

MITJA ŽAGAR

## POSITION AND PROTECTION OF ETHNIC MINORITIES IN THE CONSTITUTION OF THE REPUBLIC OF SLOVENIA (basic information)

### I. Introduction

The Republic of Slovenia is a small new state in Central Europe, independence and sovereignty of which were officially internationally recognized in January 1992;<sup>1</sup> it is also an UN member-state.<sup>2</sup> Slovenia lies in the North-West of the territory of the former Yugoslavia, and borders on Italy, Austria, Hungary, and Croatia.<sup>3</sup>

Looking from the ethnic perspective, the population of the Republic of Slovenia is a rather homogenous one in comparison with some other states.<sup>4</sup> At the same time, it should be stressed that also the population of Slovenia is ethnically plural to a certain extent as it is the case with all other existing states in the present world; surely, the existing ethnic and cultural plurality of the population and ethnic policy of the country in different historical periods have conditioned its specific development.

Beside Slovenes who constitute almost 90% of the population, the following ethnic minorities are living autochthonously in the territory of Slovenia: Hungarian, Italian and Roma (Gypsies) communities, and altogether some hundreds of autochthonous Croats, Serbs, Germans (Austrians) and Jews. The rest of the population are immigrants from all over the former Yugoslavia who came to Slovenia mostly as economic immigrants in the post World War II period. Slovenia was traditionally the most developed part of the former Yugoslavia to which people from the less developed parts of the country immigrated. On the other hand, many Slovenes emigrated from the country - most of them for economic reasons. In the post World War II period the inflow of population was larger than outflow, and Slovenia was an immigrant society within the former Yugoslavia; this processes have influenced some specific changes in the traditional ethnic structure of Slovenia. After Slovenia became an independent state, most of

---

1. Some states recognized the independence of Slovenia already in 1991 (e.g. Baltic states, Croatia, Vatican), but the major turning-point was the collective recognition of the independence of Slovenia and Croatia by the European Community in January 1992, which some 100 states followed suit.

2. After her official recognition by the USA in April 1992, Slovenia became an UN member-state together with Bosnia and Hercegovina and Croatia in late Spring 1992.

3. Its international borders with Italy, Austria and Hungary are undisputed and well defined, but there may be certain problems in finally defining the border with Croatia. Slovenia - although having a certain part of something more than 40 km of the Adriatic coast and also the international port of Koper/ Capodistria - is in practice a land-locked country because she doesn't have direct access to the international waters; there would have been no difficulties, had it not been for certain problems in relations with the Republic of Croatia. Namely, because of some unrealistic and thoughtless proposals of both sides the negotiations to solve existing transportation and fishing problems that should have been bare formality became rather complicated and any kind of a reasonable solution was made more difficult to achieve.

4. Comparing Slovenia to all other new states in the territory of the former Yugoslavia, her population is surely the most ethnically homogenous one.

immigrants who permanently lived there applied for a Slovene citizenship, and large majority of them who had permanent residence in Slovenia in December 1990 were granted it.

Table 1:

Ethnic communities in Slovenia and ethnic structure of the population in 1991<sup>5</sup>

The Republic of Slovenia (area: 20,256 sq km)		
Total population in 1991	1,962,606	100.0 %
Slovenes	1,718,318	87.6 %
Hungarians	8,499	0.4 %
Italians	3,063	0.2 %
Roma (Gypsies)	2,282	0.1 %
*Yugoslavs* <sup>6</sup>	12,237	0.6 %
Immigrant communities <sup>7</sup>	cca. 190,000	cca. 10.0 %

In addition to the already mentioned changes in the ethnic structure of the population of Slovenia in the period after World War II, the recent development has contributed to some new and additional changes. Namely - in the Fall of 1992, there are between 70,000 and 100,000 refugees from Bosnia-Herzegovina and Croatia in the Republic of Slovenia because of the war in the territory of the

5. Data from: Svein MONNESLAND, For Jugoslavia og etter: Nye stater - gamle nasjoner (1992); Sypress Forlag, Oslo 1992; Bulletin of the Statistical Office of the SFRY, Belgrade 1991.

6. Though non such nation or distinct ethnic group - with common language, culture, history, territory, religion, etc. - actually existed in the former Yugoslavia historically, there were 1,219,045 people or 5.4% of the total population of the former Yugoslavia in 1981, and 700,400 people or 3% of the total population of the former Yugoslavia in 1991 who declared themselves "Yugoslavs" (Yugoslavs by nationality). The introduction of this category was probably influenced partly by the communist ideology according to which the importance of nations and ethnicity in the today's sense should have been diminishing; at the same time, this category offered a possibility of collective identification especially to some children from ethnically mixed marriages who could not have identified themselves with any other individual ethnic group in the former Yugoslavia; they identified themselves with the multi-ethnic Yugoslav community. This category was introduced in the census in 1961 when 1.7% of the total population declared themselves Yugoslavs; with the rise of nationalism at the end of 1960s and the beginning of 1970s their number and share decreased in 1971 to 1.3%; in 1970s and the first half of 1980s their number and share have been growing, and at the end of 1980s and the beginning of 1990s their number and share decreased again. Although the former Yugoslavia no longer exists, certain number of people in all parts of its territory still declare themselves Yugoslavs; taking into consideration the present development it can be expected that their number and share in the population of new states will further decrease.

7. In 1991 the ethnic structure of the immigrant population that represents almost 11 % of the population in Slovenia was as follows:

Croats	53,688	2.7 %
Serbs	47,097	2.4 %
Muslims	26,725	1.4 %
Macedonians	4,412	0.2 %
Montenegrins	4,233	0.2 %
Albanians	3,558	0.2 %

In this context it should be mentioned, that also the small number of Croats and Serbs who autochthonously live in Slovenia are included in the presented data.

former Yugoslavia.<sup>8</sup> It is very likely that at least some of them will decide to stay in Slovenia - regardless of what the development and outcome of this tragic war will be. Regarding the ethnic structure of the population of Slovenia, this will further increase the numerical size and share of the ethnically diverse and plural immigrant communities in the society.<sup>9</sup>

1.1.

This paper presents some aspects of the constitutional regulation of ethnic relations and some elements of ethnic policy in the Republic of Slovenia. In this context, some theoretical and political questions and background of the constitutional regulation of ethnic relations are presented in the second section. In the third section, special attention is paid to the concept of constitutional protection of autochthonous ethnic minorities and to the presentation of constitutional provisions. In the fourth section, some aspects of the position of immigrant communities are presented and commented. And the conclusion brings some comments on the possible future development.

## **II. The constitution of the Republic of Slovenia: regulation of ethnic relations and protection of ethnic minorities**

The Constitution of the Republic of Slovenia was adopted by its parliament in December 1991 - after the independence of the republic had already been achieved in the practice, and just before the already announced official recognition by the EC and its member states took place.<sup>10</sup> This constitution enacts the constitutional basis of the new democratic Slovene state with a multi-party parliamentary system; its second part - the charter of human rights and fundamental freedoms shall provide the main normative basis for democracy and democratic nature of the political system. It is in this context, that also special rights of ethnic minorities are regulated constitutionally.

The establishing of the independent Slovene state in the process of dismantling of the former Yugoslavia should be understood as the realization of the right to self-determination elaborated and guaranteed by the Public Internation-

---

8. The seriousness of the problem of refugees in Slovenia may be more present if we compare the number of refugees with the total population of Slovenia: in the Fall 1992 refugees in Slovenia represent the share of some 5 % of the total population.

9. To present some trends and changes in the ethnic structure of the population of Slovenia especially in the late 1980s and early 1990s, the following data may be interesting. In 1981 the total population of Slovenia was 1.891.864. Out of this number, there were 1.712.455 or 90,52 % of Slovenes, 9.496 or 0,50 % of Hungarians (mostly in Prekmurje), 2.187 or 0,12 % of Italians (mostly in Primorska in Istria peninsula), and 1.435 or 0,08 % of Romanies. Some 7 % of the population were members of the other "Yugoslav nations and nationalities" - who mostly came to Slovenia as immigrant workers; among them there were: Croats (some more than 55 thousands), Serbs (some more 42 thousands), Muslims (some 13 thousands), Montenegrins (some more than three thousands), Albanians (some two thousands); etc. 26.263 inhabitants declared themselves as "Yugoslavs by nationality" in 1981, which was some 1,4 % of the total population in Slovenia. (Data from: Statistični godišnjak Jugoslavije - 1988 (The Statistical Yearbook of Yugoslavia - 1988), Year XXXV, Savezni zavod za statistiku, Beograd 1988.) The situation in 1991 is presented in the Table 1 which shows data in the time of census in the early Spring of 1991. With the inflow of refugees it may be expected that the number and share of Croats and especially Muslims (Bosnians) will increase considerably.

10. See: The Constitution of the Republic of Slovenia - Ustava Republike Slovenije, Uradni list Republike Slovenije - Official Gazette of the Republic of Slovenia, No. 33/1991. The official English translation of the constitution was published in the Fall 1992: Constitution of the Republic of Slovenia, časopisni zavod Uradni list Republike Slovenije, Ljubljana 1992.

al Law;<sup>11</sup> also, the Preamble to the Constitution of the Republic of Slovenia stresses that the independence of the republic is based "on the fundamental and permanent right of the Slovenian people to self-determination."<sup>12</sup> Such a decision was confirmed by the referendum that took place on December 23rd, 1990 when an overwhelming majority voted in favour of the independence of Slovenia.<sup>13</sup>

Taking into consideration all the work on amending the Constitution of the (Socialist) Republic of Slovenia (from 1974) in the late 1980s and early 1990s that actually created constitutional basis for the first post World War II multi-party elections in Slovenia in the Spring of 1990, and for the reform of the political system, the whole process of preparing and drafting of the new Slovene constitution was going on for more than two years. Many different issues and questions were discussed in this process, and special attention was paid also to the constitutional regulation of protection of ethnic minorities. Although Slovenia is ethnically relatively homogenous, the fact that ethnic plurality exists there has always been recognized in constitutional discussions; several different proposals and opinions have been discussed in this context, and the adopted solution was formed as a compromise acceptable to all participating parties. A very important role in drafting and formulating of constitutional provisions was played by the representatives of ethnic minorities in the republic parliament and its Constitutional Commission.

#### *II.1. Ethnic communities*

In Slovene politics and in the Constitutional Commission of the parliament, following the practice of most of the states in the world and the usually existing division, the distinction was made between autochthonous ethnic communities who live traditionally in a certain territory and immigrants (immigrant communities) who came to this territory relatively recently. Based on such a concept, it was decided that the special constitutional collective protection was to be guaranteed only to autochthonous ethnic minorities in Slovenia.

To avoid the possible misunderstanding, the definition of traditional ethnic minorities should be explained; such a definition was obviously accepted and

11. There are many controversies connected with the concept and realization of this right and its relations to some other basic rights provided by the International Public Law (e.g. territorial integrity and sovereignty of states). In this context it should be stressed that the right of "Yugoslav nations" to self-determination was mentioned also in the Basic Principles of the Constitution of the Socialist Federative Republic of Yugoslavia from 1974, but it was not elaborated in the normative part of the constitution. Although this right of "Yugoslav nations" had been guaranteed already by the Constitution of the Federal People's Republic of Yugoslavia from 1946 many thought that this right had been consumed by the creation of the multi-national Yugoslav federation during and after World War II. They argued that the proof of their position was that there were no procedural provisions in any of the post World War II Yugoslav constitutions that would have provided and regulated the procedure of realizing this right of "Yugoslav nations".

12. Quotation: The Preamble of the Constitution of the Republic of Slovenia (1991).

13. The right to participate in the referendum was given to everyone (to every Yugoslav citizen) permanently living in the territory of the Republic of Slovenia who had a voting right. Taking into account the participation of the people and the results of the referendum it may be stated that most of the population of Slovenia regardless their ethnic origin and identity voted in favour of the sovereignty and independence of the Republic of Slovenia. At the time of the referendum it was thought that the sovereignty and independence of Slovenia could have been realized within the Yugoslav confederation or a kind of very loose Yugoslav union, which later on proved to be impossible.

used also by the Constitutional Commission of the Slovene parliament. An ethnic (national) minority can be defined as (1) a part of a certain nation that as (2) a specific, distinct and formed ethnic community (group) (3) lives in a common territory outside the borders of the nation state of its nation - usually as (4) a consequence of specific historical (social, political, military, administrative, etc.) development. Beside these four elements that formulate the basic common definition of ethnic minorities - as it is usually used in different international documents dealing with or regulating these questions - the fifth element is often mentioned as an additional criterion in theory, but also in political and legal practice. This element is: (5) autochthonous settlement of a certain ethnic minority in a certain territory - in a certain multi-ethnic community.<sup>14</sup>

At the same time, the terminology used by the Constitution of the Republic of Slovenia in the context of ethnic minorities needs to be explained. Instead of the term "ethnic (national) minority" the term "ethnic community" is strictly used in the text of the constitution. The decision to use this term was not accidental, but had its theoretical and political background: the term "minority", as it is usually used in everyday life and political practice, has certain - mostly negative connotation connected not only with the quantitative but also qualitative characteristics of this phenomenon; to avoid the possible negative connotation of the use of the term "minority" in the connection with ethnic minorities, the more politically neutral term "ethnic community" was chosen as it was initiated also by the representatives of ethnic minorities in Slovenia in the Constitutional Commission.<sup>15</sup> It is because of these reasons that the term "ethnic community" is used in the Constitution of the Republic of Slovenia in articles that define special rights of Italian, Hungarian and Roma - Gypsy ethnic communities.

## *II.2. The positive concept of protection of ethnic minorities*

There were many discussions concerning the concept of protection of ethnic minorities in Slovenia. Different concepts were presented and advocated in the process of drafting of the Constitution; they ranged from the opinion that every kind of special protection of ethnic minorities is incompatible with the basic principle of equality before law for all as the main principle of liberal

---

14. The problem may be to decide how long it is required for a certain ethnic community to live in a certain territory before it may be considered an autochthonous ethnic community. The status of autochthonous ethnic community in multi-ethnic communities that guarantee a certain special protection of ethnic minorities is a precondition for a certain ethnic community and its members to be entitled to these rights. This is always also a political question, and should be observed from this perspective.

More see e.g.: Ernest PETRIČ, *Mednarodnopravno varstvo narodnih manjšin (The Protection of Ethnic Minorities by the International Law)*, Založba Obzorja, Maribor 1977, pp. 89-104; Mitja ŽAGAR, *Sodobni federalizem - s posebnim poudarkom na asimetrični federaciji v večnacionalnih državah (Modern Federalism: The Model of Asymmetrical Federation in Multi-National States)*, Doktorska disertacija (PhD dissertation), Pravna fakulteta, Ljubljana 1990, pp. 292-294.

15. In the former Yugoslavia the term "ethnic (national) minority" was also avoided because of its possible negative connotation. Instead of the term "ethnic minority" the term "nationality" was used in the Yugoslav constitutional and political practice. Although such a practice of the use of the term "nationality" was not unknown in the world, it was often criticized due to the fact that the term "nationality" may have different meanings. Namely, the term "nationality" might be used to determine someone's ethnic origin or belonging, to determine certain specific ethnic group, but also to refer to someone's belonging to a certain state (citizenship).

democracy,<sup>16</sup> over proposals to implement an absolute reciprocity taking into consideration the position and rights of Slovene minorities in the neighbouring countries, to the proposals that all the possible special rights should be guaranteed constitutionally.<sup>17</sup> At the end, the consensus was reached that the level of the protection of ethnic minorities should not have decreased comparing to the level of protection of ethnic minorities guaranteed by the constitution of the (Socialist) Republic of Slovenia (from 1974, and amended later). This was also in the accordance with the statements and assurances of some leading Slovene politicians before the referendum on independence of Slovenia in December 1990. Concerning the role of the state in realizing special rights of ethnic minorities and their members this meant that the, so called, "positive concept of protection of ethnic minorities and their members" was accepted to a large extent by the Constitution of the Republic of Slovenia (from 1991).

The whole "positive concept" was developed as a theoretical concept and is based on the division of human rights in the law to rights of "positive" and to "rights of negative status." To explain this division in a very simple way one could say that the rights of negative status entitle their subjects to the protection of the state in cases these rights are violated by someone else; on the other hand, the rights of the positive status entitle their subjects to demand certain action from the state to realize them.

Based on this division, the "positive concept of protection of ethnic minorities and their members" means that the special obligation of the state exists to act in order to assure the realization of special rights of ethnic minorities and their members. This concept is based on two main characteristics:

---

16. Supporters of this view argued that any kind of discrimination of everyone, including the positive discrimination, means the violation of the principle of equality before law. They claimed, that any kind of discrimination - being it "positive" or "negative" - establishes inequality of individuals; they didn't accept arguments that minorities were objectively in less favourable position within the political system simply because of the fact that they were minority and their influence on political decision-making process was limited by this fact. The argument, that in case that they did not have any kind of special position guaranteed by the constitution and legal system they would try to find different channels outside the formal system to influence the decision-making and that this would cause further differentiation among minority groups concerning their material resources and influence, was not accepted by them.

17. Special rights of minorities are advocated as important means that could assure equality in a society by providing equal initial (starting) positions and similar opportunities for all or almost all social groups and individuals; in the society of objectively existing inequality, such selective approach should assure - at least - a certain level of equality. Various socially deprived groups and individuals are not usually in a position to realize their equal rights existing in a legal system if they are not granted and guaranteed their special (additional) rights; that is why human right activists are calling for special protection and rights of minorities and other socially deprived groups and their members. They are stressing also the fact that the very existence of special rights of minorities in a certain constitutional and legal system by itself could not provide and assure the realization of such rights and the realization of the basic principle of equal rights for everybody in the practice; to assure the realization of special rights of minorities, there is an urgent need for the obligation of a state to provide and guarantee realization of special rights of minorities (and other socially deprived groups) and their members.

(i) it establishes minorities as distinct communities<sup>18</sup> and their members as individuals as active and equal collective and individual subjects in a plural society and its political system. In order to realize and assure the realization of special rights and an equal position of minorities and their members in society, their representation and an active and decisive role in decision-making processes in the institutions of political system should be provided and guaranteed by the constitution and the legal system of a certain state;

(ii) it requires a specific active role of a state in the field of protection of ethnic minorities.<sup>19</sup> Namely, special obligations of a state shall be provided by the constitution and the legal system in order to assure realization of special rights of minorities. This obligation of a state - its institutions and organs - to act in order to realize special rights of minorities shall be established by its constitutional and legal system alone; no special or additional claims or requests of minorities are required. The very fact, that the state wouldn't have acted in such a case, would establish a violation of the law by the state and its - moral and legal - responsibility for (possible) consequences.

As it has been mentioned, this concept has mostly been developed as a theoretical concept, and has as such been only fragmentally introduced, used and developed in constitutional and legal systems and in the practice of very few states.<sup>20</sup> Some elements of this concept introduced in the Constitution of the Republic of Slovenia (1991) will be presented later in the article.

### *II.2.1. Dual nature of the rights of ethnic minorities*

In this context something should also be said about the dual nature of special rights of ethnic minorities and their members. In their complexity, these rights are at the same time both -collective and individual rights. As collective rights they belong to ethnic (national) minorities as distinct communities; as

18. When the term "distinctive" or "distinct community" is used, I'm referring to the existence of different ethnic, linguistic, religious, cultural or other specific communities (groups, societies) in a certain country; such communities could be distinguished on the basis of their ethnic, lingual, religious, cultural or other characteristics that are different from the characteristics of other citizens and communities in a country. The term "distinct community" is in this article used in a way as it is usually used in Canada to describe ethnic and other diversities in the Canadian society; such diversities (specific characteristics) used to define "distinct communities", could be found in every bi- or multi-ethnic, bi-or multi-lingual, bi- or multi-religious, bi- or multi-cultural society.

19. This goes far beyond the classical concept which doesn't require an obligatory active role by (and of) the state; the classical concept assures possibilities for every individual member of ethnic (national) minorities and for some organizations of minorities to sue everyone who violates any of these rights. In some cases there might also be an obligation for the state to prevent violations of special rights of minorities (and all other human rights) that is provided by the constitution and legal system. Human rights including the rights of minorities are, in this context in these countries, understood mostly if not exclusively as individual rights.

20. Some elements of this concept have been introduced in legal systems and in political practice in Canada, the former Yugoslavia and Slovenia; some other states may sometimes use certain elements of a "positive concept" in their minority policy - mostly in the field of education of members of minorities (in their own language in order to preserve and develop their distinctive culture). Such a concept is advocated also by members and/or representatives of ethnic minorities, by some organizations (associations) of ethnic minorities, and by some experts and scholars, but it is not accepted broadly and well by states (and their institutions) and different politicians (especially members of national political parties).

individual rights they belong to every member of a certain ethnic minority. Concerning their nature, some of the rights are realized mostly as collective rights while others are realized mostly as individual rights.<sup>21</sup>

The implementation of a "positive concept of protection of minorities" establishes an obligation of the state to act to assure the realization of these rights in their complexity both as individual and collective rights. The nature and a way of realizing of a certain right (in every specific case) would condition concrete obligations of a state in order to realize such a right.

In this context it should be mentioned that that kind of division of rights is not generally accepted. Some argue, that all human rights are in their nature only individual rights. They don't agree with the argument that all collective rights do have their individual dimension and application but as such by their nature they are collective rights of a certain community.<sup>22</sup>

In the present Slovene Constitution dual nature of special rights of ethnic communities is accepted. This can also be seen in the specific wording of constitutional provisions. Though the Constitution introduces these rights as special rights of "autochthonous ethnic communities" the provisions acknowledge the dual nature of these rights and guarantee them to both - to ethnic communities as collective subjects and to their members as individual subjects.

### *II.3. Dimensions of ethnic policy*

Ethnic policy of every state should be observed in the context of its specific situation and its general policy. Usually there are many different factors that influence the shaping of ethnic policy and its contents.

The ethnic minority policy may be considered a classical and central issue of ethnic policy of ethnically plural societies. There are certain international standards that have been developed in this context and can be used as yard-sticks in analyzing a concrete ethnic minority policy of every state. It should be stressed that ethnic minority policy of contemporary states and also their legal regulation of (special) rights and social position of ethnic minorities usually have two main dimensions:

(i) internal dimension: Formation, nature and realization of the ethnic minority policy and of ethnic minority legislation are very much influenced by specific political interests of major "political players and factors"<sup>23</sup> within a certain society. If the level of tolerance and democracy in a certain multi-ethnic society is high, if social and political conditions are stable, and if relations and cooperation between (among) ethnic groups are relatively intense and stable, then possibilities to develop favourable policy and legislation for ethnic minorities are much better than in unstable and intolerant societies. Especially, in a situation of social and economic, but also political and moral crisis in multi-ethnic socie-

21. E.g.: The right to education in the language of minorities belongs simultaneously to both - to a certain ethnic minority as a distinctive community and to every individual member of such a minority. By establishing of an appropriate educational system this right would be realized as a collective right of a certain minority; by giving the possibility to attend a bi-lingual school or educational program and/or a school or educational program in the language of a minority such a right would be realized as an individual right of every member of a certain minority.

22. In our case, they would argue that members of minorities do have certain rights while minorities as collective subject are not entitled to any special rights.

23. Such as political parties, pressure groups and lobbies - including lobbies of ethnic minorities, influential associations and mass organizations, religious and cultural organizations, etc.



ties which often produces and/or strengthens nationalism and nationalist policies, ethnic minorities are often used as scape-goats blamed for all problems and presented as "national enemies."<sup>24</sup> In this context we should once again stress the importance of ethnic tolerance and equality for the existence and level of development of democracy in a certain multi-ethnic society, and we can state that practice and policy of intolerance - including ethnic intolerance (so characteristic for nationalist policy) - may endanger the very existence of democracy by requesting, often artificial, unity, total obedience and subordination to certain idea, ideology or policy, and by destroying all different kinds of social pluralism.

(ii) international (external) dimension: International impacts of ethnic minority policy and legislation of a certain state should be observed especially from two aspects and at two levels:

- on the one side, there is a bilateral impact of the ethnic minority policy and legislation on relations and cooperation between states. Relations between two states and the foreign policy of a certain nation state in such a bilateral relations may well be influenced and even conditioned by the ethnic policy of the other state; the position and rights of "her" (its) ethnic minority guaranteed by the constitution and legal system and realized in the practice are namely influenced by the nature and content of the existing ethnic minority policy of the other state. It is very likely, that bilateral relations between two states are better if the rights and social position of (their) ethnic minorities are well regulated in respective states, and the ethnic minority policy of states is favourable and positive for minorities, and vice versa;

- on the other side, there is a general (or multilateral) international impact of the ethnic minority policy and legislation on international relations of the state and on its position within the international community. Both, ethnic minority policy and legislation in this field were traditionally and mostly still are considered internal affairs of each state that should not effect its international relations and position - with the exception of the already mentioned impact on bilateral relations of two states. Some general international (especially legal) standards of position and protection of ethnic minorities<sup>25</sup> in multi-ethnic states have been

---

24. The case of Jews, Romas (Gypsies) and some other ethnic groups in the time of the Nazi Germany, and the tragic consequences of the nazi ethnic policy are often quoted in this context as the most extreme example, but many other examples could be found in almost all historical periods in different parts of the world. Usually, the consequences of such ethnic policies are tragic and because of them problems grow even larger, but they are often used as nationalist policies can (relatively easily and successfully) mobilize large masses of dissatisfied people - (mis)using their national identity as one of the main existing collective identities to back certain political party or stream.

25. Standards of special protection of ethnic, cultural, linguistic, racial and/or religious minorities that have been developed by the international law are based on the conception of human rights and fundamental freedoms, and shall guarantee and promote all the rights that assure these minorities as collective subjects their specific existence, originality and development; all this shall assure individual members of such minorities the equality in enjoying and exercising all personal, political, economic, social and cultural rights. Such special rights that should assure the protection, equal social status and development of ethnic minorities are e.g.: equal dignity and rights - "without distinction of any kind, such as race, colour, sex, language, religion, political and other opinion, natural or social origin, property, birth or other status" (Universal Declaration of Human Rights, Article 1, Par. 1); the right to use the language of ethnic minority (also in official businesses with the state administration); the right to education in the language of the minority; right to cultural originality and to

developed -especially in the post WW II period, but also their implementation has been mostly considered as a part of internal affairs of each state. Some violations of these rights and mistreating of ethnic minorities have provoked critical reactions and condemnation of certain international fora and some states, and there has (relatively often) been some pressure by international public and media - but very seldom some concrete diplomatic and political actions of international community have been taken.<sup>26</sup> Bad public image of a certain state may have influenced its international position and may have caused certain problems in its political, economic, cultural, sports, etc. relations and exchanges with other states - but these were more or less the only consequences. Yet lately, the international praxis has changed to a certain extent: the violations of ethnic (minorities') rights are important issue on political agenda in international relations, and in few cases the international community even - in different ways - intervened because of them in certain states.<sup>27</sup>

These basic characteristics of ethnic minority policy are valid also in the case of Slovenia. In this context it should be mentioned, that the ethnic minority policy of a certain state may be considered a very important factor of bilateral relations and cooperation with neighbouring countries.

An important part of ethnic policy of a certain state is policy on immigrants and immigrant communities. These questions are especially important in Slove-

---

development; etc. In certain specific cases, ethnic minorities may claim and should be acknowledged also the right to self-determination (including the secession from the state(s) where they live) when their rights and equal social position are violated and/or negated, when their very existence is not recognized or is denied, when their culture, originality and the very existence are endangered and their specific development prevented or made impossible by the state's policy and activities. These standards are based on and provided by some basic international legal documents (such as the UN Charter, the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, some other resolutions and covenants within UN), peace treaties and some other bilateral or multilateral international treaties, documents of peace and other international conferences (e.g. CECS documents), etc. (See e.g.: Ernest PETRIČ, *Mednarodnopravno varstvo narodnih manjšin* (The Protection of Ethnic Minorities by the International Law), Založba Obzorja, Maribor 1977, pp. 77-140, 228-241; Ernest PETRIČ, *Pravica do samoodločbe, mednarodni vidiki* (The Right to Self-Determination: International Aspects), Založba Obzorja, Maribor 1984, pp. 91-96; Mitja ŽAGAR, *Sodobni federalizem - s posebnim poudarkom na asimetrični federaciji v večnacionalnih državah* (Modern Federalism: The Model of Asymmetrical Federation in Multi-National States), Doktorska disertacija (PhD dissertation), Pravna fakulteta, Ljubljana 1990, pp. 292-294, 319-321.)

26. Such an exception were (by UN adopted) sanctions against the South African Republic because of its ethnic policy and system of apartheid. These sanctions were aimed at pressing on the South African regime to abolish the apartheid and present development shows that they may have had certain effect. At the same time it has to be stressed that these sanctions have - all the time - been violated both by states and companies because of their (especially economic) interests.

27. The most evident example of such actions of the international community were sanctions against Iraq because of its treating of Kurdish minority - that led to an international (humanitarian) intervention in the north of the state (in the territory where Kurds live) and to the establishment of internationally controlled (so called) "no fly zone" that should prevent use of the Iraqi air forces against Kurds. In september similar "no fly zone" was implemented in the south of Iraq in order to protect Shi-ite minority from the air attacks by Baghdad government which accused them of being pro-Iran and of undermining Iraq state.

The issue of the protection of ethnic minorities was stressed by the international community also in the case of the Yugoslav crisis, when the satisfactory level of guarantees and of protection of ethnic minorities was put up (by the EC on the basis of the report of the international expert consulta-

nia in the context of the Yugoslav crisis; immigrant policy, and the question of constitutional and legal regulation of position and possible special rights of immigrant communities play (and will play) important role in bilateral relations and cooperation among the new states in the territory of the former Yugoslavia.

The international standards of protection of immigrants and immigrant communities are relatively few and low; this is reflected also in the position of immigrants and immigrant communities in immigration societies. The situation of immigrants in new states in the territory of the former Yugoslavia is specific due to the fact that they were all Yugoslav citizens, but with the establishment of new states they suddenly became foreigners and immigrants. Such a situation in the time of dismantling of multi-ethnic states has not been unknown in the past - e.g. dismantling of Austro-Hungarian state; basically, in all these cases similar solutions have been used as are applied by the new states in the territory of the former Yugoslavia.

At the same time it should be stressed, that the policy on immigrants and immigrant communities in Slovenia will play an important role in the bilateral relations among the new states in the territory of the former Yugoslavia. On the other hand, the internal dimensions of the policy on immigrants and immigrant communities are important in the context of the future democratic development of Slovenia.

### III. Constitutional protection of ethnic communities<sup>28</sup>

In the context of studying the position and special rights of ethnic minorities in this article, it is especially important that the special rights of Italian and Hungarian national communities (minorities) are provided and regulated by the Constitution of Slovenia (1991) in the Article 64; their realization shall be morally and materially supported by the state, which should also assure their participation in the political system at all levels of the political system - at the local level (LG) and at the level of the republic in National Assembly. The constitution further provides that:

"Statutes, regulations and other legislative enactments which exclusively affect the exercise of specific rights enjoyed by the Italian or Hungarian ethnic communities under this Constitution, or affecting the status of these communities, may not be enacted without the consent of the representatives of the ethnic community or communities affected."

"...The rights of both ethnic communities and of their members shall be guaranteed without regard for the numerical strength of either community."<sup>29</sup>

...tive commission led by Badinter) as one of the main (pre)conditions to recognize the independence of newly established states - former Yugoslav republics.

28. For a more precise elaboration of special rights of minorities, see the selected articles of the Constitution of the Republic of Slovenia in an appendix to this journal.

29. Special rights of both the ethnic communities - autochthonous ethnic minorities living in the territory of the Republic of Slovenia (Italians in the South-West close to Italian border in the Primorska region; Hungarians in the North-East close to Hungarian border in the Prekmurje region) - are regulated by the Article 64 "Special Rights of the Autochthonous Italian and Hungarian Ethnic Communities in Slovenia" of the Constitution of Slovenia (1992). Quoted in the text is the Paragraph 5 and a part of the Paragraph 4 of this Article.

It is important to mention, that the term "ethnic communities" was chosen instead of the term "ethnic minorities" on the initiative of the members of both mentioned ethnic communities in order to

The constitution guarantees that these two ethnic communities shall always be represented directly by one deputy each in the National Assembly - which is a House (Chamber) of Representatives in the republic parliament.<sup>30</sup>

It is an important development, that the status and special rights of the Roma-Gypsy ethnic communities in Slovenia are constitutionally guaranteed and shall be determined by a special statute.<sup>31</sup> In this context it is important to stress, that Roma ethnic communities are considered one of the autochthonous ethnic communities in Slovenia (though they do not have the mother state with which they could exercise special connections); their status and rights are defined in a specific way because of the facts that Roma ethnic communities live all over the territory of the Republic of Slovenia, that they haven't developed common autonomous ethnic organizations or bodies, and that their common identity and consciousness are currently being built. The statute shall establish - with a direct participation of representatives of Roma communities in Slovenia

---

...avoid negative connotations that the term "minority" might have had in the political context and in understanding of their position.

30. See e.g.: Paragraph 3 of the Article 80 of the Constitution of the Republic of Slovenia (1991). A special law (statute, act of the parliament) should regulate the elections of deputies of the republic parliament and also of the representatives of both ethnic communities in it; such a law shall be adopted by a two-thirds majority of all deputies - and according to the already mentioned general provision (Paragraph 5 of the Article 65) representatives of both ethnic communities shall have a decisive say in defining the electoral procedure for the representatives of these communities.

In this context, it should be mentioned that different options were discussed during the process of preparing and adopting of this constitution concerning the representation of both ethnic communities in the republic parliament. There was also the proposal that each of two ethnic communities should have been entitled to elect two or even more deputies (members of parliament) to the house of representatives of the parliament which would have made it possible that the plural structure of both communities (including political pluralism among members of both communities) would have been reflected in the parliament; when it was decided that the number of members of parliament would be reduced from the initially proposed number (to almost one-third of it), it was agreed that also the number of guaranteed direct representatives of both communities would be reduced - taking into consideration also the share of both communities in the total population.

The representation of both ethnic communities in the republic parliament is constitutionally guaranteed regardless of the number of members of these communities and/or their share in the total population of Slovenia. Besides, the possibility exists - and it will very likely be realized - that some additional deputies who are members of both ethnic communities will be elected to the parliament. Namely, the proclaimed ethnic policy of some political parties may be the reason, that some members of both ethnic communities will run on lists of different political parties as their candidates; these candidates - if elected as deputies - will not have the status of special representatives of ethnic minorities in the parliament, but it is very likely that they are going to present and promote also certain specific interests of their ethnic communities - and the chance to realize their proposals and to assure the needed majority to adopt certain decisions will be even better if they are supported by different political parties.

31. See: Article 65 "The Status and Special Rights of Gypsy Communities in Slovenia" of the Constitution of the Republic of Slovenia (1991).

The Roma - Gypsy communities live autochthonously in the territory of Slovenia, and its members are living in different parts of Slovenia (most of them in the Prekmurje and in the Dolenjska region). Some of them still live traditionally as travelers and traveling craftsmen (especially in the Dolenjska region and some families also in other parts of the republic), and some of them have changed their style of living and live in the permanent settlements. Their economic and social situation is often very difficult, and there are many social problems (unemployment, breaking of the law, etc.). Often, there are some problems especially with the travelling families and their integration in a certain local community, where Romas - Gypsies are (because of their way of living) seen as unwanted invaders who disturb the normal life of the local community.

- such a protection of Roma minorities that would correspond to their actual situation, interests, needs and wishes.<sup>32</sup>

#### IV. Immigrant communities in Slovenia

A potential weakness of the new Slovene constitutional system in the field of inter-ethnic relations might lie in the fact that the Constitution anticipates status and special rights only for autochthonous national minorities, while it does not specifically deal with the status and special collective rights of members of other "Yugoslav nations" living in Slovenia - the majority of whom became Slovene citizens.<sup>33</sup>

As Slovene citizens or foreign immigrants in Slovenia the members of immigrant communities have all individual rights; those immigrants who got the Slovene citizenship are also guaranteed all those rights that belong specifically and exclusively to Slovene citizens. This means, that general constitutional provisions listed in the annex of this text apply to them: they may establish their ethnic organizations and associations, use their language and script, express

---

32. To elaborate the reasons that led to the decision that special status and special rights of the Roma - Gypsy community in Slovenia are regulated in a specific way (in a different way than that of Italian and Hungarian ethnic communities) in more detail, the following reasons shall be mentioned: the Roma community in Slovenia is relatively small (few hundreds) and very dispersed in the territory (which is a very different situation compared to that of other two autochthonous ethnic communities); there is a little sense of common identity among the members of the community and not much has been done to develop and promote their specific culture; the level of the education among the members of this ethnic community is low, and yet in the last twenty years there have been some attempts to include their language and culture in the educational programs in primary schools in the local communities where they live (many problems concerning the education of Roma children were connected with the fact that they didn't speak Slovene language, and that they were not traditionally socialized in a way that would be compatible with the one in schools); there are hardly any forms of cultural, social and political integration of this community, and also some of the existing (mostly cultural) associations find it difficult to cooperate; etc. All these were the reasons, that it was decided that a special statute shall regulate their status and special rights. This should be done in a way which will enable them to realize these rights - and will be agreed by the community itself, as it is very obvious that their specific situation will have to be respected when the legislation on their status and special rights is going to be prepared and passed.

33. Members of the other former "Yugoslav nations" in Slovenia represent some 10 % of the population. Most of them came to Slovenia as economic migrants from other parts of the former Yugoslavia - mostly in the post WW II period. Some of them were to stay temporarily to economically support their families (their families were still living in the republic of their origin); but most of them settled in Slovenia, where they created their families. Also, some of them who decided to stay permanently came to Slovenia with their families - or brought them later on. A large part of those who came to Slovenia to stay there permanently, applied for the Slovene citizenship after Slovenia became the independent state - and most of them were given it on the basis of the Slovene legislation on citizenship.

Namely, the Article 40 of the Law on the Citizenship of the Republic of Slovenia (Uradni list RS - Official Gazette of the Republic of Slovenia, No. 1/1991) provided for every citizen of the former Yugoslavia who had a permanent residence and actually lived in the territory of the Republic of Slovenia on 23 December 1990 (the day of the Plebiscite on the Independence and Sovereignty of Slovenia) and who applied for the Slovene citizenship within six months after the adoption of this law (25 June 1991) a special procedure to be granted the citizenship. Their applications could have been refused if they participated actively in the aggression against Slovenia (as members of the Yugoslav federal army in the - so called - "Ten Days War"). After the period of six months decided by the law, everyone can apply for the Slovene citizenship on the basis of general

and develop their specific ethnic culture; they may freely express their ethnic identity, and this should not be any factor of their discrimination - at the same time they should not be forced to express their ethnic affiliation.

Though their collective rights as distinct ethnic immigrant communities are not established and guaranteed constitutionally, in the practice there are some primary schools that operate in the language of immigrants in the larger centres where there is a large concentration of immigrants. Also some other services and rights for immigrants and distinct immigrant communities could be provided by the concrete ethnic policy (possibly based on social consensus) although they are not provided constitutionally.

It is very likely that certain problems may be expected in the ethnic policy on immigrants in Slovenia. Namely, those immigrants who became Slovene citizens will claim very likely collective ethnic rights for distinct immigrant communities similar to those of autochthonous ethnic minorities; the main problems in this context will be that members of certain immigrant communities live in different parts of the territory of Slovenia,<sup>34</sup> that there are many diverse immigrant communities living in Slovenia, that it will be rather difficult to establish appropriate autonomous ethnic organization of specific ethnic communities. At the same time it may be expected - also taking into consideration trends and developments in the other parts of Europe - that there will be certain reservations by the autochthonous communities; an important limitation in this context will be also economic crisis and all its impacts. In the case, that immigrant commu-

---

...conditions: 18 years of age; 10 years of living in Slovenia and of these at least last 5 years permanently; an applicant should have a permanent residence and sources of support (employment) in Slovenia; he or she should not be sentenced to a one year or more imprisonment for a major crime in the country of his/her origin; he/she should be able to communicate in the Slovene language; a dual citizenship should be avoided; the residency permit for foreigners should not have been refused to the applicant previously; granted citizenship to the applicant shall not represent any danger for public order, security and defence of the Republic of Slovenia. (Article 10 of the above mentioned law.)

All constitutionally defined individual rights are guaranteed to every citizen and most of them are guaranteed also to foreigners living in the territory of Slovenia in accordance with the constitution and the law. So, members of other former "Yugoslav nations" who are Slovene citizens and who live in different parts of the territory of the republic enjoy all individual rights - including the right to cultural associations in order to prevent and develop their ethnic culture. Special status and special (individual and collective) rights are guaranteed only to autochthonous (Italian, Hungarian and Gypsy - Roma) ethnic communities by the constitution - and the obligation of the state to assure and realize their status and these rights is also constitutionally established; but the constitution doesn't guarantee any special individual or collective rights to members of other ethnic communities who didn't live autochthonously in the territory of Slovenia - and no special obligation of the state is established in this context.

On the other hand, those members of the former "Yugoslav nations" who live in Slovenia permanently but are not Slovene citizens (because they didn't apply for the citizenship or because they were not granted it) are in their legal status foreigners, and enjoy all the rights that the constitution and legislation provide for foreigners - including the right to cultural association as one of their individual rights.

34. Their concentration is relatively big in certain bigger traditional industrial centres; immigrants in some of these centres (e.g. Ljubljana, Maribor, Velenje, Jesenice, Koper, etc.) represent substantial share of local population, but mostly immigrants are not ethnically homogenous and are originating from different parts of the former Yugoslavia and are of different ethnic origin.

nities will push hard for their special status, a rise of Slovene nationalism and escalation of ethnic tensions in Slovenia could also be expected.

#### *IV.1. Refugees*

The fact that there are several thousands of refugees in Slovenia will influence the future development in many ways. Certain number of the refugees who will stay in Slovenia permanently will contribute to the change of the ethnic structure of the population of Slovenia. In this context, it is not so important whether they are going to be given Slovene citizenship (if they apply for it) or not; the main question is how the ethnic policy of Slovenia will handle the specific situation and problems. Namely, the questions of the education in the language of refugees, questions of their ethnic identity, the possibilities for their cultural life and development, possibilities of integration into the Slovene society for those who will decide to stay, etc. are only some additional questions and problems to be handled by the ethnic policy of Slovenia in the near future.

At the same time it shall be stressed, that the very presence of refugees in Slovenia combined with worsening economic and social situation in Slovenia may contribute to some problems in inter-ethnic relations in Slovenia; such conditions may easily cause the rise of nationalism in Slovenia and the shaping and escalation of ethnic conflicts.

#### **V. Conclusion: some final remarks**

But for some minor excesses, there have been no ethnic conflicts reported from Slovenia. Slovenia's ethnic policy is considered open, and rather tolerant. Certain cases of ethnic tensions, and presence of nationalism and certain elements of nationalist policies do exist on the other hand, and to a certain extent they do influence ethnic policy.

The constitutional protection and regulation of special rights of autochthonous ethnic communities (minorities) may be considered good, and the standards provided are much higher than international. The main question in the future is, how these provisions are going to be realized in practice; certain problems may surely be expected in this context.

It may be expected in the future that at least some large distinct ethnic immigrant communities in Slovenia will demand the same status and collective rights as they are guaranteed to indigenous (autochthonous) ethnic minorities. But such a development isn't very likely in the near future.

The fact that Slovenia is a multi-ethnic and multi-cultural community, and that an important part of this plurality is contributed by various immigrant communities is yet to be accepted fully by the Slovene ethnic policy. In this context, the development of ethnic policy and of some of its aspects may be considered a gradual long-term process. This process will be influenced by the general situation in Slovenia, and especially by its economic and social development. It will at least to a certain extent depend on the future development in the territory of the former Yugoslavia and on the process of managing and resolving of the Yugoslav crisis. The future development of international protection of ethnic minorities and immigrants, and of regulation and protection of immigrants and (distinct) immigrant communities in the practice of other states and at the international level should also be considered important factors in this context.

## Povzetek

### POLOŽAJ IN VARSTVO ETNIČNIH SKUPNOSTI V USTAVI REPUBLIKE SLOVENIJE

Prebivalstvo Slovenije je etnično dokaj homogeno, saj vse avtohtone narodne skupnosti predstavljajo manj kot 1% in imigrantske skupnosti kakšnih 10% od slabih 2 milijonov prebivalstva.

Ustava RS zagotavlja visoke standarde varstva avtohtonih manjšin ter njihovo politično participacijo: pravice manjšin -vključno z neposrednim predstavljanjem italijanske in madžarske narodne skupnosti v republiškem parlamentu- so zagotovljene ne glede na njihovo število. Ustavno varstvo manjšin temelji na "pozitivnem konceptu zaščite manjšin", ki terja aktivno vlogo in odgovornost države za uresničitev posebnih pravic in položaja avtohtonih narodnih skupnosti-Italijanov, Madžarov in Romov.

Imigrantskim skupnostim ustava ne zagotavlja takega kolektivnega varstva, čeprav se zdi verjetno, da ga bodo posamezne skupnosti terjale. Imigranti kot posamezniki uživajo vse individualne pravice, vključno s pravico do združevanja za uresničevanje njihovih specifičnih interesov; sedanje politične rešitve pa zagotavljajo tudi izobraževanje v njihovem jeziku.

Veliko število beguncev iz Bosne in Hercegovine ter iz Hrvaške, ki so trenutno v Sloveniji zaradi krize na ozemlju bivše Jugoslavije, bo verjetno dodatno vplivalo na spreminjanje etnične situacije v Sloveniji.