

National Identity in Post-Yugoslav States: Constitutional Relationship Between The Ethnic, Civic and National

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Abstract: This paper treats the issues of identity. It showcases the approaches to the relations among ethnic, civic and national interests in the drafting of constitutions in transitional countries. Tethered to the fundamental principles of good drafting, the paper highlights the balance of constitutional relations in post-Yugoslav countries. Most of these states are heterogeneous societies, which makes it harder for the constitution-maker to define the state as civic. The Montenegrin society is established on civic foundations, whereas Macedonian and Bosnian-Herzegovinan constitutions established a constitutional system in which the collective particularities of ethnic groups are manifested largely on the expense of citizens or other collectivities. This paper also deals with the problem of constructing national identity, where ethnic identity is seen as an obstacle.

Keywords: National identity, culture, ethnicity, civic, constitution



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Introduction

The aim of this paper is the analysis of certain phenomena and processes. On the one hand, there is national identity and democracy, and on the other hand, there are societies that can be labelled unstable, such as the countries that emerged from the breakup of former Yugoslavia. Most of these countries are economically very weak, and in most of them there is a trend of strong political confrontation between the political structure of the government and the opposition.

The essence of the term “democracy” is the rule of majority with respect to minority rights. It is necessary to explain the concept of “national identity”. National identity is a part of identity¹ as a psychological category. Along with national, there is also cultural identity,² but it is not the subject matter of this paper. I explored the definition of the notion of national identity in books and articles on sociology and politics and found that there is no single definition of national identity. I will not try to give a definition of national identity because, as ancient Romans would say, *Omnes definitionem periculum est* (“Any definition is dangerous”).

In this essay, I will expose the legal regime of “people”, “nation”, “state”, and point out the various provisions in the constitutions and other normative acts in former Yugoslav countries. National identity is not regulated in legal provisions of these countries. According to the records made available to me, it is not regulated in comparative constitutional law either. In the late eighties, the European Union initiated a policy of creating a European identity, so the Maastricht Treaty introduced provisions on the national identity of the Member States.³ In the nineties, national identity was used for the preservation of national sovereignty and independence. The obligation to respect national identity, in addition to the Maastricht Treaty, was expressed in the Lisbon Treaty.⁴ The

1 The term “identity” comes from a Latin term meaning sameness.

2 It is questionable whether cultural identity is a legal concept. See: ROELLECKE, G. (2001) review of the manuscript of Gabriele Britz, *Kulturelle Rechte und Verfassung, Über den rechtlichen Umgang mit kultureller Identität*, *Juristenzeitung*, p. 562 and further.

3 See: Article 6, Paragraph 1 and Paragraph 2 of the Maastricht Treaty; the original version of Article 126 of the Maastricht Treaty.

4 See: Article 3, Paragraph 3, and Article 4, Paragraph 2 of the Lisbon Treaty. It is certain that jurisprudence was ready to capitulate before determining the legal content of “national identity”. See: DOEHRING, K (1993), *Staat und Verfassung in einem zusammenwachsenden Europa*, *Zeitschrift für Rechtspolitik*, p. 98, 101; UHLE, A. (2004) *Freiheitlicher Verfassungsstaat und kulturelle Identität*, *Jus Publicum — Beiträge zum Öffentlichen Recht*, Band 121, p. 4.

answer came along the line of dividing legal spaces: what makes up cultural identity of a national constitutional state from the European perspective is exactly what makes up national identity of the Member States from the perspective of the European Union (Uhle, 2004: 5).

Nation is a stage in people's development manifested in the creation of the nation state. State and law affect the formation, development and maintenance of the nation, because they bind people hard and strengthen other social connections. The state has a dominant role in the construction of national identity, because national identity to a large extent is achieved through coercive categories regulated by imperative legal norms: the institution of citizenship, the use of a common language, the use of a state symbols, and emotional relations of the individual towards the state, which legal norms cannot regulate. Professor Radomir Lukić wrote that nation is "a relatively intimate and a permanent community of a number of people who have long lived together and thus acquired common features and character so that they understand each other and can easily get together".⁵ Keeping this in mind, we can conclude that nationality indicates a legal bond with a particular state.

Nationalism⁶ is an exaggerated national identity which occurs when a nation is too important for an individual during his or her identification (Milošević-Đorđević, 2003). In political theory, nationalism is usually divided into two categories: patriotism and chauvinism. The former usually carries a positive meaning, whereas the latter carries a negative one. I believe that patriotism is not an obstacle in the development of national identity in the former Yugoslavia, but chauvinism is.

Legal regime and the content of the terms "people", "nation", "state" in constitutions and other legal acts in comparative law differs. However, there is usually a distinction between people (*ethnos*) and nation (*demos*),⁷ but in most cases there is no distinction

5 Original language version: „relativno prisna i trajna zajednica izvjesnog broja ljudi koji su dugo živjeli zajedno i time stekli izvjesne zajedničke osobine i karakter tako da se međusobno razumiju i mogu lako da se zbliže“ See: LUKIĆ, R. (1975) Uvod u pravo, Beograd, Naučna knjiga, p. 37

6 Jürgen Habermas states that initial nationalism had been related to forming modern nation-states and had a positive, libertarian spirit and democratic connotation, but later on started being more linked to authoritarian and anti-democratic tendencies and social forces (being more existent among upper classes and attached to rightist, conservative ideological orientations). See: HABERMAS, J. (1992) Citizenship and National Identity, Praxis International, Vol. 12, No. 1.

7 To research the phenomenon of national, Emmerich Francis used these terms productively. He understood "general reality of the people" under *Ethnos*, and under the *demos* "historical type of modern nation". See: FRANCIS, E. (1965), *Ethnos und Demos. Soziologische Beiträge zur Volkstheorie*, Berlin, Duncker &

between nation and state. Constitutional formulations of the people-nation-state relationship in Western democracies are very diverse, both in homogenous and heterogeneous societies. The Preamble to the Constitution of France speaks of “the French people” who officially declared their commitment to human rights and certain principles of “national sovereignty”. Heterogeneous countries such as Belgium and Switzerland have built a kind of national identity by using the terms “Belgians” and “the Swiss”, even though the Belgian and Swiss nation are not mentioned in the constitutions of these two countries. The Western, state-level legal approach clearly distinguishes between “nation” and “people”—the nation represents people (citizens of a country), and people represent a community of origin. On the other hand, the Eastern, cultural and biological approach substantially equates nation and people. The Statute of the United Nations speaks about relations among nations which are member states of the United Nations. This is one of the arguments for the claim that, to a large extent, the distinction between “people” and “nation” is universal, i.e. that in public law, there is a dominance of the Western, state understanding of nation, where nation and citizenship are synonyms (Šarčević, 2009: 25-31).

Yugoslav identity

There were numerous differences among the regimes in communist countries, but they all had three common characteristics: 1. a common form of collective ownership over the means of production; 2. a ban of political opposition, and 3. the establishment of effective protection of human rights and fundamental freedoms guaranteed by the constitution. Lidija R. Basta stated that socialist societies were organized in quasi-states and operated according to one basic principle—complete control of the Party.⁸

Socialist order in these countries was imposed by an external force and could be upheld only until it is in effect. The Swiss, German, and particularly the American model of federalism were transferred to other countries. It often did not produce the desired results. This fact is most obvious in a number of countries of Central (Latin) and South America, which implemented a specific form of federalism, based on the American model, called “caudillismo”. It was coined by Daniel J. Elazar and is defined as the rule

Humblot, p. 87.

8 See: BASTA, R. L. (1998.) Uloga ustava u zemljama centralne i istočne Evrope IN SAMARDŽIĆ, S., NAKARADA, R. KOVAČEVIĆ, Đ. (Eds.) *Lavirinti krize-Preduslovi demokratske transformacije SR Jugoslavije*. Beograd, Institut za evropske studije, p. 57-58.

of a central power through a displaced political leader in some provinces (Elazar, 1995: 33). It is also a historical fact that the Soviet model of federalism⁹ has not given positive long-term results in the countries that were modelled on it. The states that were affected by Soviet federalism—the Czechoslovak Socialist Republic and the Socialist Federal Republic of Yugoslavia—as a result of the centralized state apparatus, the autocratic political regime, the ideology which permeated the whole society, monopolization of power by a single party, directivist concept of economic policy, in the end disintegrated¹⁰ after the collapse of the bipolar division of world order. However, it is a fact that these federations in some elements (the right to secede) gave more options to federal units than Western federations did (Trnka, 2006: 87). Three socialist states have disintegrated in a similar way—the Soviet Union, in a rather chaotic manner, Czechoslovakia peacefully, without bloodshed (the “stuffed”, “velvet” revolutions in Central and Eastern Europe), and Yugoslavia by armed conflicts and heavy and ruthless crimes. The general assessment is that the reason behind different forms of dissolution of such federations is a different degree of mismatch between ethnic and administrative borders (Sokol-Smerdel, 1998: 286). That is why the Yugoslav federation dissolved in the bloodiest possible way. There was a threat that some people would have to live in more than one country, and some people were very manipulated by their political leaders who presented them the same or similar fate in what has already befallen them during the Second World War (Serbs in the Republic of Croatia).

Socialist Federal Republic of Yugoslavia found itself in a deep political and economic crisis in the late 1990s. Unresolved national issues and the delay in economic development were the main generators of the crisis. In the political struggle of nationalist and reformist parties, the former won. The struggle for national emancipation led to the strengthening of the rigid form of nationalism—chauvinism. In my opinion, there are three reasons for this: 1. the death of Josip Broz Tito, the charismatic leader of Yugosla-

9 Professor Krbek points out that the Soviet federation necessarily deviate from those patterns of federation, which is developed in the federations of civic states. See: KRBK I. (1947), *Sovjetski federalizam prema građanskim federacijama*, Zagreb, Jugoslavenska akademija znanosti i umjetnosti, 1947.

10 Although Yugoslavia was restored on the basis of a federal system, Yugoslav federalism, modeled on the Soviet federalism, was more administrative and cultural. The conflict with Stalin in 1948, from defensive reasons, led to the strengthening of national unity. But already after Stalin's death, since the early fifties, frequent constitutional changes were evidence of the fact that Yugoslavia is still looking for a formula that would, on the one hand, allow the Serbian people to live in one state, and on the other hand, to eliminate the danger of assimilation and outvoting. However there were many obstacles to federalization of Yugoslavia: unified ideology as the main connective tissue of the multiethnic state; personal power; strong police and military structures, but, above all, the identification of the Serb people with Yugoslavia as their own state.

via, who managed to restrain inter-ethnic and inter-republic animosities, 2. conflicts in the Yugoslav Communist Party and its dissolution, and 3. the decline of the Republic of Serbia in the financial sense. Yugoslavia began to disintegrate in 1990 and finally broke up in 1992. Its six federal units became independent states.

After the fall of communism, there was a process called “constitutional revolution” taking place in the dissolution of the former Yugoslavia. This process assumed the following transitions: 1. the transition from a controlled planned economy to a market economy; 2. the transition from a one-party rule to a multi-party democracy, 3. the transition from an arbitrary and limitless power system to a constitutional rule and rule of law. After a peaceful shift of the communist regime, there was a significant increase in the influence of the idea of a “national revolution” which significantly disrupted the establishment of the constitutional principles in the political practice.

The new constitutions of the former Yugoslav republics contained a number of specific matters, particularly the treatment of ethnic and national minorities. It was assumed that a peaceful change of the communist rule will inevitably lead to a peaceful process of reforming the society in the direction of liberal democracy along with establishing the rule of law. Programs and promises of election winners supported such expectations. In Croatia, for example, the development was contrary to such expectations. Soon after the adoption of the Constitution in December 1990, the winners of the election demonstrated that their intention was to make a constitutional and legal system only as a means to establish permanent dominance of a single party and a single social class. The Croatian Democratic Union, the party which won the first democratic elections in Croatia, was in favour of Croatian independence from the beginning. The Great Serbia project pandered to this political party and there was a collision of two nationalisms, the Great-Croatian and the Great-Serbian. Croatia, led by Tuđman, the victim of Serbian aggression in the midst of the war, negotiated with Serbia, led by Milošević. In Karadordevo, these two politicians, among other things, made an agreement on the division of Bosnia and Herzegovina. The Croatian Constitution, adopted on 21 December 1991, stipulated that Croatia is a sovereign, independent and internationally *recognized national state of the Croatian people*.¹¹ I will prove here that the claims that this Constitution abolished the status of constituent people in Croatia to Serbs are false, since this

11 See: Article 1 (titled “Historical Foundations”) of the Constitution of the Republic of Croatia of 1991.

status never existed.¹² Term “constituent people” did not exist in the constitutional text or in other legal provisions, but it is used in the political practice.

At the end of the 18th century, the period when modern nations began to be created, there were attempts to create a South-Slavic (Yugoslav) national identity. At the end of 19th and at the beginning of the 20th century, the term “Yugoslavs” began to be used to refer to the South Slavs in Austria-Hungary. After the First World War, when the Kingdom of Serbs, Croats and Slovenes was created, the term “Yugoslavs” was used for all its peoples, especially South Slavs. Aleksandar Karadorđević (Alexander II) established dictatorship in 1929, the country was renamed the Kingdom of Yugoslavia, and he officially declared that there is only one Yugoslav nation with three tribes. In 1928, the Yugoslav monarchy adopted the Citizenship Act, which replaced all previous individual regulations of certain areas of the new common state, the State of Serbs, Croats and Slovenes. That effort failed, and it even made internal conflicts worse. After 1945, the constitution no longer mentioned the “Yugoslav nation”.¹³

Socialist Yugoslavia,¹⁴ formed after the Second World War, was a federal country which formally recognized ethnic diversity. However, many people declared themselves as Yugoslavs because they wanted to identify with Yugoslavia as a whole, and not with one of its peoples. The 1971 census recorded that Yugoslavs made up 1,33% of the total population. The 1981 census recorded that Yugoslavs made up 5,4% of the total population. After the breakup of Yugoslavia, the majority of Yugoslavs again declared the same nationality they had before the breakup. Nevertheless, even after the breakup some

12 There were claims that the Croatian Parliament’s “Christmas” Constitution of 1990 abolished the status of constituent people in Croatia, but they are not true since this status never existed as one can see in the Constitution of the People’s Republic of Croatia of 1947. In Article 11, which stated that the Serbs are equal people to Croats, with a similar formulation in the Constitution of the Socialist Republic of Croatia of 1963. By the amendments to the Constitution of 1971 and 1972 formulation that SRC is a “national state of Croatian people, the state of Serb people in Croatia and the state of ethnicities living in it”, entered the constitutional system for the first time, and the similar is mentioned in a Constitution of the Socialist Republic of Croatia of 1974. Such formulation has not risen Serbs to the level of a constituent people in Croatia, but it only recognized different, that is, a special status in relation to other peoples and ethnicities.

13 Although constitutions and other legal acts, did not mention Yugoslav national identity, ethnic identities were not officially rejected, but the formal and factual insistence on the primacy of the class principles led the national and ethnic identities of the subordinate position in legal and political system of the SFR Yugoslavia, and they were repressed as identities of lower rank. Accordingly, the ethnic (often meant as “national”) identification was often seen as a threat to integrative class identity.

14 The name of the Federal Republic Yugoslavia was valid until the adoption of the Constitution of 1963, when it was replaced with the name of the Socialist Federal Republic of Yugoslavia. The new name was needed to show the primacy of class principle over national. See: Constitution of Yugoslavia (1986.) IN BLAUSTEIN, P. A. and FLANZ, H. G. (Eds.) Constitutions of the Countries of the World. New York, Oceania Publications.

people continued to declare themselves as Yugoslavs. According to the 2002 census, there were 80,721 Yugoslavs in Serbia and Montenegro; the 2001 census recorded 65,505 Yugoslavs in Canada.

It can be said that the Yugoslav project was successful in terms of state constitution, but it was permanently unsuccessful in its intention to build a national identity. From the data that less than ten percent of the population of Yugoslavia declared themselves as Yugoslavs, it can be concluded that the project did not have significant success. The thesis is that during the time of "brotherhood and unity" ethnic tolerance reigned. However, the tragic end of Yugoslavia raises the question of the extent to which such tolerance was real, and the extent to which it was simply imposed on people. A possible conclusion is that the idea of tolerance cannot be imposed under the authoritarian regime.

After the collapse of communism and the division of the World into East and West, the energy from the Yugoslav nationalism was transferred to specific nationalities. There was a clash of the destructive part of the national identity that led to a bloody war (the situation was similar in certain parts of the former Soviet Union: the wars in Azerbaijan, Chechnya, South Ossetia, Abkhazia and Dagestan), and in the end it sacrificed the economic interests of nations and peoples in the region. The victims of the Second World War are deemed the enemies of quisling formations, whereas the collaborators of the occupiers are deemed to be antifascist. Antifascism is equated with communism, and communism is considered to be just as evil as fascism.

With the establishment of a new social order, these states faced the process of transition in all social, economic and legal structures. Currently, the population in these countries suffers the consequences of the collapse in economy and political instability. The new system has led to such an impoverishment that workers in these states began to wonder if they were closer to a tycoon who belongs to the same ethnic group as they themselves, who does not pay them adequately, and who denies them annual bonuses without appropriate legal grounds, or to the previous economic system.

Nations in the Western Balkans

The nations in the Western Balkans are late nations. In this connection, it must be noted that the legal aspect must delineate the terms "people" and "nation". "Nation"

means a political and state union (demos), and “people” means a cultural and biological communion.¹⁵ State-law approach will point out that the Statute of the United Nations speaks about the relationship among “nations” (state peoples). “Nation” is the people that constitute a state/country, therefore the people of the state/state-people. This notion is characterized by a group of characteristics that have a non-state character (religion, language, awareness of the common origin, etc.).

The process of building a nation state, which in other states ended two centuries ago, started too late in the Western Balkans and it progresses very slowly. In these countries, the terms “nation” and “people” are still used as synonyms. Constitutional theory in countries of the former Yugoslavia commonly perceives nation and people as the same phenomenon which is biologically determined. However, the dogma of earlier versions of constitutions refutes such views.¹⁶ According to the constitutional provisions from 1974, republics are communities of state peoples (republic nations). Article 1 of the 1974 Constitution of Yugoslavia stipulates that Yugoslavia is a federal state, a community of voluntarily united peoples and their socialist republics.¹⁷ It is a notori-

15 Professor Šarčević clarified the ideal type of distinction between “ethnos” as the community of origin and “demos” as “a community of rights and obligations”, as a form of a terminology pattern that distinguishes the ethnic community from state community, and compatriot from citizen. See: ŠARČEVIĆ, E. (2009.) *Dejtonski Ustav: Karakteristike i karakteristični problemi*, Sarajevo, Konrad Adenauer Stiftung, p. 15.

16 While the constitutional declarations of Slovenia and Macedonia clearly indicate the existence of the Slovenian and Macedonian state people, and Montenegrin, Croatian and Serbian constitutions cite the nation states of majority state peoples—Montenegrins, Croats and Serbs, by the letter of the constitution in Bosnia and Herzegovina, there are arrangements about Serbs, Muslims, Croats and other peoples and ethnicities living in it. See: Article 1, Paragraph 1 of the 1974 Constitution of the Socialist Republic of Slovenia; Article 1 of the 1974 Constitution of the Socialist Republic Macedonia; Article 1, Paragraph 2 of the 1974 Constitution of Socialist Republic of Montenegro; Article 2, Paragraph 2 of the 1974 Constitution of the Socialist Republic of Croatia; Article 1, Paragraph 2 of the Constitution of the 1974 Socialist Republic of Serbia, and Primary Principles I, Article 1, Paragraph 1, Article 2, Article 3, Paragraph 2 of the Constitution of the Socialist Republic of Bosnia and Herzegovina. The original text of the 1974 Constitution of Bosnia and Herzegovina treats Bosnian constituent peoples—they are equal (see: Article 3). They commonly exercise their sovereign rights and national interests in Bosnia and Herzegovina as their state (Primary Principles II, Paragraph 1). The Constitution used the noun “people” (not nation), and the regulations that described segments of state sovereignty always had the same order, first working people and citizens were mentioned, then the peoples that were eventually listed as Muslims, Serbs and Croats (the order is constantly changing throughout the text of the Constitution, or as in Article 282, 284, Paragraph 1, no names were mentioned) and members of other peoples and ethnicities (see: Paragraph 1 of the Preamble, Primary Principles II, Paragraph 1, Article 1, Paragraph 1, Article 282 of the Constitution).

17 The 1974 Constitution abolished the primacy of class identity and set class and national identity in the relationship of formal equality. The full definition of sovereignty in the Constitution of Yugoslavia was as follows: *“The Socialist Federal Republic Yugoslavia is a federal state as a state community of voluntarily united peoples and their socialist republics... based on the government and self-management of the working class and all working people and the socialist self-managing democratic community of working people and citizens of equal peoples and ethnicities.”* See: Constitution of Yugoslavia (1986.) IN BLAUSTEIN, P. A. and FLANZ, H. G. (Eds.) *Constitutions of the Countries of the World*. New York, Oceania Publications.

ous fact that there is no success in the imposition of a national identity “from above”, as was the case with Yugoslav identity.

Constitutional preconditions for and limitations of national identity

On the referendum held on 21 May 2006, the citizens of Montenegro decided that Montenegro is an independent, sovereign and civic state. On 3 June 2006, the Parliament of Montenegro, based on the results of the referendum, adopted a Decision on Independence,¹⁸ whereby Montenegro regained its independence and left the state union Serbia and Montenegro¹⁹ for the first time after 1918. The Constituent Assembly of Montenegro adopted the Constitution of Montenegro²⁰ on 19 October 2007. This legal act stipulates that “*the holder of sovereignty is a citizen with Montenegrin citizenship*”.²¹ The Preamble of the Constitution does not just mention ethnic Montenegrins. It is based on the civic spirit concept and it stipulates as follows: “*Based on the decision of the citizens of Montenegro to live in an independent and sovereign state of Montenegro... determination that we, as free and equal citizens, members of peoples and national minorities who live in Montenegro: Montenegrins, Serbs, Bosniaks, Albanians, Muslims, Croats and others, are committed to a democratic and civic Montenegro*”.²² Montenegro is defined as a “*civic, democratic, ecological and a welfare state based on the rule of law*”.²³ Therefore, Montenegro is constitutionally defined as a civic state in which civic interests prevail. Holders of the constitutional rights are individuals, not collectives as a rule. Montenegro has tried, from the beginning of its independent existence, to build a society with a civic spirit which is based on the principles of liberal democracy.

In Croatia,²⁴ the Croatian people are defined as the statehood. Under its Constitution, Croatia is established as a “national state of the Croatian people and the state of the

18 Published in: The Official Gazette of Montenegro, Number 36/2006, 05 June 2006

19 The EU set up certain criteria related to the referendum in Montenegro. Thus, the required registered voter turnout for the referendum to be valid is 50%. The required voter turnout for the decision on independence is over 55%. Voter turnout was 86,5%. About 55,5% of voters opted for independence of Montenegro, whereas 44,5% of them voted against it. Unlike in the case of other former Yugoslav republics, the EU set the exact percentage of citizens of Montenegro who have to go to the polls and vote for independence.

20 Published in: Official Gazette of Montenegro, Number. 1/2007, 25.10.2007.

21 See: Article 1 of the Constitution of Montenegro.

22 See: Preamble of the Constitution of Montenegro.

23 See: Article 1, Paragraph 2 of the Constitution of Montenegro.

24 Croatia adopted its constitution as an independent state on 22 December 1990. The Croatian Parli-

members of autochthonous national minorities: Serbs, Czechs, Slovaks, Italians, Hungarians, Jews, Germans, Austrians, Ukrainians, Russians and others who are its citizens, to whom equality with citizens who belong to Croatian people and the realization of national rights in accordance with the democratic norms of the United Nations and countries of the free world are guaranteed.²⁵ In addition to state-significance of the Croatian people, the Preamble guarantees protection and the status of national minorities. On the grounds of this fact, Constitutional Act on the Rights of National Minorities²⁶ (from 2002) and the Election of Members of the Croatian Parliament Act²⁷ were adopted. These two legal acts guarantee the political rights of minorities so the total of eight representatives of national minorities, three of which were mandatory members of the Serb minority, entered the Croatian Parliament after the elections held on 23 November 2003. Croatian Constitutional Act on Amendments to the Constitutional Act on National Minorities²⁸ and the Act on Amendments to the Election of Representatives to the Croatian Parliament²⁹ guarantee that national minorities which comprise 1,5% of the total population have at least three seats of that national minority,³⁰ and minorities which comprise less than 1,5% of the total population have double voting rights, i.e., in addition to universal suffrage and a total of five members of those national minorities. These legal provisions have been repealed by the Decision of the Constitutional Court of the Republic of Croatia, which has significantly changed minority rights. The decision brought back in legal force an earlier provision of Article 19 of the Constitutional Act on the Rights of National Minorities, which guarantees that a minority which comprises over 1,5% of the population has the right to at least one and at most three representatives, while a minority which comprises less than 1,5% of the population carries the right to a minimum of four representatives, without the double-vote right. According to the Croatian Constitution, the official language is the Croatian language, and the official script is Latin, but some local units can introduce another language in official use, and the Cyrillic or some other script, under the condi-

ament passed the Declaration of Sovereignty and Independence of the Republic of Croatia and the Croatian Constitutional Decision on Sovereignty and Independence on 25 June 1991. The European Community recognized Croatia on 15 January 1992.

25 See: Preamble of the Constitution of Croatia.

26 Published in: "People's papers" No. 154/02.

27 Published in: "People's papers" No. 69/03.

28 Published in: "People's papers" No. 80/10.

29 Published in: "People's papers" No. 145/10.

30 In practice, it is the Serb minority.

tions prescribed by law. The Constitutional Act on Amendments to the Constitutional Act on National Minorities stipulates that *“equal official use of language and script used by the members of national minorities is exercised on the territory of the local government where the members of national minorities comprise the smallest third of the population”*.³¹ By the end of 2012, tensions related to the introduction of the Serbian language and the Cyrillic alphabet in official use, appeared in a number of municipalities which fulfil legal requirements to introduce them. This is particularly evident in Vukovar.

The Republic of Macedonia³² gained independence from former Yugoslavia by adopting its own constitution on 17 November 1991. In Macedonia, sovereignty belongs to its citizens. According to Article 2 of the Macedonian Constitution: *“In the Republic of Macedonia, sovereignty derives from the citizens and belongs to the citizens,³³ the citizens of the Republic of Macedonia shall exercise power through democratically elected representatives, in a referendum, and through other forms of direct expression”*.³⁴ In 2001, there was an armed conflict between ethnic Albanians and government forces, which resulted in the Ohrid Agreement from 13 August 2001, which was the cause for significant constitutional changes. Principles of the Ohrid Agreement were introduced in the Macedonian constitutional system by way of amendments to the Constitution of the Republic of Macedonia from 20 November 2001.³⁵ The constitutional system of Macedonia introduced a novelty—a minority veto. This institute implies that certain laws and regulations relating to culture, education, personal documents, and the use of symbols, are voted by dual majority, i.e. the majority of delegates present and voting (quorum is the majority of all MPs), provided that such majority includes most of the delegates who claim not to belong to the majority community in Macedonia, i.e. ethnic Macedonians. Here, in a democracy, there is a deviation from the principle of majority rule in matters of collectives, where the majority cannot impose regulations to the minority in relation to the matters in which a minority, as a particular ethnic-cultural collectiv-

31 See: Article 12 of the Constitutional Act on Amendments to the Constitutional Act on National Minorities.

32 The official, constitutional name. Macedonia is a member of the UN since 8 April 1993, but under the name the Former Yugoslav Republic of Macedonia (FYRM), because of the Greek opposition to the name of Macedonia. However, a large number of countries had recognized Macedonia under its constitutional name, the Republic of Macedonia.

33 See: Paragraph 1 of Article 2 of the Constitution of the Republic of Macedonia.

34 See: Paragraph 2 of Article 2 of the Constitution of the Republic of Macedonia.

35 See: Amendments IV, V, VI, VIII, IX, X, XI, XII, XIII, XIV, XV, XVI, XVII and XVIII to the Constitution of the Republic of Macedonia, published in: Official Gazette of the Republic of Macedonia, No. 91.

ity, is different from other collectives. There are other instruments for the protection of ethnic minorities, such as decentralization of local self-government,³⁶ proportional representation in bodies of government,³⁷ the official use of the Albanian language³⁸ and the establishment of inter-community Committee.³⁹ The Ohrid Agreement did not change the constitutional provision which identified citizens as a source of sovereignty. However, the Ohrid Agreement changed the formulation of the Preamble of the Constitution and regulated that the adopters of the constitution are the citizens of the Republic of Macedonia. As a result of a compromise, the Constitution was amended by Amendment IV to the Constitution of the Republic of Macedonia; thus, the adopters of the Constitution are first the citizens, and then Macedonian and other peoples. Citizens of Macedonia continue to be the bearers of sovereignty, however, constitutional rights of ethnic groups which do not belong to the Macedonian people, who are the majority, especially the Albanian people, are now regulated and protected by normative solutions. The protection of collective rights is not territorialized,⁴⁰ because Macedonia is still a unitary state, but with a greater degree of decentralization than was previously the case.

After the secession of Montenegro and the dissolution of Serbia and Montenegro, Serbia became independent. By adopting the new Constitution in 2006,⁴¹ it replaced the previous constitution from 1990. In the new Constitution, the sentence "*Serbia is a state of all its citizens*" was replaced by the following sentence: "*Serbia is a state of Serbs and its other citizens*"⁴² Clearly, one of the ethnic groups living in Serbia is "more equal" than others. Earlier in this paper, I have shown that this kind of constitutional discrimination on ethnic grounds also appears in the Croatian Constitution.

36 "Equitable representation of persons belonging to all communities in public bodies at all levels and in other areas of public life." Article 8 of Annex A to the Constitutional Amendments.

37 "A revised Local Self-government Act will be adopted and it will reinforce the powers of the elected local officials and substantially broaden their competencies in conformity with the Constitution (as amended in accordance with Annex A) and the European Charter on Local Self-government, and reflecting the principle of subsidiarity in effect in the European Union. (...) Boundaries of municipalities will be revised within one year of the completion of a new census..." Article 3 of the Development of a Decentralized Government.

38 "Any other language spoken by at least 20 percent of the population is also an official language, written using its alphabet, as specified below." Article 7 of the Annex to the Constitutional Amendments.

39 "The Committee considers issues of inter-community relations in the Republic and makes appraisals and proposals for their solution." Article 78 of Annex A to the Ohrid Framework Agreement.

40 "There are no territorial solutions to ethnic issues": Article 1.2 of the Framework Agreement.

41 Published in: Official Gazette of the Republic of Serbia, No. 98/2006.

42 See: The Preamble of the Constitution of the Republic of Serbia of 2006.

On the other hand, just like the Constitution of Montenegro, the Constitution of Slovenia⁴³ stipulates that *“Slovenia is a state of all its citizens and is founded on a permanent and inalienable right of the Slovene people to self-determination”*.⁴⁴ However, unlike the Constitution of Montenegro, which does not single out any people as nation-building, the Constitution of the Republic of Slovenia only mentions the will of the Slovene people to create their own state by self-determination. The Preamble of the Slovenian Constitution also emphasises only the right of the Slovene people⁴⁵ to self-determination.⁴⁶

The General Framework Agreement for Peace in Bosnia and Herzegovina is the peace accord which was reached in Dayton, Ohio, USA, in November 1995. It was formally signed in Paris on 14th December 1995. This agreement ended the Bosnian War which lasted from 1992 to 1995. The structure of the government in Bosnia and Herzegovina is regulated by Annex 4 to the Agreement, which is actually the Constitution of Bosnia and Herzegovina. Annex 4 proclaimed constitutional ethnization of the society of Bosnia and Herzegovina, state and constitutional law. It was made possible through the use of a constitutional term “constituent peoples”⁴⁷ (Bosniaks, Serbs and Croats). These constituent peoples were made the masters of the division of territory, division of competencies and the control over legal goods of Bosnia and Herzegovina. It was regulated by the provisions in the normative section of the Constitution. The Constitution proclaimed an institutional ethnic balance between Bosniaks, Serbs and Croats. The same section does not mention “others” and citizens, and they are the basis of the constitutional system of Bosnia and Herzegovina, according to the Preamble of Annex 4. Sections of the Constitution are discriminatory, as was determined in two decisions of European Court for Human Rights (in 2009 and 2015),⁴⁸ so Bosnia and Herzegovina has to change its electoral system and open House of Peoples of Parliamentary Assembly of Bosnia and Herzegovina and Presidency of Bosnia and Herzegovina to its citizens who do not identify themselves as constituent peoples. I also have to emphasise that

43 Published in: Official Gazette of the Republic of Slovenia No. 33/91-I, 42/97, 66/2000, 24/03, 69/04, 68/06, and 47/13.

44 See: Article 3 of the Constitution of the Republic of Slovenia.

45 It is important to point out that the original text in the Slovenian language speaks of “the Slovenian people” and not “the Slovenian nation”.

46 See: Preamble of the Constitution of the Republic of Slovenia.

47 See: Preamble of the Constitution of Bosnia and Herzegovina.

48 See: Sejdić and Finci versus Bosnia and Herzegovina (27996/06 and 34836/06), and Zorić versus Bosnia and Herzegovina (3681/06).

this Constitution (its source text is in the English language) only speaks about Bosniaks, Serbs and Croats as (constituent) peoples and the adjective “Bosnian-Herzegovinian” is tied with citizenship, which is a segment of nationality. I can conclude that a constitutional precondition for Bosnian-Herzegovinian national identity exists in normative solutions in this post-Yugoslav country.

Conclusion

The issues of national identity have not gained much attention from the local public law and social issues professionals. One of the obstacles is the fact that in the former Yugoslav republics, in professional and colloquial speech, the notion of “the people” (ethnos) is equated with the notion of “nation” (demos). This constitutes the core element in the formation of national identity. For example, there are not many Serbs, citizens of Croatia, who will say that they are of Croatian nationality, or many Croats from Bosnia and Herzegovina who will proclaim themselves as the members of the Bosnian nation. On the other hand, there are few constitutional provisions which define a nation in terms of the state. The basis of national identity among people in the former Yugoslav republics is mainly their identification with one of the ethnic groups, the culture and history, rather than with the state. This is mostly the case with the ethnic groups that are in minority in one of these states.

A brief overview of the positioning of civic and national elements and their relationship in the constitutional systems of the states formed after the breakup of Yugoslavia shows that in the legitimisation and the emergence of the state and its constitution, the role of ethnic groups is not negligible at all. The constitutional relationship between the civic and national element is different. Only in Montenegro, as an extremely civic state, is civic interest prevalent, while the holders of human rights are typically individuals, groups only exceptionally. Montenegro has been “running” from the ethnic and cultural elements of the political system, and immediately after the restoration of independence it has been trying to assume the basic principles of liberal (“bourgeois”) democracy and build a civic spirit of society. The Macedonian political system is burdened with ethnical relationship between Macedonian and Albanian groups that resulted in armed conflict. The Ohrid Peace Agreement brought about the legal solution of the conflict and inter-ethnic issues in terms of converting Macedonia from a national state of the Macedonian people to a multi-ethnic state and an extension of

political rights of the Albanian ethnic groups. However, neither Macedonian nor Albanian ethnic collectivity is the holder of sovereignty; it is the Macedonian political people-Macedonian citizens. The citizen as the original carrier and symbol of sovereignty is the basis of democratic government. We have seen that all the states that emerged from Yugoslavia are particularly sensitive to issues such as the makers of constitution, the constitution standardization of the dominant people and the political representation of minority ethnic groups, due to their importance (Macedonia) and the role of constitutional courts in this process (Montenegro and Croatia). Such issues are resolved in very different ways. From all this it follows that there is no universal principle of relations between the civic and national element in constitutional arrangements of various heterogeneous political communities, whose balance is one of the foundations of the socio-political system of a particular country.

The analysis of the national identity of Yugoslavia's successor states shows that there can be no discussion about building a model civic/national constitutional identity, although their constitutions define it as such. However, it should be noted that the states classified as civic also contain ethnic elements of the concept of identity, although they are not in the very foundations of their constitutions. For example, in France and the USA, the dominant culture and language are also imposed on all members of the society, and the integration of community members takes place by assimilation. In addition, in reality there is a discrepancy between the proclaimed civic values and civic practices in these countries. Solutions that exist in Yugoslavia's successor states are contradictory and do not create conditions to build the community that is proclaimed. Instead of defining the state as civic and installation of the principles that degrade it, we should ask ourselves what the desirable community is and with what solutions it could be achieved.

When comparing the subject of constitutional identity of socialist Yugoslavia and its successor states, it can be concluded that common components do exist. In most cases, the constitution gives a priority to ethnicity (most constitutions except the Montenegrin constitution), and a radical form of ethnocracy is determined in the constitutional system of Bosnia and Herzegovina. The analysis of the constitutional framework in all these states, except Montenegro, shows that there cannot be a process of building the model of a constitutional or national identity because the constitutions of these states restrict it. General principles of those constitutions are typical for the constitu-

tions which can be labelled ethnic, where belonging to an ethnic group determines the political subjectivity. The effect of such a constitutional framework is the creation of a community in which general values exclude those members of the society who do not belong to that particular ethnic group (in Bosnia and Herzegovina there are three ethnic groups and they exclude both others and citizens from the decision-making process).

The making of an identity is a question of culture, but it is always a question of activity, the political mobilisation of identity. If there is a political and social will for adopting some values, then these principles should be incorporated in the constitution and institutions, but in the everyday political discourse as well. Normative solutions in Yugoslavia's successor states do not make preconditions for the creation of a nation, the community which is proclaimed. Instead of proclaiming them as civic states and incorporating antinomic normative solutions that degrade such proclamations, there is a need for a strong debate about what national identity in these countries represents and how most of the population can learn to identify with this identity.

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