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The Constitutional Process in Three Former Yugoslavian Countries

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Introduction

The fall of the Berlin wall in 1989 has been followed by the dismemberment of some of the eastern European countries such as Soviet Union, Czechoslovakia and Yugoslavia. From the ashes of those countries, new entities were born.

These new countries, at the beginning of the 1990s, had to walk through a long transition, in order not only to gain and maintain the independence, in some cases with the force too, but also to establish new democratic and free market institutions.

My thesis will focus on the constitutional process in former Yugoslavian countries. Here the split of the older Socialist Federal Republic of Yugoslavia in new sovereign states presents some particular features: first of all, the disintegration process was carried out in a bloody way, with hundreds of thousands deaths and many refugees. Secondly, while former Soviet Union countries and international community accepted that Russia succeeded to USSR in international treaties, and so to take Soviet Union permanent seat in the Security Council, this didn't happened to the new Federal Republic of Yugoslavia. The claim of FRY to succeed to SFRY in the international relations was rejected not only by the other former Yugoslavian countries, but also by the UN, forcing the new state to apply for admission under Article 4 . The reasons for this rejection were the lack of some element in the government organization which characterized SFRY, namely the qualification of "socialist" republic, and the fact that, in SFRY, the presidency used to be covered in turn by representatives of the different republic which composed the federation.¹

With the declaration of independence of Slovenia and Croatia of 25 June 1991, the disintegration process began. As I said, this process in Yugoslavia was a violent process; immediately after the declaration, Yugoslav People's Army moved to Slovenian border with Italy, while in Croatia a conflict broke out between the government, and Serb rebels backed by the Yugoslav army. The two countries became independent from Yugoslavia in the October of the same year, after the failure in the efforts to transform the federation into a confederation. An important role in the break up process was made by the Arbitration Commission of the Conference of Yugoslavia, commonly known as Badinter Arbitration Committee, and its advisory opinions. In the first opinion, the Committee stated that the armed conflict provoked a loss of representativeness of the institutions of the Federation, and for this reason it affirmed that the SFRY was suffering a process of disintegration, and not a process of secession, as Serbia claimed. Moreover, in the opinion

¹ C. Di Turi, *Formazione di nuovi stati e autodeterminazione dei popoli: il caso dell'ex-Jugoslavia*, in S. Gambino, *Costituzionalismo europeo e transizioni democratiche*, Giuffrè Editore, Milano, 2003

n. 8 was stated that Serbia and Montenegro had created a new country, the Federal Republic of Yugoslavia, with a new Constitution.²

As I already said, my analysis will focus on the constitutional process in former Yugoslavian countries. However, in order to conduct a deeper analysis of the events and of the process, I will confine my analysis in the examination of the constitutional transition process in only three, very representative countries. Thus, in the following pages, I will analyse the constitutional process in Slovenia, Croatia and Serbia. While I'm writing this thesis, only two of them have become member of the European Union; moreover, while Slovenia joined the Union in 2004, with the vast majority of eastern European countries, Croatia became member only in 2013.

The constitutional process in these three countries had been different one from the other: while in Slovenia it was fast, and immediately led to the consolidation of a democratic regime, in Croatia and FRY (which became Union of Serbia and Montenegro in 2003) the transition toward democracy was slowed down by both exogenous and endogenous factors.

Among the exogenous factor, there is certainly the period of war that these two countries had to face in the first phase of their life. Besides the aforementioned conflict inside the Croatian borders, the two countries had been involved in the war which broke out inside the Bosnian borders, and which involved Bosnians, Croats and Serbs until Dayton agreements in 1995. Moreover, between 1996 and 1999 the FRY was involved in another armed conflict, in Kosovo. The engagement in those conflict slowed the democratic transition of these two countries: the necessity to protect the independence of the country (in the case of Croatia) and its integrity, permitted to charismatic presidents such as Franjo Tuđman and Slobodan Milošević, who could boast to be elected directly by the people, to increase their powers far beyond the constitutional provisions. In Slovenia, instead, the war lasted only ten days, and the casualties were very low. Thus there was no necessity of a stronger executive, and the separation of powers remained unchanged.

Another important exogenous factor was exercised by the European institutions, in particular by the European Commission, the Council of Europe and the OSCE. After the disruption of the Communist bloc, the former Yugoslavian countries expressed their will to join the Western bloc and the European Union. For this reason they accepted to do reforms in their countries in order to guarantee the principles of rule of law, democracy and protection of human and minority rights. Furthermore, the European Union provided economic aids for reconstruction of the economies of these countries, through many programs, at the condition that they promoted economical and political reforms.

² Revue général de droit International public, 1992

Among the endogenous factors, the party system, the electoral laws, the result of the parliamentary election and presidential election are key elements in the constitutional transition. The balance of powers, in fact, depends from the balance of the political forces in the society and their orientation.³ Another important endogenous factor is the heritage from the past: all three states have been part of a great imperial state, but while Slovenia and Croatia were part of the Austro-Hungarian Empire (although Croatia was under Hungarian jurisdiction), Serbia gained its independence against the Ottoman Empire. The effect of these two empire on politics and society is great, and, if the circumstances are favourable, can make the transition towards democracy easier, for those countries which experienced a state legal-rational tradition (as the case of Slovenia and Croatia)⁴.

A part from these differences, the new Constitutions of these countries were quite similar. First of all, the new Constitutions were free of ideological connotation. This element was very important for those who drafted the new fundamental laws, because it was in contrast with the previous constitutionalism, which instead used to refer at the socialist society and its principles.

Secondly, the new Constitutions are shorter than the previous ones, with fewer disposal, and only social relations are included in a quantitative way⁵. Thus, they comprehend only the standard content of a Constitution, namely the disposals on the state order and form of sovereignty, the disposals on the economic and social organization, the list of liberties and rights of the men, the organization of power and the rules for changing the Constitution. For this reason, we can decree that these constitutions are not just “social documents”, as they were called before, but they are juridical acts, which include only the issue of state interest.⁶

The new Constitutions in Slovenia and Croatia have been adopted in 1991 by the Assemblies elected in the first multiparty elections in 1990, won by the center-right coalition of DEMOS, in Slovenia, and by the nationalist right-wing party of HDZ in Croatia. These assemblies, drafting the new Constitutions, wanted to break all ties with the previous socialist constitutionalism. Thus, we can find in these Constitutions the separation of powers, the protection of rights and freedoms of the men and the citizens and of the private property.

³ D. Bataveljic, *Mutamenti giuridico-Costituzionali nei paesi in transizione con particolare riferimento ai paesi dell'ex-Jugoslavia*, in S. Gambino, *Costituzionalismo europeo e transizioni democratiche* Giuffrè Editore, Milano, 2003

⁴ P. Nikiforos Diamandouros and F. Stephen Larrabee, *La democratizzazione nell'Europa Sud-Orientale*. In *Rivista Italiana di scienza politica n. 1*, Edizioni il Mulino, Bologna, 2001.

⁵ D. Bataveljic, 2003, *Mutamenti giuridico-Costituzionali nei paesi in transizione con particolare riferimento ai paesi dell'ex-Jugoslavia*, cit.

⁶ Ibid.

These principles can obviously be found in all the constitutions of the former Yugoslavian countries, including the FRY. However, the FRY tried also to maintain the legitimacy of the older SFRY: for this reason, the Constitution of the new country has been adopted and promulgated by the Federal Chamber of the Assembly of the Socialist Federal Republic of Yugoslavia, following upon the proposal and consent of the National Assembly of the Republic of Serbia and the Assembly of the Republic of Montenegro; in short, the Constitution has been approved with the constitutional review procedure contained in SFRY Constitution of 1974 (at the articles 398-403)⁷.

In the following Chapters, I will analyse the Constitutional process of these three countries and the consolidation of their institutions. In doing so, I will focus my attention not only on the formal institutions, but also on all the elements that provoked a shift in the balance of power towards an institution or another. For this reason, in the first chapter I will analyse the historical elements of the countries, whose effects can be seen in the society, in party competition and also in the creation of certain institutions. In the second chapter I will analyse the Constitution adopted immediately after the breakup of the Socialist Yugoslavia. In the third chapter, I will focus my attention on the amendments of these constitutions, caused by both internal and external factors. The fourth chapter, finally, will be dedicated to the European conditionality and the protection of minority rights. Since these countries immediately expressed the will to join the European institutions, the European Commission, the Council of Europe and the OSCE constantly monitored the progress made by the countries in adopting democratic institution and in protection of human and minority rights. The prospect of joining the European institutions, and the economic aids granted by the European Union, determined an high standard of protection of national and ethnic minorities.

⁷ However, there were some irregularities in amending the SFRY's constitution. See P. Nikolić, *Dalla disgregazione della <<Seconda>> all'instaurazione della <<Terza>> Yugoslavia*, in "Quaderni Costituzionali", a. XII, n. 3, ed. Il Mulino, 1992; P. Nikolić, *La forma di governo Yugoslava*, in L. Mezzetti, V. Piergigli, "Presidenzialismi, semipresidenzialismi, parlamentarismi: modelli comparati e riforme istituzionali in Italia", Torino, G. Giappichelli, 1997. I will analyse this aspect in chapter three

Chapter one

The heritage from the past

1. Historical, cultural and political heritage

a) The heritage of the period before the unification

Before the creation of the Kingdom of the Serbs, Croats and Slovenes, that unified the Slavs of the south in a unique country, these populations were subjugated to different empires. While Slovenia and Croatia were part of the Hapsburg Empire, Serbia was part of the Ottoman Empire until 1835, when it gained the autonomy. These two Empire had a completely different organization and legitimacy of power, as well as different cultural values.

While the Austro-Hungary Empire, and the Austrian Empire before it, since the XVIII century tried to provide the state with enlightened and rational institution, as the other western monarchies were doing, in the Ottoman Empire the exercise of power was extremely personalized, without a clear distinction between the state and the family and between the private and the public sphere. In this kind of regime, called “Sultanism”, all individuals, groups and institutions are permanently subject to the unpredictable and despotic intervention of the sultan.⁸ Public officials are completely submitted to the sultan, who know no limit and exercise its power in a discretionary way. As a result, while Slovenia and Croatia, after the break out of the Communist bloc, could build their new states basing on the previous political experience, that was characterized by a state in which the law was clear and predictable and the controversies were resolved by the application of the law, and not by discretion, Serbia couldn't do it, because before the unification it suffered more than three centuries of Ottoman rule and Sultanistic regime.

A second difference, strictly related with the first one, regards the intermediate groups. According to Montesquieu, the intermediate corps play a crucial role in limit the power of the king. While in Austria there were important intermediate groups such as the aristocracy and the bourgeoisie, that could restrict the power of the monarch, in the Ottoman Empire the civil society was too weak to oppose itself to the Sultan. The public officers were completely submitted to the Sultan, who could replace them, and even kill

⁸See J. J. Linz & A. C. Stepan, *Modern Nondemocratic Regimes in Problems of Democratic Transition & Consolidation*, Baltimore Johns Hopkins University Press, 1996

them, whenever he want. The result was a “leveling egalitarianism” built on the solidarity between the weak,⁹ where the citizens, who were not able to organize themselves in order to protect their interests, developed an excellent endurance capacity against the power. This egalitarian culture made the instauration of the communist regimes in this region easier, and its conservation more stable, avoiding the crisis registered in Central Europe.¹⁰ On the other hand, the persistence of the egalitarian heritage had a negative influence in the democratic transition, because the lack of a liberal-pluralist component can lead to the democratic process a potentially populist dimension¹¹.

The role of the religious élite was important too. While the Catholic Church in western and central Europe functioned as a counter-power of the absolutist state, the Orthodox religion instead was submitted to the rule of the Empire. It follows that, after the end of the Communist bloc, while the Catholic Church in Poland and in the other Central European countries promoted democratic values and political reforms, supporting the opposition parties, in the Balkans, and in Serbia in particular, the Orthodox Church supported the nationalism promoted by the Government¹².

Another cultural element that influenced the constitutional transition was the nationalist ideology, which played an important role in the history of these countries from the end of the XIX Century to the Second World War, and which, after the collapse of the communist world, returned on stage even stronger. The political consciousness of the Western Balkan’s populations as “Slavs” gradually developed in the first half of the nineteenth century, but the simultaneous development of tribal particularisms prevented integration.¹³ The Pan-Slavs ideas, in fact, stimulated by the Russian advance towards the Balkans, were too vague and too weak to counteract the various religious, linguistic, political and historical differences among the tribes.¹⁴ The Serbs and the Croats established at least a common literary language, although it was written in two different alphabets, but the Bulgarians and the Slovenes developed separate languages. Some Serbs and Croats

⁹ P. Nikiforos Diamandouros and F. Stephen Larrabee, *La democratizzazione nell’Europa Sud-Orientale*, in *Rivista Italiana di Scienza Politica*, n. 1, 2001, Edizioni il Mulino, Bologna, p. 38

¹⁰ *Ibid.* p. 38

¹¹ *Ibid.* p. 38

¹² D. Possanzini, 2006, *Elezioni e partiti nella Serbia post-comunista (1990-2004)*, in *Quaderni dell’Osservatorio Elettorale* n. 56, Regione Toscana, Firenze, p. 40

¹³ J. Frankel, *Federalism in Yugoslavia*, *The American Political Science Review*, vol. 49, No. 2, Cambridge University Press, Cambridge, 1955, p. 416.

¹⁴ *Ibid.* p.416

did, indeed, think at the unification of all South Slavs, but they generally did so in terms of a Greater Serbia or a Greater Croatia, which were clearly unacceptable for other tribes.¹⁵

In 1867 the Austrian Empire was transformed in the Austro-Hungary, re-establishing partially the sovereignty of the Kingdom of Hungary and creating a union between the latter and the Austrian Empire. According to the Austro-Hungarian Compromise, Slovenia remained subjected to the Emperor of Austria, who maintained the control of Istria and Dalmatia too, while Croatia, deprived of those lands, felt under the jurisdiction of the King of Hungary. The 1868 Croatian-Hungarian Agreement provided the Kingdom of Croatia-Slavonia (that was its official name) of a special status inside the Hungarian jurisdiction, granting Croats autonomy over the internal affairs. However, the Land Government (who, until 1914, had only three department, namely internal affairs, religion and education, and justice) was lead by the Ban, a viceroy nominated by the Hungarian Prime Minister and appointed by the King of Hungary, so the administration of Croatia was strictly under the control of Budapest. Together with the Magyarization policies promoted by the central government, which imposed the Hungarian language in high school and administration, all these elements contributed to generate hostility and resentment against the Austro-Hungary, and contributed to the growing up of a radical nationalist behaviour between Serbs and Croats, who started to look at the neighboring Kingdom of Serbia.

The Kingdom of Serbia became fully independent from the Ottoman Empire in 1878, and became immediately the reference state for Serbs and Croats nationalists who lived in Austro-Hungary, and who had the project to create a state of the Southern Slavs (Yugoslavs). The Serbian Karadjordjević dynasty, having liberated the Serbs from Turkish rule and leaning heavily on Russian support, aimed at dynastic aggrandizement and sought for Serbia the role of Piedmont among the South Slavs.¹⁶

Serbia adopted its first constitution only in 1903 (more than forty years later than the Austrian Empire) thanks to its liberal King Petar I, who established a period of parliamentary government, interrupted by the two Balkans Wars of 1912 and 1913, first, and the World War One, then.

In this country, the long fight for independence and the threat of invasion by its neighbors, Austria and Bulgaria in particular, generated a widespread nationalist sentiment.

¹⁵ Ibid. pp.52-57. We need, however, to distinguish between these movement, that promoted the unification of the Southern Slavs, with the similarly named movement created after the unification, that promoted instead separatist instances.

¹⁶ J. Frankel, *Federalism in Yugoslavia*, cit. p. 416.

b) The interwar period

After the end of the First World War Southern Slav populations have been united in a common state, namely the Kingdom of Serbs, Croats and Slovenes. Soon after the creation of this new state, coexistence of different ethnic group proved to be harder than they thought. Tensions arose in particular between the two largest ethnic groups, the Serbs and the Croats. While the latter, together with the other minority groups, preferred Yugoslavia to be a decentralized state, fearing Belgrade's domination, most Serb politicians believed that Yugoslavia should be centralized and governed from Belgrade. Serb's point of view was not illogical, because Serbia was traditionally a centralized State (on the French model), and at that time was a success story, at least in the Balkan context. Furthermore Serbia was gradually being industrialized and its economy was prospering despite the customs war with Austria-Hungary in the early twentieth century. In addition, Belgrade, during the first years of the twentieth century, was a regional cultural centre, with some leading Hapsburg South Slav intellectuals and artists spending significant time or moving there. Even before the 1912-1913 Balkan Wars Serbia was viewed by other Yugoslavs as a South Slav Piedmont.¹⁷ Nevertheless, it would be too simplistic to argue that while the Serbs were centralists, the Croats were federalists, as is commonly done. The Croatian Peasant Party, who had the support of the 90% of the Croat vote, demanded territorial autonomy for Croatia, but never considered granting autonomy to non-Croats who were eventually included in the Croatian province under the terms of the August 1939 agreement¹⁸. This demand of territorial autonomy, however, was not conceived as a step towards the independence: the party, which was the strongest opposition party in the interwar period, sought to achieve the widest possible autonomy for a Croatia that would be territorially as large as possible, but maintaining the territorial integrity of Yugoslavia.¹⁹ Moreover, also among the Serbian parties and factions, the idea of a federation, or at least the institution of a sort of regional autonomy, was widely supported. During the Constitutional debate, for example, Stojan Protić, the second leading personality of the Serbian Radical Party, presented an alternative constitutional proposal that envisaged wide regional autonomies. Protić's proposal, however, failed to reach the majority, largely because Nikola Pašić, the other important figure of the party, secured the support from Muslim deputies, while the Croatian Peasant Party of Stjepan Radić was boycotting the parliament at that time, together with the Serb Republicans and Social-Democrats, as a

¹⁷ D. Djokic, *Nationalism, Myth and Reinterpretation of History: The Neglected Case of Interwar Yugoslavia*. In *European History Quarterly* vol. 42, n. 1, SAGE publications, New York, 2012, p. 80

¹⁸ *Ibid.* pp. 80-81

¹⁹ Cf. *Ibid.* p. 76

protest because the monarchical form of state was accepted without a previous discussion.²⁰

Notwithstanding this difference of views, the leading Serb and Croat parties achieved two national agreements. The first was the Pašić-Radić agreement of 1925, which secured the entry of Radić and the Croat Peasant Party into the government of Nikola Pašić for the first time. The second agreement was between Radić and Svetozar Pribićević, the leader of the Independent Democratic Party, and concluded after Radić left the government in 1927. This second agreement was even more unexpected than the first one, given that the two men had been bitter political rivals since before the unification and given that Pribićević left the Pašić government two years previously because of Pašić rapprochement with Radić. Moreover, Pribićević had broken away from the Democratic Party in 1924, to form the Independent Democratic Party, because the Democrats' leader Davidović had moved closer to Radić's anti-centralist position. Yet, the Peasant-democratic Coalition of Radić and Pribićević – de facto a coalition between the Croats and Croatian Serbs – would last throughout the interwar period and was the longest lasting political coalition in the entire history of Yugoslavia.²¹ The ratio behind the entrance of the Croatian Peasant Party into the government was Pašić's belief that this was enough to solve the Croat question. Radić and his party, instead, were not interested in the spoils of power unless these included autonomy for Croatia.²²

The political tensions between the government and the opposition parties reached their peak in 1928, when the leader of the Croatian Peasant Party, Stjepan Radić, was shot in the Chamber of the Parliament by Puniša Račić, a Radical Party deputy, and ethnic Serb. After the failure of the Korošec's government, the only government led by a non-Serb prime minister, King Alexander convinced himself that the only solution to the political crisis was the abolition of parliamentarianism. On the morning of the 6 January 1929 the King issued a proclamation entitled "To my Dear Nation! To all the Serbs, Croats and Slovenes!" whereby he directly addressed "his nation as a ruler and son of this country" informing them that the time had come "when no mediator can and must exist between the nation and the King." In the concluding part of his manifesto, he annulled the Constitution of June 1921, and dissolved the Assembly.²³ The King appointed as Prime Minister General Petar Živković, commander of the Royal Guard and loyal to him. The government was composed by Serb politician and representatives of the Croat economic circles, while the General was entrusted also of the position of Minister of the Interior. The

²⁰ Ibid. p. 82

²¹ Ibid. pp. 82-83

²² Ibid. p. 83

²³ J. Gašparić, *The country at a standstill: Yugoslavia and Slovene politics in the 1930s*, Nationalities Papers: The Journal of Nationalism and Ethnicity, v. 39, n. 2, Routledge, London, 2011, pp. 223-224

Ministry of Transport, instead, was assigned to Anton Korošec, the leader of the Catholic Slovene People's Party (SLS). The choice to include the Slovene Party into the government was justified by the fact that the SLS had the support of the majority of the Slovenes. The SLS, on the other hand, judged more comfortable to have a seat in the government, rather than join the opposition. However, Korošec and the SLS supporters in Slovenia, who advocated an autonomist position, had scruples about persisting in a government which consistently advocated a unitarist/centralist line²⁴.

A recurring thesis in the newspapers and political press of the 1930s was that the King's act of 6 January 1929 saved the unity of the country and thereby its' very existence. In the tense political situation after the gunshot in the Assembly, the crisis in the country actually seemed uncontrollable²⁵. A British professor R. W. Seton-Watson, an expert on Central and South-Eastern Europe, observed that after this event it seemed "that statesmanship went bankrupt, and according to public opinion the crown was the only government factor not yet compromised and thus able to find a way out of a dead-end street". The King's intervention was considered necessary, but the method used began to raise doubts and questions soon after 6 January. Although Seton-Watson agreed with the need for a thorough reform of the Yugoslav political system, he claimed that it should have been carried out by a neutral government, headed by a civilian.²⁶ Among other things, Seton-Watson claimed that the regime in the country was "fully against the principle of parliamentarianism and that it had stifled any form of free criticism." He called the events in the first Yugoslavia "pure absolutism, unacceptable to a supporter of free institutions of any kind."²⁷ King Alexander's regime decisively pursued the set goal: a strong and unified country. Whoever doubted this or even openly opposed it, fell from grace. There were no possibility for open criticism. Every political activity was limited, while severe censorship was introduced into the press.²⁸ The tentacles of the regime reached also the judicial power: Court independence was largely encroached. A special National Court for the Protection of the State was established for political offence trials, and its sentences were without any possibility for an appeal. In September 1931 the King carried out his plan of returning to constitutionality and the first Yugoslavia once again became a constitutional monarchy with two houses of a parliament called the National Representation. Yet the essence of the regime did not change. In the first half of the 1930s, the country remained in the firm grip of monarch Alexander. The new Constitution established a fictitious

²⁴ Ibid. p. 225-232

²⁵ Ibid. p. 226

²⁶ R. W. Seton-Watson, *Pozadina Jugoslovenske Diktature (Alexandar, Pašić, Radić, Pribićević)*. Novi Sad, 1967, pp. 19,26-27

²⁷ R.W. Seton-Watson, *Stav věci v Jugoslavii III, Lidové noviny, 1930*

²⁸ J. Gašparič, *SLS Pod Kraljevo Diktaturu: Diktatura Kralja Aleksandra in Politika Slovenske Ljudske Stranke V Letih 1929-1935*. Ljubljana, 2007, p. 70

parliamentary system, where the National Assembly lacked of the power to adopt the budget and the political accountability of the government towards the two houses. The country thus remained a centralized absolute monarchy, but strengthened by “pseudo-parliamentarianism.” Political parties were once again permitted, but they couldn’t have a religious, national or provincial character, and they were not allowed to oppose to national unity. Furthermore, they should have an all-national character, that means that each party should comprehend the entire national territory. Due to these limitations, the only allowed political party in the first half of the 1930s was the pro-regime all-national Yugoslav National Party (JNS), which comprehended also the Slovene liberals.²⁹ The lack of political control of the parliament, and the fact that only the pro regime party had all the requirements to be recognized as party allowed King Alexander to pursue an extremely severe policy towards the opposition. State and provincial officials from the opposition were made redundant, transferred to different posts or retired prematurely, and teachers suffered a similar fate. The regime didn’t allow the freedom of speech, and the too critical political opponents found themselves behind the bars, with the status of political prisoners, or were sent into confinement. However, the power and the influence of the former political parties remained high and the King was aware that no serious moves were possible without the participation of at least a part of the “prohibited” political interests, thus, during this period, he maintained relationships with some opposition leaders, including those in confinement³⁰.

In 1932 was founded the Ustaša revolutionary organization, a Croat far right terrorist organization which, in 1934, contributed to the assassination of the King Alexander I in Marseille. Following the King’s assassination (but also in the last phase of his regime) political parties had renewed their activities and in the second half of the decade they were allowed de facto to function. The opposition press was permitted to publish, and the activities of the old political parties were widely reported. In the summer of 1934, a new all-national party, the Yugoslav Radical Union (JRZ) was founded and entered into government, while the Yugoslav National Party joined the opposition. The Yugoslav Radical Union was formed by the merger of a faction of the Radical Party led by the prime minister Milan Stojadinović, the Yugoslav Muslim Organization (supported by the vast majority of Bosnian Muslims) and the Slovene Populist Party³¹.

In the mid-1930s, a Serb-Croat opposition had emerged, with the aim of returning to democracy and solve the Croat question. However, the two groups had different ideas on what should be the priority among these two. While the Serb parties (the Democrats, the Independent Democrats, the Agrarians and the Radical’s Main Committee) believed that

²⁹ Ibid. pp.116-18, 136-39

³⁰ J. Gašparić, *The country at a standstill*, cit. pp.229-230

³¹ D. Djokic, *Nationalism, Myth and Reinterpretation*, cit. p. 83

the prime aim should be the abolition of the 1931 Constitution and the reintroduction of democratic institutions, the Croatian Peasant Party believed that the Croat question must be solved first, while democracy could wait³².

Despite the disagreement over prioritizing their political goals, the regime was seriously shaken in 1937-1938. First, a crisis over the signing of the Concordat that would regulate the position of the Roman Catholic Church in Yugoslavia broke out in summer 1937. The Serbian Orthodox Church strongly opposed the terms of the Concordat, arguing that it would place it in an inferior position in relation to the Roman Catholic Church in Yugoslavia. The same night the Concordat received majority support in parliament, the Serbian Patriarch died; rumors that he had been poisoned by the regime quickly spread. Mass demonstrations in Belgrade and other Serbian towns broke out, but were violently suppressed by the gendarmerie. In the autumn of the same year the Serb-Croat opposition formed the Bloc of the National Agreement, demanding the abolition of the constitution and a solution to the Croatian question. The Opposition thus sent the government, weakened by the Concordat crisis, a clear message of unity. In the elections of 1938, notwithstanding the state political repression and the nondemocratic voting system, the United Opposition suffered only a narrow defeat, gaining more than 40% of the votes. These were the greatest success of the united opposition, but also the beginning of its end.³³

Prince Regent Pavle Karađorđević, in fact, realized that the success of the Serb-Croat opposition was due to a growing discontent with the regime across the country, despite the support in Slovene and Bosnian Muslim areas, as well as the government's continued strength in most Serb areas. He also concluded that he needed to get rid of the Prime Minister Stojadinović, who increasingly appeared to see himself as a Yugoslav Mussolini. On the other side, Vladko Maček, leader of the Croatian Peasant Party and of the United Opposition, after the parliamentary elections of 1938 realized that he could not achieve autonomy for Croatia merely by cooperating with Serbian democrats. Moreover, throughout the 1930s, he kept close contacts with the royal Court, even during the period of close cooperation with the Serb opposition parties, and his relations with Prince Pavle were regular and cordial. Thus, on 26 August 1939, ten days before the second World War broke out, the New Prime Minister Cvetković and Maček signed an agreement that brought the major Croat party into the government, and solved the Croat question, introducing the creation of an autonomous Croatia. However, the creation of a Croatian *banovina* opened

³² Ibid. p. 85

³³ Ibid. pp.85-86

up the Serb question, and led to calls among Bosnian Muslims and Slovenes for the creation of their own *banovina*.³⁴

Finally, in the late 1930s, Serb nationalist ideas started to resurge once again. The Serb nationalist ideology was promoted by the Serbian church, and in that period began to raise consents also among Serb intellectuals, gathered around the Serb Cultural Club. After the Cvetković-Maček agreement, they were joined by some Serb opposition politicians, disappointed with Maček and his betrayal of the democratic opposition. However, even the most vocal critics of the Cvetković-Maček agreement did not argue that Yugoslavia should cease to exist rather that it needed to be merely restructured, so that Serb would have their own *banovina*.³⁵

³⁴ Ibid. p.86

³⁵ Ibid. pp.86-87

c) Emigration policies and nation building in the interwar period

The Kingdom of Yugoslavia, and the Kingdom of Serbs, Croats and Slovenes before it, pursued, during its life, a set of policies in order to create a “Yugoslav” nationality. The dominant political elite of the Kingdom, in fact, felt the urgent need to integrate the country’s population and its administration into a unified national state. They argued that “Serbs, Croats and Slovenes were but three tribes of a single, tri-named nation”.³⁶ When King Alexander established his regime, one of the main goal, expressed in his manifesto, was the consolidation of the state in the sense of a Yugoslav unity, and consequently solving the disagreements between individual tribes residing in the Kingdom of SHS.³⁷ These elites considered the Yugoslav state to be the political manifestation of the South Slavs’ historic aspirations to unity and independence. Non-Slavic minorities were tolerated if not because tolerance was prescribed by the post-World War One peace treaties, but they certainly were not welcome. Attitude towards the four major minorities (Germans, Magyars, Albanians and Turks) were further hardened by the fact that Yugoslav nationalists associated these groups with the oppression experienced by Slavs in the Austro-Hungarian and Ottoman empires.³⁸ The requirement that a political party, during the 1930s, should comprise the whole territory of Yugoslavia, and that it should not have any ethnic, religious or geographic connotation are clear examples of a policy that aimed to go beyond the historical differences, creating a unique nation.

The emigration policies were very important for this effort. Before World War One, according to US statistics, some 620,000 South Slavs immigrated to the United States of America.³⁹ After the War, we can assist to the phenomenon of repatriation: according to the Yugoslav migration expert Artur Benko Grado, between the years of 1918 and 1920, 26,300 Yugoslav citizens came back home⁴⁰. According to him, these returnees often fell victims to swindlers who overcharged them for the voyage home or parted them from their savings in other ways. Thus, the need for state protection arose. On the other hand, many repatriates from the US were a potential threat, because many of them were said to lean towards republicanism or even Bolshevism. Thus, political control of returnees was

³⁶ S. Ramet, *Three Yugoslavias. State-Building and Legitimation, 1918-2005*, Bloomington, IN 2006, p. 36

³⁷ J. Gašparić, *The country at a standstill*, cit. p. 226

³⁸ U. Brunnbauer, *Emigration Policies and Nation-building in Interwar Yugoslavia*, in *European History Quarterly*, v. 42, SAGE publications, New York, 2012, p. 606

³⁹ Letter by the Emigration Commissariat in Zagreb to the Minister for Social Policy, 1921, Croatian State Archive, Zagreb, (HDA) Grado, f. 790, k. 5, 519-520

⁴⁰ A. B. Grado, *Rad iziljeničkog odseka*, 1925, in HDA, f. 790, k.9, 15/148

also considered necessary.⁴¹ The restrictions on immigration imposed by many popular overseas destination countries forced countries of emigration, such as the Kingdom of SHS, to enforce exit quotas in order to avoid paying costs stemming from the repatriation of emigrants who had been denied entry. The Kingdom decided to use the regulation of the emigration in order to ethnically homogenize Yugoslav population by facilitating permanent emigration of non-Slavs and impeding the emigration of members of the tri-
unite nation. This hidden aim was evident in the way that emigration passports were distributed among the country's district. In Slovenia, for example, in the small district of Kočevje, where the territory's German minority was concentrated, received 250 emigration passports for the USA in 1923/24, while the city of Ljubljana, instead, received only 10. Districts in the Vojvodina with large Hungarians and Germans minorities such as Sombor and Veliki Bečkerek were allocated many more passports than the main city of the region, Novi Sad.⁴² The policy, however, encountered difficulties in practice. In 1925, the Ministry had to concede that some local authorities had recently departed from it and impeded the emigration of national minorities. The emigration of Slavs from Macedonia was particularly tricky for the Yugoslav state. Many of them joined pro-Bulgarian, anti-Yugoslav nationalists organizations in America or Australia, that agitated for the separation of the Serb-controlled part of Macedonia from Yugoslavia and its accession to Bulgaria. Successive Bulgarian governments supported these pro-Bulgarian activities in America and in Serb controlled Macedonia.⁴³ The Yugoslav General Consul in Chicago reported I 1925 that many of the immigrants from "Southern Serbia" (Macedonia) were successfully recruited by the pro-Bulgarian Macedonian Political Organization in the United States.⁴⁴ The general Consul suggested thus to stop the emigration of Macedonians, but the Ministry for Social Policy responded by reiterating its preference for facilitating minority emigration⁴⁵.

The policy of facilitating minority emigration was not carried out with the same gusto for all minority groups. Official pressure to leave and the state of a minority group's rights were correlated to the extent that minority was considered hostile to the government. The large German minority fared the best in this regard because it was not seen as a threat. Principally, this was because Germany didn't harbour claims on Yugoslav territory. Additionally, after 1933 Yugoslavia became increasingly dependent on trade with Nazi Germany⁴⁶. According to Benko Grado, because the Germans were hard-working and easy

⁴¹ A. B. Grado, *Exposé on the organization of the emigration service*, 24 Agosto 1920, in HAD, f. 790, k.3

⁴² A. B. Grado, *Rad iziljeničkog odseka*, cit. pp.165-167

⁴³ U. Brunnbauer, *Emigration Policies and Nation-building in Interwar Yugoslavia*, cit. p. 615

⁴⁴ Archive of Yugoslavia (AJ), konsulat u Buenos Airesu, f. 385, fasc. 4, a. Jed. 29, p.680

⁴⁵ U. Brunnbauer, *Emigration Policies and Nation-building in Interwar Yugoslavia*, cit p. 616

⁴⁶ *Ibid.* p. 617

to govern, they should not be pushed to leave⁴⁷. In comparison with the Germans, the Hungarian minority's rights were violated much more frequently. The fact that the Hungarian minority was concentrated near the Hungarian border, made the group a threat in the eyes of the Belgrade government. Nevertheless, there is no indication that a coherent policy forced Hungarians to leave.⁴⁸

The non-Slavic Muslim minorities (ethnic Turks and Albanians) faced much greater pressure to emigrate because the dominant Serb political elite considered them a particularly problematic group. These Muslim minorities didn't fit the notion of a South Slavic *Kulturnation* (cultural nation) and no leading politician believed that would ever be assimilated (the Serbo-Croatian speaking Bosnian Muslims, on the other hand, were considered to be part of the Yugoslav nation). Many Serbs considered Albanians and Turks to be modern-day embodiments of the former Ottoman oppression. More importantly, Albanians and Turks populated so-called Southern Serbia, Kosovo and Macedonia, the region that Serb politician considered the spiritual heart of Serbia. Administrative and legal measures undertaken by the Yugoslav government facilitated their emigration, reducing the costs for expatriating⁴⁹.

Parallel to this support for the emigration of Albanians and Turks from Southern Serbia, the government also encouraged Serb families to colonize the region. These migrants came mainly from Bosnia, Montenegro and the Karst Regions of Croatia, but there were also some repatriates from America. They were sent to Kosovo and Macedonia in order to re-shape the ethno-demographic situation there. Because colonist received land, tax credits and other benefits from the government, it was thought that they would put additional pressure on the local Muslim population and thus make emigration seem even more desirable to Muslims. Although the government usually framed this policy in terms of strengthening the Yugoslav nation, its subtext was clear. The aim was to Serbianize Kosovo and Macedonia. It was also not by chance that many local administrators in these regions were drawn from ardently nationalist Serbian circles. The authorities also hoped that the opportunity to get land and government subsidies within Yugoslavia would prevent national peasant families from emigrating.⁵⁰

The governments of Prime Minister Milan Stojadinović, which propagated integral Yugoslavism, aimed at resettling Albanians and Turks outside of Yugoslavia. For this purpose, the government should adopt a range of measures in order to put so much pressure on Turks and Albanians that they would leave voluntarily the country, without

⁴⁷ A.B. Grado, *Mišljenje*, 7 April 1925, in HDA, Benko, f. 790, k. 9, p. 283-284

⁴⁸ U. Brunnbauer, *Emigration Policies and Nation-building in Interwar Yugoslavia*, cit. p. 617

⁴⁹ *Ibid.* p. 617-618

⁵⁰ *Ibid.* 618

provoking the League of Nations to intervene. Among these were the rigorous enforcement of all laws and regulations, the suppression of Albanian anti-emigration propaganda, the mobilization of non-Slavic males in Southern Serbia for army training and manoeuvres as often as possible, the preclusion of non-Slavs from holding government jobs, the strict enforcement of obligatory schooling in “our schools” and finally the rapid nationalization of toponyms and personal names. The government also tried to sign a bilateral resettlement treaty with the Republic of Turkey, that was trying to pursue the same policy with the Armenian minority. A Convention regulating the resettlement of 40,000 Turkish families was signed in 1938, but, because of the outbreak of the Second World War, it was never implemented. Moreover, Turkey welcomed only Turkish-speaking Muslims or those who adhered to “Turkish” cultural practices, but they were reluctant to accept Albanians.⁵¹

The attempt to homogenize the population inside the country through migration policies failed: the emigration numbers from Yugoslavia, in fact, were too small in the interwar period to have a significant impact on the population’s ethnic distribution. The only success of Yugoslavia’s migration policies was the increase of the Serbian population in Kosovo, that raised from 21.1 per cent in 1921 to 31.1 per cent in 1931, thanks to state-sponsored colonization.⁵²

⁵¹ Ibid. pp. 618-619

⁵² M. Vočković, G. Nokolić, *Stanovništva Kosova u razdoblju 1918. Do 1991. Godine sa osvrtom na prethodni istorijski period*. Munich, 1996, p. 80

d) The Second World War; three wars in one

During the Second World War, Yugoslavia was invaded by Nazi forces. During Nazi occupation Maček, who believed in the final victory of the western democracies in their clash with Fascism and Nazism, rejected the German-Italian proposal to become the leader of an independent, enlarged Croatian state. After his refusal the Axis turned to Ante Pavelić and his Uštasa movement⁵³. In period between 1941 and 1945, in Yugoslavia we can assist to three wars in one. Not only the country suffered the international war and the invasion by the Axis members, that created in the territory two puppet states in Serbia and Croatia, but it was also an ideological civil war within the kingdom: the old regime and its supporters versus the fascists and their supporters versus the communists and their supporters. In this war, it was not uncommon for one of the three sides in this ideological civil war to collaborate periodically with some of the foreign occupiers to the detriment of its civil war enemies. Finally, it was a period of inter-ethnic war: that is, of local wars in areas of mixed population between Serbs and Croats, between Serbs and Slavic Muslims, between Croats and Slavic Muslims, and between Serbs and Albanians. One characteristic of this complex three-wars-in-one period was the commission of unimaginable atrocities on all sides. Forty-five years later, in 1991, individual, family, and ethnic group memories of those horrible events were still extremely fresh, and those memories engendered extreme fear and hatred as well as a strong desire for revenge.⁵⁴ In the Croat state, in particular, the violent repression of the Serb and Jewish minorities made by the Uštase militias were an extreme vivid memory among the Serb minority when, in 1991, the nationalist party of Franjo Tuđman won both Croatian parliamentary and presidential elections. However, we have to say that, even if at first a large part of Croats welcomed the independence, many turned against the brutal violence of the Uštase rule. Moreover, the members of the Croatian Peasant Party joined the London-based government in exile, and the contribution of the Croats in the Yugoslav's struggle against the occupiers, even joining the predominantly Serb and royalist Yugoslav Home Army of General Mihailović (the *Četniks*).⁵⁵

⁵³ Ibid. p. 88

⁵⁴ W. Harriet Critchley, *The failure of federalism in Yugoslavia*, in *International Journal*, vol. 48, 1993, p. 439

⁵⁵ D. Djokic, *Nationalism, Myth and Reinterpretation*, p. 88

e) The Socialist Federal Republic of Yugoslavia

After the Second World War Yugoslavia was re-created as a socialist federal republic, led by Josip Broz Tito. The new regime continued to foster a Yugoslav national identity, and tried to suppress the expressions of ethnic identity, although the federation was composed by six republics that maintained ethnic titles. Notwithstanding the attempt of the new regime to go beyond centuries of history and create a unique national sentiment, ethnic memories remained and began to reappear with the constitutional changes in the 1974, and the death of Tito in 1980.⁵⁶ The resurgence of the ethnic identity was due to a past that was difficult to forget, and to a growing economic disparity inside the country. In the interwar period little progress was made toward the creation of a common economic infrastructure in the ensuing twenty-odd years. After the war, the efforts at economic recovery were impressive by pre-war standards, but they resulted in uneven economic development across the new federal state. Some republics, mainly Croatia and Slovenia, used industrialization and tourism programs to foster their economic development and garner hard currency for further development. Other republics, like Serbia, Montenegro and Macedonia, remained heavily agricultural on what was a poor agricultural land base, experienced little industrialization, and so remained the least economically developed and poorest regions of the state. In SFRY, attempts to even out the levels and pace of economic development across the federation, by transferring federal revenues from the richest republics to the poorest and by making greater federal investment in the poorer areas, were not very successful.⁵⁷ These efforts, instead, exacerbated political differences and jealousies among the units of the federation. The richer, more developed republics and autonomous regions resented paying for the economic development of the poorer units. They wanted the monies from contributions to federal revenue and additional federal investment for the economic development of their own republics and autonomous regions. The poorer units, on the other hand, resented receiving federal “charity” and the attitudes the richer units displayed towards them. In 1965, federal economic reforms were introduced which favoured more decentralization in the form of decreasing the revenues paid to the federation and allowing for more economic planning and policy control at the republic/autonomous region level. These reforms created dissatisfaction on all sides, however. Economic disparities increased, as did mutual resentment among the various units of the federation⁵⁸.

The importance of this historical events was crucial, both in the dissolution of Yugoslavia, and in the period immediately after its dissolution. In the next chapter I will stress the

⁵⁶ W. Harriet Critchley, *The failure of federalism in Yugoslavia*, cit. pp. 439-440

⁵⁷ Ibid. p. 444

⁵⁸ Ibid. pp. 444-445

importance of the nationalism in the creation of the identity of the new states, and how it was instrumental to the ruling class in order to gain and maintain the power. In the next paragraph, instead, analyzing the juridical heritage of these countries, and the constitutional arrangements in the former Kingdom of Yugoslavia and Socialist Yugoslavia.

2. The Juridical Heritage

In the previous paragraph I have shown the differences between the Austrian Empire and the Ottoman Empire. The first was characterized by a western organization of power, with a Constitution, adopted in 1861, which created a bicameral parliamentary system and some forms of autonomous government. These institutions had a legal-rational legitimacy, as their source of legitimacy came from the written Constitution and the laws of the Empire.

In the Ottoman Empire, instead, before the constitution of the *vilayet* (the provinces), headed by the *vali* (sultan's representative), in 1867, the principal institution of local government were the *millets*. The millets were administrative structure whose members were part of the same religious community. These institutions had a great power: they solved controversies between their own members, collected and distributed the taxes and they set their own laws. The source of legitimacy of these institution was not legal-rational, but was founded in the tradition. If, in one hand, these institutions, isolating the various religious groups, ensured the pacific coexistence between people of different faith, avoiding the religious clashes which instead erupted in the western European absolutist monarchies, on the other hand this isolation, in a predominant peasant population, generated hostility towards the political divisions. The fear of division is a pre-political phenomenon typical of the rural communities. In these societies, characterized by a collectivist solidarity between the member of the community, the division is perceived as a sinister force who may endanger the unity of the rural world.⁵⁹ These two element, combined, thwarted the creation of pluralist structures in the society.⁶⁰

When the South Slavs representatives met for the first time, the ideas about the organization of the new state were quite distant. During the secret talks of unification between the representatives of the Serbian King and those of the Yugoslav Council, which represented the Croats and the Slovenes living under Hapsburg rule, that took place in 1915, while the Serbs were thinking in terms of other South Slav lands being joined to Serbia and of a centralist government, the Hapsburg Slavs desired a union based on the principle of the preservation of the identity of the historical units. Some of them, as well as a few Montenegrin émigrés, supported the federal idea.⁶¹ This reflects the different history of the two more important ethnic groups: the Croats, on one side, after a fifty years domination by the Kingdom of Hungary, asked for a more decentralized state, and more

⁵⁹ P. Nikiforos Diamandouros and F. Stephen Larrabee, *La democratizzazione nell'Europa Sud-Orientale*, cit. p. 41

⁶⁰ *Ibid.* p. 41

⁶¹ F. Čulinović, *Razvitak Jugoslavenskog Federalizma* (The Development of Yugoslav Federalism), Zagreb, 1953, pp. 42-52

autonomy to the Croat local government; the Serbs, on the other side, coming from a tradition in which the unity inside the community was a *conditio sine qua non*, supported the creation of a centralized state, in which they were the more important group. Furthermore, transforming Yugoslavia into a federation meant to separate the Serbs who lived in Serbia from the ones who lived in Croatia and Bosnia, which was in contrast with the Serb nationalist ideology, that promoted Serb national unification and the creation of the Greater Serbia, as was presented in Ilija Garašanin's pamphlet "Načertanije"⁶². All these elements combined contributed to the creation of the cleavage between center and periphery, which was a crucial one in the first multiparty elections, especially in Croatia, where the Serbs were the principal minority group. After these talks, the Serbs were in the stronger position, since Serbia was a recognized state fighting on the side of the Allies and enjoying strong Tsarist support. The fall of the Tsar weakened their insistence on their own terms and induced them to meet again the representatives of the Hapsburg South Slavs at the prolonged Corfu Conference in the summer of 1917, but the ensuing Declaration was ambiguous and left to the future the determination of the political system of a unified Yugoslavia. It accepted only the basic idea of Yugoslavia as distinct from an enlarged Serbia.⁶³ When the National Council of the Serbs, Croats, and Slovenes, representing the South Slavs living within the Austro-Hungarian Empire, severed its relations with the Empire and constituted what may be legitimately considered a state, the Serbs were forced to meet the delegates of the Council at another Conference. The resulting Geneva Declaration of 6 November 1918 agreed to the unification of three historical units until the final determination of the constitution⁶⁴. The Declaration established a unitary provisional coalition government, leaving the determination of the system of government to the future Constituent Assembly⁶⁵. The provisional Government, in the period before the elections for the Constituent Assembly, held in 1920, persecuted all the opponents of a unitary, centralist system as separatists and traitors, but despite its pressure the centralist bloc obtained little more than half the votes in the elections to the Constituent Assembly. Six draft constitutions had presented before the assembly, ranging from a rigidly centralist governmental draft, through proposals involving varying degrees of devolution, to one advocating a true federation. In this assembly, the Communist party of Yugoslavia, with its 58 representatives, was the third largest party; however, the lack of a political program, and its inefficient leadership impeded to be influent in the assembly: they didn't present a draft of their own, and in 1921 they withdrew from the assembly in protest against the governmental terror. Thanks to this and other withdrawals, the Governmental supporters

⁶² This pamphlet, written in 1847, promoted Serb National unification and the creation of the Greater Serbia, which would consist of Serbs of the Austro-Hungarian and Ottoman Empires

⁶³ J. Frankel, *Federalism in Yugoslavia*, cit. p. 417

⁶⁴ Ibid. pp. 417-418

⁶⁵ F. Čulinović, *Razvitak Jugoslavenskog Federalizma*, cit. pp. 52-67

were able to adopt, the 28 June 1921, the Vidovdan Constitution, that established Yugoslavia as a strictly unitary state⁶⁶.

The centralist Constitution failed, as we have seen, to meet the requirements of the multinational society. In 1929, the King suspended the Constitution and established a dictatorship.⁶⁷ The King introduced a new administrative structure, consisting in nine banovinas, whose aim was to disburden the central government and simplify the administration. All of them were named after rivers, except the one named after its littoral position.⁶⁸ As a result, the administrative map of the Kingdom of Yugoslavia became much simpler than the year before, when there were 33 authorities, but it purposely denied the existing historical and national individualities. Eight out of the nine banovinas failed to encompass the full territory of any of the nations of the Kingdom of Yugoslavia. The only exception was the Dravska banovina, which to a large extent included the Slovene-populated areas of Yugoslavia. The Slovene territory was, however, administratively united only in a symbolic level.⁶⁹ Each banovina was headed by a ban who was appointed by the order of the King, based on a proposal from the Minister of the interior and in agreement with the Prime Minister. Each ban therefore represented regal government in the banovina and at the same time executed the highest political and general administrative authority but had no decree issuing or legislative competences. The reorganization of the state government thus introduced only administrative decentralization, but not a self-government.⁷⁰

With the Cvetković-Maček agreement of August 1939, as I have already mentioned, Croatia obtained a special autonomous status inside the Kingdom of Yugoslavia. This agreement, even if not applied, since the eruption of the war, generated a widespread resentment among other ethnic groups, Bosnian Muslims and Serbs in particular.

After the Second World War, Tito and the communist party recognized that the only way to face the ethnic rivalries was to create a federalist state. The country was thus divided into six republics, whose names referred to the ethnic groups. Giving ethnic titles to the federation's constituent republics had one important weakness. The titles masked the

⁶⁶ J. Frankel, *Federalism in Yugoslavia*, cit. p. 418

⁶⁷ Ibid. p. 419

⁶⁸ They were Dravska banovina with a seat in Ljubljana, Sava banovina with a seat in Zageb, Littoral banovina with a seat in Slit, Vrbas banovina with a seat in Banja Luka, Drina banovina with a seat in Sarajevo, Danube banovina with a seat in Novi Sad, Vardar banovina with a seat in Skopje, Morava banovina with a seat in Niš, and Zeta banovina with a seat in Cetinje. Belgrade with Zemun and Pančevo was defined as a self-governing town hence as a special tenth administrative unit.

⁶⁹ J. Gašparić, *The country at a standstill*, cit. p. 226

⁷⁰ M. Stiplovšek, *Banski svet Dravske banovine 1930-1935: Prizadevanja banskega sveta za omilitev gospodarsko-socialne krize in razvoj prosvetno- kulturnih dejavnosti v Sloveniji ter za razširitev samoupravnih in upravnih pristojnosti banovine*. Ljubljana: Znanstveni inštitut Filozofske fakultete, 2006, p. 40. And J. Gašparić, *SLS Pod Kraljevo Diktaturo*, cit. pp. 84-88

degree of ethnic mixing in most of the six republics. Former Yugoslavia was a multi-ethnic state of impressive proportions and all the units of the federation, with the exception of Slovenia, had mixed populations and substantial minorities.⁷¹

Two autonomous units were formed: the Autonomous Province of Vojvodina and the Autonomous District of Kosovo-Methoija. Unlike the first Yugoslavia federalists, the Communist leaders didn't study Western federations, but several of them, including Tito, had first-hand knowledge of the soviet Union. Moreover, they were at the time under the "hegemonist pressure of Soviet ideology"⁷² and there is no doubt that the federal framework, complete with the autonomous units, closely followed the Soviet pattern.⁷³ According to one of the leader of the Communist party, Edvard Kardelj, this Constitution was burdened with the "mechanical transplantation of some forms from the Soviet system,"⁷⁴ but, as Professor Djordjević replied, it also gave expression to peculiarly Yugoslav conditions.⁷⁵

According to the Constitution, all authority is derived from the people, who realize it through organs of state authority ranging from the People's Committees (the Yugoslav equivalent to the Russian soviets) through Republican to Federal organs. The Constitution vested original sovereignty in the Republics and limited their competence only by the powers transferred to the Federation, leaving them residual powers (Articles 6 and 9). The sovereignty of the Republics, however, amounted to very little, since the Federation was given an extremely wide competence and its jurisdiction included such a wide range of activities that very little scope remained for the exercise of the federal principle (Article 9 and 44).⁷⁶

The Constitution established a bicameral system, with a second house, the House of Nationalities, consisting of 30 representatives of each Republic, 20 of the Autonomous Province of Vojvodina, and 15 of the Autonomous District of Kosovo-Methoija, who had equal powers with the lower house. The organization of the executive, however, clearly revealed the predominance of the Federation, whose Ministries had a wide range of tasks, while the parallel Republican Ministries were to work on a basis of regulations, instructions, orders and decisions of their federal counterparts. Furthermore, the Federal Government had also the power to suspend any act of a Republican Government and to annul any act of a Republican Minister not in conformity with Federal or Republican legislation (article 131).

⁷¹ W. Harriet Critchley, *The failure of federalism in Yugoslavia*, cit.p. 440

⁷² E. Kardelj, *The New Social and Political System of the Federal Peoples' Republic of Yugoslavia*, in *New Fundamental Law of Yugoslavia*, Belgrade, 1953, p. 5

⁷³ J. Frankel, *Federalism in Yugoslavia*, cit. p. 421

⁷⁴ E. Kardelj, *The New Social and Political System*, p. 9

⁷⁵ J. Djordjević, *Ustarno pravo Federativne Narodne Republike Jugoslavije*, Belgrade, 1953, p. 31

⁷⁶ Moreover, article 44 spoke of the poker comprised within the Federal jurisdiction and the enumeration was not, apparently, exhaustive. See J. Frankel, *Federalism in Yugoslavia*, pp.422-423

According to the criteria prevalent among Western scholars, the Yugoslav Constitution of 1946 was not of a true federal type where “the general and regional governments are each, within a sphere, coordinated and independent”: following the Stalin Constitution, it established a system termed “quasi-federal” by Professor Wheare.⁷⁷ Moreover, it must be stressed that in Communist Yugoslavia, no less than in Communist Russia, constitutional forms had and still have much less importance than in Western democracies, since real power is concentrated in the strictly centralized machinery of the Communist party, which remains outside the constitutional framework.⁷⁸ Furthermore, Yugoslavia adopted from Russian practice the institution of autonomous units. The system of autonomous units was applied in Yugoslavia to two territories only. Both the Autonomous Province of Vojvodina and the Autonomous District of KOSMET were governed by statutes enacted by their own legislatures and confirmed by the People’s Assembly of Serbia⁷⁹.

Although the 1946 Constitution was a slavish copy of the Stalin Constitution, Yugoslav institutions developed independently and were much more a political reality than their Russian prototypes. The People’s Committees as local organs of government, drawing on their wartime tradition, exceeded the importance of the local soviets in the Soviet Union, and were ready to play a greatly enhanced role after the reforms which started in 1951. The statutes of the autonomous units were passed in 1947 and the units functioned much more effectively than their Russian counterparts.⁸⁰ On the other hand, as in the Soviet Union, bureaucracy grew in numbers and in power, and central organs gradually enlarged their competence and eventually controlled rigidly the whole of Yugoslavia’s political and economic life. The number of Federal and Federal-Republican Ministries increased and various Federal committees gradually assumed full control over the Republican organs operating within their spheres.⁸¹

From 1950, after the break with the Cominform had become final, the Yugoslav leaders began to grope towards a system which would become more efficient and less oppressive and would eliminate excessive centralization.⁸² The decentralization process culminated with the 1974 Constitution. At the federal level, the Presidency of the SFRY, that was already introduced in the Constitutional amendment of 1971, reduced its composition from 23 members (three per each member state, two per each province, namely Kosovo

⁷⁷ K.C. Wheare, *Federal Government*, London, 1947, pp. 11 and 27-28

⁷⁸ J. Frankel, *Federalism in Yugoslavia*, cit. p. 424

⁷⁹ *Ibid.* pp. 424-425

⁸⁰ J. Djordjević, *Ustavno pravo*, cit. pp. 33 and 204-207

⁸¹ J. Frankel, *Federalism in Yugoslavia*, cit. p. 425

⁸² *Ibid.* p. 426

and Vojvodina, and Tito) to 9 (one per each member state and province, and the chairman of the Presidium of the League of Communist of Yugoslavia)⁸³.

The federal assembly was composed of delegates from each of the eight units (six republics and two autonomous regions). The jurisdiction of the federal level of government was confined to foreign affairs, defense, and some joint economic concerns. At the same time more powers and authority were given to the legislative assemblies of the units.⁸⁴

The Constitution of the SFRY designed a state whose functions were so decentralized that many authors defined it as distorted, hybrid or also a “quasi-confederalism”⁸⁵. This distribution of power, who granted to the six republics who were member of the federation an high degree of independence, including the possibility to determine their own form of government, could work only with a strong political-institutional centralization, ensured by the communist party and its leader, Josip Tito⁸⁶. According to many authors, this decentralization of power, promoted by Tito for political reasons, generated cultures, local traditions and political and juridical procedures which, with the fall of the Berlin Wall, led to the disintegration of the country⁸⁷. However, as I already said, the different cultures, traditions, legal and political procedures were not generated by the juridical developments of the recent years, but were the result of the different centennial history of these populations, that had been frozen by the decentralized form of state of Socialist Yugoslavia.

The change in the Constitutional arrangement was pursued by the Communist Party in order to resolve the growing tension between two different ideas of federalism. On the one hand, the Croats and the Slovenes were disappointed that Belgrade was both the federal capital and the capital of Serbia, and that a large portion of senior civilian and military leadership positions were held by Serbs, and started to express their dissatisfaction advocating a more decentralized federal structure with more powers in the hand of the units and less power to the federal level. The Serbs, on the other hand, began to see themselves as essentially losers in an anti-Serb conspiracy, and wished to see a more centralized federal structure which would give more power to the federal level and

⁸³ Until his death, Tito was the President of the Yugoslavia. After his death, the head of the collegial presidency changed every year basing on a rotating system.

⁸⁴ W. Harriet Critchley, *The failure of federalism in Yugoslavia*, cit. pp. 442-443

⁸⁵ Cfr. P.Nikolic, *La disgregazione della Jugoslavia socialista. Formazione e sviluppo della nuova Jugoslavia e dei membri costitutivi della federazione*. In S. Gambino *Europa e Balcani, 2002*, CEDAM

⁸⁶ S. Gambino, *Potere costituente e transizioni democratiche nell'area balcano-occidentale*, in M. Calamo Specchia, M. Carli, G. Di Plinio, R. Toniatti, 2008, *I Balcani Occidentali. Le Costituzioni della transizione*, G. Giappichelli Editore, Torino, p. 26

⁸⁷ Ibid. p 26

less to the republics. Rather than resolving the tensions, this new constitutional order increased dissatisfaction on all sides, particularly after Tito's death. At the unit level, politics in the governments of the republics and autonomous regions was increasingly identified with the majority or dominant ethnic group in that unit. Throughout the 1980s, politicians at the unit level increasingly used ethnicity as a component of their policies and debates. Serbs in the Serbian republic worked for a more centralized federation, while Serbs elsewhere in Yugoslavia grew more and more unhappy with the governments and policies of the non-Serbs republics in which they resided. Croats and Slovenes, for their part, wanted further decentralization to convert the federation into a confederation. Albanians in Kosovo and Macedonia wanted more autonomy and political power. Among some Croats, Bosnian Muslims, and Albanians there was a growing fear of becoming minorities in a Greater Serbia and losing their own autonomy and political power: that is, a fear that the Serbs, by annexing territory to Serbia or reincorporating the autonomous regions or centralizing the federation, would use their overall dominance to the detriment of locally dominant non-Serb ethnic groups.⁸⁸ This fear became concrete when Slobodan Milošević, as president of the Serbian League of Communists, supported the anti-bureaucratic revolution in the Autonomous Provinces of Vojvodina and Kosovo, and in the republic of Montenegro, that led to the institution in these areas of Serb government loyal to Milošević.

The 1974 Constitution modified also the status of the two autonomous unities, Kosovo and Vojvodina, that became almost equivalent to the six Republics. In fact, not only they had the same number of representatives in the federal institutions of the states, but their representatives in the collegial presidency had the same powers of the Presidents of the member states⁸⁹. The increasing autonomy that these two provinces were assuming in the laws of the Socialist Yugoslavia were interpreted by the Serbs as an attempt, pursued by Tito (and the Komintern), to weaken the Republic of Serbia and the importance of Serbian population, creating, only in its territory, two enclaves more and more independent and difficult to control, who threatened the power of Serbia not only at the State level, but also at federal level, through its representatives in the federal institutions, and pursuing, inside them, policies with the aim of contrasting the government of Belgrade⁹⁰. In this optic we can understand the drastic reform of the status of the two autonomous provinces provided in the Constitution of Serbia in 1990.

⁸⁸ W. Harriet Critchley, *The failure of federalism in Yugoslavia*, cit. pp. 442-443

⁸⁹ T. Cerruti, *Recenti vicissitudini di uno Stato balcanico: il caso jugoslavo. Da un federalismo dubbio ad una confederazione a termine?*. In *Diritto Costituzionale Comparato ed Europeo n.1, 2003*, p. 19

⁹⁰ *Ibid.* p. 20

The form of state of the Socialist Yugoslavia could work only with a charismatic leadership, ensured by Tito, and a strong communist party. After Tito's death, the lack of leadership, the ethnic rivalries, the economic crisis and the inequalities among the different republics, the disintegration of the communist regimes in Eastern Europe, and the revive of nationalism, especially in Serbia and Croatia, gave the floor to the independence aspiration of the different ethnic groups, whose identities were forged by their centennial history.

Chapter 2

The New Constitutions

1. Elements in common

The new Constitutions were the juridical foundation of the new States in former Yugoslavia⁹¹. The first state that adopted a constitution was Serbia, in September 1990, followed by Croatia in December 1990, Slovenia in 1991 and the Federal Republic of Yugoslavia in 1992.

The Constitution of the Republic of Croatia was drafted by the strongest political party, the HDZ, after the elections.

The Constitution of the Republic of Slovenia was written in 1990 and adopted a year later. It was drafted by the anticommunists parties, who composed the absolute majority of the assembly. This Constitution was since the beginning a modern and democratic text⁹².

The new Constitutions of Serbia and Yugoslavia, instead, were written by the “reformed” communists parties. In Serbia, the Constitution was adopted by the Assembly elected in 1989 in a single party competition, and was applied without the approval of the citizens, contrary to what happened in Montenegro; thus neither the assembly nor the Constitution had a democratic legitimacy. The constitution of Yugoslavia was drafted by the parties of the old regime too⁹³. Furthermore, according to many authors, the Constitution of the Federation of Yugoslavia should be null, because the Constitution was proclaimed by one of the two Chambers of the socialist Parliament, whose members were delegated by the assemblies and organizations of the different Republics and Provinces⁹⁴.

In the following pages I will analyse the Constitution of Serbia, Croatia and Slovenia in a comparative way, stressing the common features and the main differences between these texts. I choose to consider Serbia, instead of Yugoslavia, because the latter appeared more as a confederation between two different states (Serbia and Montenegro) rather than a federal state. In the next paragraph, instead, I will show the common features of the political systems of the three Republics, as it was in the period of the drafting of the first

⁹¹ P. Nikolic, *La transizione costituzionale nella ex-Jugoslavia*, in S. Gambino, *Costituzionalismo europeo e transizioni democratiche*, Giuffrè Editore, Milano, 2003, p. 161

⁹² P. Nikolic, *La transizione costituzionale nella ex-Jugoslavia*, cit. p. 162

⁹³ P. Nikolic, *La transizione costituzionale nella ex-Jugoslavia*, cit. p.163

⁹⁴ Cfr. T. Cerruti, *Recenti vicissitudini di uno Stato balcanico: il caso jugoslavo*. Cit. p. 12-13. For a further analysis on the legitimacy of the Constitution of the FRY see the fourth paragraph.

constitutions. Successively, I will analyse the different forms of government of the three states. In the next Chapter, instead, I will show the evolution of these systems, and the transformation of the different constitutions.

The Constitutions of Slovenia, Croatia and Serbia shared some common features. First of all, the Constitutions had a clear nationalist stamp. The nationalist rhetoric was used instrumentally by the parties that ran in the election in order to ensure the votes of the rural areas. During the electoral campaign they promised that, once they reach the government, they would deal firmly with the local minorities and institute programs that would affirm each of their several republics as the nation state of its dominant, ethnically defined nation⁹⁵. On the other hand, they needed to establish a democratic system, in order to join the Western Institutions such as the NATO and the European Community. The solution found in the various Yugoslav republics was the creation of a system that Hayden defines as *constitutional nationalism*, which means a constitutional and legal structure that privileges the members of one ethnically defined nation over other residents in a particular state⁹⁶. Constitutional nationalism envisions a state in which sovereignty resides with a particular nation, the member of which are the only ones who can decide fundamental questions of state form and identity⁹⁷. The danger of such a polity is, as Stanley Tambiah notes, that minority resentment may lead to demands for greater equality which, if unmet, turn easily into demand for secession⁹⁸. This was basically what happened in Croatia and Serbia, where the nationalist policies of the ethnic majority group induced to the creation of secessionist movements among the largest minorities.

Constitutional nationalism is expressed in the Constitution of the different countries. The preliminary section of the constitution of the Republic of Croatia begins referring to “The millennial national identity of the Croatian nation and the continuity of its statehood, [...] based on the historical right to full sovereignty of the Croatian nation,” as manifested by a series of states from the Croatian kingdom of the seventh century through the conclusion of the Joint Anti-Fascist Council in 1943 and the existence of the People’s (later Socialist) Republic of Croatia from 1947 to 1990. It then states that “at the historic turning-point marked by the rejection of the communist system and changes in the international order in Europe, the Croatian nation reaffirmed, in the first democratic elections (1990), by its freely expressed will, its millennial statehood and its resolution to establish the Republic of Croatia as a sovereign state.” Then it refers to the “inalienable and indivisible, non-transferable and perpetual right of the Croatian nation to self-determination and state

⁹⁵ R. M. Hayden, *Constitutional Nationalism in the Formerly Yugoslav republics*, in *Slavic review*, Vol. 51, N. 4, 1992. p. 655

⁹⁶ *Ibid.* p. 655

⁹⁷ *Ibid.* p. 656

⁹⁸ S. Tambiah, *Ethnic Conflict in the World Today*, in *American Ethnologist* v.16, Blackwell Publishing, Inc., Malden, 1989. pp. 335-49

sovereignty, including the inviolable right to secession and association as the fundamental conditions for peace and stability of the international order, the Republic of Croatia is hereby established as the nation state of the Croatian nation and the state of the members of its national minorities". All these passages, symbolic rather than binding, since they are in the preamble to the constitution rather than within the operative text, are accompanied by the symbolism of the republic's ethnically Croat coat of arms and flag (art. 11), similar to the symbols used by the Ustaše during the Second World War, and by the policies of the HDZ.⁹⁹

The Constitution of Serbia also make references to "the centuries-long struggle of the Serbian people" and to their determination to create a democratic State of the Serbian people¹⁰⁰. However, the impact of the 1990 Constitution on minorities in Serbia can be gauged more accurately when it is recognized that It was enacted to reestablish Serbia's full sovereignty and to remove constitutional mechanisms for self-rule by the largest minorities in the republic¹⁰¹. The 1990 Constitution, in fact, modified the status of the two autonomous provinces, reducing their autonomy in a considerable way,¹⁰² and provoking the insurgence of separatists movements in the autonomous province of Kosovo.

Also the more democratic Constitution, the Slovene, presents some nationalist features, as we can see from the Preamble, when it refers to the "fundamental and permanent right of the Slovene nation to self-determination; and from the historical fact that in a centuries-long struggle for national liberation we Slovenes have established our national identity and asserted our statehood". Another import element to notice is the different treatment reserved in the Constitution for the Italian and Hungarian minority on one hand, and for the other minorities in the other.

The consolidation of the mono-ethnic state, afraid that the claims of the minorities can lead to the breakup of the national unity, requires a centralized organization of the state, with a substantial refuse of the local self-government and of the decentralization of competences which are typical of the federal state. The centralized state is legitimated by the previous centralized and authoritarian regime that left a deep mark in the political culture of the Balkan society¹⁰³.

⁹⁹ R. M. Hayden, *Constitutional Nationalism in the Formerly Yugoslav republics*, cit. p. 657.

¹⁰⁰ Ibid. P. 657

¹⁰¹ B. Jović, *Datum za historiju*: 28. Mart 1989, Belgrade, 1989

¹⁰² T. Cerruti: *Recenti vicissitudini di uno Stato balcanico: il caso jugoslavo*. Cit. P. 20

¹⁰³ G. de Vergottini, *Costituzionalismo europeo e transizioni democratiche*, in M. Calamo Specchia, M. Carli, G. Di Plinio, R. Toniatti, "I Balcani Occidentali. Le Costituzioni della transizione", G. Giappichelli editore, Torino, 2008, p.13

The nationalist identity present in the constitutions, however, is quite common. After such a long period in which their sovereignty was limited by the communist regime, it's not a surprise that they wanted to re-establish their autonomy.

Further, after the breakup of the communist bloc, the new countries shared the common will to be accepted by the western countries, and to become part of the western supranational institutions such as NATO and European Community. For this reason, all the constitutional charters recognize and protect the human rights and freedoms. Among the rights and freedoms protected by the constitutions, also the economic rights of the citizens and of the aliens are protected. We have to remember here that the transition didn't involved only the political regime of the countries, but also their economic structures, moving from a communist economy, although more opened to the other countries than the other eastern European countries were, towards a capitalist economy, based on the free initiative of the people, a lower intervention of the state, and a greater inequality among the citizens. Thus the new constitutions needed to guarantee the freedom of enterprise and the freedom of economic initiative, on one hand, and the protection of the weaker part of the population, in the other. This dualism can be found in the constitutions on these countries. Thus, in Slovenia, the Constitution states that the freedom of enterprise shall be guaranteed (art. 74) and entrust the state for the protection of employment and work (art. 66), land (art. 71), natural and cultural heritage (art. 73), and for the promotion of a healthy living environment (art. 72). In the Croatian Constitution, the right to ownership shall be guaranteed (art. 48 c.1) and the entrepreneurial and market freedom shall be the basis of the economic system of the Republic (art. 49), but the ownership implies obligations (art. 48 c. 2). These documents envisioned also the creation of a welfare system, the right to education (also private education) and to the health care.

In the Constitution of Serbia is present also a Chapter dedicated to "the rights and duties of the Republic of Serbia", that should be carried out by the republic agencies established in the Constitution (art. 70), laying down policies, enacting and enforcing laws, and providing constitutional-judicial and judicial protection of constitution and legality (art. 71). The article 72 enumerated the field of action and the goals of the state agencies; among them, there is the duty of the Republic to maintain relations with the Serbs living outside the Republic of Serbia in order to preserve their national and cultural-historical identity¹⁰⁴.

In all the constitutions the legislative power is demanded to the Parliament. In these countries, the Parliament is the representative body of the citizens, who directly elects their representatives. Both the Slovene and the original text of the Croat Constitution designed an asymmetric bicameral system. The Slovene National Assembly is composed

¹⁰⁴ This last provision is clearly referred to the Serbs who lived, at that time, in the territories of Croatia, Bosnia-Herzegovina and Montenegro.

by 90 MPs, elected by the citizens by universal, equal, direct and secret voting, through an electoral system regulated by a law passed by a two-thirds majority votes of all deputies (art. 80). Elections should be held every four years (art. 81). The article was amended in 2000, introducing in the constitutional framework the proportional system of election, with a 4 % threshold. The National Council, instead, is composed by four representatives of the employers, four representatives of the employees, four of the farmers, crafts and trades, and independent professions, six representatives of the non-commercial fields and twenty-two representatives of local interests; 40 members in total (art. 96), elected every five years. While the National Assembly is entitled of the legislative and decision-making powers, the National Council has a consulting role. It can propose laws to the National Assembly, give advisory opinion and require to the National Assembly to decide again on a given law prior of its promulgation (art. 97). The second decision of the National Assembly, in that case, should pass with the absolute majority of the members of the assembly, unless the Constitution provides a qualified majority. The second decision on that law is the final decision (art. 91).

Croatian Parliament, as envisaged in 1990 Constitution, was composed by a House of Representatives and a House of Counties. The House of Representatives shall have no more than 160 representatives and no less than 100 members, and it's vested with the legislative power of the Republic of Croatia (art. 71, c. 1). They are directly elected by the citizens. The House of Counties is composed by three representatives per county, elected directly by the citizens through secret ballot. The President of the Republic can appoint five more members of the House of Counties from among citizens especially deserving for the Republic (art. 71, c. 4). The so called virile right was deeply rooted in the Croatian electoral history of the second half of the 19th century and the beginning of the 20th century. Thanks to this right, the president arbitrarily decided who was eminent enough to obtain a seat in the House of Counties. After the 1993 elections, he appointed five trustworthy persons, transforming the absolute majority of the HDZ in the upper house almost into a two third majority. After the second election in 1997, instead, the president, because of international and internal political reasons, appointed through this right three HDZ members and two representatives of the Serbian minority¹⁰⁵. The President of the Republic, after the expiry of his term, should become a lifelong member of the House of Counties. The members of both Chambers were elected for a four year term (art. 72). The House of Representative was entitled of the most important legislative functions, enumerated in article 80, while the House of Counties had quite the same functions of the Slovene National Council i. e. it gave opinions on Constitutional amendments and other questions falling within the competences of the House of Representatives. It had also the

¹⁰⁵ M. Kasapović, *Electoral Politics in Croatia 1990-2000*, in *Politička Misao*, Vol. 37, N. 5, Zagreb, 2000, p. 8

power to return the law to the House of Representatives within a period of 15 days from the date of the passage of the law in the first Chamber (art. 81).

The Serbian Parliament is constituted by a single chamber, the National Assembly, composed by 250 representatives, elected directly by the citizens through secret ballot (art. 74) for a four year term (art. 75). Article 76 stated that the representatives represent the citizens of the constituency in which they are elected; this provision, which is not present in the 2006 constitution, was probably related with the first electoral law of the country, that introduced the single-member constituency, according to which every constituency elects its representative to the Parliament. The enlargement of the constituencies, that transformed them from single-member to multimember mandate, made this constitutional provision ineffective.

Article 73 of the 1990 Constitution enumerated the competences of the National Assembly. As can be noticed, there are all the competencies that are typical of parliament of a sovereign nation, including the power to ratify international treaties, and to decide on war and peace. Furthermore, there is no reference to the Federal Republic of Yugoslavia, and the relationship between the state parliament and the federal assembly.

The Croatian Constitution provide, at article 93, the creation of an ombudsman, a commissioner of the Croatian Parliament, who shall protect the constitutional and legal rights of citizens in proceedings before government administration and bodies vested with public powers. The ombudsman is elected by the House of Representatives, and remain in charge for eight years.

In all the three constitutions the President of the Republic is directly elected by the citizens, for a five years term. The system of the election is the same as for the President of the Republic of France, with a second ballot turn between the two most voted candidates if none of them reach the absolute majority of the votes. The reasons for this choice were various: letting the citizens choose their president appeared the most democratic choice, and was a clear sign of breakage with the previous regime, where also the representatives were appointed by others. On the other hand, the direct election of the President, in Croatia and Serbia, gave an advantage to the ruling parties, the HDZ in Croatia, the SPS in Serbia, who could benefit from their charismatic leaders and their capacity to raise consents. A third element was the choice of the form of government: in the western Balkans, the choice was oriented between the Austrian form of government and the French semi-presidential system. In both these form of government the president is directly elected by the citizens, but his competencies changes considerably. As we will see in the following pages, Slovenia adopted a form of government similar to the Austrian system, while Croatia vested the President of quite considerable powers. In Serbia, during Milošević presidency, the role of this institution grew far beyond the Constitutional provisions. However, after Milošević left the presidency, and Milan Milutinović took his

place in 1997, the influence of the President over the other state institutions was extremely reduced.

The Government and each of its members are responsible to the Parliament for their work in all the Constitutions. The Croat Constitution provide also the responsibility of the government towards the President of the Republic (art. 111). The vote of no confidence can be proposed, according to the Serbian Constitution, by at least 20 MPs, which basically corresponds to the 8% of the seats. In the Croatian Constitution the motion must be signed by the 10% of the members of the House of Representatives, and must be approved by the majority of the total number of representatives. Further, if the House of Representatives rejects the proposal for a vote of no confidence, the representatives who made it may not again make the same proposal before the expiry of three months(art. 113 c. 5). In Slovenia, instead, the vote of no confidence shall be proposed by ten members of the National Assembly (almost 11% of the representatives) only by electing a new President of the Government (art. 116). The Government, in all the Constitution, may also require a vote of confidence by the assembly.

The judicial power is independent in all the Constitutions. Every Constitution provided the possibility to appeal the decisions of the courts to the Supreme Court.

Although these are centralized states, the Constitutions recognized some form of local self government. The local government in Slovenia is constituted by municipalities, that are financed by their own sources. The municipalities can decide to join into wider self-governing local communities, as well as regions, in order to regulate and manage local affairs of wider importance (art. 143). The state authorities, however, supervise the legality of the work of local community authorities (art. 144). In Croatia, instead, units of self-government are the municipalities and districts or towns (art. 129), and Counties (art. 131). Large town are organized as counties. The units of self-government of Serbia were the municipalities. According to article 117 of Serb Constitution, law can establish that a municipality becomes a city, comprising in its territory two or more municipalities. A statute may determine then which affairs shall be administered by the city and which by a town municipality. Article 118, instead, provide a different status for the city of Belgrade. Finally, the Constitution of Serbia recognized a particular status to two provinces of the country, Vojvodina and Kosovo and Metohia, giving their particular nationality, culture and history. The status provided in the Constitution of Serbia reduced the autonomy of the two provinces in a significant way, imposing, that the new statute of these provinces should be approved by the National Assembly (art. 110), providing what agencies should be established in the two provinces (art. 111), and introducing the possibility that, if the autonomous province fails to execute a decision or a general enactment of the autonomous province, the republic agency may provide for its direct execution (art. 112).

These provisions were quite contradictory from a juridical point of view, since the Republic of Serbia, at the moment of the adoption of the Constitution, was still member of the Socialist Yugoslavia, whose constitution provided a greater autonomy for these provinces. The contrast between the two Constitutions was solved only two years later, when was adopted the Constitution of the Federal Republic of Yugoslavia, that left the regulation of local self-government in the hand of the member states¹⁰⁶. This radical change in the status of provinces in which the national minorities were the largest ethnic group generated a separatist resentment in these areas, especially in Kosovo, where the Albanian population decided to boycott the state institutions, from the school to the parliamentary elections, and to form paramilitary groups¹⁰⁷.

The Constitutions of these countries are rigid. Thus they provide special mechanisms in order to amend them, in particular, the requirement of a qualified majority and, eventually, a positive vote of a confirmative referendum. Croatian Constitution differ from the other, since the constitutional amendment didn't need a referendum in order to enter into force. In order to guarantee the respect of the Constitution, in all the countries was established a Constitutional Court, composed by nine judges in Slovenia and Serbia, eleven in Croatia, elected by the assembly.

¹⁰⁶ T. Cerruti, *Recenti vicissitudini di uno Stato balcanico: il caso jugoslavo. Da un federalismo dubbio ad una confederazione a termine?* Cit. P. 20

¹⁰⁷ Ibid. p. 20

2. The Political System: the Constituent Assemblies and the first multiparty elections

During the transition process the various political actors can be decisive in creating new rules, policies and institutions. In this phase the ties of the social environment are lowered, the tradition is less decisive, and the society is more pliable,¹⁰⁸ so we can think at the transitions as a moment of *crafting*¹⁰⁹.

The way the political competition is structured in the different countries, the nature of the electoral law, the transparency of the election and the presence or not of a charismatic party leader as Tuđman or Milošević are all elements that influenced the form of government, the role of the minorities and the relationship between the different ethnic groups, inside the country, and with the International Institutions and the European Union, outside the country.

Slovenia, Serbia and Croatia shared some common features. First of all, since the first multi-party elections, held in 1990, the party system appeared extremely fragmented, with many small parties represented in the national assembly.

Related to the first element, there was in these countries the tendency to create broad coalitions, especially between the opposition parties, with the common goal of seizing the power from the existing political elite. Coalitions like these were composed by many small parties, often quite distant from an ideological point of view. In many cases, these coalitions were merely electoral cartels, which lasted the time of the election, and disappeared immediately after. An example was the Democratic Opposition of Slovenia, also known as DEMOS coalition, which comprehended the Slovenian Democratic Union, the Social Democrat Alliance of Slovenia, the Slovene Christian Democrats, the Farmer's Alliance and the Greens of Slovenia. This coalition won the 1990 elections and was dissolved in 1992.

Another particular aspect which regarded the first multi-party elections was the connotation of referendum on the existing political élite. In many cases the electors didn't pay much attention on the selection of the party they voted, but rather they voted for or against the political elite of the previous communist regime. This can be noticed in particular in the parliamentary election of Croatia of 1990, when the electoral competition was polarized between the Croatian, anti-socialist, rightist bloc, which found its champion

¹⁰⁸ P. Nikiforos Diamandouros and F. Stephen Larrabee, *La democratizzazione nell'Europa Sud-Orientale*, cit. p. 32

¹⁰⁹ For an analysis of the role of the politics in modeling the new democratic regimes see G. Di Palma, *To Craft Democracies. An Essay on Democratic Transitions*, Berkeley, University of California Press, 1990

in the Croatian Democratic Union (HDZ), on the one hand, and the pro-Yugoslav, pro-socialist, leftist bloc, which had its champion in the reformed Croatian League of Communists, transformed after the first elections in the Social-Democratic Party (SDP).¹¹⁰

A constant in the political arena during the first phase of the transition, especially in Croatia and Serbia, was the ethno-mobilisation strategy used by the political élites in order to mobilise people into conflict, offering legitimization of their authoritarian style of governing.¹¹¹ The use of the nationalist rhetoric has been carried on, through (controlled) medias and political rallies, by the new political, economic, military and religious elites, that employed the pre-existing historical narratives and myths¹¹², that were still present in the cultural heritage of the different ethnic communities. The resurgence of Serb nationalist ideology, the threat of a Presidency of Yugoslavia led by the Serbian voting bloc, as it resulted after the anti-bureaucratic revolution¹¹³, that could impose a general state of emergency in the country, the political vacuum generated by the breakup of the League of Communist of Yugoslavia into different parties for each republic, gave rise to ethnic based political parties that gave voice to virulent nationalist hatreds.¹¹⁴

Finally, an obstacle to the creation of truly liberal regimes in these three countries was the incomplete maturation, or the absence, of a liberal culture. An example of that can be seen in the restrictive legislation on the freedom of press. In Serbia, Croatia and Slovenia, the defamation by press entailed also the imprisonment; this severe legislation, applied with extreme rigidity by the tribunals, led to a reduction of the freedom of press and thus helped the governments in office¹¹⁵. Furthermore, in Serbia and Croatia the partial and censored reporting by the state-owned media on war crimes committed by the respective

¹¹⁰ M. Kasapović, *Electoral Politics in Croatia 1990-2000*, cit. p. 10

¹¹¹ A. Petričušić, *Ethno-Mobilisation and its Consequences in Croatia*. In *Southeastern Europe*, Vol. 35, Brill Online, 2011, p. 41

¹¹² Ibid. p. 41

¹¹³ The Anti-bureaucratic revolution was a campaign of street protests ran between 1986 to 1989 by supporters of Serbian leader Slobodan Milošević in the autonomous provinces of Kosovo and Vojvodina and in the Socialist Republic of Montenegro which overthrew the governments of these entities and replaced them with allies of Milošević, thus creating a voting bloc inside the Yugoslav presidency council. The revolution was condemned by the other Socialist Republics of Yugoslavia, and created tensions inside both the presidency and the League of Communist which ended with the dissolution of the party, first, and the breakup of the federation, later.

¹¹⁴ D. Gavrilović, Đ. Stojanović, *Bring Back the State: New Challenges of Stabilization in the Former Yugoslav Territories*. In *Serbian Political Thought year II*, Vol. 2, 2010 p. 62

¹¹⁵ see L. Mezzetti, *Transizioni costituzionali e consolidamento della democrazia nei paesi dell'Europa centro-orientale e Balcanica*. In V. Piergigli *L'autoctonia divisa. La tutela giuridica della minoranza italiana in Istria, Fiume e Dalmazia*, CEDAM, 2005

governments made them responsible for the creation of a hostile attitude towards the ethnic minorities.¹¹⁶

In Slovenia the 1990 parliamentary elections were preceded by some important constitutional amendment in 1988, which reinstated the direct election of the representatives, after the Constitution of 1974 introduced the so-called delegate system. This unique electoral system introduced a greater dependency of the delegate on the constituency, and indirect elections at different levels instead of direct elections.¹¹⁷ In this system the Members of the Assembly were not the representatives of different political interests, but were on equal terms representing the interests of different interest groups in society, which, of course, was not compatible with any sort of competitiveness between the different candidates, nominated by different political parties, during an election.¹¹⁸

This electoral system was developed inside a peculiar political framework, namely the one that came from the Constitution of 1974, which established an assembly consisting in three chambers in each of the republics and in the local communities. The three chambers of the Assembly represented the three basic interest groups in the society: the Chamber of Associated Labour represented the interests of all working people (employees and self-employed), the Chamber of Communes represented the local interests and the Socio-Political Chamber represented the different interests of the various socio-political organizations¹¹⁹. None of these chambers, not even all three together, represented the interests of the people as a whole¹²⁰.

The Constitutional amendment of 1988 reinstated the direct elections of the Members of Parliament. However, it didn't change the institutional framework, which remained the one designed in the Federal Constitution of 1974, with the three chamber division of assembly still in place. This made the new electoral system rather complicated, since it had to remain within the existing constitutional arrangement, on the one hand, but try to incorporate the features of modern electoral systems on the other¹²¹.

In order to develop a new electoral law, negotiation between the public authorities and the newly developed political parties took place. It was immediately clear that the interest of the ruling government and the new parties differed significantly. While the ruling government saw greater potential for its success in the majority electoral system, the new

¹¹⁶ see A. Petričušić, *Ethno-Mobilisation and its Consequences in Croatia*, cit.p. 51

¹¹⁷ F. Grad, *The Slovene Electoral System*, in F. Lanchester, *La Legislazione Elettorale degli Stati dell'Europa Centro-Orientale*, A. Giuffrè editore, Milano, 1995, p.246

¹¹⁸ *Ibid.* pp. 246-247

¹¹⁹ *Ibid.* p. 246

¹²⁰ *Ibid.* p. 246

¹²¹ *Ibid.* p. 248

political parties favoured the proportional system. The result was a compromise, according to which different electoral systems had been adopted for the different chambers of the parliament: the Chamber of the Associated Labour was elected according to the plurality system, the Chamber of Communes was elected on the basis of the majority system and the Socio-Political Chamber was elected on the basis of the proportional system¹²².

In Croatia and Serbia, instead, the old ruling elite didn't promote any negotiation with the opposition parties. In Croatia, during the last years of the Socialist Yugoslavia, many intellectuals, media, and political parties, which became legal in 1989, began asking for free and multiparty elections, democracy, free market and independence. In the first phase, this mobilization helped the reformist wing of the communist party, who gradually succeeded in neutralizing the hard-liners.

When the Croatian Communist party announced the first free and multiparty elections in 1990, the reformist wing was sure of its victory against the weak opposition parties. For this reason, they didn't take into consideration any possible negotiations with the opposition on such issues as securing transitional pace, the constitutional form of the new democracy or even the type of electoral system for the first elections¹²³. These tasks were left to be settled down after the elections. There was only a tacit agreement among the main parties that the first democratically elected parliament should act as a Constitutional Assembly and that new elections should be called as soon as possible after the adoption of the new constitution.¹²⁴ As we will see, things turned out differently.

The case of Serbia is very peculiar. The Constitution of the Republic of Serbia was adopted by the Assembly of the Socialist Republic of Serbia, elected in 1989 through the delegate system, when there was no other party except from the Socialist Party of Serbia. Thus, the 1989 elections didn't legitimize nor the Assembly neither the Constitution adopted by it.¹²⁵ The new President of the Republic of Serbia was Slobodan Milošević¹²⁶. The Assembly adopted also the electoral law that was applied in 1990 parliamentary elections. The first electoral law established a majority system in which the representatives were elected through 250 single-member constituencies. This system, which in the other countries is useful in order to establish a bipolar competition, in Serbia created a dominant party system, where the SPS, with the 46% of the votes, won the 77,6% of the seats. Thus after

¹²² See: F. Grad, *Volitve v političnem pluralizmu (Elections in Political Pluralism)*, Ljubljana 1990

¹²³ G. Čular, *Political Development in Croatia 1990-2000: Fast Transition-Postponed Consolidation*, in *Politička misao*, Vol. 37, N. 5, University of Zagreb, 2000, p. 32

¹²⁴ M. Kasapović, *Electoral Politics in Croatia 1990-2000*, cit. p.10

¹²⁵ P. Nikolić, *La forma di governo Jugoslava*, in L. Mezzetti, V. Piergigli, "Presidenzialismi, semipresidenzialismi, parlamentarismi: modelli comparati e riforme istituzionali in Italia", Torino, G. Giappichelli, 1997, pp. 395-396

¹²⁶ P. Nikolic, *La transizione costituzionale nella ex-Jugoslavia*, cit. p. 162

the election was created a disequilibrium between the parliamentary composition, in one hand, and the preference of the voters, in the other hand¹²⁷. With its 194 seats, in fact, the SPS could autonomously form the government. Moreover, since the second political party, the Serbian Renewal Movement, had won only 19 seats, the parliamentary opposition was impossible¹²⁸.

The reasons of the adoption of the majority system in the first multi-party election in Serbia hailed from the belief of the élite in power that it was possible to reach democracy in a short time¹²⁹. They thought that the use of majority system would represent a radical change in a framework where civil institutions, and freedom, political and civic awareness didn't exist¹³⁰. The adoption of the idea of democratic government was showed with a strong application of a simple principle –the one of the absolute majority- although this principle implies some correctives in order to guarantee for the protection of the minorities¹³¹. The application of the majority system in such an heterogeneous society had a destabilizing impact for its un-proportional effects¹³². The adoption of majority or partially majority systems in heterogeneous societies generates negative effects on the consolidation of democratic institutions¹³³.

In Slovenia and Croatia, the first multiparty elections were won by the anti-communist parties. In Slovenia, the 1990 elections were won by the Demos coalition, a broad coalition composed by newly established parties that gained the 55% of the votes for the Socio-Political Chamber. The new elected assembly was composed by nine different political parties. Despite the persistence of the three Chamber system, the Parliament functioned as a multiparty parliament and the antagonisms which inhibited its normal functioning were mainly the antagonism between the ruling coalition and the parties which formed the parliamentary opposition¹³⁴. In Croatia the final result of the parliamentary election in 1990 was characterized by an extreme party/political bipolarization between the Croatian, anti-socialist, rightist party and the pro-Yugoslav, pro-socialist, leftist party. This bipolarization mainly reflected the dominant cleavage between the (Yugoslav) centre and the (Croatian) periphery, manifested in the division of the bulk of the electorate into the proponents of the Croatia independence and the Yugoslav unionists; the latter group indiscriminately included the unitarists, the federalists, and the confederalists.¹³⁵ This age-old polarization pattern included the sub-polarizational ethnic cleavage between the

¹²⁷ I. Peijc, *Il sistema di separazione dei poteri e la nuova costituzione serba del 1990*, cit. p. 172

¹²⁸ *Ibid.* p. 172

¹²⁹ *Ibid.* pp. 172-173

¹³⁰ *Ibid.* p. 173

¹³¹ *Ibid.* p. 173

¹³² D. Possanzini, *Elezioni e partiti nella Serbia post-comunista (1990-2004)*, cit. p. 77

¹³³ *Ibid.* p. 77

¹³⁴ F. Grad, *The Slovene Electoral System*, cit. pp. 249-250

¹³⁵ *Ibid.* p. 10

Croatian majority and the Serbian minority, as well as the functional cleavage socialism/anti-socialism or regime/anti-regime¹³⁶. The domination of the polarizational pattern centre/periphery used to be the central socio-structural assumption of the two-party electoral competition and the establishment of the two-party parliamentary system after the first elections. This process was facilitated by the absolute majority electoral system¹³⁷, adopted in the 1990 parliamentary elections.

The parliamentary elections were won by the opposition, right wing party HDZ, who gained the absolute majority of the seats (205 out of 356) with the 42% of the votes. The Croatian League of Communists-Party for Democratic Changes placed second, while the Coalition of People's Accord, the other anti-regime group, composed by the Croatian Social Liberal Party, the Croatian Peasant Party, the Croatian Democratic Party, the Social Democrats of Croatia and a number of local, youth, and environmentalist groups and individual candidates, was third, breaking apart already between the first and the second round of the 1990 elections. It's important here to notice that the Serbian Democratic Party of Jovan Rasković, the ethnic party of Serbs who asked for the independence of the Serbian people, gained only five seats, due to the fact that the majority of Croatia's Serbs were moderate, and chose to vote for the reformed communist party¹³⁸.

¹³⁶ See, among the others, N. Zakošek, *Polarizacijske strukture, obrasci političkih uvjerenja i hrvatski izbori 1990*, in Grdešć et. A. and M. Kasapović, 1996, *Demokratska tranzicija i političke stranke*, Fakultet političkih znanosti, Zagreb, 1991

¹³⁷ M. Kasapović, 2000, *Electoral Politics in Croatia 1990-2000*, cit. p. 10

¹³⁸ See A. Petričušić: *Ethno-Mobilisation and its Consequences in Croatia*. Cit. P. 43

3. The new Constitutions: form of government

a) Slovenia

The new Constitution of Slovenia, adopted by the assembly elected in the first multiparty elections at the end of 1991, established a new organization of the state authority and a new political framework. The major changes affected the Parliament and the Presidency. Instead of the previous collective presidency, was instituted the President of the Republic, who should be elected directly by the people. The assembly was transformed from a three Chamber institution to a bi-cameral Parliament, where the National Assembly was instituted as the legislative and representative body, and a second chamber, the National Council, is the representative organ of the social, economic, professional and local interest groups. Since its first draft, the Slovene Constitution was a modern text.

During the Socialist period, Slovenia had a head of state in the form of the collective presidency of the Socialist Republic of Slovenia, which represented the Slovene Republic and had significant powers in the areas of defence and international relations as well as certain other important political issues. Gradual constitutional development led in 1989 to the abolition of automatic membership of the presidency of the republic (previously, two seats were reserved in this eight-member presidency for senior Party officials) and the number of members was reduced to four plus the so-called president of the presidency; furthermore, direct elections were introduced for the president and members of the presidency.¹³⁹ In the constitutional debate a consensus was soon reached on the greater suitability for Slovenia of the parliamentary model, which was substantiated primarily by the danger that during the transition, and subsequently, an individual holding the office of a strong president could be too strong a counterweight to the other organs of state or even prevail over them¹⁴⁰. On the other hand, during the debate the position prevailed that the president of the republic should be directly elected. This somewhat contradictory solution was the result of public pressure: in the initial phase of the transition, in fact, there was a clearly expressed desire among the public to elect the president of the republic by direct ballot. At the time when the new constitution was being drawn up, it is fair to say that the institution of president of the republic was, to a great extent, adapted to suit the then president of the presidency and former leader of the League of Communist of Slovenia, Milan Kučan. Thanks to his reformist leadership of the League of Communists, and to his fights against the centralist and hegemonic tendencies of the pro-Serbian Yugoslav League of Communists, Kučan acquired enormous respect among the people of

¹³⁹ M. Cerar, *Slovenia*, in R. Elgie "Semi-presidentialism in Europe" , Limerick, University of Limerick, 1999, p. 237

¹⁴⁰ *Ibid.* p. 238

Slovenia.¹⁴¹ The parliamentary parties were fully aware that he would win a direct ballot, and many of them were in favour of an indirect election of the president; however, since the strong popular support for a direct election of the president, they opted to reduce the influence of the “president-to-be” Kučan by opting for relatively minor presidential powers.

According to the Slovene Constitution, the President has no more than ceremonial powers. His powers are enumerated in article 107. His role in the formation of the government is very limited: according to article 111, in fact, the President should only propose to the National Assembly a candidate for President of the Government, after consultation with the leaders of the different parliamentary groups. After the National Assembly elects the President of the Government, the role of the President of the Republic in the formation of the Government ends. Furthermore, the President has not the monopoly in the proposal of the candidate, since he/she can be proposed also by parliamentary groups or at least ten deputies (art. 111 c. 3). In case of emergency or state of war, if the National Assembly is unable to meet, the President of the Republic may, on the proposal of the government, issue decrees with the force of law (art. 108 c. 1). In this event, the President may also restrict individual rights and freedoms (at second comma). However, the presidential decrees must be submitted to the National Assembly, as soon as it convenes. The right to the President to issue decrees with the force of statute is therefore only an extraordinary and temporary power which cannot be taken to permit autocratic or arbitrary behaviour of any sort¹⁴².

The President, during the peace, has no influence nor on the government neither on the parliament. The only role he has during the legislative process is to promulgate the laws of the parliament “no later than eight days after they have been passed by the National Assembly (art. 91) and to give non binding opinions on single issues, when the National Assembly requires it.

The National Assembly is the major legislative body. It is composed by ninety deputies, elected by universal, equal, direct and secret voting (art. 80). The electoral system should be regulated “by a law passed by the National Assembly by a two-thirds majority vote of all deputies” (art. 80, c. 4). Thus the Constitution, since its first draft, provided that the electoral system should be the result of a common agreement between the different political parties. The National Assembly passes decisions, adopts laws and ratifies treaties by simple majority (art. 86). The laws can be proposed by the Government or by any deputy. Laws may also be proposed by at least five thousand voters.

¹⁴¹ Ibid. pp. 238-239

¹⁴² Ibid. pp. 244-245

The National Assembly may also order enquiries on matters of public importance, and it must do so when required by a third of the deputies of the National Assembly or when required by the National Council (art. 93).

The National Council is the representative body for social, economic, professional and local interests. It is composed by four representatives of employers, four representatives of the employees, for representatives of farmers, crafts and trades, and independent professions, six representatives of non-commercial fields, and twenty-two representatives of local interests. Its members are elected for a five year term

The National Council function as a second chamber: it proposes laws to the National Assembly, require inquiries as referred in art. 93 and may also require the National Assembly to decide again on a given law prior to its promulgation. This last competence is regulated by art. 91, that provides that the National Council, within seven days of the passing of a law and prior to its promulgation, may require the National Assembly to decide again on such law. In this case, the absolute majority of all the deputies is required in order to pass the law, unless the Constitution envisages a higher majority for the passing of the law under consideration (art. 91).

The Council may also convey to the National Assembly its opinion on all matters within the competence of the National Assembly and, when required by the National Assembly, must express its opinion on an individual matter (art. 97).

The Government is entitled of the executive power and is the highest body of state administration. It determines, directs and coordinates national policy in accordance with the constitution, the laws, and other general acts of the National Assembly. To this end the government issues various executive regulations and other acts, and adopts political, economic, financial and other measures which are important for the country's development. The government proposes to the National Assembly the adoption of laws, the national budget, national programmes, and other general acts which lay down the principles of long-terms policy in individual areas. In carrying out these functions, the government is independent, but obviously within the constitutional and statutory framework and within the scope of the national budget, and the policy principles and long term orientations of the National Assembly.

The government is composed by the president and the ministers. The President of the government is proposed to the National Assembly by the President of the Republic after consultations with the leaders of parliamentary groups, and is elected by the Assembly by absolute majority vote. If the candidate proposed by the president doesn't receive enough votes, the President shall propose another candidate within fourteen days, after renewed consultations. In this phase, a candidate may be presented also by parliamentary groups or

a minimum of ten deputies. If no candidate is elected, the President of the Republic dissolves the National Assembly and calls new elections, unless within eighty-four hours the National Assembly decides by a majority of votes cast by those deputies present to hold new elections for President of the Government, whereby a majority of votes cast by those deputies present is sufficient for the election of the candidate (art.111). We have to notice that the repeated failure to form a government is the only case in which the President can dissolve the Assembly.

Ministers are appointed and dismissed by the National Assembly on the proposal of the President of the Government.

The work of the Government is supervised by the Assembly through its working bodies, parliamentary questions, interpellations, motions of no confidence against the individual minister or the Government as a whole, or by lodging impeachment charges against the prime minister or individual minister before the Constitutional Court. The constitution provide, at article 116, the instrument of constructive vote of no confidence, i. e. the National Assembly may pass a vote of no confidence in the Government only by electing a new President of the Government on the proposal of at least ten deputies and by a majority vote of all deputies.

At the same time, the government is able to influence the work of the National Assembly by proposing laws and other acts. The prime minister can also require a vote of confidence to the assembly, and may also tie it to the adoption of a law or to some other decisions in the National Assembly.

Giving these provisions, it appears clear that the Constitution of Slovenia designed a parliamentary system, in which the focus of political decision-making lies with the parliament and the government, while the President of the Republic has the same features of the President in the parliamentary systems, with the only exception that he/she is directly elected by the citizens.

b) Croatia

The Constitution of Croatia of 1990 was a declared attempt of imitating a Constitution of a foreign country: in drafting the document, in fact, the Constituent Assembly tried to introduce in Croatia the French semi-presidential system designed in 1958 Constitution, as it was modified in 1962¹⁴³. The Croat doctrine justified the choice both from an historical point of view, arguing that this was in continuity with the role of the *ban*, the Governor of the banovinas, during the Austrian domination, and from a comparative point of view, affirming that this form of government was more stable and democratic than the parliamentary and the presidential systems.¹⁴⁴ According to many authors, however, the real *ratio* of the adoption of the semi-presidential system was the necessity of the majority party to attribute an hegemonic role in the hands of its leader, Franjo Tuđman. Among them, Pavle Nikolic defined the Croatian form of government “vitiated parliamentary system”; according to him, the final goal of the constituents became clear at the end of Tuđman regime, when the final constitutional dispositions that provided an “omnipotent position” to the President.¹⁴⁵ Furthermore, during the constitutional process, the “technical” members of the Commission that drafted the Constitution tried to oppose to the provisions that entrusted greater powers in the hands of the President, but the HDZ representatives, who composed the majority inside the commission, were able to prevail¹⁴⁶.

Although in the adoption of the Constitution, several compromises were reached with the opposition forces, the HDZ, thanks to the majority gained in the elections, was able to introduce the elements they wanted. The HDZ was a distinct Croatian phenomenon. Although it was registered in 1989, it didn't transform itself into a political party suitable to act within the democratic institution, neither after the electoral victory. It tried, instead, to institutionalize itself in a form of political regime¹⁴⁷. In its first years it showed several feature that are more similar to a populist movement, rather than a political party. Firstly, instead of a clear party program, they offered a fuzzy platform for democratic transition

¹⁴³ T. Cerruti, *La forma di governo della Croazia: da “presidenzialismo” a regime parlamentare*, in *Diritto Pubblico Comparato ed europeo*, fascicolo 4, Giappichelli editore, Milano, 2001, p.1819. Differently from the majority of Croat and foreign doctrine, however, Orlandi recognizes in the Austrian Constitution the model adopted in Croatia. In particular, she asserts that the role of the Head of State correspond to the Schmitt's prototype of “guarantor of the Constitution”, M.A. Orlandi, *La diffusione del sistema semipresidenziale nell'Europa centro-orientale*, in A. Giovannelli (cur.), *Il semipresidenzialismo: dall'arcipelago europeo al dibattito italiano*, Torino, Giappichelli, 1998, 162 ss.

¹⁴⁴ Ibid.

¹⁴⁵ P.Nikolic, *I Sistemi costituzionali dei nuovi Stati della ex-Jugoslavia*, Torino, Giappichelli, 2001, cit. p. 91

¹⁴⁶ T. Cerruti, *La forma di governo della Croazia: da “presidenzialismo” a regime parlamentare*. Cit. P. 1826

¹⁴⁷ G. Čular, 2000, *Political Development in Croatia 1990-2000: Fast Transition-Postponed Consolidation*, cit. p. 35

dominated by only one issue – sovereignty of the Croatian state. Secondly, the leader of the movement, Tuđman, very soon became “untouchable” charismatic leader with almost messianic meaning for his followers, rather than a party leader. And thirdly, this highly emotional, nationalistic and historically oriented populism functioned as a strong incentive for considerable part of population to find the movement much more than one could demand from a political party – psychological security of collectivism in the times of rapid social changes and a promise for national and individual prosperity that, according to their beliefs, had been precluded to them during the communist Yugoslavia.¹⁴⁸

According to the 1990 Constitution, the powers of the President could be divided in three categories: the ones that were typical of every Head of State, the ones that characterized the President in every semi-presidential system, and the ones that were peculiar of the Croat system. Among the first category, we could see the duty of the President to represent the country at home and abroad (art. 94), the power to call the elections of the two chambers of the *Sabor* and to convene their first session, to call referenda, to grant pardons and to confer decorations and other awards specified by law (art. 98). The President also received diplomats of foreign countries (art. 99) and was the commander-in-chief of the armed forces of the Republic. On the basis of a decision of the Croatian Parliament, the President proclaimed war and concluded peace (art. 100). The faculty of dissolving the assembly was strictly regulated by the Constitution at article 104: the President may dissolve the House of Representatives at the proposal of the Government and with the counter-signature of the Prime Minister, after having consulted the Chairman of the House, if this House has passed a vote of no confidence to the Government, or if it has not approved the state budget within a month from the date when it was proposed. We can say without doubt that the Croat President had less autonomy in the dissolution of the first chamber than his French colleague: in the French Constitution, in fact, the President can dissolve the assembly without any countersignature of the Prime Minister. Finally, the President could be impeached for any violation of the Constitution he has committed in the performance of his duties. Article 105 states that the proceeding for the impeachment should be instituted by the House of Representatives by a two-thirds majority vote of all representatives. The final judge on the impeachment was left to the Constitutional Court, that should decide with a two-third majority vote of all justices.

Among the “semi-presidential” functions, the Head of State was responsible for abiding by the Constitution, and ensured the continuance and unity of the Republic and the regular functioning of government (art. 94). He appointed and relieved of duty the Prime Minister of the Republic of Croatia and, at the proposal of the Prime Minister, appointed and relieved the Ministers (art. 98). In the event of a state of war or an immediate danger to

¹⁴⁸ Ibid., pp. 35-36

the independence and unity of the Republic, or when the government bodies are prevented from regularly performing constitutional duties, the President of the Republic should pass decrees with the force of law and take emergency measures. When the Parliament is in a position to meet, the President should submit decrees for approval to the Chamber of Representatives (art. 101). As we saw before, also the Slovene Constitution has a similar disposition, at article 108. However, the two disposition are quite different: while article 108 of the Slovene Constitution provides that the President may issue decrees with force of law if the National Assembly is unable to convene due to a state of emergency or war, implying that these conditions shall be present at the same time, and that in particular the first one should be a consequence of the second, article 101 of the 1990 Croat Constitution affirmed that the President of the Republic should pass decrees in the event of a state of war or an immediate danger to the independence and unity of the Republic, or when government bodies are unable to meet. Thus, the presence of only one of these conditions was enough to enable the President to issue decrees with force of law. Furthermore, the Slovene Constitution provides that the President may issue decrees only on the proposal of the Government, a condition that was not present in the Croat Constitution, where the President issued decrees by himself.

Another semi-presidential function of the President was the possibility to preside over sessions of the Government at which he was present (art. 102).

The President was directly elected by the citizens, with the possibility of a run-off in case none of the candidate reached the 50% of the votes in the first round. The President remained in charge for five years, and could be elected only two times (art. 95). The President of the Republic, finally, should not perform any other public or professional duty, except for party-related duties (art. 96). This provision was very important, since gave to the President, Franjo Tuđman, the possibility to be at the same time President of the Republic and leader of his party, a role that permitted him to control the HDZ representatives, and thus the parliamentary majority.

The Presidential functions that are peculiar to the Croat system instead were the possibility to remove the President of the Government (art. 98), the power, at the Government's proposal, to decide on the establishment of diplomatic and other representative offices of the Republic of Croatia abroad, and to appoint and recall diplomatic representatives of the Republic of Croatia (art. 99) and the possibility to convene a session of the Government of the Republic of Croatia and to place on its agenda items which he deems should be considered (art. 102). The President had also the faculty

to appoint and recall the members of the Presidential Council and other advisory and auxiliary bodies that assisted him in the performance of his duties (art. 106).¹⁴⁹

The President shared the executive power with the Government. It consisted of a Prime Minister, Deputy Prime Ministers, Ministers and other members (art. 108). It should pass decrees in conformity with the Constitution and law, introduce bills, propose the state budget and enforce laws and other regulations enacted by the Croatian Parliament (art. 110). The Government was responsible to the President of the Republic and the House of Representatives of the Parliament of the Republic of Croatia (art. 111). The President of the Government, within fifteen days from his nomination, should present the Government to the House of Representatives and ask for a vote of confidence to the Government. The absolute majority was required in order to approve the government (art. 112). The vote of confidence to the Prime Minister, individual Government members or the Government as a whole may be requested by a tenth of the representatives in the House of Representatives. A vote of confidence in the Government may also be requested by the Prime Minister. If the House of Representatives rejected the proposal for a vote of no confidence, the representatives who made it may not again make the same proposal before the expiry of three months (art. 113).

The 1990 Constitution established a bicameral system. The Croatian Parliament (Sabor) was defined in article 70 as a body of the elected representatives of the people and was vested with the legislative power. It consisted in the House of Representatives and the House of Counties. The House of Representatives was composed by no less than 100 members and no more than 160, elected directly by the citizens. The House of Counties was composed by three representatives per county, elected directly by the citizens of the county. Five more representatives in the House of Counties were appointed by the President “from among citizens especially deserving for the Republic” (art. 71). This is the so called virile right, that was applied in a very controversial way by Tuđman in 1993, when he appointed five members of his party inside the House, increasing the absolute majority of his party inside this Chamber.¹⁵⁰ Representatives were elected for a four years term (art. 72).

The competences of the House of Representatives were enumerated in article 80. This chamber worked as a first Chamber, and it was vested of the most important legislative functions. In particular, it decided on the enactment and amendment of the Constitution, passed laws, adopted budget, decided on war and peace and on alterations of the borders of the Republic, called referenda, carried out elections, appointments and relief of office, in conformity with the Constitution and law, supervised the work of the government and

¹⁴⁹ See T. Cerruti, *La forma di governo della Croazia: da “presidenzialismo” a regime parlamentare*. Cit. pp. 1820-1821

¹⁵⁰ M. Kasapović, *Electoral Politics in Croatia 1990-2000*, cit. p. 5

the holders of public powers responsible to the Parliament, granted amnesty for penal offenses, and conducted other affairs as specified by the Constitution.

The House of Counties, instead, worked as a Second Chamber, proposing bills to the House of Representatives and giving its opinions on questions falling within the competence of the House of Representatives. As the National Council of Slovenia, the House of Counties may ask the House of Representatives to re-consider a certain law. In this case, the law must be approved by the absolute majority of the members of the House of Representatives (art. 81). The two chambers used to make decisions by simple majority vote, except for laws which regulated national rights, that required a two-third majority, and laws that elaborate the constitutionally defined freedoms and the rights of man and the citizen, the electoral system, the organization, responsibilities and operation of local self-government and administration, that required the absolute majority of the votes, and for any other case specified by the constitution (articles 82-83).

Art. 93 provided a popular defendant, or Ombudsman, who should protect the constitutional and legal rights of citizens in proceedings before government administration and bodies vested with public powers. The Ombudsman was a commissioner of the Croatian Parliament, and should be elected by the House of Representatives for a term of eight years.

c) Serbia

Serbia was the first Yugoslav republic that adopted a Constitution, on 28 September 1990. The new Constitution, according to Irena Pejic, was a clunky attempt to go beyond the constitutional and political differences about the functioning of the Socialist Yugoslavia.¹⁵¹ The Constitution was adopted by the Assembly elected in 1989, when the Socialist Party of Serbia was the only political party that participated. Thus the Assembly had no democratic legitimacy.

According to Nikolić, the Constitution, drafted by a single party, while the opposition parties could only protest outside the assembly, clearly reflected the will of the ruling elite to remain in power.¹⁵² On the other hand, in order to be acceptable by the Western countries, the new Constitution should ensure the respect of the democratic principles. For this reason, we could find in the text articles that established and regulated the referendums (art. 81) and the popular legislative initiative (art. 80), that stated the rights and freedoms of the men and the citizens (second part), on the one hand, and on the other hand other dispositions that, concerning the powers of the President of the Republic, limited the democratic development.¹⁵³

The Constitution of Serbia was drafted on the basis of the principle of separation of powers, introducing a mixed system, with some features that are typical of the parliamentary system and some other that are typical of the presidential model. Although was clearly stated in the Constitution the will to introduce a separation of powers that is typical of a parliamentary form of government, the powers that the President of the Republic assumed made the system closer to a presidential one.

The 1990 Constitution proclaimed the State of Serbia, ignoring the SFRY's 1974 Constitution. Article 1, in fact, affirmed that "Serbia is a democratic state of all citizens living within it", while in the following articles were identified the territory of the Republic (art. 4), the symbols (art. 5), the nationalities that live in it (art. 8), and the organization of power.

The relationship between the republic of Serbia and the SFRY are regulated in article 135, and should consist in two aspects.

First of all, the Constitution of Serbia stated that the rights and duties of the Republic, which is part of the SFRY, should be accomplished in conformity with the SFRY

¹⁵¹ I. Pejic, *Il sistema di separazione dei poteri e la nuova costituzione serba del 1990*, in S. Gambino "Costituzionalismo europeo e transizioni democratiche", Giuffrè editore, Milano, 2003, p. 169

¹⁵² P. Nikolić, *Dalla disgregazione della <<Seconda>> all'instaurazione della <<Terza>> Yugoslavia*, in "Quaderni Costituzionali", a. XII, n. 3, ed. Il Mulino, 1992, p. 533

¹⁵³ *Ibid.* p. 533

Constitution.

Secondly, the 1990 Constitution clearly stated the duty of the agencies of the Republic to protect the interests of Serbia, if the federation or the other Republics, violating the rights and duties provided in 1974 SFRY Constitution, attempted to the equality of the rights of the Republic of Serbia or endangered its interests without any compensation.

With the adoption of the 1992 Constitution of the Federal Republic of Yugoslavia and the break out of Yugoslavia, this provisions became obsolete.¹⁵⁴

The National Assembly was composed by a single chamber made by 250 representatives, elected every four years. The representatives, according to article 76, represented the citizens of the constituency he has been elected in. This provision, however, became outdated when the 2000 electoral law provided a single constituency that covered the entire territory of Serbia.

The powers of the National Assembly are enumerated in article 73. They were the typical powers of any sovereign state, and comprehended also some foreign policy powers such as ratifying international treaties, or declaring peace and war.

The President was directly elected by the citizens every five years. The Constitution gave him some ceremonial powers, and some powers that are typical of any semi-presidential system, namely the task of conducting “affairs in the sphere of relations between the Republic of Serbia and other States and International Organizations in accordance with the law” (art. 83, c. 4), and the possibility to establish professional and other kind of services to conduct affairs falling within his jurisdiction (art. 83, c. 11). The article 83 provided also special powers in case of war or immediate danger of war: if the assembly is unable to meet, after obtaining an opinion from the prime minister, the President could establish the fact of an immediate danger of war or proclaim the state of war. During these circumstances, the President may, at his own initiative or at the proposal of the Government, pass the enactments relating to questions falling within the competence of the National Assembly, with the duty to submit them to the National Assembly for approval as soon as it is in a position to meet. If the security of the Republic, the freedoms and rights of man and citizen or the work of State bodies and agencies are threatened in a part of the territory of the Republic, the President, at the proposal of the Government, may proclaim the state of emergency. In this case, the President can issue decrees, but they should be in accordance with the Constitution and law. Differently from the other two constitutions we examined before, the Constitution of Serbia adopted different provisions for the state of war and the state of emergency. It’s interesting to notice that, in the case of the state of emergency, it was not required that the assembly was unable to meet, and it’s not specified if the acts the President adopted in such circumstances should be

¹⁵⁴ Ibid. p. 536

submitted to the assembly.

In the legislative process, the President had the function to promulgate the laws. The President may require to the Assembly to vote again on a law prior its promulgation, but he was bound to promulgate it if it was passed for the second time in the National Assembly (art. 84).

At the proposal of the Government containing justified grounds, the President of the republic may dissolve the National Assembly (art. 89).

The Government was vested of the executive power. It implemented and enforced the laws of the National Assembly, proposed laws, decrees, and the development plans (art. 90). The President of the Republic, after hearing the opinions of the representatives of the majority in the National Assembly, propose to the latter a candidate for the post of prime minister. The candidate should present his program and propose the list of ministers of his Government to the National Assembly (art. 92). The Government was responsible only towards the National Assembly, that could vote no confidence in the Government or in one of its members (art. 93). The Government may also ask for a vote of confidence. The Prime Minister, finally, may propose to the National Assembly the dismissal of individual members of the Government.

As we could see, the Constitution of Serbia remained extremely vague in defining the presidential powers. In particular, the activity of the President could not be controlled by any political agency. His acts made in time of peace didn't need any countersignature by prime minister or ministers, while on the decrees made during the state of war or the threat of war no control of constitutionality was required. Furthermore, his right to dissolve the assembly in any time was an important tool to influence the parliamentary debate, and forcing political party to converge on the positions of the party of the President.

Finally, the bureaucratic impeachment procedure made him almost untouchable. Article 88, in fact, provide that the impeachment procedure should be initiated by two thirds of the members of the assembly, in case of a violation of the Constitution. In this case, the President could be removed not by a judgment of a tribunal, but by a popular vote. In essence, the recall of the President should be decided upon by a sort of referendum, where no quorum was required. The President was removed if the majority of the total number of voters vote in favour of the recall. If the voters do not recall the President, instead, the National Assembly should be dissolved.

The form of Government in Serbia, thus, is a mixed system, in which the President could exercise a very strong role. However, as we will see in the next chapter, the Constitution didn't impose a strong presidency: the fact that, until 1997, the presidency was so influent in the main decisions of the country was a consequence of the hegemonic role of the

President, Slobodan Milošević, who was at the same time Head of the State and unquestioned leader of the ruling party, the SPS. Proof is that his successor, Milan Milutinović, was much less involved in the political arena.

4. Yugoslavia: federation or confederation?

The Constitution of the “third” Yugoslavia was adopted and proclaimed by the representative body of the Socialist Yugoslavia in 1992, under proposal of the Serb National Assembly and the Assembly of the Republic of Montenegro. Since its adoption, many professors argued that this Constitution was null. Pavle Nikolić, in particular, identified three reasons for its legal nullity.

First of all, according to the debate of that time, the new Yugoslavia should succeed in the international arena to the socialist Yugoslavia, and in order to guarantee this, the authors of the Constitution thought that using the amending procedure specified in 1974 Constitution. However, those provisions were violated, the order of different stages prescribed by the document was distorted, and some of them were simply omitted.

Secondly, the Federal Council of the Assembly of the SFRY that adopted the Constitution was not legitimated in drafting it, neither was legally valid. The electoral mandate of the Federal Council, in fact, was expired in 1990, and the decision to extending its mandate was not in conformity with the Constitution. The Federal Council was not legitimated too, because its member were elected in 1986, when there was no other party then the Communist League. In 1992, instead, many other parties appeared both in Serbia and in Montenegro, thus the Federal Council didn't represent the federation anymore, and so it was not legitimized to draft the Constitution.

Finally, the Constitution of one of the two Republics that composed the Federation, the Republic of Serbia, didn't provided the possibility to associate Serbia with another state, nor the change of the status of Serbia, and so neither the procedure required for these acts. Furthermore, there was no constitutional basis for the acts of the Governments and the Presidents of Serbia and Montenegro during the period of the adoption of the Constitution.¹⁵⁵

The “third” Yugoslavia failed also to succeed the Socialist Yugoslavia in the international context. The Security Council, in fact, with the Resolution n. 777 of 19 September 1992, declared the disruption of the Socialist Yugoslavia and the impossibility of the “Serb-Montenegrin bloc” to take its seat at the UN General Assembly.¹⁵⁶

On article 77 were defined the matters in which the organs of the Federation could formulate policy, enact and enforce federal legislation, other laws and general enactments,

¹⁵⁵ Ibid. pp. 541-542

¹⁵⁶ C. Di Turi, *Formazione di nuovi stati e autodeterminazione dei popoli: il caso dell'ex-Jugoslavia*, in S. Gambino “Costituzionalismo europeo e transizioni democratiche,” Giuffrè Editore, Milano, 2003, pp. 128-130

and ensure judicial protection. As it could be noticed, the range of activity of the federation is quite small, and regarded the internal market, the freedoms, rights and duties of man and the citizen, the control of the borders, the development of the Federation, defense and security of the Federal Republic.

The Federal Assembly was composed by two Chambers: the Council of Citizens, and the Council of the Republics. The members of the first chamber were elected by the citizens, the members of the second instead were elected by the assemblies of the member republics of the Federation (Serbia and Montenegro). The Assembly was vested by the legislative power: adopted federal statutes, laws and general enactments, approved the federal budget and final balance sheet, ratified international treaties falling within the jurisdiction of the Federal Republic of Yugoslavia, proclaimed the state of war, threat of war and state of emergency, decided war and peace, granted pardons, elected the judges of the Federal Constitutional Court, decided on the alteration of the borders, and on admission of other states as member republics. It had also the duty to control the Government, although in the praxis the assembly was not able to impose its will on it.

The competences of the President of the Republic were enumerated in article 96. He was the representative of the country at home and abroad, he promulgated the federal laws and issued instruments for ratification of international treaties. He appointed and recall the ambassadors of Yugoslavia under government proposal, conferred decorations, granted pardons and performed other duties. He was also the commander-in-chief of the armed forces, but he should exercise this power in conformity with the decisions of the Supreme Defense Council, of which he was a member. The President, as we can see, had no possibility to influence the policies of Yugoslavia. In fact, the President had no relationship with the federal Government, nor with the Assembly. His role, thus, was only as a guarantor of the Constitution.

The electoral system contributed to the weakness of this institution. The President, in fact, according to the 1992 Constitution, was elected by the Federal Assembly.

Giving the weak position of the President, the federal Government was the centre of the executive power. The federal Government formulated and conducted domestic and foreign policy and enforce federal statutes, other laws and general enactments. It introduced bills, adopted decrees, resolutions, and other legislation. It fostered relations between the Federal Republic and other states and international organizations. It created and abolished federal ministries and other federal agencies and organizations, determined their organizations and competencies and directed and coordinated their work. It also proclaimed the threat of war, the state of war, or emergency, and in these cases adopted measures regulating matters within the jurisdiction of the federal Assembly when the Assembly was not able to meet.

The Prime Minister was proposed by the President to the Assembly, after consultations with the spokesmen of the different parliamentary groups. Prime Minister and President should come from different member states. The Government and its members were responsible to the Assembly, that could vote no confidence. However, the possibility to control the Government by the Assembly was quite low. The most important instrument of control were the parliamentary questions, but the amount of that was very low. According to the Constitution, the *plenum* of the Assembly should decide when to introduce the parliamentary questions in the agenda, but in the praxis President of the Chamber, who was a member of the ruling coalition, decided when the parliamentary questions should be discussed. Furthermore, although the internal regulations explicitly prescribed that the reply should be given by the minister in the same day, in praxis the reply was given after a long time, and was a written reply. Moreover, in many cases, the Government didn't reply at all.¹⁵⁷

On the other side, the Government could influence the Assembly, thanks not only to the possibility to propose the vote of confidence, but also with the power of dissolving the assembly, if the latter was unable, for a prolonged period, to exercise its competences.¹⁵⁸

Now that we have analysed the form of government of the Federal Republic of Yugoslavia, it's time to answer to our previous question: was the "third" Yugoslavia a federation or a confederation? I have already mentioned the fact that the competences attributed to the federation by article 77 of the Constitution of the Federal Republic of Yugoslavia were very limited. Moreover, the Constitution stated, at article 6, that the member republics were sovereign in matters which under the Constitution were not reserved to the jurisdiction of the Federal Republic of Yugoslavia. The article gave also to the member republics the right to organize their government under their own constitutions. Article 7 affirmed that, within their competencies, the member republics could maintain relations with foreign states, establish their own missions in other states, and join international organizations. They could also conclude international agreements, but not to the detriment of the Federal Republic of Yugoslavia or the other member republic.

According to Nikolić, there are many elements in common between this constitution and the 1974 Constitution of the Socialist Yugoslavia, such as the already mentioned rights of the member republics to determine their own form of government, the right to entertain relations with foreign countries, or the right of the Presidents of the republics to participate in the Supreme Defense Council (art. 135) and the right of the member republics to intervene in the procedure for amending the Constitution, giving them a veto power in certain matters (art. 140 and 141). For these reasons, Nikolić defined the form of

¹⁵⁷ P. Nikolić, *La Forma di Governo Jugoslava*, Cit. pp.402-403

¹⁵⁸ *Ibid.* p. 403

state of the “third” Yugoslavia a confederation, rather than a federation.

Although Yugoslavia was perceived as a federal state, and thus should be sovereign, the large part of the scholars agree that the member republics had their own sovereignty.¹⁵⁹

According to Blagojevic, in fact, the member republics had a large amount of exclusive competences, comparing to the concurrent competencies and to the exclusive competencies of the Federation; in particular, the possibility to determine their own form of government, and their institutions of local government.¹⁶⁰ Vukotic, instead, endorsed the theory of the “shared sovereignty”, affirming that the federal Republics, owner of the “original” sovereignty, gave birth to the Federation, that was sovereign just in a derived way. The author also stressed the asymmetric functioning of the system, that on the one hand provided that the member states should respect the Constitution, and on the other side gave to the member republics the possibility to “discipline themselves from time to time,” keeping in their own Constitutional charters almost twenty provisions that are clearly in contrast with the federal Constitution.¹⁶¹

Markovic, on the other side, clearly affirmed that Yugoslavia was “without doubts” sovereign. Moreover, according to him, Yugoslavia presented some features of an unitary state, such as the juridical connotation of the citizens, that were equal, and some features of the confederation. Thus, the member republics would be sovereign only in those fields in which they had competencies.¹⁶²

Other authors instead affirmed that the federal Constitution was only a framework created by the ruling elites of the two countries in order to maintain the large part of the competencies in the hand of the political leaders of the two member republics, avoiding the creation of a unitary force across the federation.¹⁶³

A part from these disputes, the Constitution envisaged also some irregularities. In particular, as I have already mentioned, the 1992 federal Constitution was in contrast with some disposition of the 1990 Constitution of the Republic of Serbia. The Constitution of Yugoslavia didn’t provide any disposition on the deadline before which the member Republics should adapt their Constitution to the federal document. Further, after the

¹⁵⁹ T. Cerruti, *Recenti vicissitudini di uno stato balcanica: il caso jugoslavo. Da un federalismo dubbio a una confederazione a termine?* Cit. p. 15

¹⁶⁰ S. Blagojevic, *Status Republike-clanice u ustavno-pravnom sistemu SR Jugoslavije i ostvarivanje nacela federalizma (Il ruolo degli Stati membri nel sistema costituzionale della Jugoslavia e la realizzazione dei principi del federalismo)*, in *Pravni zbornik*, 1998, I-II, pp. 13-29

¹⁶¹ M.M. Vukotic, *Jugoslavia – Juce, danas, sutra* (La Jugoslavia – ieri, oggi domani), in *Pravni Zbornik*, 1998, I-II, p. 20

¹⁶² R. Markovic, *Ustavno pravo i politicke institucije*, Belgrade, Sluzbene Glasnik, 2001, p. 467

¹⁶³ P. Nikolić, *Od kvazi federacije do jedinstvene drzave* (Da quasi-federazione a Stato unitario), in *Savezna Republika Jugoslavija kao dvoclana Federacija (RFJ come federazione di due membri)*, atti del Convegno, Podgorica, Crnogorska Akademia nauka i umijetnosti, 1995, pp. 220-225

adoption of the Constitution, the Federal Constitutional Court, that should control and eventually solve conflicts between laws and constitution, remained inactive.

To sum up, classifying the institutional framework of the “third” Yugoslavia is quite complicated. The Constitution was badly written, and some of its dispositions remained in contrast with the Constitutions of the member republics, in particular with the Constitution of Serbia, that was written two years before. Furthermore, the assembly that adopted the document was composed by political personalities that were part of the old communist regime. Thus, if they introduced some democratic features, they did so because moved by international pressures, rather than by a genuine believe in democratic values. The Serbs, believing that the Constitution of the Socialist Yugoslavia was designed in order to restrict their potentialities, wanted to maintain the large majority of the competencies to the member republics. As we will see in the next chapter, however, when Milošević became President of the Federation, they moved in the opposite direction, trying to increase the competencies of this organ far beyond the Constitutional provisions. A union between two republics cannot last, if the rules of the game are not respected by the two players, and in fact the “third” Yugoslavia collapsed very soon.

5. Conclusions

With the breakup of the Socialist Yugoslavia, the different countries had to create new states, and adopt new constitution. Every country pretended to adopt a constitution inspired to the western democratic model. However, only Slovenia proved to be ready for democracy. Both Croatia and Serbia, instead, because of the nationalist ideology spread in the two countries, and of the lack of a previous democratic tradition, adopted constitutions that didn't provide the checks and balances that a liberal state required. Moreover, the turbulences inside and outside the two countries made the centralization of the powers in a single, charismatic leader, more acceptable by the citizens of those countries.

In the next chapter, I will analyse how the constitution had been applied, and the successive amendment to the constitutions.

Chapter 3

The consolidation of the new institutions

1. Introduction

The way taken by Slovenia, Croatia and Serbia toward the consolidation of the democratic system and institutions was different from a country to another. While Slovenia had a very straight path toward the creation of a democratic system, that allowed it to join the European Union at the same time of the countries of the Central Europe, Croatia had to pass through a period of authoritarian democracy, where the major political force, the HDZ, and its President, Franjo Tuđman, exercised an hegemonic role in the political and economic spheres. Serbia, instead, after the fall of Milošević, the collapse of the “third” Yugoslavia, and the secession of Montenegro in 2006, had made many steps in the right direction, but it’s still far from the status of democratic country.

An important factor that slowed the consolidation of the democratic institution were the clashes between the different ethnic groups, that pushed for more authoritarian interpretations of the constitutions both in Croatia and Serbia.

The Socialist Yugoslavia, in fact, was a multiethnic country, where the different ethnic groups used to live together, sharing the same territory. The same borders of the member republics were not designed on the basis of the ethnic distribution of the population. For this reason, many Croats and Serbs used to live in Bosnia and Herzegovina, while the 12% of the population of Croatia was Serb. Finally, in Serbia there were two important minority groups: the Hungarians and the Albanians. They lived in specific regions of Serbia, namely in Vojvodina and Kosovo; for this reason the 1974 Constitution proclaimed these two regions autonomous, but it left them inside the jurisdiction of the Republic of Serbia.

In the next paragraph I will rapidly show the conflicts that erupted in those years inside Croatia and Serbia. Then I will make, as I did in the last chapter, an overview of the party systems in those countries, and finally I will analyse the constitutional reforms in these countries.

2. Ethnic conflicts

In the region of Krajina, the Serbs, orchestrated by Belgrade, organized a “Referendum on Serbian Autonomy” on 17 August 1990, which marked the beginning of the so-called Log Revolution¹⁶⁴. On 30 September the Serbian National Council declared the “autonomy of the Serbian people on ethnic and historic territories on which he lives and which are within the current boundaries of the Republic of Croatia as federal unit of the Socialist Federal Republic of Yugoslavia”. On 21 December, Croatian Serbs in Knin announced the creation of the Serbian Autonomous District (SAO Krajina) and declared their independence from Croatia¹⁶⁵.

The adoption by the Zagreb Government of the new flag and coat of arms, which were similar to the symbols used by the Ustaša during the Second World War, and the use of the nationalist language and terminology, helped the radical wing of the SDS, led by Milan Babić and backed by Belgrade, to achieve the control of the party against the moderate wing, who instead was trying to negotiate with Croatian government¹⁶⁶. The party withdrew from Parliament and engaged in the violent ethnic rebellion of part of the Serbs living in Croatia. The Party was banned in 1992 by the Constitutional Court, due to the violation of Art. 43 c. 2, which stated that “The right to free association shall be restricted by the prohibition of any violent threat to the democratic constitutional order and the independence, unity and territorial integrity of the Republic”. After the military defeat of the SAO, its activity ceased.

A large Serb minority lived, and still live nowadays, in Bosnia and Herzegovina. In this country a civil war erupted too. Belgrade supported Serb rebels in this region as it did for the Serbs who lived in Croatia. The intervention of the international community, that imposed a ceasefire and a new constitution of Bosnia that granted the independence of the country, although not the governability, generated a political crisis of Serbian government, that ended with the dissolution of the National Assembly before it could vote the no confidence to the government.

Serbia was also involved in a deep internal clash in the region of Kosovo-Methoja, where the majority of the population was composed by Albanians. As I have already mentioned in the first chapter, the increase of the autonomy of the two autonomous unites of Kosovo and Vojvodina, provided by 1974 Constitution, was interpreted by many Serbs as an attempt, pursued by Tito (and the Komintern), to weaken the Republic of Serbia and the

¹⁶⁴ A. Petričušić, *Ethno-Mobilisation and its Consequences in Croatia*, cit. pp. 43-44

¹⁶⁵ *Ibid.* p. 44

¹⁶⁶ *Ibid.* pp. 44- 45

importance of Serbian population, creating, only in its territory, two enclaves more and more independent and difficult to control, who threatened the power of Serbia not only at the State level, but also at federal level, through its representatives in the federal institutions, and pursuing, inside them, policies with the aim of contrasting the government of Belgrade¹⁶⁷. Following the rise of Milošević, who became president of Serbia in 1989, in the region was imposed the state of emergency, and the League of Communist of Kosovo was dissolved. With the 1990 Constitution of Serbia, moreover, the autonomy of these two provinces was extremely reduced. The Albanians replied with the creation of a new political party, the Democratic League of Kosovo, and the parliament of Kosovo proclaimed on 2 July 1990 the “Republic of Kosova¹⁶⁸”. This act was not a proclamation of the secession of Kosovo from Yugoslavia, but instead it was an attempt to create a republic that should be member of Yugoslavia, as Serbia and Montenegro were. Belgrade replied dissolving the parliamentary assembly, but this didn’t stop the Democratic League of Rugova, who, having the support of the parliament, first adopted the Constitution of the Republic of Kosova on 7 September 1990, and then called a referendum on the international status of Kosovo for the end of the month. The turnout at this referendum was impressive: 87,5% of the population, almost everyone Albanian, voted for the full independence and sovereignty of Kosova. Meanwhile, the unemployment rate was rocketing, due to the “Serbization” of local administration promoted by the central government, that consisted in firing the Albanians and substituting them with Serbs bureaucrats. Until 1998, the Republic of Serbia and the Republic of Kosova coexisted, with the latter that created a real parallel-state, with a school system, an healthcare system,¹⁶⁹ and also tribunals, where was applied the folk law of the Albanian community. In 1998 the rise of the Freedom Army of Kosovo (the UÇK), that didn’t accept the reformist policies of President Rugova. The Freedom Army began a terrorist activity in Kosovo, killing Serb policemen and soldiers, and also Albanians who collaborated with the enemy. The breakout of the conflict and Serb reaction led to the intervention of the international community.¹⁷⁰

The conflict was not just an ethnic conflict. Since the different ethnic groups founded their identity on their religious belief, the conflict was also a religious conflict, as we could see in the city of Mitrovica, in the northern part of Kosovo, where the Serbs burned the Mosque,¹⁷¹ and, after the war, built an Orthodox cathedral in the Serb part of the divided

¹⁶⁷ T. Cerruti, *Recenti vicissitudini di uno Stato balcanico: il caso jugoslavo. Da un federalismo dubbio ad una confederazione a termine?*, cit. p. 20

¹⁶⁸ in Albanian the name of the region is Kosova, in Serb is Kosovo

¹⁶⁹ They didn’t create hospitals, but some places where they could give medical assistance

¹⁷⁰ M. Mazza, *Aspetti storico-giuridici e istituzionali della stato genesi (etero diretta) kosovara*, in *Diritto pubblico comparato ed europeo*, n. 2, Giappichelli editore, Milano, 2008, pp. 564-567

¹⁷¹ The large majority of the Kosovo Albanian are Muslims.

city. The Serb administration began the construction of a cathedral in the centre of Pristina too, but they stopped the construction when the Albanians, under UN Mission, retake the control of the city.

During a situation of crisis, in which the security and independence of a country is in danger, the population is usually more favourable to a strong executive; in addition, if the institutions and the democratic values are new and not rooted in the society, the possibility of a shift toward a non democratic form of government is more likely. However, the political actors, and the party system, played even a more important role.

3. The party system: coalitions, electoral laws and competition.

a) The electoral laws

The basis for the democratic functioning of the representative institution were established by the assembly who adopted the constitution. As I showed in the previous chapter, in Slovenia the Constitution was drafted by the different political parties, both member of the majority and the opposition. In Croatia and Serbia, instead, the ruling party had the possibility to determine both the constitution and the electoral law.

The electoral law is fundamental, since the choice between majority or proportional system, or the choice of the size of the constituency, or the threshold system, are typical instruments of political engineering that influence the party system.

For this reason, in Croatia, the HDZ, who controlled the majority of the assembly, imposed an electoral law that should grant its victory. The assembly thus adopted a segmented system, which combined the principle of representation, the rules of decision-making and the structural elements of the majority electoral system, and the proportional, with the aim of create a parliamentary majority capable of forming a stable government, and a fair representation of major political interests and social groups in the parliament. Basically, half of the seats were distributed through the majority system, in single member constituencies, in which there was an individual competition, while the other half were allocated through a proportional system, in multimember constituencies, in which there was a closed-list competition. In Croatia, however, during the 1990s the electoral law changed before every election, and every time it was modified in order to favour the HDZ. For this purpose in 1994, because the opposition parties organized themselves in a broad coalition, and because of the split of the moderate faction of the HDZ, that founded a new party, the Croatian Independent Democrats (HND), the ruling party decided to change the electoral law. The segmented system was maintained, but the ratio changed. Instead of distributing half of the seats with the majority system and the other half with the proportional, in the new electoral law the balance tipped in favour of the closed list seats. The reason of this reform was due to the fact that the HDZ was not sure of its victory against a united opposition in a winner-take-all system, and they knew that the equal distribution of the party in the country could have more benefit from a proportional law. Furthermore, the threshold was raised from 3% to 5%, and a differentiated threshold for electoral coalition was introduced. A second electoral reform designed to help the ruling party was the introduction of the right to vote for Croatian citizens who lived abroad. Already the 1990 Constitution legalized the right of all Croatian citizens, regardless of their place of abode, to take part in the presidential and parliamentary elections. Art. 45 c. 2, in

fact, stated that “in elections for the Croatian Parliament and the President of the Republic, the Republic shall ensure suffrage to all citizens who at the time of the elections find themselves outside its borders, so that they may vote in the states in which they find themselves or any other way specified by law”. This constitutional provision did not refer to the right of the expatriates in the usual sense of the word to participate in the Croatian parliamentary and presidential elections, but only to those with the Croatian citizenship. So it turned out that this right was intended for the Croatian citizens residents of Bosnia and Herzegovina, who were one of the three constituent peoples of the state¹⁷², among whom the HDZ was the most popular party. The 1995 electoral law provided the election of a fixed number of representatives (a tenth of the regular composition of the House of representatives) in a separate electoral unit and a separate electoral list. This choice was justified by the fact that the electorate who lived abroad was almost a tenth of the electorate living in Croatia. However, only the 27% of the citizens who lived abroad participated to the elections, thus, the citizens who lived abroad, and in Bosnia and Herzegovina in particular, were over-represented. The effect on the party system was that the HDZ increased the size of its majority, gaining the 59.1% of the seats instead of the 54.8% that they would win without the expatriates’ votes.

In 1999, finally, after the death of its historic leader, Franjo Tuđman, and the corruption scandals that involved high level party members and Croatian tycoons, the HDZ, knowing that it would lost next elections, introduced a proportional system. Thus, the 1999 “Law on the Constituencies for the election of representatives for the Croatian State Parliament” divided the country in ten multimember constituencies, and provided a separate constituency for the votes of the citizens who lived abroad and one for the “autochthonous national minorities”. The new electoral law stated also that the number of the representatives of the “diaspora” was linked to the number of voters abroad who effectively participated in the Croatian elections, and not to the size of the electoral body. The use of the non-fixed standard method, as it is called this method, reduced the number of the “diaspora” representatives from 12 to 6 (if they used the old repartition method, their representatives would be 14, as the normal constituencies). The ethnic minorities had the possibility to elect five representatives in an ad hoc constituency. They could also choose to vote for a candidate who ran in the regular constituency. In this case, the voter of the minority should request to be placed in the regular list to the polling commission. Thus the minority representation was regulated in a different way than in Slovenia, where the voters have the possibility to vote both for the minority representative and for the national party. This procedure caused many delays and confusion, because the number of

¹⁷² M. Kasapović, *Electoral Politics in Croatia 1990-2000*, cit. pp. 6-7

ethnic voters who chose to transfer their names from the ethnic list to the regular list was unexpectedly high¹⁷³.

In Slovenia, instead, the electoral law was adopted by an assembly composed by many small parties, and also some independent members. We have to remember that in 1990 elections for the constitutional assembly none of the political parties gained more than 18 % of the votes. For these reasons most of the parties preferred a proportional system, while a small number of parties was in favour of combining the proportional system with some plurality system correctives.¹⁷⁴ The 1992 electoral law provided, for the election of the representatives in the National Assembly, a proportional system combined with some elements of the plurality system. These correctives were the possibility to vote for individual candidates and the introduction of a threshold. In the new electoral law the Members of Parliament were elected in multimember constituencies; the seats were distributed first, in the constituency, using the method of the Hare quota (which guarantees more proportionality), and then the additional seats should be distributed at national level, according to the d'Hondt formula. The voters voted for an individual candidate of the list. The votes for candidates of a given party are totalled and given to the list. In this way, voters had the possibility to vote both for the individual candidate and for the party he belongs to at the same time.¹⁷⁵ The votes collected by the list were not distributed in accordance with the order of ranking from the list which was set up by the party, but according to the number of votes the candidates on the list perceived in the electoral unit¹⁷⁶.

In the first round the seats in the constituencies are distributed using the Hare quota. The rest of the seats are further distributed at national level on the basis of those votes which remained unused on quota distribution in the districts (the remainder votes), using the d'Hondt system.¹⁷⁷

Finally, the electoral law provided a threshold for individual party. The threshold was set at three parliamentary seats, that meant that the parties needed to win about 3.2% of the votes in order to pass the threshold. Differently from the other countries, in Slovenia the electoral law remained the same until 2000, when the threshold was raised from 3.2% to 4%, without reducing the fragmentation of the political system.

The Constitution of the Federal Republic of Yugoslavia granted to the member republics the right to determine the electoral law for the election of the members of the federal Parliament. For the first elections of the Federal Parliament of Yugoslavia, in Serbia was adopted a mixed system, in which 54 MPs were elected with the proportional system, and

¹⁷³ See the Report made by the International Republican Institute on the elections of Croatia in 2000

¹⁷⁴ F. Grad, *The Slovene Electoral System*, cit. p. 252

¹⁷⁵ *Ibid.* pp. 255-256

¹⁷⁶ *Ibid.* p. 256

¹⁷⁷ *Ibid.* p. 265

52 with the plurality system i.e. the winner was the candidate who gained the relative majority (first past the post). The proportional lists should overtake an electoral threshold of 5% in the single constituency. In the federal elections of May 1992, the SPS gained the absolute majority of seats in the Chamber of Citizens. The only other Serbian party who entered in the federal parliament was the Serbian Radical Party, who gained 23 of the seats distributed through the proportional system, and 7 of the one distributed through the plurality one. The protests inside the Republic of Serbia against the electoral law and the low turnout of these elections moved the President of the Federation Dobrica Ćosić and the Prime Minister of the Federation Milan Panić to call for new elections, that would be held in December of the same year.

The federal electoral law was modified in September 1992, introducing a proportional electoral system. In the territory of Serbia were established 9 multi-member constituencies. The seats were distributed using the d'Hondt formula. An electoral threshold of 5% at the constituency level was adopted¹⁷⁸. The same election system was extended also in Serbian parliamentary elections, orienting the Serbian party system toward the representation of the political minorities rather than to the protection of the government stability¹⁷⁹.

The 1996 local elections showed the beginning of the erosion of the political consent of the ruling party, the SPS. In order to ensure their victory in the federal elections, the Government modified the number of constituencies, increasing them from 9 to 29. This constituency system was extended also to the parliamentary elections of 1997, in which the SPS' coalition, taking advantage from the boycott of the liberal parties, gained the relative majority of the seats.

The electoral law for the parliament of Serbia changed again in 2000, immediately after the federal elections that showed an unexpected triumph of the opposition parties. When it was clear that the opposition parties, united in the DOS coalition, would win the next parliamentary elections, the ruling coalition amended the electoral law: instead of 26 constituencies they instituted a single constituency that corresponded to the territory of the entire country. The introduction of a national constituency, and consequently the application of the 5% threshold at national level, if in one hand made the electoral result more proportionate to the real strength of the political parties, on the other hand it reduced the possibility of smaller parties, and ethnic parties in particular, to be represented in the parliament. The introduction of the single, unified constituency, that covered the entire territory of Serbia, made the reach of the 5% threshold impossible for those parties that were rooted only on a certain region, as the ethnic parties were. In 2000 elections the parties that represented the ethnic minorities were able to overcome the threshold joining the DOS coalition, but in 2003 parliamentary elections the parties that composed the coalition run separately, thus the ethnic parties could not reach the threshold, and for the first time the ethnic minorities had no representatives inside the

¹⁷⁸ D. Possanzini, *Elezioni e partiti nella Serbia post-comunista (1990-2004)*, cit. pp. 86-87

¹⁷⁹ see V. Goati, *Elections in FRY from 1990 to 1998. Will of people or electoral manipulation*, Belgrade, CESID, 2001

National Assembly. After this event, the Parliament amended the electoral law, abolishing the 5% threshold for those parties that represented national minorities. In this way, those parties, in order to gain seats in the parliament, needed to reach or surpass the number of votes equal to the natural electoral threshold.¹⁸⁰

To sum up, while Slovenia adopted a proportional electoral system that crystallized the party competition since the beginning, Serbia and Croatia, until 2000 elections, adopted different electoral models, combining proportional and majority systems, in order to ensure to the ruling coalition to remain in power. Just before 2000 elections, instead, knowing that they would be defeated, modified the electoral law in order to increase its proportionality, and thus being influent also after their electoral defeat.

¹⁸⁰ D. Possanzini, *Elezioni e partiti nella Serbia post-comunista (1990-2004)*, cit. p. 49

b) Party system and electoral competition

The party competition was different in the three countries. While in Slovenia the party system stabilized itself immediately, in Croatia and Serbia we can recognise two different phases. The first phase lasted until 2000 elections, and was characterized by a dominant party system. In both countries the ruling party controlled the main state institutions, and used Government powers in order to pursue its own interests. Both parties, the HDZ in Croatia, the SPS in Serbia, could count on an untouchable leader, respectively Tuđman and Milošević. They both used the nationalist rhetoric in order to gain the power and raise consents, especially in most rural areas, and created a corrupted system based on the exchange of personal favours with the main tycoons.

After the victory in 1992 parliamentary elections, the HDZ started its gradual institutionalization into the political regime. In fact, due to the authoritarian nature of the movement, the type of transition (which in Croatian case entailed simultaneously the process of state building), and the impact of the war, the movement transferred much of its values, vocabulary and interpretations of reality into the common symbolic and institutional patterns that were spread out on a large segment of the Croatian society¹⁸¹. This was obvious in many domains: from an exclusive ethnic definition of the state and society, across dubious historical reinterpretations and rigid interpretations of the war of independence and national sovereignty to the cultivation of charismatic sentiments and authoritarian practice.¹⁸² These symbolic patterns, transmitted into formal and informal norms and rules, determined activities, behavior and expectations of many, not only political but also social, institutions and actors in such a comprehensive way that is possible to talk about the regime institutionalization.¹⁸³

In Serbia, instead, the communist rhetoric was replaced by the nationalist ideology. Milošević used the nationalist language and myths in order to mobilize the population against the ethnic minorities and ensure the consent of the rural areas of the country. Through mob rallies organized in all the federation, Milošević built the myth of a genocidal nature in other Yugoslav nations who were then accused of threatening the preservation of the Serbian nation¹⁸⁴. The Kosovo Albanians were thus demonized as internal enemies who were eradicating the Serb population in Kosovo, both by killings of the Serbs and by their high birth rate, resulting in demographic growth that was changing the ethnic structure of the province¹⁸⁵. The Croats were, in the other hand, demonized with the aim of reminding the Serbs in Serbia of the second World War Ustaše atrocities against the

¹⁸¹ G. Čular, *Political Development in Croatia 1990-2000: Fast Transition-Postponed Consolidation*, cit, p. 36

¹⁸² Ibid. p. 36

¹⁸³ Ibid. pp. 35-38

¹⁸⁴ A. Petričušić, *Ethno-Mobilisation and its Consequences in Croatia*, cit. p. 41

¹⁸⁵ Ibid. p. 51

Serbs, Jews and Roma in order to mobilize them¹⁸⁶. Those nationalist political campaigns were possibly due to the loyalty of the media controlled by Milošević regime¹⁸⁷.

In Slovenia the political system was determined by the output of the 1992 parliamentary elections, after which, despite the threshold, eight parties entered in the Parliament. None of the political parties that run for the elections was able to form a government alone. The strongest party was the Liberal Democrats, that gained 22 seats out of 88, not enough to form a government alone. Among the other political parties, the number of seats were quite similar: the Christian Democrats gained 15 seats, the United List of Social Democrats (a coalition of reformed communist parties) 14, the Slovenian National Party 12, the Slovenian People's Party 10, the Democratic Party of Slovenia 6, the Greens of Slovenia 5 and the Social Democratic Party of Slovenia 4. Thus a Grand Coalition, composed by six of the eight parties, was formed. The coalition, composed by both centre-right parties and the former communist representatives, remained in power until the following elections, held in 1996.

We can say, to sum up, that while in Slovenia it developed almost immediately a pluralist system, where different parties and coalitions, giving the proportional electoral law, tried to compose large coalitions, in Croatia and Serbia, in the first phase of their lives, the political system was a dominant party system, in which a single party, alone or in coalition with other parties, controlled the state institutions.

The war and semi-war periods that faced both Serbia and Croatia in the first years of their lives contributed to the enforcement of the ruling party. During this period, the conflict arena was mostly opaque, the polarization patterns unclear, and the civil, social, political and ideological conflicts suppressed¹⁸⁸. The wartime homogenization contributed to the annihilation of the political and the ideological identity and the rallying of most voters around the party in power¹⁸⁹. From 1995, however, the opposition parties started to organize themselves, and became a serious threat for the hegemony of the ruling party. In Croatia, the opposition parties won the local elections for the city of Zagreb in 1995. This generated the so-called "Zagreb crisis", since the President Franjo Tuđman, refused to approve any candidate the winner coalition proposed. Although the act of the President was legal, since the mayor of the city of Zagreb was equalized to the county prefect by law, and thus needed to be approved by the President of the Republic, the fact that the President strongly opposed all the candidate proposed by the coalition who represented the majority of the city assembly, affirming in a public statement that "We cannot allow an 'oppositional situation' in the capital", is a clear sign of this undemocratic tendency¹⁹⁰.

¹⁸⁶ Ibid. pp. 51-52

¹⁸⁷ Ibid. pp. 50-52

¹⁸⁸ M. Kasapović, *Electoral Politics in Croatia 1990-2000*, cit. p. 11

¹⁸⁹ Ibid. p. 10

¹⁹⁰ G. Čular, *Political Development in Croatia 1990-2000: Fast Transition-Postponed Consolidation*, cit., pp. 39-40

In Serbia, instead, after the defection of New Democracy, a small party that entered into parliament after 1993 parliamentary elections in coalition with the opposition parties, that left the opposition in order to enter in the government of the SPS, the DEPOS coalition dissolved. In 1996 the anti-government rally of March signed the beginning of an agreement between the two main opposition parties, the SPO and the Democratic Party (DS), led respectively by Vuk Draskovic and Zoran Đjindžić. In September of the same year, these parties created the *Zajedno* Coalition together with the Civic Alliance of Serbia (GSS) of Vesna Pešić, in order to participate to the local elections¹⁹¹. The result of these elections showed the beginning of the erosion of the political consent of the SPS: although it won in 144 out of 188 cities, it lost in important cities such as Belgrade and Nis¹⁹². The invalidation made by the electoral Commission and the local tribunals, pushed by the socialist Government and the Socialist Party¹⁹³, provoked an insurgence of civil protests in fifty cities for more than one hundred days¹⁹⁴. After the protests and the inspection of the OSCE, the Government recognized the electoral victory of the *Zajedno* coalition in Belgrade and the other cities¹⁹⁵. In Federal elections, instead, although small constituencies should reduce the representation for smaller parties, both the *Zajedno* coalition and the Radical Party succeeded in limiting the un-proportional effects¹⁹⁶. The SPS, on the other hand, in coalition with the ND and the JUL, a pro-Yugoslavia party led by Milošević's wife, Mirjana Marković, won the absolute majority of the seats of the Chamber of Citizens. After the federal elections of 1996 the differences between the different parties who composed the *Zajedno* coalition emerged, together with the internal struggle for the leadership of the coalition between Draskovic and Đjindžić (who meanwhile became mayor of Belgrade), with the latter who, refusing to support Draskovic's candidature for presidential elections of 1997, provoked the defection of the SPO from the coalition¹⁹⁷. Furthermore, while Đjindžić started a media campaign to boycott the 1997 elections, the members of the Serbian Renewal Party of Belgrade made a deal with the Socialist and the Radical Party leaders of the city in order to remove Đjindžić from his seat.

In Slovenia, the elections held in 1996 created a stalemate that left the country without a government for several months.

The 2000 elections became a watershed for both Serbia and Croatia. In the latter, the opposition parties won against the HDZ, which was weakened by the death of its leader

¹⁹¹ D. Possanzini, *Elezioni e partiti nella Serbia post-comunista (1990-2004)*, cit., pp. 91-92

¹⁹² Ibid. p.92

¹⁹³ In Belgrade, for example, the electoral Commission annulled the victory of 10 seats of *Zajedno* coalition, while the tribunal of Belgrade, upon the request of the socialist party, made void other 33 seats won by the *Zajedno* coalition.

¹⁹⁴ D. Possanzini, *Elezioni e partiti nella Serbia post-comunista (1990-2004)*, cit., p. 92

¹⁹⁵ Ibid. p. 92

¹⁹⁶ Ibid. pp. 92-93

¹⁹⁷ Ibid. p. 93

and the internal fights for succession. The winning coalition, composed by the SDP, the HSLs and other minor parties had the chance of rewriting the Constitution and to put the country back on the democratic track.

The HDZ loosed the Presidential elections too. Its candidate, Mate Granić, in fact, placed third, behind the HSLs candidate Dražen Budiša and Stjepan Mesić, a former leading figure of the HDZ¹⁹⁸, who in 1994 left the party and founded the HNS. In Croatia, thus, the “returning wave” of the political parties of the old regime happened in delay in comparison with the other countries of the area (such as Romania or Bulgaria), that permitted to this political forces to grow up and, once they reached the government again, to promote important reforms.

The HDZ was still the most voted political party, but it was weakened by internal struggle for the leadership of the party, while many businessmen who became tycoon thanks to the privatization of Tuđman presidency were convicted. For the first time almost every party and coalition who composed the democratic opposition, with the exclusion of the Serbian Renewal Movement, reunited in a single coalition, the DOS coalition. The coalition was formed by 18 different parties, including many parties who represented the interests of the Hungarian ethnic minority who lived in Vojvodina, and other intellectual groups, associations and NGOs such as the economists of the G17. In this *rassemblement* there were two leading figures, Koštunica and Đjindjić, and two leading parties, the Democratic Party of Serbia (DSS) and the Democratic Party (DS). According to many opinion polls, Vojislav Koštunica was the best candidate in order to challenge Milošević in the elections for the Presidency of Yugoslavia¹⁹⁹. The personal history of Koštunica could allow to the coalition to avoid the demystifying propaganda of the regime: his moral integrity, the political independence showed during his political carrier, his nationalist rhetoric against American interference on Serbia’s domestic affairs would prevent him from the accusations of betrayal and corruption that Milošević used to do against his opponents²⁰⁰. Moreover, Koštunica was never a member of the League of Communists, unlike the other opposition leaders²⁰¹. Finally, his honest and shy nature contributed to create a representation of him which was completely different from the other political leaders of that time²⁰².

The elections for the President of the Federation of 2000 would be the first in which the President was direct elected by the people. According to the new electoral law, in fact, the President should be elected by the absolute majority of the voters, with a runoff voting system between the two most voted candidates. This system was basically the same for the election of the President of the Republic of Serbia, with the only exception that it

¹⁹⁸ Mesić had been, among the other roles, Secretary General of the HDZ, and Prime Minister of Croatia from May until August 1990, when he resigned to be appointed as member of the Yugoslav federal Presidency

¹⁹⁹ D. Possanzini, *Elezioni e partiti nella Serbia post-comunista (1990-2004)*, cit., pp. 98-99

²⁰⁰ *Ibid.* p. 99

²⁰¹ *Ibid.* p. 99

²⁰² *Ibid.* p. 99

didn't provide a quorum on the participation of the voters²⁰³. Moreover the law provided the right of the President in charge to be re-elected for a second mandate, so that Milošević could participate to the elections, and made more complex the procedure for the destitution of the President by the Parliament²⁰⁴. The democratic parties of Montenegro, considering these amendments as detrimental of the national status, boycotted the elections, thus all the parliamentary seats assigned to the Montenegro went to Milošević allies²⁰⁵.

The federal parliamentary elections were won in Serbia by the DOS coalition, which gained the 44% of the votes and 58 of the 108 seats. The SPS received more votes than the 1996 elections, but lost 10 percentage points and 20 seats, due to the high electoral turnout. The SRS received only the 8.6% of the votes, while the SPO didn't received any seat in the Chamber of Citizens²⁰⁶.

The Presidential elections assumed the connotations of a referendum on Milošević regime. The votes in fact were divided between him and Koštunica²⁰⁷. Notwithstanding this polarization of the votes, the Electoral Commission affirmed that none of the candidate had reached the absolute majority, although the electoral results were manifestly manipulated, since the number of ballot paper was higher than the number of voters²⁰⁸. The Federal Constitutional Court, instead, stated that the elections were invalid, and thus must be repeated. After the sentence of the Court, seven hundred thousand Serb citizens poured into the streets of Belgrade protesting against the regime. The so called "democratic revolution" forced the Constitutional Court to withdraw the decision of the Electoral Commission, proclaiming the victory of Koštunica²⁰⁹.

After the unexpected victory of the DOS coalition in the federal elections, it was clear that the parliament didn't represent the country anymore. The Serbs parliamentary elections were thus anticipated to December 2000, and were a triumph for the DOS coalition, that, with its 64% of the votes (the highest percentage of votes ever registered in Serbia for a single list) won 176 MPs. Among them, the two most important parties of the coalition, the DSS and the Democratic Party, won the same number of seats (45).

The SPS lost one million votes since the federal elections of few months before, gaining only the 13.7%. The SPO did worst: with only 3.7% of the votes, it didn't entered in the parliament. The SRS was the only party that maintained the percentage of votes of the federal elections, 8.6%.

The DOS coalition, however, split almost immediately (august 2001), with the DSS that left the government because of the small representation that the Prime Minister Đindjić gave

²⁰³ In Serbia the election of the President was valid only if the 50% + 1 of the voters effectively express their vote

²⁰⁴ D. Possanzini, 2006, *Elezioni e partiti nella Serbia post-comunista (1990-2004)*, cit. pp. 99-100

²⁰⁵ *Ibid.* p. 101

²⁰⁶ *Ibid.* p. 101

²⁰⁷ *Ibid.* pp. 101-102

²⁰⁸ *Ibid.* p. 102

²⁰⁹ *Ibid.* p. 102

to them. The left of the DSS from the coalition, the corruption scandals inside the government, the murder of the Prime Minister Đjindjić by a mafia clan and the pressure of the G17, forced the President to dissolve the parliament and call for new elections in 2003.

Meanwhile, the presidential elections of 2002 left the country without an elected President. The fracture inside the DOS coalition led to the candidature of both Koštunica and Miroljub Labus (“Đjindjić’s candidate”²¹⁰) to the Presidential election. At these elections, Koštunica didn’t reach the absolute majority of the votes, and at the runoff the abstention of Labus’ supporters prevented to reach the *quorum*. At the second consultation of December, the *quorum* wasn’t reach neither at the first turn²¹¹.

The electoral law was thus amended, abolishing the *quorum*. With this amendment Boris Tadić, of the Democratic Party, was elected President in 2004, after the runoff against the radical Tomislav Nikolić²¹².

On the other side, in the 2003 parliamentary elections the different parties who composed the DOS coalition decided to run separately. Thanks also to the high abstention rate, the SRS gained the relative majority (82 seats) with the 27.6% of the votes. The first democratic party was the DSS, that won 53 seats with the 17.7%, followed by the DS with 37 MPs and the 12.6% of the electoral consent. The new entry G17 plus, founded by Labus, placed itself fourth, with the 11.5% of the votes. The coalition “Together for Serbia” of the SPO and New Serbia (NS) obtained the fifth position. Finally, the SPS was able to gain the vote of protests, entering into parliament with the 7.6% of the votes²¹³.

In the Croat parliamentary elections, held after the Constitutional reforms in 2003, the HDZ won the elections, and could form a government with the parliamentary support of the ethnic minority representatives and the Party of Pensioners (HSU). The HDZ, under the leadership of Ivo Sanander, and after the exit of the radical wing of Ivić Pašalić, was able to present itself as a new party, loyal to the democratic institutions, that could be a democratic alternative to the SDP and its coalition. The HDZ loosed the Presidential elections of 2005, but won again the parliamentary election in 2007, although in the latter the HDZ won just 5 seats more than the SDP. After the 2007 elections, the HDZ didn’t have enough seat in order to establish a single-party government, so it had to chose its ally; instead of choosing the far right extremist party, as Tuđman did in 1997 local elections, it formed a coalition with the small centre coalition HSS-HSLS, the HSU and the ethnic minority representatives. Thus the political system had been stabilized through a bipolar competition between two coalition, a center-right and a center-left party, that compete in the elections, and accept the electoral outcome without any reserve.

²¹⁰ T. Cerruti: *Recenti vicissitudini di uno Stato balcanico: il caso jugoslavo. Da un federalismo dubbio ad una confederazione a termine?*. In *Diritto Costituzionale Comparato ed Europeo n.1, 2003, cit. p. 27*

²¹¹ *Ibid.* p. 27

²¹² D. Possanzini, *Elezioni e partiti nella Serbia post-comunista (1990-2004)*, cit. p. 108

²¹³ *Ibid.* pp. 106-107

4. The Constitutional reforms

All the three countries introduced some constitutional amendments to the original documents. In the next paragraphs I will analyse the constitutional amendments state by state.

a) The Constitutional amendments in Slovenia

Slovenia amended some articles, in order to enforce the institutions of the country, and to enter in the European Union. In order to enforce the democratic institutions, the Assembly modified article 80, that regulates the composition and the election of the members of the National Assembly. The Constitutional Act Amending Article 80 of the Constitution of the Republic of Slovenia, approved on 25 July 2000, introduced another clause, that provides that the MPs, with the exception of the members of the national communities, are elected according to the principle of proportional representation with a four-percent threshold required for election to the National Assembly, with due consideration that voters have a decisive influence on the allocation of seats to the candidates. In this way, the basic principles of the electoral law are crystallized in the constitutional text.

A second important amendment was the Constitutional Act Amending Articles 90, 97 and 99, adopted on 24 May 2013, that introduced some limitation on the issues on which the referendum can be called. Moreover, with this amendment, the National Council cannot require the calling of the referendum.

Finally, the Constitutional Act Amending Articles 121, 140 and 143 adopted on 27 June 2006 introduced the Regions.

The National Assembly also amended some articles in order to make the legal system more suitable to the European legislation. A clear example is the creation of article 3a, that provides that Slovenia may transfer the exercise of part of its sovereign rights to international organizations which are based on respect of human rights and fundamental freedoms, democracy, and the principles of the rule of law, and may enter into a defense alliance with states which are based on respect of these values. This amendment modifies also article 47, introducing the possibility to extradite a citizen of Slovenia if there is an obligation of a treaty in this sense. The Constitutional Act modified also article 68, which was already amended in 1997. The final provision establishes the right of aliens to acquire ownership rights to real estate under conditions provided by law or a treaty ratified by the National Assembly.

Other amendments to the Constitution regarded some rights such as the right for pensions, and the duty of the state to promote measures for encouraging the equal opportunity of men and women.

b) Croatia: from a semi-presidential system to a parliamentary system

If the Constitutional amendments modified certain aspects of the Constitution of Slovenia, without subverting its form of government, this cannot be said for the case of Croatia.

After ten years of dominance of the HDZ, the 2000 parliamentary elections registered a victory of the centre-left coalition. After they won the elections, the new President of the Republic, Stjepan Mesić, the leader of the centre-left coalition, and the President of the Government appointed two different commissions composed by experts with the task to draft a constitutional amendment. The *Sabor* approved the final text of the reform in with two different decisions. The first *odluka* was approved on 9 November 2000, the second *odluka* on 28 May 2001.

The constitutional amendment should be made, according to an article of the “presidential commission” published on March 2000, in order to bound the institutions to the rule of law and the protection of the human right, to eradicate the negative consequences produced by the privatization of power and the corruption produced by the concentration of power in the hand of the Head of State and a single political party.²¹⁴ The first thing to do was thus to change radically the form of government of Croatia. This was also one of the main points of the electoral programme of the winner coalition, that clearly affirmed, during the electoral campaign, the necessity to introduce a parliamentary democracy. The core of the reform, according to the writers, is announced in the new article 4, that affirms that “government shall be organized on the principle of separation of powers into the legislative, executive and judicial branches, but also limited by the constitutionally-guaranteed right to local and regional self-government,” and also calls for a “mutual cooperation and reciprocal checks and balances as stipulated by the Constitution and law.” Thus, the separation of powers remains, but it doesn’t imply the lack of control over the work of the different bodies. On the opposite, it implies a system of interaction and reciprocal control between the different agencies.²¹⁵

The 2000 Constitutional reform limited the competences of the President of the Republic, and increased the competences of both the Government and the Parliament. For instance, the countersignature of the President of the Government is now extended to every presidential act.

²¹⁴ V. Mratovic, B. Smerdel, A. Bacic, J. Crnic, N. Filipovic, Z. Lauc, *Strucne osnove za izradu prijedloga promjene Ustava Republike Hrvatske*, in Zbornik Pravnog Fakulteta u Zagrebu, Zagreb, 2000, p. 373

²¹⁵ T. Cerruti, *La forma di governo della Croazia: da “presidenzialismo” a regime parlamentare*, cit., pp.1828-1829

The procedure for the government formation changed radically. After the reform, in fact, the President of the Republic has only the task to entrust the mandate to form the Government to a person who, based on the distribution of seats in the Croatian Parliament and completed the consultations, enjoys the confidence of a majority of all deputies (art. 98). The decision on the appointment of the Prime Minister, furthermore, should be co-signed by the Speaker of the Croatian Parliament, and it's consecutive to the vote of confidence in the Government of the *Sabor* (art. 110). The President has no role even in the appointment of the ministers, that are appointed by the Prime Minister with the co-signature of the Speaker of the Croatian Parliament.

The amendment reduced also the powers of the President towards the Government. The President, in fact, cannot convene a session of the Government of the Republic of Croatia nor place on its agenda items which he deems should be considered anymore, neither he cannot preside over sessions of the Government at which he is present. The new article 102, in fact, states that the President of the Republic may only propose to the Government to hold a session and consider specific issues, attend any session of the Government and participate in deliberations.²¹⁶

In the new Constitution disappears also the provisions that vested the President of the Republic of the role of guardian of the Constitution; moreover, he has the duty to take the oath (art. 95) and he must not be member of any political party (art. 96).

The President keeps the power to dissolve the assembly. The assembly can be dissolved at the proposal of the government, with the countersignature of the Prime Minister and after consultations with representatives of the parliamentary parties. Article 104 provides the cases under which the assembly could be dissolved, i. e. if the assembly, following the Government's motion of confidence, passes a vote of no confidence in the Government, or the first fails to adopt the central budget on time, which is prolonged from 30 days as it was in 1990 Constitution to 120. Moreover, the President of the Republic cannot dissolve the first chamber as long as impeachment proceedings are underway against him/her for any violation of the Constitution.

The Constitutional reform reduced the powers of the President of the Republic. The only exceptions are article 89 and article 100. The first gives to the President the power to institute proceedings to review the constitutionality of a law before the Constitutional Court of the Republic of Croatia prior to its promulgation. Article 100, instead, vests the President of the role of commander-in-chief of the armed forces in war and peace, and gives to the President the power to appoint and dismiss military commanders.

²¹⁶ Ibid. p. 1830

Finally, the new text, at article 97, provides the rules for replacement of the President of the Republic in every case in which he is unable to perform his duties, even for a short time, in a very detailed way. The reason for this accuracy can be found in the attempt to avoid that what happened during the last year of Tuđman presidency, when the President could perform his duties only for a short time, could happen again.²¹⁷

The Government is accountable now only to the first chamber of the *Sabor*, and not to the President of the Republic, as it was before (art. 115). The new procedure for the appointment of the Prime Minister, as I have already said, reduced the role of the President of the Republic. If the Prime Minister-Designate fails to form a Government within 30 days of accepting the mandate, the President of the Republic may extend such mandate for a maximum of an additional 30 days. If the Prime Minister-Designate fails to form a Government in such extended period or if the proposed Government fails to secure a vote of confidence from the Croatian Parliament, the President of the Republic shall confer the mandate to form Government to another person (art. 111). If no Government is formed neither with this procedure, the President of the Republic shall appoint an interim non-partisan Government and simultaneously call an early election for the Croatian Parliament.

The new powers of the Government are enumerated in article 113. The Government shall propose bills and other acts to the Parliament, and the central budget and annual accounts. It executes laws and other decisions of the Parliament, adopts decrees to implement laws. It also conducts foreign and domestic policy, directs and controls the

²¹⁷ Ibid. p. 1831. Article 97 states: In case the President of the Republic is prevented from discharging his/her duties for a shorter

period as a result of his/her absence, illness or use of annual leave, he/she may entrust the Speaker of the Croatian Parliament to discharge his/her duties on his/her behalf. The President of the Republic shall decide on the resumption of his/her duties.

In case the President of the Republic is prevented from discharging his/her duties for a longer period as a result of illness or incapacity and, in particular, if he/she is incapable of making the decision to entrust somebody to discharge his/her duties on a temporary basis, the Speaker of the Parliament shall assume the office of President pro tempore of the Republic pursuant to the decision of the Constitutional Court. The Constitutional Court shall decide thereon at the proposal of the Government.

In the event of the death of the President of the Republic, his/her resignation, which is to be tendered to the Chief Justice of the Constitutional Court of the Republic of Croatia and disclosed to the Speaker of the Croatian Parliament, or when the Constitutional Court finds any grounds for the termination of his/her term of office, the Speaker of the Croatian Parliament shall assume the office of President pro tempore of the Republic by virtue of the Constitution.

When the Speaker of the Croatian Parliament, acting as the President pro tempore of the Republic, makes a decision promulgating a law, such a decision shall be countersigned by the Prime Minister of the Republic of Croatia.

Elections for a new President of the Republic shall be held within 60 days from the date when the President pro tempore of the Republic assumed office under paragraph (3) of this Article.

operation of the civil service, tends to the economic development of the country, directs the performance and development of public services, and performs other duties determined by the Constitution and law. The Constitution thus attributes wide competences to the Government, reducing the presidential role.

The most important reforms of the Constitutional amendment of 2000 regarded the organization of the two heads of the executive, the President and the Prime Minister. The reform reduced the role of the President, who kept some relevant powers, in particular regarding the command of the armed forces, its possibility of intervention in case of government crisis, and the possibility to require to review the constitutionality of a law before the Constitutional Court prior to its promulgation, and maintained the direct legitimacy toward the people.²¹⁸ However, its power were extremely reduced by this reform and by the praxis that was established during the successive years, that showed a consolidation of the institutional system towards a parliamentary democracy.

The first Constitutional amendment didn't modify the role of the Parliament in a considerable way: the most important changes regarded the official name of the Parliament, and the electoral process for the members of the House of Counties, that after this amendment were not elected on the number of "three per county" but "among the counties".²¹⁹ Regarding some issues, the reform disposed that the two chambers should have the same power, but in case of conflict between the two chambers the first prevail. The House of Counties had also a sort of suspensive veto on the laws that regarded local and regional entities; the House of Counties thus could ask to the House of Representatives to examine the text a second time, but if the Chamber approved the law with for the second time with the absolute majority the law is adopted. We have to anticipate, however, that these amendment had few effect in Croat history, since the second *odluka* in 2001 abolished the House of Counties.

In order to strengthen the Parliament, and to improve the control of the Parliament over the Government, and more generally the interaction between the different institutions, article 86 provides that deputies are entitled to pose questions to the Government of the Republic of Croatia and individual ministers. An interpellation can be submitted by at least one tenth of the deputies in the Parliament on the work of the Government or any of its members.

Article 87 modified the referendum process, introducing at the third comma the possibility to require a referendum by ten percent of the total electorate of the Republic of Croatia.

²¹⁸ Ibid. pp. 1834-1835

²¹⁹ Ibid. p. 1835

This provision is quite controversial, since it doesn't provide any control by State organs on the referendum questions.²²⁰

On 28 March 2001 the House of Representatives adopted a second *odluka* that contained the second constitutional amendment.

The most important reform is the already mentioned elimination of the second chamber. In every constitutional provisions the reference to one of the two chamber is substituted with the more generic *Sabor*; the articles that disciplined the role of the Second Chamber are abrogated, and every function that in the 2000 reform were attributed to the House of Representatives are now attributed to the *Sabor*. The members of the Commission justified this change in many ways. First of all, they argued that the country had an historical unicameral tradition, that come from the first *Sabor* in the XIXth Century. Secondly, they affirmed that a second chamber was useless in a unitary state. Thirdly, the Writers of the first Constitution admitted that in the original text of the 1990 the Parliament was composed only by a chamber, and that the House of Counties was added at the end of the constitutional process for the will of the President Tuđman. Finally, the member of the Commission agreed that the monitoring role of the Second Chamber could be exercised by the Constitutional Court, whose competencies had been increased by the first constitutional review.

The Second Constitutional amendment introduced some terminological changes too. In particular, are removed from the constitution any reference to the notion of "croat citizen". This change was due to the intention of the new ruling coalition to transform Croatia from a nationalist state to a civic state.²²¹

²²⁰ Ibid. p. 1836

²²¹ Ibid. p. 1837

c) The death of the “Third” Yugoslavia

The “Third” Yugoslavia was a sick patient since its born. During the time, political groups that asked the independence grew in number. I have already mentioned what happened in Kosovo, where the reduction of autonomy provided in the Constitution of Serbia of 1990 had been followed by the creation of a parallel state, first, and a civil war, later. In Vojvodina, instead, the new Constitutional provisions were applied in a more restrictive way, according to the centralizing policy of Milošević and his party. The electoral victory of the DOS coalition, of which the parties that represented the ethnic minorities, was followed by a new law, the *Omnibus Zakon*, adopted in February 2002, that increased the competences of the local government of Vojvodina, in several issues.

The *Omnibus Zakon* vested the province of Vojvodina of an important role not only on issues such as language, culture and education, but also conferred to the province important functions in the welfare system, economical development, and many other important issues.²²²

The *Omnibus Zakon* wasn't, however, a Constitutional amendment, but only a law of the Republic of Serbia, that was applied only to a region inside one of the two member republics.

The ethnic conflicts in Serbia, that degenerated in violation of human rights and ethnic cleansing, led to the intervention of the international community. In 2002, in fact, because of the growing tensions between the republic of Serbia and the Republic of Montenegro, the High Representative of the European Union for Common Foreign and Security Policy, Javier Solana, intervened in Yugoslavia, forcing the highest ranks of both republics to sign a document that should lay the groundwork for a radical redefinition of the relationship inside the federation.²²³

In Montenegro Milo Đukanović defeated in the Presidential elections of 1997 the pro-Milošević wing of the Democratic Party of Socialists of Montenegro, headed by Momir Bulatović. The main point of Đukanović's programme was the creation of an autonomous and sovereign state, not bounded with the Federation. In the successive years, Montenegro didn't recognize Yugoslavia, didn't adopt its money, didn't allow the federal policy to exercise border activities. Furthermore, as I have already mentioned, the majority of the population of Montenegro boycotted the 2000 federal elections. The Government of Montenegro, however, couldn't declare the secession from the Federation, since

²²² T. Cerruti: *Recenti vicissitudini di uno Stato balcanico: il caso jugoslavo. Da un federalismo dubbio ad una confederazione a termine*, cit. p. 24

²²³ Ibid. p. 26

according to the Constitution of the republic, the change of status of the country required a referendum. This implies that since the victory of the “yes” was not sure, the Government preferred to avoid a vote that could cause the loss of power. In addition, many citizens of Montenegro lived in Belgrade, so in case of secession these citizens would become foreigners, if they remained in Belgrade, or refugees, if they came back in Montenegro.²²⁴

The European Union intervened to facilitate dialogue between the two republics. In front of the High Representative, the Heads of State and Government of Serbia, Montenegro and the Federation of Yugoslavia signed an agreement, called “Starting points for the restructuring of relations between Serbia and Montenegro” that, practically, declared the death of the Federation of the Republics of Yugoslavia, creating a Union between two countries who enjoyed a wide autonomy.

The agreements envisioned the creation of a Constitutional Commission, that should draft a new Constitution. The document should be approved by the Parliaments of the two member republics and by the Federal Parliament. Before designing the organs of the Union, the agreement specified that “upon the expiration of a three-year period, the member states shall be entitled to instituting proceedings for a change of the state status, that is, withdrawal from the state union. The article proceeded indicating the consequences for the withdrawal of the two countries, or for the withdrawal of the lone Montenegro. Thus, in case only Montenegro decided to secede, Serbia would inherit the legal personality of Yugoslavia, while if both countries declared the independence, all debatable issues shall be resolved in succession proceedings, as was done in the case of former Yugoslavia.²²⁵

The new institutions should be the Parliament, unicameral, the President, elected by the parliament, the Council of Ministers, composed by five departments, the Court of Serbia and Montenegro, and the army.

The departments of the Government were foreign affairs, defence, international economic relations, internal economic relations and protection of human and minority rights. The ministers should be proposed by the President. The Court should have constitutional-court and administrative court functions. The Army should be under the command of the Supreme Defence Council, composed by the three presidents (the President of the Federation, of the Republic of Serbia, and the Republic of Montenegro). The Supreme Defence Council should take decisions by consensus.

²²⁴ Ibid. pp. 27-28

²²⁵ See “Starting Points for the Restructuring of Relations between Serbia and Montenegro” http://peacemaker.un.org/sites/peacemaker.un.org/files/ME%20RS_020314_The%20Agreement%20on%20Principles%20of%20relations%20between%20Serbia%20and%20Montenegro.pdf

The Constitution of the Union of Serbia and Montenegro was composed by only 67 articles. The guidelines written in the previous agreements were respected. Article 14 solved the question of the personality in international law, providing that the Union had a single personality in international law. Member states could be members of international global and regional organizations which didn't require international personality. They could also maintain international relations, conclude international agreements and establish their representative offices in other states if that was not in conflict with the competences of Serbia and Montenegro and the interests of the other member state (art. 15).

The Assembly of Serbia and Montenegro was a unicameral body composed by 126 deputies of which 91 should be from Serbia and 35 from Montenegro (art. 20).

About this text, first of all we have to notice the limited powers of the organs of the Union, that can be seen in the formulation of article 19, that in enumerating the competences of the assembly, provided that the preliminary approval of the organs of the member states was required in the most important issues. The second important thing to consider is its temporary nature. This constitution, in fact, should last only three years; after that time, a referendum in Montenegro, or in both countries, should decide on life or death of the Union.

After Montenegro decided to secede from the Union in 2006 referendum, Serbia modified its constitution. The 2006 Constitution of Serbia introduced many important innovations. First of all, as we can see in Article 1, the Constitution clearly referred to the principles of civil democracy, to the respect of human and minority rights, and ensured its commitment to European principles and values. A new article, Article 14, provided the duty for the state to protect the rights of national minorities, and to guarantee special protection to national minorities for the purpose of exercising full equality and preserving their identity. The rights and freedoms of men and citizens, and the rights of minorities, are enumerated in the second part of the Constitution.

The most important organ is the National Assembly, whose controlling functions are implemented from the 1990. According to the Constitution, in fact, the Assembly shall, in addition with the other functions attributed to it in 1990, supervise the work of the security services, and give previous approval for the Statute of the autonomous province.

The President of the Republic shall express state unity. He/she is directly elected by the citizens. While assuming the office, the President of the Republic shall take the oath before the National Assembly. The oath is changed from the one provided by the 1990 Constitution;²²⁶ the new oath is similar, but with a clear reference to Kosovo and

²²⁶ The old oath, in fact, was "I swear that I shall devote all my forces to the preservation of sovereignty and

Methohija, declaring that the region is a constituent part of the Republic of Serbia. The most important change in the role of the President, however, regarded its powers in state of emergency, that are regulated in article 200. The new Constitution reduces the influence of the President of the Republic in this event, and increases the role of the Parliament and its president. The state of emergency, in fact, should be proclaimed by the National Assembly, that may prescribe the measures which shall provide for derogation from human and minority rights guaranteed by the Constitution. When the National Assembly is unable to convene, the decision proclaiming the state of emergency shall be adopted by the President of the Republic together with the President of the National Assembly and the Prime Minister. In the last case, the measures which provide for derogation from human and minority rights may be prescribed by the Government in a decree, with the President of the Republic as co-signatory. Thus the possibility of centralization of power in the hands of the President is extremely reduced.

The Government is elected by the national Assembly and is responsible only to the National Assembly. The President of the Republic, in the process of government formation, has only the role of proposing to the National Assembly a candidate for the Prime Minister, after hearing the representatives of elected election lists (art. 127).

integrity of the territory of the Republic of Serbia, to the realisation of human and civil freedoms and rights, to the observance and defense of the Constitution and laws; to the preserving of peace and welfare of all the citizens of the Republic of Serbia, and that. I shall conscientiously and responsibly meet all my duties."

5. Conclusions

The different countries faced a different transition. While Slovenia didn't suffered a period of war or semi-war during the consolidation of its institutions, the two other countries, Serbia in particular, suffered a period of ethnic and nationalistic tensions that influenced its democratic development. Other factors influenced the transition. First of all, the composition of Serbian society, which was less developed and more rural than Slovenia and Croatia favoured the rise of nationalist parties, that were less favourable to the creation of democratic institutions. Secondly, as I said in the first chapter, the heritage of the previous empires also played a role, since on the one hand many institutions that were introduced in the different states were inspired by institutions that already existed in the country before the creation of the Kingdom of Serbs, Croats and Slovenes. On the other hand, in Kosovo the creation of the parallel state, and of the parallel system of justice, was easier thanks to the centennial organization of the *millets*, in which the different religious communities administered the justice inside the community.

The protection of minority rights is very important in these countries, that since their born shared the common goal to be member of the European Union. For this reason, I decided to dedicate the last chapter of my thesis on the protection of human rights in these countries and the European conditionality.

Chapter four

Minority rights and European conditionality

1. Introduction

The fragmentation of Yugoslavia in seven sovereign States didn't solve the national issue. At the opposite, the disruption of Socialist Yugoslavia generated seven "smaller Yugoslavias". Every former Yugoslavian country is, in fact, a multinational State. For this reason, their constitutions introduced special provisions for the protection of the rights of the "non-majority groups" of the population.²²⁷

The Constitution of the Socialist Yugoslavia, and the Constitutions of the member republics, introduced very high standards of protection of the rights of the different groups. The 1974 Constitution provided a distinction between nations (*narodni*), nationalities (*narodnosti*), and "other nationalities and ethnic groups".²²⁸ Nations corresponded to the ethnic groups who lived in every republic: Serbs, Croats, Slovenes, Montenegrins, Macedonians and Muslims. The term "nationality", instead, substituted since 1968 the word "minority": it indicated the minority groups who lived in one of the member republics, that were majority in a neighbour State. They were namely the Albanians in Kosovo and in western Macedonia, the Hungarians in Vojvodina, the Bulgarians, the Czechs, the Italians, the Romanians, the Ruthenians, the Slovaks and the Turks. Finally, the term "other nationalities and ethnic groups" was referred to the transnational groups, who were not majority in any of the member republics or the neighbour states.²²⁹

²²⁷ F. Palermo, *Le generazioni della condizionalità. Perché uno studio sui diritti delle minoranze nei Balcani occidentali*, Preface to M. Dicosola "Stati, Nazioni e Minoranze. La ex Jugoslavia tra revival etnico e condizionalità europea", Giuffrè editore, Milano, 2010, p.XIV

²²⁸ See H. Poulton, *Linguistic Minorities in the Balkans (Albania, Greece and the Former Yugoslavia)*, in C. Bratt Paulston, D. Peckam, "Linguistic Minorities in Central and Eastern Europe, Clevedon- Philadelphia-Toronto- Sidney- Johannesburg, Multilingual Matters Ltd., 1998, pp. 41-44. A. Liebich, *Les minorités nationales en Europe centrale et orientale*, Chêne-Bourg/Genève, Georg Editeur, 1997, pp. 93-96. J. Krulic, *Le devenir des peuples de la Yougoslavie et es Balkans*, in AA. VV., *Les minorités de l'Est européen. A la lumière des récents changements de régimes et leur impact sur l'immigration en Europe*. Actes du colloque organisé par le « Groupement pour les droits des minorités » des Communautés européennes les 25 et 26 mars 1992, pp. 86-89. L. Cohen, P. Worwick, *Political Cohesion in a Fragile Mosaic. The Yugoslav Experience*, Boulder, Colorado, Westview Press, pp. 163-166 (*Appendix A: The Ethnic Composition of Yugoslavia*).

²²⁹ M. Dicosola, *Stati, Nazioni e Minoranze. La ex Jugoslavia tra revival etnico e condizionalità europea*, Giuffrè editore, Milano, 2010, pp. 139-140

The protection of minorities provided in 1974 Constitution was one of the most detailed in Europe.²³⁰ Basing on the principles of equality among the citizens, without any discrimination, article 154 of the Constitution guaranteed the freedom of expression, the right to use minority language and script, and the right to chose their own minority affiliation.²³¹

After the disruption of the Socialist Yugoslavia, any of the new sovereign states presented inside them some ethnic groups that were minority inside that country but majority in a different former Yugoslavian country, or in a neighbour state that was not part of Yugoslavia. In addition, there were also some “transnational groups”, who did not constitute the majority group in any state: among those there were the Roma population, and the Yugoslavians, who are the persons who are born from mixed marriages.²³²

As I have already mentioned before, in the Constitutions of the three countries we can see some references to the national identity, using terms that referred to the Nation-State ideology of the nineteen century. On the other hand, the multi-ethnicity of the population that composed each state of the former Yugoslavia imposed the creation of legislative instruments that could protect the “right to be different” of the groups that were minorities inside the states. For this reason, while in their constitutions they use the language of the XIX Century Nation-States, at the same time they recognise the existence of minorities, and ensure them specific rights.

The preamble of the Constitution of Croatia, thus, enumerates the recognised autochthonous minorities, affirms their equality regard the Croat citizens and ensures their protection according to the laws of the United Nations.²³³ The second part of Serbia’s 2006 constitution, instead, is entitled “Human and Minority Rights and Freedoms,” and it’s dedicated to them. The Constitution of Slovenia, finally, after having guaranteed the right to express affiliation with his own nation or national community, and to use his language and script,²³⁴ recognises special provisions for Italian and Hungarian minorities, that are considered the two autochthonous groups, and to Romany community.

²³⁰ About the minority rights in the SFRY see M. Paunović, *Nationalities and Minorities in the Yugoslav Federation and in Serbia*, in J. Packer, K. Myntti, “The Protection of Ethnic and Linguistic Minorities in Europe”, Institute for Human Rights, Åbo Akademi University, 1993, pp. 145-165

²³¹ See V. Klopčič, *Le droit des langues dans l’ex-Yugoslavie*, in H. Giordan, « Les droit des minorités en Europe. Droits linguistiques et droits de l’homme », Paris, Kimé, 1992, pp. 325-341

²³² M. Dicosola, *Stati, Nazioni e Minoranze*. Cit., p. 153

²³³ The Preamble affirms “Republic of Croatia is hereby established as the national state of the Croatian people and a state of members of other nations and minorities who are its citizens: Serbs, Muslims, Slovenes, Czechs, Slovaks, Italians, Hungarians, Jews and others, who are guaranteed equality with citizens of Croatian nationality and the realization of ethnic rights in accordance with the democratic norms of the United Nations and countries of free world.”

²³⁴ Articles 61 and 62 of the Slovene Constitution

These countries, in adopting laws and regulations in order to protect the rights of the minorities, were not left to themselves. Since, after the disruption of Yugoslavia, they expressed their will to join the Western bloc and the European institutions, they needed to modify their legal framework in order to comply with the European standards. For this reason, the constitutional reforms were monitored by the European Commission, the Venice Commission (the Council of Europe's advisory body on constitutional matters) and the High Commissioner on National Minorities of the OSCE.²³⁵

Thus, the protection of the minority rights in these countries is subjected to a “double conditionality”: on the one hand, by internal factors, on the other hand, by international institutions. Under this double conditionality, all the countries adopted a very detailed system of protection of minority rights.²³⁶

In the next paragraph, I will analyse in detail which are the external factors that influence the protection of minorities. In the successive paragraphs, instead, I will compare the legislation on protection of the human rights in the different countries, and how the European institutions influenced it. Finally, I will discuss specific issues on this matter that arose in the different countries.

²³⁵ M. Dicosola, *Stati, Nazioni e Minoranze*. Cit., pp. 154-155

²³⁶ *Ibid.* p. 155

2. The European conditionality

a) The European conditionality in the EU enlargement

In 1989 the European Community began the “pre-accession” phase, in order to support the implementation of the economical and the legal framework of the countries of the Eastern Bloc, Malta and Cyprus. This phase started with the adoption of the PHARE program (an acronym for *Poland and Hungary: Aid for the Reconstruction of Economies*), that was initially conceived for these two countries only, and then was extended to the other countries of the Central and Eastern Europe, including Slovenia. The programme supported the institutional development and the investments in these countries. In particular, 30% of the resources were used to the institutional development, while the remaining part was invested in order to enforce the infrastructures and the social and economical cohesion.²³⁷

During the 1993 European Council, held in Copenhagen, the member states of the European Union opened the possibility to join the Union to the states of Eastern and Central Europe who respected certain criteria. The so called Copenhagen criteria consisted in political, economic, and legislative standards required to a country in order to be eligible to be member of the European Union. Among the political criteria, the candidate state must be a democratic state, whose institutions are based on the rule of law, and that respect and protect human and minority rights. The prospect of joining the Union was for the countries of Eastern and Central Europe an incentive to pursue the constitutional reforms made in the following years.²³⁸ The reforms introduced by the application of the conditionality principle determined also the relevant effect of favouring the constitutionalising process of the European law, through the incorporation of its principles in the internal legislation of the candidate States.²³⁹

The conditionality of the European Union can be divided in external conditionality, towards third countries, and internal conditionality, during the negotiation process with the candidate States. The external European conditionality has a political feature: the Union, in

²³⁷ F. De Grano, *Strumenti finanziari UE a transizione democratica. Gli interventi del programma PHARE a favore dei paesi in preadesione*, in S. Gambino, “Costituzionalismo europeo e transizioni democratiche”, Giuffrè editore, Milano, 2003, p. 379

²³⁸ M. Dicosola, *Stati, Nazioni e Minoranze. La ex jugoslavia tra revival etnico e condizionalità europea*, cit. pp. 12-13

²³⁹ See A. Albi, *EU Enlargement and the Constitutions of Central and Eastern Europe*, Cambridge, Cambridge University Press, 2005

fact, uses its economic instruments and funds as an incentive for the countries to promote political reforms that would improve democracy and protection of human rights.²⁴⁰

An example of the European conditionality can be seen in the already mentioned PHARE programme. In this programme, in fact, in order to receive economic resources, the countries must comply with the basic principles of democracy, such as to take free elections in a multiparty system, to respect the human rights, and to introduce in their countries a market economy. The conditions provided in the programme have been confirmed in the *Europe Agreements*.²⁴¹ Furthermore, during the European Council of Lisbon, in 1992, the Commission declared that in order to be part of the European Union three requirements must be met: to have an European identity, to be a democratic country, and to respect human rights. The European Council of Copenhagen, in 1993, formalized the principle of conditionality, introducing the already mentioned “Copenhagen criteria”. The criteria were codified by the treaty of Amsterdam, that introduced, in the Treaty on the European Union, article 6.1, that states: “the Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States.”²⁴²

On the basis of the declaration of the European Council of 1993 and on the Treaty on the European Union, the principle of conditionality became part of the legislation of the European Union, and the Copenhagen criteria could be considered constitutional conditions for candidate States who want to join the Union.²⁴³

The prospective of the entry in the European Union, with its economical and political benefits, together with the sincere will of the new political leaders to come back in Europe, made the candidate States more favourable to accept the standards imposed by the European Commission. The Commission constantly monitors the implementation of the countries, and in its *progress report* analyses what the candidate State has done and what instead should be revised.²⁴⁴

²⁴⁰ See K. E. Smith, *The Use of Political Conditionality in EU's Relations with Third Countries*, EUI Working Paper no. 7, 1997

²⁴¹ M Marescau, *Pre-accession*, in M. Cremona, “The Enlargement of the European Union”, Oxford University Press, Oxford, 2003, pp. 12-14

²⁴² As we can see, in this codification two important criteria are missing: the protection of minorities, and the absorption capacity of the Union.

²⁴³ L. Cappuccio, *Le condizioni costituzionali di adesione all'Unione Europea*, in S. Staiano, “Giurisprudenza costituzionale e principi fondamentali. Alla ricerca del nucleo duro delle Costituzioni. Giappichelli editore, Torino, 2006

²⁴⁴ See H. Grabbe, *How does Europeanization affect CEE Governance? Conditionality, diffusion and Diversity*, in “Journal of European Public Policy, vol. 8, n. 6, 2001, p. 1013

b) The conditionality of the Council of Europe and the OSCE

The European conditionality, however, is a broad process that doesn't involve only the institutions of the European Union, but also other subjects, such as the Council of Europe and the OSCE.

The Council of Europe, after the disruption of the communist bloc, decided to enlarge itself to the countries of the eastern and central Europe. For this purpose was created the European Commission for democracy through law, better known as Venice Commission. The role of the Venice Commission is to provide legal advice to its member states and, in particular, to help states wishing to bring legal and institutional structures into line with European standards and international experience in the fields of democracy, human rights and the rule of law. It also helps to ensure the dissemination and consolidation of a common constitutional heritage, playing a unique role in conflict management and provides “emergency constitutional aid” to states in transition.²⁴⁵ It gives opinion on the progresses made by the states on democracy, human rights, and rule of law, makes studies, general or comparative, and organize seminars for jurists. The opinions of the Venice Commission, in particular, became fundamental in the adoption of the constitutional reforms, as we will see in the next pages.

The Organization for Security and Co-operation in Europe (OSCE) was born originally as Conference on Security and Co-operation in Europe (CSCE) in 1975. Between 1992 and 1994 it was re-organized and institutionalized. During this process the name changed in OSCE. During this re-organization new institutions were created, such as the OSCE High Commissioner on National Minorities and the OSCE Office for Democratic Institutions and Human Rights, that conduct a very important role in supporting the States of central and eastern Europe during their constitutional transition, in particular it helped to build democratic institutions; hold free, fair and transparent elections; promote gender equality; ensure respect for human rights, media freedom, minority rights and the rule of law; and promote tolerance and non-discrimination.²⁴⁶

²⁴⁵ See www.venice.coe.int/WebForms/pages/?p=01_Presentation

²⁴⁶ See <http://www.osce.org/what/democratization%20>

c) The European conditionality in former Yugoslavia

The Western Balkans' countries were excluded from the enlargement process of the European Union because of the internal conflicts that arose in that countries between 1991 and 1999, that slowed down the democratization process, as we have already seen in the previous chapters. Slovenia was the only exception, since there were no ethnic conflicts in the country, and the political parties promoted democratic values since the first multiparty elections.

Croatia applied for membership on 21 February 2003. According to the opinion of the European Commission, Croatia in 2004 was a functioning democracy, with solid institutions that guarantee the rule of law. Croatia joined the European Union in 2010.

Serbia – along with 5 other Western Balkans countries – was identified as a potential candidate for EU membership during the Thessaloniki European Council summit in 2003. In 2008, a European partnership for Serbia was adopted, setting out priorities for the country's membership application, and in 2009 Serbia formally applied. In March 2012 Serbia was granted EU candidate status. In September 2013 a Stabilisation and Association Agreement between the EU and Serbia entered into force. Serbia applied for membership in 2009, and became a candidate country in 2012. At the moment it's still a candidate country.²⁴⁷

From the 1990s, the European Union promoted agreements and programmes tailored for the Western Balkans countries. The Stability Pact for South-Eastern Europe was established in 1999 with the aim of establishing and reinforcing peace in South-Eastern Europe. The Pact offered a comprehensive and coordinated strategy and was a substantial improvement on the international community's previous approach to crises and security problems in the Balkans. It represented a form of regional cooperation through which Union Member States, the European Commission, the countries of the region, Russia, the US, Canada, Japan, and various financial institutions and international organisations participated in reinforcing peace and stability in the region. The Pact functioned on the basis of good neighbour agreements signed between the States of South East Europe; its work was divided first into regional groups (chaired by a special coordinator) made up of several subgroups: the first of these for democratisation and human rights, the second for reconstruction, cooperation and economic development, and the third for security issues. Thus a mechanism was created for coordinating the policies of the various players engaged in the Balkans area and approving the policies adopted by those who had signed the Pact

²⁴⁷ For more informations about the accession process of Serbia, see http://ec.europa.eu/enlargement/countries/detailed-country-information/serbia/index_en.htm

itself. In May 2006 the Stability Pact was replaced with the Regional Cooperation Council.²⁴⁸

Another important programme is the *Community Assistance for Reconstruction, Democratisation and Stabilization* programme (CARDS), introduced in 2001 with the aim of enabling the countries of South-Eastern Europe to participate in the stabilisation and association process. It was focused in particular on reconstruction, stabilisation of the region, aid for the return of refugees and displaced persons, and also support for democracy, rule of law, human and minority rights, civil society, independent media and the fight against organised crime, as well as development of a sustainable market-oriented economy, poverty reduction, gender equality, education and training, and environmental rehabilitation. In doing so, it promoted regional, transnational, international and interregional cooperation between the recipient countries and the Union and other countries of the region.²⁴⁹

Finally, in 2007 the European Union launched the Instrument of Pre-accession Assistance, in order to support reforms in the “enlargement” countries with financial and technical help. The IPA helps the beneficiaries make political and economic reforms, preparing them for the rights and obligations that come with EU membership. Those reforms should provide their citizens that come with better opportunities and allow for development of standards equal to the ones we enjoy as citizens of the EU. In 2014 the IPA were revised, introducing specific strategic planning documents made for each beneficiary, while a Multi-Country Strategy Paper will address priorities for regional cooperation or territorial cooperation. The so called IPA II targets reforms within the framework of pre-defined sectors. These sectors cover areas closely linked to the enlargement strategy, such as democracy and governance, rule of law or growth and competitiveness. This sector approach promotes structural reform that will help transform a given sector and bring it up to EU standards. It allows a more targeted assistance, ensuring efficiency, sustainability and focus on results.²⁵⁰

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http://www.esteri.it/mae/en/politica_estera/aree_geografiche/europa/ooii/patto_di_stabilit_dei_balcani.html

²⁴⁹ For more informations about the programme, see

http://europa.eu/legislation_summaries/enlargement/western_balkans/r18002_en.htm

²⁵⁰ For an overview of the Instrument of Pre-accession Assistance see

http://ec.europa.eu/enlargement/instruments/overview/index_en.htm

3. The protection of minorities in Slovenia, Croatia and Serbia

a) The ethnic composition of the three countries

The three countries subjected to our analysis are multicultural countries. In each of them coexist different ethnic and religious groups. In each of the states, there is a majority group (the Slovenes in Slovenia, the Croats in Croatia, the Serbs in Serbia) that controls the institutions of the state. Beside the majority group there are many minority groups, among which there are some groups more numerous than other. Due to this composition, the three countries must adopt a legislation that protect all the minority groups, on the one hand, and special provisions that should guarantee special rights to the largest minority group.

In Slovenia the Constitution grants to the Italian and Hungarian minorities the privileged status of “autochthonous minorities”. The Italian minority in Slovenia and Croatia was formed after the end of the Second World War, when part of the Italian territory was absorbed by Yugoslavia. In 1947 a stripe of land that comprehended Trieste and Capodistria (that was renamed Koper) was divided in two areas. In 1954 an agreement between Italy and Yugoslavia, that gave back Trieste to Italy and assigned the other area to Yugoslavia, gave birth to the Italian minority in Yugoslavia, whose rights should be granted basing on a statute inserted in the document.

In Croatia the prevalent minority group are the Serbs, but the country is composed by many small minority groups, namely Albanians, Austrians, Bosnians, Bulgarians, Montenegrins, Czechs, Hungarians, Macedonians, Germans, Polishes, Roma, Romanians, Russians, Ruthenians, Slovaks, Italian, Turks, Ukrainians, Vlachs and Jews. Before the war 12 % of the population of the country defined itself as Serb; after the war, due to the subsequent emigration, the percentage of the Serb population in Croatia reduced. Consequently, Serb today constitute 4% of Croatian population.

In Serbia there are 15 different minority groups. Here the minority issue is related to the organization of the state, since in the two autonomous provinces, Kosovo and Vojvodina, are concentrated different ethnic groups. The fact that in the province of Kosovo, in particular, the Albanian minority constitutes the majority of the population, led to the instability of the province, that escalated in an ethnic conflict. In Vojvodina, instead, the Hungarians are the largest minority group, but the ethnic composition of the province is more heterogeneous than in Kosovo. Besides these two provinces, there are also many minority groups that live in the central area of Serbia.

b) The minority rights in the Constitutions

The Socialist Yugoslavia granted to the ethnic minorities the protection of their rights. Before drafting the Slovenian Constitution, the Council of State adopted a resolution that stated that the level of protection of the minority groups in Slovenia granted by the socialist state not only should not be reduced, but it would be a starting point and a basic standard for successive regulations. Furthermore, the constitutional act affirmed that “the Republic of Slovenia shall respect the equal rights of other Yugoslav republics, and together with them gradually regulate all issues arising from their hitherto common existence equally, democratically and peacefully, and respect their sovereignty and territorial integrity”. Article five, finally, provided that “In its own territory, the state shall protect human rights and fundamental freedoms. It shall protect and guarantee the rights of the autochthonous Italian and Hungarian national communities. It shall maintain concern for autochthonous Slovene national minorities in neighbouring countries and for Slovene emigrants and workers abroad and shall foster their contacts with the homeland. It shall provide for the preservation of the natural wealth and cultural heritage and create opportunities for the harmonious development of society and culture in Slovenia.”

In Croatia we can distinguish between two normative phases on the protection of minority rights. The first phase started in 1991, after the war; during this phase, the protection of minority rights was set apart by the necessity to enforce the protection of human rights. The second phase, instead, started in 2000, when was amended the constitutional law on protection of minority rights.²⁵¹

The Constitution of Croatia doesn't provide an enumeration of the minority rights. The preamble of the Constitution defines Croatia as the “national state of the Croatian people and a state of members of other nations and minorities who are its citizens: Serbs, Muslims, Slovenes, Czechs, Slovaks, Italians, Hungarians, Jews and others, who are guaranteed equality with citizens of Croatian nationality and the realization of ethnic rights in accordance with the democratic norms of the United Nations and countries of free world”. Article 15, instead, states that to the members of all national minorities equal rights are guaranteed, and refers the protection of them to a constitutional act and to an electoral law that should guarantee to national minorities to be represented in the Croatian Parliament. The freedom of the members of all national minorities to express their nationality, to use their language and script, and to exercise cultural autonomy, is guaranteed by article 15 too.

²⁵¹ M. Dicosola, *Stati, Nazioni e Minoranze. La ex jugoslavia tra revival etnico e condizionalità europea*, cit., p. 174

The Croat Parliament approved, in 1991, the Constitutional Law on Human Rights and Freedoms of National and Ethnic Communities. In September 1995, however, because of the military occupation of the territory of Croatia, the application of the Constitutional Law has been suspended. Four years later, the Parliamentary Assembly of the Council of Europe adopted a resolution in which required to Croat government to adopt a new constitutional law in order to modify the suspended law of 1991. The Croat Parliament, thus, amended the Constitutional Law in 2000, reintroducing some of the suspended provisions regarding the Serb minority, but repealing the vast majority related to Serb minority self-government²⁵². In 2002, instead, a new constitutional law had been adopted. The new law recognizes, at article 4, the right of the citizens to express their nationality, while article five define “national minority” every group of citizens, traditionally settled in Croatia, who want to maintain ethnic, linguistic, religious or cultural features different from the rest of the citizens.

The Croat legislation on minority rights has a fundamental limit, as regard to the groups protected by the law. The Constitution, in fact, applies its provisions only to minority groups enumerated in the Preamble. Furthermore, in defining the national minorities, the constitutional law refers exclusively to Croat citizens.²⁵³

In Serbia, during the war and in the immediately aftermath of the war, the nationalist feature of Milošević regime led to a denial of any guarantee of the rights of national minorities, who instead suffered the repression policy of the government.²⁵⁴ After SPS’ electoral defeat in 2000 general elections, the Federal Republic of Yugoslavia signed the Framework Convention for the Protection of National Minorities, and in 2002 approved the federal law number 11 on protection of rights and freedoms of national minorities.²⁵⁵

The Constitution of the Union of Serbia and Montenegro of 2003 provided at article 8 that the Charter on Human and Minority Rights and Civil Freedoms should form an integral part

²⁵² For a more accurate analysis of the minorities in Croatia see the report <http://www.minorityrights.org/download.php?id=122>

²⁵³ M. Dicosola, *Stati, Nazioni e Minoranze. La ex jugoslavia tra revival etnico e condizionalità europea*, cit., p. 176

²⁵⁴ D. Janić, *Some Characteristics of the Legislative Protection of Minorities*, in *Yugoslav Law*, 1993, n. 1, p. 3

²⁵⁵ Published on Official Gazette, n. 11/2002. About the protection of rights of national minorities in the FRY, see A. Mladenovic, *La lingua serba e le minoranze linguistiche della Repubblica Federale di Jugoslavia*, in M. Cermel, “La transizione alla democrazia di Serbia e Montenegro. La Costituzione della Repubblica Federale di Jugoslavia 1992-2002, Venezia, Marsilio, 2002, pp. 155-165. M. Frau, *I diritti delle minoranze nazionali nella Costituzione della repubblica Federale di Jugoslavia*, in M. Cermel, op. cit., pp. 167-197. V. Stanovcic, *Legal Status and Minorities in Serbia and Montenegro*, in *European Yearbook of Minority Issues*, 2002/3, vol. 2, pp 631-53. J. Briza, M. Biro, M. Grčki, N. Novaković, L. Palibrk, P. Domonji, *National Minorities in Serbia*, Helsinki Committee for Human Rights in Serbia and Humanitarian Centre for Integration and Tolerance, Belgrade, Zagorac, 2002. P. Nikolić, *I sistemi costituzionali dei nuovi stati della ex Jugoslavia*, Cit. pp. 43-46

of the Constitutional Charter, while at article 9 vested the member states with the duty to regulate, ensure and protect human and minority rights and civil freedoms in their respective territory, providing that the attained level of human and minority rights, individual and collective and civil freedoms may not be lowered. However, if the Montenegrin Constitution of 1992 already fulfilled article 9, enumerating the rights of minorities, the 1990 Constitution of Serbia dedicated only two articles on rights and freedoms of national minorities, proclaiming their freedom to express his national affiliation and culture, and freedom to use his language and alphabet.²⁵⁶

The Federal Law n. 11 remained into force also during the Union of Serbia and Montenegro, and after the dissolution of the Union, continued producing its effects as Serbia state legislation.²⁵⁷

Article 2 of the law n. 11 of 2002 define a national minority as “any group of citizens of the Federal Republic of Yugoslavia numerically sufficiently representative and, although representing a minority in the territory of the Federal Republic of Yugoslavia, belonging to a group of residents having a long term and firm bond with the territory of the federal Republic of Yugoslavia and possessing characteristics such as language, culture, national or ethnic affiliation, origin or confession, differentiating them from the majority of the population and whose members are distinguished by care to collectively nurture their common identity, including their culture, tradition, language or religion.”

In 2006 Constitution of Serbia the protection of minorities became a central topic, as we can see already in the first article, which was modified in order to include in the basic principles the protection of minority rights and freedoms, as well as the commitment to European principles and values. Furthermore, article 14 affirms that “The Republic of Serbia shall protect the rights of national minorities” and grant special protection to national minorities for the purpose of exercising full equality and preserving their identity. Moreover, the second section of the Constitution, entitled “Human and Minority rights and freedoms,” gives to the protection of minority rights the same relevance of the human rights.

The protection of minority rights is based on the principle of non-discrimination, as affirmed by article 76 of the Constitution, that states that “any discrimination on the grounds of affiliation to a national minority shall be prohibited.” The prohibition of

²⁵⁶ Article 8 and 49

²⁵⁷ According to Article 64 of the Constitution of the Union of Serbia and Montenegro, in fact, “The laws of the Federal Republic of Yugoslavia governing the affairs of Serbia and Montenegro shall be enforced as the laws of Serbia and Montenegro. The laws of the Federal Republic of Yugoslavia governing the affairs other than those of Serbia and Montenegro shall be enforced as the laws of the member states pending the adoption of the new regulations by the member states except for the laws which the Assembly of the member state concerned decides not to enforce.”

discrimination is enforced by the adoption of the Law on prohibition of discrimination of 2009, that, among the other provisions, institute a Commissioner for Protection of the Equality²⁵⁸, and by the article 60 of the penal code, that provides sanctions in case of discrimination based on nationality, race, religious belief, ethnic group or language. The Broadcast Law of 19 July 2002, furthermore, prohibits programs that encourage discrimination, hate or violence against a single person or a group based on his religion, race, nationality or ethnicity.²⁵⁹ The laws on primary and secondary education, finally, condemn teachers and professors who discriminate students.²⁶⁰

²⁵⁸ Articles 28-34 of the Law on the Prohibition of Discrimination.

²⁵⁹ Article 3 of the Law on Broadcasting

²⁶⁰ Article 7 of the law on elementary education and article 88 of the law on secondary education. For a consultation of these laws, see *The First Report by the Federal Republic of Yugoslavia on the Implementation of the Framework Convention for the Protection of National Minorities*. Submitted pursuant to Article 25, Paragraph 1 of the Framework Convention for Protection of National Minorities, 16 October 2002, ACFC/SR (2002) 003; *Alternative report Submitted pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities*, September 2007. Both these reports can be downloaded at www.minelres.lv/coe/statereports.htm

c) Linguistic and cultural rights

The linguistic and cultural rights are guaranteed in the three countries. The Slovene Constitution states that the official language of the country is the Slovene, but in those municipalities where Italian or Hungarian national communities reside, Italian and Hungarian are official languages too (art. 11). The right to freely express affiliation with his nation or national community and to use his language and script, instead, is affirmed in articles 61 and 62. Article 62, in particular, provides the possibility to use the minority language also in procedures before state and other bodies performing a public function, in a manner provided by law. The use of Italian and Hungarian as second language is provided also in public administration, and in official documents such as the birth and death certificates, identity cards and passports.²⁶¹ Moreover, in areas where reside national minorities, legal proceedings can be conducted in the language of the minority.²⁶² In those areas, the notary deeds should be redacted also in the second language,²⁶³ and the activities of the public prosecutor should be conducted in Italian or Hungarian.²⁶⁴

The Croat Constitution affirms at article 12 that the Croatian language and the Latin script shall be in official use in the Republic of Croatia, but in individual local units another language and Cyrillic or some other script may be introduced in official use together with the Croatian language and Latin script under conditions specified by law. The Constitutional law on rights of national minorities grants the use of minority languages through many dispositions.²⁶⁵ In the units of self-government, the use of minority languages is admitted provided in cases specified by the Constitutional law and the Law on the Use of the Language and Script of Ethnic Minorities in the republic of Croatia.²⁶⁶

Article 10 of the Constitution of Serbia states that the Serbian language and the Cyrillic script are in official use in the republic, while official use of other languages and scripts shall be regulated by law. The already mentioned law n. 11 of 2002 recognize the right to use the national languages, while the law on official use of language and scripts provides that in the areas where national minorities lives, the latter can use their own language in

²⁶¹ Article 30, Paragraph 2 of the Birth, Death and Family Records Act of 1987

²⁶² Article 45 of the Tribunal Act of 1994

²⁶³ Article 13 of the Notarial Act

²⁶⁴ Office of Public Prosecutor Act, 1994

²⁶⁵ Article 10, for instance, states that "Members of national minorities shall have the right to freely use their language and script, in private and in public, including the right to display signs, inscriptions and other information in the language and script of their use, in accordance to law."

²⁶⁶ See A. Petričušić, *Constitutional Law on the Rights of National Minorities in the Republic of Croatia*, in *European Yearbook of Minority Issues*, 2002/3, vol. 2, p. 607

the self-government institutions, and in other organizations that exercise public authority. The violation of these laws can be punished also with the imprisonment.²⁶⁷

²⁶⁷ According to the Serb Criminal Code, in fact, “Whoever contrary to the regulations governing the use of language and alphabet of peoples or members of national and ethnic groups living in Serbia denies or restricts to citizens the use of their mother tongue or alphabet when exercising their rights or addressing authorities or organizations, shall be punished with fine or imprisonment up to one year” (art. 129 of the Criminal Code)

d) Rights of representation

At national level, article 80 of the Slovene Constitution states that two seats of the Parliament belong to the representatives of the Italian and Hungarian ethnic group. Here we have to notice that the election of the Italian and Hungarian representative, one per each group, doesn't exclude the possibility of these minorities to participate to the election of the other parties of the National Assembly. In practice, Italian and Hungarian minorities don't have to choose between voting for the representative of the community or voting for one of the party that could form the government. On the contrary, they have two rights to vote for the same body, one to elect the minority representative, and one to elect one of the national party and their favourite candidate. Therefore, compared to their actual number, their vote has an higher value in comparison to the right to vote of other nonminority voters. Moreover, the candidature of the minority representatives is regulated by different rules²⁶⁸, and the system for counting the votes is different too.²⁶⁹ The constitutionality of these norms, that finds no similarities in any other electoral law, has been confirmed by the Constitutional Court of Slovenia in two decisions on 28 January and 12 February 1999.

In Croatia the 1992 electoral law provided at Article 10 a representation in the parliament proportional to the population for those minority groups with over eight per cent of the total population in the 1981 census. This provision applied only for Serb minority, since eleven per cent of the population of the country, according to 1981 census, was Serb. Therefore, according to the electoral law, 13 Parliament representatives should be of the Serbian nationality. Unfortunately, the majority of Serbs used to live in the territories controlled by the rebels, where they had formed their own governmental organizations, so the largest majority of them didn't participate in these elections. Since 13 members of the parliament should be Serbs, the representatives of Serbian minority had been chosen from the party lists by the electoral commission. In practice, the federal election authority appointed Serb candidate who were in the lists of the Croatian parties in order to cover the thirteen empty seats. Thus, the Serbs didn't had real representatives in the parliament, since the thirteen member of the parliament who were Serbs were candidates of the Croatian parties, and were not elected by the Serbian minority. For the other autochthonous minorities, who had a population of less than eight per cent, the law reserved five seats in total.

The 1995 electoral law reduced the number of seats reserved to Serbian minority to three, and provided a separate procedure for their election. The 1999 law provided that the minorities should have five representatives, elected in a separate constituency which comprehended the entire territory of Croatia.

²⁶⁸ Article 45 of the law on election of National Assembly

²⁶⁹ Article 95 of the law on election of National Assembly

The right of the minorities to be represented in the Parliament was explicitly expressed in the 2001 Constitution, which states at Art. 15 c. 3 that “Over and above general suffrage, the right of the members of national minorities to elect their representatives to the Croatian Parliament may be stipulated by law”. In 2003, the Act on election of representatives to the Croatian Parliament, at Art. 15, second comma states that “the members of national minorities in the Republic of Croatia shall have the right to elect eight representatives to the Parliament, who shall be elected in a special constituency being the territory of the Republic of Croatia”. Article 16, instead, distributes the seats between the different ethnic groups: three for the Serbs, one for the Hungarians, one for the Italians, one would be elected by Czech and Slovaks minorities together and other two seats to all the other minority groups²⁷⁰.

The minority representation inside the Serbian Parliament was not regulated by any specific law until the 2003 elections, when the absence of national minority representatives inside the assembly was a mark to the credibility of the institution. The unique threshold settled at 5% for political parties in order to participate to the distribution of seats was a discriminatory barrier for those parties that represented the interests of the minority groups. With the reform of the electoral law of 2004, the threshold was abolished; however, the smaller parties faced still some difficulties in order to participate, since the amount of submissions required in order to participate to the electoral competition was extremely high. Article 43 of the law, in fact, provides at least 10,000 submissions in order to admit a list to the competition. The Electoral Commission of the republic of Serbia reduced it to 3,000 in 2006, but the Constitutional Court, in 2008, annulled the decision of the Commission, saying that it lacked the competences for adopting that act: only a law adopted by the parliament, in fact, can amend an ordinary law. In Vojvodina, which is an autonomous province, and where there is an high level of participation of national minorities, only 3,000 submissions are required.

At the local level, Slovenia and Croatia grants the representation of minorities into the institutions of self-government.

In Slovenia, in the areas where the Italian or Hungarian minority lives, they must have at least a representative in the city council. The same provision must be applied also in the areas inhabited by the Roma population.

In Croatia, where a national minority constitutes more than 5% and less than 15% of the total population, in case no minority representative is elected, the number of representatives should be increased by one member and the member of the minority who had more votes enters into the city council (article 20 of the Constitutional law of 2002).

²⁷⁰ Namely one seat for Austrian, Bulgarian, German, Polish, Roma, Romenian, Rutherian, Russian, Turkish, Ukrainian, Vallacchian and Jewish minorities and another to Albanians, Slovenes, Macedonians, Bosnians and Montenegrins

Members of national minorities have also the right to be represented in executive organs of the unity of self-government, and have the right to an equal representation in state administration and in judicial organs.

In Serbia there are not specific dispositions about the representation of minorities in local governments. The federal law n. 11 provides the institution of the Federal Council and the National Minority Councils (NMC). In 2006, basing on the provisions of the federal law, was instituted a Republican Council on National Minorities. In 2009 the law on National Councils of National Minorities recognized the right to constitute NMC with the purpose of exercise the rights of self-government in sectors of culture, education, information, and on the official use of the language and script, basing on the principle affirmed in article 75 of the Constitution.²⁷¹ National Council are composed by no more than 35 and no less than 15 members. They have consulting and proposal competences, enumerated in article 10 of the law on National Councils of National Minorities.²⁷² The Councils can be elected both directly and indirectly by the electoral Assembly.

²⁷¹ The Article states at the second and third commas "Persons belonging to National minorities shall take part in decision-making or decide independently on certain issues related to their culture, education, information and official use of languages and script through their collective rights in accordance with the law.

Persons belonging to national minorities may elect their national councils in order to exercise the right to self-governance in the field of culture, education, information and official use of their language and script, in accordance with the law."

²⁷² Article 10 provides: "In compliance with law and its statute, and through its bodies, a national council shall independently:

- 1) Adopt and amend the statute of the national council;
- 2) Adopt the financial plan, the financial statement and the annual financial statement;
- 3) Manage its property;
- 4) Decide about the name, symbols and seal of the national council;
- 5) Establish proposals of national symbols, emblems and holidays of national minorities;
- 6) Establish institutions, associations, funds and business organisations in the field of culture, education, information and official use of language and script as well as in other areas of importance for the preservation of a national minority's identity;
- 7) Propose a representative of the national minority at the council for inter-ethnic relations with the unit of local self-government;
- 8) Determine and award recognitions;
- 9) Initiate the adoption of and monitor the implementation of law and other regulations in the field of culture, education, information and official use of language and script;
- 10) Participate in the preparation of regulations and submit motions for amendments and supplements to regulations prescribing the national minority rights guaranteed by the Constitution in the field of culture, education, information and official use of language and script;
- 11) Submit motions for the adoption of special regulations and provisional measures in the domains in which the right to self-government is accomplished in order to

Besides them, in the areas where different ethnic groups coexist the Committee for Interethnic Relations is established. The Committee is an independent body composed by representatives of all national and ethnic communities. The Committee shall discuss about issues related to the respect, the protection and promotion of national equality, and shall communicate to the Municipal Assembly its viewpoints and proposals. Before taking any decision on issues on rights of national and ethnic communities, the Municipal Assembly must require an opinion to the Council of Interethnic relations. The Committee may also appeal to the Constitutional Court against an act of the city assembly, adopted with a constitutional irregularity, that may endanger the rights of the ethnic or national communities.²⁷³

Similar institutions are present also in Slovenia and Croatia.

In Slovenia to Italian and Hungarian minorities is granted the possibility to create Self-governing Ethnic Communities in order to implement their rights, to promote their needs and interests, and to organize participation in public matters, in regions of their autochthonous settlement.²⁷⁴ Their functions are enumerated in article three of the law.²⁷⁵ In order to fulfill their tasks, Self-governing ethnic communities cooperate with members of ethnic communities who are elected into bodies of self-governing local communities and National Council (article 5).

achieve full equality between the members of the national minority and the citizens belonging to the majority population;

12) Initiate the proceedings before the Constitutional Court, the Protector of Citizens, the Provincial Ombudsman and the local ombudsmen and other competent bodies, if it shall assess that there has been a violation of the rights and freedoms of the members of national minorities guaranteed by the Constitution and law;

13) Initiate the proceedings referred to in item 12 of this Article on behalf of the members of national minorities on the grounds of a previously granted written power-of-attorney;

14) Take positions, make initiatives and undertake measures in respect of all the issues directly related to the status, identity and rights of a national minority;

15) Decide on other issues entrusted to it pursuant to the law, by the documents of the autonomous province or by the unit of local self-government.”

²⁷³ Article 63 of the Law on Local Self-government, February 2002

²⁷⁴ Law on Self-governing Ethnic Communities of 5 October 1994

²⁷⁵ Article 3 read as follows: “Self-governing ethnic communities perform the following tasks:

- in accordance with the Constitution and law, they decide autonomously on all matters within their competence;

- in accordance with law, they give consent to matters concerning the protection of special rights of ethnic communities. The decisions are made together with bodies of self-governing local communities;

- they discuss and study matters concerning the status of ethnic communities, they adopt standpoints and they submit proposals and initiatives to competent bodies;

- they stimulate and organize activities, contributing to the preservation of ethnic identity of members of Italian and Hungarian ethnic community.”

In Croatia, the constitutional law on rights of national minorities provides the institution of specialized representative organs, such as the National Minority Councils. These units of self-government can be established, according to article 24 of the constitutional law, “in the territory of which the members of national minorities participate with at least 15% in the total population of the unit of self-government, in the units of self-government in the territory of which live over 200 members of an individual national minority, and in units of regional self-government in the territory in which live over 500 members of national minority”. National Minority Councils can propose to the bodies of the units of self-government measures for improvement of situation of the national minority, must be informed of every issue that is to be discussed by the committees of the representative body of the units of self-government, and give opinions and proposals to the programs of radio and television stations on local and regional level aimed for national minorities or on programs related to minority issues.²⁷⁶ When preparing general acts, the municipality government must ask for opinion the National Minorities Council. If the Council deems that a general legal act of the self-government unit or some of its provisions are in contrast with the Constitution or Constitutional acts regulating rights and freedoms of national minorities, it must inform the ministry in charge of general administration. In this case the Council can also inform the municipality government of the self-government unit and to the National Minorities Committee.

The National Minorities Committee is an advisory organ whose members are appointed by the government. The Committee is established for participation of national minorities in the public life of the Republic of Croatia, and mostly for consideration and suggestion of regulation and solution of issues connected to exercising and protection of rights and freedoms of national minorities. It cooperates with the competent government bodies and bodies of self-government units, National Minority Councils, representatives of national minorities, associations of national minorities and legal entities performing activities by means of which minority rights and freedoms are being exercised. The National Minorities

²⁷⁶ The competences of the National Minorities Councils are enumerated in article 31, that states as follows: “The National Minorities Councils in the unit of self-government are entitled to:

- Propose to the bodies of the units of self-government measures for improvement of situation of the national minority in the country or on some of the regions, including giving proposal drafts of general legal acts by means of which issues of importance for the national minority are being regulated to the bodies passing them;
- Nominate candidates for offices in bodies of the state administration and bodies of the units of self-government;
- Be informed of every issue that is to be discussed by the committees of the representative body of the unit of self-government, and considers the situation of the national minority;
- Give opinions and proposals to the programmes of radio and television stations on local and regional level aimed for national minorities or on programmes related to minority issues.

The bodies of the units of self-government will by their general legal acts regulate the ways, terms and procedures of exercising the rights determined in the paragraph 1 of this Article.”

Committee cooperates also with international organizations and institutions, and competent bodies of parent countries of the members of national minorities. Finally it distributes the financial means ensured in the state budget for the needs of national minorities.²⁷⁷

Finally, it's important to notice that in Slovenia and Serbia there are special regulations on broadcasting in order to enforce the rights of minorities. I have already mentioned the norms on broadcasting that tackle the discrimination in Serbia. In Slovenia, instead, autochthonous minorities have the right to be represented in the Broadcasting Council.²⁷⁸ The Broadcasting Council appoints program councils for the national minority programs, that should deal with the carrying out of the program concept, complaints and suggestions of the public, makes suggestions to the Council of RTV Slovenia for the consideration of

²⁷⁷ Article 35 of the Constitutional law disciplines in detail the competences of the Committee and its duties: The National Minorities Committee is being established, for participation of national minorities in the public life of the Republic of Croatia, and mostly for consideration and suggestion of regulation and solution of issues connected to exercising and protection of rights and freedoms of national minorities. With this aim the Committee cooperates with the competent government bodies and bodies of selfgovernment units, National minority councils, or representatives of national minorities, associations of national minorities and legal entities performing activities by means of which minority rights and freedoms are being exercised.

The National Minorities Committee has the right to: - propose to bodies of the state authority to consider some issues of importance for the national minority, and particularly the implementation of this Constitutional act and special acts by means of which minority rights and freedoms have been regulated; - to draft measures for promotion of situation of national minority in the state or in some of its parts to the bodies of state power; - to give opinions and proposals on programmes of public radio and television aimed for national minorities, and on treatment of minority issues in programmes of public radio and television stations and other means of communication; - to propose the implementation of economic, social and other measures in the regions of traditionally or predominantly inhabited by national minorities in order to preserve their existence in that regions; - to request and obtain from the state authorities and authorities of the local and regional self-government data and reports necessary for considering issues from their scope; - to call and request the presence of representative of state authorities and authorities of local and regional self-government, competent for the issues in scope of the National Minorities Committee, as regulated by this Constitutional act and the statute of the Committee

The National Minorities Committee cooperates in issues of interest for national minorities in the Republic of Croatia with the competent bodies of international organisations and institutions dealing with issues of national minorities, and competent bodies of parent countries of the members of national minorities in the Republic of Croatia.

The National Minorities Committee distributes the financial means being ensured in the state budget for the needs of national minorities. The users of the means submit to the Committee yearly reports on the expenditure of the means being remitted to them from the state budget, and the Committee report of the fact to the Government of Republic of Croatia and the Croatian Parliament (Sabor).

If in a 90 days term from the adoption the state budget, the National Minorities Committee does not decide on distribution of the finances from sec.4. of this Article, the decision on it is being passed by the Government of Republic of Croatia.

²⁷⁸ Article 16 of the Law on Radio and Television of Slovenia, 29 March 1994

certain questions linked to the national minority program, and performs other tasks determined by the statute.²⁷⁹

²⁷⁹ Article 22 of the Law on Radio and Television

4. Issues on protection of minorities in specific states

a) The Erased

In Slovenia the Italian and Hungarian minorities, being historic minorities, benefit of a privileged level of protection of their minority rights. This standard of protection, instead, is not granted to the new minorities, that were created after the disruption of Yugoslavia, and that are composed by citizens coming from other former Yugoslavian Republics. These people, furthermore, not only don't have the rights granted to autochthonous minorities, but they suffered a real discrimination, since the Citizenship Act and the Foreigners Act of 1991 transformed many Yugoslav citizens in foreigners, or as they were called by the press, "erased".²⁸⁰

In the legislation of the Socialist federal Republic of Yugoslavia the citizens of Yugoslavia used to have a double citizenship. Besides being citizens of Yugoslavia, they also were citizens of one of the member Republic by *jure sanguinis*. After the break out of the Socialist Yugoslavia, this system generated a discrimination of the non-autochthonous minorities who lived in Slovenia.²⁸¹

According to the Citizenship act, in particular, the citizens of any other republic who have permanent residence in Slovenia could obtain the Slovene citizenship if they submit a request within six months from the independence day.²⁸² People who instead didn't apply for citizenship within the time limit would become foreigners, and they would be erased from the register of permanent residents.²⁸³ As a consequence, after the deadline of six months, the rights recognized to Slovene citizens and to residents in Slovenia would be negated; among them, the social rights and the rights of protection of national identity.²⁸⁴

The Constitutional Court intervened two times. On 4 February 1999 the constitutional judge declared Article 81, second comma of the Foreigners Act unconstitutional, since it didn't provide how to obtain a permanent residence permit, and gave six months to the National Assembly in order to change the law. The 8 July 1999 the National Assembly

²⁸⁰ M. Dicosola, *Stati, Nazioni e Minoranze*, cit., p. 159

²⁸¹ See J. Zorn, *The Politics of Exclusion during the Formation of the Slovenian State*, in J. Dedić, V. Jalušić, J. Zorn, "The Erased. Organised Innocence and the Politics of Exclusion", Ljubljana, Peace Institute. Institute for Contemporary Social and Political Studies, 2003, pp. 93-152

²⁸² Article 40 of the Citizenship Act

²⁸³ Article 81, second comma of the Foreigners Act

²⁸⁴ According to the Ministry of the Interior, 25,671 people have been erased. Among them, only 7,313 became the Slovene citizens, and 3,630 obtained a work permit. For a further analysis, see "25,671 Cancellati" in www.osservatoriobalcani.org, 2 February 2009; J. Dedić, *The Erasure: "Eleven Years Later"*, Public Lecture Organized by the Association of the Erased Residents of the Republic of Slovenia, Faculty for Social Work, 27 February 2003

adopted a new law, that should consent to people who permanently resides in Slovenia to acquire a permanent residence permit.²⁸⁵ The new law, however, was declared unconstitutional too, because it was not applicable to the erased and to those who had been forced to move from Slovenia.²⁸⁶ The Government thus proposed the Technical law on the erased, whose adoption was stopped by the referendum promoted in 2004 by the nationalist parties, who appealed to the economic consequences that a compensation for the damages to the erased could create at the balance of the country. In 2007, finally, was proposed a constitutional law on the erased, that didn't recognize the "massive erasement" of the minorities, but attributed this event to some administrative mistakes, and thus didn't recognize any right to compensations.

²⁸⁵ Article 1 of the Act Regulating the Legal Status of Citizens of Former Yugoslavia Living in the Republic of Slovenia, 1999

²⁸⁶ Decision of the Constitutional Court n. U-I-246/02, 3 April 2003

b) The protection of the Italian minority living in Croatia in the bilateral treaty of 1996

On 2 February 1995 the Constitutional Court of Croatia declared unlawful the legislation on the rights of the Italian minority.²⁸⁷ In order to solve this irregularity, a bilateral treaty was signed between Italy and Croatia. According to the agreement, the Italian community must receive the same treatment in the whole country, without distinctions between the Italian who live in the territories that before the World War were part of Italy and the ones who live in the rest of the state. The Republic of Croatia recognizes the “Italian Union” as the Organization that represent the Italian Minority.²⁸⁸ According to the treaty, the Republic of Croatia should guarantee the right of movement to members of the Italian Minority to and from the territory of Slovenia,²⁸⁹ the freedom to work to Slovene citizens who are members of the Italian Minority,²⁹⁰ and should protect Slovene citizens who are affiliated to the Italian Minority from discriminations.²⁹¹

On the other side, the Italian Republic commits itself to respect the rights of the Croat Minority who lives in the region of Molise.²⁹²

However, the treaty doesn't provide a system of monitoring that may supervise the compliance of the states with, nor an organ that can sanction the state who doesn't respect its provisions, so this agreement threatens to turn into a statement without effects.²⁹³

²⁸⁷ Sentence of 2 February 1995, n. U-II-433/1994

²⁸⁸ Art. 4 of the treaty

²⁸⁹ Art. 5 of the treaty

²⁹⁰ Art. 6 of the treaty

²⁹¹ Art. 7 of the treaty

²⁹² Article 8 affirms: “[...] The Italian republic agrees to grant to the Croatian autochthonous minority in the territory of traditional settlement where his presence is established, to preserve and express freely their identity and cultural heritage, to use their mother tongue in private and in public, and to establish and maintain their own institutions and cultural associations.” It is estimated that nearly 5,000 Croats live in the Molise province of Campobasso of Italy. They constitute the majority in the three villages of Acquaviva Collecroce, San Felice del Molise and Montemitro. The Community originated from refugees fleeing the Balkans from the Ottoman Empire in the 15th and 16th Centuries.

²⁹³ M. Dicosola, *Stati, Nazioni e Minoranze. La ex jugoslavia tra revival etnico e condizionalità europea*, cit., pp. 181-182

5. European conditionality and protection of minority rights

In all the three countries the protection of minority groups have been influenced by the European Union and the other International institutions. In particular, the prospect of joining the Union was an incentive for these countries for doing the reforms needed in the issues of democracy and protection of minority rights.

In Slovenia, the European Commission urged the reform of the law on local self-government, in order to ensure to Roma population the right to be represented in City Councils, through two Reports in 2001 and 2002.²⁹⁴

Croatia became member of the Council of Europe in 1996, and in 2004 became a candidate country for joining the European Union. Through this time, the Commission monitored the progresses made by the country in order to meet the standards of the European Union. In the *progress report* of 2006, for instance, the European Commission valued the progresses made by the Croat government in order to implement the constitutional law of 2002.²⁹⁵ According to the report, many progresses had been done, regarding the representation of minorities in state administration, with the creation of the Central Office for State Administration. Moreover, the Commission valued positively the increase of cooperation between the National Minority Councils and local authorities, and found a reduction of discriminatory episodes toward Serb minority. However, the report denounced also the limits in the implementation of the constitutional law, and in integration of national minorities, that were perceived in the media as separate entities. The report, finally, individuates some progresses in integration of the Serb and Roma minorities.²⁹⁶

The decision of the Council of 2008, furthermore, stressed the importance of the implementation of the constitutional law, in particular regarding the representation of minorities in working sector. It also defined as key priorities for national minorities to grant access to justice, to promote the respect and the protection of their rights, and to promote tolerance toward the Serb and Roma minorities.²⁹⁷

The Constitutional law of 2002 had been valued also by the Venice Commission and the OSCE. The Venice Commission, in particular, although valued positively the norm, criticized

²⁹⁴ 2001 Regular Report on Slovenia's Progress toward Accession, Brussels, 13-11-2001, SEC (2001) 1755, p. 21; 2002 Regular Report on Slovenia's Progress toward Accession, Brussels, 9-10-2002, SEC (2002) 1411, pp. 26-28

²⁹⁵ Commission of the European Community, Commission Staff Working Document, *Croatia 2006 Progress report*, COM (2006) 64 final, Bruxelles, 8-11-1006

²⁹⁶ Ibid.

²⁹⁷ 2008/119/EC. Council Decision of 12 february 2008 on the principles, priorities and conditions contained in the Accession Partnership with Croatia and repealing Decision 2006/145/EC. Official Journal L 042, 16/02/2008 P. 0051-0062

the limit to the subject covered by the norm, that are those minority groups enumerated in the Preamble of the Constitution.²⁹⁸ Moreover, both the Venice Commission and the OSCE criticized the exclusive reference to the Croat citizenship present in the Constitutional law.²⁹⁹

The Venice Commission intervened also on the Constitution of Serbia of 2006, underlining some contradictions. First of all, according to the Commission, article 1 of the Constitution was conflicting with the definition of the Republic of Serbia present in the same article;³⁰⁰ in particular, the definition of Serbia as “a state of Serbian people and all citizens who live in it”, according to the opinion of the Venice Commission, emphasizing the ethnic feature of the state, render the second section of the constitution meaningless. The Commission, however, valued that this contradiction doesn’t produce any effect in practice. Secondly, the new article 10, according to the Commission, reduces the rights of minority groups, as compared to the Constitution of 1990.³⁰¹ The new Constitution considers as official language the Serb with Cyrillic script, while article 8 of the 1990 Constitution provided the use of Latin script in cases provided by the law.

Furthermore, the High Commissioner for National Minorities of the OSCE analyzed the law on the Minority Councils, stressing the importance to harmonize the law with the law n. 11 of 2002, avoiding contradiction between the norms.³⁰²

The European Commission analyzed both the Constitution and the other laws on protection of minorities in its progress reports. In the Progress Report of 2006 the Commission judged positively the role of the Republican Council for Minorities, and the reform of the criminal Code that envisages several criminal offences pertaining to issues of racism and xenophobia. The commission also appreciated the improvements concerning representation of minorities in public administration through a number of measures.³⁰³ Improvements have also been registered concerning education in minorities’ languages,

²⁹⁸ European Commission for Democracy through Law (Venice Commission), *Draft opinion on the Amendments of 9 November 2002 and 28 March to the Constitution of Croatia*, CDL (2001) 69.

²⁹⁹ European Commission for Democracy through Law (Venice Commission), *Opinion on the Constitutional Law on the Rights of National Minorities in Croatia*, n. 216/2002, CDL-AD (2003) 9, points 11-17; Report of OSCE on rights of national minorities, <http://osce.org/croatia>

³⁰⁰ Article 1 states: “Republic of Serbia is a state of Serbian people and all citizens who live in it, based on the rule of law and social justice, principles of civil democracy, human and minority rights and freedoms, and commitment to European principles and values.”

³⁰¹ Article 10 affirms: “Serbian language and Cyrillic script shall be in official use in the Republic of Serbia. Official use of other languages and scripts shall be regulated by the law based on the Constitution.”

³⁰² See High Commissioner on National Minorities, *Comments on the Serbian Draft Law on the Election and Powers of National Councils of National Minorities*, The Hague, 31-05-2007

³⁰³ Namely “publication of competitions in minority languages, vocational training in minority languages, proportional representation in multiethnic regions and continuous monitoring of representation of minority groups in public services.”

using Albanian and Hungarian textbooks respectively in Southern Serbia and in Vojvodina. On the other hand, there had been no progress in the adoption of new legislation needed to better regulate the status, work and election of the National Councils for the minority groups.³⁰⁴

In the 2007 Progress Report the Commission approved the new constitution, in particular regarding the protection of national minorities. The Commission appreciated in particular that the Constitution provides a constitutional basis to National Councils. On the other hand, the Republican Council for Minorities had not met since 2006, while the legislation necessary to regulate the election of national councils and their duties has not been adopted.³⁰⁵ This criticisms will be present also in the 2008 Progress Report.³⁰⁶

To sum up, the new Constitution of Serbia and the law on National Minority Councils have been monitored by the Venice Commission, the High Commissioner for National Minorities and the European Commission. These institutions conditioned, at least in an implicit way, the legislation of the country on matters regarding the protection of minority rights, and contributed to create a legislation that guarantees a high level of protection of the rights of national minorities.

³⁰⁴ Commission of the European Communities, Commission Staff Working Document, *Serbia 2006 Progress Report*, Brussels, 8-11-2006, COM (2006) 649

³⁰⁵ Commission of the European Communities, Commission Staff Working Document, *Serbia 2007 Progress Report*, Brussels, 6-11-2007, SEC (2007) 1435, pp. 14-15

³⁰⁶ Commission of the European Communities, Commission Staff Working Document, *Serbia 2007 Progress Report*, Brussels, 5-11-2008, SEC (2008) 2698 p. 14

6. Conclusions

The former Yugoslavian countries are multi-ethnic entities in which different ethnic, religious and linguistic groups coexist. After the split of Yugoslavia in many national states, there was the necessity to guarantee the protection of the rights of the minority groups, in order to avoid social turbulences inside the countries.

Today, minority groups in western Balkans enjoy an high level of protection, at least in the formal documents. Their linguistic and cultural rights are guaranteed, and the country legislations protect them against discrimination. Their rights to be represented are guaranteed too, in many different ways.³⁰⁷

The European institution influenced this process in two ways: directly, monitoring the implementation of minority rights and asking the state to change certain norms, and indirectly, imposing the adoption of reforms as a condition for their entrance in the European institutions.

The European conditionality accelerated the reform process on the issue of minority rights, although some aspects remains uncertain. First of all, the contradiction between the high level of protection of national minorities and the political will to stress the nationalist identity of the state is still present in the countries, especially in Serbia. Secondly, there is still a gap between the law in the book and the law in action, since the legislative provisions are not always followed by their implementation. But the main critical aspect of the European conditionality is the “double standard” imposed by the European institution. To candidate countries, in fact, a standard for protection of minorities is imposed that is not respected by the countries that are already members. The application of double standards can cause many problems, because it can produce a sort of “inverse conditionality”, i. e. the refusal of candidate countries to conform to the standard imposed by the European institutions if these standards are not applied in Western European countries,³⁰⁸ that could cause the break out of the entire European system of protection of minority rights.³⁰⁹

³⁰⁷ M. Dicosola, *Stati, Nazioni e Minoranze. La ex jugoslavia tra revival etnico e condizionalità europea*, cit., pp. 267-271

³⁰⁸ See J. Hughes, G. Sasse, *Monitoring the Monitors: EU Enlargement Conditionality and Minority Protection in the CEECs*, in *Journal of Ethnopolitics and Minority Issues in Europe*, vol. 1, 2003

³⁰⁹ As F. Van den Berghe affirms, these problems were already present in the Society of Nations, where the system of protection of minority rights was seen as an imposition of the western countries, who had won the War. See F. Van den Berghe, *The European Union and the Protection of Minorities: How Real is the Alleged Double Standard?*, in *Yearbook of European Law*, vol. 22, 2003

Conclusions

The countries I analysed are very different from many points of views.

First of all, their historical background was different. While Slovenia and Croatia were part of the Austrian Empire, Serbia was part of the Ottoman Empire. Moreover, when the Austrian Empire transformed itself into the Austro-Hungary, Slovenia and Croatia were separated: Slovenia and the Istria peninsula fell under the Austrian jurisdiction, while Croatia was subjugated to the Hungarian rule.

Being part of a western Empire or of the Ottoman Empire produced different effects that influenced also the recent history of the region. First of all, being part of an empire characterized by legal-rational institutions allowed Slovenia and Croatia to establish their new states relying on the previous political experience. Serbia, that suffered more than three centuries of Ottoman rule and Sultanistic regime, could base its constitutional process only on the interwar unitary political experience, and on the short period of constitutional monarchy, that began with the octroyé constitution proclaimed by King Petar in 1903.

Secondly, while in Austria there were important intermediate groups that could restrict the power of the monarch, in the Ottoman Empire the civil society was too weak to oppose itself to the Sultan. The lack of intermediate corps made the instauration of the Communist regime in Serbia easier than in the other two countries. On the other hand, the persistence of the egalitarian heritage had a negative influence in the democratic transition, favouring the creation of populist parties.³¹⁰

A second difference between these countries regards the ethnic composition of them. All the three countries are multiethnic countries, in which different ethnic groups coexist. However, while in Slovenia the different minority groups compose only a small amount of the total population, this is not the case of Croatia and Serbia. In Croatia, the Serb minority composed the 12% of the total amount of population in 1991, and was majority group in some regions of the country. This group, after the proclamation of independence of Croatia, began a civil war against the Croat nationalist government, asking for their secession. After the war, many of them emigrated in Serbia, thus nowadays the Serbs of Croatia compose only the 4% of the total population of the country.

In Serbia the ethnic composition was even more complicated. Not only different ethnic groups coexisted in the same regions and cities, but in the northern and in the southern part of the country, near the border with respectively Hungary and Albania, the Serbs are a minority.

³¹⁰ Nikiforos Diamandouros and F. Stephen Larrabee, *La democratizzazione nell'Europa Sud-Orientale*, cit. p. 38

Thirdly, the economic development during the Socialist period played an important role, since it exacerbated the ethnic rivalries. In the second half of the 20th century, in fact, Slovenia and Croatia were far more developed than Serbia and the other member republics. The Federal government tried to reduce the gap between the republics, by transferring federal revenues from the richest republics to the poorest and by making greater federal investment in the poorer areas, but these policies were not very successful.³¹¹ These efforts, instead, exacerbated political differences and jealousies among the units of the federation. The richer, more developed republics and autonomous regions resented paying for the economic development of the poorer units. The poorer units, on the other hand, resented receiving federal “charity” and the attitudes the richer units displayed towards them.³¹²

Due to these differences, the three countries faced a different constitutional process. While Slovenia had a fast transition toward a free and democratic state, with a stable political system and a modern constitution that guarantees the balance of powers of the different institutions, and the respect of the human and minorities rights and freedoms, Croatia and Serbia faced a longer consolidation process. In Croatia, we can distinguish between two phases. The first phase was characterized by the hegemonic role of the HDZ, and its charismatic leader Franjo Tuđman, who was at the same time party leader and President of the Republic. During this phase, that lasted until the national elections in 2000, the party, supported by the new tycoons of the country, penetrated inside the institutions, institutionalizing itself inside them, and strengthening its power with political favouritisms. The HDZ was able in first multiparty elections to channelize the desire for independence of the Croat population, achieving an astonishing victory against the reformed communists. After that, the civil war erupted against the auto-proclaimed Serbian Autonomous District (SAO Krajina), contributed to the centralization of power in the hand of the charismatic leader. After the 2000 elections, a constitutional reform process began, that led to the transformation of the parliament from a bicameral to a unicameral assembly, and a transformation of the form of government from a semi-presidential toward a parliamentary democracy. After 2000, also the protection of minority rights increased, with the adoption of the Constitutional law in 2002, that recognizes the rights of the citizens to express their nationality, and defines as “national minority” every group of citizens, traditionally settled in Croatia, who want to maintain ethnic, linguistic, religious or cultural features different from the rest of the citizens.³¹³

In Serbia, finally, the Constitutional process was even more complex. Here the ethnic tensions were even stronger than in Croatia, since they were originated already during the

³¹¹ W. Harriet Critchley, *The failure of federalism in Yugoslavia*, cit. p. 444

³¹² *Ibid.* pp. 444-445

³¹³ Articles 4 and 5 of the Constitutional Law on the Rights of National Minorities, Zagreb, 2002

Kingdom of Yugoslavia. At that time, in fact, the Kingdom decided to use the regulation of the emigration in order to ethnically homogenize Yugoslav population by facilitating permanent emigration of non-Slavs and impeding the emigration of members of the tri-
unite nation.³¹⁴ The pressure to emigrate was stronger against the Turks and the Kosovo Albanians, that populated the so-called Southern Serbia, which are the regions of Kosovo and Macedonia. Here the Yugoslav government, on the one hand, undertook administrative and legal measures in order to facilitate the emigration of these populations, and on the other hand, promoted the colonization of the region by the Serb families, granting them lands, tax credit and other benefits.³¹⁵ After the war, the Constitution of the Socialist Federal Republic of Yugoslavia, created two autonomous units, Kosovo and Vojvodina, with almost the same powers of the six Republics. In particular, they had the same number of representatives in the federal institutions of the states, with the same powers of the representatives of the member republics.³¹⁶

After the proclamation of the new Constitution, in 1990, that limited the autonomy of Vojvodina and Kosovo, ethnic tensions erupted in the latter, with the Kosovo Albanians that created a parallel state and auto-proclaimed the Republic of Kosova. After the end of the conflicts in Croatia and Bosnia, in which the government of Belgrade backed the Serb rebels in both countries, Milošević turned his attention to Kosovo, where the terrorist group UÇK began to kill Serb officers. The violent civil war and the ethnic cleansing made by the government of Serbia led to the intervention of the international community in 1999.

The first ten years of the Republic of Serbia, which was member republic, together with Montenegro, of the Federal Republic of Yugoslavia, were characterized by the dominance of the Socialist party, that ruled alone or in coalition with other parties. After the international intervention in Kosovo, Milošević was defeated in federal and republic elections by the DOS coalition, led by Kostunica. The new coalition was able to introduce some innovations, especially regarding the protection of minority rights. For a Constitutional reform, however, we needed to wait until 2006, when, after the disruption of the Union of Serbia and Montenegro, a new Constitution was adopted.

The three constitutions are quite similar in declaring the values of freedom and democracy as fundamental principles of the new states, as well as in affirming the duty of the state to respect and protect the human rights and freedoms. But they are very different between them in designing the new state institutions.

The only element present in the three constitutions is the direct election of the President of the Republic. The reasons why all the three countries opted for the direct election are

³¹⁴ A. B. Grado, *Rad iziljeničkog odseka*, cit. pp.165-167

³¹⁵ U. Brunnbauer, *Emigration Policies and Nation-building in Interwar Yugoslavia*, cit. pp. 617-618

³¹⁶ T. Cerruti, *Recenti vicissitudini di uno Stato balcanico: il caso jugoslavo*. Cit. p. 19

various. First of all, there was the idea that a direct elected president would be more democratic. This idea was present not only among the members of the Constitutional assembly, but also, and especially, among the population, who, after more than forty years of collegial presidency, whose members were appointed by the League of Communists, wanted to express their choice on the highest office of the Republic.

We have to say that in the other former communist countries the constitutional assemblies opted for the direct election of the President of the Republic too.

However, the three countries differed, at the beginning, on the competences to attribute to the President. While Slovenia left to its President only ceremonial powers, the constitution of Croatia, as it was written in 1990, introduced a semi-presidential system, which was, in a certain way, a copy of the French semi-presidential system, but that presented some peculiar aspects too. In particular, the government was accountable to the President of the Republic, who could remove the Prime Minister whenever he want. The first Constitution of Serbia created a mixed system, with some features that are typical of the parliamentary system and some other that are typical of the presidential model. The Constitution gave to the President of the Republic only a ceremonial role, and some foreign affairs powers.³¹⁷ However, the Constitution remained extremely vague in defining the presidential powers. In particular, it failed to establish a real system of check and balances, leaving the possibility to control the country to a President who could have a strong control of the ruling coalition, as Milošević had.

The three countries are different also in the conformation of the Parliament. Slovenia and Croatia, in fact, instituted a bicameral system, while Serbia opted for a unicameral parliament. However, the second chamber of Slovenia is different than the one of Croatia: while in Croatia the House of Counties was composed by representatives of the different counties, the Slovene National Council is composed by social groups.

The Constitutional reforms of 2000/2001, in Croatia, and the new Constitution of Serbia in 2006, shared a common principle: the necessity to reduce the influence of the President of the Republic, and to increase the role of the Government and the Assembly. In order to fulfill this scope, the Constitution of Croatia reduced the role of the President also in the procedure of government formation, imposing the countersignature of the Speaker of the Croatian Parliament on the appointment decision too. The Constitution of Serbia, instead, reduced the role of the President in state of emergency, and increased the controlling function of the Assembly.

³¹⁷ The fact that the Constitution of Serbia provides the Republic institutions with a strong foreign affairs power, although it was still member, at the time, of the Socialist FRY, is discussed in Chapter 2.

In the Constitutional process, finally, a great role was played by the international institutions, and the European institutions in particular. The United Nations, the European Union, the Council of Europe and the OSCE influenced in many ways the instauration of democratic institutions. Not only they influenced the legislation of the countries in a direct way, through reports, or opinions, economic aid programs, or even intervening directly in a country, as it happened during the Kosovo crisis in 1999, but also in an indirect way. Since the disruption of the communist bloc, in fact, these countries expressed their will to join the European institutions, and the Western bloc. In order to become part of the western world, they were more favourable to make radical changes in state legislation, in order to guarantee the rule of law, democratic standards, a market economy, and the protection of human and minority rights.

The protection of minority rights, in particular, it's a very important topic in these countries, since we are talking about multiethnic countries, where different ethnic groups coexisted for centuries. Many European institutions monitored the legislation on minorities of the countries, and gave their opinion about the implementation of it. Furthermore, many programs provided economic aid to the countries of the region at the condition that they granted, among the other conditions, the protection of human and minority rights. However, it's not fair to say that these countries adopted specific laws on protection of minority rights just because of the prospect of the EU membership, or because of economic necessities. It is more correct to say that in these countries different ethnic groups used to live one beside the other for centuries, and if there were tensions, they were generated during the unitary period, when the power was centralized in the hand of the King, first, and Tito, later, and exploded after the latter's death.

The Socialist Yugoslavia provided an high standard of protection of minority rights. After its disruption, Slovenia assumed the legislation on minority protection of the socialist period as a starting point, in order to grant a higher standard of protection to minorities. However, to the Italian and Hungarian minorities the privileged status of "autochthonous minorities" was reserved, while a penalizing legislation provided that if the citizens of any other former Yugoslav republic who had a permanent residence in Slovenia didn't apply for citizenship within six months from the independence day, they would be erased from the register of permanent residents.³¹⁸ The Slovene legislation, finally, ensures to the Roma population a standard of protection that is exemplary for the whole Europe. In Croatia and Serbia, instead, serious steps towards the protection of national minorities could be seen

³¹⁸ Article 81, second comma of the Foreigners Act. According to the Ministry of the Interior, 25,671 people have been erased. Among them, only 7,313 became the Slovene citizens, and 3,630 obtained a work permit. For a further analysis, see "25,671 Cancellati" in www.osservatoriobalciani.org, 2 February 2009; J. Dedić, *The Erasure: "Eleven Years Later"*, Public Lecture Organized by the Association of the Erased Residents of the Republic of Slovenia, Faculty for Social Work, 27 February 2003. I discussed this topic in the last chapter, at Paragraph 4.a

only after the 2000 elections. In 2002, in fact, the Croat parliament adopted the above mentioned constitutional law, that ensured the rights of the members of the national minorities. In the same year, instead, the Federal republic of Yugoslavia approved the federal law number 11 on protection of rights and freedoms of national minorities, that remained into force also during the Union of Serbia and Montenegro, and produces its effects also in Serbia state legislation nowadays.

About the representation of minorities inside the institutions, in Slovenia and Croatia special seats are reserved to representatives of minorities both in the parliament and in the assemblies of local self-government. In Serbia, instead, there are no special seats, but the electoral law provide a different threshold for parliamentary elections for those parties who represent national minorities. In the three countries, moreover, national minorities can create special advisory councils and committees, in order to promote their interests, collaborating with national and local representatives.

To conclude, the constitutional process was different for the three countries, due to their different history, economic system, and ethnic composition. At the time when I'm writing this thesis, two of them reached a consolidation of their democratic institutions that allowed them to join the European Union. Serbia is still behind them, but the country has made progresses in this direction, especially after the independence; thus it is reasonable to assume that in the next ten years Serbia is going to be a new member of the Union too, if it follows this path.

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