

Abstract

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, but also to establish new democratic and free market institutions.

My thesis will focus on the constitutional process in former Yugoslavian countries. Before the unification, 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 Empires 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 European 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.¹ Public officials were completely submitted to the Sultan, who exercised 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. 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 them, whenever he want.

¹See J. J. Linz & A. C. Stepan, *Modern Nondemocratic Regimes in Problems of Democratic Transition & Consolidation*, Baltimore Johns Hopkins University Press, 1996

The result was a “leveling egalitarianism” built on the solidarity between the weak,² where the citizens, who were not able to organize themselves in order to protect their interests, developed an excellent endurance capacity against the power.

After the unification, the Kingdom of the Serbs, Croats and Slovenes was created. According to the Constitution, it was a centralized state. 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.

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 King Alexander convinced himself that the only solution to the political crisis was the abolition of parliamentarianism, thus he annulled the Constitution of June 1921, and dissolved the Assembly.³ In the mid-1930s, a Serb-Croat opposition had emerged, with the aim of returning to democracy and to entrust the Croats with more autonomy. On 26 August 1939, ten days before the second World War broke out, Prime Minister Cvetković signed with Maček an agreement that brought the major Croat party into the government, and solved the Croat question, giving the autonomy to Croatia. However, the creation of a Croatian *banovina* opened up the Serb question, and led to calls among Bosnian Muslims and Slovenes for the creation of their own *banovina*.⁴ Serb nationalist ideas started to resurge once again, thanks to the Serbian church, raising consents also among Serb intellectuals.

During the Second World War, Yugoslavia was invaded by Nazi forces. 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, and an ethnic war between the different ethnic groups in areas of mixed population. During the war, many unimaginable atrocities were committed. In the Croat state, in particular, the Uštase militias, who were entrusted of the government of the area, carried out ethnic cleansing against the Serb and Jewish population.

² 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

³ 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

⁴ 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.86

After the war, Yugoslavia was reorganized as a federation of socialist republics, on the model of the Soviet Union. Although the SFRY was formally a federation, very few competences remained in the hand of the member republics. 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.⁵ The decentralization process culminated with the 1974 Constitution.

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”⁶. 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 Tito⁷. According to many authors, this decentralization of power, generated cultures, local traditions and political and juridical procedures which, with the fall of the Berlin Wall, led to the disintegration of the country⁸.

Rather than solving the tensions, this new constitutional order increased dissatisfaction on all sides, particularly after Tito’s death, when 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.

After the disruption of the communist bloc, Serbia adopted, in September 1990, a new Constitution, followed by Croatia in December 1990, Slovenia in 1991, and finally the Federal Republic of Yugoslavia in 1992.

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

⁵J. Frankel, *Federalism in Yugoslavia*, The American Political Science Review, vol. 49, No. 2, Cambridge University Press, Cambridge, 1955, p. 426

⁶ 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

⁷ 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

⁸ Ibid. p 26

assembly. This Constitution was since the beginning a modern and democratic text⁹. 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, and the constitution of Yugoslavia was drafted by the parties of the old regime too¹⁰. Furthermore, according to many authors, the Constitution of the Federation of Yugoslavia should be null.¹¹

The Constitutions of Slovenia, Croatia and Serbia shared some common features. First of all, the Constitutions had a clear nationalist stamp, as we can see in the preliminary section of the constitution of the Republic of Croatia, that 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,” or the Preamble of the Slovene Constitution, that 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”. In Serbia, the nationalist stamp of the Constitution can be seen in the reduction of the autonomy of the two autonomous units, namely Vojvodina and Kosovo.

In all the constitutions the legislative power is demanded to the Parliament. Both the Slovene and the original text of the Croat Constitution designed an asymmetric bicameral system. Besides the first Chamber, the Slovene Constitution provide the institution of the National Council, 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. In Croatia, instead, 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 President of the Republic, after the expiry of his term, should become a lifelong member of the House of Counties.

The Serbian Parliament is constituted by a single chamber, the National Assembly.

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 of the election of 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

⁹ P. Nikolic, *La transizione costituzionale nella ex-Jugoslavia*, in S. Gambino, *Costituzionalismo europeo e transizioni democratiche*, Giuffrè Editore, Milano, 2003, p. 162

¹⁰ Ibid. p.163

¹¹ 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, pp. 12-13.

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.

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 Slovene Constitution established a parliamentary system, in which the President of the Republic is directly elected by the citizens. This somewhat contradictory solution was the result of public pressure: during 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 a too strong counterweight to the other organs of state or even prevail over them¹². On the other hand, 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. Kučan was extremely popular among the population, and the political parties were fully aware that he would win in a direct ballot. For this reason, drafting the constitutional document, they decided to reduce the influence of the “president-to-be” Kučan by opting for relatively minor presidential powers. 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.

In drafting the Constitution of Croatia, instead, the Constitutional Assembly tried to imitate the French Constitution.¹³ The Croat doctrine justified the choice both from an historical

¹² M. Cerar, *Slovenia*, in R. Elgie “Semi-presidentialism in Europe” , Limerick, University of Limerick, 1999, p. 237 p. 238

¹³ 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.

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.¹⁴ 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. 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 latter there 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).¹⁵

The Constitution of the Republic of Serbia was adopted by the Assembly elected in 1989, when the Socialist Party of Serbia was the only political party. 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 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, in particular in case of war or immediate danger of war, and in state of emergency. However, the Constitution 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 bureaucratic impeachment procedure made him almost untouchable.

¹⁴ Ibid. p. 1819

¹⁵ See T. Cerruti, *La forma di governo della Croazia: da "presidenzialismo" a regime parlamentare*. Cit. pp. 1820-1821

The Constitution of the “third” Yugoslavia was adopted and proclaimed by the representative body of the Socialist Yugoslavia in 1992. Since its adoption, many professors argued that this Constitution was null, since in modifying the Constitution of the Socialist Yugoslavia the articles that regulated the amending of the Constitution were violated. Moreover, the electoral mandate of the Federal Council was expired in 1990. Finally, some provisions of the Constitution of Serbia were in contrast with the Federal Constitution. 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 President of the federation was elected indirectly, and his powers were limited. Thus the centre of the executive power was the Government. The Constitution didn't provide many instruments to the Assembly in order to control the Government; on the other hand, the Government may influence the Assembly, proposing the vote of confidence, or dissolving it, in case the Assembly was not able to exercise its competences for a long time.¹⁶

The aftermath of the proclamation of the new Constitution were different from a country to the other. While Slovenia experienced a period of political stability, that allowed it to consolidate its institutions and join the European Union in 2004, 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, finally, after a period of ethnic war and semi-war, that led to the international intervention and the fall of Milošević regime, made many steps toward the creation and consolidation of democratic institutions, but it's still far from the status of democratic country.

After the proclamation of the independence of Croatia, in the region of Krajina, the Serbs started the so-called “Log Revolution”. On December 1990, they announced the creation of the Serbian Autonomous District and declared their independence from Croatia. The Revolution, backed by Belgrade, was repressed by Zagreb Government. In Serbia, instead, after the adoption of the new Serb Constitution, that reduced the autonomy of the Albanian minority, who composed the majority of the population of Kosovo, they adopted their own Constitution, and created a real parallel state. The coexistence between the

¹⁶ 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, p. 403

Republic of Serbia and the “Republic of Kosova” lasted until 1998, when the Freedom Army of Kosovo (UÇK), started its terrorist activity, killing Serb policemen and soldiers, and also Albanians who collaborated with Serb authorities. The breakout of the conflict and Serb reaction led to the intervention of the international community.¹⁷

The three countries adopted different electoral system. 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.

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. They also used state institutions to maintain the power, modifying the electoral law prior to any election, or declaring null the administrative elections won by the opposition, as it happened in Zagreb, in 1995, or in Belgrade, in 1996. In 2000, both the HDZ and the SPS lost the parliamentary and the presidential elections. After these elections, a Constitutional reform period started in both countries, that led to an increasing protection of human and minority rights, on one hand, and to the reform of the state institutions, that transformed these two countries in democratic states, on the other hand.

Thus while Slovenia since 1991 amended only certain aspects of its Constitution, without subverting its form of government, Croatia passed two Constitutional amendments, in 2000 and 2001, that transformed the Constitutional asset of the country.

The first amendment changed the form of government of Croatia, reducing the competences of the President of the Republic, and increasing the competences of both the Government and the Parliament. The President of the Republic 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

¹⁷ 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

constitutionality of a law before the Constitutional Court prior to its promulgation, and maintained the direct legitimacy toward the people.¹⁸ However, its powers 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 core of the reform, according to the writers, is announced in the new article 4, that 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.¹⁹ The second Constitutional amendment, in 2001, abolished the House of Counties, transforming the Sabor in a unicameral institution.

After the defeat of the pro-Milošević wing of the Democratic Party of Socialists of Montenegro, in 1997, the Government of the Republic promoted the creation of an autonomous and sovereign state. Thus they didn’t recognize Yugoslavia, didn’t adopt its money neither allowed the federal police to exercise border activities. 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 Constitution of the Union of Serbia and Montenegro was adopted in 2003, but it had a temporary nature: after three years, 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, in order to create a full sovereign state. The new Constitution reduced the role of the President of the Republic during the state of emergency, and introduced an entire section on the protection of human and minority rights.

Because the former Yugoslavian countries are multiethnic states, where different ethnic and religious groups coexist, the Constitutions of these countries must guarantee a high standard of protection of their rights. Furthermore, since these countries expressed their will to join the Western bloc and the European institutions, their constitutional processes had been monitored by the European Commission, the Venice Commission (the Council of

¹⁸ Ibid. pp. 1834-1835

¹⁹ T. Cerruti, *La forma di governo della Croazia: da “presidenzialismo” a regime parlamentare*, cit., pp.1828-1829

Europe's advisory body on constitutional matters) and the High Commissioner on National Minorities of the OSCE.²⁰

The European institutions influenced the reforms in these countries in many ways. First of all, through ad hoc programmes, that granted economic aids to former communist countries on condition that they made political reforms in order to transform their countries in democratic states. In 1999 the European Union promoted agreements and programmes tailored for the Western Balkans countries, such as the Stability Pact for South-Eastern Europe, the Community Assistance for Reconstruction, Democratisation and Stabilization programme (CARDS), and the Instrument of Pre-accession Assistance, launched in 2007, and revised in 2014.

Since these countries want to join the European Union, besides the explicit conditionality, generated by the agreements and the programmes, the EU exercises also an implicit conditionality. In order to join the EU, in fact, the countries must comply with the so-called Copenhagen criteria, that provide political, economic, and legislative standards in order to enter in the Community. 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.²¹

The European conditionality 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 created the European Commission for democracy through law, better known as Venice Commission, in order 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, giving opinion on the progresses made by the states on democracy, human rights, and rule of law. The Organization for Security and Co-operation in Europe (OSCE), instead, through its High Commissioner on National Minorities and the Office for Democratic Institutions and Human Rights, support the states of Central and Eastern Europe during their constitutional transition, in particular regarding the respect of international and European standards.²²

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

²⁰ M. Dicosola, *Stati, Nazioni e Minoranze. La ex jugoslavia tra revival etnico e condizionalità europea*, Giuffrè editore, Milano, 2010, pp. 154-155

²¹ Ibid. pp. 12-13

²² Ibid. pp. 31-32

legislations protect them against discrimination. Their rights to be represented are guaranteed too, in many different ways.²³

In Slovenia, a particular standard of protection is reserved to the Italian and Hungarian minorities, that are considered by the constitution as autochthonous national communities. In Croatia, instead, the constitutional laws recognize and protect the national minorities, but their provisions can be applied only to minority groups enumerated in the Preamble of the Constitution. In Serbia, finally, after the fall of Milošević regime, that promoted repression policies towards minority groups, in particular the Albanian minority, 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,²⁴ that became part of the legislation of the Union of Serbia and Montenegro first, and of the independent Republic of Serbia in 2006, when it was constitutionalized in the new Constitution.

The legislation of these countries was influenced by the European institutions, especially regarding 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 2002.²⁵ In Croatia, the progresses made by the government in the implementation of the Constitutional law of 2002 were valued by the European Commission, that through its progress reports, analyzed what have been done and what still should be done. Finally, the new Constitution of Serbia have been monitored by the Venice Commission, the High Commissioner for National Minorities and the European Commission.

The European conditionality accelerated the reform process on the issue of minority rights, although some aspects remains uncertain, in particular regarding the “double standard” imposed by the European institution. To candidate countries, in fact, is imposed a standard for protection of minorities that is not respected by the countries that are already members. The application of double standards can cause many problems, because it can product 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

²³ Ibid. pp. 267-271

²⁴ Ibid. p. 215

²⁵ *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

applied in Western European countries,²⁶ that could cause the break out of the entire European system of protection of minority rights.²⁷

²⁶ 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

²⁷ 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

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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