

Nina Baltic



Theory and Practice of Human
and Minority Rights under
the Yugoslav Communist System

This report was compiled in the frame of the FP6 project “Human and Minority Rights in the Life Cycle of Ethnic Conflicts”.

The author was affiliated to the Institute for East European Law, part of the Faculty of Law at the University of Cologne (Germany), one of the partners in this project.

Copyright March 2007: the executing contracting institution

Report on the Theory and Practice of Human Rights and Minority Rights under the Yugoslav Communist System

Nina Baltic

TABLE OF CONTENTS

Introduction.....	4
Historical Background	4
Structure of the Analysis	5
1. Part One - Theory and Practice of Human Rights.....	6
1.1. 1945-1953	6
1.1.1. State structure	6
1.1.2. Constitutional System and Human Rights	7
(a) Particular Civil Rights and Duties.....	7
(b) The Implementation of the Freedom of Religion in Particular	7
1.1.3. Courts and Trials.....	9
(a) Courts	9
(b) Trials	10
1.2. 1953-1963	11
1.2.1. State Structure	11
1.2.2. Juridical Reform	11
1.2.3. Trials.....	12
1.3. 1963-1974	13
1.3.1. State Structure	13
1.3.2. Liberalisation in the Sixties	13
1.3.3. Constitution.....	14
1.3.4. Court System	14
(a) Constitutional Court	14
(b) Courts	14
1.3.5. Press and Religious Institutions.....	15
1.3.6. Economic and Political Crises.....	15
(a) FADURK.....	15
(b) Croatian Spring	16
(c) Serbia's Intellectuals	17
(d) Incidents in Kosovo	17
1.4. 1974-1990	17
1.4.1. State Structure	17
1.4.2. Constitutional System	18
1.4.3. Economic System	19
1.4.4. Constitutional Court.....	20
1.4.5. Freedom of Press	20
1.4.6. Political Prisoners.....	21
1.4.7. Religion.....	22
1.4.8. Army	23
1.4.9. International Agreements	23

2. Part Two - Theory and Practice of Minority Rights	24
2.1. <i>Federal level: General Aspects</i>	24
2.1.1. Demography	24
2.1.2. Terminology	24
2.1.3. Census	27
2.1.4. Birth rates.....	28
2.1.5. Migration and Emigration.....	28
2.1.6. Ethnic distribution across Yugoslavia	29
2.1.7. Legal Provisions concerning Minority Rights	30
(a) 1945-1963	30
(b) Amendments in the late sixties.....	33
(c) 1974 -1989	33
Electoral system.....	33
Language rights in the agencies and organisations of Yugoslavia .	34
Judicial system	35
2.2. <i>Republican level: The Issue of Culture and Education.....</i>	36
2.2.1. SR Bosnia and Herzegovina.....	36
2.2.2. SR Croatia	37
2.2.3. Macedonia.....	38
2.2.4. Serbia and the Autonomous Provinces:	38
(a) Serbia (proper).....	39
(b) Vojvodina	40
(c) Kosovo	40
Legal development.....	40
Economic development.....	41
Education and Culture.....	42
3. Part Three - Evaluation	44

Introduction

Historical Background

History has formed a blended pattern of ethnic groups on the territory of the former Yugoslavia. As it would go far beyond the scope of this report's topic to deal with all facts¹ and influences that led to the origin of the second Yugoslavia, its political, economic and social systems and its inherent problems, the following text compresses the prehistory of Socialist Yugoslavia into a short survey in order to make the processes that took place between 1945 and 1990 comprehensible.

The South Slavs' migration – presumably from their “original” areas of settlement north of the Carpathian Mountains – to the territory of the former Yugoslavia was finished by roughly the 7th century.² In the last phase of the Slavs' southward migration, the Serbs and the Croats settled separately in several tribes, coming across other Slav tribes that had already been living there for a short period of time.³

These Slavs arriving to the future Yugoslav state territory encountered different peoples there, namely Romanized autochthon population⁴, which were eventually largely absorbed by the Slavs. That forced the autochthon inhabitants to retreat to the mountains or to leave the territory.⁵ For example the Vlachs – akin to the Romanians – living in the territory of former Yugoslavia are descendants of such a Romanized population, which succeeded in preserving its language and culture to a certain extent.⁶ The question of whether the Albanians derive their origin from ancient Illyrians is scientifically disputed, but seems probable.⁷

As the Slavs reached this territory, it had already been divided into two cultural spheres: The Eastern Byzantine Empire (later Orthodox Christianity) and the Western Roman Empire (later Roman Catholic).⁸ However, the geographical character of the new lands also prevented the Slav tribes from an integrative development. The wide Dinaric Mountains divided them into relatively isolated parts. The fact that these natural barriers at the same time could not “prevent the outside penetration” was one of the reasons that the medieval states, founded by the Bosnians (1180-1463), Croats (925-1102) and Serbs (early 7th and 13th century – late 14th century), were all of short duration.⁹

¹ Plenty of facts in the southern Balkans history are disputed and might never be entirely ascertained.

² Edgar Hösch, Karl Nehring and Holm Sundhaussen, *Lexikon zur Geschichte Südosteuropas* (Böhlau, Vienna, 2004), 627; Michael Weithmann, *Balkan-Chronik: 2000 Jahre zwischen Orient und Okzident* (Pustet, Regensburg, 2nd ed. 2000), 54, 55; Traian Stoianovich, *Balkan Worlds: the First and Last Europe* (Sharpe, New York, 1994), 125, 126.

³ Peter Bartle, *Grundzüge der Jugoslawischen Geschichte* (Wissenschaftliche Buchgesellschaft, Darmstadt, 1985), 3; Edgar Hösch, *Geschichte der Balkanländer* (Beck, Munich, 4th ed. 2002), 38; Noel Malcom, *Bosnia: A Short History* (Papermac, London, 1996), 6, 7.

⁴ For example Illyrians, Dacians and Thracians: Stoianovich, *op. cit.* note 2, 121-; Sylvia Irene Schmitt, *Krisenherd Balkan: eine Herausforderung für die internationale Staatengemeinschaft* (Kovač, Hamburg, 2005), 40.

⁵ John R. Lampe, *Yugoslavia as history: Twice there was a Country* (Cambridge University Press, Cambridge, 2000), 14.

⁶ Karl Kaser, *Südosteuropäische Geschichte und Geschichtswissenschaft* (Böhlau, Vienna, 2nd ed. 2002), 56, 61, 62.

⁷ Kaser, *op. cit.* note 6, 49, 52, 53.

⁸ Weithmann, *op. cit.* note 2, 43-; Lampe, *op. cit.* note 5, 14-.

⁹ Lampe, *op. cit.* note 5, 10.

Over the centuries, the Ottoman and Habsburg Empires partitioned the lands into very diverse jurisdictional, cultural and religious areas. Even within the respective regimes there were no unified rules in force.¹⁰ In 1918 the downfall of the once mighty empires accompanied by the outcomes of the First World War decided the basic elements upon which the first Yugoslav state was founded.¹¹ The Kingdom of the Serbs, Croats and Slovenes — renamed the Kingdom of Yugoslavia in 1929¹² — was shaped by the unification of the “State of the Slovenes, Croats and Serbs,” the South Slavs, ruled by the Habsburg Empire, with the “Kingdom of Serbia and Montenegro” on 1 December 1918. The newly created kingdom was ruled by the Serb King and was, from its beginning, characterized by tensions between the nations involved.¹³

With the German invasion in 1941, the Kingdom of Yugoslavia virtually ceased to exist. The brutal events that followed afterwards were widely based on ethnicity and national affiliation, to mention only the most widespread Ustasha and Nazi slaughter, and Chetnik crimes,¹⁴ amongst others, and determined circumstances of the Second Yugoslavia. The Partisans, prevailingly of Serbian/Montenegrin¹⁵ composition in the initial phase, were the only party that had a multi-ethnic approach, which they pursued together with a new “fairer” social order in the second Yugoslavia.

Structure of the Analysis

The complexity of the development of human rights and minority rights make a separate analysis of both topics necessary. For this reason the development of the state structure on the federal level and four constitutional changes, which had formed the framework for the development of both subjects, will be revealed in the first part. Furthermore the first part will include the human rights theory and practice.

The second part considers the effects of the constitutional/system changes specifically concerning minority rights at federal and republican/provincial level. Naturally an intersection between the two issues occurs. This is particularly evident in the case of Kosovo, which is analyzed more in detail in the last part of the report.

¹⁰ Lampe, *op. cit.* note 5, 9-.

¹¹ Dušan Bilandžić, *Historija SFRJ: Glavni procesi 1918 - 1985* (Školska Knjiga, Zagreb, 3rd ed. 1985), 9.

¹² Simultaneously transforming the “constitutional monarchy” into a royal dictatorship.

¹³ Hösch, Nehring and Sundhaussen, *op. cit.* note 2, 321- ; Holm Sundhaussen, *Geschichte Jugoslawiens: 1918 - 1980* (Kohlhammer, Stuttgart, 1982), 34, 38- .

¹⁴ Hösch, Nehring and Sundhaussen, *op. cit.* note 2, 322- ; Mischa Glenny, *The Balkans 1804 - 1999: Nationalism, War and the Great Powers* (Granta Books, London, 2000), 479- ; Lampe, *op. cit.* note 5, 200-232.

¹⁵ Sundhaussen, *op. cit.* note 13, 132; Lenard Cohen and Paul Warwick, *Political Cohesion in a Fragile Mosaic: The Yugoslav Experience* (Westview Press, Boulder, 1983), 60.

1. Part One - Theory and Practice of Human Rights

1.1. 1945-1953

The Communist Party emerged as winner from the elections held in 1945, a victory achieved by the strong position it gained with the outcome of the Second World War, which it used to suppress non-communist politicians in the electoral campaign. Voters had the possibility either to choose a candidate from the Popular Front List, consisting of members of the Communist party or pre-approved persons, or to post the ballots to an opposition-box.¹⁶ This was the beginning of the one-party-system that would last until Yugoslavia's dissolution. However, in the sixties the positioning of alternative candidates gradually advanced the one party system.

1.1.1. State structure

The elected delegates proclaimed the Federal People's Republic of Yugoslavia and the new Constitution on 29 November 1945.¹⁷ According to the Constitution the highest legislative body was the People's Assembly (Narodna skupstina), consisting of two chambers, a Federal Council (Savezno Vece) and a Council of Nationalities (Vece Naroda).¹⁸ The Federal council was elected by all Yugoslav citizens (1 deputy per 50000 citizens) while the deputies of the Council of Nationalities were elected by the Republics (30 deputies each), the Autonomous Province Vojvodina (20 deputies) and the Autonomous Region Kosovo and Metohija (15 deputies).¹⁹ Both voted that the Presidium²⁰ and the government (vlada) was the highest agency of state authority.²¹ The organizational scheme of the state structure was not really implemented, as all political decisions were made within the so-called Political-Office (Politbiro) of the Yugoslav Communist Party, although the Party was not legally institutionalized within the official state structure.²² The Political-Office decision-making system was ubiquitous throughout the country to the lowest levels, including local governmental bodies, which were composed of Party members and state officials controlled by the Party.²³

The *Federal People's Republic* was actually a highly centrally aligned entity. At its initial stage, Yugoslavia used the Soviet Union as a role model for its constitutional system. The first constitution of the FNRJ²⁴ regulated in section III articles 9-13 the basic rights of the peoples and peoples' republics in the Federal Peoples Republic of Yugoslavia (hereinafter FPRY), including a provision referring to the rights of the national minorities. According to article 9 section I FPRY, the sovereignty of the individual Republics - the Peoples Republic (hereinafter PR) of Serbia (with the Autonomous Province Vojvodina and the Autonomous Region

¹⁶ George W. Hoffmann and Fred Warner Neal, *Yugoslavia and the New Communism* (Twentieth Century Fund, New York, 1962), 79, 80; Lampe, *op. cit.* note 5, 234.

¹⁷ It came into effect 31st January 1946. Ustav, Sluzbeni list FNRJ, no. 10/46.

¹⁸ Art. 52 of the Constitution of the FNRJ, Ustav, Sluzbeni list FNRJ, no. 10/46.

¹⁹ Art. 53, 54 of the Constitution of the FNRJ, Ustav, Sluzbeni list FNRJ, no. 10/46.

²⁰ Article 74 Constitution of the FNRJ.

²¹ Article 77 of the Constitution of the FNRJ.

²² Franz Mayer, „Zur Geschichtlichen Entwicklung von Staat und Verfassung in Jugoslawien“, in Klaus-Detlev Grothusen (ed.) *Südosteuropa-Handbuch Band 1: Jugoslawien* (Vandenhoeck & Ruprecht, Göttingen, 1975), 33-150, at 40.

²³ Hugh Seton-Watson, „Yugoslavia Today“, *International Law Journal* (1947), 150-161, at 161; Hoffman and Neil, *op. cit.* note 16, 84.

²⁴ Ustav FNRJ, 10/46; Ratko Markovic and Milutin Srdic, *Ustavi i ustavna dokumentacija Socialisticke Jugoslavije: 1942-1988* (Naučna Knjiga, Belgrade, 1989), 31-.

Kosovo and Metohija as parts of the Republic²⁵), PR Croatia, PR Slovenia, PR Bosnia and Herzegovina, PR Macedonia and PR Montenegro²⁶ - were limited by rights given to the Federal Peoples Republic of Yugoslavia by the Federal Constitution and matched by a corresponding duty of the FPRY to protect the sovereign rights of the Republics.²⁷ Each Republic had its own constitution in accordance with the Federal Constitution, which theoretically allowed them to respond to individual characteristics. The republics' constitutions, however, were almost identical to the Federal Constitution.²⁸

1.1.2. Constitutional System and Human Rights

In the first constitution – of the three Constitutions issued during Yugoslavia's existence – the portion concerning Civil Rights and Duties did not deviate much from the western constitutions.²⁹

2.2.1. Particular Civil Rights and Duties

In accordance with general communist philosophy and in consideration of Yugoslavia's bloody past, great importance was attached to the equality of people. The general principle of equality opened paragraph V. (articles 21-43) of the constitution, titled "Civil Rights and Duties," in article 21 section I. Section II of article 21 stated the prohibition of privileges based on birth, position, property and educational background, while paragraph III prohibited and made it a punishable offence to give citizens an advantage or to restrict rights based on nationality, race or confession of faith and forbade the dissemination of national, racial or religious hatred.

In general, the Constitution provided all the rights known by western Constitutions:

Universal suffrage was regulated by article 23, which determined that all citizens, without distinction of sex, nationality, race, faith, educational or residential background, who had attained the age of eighteen, had the right to vote and to be elected to every state agency. The right to vote was general, equal, direct, free and secret according to the constitution.

According to article 27, citizens were guaranteed freedom of press, speech, association, assembly, public assembly and manifestation. Nevertheless, the press was not free, nor were the citizens in their expression. Above all, the press was oriented towards establishing Communist Party power.

2.2.1. The Implementation of the Freedom of Religion in Particular

The separation of church and state, and freedom of faith, conscience and creed were implemented in article 25 of the Federal Constitution, prohibiting simultaneously the misuse of church and belief for political purposes. The option of state support for churches was extended and attended to by the state, conditional on the placement of appropriate personnel as representatives of the churches and denominations. Due to the fact that churches were forced to stay out of politics and to practice solely religious work, there were attempts to hinder public

²⁵ Article 1 section III of the Federal Constitution.

²⁶ Article 1 section II of the Federal Constitution.

²⁷ Article 9 section I and II of the Federal Constitution, Ustav FNRJ, 10/46, Markovic and Srdic, *op. cit.* note 24, 31-.

²⁸ Cp. in place of all six republican constitutions, e.g. Constitution of the Peoples Republic of Slovenia.

²⁹ Mayer, *op. cit.* note 22, at 40.

employees from attending religious ceremonies.³⁰ Nevertheless, in general religious freedom could be practiced without discrimination and from the beginning³¹ the governments of the republics annually subsidized the religious communities with large sums.

A conflict did occur between the clergy and the regime, and was twofold:

On one hand, there was the inherent conflict between the general communist approach, which weakened the churches through land and educational reforms that limited the real property held by the Orthodox and Catholic churches and minimized religious influence by relegating religious lessons to voluntary education.³² Article 3 of the Law on Land Reform and Settlement³³ e.g. stated that the "land estates (over 10 ha) of churches, monasteries, religious institutions and of all kinds of foundations, should be taken away from the present owner and passed into the hand of the State". Article 8 allowed the maintenance of religious institutions (churches, monasteries, ecclesiastical authorities) of major importance or of major historical significance up to 30 hectares of arable land and up to 30 hectares of forest out of their present holding.

On the other hand, the Roman-Catholic and the Orthodox churches were driving forces in the national development of the Croatian and Serb nation. In general, nation building of Croats, (present-day) Bosniacs (former Muslims) and Serbs was primarily based on religious affiliation. As the churches were also carriers of nationalism, they were doubly in conflict with the Yugoslav Communist Party, whose equalizing approach attempted to deal with the problem of national hatred. The Roman-Catholic clergy, due to its partial interpenetration with the Ustasha-Regime and its low support of the Partisans, was a particular thorn in the flesh of Tito's regime.³⁴ Cooperation between the Orthodox clergy and the Partisans had been somewhat better during the war, and therefore so was their relationship in the post war period. The conflict between the Roman-Catholic Church (in particular in Croatia) and the regime appeared more frequently than it did with the other religious communities in the following decades.

Nevertheless, the Slav Muslim clergy also came into conflict with the authorities. Several mosques were closed or alienated, competences in e.g. education and religious taxation were wrested from the religious leaders, and religious publications as well as the education of religious teaching staff were restricted.³⁵ The communists also interfered in the Muslims' religious traditions partly as there were certain elements, e.g. the veil for women, which had to be abolished.³⁶

The Islamic Religious Community (IVZ - Islamska Vjerska Zajednica), led by the anti-communists, that were elected immediately after the war, was forced to replace its leadership due to the denial of financial support.³⁷ The first elected Reis-ul-Ulema resigned in 1947, and was replaced by a newly elected reliable religious official, who adopted a non-confrontation course. As a result, the community was given the right to autonomy in internal affairs.³⁸ A supreme

³⁰ Hoffmann and Neal, *op. cit.* note 16, 95.

³¹ *Ibid.*

³² *Ibid.*, 93.

³³ Sluzbeni list FNRJ, Sl. l. 64/45; Zdenko Štambuk, *The Legal Status of Religious Communities in Yugoslavia* (Međunarodna Štampa - Interpress, Belgrade, 1967), 23.

³⁴ Hoffman and Neal, *op. cit.* note 16, 93- .

³⁵ Francine Friedman, *The Bosnian Muslims: Denial of a Nation* (Westview Press, Boulder, 1996), 150.

³⁶ Hoffmann and Neal, *op. cit.* note 16, 93.

³⁷ Zachary T. Irwin, "The Islamic Revival and the Muslims of Bosnia-Herzegovina", XVII (4) *East European Quarterly* (1984), 440-458, at 440.

³⁸ *Ibid.*, 441.

assembly (“Vakufski Sabor”), which included regional assemblies in Bosnia, Serbia, Macedonia and Montenegro, was established, and subsidies of 22.9 million Dinar in the period of 1948-1950 provided for a relatively “normal functioning of the IVZ”.³⁹

Another more problematic incident that occurred during the last five years of the forties was the suppression of “Mladi Muslimani” – a youth organization that had partly collaborated with the Axis-forces and was partly committed to aiding refugees during the Second World War – of which many leaders and members, including Alija Izetbegovic, were imprisoned.⁴⁰

1.1.3. Courts and Trials

The inviolable dignity of the citizen’s person was stated in article 28 of the Federal Constitution. The Constitution also stated that no one could be arrested for more than three days without the written and substantiated decision of a court or of the public prosecutor, and articulated the “nulla poena sine lege” maxim. Furthermore, persons had to be heard and supplied with counsel. These constitutionally determined rights did not matter in the practice of the Yugoslav regime, which exploited the judiciary system for its own purposes.

(a) Courts

At the lowest level, the first juridical institutions of the local government during the early communist were People’s Courts. Occupied by Party members and/or persons who were loyal to the government, they relied on the “achievements of the National Liberation” rather than on the determined law.⁴¹

During this period, the judiciary was composed either of professional judges with an unlimited mandate, who were mostly poorly skilled, or of judge jurors who were citizens. The only formal condition to meet for the election of a judge at the lower level courts was that the person had to have the right to vote according to the Constitution.⁴²

The courts initialized trials on the charges of the Public Prosecutor, who held an enormously strong position. The Public Prosecutor was appointed at the federal level, and the Public Prosecutor’s Office determined the subsequent posts of public prosecutors at all levels below in parallel with the Soviet model. This procedure led to a strictly hierarchic structure in the prosecution section. The Prosecutor’s competences included control of the “administrative application of laws and the right of intervention during judicial and administrative proceedings,” according to articles 124 and 127 of the Federal Constitution, and following the theory of the unity of state authority.⁴³ Furthermore the prosecutors were “closely connected and often recruited from the Intelligence Service, Military and Secret Police” and backed the Party leadership.⁴⁴

The other strand interwoven in the juridical system was the OZNA, Department for the Protection of the People, later known as UDBA (Uprava državne bezbednosti - State Security Administration) and later renamed SDB (Sluzba Drzavne Bezbednosti - State Security Service). OZNA members were responsible on one hand, for the identification of alleged opponents of the regime, turning them

³⁹ *Ibid.*

⁴⁰ Friedman, *op. cit.* note 35, 149, 150.

⁴¹ Lenard J. Cohen, “Judicial elites in Yugoslavia: The Professionalization of Political Justice”, (11) *Review of Socialist Law* (1985), 313-344, at 321.

⁴² This was a deviance from soviet system, where judges were elected directly; Cohen, *op. cit.* note 41, at 321.

⁴³ Thomas Shillinglaw, “The Development of Constitutional Review in Yugoslavia”, IV (4) *East European Quarterly* (1971), 369-388, at 373.

⁴⁴ Cohen, *op. cit.* note 41, at 322.

over to the juridical system, and on the other for all judicial functions: from the investigation up to the execution of sentences, including the execution of political opponents.⁴⁵ The head of this organization was Aleksandar Rankovic, who was in charge in this field until his dismissal in 1966, and ran a hard and rough regime.⁴⁶

(b) Trials

These preconditions set the frame for the exploitation of jurisdiction, in order to punish collaborators of the axis powers and war criminals of World War II. Subsequently, the main target became the anti-communist stream and later, after the split with Stalin, the system was used to eliminate all Pro-Russian forces throughout the country.⁴⁷

The axis allies – Ustasha, Chetniks, Slovene Home Defenders and the civilians who had fled the country with them – were returned to Yugoslavia by the British and United States forces.⁴⁸ They belonged to the first category of state enemies. More than 30,000 of them were killed outright, but most were sent to detention camps.⁴⁹ Furthermore, political opponents who stayed on the territory of Yugoslavia were executed, imprisoned or similarly brought to criminal camps or sentenced by the courts.⁵⁰

The two most well-known trials, belonging to the first category, were those of Draza Mihailovic, the leader of the Chetnik movement, who was sentenced to death, and of Alojzije Stepinac, the archbishop of Zagreb during the Ustasha regime, who was convicted to a prison term that was, due to health problems, later transformed into house arrest. Both trials were much criticized by (different) western parties. Without delving at length into matters concerning the two trials, it is certain that the fair-trial principle was not upheld, and that procedural shortcomings were common. For example in the Stepinac trial, the defense witnesses were restricted to seven, while the number of witnesses for the prosecution numbered seventy-one.⁵¹

Similar examples can be found in other trials in the aftermath of WW II that were used to get rid off all political enemies in favour of Communist Party power stabilization. Many members of the “intellectual and bourgeois circles” shared a similar fate to Dragoljub Jovanovic, the leader of the small Serbian Agrarian Party, who was sentenced to nine years imprisonment due to his regime-critical statements.⁵²

After the Tito-Stalin-split, the initially Soviet oriented system turned against its own followers: communists who had sided with Stalin or were accused of siding with Stalin. These were the last mass persecutions before the period of relaxation and decentralization of fifties and sixties began.⁵³ The fear of power loss allowed the (disputed) number of alleged Pro-Russian prisoners to rise to 12,000-15,000,⁵⁴ including e.g. Andrija Hebrang, and Sreten Zujovic, who were both previously high ranking members of the Communist party and very close to Tito.⁵⁵ Many of them

⁴⁵ Cohen, *op. cit.* note 41, at 323; Lampe, *op. cit.* note 5, 238.

⁴⁶ Lampe, *op. cit.* note 5, 289, 290; Hoffmann and Neal, *op. cit.* note 16, 92, 142, fn. 2; Cohen, *op. cit.* note 41, at 326.

⁴⁷ Cohen, *op. cit.* note 41, at 323.

⁴⁸ Lampe, *op. cit.* note 5, 227-.

⁴⁹ Matjaz Klemencic and Mitja Zagar, *The Former Yugoslavia's Diverse Peoples: a reference sourcebook* (ABC-CLIO, Santa Barbara, 2004), 195; Lampe, *op. cit.* note 5, 228.

⁵⁰ Klemencic and Zagar, *op. cit.* note 49, 195-.

⁵¹ Hoffmann and Neal, *op. cit.* note 16, 94.

⁵² Lampe, *op. cit.* note 5, 238; Klemencic and Zagar, *op. cit.* note 49, pp. 198.

⁵³ Cohen, *op. cit.* note 41, at 323.

⁵⁴ Cohen, *op. cit.* note 41, at 326; Sundhausen, *op. cit.* note 13, 157.

⁵⁵ Sundhausen, *op. cit.* note 13, 157, 158.

were sent to Goli Otok, a remote island in the Northern Adriatic Sea and site of a massive concentration camp/prison for collaborators and anti-communists, or to other prisons throughout the country where the detained persons suffered from harsh treatment, which they often did not survive.⁵⁶

According to the Statistical Survey of Yugoslavia, in the period of 1945-1964, 10,211 persons were sentenced on the basis of offences against the people and state in 1947, 11,246 in 1948, 6,366 in 1949 and 5,269 in 1959. The official number then declined to 145 in 1964.

Depending on the situation, the law was construed according to the regime's immediate goals, and individual rights were restricted due to the construction and maintenance of a Yugoslav state without any institutions that could have implemented the guaranteed rights.⁵⁷ Later, with the first constitutional amendment, a modified separation of powers was introduced and developed with the further constitutional changes. At this time, however, the unity of state was the leading principle.

1.2. 1953-1963

1.2.1. State Structure

From the early fifties onwards, Yugoslav leadership would admit the rough suppression of leadership in the post war period to a certain extent. Kardelj e.g., one of the leading thinkers of the regime, explained in the early fifties, that "the measures of the revolutionary political pressure were no longer needed to be the main instruments to secure free socialist development".⁵⁸ At this stage, the reforms following the split in 1948 had brought a more democratic orientation to the Yugoslav system. The modifications encompassed the state structure, the republican and local governments, the juridical system, and formally the Communist Party, which was renamed the Yugoslav League of Communists in 1952.⁵⁹ To the Federal Assembly, consolidated out of the two former chambers, the Chamber of Nationalities and the National Assembly, was added a Council of Producers based on the Constitutional Law of 1953. This conception led to a practical restriction of the influence of the Chamber of Nationalities, mostly in matters affecting the interests of the republics.⁶⁰ Nevertheless, just a little before, in 1951, competences were transferred from the federal level to the republican and local level. At the local level, workers' councils were introduced in 1949/1950 and the administrative organization was decremented by 100.000 figures.⁶¹ The economic reform was a consequence of the dispute with Russia, as the most important trade partner, entailing the constitutional reform in 1953.

1.2.2. Juridical Reform

The enactments of the new Criminal Code⁶² (1951), Code of Criminal Procedure (1954), and the Law on Courts (1954) reformed the judicial system in order to "overcome the earlier arbitrariness by the courts and the police".⁶³ However,

⁵⁶ Cohen, *op. cit.* note 41, at 326.

⁵⁷ Shillinglaw, *op. cit.* note 43, at 373; Cohen, *op. cit.* note 41, at 323.

⁵⁸ Cited after: Shillinglaw, *op. cit.* note 43, at 373. An open discussion about the thousands of dead of the Pro-Russian cleansing was not started until Tito's death in 1980.

⁵⁹ Sundhausen, *op. cit.* note 13, 164. Cohen, *op. cit.* note 41, at 324.

⁶⁰ R. V. Burks, *The National Question and the Future of Yugoslavia* (Rand. Corp., Santa Monica, 1971), 9.

⁶¹ Sundhausen, *op. cit.* note 13, 164.

⁶² Criminal Code, Ur. l. SFRJ 13/1951.

⁶³ Cohen, *op. cit.* note 41, at 323.

although a provision of the Law on Courts from 1954 prohibited the external influencing of judges, Party control over judges was maintained through legislative election.⁶⁴

The requirement of a law degree for future judges introduced by article 46 of the Law on Courts was a reaction to the educational level of most judges in office:

“In Bosnia-Herzegovina 110 out of 184 judges had no legal training and three district court judges had only elementary education. [...] In Kosovo almost the entire judiciary had only completed elementary school”.⁶⁵

The result of the reform was a gradual professionalizing of the judicial staff, which nevertheless did not include the judge-jurors, who played an important part in the judicial system.⁶⁶

This professionalizing process was extended to public prosecutors by the Law of Public Prosecutors in 1954. Additionally, their competences were restricted and procedural infringements of Public Prosecutors were subjected to judicial review by law. However the decentralization of Public Prosecutors branch did not commence until 1967.⁶⁷

The whole juridical system was working to the regime's advantage. The criminal code played its part in chapter ten: criminal offences against the people and against the state. “Contra revolutionary attack against the state and social organization”, “Endangering of territorial integrity and independence of the state”, “Espionage”, “Aiding the enemy in time of war”, “Political and economic cooperation with the enemy”, “Participation in hostile activity against the Federative People's Republic of Yugoslavia”, “Flight for the purpose of hostile activity”, “Association against the people and the state”, “Hostile propaganda” (article 118), “Incitement of national, racial or religious intolerance, hatred or dissension” were some of the articles of the extensive chapter that were regarded as indispensable for the protection of the people and state.

1.2.3. Trials

The UDBA, reformed as the SDB from 1954 on, was also restrained to some extent, but remained a very powerful apparatus of persecution until Rankovic's dismissal; it was responsible for the persecution and assassination of political Yugoslav opponents abroad and within Yugoslavia.

One of the most well-known cases of political dissident at the beginning of the fifties was that of Milovan Djilas. Formally, he belonged to the leadership of the Communist Party and was a high-ranking state official. He began to criticize the regime and demand the democratization of the system, e.g. the shutdown of Goli Otok.⁶⁸ Since he refused to stop his work and the dissemination of his ideas, he and Vladimir Dedijer, who had sided with him, received “short suspended sentences as a further warning”.⁶⁹ Djilas continued his criticisms and was therefore sentenced several times until Yugoslavia's dissolution, while Dedijer retreated to teaching.⁷⁰

⁶⁴ *Ibid.*, at 324.

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*, at 326.

⁶⁸ John B. Allcock, *Explaining Yugoslavia* (Columbia University Press, New York, 2000), 272; Hoffmann and Neal, *op. cit.* note 16, 186-; Cohen, *op. cit.* note 41, at 326.

⁶⁹ Cohen, *op. cit.* note 41, at 327.

⁷⁰ Sundhaussen, *op. cit.* note 13, 167.

1.3. 1963-1974

1.3.1. State Structure

The economic and social developments of the self-management principle in Yugoslavia through the introduction of workers' councils caused the need for a constitutional rearrangement. The constitutional change of 1953 did not concern human/citizen rights or minority rights; rather its principal function was to accompany the social-economic reforms. The new constitution was elaborated in 1963. It was designed by Edvard Kardelj, and it emphasized "constitutionalism and legality as the twin principles underlying the Yugoslav model of communism" and now formally picked up the term Socialism.⁷¹ The new legal order, however, brought decentralization and a complicated system of representation in the official bodies. The federal legislative was now composed of the Federal Council, Economic Council, Educational and Cultural Council, Social and Health Council and the Organizational-Political Council. The Federal Council consisted of 120 elected delegates, and the nationality council of 70 delegates (10 for each republic and 5 for each autonomous province), and was entrusted with questions concerning the equality of nations and the rights of the republics.⁷² The other councils were composed of delegates from the working organizations or working communities, which were elected in the municipalities and overbalanced the Federal Council.

1.3.2. Liberalization in the Sixties

This constitutional reform set the stage for the strengthening of each republic's authority and the equalization of the nations and nationalities of Yugoslavia. The economic reform in 1965 – comprising, inter alia, bank reforms, taxes, and private bank credit access – introduced a socialist market dependent on trade with the West.⁷³

The liberal political atmosphere was conditioned by two additional factors: the dismissal of Aleksandar Rankovic, minister of interior affairs and chief of the security apparatus, which cleared the way for decentralization and greater authority for the republics and in particular the Province of Kosovo, and a liberal Serbian leadership – Marko Nikezic and Latinka Perovic – that was open to the demands of the Croatian and Slovenian political leadership.⁷⁴ Nevertheless, in the army, security services, and the party, conservative/centralistic leanings had been maintained. The Yugoslav Peoples Army's command, teaching and administration were conducted in the Serbo-Croatian language,⁷⁵ while in civil life and administration the use of all Yugoslav national languages was strengthened by the proclamation that all languages of the Yugoslav nations were equal.⁷⁶

Higher education was enhanced throughout Yugoslavia by the establishment and enlargement of new faculties and universities and the increasing exchange of students with Western Europe and the United States, which improved the level of education.⁷⁷

Additionally, influences promoted by the numerous guest workers regularly returning to Yugoslavia, and an extensive employment policy, facilitated a

⁷¹ Cohen, *op. cit.* note 41, at 329.

⁷² Article 165 section II of the Constitution of the Socialist Federal Republic of Yugoslavia, 14/63.

⁷³ Lampe, *op. cit.* note 5, 265, 289, 290; Cohen and Warwick, *op. cit.* note 15, 77.

⁷⁴ Lampe, *op. cit.* note 5, 265, 289, 290.

⁷⁵ Article 42 section III of the Federal Constitution.

⁷⁶ Article 42 section I of the Federal Constitution.

⁷⁷ Lampe, *op. cit.* note 5, 292, 293.

relatively high living standard inclined toward western consumer societies during this time.⁷⁸

1.3.3. Constitution

Yugoslavia had now developed its own brand of socialism. According to the elaborated Yugoslav socialist philosophy, a secure existence was seen as the basis for the implementation of individual rights within a collective.⁷⁹ The constitutional system provided a complicated system of human and citizens' rights. It distinguished between workers' rights and citizens' rights. The collective rights of self-managed workers and citizens were mainly outlined in the chapters "social-economic system" and the "social-political system". The paragraph "Freedoms, rights and duties of man and citizen," which was embedded between the latter two chapters, comprised classical human and civil rights, as well as social rights.

Freedom of the press, and of association, speech, public appearance, and assembly (article 40), for example, were granted under the premise that they not be misused for subversion of the socialist democratic system⁸⁰. The press, television and broadcasting services were also obliged to be truthful and objective in their reporting, according to article 40 section V.

All important human rights that can be found in western constitutions were formally granted under the Federal Constitution, in addition to many more social and economic rights. Nevertheless, the realization of these rights was bound to the socialist community.

1.3.4. Court System

(a) Constitutional Court

The establishment of the Constitutional Court (in 1963 on Federal level and in 1964 on republican and provincial level) was primarily a reaction to the progression of self-management. Decentralization followed. Decision making in all fields was transferred from federal to republican and local levels. This caused a need for a mechanism to guarantee the coherent implementation of self-management.⁸¹ The Constitutional Court, however, was not a supervisory institution that could control the republican constitutional courts. It had a largely subsidiary function due to republican and provincial autonomy.⁸² It was not intended to be only a juridical, but also a "political-legal body", deciding on conflicts of self-management, litigations of public bodies, and conflicts between the Federation and the Republics.⁸³ From 1964-1966 the Constitutional Court dealt with more than 3,000 cases of "human and self-government rights" falling into the purview of the complicated system of "self-management".⁸⁴

(b) Courts

In general, jurisdiction advanced continuously. Judges had to have had complete judicial education to sit on communal and district courts, however they also had to

⁷⁸ Sundhausen, *op. cit.* note 13, 184, Lampe, *op. cit.* note 5, 294.

⁷⁹ Vladimir Prvulović, *Pravo na slobodu: Ljudska prava i slobode u socijalizmu* (Privedni Pregled, Belgrade, 1984), 13.

⁸⁰ Article 40 section III of the Federal Constitution.

⁸¹ Christine Höcker-Weyand, *Verfassungsgerichtsbarkeit in Jugoslawien* (Bundesinstitut für Ostwissenschaftliche und Internationale Studien, Cologne, 1978), 7.

⁸² *Ibid.*, 11.

⁸³ Cp. Cohen, *op. cit.* note 41, at 329.

⁸⁴ Cohen, *op. cit.* note 41, at 329; Höcker-Weyand, *op. cit.* note 81, 25.

be “morally and politically suitable.” This was ensured, inter alia, by the Socialist Alliance of Working People, a successor of the Peoples’ liberation front, which exercised advisory activity in the “commissions for elections and appointments” of the judges.⁸⁵ Furthermore, an exemplary analytical investigation in 1979/1980 showed that 87.2 % of the judicial staff were members of the League of Communists. The percentage was lowest in the law courts (84.7 %), higher in the courts of associated labour (93.2%) and highest in the public prosecutor’s offices (93.7 %).⁸⁶

1.3.5. Press and Religious Institutions

Freedom of the press expanded during this period, and the prohibition of single issues of foreign newspapers and journals remained minor. In the official gazette of 1968 e.g. the import and dissemination of one issue of “Corriere della sera” and “Der Spiegel” was prohibited.⁸⁷

In domestic printed media⁸⁸ publications like Praxis, Gledista, Nase Teme, Glas Koncila (catholic), and since 1967 Pravoslavje (orthodox), reflected various currents within the Yugoslav society.⁸⁹

After the death of Stepinac, whose conviction caused first a dispute and then silence between the Yugoslav regime and the Vatican, talks were resumed in 1960 and the improving relationship between the catholic clergy and the regime relieved pressure from religious activity.⁹⁰ The denominations were able to extend their publishing activities and to build new churches and restore many of the old destroyed ones.⁹¹ In general, relationships with all three large religious communities improved.⁹²

1.3.6. Economic and Political Crises

(a) FADURK

As the gap of economic development between the republics and provinces widened in the early sixties, the FADURK (Federal Fund for Accelerated Development of the Underdeveloped Republics and Kosovo) for Bosnia-Herzegovina, Kosovo, Macedonia and Montenegro, was created to overcome the increasing economic inequality.⁹³

In Bosnia the GDP per capita had fallen from 95 % of the Yugoslav average in 1952 to 76 % in 1960, while Kosovo’s GDP per capita reached one quarter of Slovenia’s GDP in 1952 and decreased to one fifth in 1960.⁹⁴ Nevertheless, what was meant to resolve a critical situation, would later serve as grounds for complaints from all parties:

The two western republics Croatia and Slovenia, accounting for the largest shares of GDP, complained about the diversion of their “tax dinars”. Serbia’s representatives would later complain about Kosovo receiving the largest relative share of the FADURK funds [and][...] Bosnian party leaders were the first to object, pointing out that their

⁸⁵ Cohen, *op. cit.* note 41, at 329.

⁸⁶ *Ibid.*, at 336.

⁸⁷ Sluzbeni list SFRJ, 1/1968 p. 25 and 14/1968 p. 303.

⁸⁸ “150 weekly and 23 daily publications by 1966”, Lampe, *op. cit.* note 5, 293.

⁸⁹ Lampe, *op. cit.* note 5, 293. Allcock, *op. cit.* note 68, 273.

⁹⁰ Lampe, *op. cit.* note 5, 293.

⁹¹ *Ibid.*

⁹² *Ibid.*

⁹³ Allcock, *op. cit.* note 68, 83- ; Lampe, *op. cit.* note 5, 291.

⁹⁴ Allcock, *op. cit.* note 68, 83, 84.

republic received only one-third of what Kosovo did on a per capita basis.⁹⁵

This economic reform was one of the main motives for the student demonstrations that broke out in Belgrade in 1968. The participants decried, among other things, the “growing economic inequality” caused by the reform in 1965, and were joined by strikes in Zagreb, Ljubljana and Sarajevo.⁹⁶ In Belgrade the police fired once at the demonstrators before the situation was defused by the leadership agreeing to cooperate with the students.⁹⁷

(b)Croatian Spring

Croatian Spring started with cultural complaints about the official use of the Serbo-Croatian language, which was dominated, in the eyes of Croatian intellectuals, by the Serbian language.⁹⁸ They demanded the recognition of a separate Croatian literary language.⁹⁹ Complaints followed about the unsuccessful 1965 economic reforms, which allegedly exploited Croatia, and eventually unrest broke out bearing nationalistic elements.¹⁰⁰

Some of the most extreme demands of Croatian Spring included a separate army and a separate representation in the United Nations.¹⁰¹ By 1972 the situation had deteriorated: the result was a purge of approximately 1000 party members of the Croatian Communist Party, of whom 90 % were Croats.¹⁰² Amongst the protagonists of Croatian spring were the leaders of the Croatian Communist Party, Savka Dabcevic-Kucar and Mika Tripalo, Matica Hrvatska, a cultural society, students who attended demonstrations, journalists, literati such as Krleza and Busic, scholars such as the future Croatian President Tudjman — it was a mass movement (Maspok).¹⁰³ Vlado Gotovac, Marko Veselica and Franjo Tudjman were among the 427 persons sentenced for “offences against the people and the state” in 1972.¹⁰⁴ In 1971 Matica Hrvatska was abandoned and could not continue its work until Yugoslavia’s political situation changed in 1990. The purge of the early seventies was another influence that, besides the economic emigration of approximately 10 % of the Croatian population, led to an even proportionally higher overrepresentation of Serbs in the party apparatus, which was common to the state agencies, administration and police.¹⁰⁵ The consequences of the crisis, however, were far-reaching. Liberals throughout Yugoslavia who had sided with the liberals in Croatia were cleansed from their offices, which led to the reinforcement of conservative Party forces.¹⁰⁶

⁹⁵ Lampe, *op. cit.* note 5, 291.

⁹⁶ *Ibid.*, 301, 302.

⁹⁷ *Ibid.*

⁹⁸ Cohen and Warwick, *op. cit.* note 15, 144

⁹⁹ Pedro Ramet, *Nationalism and Federalism in Yugoslavia: 1963 - 1983* (Indiana University Press, Bloomington, 1984), 107, 108.

¹⁰⁰ Dusko Doder, “Yugoslavia: New war, old hatreds”, (91) *Foreign Policy* (1993), 3-23, at 13; Ramet, *op. cit.* note 99, 104- .

¹⁰¹ Lampe, *op. cit.* note 5, 308.

¹⁰² *Ibid.*, 310.

¹⁰³ Cohen and Warwick, *op. cit.* note 15, 144-157; Ramet, *op. cit.* note 99, 104 - 143; Lampe, *op. cit.* note 5, 305 - 311.

¹⁰⁴ Hugh Poulton, *The Balkans - Minorities and States in conflict* (Minority Rights Publications, London, 1991), 31.

¹⁰⁵ Ramet, *op. cit.* note 99, 109, 110; Poulton, *op. cit.* note 104, 32.

¹⁰⁶ Cohen and Warwick, *op. cit.* note 15, 146.

(c) Serbia's Intellectuals

In late sixties and early seventies, confrontations between the regime and the intellectuals in Serbia appeared as well. Dobrica Cosic e.g., was expelled from the Party because he disagreed with the decentralization of the Federal Republic, which meant the weakening of Serbia. The Belgrade professor Svetozar Stojanovic called the LC a "Stalinist party," and asserted that the suppression of democratic institutions had occurred for the sake of a "charismatic leader". Among other things, this caused the discharge of eight Belgrade professors and the confiscation of the newspaper "Filozofija".¹⁰⁷

(d) Incidents in Kosovo

In the late sixties, the annual share of political criminality according to the official Yugoslav sources was 0.1 % (1967), while it amounted to 7.7 % in 1947, 3.0 % in 1950, and 0.3% in 1961.¹⁰⁸

In 1969 the (official) share rose, due to the Albanian protests in Kosovo, to 0.28 % (1.84 % in Kosovo). Large Albanian demonstrations about Serb supremacy in Kosovo erupted in 1968, demanding the republican status of Kosovo, and partly also unification with Albania.

Another rise came in 1972-73 with 0.68/0.76% rate respectively (1.68/1.17% in Croatia and 1.42/2.56% in Bosnia-Herzegovina) after the political cleansings of Croatian Spring and the related purges in the other republics.¹⁰⁹ In ethnically heterogeneous Croatia, Kosovo and Bosnia, political criminality was higher than in the other republics and Vojvodina (which was also a highly heterogeneous entity).¹¹⁰

The turbulent times of the early seventies were followed by a policy of "political devolution and centralization, repression and tolerance".¹¹¹ Thus the crisis of the early seventies resulted in the import ban on many single issues of foreign newspapers to Yugoslavia. The number of import banned issues of foreign journals and newspapers rose from five in 1967 to over fifty in 1974.¹¹²

The developments of the last decade made a reshaping of the Yugoslav system necessary again. The constitution of 1963 was amended by 42 amendments, in 1967, 1968 and 1971, as the leadership of SFRY attempted to reshape political development, before the last constitution was eventually issued in 1974.

1.4. 1974-1990

1.4.1. State Structure

In 1974, the new Constitution made the Federation a *de facto* confederation. Republics and Provinces now had legislative powers in almost all fields, with the exception of some remaining domains, such as foreign policy and defense.¹¹³ The number of chambers was reduced from five to two, which increased the Republics' influences. The Assembly consisted of the Federal Council, composed of the delegates from the self-management communities and social-political organizations, and the Council of the Republics and Provinces, whose members were elected in their capacity as republican or provincial representatives. Thus the

¹⁰⁷ Sundhausen, *op. cit.* note 13, 199, 200.

¹⁰⁸ Cohen and Warwick, *op. cit.* note 15, 151, 153.

¹⁰⁹ *Ibid.*

¹¹⁰ *Ibid.*, 144

¹¹¹ *Ibid.*, 154.

¹¹² Sluzbeni list SFRJ 1/68 p. 25 and Sluzbeni list SFRJ 1974 pp. 13, 14.

¹¹³ Friedman, *op. cit.* note 35, 160.

electoral system was complicated: the delegates were directly elected only at the local level, while at all higher levels delegates were elected by delegates of the level below.¹¹⁴

Membership in the Communist Party was not a precondition to be elected as delegate to the assemblies; however the League of Communists, with Tito as head, still played a decisive and politically unifying role.¹¹⁵

After its first modification in 1952,¹¹⁶ the League of Yugoslav Communists (SKJ) was decentralized during the course of the liberalization of the sixties (placing decisive power under the republican and provincial Communist parties), and then re-centralized in 1974 through the reimplementation of a central committee, which was, like the Presidency of the SKJ, composed of representatives from the republics and provinces.¹¹⁷ The League of Communists of Yugoslavia was designed to act as a catalyst for republican and provincial interests, when the representatives of the republics and provinces came together as at the federal party presidium, providing the uniformity needed for assertive decision-making within a one party system. The contradiction in terms of a one-party-system led by a collective presidency arranged according to the republics and provinces became apparent when it became headless. With Tito's death the last and most important political heavyweight was gone.

Additionally, the mechanisms of how the League of Communists Yugoslavia was involved in decision making were not institutionalized in the legal system. "[The role] of President Tito and the SKJ in the management of conflicts and in ensuring the necessary cohesion within the system [was an informal one]".¹¹⁸ The Yugoslav Constitutions and many laws, for example, were designed by the leading thinkers in the Communist Party and were then passed to the Executive Council and finally to the assemblies, which had to enact them.

Croatian spring, which lasted approximately four years, is also a good example how decisions were made by the Communist leadership. In this case Tito intervened when it became apparent that the Croatian republic's party leadership was incapable and unwilling to "resolve" the situation, and when "nationalistic" ideas and general unrest spread through all strata of society, with the eruption of demonstrations and other unwanted effects. At this point Tito decided to prevent a further development in the "wrong" direction by cleaning the state and party apparatus in Croatia, and to varying extents, that of the other republics.

1.4.2. Constitutional System

Just as the version before, the Constitution of 1974 had a section covering human and civil rights. As a part of the world's longest constitution, the section on the "freedoms, rights and duties of men and citizens" contained 50 articles alone. It began in Article 153, Section I, with "freedom and duties of men and citizens", which had to be realized in "mutual people's solidarity and in fulfilling duties and responsibility of each person towards others and of all others towards each person". Article 153 had a constitutional barrier, stating that the rights were

¹¹⁴ Lampe, *op. cit.* note 5, 313.

¹¹⁵ Allcock, *op. cit.* note 68, 274; Klemencic and Zagar, *op. cit.* note 49, p. 213.

¹¹⁶ Change of Communist Party of Yugoslavia (KPJ) into League of Yugoslav Communists, as well as the Polit-Biro into the Executive Committee.

¹¹⁷ George Zaninovich, "The Yugoslav Communist Party: Organization, Ideological Development and Oppositional Trends", in Klaus-Detlev Grothusen (ed.), *Jugoslawien* (Vandenhoeck & Ruprecht, Göttingen, 1975), 11-33, at 18; Cohen and Warwick, *op. cit.* note 15, 78; Ramet, *op. cit.* note 99, 76.

¹¹⁸ Klemencic and Zagar, *op. cit.* note 49, p. 213.

limited by the equal freedoms and rights of the others and by the constitutionally appointed interests of the socialist community.

In Marxist-rooted Yugoslavia, however, the stress was placed on economic, social and cultural rights. Therefore social and economic rights were – similar to the Constitution of 1963 – elaborated extensively, and in detail in the Constitution. These ranged from the guarantee of work, to the prohibition of forced labour, a 42-hour (work) week, and even 18 days of guaranteed holiday per year, as well as the guarantee of social insurance.

Indeed, the constitutional guarantees of social rights in particular were well implemented, compared to the social order of the first Yugoslavia. Health care coverage rose from about 17 % during the pre-war period to almost 100 % in 1985. Ninety-eight percent of the population was insured by workers' or farmers' insurance associations, the rest (veterans, welfare recipients) were covered by the state budget.¹¹⁹ The social, political and economic crisis of the eighties, however, also widened the problems in health care, in particular in the poorer regions of Yugoslavia. This resulted in a situation worse than that of some other eastern-bloc countries. Kosovo and Macedonia e.g. were the republics with the highest infant mortality.¹²⁰

1.4.3. Economic System

The last 15 years of Yugoslavia's existence were marked by attempts to solve the economic problems. Yugoslavia's foreign debt had multiplied from 4 billion US in 1972 to more than 20 billion US by the middle of the eighties.¹²¹ The self-management system that had led to full employment was inefficient, running on international loans, whose inflow was disrupted by the world energy crisis at the end of the seventies.¹²²

Tito had been the crucial authority ensuring decision making despite the clashing interests of the republics and provinces.¹²³ He was the lifetime president of the Federal Republic, the president of the League of Communists of Yugoslavia, and the commander-in-chief of the Armed Forces until his death.¹²⁴ With his death, effective decision making on high political level was impeded. Indeed, the last constitutional system was constructed to enable the government, staffed according to an ethnic key, to decide in consensus – theoretically without a supervisory authority. The discordant leadership was incapable of dealing with fundamental problems because of a lack of unity. Attempted economic reforms initiated by the various succeeding leaders continued to be unsuccessful and resulted in hyperinflation.¹²⁵

¹¹⁹ Donna E. Parmelee, "Yugoslav Health Care", in John B. Allcock, John J. Horton and Marko Milivojević (eds.) *Yugoslavia in Transition* (Berg, New York, 1992), 297-336, at 310, 311.

¹²⁰ *Ibid.*, 320-.

¹²¹ Lampe, *op. cit.* note 5, 321, 322; Will Bartlett, "Foreign Trade and Stabilization Policy in a Self-Managed Economy: Yugoslavia in the 1980s", in John B. Allcock, John J. Horton and Marko Milivojević (eds.) *Yugoslavia in Transition* (Berg, New York, 1992), 238-263, at 254.

¹²² Klemencic and Zagar, *op. cit.* note 49, 208, 209.

¹²³ Poulton, *op. cit.* note 104, 10.

¹²⁴ *Ibid.*

¹²⁵ Klemencic and Zagar, *op. cit.* note 49, 215, 216.

1.4.4. Constitutional Court

The ethnic key principle was transferred to the Constitutional Court as well.¹²⁶ According to Article 181 of the Federal Constitution, the Constitutional Court at that time was composed of 13 judges and a president, of which each republic designated two judges and the two autonomous provinces one each. Re-election of the judges was not possible, and the position of the president of the court changed annually on a rotating basis, passing the office of president of the court clockwise to every republic and province. The annual rotation was introduced alongside the novel form in 1981.

According to Article 387 I of the Federal Constitution, basically anyone, even anonymously, had the right to “initiate” a proceeding before the Constitutional Court. The Constitutional Court then reviewed the initiative and issued a discretionary decision on the resumption of the proceeding.¹²⁷ The *right* to apply was only granted to republics, provinces, state agencies, socio-political communities, etc (Article 387 of the Federal Constitution). It was therefore a collective right in a broad sense. Most of the proceedings were initiated by citizens or workers, but dealt naturally with rights that pertained self-management or labour and not “classical human rights”.¹²⁸

1.4.5. Freedom of Press

Although more or less open discussion was possible in some matters, the Communist Party was still the only party, and it held its controlling influence over the social-political organizations.¹²⁹ Freedom of opinion or the press had to remain within these limits.

In addition to freedom of the press and of opinion, assembly, speech etc. (Article 167), citizens had a constitutional right to be informed about relevant occurrences concerning them and their work in Yugoslavia and abroad (Article 168). However there existed an obligation of truthful and objective reporting on the part of the press, broadcasting and television, which was determined in the Constitution. The implementation of press review and banning was apportioned within the Prosecutor’s Office, “the Commission for Ideological Work, the Commission for Political Propaganda Activity in Information and Public - [linked to] the Central Committee of the [LCY] -, the Section for Information and Public Opinion of the Socialist Alliance of Working People of Yugoslavia, [...] and the republican branches of these bodies”.¹³⁰

Nevertheless, the process of decentralization had prevented the wide implementation of censorship. When an issue was banned on the republican level in one republic (a prohibition was also possible on federal level), the same issue could be openly released in another republic.¹³¹ Moreover, aside from the lack of a source for overall censorship, there was no common political consent to do so.¹³²

¹²⁶ Amandman VII, Ur. l. SFRJ 88/81, pp. 981-983; Georg Brunner, „Die neue Verfassungsgerichtsbarkeit in Osteuropa“, 53 *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht (ZaöRV)* (1993), 819-870, at 821; Höcker-Weyand, *op. cit.* note 81, 22.

¹²⁷ Höcker-Weyand, *op. cit.* note 81, 30.

¹²⁸ *Ibid.*, 66.

¹²⁹ Cp. Poulton, *op. cit.* note 104, 10.

¹³⁰ Pedro Ramet, “The Role of the Press in Yugoslavia”, in John B. Allcock, John J. Horton and Marko Milivojević (eds.) *Yugoslavia in Transition* (Berg, New York, 1992), 238-263, at 415, 416.

¹³¹ *Ibid.*, at 415.

¹³² *Ibid.*, at 416.

Closely connected to the problem of the banning of domestic publications, however, was the persecution of the authors of articles, papers and books. Dissenting opinions could have serious consequences, and in many cases they represented political offences.

Article 133 of the Criminal Code of the SFRY¹³³ included, among many other comprehensive crimes, “verbal offences” of hostile propaganda, which could be punished with up to ten years of imprisonment. The exhaustively worded article impeded the free use of speech and the press enormously, and resulted in resistance and the demand for the abolishment of Article 133 of the Criminal Code in the eighties.¹³⁴ If persons were accused of an offence under Article 133 of the Criminal Code they often suffered a bitter fate, as they stood at the lowest rank in the hierarchy of prisoners.¹³⁵

1.4.6. Political Prisoners

In theory, the Yugoslav legal system protected detained persons well. Forced confession and statements were, for example, prohibited and punishable offences. Article 199 of the Federal Constitution even guaranteed the right to the restitution of damages caused by the illegal or wrong behaviour of state agencies.

Defendants in political trials did not benefit much from the professionalism of the “Yugoslav judicial system”.¹³⁶ In the case of numerous political prisoners, all constitutional guarantees and procedural rights were ignored. Investigations often employed physical and psychological force in order to acquire confessions, which were then used as evidence for conviction in trial.¹³⁷ Suspects or prisoners sometimes died from injuries suffered during interrogations, and were then declared suicides by the authorities. This was the case of one member of a group of 28 arrested people around Milovan Djilas, who officially “committed suicide” during his arrest in 1984 in Belgrade.¹³⁸ He shared the same fate as Ernest Brajder who was arrested and subsequently “committed suicide” in Zagreb in 1981.¹³⁹

In the former case, the arrest concerned a circle of intellectuals who gathered around Milovan Djilas in private apartments and discussed basic questions relating to Yugoslav development.¹⁴⁰ The latter case involved a group in Zagreb who gathered signatures for petitions in favour of amnesty for political opponents (including, amongst others, imprisoned Dobroslov Paraga). Constitutionally guaranteed rights, e.g. the inviolability of the home, or the right of citizens to submit petitions or proposals to responsible agencies and organizations, were only granted under the condition that they not be used for e.g. destroying the basis of

¹³³ “Who, by paper, flyer, drawing/picture, speech or in another way invokes or stimulates the overthrow of the working class’ and working people’s governance, or a unconstitutional change of the socialistic self-management social system, the breaking of brotherhood and unity and equality of nations and nationalities,[...] or the maliciously and untruly depicted socio-political circumstances in the state can be punished from one to ten years imprisonment.”

¹³⁴ Klemencic and Zagar, *op. cit.* note 49, 213.

¹³⁵ Cp. Jure Petričević, *Menschenrechte in Jugoslawien : Dokumentation* (Internationale Gesellschaft für Menschenrechte, Vienna, 2nd ed. 1984), 41.

¹³⁶ Cp. Cohen, *op. cit.* note 41, 329

¹³⁷ Petričević, *op. cit.* note 135, 16-; Amnesty International, *Jugoslawien: gewaltlose politische Gefangene* (Amnesty International, Bonn, 2nd ed. 1988), 14-; International Society for Human Rights, *Die Petition, Amnestie für alle politischen Gefangenen in Jugoslawien* (Internationale Gesellschaft für Menschenrechte, Frankfurt/Main, 1986), 20-.

¹³⁸ Petričević, *op. cit.* note 135, 17.

¹³⁹ International Society for Human Rights, *op. cit.* note 137, 24, 25.

¹⁴⁰ Wolfgang Libal, *Das Ende Jugoslawiens: Chronik einer Selbstzerstörung* (Europaverlag, Wien, 1991), 108.

the socialist self-management democratic system, the endangerment of the independence of the state, the dissemination of national hatred and xenophobia, or for insulting public morality.

Political opponents often had to suffer torture and maltreatment from their fellow inmates and the prison guards as well as suffer miserable living conditions.¹⁴¹ Goli otok e.g., still operated in the eighties (until 1988) and manufactured wood and metal. Prisoners were forced work overtime and faced deficient safety measures during work and appalling sanitary equipment¹⁴². In many other prisons accommodation was disastrous and medication insufficient.¹⁴³ In the case of imprisoned clergy, the denial of prayer-books was also reported.¹⁴⁴

1.4.7. Religion

The first large incident involving Muslims occurred at the beginning of the eighties. The Yugoslav regime proceeded against “chauvinistic Bosnian Muslim nationalism” in 1983.¹⁴⁵ Thirteen Muslims, mostly highly educated, amongst them Alija Izetbegovic, were accused of counter-revolutionary activities and hostile propaganda. Izetbegovic, together with people who were involved in the arrangement of the Declaration, was tried for the “Islamic Declaration” – written in 1970 and published in 1983 in the South Slav Journal.¹⁴⁶

The Islamic Declaration was a program whose general goal was the Islamic recognition of the Bosnian Muslims and the Muslim population overall, in which Izetbegovic did not refer to Bosnia in particular. Nevertheless, the contents certainly sounded provocative to the Party’s ears.

Alija Izetbegovic, released in 1988 during a general amnesty, served five years of his determined fourteen years prison term for the intent to create “an Islamic republic in Yugoslavia”.¹⁴⁷ The others received jail terms from half a year up to fifteen years. In Bosnia and Herzegovina nationalism was persecuted rigorously to avoid any expansion of national hatred. In 1984 Vojislav Seselj was sentenced for his nationalistic views, amongst which was the partition of Bosnia and Herzegovina between Serbia and Croatia.¹⁴⁸

Incidents like the case of a professor of the Faculty of Theology in Ljubljana, however, who discussed the marginalization of the church within the society, and was condemned in public without a chance to defend himself, occurred in large numbers and related to all religious communities.¹⁴⁹

Liberal and open-minded critical publications increased in particular in Slovenia. Youth organizations demanded alternative service and the abolishment of the “Day of Youth” – a solemnity commemorating Tito’s birthday.¹⁵⁰ In Belgrade journals like “Student” openly affronted the postwar cleansing of political enemies.¹⁵¹ At its peak at the end of the eighties, Mladina, a Slovenian Socialist

¹⁴¹ Petričević, *op. cit.* note 135, 16-; Amnesty International, *op. cit.* note 137, 14-; International Society for Human Rights, *op. cit.* note 137, 20-.

¹⁴² Amnesty International, *op. cit.* note 137, 64-.

¹⁴³ Amnesty International, *op. cit.* note, 29-.

¹⁴⁴ Petričević, *op. cit.* note 135, 16.

¹⁴⁵ Friedman, *op. cit.* note 35, 193.

¹⁴⁶ Alija Izetbegovic, “Islamic Declaration”, (6) *South Slav Journal* (Spring 1983), 59-89, ct. after ¹⁴⁶; Friedman, *op. cit.* note 35, 193, 196.

¹⁴⁷ Friedman, *op. cit.* note 35, 195.

¹⁴⁸ *Ibid.*

¹⁴⁹ Cp. Ciril Zebot, “Human Rights in the Yugoslav System of Self-Management Socialism”, in Oskar Gruenwald (ed.) *Human Rights in Yugoslavia* (Irvington, New York, 1986), 285-322, at 307.

¹⁵⁰ Libal, *op. cit.* note 140, 108, 109.

¹⁵¹ *Ibid.*, 106, 107.

Youth Alliance journal, pointed its criticism “at the Serbian-dominated” Yugoslav army, and took sides with the Albanians in Kosovo.¹⁵²

1.4.8. Army

According to Article 240, Section I of the Federal Constitution, the Yugoslav People's Army (YPA) protected the independence, sovereignty, territorial integrity and constitutionally determined social order of the SFRY. The devolution of civilian control over the YPA and an above-average representation of officers of Serbian and Montenegrin origin were influential factors in the process of Yugoslavia's dissolution.¹⁵³ The YPA held a significant position within the Yugoslav society.

In 1981 Albanian demonstrations broke out in Kosovo. The occasion that fired up the initial protests that began in Pristina in 1981 was related to grievances at Pristina University.¹⁵⁴ Riots broke out across the Province and spread to the Albanian inhabited regions of other Yugoslav republics. According to official data 9 protestors died, while 287 were injured. The government proclaimed a state of emergency and the federal army intervened.¹⁵⁵ Up to 30.000 military troops were involved, supported by (special) police forces to restore the order.¹⁵⁶ What followed was a decade of repressive policy against the Albanian population of Kosovo. As these occurrences are closely related to the topic under part two of the report, this issue will be addressed under the section dealing with Kosovo and minority rights.

1.4.9. International Agreements

By 1990, Yugoslavia had signed and ratified all major important international agreements concerning human rights: e.g. the Convention on Prevention and Punishment of the crime of genocide,¹⁵⁷ the Convention on the Political Rights of Women,¹⁵⁸ the Declaration on the Elimination of All Forms of Racial Discrimination,¹⁵⁹ The International Covenant on Civil and Political Rights¹⁶⁰ and the International Covenant on Economic, Social and Cultural Rights,¹⁶¹ and the Convention on the Elimination of all forms of discrimination against women.¹⁶² It signed the Helsinki Final Act in 1975, and was also a host/participant at the OSCE conferences in Belgrade (1977) and Madrid (1980) respectively.¹⁶³

Although Socialist Yugoslavia cooperated in almost all international agreements and was very active in this field, its view on classical (negative) human and citizen rights was critical.¹⁶⁴ Yugoslavia's focus lay on the human rights of the

¹⁵² Lenard J. Cohen, *Broken Bonds: Yugoslavia's Disintegration and Balkan Politics in Transition* (Westview, Boulder, 1995), 59.

¹⁵³ Valerie Bunce, “The Elusive Peace in the Former Yugoslavia” 28 *Cornell Int'l L.J.* (1995) 709-718, at 709, 710.

¹⁵⁴ Libal, *op. cit.* note 140, 111.

¹⁵⁵ Sami Repishti, “Human Rights and the Albanian Nationality in Yugoslavia”, in Oskar Gruenwald (ed.) *Human Rights in Yugoslavia* (Irvington, New York, 1986), 227-284, at 257-.

¹⁵⁶ Repishti, *op. cit.* note 155, at 257- ; Miranda Vickers, *Between Serb and Albanian: A History of Kosovo* (Hurst & Company, London, 1998), 198.

¹⁵⁷ <http://www.ohchr.org/english/countries/ratification/1.htm>.

¹⁵⁸ Sluzbeni list FNRJ, Međunarodni ugovori i drugi sporazumi, br. 7/54.

¹⁵⁹ Sluzbeni list SFRJ, Međunarodni ugovori, 6/67, 740.

¹⁶⁰ Sluzbeni list SFRJ, p. 7/71, .p. 73.

¹⁶¹ Sluzbeni list SFRJ, . 7/71, p. 88.

¹⁶² Sluzbeni list SFRJ, Međunarodni ugovori, 11/1981, 613.

¹⁶³ Amnesty International, *op. cit.* note 137, , 23.

¹⁶⁴ Cp. Ernest Petrič, “Predlogi Jugoslavije za mednarodno pravo varstvo manjsin“, (11-12) *Razprave In Gradivo (RIG)* (1980) 7-26, at 12.

“third” generation as e.g. minority rights, environmental rights, etc.¹⁶⁵ Nevertheless, none of these agreements constituted “individual self-enforcing rights,” as they were designed to constitute only contractual obligations between the participating parties – the states.¹⁶⁶ Yugoslavia did not subscribe the Optional Protocol to the International Covenant on Civil and Political Rights, which would have granted an individual the right to claim human rights violations, until 1990.¹⁶⁷

2. Part Two - Theory and Practice of Minority Rights

2.1. Federal level: General Aspects

2.1.1. Demography

According to the last overall Yugoslav census, there were 8,140,452 Serbs, 4,428,005 Croats, 1,999,957 Muslims (in a national sense), 1,753,554 Slovenes, 1,339,729 Macedonians, 579,023 Montenegrins, 1,730,364 Albanians, 426,866 Hungarians, 168,099 Romany, 101,191 Turks, 80,334 Slovaks, 54,954 Rumanians, 36,185 Bulgarians, 32,063 Vlachs, 23,285 Ruthenians, 19,625 Czechs, 15,132 Italians, 12,813 Ukrainians and approximately 5,000 Jews living in Yugoslavia. 5.76% of the population did not declare themselves in favour of any nation or nationality, instead 5.4 % of these declared themselves as Yugoslavs.¹⁶⁸

From the seventies onwards, the population was understood as constituting 6 constitutional nations (Serbs, Croats, Muslims, Slovenes, Macedonians, and Montenegrins), 10 nationalities (Albanians, Bulgarians, Czechs, Hungarians, Italians, Rumanians, Ruthenians, Slovaks, Turks and Ukrainians) and two ethnic groups (Romany and Vlachs).¹⁶⁹ This categorization did not comprehend all ethnic groups living in Yugoslavia; for example, Poles, Russians and Jews were not categorized in a legally proper way.

2.1.2. Terminology

The aforementioned differentiation of nations, nationalities and ethnic groups in Yugoslavia was based on the political and legal realignment in the late sixties and early seventies, which was determined by the new Constitution of 1974. During the first two decades of Yugoslavia’s existence, the terms “minority” and “nationality” were both in use, and both of them comprised all minorities. The term “minority” was defined as a group of people who cherish their own lifestyle, their own language that differs from the majority’s language – or the language of the nation which constituted the state – their own cultural aspirations and needs, and often their own religion.¹⁷⁰

During the course of the all-encompassing decentralization and political and legal reshaping, the term “narodna manjina”/“national minority” was replaced

¹⁶⁵ Vojin Dimitrijević, “Jugoslawien und die internationalen Menschenrechte“ (907) *Internationale Politik* (1988) 7-10, at 7.

¹⁶⁶ Zachary T. Irwin, “Law legitimacy and Yugoslav National Dissent: The dimension of Human Rights”, in Oskar Gruenwald (ed.) *Human Rights in Yugoslavia* (Irvington, New York, 1986), 169-210, at 186.

¹⁶⁷ <http://www.ohchr.org/english/countries/ratification/5.htm#N8>.

¹⁶⁸ See below index I.

¹⁶⁹ Koća Jončić, *Nationalities in Yugoslavia* (Jugoslav. Stavnost, Belgrade, 1982), 5.

¹⁷⁰ Ljubiša Strojčević and Miloš Martić, *Nacionalne Manjine u Jugoslaviji* (RAD, Belgrade, 1953), 108.

with “narodnost”/“nationality” through the amendments VII-XIX of 1968¹⁷¹ and it was affiliated within the new Constitution adopted in 1974.¹⁷²

The term “minority” was considered to be a pejorative one, which was in conflict with the idea of a “socialistic-homogenous” – not “national-homogenous” – community.¹⁷³ Therefore the displacement of the term “minority” served to stress the equal status of minorities with the constitutive nations.¹⁷⁴ Since then, the term “nationality” officially referred to the “members [of] the people that [were] organized into a nation, with [their] own written language and other features” and which had a “native nation” outside the borders of Yugoslavia.¹⁷⁵ Besides the 10 groups that were classified as nationalities, the nomination “ethnic group” applied to the “people at a lower level of ethnic organization, with no written literary language, and a primarily oral tradition (e.g. the Vlachs) or to a group that was at that time in the process of creating its literary language and other features (e.g. Romany)”.¹⁷⁶

The fourth group of minorities were, due to their small number and dispersal (under 10.000), neither categorized as “nationalities” nor as “ethnic groups”, e.g. Austrians (1.404), Greeks (1.641), Jews (1.384), Germans (8.712), Poles (3.043) and Russians (4.467).¹⁷⁷ However, the term “nationality” was commonly used for these minorities as well.

The index below lists the minority groups. Jews and Poles are not listed separately in the index below, but under the category “Others”, with other ethnic groups that lived in Yugoslavia in rather small numbers.

a. Index I: National distribution, population changes and censuses in absolute numbers:¹⁷⁸

Yugoslav population: Ethnic affiliation in absolute numbers						
	1948	1953	1961	1971	1981	1991
Total	15,772,098	16,936,573	18,549,291	20,552,972	22,427,585	23,528,230
Montenegrin	425,703	466,093	513,832	508,843	579,043	539,262
Croats	3,784,353	3,975,550	4,293,809	4,526,782	4,428,043	4,636,700
Macedonians	810,126	893,247	1,045,516	1,194,784	1,341,598	1,372,272
Muslims	808,921	998,698	972,960	1,729,932	1,999,890	2,353,002
Slovenes	1,415,432	1,487,100	1,589,211	1,678,032	1,753,571	1,760,460
Serbs	6,547,117	7,065,923	7,806,152	8,143,246	8,140,507	8,526,872
Albanians	750,431	754,245	914,733	1,309,523	1,730,878	2,178,393
Bulgarians	61,140	61,708	62,624	58,627	36,189	-
Czechs	39,015	34,517	30,331	24,620	19,624	-

¹⁷¹ Amandmani VII- XIX, Sl. l. 55/1968 vom. 30.

¹⁷² Ustav SFRJ, Sl. l. 9/74, 21.2.1974, pp. 209-262.

¹⁷³ John-F. Besemers, “The demographic factor in inter-ethnic relations in Yugoslavia” 1977, 4 (1) *Southeastern Europe* (1977) 1-33, at 4; Vera Klopčič, “The ethnic structure of ex Yugoslavia” (26-27) *RIG* (1992) 149-170, at 149, 153; Jovan Djordjevic, “Polozaj i zastita manjina u ustavnom i politickom sistemu Jugoslavia”, (13-14) *RIG* (1981) 163-168, at 167.

¹⁷⁴ Dusan Popovski, “Respect for the rights of ethnic minorities”, (16) *Socialist thought and practice* (1972), 58-71, at 69; Djordjevic, *op. cit.* note 173, at 163-169.

¹⁷⁵ Jončić, *op. cit.* note 169, 5, Fn. 2,

¹⁷⁶ *Ibid.*

* According to the census of 1981.

¹⁷⁷ *Ibid.*, 5, Fn. 3.

¹⁷⁸ Gerhard Seewann and Peter Dippold (eds.), *Bibliographisches Handbuch der ethnischen Gruppen Südosteuropas* (Oldenbourg, Munich, 1997), 864, 861.

Italians	79,575	35,874	25,615	21,791	15,132	-
Hungarians	496,492	502,175	504,369	477,374	426,867	378,997
Germans	55,337	60,536	20,015	12,785	8,712	-
Romanies	72,736	84,713	31,674	78,485	168,197	-
Romanians	64,095	60,364	60,862	58,570	54,955	-
Russians	20,069	12,426	12,305	7,427	4,467	-
Ruthenians ¹⁷⁹	37,140	37,353	38,619	24,640	23,286	-
Slovaks	83,626	84,999	86,433	83,658	80,344	-
Turks	97,954	259,535	182,964	127,920	101,291	-
Ukrainians ¹⁸⁰	-	-	-	13,972	12,813	-
Vlachs	102,953	36,728	9,463	21,990	32,071	-
Others	19,883	18,400	16,488	31,982	25,117	-
Yugoslavs	-	-	317,124	273,077	1,219,024	710,394
No national declaration	-	-	-	32,774	46,701	-
Regional affiliation	-	-	-	15,002	25,730	-
Unknown/re-maining	-	6,389	14,192	67,138		1,070,878

b. Index II: National distribution, population changes and censuses in %¹⁸¹:

	1948	1953	1961	1971	1981	1991
Total	100.0	100.0	100.0	100.0	100.0	100.0
Montenegrin	2.7	2.8	2.8	2.5	2.6	2.3
Croats	24.0	23.5	23.1	22.1	19.8	19.7
Macedonians	5.1	5.3	5.6	5.8	6.0	5.8
Muslims	5.1	5.9	5.2	8.4	8.9	10.0
Slovenes	9.0	8.8	8.6	8.2	7.8	7.5
Serbs	41.5	41.7	42.1	39.7	36.3	36.2
Albanians	4.8	4.5	4.9	6.4	7.7	9.3
Bulgarians	0.4	0.4	0.3	0.3	0.2	
Czechs	0.2	0.2	0.2	0.1	0.1	
Italians	0.5	0.2	0.1	0.1	0.1	
Hungarians	3.2	3.0	2.7	2.3	1.9	1.6
Germans	0.4	0.4	0.1	0.1	0.0	
Romanies	0.5	0.5	0.2	0.4	0.7	
Romanians	0.4	0.4	0.3	0.3	0.2	
Russians	0.1	0.1	0.1	0.0	0.0	
Ruthenians ¹⁸²	0.2	0.2	0.2	0.1	0.1	
Slovaks	0.5	0.5	0.5	0.4	0.4	
Turks	0.6	1.5	1.0	0.6	0.5	
Ukrainians ¹⁸³	-	-	-	0.1	0.1	
Vlachs	0.7	0.2	0.1	0.1	0.1	
Others/remaining	0.1	0.1	0.1	0.2	0.1	4.6
Yugoslavs	-	-	1.7	1.3	5.4	3.0
No national	-	-	-	0.2	0.2	

¹⁷⁹ Cp. fn. 172.

¹⁸⁰ Cp. fn. 172.

¹⁸¹ Seewann and Dippold, *op. cit.* note 178, 865, 861.

¹⁸² Cp. fn. 172.

¹⁸³ Cp. fn. 172.

declaration						
Regional affiliation	-	-	-	0.1	0.1	
Unknown	-	0.0	0.1	0.3	0.7	

As the census-tables above indicate, Yugoslavia underwent considerable changes in its ethnic structure during its existence. Birth rates, mortality, migration, economic emigration and several other factors influenced the demographic changes in Yugoslavia.

2.1.3. Census

Yugoslavia attached much concern to its ethnic development and interethnic relations. Precisely recorded and analyzed censuses were taken in 1948, 1953, 1961, 1971 and 1981. The census of 1991 was taken separately by the republics, and data collection was incomplete since the situation had already deteriorated and there was no common platform for an all-Yugoslav census anymore.

Already during the first four mentioned censuses the criteria were not applied uniformly, as they redefined national/ethnic affiliation from census to census. Therefore the results of the censuses must be understood in the light of the respective circumstances.¹⁸⁴

The changing categorization of Muslims in the censuses permits tracing Yugoslavia's political development toward its nations and nationalities. Although the Slav Muslims were not recognized as a separate nation until 1971, most of them refused (due to their own national identity) to declare themselves as Croats or Serbs from the first Yugoslav census in 1921 onwards.

The census in 1953, for example, categorized persons of Yugoslav descent, but nationally not declared (many of them Slav-Muslim) as well as persons who declared regional affiliation, as "Yugoslavs - not declared", whereas persons of non-Yugoslav descent were categorized as "nationally not declared".¹⁸⁵ In 1961, Muslims could declare themselves as "Muslim" - ethnically affiliated, however the other Yugoslavs and non-Yugoslavs who did not wish to declare their national affiliation, were put in two different categories.¹⁸⁶ The 1971 census introduced a declaration category "Muslim in a national sense", while persons declaring themselves as regionally affiliated changed into the category of "regionally affiliated",¹⁸⁷ except in Croatia and Bosnia and Herzegovina where they were categorized as "not declared" persons.

The option to declare themselves as Muslims in a national sense¹⁸⁸ (and not in the religious sense within an atheistic state) explains mainly the increase of the (Slav) Muslims population from 5.2 % to 8.4 % during the period from 1961 to 1971.¹⁸⁹ With this step the Muslims were recognized as the sixth constitutive nation in Yugoslavia.

¹⁸⁴ A question concerning the religion e.g. was posed only in 1953 and left out in all the other censuses, which was justified with the conception of the secular system. Furthermore since 1971 Ukrainians and Rusyns were not listed anymore in a collective group (Ruthenians/Rusyns - the terminology varies). Cp. Klopčič, *op. cit.* note 173, at 153; Stanko Žuljić, *Narodnostna struktura Jugoslavije i tokovi promjena* (Ekonomski Institut, Zagreb, 1989), 26, fn. 26.

¹⁸⁵ Klopčič, *op. cit.* note 173, at 153.

¹⁸⁶ Žuljić, *op. cit.* note 184, 26, fn. 26; Klopčič, *op. cit.* note 173, at 153.

¹⁸⁷ Klopčič, *op. cit.* note 175, at 153, 154.

¹⁸⁸ Which did not sufficed the Muslims entirely.

¹⁸⁹ Cp. Index II, p. 26; Žuljić, *op. cit.* note 184, 26, 27,

In the following period, from 1971 to 1981, the number of “Yugoslavs” increased exceedingly, despite the fact that there was no official “melting pot” policy in Yugoslavia. This phenomenon can generally be explained by a relatively high percentage of nationally-mixed marriages, the assimilation of small-numbered nationalities and the methodological basis of the census in 1981.¹⁹⁰ The number of “Yugoslavs” was high in nationally heterogeneous regions in particular.¹⁹¹ Therefore the census of 1981 was criticized for its considerable “impact of subjective and social-psychological factors” on the citizens’ decision concerning their national (non) identification.¹⁹²

2.1.4. Birth Rates

In the postwar period, the birth rate of all the Yugoslav nations and nationalities was relatively high, and was followed by a period of stagnation that led into a period of decline.¹⁹³ This was particularly evident for the Croats and Serbs in the eighties. In general, the main reason for the decline in the population growth of nationalities and ethnic groups was the low birth rate, particularly e.g. in the case of the Hungarians and Romanians, while the number of members of the Albanians and Romanies increased.¹⁹⁴

2.1.5. Migration and Emigration

The deepest influence on Yugoslavia’s national composition was caused by a sharp decline in the German population immediately after WW II. Germans were the largest national group after WW I, counting more than 500.000 persons or 4.2 % of the whole Yugoslav population in 1921.¹⁹⁵ They lived to a large extent in Vojvodina, but also in Slovenia, Croatia and other parts of the territory. The Slovenian “German inhabitants” were mostly of Austrian descent, while the overwhelming majority of Germans were “Swabian,” and lived mostly in Vojvodina.¹⁹⁶ Some of them were relocated during the war according to Hitler’s plans, e.g. to Poland.¹⁹⁷ However, most of them fled the country with the retreating German army. In 1953 60.000 Germans were registered (0.4 % of total population) and their number kept declining. In 1981 they accounted for less than 0.1 % of the entire Yugoslav population.¹⁹⁸

The Italian inhabitants emigrated due to the implementation of a new – at that time communist – order in the country. Many Italians preferred to opt for a move to Italy in 1953 and thus left Yugoslavia.¹⁹⁹ Along with them many Slav inhabitants, who disagreed with the political situation in Yugoslavia, opted for Italy, while many left-minded Italians from the Italian side, moved to Yugoslavia.

¹⁹⁰ Cp. Klopčič, , *op. cit.* note 175, at 156; Rado Genorio, Vladimir Klemečič and Aleš Stergar, “Vprašanja okrog interpretacije rezultatov jugoslavsega popisa prebivalstva po narodnosti leta 1981” (16) *RIG* (1983) 147-156, at 149.

¹⁹¹ Genorio, Klemečič and Stergar, *op. cit.* note 190, at 155.

¹⁹² Cp. Genorio, Klemečič and Stergar, *op. cit.* note 190, at 155.

¹⁹³ Dusan Breznik and Milica Sentić, “Composition and development of Yugoslavia’s Population in Terms of Nationality”, in Koča Jončić (ed.) *Nations and Nationalities of Yugoslavia* (Medjunarodna Politika, Belgrade, 1974), 22, 23.

¹⁹⁴ Breznik and Sentić, *op. cit.* note 193, 22, 23; Genorio, Klemečič and Stergar, *op. cit.* note 190, at 147, 148.

¹⁹⁵ Žuljić, *op. cit.* note 184, 24, 12 index.

¹⁹⁶ Ales Bebler, “Die Stellung der nationalen Minderheiten in Jugoslawien“ (1) *RIG* (1960) 11-38, at 13, 14.

¹⁹⁷ *Ibid.*, at 13.

¹⁹⁸ Cp. Žuljić, *op. cit.* note 184, 24, 12 index, Index II at 26.

¹⁹⁹ Cp. Jončić, *op. cit.* note 169, 7.

The Italians leaving Yugoslavia shared the fate of many Turkish inhabitants, whose emigration to Turkey continued until 1958 on the basis of a bilingual contract between Yugoslavia and Turkey.²⁰⁰ Their number was therefore reduced to approximately 100.000, mostly inhabiting parts of Macedonia, Kosovo and south-western Serbia and eastern Montenegro (Sandzak).²⁰¹

Population patterns changed more and more during Yugoslavia's existence, as a consequence of inner-Yugoslav migration northwards (to Slovenia, Croatia and industrial centres throughout the country) during the course of increasing industrialization, and due to the large numbers of people immigrating to Western Europe as temporary workers.²⁰² Coming from the industrially less-developed south, labour demand in other republics, particularly in the major industrial centres, caused many Albanians to move within the territory Yugoslavia, for example to Serbia proper, Vojvodina (commune of Beocin) and Slovenia.²⁰³

2.1.6. Ethnic distribution across Yugoslavia

5 out of 10 nationalities or 71 % (1,773,879 members) of all nationalities in Yugoslavia lived in the Autonomous Provinces Kosovo and Vojvodina, which were parts of the Socialist Republic Serbia.²⁰⁴

Albanians: The main residential area of the Albanians was Kosovo/Kosova. In smaller groups, they also lived in Macedonia and Montenegro and southern Serbia (proper).²⁰⁵

Bulgarians: Most Bulgarians lived along the Bulgarian border in south-eastern Serbia, smaller numbers in Macedonia, of which many, as a consequence of industrial development, moved to Vojvodina and other republics.²⁰⁶

Czechs: Most members of the Czech nationality lived in Slavonia (northern Croatia) and Vojvodina, respectively.²⁰⁷

Hungarians: The Hungarians lived in regions along the border of Hungary in Prekmurje (Slovenia), Slavonia, Baranja (Croatia). However the largest contingent lived in Vojvodina.²⁰⁸

Italians: Members of the Italian nationality lived in the coastal area of Slovenia and Croatia, and some in the northern Croatia (Slavonia) and Bosnia.²⁰⁹

Jews: The few surviving Jews emigrated from Yugoslavia, which left a minimal number of Jews dispersed across Yugoslavia.²¹⁰

Polish: On the basis of a Yugoslav-Polish agreement most of the Polish people moved to Poland in 1946/1947.²¹¹

Romanians: They lived mainly in eastern Vojvodina (Southern Banat), and to a lesser extent in northern Croatia.²¹²

²⁰⁰ *Ibid.*, 7.

²⁰¹ Ruža Petrovič, "National structure of the Yugoslav Population" XIV (1) *Yugoslav Survey* (1973), 1-22, at 8; Jončić, *op. cit.* note 169, 9; Bebler, *op. cit.* note 196, at 13.

²⁰² Genorio, Klemečić and Stergar, *op. cit.* note 190, at 150, 151; Žuljić, *op. cit.* note 184, 154, index; Allcock, *op. cit.* note 68, 165.

²⁰³ Petrovič, *op. cit.* note 201, 8.

²⁰⁴ Jončić, *op. cit.* note 169, 8.

²⁰⁵ *Ibid.*

²⁰⁶ Petrovič, *op. cit.* note 201, 9.

²⁰⁷ Jončić, *op. cit.* note 169, 9.

²⁰⁸ Petrovič, *op. cit.* note 201, 8; Jončić, *op. cit.* note 169, 9.

²⁰⁹ Bebler, *op. cit.* note 196, at 23, 24; Strojčević and Martić, *op. cit.* note 170, 13; Burks, *op. cit.* note 60, 10.

²¹⁰ Burks, *op. cit.* note 60, 10.

²¹¹ Bebler, *op. cit.* note 196, at 13.

²¹² Petrovič, *op. cit.* note 201, 8; Jončić, *op. cit.* note 169, 9.

Ruthenians: Ruthenians lived mostly in Vojvodina (Backa and Srem) and Slavonia (northern Croatia).²¹³

Ukrainians: Most Ukrainians lived in Vojvodina, northern Croatia and Bosnia.

Romanies: The Romanies lived in all parts of Yugoslavia, most numerous in Serbia, Kosovo, Vojvodina and Macedonia.²¹⁴

Vlachs: The Vlachs lived chiefly in eastern Serbia and Macedonia.²¹⁵

2.1.7. Legal Provisions concerning Minority Rights

(a) 1945-1963

After WW II, Yugoslavia found itself in a rearranged Europe bound only to the prohibition of discrimination based on the UN-Charter, which it ratified on 19 October 1945.²¹⁶ The international bilateral and multilateral agreements that were signed in the past, which included the obligations towards minorities, were not valid anymore.²¹⁷ Throughout Yugoslavia's existence minority affairs have always been an important concern. A draft proposal for the Universal Declaration on Human Rights, promoted by the Yugoslav delegation in 1948, that would have appointed an extensive status of minorities, was eventually rejected, as the major powers in the United Nations consistently avoided any commitments in this field.²¹⁸ Yugoslavia spent great efforts bringing a more extended inclusion of minority rights into international documents, e.g. the UN Covenant on Civil and Political Rights or the Final Act of the Helsinki Conference, but eventually failed.²¹⁹ It hosted seminars and meetings concerning minority rights: the UN Seminar on human rights in multinational communities in Ljubljana in 1965, and the UN Seminar on the protection of rights of national, ethnic and other minorities in Ohrid in 1974.

Yugoslavia's commitment toward minority affairs was also followed at bilateral and regional levels. Cooperation methods comprised bilateral treaties, associations of cultural, educational, sports and other organizations, societies and establishments of regional cooperation. Such an example can be found in the country's participation in a regional project named the "Alpe-Adria-Working-Community." Founded in 1978, it was a consolidation of neighbouring regions from Austria, Hungary, Germany, Italy, Slovenia and Croatia, primarily concerned with Trans-Alpine and Adriatic traffic links, port traffic, tourism, cultural relations (minority rights), etc.²²⁰

The contact and communication between minorities with their native nations was believed to improve the relationship with the neighbouring countries/native countries of the respective nationalities.²²¹ Albania was, due to the tensions with Yugoslavia over Kosovo, the only neighbouring state that had no

²¹³ Petrovič, *op. cit.* note 201, 9; Jončić, *op. cit.* note 169, 9.

²¹⁴ Jončić, *op. cit.* note 169, 9.

²¹⁵ *Ibid.*

²¹⁶ "Povelja ujedinjenih naroda i statut međunarodnog suda pravde", (5) *Međunarodni ugovori* (1945), 56-123.

²¹⁷ Strojčević and Martić, *op. cit.* note 170, 15.

²¹⁸ Silvo Devetak, "Razvoj sistema OZN o pravica manjina", (13-14) *RIG* (1981), 17-24, at 20.

²¹⁹ Ernest Petrič, "The Helsinki Conference and the National Minorities", (24-25) *Jugoslavenska revija za međunarodno pravo* (1977), 146-159, at 147, 148, 149.

²²⁰ Silvo Devetak, "The Alpe-Adria as a Multinational Region", 10 *Slovene Studies* (1988), 86-97, at 86.

²²¹ Mirko Ostojic, "Jugoslawien und seine Nachbarn", 37 *Internationale Politik* 1986, 8-9, at 8.

bilateral contracts on “cultural, educational and scientific” issues with Yugoslavia.²²²

The agreements contained more or less specified regulations concerning the rights of the respective minorities living in Yugoslavia. Agreements with Hungary were particularly developed, while agreements with, for instance Austria, Italy and Romania, comprised less detailed arrangements.²²³

From its beginning, Yugoslavia’s political and legal approach towards its nations and minorities was marked by a balancing and equalizing attitude, whereby the first phase, from the mid-forties to the mid sixties, provided less extensive rights, even if they were formally assured in the Constitution and laws. National differences were to be abolished by a quick and massive industrialization throughout the county using “Stalinist central planning”.²²⁴ The less developed (southern) republics, which had large numbers of minorities, were assisted financially large extent by the federal government, with the aim of adjusting inter-republican differences in the educational and social fields.²²⁵

Vigorous efforts were also made on the literacy plan in all parts of the Republic of Yugoslavia, with quite good success within the minority groups, which were eminently affected.²²⁶ In 1948, the percentage of illiterate people was: 2.32% of Slovenes, 18.11 % of Croats, 24.13 % of Montenegrins, 27.71 % of Serbs, 30.24 % of Macedonians, 36.21 % of Romanians, 63.86 % of Turks and 73.73 % of Albanians.²²⁷

Minorities were protected by the general non-discrimination approach of the 1946 Constitution, and specifically by Article 13 of the Constitution,²²⁸ which additionally guaranteed a collective right concerning cultural development. The Constitution comprised a general prohibition of discrimination in Article 21 Section I, while Section III stated that acts privileging or restraining persons based on nationality, race or confession of faith were unconstitutional and punishable. The equality of election was guaranteed by the provisions of Article 23, as part of the general non-discrimination principle.

Furthermore, a “Law on the Prohibition of Provocation of National, Racial or Religious Hatred and Disruption” was issued immediately after WW II.²²⁹ The Criminal Code incorporated privileging or restraining persons on the basis of nationality, race or religion as a punishable offence (Article 119 I).²³⁰ There were also administrative provisions that asserted the right of each deputy to use his mother tongue.²³¹ This was stated, for example, in the Code of Procedure of the Federal Assembly. Language rights were also provided in Article 7 of the Law on Settlement of Public Courts, which stated that the official language had to correspond to the official language of the country in which the court was placed, and asserted the right of any party that did not have mastery of the procedural

²²² Silvo Devetak, “Are Contracts with the ‘Mother nations’ a Prerequisite for the Free and Cultural Development of Ethnic Minorities?”, (9) *Journal of multilingual development* (1987), 433-442, at 436.

²²³ *Ibid.*, 436.

²²⁴ Burks, *op. cit.* note 60, 2.

²²⁵ *Ibid.* 3.

²²⁶ Strojkočić and Martić, *op. cit.* note 170, 121.

²²⁷ *Ibid.* 121.

²²⁸ Art. 13 of the Constitution of the FNRJ, Ustav, Sluzbeni list FNRJ, no. 10/46

²²⁹ Strojkočić and Martić, *op. cit.* note 170, 65.

²³⁰ There have been judgments sentencing people for offending national towards member of minorities mainly in the fist postwara period, cp. Strojkočić and Martić, *op. cit.* note 170, 87, 98.

²³¹ Strojkočić and Martić, *op. cit.* note 170, 68.

language to use its own mother tongue, as well as to access to the procedural material provided by an interpreter, if necessary.²³²

While these procedural provisions – as individual citizen rights – applied to all citizens in the Federal Republic, and were intended to realize the language rights of the nations within their own republics, minority rights – as collective rights – were implemented in the cultural and educational fields. Some minority groups had their own print media, cultural associations and theatres. Schools for minorities operated throughout the Federal Republic where these minorities lived in larger numbers, most of them in the Autonomous Province of Vojvodina and the Autonomous Region of Kosovo and Metohija.²³³

Serbia was the only Republic with an autonomous province/autonomous region. At that time, self-government rights of the republics, and in particular of the autonomous territories, were undeveloped. The legal ratio between the Serbian Republic and its province/region remained abstract and unclearly ruled by the Serbian Constitution and the statutes of the autonomous territories.²³⁴ Nevertheless, the political affairs of the forties also involved minorities. The Stalin-Tito relationship entailed repression of Albanians and Hungarians, who were the usual suspects due to the political processes in their native countries.²³⁵ The worst implicated was the White Russian immigrant colony, whose members were arrested in large numbers.²³⁶

Legal provisions concerning minority and national rights were extended in the (Federal and the Serbian republican) Constitutions of 1963. The new Federal Constitution²³⁷ implemented the new official name “Socialist Federative Republic of Yugoslavia” (SFRY) and emphasized the federative character of Yugoslavia. The “Basic Principles I” first referred to the nations, which were granted the right of self-determination and a right to succession. Nevertheless, the nationalities were listed as equal elements of the Federal Republic.²³⁸

In general, language rights were strengthened guaranteeing the free use of language to all citizens (article 41), and more emphasis was spent on the language rights of the nations of Yugoslavia (article 42). The equality of the languages and alphabets of the *nations of Yugoslavia* was therefore guaranteed in Article 42 I. The right of every nation to enjoy education in its own language in other Yugoslav republics was also granted in Section III of Article 42. The Serbo-Croatian language was exceptionally used in commanding, teaching and administrating the Yugoslav army.

The rights of national minorities were outlined in a more detailed manner in Article 43. This Article codified the free right of the use of a language, the development of the minority culture, and the foundation of organizations for this purpose. Education in minority schools was to be conducted in the respective minority native language.

Legal powers were transferred to the republican level by Section III of Article 43, which stated that all rights concerning each nationality in its respective territory were to be regulated through the republican Constitution and laws. The regulation of Article 111 Section III, which determined the two provinces as social-political entities within Serbia, was later criticized as having bound the provinces

²³² *Ibid.*, 121.

²³³ *Ibid.*, 121, 122.

²³⁴ Robert R. King, *Minorities under Communism: Nationalities as a Source of Tension among Balkan Communist States* (Harvard University Press, Cambridge, 1973), 134.

²³⁵ Burks, *op. cit.* note 60, 6.

²³⁶ *Ibid.*, 6.

²³⁷ Ustav SFRJ, Sluzbeni list SRFJ, 14/63, 7th IV 1963, 261-289.

²³⁸ Mayer, *op. cit.* note 22, 4; King, *op. cit.* note 234, 125.

even more closely to Serbia than they were under the Constitution of 1946.²³⁹ Although Kosovo's Constitutional regulation was excluded from the federal level and consolidated under the Serbian Constitution, its competences were largely extended. A substantial improvement was reached with the Constitutional amendments in the preamble of the last Constitution of 1974, which strengthened the rights of the socialist republics and provinces gradually.

(b) Amendments in the late sixties

Amendments changing the provisions were issued on an almost annual basis (1967,²⁴⁰ 1968,²⁴¹ the resolution of 1969²⁴² and then 1971²⁴³). These, inter alia, governed the functioning of the Federal Assembly, and stressed the equality of nationalities with the nations. Amendment XIX implemented the right of nationalities to use their rights in procedures before federal state agencies and organizations with official authority.

(c) 1974 -1989

According to the very complicated wording of Article 1 of the 1974 Constitution, the SFRY was designed on the one hand as a league of voluntarily united nations and their republics and autonomous provinces (which were part of the Socialistic Republic of Serbia), based on the government and self-management of the working class, and on the other hand as a socialist self-managed democratic community of working people and citizens and equal nations and nationalities. These basic principles also set the frame for the implementation of minority rights. The possibility to undermine the federal basic principles was blocked by Article 206 of the SFRY Constitution, which stated that the republican and the (new) autonomous Constitutions had to be in accordance with the federal one.

In accordance with the Federal Constitution, the republican and provincial Constitutions were now the main foundations of the guarantee of minority rights. Implementation was accomplished through laws, directives and other general acts within the statutes of the communities (as the basic territorial social-economic communities), in the self-management agreements, statutes and acts of the united-work-communities (as autonomous self-management worker communities), through the statutes of local communities (as the basic self-management communities of working people and citizens of the SFRY), and in the self-management interest communities.²⁴⁴ Hence the legal frame concerning minority rights ranged from the federal regime, to the political organization of the republics and provinces, down to local forms of self-management in the organizations of united work and municipalities, including in the judiciary system.

Electoral System

The design of political rights in general, and of minority rights in particular, in Yugoslavia was supposed to be implemented mainly on the communal level. Many of the nationalities were a majority in the communes in which they lived. Hence, they could constitute most of the delegates in the bodies of government and self-

²³⁹ Violeta Demaj, *Kosovo/a, Recht auf Unabhängigkeit* (Neuer Wissenschaftlicher Verlag, Vienna, 2003), 48.

²⁴⁰ Amandmani I-VI, Sl. list SFRJm br. 18/1967.

²⁴¹ Amandmani I-VI, Sl. list SFRJm br. 18/1967, Amandmani VII- XIX, Sl. l. 55/1968.

²⁴² Ur. l. SFRJ 20/69, 20th may 1969, 610-612.

²⁴³ Amandmani , Sl. list SFRJ br. 29/1971.

²⁴⁴ Koća Jončić, "Polozaj narodnosti u novom ustavnom sistemu", 17 *Socijalizam* (1974), 709-727, 710.

management in which vital political and social issues, including their own position, were decided.²⁴⁵

In the self-conception of the Yugoslav socialist system, a minority member was a “worker and citizen,” and like any other member of the nations was a “self-manager” who was responsible for the realization of his rights, incorporated into a supportive community.²⁴⁶ The requirements of a self-management society and the transfer of public action from the state to the self-management level also shifted responsibility for decision-making in minority-concerns to the lowest and most direct stage – local decision making.²⁴⁷ The basis for the exercise of rights was the local “multi-chamber assembly” system, consisting of the chamber of Associated Labour, the Chamber of the Local Territorial Communities and the Social-political Chamber.

This Trinity-Principle was followed through in the republican and provincial assemblies and in the Federal Chamber (220 delegates), one of the two Chambers of the Federal Assembly. The other, the Chamber of Republics and Autonomous Provinces (88 delegates), was, despite its smaller number, the more powerful chamber, where important decisions concerning republican and provincial affairs were made by common consent.²⁴⁸ The delegates were therefore bound to the positions determined by the republican and provincial assemblies.²⁴⁹

The principle of proportional representation of nations and nationalities – the “ethnic key” – at all levels of administration and authority was gradually implemented into the legal provisions.

Language Rights in the Agencies and Organizations of Yugoslavia

The official use of national languages was derived directly from the Federal Constitution, while the national languages were in use in conformity with the Federal Constitution and the laws, according to Article 246 I of the Federal Constitution.

Yugoslavia did not have an official state language.²⁵⁰ Seven equal languages were in official use at the federal level: “Serbo-Croat (Cyrillic), Croatian literary language (Latin), Serbo-Croat or Croato-Serbian language [(ijekavica)] [...] (Cyrillic and Latin), Macedonian (Cyrillic), Slovene (Latin)”, as well as the two languages of the nationalities: Albanian and Hungarian.²⁵¹

While Article 170 of the Federal Constitution guaranteed the right to the individual use of a language, Article 246 was the central provision guaranteeing collective language use.²⁵² Instead of the Federal Constitution, republican constitutions regulated the question of the official use of the languages of nationalities.²⁵³ The constitutionally appointed right of the nationalities to use their languages and scripts in procedures before state agencies and organizations with official authority (Article 171 I of the Constitution of the SFRY) was accomplished, for example, in the standing orders of the Chamber of Republics and

²⁴⁵ *Ibid.*, 711.

²⁴⁶ Kiro Hadzivasilev, “National Equality and Social Self-management”, in Koća Jončić (ed.), *Nations and Nationalities of Yugoslavia* (Međunarodna Politika, Belgrade, 1974), 79-114, at 111.

²⁴⁷ Jončić, *op. cit.* note 244, 711.

²⁴⁸ Lampe, *op. cit.* note 5, 313.

²⁴⁹ Hadzivasilev, *op. cit.* note 246, at 110.

²⁵⁰ Silvo Devetak, *The Equality of Nations and Nationalities in Yugoslavia: successes and dilemmas* (Braumüller, Vienna, 1988), 46.

²⁵¹ *Ibid.*

²⁵² *Ibid.*

²⁵³ *Ibid.*

Provinces²⁵⁴ (hereinafter SOCRP) and the Federal Chamber²⁵⁵ (hereinafter SOFC). The orders affirmed the right of each delegate to use a language of the nations or nationalities in communication within the Chamber²⁵⁶. The passive languages that the languages used were translated into were, beside the national languages, Hungarian and Albanian.

The same principle applied to the “more important” written material used in the Chambers’ sessions. This created the need for a translation service (61 translators, who also edited the official gazette of the SFRY, which was published in the nations languages and the Hungarian and Albanian language), which was introduced in 1978, and for a joint commission of the Chambers concerned with the verification of the conformity of texts in different languages.²⁵⁷

Nevertheless, the system was undeveloped as there was no uniform rule on the implementation of equal language rights for the federal agencies. As a result, discrepancies and unclear questions appeared in the subsequent application of the rules concerning the use of minority rights.²⁵⁸ Additionally, for “practical reasons” the Serbo-Croatian language was used most commonly, though on rare occasions the Slovene delegates exercised their language right, and there were examples of the use of Albanian or Hungarian.²⁵⁹ Many more regulations, all following the above described principle, could be found in diverse regulations of diverse laws: e.g. the Law on the Basis of the System of State Administration,²⁶⁰ the Law on the State Seal,²⁶¹ the Law on Advertisement of Federal Laws and other Regulations and General Acts,²⁶² etc.

Judicial system

Minorities were collectively protected by the Constitutional Court, which could abolish laws and other legal acts that limited or violated the guaranteed rights of minorities.²⁶³ Unlike the jurisdictional protection of the human or citizen rights of individuals, which merely had an initiation right, minority rights could be protected collectively, for example by a Constitutional Court action of the autonomous provinces according to Article 375 Section V of the Federal Constitution.

The procedural rights of minorities were protected by Article 246, which provided for the general equalization of the languages of nations and nationalities in procedures before the courts and other organizations dealing with the determination of the rights and duties of citizens. In Vojvodina for example, where the language rights were primarily applied, there were municipalities where proceedings were conducted in up to five or six different languages.²⁶⁴

²⁵⁴ Art. 300, Poslovnik vijeca republika i pokrajina skupstine Scijalisticke Federativne Republike Jugoslavije (Standing order of the Chamber of Republics and Provinces of SFRY). Sl. l. SFRJ 1982, 38, 710-744.

²⁵⁵ Art. 346, Poslovnik saveznog vijeca skupstine socialisticke federativne Republike Jugoslavia, (Standing order of the Federal Chamber of SFRY). Sl. l. SFRJ 1982, 38, 671-709.

²⁵⁶ Devetak, *op. cit.* note 250, 48, 55.

²⁵⁷ *Ibid.*, 46.

²⁵⁸ *Ibid.*, 52.

²⁵⁹ *Ibid.*, 51.

²⁶⁰ Ur. l. SFRJ, 23/78, 873-924.

²⁶¹ Ur. l. SFRJ, 67/72, which provided in article 2 that the name of the country must be written on the state seal in the languages of the nations of Yugoslavia.

²⁶² of 22 September, Sl. l. SFRJ 43/76

²⁶³ Djordjevic, *op. cit.* note 173, at 167.

²⁶⁴ Tadeusz Szymczak, *Jugosławia Państwo Federacyjne* (Wydawnictwo Łódzkie, Łódź, 1982), 297, 298.

2.2. Republican level: The Issue of Culture and Education

The legal implementation of the constitutionally (Federal and Republican) guaranteed right of education in minority languages was carried out with laws and acts on the local level. Therefore the school models in nationally mixed regions throughout Yugoslavia differed from one to another.

In general, minority languages were either a mother tongue or a second language. According to this distinction, schools could be bilingual, or the language of the minority could be the language of instruction or the subject of instruction.²⁶⁵ However, the education of minorities was still regarded as an integrative element of the whole educational system.²⁶⁶ Learning the national language of the respective republic was compulsory.

Even though education in minority languages began in the early Yugoslav period, a school system capable of providing enough capacity for all students had to be created first. The following republic-specific sections refer to the last and most developed chapter of Yugoslav minority rights in education (elementary school), and consider both the demographic structure of the republics and the cultural development of the minorities. In order to explain the implementation of minority rights, but to avoid repetition, not all republics are included below.

2.2.1. SR Bosnia and Herzegovina

Bosnia and Herzegovina's population counted 4,124,008 inhabitants according the census in 1981. Muslims made up 1,629,924, Serbs 1,320,644 and Croats to 758,136, representing the constitutional nations of Bosnia and Herzegovina.²⁶⁷ In this period 4,502 Ukrainians, 689 Czechs, 616 Italians, 945 Hungarians (dispersed), 609 Poles and 725 Romanies also lived there. They made up 0.6 % of Bosnia and Herzegovina's population.²⁶⁸ These were merely 0.07 % of the total number of nationalities in all of Yugoslavia, the smallest number of nationality members (12,366) and ethnic groups (7,300) compared to the other Yugoslav republics.²⁶⁹

Article 4 of the Constitution of Bosnia and Herzegovina²⁷⁰ stated that the official languages were Serbo-Croatian and Croato-Serbian – with the “ijekavica-pronouncing” – and that both scripts (Cyrillic and Latin) were equal. Additionally, the equality of the languages of nations and nationalities and scripts was stipulated in section I of Article 181. Members of the nationalities had the right to use their languages before the agencies of official authority, if the laws and statutes of the social-political communities and self-management acts of the organizations of united work and other self-management organizations ruled in favor of the official use of that national language.

Section II of Article 181 asserted the right to education in minority languages according to the law. Because of the small number of nationality members and their dispersion across the republican territory, few lessons in their mother tongue were provided, and these only in elementary schools and on a

²⁶⁵ Sonja Novak-Lukanović, “Bilingual education in Yugoslavia” 9 *Journal of multilingual and multicultural development*, (1988) 169-176.

²⁶⁶ Cp. Laslo Varga, “National equality in education, culture science and other social activities”, in Koća Jončić (ed.) *Nations and Nationalities of Yugoslavia* (Medunaroda politika, Belgrade, 1974), 329-368, 343.

²⁶⁷ Seewann and Dippold, *op. cit.* note 178, 1160.

²⁶⁸ Breznik and Sentić, *op. cit.* note 193, 9

²⁶⁹ Breznik and Sentić, *op. cit.* note 193, 9.

²⁷⁰ Sluzbeni list SR BiH, 4/74.

voluntary basis.²⁷¹ Lessons in Italian were conducted in Sibovska and Stivoka with 115 students, lessons in Czech in Prnjavor with 32 students, Albanian in Sarajevo with 30 students and in the region of Banja Luka lessons in the Ukrainian language were provided for approximately 500 students.²⁷²

Minorities had cultural associations, e.g. Taras Sevcenko, Bratstvo (Ukrainian), Ceska Beseda (Czech), Veseli Brijeg (Romany), which were active in the nationalities' publishing, theatre and sports events. They were also in contact with other related national organizations in other republics, where their members lived in larger numbers, e.g. with SR Croatia and SAP Vojvodina.²⁷³

2.2.2. SR Croatia

In the 1980s, Croats numbered 3,454,661 persons, making up 75.1 % of the total population living in Croatia. The nationalities and ethnic groups made up 1.7 %: for example, there were 6,006 Albanians (0.1 %), 15,061 Czechs (0.3 %), 25,439 Hungarians (0.6 %), 11,661 Italians (0.6 %), 3,321 Ruthenians (0.1%), 2,515 Ukrainians (0.1 %), 3,858 Romanians (0.1%) and 758 Poles.²⁷⁴

The Serbs were considered a nation in Croatia, making about 12 % of Croatia's population. The incidents of Croatian Spring had also left their marks noticeably in the Croatian Constitution. On one hand, the Literary Croatian language was recognized in the text of the Croatian Constitution of 1974, on the other, the Croatian Literary language was now carefully defined as a "standard form of the national language of the Croats and Serbs in Croatia, named Croatian or Serb [language]" (Article 138 section II). The question of the difficult classification of the Croatian Serbs was solved by compromise:²⁷⁵ the first article of the Croatian Constitution designated the Croatian Republic as national state of the Croatian people, state of the Serb nation in Croatia, and state of nationalities that lived within Croatia.

Article 137 Section I of the Constitution guaranteed the equality of all nations and nationalities in SR Croatia: Croats, Serbs, Hungarians, Czechs, Italians, Slovaks, Ruthenians, Ukrainians and other nations and nationalities. The rights in Articles 137 and 138 comprised, according to the federal sample, the right to cultural development, to the use of languages and scripts of nations and nationalities in general, and in procedures before state agencies, and to education in the languages of nations or nationalities, etc. Furthermore, the nations and nationalities were granted the right to use their national symbols and to proportional representation in the assemblies of social-political communities and other agencies with official authority.

Financing the realization of language rights was left to social-political organizations of united work and the self-management interest communities according to Article 139 of the Croatian Constitution. Thirty out of 113 municipalities were inhabited by a considerable number of nationality members. The implementation of minority rights was varying: while some statutes of

²⁷¹ Sonja Novak-Lukanović, "Some Yugoslav experiences in Asserting Equality of the nations and nationalities in the Field of Education" (18) *RIG* (1986), 33-89, at 37; Novak-Lukanović, *op. cit.* note 265, at 172.

²⁷² Ibrahim Bakić, "Polozaj i ravnopravnos narodnosti u SR BiH", (13-14) *RIG* (1981) 181-188, at 183, 184.

²⁷³ *Ibid.*, at 187.

²⁷⁴ Breznik and Sentić, *op. cit.* note 193, 10.

²⁷⁵ Marco Geistlinger, "Minderheitenschutz im östlichen Europa: Kroatien", Institut für Ostrecht der Universität zu Köln, *Minderheitenschutz im östlichen Europa*, at http://www.uni-koeln.de/jur-fak/ostrecht/minderheitenschutz/Vortraege/Kroatien/Kroatien_Marco_Geistlinger.doc#_To c115586462, 12.

municipalities, e.g. in Istria and Slavonia, were adequately adapted, other remained abstract and general, and still others did not mention minorities at all.²⁷⁶ Italian, Hungarian and Czech minorities enjoyed education in their mother tongue in some parts of Croatia, while other municipalities provided only hours of Hungarian, Czech, Slovak, Ruthanian and Ukrainian for their nationality members.²⁷⁷ In the municipalities and communities of municipalities that had adopted minority rights, commissions for nationalities were established, as well as a committee for inter-national relations, which had to be consulted on questions of relevance to the nationalities.²⁷⁸

2.2.3. Macedonia

Sixty-seven percent (1,279,323) of the population of SR Macedonia were Macedonians²⁷⁹. Macedonia had the second largest number of nationalities after SR Serbia, altogether 516,814 people according to the census of 1981²⁸⁰. Albanians numbered 377,726 persons (19.8%), followed by Turks with 86,891 (4.5%), 43,223 Romany (2.3%), 6,392 Vlachs (0.3%), and 1,984 Bulgarians (0.1%).²⁸¹ All nationalities together made up 19.3% of the nationalities living in Yugoslavia and 27% of Macedonia's population. Albanians and Turks had their own primary schools, television and broadcasting in their own languages, and various cultural organizations and representatives in the assemblies on local and republican levels.²⁸²

Due to nationality politics, the Romany were capable of making gains with respect to the other nationalities in Macedonia, to some extent. In addition to their own television and radio broadcastings, the representation of Romany in the local assemblies and the republican assembly was enhanced.²⁸³ The municipality of Struga was e.g. the only municipality in Yugoslavia that applied the right to proportional representation also to ethnic groups.²⁸⁴ However, the same policies failed for the Vlach group, which became more and more assimilated within the Macedonian majority population.²⁸⁵

2.2.4 Serbia and the Autonomous Provinces

As stated above, 75.8 % of all nationalities and ethnic groups lived in SR Serbia, the largest parts of them in the autonomous provinces. Nationalities made up 21.8 % of Serbia's whole population; 1,896,774 members of nationalities and 136,555 members of ethnic groups lived there.²⁸⁶ In 1981, 70.9% of the Albanian inhabitants lived in the territory of SAP Kosovo, 21.8 % in SR Macedonia, 4.19 % in Serbia proper, 2.18 % in Montenegro and 0.93 % in the territory of the rest of the socialist republics.²⁸⁷ Ninety percent (90.28 %) of the Hungarians lived in SAP Vojvodina, 5.96 % in Croatia, and 2.22 % in Slovenia. The Romany lived mostly in Serbia

²⁷⁶ Marinko Gruic, "Aktuelni problemi samoupravnog položaja narodnosti u socijalističkoj republici hrvatskoj", (13-14) *RIG* (1981) 189-199, at 192.

²⁷⁷ Novak-Lukanović, *op. cit.* note 265, at 171, 173.

²⁷⁸ Gruic, *op. cit.* note 276, at 198.

²⁷⁹ Seewann and Dippold, *op. cit.* note 178, 1179.

²⁸⁰ Breznik and Sentić, *op. cit.* note 193, 10.

²⁸¹ *Ibid.*

²⁸² Poulton, *op. cit.* note 104, 28.

²⁸³ *Ibid.*, 29

²⁸⁴ Vera Klopčič, "Urejanje položaja narodnosti v statutih občin na narodnostno mesanih območjih SFRJ" (16) *RIG* (1982) 191-199, at 197.

²⁸⁵ Poulton, *op. cit.* note 104, 29.

²⁸⁶ Breznik and Sentić, *op. cit.* note 193, 10.

²⁸⁷ Žuljić, *op. cit.* note 184, 19.

(66.01%) and SR Macedonia (25.65%). The Turks lived in SAP Kosovo (12.37 %), and in SR Macedonia (85.57 %).²⁸⁸ The Serb share of the total population of the (whole) SR Serbia accounted for 66.4 %.

The Constitutions of Serbia, Vojvodina and Kosovo had adopted the provisions of the Federal Constitution and stipulated the official languages on their respective territories. According to Article 240 Section I of the Constitution of the Socialist Republic of Serbia,²⁸⁹ this was the Serbo-Croatian language, and additionally (Section II) languages defined in the statutes of the municipalities. Section III of the same article defined the competence of the autonomous provinces to choose the languages to be used before state agencies and official organizations. According to Article 233 Paragraph II of the Serbian Constitution, laws and other regulations and acts that were to be applied over the entire territory of the Republic also had to be published in the Albanian and Hungarian languages.

According to Article 240 section III of the Serbian Constitution of 1974, the provincial constitutions themselves stipulated the languages in which proceedings were to be conducted in state agencies and organizations. These languages were, according to the article 5 of the Constitution of the Autonomous Province Vojvodina:²⁹⁰ Serbo-Croatian, Hungarian, Slovak, Romanian and Ruthenian. In Article 236, the Constitution of AP Kosovo designated Albanian and Serbo-Croatian as official languages in procedures before state agencies and organizations with official authority, and, if determined in the statutes of municipalities and other social-political organizations, the Turkish language could be used officially as well. The provinces adopted separate laws on the equality of the languages and scripts of the nations and nationalities in SAP Vojvodina²⁹¹ and in Kosovo.²⁹² They upheld language rights in procedures before state agencies and organizations with official authority, including the juridical institutions.

(a) Serbia (proper)

In Serbia proper the percentage of Serbs added up to 85.44 %. The nationalities and ethnic groups numbered 204,570 persons, or 2.4 % of the total. Albanians at 72,484 people (1.3%), and Bulgarians at 30,769 (0.5 %) made up the two largest nationality groups. Thirty-four percent of all Yugoslav Romanians (57,140 people) and 79.6 % of all Yugoslav Vlachs (25,535 people) lived there.²⁹³

The "Law on Education" and other Republic and Communal self-managing acts regulated the education of all nations and nationalities in Serbia proper, providing equal rights and financial means to all nationalities in order to organize schools.²⁹⁴ Bilingual schools for Serbian children and children of Bulgarian nationality, with lessons in both Serbo-Croatian and Bulgarian, existed in the communes of Dimitrovgrad, Surdulica, Babusnica. The Bulgarian language was also taught in a mixed school system, with certain lessons in Bulgarian, such as history, art, music education and extracurricular activities. In the communes of Presevo, Bujanovac and Medvedja, some schools offered lessons and school activities

²⁸⁸ Žuljić, *op. cit.* note 184, 19.

²⁸⁹ Ustav Socialisticke Republike Srbije, Sluzbeni Glasnik S.R. Crbije, 8/74.

²⁹⁰ Ustav Socialisticke Autnomne Pokrajine Vojvodine, Sluzbeni list SAP Vojvodine, 4/74.

²⁹¹ Zakon o ostvarivanju ravnopravnosti jezika i pisma naroda i narodnosti pred drzavnim organima i organizacijama koje vrse javna ovlasćenja, Sl. list SAPV, 6/73, 28/77.

²⁹² Zakon o ostvarivanju ravnopravnosti jezika i pisma u SAPK, 48/77, 11/85.

²⁹³ Breznik and Sentić, *op. cit.* note 193, 10, 11.

²⁹⁴ Anka Budimlija, "The role of the school in preserving the cultural and language identity of pupils and influence on the development of brotherhood, unity and equality of the peoples and nationalities in the Socialist republic of Serbia" (18) *RIG* (1986) 158-164, at 158.

conducted in Serbo-Croatian and Albanian. In some regions the Albanian and Bulgarian minorities were also provided with secondary vocational education.

(b) Vojvodina

Vojvodina was, due to its large number of different nationalities, the most heterogeneous part of Yugoslavia. Serbs made up to 54.42 % of the population. There lived 20.7 % (554,940 people) of the total number of all Yugoslav nationalities and ethnic groups. They made up to 27.1 % of the inhabitants of Vojvodina: Hungarians made up 18.9% (385,356 people), Croats 7.8 % (139,000), Romanians 2.3 % (47,289), Ruthenians 0.9 % (19,305), Ukrainians 0.2 % (5,001), and Romany 1.0 % (19,693).²⁹⁵

In some areas ethnic concentration was quite high e.g. Croats lived mostly in the District of Backa and parts of the District Srem, 70 % of the Slovaks lived in Backi Petrovac, Kovacica and Stara Pazova, but there were also intensively industrialized communes such as Novi Sad or Subotica with high heterogeneity.²⁹⁶ The implementation of minority rights was well-elaborated. The educational system comprised every level of education from pre-school to higher education at the University of Novi Sad.

Unlike Kosovo at the beginning of the seventies, nationalities were proportionally represented in the representative bodies, delegations, organizations of united work, etc.²⁹⁷ In Kosovo proportional representation was not achieved. Publishing in national languages was manifold. Newspapers, magazines, several weekly and monthly newspapers and books were also published in collaboration with publishers in the People's Republic of Hungary, the People's Republic of Romania and the Czechoslovak Socialist Republic.²⁹⁸

(c) Kosovo

Legal development

The first statutes of the Autonomous *Province* of Vojvodina and the Autonomous *Region* of Kosovo and Metohija were issued in 1948.²⁹⁹ At this time, the Autonomous Province of Vojvodina had an Assembly as highest organ, while Kosovo had a regional committee with administrative powers. This differentiation between Province and Region was perpetuated until the constitutions (Federal and the Serbian) of 1963, when Kosovo became an Autonomous Province as well. In this phase, both provinces had no constitutional court of their own, however Vojvodina had a Court of Chancery and therewith juridical autonomy. In Pristina, however, a department of Serbia's Supreme Court was opened.³⁰⁰

Since then, both provinces were equally represented in the Nationality Council of the SFRJ.³⁰¹ The tasks of the agencies for the provincial territory comprised issuing statutes for the territory, the arrangement of agencies within the territory, matters of economic concern, education, health, and social care, the protection of minority rights, attention to the participation of minorities in social

²⁹⁵ Breznik and Sentić, *op. cit.* note 193, 11.

²⁹⁶ Miladin Gvozdenov and Hajradin Hoxha, "Socijalističke autonomne pokrajine u jugoslovenskom federalnom sistemu", in Koća Jončić (ed.), *Nations and Nationalities of Yugoslavia* (Medjunarodna politika, Belgrade, 1974) 191-240, at 210, 211.

²⁹⁷ *Ibid.*, 215.

²⁹⁸ *Ibid.*, 216.

²⁹⁹ *Ibid.*, 199.

³⁰⁰ Vickers, *op. cit.* note 156, 160, 161.

³⁰¹ Before Vojvodina sent 6 and Kosovo and Metohija 4 representatives, respectively.

activities, the execution of laws and regulations of the Federation and the republic, etc.

The elimination of the term “Metohija” from the provincial name was conducted under the Constitutional Amendments of 1968, as reaction to the previous unrest in Kosovo.³⁰² Nevertheless a full legal status such as Vojvodina’s was not reached until the Constitution of 1974. With the Federal Constitution of 1974, which provided a veto right on border changes of the provinces in Article 5 Section II, and a veto right concerning constitution changes for all republics and provinces in Article 402, Kosovo became a federal entity.³⁰³ These were two strong barriers that resisted all *legal* attempts to abolish the Autonomy of the Kosovo in the eighties.

Kosovo’s position improved: it had independent executive, legislative (parliament) and judicial (Constitutional Court) institutions, and its own National bank.³⁰⁴ In economics, taxation and other affairs that were regulated coherently for the whole republican territory, legislative acts could be issued only in accordance with the two provincial assemblies.³⁰⁵ Generally speaking Kosovo’s position matched that of the Republics. The difference was that the Albanians were recognized as a nationality and not as a nation. The status of nation would have allegedly included the right of secession as was guaranteed to all the nations in the basic principles in Article I of the Federal Constitution.

Economic development

The first five-year plan on economics, issued in 1945 by the Federal leadership, contained an industrialization approach for Kosovo. According to the communist philosophy, industrialization was intended to solve the region’s problems and overcome the “backwardness” of Kosovo.³⁰⁶ The first five years, however, were spent rebuilding to pre-war capacity.³⁰⁷ Kosovo was rich in zinc, silver and lead – a capital-intensive industry that generated relatively little employment.³⁰⁸ The growth rate of the GDP (0.7 % in this period) increased through investment in the following years. The investments of the Federation and Serbia into industry and infrastructure amounted to 39 % of the Yugoslav average per capita investment.³⁰⁹ Among other factors, inefficient investment politics minimized the effects of the efforts taken to improve Kosovo’s economic and social level. Another factor was the high birth rate of the Albanian population, which kept the national income per capita low, despite the quadrupling of national income from the mid-forties to the seventies.³¹⁰

The Albanian representation in state agencies and organizations in the beginning of the seventies did not match their share in the population. The Albanian representation in workers’ councils and respective organizations increased e.g. from approximately 50 % in 1963, to approximately 60 % in 1971.³¹¹ The same year, the percentage of Albanians among office workers accounted for 40.1 %, while at the same time their share in the total population of the Province was

³⁰² Ramet, *op. cit.* note 99, 158, 159.

³⁰³ Vickers, *op. cit.* note 156, 178, 179.

³⁰⁴ Vickers, *op. cit.* note 156, 178, f, Demaj, *op. cit.* note 239, 53.

³⁰⁵ Vickers, *op. cit.* note 156, 178, 179.

³⁰⁶ James Pettifer, „Wirtschaft und Gesellschaft in Kosovo von 1945 bis heute“, in Jens Reuter and Conrad Klewing (eds.), *Der Kosovo Konflikt: Ursachen, Verlauf, Perspektiven*, (Wieser, Klagenfurt, 2000), 89-104, at 92, 93.

³⁰⁷ Jens Reuter, *Die Albaner in Jugoslawien* (Oldenbourg, Munich, 1982), 54.

³⁰⁸ *Ibid.*, 55.

³⁰⁹ *Ibid.*, 54, 55.

³¹⁰ Gvozdenov and Hoxha, *op. cit.* note 296, at 228.

³¹¹ *Ibid.*, at 233.

73.8%. In the social sector, the employment figures in 1977 were composed of 58.2% Albanians, 31% Serbs, and 5.7 % Montenegrins. The number of Albanian employees increased (1978: 83% Albanians, 9.3% Serbs), and eventually amounted to 92 % with an under-representation of Serbs (5 %) in 1980 in the social sector.³¹² The distribution of public offices was bound to national quotas and bilingualism was now a conditional qualification for public employees.³¹³

Education and Culture

In the last phase of the SFRY, Kosovo had 1,273,819 members of nationalities and ethnic groups – 47.1 % of the total number in Yugoslavia. In 1981 the percentage of nationalities amounted 80.4 %: 1,226,736 Albanians (77.4 %), 12,431 Turks (0.8%), 34,126 Romany (2.2 %), and 58,526 (Slav) Muslims. Other ethnic groups (altogether less than 10,000 people) included, for example, the Cherkessians and Aromuns.³¹⁴

After the WW II short- and long-term measures were taken to reduce illiteracy amongst the population and to skill-train the inhabitants in Kosovo. Short-term training of educational staff enabled the opening of 122 Albanian language departments in elementary schools in 1946.³¹⁵ Long-term measures were taken to construct an educational system throughout the whole Region.

In the sixties, sub-offices of faculties (Philosophy, Law and Economics) of the University of Belgrade opened in Pristina.³¹⁶ The number of Albanian staff employed in the educational system grew constantly in parallel to all other sections of society. Nevertheless, problems remained: attempts to provide the growing population with adequate schools were insufficient. Schools that had up to four shifts a day, short timetables, underpaid teachers, inadequate teaching materials etc., generated graduates who were bound to Kosovo, which itself had an enormously high unemployment rate.³¹⁷

Over 500 Kosovar localities were not provided with elementary schools in the middle of the seventies. This, combined with an insufficient road network, exacerbated low school attendance rates enormously. Additionally, the “patriarchal proclivity of Albanian families to keep female children from attending school” kept the illiteracy quota high.³¹⁸

Nevertheless, positive developments could be also observed. The Albanian literary scene in the seventies was flowering.³¹⁹ In 1976, 193 books were published with a circulation of one million, a minor part of which were Serbian publications.³²⁰ Broadcasting in the Albanian language was supplemented by TV Kosovo. “Rilindija” – first a weekly, and from 1958 on – a daily publication was the most known Albanian newspaper.³²¹ There were several monthly newspapers/magazines, weekly newspapers, a medical journal, a cultural and educational journal, and a children’s’ journal in the Albanian language. The Turkish minority in Kosovo also had its own journal “Tan.” From 1969 on,

³¹² Ramet, *op. cit.* note 99, 158-.

³¹³ Vickers, *op. cit.* note 156, 180.

³¹⁴ Breznik and Sentić, *op. cit.* note 193, 11; Armin Hetzer, „Kultur und Konflikt in Kosovo“, in Jens Reuter and Conrad Klewing (eds.), *Der Kosovo Konflikt: Ursachen, Verlauf, Perspektiven*, (Wieser, Klagenfurt, 2000), 105-116, at 108, 109.

³¹⁵ Fatmir Fehmiu, “Equality of language, oral and written, of the nations and nationalities in the socialist Autonomous province of Kosovo in the field of education” (18) *RIG* (1986) 210-225, at 211.

³¹⁶ Hetzer, *op. cit.* note 314, 113.

³¹⁷ Repishti, *op. cit.* note 155, at 253, 254.

³¹⁸ Ramet, *op. cit.* note 99, 156.

³¹⁹ Hetzer, *op. cit.* note 314, 115.

³²⁰ *Ibid.*, 114.

³²¹ *Ibid.*

instruction could be conducted in the Turkish literary language, and Turks had right to use their language before state authorities.³²²

Already during the seventies, however, disturbances and arrests of Albanians occurred to a larger extent. In 1973 - 1975, for example, a separatist organization, headed by Adem Demaci, advocated the unification of Kosovo and the predominantly Albanian parts of Macedonia and Montenegro with Albania.³²³ For these and other activities, Adem Demaci spent over 20 years of his life in prison. The occurrences of 1973-1975, however, were just a foretaste of what was to come in 1981.

The riots started in Pristina. The initial protests concerned bad food in the University Cafeteria, but soon escalated into riots with 20,000 people – spreading to Montenegro and Macedonia. Officially there were 9 dead and a disputed number of injured and arrested. The disputed data ranges from hundreds to thousands.³²⁴ When the state of emergency was declared, Kosovo was completely isolated; army and police took over control. Night curfews, a news embargo, and a prohibition of assembly were issued. The police and the army also acted brutally toward orderly demonstrations.³²⁵

Subsequently, the League of Communists of Kosovo and the state institutions were purged of “suspect” Albanians. In the following 6 years approximately 3,000 Albanians were sentenced for political and military crimes and 6,650 for misdemeanours.³²⁶ The share of students in the sentenced masses was approximately 2,000. Presumably at that time Albanians made up more than 90 % of all Yugoslav political prisoners, with an enormous share of people under 20 years of age.³²⁷ The situation for Albanian recruits in the Yugoslav Army got worse with the occurrences of 1981. Alleged discrimination on the basis of ethnicity against Albanian recruits included solitary confinement, denial of food and water and murder.³²⁸

With the alteration of political conditions in Serbia – Milosevic became the headman of the Communist Party of Serbia in 1987 – the situation sharpened. Serbian deputies issued an Initiation for a constitutional change before the Federal Assembly, according to Article 399 of the Federal Constitution. The proposal contained modifications of the state structure and economics, in the course of which the status of the federal unit of Kosovo would have been changed.³²⁹ The realization of the latter issue failed due to Kosovo’s veto right and a lack of support from the other republics. This failure on the federal level was circumvented on the republican level in Serbia in 1989. By amendment, the veto right concerning changes in the Serbian constitution was abolished and replaced by a non-binding statement right of the Provincial Assembly. The Constitutional Court of Serbia obtained the right to control the constitutional ruling of the provincial assembly and to abolish it indirectly.³³⁰

The subsequent mass demonstrations prompted the “Law on the procedure of republican agencies in extraordinary circumstances” in 1989, which suspended the

³²² *Ibid.*, 109, fn. 16.

³²³ Ramet, *op. cit.* note 99, 161.

³²⁴ Reuter, *op. cit.* note 307, p. 79; Repishti, *op. cit.* note 155, at 257-; Dijana Plestina, *From Democratic Centralism do Decentralized Democracy? Trials and tribulations of Yugoslavia’s Development*, in John B. Allcock, John J. Horton and Marko Milivojević (eds.) *Yugoslavia in Transition* (Berg, New York, 1992), 125-168, at 150.

³²⁵ Demaj, *op. cit.* note 239, 57.

³²⁶ Amnesty International, 1987; Plestina, *op. cit.* note 324, 150.

³²⁷ Demaj, *op. cit.* note 239, 59.

³²⁸ *Ibid.*

³²⁹ *Ibid.*, 64.

³³⁰ *Ibid.*, 61.

legislative, executive and judiciary competences of Kosovo until a new Serbian Constitution was issued in 1990, in which Kosovo still had the status of an Autonomous Province, but these rights were not comparable to those listed under the Yugoslav constitution of 1974.³³¹

3. Part Three - Evaluation

This analysis demonstrates that human rights and minority rights progressed coherently with Yugoslavia's structural reorganization and decentralization, which based structural changes on the gradual progress of the economy. Economic changes were the root of the constitutional changes from 1946 until 1974.

After breaking ties with the Soviet Union in 1948, Yugoslavia had to open itself to the West and develop its own brand of Socialism with a more liberal approach towards human rights compared to other Socialist Eastern-block countries. Like the Constitutions before it, the Constitution of 1974 guaranteed Classic Human Rights. Nevertheless, they corresponded to duties towards the community, and had to be asserted within the limits of the Socialist System. The emphasis was laid on socialist-characterized individual and collective self-management rights, as well as on social rights, while individual rights like freedom of expression or freedom of association were to be exercised only in line with the official policy. It was the League of Communists of Yugoslavia, or rather the political leader Tito - as long as he was alive - and his closest comrades, who drew the lines in which political statements were allowed.

The two main pillars of Communist Party policies – equality of all nations and nationalities, and the reorganization of the society in a communist and later socialist style within the one-party system – were an inextricable knot that historically evolved from the role that the Partisans played in the Second World War. Therefore:

The party had a monopoly both in perceiving and in redressing ethnic grievances. Voicing complaints of one's own ethnic collective in public was nationalism, and it was tantamount to an attack on the Communist party. Recognition and representation of collective identities were conceived as a disruption of the one-party system. The Party was jealously defending its monopoly in extending protection. The pronouncing of national demands or gathering along ethnic lines was perceived as direct offence to the communist party.³³²

The regime tried to keep the ethnic balance by all means, and sometimes artificially, by disseminating its concept of equality of all ethnic groups. When, for example, incidents occurred that were viewed as nationalistic criminal offences by an individual from one ethnic group, there were anxious efforts to trace another nationalistic offender in the same region from another ethnic group.³³³

As the party was not institutionalized in the Yugoslav legal framework, it implemented its power informally, for example through the instrumentalization of the judicial system and the Intelligence Services for the persecution of political opponents.

³³¹ *Ibid.*, 92.

³³² Tibor Varady, "Collective Minority Rights and Problems in Their Legal Protection: The Example of Yugoslavia" 6 *East European Politics and Societies* (1992), 260-282.

³³³ *Ibid.*, at 265.

The treatment of dissidents in Yugoslavia was observed by the UN Human Rights Committee. The Committee was established to observe member states' implementation of the ICCPR, and to provide a forum for communication and discussion on the development of human rights in the member states. Furthermore, Yugoslavia was regularly admonished for human rights violations by Amnesty International during the late seventies and the eighties – a crucial phase for the developments that evolved during the nineties. The dissidents in these cases were individuals who left the defined frame of permitted national demands, or demands for further democratization/decentralization.

Political discussion on these topics was reserved for the higher political level, for example the republican representations in the League of Communists of Yugoslavia. There was little possibility for the unpunished articulation of national demands in civil society. There was no possibility for unpunished (collective) organization, for example the “loose coordination of cultural organizations within the same nation,” for which the “party’s codename [was] outworn verticalism”.³³⁴ This resulted in a civil society that had no outlet for, and no constructive attitude in dealing with national/istic currents. In retrospective

[...] almost everyone felt and behaved like victims - of party clashes, war, revolution, and various campaigns against the ‘enemy’. [...] [With no democratic tradition] the fusion of groups and classes was replaced by a chaotic desire for an ‘organic unity’ of blood and soil. The whole nation was declared to be the victim of another nation.³³⁵

Although the punishment of political opponents was conducted selectively, omnipresent intimidation led to a passive attitude amongst the broad population, who internalized a “neutral” approach towards “politics,” retreating from political statements.³³⁶ This became apparent, for example, in the passive attitude of the Croatian “public” throughout the eighties, as a consequence of the political mass-cleansings of Croatian Spring and the retrospective perception of Croats concerning their “suppression” during Socialist Yugoslavia.

In most cases, the treatment of dissidents and the trials initiated against them were not in conformity with international standards on human rights set out by the ICCPR and the European Convention on Human Rights.³³⁷ Violations ranged from charges concerning the restriction of freedom of opinion, the treatment of arrested persons in hearings, the violation of procedural guarantees for arrested persons, to the inhuman conditions under which they were imprisoned. Cases in which persons were discharged or convicted for the organization and support of petitions addressed to state authority for the release of imprisoned political opponents, or for “regime-critical” interviews given to foreign press, violated the standard of freedom of expression granted e.g. under article 12 II ICCPR. The clause in 12 Paragraph III of the ICCPR, which states that freedom of expression can be restricted for the protection of national security or of public order, public health or morals or the rights and freedoms of others, could not justify the conviction of persons who simply exercised their constitutionally guaranteed right, e.g. to address petitions to state authorities, for criminal offences under article 133 of the Yugoslav Criminal Code.³³⁸ According to international minimum standards on freedom of expression, national laws that permit freedom of opinion

³³⁴ *Ibid.*, at 264.

³³⁵ Nebojsa Popov, “Traumatology of the Party State”, in Nebojsa Popov (ed.), *The Serbian Road to War: Traumata and Catharsis* (Central European University Press, Budapest, 2000), 81-108, at 101.

³³⁶ *Ibid.*

³³⁷ Irwin, *op. cit.* note 166, at 193.

³³⁸ *Ibid.*, at 187.

only on the behalf of one ideology (for example Socialism or Islam), contradict international standards, even if these ideologies are part/or are the “public order” of the state.³³⁹

Minority rights

Nationalities/minorities that were granted the right to cultural development and to the use of their languages under the first Yugoslav Constitution, had a more or less elaborated system of language rights by the beginning of the eighties, which they could use in proceedings before federal, republican and local agencies. They had their own schools and were represented in the local official bodies. However, in some regions the implementation of regulations was often incomplete or was completely absent. Not all members of minorities could profit from the regulations. Nevertheless, the Yugoslav minority policy ensured preservation of the culture of some minorities, even led to improvements for some minority groups, and provided good inter-ethnic relations. Before the situation in Yugoslavia started to deteriorate, people generally lived together peacefully.

Yugoslavia was one of the states that had pushed for the incorporation of collective minority rights in the negotiations for international treaties dealing with human rights. Standards concerning collective minority rights developed rather slowly under international law after the Second World War, and predominantly emphasized individual rights, which also extended to minority members. With the ICCPR there was, for the first time, a provision concerning minorities (Article 27 of the Covenant), which recognized the collective element in minority rights protection.³⁴⁰ Since then, various international contracts have been developed establishing minority rights comprising individual and gradually more collective minority rights.

Comparing the minority rights system in Yugoslavia to international standards, set by the ECHR for example, it becomes clear that Yugoslavia's minority rights system was ambivalent. Since minority protection under the ECHR was developed by the European Court of Human Rights – the ECHR does not comprise minority specific provisions – the standards of minority protection were developed from general individual human rights. The use of a minority language in private or among members of a minority group was taken from Article 10 of the ECHR (freedom of expression), and comprises the right to publish print media without interference by the state, and the obligation of the state to tolerate the free expression of the minority group even in questions concerning the political structure of the State.³⁴¹ According to this perspective, minority members in Yugoslavia were regarded as all other citizens in Yugoslavia. They had the right to publish print media in their own language; however they did not have the possibility to voice any political complaints against the regime.

On the other hand, the “right to mother tongue education,” for example, is not a standard of the ECHR,³⁴² but it was foreseen by the Yugoslav legal system. Nevertheless, the obligation for states to provide and promote opportunities for minorities to learn their mother tongue or to have instruction in their mother tongue, was, in the meantime, incorporated by other international treaties, for example the Declaration on the Rights of Persons Belonging to National or Ethnic,

³³⁹ Manfred Nowak, *CCPR-Kommentar: Uno-Pakt über bürgerliche und politische Recht und Fakultativprotokoll* (Engel, Kehl, 1989), 379.

³⁴⁰ Varady, *op. cit.* note 332, at 270.

³⁴¹ Halida Nasic, “Minority Rights Instruments and Mechanisms, Minority Protection along the conflict Continuum”, Paper for Workpackage 1 of the MIRICO project, 33.

³⁴² Cp. *Ibid.*

Religious and Linguistic Minorities or the Framework Convention for the Protection of National Minorities.³⁴³

³⁴³ *Ibid.*, 14, 39.