PROTECTION OF HUMAN RIGHTS IN THE ARMY AND POLICE

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Edited by

Miroslav Hadžić

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Content

Foreword

The book *Protection of Human Rights in the Army and the Police* combines the papers prepared by the researchers and associates of the Centre for Civil-Military Relations, a Belgrade-seated NGO, within a project on the "Protection of Human Rights in the Army and the Police of the FR of Yugoslavia". The whole project, including the publishing effort, was implemented with the support of the Westminster Foundation for Democracy, London and Freedom House, Budapest.

The project, initially conceived as one-year (2000-2001) interdisciplinary research exercise, was essentially aimed at identifying the degree of respect for human rights in the Yugoslav army and the police. The research also extended to the observance of human rights of citizens under the jurisdiction of the army and/or the police. The main task of the researchers was to look into the (im)balance between the regulative – constitutional and legal – protection of human rights in the army and the police of the FRY and their actual discharge. In order to do that relevant empirical data had to be collected.

To this end, in early 2001, the Centre for Public Opinion and Political Research of the Institute for Social Sciences of the University of Belgrade carried out a survey on the situation of human rights and freedoms in the Yugoslav army and the police on a representative sample of 1680, as required for project purposes. The survey findings were presented to the public at a press conference on 12 April 2001 in the Belgrade Media Centre. The conclusive analysis of findings was then incorporated into the present Collection of Papers.

As their work developed, the project team became aware of the need for comparative insights into the situation of human rights in the armies of other transition countries, and therefore decided to include two reviews, one each by a domestic and a foreign expert, describing the relevant situation in the armies of the formerly Soviet states.

Seeking the public and professional verification of the initial findings, the Centre, in cooperation with the Belgrade Centre for Human Rights, organized a round table addressing the "Situation of human rights and freedoms in the Yugoslav Army" on 30 January 2001. Participants in the round table included associates of specialized NGOs as well as official representatives of the Federal Defence Ministry and the Yugoslav Army General Staff. The debate attracted substantial attention of the media in Belgrade and the general public was duly informed about the most important as well as disputable topics.

Seeking to publicly promote the need for the protection of human rights the Centre printed two topical posters – human rights in the Army and human rights in the police – in 3000 copies and organized their distribution in Serbia and Montenegro via its associate NGOs. In addition, 2000 flyers were also printed and distributed to the general public.

Due to successive extensions of the scope of research, the deadline for project completion was moved back to December 2002, which is when all research findings were in place to start preparations for publishing.

II

The research findings have been organized in four chapters. The first chapter (Principles and Premises) offers a theoretical and real-life framework for the thematizing of human rights in the army and, in a way, provides an introduction to the Collection. It includes the interventions of Vojin Dimitrijević on the human rights in Yugoslavia, Ljubomir Krstić on warfare and human rights, and Miroslav Hadžić on the theoretical and methodological aspects of looking into the human rights in the army.

Chapter II (Human Rights in the Yugoslav Army) starts with a review of public opinion survey findings by Milorad Timotić, to continue with Jovan Buturović's reflections on the scope of judicial protection of human rights in the Yugoslav People's Army and the YA, followed by Svetlana Stojančić's intervention on the regulation of human rights of YA conscripts. This line of discussion is rounded off by Kosta Čavoški's inquiry into the treatment of civil rights and freedoms in state exigencies, with reference to the state of war in the FRY during the NATO aggression.

The (im)balance of regulative and actual protection of human rights in the police is addressed by Budimir Babović in chapter III of the Collection (Human Rights in the Police). This is followed by the contributions of Illona Kiss, focusing on the protection of human rights in the armies of East European and Central Asian countries and Željko Ivaniš on the state of human rights in the Army of the Russian Federation in chapter IV (Comparative Experiences).

The reader will certainly note that the papers differ in many respects. They differ in terms of their scope as well as research achievements, and it is only natural that the heterogeneous composition of the research team should result in different language styles. In addition, due to successive extensions of the deadline for project completion one may get the impression that the picture thus presented is somewhat outdated. That is why the editor thought it best to relax his criteria a little bit, aware of the importance of his work as the first thematic

collection addressing the situation of human rights in the army, and partly also in the police, of the country that has now become the state union of Serbia and Montenegro. The editor, therefore, willingly accepts his share of responsibility for the possible deficiencies of the Collection hereby presented to the local and foreign public.

Belgrade, 24 February 2003 Miroslav Hadžić

I

PRINCIPLES AND PREMISES

Human Rights in Yugoslavia at the End of 2000

Vojin Dimitrijević

The Federal Republic of Yugoslavia (FRY) was officially established by the Constitution of April 27, 1992. However, as a political alliance formed by the leaders of the republics of Serbia and Montenegro, it existed even before that – practically during the entire crisis in Yugoslavia (SFRY) and the armed conflicts in its territory. Under the influence of various disintegrative processes, the SFRY eventually formally disappeared, leaving behind it five new states: the FRY, Slovenia, Croatia, Macedonia and Bosnia and Herzegovina.

The FRY is one of the states successors to the SFRY, and therefore bound by all international agreements on human rights it ratified. There was no small number of them, but throughout the existence of the SFRY there was no record of any Yugoslav court or another state authority applying an international regulation in practice, although that was possible under the constitution.

The SFRY was a "socialist" state, with a somewhat softer variant of "real socialism" – Marxism was the official state ideology, and the Communist Party (the League of Communists of Yugoslavia) had the monopoly in the conduct of all state affairs. Power sharing, even if only formal, did not exist. In such a party state, law could not play a significant role and was subjected to political decisions of the Party top ranks, intertwined with the formal state structure in personnel as well as functional terms.

All constitutions of the SFRY (as well as those of its federal units) proclaimed the rights of man and citizen, although these could easily be limited by laws and by-laws, or simply disregarded in practice. In addition, the constitutions did not include the whole catalogue of human rights the SFRY was obliged to observe pursuant to the ratified international agreements. Representatives in the last composition of the SFRY Assembly, members of the League of Communists of Yugoslavia almost to the last man, themselves admitted this deficiency of the Constitution: on May 16, 1990 the Federal Chamber of the Assembly established a draft of constitutional amendments which, among other things, anticipated incorporation of guarantees of certain, thus far unproclaimed, human rights, e.g. the freedom of conscience

and religion, the right to private property and private sphere, the prohibition of discrimination on the basis of political convictions and social background and even the prohibition of torture![1] However, amendments to the Constitution were not adopted, in the absence of the required support of all member republics.

However, the country enjoyed the reputation of being "more free" than other "socialist" states ideologically close to it. This is especially true of the time after 1948 and the conflict between the Communist Party of Yugoslavia and its leader Josip Broz Tito with the international leaders of the communist movement, embodied in the Information Bureau of Communist Parties (successor to the Comintern) and the General Secretary of the Communist Party of USSR, Joseph Stalin. At that time the regime in Yugoslavia stood firm in its resistance to the entire socialist block, but as time went on, faced with a challenge to its legitimacy, it started to decrease the level of repression, and even to accept some liberal reforms.[2] The liberalization did not apply to the narrow political sphere, but the new measures in the field of economy and administration practically spelled the abandoning of ideological dogmatism and a weaker central bureaucracy. This also reflected on human rights. In the second half of the seventh decade the omnipotence of the political police was limited. The citizens of the SFRY now found it easier to obtain passports, and were not required to apply for exit visas. However, the communist authorities did not recognize the right to leave the country, they were obliged to grant under the International Covenant on Civil and Political Rights ratified in 1971.

As a founding member of the non-aligned movement, a group that for some time played an important role in international relations, the SFRY had greater sway in the United Nations and other universal organizations than either its size or power merited. In the last decades of its existence, it had good relations with the "capitalist" West, the "socialist" East and the "non-aligned", which enabled it to play an active diplomatic role. One of the favourable consequences for its citizens were agreements abolishing the visas with almost all countries of the world.[3]

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[1] Draft: Amendments to the Constitution od the SFRY, *Assembly Review*, no. 406, Belgrade, May 21, 1990.

[2] Brutal oppression of symphatizers of the USSR and Stalin is linked to the conflict with the Comintern. Thousands of people were, without a trial, interned on isolated islands in the Adriatic Sea (including most famously the island of Goli Otok).

[3] The start up of armed conflicts in Slovenia and Croatia made it easier for a number of citizens of SFRY to look for asylum abroad.

The last Constitution of the SFRY, of 1974, seeking to favour the "working class", divided the citizens of the SFRY into "working people" and "citizens", and only the former category could enjoy all the proclaimed rights. The system of socialist self-management, to which this Constitution was committed beyond anything else, did not liberate the "working people" from the party authority, but did let them have a certain level of co-deciding at work. Non-conformist statements of ordinary people, even if reproachful to one's superiors, as a rule did not produce severe consequences or criminal prosecution. However, the system kept a close eye on the activity of the intellectual elite, additionally restrained in the economic sphere by state ownership of the media, publishing and film companies, theatres, universities and scientific institutions. The resistance of intellectuals was also suppressed by police intimidation and other drastic means, e.g. the discharge of university professors after the students' protests in 1968. "Verbal offence", or rather the provision of the Criminal Code incriminating any statement that could "disturb the public" was not abolished before 1988.

The very thought of establishing an opposition party was dangerous. In its showdown with people who tried to organize themselves politically, the authorities choose no means: the "dissidents" were arrested and punished all along. The freedom of political association was restricted, and even formally dependent on the Communist Party i.e. its transmission represented by the People's Front (later the Socialist Alliance of Working People) without the approval of which no association of citizens could be registered. Elections were but an empty ritual. With the Constitution of 1974 they lost even the legal significance they had – no longer direct and replaced by a multiple-stage "delegate" election system.

Describing the causes of this crisis emerging in the SFRY at the turn of the ninth decade of the past century is not the subject of this report.

However, the reader should nevertheless bear in mind that, as the end of the state drew closer, and especially during the armed conflicts which broke out in 1991, the basic human rights were dangerously jeopardized and violated by all political actors, starting from those who posed as state authorities to various criminal groups which tried to dignify their deeds by ostensibly fighting for national interests or liberation of one of the Yugoslav peoples. No one suspected of violating humanitarian law, the rules of which were exemplary incorporated in the Criminal Code of SFRY and the instructions for army procedure in armed conflicts, was prosecuted in earnest in any of the states established on the territory of the SFRY, the FRY included.

In the last period which started with the build-up of the political crisis in the SFRY, the decisive political roles in Serbia and Montene-

gro were played by their respective communist parties, or rather their successors: the Socialist Party of Serbia (SPS) in Serbia and the Democratic Party of Socialists (DPS) in Montenegro. Although both parties denied their connection with the communist past, few in the federal and republic authorities had not been officials of the League of Communists of Yugoslavia prior 1992. The Yugoslav People's Army (JNA), indoctrinated by communism, changed its name to Yugoslav Army and was declared non-political, but remained loyal to the ruling communist-nationalist project and unchanged in respect of high-ranking personnel all the way until the year 2000.

The initial signs of a serious disagreement among the former communists appeared as late as 1996 in Montenegro, leading to an open split in its ruling DPS next year. The reform wing, led by Milo Djukanović, came out of the conflict victorious. It took the power in Montenegro and entered a coalition with opposition parties of similar orientations. The outcome of the internal conflict within the DPS and changed political circumstances in Montenegro soon gave rise to a conflict between the government of this federal unit, on one side, and the governments of Serbia and the federal state (until October 5, 2000 still under the control of the SPS and the FRY president Slobodan Milošević), on the other. The aggravation of the conflict marked the first part of 2000. However, despite the changes after the federal elections in autumn that year, requests to schedule a referendum on independence of this republic from the FRY not only failed to disappear but, on the contrary, gained in intensity.

Almost until the end of 2000 the power on the federal level and in Serbia remained in the hands of a coalition of three political parties: two of them (The Socialist Party of Serbia – SPS and The Union of Yugoslav Left – JUL) nominally belonged to the left, while the third (The Serbian Radical Party – SRS) declared itself as the extreme right. Their ally on the federal stage was the Socialist Popular Party (SNP) of Montenegro, made up of the splintered DPS membership. Even the federal prime minister was from the SNP, despite the fact that the party lost the elections in Montenegro.

The largest turning point since the establishment of the FRY – the most important event in Serbia for the issue of human rights and democracy after the Second World War – occurred in September and October 2000. For reasons which still remain insufficiently clear, the then FRY president, Slobodan Milošević, used his obedient majority in the Yugoslav Parliament and, against the strong opposition of the authorities and ruling parties in Montenegro, installed major amendments to the FRY Constitution and, quite unexpectedly, scheduled the federal elections for September 24. The most important amendments to the Constitution anticipated direct vote for the FRY President and

representatives in the Chamber of Republics (upper house) of the Federal Assembly.

A coalition of 18 Serbian parties joined within the Democratic Opposition of Serbia (DOS) came forward as the most serious opponent to Slobodan Milošević. Its presidential candidate, who actually gave the pre-election coalition its name, was Dr. Vojislav Koštunica, President of the Democratic Party of Serbia (DSS). The elections were boycotted by the parties in power in Montenegro (known as the coalition "For Better Life" from the previous elections), and the authorities in Montenegro also declared against the vote, explaining their attitude by the illegitimacy of constitutional amendments made without the participation of legal representatives of Montenegro. The turnout of the Montenegrin electorate was therefore low.

Boycott in Montenegro did not substantially influence the results of the presidential election because of the small share of Montenegrin voters in the overall electorate. As persistently anticipated by public opinion surveys the candidate of the DOS won his most important opponent, Slobodan Milošević himself. What did come as a surprise was that Koštunica carried the election already in the first round. However, in consequence of the low voter turnout in Montenegro, Montenegrin representatives in the Assembly of the FRY included almost exclusively the candidates of the SNP, which was close to Milošević, and a number of small Montenegrin parties of similar orientation.

The outcome of the September 24 elections did not remove the grave uncertainties. Namely, while the result was predictable, no one was sure whether Milošević and his structures would be ready for the handover of power to the winner. Naturally, they put up stubborn resistance, using all means available, just as they did on similar previous occasions: in addition to aggressive propaganda through the regime media, brimming with threats and insults, there were also corrupt polling commissions and subservient courts which in every way wanted to falsify the vote and then also to repeat and eventually even annul the elections.

The post-electoral fraud added to the general discontent with the situation in the country, as dramatically manifested by a general strike and mass demonstrations in Serbia. They culminated on October 5, when the protesters swept over Belgrade and took the buildings of the Federal Assembly and Radio Television Serbia. After an initial intervention, the police and the army gave up violence towards the citizens, and Milošević finally had to concede defeat.

At the same time, elections for local authorities in Serbia were held, and the former opposition reinforced its favourable position. In addition to the switch of power in a large number of places, the change was also revealed in the fact that the Serbian Renewal Movement (SPO) remained outside the DOS and went to the elections alone (as was also the case of

the presidential election) only to suffer a heavy defeat. Riding the wave of the overall victory of the DOS, its officials became heads of municipalities even in places where the former coalition still had the majority.

Thus, Vojislav Kuštunica became the undisputable head of the state, but the DOS was forced to strike bargains with the Montenegrin SNP. It had to relinquish a number of ministries in the federal government, including the office of the prime minister.

In view of the division of powers between the federal state and the republics, the victory of the DOS and the change of the entire political system were not complete without the relevant changes in Serbia. They partially started by a temporary agreement between old and new forces, embodied in a provisional government made of members of the DOS, the Socialist Party of Serbia and the Serbian Renewal Movement, formerly an opposition party which stayed out of the DOS and suffered a an evident electoral defeat. A government of this kind could not achieve much, and the real change had to be put off until after the parliamentary elections in Serbia held on December 23, 2000 and ending in a convincing victory for the DOS (176 out of the total of 250 seats in the Serbian Parliament). Until the end of 2000 the new Assembly of Serbia could not be constituted due to successive complaints lodged by a member of the defeated coalition – the SRS. These complaints were dismissed in early 2001, and the constitution of the Government of the Republic of Serbia became possible.

Most political parties in Serbia pledged their support to human rights, but ever since the beginning of conflicts in the SFRY they have been overwhelmed by the need to present and legitimise themselves as national and patriotic. That is why of primary importance for them are the collective rights of the Serbian people, allegedly the precondition for the exercise of individual rights. The same applies to the political parties of ethnic minorities, mainly concerned with the right of self-determination, leading to independence (Albanians) or an extensive territorial or personal autonomy (other minority parties). Just as in other European transition countries, the inability of most political parties in the FRY to attract the membership of various ethnic majority and minority groups is quite obvious, and tends to impoverish the country's political life.

The FRY has remained an ethnically non-homogenous country. According to the results of the last census (1991) the FRY has 10,394,026 inhabitants, of whom 7,023,814 are Serbs and Montenegrins (67,5%), while the balance are Albanians, Hungarians, Muslims, Roma, Slovaks and members of other ethnic groups. The prevailing official Serbian-Montenegrin nationalist rhetoric repulses a third of the population and weakens their civil loyalty, which, on its part, helps start the vicious circle of distrust.

The respect for human rights, especially economic and social, is endangered by a difficult economic situation. Almost immediately upon its proclamation, the FRY found itself under the attack of the UN sanctions imposed due to the participation of the FRY authorities in the war with Bosnia and Herzegovina. The sanctions, along with wars, contributed to the criminalization of the Yugoslav society.

The new authorities could not change the situation of human rights irrevocably and to a substantial degree in so short a time. Legislative changes were made difficult by the balance of power in the Federal Assembly and the absence of parliamentary elections in Serbia. However, some progress has been achieved by simply ignoring the worst laws, and the long awaited reactivation of constitutional courts, leading to the dropping of a number of unconstitutional legal provisions.[4]

The most conspicuous progress has been achieved in the international sphere. The FRY abandoned the fruitless insistence on international continuity with the SFRY and was admitted to the membership of the United Nations and some of its specialized institutions. The country also returned to the Organization for European Security and Cooperation (OESC). A request for the FRY membership of the Council of Europe is being seriously considered, and the Yugoslav parliamentarians are once again regular guests at the sessions of this Organization's Parliamentary Assembly.

(translated by: Dubravka Alić)

[4] See e.g. the Decision establishing the constitutionality of provisions of Article 91, para 2, items 3 and 4; Article 196; Article 210, para 1 and Article 417, para 2 of the Law on Criminal Procedure, Official Journal of the FRY, No. 71/2000.

Warfare and Human Rights

Ljubomir Krstić

Introductory Notes

It may seem illogical to talk about human rights in a social process such as warfare. The greatest modern-day war theoretician Carl von Clausewitz held that war was an act of mutual destruction of people – "als einen Akt gegenseitigen Vernichtung"[5]. As such, war, unto itself, has nothing humane in it – "denn der Krieg ist selbst nichts Menschenfreudliches"[6]. If that is so, how can there be any talk of human rights in war?

To recognize and respect human rights and basic freedoms in their entirety is only possible when war is excluded from the relations between men and nations. In spite of the significant anti-war efforts of humanistic thinkers and activists worldwide, war is still a reality of our time. Even so, it is possible as well as necessary to talk about the respect for human rights in time of war. They include the right to life, the right to protection from torture or cruel, inhuman or humiliating treatment if of prisoners, the right to personal property and the right of civilian individuals and ethnic or religious groups to remain in their home territory in case of a military occupation, i.e. the right not to be displaced internally or from the territory of the country whose nationals they are.

The main thesis of this paper is that unless these rights are respected there is no war, nor is there military activity in it. This is to say that they make an important constitutive part of war. In other words, where and when these rights are violated, the armed operations are of a sub-military nature and therefore escape the definition of warfare. The theoretical outcome of this thesis is the Clausewitz system of thought, i.e. its diagnostic and heuristic values.

In order to come to a valid knowledge about war, the respect for human rights inherent in it and its various violations, it is necessary to go back to Clausewitz as an undisputed authority in the field of mili-

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[5] Carl von Clausewitz, *Vom Kriege*, Verlag Ministeriums fur Nationale Verteidigung, Berlin, 1957, p. 207

[6] *Ibidem*, p. 371. The German original will be used hereinafter.

tary philosophy and science. He will help us to answer the question of what war and warfare are[7] and where to draw a line between a military and a sub-military armed operation. These will allow us to identify the forms, subjects and determinants of an armed operation, throughout history as well as today, which negate the basic human rights. So, back to Clausewitz we go!

War, Warfare and Humanity
War: From Concept to Reality

In the first chapter of his book "On War", Clausewitz gives two definitions of war. The first is conceptual, methodological-instrumental, and the other diagnostic. It took a life-long professional career to come to the second one via the first one. Toward the end of Clausewitz' life, his thought developed and, as Aron Raymond put it[8], new horizons opened before this thinker. Only then did he discover the difference between concept and reality, and between absolute and real war.

In the abstract, ideal and emblematic sense, war is "an act of force aimed at subjecting the enemy to our will. The force uses the inventions of arts and sciences to put up resistance to force." "The force, i.e. physical force… is therefore a means; and to compel the opponent to fulfill our will, that is the purpose (der Zweck). In order to achieve this goal with success, we must prevent the enemy from putting up resistance (den Feind wehrlos machen) and that, as a concept, is the true goal (das Ziel) of War".[9]

For Clausewitz, real war is "an extraordinary triad made of the primary energy of its elements, hatred and hostility, which are to be considered blind natural instincts; also, it is made of the game of probability and coincidence, which turns it into a free activity of the spirit, and, finally, of a subjugated nature of the political instrument, which is why it belongs exclusively to reason."[10]

The idea that states can resort to violence against other states in order to impose their will on them is not new. Before Clausewitz, this

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[7] Already in the first chapter of the first volume of *On War*, BW Gallie identifies ten definitions of war by Clausewitz. In my opinion, those are not definitions of war, but of its different characteristics. See Gallie, B.W: *Philosophers of Peace and War (Kant, Clausewitz, Marx, Engels and Tolstoy)*, London, Cambridge University Press, 1979, p. 37-65.

[8] Aron Raymond: *Penser la guerre*, *Clausewitz*, I, L'age European, Paris, Gallimard, 1976, p. 9.

[9] Clausewitz: *On war.* (Note: All the passages from Clausewitz' capital work used in this paper are tentative translations from a Serbian edition.)

[10] *Ibidem*

view had advocates in Hobbs, Montesquieu, Rousseau and Hegel. The novelty Clausewitz brings in is the linking of the act of violence with the will and incorporating them in a unique conceptual system of different kinds of wide-range armed conflicts – from war to destruction, on the one side, and from war to armed reconnaissance, on the other ("Von dem Vernichtungskriege", "bis zur bewaffneten Beobachtung").[11] This conceptual system is based on that second definition of war. The definition contains three components characteristic of every real war. They are the relations between the warring sides (violence, hatred, hostility), the qualities of the war circumstance itself (probability, coincidence and free activity of the spirit) and, of course, politics.

Politics (the reason) is paramount here and the first two are under its control. In order to fully grasp Clausewitz' theory of war, some additional considerations that his work is full of also need to be included in the definition. This interpolation, however, goes beyond the subject matter of this paper and we shall not deal with it here. Instead, taking that definition as our starting point, we shall focus our attention on the characteristics of war which are relevant for the understanding of the relations between the conflicting sides from the point of view of basic human rights. The scope of this paper will not go beyond that definition.

Reciprocity in Armed Activity

Battle is the very essence of war. Unlike other forms of struggle, war is waged with lethal means, with weapons. Their lethal performances are achieved thanks to the weapons' aggressiveness, high rate of fire, its kinetic and protective functions. Throughout history, weapons evolved from single- to multi-purpose weapons. Today, we have systems of weapons. War is "a conflict over big interests solved in blood and in this it differs from all other conflicts"[12]. For instance, this particular characteristic makes war different from economic and sporting competitions and political or religious propaganda.

However, the use of physical force, that is to say weapons, is not enough to distinguish war from other forms of fighting. Some sports (archery, fencing, hunting and fishing), as well as mining, demolitions and some other forms of struggle against the nature use weapons and explosives, but no one in their right mind would classify them as war. Unlike these activities, war presupposes the existence of an active enemy whose conscious intention is to fulfill a destructive goal. More

[11] *Ibidem*

[12] *Ibidem*

precisely, it implies the exchange of destructive activities. “War is not the activity of a live force against something dead, since total passivity could never result in a war. Rather is it a clash between two live forces and what we said about the final goal of every act of war must apply to both adversaries. Hence, we have a mutual influence here again. Until I have defeated my enemy, I should fear that he will defeat me. I am therefore no longer my own master, since he is imposing his will on me just as I am imposing my will on him”[13].

War is not an armed activity against some dead matter nor against a living object that passively surrenders. It is “acting against a reacting living object”[14]. It is a constant mutual influence (Wechse Iwirkung) of opposite actions”. War is “mutual destruction”[15].

Enemy, Hatred and Destruction

Warfare is a systematic, purposeful, massive and organized[16] application of lethal force of one state against the people, property, resources and morale of another. The inter-state character of warfare does not prevent the emergence and activities of (more or less numerous) paramilitary formations. Because, they are either the instruments of the existing states or the embryos of the new ones (the states *in statu nascendi*).

The sides involved in this relationship (battle) are enemies. It is essential (in scientific, political and ethical sense) to define the enemy with as much precision as possible. Who qualifies as enemy in wartime? Who should a state direct its lethal force against in order to destroy the enemy? From the military point of view, the enemy is only “an armed force that puts up resistance – “der Gegner im einzelnen Gefecht aber ist die Streitkraft, welche uns entgegenstecht"[17]. Because, the aim of war is to subdue the enemy, “while the destruction of the enemy armed forces is a means”[18]. So, from the nature of war and warfare it results that the concept of the enemy may involve only social groups, that is to say their members, who by a mutual use of weapons or in some other way (intelligence, counter-

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[13] *Ibidem*

[14] *Ibidem*

[15] *Ibidem*

[16] Gaston Bouthoul sees organization as an important characteristic of war. See: G. Bouthoul: *Traite de Polemologie (sociologie des guerres*), Paris, Payot, 1970. According to him, "war is an armed and bloody struggle between organized groups", p. 35.

[17] *Ibidem*

[18] *Ibidem*

intelligence, logistics and so on) strive toward a destructive goal. It is necessary here to distinguish the members of a warring state who belong to its armed forces from those who are unarmed, have no hostile intentions and are therefore not the enemy. Moreover, within the armed forces it is necessary to distinguish its active fighters from those sick, exhausted, seriously wounded and captured. The latter, like civilians, are not the enemy by definition, since they are unarmed and are not striving towards a destructive goal.

It is important to note that the members of two armed forces at war against each other are not the private but the official enemy. As a rule, they do not know each other nor have they ever harmed each other in any way. Ancient Romans were well aware of this distinction and used the word *hostis* to denote the official enemy of the state, while *inimicus* designated private or personal enemy.

Military hostility implies mutual hatred between the armed forces in the process of warfare. First of all, this is a "rational, reactive hatred". It is the combatants' reaction to a threat against their own lives and the lives of their loved ones. The impulse to kill the others in war comes from the fear that the others may kill us. "The presupposition of this hatred is the respect for life. Therefore, a rational hatred has an important defensive biological function, it is an effective equivalent to a life-saving action that comes as a reaction to life-threatening dangers and ceases to exist once the threat has been eliminated. Rather than the opposite of the desire to live, it is its companion".[19]

Psychological studies show that, even when an entire nation participates in offensive and defensive war efforts, very few citizens actually hate the enemy on a personal level. Behavioral studies of soldiers in battle show that nostalgia and homesickness exceed in intensity the hate and aggressiveness they feel for the enemy. "Very few citizens of the aggressor nation actually have aggressive feelings."[20]

Rational, reactive hatred should be distinguished from irrational and pathological hatred. The latter is not caused by a real outside threat. It is a relatively lasting capability to hate a hostile individual or group. It is a product of socialization.

Irrational hatred has no natural conclusion. It is instigated or, more precisely, someone instigates it. In the course of the preparations for and use of a wide-range violence it is actualized in the form of real threats which, in turn, cause a reactive, rational hatred. Thus pathological hate is manifested as a rationalized, reactive hate. It is the starting point of all manipulative techniques aimed at pushing individuals

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[19] Erich Fromm, *Man for Himself*

[20] Allport W. Gordon: The Role of Expectancy in War (Studies from Psychology, Sociology and Anthropology), edited by Bramson L. and W.G. Goethals, New York/London, 1964, p. 178.

and nations into mutual destruction. The reciprocity of violence, hostility and hate, which is a hallmark of every war, leads to a mutual destruction of the participants in the conflict. War is nothing else than a mutual destruction – "Da der Kriege nichts ist als gegenseitige Vernichtung"[21]. Who and what gets destroyed? Or, how does Clausewitz explain the substance of the notion of destruction?

It is with proverbial Prussian accuracy that Clausewitz defines this notion. The goal of every war is to subjugate the enemy (das Niederwerfen des Gegners), that is to say, to bring him to his knees, crush him, devastate or overthrow him, while the destruction of his armed forces --"Vernichtung der feindlichen Streitkrafte"[22]– is purely a means. Accordingly, the goal of a battle is to destroy the enemy or, even better, his military capability (seiner Streitfahkeit)[23]. Therefore, destruction applies only to the armed forces and not the civiian population and infrastructure found in the conqured territory, let alone the extermination of entire nations. Let us stress once more that for Clausewitz only the destruction of the enemy's armed forces is permissible. To him, their destruction marks the end of the conflict. Next, the winner determines the conditions for peace. Not a single segment of his deliberations on war, including those closest to its absolute form, implies that the destruction of armed forces ever means massacring or destroying the enemy troops in a physical sense. To him, the art of war is not the art of killing, but rather the art of achieving victory. Therefore, the destruction should by no means be measured by the numbers of those killed or wounded, but rather by the degree of reduction of the enemy's military capability. Its essence is to render the enemy forces unable (wherlos machen) to continue to fight. As real war gets closer to absolute war, this does not necessarily imply its criminalization. The art of commanding the troops is not so much in going into battle, as it is in creating a favorable tactical situation for one's own forces. If that situation does not ensure the desired outcome, then military goals are achieved on the battlefield.

Uncertainty, Probability and Free Activity of the Spirit

The tendency to destroy the enemy entails the need to constantly test one's own strength, as well as the enemy's. However, this is what the enemy is doing, too. Both sides try to anticipate the oponent's intentions, plans and actions and adjust their own accordingly. A

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[21] Clausewitz, *op.cit*.

[22] *Ibidem*

[23] *Ibidem*

clever and prompt reaction to the enemy's behavior is of paramount importance here. This is why the intelligence information about the enemy's strength, logistics, organization and intentions are so valuable. They are the starting point in the process of assessing one's own strength, potentials and behavior and in planning successful military actions.

The importance of a well-timed alert and a prompt identification of goals in our time has resulted in the development of the information systems and systems for air, space and electronic reconnaissance (unmanned aircraft, AWACS, satellites, intelligence component of C3I system, etc.) which were completely beyond Clausewitz' imagination. In addition to this, the old and even the ancient methods of information gathering have never been abandoned, but rather enhanced by means of new technical inventions.

Despite this huge progress, the knowledge gathered by the use of of these new means and methods is not fully reliable. The enemy keeps the information about his strength, intentions and plans top secret. Rigorous measures are employed in order to prevent the opponent from getting hold of those information, or bogus information are made available to him in order to lead the enemy to wrong consclusions and eventually to wrong decisions.

On the other hand, some characteristics of the enemy evade accurate estimation. This refers above all to his ethical and spiritual qualities. And they are, *ceteris paribus*, crucial to the course and the outcome of the entire campaign. Both sides in conflict seek to win. If it were not so, there would be no conflict. If we set aside the disproportion in strength of the conflicting sides, the outcome of a battle is not entirely predictable. It hardly ever turns out the way its participants planned. There is always something they could not predict. It can even happen that the winner has suffered more casualties than the defeated enemy. It is possible, in some cases, to predict with a relatively high accuracy the outcome of a battle as well as the approximate number of human casualties. Which particular individuals will get killed is impossible to foresee.

Restrictions and obstacles in the process of getting familiarized with the enemy lead to rapid and usually unanticipated shifts on the battlefield – all of which is refracted through the individual prism (consciousness and emotions) of the soldiers. Therefore, seen from their angle (which is important for the course of the battle) the battle is characterized by uncertainty, probability, good luck and bad luck. To claim otherwise when human lives and their future are at stake would be showing the cruelty of a technocrat. All that has been said confirms that Clausewitz' ideas are still valid today, 170 years after his death. On evaluating the strength of the enemy, he believes, it is possible to make an educated guess about the size of his forces since "it is based

on numbers, even if not exclusively, but his force of will can be defined with far less precision and assessed only approximately by the strength of his motivation."[24] Because it deals with human beings with morality, military activity can never be defined in absolute or definite terms. "It is clear," Clausewitz writes, "that the absolute, the so-called mathematical exactness is not applicable to the calculations of war ability, since right at the beginning there starts the game of possibility, probability, good luck and bad luck, the game which is embedded in all the small and big threads of war, making war, of all human activities, the most similar to a game of cards."[25]

Thus described, war leaves a lot of room for the free activity of the spirit (freie Seelentatigkeit) of war commanders and their armies. War skill consists of a large number of combinations with military forces, means and principles in time and space. It shows how much richer the world of possibility is than the world of reality.

In one of the earliest known treatises on war and military science, it says:

"There are only five musical notes, but the melodies composed of them are so many that man could never hear them all.

There are only five primary colors, but their combinations are so many that man could never even imagine them all.

There are only five flavors, but their mixtures are so varied that man could never taste them all.

There are only regular and special forces in battle, but their combinations are limitless, so no one could ever grasp them all."[26]

Politics and Warfare (the Traditional and Modern in Clausewitz)

For Clausewitz, the third component of war is politics. It is crucial for the emergence and characterization of this phenomenon. We must therefore pay close attention to what Clausewitz understands under politics. This is even more important if we bear in mind the fact that his work "On War" was written almost two centuries ago. Since then, the notion of politics has changed, as it has always changed throughout history (take Aristotle's understanding of politics, for instance). Misconceptions, inconsistency, even forgeries may result from our trying to interpret Clausewitz' teaching by using the present-day rather than his own perception of politics. The scientific, political and moral consequences of this kind of approach lead to even bigger in-

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[24] *Ibidem*

[25] *Ibidem*

[26] Sun-Tzu: *The Art of War,* Beograd, ' Vojno delo', 1952.,str.32

consistencies and misconceptions, one of them being, for instance, that Clausewitz' sees war outside any moral or ethical context, which is simply not true. But let us first see what he meant under politics.

Clausewitz distinguishes a subjective and objective side of politics. However, there is an important difference between the way he understood politics and today's understanding of these phenomena.

In the first instance, he speaks of "political purpose" and "political motives", i.e. of a conscious action of the subjects of a political activity. On the level of international relations, "politics can be seen only as a representation of all the interests of a society as a whole"[27] i.e. as their steering force in the relations with other states. It is "the intelligence of a personified state"[28]. In evaluating this "intelligence", he speaks of a "correct", "incorrect", i.e. "wrong" policy[29]. Subjective policy defines the goal of the war. The first is a political goal (der politische Zweck), and the second is a military goal (das Ziel). The military goal is subject to the political one.

In another example, Clausewitz writes about "the political condition", i.e. the objective reality of political relations. This political condition (objective policy) defines the type of war, i.e. the different types of warfare throughout history.

Objective policy, as defined by Clausewitz, covered a bigger territory then than in does today. It included many different things, i.e. social phenomena which are no longer seen as pertaining to politics or exclusively to politics (for instance, "own force, enemy force", "characters of peoples and governments"). It is therefore more correct to define Clausewitz' concept of objective policy as "social situations and relations" – "die gesellschaftliche Zustande und Verhaltnisse"[30]. This is why he places war in "the domain of social life" [31] rather than among skills and sciences.

When Clausewitz sealed the manuscript of "On War", the holistic view of the world and the positivist division of political science still prevailed. Social sciences as we know them today did not exist yet, including sociology, the most inclusive of all. Toward the end of Clausewitz' life, August Compte defined his teaching as positive

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[27] Clausewitz, *op. cit*.

[28] *Ibidem*

[29] *Ibidem*

[30] *Ibidem*. Jomini's understanding of politics is also much broader than the one we have today. To him, war and military policies are fields (parts) of military skill. Apart from the ingredients that they contain today, his definition also includes a number of psychological, economic, sociological, geographical, statistical and other (non-political) elements. See, Antoine-Henri Jomini: *Summary of the Art of War* (1838; *Précis de l'art de la guerre).*

[31] Clausewitz, *op.cit*.

policy, “politique positive”. Two decades after the death of the famous Prussian, politics was still described as the princesse of all sciences, "la princesse de toutes les sciences”.

Clausewitz’ thought was taking shape as the traditional meaning of politics gave way to the modern understanding of this notion. In Aristotle’s days, politics included all that had to do with a communal lifestyle. Its important quality was the tendency towards the noble and the just. A governement is judged by how well it serves the common good. The prospect of moral perfection should be the supreme law of a state. Ancient states are classified according to their specific moral characteristics, their relationship to good and bad, above all.

In modern times, this all-inclusive category of politics was irreversibly broken down into a series of separate fields and sciences (this process was completed by the end of the 19th century). Politics, in that context, is not amenable to the requirement of just action. It is insulated from ethics and amenable to the autonomous laws of the reason of the state. Politics thus becomes a technique of gaining and sustaining power for arbitrarily set purposes. Political activity is no longer defined by a goal – any goal at all – but rather with a means, with a power to determine the behavior of others. Politics is no longer understood as the intellectual order of communal life, but rather as the ambition to participate in power or have influence over the distribution of power, be it between states or inside a given state among the groups which it consists of (Weber). Clausewitz’ thought is at once characterized both by the traditional and the modern understanding of politics. He is “modern” because he understands war as an extension of politics aimed at imposing our will upon the enemy, i.e. because he understands politics as the tendency to influence the behavior of other people and nations. The way he understands the domain of objective politics is what makes him “traditional”. This, however, is not the main characteristic of his “traditionalism”. In our view, the main value of his understanding of subjective politics is that he never excluded the ethical substance. In that he is very clear. For Clausewitz, “politics unites and equalizes in itself all the interests of internal authority, including the *interests of humanity* (underlined by author) and all the rest that a philosophical mind could express”[32]. He expressed his intention to deal specifically with the ethical aspect of warfare in an article discovered in his legacy. He says he wishes to take a look at war from political and human points of view (die politische und menschenlische Seite des Krieges).[33] Looking at some actual armed conflicts of his times, he tells with repugnance of the cruelty of the French revolutionary regime to the rebelling Vendée (1793-96), which pays

[32] *Ibidem*

[33] *Ibidem*

no attention to human dignity or anything human[34]. It is with such understanding of politics that Clausewitz explains the genesis and characteristics of war.

War waged by civilized nations "always derives from a political situation" (von einem politische Zustande) and is always triggered by a political motive (ein politisches Motiv)[35]. Politics is "the mother of wars", it is the "intelligence" (sie ist Intelligentz), while war is "merely an instrument, and not vice versa…"[36] Due to its inferior position of being used as a political instrument, war belongs to reason (verstand). He who wishes to wage war should stick to the principle to use "only those forces and set only those goals which are just enough for him to fulfill his political purpose". In a reversed situation, "the means would be totally out of proportion to the purpose"[37]. War is nothing else but a "state policy extended with other means" (der Krieg nichts ist als die fortgesetzte Staatspolitik mit anderen Mitteln)"[38]. It is merely "a segment of political relations and therefore not independent"[39]. Politics is "present throughout the act of war and exerts permanent influence upon it, if the mere nature of the forces exploding within it allows this"[40]. War skill "at its peak becomes politics, but, of course, politics which instead of writing music wages battles"[41].

In view of all that has been said, war is "a political act"[42]. It "must inevitably have a political character"[43]. "In all its main features, war is nothing else but politics replacing pen with sword" but "it does not cease to follow the logic of its owns laws"[44]

With those characteristics of war in mind, "the ultimate rationale of warfare, the one that all the main guidelines derive from, is no other than that of politics itself"[45]. "To superpose military reasons to the political ones would be paradoxical. Hence, the only option is to "subject military rationale to the political one"[46]. When evaluating a war,

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[34] Clausewitz: Bekenntnisse, 1812, cited from Aron Raymond, *Penser la guerre, Clausewitz, II*, L'age planetaire, Paris, Gallimard, 1976, p. 129.

[35] Clausewitz, *op. cit*.

[36] *Ibidem*

[37] *Ibidem*

[38] *Ibidem*

[39] *Ibidem*

[40] *Ibidem*

[41] *Ibidem*

[42] *Ibidem*

[43] *Ibidem*

[44] *Ibidem*

[45] *Ibidem*

[46] *Ibidem*

"one should always consider politics first". War "must be measured against political standards"[47]. After placing violence, affectivity and freedom of will into the sphere of politics, having described their importance and role the way he did, Clausewitz could see the difference between concept and reality and consequently draw a distinction between two kinds of war. It is in that point that the transition from the initial to final definition of war began.

The first definition applies to the ideal, absolute war (absoluter Krieg), while the second regards real war (wirklicher Krieg). The abstract, ideal, absolute war is not to be aspired for and is rather just an instrument of gaining knowledge about the real war. Depending on the degree of tensions which precede a war, the latter resembles absolute war to a lesser or higher degree. Absolute war is characterized by an unrestricted use of force, i.e. a ruthless use of physical force. Each side in the conflict seeks to impose legality (its will) on the other side. They influence each other until the end. By contrast, because of its quality of a political instrument, the real war is not an absolute expression of force and blind violence, nor is it characterized by absolute hatred between the warring sides. There is no finality in it. It is an activity of forces that never develop in a perfectly uniform or harmonic way. Rather, "one moment, they make a strong push ahead trying to overcome the resistance put up by sluggishness and friction, and the next moment they are too weak to undertake any action at all" [48]. Therefore, real war can be described as a fluctuating pulsation of aggressiveness. It is characterized by congestion, periods of high tension and occasional military attacks. It is therefore not an ongoing battle. Real war can go on for a while even without any battles being waged.

Political purpose is the supreme consideration in warfare. It determines the guidelines, the volume of means, the level of energy and the number of casualties of war. In accordance with this, the destruction of the enemy's forces should be aspired for or carried out "only as much as necessary".[49]

The political reason rules the passion of the nations and it subjects to its will the adventurous initiatives and the free activity of the spirit of war commanders and their officers. It controls violence and restricts it to a necessary measure in order to use it as a means for achieving a goal. This is the difference between "wars" waged by savages and civilized nations. Savage peoples resort to unrestricted violence until one side or the other is destroyed.

There are two main kinds of war. The goal of the first kind of war is to "defeat the enemy completely, regardless of whether we want to

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[47] *Ibidem*

[48] *Ibidem*

[49] *Ibidem*

cause his political end or merely to obstruct his resistance and impose the kind of peace that suits us". The goal of the second is to achieve some "victories at the border of their state, be it in order to keep what had been conquered or to use it as a useful bargaining asset once peace has been signed"[50]. The differences between these two basic kinds of war are numerous.

The Interest of Humanity in Warfare

Let us now go back to the ethical element of Clausewitz' understanding of war. As we mentioned before, it is incorporated in his understanding of politics, with humanity as its integral part. If it is so, then the ethical element is present throughout the war, exerting permanent influence upon it. It is, therefore, a necessary constitutive part of war and warfare. In other words, without this element, armed operations escape the conceptual definitions of war and warfare. It is extremely important to note that Clausewitz does not treat warfare as some external need to humanize armed conflicts of large proportions ("la civilization de la guerre", i.e. "the humanization of war"). On the contrary, he draws that need from the very essence of war. He speaks explicitly in the interest of humanity. This interest is the goal that we bear in mind as we act. He thinks that the interest of each warring side is to behave humanely in battle or, said in today's language, to respect the basic human rights codified in laws and the customs of war. This mutual interest is the basis of their universality.

As we mentioned before, warfare is a reciprocal armed activity with a destructive goal. This reciprocity is not found in the unilateral acts of violence. It is always applied against the weak and the unarmed. Killing people who demonstrated no hostile intentions, unruly behavior of the troops and the destruction of non-military targets have nothing in common with military activity as such. Centuries-old history of wars unambiguously shows that inhuman conduct in battle does not contribute to the strength and successfulness of an armed force. Quite to the contrary, it destructs and diminishes them. On the other hand, it does not weaken the enemy, but rather makes him stronger. Even if completely defeated, the enemy will not surrender if he knows that his captor will torture and kill him. He will put up strong resistance and make his capture as costly as possible. By contrast, human treatment of prisoners encourages the enemy to surrender.

War luck is extremely inconstant. Today you can be the captor and the next day – the captive. Today you may conquer a part of the

[50] *Ibidem*

enemy's territory and treat his civilian population with cruelty. Your luck may turn in only a matter of days or months and the enemy could do the same to you. This is why the mistreatment of the members of the enemy formations (torture and killings of prisoners) may have a boomerang effect and eventually turn against one's own armed forces and people. Because, as in the law of communicating vessels, one cruelty leads to another.

Massive violations of the laws and customs of war eventually make an armed force look like a band of marauders. If these violations are committed on both sides, as the parties in conflict progressively sink into mutual extinction, the war loses all rationality. As a consequence of the violations of concrete historical and ethical standards of warfare, their inspirers and perpetrators are, above all, the enemies of their own armed forces, the enemies of their own state and their own people. In civilized societies, they are indeed treated as such. On the other hand, the respect for the law, i.e. lawful conduct, are what makes a professional soldier. The are a first-rate military virtue, the foundation of honor, pride and self-esteem of the warrior.

To avoid these consequences, the conduct in war, as in other kinds of contests (a sporting match, business competition and so on) is regulated not only with a system of ethical norms and values, but with by laws as well. They determine when it is allowed to resort to armed violence, as well as the conduct in war, i.e. the way war is waged. The essence of moral education of armed forces is to teach their members to actually want to do what they have to do in a military organization and its environment.

The Nazis are the authors of the saying: "Kriegs raison gehet vor Kriegs manier". For them, there is no such thing as legality in a life-and-death struggle.[51] The dichotomy between "Krieg raison" – military need, and "Kriegs manier" – the laws and customs of war, as well as their opposites, is neither scientifically nor ethically justifiable. Because Kriegs raison implicates Kriegs manier. Without this implication there is no such thing as military activity, nor is there the phenomenon of war. The historical military-ethical systems of great cultures are there to prove it.

Thirty-odd years after Clausewitz' death, Francis Lieber wrote, and president Lincoln signed, an instruction for the conduct in war: "People who take up arms against each other in war do not for that reason cease to be moral beings, responsible to each other and to God".[52] In accordance with this, the prisoners of war, as "public ene-

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[51] Falk A. Richard, Kolko Gabriel and Lifton Jay Robert (eds.): *Crimes of War*, Random House, New York, 1971, p. 283

[52] F. Lieber, cited in P. L. Stromberg, M. Wakin Malham, Callahan Daniel: *The Teaching of Ethics in the Military*, New York, The Hastings Center, Institute of Soci-

mies", are not real enemies. They must not be subject to any punishment for being "public enemies".

The 1868 *Saint Petersburg Declaration* says that: "the only legitimate goal for a states in war is to weaken the military forces of the enemy."[53]

The 1874 Brussels Conference concludes that "the prisoners of war are not criminals, but lawful enemies. They are subject to the authority of the enemy government, and not that of the individual or unit that captured them, and must not be exposed to any violence or mistreatment."[54] To the contrary, they are entitled to human treatment. The wounded and the sick members of the enemy's armed force, just as the civilian population, must be offered help.

The Hague regulations represent a serious step forward in the efforts to avoid the unnecessary suffering of those who take part in war. This refers primarily to the human treatment of war prisoners and wounded soldiers, as well as to granting immunity to non-fighters (civilians) and non-military objects. According to them, the prisoners of war "are entitled to human treatment. All their personal belongings, except weapons, horses and military documents, should remain in their possession". Article 22 explicitly states that the right of the combatants to use the means of destruction against the enemy "is not unrestricted".[55]

In his book *Etika rata* (*The Ethics of War*) (sent to print five days after the conclusion of the Second Balkan War), author Janaćije Denić writes: "A nation's virtues in times of war include protecting the honor of women, protecting children and the innocent, protecting property and the means of livelihood, and helping the poor and weak of the conquered nation. All that helps to sustain life is ethical and moral (…) On the other hand, the vice of an unethical nation, in time

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ety, Ethics and the Life Sciences, 1982. In *Social Contract*, Jean Jacques Rousseau writes: "War is therefore by no means a man-man relationship, but rather a state-state relationship, in which individuals become enemies purely by chance, not as human beings, not even as citizens, but as soldiers; never as members of a nation, but as its defenders. Finally, a state's enemy is always another state and never people, since between things so divergent by nature no legal relationship can be established". "Given that the goal of war is to destroy the enemy state, we have the right to kill its defenders for as long as they hold arms in their hands; but the moment they surrender their arms and themselves, their weapons cease to be a threat and they are no longer the enemy, and again they become ordinary men and we no longer have the right to decide about their fate. Sometimes we can kill a state without killing any of its citizens; war, however, does not grant a single right which is not needed for the realization of its purpose".

[53] *Crimes of War*, p. 3.

[54] The 1874 Brussels Conference, cited in Best, Geoffrey: *Humanity in Warfare*, London, Weidenfeld and Nicholson, 1980, p. 137

[55] *Convention on Land Warfare*, 1907

of war, include dishonoring women, seizing property and means of livelihood, and denying help to the other nation's poor and weak." The defeated "should be perceived as vulnerable, as our fellow men".[56]

Violence in war can be reduced to the kind and extent necessary for fulfilling the war's purpose. This means that military activities may be conducted in accordance with the principles of humanity and chivalry. The Hague regulations acknowledge the status of a military professional only to those who respect the laws and customs of war. This applies to regular armed forces as well as militias and volunteer units.

The targets of military actions must be strictly limited to military objects, i.e. the objects whose nature, location, purpose and function contribute effectively to the military action and whose complete or partial destruction, seizure or neutralization results in a certain military gain. However, this too may be done only with permitted means of violence. Throughout the history of war, there have been restrictions regarding their use. In the old days, it was poisonous arrows, today it is biological weapons. Any violation of the laws and customs of war escapes the military sphere and constitutes a crime. Napoleon Bonaparte was even more strict on this: "My main maxima in politics as in war has always been that any damage inflicted on the enemy, even if there were no rules against it, is justified only if absolutely necessary, all the rest is common crime."[57]

Ethical conduct in warfare is difficult to uphold, but without it there is no military activity. A soldier shows his strength through harshness, determination, righteousness and humanity with which he treats his captives. He is courageous, but not cruel. He never forgets that his enemies are human beings. This is why S. Hunlington is wide off the mark when saying that a military professional engages in battle without any political and moral considerations, i.e. that for him "raison d'état" features as crucial.[58]

Bearing in mind the crucial importance of the ethical element in a military activity, the ethical education and instruction of an armed force is paramount. They make an integral part of war preparations in both the existing states and those *in statu nascendi*.

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[56] Denić, Janaćije: *Etika rata*, Beograd, Prosveta,1915, p. 71, 79

[57] Best Geoffrey, *op.cit*, p. 49

[58] S. Huntington: *The Soldier and the State, The Theory and Practices of Civil-Military Relations*, The Belknap Press of Harvard, Univ. Press, Cambridge, Massachusetts, 1957, p. 78

"Primitive war": Armed Activity Against Humanity
Sub-Military Character of "Primitive War"

Massive use of weapons in the resolving of social differences does not in itself constitute war. As we mentioned earlier, war is a reciprocal armed activity of massive proportions, with a destructive goal. Armed activity is its important feature. But as important as it is for the definition of war, it is still not distinctive enough. To be the key element of war, the armed activity has to include the interest of humanity, which is imminent to it.

The anthropological studies of primitive peoples (Bushmen, the tribes of Papua New Guinea) enriched social thought with the concept of "primitive war". This phenomenon, looked at from the point of view of genetics, is typical of prehistoric societies and pre-state times. In primitive peoples (rohe Volker) "all the members of one group are friends and share a common interest against any other group. The prevailing feeling within the 'Us-Group' and among its members is that of peace and cooperation. The feeling prevailing within the group towards all the outsiders is that of hostility and belligerence. These feelings are perfectly consistent with one another, in fact, they supplement one another."[59] Two moral codes and two groups of customs derive from this. One for the members of the group within itself, and the other for strangers, those outside the group. It is commendable to kill the outsiders, those strangers who belong to the "Other-Group", to plunder them, practice blood feud, snatch their women, etc. By contrast, none of this is permissible within the Us-Group. A collectively sanctioned and permitted violence in the Us-Group (Us-People) against the Other-Group is called primitive war.[60]

The anthropologists link war, "real military operations", "civilized warfare" or "political warfare" to the invention of the principle of tactics, which able commanders use in its entirety in each battle. By contrast, the primitive war uses these principles selectively, chiefly those elements of them which derive from animal hunt. It is, in fact, a man hunt. This is the essence of primitive or sub-military war. "It is a man hunt, whose outcome is a primitive war or sub-military operation. The emergence of real war required the use of all the principles of war in every battle, sometimes combined in different ways."[61]

Absolute hostility reigns between the Us-Group and the Others-Group. It is blind violence constrained only by its internal characteristics and never from the outside. The battle continues until one of the

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[59] Sumner G. William, *War*, 1911, in: *War*, p. 209

[60] Harry Holbert Turney-High, *The Military (The Theory of Land Warfare as Behavioral Science),* Massachusetts, 1981, p. 26; See also: J. Schneider, *Primitive Warfare: A Methodological Note*, in: *War*, ibidem, p. 274-283

[61] *Ibidem*, p. 23

groups involved is physically destroyed. These conflicts do not acknowledge strategy or logistics, and the hostilities are defective in terms of several or sometimes many requirements of tactical warfare. These, however, are neither the only nor the most important characteristics of primitive war. It can be manifested in different forms, some of which make it similar to civilized warfare. But there is one key thing that they all have in common. "It is the treatment of the enemy as a wild beast, as something not entirely human."[62] By contrast, in a real war the soldier can treat his enemy as a human being. The primitive "warrior" shows no sympathy or mercy. The goals of his war stem from the emotional life of individuals and small groups, and are rarely economically motivated. This is why this type of "warfare" is bellow the military horizon and as such it is a manifestation of human immaturity.

Let us note once more that the war of civilized nations is inseparable from the situation in the state. Military activity exists in it as a separate branch in the social division of labor, a military organization as the most elemental social substrate of the state. That war is characterized by strategy, tactics and logistics. It is a political act. The concepts such as enemy, animosity and destruction have an entirely different meaning here than in the primitive war. As such, it is not blind violence, it is not absolute hostility. Despite the inhumanity of war as a whole, it does imply elemental humanity, humanity out of interest, i.e. the interest of humanity. This is what makes it totally different from primitive war. The latter is not merely an inferior form of the former, as primitive religion or primitive art are inferior forms of modern religion and art, and therefore does not belong in the military sphere. In the primitive war of prehistory, all members of a different clan or tribe are enemies, the animosity is absolute, the goal is not to impose your will on the enemy, but to achieve his total physical annihilation. In real, civilized war, the only enemy are the armed forces fighting against each other with a destructive intention in mind. The animosity they feel for each other is relative (it is a rational, reactive hatred), and their goal is a political one.

Primitive war and the sub-military activity that characterizes it, although genetically connected with the level of prehistoric social development, have existed throughout history and exist still today. They emerge in all those situations where massive armed violence, used for political purposes, is devoid of the elemental ethical substance, that is, when the architects and perpetrators of that violence do not see their enemy as a human being.

In the early days of the World War 1, Emperor Wilhelm II wrote to Francis Joseph: "My soul is being torn apart, but everything must

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[62] *Ibidem*, p. 26

be raised to the ground, all – men, women, children, old people – must be slaughtered and not a single tree, not a single house must remain on the face of the earth. With the use of these terrorist methods, the only ones that will have any effect on such a degenerate people as the French, the war will be over in two months. Otherwise, if I were to yield to the considerations of humanity, it would last for years. Despite the repugnance I feel, I am compelled to resort to the system I have described."[63]

Due to a low level of social development, in order to survive prehistoric man did not have any other choice in his dealings with neighboring tribes or clans but to go to war. By contrast, civilized man does have an alternative. In a civilized society it is relatively easy to tell the difference between armed forces and population, soldiers and civilians, friends and enemies, good and bad. And yet, it is not rare for the states to choose to engage in sub-military activities, manifested in a mix of the logic of primitive war and that of an increasingly deadly technique and an ever more efficient military technology. Therefore, if one was to judge it, primitive war waged by a civilized country is more primitive than the primitive war of prehistory. In fact, it is not war. It is rather a series of gruesome crimes. Their inspirers and perpetrators are not soldiers, but sub-military troops.

Manifestations of Sub-Military Activity

Bearing in mind the characteristics of primitive warfare as listed above, it is necessary to specify the way it manifests itself. Bearing this intention in mind, we shall place the sub-military activities that it is characterized by into two social situations. First in battle, and then outside of it.

Violence in battle, which is an important quality of warfare, is only present to a measure which is needed to achieve the military goal, that is to disable the enemy to an extent which will prevent him from continuing to fight. The soldiers on the opposite sides kill each other out of fear for their own lives. In this way, they are defending their right to life, thinking that "If I don't kill him, he will kill me". Only in that particular context is the killing militarily justified. If, however, one resorts to excessive use of violence, i.e. if the violence used exceeds the realistic military needs, then that kind of military activity acquires sub-military characteristics. It may be manifested in the use of the most modern systems of weapons against a poorly equipped enemy, the methods of extermination rather than those lead-

[63] *Crimes of War*, p. 135

ing to a military victory, and the use of weapons that may expose the enemy to unnecessary suffering.

While in the first instance we are dealing with a reciprocal violent activity which uses various weapons, no matter if unequal in strength, in the second we are dealing with a unilateral armed activity against those unable to fight (prisoners, the wounded, the sick, etc.) and against those who expressed no hostile intentions and undertook no hostile actions (civilian population) and their physical and spiritual values. Sub-military activity in this case takes on the following forms:[64]

– Violations of the right to life and physical integrity, especially all kinds of murder, mutilations, cruelty and torture;
– Illegal banishment, displacement and illegal arrests of civilians, persecution on account of political opinion, race or religion;
– Banishment and displacement of a religious, national or racial group or its parts, violations of personal dignity, especially offensive and humiliating treatment;
– Forcing the prisoners of war or civilians to serve in the enemy forces, taking hostages;
– Sentencing and punishment without trial and a regular court procedure with all the guarantees deemed necessary by civilized nations;
– Activities aimed at total or partial destruction of a national, ethnic, racial or religious group (killing the members of the group, inflicting serious bodily or spiritual harm to its members, deliberate exposure of a group to the living conditions that will result in its total or partial ruin, imposing measures intended to prevent birth within the group, forcible displacement of children from one group to another, etc.);
– Destruction and theft of public and private property, as well as all other forms of misappropriation of property motivated by non-military reasons and committed in an unlawful and arbitrary way;
– Exposing civilian population or individuals to armed attack, launching random attacks which might hurt civilians or civilian objects whenever it is possible to anticipate that such attack could cause massive loss of lives, massive wounding of civilians or damage to civilian objects;

[64] Cited from the Geneva Conventions I, II, III, IV and the Protocols I and II to them, Convention on the Prevention of the Crime of Genocide, Convention on the Non-Expiry of War Crimes and Crimes Against Humanity, Statute of the Nurnberg International Military Court, Statute of the International Penal Court for Serious Violations of International Humanitarian Law in the Territory of Former Yugoslavia in 1991.

– Raids on facilities and objects storing dangerous goods, if it is known that it would result in a massive loss of lives, wounding of many civilians and damage to civilian objects;
– Destruction of towns and villages or their devastation which is not militarily justified;
– All-out attacks on undefended towns, villages, demilitarized zones, objects or houses, seizure of or deliberate damage to religious objects, charity objects or objects used for educational, artistic or scientific purposes, historic monuments and works of art and science.

Sub-military activities are a negation of universal ethical norms and moral values of our civilization, that is of the "fundamental laws of humanity" which must be respected at all times and under every circumstances. All those who fail to do so are the *hostes humani generis* – the enemies of their own people, state and its armed forces. With sub-military activity there always come the most brutal violations of basic human rights.

Subjects and Determinants of Sub-Military Activity

We may look at the phenomenon of sub-military activity through the behavior of individual participants in war. It would therefore be useful to point to a correlation between their personal characteristics and the level of respect they have for the laws and customs of war. This approach would surely provide a good insight into the nature of crimes committed in war and their causes. This method would prove good enough for understanding this phenomenon – if politics, which determines war and permeates it to a level where it becomes a political act, included the ethical element as well. In that case, the criminal behavior of individual combatants would quickly be met with an efficient moral and legal punishment. In this case, we are talking about "war" Here we are talking about war crimes.

But, as we mentioned earlier, war is an extension of politics as well as its instrument. The instrument must be shaped to suit the political goals of the state or the state *in statu nascendi*. If the inherent ethical element of war is absent from a particular policy, the armed operations take on sub-military characteristics. In that case we are talking about "war" as a crime. A state therefore becomes a criminal state (Verbrecherstaat), according to Karl Jaspers.[65] All those who obey it become "regime's criminals".[66] In that context, organized tortures and killings become an institution of the government, and the

[65] Karl Jaspers, *German Guilt*, in: *Crimes of War*, p. 476-485

[66] Hannah Arendt, in: *Crimes of War*, p. 494

extermination of entire nations an integral part of the state's demographic policy, i.e. they become the regime's crimes. Therefore, not only the direct perpetrators of these misdeeds are criminals, but also all the official representatives of both political and military authorities – from the lowest-ranking, the government and top military commanders all the way to prime ministers and presidents. They are all links of a unique criminal chain.

A war of aggression is the biggest crime of all. What makes it different from other war crimes is that it contains accumulated evil. It is usually categorized as "unjust war". In real life, this classification, however, does not have as high a diagnostic or discriminatory value as it is commonly believed. War is always evaluated almost exclusively from the point of view of nationality, class, ideology… As a result, there is hardly a war that its participants do not perceive as just and unjust at the same time. The same wars, looked at from the different perspectives of interests and beliefs of the conflicting parties, are seen as just, i.e. unjust. Even today, at the very beginning of the third millennium, we still lack proper identification and censure mechanisms applicable to armed aggression. A minimum of diplomatic and propaganda skills is often enough to make an aggression pass as self-defense, any war as a struggle for justice and peace, any armed struggle, regardless of its proportions, as an incident. Even if a government is recognized as the aggressor, it is condemned only after its forces have already made considerable progress and numerous war crimes have already been committed.

Wars of defense alone are ethically and legally justifiable. They belong to the category of just wars. However, based on this classification, one should not, as it has often been the case, conclude that all the deeds committed in such wars are just and moral. Historic experience has shown that many "popular wars" proved disastrous for the people itself and were nothing short of full-blown humanitarian catastrophes. They are characterized by horrors, brutality and terrible suffering of the civilians. This is probably why Clausewitz dodged the question of whether "the enhancement of the war element"[67], in the form of popular war, was useful to mankind.

Men fight and states wage wars. Either can get involved in both military and sub-military activities. In the situations of actual violence, their activities interact, supplement and sometimes oppose each other. As a rule, ethically undeveloped commanders and soldiers are incapable of carrying out the goals of an ethical war policy, and *vice versa*. A criminal state wages criminal wars ("war" as a crime). Its vital interest is to have a fully obedient commanding staff to fulfill its goals, because a criminal state needs its national, i.e. the regime's

[67] Clausewitz, *op. cit*., p. 411

criminals as its instruments. However, there have been cases of individual soldiers manifesting a high level of morality in an otherwise criminal war. Despite Hitler's orders, many German officers refused to shoot the captured Allied pilots or the Red Army commissars, thus exposing themselves to serious risks.

On the other side, the states whose policy contains the elemental ethical substance will invest huge efforts into teaching their armed forces to respect the laws and customs of war. Thus the crimes that may be or have been committed by their officers and soldiers are not determined by the national policy, but rather by the individual characteristics of the "warriors". They are then quickly exposed and punished, a fact that helps to reduce human suffering and destruction to a (unavoidable) minimum.

The ideological-emotional basis of sub-military activity, i.e. crime in war and "war" as a crime, is separate from its specific historical forms, with the concept of absolute animosity always being its vital characteristic. And the logical outcome of absolute animosity are aggression, massacre and genocide. Animosity turns absolute when based on a philosophy of racial or biological superiority. It is the spiritual food for the criminal state, its criminals and the criminals acting independently from the policy of the state.

Statesman, politician, military commander or a common soldier, it is always man that commits crimes. He is the bearer of the ideas and values which lead to his criminal behavior. The circumstances in which this will be manifested can be more or less favorable.

This depends on several important factors, whose influence varies depending on the situation. Peter Karsten divides them into two groups. The first group comprises the values and attitudes that each individual soldier brings with him into a military organization at war (personal characteristics, ethno-centricity and other ideological features) and the second comprises a military organization in the process of war (the situation on the battlefield, the quality of leadership and the nature of weapons used in the conflict). These factors interact and overlap.[68]

This paper and other studies on warfare have never established a propensity for criminal acting in any particular national group. However, they firmly established that sadistic nature, low degree of education, poor social background, unfulfilled personal ambitions and criminal past of the combatants of any nationality, as well as extreme ethnocentrism characterized by the belief that people should be divided into superior and inferior, good and bad, civilized and uncivi-

[68] Peter Karsten, *Law, Soldiers, and Combat*, London, Greenwood Press, Westport, Ct, 1978, p. 32. The author offers an elaborate explanation of these criteria. See in particular p.32-144.

lized[69], *ubermenschen* and *untermenschen*[70]. Religious mythologies[71] may sometimes play the same role (sacred wars, like Guerra florida in the Aztec mythology, Christian *Bellum Peregrinum*, Islamic Jihad, etc.)[72], as well as sharp differences in the political culture of the warring sides (big social revolutions of the modern era) are the main generators of sub-military behavior. It is further fuelled by the situation on the battlefield (stress, fear, frustration, anger and revenge) and poor military leadership.

Many crimes, irrespective of their nature, can and often have been prevented by law-abiding officers. The conduct of many German, British, Polish and Russian officers during the Crimea War, and later in both world wars are there to prove it. And *vice versa*, officers with a poor sense of ethics[73], and their superiors, who purged the basic ethical substance from politics and from war as its extension, have contributed to turning a good part of human history into utter catastrophes. The warriors (officers and soldiers) must never forget that, as human beings and as soldiers, they have obligations that transcend their duty to obey the immoral orders of their own state. This is why they must, at any cost, prevent any crimes during war, irrespective of whether they serve in the armed forces of a republic, a monarchy, a socialist or a capitalist state, or even a guerrilla movement. This is an important indicator of their military competence.

Sub-Military Warfare in Yugoslavia

Extreme ethnocentrism and other backward ideologies, which were the very foundation of the policies of the national parties during

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[69] During the extermination campaign against the American Indians, Jacob Dowling served under the command of Colonel Chivington in the 1864 Sand Creek Massacre. During the attacks upon the Cheyenne camps, he proved absolutely merciless: "I killed everyone I could and I think that was the general spirit in the command. I think and truly believe that the Indians are an impediment to civilization and that they should be exterminated", Ibidem, p. 56.

[70] Under the command of Col. William Kelly, hundreds of men, women and children were killed in the notorious Mi Lai Massacre during the Vietnam War. During his trial, Kelly could not understand what he did wrong and referred to the Vietnamese only as "gooks" and "mud".

[71] Aho A. James, *Religious Mythology and the Art of War*, *Comparative Religious Symbolism of Military Violence*, London, Aldwych, 1981.

[72] *Ibidem*, p.10. For more details about the sacred wars and their specific military ethics see table 2 on p. 12.

[73] A US officer in Vietnam wrote the following verse: If you kill for pleasure/ You' re a sadist/ If you kill for money/ You' re a mercenary/ if you kill for both/ you' re a RANGER. Karsten, ibidem, p. 84.

and in the aftermath of the devastation of the Socialist Federative Republic of Yugoslavia (SFRY), poor political leadership of the army as well as the personal characteristics of the politicians, propaganda and military professionals – all this resulted in the armed activities in the territory of the former Yugoslavia becoming prominently sub-military.

Instead of making a rational assessment of the situation in which the country found itself after the conclusion of the Cold War and the subsequent changes in the international relations, and shaping a new national policy accordingly, Yugoslavia's incompetent leadership – in each of the six republics – built their political platforms upon mythological truths (about their own nations, national states and their historical mission). The national leaders, with the strong support from the media and intelligentsia, "unveiled" it to their people that they had been robbed and humiliated. They blamed other nations, their neighbors, for all the hardship. It was high time, they thought, they walked proudly again and have their natural dignity and power restored to them. Because, they were a heaven-born people, a historically intelligent people, unlike the "historically crazed-out nations". The new leaders, the makers and products of such psychosocial climate promised to unite all the members of one nation in one state. They defined their lebensraum and traced new borders for them. They did this in a territory with a centuries-long history of massive migrations and ethnic mixing. They did it as broad integration processes resulted in national borders becoming more and more a thing of the past. They did it to the nations that shared the same language and culture and were linked with blood, friendship and business. In contradiction of the prevailing trend of global integration, they opted for national homogenization, thus deepening inter-ethnic antagonisms. In contradiction to the philosophy of human rights and freedoms, they nurtured the myth of the national state with a historical mission, in which individuals are no longer free citizens but rather parts of a metaphysical entity.

Under those circumstances, one pathological nationalism led to another, like in the law of communicating vessels. They developed a thesis that it is not possible to live together with other ethnic and religious groups, which climaxed with their treating the remaining nations of the common homeland as enemies. The state media, public appearances of the officials, intellectuals, party leaders and others were replete with words of inter-ethnic hate. The primitive nationalists even added national epithets to the names of rivers, mountains and valleys.

In fact, the process of national homogenization was just a screen for a backward ambition that went largely unnoticed by analysts: to impose nationalism – a form of cultural pathology – as the nation's ideology. This resulted in a further division into good and bad Serbs,

good and bad Croats and good and bad Muslims, where all who refused to adopt the racist ideology and its values were labeled bad.

The leadership of the JNA (Yugoslav People's Army) also took part in this process. Like cancer, nationalism ate into its identity and role, which were based on tradition and stipulated by the Constitution. The top army people, with just a few honorable exceptions, proved to be morally and intellectually unfit for the positions they occupied and for the role that Yugoslav citizens and nations had entrusted them with. Remorselessly and without giving it much thought, they embarked upon a task of "solving the national question" of their respective nations. They turned into the loyal followers of their "leaders" and "chiefs" and started to implement their policies using "other means". The JNA ceased to be "Yugoslav" and "people's" and, because of the sub-military activities it got involved in, it even ceased to be a proper army. Its officers spread to the newly-formed national armies to lead them into the mutual destruction of yesterday's "brotherly" nations and their common material and cultural property.

Almost overnight, the Yugoslav officers, who had for decades pledged to "deepen the all-Yugoslav and popular" character of JNA, became Serbian, Croatian, Muslim, Slovenian and Macedonia officers. They thus broke their soldier's oath to defend the interests of all Yugoslavs, and not just their respective nations. Instead of fighting to preserve the common state according to the will of the people, which they pledged to defend with their blood, the opted for its devastation and destruction. The entire weaponry and military equipment, financed from the federal budget by all the nations of the previous Yugoslavia, was now used for mutual destruction of these very nations. Those who had pledged to defend Yugoslav "brotherhood and unity, the apple of my eye" turned into the instigators of ethnic intolerance and hatred. Hence, they turned against their former colleagues and commanders, to whom many of them owed their professional careers.

Parallel to the disintegration of the JNA, national armies were being formed (from the former Territorial Defense Units and JNA deserters) as well as a number of paramilitary formations. They included quite a few criminals. Their national exclusiveness reflected the policy of national homogenization, proclaimed and carried out by the political leaders. The top commanding posts were given to previously anonymous or low-ranking officers.

This extremely ethnocentric orientation got the support of a number of ranking officers and generals who belonged to the "old guard". One of them flatly accepted the position of the chief of staff of the newly-formed army of one of the former Yugoslav republics, now an independent state. Another published a book about the break-up of

Yugoslavia qualifying all non-Serbs as war mongers.[74] Yet another published his "revelation" that humanity and war do not go together.[75] A fourth called the "Yugoslav 1990-1994 civil war just another landmark in the centuries of struggle of south Slavic nations for survival and freedom".[76]

Others took on "geopolitics". They began to measure their former homeland, whose nations gave them all that they ever had, from side to side and on the basis of these measurements they gave "expert advice" on how to rip it up even further. In that situation, honorable officers and generals were in absolute minority, unable to influence the events. Their warnings about the senselessness of the wars in the territory of the former Yugoslavia virtually fell on deaf ears.[77]

The political and military architects and implementers of the project of pathological nationalism even coined a new vocabulary. They introduced new words in everyday speech and changed the original meaning of some military terms. No doubt, the syntagma "ethnic cleansing" is the most notorious of all. It implicates that people of other religion or ethnicity spoil and pollute the majority nation in a geographic space which it claims to be its lebensraum. They are seen as microbes that infect a healthy organism and should therefore be eliminated as quickly and efficiently as possible. Put in a crude language (as a folk singer who joined a paramilitary unit once said in a TV show) "the sewers need cleaning". Within this mental framework a Serb, a Croat, a Muslim, an Albanian or anyone else is the enemy not because he has taken up arms and joined a struggle for what he thinks is a just cause, but only because he is Serbian, Croatian, Muslim or Albanian. This is absolute hostility *par excellence*.

"War captive" is another significant syntagma that entered all Balkan languages. Not coincidentally so. In countries with high political culture, what we call war *captive* is called the *prisoner* of war (prisonier de guerre, Kriegsgefangene). This is more than just a choice of words since the term reflects the way one understands the meaning of the phenomenon it denotes. The prisoner of war is a member of the

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[74] Veljko Kadijević: *Moje viđenje raspada (My Vision of the Break Up),* Beograd, Politika, 1993.

[75] Čubra, N.: *Vojska i razbijanje Jugoslavije (The Army and the Break Up of Yugoslavia)*, Beograd, Ekonomik 94 and Fineks, Ekonomski institut, 1997, p. 144.

[76] Jakšić, P.: *Pohod na Jugoslaviju – jugoslovenski gradjanski rat 1990-1994 (Campaign Against Yugoslavia – Yugoslav Civil War 1990-1994)*, Beograd, Knjževne novine – Enciklopedije, 1944, cited from "Politika" daily, Nov. 11, 1994..

[77] They included, above all, the members of the Association for the Promotion of Truth about the Peoples' Liberation Struggle and the Multiethnic Writers' Association of Bosnia and Herzegovina from Belgrade. In a well documented book, one of them correctly called the "war" in the territory of the former Yugoslavia senseless. See, I. Radaković: "Besmisleno YU ratovanje" (*Senseless YU War*), Belgrade, 1995.

enemy forces who is kept in detention in order be kept away from fighting. During his captivity, he is guaranteed the elemental human rights as stipulated by the laws of war and military ethics. War captive has an entirely different meaning. Again, he is a member of the enemy forces, but he is not arrested, nor imprisoned, but rather captured. To capture here means put someone in a slave-like position. And by definition a slave is not a human being, he is a thing and his owners can therefore treat him as they please.

Obviously, when based on such premises armed activity does not require high personal qualities of its participants. On the contrary, the less endowed the officer is with the highest human qualities (love, sense of poetry, kindness, philosophical or critical doubt) the "better" suited he is for the job. His should have a limited mind and an unyielding belief in the importance of his mission. Otherwise, he would never have the patience needed to carry it through. Only then can he be an "exemplary" soldier. He must never be human, feel love or compassion or think about what is right.

"War" in the former Yugoslavia is a convincing proof of that. In the March 1995 Report No 17 of Belgrade's Humanitarian Law Center it says: "During the conflicts, which started in 1991, it turned out that the JNA's military academies had produced a number of officers who were not only militarily incompetent but also ready to give precedence to an ideologized national interest over the international law. This was obvious from the way the operations were conducted, often without any military reason, which was particularly obvious in the unjustified mass destruction of settlements (Vukovar, Sarajevo, Mostar and, to a certain extent, Dubrovnik), in the treatment of the enemy as an inferior being unworthy of any consideration, and not as the prisoner of war (the prisoners were taken to prisons and concentration camps, forced to do jobs banned by international law, such as cleaning mine fields, etc.), in the irresponsible sacrificing of inexperienced soldiers in the reckless and poorly planned operations[78]."

What is known as the war in the territory of the former Yugoslavia is not characterized by military proficiency. It is characterized, above all, by a variety of manifestations of unilateral violence – mass expulsions of civilians, concentration camps, rapes, mass graves containing the bodies of prisoners and civilians alike, and the destruction

[78] Nataša Kandić (ed.), *Kršenje ljudskih prava na teritoriji bivše Jugoslavije 1991 -1994* (Human Rights Violantions in the Territory of the Former Yugoslavia 1991-1994), Humanitarian Law Center, Belgrade, 1977, p. 234-235 (Serbian edition).

of cultural heritage. This is what that war will go down in history for.[79]

The pre-war population of the region that suffered most casualties was approximately 8 million. Out of this number, over 3 million became refugees in more than 40 states worldwide. Most of them were expelled or in some other way forced to leave their place of residence. More than 250,000 civilians and soldiers of all nationalities died in the conflict. The Commission of the UN Security Council was notified of the existence of more than 700 concentration camps and other detention facilities. New mass graves are found almost daily, their number now reaching 2,000. Hundreds of thousands of people came out of that war physical and mental invalids. More than 200,000 young people from the regions not immediately affected by armed conflicts left the country to avoid being drafted.

There is enough evidence to prove that the "ethnic cleansing" and other crimes were not accidental nor sporadic and that they were not committed by some informal groups or civilian gangs. On the contrary, the treatment of the enemy, the manner in which those misdeeds were carried out, as well as the territory in which they took place, reveal that the political leaderships had identified a goal and it had also facilitated, planned and coordinated these crimes. We are dealing here with carefully planned and brutally executed operations of destruction and expulsion of the "undesirable" ethnic groups in a specific territory. All this is further corroborated by the fact that the commanders did not avert or punish the perpetrators of such crimes even thought they were aware of them. What is more, those individuals were singled out as patriots and heroes and rewarded with high positions in the government, military and police structures.

The responsibility for those crimes lies with the leaderships of the states that emerged from the ruins of the old Yugoslavia. They planned, organized and/or instigated them. The responsibility lies with the commanding officers of all the armies involved – from JNA to KLA ("Kosovo Liberation Army") to paramilitary and police units. They are responsible for these crimes and for encouraging the perpetrators to commit them or for tolerating them. They are also responsible for not having prevented the crimes, something they were legally bound to do by the laws of war and war ethics. The responsibility lies with all those who, with words or actions, encouraged those crimes,

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[79] For additional details about the "war" in Yugoslavia see N. Kandić, *ibidem*; *Human Rights in Yugoslavia 1999*, V. Dimitrijević (ed.), Belgrade Center for Human Rights, Belgrade, 2000; Final Report of the Commission of Experts Founded in Accordance with the Resolution 780 (1992) of the UN Security Council (Bassiouni Commission), in: International Tribunal for War Crimes in the Territory of the Former Yugoslavia, Zagreb, Croatian Helsinki Committee, 1995.

justified and concealed them or called them a war. We are dealing here with a criminal chain, and therefore also with a chain of responsibility, which stretches from statesmen and politicians, at the one end, to the most marginal of individuals, who committed them, at the other. Moral responsibility lies with all those who failed to show compassion for the suffering ones and solidarity with their fellow human beings. All those who refused to see what was going on and did nothing to stop it are also guilty.

POLITICS, ETHICS AND WAR

When politics is separated from ethics, it becomes a technique of manipulating people's behavior. Its main concern is how to gain and sustain power. Hence the clash between politics and morality, i.e. the opposition between power and morality. Some of the consequences include rejection of morality, disrespect for human life and dignity – in all, disrespect for basic human rights which belong to every man. This, however, is but one extreme. In reality, politics and ethics do coexist as a result of a conscious effort. If and when this is the case, the ethical element is introduced in politics from the outside, in a mechanical fashion, as an entity alien to it. The idea is to elevate politics and make it somewhat human, ethical. In that context, it is held that in politics as in war (which is seen as its extension) it is desirable to be moral. At issue here is an attempt to reconcile politics and ethics, i.e. political practice and morality.

In neither case is ethical quality (morality) a necessary feature of politics. This also holds true for the extension of politics with other means – war. The historical merit of Karl von Clausewitz resides in the fact that, as the holistic view of the world was abandoned and a positivistic splitting of traditional politics was taking place, he preserved the ethical element of politics as the "Mother of War", that is to say he preserved the "interest of humanity" as an integral part of politics.

In its original meaning, politics is inseparable from ethics. This unity is based on their common origin in man. *Politike pragmateia* examines the communal life of man in relation to the essential structures of that life. Aristotle defines politics as a "philosophy of human affairs", "philosophy of human life" or "practical wisdom"[80]. Its subject matter are human affairs, "those which are amenable to decision"[81] and the concepts of good and bad are at its center.[82] The goal

[80] Aristotle, *Nichomachean Ethics*

[81] *Ibidem*

[82] *Ibidem*

of all human action is good, and the highest good "is the supreme and the most inclusive" kind of human knowledge and potentiality. The "knowledge of state" appears as such[83]. The most highly estimated skills, first and foremost military skill and then economy and oratory skills, are under its jurisdiction[84]. Politics, the knowledge of state or practical wisdom determine the kinds of knowledge that are needed in the state and that "every individual should learn and to which extent to master". It also determines "what one should do and what one should abstain from" [85].

Justice is a "need of the state". Its aim is to attain "the best possible life"[86] and all in it must be subject to this goal. Therefore the state exists to act "in compliance with moral laws, and not just because of communal life"[87]. Its organization and activities it should offer a possibility for moral perfection. The education of people and their getting accustomed to behaving in accordance with the standards of morality and justice are of paramount importance. It is many times more important in people who have political power and soldiers who obey their orders. Because, "armed justice is the most terrifying of things"[88].

Modern times brought about a shift away from this concept of politics, and even from the politics, ethics and military skills as we know them today, resulting in the creation of a number of separate individual disciplines. Their origins in traditional politics are almost completely forgotten. The end result is the suppression of practical-moral orientation of politics and its transformation into an activity in which any goal can be attained. This degradation of politics led to a belief that anyone can practice it regardless of his or her moral features and, depending on the power he has, control the fate of individuals and nations. This applies to military skills as well, i.e. to war as an extension of politics, where it is believed that just about anybody can decide about life and death of hundreds of thousands of human beings.

It is important to stress that Aristotle believed that political science and practical political work include some basic moral requirements. Those who wish to practice them must have a basic knowledge of morality. On the introductory pages of *Nichomachean Ethics*, he wrote that a person who is inexperienced in "life's acts and relations" and likely to "be led by his passions" is not a suitable listener of lectures on social life. He will listen in vain to those lectures whose aim

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[83] *Ibidem*

[84] *Ibidem*

[85] *Ibidem*

[86] Aristotle, *Politics*

[87] *Ibidem*

[88] *Ibidem*

"is not (theoretical) knowledge, but rather practical usage". It does not matter whether he is of young age or immature by nature. Because, "the deficiency is not in the age (of those people), but in the passions that control their lives and all their ambitions. Such people cannot make any use of knowledge because they do not match up to it."[89]

Therefore, he who wishes to learn something from lectures on good, justice and, generally speaking, on social matters, must "be ethically formed". Such person "either already carries the moral principles in himself or is able to embrace them easily"[90]. When neither is the case, we are dealing not only with a useless person, but a dangerous one as well. Because, "man without virtues is the most perverted and savage of creatures"[91]. He "can do a thousand times more evil than an animal".[92]

All this leads to a conclusion that it is necessary to re-examine the ideas of the past if we want to understand the present. It would clearly show us that the immorality of rulers, the humiliations to which they expose their subjects, a general tendency to spread lies and fear, so common in this day and age, have nothing in common with the genuine meaning of politics.

Mutadis mutandis, this holds true for war as well. If the extension of politics "with different means" results in unilateral acts of violence, that does not constitute war. Its main distinctive element – battle – is absent from it, in the same way it is absent from animal hunt.

By resorting to this sort of violence, military commander is not waging a battle, but merely terrorizing, torturing and finally brutally killing his victims. The victim, on the other hand, similar to a hunted animal, has neither means nor possibility to retaliate, i.e. to put up adequate resistance against violence. Immanent to war, battle requires both courage and morality from its participants. The requirements for unilateral violence and its many brutal forms include cowardice, cultural, civilizational and moral backwardness.

In its true, original meaning, politics serves to humanize the world within its historical limits. Today, the philosophy of human rights and freedoms and the movements which promote them are the most obvious illustration of that. How progressive political agents are, including states as well as individuals, is best reflected in their human-right policy.

The aim of this philosophy and these movements is to transcend war as a way of working out social differences. On this long and diffi-

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[89] Aristotle, *Nichomachean Ethics*

[90] *Ibidem*

[91] Aristotle, *Politics*

[92] Aristotle, *Nichomachean Ethics*

cult road, they encourage people and nations to do as much good to each other as possible in peacetime, and in wars, which are still being waged, as little evil as possible. They promote a renaissance of politics, in which its true meaning will prevail. The respect for basic human rights in war protects the military profession from various distortions and degeneration. And most of all, it protects this honorable vocation from the incursions of the criminal state and its efforts to degrade military professionals into the regime's criminals.

(translated by: Ana Davičo)

The Citizen in Uniform

Miroslav Hadžić

Whenever the issue of the protection of human rights in the military is put on the agenda, it is inevitably met with two basic dilemmas. They both stem from the social essence of war and military organization. Right away, the question arises of whether, how and in what measure is it possible to protect human rights in an organization whose ultimate purpose is the destruction of life itself! And always under the pretext of protecting it. The second dilemma centres on the problem of the protection of human rights in war, given that the realization of military goals, first and foremost, requires and implies the physical destruction of enemy troops. However, these questions were historically asked and the quests for their answers embarked upon in a reverse order.[93]

Due to the current modifications of the nature of war, which today more than before concern the civil population and its vital resources, this problem gained in complexity. One of the paradoxes of the (post)modern war is reflected in the fact that, thanks to the new technologies of destruction, non-combatants are now exposed to a proportionally bigger danger, while the opposite is true of combatants. This is why today's "humanitarian interventionists" are more concerned about protecting their soldiers during and after combat than about the safety of the civilian population they are so keen on saving.[94]

The first modern response to these basic dilemmas is found in the *Universal Declaration of Human Rights*, listing the protected human rights in Article 30. It says that "nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein".[95] This gave a fresh impetus to the development of humanitarian law, which "is turned en-

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[93] See Konstantin Obradović, "Humanitarian Law Today", in: *Law of Human Rights*, Konstantin Obradović, Milan Paunović (eds.), The Belgrade Center for Human Rights, 1996, p. 77-94

[94] The 1999 NATO aggression against the FRY, as well as the US bombing of Afghanistan in 2001 offer new proof for this thesis.

[95] Universal Declaration of Human Rights, quoted from *The Rights of Man - Collection of Papers*, Vladan Vasilijević (ed.), Prometej, Belgrade, 1991, pp. 36-41.

tirely towards the individual, the victim of war, its basic and proclaimed goal being a direct protection of man and his interests during conflict."[96]

A decisive point in the modern-day development of humanitarian law was the adoption of the Geneva Conventions on the laws and customs of war, in 1949.[97] The additional 1977 protocols also included internal armed conflicts. Hence, humanitarian law is "to the maximum extent directed towards the protection of the individual in an armed conflict. Apart from that, it is precise, unambiguous and sufficiently elaborated", so that "all the possible and conceivable situations wherein it should be applied are practically foreseen".[98] This is why "today's law of war restricts the military need to the maximum and impedes the fulfilment of its demands (…). Therefore, the modern law of war really makes it difficult to wage a war".[99] A new step forward was made with the adoption of the European Convention on the Protection of Human Rights and Fundamental Freedoms, in 1950.[100] However, paragraph 1 of Article 15 states that "in time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law." Paragraph 2 of that same article specifies that "no derogation from Article 2 (the right to life, M.H.), except in respect of deaths resulting from lawful acts of war, or from Articles 3 (prohibition of torture, M.H.), 4 (paragraph 1, prohibition of slavery, M.H.) and 7 (lawful punishment, M.H.) shall be made under this provision."[101] The European Court of Human Rights was established next, and the list of protected rights constantly enlarged with the 1952 Protocol to the Convention, and Protocols 4 (1963), 6 (1983) and 12 (2000).[102]Again, it became evident that it was much

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[96] Konstantin Obradović, *Humanitarian Law*, Belgrade Center for Human Rights, Belgrade, 1997, p. 138.

[97] Konstantin Obradović, *Ibidem*, especially pp. 131-172 ibidem.

[98] *Ibidem*, p. 169

[99] *Ibidem*, p. 170

[100] For more details, see: European Convention on the Protection of Human Rights and Freedoms.

[101] The European Convention protects the right to life in Article 2, and bans torture in Article 3; the first paragraph of Article 4 states "that no one shall be held in slavery or servitude", and Article 7 that "no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed".

[102] For more details, see: The European Convention on the Protection Human Rights and Fundamental Freedoms.

easier to prohibit human rights violations with international norms than to force the internal and/or external conflicting parties to respect them. This is corroborated by the fact that only 37 years after the Nuremberg trials the first – and *ad hoc* – criminal courts for human rights violations in specific armed conflicts were set up.[103] It is therefore not surprising that, due to the US opposition and reservations from Russia, India and China, as well as the abstention of most other Asian states, the establishment of a permanent international criminal court for war crimes has been stalled until recently.[104] A general lack of support, as well as the absence of the US endorsement, warn that the scope of humanitarian law still largely depends on the political (ill) will of the key international community members.[105] In other words, it tells us that they will for a long time to come remain outside its effective reach. It is therefore realistic to expect that the world's leading power holders will continue to interpret the provisions of humanitarian law during armed conflicts arbitrarily and selectively. Another proof of this is the US resolve to have its soldiers exempt from criminal prosecution for possible war crimes by means of extorted bilateral agreements, thus mocking the very idea of the international criminal court for war crimes.[106]

The fact that international norms have narrow jurisdiction is clear from the fact that, despite the UN Charter, armed forces are still being deployed in internal and inter-state conflicts. For the time being, only the Euro-Atlantic community – thanks to its economic, political and military strength based on the global supremacy of the US – has managed to eliminate the threat of war within its own circle. However, the events of September 11, 2001 show that the Community failed to protect itself from new security risks, notably international terrorism. And that despite – or precisely thanks to – the fact that the US and the allies, bypassing the UN, had previously seized the right to control the

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[103] UN Security Council Resolution 827 of May 25, 1993 established the International Criminal Tribunal for the Former Yugoslavia, which became operational on November 18 that same year. See: Vladan Vasilijević, op. cit., page 52. The war crimes in Rwanda are under the jurisdiction of the same tribunal.

[104] Over 60 countries ratified the Tribunal's Roman Statute by April 11, 2002 thus meeting the requirement for its establishment. See also: Beta, Reuters, cited in *Danas*, April 12, 2002, page 11. For more details, see: Milan Šahovic, "Permanent International Criminal Court", *Republika*, Belgrade, 2002, Vol. 286-287, page 4.

[105] "Therefore, we have to throw into the garbage bin all the basic principles of the world order, international law and the basic obligations regarding sovereignty… And once we are through with "this legalism", we shall adopt the only truly existing alternative: the powerful ones will do as they please", Noam Chomski, "Principles as a Piece of Paper (reply to Denić)", in: *Serbia and NATO* (II), World Debate, Dossier, New Serbian Political Thought, special edition 2, Belgrade, 1999, p. 42.

[106] See also: Is Hypocrisy of U.S.A. Acceptable, Belgrade Today, August 2002.

crises and wars taking place in their zones of strategic interest, and to decide their outcomes. Furthermore, NATO members allowed themselves to repeatedly breach humanitarian law in war and, moreover, did that invoking the protection of human rights.[107] Internally, of course, this did not prevent them from turning the focus of their attention to the protection of human rights and freedoms of their citizens in domicile armies.[108]

Despite the frequent violations of human rights and humanitarian law after World War 2, at least the thesis that the degree to which they are observed greatly depends on the character of the political regime in a given state seems to be correct. Moreover, it also depends on the dominant political culture.[109] Therefore, it is possible to categorize the states by the degree of their adherence to the principle of the rule of law as an important prerequisite for – but not a sufficient warrantor of – the respect of humanitarian law in internal and/or international armed conflicts. And, consequently, for the protection of human rights in the army.

The cumulative effect of order is, above all, conveyed by a state's theory and practice of security – its own and that of others. The way a state perceives and protects its security, however, depends on the constellation of international relations, its geo-political position and military and political power. Hence, a country's attitude to humanitarian law and human rights is further conditioned with its perception of security risks and the existing arsenal for their elimination. In addition to this, the list of potential risks depends on the way the country's political elites define the content and scale of national (state) interests. It also depends on the way they formulate the strategy of national security or, in other words, the protected values (interests) and rules of deployment of armed forces for such purposes. That this is so confirms, for instance, the global character of the US national security strategy and the resulting (self-appropriated) right to protect the country's interests wherever they are considered in jeopardy, using its armed force, as required. This, together with all the rest, introduced double standards into the US perception and practice of human rights – very

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[107] For details about the debate on the sustainability of the use of human rights as a pretext for armed intervention see: Jürgen Habermass, "Bestiality and Humanity", in *Serbia and NATO* (II), p. 64-71

[108] This is proved by a fresh interest of the military sociology in the protection of minority rights (racial, religious, cultural and sexual) in the military organization. See also: Charles C. Moskos, John Allen Williams, David R. Segal, *The Post-Modern Military*, Oxford University Press, New York, Oxford, 2000.

[109] For more details, see: Milan Podunavac, "Political Culture and Political Institutions", in: *The Fragments of Political Culture*, M. Vasovic, Ed., Institute for Social Sciences, Center for Political Studies and Public Opinion, Belgrade, 1998, p. 13-37.

high standards for the country's own citizens (and soldiers), and considerably lower for those who suffer the consequences of its interventions. The experience of socialist regimes, however, shows that, during the division into two political blocs, the rationale of their security strategies was to protect socialism from the inside. The prevalence of ideological values and goals, which was just another name for the selfish interests of party oligarchies, resulted in the fact that it was the so-called internal enemies of socialism who were the main target of military forces. In line with this, there was a growing discrepancy between the normative and actual protection of human rights. This is why in those societies the freedoms of thought, consciousness and confession were particularly open for abuse and their criminalization left unlimited space for human rights abuses by the military and the police.[110]

On the next level, the attitude to humanitarian law and human rights is mediated by the civil-military relations in a given country. The course and scale of this influence directly depend on the type of civil control over the military (the armed forces). All the more so if one knows that not every type of civil control is necessarily democratic. Consequently, the type of civil control offers indirect evidence of the social position and political influence of the military. The character of relations within a particular army, which, among other things, depend on the procedure and instruments for the non-military protection of constitutionality and legality, is no less significant. This is so because the members of the army form their attitudes to human rights and humanitarian law primarily within a military organization. Hence, their (future) inclination to respect these rights largely depends on the nature and substance of military socialization, and by the same token on the way they are trained for their war-time (peace-time) duties. The resulting effect produced by the basic features of the prevailing civil-military relations and the military organization concerned is further manifested and measured by the degree of the protection of their citizens' human rights while in military service or under army jurisdiction.

There is no doubt that modern states of the Euro-Atlantic community have democratic civil-military relations, and democratic control over the military, as their ultimate form. In line with this, effective protection of human rights is increased in their respective armies. Generally, the same correlation also works in the reverse: in non-democratic regimes, where the citizens' human rights are abused *per definitionem*, the chances that human rights in the military will be pro-

[110] See: the 1980 Petition to the Presidency of the Federal Republic of Yugoslavia to do away with Article 133 of the Federal Criminal Code (sanctioning the "verbal offense" – M.H.), in Srdja Popović, *Road to Barbarism*, Helsinki Committee for Human Rights in Serbia, Belgrade, 2000, pp. 48-55.

tected are small or almost non-existent. If this causality is indeed sustainable, then it is safe to presume that a similar model persists when these armies are engaged in international armed interventions and/or local wars. Besides, the recent historical records confirm that armies of authoritarian regimes have been more inclined to violate human rights.[111] However, departures from the established trends also occur in democratic regimes. To be precise, the internal loyalty of democratic countries to human rights protection has not, to this date, prevented them from breaching those same rights during (individual or group) deployment of their armed forces outside their territory.[112] Hence a growing trend of undemocratic behaviour in international conflicts revealed among the military-political personnel from genuinely democratic countries, including their arbitrary approach to the usances of humanitarian law, interpreted according to need.

The relevance of the thesis that the degree of respect for human rights depends on the nature of a political regime, and therefore also on the character of the prevailing civil-military relations, is enhanced by the general knowledge about the conduct of armies in internal conflicts. The former Yugoslavia is the most recent European example. That this thesis is well-founded is also proved by the war in Chechnya. In these wars – despite the situational differences and due to the fact that they were essentially quite similar – it became evident that armies of similar ideological, authoritarian provenience relentlessly breached the provisions of humanitarian law. This was made even easier as, at times, whenever it suited the national and political elites, these wars developed into religious and nationalist conflicts. The same holds true of the enemy (secessionist) armies, since they came out of the same authoritarian nest. However, one striking difference between these two acts of war is the inconsistency of key international players (USA, EU and NATO) in their approach to those who violated humanitarian law. Thanks to external factors some, but not all, of those charged with war crimes are now in The Hague Tribunal. There are no guarantees that the Tribunal, still under the influence of the US and EU petty politics, will live up to expectations for justice and the rule of law nursed by the citizens of the former Yugoslavia.[113] The global power holders gave new evidence of their two-facedness when they

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[111] Examples are the military interventions of the Warsaw Pact in Hungary (1956) and Czechoslovakia (1968).

[112] The proof of this is the use of forbidden weapons (e.g: depleted Uranium ammunition or cluster bombs) during the NATO aggression against Yugoslavia.

[113] For more details, see: Miroslav Hadžić, The Role of the Army in the Process of Disintegration of Yugoslavia, in Kriegsverbrecher vor Geriht, Das Haager UN-Tribunal fur Ex-Jugoslawien, *Sudosteuropa-Gesellschaft, Deutsche Welle*, Köln, 1999.

stopped international justice at Russia's doors. This is hardly surprising, given that western interventionists, as already noted, do not let justice anywhere near their own turf. It is far more difficult, however, to estimate whether the democratic regimes of Euro-Atlantic countries can guarantee in advance that their armies will respect humanitarian law in case of an internal conflict. Thanks to the prosperity and economic potentials of these societies, their armies have not been used for the purpose of internal defence or change of regime after World War 2. Whether and in what measure they will actually be ready to respect humanitarian law, if brought into a situation to defend the regime, can only be guessed. The events in southern US states not so long ago, when the National Guard and the police were deployed in racial conflicts, advise caution. The reasons for concern have multiplied after the US declared war on global terrorism, as the human rights of its racially suspicious citizens immediately came under the attack of its security services. The activation of military courts and broader discretionary authorities of secret services, increased uncertainties regarding the respect for human rights of US citizens who, justifiably or not, found themselves within their reach.[114] Both these cases confirmed the inherent inclination of parts of ruling elites, as well as armed forces and secret services to disregard, violate or have insufficient respect for the human rights of their fellow nationals in the name of higher state and national interests (as they understand them). This gives rise to the assumption that true commitment to human rights of armies in democratic states can only be tested – and confirmed or proven false – in internal deployment, in a situation of a severe social and economic and/or political crisis.

Still, for the time being, it is clear that the highly developed culture of human rights in democratic states has taken root in their armed forces as well. This has been possible thanks to the fact that the concept of the protection of these rights has been supported by firm institutional and procedural guarantees.[115] This is further aided by democratic civil-military relations which are, along with other things, based on a comprehensive (re)integration of the military into the society. The initiated metamorphosis of the traditional civil-military relations imposed the redefinition of the purpose and goals of the army. In this process, the protection of the society, state and its citizens by the mili-

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[114] For more details, see: Ronald Dworkin, "The Real Threat to the American Values", *The Guardian*, March 9, 2002, cited in *Republika*, Vol. 292-293, Belgrade, September 1-30, 2002, pp. 23-26.

[115] For more details, see: Hans Born, "Multi-Level Control of the Armed Forces in Democracies: the Dutch Case", in: *Democratic Control of the Army and Police*, Miroslav Hadžić, Ed., Center for Civil-Military Relations, Belgrade, 2001, pp. 191-228, especially p. 204ff.

tary lost its original status. Based on the knowledge that security is but an end product of a joint action of numerous factors – economic, social, political, demographic, cultural, spiritual, value-related and ecological[116], a progressive demilitarization of the security sphere has begun. This is gradually shrinking the domain of military exclusivity, while the demand for the respect of human rights in the military gains additional legitimacy.

This resulted in the military beginning to steadily overcome its traditional professional and functional isolation from the rest of the society.[117] In order to facilitate the transfer of democratic values into the military, and have its members motivated enough to protect these values, the (re)integration of the military into the society has been encouraged. Expectations, among other things, include a firmer commitment of officers to the human rights of their subordinates, i.e. to humanitarian law during the deployment of their units (army). In the German version, the pivotal point of this concept is the term "citizen in uniform"[118] This term is based on the view that the individual's permanent or temporary stay in the army does not deprive him of his rights. Moreover, it is based on a belief that the only difference between soldiers and other citizens is their profession, rather than the scope of the existing human rights. Obviously, a professional military arrangement implies that the citizen in uniform renounces some of his human rights in advance and of his own volition. But all this remains within the framework of the given principles of subordination and obeying orders, as the foundations of every military organization. However, this also implies that certain rights may be denied to the citizen only by constitution and laws, and that this denial is limited in time and space.

A true commitment of an army and its members to the democratic values of a particular society can therefore be determined by their attitude towards the body of universal human rights. The key indicators

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[116] Compare: Barry Buzan Ole Weaver and Jaap de Wilde, *Security: A New Framework for Analysis*, Lynne Riener Publishers Inc., London, 1998.

[117] "The concept of *Innere Fuhrung* has made the *Bundeswehr* an integral and natural component of our state order and society. It is a successful concept for the comprehensive integration of armed forces into a democratic society.", Paul Klein, Jurgen Kuhlmann, "Germany and its Armed Forces in Transition", in: *The Military and Society in the 21st Century Europe*, p. 189.

[118] In Germany, this process is based on two interconnected concepts: "*Innere Fuhrung*" (internal leadership) and "Citizen in Uniform". We borrowed the second term for the title of this paper. For more details, see: Paul Klein, Jurgen Kuhlmann, "Germany and its Armed Forces in Transition", in: *The Military and Society in the 21st Century Europe*, Jurgen Kuhlmann, Jean Callaghan (Eds.), Gorge C. Marshall European Center for Security Studies, Garmisch-Partenkirchen, 2000, pp. 183-225, especially p. 189ff.

for this are the degree of respect for human rights within a given military organization, i.e. the observance of humanitarian law during internal or international deployment of armed forces.

Of course, these two aggregate indicators are set against a background of complex relations. Members of the military as well as citizens can find themselves in different situations and be cast for a number of different roles. This is why only by explaining such terms as "the protection of human rights in the military" and "the respect for humanitarian law" and by exploring their interconnection do these abstract expressions obtain specific contents. This would allow us to establish more accurately the scope of human rights in the military, i.e. that of humanitarian law, and to identify the forms of their materialization. This would enable us to list normative obstacles and situational challenges to the respect of human rights in the military, i.e. humanitarian law by the military. On this basis, it would then be possible to check the degree of conformity between normative guarantees and the protection of these rights by the military organization in a real-life situation. For this purpose, it is necessary, at least tentatively, to identify and categorize the modalities of a military approach to human rights.

The central distinctive feature results from the inherent differences between the state of peace and the state of war. In our view, this further results in a justified comparative use of both these terms: human rights (in the military) and humanitarian law. We also believe that humanitarian law is, in fact, just a form in which human rights continue to exist in war. Hence, when using one term or the other, we do not reduce their scope, but simply change focus. In peacetime, the accent is on the problem of respect for human rights by the members of the military, as well as resident citizens while in the military. A state of war, however, brings into focus the problem of the respect for human rights of members of the rival army and the civilian population of the adversary state. However, in a war situation, each warring side can easily lose sight of the internal situation of human rights. This is so because a state of war more often than not alters the participants' attitude to the rights of their citizens and soldiers. Indeed, in war, patriotism is often (ab)used to find ideological excuses for internal and radical reductions or breaches of human rights. Just as the war propaganda, among other things, serves to prevent the public scrutiny of the domicile army's commitment to human rights and direct public attention to the transgressions of the enemy.

Despite the fundamental differences between the state of peace and the state of war, it is possible to construct unique models which further specify the scope and substance of human rights in the military, i.e. the army's attitude to humanitarian law. In terms of the pro-

tection of individual human rights, for instance, two basic models become apparent.

The first one emphasizes the rights of members of the military (the armed forces). In line with humanitarian law, members of the enemy army, in war, also fall under this model. This model permits further variations depending on different parameters and/or criteria for the classification of rights and their beneficiaries. The status of the individual within a military organization, for instance, constitutes a separate model type. This, in turn, requires that normative provisions and the factual state of human rights of each category of its members – senior and junior officers, soldiers serving under contract or professional soldiers, reservists, and civilians employed in the military – be subjected to a comparative analysis. Of course, the number of models depends on the structure of the military. It is realistic to expect that an uneven status, as a concise expression of an uneven participation in the division of power within the army, is likely to result in a considerable diversity in the factual discharge of rights of each of the army – social and professional -strata. Therefore, when studying the human rights situation among, say, officers, it would be justified to take into account the functional and hierarchical division into generals, senior officers (major – colonel) and junior officers (second lieutenant - captain). By the same token, one can expect varieties within the group of junior officers, but also among younger and older soldiers. In addition, the human rights of civilians in the military can largely depend on their professional qualifications (and educational level, from basic training to a college degree) because they define their position and role in the military organization. Another version of the basic model could result from checking whether the limitations of certain rights apply to the service alone, or extend to the everyday life of all (some) categories of army members outside the barracks. It would also make sense to analyze the attitude of the army towards those human rights of its own members which, in accordance with international conventions and local legislation, are not subject to temporary limitations.[119]

The second model centres on the citizens of a specific society. In war, this also includes the civilian population of the enemy state. In peacetime, and in democracies, the human rights of citizens are, in principle, outside the reach of the army. However, the frequency and range of possible deviations depend on how the constitution and laws define the jurisdiction of military courts and military intelligence. In this case, the nature of the so-called military felonies, which are documented by military security and handled by military courts, de-

[119] According to the Constitution of the FRY, the rights listed in Articles 20, 22, 25, 26, 27, 28, 29, 35 and 43 must not be derogated even in a state of emergency; see also: The Constitution of the FRY, Laws, VINC, Belgrade, 1993.

termines whether the army will interfere with the human rights of citizens and, if so, how much and in what way. What is much more important is that a number of citizens' rights come under the jurisdiction of the military in states of emergency. The type and incidence of these emergencies, of course, vary from one state to another and so does the authority of the army. For instance, the Constitution and laws of the FRY recognize the state of emergency, the state of imminent war danger and the state of war.[120] It is then possible, and even necessary for research, to construct model variations analogue with the different cases. This process could continue with regard to the type and number of rights that are/not subject to restriction during each state of emergency. The restriction of, for instance, certain political rights, as opposed to economic, social or cultural, does not have the same implications for the status of individual citizens. In addition, the derogation of one of these rights may be compensated after the termination of the state of emergency, while the termination of some other rights (the right to life, prohibition of torture, etc.) is irrevocable.

The validity of constructs outlined in this paper can only be verified if human rights are studied in a specific society and its military. Given that similar studies are still uncommon in the FRY (Serbia and Montenegro)[121], we shall now try to list the arguments in favour of an expert and public scrutiny of the human rights situation in the Yugoslav Army (YA). We shall also, to the extent necessary, refer to the past and present socio-political climate in the state of Serbia and Montenegro.

Characteristics of the Legacy

The human rights situation in the YA, and its members' understanding of humanitarian law, can only be fully understood and evaluated if we analyze the nature of the political order of the third Yugoslavia (FRY). After it emerged from the ruins of a party-controlled socialist state, the Socialist Federative Republic of Yugoslavia, its leaders, enjoying broad public support, declared it to be the successor of the previous state. It is therefore not surprising that, during the FRY's short life, and independently from the fictitious and/or feigned democratic changes, the local heirs of Josip Broz – Slobodan

[120] Compare: The Constitution of the FRY, Article 78, paragraph 3, and Article 4 of the Defense Act.

[121] To this date, this has mainly been the responsibility of non-governmental organizations, which released their findings to the public in the form of annual reports on the human rights situation in the FRY (Serbia), listing also the breaches of these rights in the Yugoslav Army. Thus, for instance, the Belgrade Center for Human Rights, has been publishing its annual report "Human Rights in Yugoslavia" since 1998.

Milošević and Momir Bulatović/Milo Djukanović – remained loyal to the communist theory and practice of human rights.

For clarity's sake, let us remember that the issue of human rights was officially introduced in the political space of the second Yugoslavia as part of the so-called third package of the Final Act of the Conference on Security and Cooperation in Europe.[122] Since then, the communist regime talked about human rights in international communication only. At home, the development of human rights was thwarted by the system of self-management and socialist humanism, said to be its natural companion. Hence, the human rights were seen through an ideological prism. They were understood as a means which "global capitalism" used to further discredit and intentionally destroy "the global process (system) of socialism". The reluctance of the public to address the issue of human rights in the SFRY was strengthened by the evidence of breaches of minority rights – blacks and the poor – in western countries. The end result of this ideological and propagandist approach was to deny the civilizational and universal value to the concept of the protection of human rights. All the more so because such criticism would surely end in questioning the consequences, and probably even impeaching the exponents of the 1944-47 revolutionary terror and numerous ideological splits within the Communist Party of Yugoslavia (1948 split with the Soviet Union, 1966 Brioni Plenary Session, Cestovna Affair, MASPOK, the 1971 purge of Liberals in Serbia, etc.) The devastating consequences of the internal party clashes spread over the entire society.

The regime's manipulation with human rights thrived thanks to two main incentives. The first was a product of its successful exploitation of the country's geopolitical position. An able keeper of balance, the regime obtained considerable economic benefits from the West. However, that did not compel it to give up ideological brotherhood with the East (USSR). Moreover, by using the ideological triad "self-management – people's defence – non-alignment", the regime presented itself – both at home and abroad – as a morally superior critic of both capitalism, on the one hand, and Lager-type socialism, on the other. As a result, the citizens of the SFRY accepted the explanation that partial softening of the local Stalinism was a decisive step towards the "empire of freedom". The concept of integral self-manage-

[122] For the part of the text of the Final Act about cooperation in humanitarian and other fields, see: *CSCE Documents, 1975-1995*, International Politics and a group of publishers, Belgrade, 1995, pp. 47-69.

ment[123] came next, making the debate about human rights pointless and even dangerous.

The second set of reasons was the end product of combined methods used by the regime to systematically reduce the need of the individual (who was never fully promoted to citizen) for human rights. The substantial dislike for this topic was generated through a systematic ideological indoctrination. Moreover, as self-managing procedures became more and more complex, the population was kept in the illusion that it had conquered the basic economic and political rights. Lateral support pillars were built on the general corruptness of a population accustomed to spending the unearned (borrowed) in advance. Furthermore, within the strategy of rapid industrialization, unjustified migration to urban centres was encouraged, resulting in a growing number of social welfare cases. Above all, by placing (future) history under the jurisdiction of collective entities – the Party and the working class – a would-be citizen was further depersonalised and his need for individualization stamped out.

The main instruments guaranteeing the survival of the authoritarian regime – the army, police and secret services – hid behind the façade of self-management. Their power over the citizens was legalized by their role of the keepers of the constitutional order, which was just another name for the keepers of power held by the Leader and the Party.[124] Therefore, they acted mainly as branches of a traditional political police whose task was to find and punish the citizens of different minds. To serve this purpose, these apparatuses were in fact exempt from the jurisdiction of the institutions of the system. This was easy in a situation wherein the system was a vehicle for the legalization and legitimisation of decisions made by the party leadership. Accordingly, the position of the army, the police and secret services on

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[123] Edvard Kardelj laid its foundations in a brochure entitled *The Directions of Development of the Political System of Socialist Self-Management*, IC Komunist, Belgrade, 1977.

[124] Article 134 of the 1946 Constitution of the Federal People's Republic of Yugoslavia provided that the Yugoslav Army "must serve to sustain peace and safety". A 1953 Constitutional Law charged the Federation, and consequently its army, with defending the country and "protecting social and political order". This order was named "socialist social and political order" in Article 114 of the 1963 Constitution of the SFRY, and the obligation of the army to protect the constitutional order also implied its socialist nature. Paragraph 3 of the XLI Amendment to the 1971 Constitution mentioned the Armed Forces of SFRY, made of the Yugoslav People's Army and Territorial Defense, as entities charged with the protection of constitutional order. Article 240 of the 1974 Constitution reiterated the obligation of the intelligence service to protect "the social order of the SFRY as defined by this Constitution". See: Miroslav Hadžić, "The Lack of Preconditions for a Democratic Control of the Yugoslav Army", in: *Democratic Control of the Military and the Police,* p. 64.

the citizens' human rights, i.e. the frequency and types of their violations, were kept away from the eyes of the public and out of parliamentary control. This was accompanied by a hyper-production of constitutions and constitutional amendments, laws and regulations, which merely lessened their efficiency. The proliferation of norms and (para)judicial institutions[125] could not mask the domination of petty politics and ideology over the principles of justice and the rule of law. Consequently, the executive and judicial branches treated the human rights arbitrarily, in a fashion that suited the spur-of-the-moment needs of the party oligarchy.[126]

To make the irony still greater, the position of the "party baton" did not ensure the members of the repressive apparatus better protection of their individual rights. As their collective power over the citizens grew, so did their individual subjection within their own organization. This, indeed, was an important precondition for their political (ab)use. The legal limitations of the scope of subordination, stern hierarchy and indisputable obedience were proven false with the installation of discretionary rights of command institutions, which helped inaugurate the autocracy of superior officers.[127] The benefits the apparatuses of force gained from being excluded form the system had a boomerang effect. Being out of parliamentary control not only allowed an arbitrary use of the army in the country by the party and army top ranks, but also gave them a freedom of action inside the military organization. The members of the army were therefore deprived of the possibility to turn to the parliament for protection in case their rights were breached. What is more, the establishment of a separate system of military courts and prosecution with broad authorities deprived the military and the citizens of a possibility to have their human rights protected in civil courts.[128]

However, the use of the mechanisms and instruments for secret violations of human rights had much more serious consequences. In addition, the lack of public access to the sphere of the military and the police, and an expanded scope of military secret, also worked in that favour. Furthermore, the military and the police were not equally ac-

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[125] Associated-labor courts were a typical example.

[126] This is illustrated by the case of a group of lecturers from the Belgrade Faculty of Philosophy, Nebojša Popov, *Contra Fatum*, Mladost, Belgrade, 1989.

[127] A typical example are the provisions on the evaluation of active military staff (Armed Forces Service Act, *Narodna armija*, Belgrade, 1989, Articles 112-121), according to which their status and existence directly depended on the (ill)will of their superior officers. For more details, see: Jovan Lj. Buturović, "The Mechanisms for the Protection of Constitutionality and Legality in the YPA and YA", in: *Democratic Control of the Military and the Police*, Miroslav Hadžić, Editor, Center for Civil-Military Relations, Belgrade, 2001, p. 99-120.

[128] See: Lj. Buturović, p. 116ff.

cessible to all citizens. The selection was made according to the candidates' ideological and social (class) suitability or that of their parents. Their future status depended largely on the decisions of party and secret services. They, however, were the key instruments to wrench out extra obedience, i.e. tacit consent from the members of the army, police and secret services to give up their human rights. Thus, for instance, the choice of a military career required from a person to renounce his freedom of thought, consciousness and religion, i.e. to adopt the party ideology as his creed. Moreover, he was expected to act as promoter of the party's understanding of socialism even when off duty. The influence of army ideology also extended to the recruits, so they, too, regardless of their personal will or beliefs, were subject to systematic ideological (re)training.[129] At the same time, individual religious rights were also restricted, as well as the right to conscientious objection and civil work or alternative service. But most of all, with the instruments and procedures for the protection of constitutionality and legality in the Yugoslav People's Army so reduced, an individual seeking protection of his rights had to turn to his superiors, i.e. to the very same people who had violated them in the first place.[130]

The Necessity to Study the Human-Rights Situation in the Yugoslav Army

During the eighties, when it seemed that a fundamental crisis of socialism would galvanize a democratic restructuring of the SFRY, and thus put an end to the unrestricted power of the military, police and secret services,[131] the national-republic elites turned them into the main instigators of the civil war.[132] During the wars in the former Yugoslavia, the citizens suffered all the bitter consequences of the fact that human rights had been constitutionally and systemically marginalized. Their rights were caught in a cross-fire between the new states and their armed forces. Insufficient patriotism and the lack of belligerence subjected the citizen to persecution of his own state and its army,

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[129] For more details, see: Miroslav Hadžić, *The Fate of a Party Army*, Samizdat FREEB92, Belgrade, 2001.

[130] "The military personnel have the right to submit grievances to their superiors on matters relating to the life and work in the military unit (…) The right to complain against an order issued by a superior officer does not absolve the soldier from carrying it through"; "Armed Forces Service Act", p. 56.

[131] In those days, particularly in Slovenia, the demands for alternative service, democratization of the army, changes in its financing and in the military industry, equality of languages, etc. were voiced first. See also: *Borba*, 27and 28 March, 1989, p. 10.

[132] For more details, see: Miroslav Hadžić, *The Yugoslav People's Agony,* Ashgate, England, 2002.

while different beliefs and different national background exposed him to ethnocide. This is why the ex-Yu wars were and still are the key factor and determinant of the situation of human rights in the FRY and its army.

Moreover, the status of human rights in the FRY and its army, as well as the relevant attitudes towards humanitarian law, were marked with a caesarean and totalitarian involution of Slobodan Milošević's regime.[133] That is why the human rights of all Yugoslav citizens were constantly under attack, including those of the military staff. Furthermore, as part of an oppressive regime, the Yugoslav Army and its leadership took an active part in limiting and breaching the rights of their fellow-citizens. Consequently, an unknown number of Yugoslav Army members, willingly or unwillingly, transgressed against humanitarian law, especially during the Kosovo campaign.

The presumption that the Yugoslav army committed human rights violations during its campaign of war is further corroborated by the flaws in the constitutional and legal definition of its status and role in the third Yugoslavia. Numerous constitutional loopholes allowed Milošević to use the army to protect his own regime.[134] However, the key constitutional lacunae have not been filled by subsequent laws.[135] What is more, the Armed Forces Act and the National Defence Act were passed only 18 months after the FR of Yugoslavia had been proclaimed.[136] Therefore, the status of the military and its members was undefined during that period, and old laws were applied. According to Jovan Lj. Buturovic, the Armed Forces Act was a step back compared with the legislation enforced in the Yugoslav People's Army.[137] Namely, in the SFRY, the status of the army and its members was regulated by five laws: Act on Service in the Armed Forces, Military Obligation Act, Act on Retirement and Disability Insurance of Mili-

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[133] See: Milan Podunavac, The Principle of Citizenship and the Nature of Political Regime in Post-Communism: the Case of Serbia, in: *A Suppressed Civil Society*, Vukašin Pavlović (Ed.), Eko Center, Belgrade, 1995, p. 221-235.

[134] For a list of such loopholes, see: Miroslav Hadžić, The Fate of a Party Army, p. 226-238.

[135] For the findings about the flaws of the legislation, see: *Compendium of Yugoslav Laws on the Security Sector: Human Rights and Democratic Oversight Aspects*, Geneva Centre for the Democratic Control of Armed Forces, Centre for Civil-Military Relations, Belgrade, 2002.

[136] Although the FRY Constitution was passed on 27 April,1992, The Yugoslav Army Act came into effect only during 1994, when it was adopted by the Chamber of the Repubilcs of the federal parliament, while the National Defense Act came into force on 29 October, 1993. Cited in: Laws, VINC, Belgrade, 1993, p. 13, 57 and 213.

[137] For more details, see: Jovan Lj. Buturović, Mechanisms for the Protection of Constitutionality and Legality in the YPA and YA, in: *Democratic Control of the Military and the Police*, p. 99-120.

tary Personnel, and the Act on Children's Allowances and Other Forms of Protection for Children of Military Staff. Put together, these laws had around 1,000 articles, all of which were revoked by the new law containing only 364.

Negative consequences of this reduction in the number and coverage of legal norms were twofold. Firstly, the largest part of this sphere was now regulated by by-laws, which diminished the legal security of military personnel, as well as citizens under the army jurisdiction. A number of important and sensitive aspects of relations within the army remained unregulated. The law also failed to define the scope of the military secret and the competences of military security services. Instead, the Chief of the General Staff was given the right to name "the authorized security and military police officials" (Article 30). If we know that the status of the military security services has only recently been regulated by a federal law,[138] it becomes quite clear why their power within the army had been unlimited. Moreover, the by-laws – rules, instructions, etc. – addressing the work of these services were classified and therefore inaccessible not only to citizens, but also to military personnel. The law, among other things, failed to cover the entire complex of the military industry, as well as the army housing stock. This gave rise to financial and other abuse both in the Army and in its surroundings.

Secondly: the Armed Forces Act grants the commanding staff a number of discretionary rights, thus encouraging arbitrary behaviour. This also facilitates violations of human right of army personnel and citizens, as confirmed e.g. by the provision on special promotion (Article 46), allowing the president of the FRY, acting upon a proposal of the General Staff, to decide on extraordinary promotion of officers to generals, while the Chief of the General Staff is given the same authority with respect to promotion to higher rank of officers and non-commissioned officers. This article *de facto* cancels the provisions of the Act on Promotion Criteria and Procedures (Articles 41-45). Discretionary right of this kind has also been incorporated in the provision anticipating that an officer's service may be terminated after 30 years of active employment "if so required by the service" (Article 107, para 3). In a similar vein, an officer's service may also be terminated "if he receives two consecutive negative evaluation reports" (Article 107, para 3). In both instances, the superior officer is allowed to establish the "the requirements of the service" using his discretionary right, i.e. to remove someone from service by giving producing a negative evaluation report and thus to leave him jobless. The range of

[138] The FRY Security Services Act, including the military security services, was passed only on 2 July, 2002. See: Official Journal, No. 37/2002.

discretionary rights granted to the commanding staff by these by-laws is not known, given that they are unavailable to the public.

Paradoxical as it may seem, the legal uncertainty of soldiers and citizens alike is further enhanced by the existence of a separate system of military courts and prosecution. Professor Dimitrijević assigns that to their extensive authorities.[139] Apart form the so-called military offences, they also have competences over a number of other felonies. Military courts are, for instance, also authorized to handle "political" criminal offences. At the same time, they can exempt military personnel from the jurisdiction of civilian courts. Moreover, since the president of the FRY nominates and dismisses military judges and prosecutors, their professional independence is directly reduced.

Above all, public evidence shows that there are reasons to believe that over the past ten years the human rights, i.e. provisions of humanitarian law were actually restricted and/or violated in the Yugoslav Army.[140] Thus, there are reasonable grounds to suspect:

- Various violations of the laws and customs of war, committed under the auspices or on behalf of the Yugoslav People's Army, i.e. the Yugoslav Army, and culminating in crimes against humanity and genocide;
- Covert ethnic cleansing of the Yugoslav army officer core between 1992 and 1994;
- Forcible participation of a number of Yugoslav Army officers in the wars in Croatia and B&H;
- Forcible draft of refugees from Croatia and BiH to be dispatched to the battlefields in Republika Srpska Krajina and Republika Srpska;

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[139] See: Vojin Dimitrijević, *Yugoslav Military Legislation*, Compendium, p. 10-17.

[140] Although she does not deny that some Serbian participants in the Yugoslav wars did commit crimes, Mirjana Vasović (The Advocates of the »Official Version«, *Prizma*, CLSD, Belgrade, May 2002, pp. 40-44) exposes to sharp and yet arbitrary criticism those who advocate the "protection of universal human rights and condemn the crimes against humanity", allegedly as "fervent supporters of the practice of 'ethnification' of crime 'in the field'". The author invented and imputed to those who disagree with her (in particular the authors of "The Serbian Side of War") the idea that "the enitre *Serbian* public must face *'Serbian crimes'* and thus undergo a collective 'catharsis'", to note that this idea (of hers) "contains an implicit presumption of responsibility of the Serbian people as a whole". Her final accusation comes in the form of a claim that "a requirement of this kind expresses the principle of *'collective guilt*' in its most acute form" (all highlights are from the original text – M.H.). The easy-going manner used by the author, in passing and in several paragraphs, to refute the findings of 27 authors presented on 832 pages and, at the same time, to ascribe theoretical and methodological value to her insinuations, is indeed amazing (*The Serbian Side of War, Traumas and Catharsis In Historical Memory*, Nebojša Popov, Ed., Republika, Belgrade, 1996).

- The breach of the right to conscientious objection, i.e. the right to civil (alternative) service;
- Mock trials in military courts (the cases of Gen. Trifunović and reporter Miroslav Filipović);
- The contribution of Yugoslav Army members in instigating national and religious hatred, and
- Political abuse of some commands and Yugoslav Army units.

The true proportions of human rights violations in the Yugoslav Army will become known when the relevant empirical studies are made. This implies that the army is first placed under democratic, civil control. This should be preceded by a democratic reorganization of the state union of Serbia and Montenegro. However, that union is not possible without the rule of law, since the rule of law determines the status of human rights in the Yugoslav Army. All this requires a modern definition of the constitutional status of the army, and the relevant changes of the existing legislation.

Moreover, it is necessary to ensure systematic education of military personnel, including the staff of the Defence Ministry, as well as the agents of the executive and judicial power in Serbia and Montenegro and to prepare them for work characterized by the democratic, civil control of the army and respect for the human rights of army members.

(translated by: Ana Davičo)

II

HUMAN RIGHTS IN THE YUGOSLAV ARMY

Serbian Public Opinion on Human Rights in the Yugoslav Army

Milorad Timotić

Introductory Remarks

On the basis of a project and questionnaire developed by the Centre for Civil-Military Relations, a Belgrade NGO, the Centre for Politicological Research and Public Opinion of the Belgrade Institute of Social Sciences, in the period from March 3 until 10, 2001, conducted a survey using its standard representative sample of 1680 Serbian citizens. The survey was carried out in 105 local communities on the territory of Serbia excluding Kosovo and Metohija, picked at random.

The Institute used a stratified three-tier quota sample. On level one, the proportions of the region were defined. For instance, the subsample for Vojvodina included the regions of Bačka, Banat and Srem. On level two, municipalities were picked at random, and the probability of their choice depended on the size of their population. Level three was used to select local communities applying the same principle but this time on the municipalities concerned, again on the basis of cumulative frequencies. The quota criteria included the stratum (urban and other settlements), sex, age and education of respondents, based on the 1991 census, as corrected by demographic projections.

The sample is fairly representative of the adult population of Serbia with respect to sex (50% male and female each), age groups (21% under the age of 30, 19% between 30 and 39, 18% between 40 and 49, 17% between 50 and 59 and 25% over 60), shares of urban population (57%) and nationalities (Serbs 81%, Hungarians 7%, Yugoslavs 3%, Muslims 2%, Roma 2%, Croats 1%, Montenegrins 1% and 4% others), education (41% with or without elementary school, 45% with worker qualifications or 4-year intermediary schools and 14% of high-school and university graduates).

The possible error with the kind of sample used in this survey is up to 3% for dichotomous variables.

The questionnaire, among other things, included questions related to the security and defence of the country, the role of the army in the political system, Yugoslav Army (YA) organization and its approach to defence integrations in the region and Europe, human rights in the YA and a number of others. Views on issues related to the internal life of the YA and the respect for human rights in the service were provided by a sub-sample of respondents who served their term in the army or were commanding officers in it. The sub-sample comprised 698 respondents, which is quite sufficient to draw reliable conclusions.

The survey findings also allow us to draw conclusions on certain matters of the defence and the army the public had no previous opportunity to judge for a number of reasons including e.g. the extraordinary circumstances prevailing in the country over the past ten years and the special position the army has traditionally enjoyed in this society. The recent aboutturn requires appropriate changes in this respect, in order to enable the public to state its views on as large as possible number of questions related to the security and defence as well as on the army which is supposed to provide that.

1. Views on the Existence of Corruption in the Army

Corruption is always a source of violation of human rights, since it works in favour of individuals compared with other members of a certain organization. That is why we sought to use this survey to check the related views and experiences of those who served in the army.

1.1. Army and Corruption

The respondents were, therefore, asked if they knew of any occurrence of corruption in the YA.

Table 1

Is there any corruption in the Yugoslav Army?	Number	%
1. Yes	363	52,0
2. No	88	12,6
3. Don't know	245	35,1
4. No answer	2	0,3
Total	698	100,0

Table 1 shows us that most respondents (52,0%) believe in the existence of corruption in the YA, as opposed to merely 12,6% who do not think so. Other respondents said they did not know.

Views suggesting the existence of corruption in the army are more often found with the young respondents in the 30-39 age group – 61.9%, and much less frequently among those over sixty – 34,2%. In terms of the profession of respondents, clerks and technicians with intermediate education and clerks and experts with higher or university education show just above average belief in the existence of corruption in the YA (60,2% and 65,4% respectively).

1.2. Spread of Corruption in the Army in Comparison with Society

The respondents were, next, asked to compare the spread of corruption in the army with that of the society in general.

Table 2

How widespread is corruption in the YA compared with the society in general?	Number	%
1. Substantially less	62	16,9
2. Less	113	30,8
3. Same	144	39,2
4. More	17	4,6
5. Substantially more	8	2,2
6. Cannot say	23	6,3
Total	367	100,0

Most respondents (86,9%) believe that corruption is just as widespread in the Yugoslav army as in the society in general, or only a little less. There are no substantial differences with respect to specific characteristics of the respondents.

The results obtained in response to the last two questions show that the public has started looking at the army with a critical eye and has, in particular its younger and more educated segments, started to deflect from an uncritical favouring of the army towards a more realistic evaluation of its purpose and role in the social and political life

2. Experience and Views on the Exercise of Human Rights in the Yugoslav Army

Starting from the fact that military service inevitably imposes some restrictions on certain human rights, we wanted to find out

which of these restrictions are most often noted by the respondents.[141] The question included the rights listed in the FRY Constitution as basic human rights, with a scale of five for the respondents' answers.

2.1. Limitation of the Right to Life

The right to life is the basic human right safeguarded by the FRY Constitution, which is why it was asked first.

Table 3

Were there any derogations from the right to life?	Number	%
1. No.	588	84,0
2. Rarely	38	5,4
3. Don't recall	34	4,9
4. Occasionally	35	5,0
5. Frequently	5	0,7
Total	700	100,0

Table 3 shows that the huge majority of respondents think their right to life was not limited during their draft, or professional military service. No major differences are noted with respect to the respondents' specific characteristics (age, education, national affiliation), which is indicative of a high level of concurrence for the whole sample.

2.2. National and Religious Affiliation and Equality

In view of the religious and national diversity of the FRY population the related rights are extremely important.

This question elicited a somewhat higher percentage of unfavourable answers than the previous one. Just over 8% of respondents had negative experiences related to their national or religious affiliation while in military service.

[141]The question, in unabridged form, read: Have any of the following human rights and freedoms guaranteed by the FRY Constitution been violated in your personal experience or that of your colleagues, during your compulsory or professional military service, and if so, how often? The question was followed by the list of rights, as presented in Tables 3 to 14.

Table 4

Violations of the guaranteed equality of citizens regardless of national or religious affiliation?	Number	%
1. None	528	75,5
2. Rare	71	10,2
3. Can't recall	42	6,0
4. Occasional	44	6,3
5. Frequent	14	2,0
Total	699	100,0

In order to better understand the responses to the previous question follows their breakdown by specific national affiliations of the respondents (Table 5).

Table 5

Violations of the guaranteed equality of citizens regardless of national or religious affiliation?	Serbs	Hungarians	Others	Average
1.None	78.1	70.2	61.2	75.5
2.Rare	9.0	17.0	14.1	10.2
3.Don't recall	5.5	8.5	8.2	6.0
4.Occasional	5.3	2.1	15.3	6.3
5.Frequent	2.1	2.1	1.2	2.0

National affiliation appears to have a mild influence, but the differences are fairly small and the overall results are favourable for the former and present-day army. For example, only 4,2% of Hungarians believe that they were occasionally or frequently denied equal treatment with others on account of their national affiliation. Even if we add the percentage of those who responded "rarely" (17,0%), the end result is not particularly untoward.

The percentage of unfavourable answers ("occasional" and "frequent") is somewhat higher in the category of "Others"[142] (16,5%), but even that is not particularly worrisome.

[142] The category of "Others" includes Montenegrins, Muslims, Croats, Yugoslavs, Albanians, Slovaks, Romanians, Bulgarians, and Roma, registered in statistically unimportant numbers to be presented separately.

Similar to the previous was the question as to whether the servicemen found it hard to cope with unequal treatment manifested by superior officers towards their subordinates, due to their national or religious affiliation (Table 5a)

Table 5a

Coping with unequal treatment of commanders and soldiers on grounds of their national and religious affiliation	Number	%
1. Very easy	98	14,8
2. Easy	293	44,3
3. Don't want to answer	138	20,9
4. Hard	112	16,9
5. Very hard	20	3,0
Total	661	100,0

The percentage of those who responded *hard* and *very hard* comes up to almost 20, which is substantially more than in the previous table.

Table 5b

Coping with unequal treatment of commanders and soldiers on grounds of their national and religious affiliation	Serbs	Hungarians	Others	Average
1. Very easy	16.2	12.8	7.6	14.9
2. Easy	45.1	34.0	44.3	44.2
3. Don't want to answer	19.9	34.0	20.2	20.9
4. Hard	16.0	14.9	25.3	17.0
5. Very hard	2.8	4.3	3.8	3.0

According to Table 5b, the percentage of *others* who find it *hard* or *very hard* to cope with unequal treatment of commanders and soldiers due only to their national or religious affiliation is higher than average (29,1%). However, the percentage of Hungarians who opted for these answers is below average (19,2%).

2.3. The Right to Inviolability of Physical and Psychical Integrity of Person

This constitutionally defined right is fairly abstract to most respondents who are not familiar with the history of struggle to secure it.

Table 6

Violations of physical and psychical integrity of person?	Number	%
1. None	411	58,7
2. Rare	94	13,4
3. Don't remember	67	9,6
4. Occasional	97	13,9
5. Frequent	31	4,4
Total	700	100,0

Bearing in mind that military is a dangerous vocation and that those who choose to pursue it are often exposed to danger (shooting with live ammunition, military exercises, handling of explosives, risk of involvement in armed conflicts), it is only understandable that the percentage of those who felt endangered in that respect is somewhat higher than with the previous questions. As for the soldiers' psychical integrity, it is probably endangered by the severity of military discipline, as well as the general physical and psychical norms implied by military service.

Here again we note a correlation between the age of respondents and affirmative answers. For instance, the percentage of those who believe that their physical and psychical integrity was "occasionally" endangered reveals a steady declining trend by age groups (21,8%, 20,6%, 13,2%, 10,2% and 5,9%). The younger the respondents the higher the percentage of those who believe that their integrity was endangered in the army. This trend may be the result of aggravated conditions in the Yugoslav Army over the past few years, and also of the continuing risk that the unit will be sent to one of the battlefields the army was engaged in. (Some respondents, although not many, took part in the war.)

2.4. Right to Freedom and Security of Person

The right to freedom and security of person is one of the basic constitutionally guaranteed human rights, but it, too, must be restricted in the army at least to a certain extent.

This right is largely complementary with the previous one (Table 6), and it is only logical that the related results are similar. This also confirms the reliability of findings.

The same trend of dependence on the age of respondents has been noted: the older the respondents the lower the percentage of those who experienced restrictions on the freedom and security of their persons (17,3%, 18,8%, 11,0%, 11,1%, 7,0%). The responses to this question were probably influenced by the same factors as in the previous case.

Table 7

Restrictions of the right to freedom and security of person?	Number	%
1. None	445	63,6
2. Rare	80	11,4
3. Can't recall	64	9,1
4. Occasional	89	12,7
5. Frequent	22	3,1
Total	700	99,9

2.5. Right to Fair Trial

Here again we have a constitutionally guaranteed right, which should not be limited in the army.

Table 8

Denial of the right to fair trial?	Number	%
1. None	459	66,3
2. Rare	56	8,1
3. Can't recall	105	15,2
4. Occasional	55	7,9
5. Frequent	17	2,5
Total	692	100,0

One in each ten respondents (10,4%) stated that his right to a fair trial was occasionally or frequently denied. This is only logical since few respondents had the opportunity to refer to military courts for the protection of their rights.

No remarkable differences are noted with respect to the age and education of respondents.

2.6. Possibility to Appeal Against the Acts of One's Superiors

Responses to the question of how the respondents coped with the lack of a complaint mechanisms in cases of a superior officer's improper treatment of his subordinates, are presented in Table 8a.

Table 8a

Coping with the absence of a complaint mechanism	Number	%
1. Very easy	57	8,3
2. Easy	215	31,4
3. Don't want to answer	74	10,8
4. Hard	278	40,6
5. Very hard	61	8,9
Total	685	100,0

By contrast from the previous questions we here register a fairly high percentage (49,5%) of those who found it hard to cope with the lack of possibility to appeal against an irregular act of a superior officer. Another difference compared with responses to the previous question is seen in the remarkable influence of the age of respondents on their respective answers. The percentage of those who found it hard to deal with the absence of complaint mechanisms increases from 33,2% among the oldest to as high as 55,6% among the youngest.

2.7. Right to Privacy

In view of the nature of the military vocation this right must be substantially restricted. The extent of the required limitation in a specific case is a matter of assessment and that is why the military regulations should set the minimum level, beyond which no further restrictions of this right will be admissible.

Table 9

Violations of the right to privacy (inviolability of letters and phone talks)?	Number	%
1. None	343	49,1
2. Rare	104	14,9
3. Can't recall	91	13,0
4. Occasional	116	16,6
5. Frequent	44	6,3
Total	698	100,0

It is only understandable that the responses to this question should be the most unfavourable for the military organization. As shown by Table 9, the percentage of those who say their right to privacy has never been violated (49,1%) is by far the smallest compared with the percentages of negative responses to the previous questions. In the same way, the percentage of those who registered *occasional* or *frequent* violations of the kind is the highest (22,9%).

No steady or important influence of the respondents' age has been registered in responses to this question which are fairly evenly distributed with the exception of inexplicable variations from 54,1% to 41,9% between two youngest age groups. The difference between the youngest (54,1%) and the oldest (53,0%) judging there have been no violations of this right is minimal.

2.8. Freedom of Thought, Conscience and Religion

Naturally, all three above-mentioned rights were substantially limited in the former, ideological army. The expression of views opposite to the ruling ideology was not permitted. The issue of conscience was determined by class and the performance of religious rites and manifestation of religious beliefs was prohibited for the duration of draft and, especially, active military service.

Table 10

Derogations from the freedom of thought, conscience and religion?	Number	%
1. None	390	55,7
2. Rare	94	13,4
3. Cant' recall	70	10,0
4. Occasional	84	12,0
5. Frequent	62	8,9
Total	700	100,0

While over half the respondents state that their rights were not restricted, one in each five (20,9%) say this happened *occasionally* or *frequently.* This is a fairly high percentage, especially since these are the basic human rights in modern democratic societies.

Another right fitting into this sphere is that of *conscientious objection,* which allows the young to serve their military obligation in civilian institutions. This right has been recognized in the Yugoslav Army Act, but the term of service is, in this case, double that of service under arms. This is considered a kind of punishment and has elicited proposals to make the term of service in civilian institutions equal or only a month or two longer than the term served in army units.

A question similar to the previous one, related to the respondents abilities to cope with the ban on the expression of their religious affiliations, elicited responses presented in table 10a.

Table 10a

Coping with the ban on expression of religious affiliation and on performance of religious rites	Serbs	Hungarians	Others	Average
1. Very easy	32.5	14.9	17.8	29.5
2. Easy	47.2	68.1	48.8	48.8
3. Don't want to answer	8.9	12.8	15.5	10.0
4. Hard	9.6	4.3	11.9	9.5
5. Very hard	1.8	0	5.9	2.2

This question, again, drew fairly favourable answers. Most respondents were aware that the prohibition to manifest religious feelings in an ideological army, such as the former Yugoslav People's Army, was to be expected and reconciled to the fact. Naturally, the percentage of "others" who found it hard to cope with the restriction of religious freedoms in the army was somewhat higher (17,8%).

2.9. Freedom of Expression

The freedom of expression is also one of the fundamental human rights, although it, too, is occasionally limited in the army.

Table 11

Derogations from the freedom of expression?	Number	%
1. None	302	43,2
2. Rare	119	17,0
3. Can't recall	66	9,4
4. Occasional	134	19,2
5. Frequent	78	11,2
Total	699	100,0

Quite understandably a large number of respondents (30,4%) felt their freedom of expression was *occasionally* or *frequently* limited. We should note that the freedom of expression had to be limited in ideological armies, such as the former Yugoslav People's Army, or even the Yugoslav Army before the democratic change of October 5,

2000. However, the situation has radically changed and a discourse should start about the need to observe the freedom of expression in the army, excluding, of course, any political and party lobbying.

The age of respondents registers a mild influence on the responses to this question. For instance, 35.8% of respondents aged 30 to 39 experienced *occasional* or *frequent* limitation of the freedom of expression, compared with 23.7% of respondents over 60 years of age. Restricted freedom of expression seems to affect the younger generations more, and the fact should therefore be taken into account in the ongoing reorganization and ideological transformation of the army, in order to provide for solutions giving greater room for the freedom of expression.

The findings based on responses to the previous question have been confirmed by another question of similar meaning, but with a somewhat more specific and milder formulation (Table 11a).

Table 11a

Coping with limitations to the freedom of expressing personal views	Number	%
1. Very easy	63	9,1
2. Easy	248	35,7
3. Don't wish to answer	68	9,8
4. Hard	260	37,5
5. Very hard	55	7,9
Total	694	100,0

Restrictions on the free expression of personal views were *hard* or *very hard* to cope with for almost half the respondents (45,4%). Correlating the results with the age of respondents we note an upward trend from the oldest (32.1%) to the youngest (51,3%) respondents.

The next two questions (Tables 11b and 11c) deal with the freedom of expressing personal views in a military environment.

Asked how they experienced the obligation to attend ideological-political instructions, the respondents gave the following responses:

Table 11b

Coping with obligatory ideological-political instructions	Number	%
1. Very easy	73	10,5
2. Easy	327	47,1
3. Don't want to answer	59	8,5
4. Hard	172	24,7
5. Very hard	64	9,2
Total	695	100,0

The fact that one in each three respondents (33,9%) found it *hard* or *very hard* to deal with obligatory ideological-political instructions is not entirely due to the limited freedom of expression, but also to the abstract and dogmatic nature of the lectures which made them difficult to understand for the majority of servicemen.

The following question sought to establish what the servicemen thought of the army top ranks' intention to impose their own ideological and political views on the military (Table 11c).

Table 11c

Coping with imposition of ideological and political views of the army top ranks	Number	%
1. Very easy	72	10,5
2. Easy	269	39,2
3. Don't want to answer	101	14,7
4. Hard	187	27,2
5. Very hard	58	8,4
Total	687	100,0

The percentage of those who found it *hard* or *very hard* to cope with the imposition of political views on the part of the army top ranks (35,6%) is somewhat higher than with the previous question. In this case, the result should more appropriately be attributed to the limitation of the freedom of expression. Here again, the age of respondents shows a fairly remarkable influence on the respondents, since the percentage of those who opted to answer as mentioned above increases from 24,1% among the oldest to 48,1% in the 30-39 age group. This means that almost half the young respondents disapprove of the military top ranks' political engagement and imposition of their views on army members in general.

It is only understandable that the restrictions, inevitable in a military organization, are more difficult for the younger generations, brought up in times when (owing to modern media) human rights and democratic values are becoming universal. This trend will undoubtedly continue and the institutions of society have to adjust to it.

2.10. Minority Rights

In the FRY, which is a multinational state, the respect for minority rights is a decisive precondition to build social cohesion and consensus on the essential issues of the society's development, as well as the unity of the military organization and the defence system's moral

strength. The stormy history of this part of the Balkans is marked by large migrations and intermixing of national communities, almost all of which have preserved their linguistic, cultural and ethnic characteristics to this very date. In view of the current internal and international situation they should all be provided the conditions for coexistence and equality in society.

Table 12

Violations of minority rights?	Number	%
1. None	494	71,6
2. Rare	67	9,7
3. Can't recall	78	11,3
4. Occasional	37	5,4
5. Frequent	14	2,0
Total	690	100,0

The findings resulting from responses are quite favourable – only 7.4% of respondents have *occasionally* or *frequently* registered a kind of derogation from minority rights.

The results reveal relatively small differences even when observed by specific national affiliations of the respondents. The group of "Others" registers (*frequent* and *occasional*) limitations of minority rights in 11,6% of cases. Only 4,3% of Hungarians say this happened *occasionally*, and not a single one thinks this occurs *frequently*. All percentages in the category of "Others" (represented by 86 respondents in the sample) indicating some kind of irregularity with respect to minority rights are somewhat above average, although the differences are not particularly large.

Table 13

Violations of minority rights (by national affiliation)?	Serbs	Hungarians	Others	Average
1. None	74.2	61.7	59.3	71.5
2. Rare	9.2	12.8	11.6	9.7
3. Can't recall	10.8	21.3	9.3	11.3
4. Occasional	3.8	4.3	8.1	5.4
5. Frequent	2.0	0.0	3.5	2.0

On the whole, the results of the survey are not indicative of national discrimination in the Yugoslav Army and allow for optimism in future social development.

2.11. Freedom from Torture

The right to freedom from torture and state reprisals is one of the human rights which ought to be fully observed in the army.

Table 14

Violations of the freedom from torture and state repression?	Number	%
1. None	437	62,9
2. Rare	57	8,2
3. Can't recall	140	20,1
4. Occasional	47	6,8
5. Frequent	14	2,0
Total	695	100,0

Less than a tenth of respondents (8,8%) found the violations of the freedom from torture and state reprisals *occasional* or *frequent* during their military service.

National affiliation of the respondents did not particularly influence the responses to this question. The age of respondents also fails to reveal a regular influence although the 30-39 age group registers somewhat more unfavourable answers compared with the average for the sample. Still, not even these differences are particularly noticeable or important.

Since the violations of the above-mentioned human right in the army may take the form of unjustified punishment of subordinated soldiers, the respondents were also asked a specific question to this effect (Table 14a).

Table 14a

Coping with unjustified punishment without possibility to appeal	Number	%
1. Very easy	64	9,3
2. Easy	213	31,0
3. Don't want to answer	78	11,4
4. Hard	263	38,3
5. Very hard	68	9,9
Total	686	100,0

Table 14a reveals that almost half the respondents (48,2%) found it hard to cope with extensive authorities of superior officers in pronouncing disciplinary measures, including punishment. The age of respondents

does have an influence on their answers, although the trend is not entirely regular. The respondents in the 30-39 age group found it hardest to put up with unjust punishment (58,8%), followed by the youngest (48,6%), and the oldest 37,9%.

The question given in Table 14b had a similar meaning.

Table 14b

Coping with excessive authorities of one's superiors	Number	%
1. Very easy	56	8,0
2. Easy	298	42,7
3. Don't want to answer	54	7,7
4. Hard	236	33,8
5. Very hard	54	7,7
Total	698	99,9

The results are similar to those presented in two previous tables (14 and 14a), since the import of the question is similar. The influence of age is also the same – the younger the respondents the more they are annoyed by the excessive authorities of superior officers with respect to their subordinate men (the percentage of those who find it *hard* and *very hard* to cope increases from 30,2% in the oldest age group to 50,9% in the youngest).

The prevention of possible abuse of authority is a matter of sensitive assessment, since all armies are based on the principle of subordination, single command and unquestioned obeying of orders. Different countries have different solutions, starting from the right of the soldiers to apply directly to parliamentary bodies and introduction of the ombudsman, to the trade union organization of army members and opening of the army towards the media and criticism of the public.

2.12. Right to Limited Working Hours

This right is, naturally, the most frequently affected by the nature of obligations assigned to military units. Activities which often have to last for a few days, with minimum time to rest (field exercises, range firing, checks of combat readiness, etc.) are fairly numerous Furthermore, the everyday army routine, the so-called daily work schedule of units, most often leaves hardly any time free.

Table 15

Violations of the right to limited, working hours, daily and weekly rest?	Number	%
1. None	366	52,5
2. Rare	107	15,4
3. Can't recall	47	6,7
4. Occasional	118	16,9
5. Frequent	59	8,5
Total	697	100

One in each four respondents (25,4%) states that his right to limited working hours and appropriate rest was *occasionally* or *frequently* denied. As may be expected, the age of the respondents has some bearing on their responses. The younger the respondents, the more difficult they find it to cope with the denial of the right to rest: the youngest say this happened in 17,4% of cases and the percentage then assumes a steady downward trend to reach 3.2% in the oldest age group. This is also a fact which should be taken into account in the forthcoming reorganization and transformation of the YA, as well as in developing the plans for military training and education.

2.13. Right to Health Protection

Bearing in mind that the conditions of life prevailing in a military organization are characterized by numerous restrictions in deciding on private and personal issues, health protection has a special importance, since it cannot be provided without the agreement of competent commanding officers. That is why the questionnaire included a special question related precisely to that right.

Table 16

Denials of the right to health protection?	Number	%
1. None	530	75,9
2. Rare	87	12,5
3. Can't recall	36	5,2
4. Occasional	34	4,9
5. Frequent	11	1,6
Total	698	100,0

It seems that a large majority of respondents were satisfied with the health care in the army. This is one of the human rights which is

the least endangered in the Yugoslav Army (present and former), at least judging by the experience and views of our respondents.

Specific characteristics of the respondents demonstrated no steady influence on their respective answers.

2.14. Rating of Human Rights Violations in the Army

Table 17

No.	Human rights	% of responses *occasionally* and *frequently*
1.	Right to the freedom of expression	30,4
2.	Right to limited working hours, daily and weekly rest	25,4
3.	Right to privacy (letters and phone calls)	22,9
4.	Right to freedom of thought, conscience and religion	20,9
5.	Right to inviolability of physical and psychical integrity of person	18,3
6.	Right to freedom and security of persons	15,8
7.	Right to fair trial	10,4
8.	Right to freedom from torture and state repression	8,8
9.	Right to equality of citizens regardless of national and religious affiliation	8,3
10.	Rights of minority members	7,4
11.	Right to health protection	6,5
12.	Right to life	5,7

Combining the responses claiming *occasional* and *frequent* derogations from human rights and freedoms, which may be a methodologically justified procedure, gives us a tentative rating of human rights violations (Table 17).

Table 17 gives the rating of responses to the questions concerning the observance of human rights in the army. We must note that the respondents included representatives of all age groups in from 20 to over 60. Their accounts of their own experiences in army service vary, due to the time span and different criteria of the young and older respondents. Still, on the whole, they represent the average public opinion and shall therefore be treated as such

Results presented in Table 17 are self-explanatory. The respondents have ranked the restrictions or violations of human rights in de-

scending order, as follows: *freedom of expression (30,4%), right to limited working hours, daily and weekly rest (25,4%), right to privacy (inviolability of letters and phone talks (22,9%),* and *freedom of thought, conscience and religion (20,9%).* The fact that the freedom of expression was rated the least favourable clearly indicates the need to change the social atmosphere in military organizations towards greater freedom of discussion and expression of views on all issues which may be subject to deliberations. The second-ranked – right to limited working hours, it is very difficult to attain in the army and therefore possible tradeoffs should be taken into consideration. As for the exercise of the right to the freedom of thought, conscience and religion in the army, it will probably be enhanced in the new democratic social environment, both for army employees and drafted servicemen.

3. Possibilities to Defend Human Rights Endangered in the Army

If, for some reason, the fundamental human rights are violated or restricted, it is essential to ensure legal conditions required to defend them and set off the resulting adverse consequences for the damaged party.

Responses to the previous question are fairly indicative. In addition to 10.5% of respondents who could turn for protection only to a higher superior, 11.5% stated they had no possibility to defend their unjustly limited, i.e. violated human rights. The age of respondents had no remarkable influence on their responses, with the exception of answers given under number 5, where we note a downward trend from 17.9 per cent among the youngest to 8.2 per cent among the oldest respondents.

Table 18

In cases of restrictions or violations of human rights, if any, did you and your colleagues in the Yugoslav Army have the possibility to reinstate or defend your endangered rights and freedoms? If so, specify?	Number	%
1. There were no violations of human rights.	393	57,2
2. Yes, by appealing to the higher superior officer.	72	10,5
3. Yes, but only in proceedings before a military court.	5	0,7
4. Yes, but only in proceedings before civilian institutions.	1	0,1
5. There was no possibility to appeal.	79	11,5
6. Can't remember.	137	19,9
Total	687	100,0

General democratisation of society will increase the chances for the protection of human rights of army members. A doubtless contribution in this respect will also be provided the introduction of an ombudsman, and the relevant public debate on the issue is in the final stage.

4. Observance of Procedure in Demanding the Responsibility for Breacking the Rules of Service

The Rules of Service regulate the rights of commanding officers to undertake corrective measures towards their subordinates. Naturally, the Rules also anticipate the procedure for the pronouncing of such measures.

Table 19

Have you or any of your colleagues during your service in the Yugoslav Army been called to account for a breach of the Rules of Service? If so, has this been done in due procedure or not?	Number	%
1. No	416	60,0
2. Procedure was observed	188	27,1
3. Procedure was disregarded	25	3,6
4. Cannot say	64	9,2
Total	693	99,9

Judging by the responses the situation is quite favourable in this respect, since the number of those who were called to account in a regular manner (27.1%) is 8 times the number of those who claim that due procedure was not observed (3,6%).

4.1. Were Disciplinary Measures Imposed in Line with the Rules and Law?

In the Army, just as in other training and educational institutions, maximum effectiveness of any measures that may be pronounced is extremely important. Naturally, this is only possible if the measures concerned are imposed in line with the laws and regulations in force.

Responses to this question, although somewhat less favourable than in the previous case, are still satisfactory. We may note that the Yugoslav Army does not have any specific problems in this respect, since merely 9.0% of respondents stated their punishment was inconsistent with laws and regulations.

Table 20

Have you or your colleagues ever been subject to disciplinary measures (punishment)? If so, have these measures been imposed pursuant to the laws and regulations?	Number	%
1. No	35	12,6
2. Laws and regulations were observed	157	56,5
3. Laws and regulations were disregarded	25	9,0
4. Cannot say	61	21,9
Total	278	100,0

Specific characteristics of the respondents apparently had no influence on their respective answers.

5. Knowledge of Geneva Conventions

Due to numerous controversies concerning the violations of the laws and customs of war in the former Yugoslavia during the past ten years, it was only too justified to include a question concerning the knowledge of the Geneva Conventions.

According to the responses about a quarter of the respondents (27,2%) were informed on the provisions of the Geneva Conventions concerning the laws and customs of war. This could be a good enough indicator for the engineers of military training and education and a reason to introduce the subject into the regular curricula.

Table 21

Were you informed on the provisions of the Geneva conventions concerning the laws and customs of war during your military training?	Number	%
1. Yes	189	27,2
2. No	276	39,7
3. Can't recall	231	33,1
Total	696	100,0

The age of the respondents does not seem to have a pronounced influence on their answers although the percentage of those who *cant' recall*, naturally, increases from 28,4% among the youngest to 37,3% among the oldest.

6. Participation in Armed Conflicts in Kosovo 1998-1999

The involvement of the Yugoslav Army in armed conflicts in Kosovo caused numerous, still ongoing, controversies, but without sufficient insight into the facts. That is why we solicited the views of those who actually took part in the war.

Table 22

Did you take part in the armed conflicts in Kosovo in 1998-1999 in the YA units?	Number	%
1. Yes	38	5,5
2. No	645	93,1
3. Don't want to answer	10	1,4
Total	693	100,0

A small number of respondents (38, or 5,5%) took part in the conflicts in Kosovo. Interestingly enough this number included 33 of Serbian nationality, 1 Yugoslav, 2 Hungarians and 2 Roms.

Violations of Laws and Customs of War in Kosovo

A number of respondents are ready to admit that the war law was actually violated in Kosovo (*frequently* 4,9% and *occasionally* 34,1%). Unfortunately, due to the small number of respondents in this category it is difficult to draw reliable conclusions, although the results obtained are fairly indicative, regardless of their statistical importance.

Table 23

Are you aware of any violations of the laws and customs of war on the part of YA units or its individual members?	Number	%
1. No	14	34,1
2. Frequently	2	4,9
3. Occasionally	14	34,1
4. Rarely	3	7,3
5. Doesn't know or wish to answer	8	19,5
Total	41	99,9

6. 2. Commanding Officers' Forewarnings to Observe the War Law

Table 24

Did your superior officers forewarn you of the YA and your personal obligation to strictly observe the laws and customs of war?	Number	%
1. Yes	25	62,5
2. No	11	27,5
3. Can't recall	4	10,0
Total	40	100,0

Most respondents (62,5%) maintain that the commanding officers did forewarn of the obligation to observe the laws and customs of war However 27.5% of those who deny that warnings of this kind were made is noteworthy, since no exceptions should be allowed in this respect. If the army does not comply with the laws and customs of war, its morals weaken as irregular conduct taints the purpose and objectives of war.

7. Concluding Remarks

In view of this brief review of the Serbian public opinion survey we may conclude that the situation of human rights in the present-day and former Yugoslav Army is not dramatically unfavourable. Most members of the army, and especially the draftees, consider their compulsory military term a serious and difficult obligation every adult male citizen should comply with, including all, even if unnecessary, deprivations and efforts. Army service is something the popular consciousness understands as a test of maturity, ability and manhood. He who passes the test successfully is considered fit to solve the problems of life. That is why all former members of the armed forces tend to refrain from criticizing the army when it comes to its respect for human rights.

The results stated above enable us to summarize the main findings as follows:

– The Serbian public opinion believes that, although the army is not immune to corruption, corruption is less widespread in army ranks than in the society in general:

– As for the human rights in the army, the most frequently limited is the freedom of expression and the respondents find it hard to cope with ideological instructions and imposition of political views of the army top ranks;

– Second in terms of frequency of limitation is the right to limited working hours and rest. This right is very difficult to consistently observe in the military organization, but certain improvements are doubtlessly possible;
– Third is the right to privacy (inviolability of letters and phone talks). We must note that this civil right was more often violated in an ideological army, such as the Yugoslav People's Army and that the democratization of society would enhance the protection of this right in the army;
– Restrictions of the freedom of thought, conscience and religion were registered by one in each five respondents which, on the whole, is not an unfavourable outcome;
We should note that the respect for human rights is fairly high and that, at least judging by this survey, members of different national and religious groups have an equal status in the Yugoslav Army;
– As concerning the protection of the endangered rights and freedoms, with the exception of the possibility to appeal to a higher superior officer, the Yugoslav Army does not have other mechanisms and procedures (possibility to approach parliamentary commissions, an ombudsman etc.);
– According to the respondents the prescribed procedure in demanding disciplinary responsibility and pronouncing disciplinary sanctions is generally observed;
– As for the human rights in times of war, insufficient attention is paid to inform the army members on the provisions of the Geneva conventions and the laws and customs of war.

The survey of the Serbian public opinion on the attainment of human rights in the Yugoslav Army offered the data on certain aspects of the military organization which have thus far been left without any empirical indicators. It also pointed to the existence of the above-mentioned problems and the need to adjust military organization to the state of conscience of the modern young generation and their understanding of human rights and freedoms. The survey also provided a starting point for further longitudinal research into this important issue.

(translated by: Ljiljana Nikolić)

Military Courts and Human Rights

Jovan Lj. Buturović

Introductory Remarks

The principal question arising in relation to military courts is that of their justifiability in view of the democratising trends prevailing in the modern world which, to a degree, also influence the change in the internal relations of the armed forces as well as the external approach to these forces, particularly manifested in civil control over the army. If the response to this question is affirmative, i.e. if the existence of military tribunals is justified, primarily for legal-political reasons, one must give a thought to the extent of their actual jurisdiction. We may, thus, ask if these courts should try all military persons for any offences they may commit or only for the so-called military criminal offences and criminal offences related to military service, or should they also try civilian persons for offences against the armed forces and the security of the country or possibly certain other criminal offences. Related to the existence of military courts is the important issue of their independence, or the very possibility of military tribunals being free from the influence of primarily military structures, especially high commands and high-ranking commanding officers. The independence of military tribunals is, in this case, measured by the degree of independence of the civilian judiciary in the same state, since independent military courts are hardly conceivable in a country wherein civilian courts are lacking in autonomy. The reverse case is possible. Another question arising in relation to military courts is whether special military criminal legislation (substantive as well as procedural), different from the general criminal legislation, is required, or whether it should be incorporated into the general criminal legislation equally applied by military and civilian courts. All these questions are, in principle, related to peace-time conditions, since in a state of war military courts are not only required but often indispensable, especially in view of the need to have fast and efficient trials, which the civilian courts can hardly provide.

The history of military courts is as long as that of the armed forces, although until the 17th century the judicial function was carried

out by high-ranking officers, i.e. military commanders. From the French bourgeois revolution onwards, military courts have been specialized tribunals dealing with the so-called military criminal offences, i.e. criminal offences of people in military service and certain criminal acts of civilians. Military tribunals, as specialized courts of law, still exist in most countries of the world. They are found in the USA, Great Britain, Russia, Italy, Switzerland, Hungary, etc., as opposed to Scandinavian countries, France,[143] Germany, Austria and a few more countries. Therefore, we see a mild trend of disappearance of military courts in times of peace.

The question of justifiability of having military courts in small countries such as ours is especially pronounced, bearing in mind that in normal times of peace, such countries have numerically small armed forces with a general trend towards their further reduction. Numerically small armed forces cannot possibly have that many offenders as to justify the existence of so expensive an organization as the military judiciary. In 1955 Norway decided to disband military courts, judging that since the number of criminal cases was so small (less than 500) it would be too costly to maintain them for verdicts which could be returned by three or four justices. However, the number of cases tried by military courts does not depend on the size of the armed forces alone, but also on the scope of their jurisdiction (real competence), i.e. on whether they have the jurisdiction to try military persons for military offences and offences related to the performance of their military service, or else for all criminal offences. Closely related to that is the question of jurisdiction of military tribunals to try civilians and, in that context, especially of their competence to hear only the so-called quasi military offences or all criminal offences against the armed forces, security and defence of the country. Naturally, this also includes the issue of jurisdiction over offences of civilians working in the armed forces.

If military courts are treated as specialized courts – and their existence is justified only as such – their jurisdiction is the narrowest, i.e. their competences are restricted to the so-called military criminal offences (real and quasi) of military and civilian persons and to criminal offences committed by military persons in relation to their service. Modern military criminal law does not offer a clear-cut model, although the prevailing inclination is towards this definition of jurisdiction of military tribunals, thus limiting their competence to hear military offences committed by military and civilian persons and criminal offences committed by military persons in relation to their service,

[143] Military courts were disbanded with the arrival of Mitterand's socialists in power, although they were retained for the French troops stationed outside France and for the fleet while outside France's territorial waters.

although a number of other offences most frequently perpetrated by servicemen, are often included. All other criminal offences of the military fall within the jurisdiction of civilian courts.

If the jurisdiction of military courts in our country were defined in a way at least approximating the above-mentioned specialized courts, the sphere of their competence would probably be halved, meaning that they would have fifty per cent less criminal cases on their hands. Naturally, before this is done, it would be necessary to address the issue of criminal offences related to the wars in these parts, and especially NATO aggression on this country, specifically the failure to respond to the draft and avoidance of military duty under Article 214 of the Yugoslav Criminal Code, arbitrary leave and desertion from armed forces under Article 217 of the same Code, and possibly a few others. Cases related to these offences have practically swamped the military tribunals, and the number of perpetrators is so large that it would be legally and technically impossible to prosecute them all. The way out of this situation could be found in general amnesty for two or possibly more of the above-mentioned criminal offences against the armed forces, whereby this problem would be resolved in a legally acceptable manner. Only after the jurisdiction of military courts is scaled down to approximately the scope of competences associated with military tribunals as specialized courts of law, and after the problem of the above-mentioned criminal offences related to the wars in these parts has been resolved would it become feasible to judge the justifiability of existence of military courts in our country.

Their specialized nature is the strongest argument supporting the existence of military courts today. It is reflected in the fact that a large number of countries have separate military criminal law (substantive as well as procedural) different from the general criminal legislation applicable to citizens at large. In addition, there are numerous other regulations addressing the armed forces and military personnel in general. Furthermore, the knowledge of the structure and functioning of armed forces, their organization, etc. is also required. All this is difficult to attain through civilian courts without prejudice to legality and the armed forces in general. However, this problem is not impossible to solve as illustrated by the examples of countries that have abolished their military courts, e.g. France and Germany, both of which have armed forces far more numerous than ours. Germany, for instance, resolved the problem of specialization by establishing military chambers in certain civilian courts to handle the trials for military offences. Justices of these chambers undergo special additional training in military criminal law and regulations related to armed forces.

Jurisdiction of Military Courts

One of the most important issues related to the military courts is the scope of their jurisdiction, i.e. the question of persons and criminal offences these should try. That is often taken as a parameter of democracy in a country, since it is considered that wide competences of military courts are indicative of the lack of democracy in a particular country and vice versa. This view hinges on the argument that civilian courts are independent (from the executive and legislative branches of power), as opposed to military tribunals, the proceedings of which are not free from the influence of executive authorities, primarily high-ranking military structures. This, fairly disputable parameter, has practically no importance in countries such as ours, where even civilian courts are not independent especially from the executive authorities, so that it does not really make much difference whether the accused will be tried by a civilian or military court, least-wise when specific criminal offences are concerned.[144]

Our country ranges among those where military courts have wide jurisdiction. It was defined according to the Soviet model and has not been substantially changed since the '50s. Wide jurisdiction was also characteristic of military courts in all East-European countries, members of the Warsaw Pact, and some of them (to my knowledge Russia and a few ex-Soviet Union states) have retained it to this date. Wide jurisdiction of military tribunals is also found in Switzerland (very extensive military criminal law – substantive, procedural and organizational), although this has no practical importance since Swiss military courts tackle few cases. This is also the case of the USA, where military tribunals try servicemen for the so-called military offences, as well as for a substantial number of other offences which are fairly frequently represented in the overall crime structure. The USA has special criminal legislation (substantive, procedural and organizational) characterized by the fact that the influence of military commanders upon the work of military courts is institutionalised, i.e. incorporated into the law. Namely, military courts are set up by competent superior officers in each particular case (in practice these tribunals operate as semi-permanent bodies) who also decide on the composition of the court, as well as on the counsels for the prosecution and the defence (unless the latter has been chosen by the accused himself). The competent superior officer, often the president of the USA as the supreme commander, endorses the execution of the verdict. In addition, the

[144] Particularly topical criminal offenses are terrorism and espionage, referred to in Articles 125 and 128 of the Yugoslav Criminal Code, the dissemination of false news under Article 218 of the Serbian Criminal Code and a few others.

president of the USA who has the legal authority to pass enactments binding on the work of military courts, has enacted the so-called Manual for Courts-Martial. The United Kingdom and Italy have defined relatively narrow jurisdictions for their respective military tribunals, encompassing military offences of military persons and a few other criminal acts which are substantially represented in the overall structure of crime committed by the military. All other criminal offences committed by military persons in these countries, as well as in Switzerland, the USA and a number of others, fall within the competence of civilian courts.

The jurisdiction of military courts in our country has been prescribed by the 1995 Act on Military Courts ("Official Journal of the FRY", no. 11/1995). It was initially defined by the 1954 Act on Military Courts ("Official Journal of the Federal People's Republic of Yugoslavia", no. 52/1954) and was not substantially changed by the subsequent legal acts of 1965 ("Official Journal of the SFRY", no. 7/65) and 1976 ("Official Journal of the SFRY", no. 4/1977),

The jurisdiction of military courts has been set on a wide basis. The first criterion is personal, which grants the military tribunals authorities to try military persons for all criminal offences (Article 9 of the Act on Military Courts). Thus, according to this criterion, the military courts are competent to try military persons for military offences such as the failure or refusal to carry out an order, arbitrary leave or desertion from the armed forces, etc. as well as for ordinary offences (e.g. traffic) which are frequently represented in the structure of crimes adjudicated by military courts. Other criteria are complementary but they substantially extend the jurisdiction of military courts, especially to civilians. In this respect we must first note that military courts are competent to hear all criminal offences committed by civilians working in the Yugoslav Army if related to their service (Art. 10 of the Act). This jurisdiction has also been extended by making the military courts exclusively competent to try civilians for certain criminal offences (Art. 10 of the Act), specifically for preventing the struggle against the enemy (Art. 118 of the Yugoslav Criminal Code), service in the enemy army (Art. 119), assisting the enemy (Art. 121), armed mutiny (Art. 124), terrorism, if aimed against a military facility or person (Art. 125), raid on military facilities (Art. 126), sabotage of military facilities (Art. 127), espionage, if the data concerned are related to the country's defence (Art. 128), disclosure of a state secret, if the data are related to the country's defence (Art. 129), infringement of territorial integrity and sovereignty (Art. 135), association for hostile activity in case of any of the above-mentioned criminal acts (Art. 136) and for all criminal offences against the armed forces (Art. 210-236 of the Yugoslav Criminal Code). These provisions were invoked to establish the jurisdiction of military courts to try the members of the

"Wasp" ("Osa") group, reporter Miroslav Filipović and groups of Dutch, British and Canadian citizens. This jurisdiction is expanded still further if the alleged offenders are simultaneously tried for other criminal offences, the military courts would otherwise have absolutely no competence to hear. That was, for instance, the case of Miroslav Filipović who was, in addition to espionage, also tried by a military court for the criminal offence of disseminating false news under Article 218 of the Serbian Criminal Code – an offence the military courts are definitely not competent to adjudicate when committed by civilians (Art. 11 of the Act on Military Courts). Military courts also try civilians for the violation of property or abuse of authority if the subject of the offence represented part of military resources or arms, ammunition and explosives used for the purpose of the country's defence (Art. 10 of the Act on Military Courts).

Finally, military courts also try the prisoners of war (Art. 15 of the Act on Military Courts).

Therefore, the Act on Military Courts establishes a rather wide jurisdiction of military tribunals with respect to military persons. This jurisdiction was just as extensive in the former Yugoslavia, but the criminal cases, and thereby also persons tried by military courts, were by far fewer in relative as well as absolute terms. Namely the Yugoslav People's Army had far more servicemen and civilians working in the Army. It had seven military courts of first instance (in Belgrade, Zagreb, Sarajevo, Split, Ljubljana, Skoplje and Niš). However, the number of persons prosecuted before military tribunals in the fifteen or so years preceding the disintegration of the SFRY rarely exceeded 2000. On the other hand, the Yugoslav Army, numerically substantially fewer and covering substantially less territory, has only three military courts of first instance (in Belgrade, Niš and Podgorica). This author did not have access to the data on the number of persons prosecuted before military courts, but numerical references on criminal files, entered on the basis of the court registry, allow us to draw a fairly reliable conclusion that the number of the prosecuted is higher than it was in the former Yugoslavia. This means that the jurisdiction of military courts has been significantly expanded in practice, although the relevant regulations remained the same. In this context the following data presented in Marko Kalođera's book[145] should be noted. The number of persons charged before military courts in the 1975-1984 period was as follows: 1975 – 1900 (of whom 1700 military and 183 civilian persons); 1976 – 1771 (1598 and 173); 1977 – 1570 (1407 and 163); 1978 – 1520 (1352 and 168); 1979 – 1530

[145] Marko Kalođera, *Vojni pravosudni organi i organi pravne službe JNA* (Military Judiciary and the Yugoslav People's Army Legal Service), Vojno izdavački i novinski centar, Beograd 1986, str. 67

(1384 and 146); 1980 – 1835 (1678 and 157); 1981 – 1996 (1755 and 241); 1982 – 2006 (1780 and 226); 1983 – 2245 (1916 and 285) and in 1984 – 1899 (1638 and 261). The increase in the number of the accused in the 1981-1983 period is due to the escalation of Albanian nationalism. Servicemen of Albanian nationality in the Yugoslav People's Army formed illegal groups to carry out certain criminal activities and were most often charged with the crime of associating for hostile activity under Article 136 of the Yugoslav Criminal Code. Already in 1984 this activity was almost completely curtailed. As for the figure on "civilian persons", it refers to civilians working in the Yugoslav People's Army who account for the bulk of the above-mentioned data, and other civilians who are in no way linked with the army and who are by far the fewest.

According to the data presented in the same book (page 235) the largest number of final judgements was related to offences against the armed forces, i.e. military offences. However, the relevant percentages remained below 50: 40% in 1975; 33% in 1976; 36% in 1977; 34% in 1978; 33% in 1979; 41% in 1980; 36% in 1981; 33% in 1982; 30% in 1983; and 29% in 1984. The balance comprises other criminal offences, most frequently violations of property (ranging between 21 and 40%) and traffic offences (16-33%). The percentage of those convicted of political crimes (including offences against the constitutional order and security of the SFRY, now the FRY), certain crimes against humanity and international law and the criminal offence against the reputation of the SFRY (mostly impairing the reputation of the Yugoslav president, i.e. the supreme commander of the armed forces) was relatively small and ranged from 1 to 5% of all final verdicts (at the height of the escalation of Albanian nationalism).

Therefore, about 60% of criminal offences within the jurisdiction of military courts in the SFRY (in the above-mentioned period and in peace time), were related to non-military crimes. If the circumstances in the present day Yugoslavia were normal this ratio would be approximately the same. And if non-military offences were exempt, their competences would decrease by about 60%. In that case, in view of the reduced size of the state and the number of Yugoslav army members, military courts in the FRY would practically have nothing to do and the rationale for their existence would be questioned. However, as already stated, the number of persons prosecuted before military courts in the FRY is today substantially higher than it was in the former Yugoslavia. This is attributable to the crimes related to the wars in Croatia and Bosnia and Herzegovina, and especially the 1999 NATO aggression on our country. By far the largest numbers of those prosecuted in this period were charged on either of two specific counts – refusal to respond to the draft and avoidance of military service under Article 214 of the Yugoslav Criminal Code (mostly conscripts

mobilized in 1999) and arbitrary leave and desertion from the armed forces under Article 217 of the Yugoslav Criminal Code (generally desertion or failure to return to one's unit after an authorized leave). One must bear in mind that the number of perpetrators of these offences is substantially higher than the number of the prosecuted. This means that many perpetrators have not been prosecuted at all, and that the prosecution was selective. The law, naturally, does not recognize selective criminal prosecution. This practice creates inequality among citizens before the law and enables abuse. The only possible, and also legally proper solution, is general amnesty for all perpetrators of these offences during the state of war. Only then would crime in the Yugoslav Army be scaled down to its real proportions thus enabling a realistic assessment of the justification of military courts, especially if their jurisdiction were reduced to military offences and certain other crimes against the defence and security of the country, abuse of authority resulting in property violation and possibly military theft and similar acts. Naturally, the issue of justification of military courts would not be mentioned at all in the case of a state of war. That is why it would be necessary for the competent bodies to review the scope and structure of crime adjudicated by military courts as well as their respective jurisdictions.

An important obstacle in considering the work of military courts in criminal (and even administrative) matters in general is the fact that the statistical data on the work of military courts and the military judiciary are closed to the public. This author, while he was justice of the Supreme Military Court (until the end of 1991), unfortunately unsuccessfully, urged that these data be made public and the offences adjudicated by military courts incorporated into the relevant statistical data for the SFRY, processed and published by the Federal Bureau of Statistics. That is because, to my knowledge, the judgements of military courts have not to this date been included in the relevant statistics of the former and present day Yugoslavia, meaning that the crime-related data of the Federal Bureau are inaccurate by the relevant percentages. This makes the job of those professionally and scientifically involved in the study of crime in the Yugoslav Army more difficult, including even those who have access to the data but cannot make references to relevant statistics.

The competence of military courts in other than administrative cases is almost negligible Namely, the military courts of first instance are competent to decide on the compensation for the damage inflicted by military and civilian persons working in the army on the federal state in the performance of their respective duties and on the requests of the federal state for the reimbursement of costs sustained due to illegal or irregular work of such persons (Article 15 of the Act on Military Courts). In practice cases of this kind are few. The courts

are also competent to hear the petitions for protection against the illegal acts of military officials, unless another form of judicial protection is provided (Art. 15 of the Act on Military Courts). To my knowledge, the number of such cases is negligible.

The Supreme Military Court has substantial jurisdiction over administrative cases (military courts of first instance are not competent to hear administrative disputes). Namely, the Supreme Military Court is competent to decide in both the first and last instance, in cases against the administrative acts of military bodies, administrative or other federal bodies and organizations, as provided by the federal law (Art. 19 of the Act on Military Courts). This activity of the Supreme Military Court is extremely important as it adjudicates as many as a few thousand administrative cases on annual basis. Also important is the fact that any verdicts the Court may take in administrative cases are subject to an extraordinary legal remedy – the request for a special review of the judgement – decided upon by the Federal Court (Art. 19 of the Act on Administrative Lawsuits, "Official Journal of the SFRY" no. 46/96). This way, the Federal Court as a civilian judicial body controls the legality of judgements of the Supreme Military Court. This certainly contributes to the legal security of military and civilian persons in exercising their rights which are decided upon by military bodies in administrative proceedings and the Supreme Military Court in administrative cases.

Independence of Military Courts

It is usually believed that military tribunals are not independent in their work, at least not to the same extent as the civilian courts of law. That is essentially true, since military tribunals in terms of both the manner of election, i.e. appointment of judges and the regulations applied – and also due to the influence of high military structures – lack the legal independence of civilian courts. In this respect we must note that the legislations of certain countries such as the U.S.A. and some other states, have institutionalised the influence of military structures, as stated above. In addition, most countries which have military courts also have special military criminal legislation (substantive as well as procedural), different from the general civilian criminal legislation. It anticipates less procedural guarantees for the accused and greater authorities of high military commanders, especially in terms in instituting criminal proceedings. A few countries which do not have military courts still have special military criminal legislations. Thus, for instance, Germany has a Military Criminal Code, and France a special substantive and procedural military criminal legislation. That is also one of the strongest arguments against the wide jurisdiction of military courts.

Our country, emulating the example of the former Soviet Union, does not have special military criminal legislation, substantive or procedural, and military tribunals apply the same substantive and procedural criminal regulations as civilian courts. The so-called military offences are incorporated into the Yugoslav Criminal Code within a special chapter (Chapter XX) under the title: "Crimes against the Yugoslav Army" and are subject to the general provisions of criminal law as set by the Yugoslav Criminal Code. This was done without much consideration as to whether all these offences should be classified in that group or whether some offences from another group should be included (e.g. the offence of undermining military and defence power under Article 121 of the Yugoslav Criminal Code, classified among offences against the constitutional order and security of the FRY, or some of the criminal acts against humanity subjected to the international law). Military courts follow the criminal procedure (same as civilian courts) prescribed by the Code of Criminal Procedure. The Act on Military Courts prescribes the organization and competences of military courts, which is understandable, but the manner of the election or appointment of judges, as well as the conditions and procedure for their discharge and certain other issues should perhaps be governed by another piece of legislation.

Looking at the substantive and procedural criminal legislation, we may conclude that it makes almost no difference for the accused whether he will be tried by a military or civilian court. In view of the present state of the Yugoslav criminal judiciary this may well be so, since neither the civilian nor military courts are independent. This is the best confirmed by the recent purges of unsuitable judges – excellent jurists – carried out without due respect for the legally prescribed discharge procedure. In general, the situation in the Yugoslav judiciary, civilian as well as military, is such that one could hardly say which of the two is more dependent on the executive bodies and authorities, i.e. military structures. Still, on the basis of an analysis of the manner of appointment of judges and prosecutors in the military judiciary, the legal status of military justices as Yugoslav Army officers and certain other relevant elements, we may note that the possibility of influencing military judges and thereby also their decisions, is substantially larger than in the case of civilian courts.

The FRY Constitution (Art. 138) prescribes that "military tribunals shall be independent and shall adjudicate on the basis of federal law". Thus, the independence of military courts is a constitutional category. Independence of military courts is also prescribed by the Act on Military Courts: military courts "are independent and autonomous in exercising their judicial function" (Art. 2 of the Act). The constitution of the former Yugoslavia also addressed the issue of independence of the military judiciary: "In performing their judicial function (the reference is to military courts – J. B.) they shall adjudicate on the

basis of the constitutions (federal, republic and provincial – J. B.) as well as the self-management general enactments (Art. 219 of the 1974 SFRY Constitution)". This provision was incorporated into the 1976 Act on Military Courts ("Official Journal of the SFRY" no. 4/77): "Military courts shall be independent in the performance of their judicial functions and shall adjudicate on the basis of the constitutions, law and self-management general enactments" (Art. 2 of the Act).

However this is where the issue of compliance with the constitution arises with respect to the provisions of Article 1 of the Act on Military Courts (prescribing that "military courts as regular courts try the offences committed by military persons and certain offences committed by other persons, if related to the defence and the security of the country...") and the provisions of Article 9 of the same Act (stipulating that military courts hear the offences of military persons…", thus offences under the Yugoslav Criminal Code and other federal statutes, as well as those regulated by the criminal codes and other statutes of the republics) in line with the FRY Constitution. The same applies to the provision of Article 11, para 1 of the Act on Military Courts prescribing that a civilian who has committed an offence falling within the jurisdiction of a military court in concurrence with an offence within the jurisdiction of another regular court, shall be tried by the military court, providing that the offences concerned have been listed in the criminal or other codes of the republics. As already mentioned, the FRY Constitution (Art. 138) stipulates that these courts adjudicate "on the basis of the federal law" which naturally implies that they do not adjudicate on the basis of the republic legislation and thus that they could not try either military or civilian persons for offences prescribed by the criminal or other codes of a republic. Had the constitution giver wanted the military courts to also adjudicate on the basis of the republic legislation he would have either made reference only to "law", instead of specifying "federal law", or else would have used the phrase "federal and republic law". Precisely that was done by the SFRY Constitution which refers only to "law" without defining it as "federal", thus covering all laws (federal, republic and provincial), and by the 1976 Act on Military Courts.

The office of a military judge is permanent (Art. 28 of the Act on Military Courts), as is that of civilian justices. Previously, the tenure of military judges was set at four years.

By contrast to the judges of civilian courts, justices of military tribunals are not elected, but rather appointed by the president of the republic upon the proposal of the federal defence minister (Art. 26 of the Act on Military Courts). Bearing in mind that military tribunals are federal courts it would only be logical that their judges are elected in the same manner as those of other courts of the Federation – the Federal Court and the Federal Constitutional Court – namely by the Fed-

eral Assembly. In Switzerland, for instance, the Parliament, i.e. its Federal Chamber, in addition to civilian judges also elects the justices of military tribunals. The very fact that justices of military courts are appointed by the president of the republic, upon the proposal of the federal defence minister violates the constitutionally and legally proclaimed independence and autonomy of these courts, since the appointment to a judicial office depends on the assessment of executive authorities. The number of justices of military tribunals of first instance and the Supreme Military Court is decided by the President of the Republic upon the proposal of the federal defence minister (Art. 26 of the Act), thus an executive body. One of the reasons invoked for the discharge of military justices is the need to reduce their numbers. In this way, an executive body, true indirectly, decides on the discharge of judges which may be taken as a pretext to remove the unsuitable.

A judge or a juror-judge of a military tribunal cannot be detained for abuse of authority without an approval of the president of the republic (Art. 31 of the Act), thus again it is a case decided by an executive body.

Reasons for the suspension and discharge of military judges are similar to those applied to the justices of civilian courts, although a military judge may also be discharged from his judicial office on termination of his service in the army (Art. 36). The procedure to establish the existence of grounds for the discharge is carried out by a three-member board of military judges set up by the president of the republic.

Judges of military tribunals may only be officers in the military legal service who have taken the bar exam (Art. 27 of the Act). Juror-judges – existing in military courts of first instance – who may be officers, non-commissioned officers or civilians working in the Yugoslav Army, are appointed in the same manner as judges. This means that civilians cannot be judges of military courts at all. A law graduate who was admitted to the bar must first become an officer of the Yugoslav Army legal branch in order to be appointed a military judge. That is one of the ways to replenish the ranks of military justices. In addition, this may be done by providing fellowships to law students, although military courts are most often staffed with officers and non-commissioned officers who have graduated from the faculty of law and taken the bar exam. It is, therefore, necessary to re-examine the provisions related to the appointment, i.e. discharge of judges of military courts so they would match those applied to other federal courts. Furthermore, military judges are officers who advance in their military careers under the same conditions as all other officers. The structure of ranks in military courts is prescribed, or more precisely defined, by military authorities or rather the Yugoslav Army General Staff. That is

why military judges, if unable to obtain promotion, frequently leave their judicial offices and transfer to other legal jobs in the Yugoslav Army or the Federal Defence Ministry, which disrupts the norm on the permanency of the judicial office. That is why it would be necessary to examine whether the justices of military courts must only be officers or else also civilian persons.

The independence of judges, and thereby also of military courts in general, may be substantially influenced by certain other legal provisions. For instance Article 41 of the Act on Military Courts prescribes that "the provisions of other laws and regulations governing the relations in the service and the rights, duties and responsibilities of military persons also apply to the presidents and judges of military courts, unless otherwise provided by this Act". Article 42 stipulates that "military judges are subject to regulations on the disciplinary responsibility of military persons for breaches of military discipline outside the performance of their judicial functions". This means that a military disciplinary court deciding on a breach of discipline may, among other things, impose a sentence of the loss of rank or service on the judge of a military court. This alone is sufficient reason to discharge the judge of his judicial duties, since Article 45 of the Act on Military Courts stipulates that a military judge is dismissed "if his professional service in the military is terminated". In this context, it is important to note that military disciplinary courts are not proper courts but rather military administrative bodies, similar to petty offences courts. Their work and decisions are strongly influenced by high-ranking military commanders who, among other things, decide whether a professional serviceman, thus also a military judge, will be called to account for a transgression he has committed before a disciplinary court.

Military judges, just as all other professional servicemen, are subject to official grading as provided by the relevant federal government decree ("Official Journal of the FRY", no. 36/94), thus by a by-law. Judges are rated by presidents of their courts and the presidents by commanders external to the military judiciary and the practice of law. Official grades are important for the advancement of professional servicemen and even judges who, too, are military professionals, as they influence promotion in rank and office, and consequently the salaries. The official grade is crucial for employment, since a professional solider who has received two successive unsatisfactory grades is bound to lose his job in the Yugoslav Army (Art. 107 of the Yugoslav Army Act, "Official Journal", no. 24/94). If the officer concerned is a military judge he will also be discharged of his judicial duties. All of the above may substantially affect the independence of military courts. In addition, one must bear in mind that a series of other issues related to the position of military judges are decided by military authorities and commanders external to the military judiciary. For example, the structure of military courts by

ranks (i.e. how many positions of justices in military courts will be pegged to specific ranks – from lieutenant to colonel) is decided by military authorities outside the military judiciary, while the rank determines the salary of the judge, or rather his financial standing and that of his family. Decisions to solve the housing problems of military judges are also taken by military authorities outside the military judiciary. A highly unfavourable fact in this context is that officers (as well as non-commissioned officers) in the Yugoslav Army, including military judges, are entitled to buy out the apartments assigned to them by the army only after fifteen years of effective service. In addition, military judges receive the same salaries as all other officers, which are set rather low even for the local circumstances and depend almost exclusively on the rank, meaning that the judges with the lowest ranks, who are generally the youngest, have the smallest receipts. Due to the above mentioned and other reasons a major drain of the best judges and legal experts from the Yugoslav Army has been registered as of 1992. According to some information obtained by this author, the complete body of judges has, statistically speaking, changed in the period from 1992 until this date. This has caused the problem of staffing the military courts with good judges, including even the positions in the Supreme Military Court. The office of a military judge is far from being attractive since it demands a lot of effort and responsibility and lacks incentives (relatively low salaries, long wait for an apartment etc.) which is why good jurists, especially civilians, are reluctant to pursue legal careers in military courts. And, without good judges the independence of military tribunals may hardly be expected, even had this independence been ideally established by the constitution and law, instead of being far from it, as revealed by the above-mentioned facts. Therefore, legal solutions do not provide for complete independence of military courts and the reality demonstrates that this independence is not attained even to the degree guaranteed by the constitution and law. Unfortunately, the situation is not much better in civilian courts, as indicated by the recent purges of unsuitable and disobedient judges and prosecutors and their respective deputies. Namely, 18 judges, prosecutors and their deputies have been summarily discharged, disregarding the legally prescribed procedure.

The 1992 FRY Constitution prescribes that "a person suspected of having committed a criminal offence *may be taken into custody and detained on the order of a competent court* only when it is necessary for the conduct of criminal proceedings" (Art. 24). Thus, according to the Constitution only a competent court may order the detention of an accused person. However, the provisions of the Code of Criminal Procedure authorizing the police to take suspects into custody have not been adjusted to the FRY Constitution to this date despite the fact that all the deadlines established for the purpose have long expired. It so happens that the police continue arresting and detaining people as if

the Constitution did not exist. On the other hand, the Act on Military Courts does not grant such authorities to the military security and police, and they do not have the power to detain persons under the jurisdiction of a military court. Namely, the Act on Military Courts was passed in 1995 and had to be adjusted with the FRY Constitution in the part regulating detention. Thus, Article 63 of this Act prescribes that "a military or a civilian person working in the army or another civilian person, may be detained for a criminal offence falling within the competence of the military court on orders of a military investigating judge," which means that this may not be done by anyone else, including military security and military police officers. In practice, however, the authorized bodies of the military security or the military police still decide on detention (up to 3 days) as if the above-mentioned legal provision was non-existent. Military courts, including the Supreme Military Court, on their part, tolerate this anti-constitutional and unlawful practice of the military security and police bodies. This clearly requires no further comment.

The influence of military bodies and military commanders on certain decisions of military courts is not a rare occurrence. Sometimes, this is done more or less secretly, sometimes indirectly or almost directly. Drastic examples are the cases of major general Vlada Trifunović and his associates, extensively covered by the media at the time, and of Veljko Miljić, former president of the Military Court in Niš, which is insufficiently known to the public.

Ours is a small country. Small countries have small armies. Small armies cannot have much crime, and hence the question of how rational it is to have military courts in peace-time (because they must exist in war), knowing that the military judiciary is an expensive organization. That is why, e.g. Norway disbanded military courts in 1995, finding that they did not have enough work. Naturally, this question cannot be posed in our country at this point of time due to the situation in it and in its surroundings. But, this notwithstanding, it would be necessary to open the question of jurisdiction of military courts. The existence of military courts is justified only as specialized courts and this means that they should hear military offences and criminal acts of military and civilian persons related to the performance of their official duties and the security of the country. The present jurisdiction of our military courts is too wide and is one of the most extensive in the world. Regrettably, the military and civilian courts in this country are, today, equally lacking in independence and it makes almost no difference for the accused whether he will be tried by one or the other.

Anyway, the independence of military courts is judged by that of the civilian courts. In the U.S.A., for instance, the decisive influence of military commanders on the rulings of military courts has been in-

corporated into the judicial system. A specific commanding officer issues an order determining the composition of the court in each particular case, as well as the representatives of the prosecution and even the defence (if the accused has not already chosen his own counsel), and the same commander approves the execution of the sentence. That is perhaps why the verdicts of the military courts in the U.S.A. do not constitute an adjudicated matter, and civilian courts may again try the same criminal offence, although this rarely happens. Germany does not have military courts, but it does have a few so-called military chambers attached to civilian courts which hear military offences and the judges concerned are specially qualified to do that.

Military courts in our country, although they observe the same substantive and procedural regulations are practically separated from the administration of justice in the country by the Act on Military Courts adopted in 1995. Thus petitions for protection against the final judgements of military courts, including the Supreme Military Court, are not decided by the Federal Court, but by the Supreme Military Court in a general session, even for criminal offences regulated by the federal law. The federal prosecutor does not have any rights with respect to the final judgements of military courts and other military bodies. All that falls within the competence of the Supreme Military Prosecutor, and he is, according to Article 18 of the Act "responsible to the president of the republic for his work and the work of military prosecutors of first instance". This puts the persons tried by military courts, or those whose rights are decided by other military bodies, in an unequal position compared with civilian persons where the application of federal regulations is concerned. Interestingly enough, the Supreme Military Prosecutor has substantially higher authorities in terms of application of federal regulations than the Federal Prosecutor. We need not particularly underline how strong is the influence of military structures on the decisions of the Supreme Military Prosecutor and military prosecution in general, especially on the pressing or dropping of charges for criminal offences within the competence of military courts. Suffice it to say that practically no one was criminally prosecuted for war crimes, not even those indicted by the Hague Tribunal.

Protection of Human Rights

Full protection of human rights may only be claimed if two basic conditions are met: if it is guaranteed by the constitution and law and if independent courts exist to enforce it through court decisions. Neither condition has been completely fulfilled in this country, since the existing legislation does not provide for full protection of human rights, while military – and for that matter also civilian – courts are not independent. For instance, the rights and obligations of service-

men and civilians working in the Yugoslav Army are prescribed by the Yugoslav Army Act. The status of these persons is far below the desired standards and below the level enjoyed by the members of the former Yugoslavia's Army under the Act on the Service in the Armed Forces as well as other statutes. Numerous issues previously regulated by the Act on the Service in the Armed Forces and other legal documents of the SFRY are now governed by by-laws, most often Federal Government decrees.

The legal status of servicemen and civilians working in the Yugoslav Army is far more uncertain than in used to be in the Yugoslav People's Army, especially in view of the fairly ramified system for discharge from the Yugoslav Army without sufficient and adequate legal protection. This creates the possibility to remove the unsuitable – a practice which is not all that infrequent. Thus, for instance, professional servicemen, primarily officers and non-commissioned officers, lose their ranks, i.e. jobs and thereby most often also their profession if sentenced to more than two-year imprisonment (three in the Yugoslav People's Army) by a criminal court, or to the loss of rank or job (on the basis of poor grades) by a military disciplinary court. Two successive unfavourable official grades automatically imply the loss of job – not an infrequent practice – and the possibility of instituting administrative action is excluded. In this relation we must point out that this offers a fast way to dispose of not only the lazy and the incompetent, but also the unsuitable, and it is sometimes also used by superior military commanders for personal showdown with their subordinates. Finally, removal from the Yugoslav Army is also possible by placing an officer or non-commissioned officer in abeyance. If the person concerned is not assigned a new duty within a period of six months, his service in the Yugoslav Army is considered terminated. The legal possibility to place a person in abeyance may be abused since neither the criteria for this procedure nor legal remedies against the decision to do so have been prescribed. Civilians working in the Yugoslav Army are in a more or less similar position, while the status of solders on contract, also professional servicemen, is even more unfavourable.

Leaving aside the issue of whether the 1992 FRY Constitution provides sufficient safeguards for human rights and liberties, we must point out that the protection anticipated by the Constitution has not been sufficiently operationalized by the relevant legislation. Moreover, some of the statutes passed after the Constitution actually impaired these safeguards. In this respect it is important to note that the Yugoslav criminal code as well as the criminal code of Serbia and other statutes regulating criminal offences have not been adjusted to the FRY Constitution to this date. Quite the contrary. A dangerous trend of prescribing criminal offences by other than criminal codes

continues. Some offences laid down by the Serbian Criminal Code are even transferred from this to other legal acts, instead of appropriately amending the Criminal Code when so required and in a legally prescribed procedure. For instance, the criminal offence of unauthorized possession of firearms or explosives under Article 229 of the Serbian Criminal Code has been relocated to the Serbian Act on Arms and Ammunition, which drastically expands the zone of crime and sets extremely severe sanctions. A similar thing has been done with the Public Order and Peace Act and a number of other statutes adopted by the Serbian National Assembly. The general trend in the modern world is to prescribe criminal offences by criminal statutes, i.e. codes and only exceptionally by other legislation. Legal science refers to the practice of prescribing criminal offences by statutes other than criminal as incidental criminal legislation, which is usually reduced to the minimum. The practice of law in our country goes in the opposite direction and the so-called incidental criminal legislation includes a large number of offences, with a generally substantially extend the criminal zone (zone of criminal repression), often going beyond the general principles established by the federal and republic criminal codes. This creates a proper chaos in criminal legislation and substantially endangers the human rights and freedoms of citizens and, in any case, gives rise to legal insecurity. On the other hand, Slovenia and Croatia adopted new criminal legislations in 1994 and 1997 respectively, based on the concepts of the modern West European criminal law.

However, the largest problem with the protection of human rights and liberties is that the Code of Criminal Procedure has not been harmonized with the provisions of the Yugoslav Constitution, so that the constitutionally proclaimed safeguards of human rights often remain but a dead letter. This is in the first place related to the authorities of the police concerning detention, search of homes and secret audio and visual monitoring and recording, as well as to numerous provisions which enable the abuse and therefore also violation of basic human rights and liberties guaranteed by the Constitution.

The above-mentioned considerations, coupled with the powerful influence of the executive on the judicial authorities, do not leave much of the proclaimed protection of human rights and liberties. And these cannot be fully protected without independent courts, civilian as well as military.

Military courts within their jurisdiction have the same role in protecting the human rights and liberties as do civilian courts. However, the independence of the former is legally limited, as stated above. To this we should add the fact that in previous times petitions for the protection of legality against the final judgements of military courts were heard by the Federal Court, thus a civilian court. This secured a kind

of control of verdicts returned by military courts and, in a rather limited way, also provided for the functioning of a single judicial system of the FRY. The 1995 Act on Military Courts (Art. 73), however, prescribes that petitions for the protection of legality against final judgements of the Supreme Military Court chambers shall be heard by the Supreme Military Court in a general session. This practically severed the last link which enabled the Federal Court to exercise a kind of control over the decisions of the Supreme Military Court, and separated the military from the civilian judiciary, thus arising the question of the unity of the judicial system in the FRY. This aspect is particularly highlighted by the fact that it is the Supreme Military Prosecutor rather than the Federal Prosecutor who is authorized to petition for the protection of legality against the final judgements of military tribunals, including the decisions of the Supreme Military Court and other bodies of the Yugoslav Army (Art. 14 of the Act on the Military Prosecutor, "Official Journal of the FRY", no. 11/95). The military prosecutor is also authorized to take all actions before the Federal Court which are otherwise within the competence of the Federal Prosecutor, when the Federal Court decides on an extraordinary legal remedy against the judgement of the Supreme Military Court or on the conflict of jurisdiction between military and ordinary courts (Art. 15 of the Act on the Military Prosecutor). Knowing, in addition, that "the Supreme Military Prosecutor is responsible for his work and the work of military prosecutors of first instance to the President of the Republic (Art. 17 of the Act on the Military Prosecutor), thus to an executive rather than legislative body, the control of legality of judgements taken by military tribunals and other bodies of the Yugoslav Army rests solely in the president's hands. Therefore, he is the one who, via the Supreme Military Prosecutor, judges the validity of decisions of all these bodies, which puts him above the judicial authority.

The only legal possibility of the Federal Court to control the final verdicts of the Supreme Military Court is the request for extraordinary review of the judgement, prescribed by the provisions of the Code of Criminal Procedure and the Act on Administrative Lawsuits. Namely, pursuant to Article 426 of the Code of Criminal Procedure a convicted person may petition for extraordinary review of a final verdict turned by the Supreme Court of the Republic or the Military Supreme Court to the Federal Court in the case of criminal offences prescribed by the federal law, if sentenced to imprisonment of no less than a year. However, a petition of this kind may not be addressed to the Federal Court for criminal offences prescribed by the republic law. The deficiencies of this legal remedy are reflected in the fact that it may be used for a fairly small number of breaches of federal laws, excluding the most frequent offences and for sentences of no less than a year. This enables both the military and civilian courts to avoid the control of legal-

ity on the part of the Federal Court, especially if the accused is concurrently tried for criminal offences covered by the federal and republic legislations. In such cases, the criminal offence under the federal law is intentionally punished by imprisonment of less than a year and the lenience is "set off" by pronouncing a stricter than required sentence for the offence under the republic law. Thus, for instance, a person tried for the criminal offence of disclosing a state secret under Article 129, para 1 of the Yugoslav Criminal Code, sanctioned by imprisonment of one to ten years, and the criminal offence of dissemination of false news under Article 218 of the Serbian Criminal Code sanctioned by imprisonment of 15 days to 3 years, may be sentenced to imprisonment of 10 months for the first offence (invoking the legal provisions on the mitigation of the sentence), and full three years for the second. Thereby, the possibility to petition for an extraordinary review of the final judgement before the Federal Court would be precluded. This is not only possible, but actually happens in courts which are not entirely independent.

Pursuant to the Act on Administrative Lawsuits, parties may petition for extraordinary review of a final judgement returned by the Supreme Military Court invoking the breach of law. Since the Supreme Military Court in administrative lawsuits decides on administrative acts of military authorities bearing on the rights related to the service of military and civilian persons working in the Yugoslav Army and their families,[146] the Federal Court in this way controls not only the legality of final judgements of the Supreme Military Court but, through them, also of the acts of military authorities in general, passed in administrative procedure. Lawsuits of this kind usually last very long, often a few years. It so happens that a party to the dispute makes a full circle from the trial and appellate court to the Supreme Military Court and the Federal Court and back, and occasionally even another such circle. Growing tired of this circling certain parties give up their rights the attainment of which starts to resemble a Kafkian trial. Generally, only the most stubborn and persistent reach the target only to enter new circles related to the enforcement of final judgements in executive procedure when the accused body would not voluntarily act in line with the final verdict. Going through these countless circles, some do not live to exercise their rights.

(translated by: Ljiljana Nikolić)

[146] E.g. the rights in the sphere of social insurance (retirement, disability, health insurance), housing issues, verdicts of military disciplinary courts, etc.

Human Rights of Yugoslav Army Conscripts

Svetlana Stojančić

Separation of the military structures of power from civil authorities and the isolation of the military sub-system from the public resulted in the lack of knowledge of the *entitlement to human rights* in the Yugoslav Army (YA). Official reports of civil or military bodies concerned with this set of issues do not exist, and therefore neither does the insight into the practice of respecting the basic human rights and freedoms in the YA. The actual situation of human rights in the YA may, for the time being, be described only on the basis of the NGOs' documentation.

The citizens are not informed which of their rights and freedoms are restricted by the constitution and law once they come under the jurisdiction of the army, or of the extent of these restrictions. Neither are they informed about the possibilities to protect their rights in relation to the army. Systematic monitoring and public insight into the normative and actual situation of human rights in the YA should make the mechanisms for the protection of human rights available to the professional army members as well as "citizens in uniform".

A higher degree of respect for the fundamental human rights and freedoms requires an increased awareness of the need to observe the constitutionally and legally guaranteed human rights in the Yugoslav Army. It also requires specific legal articulation of limitations to individual human rights and freedoms, elaboration and incorporation of efficient protective mechanisms and the possibility for civil bodies – parliament and the ombudsman – to control the observance of human rights in the YA.

HUMAN RIGHTS RESTRICTIONS

The country's defence is the right guaranteed by the Constitution of the FRY, but it is simultaneously an obligation of the citizens of Yugoslavia (FRY Constitution, Art. 63, Defence Act, Art. 20). The obligation to participate in the country's defence should be adjusted to the fundamental rights the citizens enjoy. Just as the state must pro-

vide the conditions for the exercise of basic human rights,[147] so must the army, as a special but not isolated part of the society and state, allow for the exercise of the fundamental human rights within its frameworks to both those who have opted for a military career and citizens within the competence of the army.

The state is, in precisely defined situations and in line with the constitution and law, entitled to restrict the exercise of certain rights and freedoms for the general social benefit. The possibility of limiting a specific group of rights does not imply the right to the total abolishment of individual fundamental human rights and freedoms. Rather, this means that the state is allowed to define the extent of the exercise of certain rights and liberties. Restrictions of this type which are allowable to the state are referred to as optional restrictions and may be resorted to by the authorities in order to protect the basic values of the people and the state, such as the national and public security, public health, freedoms and rights of other persons.

In addition to optional restrictions, the state is permitted to derogate from certain human rights and freedoms. Derogation measures are applied in emergencies such as wars, internal disorders of major proportions or natural disasters, but only for the duration of the emergency concerned, thus temporarily.

International instruments unevenly regulate the restriction of certain fundamental human rights. The Universal Declaration of Human Rights[148] (referred to hereinafter as the Universal Declaration) allows the possibility of limiting all the proclaimed rights and liberties. The International Covenant on Civil and Political Rights[149] (International Covenant) and the European Convention for the Protection of Human Rights and Liberties[150] (European Convention) permit the restriction

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[147] A man enjoys human rights by being human, independently from the state or its will". "Human rights are not of positive legal but rather of ethical origin" (Dimitrijević-Paunović, 1997: 26)

[148] Adopted and proclaimed by the UN General Assembly resolutions 217 (III) of 10 December 1948. Although endorsed as a resolution without legal force, it is often invoked by the actors on the international law scene and thus granted the status of international common law.

[149] Adopted and opened for signature and ratification by the UN GA resolution 2200 (XXI) of 16 December 1966 and entered into force on 23 March 1976. The SFRY ratified the International Covenant in 1971. The FRY Parliament on 22 July 2001 adopted an act ratifying the First (1966) and Second (1989) Optional Protocols to the Covenant. The First Optional Protocol enables private persons to submit communications or complaints to the Committee for Human Rights if a state, party to the Covenant, has violated one of their rights guaranteed therein. By ratifying the Second Optional Protocol the FRY undertook to abolish the death penalty.

[150] Signed on 4 November 1950 within the Council of Europe by 13 Council's member countries, and entered into force on 3 November 1953. The Convention has 11 accompanying protocols. All Council of Europe countries are signatories to the

of certain rights but nevertheless precisely define those which may not be subject to any derogation whatsoever (International Covenant, Art. 4; European Convention, Art. 15). The possibility to derogate some of the rights does not imply the obligation of the authorities concerned to do so.

NORMATIVE RESTRICTIONS OF THE YUGOSLAV ARMY MEMBERS' HUMAN RIGHTS

Members of the armed forces as a special category of persons are, in view of the nature of activities they engage in, restricted in the exercise of certain fundamental human rights and freedoms. All international instruments allow the states to regulate the scope of exercise of specific human rights for this category of persons by their respective national legislations.

The basics for the restriction of the rights and freedoms of Yugoslav Army members are set out by the FRY Constitution, while the details of individual limitations and the manner of exercising certain rights and liberties are specified by the Yugoslav Army and Defence Acts, as well as the internal documents of the army unavailable to the public.

The FRY Constitution allows the restriction of the freedom of movement if so required for the defence of the FRY (FRY Constitution, Article 30). But, the federal constitution (FRY Constitution, Art. 42 and 57) completely cancels the right of association of the Yugoslav Army members, along with the right to strike. The FRY Constitution also acknowledges the absolutely protected rights – the rights and freedoms which may never and under no circumstances be suspended. This group of rights, among others, includes the freedom of belief, conscience, thought and public expression of views, as well as the freedom of religion, public or private profession of religion, and performance of religious rites (FRY Constitution, Art. 99, para 11).

Freedom of Association

Article 22 of the International Covenant (excerpt)

Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

Convention. In practice, the Council uses it for entry of new members as one of the conditions for admission is the signing of the Convention. We may expect that this will also be the condition the FRY will have to comply with in order to acquire membership of the Council of Europe.

No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

The freedom of association is a political right of an individual, attainable in community with others. The right of association implies that "No one may be compelled to belong to an association" (Universal Declaration Art. 20, para 2). The right to form trade unions serves to protect and promote the economic and social interests of the employed. In addition to the already mentioned Article of the International Covenant which enables the state to restrict the freedom of association of the members of armed forces, the possibility of limiting this right is also permitted by the European Convention for the Protection of Human Rights and Fundamental Freedoms (Art. 11, para 2), as well as the International Covenant on Economic, Social and Cultural Rights (Art. 8, para 2).[151] However, Art. 5 of the European Social Charter,[152] refers to the *extent* of application of this right to the members of the armed forces, giving the states a possibility to prescribe the degree of restriction on the freedom of association for the abovementioned category of persons, by their national laws and regulations.

The FRY Constitution absolutely bans the political and trade union association of Yugoslav Army members. The Yugoslav Constitution stipulates that "professional members of the FRY army and the police do not have the right to form trade unions" and "may not be members of political parties" (FRY Constitution, Art. 42, paras 2 and 3). Bearing in mind that international documents refer to *restrictions in the exercise* of the freedom of association, complete abolishment of this right of professional army members could not be considered justified. The denial of the right to strike of professional army members is prescribed by Art. 57, para 3 of the FRY Constitution. The restrictions of these rights are elaborated in Art. 36, para 1 of the Yugoslav Army

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[151] The International Covenant on Economic, Social and Cultural rights was adopted by the UN GA on 16 December 1966 and entered into force on 3 January 1976. Although international instruments give states the right to restrict the freedom of association to members of armed forces, some states do not avail of this right. In he Netherlands, professional military units have 6 military associations. Some of them have a tradition of over a hundred years (Hans Born, *Višestruka kontrola oružanih snaga u demokratijama: slučaj Holandije*, in "Demokratska kontrola vojske i policije", Miroslav Hadžić (ur), Centar za civilno-vojne odnose, Beograd, 2001, str. 191-228.)

[152] Adopted by the Council of Europe on 18 October 1961, entered into force on 26 February 1965. Revised on 3 May 1996 in Strasbourg.

Act, which stipulates that "professional soldiers, students of military academies and intermediate military schools may not join the membership of political parties and do not have the right to form trade unions or go on strike".

Soldiers and members of the reserve while in military service are not permitted to engage in the activity of political parties (Yugoslav Army Act, Art. 36, para 3). This is "the case of restricting the exercise of the right to political engagement and freedom of association for a specified period of time, rather than the case of a substantial derogation of this right."[153]

Freedom of Movement

Article 12 of the International Covenant (excerpt)

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

Restriction of the freedom of movement by the state is, in addition to the International Covenant also permitted by the European Convention (Protocol, No. 4, Art. 2, paras 3 and 4). According to the Yugoslav Constitution the freedom of movement "may be restricted by federal statute, if so required… for the defence of the Federal Republic of Yugoslavia" (FRY Constitution, Art. 30, para 2). This constitutional formulation is explicated in Art. 33, para 1 of the Yugoslav Army Act as follows: "A professional soldier may travel abroad, but is obliged to report this to his commanding officer…" This para anticipates that the only condition for an army member to travel abroad is to report that, while in the case of a state of war, a member of the armed forces is obliged to obtain the approval of the Chief of the General Staff or another commander he may so authorize (Yugoslav Army Act, Art. 33, para 3). The approval to travel abroad is also required for civilians employed in the Army (Art. 149), conscripts during their military service (Yugoslav Army Act, Art. 33, para 2) and persons under draft obligation (YA Act, Art. 321, para 1). A conscript may be granted approval to travel and temporarily stay abroad in the following cases:

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[153] "*Ljudska prava u Jugoslaviji 1998"*, Beogradski centar za ljudska prava, Beograd, str. 144

– to undergo medical treatment (for the duration of the treatment, up to two years, at most);
– to join school excursions or make tourist trips (up to 40 days);
– to attend to a business matter or resolve property-related, family or similar issues abroad, or to participate in sports or cultural-artistic competitions and events, as well as in the case of a grave illness or death of a close family member residing abroad (up to 60 days);
– to fulfil an obligation stemming from his employment on a Yugoslav ship or aircraft (up to two years);
– to accompany his parents or spouse, sent on duty abroad (up to four years), providing that the person concerned is not supposed to be called up within a year from the date of application for approval;
– to attend to personal or official business, if found temporarily unfit for military service (until the expiry of the term of his temporary incapacity);
– to attend school, until the end of schooling, but no later than the end of November in the calendar when the conscript reaches 27 years of age (YA Act, Art. 321, para 2).

Travels and temporary stay abroad may last until the end of the calendar year wherein the conscript reaches 27 years of age at the latest (YA Act, Art. 321, para 3). Article 303 of the Yugoslav Army Act offers a conscript who has not been called up by the end of the calendar year when he has reached 27 years of age, the possibility to be called up by the end of the calendar year when he is 35. This means that the conscript should have the right to be issued a passport after he has reached 27 years of age, even without completing his military obligation. However, Article 321, para 5 prescribes that an army conscript "shall not be granted approval to travel abroad if one of the impediments referred to in Art. 323" existed. "Impediments" referred to in Art. 323 include: summons to a military exercise or evasion of such summons,[154] institution of proceedings for a criminal offence of failure to report for military duty or of avoiding military service, or criminal proceedings for an offence of avoiding military service by incapacitation or deceit. Due to the above-mentioned "impediments" members of the reserve units may not travel abroad or temporarily or permanently reside abroad either (YA Act, Art. 323). The provision of the same Article grants the Federal Government a possibility to define the conditions for a temporary restriction on the travelling abroad of army conscripts of a certain age or with specialized knowledge of par-

[154] The Act Amending the Yugoslav Army Act added the phrase "or avoiding to receive summons", Official Journal of the FRY, No. 44-99, 25 June 1999.

ticular importance for the replenishment of the army (YA Act, Art. 323, para 2).

Restrictions of the freedom of movement imposed on the Yugoslav Army members apply only to travelling abroad, and there are no "internal limitations". Professional army members are subject to transfers and may not choose the place of service or residence.

Minority Rights

Article 27 of the International Covenant

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

The term members of minority groups is primarily taken to denote the members of national and ethnic, as well as religious and linguistic minorities. The FRY Constitution (Art. 11) acknowledges and grants the members of national minorities the freedoms and rights "to preserve, foster and express their ethnic, cultural, linguistic and other peculiarities… in accordance with international law". The freedom of expression of national sentiments and culture and the use of one's mother tongue and script, as well as the freedom of every person not to declare his/her national affiliation are guaranteed by Art. 45 of the FRY Constitution. Although the Constitution states that any incitement or encouragement of national, racial, religious or other inequality as well as the incitement and fomenting of national, racial, religious or other hatred and intolerance is punishable (FRY Constitution, Art. 50), "the provisions of the FRY Constitution addressing the minorities are neither directly applicable in practice nor elaborated by federal statutes".[155] Special legal remedies for the protection of minority rights guaranteed by the Yugoslav Constitution do not exist.

Manifestation of national, racial or religious hatred in the Yugoslav Army is considered a breach of military discipline (YA Act, Art. 161). Officers and non-commissioned officers of the reserve units are called to account for the manifested national, religious or racial intolerance before the courts of honour (Article 186), but the exercise of the minority rights has not been regulated. The YA Act and regulations accessible by the civilian public do not govern the manner and conditions for the exercise of rights guaranteed by the Constitution to

[155] *Ljudska prava u Jugoslaviji 1998,* Beogradski centar za ljudska prava, Beograd 1999, str. 154

soldiers – members of religious minorities (performance of religious rites – FRY Constitution, Art. 43, para 1). Members of certain minorities may not exercise the right to food which is in line with their beliefs (e.g. vegetarians) or religion (e.g. Muslims), just as they may not use the languages of the minorities they belong to except in mutual communication. Normative regulation of the exercise of minority rights in the Yugoslav Army Act has so far gone lacking.

The Constitution separates the church from the state, and all churches are equal in conducting religious affairs and in the performance of religious rites (FRY Constitution, Art. 18). The FRY does not have a constitutionally acknowledged state church. Religion is a private matter of an individual. But, if it is possible to make a judgement on the basis of newspaper articles, cooperation between the Yugoslav Army and the Serbian Orthodox Church is increasingly visible.[156] There is a trend to "crown" this cooperation with the introduction of ministers into the Yugoslav Army units.[157] The Orthodox Church is indeed the dominant confession in the FRY but "the favouring of a religion because it is professed by the majority population is also discriminatory and in violation of the rights of religious minorities" (Dimitrijević-Paunović 1997: 314).

Freedom of Thought, Conscience and Religion

Article 18 of the International Covenant (excerpt)

Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to pro-

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[156] According to a survey of the Centre for Marketing and Research "Marten Board" done for the Yugoslav Army, 44 % of citizens oppose the introduction of religious services into the units and commands of the Yugoslav Army, 30% support this initiative, 14% conditionally accept a possible change, while 12% do not have a definite attitude on this issue. The survey was carried out during March 2001and the results were published by the daily "Blic", on 5 April 2001.

[157] Head of the YA General Staff Department for Morale Milan Simić announced the introduction of military priests into the YA, saying that religious services in the army and the organization of priests within the YA units would be regulated by the Rules of Service (daily "Danas", 6 February 2001). Rules of Service are among internal documents closed to the public.

tect public safety, order, health, or morals or the fundamental rights and freedoms of others.

A person cannot exercise the freedom of thought, conscience or religion unless he has the possibility to act in accordance with his beliefs, conscience and the rules of his religion. The FRY Constitution guarantees the citizens the freedom of confession, conscience, thought and public expression of opinion (FRY Constitution, Art. 35). This right belongs to the group of rights and liberties which may not be restricted even during the state of war (FRY Constitution, Art. 99, para 11).

Directly linked with the right to freedom of thought, conscience and religion is the right to conscientious objection which has not been mentioned in international instruments, but is contained and recognized in the recommendations and resolutions of the Parliamentary Assembly and the Committee of Ministers of the Council of Europe.[158] Article 8 of the International Covenant refers to the possibility of conscientious objection as well as the possibility to refuse military service and replace it with civilian service. "Conscientious objection is, today, no longer considered an exclusively religious right, but rather a fundamental human right" (Ilić – Kovačević Vučo, 2000:13).

The right of conscientious objection, for the first time, made its way into the FRY Constitution which entered into force on April 27, 1992. However, this right is not to be found it the section addressing the freedoms, rights and duties of man and the citizen, but rather in the part related to the Yugoslav Army. In this sense, the Yugoslav Constitution normatively acknowledges the right to conscientious objection, "but it essentially does not recognize it as a fundamental human right in line with European and world standards" (Ilić – Kovačević Vučo, 2000:17).

The FRY Constitution recognizes the right to conscientious objection in Art. 137:

> "A citizen who is a conscientious objector for religious or other reasons and does not wish to fulfil his military obligation under arms shall be permitted to serve in the Army of Yugoslavia without bearing arms or in civilian service, in accordance with federal law."

The principle of constitutionality is one of the basic conditions for the functioning of a democratic society. Laws must be in harmony

[158] Instruments of the Council of Europe Parliamentary Assembly relating to the right to conscientious objection include: Resolution 337 (1967); Recommendation 478 (1967) on the right to conscientious objection; Recommendation 816 (1977) and Recommendation 1518 (2001) on the right to conscientious objection to military service in member countries, Recommendation R (87) 8 of the Committee of Ministers of the Council of Europe to member states on the right to conscientious objection to compulsory military service.

with the constitution and therefore may not abolish but only specify, and elaborate the rights and liberties of citizens, and provide the legal guarantees thereof. Although the FRY Constitution allows for civilian service of conscripts, the YA Act does not offer them the possibility to fulfil their military obligation in civilian service. Those citizens who invoke the right of conscientious objection and wish to complete their military service in line with their beliefs, without carrying or using arms are, in most cases, tried before military courts for the criminal offence of refusing to receive and use arms, under Article 202 of the FRY Criminal Code.

The YA Act anticipated that conscripts who wished to exercise the right to conscientious objection should serve a double term – 24 months (Art. 296, para 2), which was a form of indirect punishment. Conscripts who opted to serve their term in the army without arms and during the service decided to receive them continued their service pursuant to the program for soldiers under arms (Art. 296, para 3). The YA Act offered no possibility to the members of the reserve who had served part of their term under arms, to continue serving without arms, if they had, meanwhile, changed their confession.[159] The Law amending the YA Act reduced the term of regular service from 12 to 9 months (Article 4, para 1), and the term of civil service from 24 to 13 months (Article 4, para 2).[160] The new law however, made no changes in terms of defining other situations or periods of time wherein a soldier may opt for armz service without arms. The conscripts may only invoke conscientious objections during draft registration (by submitting a request in writing to the competent body in the first instance (Draft Board) within 15 days from the date of receipt of summons.

An appeal against the decision of the Draft Board may be lodged with the "military-territorial body in the second instance to the military-territorial body which took the decision in the first instance within 15 days" (YA Act, Art. 300, para 2). The decision of the abovementioned body is final and may not be subject to administrative proceedings.[161]

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[159] The FRY Constitution does not refer to the right to change one's religion. This right, as one of the fundamental human rights, is contained in the Universal Declaration of Human Rights, Article 18 and the International Covenant does not allow for the restriction of this article, even if the survival of the nation is endangered, while the European Convention permits the submission of the freedom of profession of religion or beliefs "to restriction prescribed by law and necessary for a democratic society in the interest of public security…" (Art. 9)

[160] "Official Journal of the FRY", no. 3/02, Belgrade, 2002.

[161] "This provision of the Yugoslav Army Act is at variance with the general constitutional option for judicial protection against all decisions of competent bodies. With the exception of administrative proceedings in relation to the conscientious

The legislation amending the YA Act[162] *introduced changes into Art. 297 listing the organizations and institutions wherein civilian service of conscripts was possible. Before it was amended, Art. 297 read:*

> "Civilian service may take place in military economic, health and general rescue organizations, institutions for the rehabilitation of invalids and other organizations and institutions engaged in the activities of general interest.
>
> An organization, i.e. institution wherein conscripts complete their term in civilian service is obliged to provide them with free accommodation, food and receipts in the amount of financial receipts of soldiers and shall designate a person responsible for the control of civilian service of conscripts.
>
> While in civilian service, a solider is, in terms of his rights and obligations, equal to the one in military service.[163]

Article 20 of the Act amending the YA Act reads:

"Para 1 of Art. 297 is amended so as to read:

Civilian service shall take place in the units and institutions of the Army and the Federal Defence Ministry.

Para 2 is deleted, and para 3 becomes para 2.[164]

According to the interpretation of the Ministry of Religions of the Republic of Serbia "the concept of civilian service implies that the conscript concerned serves his term in military economic, health, general rescue organizations, organizations for the rehabilitation of invalids and other organizations and institutions engaged in the activities of general interest". Civilian service implies the wearing of a uniform and work in a specifically designated institution or organization.

The exercise of the right to conscientious objection in the FRY encounters major obstacles. One of these is the conviction of military courts that invoking the right to conscientious objection merely serves as an instrument to avoid military service.

CASES OF VIOLATION OF HUMAN RIGHTS IN THE YUGOSLAV ARMY

In order to obtain a wider insight into the situation of human rights in the Yugoslav Army, the associates of the Centre for Civil-Military Relations (referred to hereinafter as the Centre) drew on the reports and available documentation of organizations engaged in the

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objection, the YA Act practically excludes any judicial protection guaranteed by the Constitution." (Ilić – Kovačević Vučo 2000: 23)

[162] "Official Journal of the FRY", no. 44/99, 25 December 1999.

[163] "Official Journal of the FRY ", no. 67/93, 29 October 1993.

[164] "Official Journal of the FRY", no. 44/99, 25 June 1999.

protection of human rights, as well as the data obtained from the media. The Centre also wrote to the relevant state institutions demanding information on the cases of violation of human rights in the Yugoslav Army. This letter was addressed at the FRY Defence Ministry, Federal Justice Ministry, Federal Ministry of the Interior, Yugoslav Ministry of Religions, Ministry of Justice of the Republic of Serbia, Serbian Ministry of the Interior and the Ministry of Religions as well as the Committee for the Collection of Data on the Crimes Against Humanity and International Law (referred to hereinafter as the Committee). The Centre received responses from the federal ministries of justice and the interior as well as from the Federal Defence Ministry and the Committee.

The FRY Ministry of Justice in a letter addressed at the Centre states four cases of convictions for the criminal offence of refusing to take and use arms, under Article 202 of the FRY Criminal Code.

The Federal Ministry of the Interior in its oral response said that the Ministry's files included no records of violations of human rights in the Yugoslav Army.

The response of the Federal Defence Ministry stated that the Legal Department of the Ministry obtained the relevant data from the Supreme Military Prosecutor and the Supreme Military Court and that according to the information received and available to the Ministry, the records of the military judiciary and the Legal Department of the Federal Defence Ministry contained no reference to the violation of human rights in the Yugoslav Army. However, in August 2000, the Ministry's Legal Department addressed a letter to the federal justice minister wherein it referred to the cases of four commanders of the military police (one officer and three non-commissioned officers) who used truncheons to make a detained soldier admit to stealing a submachine gun from his unit. All four commanders were charged with the criminal offences of extracting a confession under Article 190, para 2 of the FRY Criminal Code. Regardless of this clearly registered case of violation of human rights the response of the Defence Ministry's Legal Department to the Centre states that no report of conduct which could be doubtlessly qualified as violating the human rights in the army was on files.

The Committee responded that it had not collected the data on violations of human rights in the Yugoslav Army and that in the period of its existence it received no letter or information on a case of this kind from any organization or individual.

On the basis of the documentation of NGOs we may conclude that the bodies of the Yugoslav Army most often endanger the right to conscientious objection.

The files of the Yugoslav Association for Religious Freedoms register that the Military Court in Kragujevac on May 2, 1999 sen-

tenced one Ž. G. from Smederevo to five-year imprisonment for the criminal offence of refusing to receive and use arms, under Art. 202, para 1 of the FRY Criminal Code. Explaining the sentence the Court referred to the aggravating circumstances it found in the "motives for the offence, since the invoking of the accused that he was pacifist and a Christian, and therefore did not wish to receive arms, in the view of the Court, reflected a negative attitude of the accused towards his military duty and the country's defence in general"[165]. In his appeal to the Supreme Military Court, Ž.G. stated that he accepted any service in the army which did not require the carrying of arms, including even mine sweeping. Ruling on the appeal of the condemned Ž.G. the Supreme Military Court in Belgrade confirmed the sentence of the Military Court attached to the Command of the Kragujevac Corps.[166] After a motion for extraordinary mitigation of the sentence the Supreme Military Court, on March 7, 2000 sentenced Ž.G. to one-year imprisonment, including the time he had spent in detention. Grujic started serving his prison term on April 24, 1999.[167]

The Military Court in Kragujevac on April 10, 1999 sentenced one M.R. from Smederevo, a Jehovah's Witness, to five-year imprisonment for refusing to use arms, under Article 202, para 2 related to Art. 206, para 1 of the FRY Criminal Code.[168] The Court's explanation refers to the Yugoslav Army Act which stipulates that the right to conscientious objection and military service without carrying arms was possible only in peacetime and not in a state of war.[169]

Both Ž.G. and M.R. completed their military service under arms, and declared their conscientious objections as members of the Yugoslav Army Reserve when called up during the state of war in April 1999.

According to the records of the Federal Justice Ministry, during April 1999, four persons were convicted for the criminal offence of refusing to receive and use arms, as per Article 202 of the FRY Criminal Code. In addition to the above-mentioned case of Ž.G., prison sentences were also pronounced in the following cases:

– F.K. from Vršac, was sentenced by the Military Court attached to the Command of the Novi Sad Corps to one-year imprisonment on April 28, 1999. The Supreme Military Court deciding on a re-

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[165] Verdict of the Military Court attached to the Command of the Kragujevac Corps, IK no. 18/99, 2 May 1999.

[166] Verdict of the Military Court, IIK no. 103/99, 16 May 1999.

[167] Decision of the Military Court, KVL no. 63/2000, 7 March 2000.

[168] Verdict of the Military Court attached to the Command of the Kragujevac Corps, IK no. IK-3/99, 10 April 1999.

[169] The possibility to restrict the right to conscientious objection during a state of war has not been regulated by the Yugoslav Army Act.

quest for extraordinary mitigation of the sentence on July 24, 2000 revised the verdict to a conditional sentence;

– P.I. from Smederevo, was sentenced to six-year imprisonment by the Military Court attached to the Command of Kragujevac Corps on April 21, 19999. The sentence in the first instance was revised by the Supreme Military Court on May 6, 1999, and reduced to five-years;

– K.D. from Subotica was sentenced to five-year imprisonment by the Military Court attached to the Novi Sad Corps on April 17, 1999.

On the basis of numerous cases where the right to conscientious objection was not recognized, we may conclude that the violation of this right is often the subject of lawsuits between the citizens and the Yugoslav Army. In addition to this, the right to the freedom of movement is also frequently violated.

One N.B. from the town of Jagodina in Serbia approached the Centre for Civil-Military Relations in relation to the violation of the freedom of movement. He had not yet fulfilled his military obligation. Although he was 27, his draft obligation was extended until the age of 35 by the Ćuprija Draft Board on the basis of evidence of schooling. Having received an invitation to take his PH. D at the University of Laussane, he applied for the passport to the Jagodina police in February 2001. He was not issued the passport on the basis of a request of the Ćuprija Draft Board (which only a month before extended his draft obligation), invoking the Act on Travel Documents, Art. 46, para 1, item 5.

The Humanitarian Law Centre registered a case of three Albanians on trial before the Military Court in Niš who were not enabled to defend themselves in their mother tongue. The Military Court Chamber in Niš, in July 2000 sentenced B. S. and S. M. to 15-year imprisonment and Dž. B. to 18-motnh imprisonment for associating for hostile activity. The Supreme Military Court in Belgrade revoked the sentence in December 2000 with an explanation that the court in the first instance did not observe the right of the accused to defend themselves and prepare their defence in their mother tongue. Despite the warning of the Supreme Military Court, the Chamber of the Military Court in Niš called the hearing for February 2001, without serving the accused the verdict of the court in the first instance in their mother tongue. Upon the request of the defence counsel for the submission of materials of both the lower and appellate courts in the mother tongue of the accused, the Military Court in Niš gave instructions to translate

only the ruling of the Supreme Military Court cancelling the first verdict.[170]

The number of those accused of the criminal offence of failure to report for military duty and avoiding military service, Art. 214 of the FRY Criminal Code and for the criminal offence of desertion and abandoning the Yugoslav Army without leave, Art. 217 of the FRY Criminal Code, may be taken as indicating the attitudes of part of the conscript population towards the use of the Yugoslav Army in war. According to the documentation of the FRY Ministry of Justice, until January 2000, the total of 1,786 people were condemned for the criminal offence of failure to report for military duty and avoiding military service, with additional 8,136 of the 12,540 reported cases under way. The Amnesty Act[171] has released a large number of persons from any responsibility before military tribunals.

MECHANISMS FOR THE PROTECTION OF HUMAN RIGHTS IN THE YUGOSLAV ARMY

The mechanisms and instruments for the protection of fundamental human rights in the Yugoslav Army have not been precisely and clearly regulated by the Yugoslav Army Act. The only formulation addressing the violation of rights and the responsibility for it is contained in Art. 160, para 9 of the YA Act which reads: "An act of a military person shall be deemed in violation of military discipline … if it insults the dignity of subordinated or junior staff[172] or violates the rights they are entitled to under the law". The legislator did not indicate which particular law he had in mind. The fundamental human rights are established by the FRY Constitution rather than by specific acts – which can only specify the human rights and liberties and prescribe the ways for the exercise thereof.

Insulting the dignity of the citizen in the Yugoslav Army is a criminal offence of mistreating a subordinate or junior member, under Art. 208 of the FRY Criminal Code:

1) A military commander who mistreats a subordinate or junior member in the line of service or in relation to it, or treats him in a

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[170] Article 49 of the FRY Constitution guarantees every person the right to use his mother tongue before a court of law and be informed on all facts in his own language.

[171] Amnesty Act of the Republic of Serbia, "Official Journal of the Republic of Serbia" no. 10/2001, 14 January 2001. The FRY Amnesty Act, "Official Journal of the FRY" no. 9/2001, 2 March 2001.

[172] Persons serving in the Yugoslav Army are in terms of their relations either superior or subordinated, or in terms of ranks and duties- senior or junior. (YA Act, Art. 10, para 1)

manner which is insulting for human dignity shall be punished by imprisonment of three months to three years.

2) If the offence referred to in para 1 of this Article is carried out against a number of persons, the offender shall be punished by imprisonment of one to five years.[173]

"An act which insults the human dignity includes humiliation, insulting, disparaging and other forms of psychical harassment," while mistreatment implies any physical action other than bodily harm" (Stojanović 1999:232). The procedure for lodging the complaints against one's superiors has been regulated by the Rules of Service, an internal document of the Yugoslav Army, inaccessible to the civilian public. The possibility to complain against the conduct of one's superior officer to a civilian body is still non-existent. The introduction of an ombudsman for the Yugoslav Army would mean a major step forward in resolving this problem, although the government and parliament must have clearly defined roles in the sphere of human rights protection.

The institution of the military ombudsman is an important form of parliamentary control over the army. "The role of this ombudsman is to consider the grievances of army members (soldiers and commanding officers up to a certain rank) against the acts of military authorities and their superiors." (B. Milosavljević 2001-58) In some European countries a civilian supervisor acts within the institution of the ombudsman competent for all spheres of social life (Sweden, Finland) while others have a special ombudsman elected directly by the parliament (Germany).[174]

The introduction of an ombudsman in the Yugoslav Army would give soldiers and commanders the possibility to submit their complaints directly to a civilian official, appointed by the federal parliament. Complaints, grievances and appeals would be made anonymously, and the applicants could not be called to account or suffer the consequences because of the contents of their submissions. Members of the armed forces could refer to the ombudsman when they felt "exposed to unlawful and anti-constitutional acts of anyone of the army, or if dissatisfied by the resolution of their problems in a regular proce-

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[173] On the basis of this Article, the Military Court in Podgorica opened investigation against general Spasoje Smiljanić suspected of mistreating his subordinated an junior officers. The military court decided to start the investigation on the basis of charges of six pilots stationed at Podgorica military airport "Golubovci". General Smiljanić is accused of disparaging and disgracing the pilots by accusing them of treason in front of their colleagues (daily Politika, 21 February 2001.)

[174] *Human Rights of Conscripts, Doc.7979*, *Report of the Committee on Legal Affairs and Human Rights,* Council of Europe, 3 June 1998

dure".[175] Annual reports to the parliament concerning the situation of human rights in the Yugoslav Army would be submitted by the Ombudsman who would also propose the solutions, recommendations and advice and, if necessary, the sanctions. It is important to note that the military ombudsman would not have the right to prosecute or impose disciplinary punishment on the Yugoslav Army members.

The existence of a military ombudsman would advance the process of establishing democratic civil control over the Yugoslav Army. In the same way, annual reports on the situation of human rights would enable the systematic monitoring and insight of the public into the situation of human rights in the Yugoslav Army. Promotion of human rights of Yugoslav Army members as well as the counselling of soldiers and commanders, would prevent future violations of human rights and guaranteed freedoms. The institution of the military ombudsman is particularly important for conscripts in military service. It "diminishes the individual's feeling of helplessness" (B. Milosavljevic 2001-122) before his commanders and military organs and enables him to seek the protection of his rights from a body external to the army and independent of it.

(translated by: Ljiljana Nikolić)

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Freedoms and Rights of Citizens in Public Exigencies

Kosta Čavoški

In a well-ordered state, which is referred to as the legal state or the rule of law, acts of the state which encroach on the freedoms and rights of citizens are, for the most part, laid down and channelled by relevant regulations beforehand. However, public exigencies occasionally occur wherein the internal order, external independence and the very survival of the state may be directly endangered. In such extraordinary situations, acts of the state cannot be anticipated and thoroughly regulated in advance, and the supreme authority must exercise a much greater freedom of decision-making. That is why in public exigencies certain parts of the constitution are suspended, especially those safeguarding the constitutional liberties and rights of scitizens**.**

A public exigency is, therefore, just like a dangerous medicine given to a gravely ill patient: if coercive measures and the temporary suspension of human freedoms and rights are well balanced and properly administered the people and the state will be saved. If, however, this course is deliberately taken too far, to pass autocracy for an effort to save the state or defend its endangered order, thus perpetuating an authoritarian and sometimes even tyrannical power, that abuse of the public exigency becomes fatal for the nation and the state.

Constitutional Regulation of Public Exigencies

The Constitution of the Federal Republic of Yugoslavia (FRY Constitution, Art. 78, point 3 and Art. 99, points 10 and 11) distinguishes between three public exigencies: the state of emergency, imminent threat of war and state of war. The last Defence Act ("Official Journal of the FRY", no. 43/1994) specifies the conditions and circumstances allowing for the proclamation of such states. The general condition is the existence of a threat or danger for the sovereignty, territorial integrity, constitutional order and security of the country (Art. 4, (1)), and then, subject to the *extent* and the *degree* of the impending danger, follow the specific conditions for the proclamation of

each of the three states. An immediate threat of war is declared if there is a danger of attack or another form of external threat to the country; the state of war is proclaimed if an attack on the country is *impending* or under way, while a state of emergency may be proclaimed in the event of internal riots of major proportions endangering the constitutional order of the country by *violence*, or in the case of national and other disasters which, on a large scale, jeopardize the lives of citizens, their property and material goods (Art. 4, points 1, 2 and 3).

Since the FRY Constitution does not define the conditions for declaring the existence of specific public exigencies, it is a good thing that the Defence Act does that at all, especially as it emphasizes that it is subjected to the *extent* and *degree* of the impending or already emerged danger. This way, an appropriate legal standard is introduced which, in a manner, ties the hands of the body which proclaims public exigencies by making it decide which of the three specified states will be declared, if at all, on the basis of the extent and degree of the danger involved. However, the conditions for the proclamation of specific public exigencies are not sufficiently defined and may be abused. Thus, a state of war may be proclaimed not only if an attack on the country has started, but also if it is impending, which is in our view, rather a reason to declare an *imminent* threat of war. Also disputable is the provision permitting the introduction of a state of emergency if the constitutional order is endangered by *violence*. It would be much better to qualify this condition as *armed* violence, so as to distinguish it from street protests, which are generally legitimate.

According to the FRY Constitution (Art. 78, point 3), the Federal Assembly declares a state of war, a state of imminent threat of war, and a state of emergency, while the Federal Government, subject to the opinion of the President of the Republic and presidents of the Federal Assembly's chambers may do so only if the Federal Assembly is unable to convene (Art. 99, point 10). Article 5, paras 1 and 2 of the Defence Act ("Official Journal of the FRY", no. 43/1994) stipulates that the immediate threat of war and the state of war are proclaimed on the entire country while a state of emergency may exceptionally be proclaimed on a part thereof. If the state of emergency is declared on the territory or part of the territory of one republic member alone, the opinion of the assembly of the member republic, or the republic government if the assembly is unable to convene, is solicited 48 hours in advance? (Art. 5, para 3). This may also be done upon the proposal of the assembly of the member republic, or the republic government, if the assembly is unable to convene (Art 5, para 4).

Major confusion is also introduced by the Constitution of the Republic of Serbia) which, too, regulates the issues of war and peace as well as public exigencies, although this is primarily *federal* matter. Article 72 (para 1, points 1 and 3) stipulates that the Republic of

Serbia regulates and ensures the sovereignty, independence and territorial integrity of the Republic of Serbia as well as the measures required in a state of emergency. War and peace are decided by the National Assembly (Art. 73, point 6), while the President of the Republic "at his own initiative or at the proposal of the Government during a state of war or immediate threat of war, passes enactments relating to the questions within the competence of the National Assembly, provided his being bound to submit them to the National Assembly for approval as soon as it is in a position to meet" (Art. 83, point 7). He shall, furthermore, "at the proposal of the Government, if the security of the Republic of Serbia, the freedoms and rights of man and citizen or the work of state bodies and agencies are threatened in a part of the territory of the Republic of Serbia, proclaim the state of emergency, and issue acts for taking the measures required by such circumstances, in accordance with the Constitution and law"(Art. 83, point 8).

There is no doubt that these provisions are at variance with the Federal Constitution and therefore should not be enforced. The difference in the manner these two matters are regulated by the two constitutions is rather interesting. While the Federal Government proclaims the immediate threat of war, the state of war or a state of emergency executing another's right *(iure alieno)* – the powers of the Federal Assembly, the President of the Republic of Serbia does that by his own right *(iure proprio).* The Federal Government is obliged to seek the approval of the Federal Assembly for all its acts regulating the matters within the Assembly's competence as soon as it is able to convene, (Art. 99, point 11), but the President of the Republic of Serbia seeks the approval of the National Assembly only for the enactments within its jurisdiction he has passed during the state of war or immediate threat of war, while those whereby he has introduced a state of emergency or adopted the measures required by such circumstances are not subject to anyone's confirmation or approval.

Although the above-mentioned provisions of the Serbian Constitution seriously disrupt the unity of the constitutional order of the country, the Federal Constitutional Court failed to declare them contrary to the Federal Constitution, which would have terminated their validity six months after this disparity had been established. This accounts for numerous ambivalences. The first is the question if the President of Serbia may at all introduce a state of war, state of immediate war danger or a state of emergency and pass enactments appropriate to these emergencies, when the same thing is done by the Federal Assembly, i.e. the Federal Government. Bearing in mind that the defence and security of the country are within the federal jurisdiction (Art. 77, point 7 of the FRY Constitution), and that the Federal Assembly consequently proclaims the state of immediate threat of war (Art. 78, point 3), it is clear that the President of Serbia, as the head of

one of two federal units cannot do that. However, the introduction of a state of emergency could be subject to alternative jurisdiction of the federation and its units, bearing in mind that depending on the nature of its cause (natural disasters, epidemics, internal riots etc.) a state of emergency may be proclaimed for the whole country or only a part thereof. In the latter case this may be done by the competent body of the federal unit concerned, as it is usual in well-ordered federations. Some doubt in this respect arises from the above-mentioned Articles 4 and 5 of the Defence Act, which, if narrowly interpreted, would not allow for this competence of a republic body.

There is also the question of whether the competent body of a federal unit may pass relevant regulations in a state of war, state of immediate threat of war or a state of emergency proclaimed by a federal body. In principle, this may be done, under condition that the republic body concerned does not exceed the limits of its jurisdiction to encroach on the exclusive federal jurisdiction. The Serbian Constitution (Art. 83, point 7) is partly inconsistent precisely with this condition as it stipulates that the President of the Republic may with his enactments passed during a state of war restrict some freedoms and rights of man and citizen, and alter the organization, composition and powers of the Government and of the ministries, courts of law, and public prosecutions.

Particularly disputable is the authority of the republic body (President of the Republic of Serbia) to restrict certain freedoms and rights guaranteed by the federal constitution in public exigencies. This would be inadmissible from the point of view of the constitutional division of competencies between the federation and the federal units. According to Article 77, point 1 of the Federal Constitution the Federation ensures constitutional-judicial and judicial protection of all the rights and liberties guaranteed by this Constitution, and since the *federal* enactments passed during a state of war may limit specific freedoms and rights, pursuant to the argument from the contrary *(argumentum a contrario),* the federal units could not have jurisdiction in the *same* matter. This only means that the President of Serbia may not with the enactments passed during a state of war limit individual freedoms and rights guaranteed by the *Federal* Constitution.

Limitations and Inviolability of Human Freedoms and Rights in Public Exigencies

Although the institution of public exigency is very old and dates back to the Romanian dictatorship, there have always been disputes as to whether human rights could at all be suspended or limited, and if so, whether there are certain freedoms and rights which cannot be cur-

tailed even in a state of war. In this respect we distinguish between the older and a more recent liberal view. The former is the best expressed in the 1866 lawsuit *Ex parte Milligan*.

In March 1863, at the height of the Civil (secessionist) War, the U.S. Congress authorized President Abraham Lincoln to suspend the *writ of habeas corpus*, invoking his war powers. This was intended to enable military commanders to take precaution measures against the spies and supporters of the Southern Confederation, lest they interfered with the war effort. In September 1863, President Lincoln suspended the *habeas corpus* with respect to persons imprisoned by military officers for acting against the operations of the army or the navy.

Milligan was a citizen of Indiana who apparently favoured the Confederation. He was arrested and accused of sedition. He was tried by a military court, found guilty and sentenced to death by hanging. Milligan sued out a *writ of habeas corpus* from the Federal Court. He demanded that a regular court should establish which particular law he had allegedly violated and asked for a defence counsel, hearing of witnesses and the exercise of all rights guaranteed in proceedings before regular civilian courts. In 1866 the case was presented to the Supreme Court of the U.S.A, which ruled that the state of war notwithstanding, military courts could not try civilians in areas where the civilian courts remained open and operational.[176]

The question first raised in this case was whether it was at all possible to suspend the rights and liberties guaranteed by the constitution in a state of war or a state of emergency. The Supreme Court resolutely dismissed this possibility. "The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times and under all circumstances. No doctrine involving more pernicious consequences was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government." Thus, the Supreme Court concludes, the Congress could not confer powers to suspend the Constitution. And if the military authorities invoked the martial law as allowing for that, the Supreme Court warned: "Martial law… destroys every guarantee of the Constitution …*Civil liberty and this kind of martial law cannot endure together.* It is difficult to see how the *safety* for the country required martial law in Indiana… Martial rule can never exist where the courts are open and in the proper and unobstructed exercise of their jurisdiction… During the late Rebellion, it could have been enforced in Virginia, where the national authority was overturned and the courts driven out, it does not follow that it should obtain in Indiana, where

[176] *Documentary History of the United States*, Harold Earl Hammond ed., New York: Cambridge Publishers, 1964, p. 220

that authority was never disputed and justice was always administered"[177]

Thus, the Supreme Court of the United States ruled that the suspension of constitutional guarantees of human rights was inadmissible even in the state of war, and that this might only be done in areas of ongoing war wherein the courts of law had been closed. At that time, this was a consistent liberal view. Later on, especially during World War II, these standards were not only abated but also largely abandoned. In present times, the suspension of constitutional liberties and rights in exigencies of government is considered permissible, providing that the measures undertaken are proportionate to the danger that threatens and do not encroach upon specific, extremely important liberties and rights.

The best-known international document which establishes the inviolability of certain freedoms and rights in the exigencies of government is the International Covenant on Civil and Political Rights of 1966, ratified by the former Yugoslavia in 1971. Article 4 of this Covenant allows for the temporary suspension of certain freedoms if the life of the state is endangered by a public emergency, except for the freedoms and rights guaranteed by Articles 6, 7, 8 (paras 1 and 2), 11, 15, 16 and 18 of this Covenant. These are the right to life, including the limitation on the imposition of death penalty, the right to amnesty, pardon and commutation of death sentence (Art. 6), the prohibition of torture or cruel, inhuman or degrading treatment or punishment as well as of subjecting a person to medical or scientific experiment without his free consent (Art. 7). Furthermore, it is impossible to abolish the ban on slavery, slave trade or holding anyone in servitude (Art. 8, paras 1 and 2), or the so-called debt servitude – deprivation of liberty on the ground of inability to fulfil a contractual obligation (Art. 11). Particularly important is the prohibition to abolish the principle of due process in criminal law *(nullum crimen nulla poena sine lege),* as well as the prohibition of retroactive criminal legislation (Art 15, para 1). Finally, this Covenant stipulates that no one may be deprived of his legal subjectivity (Art. 16), and prohibits the derogation of the right to freedom of thought, conscience and religion (Art. 18).

In addition to these inviolable freedoms and rights which may not be abolished or restricted even in a public exigency, the International Covenant on Civil and Political Rights anticipates another important restriction – the principle that measures undertaken in an exigency of the government must be proportionate to the danger that threatens, i.e. "to the extent strictly required by the exigencies of the situation" (Art. 4, para 1). This means that certain measures, even if permissible in principle, must not be undertaken if they are, in terms of their severe-

[177] *Op. cit*., pp. 221-222

ness, clearly disproportionate to the magnitude of the danger threatening the state.

The European Convention of Human Rights also proclaims certain rights inviolable in the exigencies of government. But, since this Convention was adopted way back in 1950 – sixteen years before the International Covenant on Civil and Political Rights – its list of inviolable rights is somewhat shorter. According to Art. 15 of this Convention the rights and freedoms from Art. 2 may not be derogated in the state of war or another public emergency threatening the life of the state, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (para 1) and 7. These are the right to life, (Art. 2), inviolability of bodily integrity, including the prohibition of torture, or inhuman or degrading treatment or punishment, as well as the prohibition of slavery and derogation from strict legality in criminal law. However, the Convention omitted to explicitly prohibit retroactive criminal statutes, which may not be all that important since the principle of strict legality implies that the adoption of such legal acts is excluded. But, by contrast from the more recent International Covenant on Civil and Political Rights, this Convention does not interdict the deprivation of the legal subjectivity of any person, nor does it proclaim the right to freedom of thought, conscience and religion inviolable in public exigencies.

The American Convention, adopted on 22 November 1969, increased the string of inviolable freedoms and rights guaranteed by the International Covenant on Civil and Political Rights by five additional rights which must not be suspended in time of war, public danger, or other emergency that threatens the independence or security of a state party (Art. 27). These are the right to freedom of conscience and religion (Art. 12), the rights of the family (Art. 17), right to a name (Art. 18), rights of a child (Art. 19), right to nationality (Art. 20) and the right to participate in government (Art. 23).

The Federal Republic of Yugoslavia, being the legal successor of the SFRY, is bound only by the prohibitions and limitations prescribed by the International Covenant on Civil and Political Rights. The FRY Constitution of 27 April 1992 has, more or less, undertaken all of these obligations. This has been done by Article 99, point 11 which stipulates that enactments adopted during a state of war may not restrict the freedoms and rights guaranteed by Articles 20, 22, 25, 26, 27, 28, 29, 35 and 43. These are the right to equality before the law without any discrimination whatsoever (Art. 20), the inviolability of the physical integrity, privacy and personal rights as well as personal dignity and security of individual (Art. 22), prohibition of torture and degrading punishment of a detained person (Art. 25), right to equal legal protection of rights in a due process of law, including the right of appeal (Art. 26), the principle of strict legality in criminal

law, presumption of innocence and the right to rehabilitation and compensation for damages due to the deprivation of liberty or conviction for a criminal offence without valid grounds (Art. 27), prohibition of retrial for an offence *(re iudicata)* if the final judgment in the case has been passed (Article 28), right to defence and professional assistance of a defence counsel (Art. 29), freedom of belief, conscience, thought and public expression of opinion (Art. 35) and the freedom of religion, public or private profession of religion and performance of religious rites (Art 43).

If we compare this list of human rights considered inviolable in a state of war with the corresponding list in the International Covenant on Civil and Political Rights, we may easily conclude that the effective FRY Constitution, for the most part, complies with the obligations stemming from the Covenant. The Constitution only failed to make the right to life inviolable during the state of war. While the Covenant permits the derogation of other freedoms and rights in all public exigencies, thus also in the state of immediate threat of war and in a state of emergency, our Constitution allows for that only in the state of war. Still, despite this advantage, our Constitution has a major flaw since it does not prescribe that measures undertaken in the state of war must be *proportionate* to the danger threatening the state, thus "*to the extent* strictly required by the exigencies of the situation", as stipulated in Art. 4, para 1 of the International Covenant on Civil and Political Rights. This gives the Federal Government a possibility to suspend constitutional freedoms and rights even when the nature and the magnitude of the threat to the state do not so require.

Limitation of the Freedom of the Press and other Forms of Public Informing in the State of a Clear Threat of Armed Attack on the Country

In September 1998 the North-Atlantic Treaty Organization for the first time threatened to bomb our country unless the Federal Government accepted the OSCE mission in Kosovo and Metohija. That prompted first the National Assembly of the Republic of Serbia to adopt appropriate conclusions on 28 September ("Official Journal of the Republic of Serbia", no. 33/1998), and then also the Federal Assembly on October 5, 1998 ("Official Journal of the FRY", no. 50/1998). Invoking, nominally, Article 2 of the Serbian Government Act ("Official Journal of the Republic of Serbia", nos. 5/91 and 45/93), and on the basis of the conclusions of the federal and republic assemblies, the Government of Serbia on 8 October 1998 passed a "Decree on Special Measures in Conditions of Threats of NATO Attacks on Our Country ("Official Journal of the RS", no. 35/1998). Since the adoption of this Decree was not preceded by the proclama-

tion of the state of immediate threat of war, it was not passed by the President of the Republic of Serbia, but by the Government which alone is authorized, under Article 90, point 2 of the Serbian Constitution to enact decrees, decisions and other acts necessary for the *enforcement* of laws.

Bearing in mind that the Decree, among other things, regulates the work and responsibility of the media "in conditions of threats of NATO attacks on our country," the only valid ground for the Decree could be found in the enforcement of the Public Information Law of that time (Official Journal of the RS", no.19/91). But the Decree, instead, cancelled and amended the above-mentioned Law in its most important part. Namely, this law (Article 1) stipulated that public information was free and that the public information media were not subject to censorship (Article 4).

In place of the freedom of public information, Article 7 of the Decree introduced the duty of the media "to defend the territorial integrity, sovereignty and independence of the Republic of Serbia and the Federal Republic of Yugoslavia", a duty which the Federal Constitution (Art. 133, para 1) assigns the Yugoslav Army rather than the free press and other public media. This honourable duty, according to Article 8, para 1 of this Decree, implies the ban on the "broadcasting of parts of programs, or programs and texts of foreign information media which run contrary to the interests of our country, disseminating fear, panic and defeatism or those with adverse effects on the citizens' readiness to safeguard the integrity of the Republic of Serbia and the Federal Republic of Yugoslavia". Para 2 of this Article goes a step further prohibiting the media to broadcast their own programs and texts "spreading defeatism and acting contrary to the conclusions of the Federal Assembly and the National Assembly of the Republic of Serbia which expressed all-national unity on the vital national and state interests," and obliged them "to oppose such actions of other media with their own program contents".

Thus, this Decree introduces into our positive law new protective objects and undefined, practically unbordered, concepts such as the "interest of our country", "fear, panic and defeatism", "adverse effects on the citizens' readiness", "all-national unity on the vital national and state interests". If concepts of this kind were used in a political speech or a document they would only bear witness to the speaker's or author's empty talk. But, since they were incorporated into a legal regulation the violation of which is subject to sanctions, they offered the enforcing body practically unlimited possibilities to exercise self-will and arbitrariness.

The largest doubts are provoked by Articles 9 and 10 of this Decree, authorizing the appropriate body of the state administration to temporarily ban the operation or impound the assets of those media

which act contrary to the provisions of Articles 7 and 8 of the Decree. In other words, whenever the competent administrative body judges that a public medium has acted contrary to the "interests of the country", "disseminated defeatism" or "adversely affected the disposition of the citizens", or else acted contrary to the conclusions of representative bodies which constituted *political*, legally *non-binding* acts, it could not only prohibit the work of the medium but also impound all of its working assets, which boils down to confiscation.

This "semi-war time" decree is clearly unconstitutional both in procedural and substantive terms. The Constitutions of Serbia and the FRY refer only to the state of war, state of imminent threat of war and state of emergency, and definitely not to any "conditions of threats with armed attacks against our country". If the Federal Assembly or the Federal Government proclaimed the state of war, relevant decrees limiting certain constitutional liberties and rights, including the freedom of the press and other forms of public information, may be enacted by the federal government, and not by the one of the republic. A republic authority may only introduce a state of emergency and pass acts appropriate to this state, but again, the body authorized to do that is the President of the Republic, not the Republic's government.

The above-mentioned Decree of the Serbian Government limits the freedom of the press and other forms of public information, guaranteed by Articles 36 and 38 of the Federal Constitution, which may only be done by a Federal Government's decree in a state of war. To make things worse, the limitation or even abolishment of the freedom of public media in a specific case (prohibition of work and impounding of working assets) is, under Articles 9 and 10 of this Decree, carried out by the state administration body, although according to Article 38, para 2 of the Federal Constitution this is the exclusive authority of the competent court.

Finally, this Decree is unlawful, since instead of enforcing the Information Law then in force, it derogated from this statute in its most important part which guarantees the freedom of the press and other forms of information and secures the *judicial* protection of this freedom.

Limitation of the Freedom of the Press and other Forms of Public Informing in the State of Immediate Threat of War

On 23 March 1999 the Federal Government passed a Decision proclaiming the state of immediate threat of war. Invoking this Decision and Article 90 of the Serbian Constitution, the Government of Serbia, too, passed a decision on measures suited to this state ("Official Journal of the RS, no. 12/99) on 24 March 1999. This Decision of

the Serbian Government is at variance with the Constitution both in procedural and substantive terms. As already mentioned, under Article 99, point 11 in a state of immediate threat of war, the Federal, rather than the republic, government passes enactments on issues falling within the competence of the Federal Assembly. The only exception are the enactments addressing a state of emergency introduced in a part of the state territory which may be enacted by the President of the Republic of Serbia, but definitely not by the Republic Government.

Article 90 of the Serbian Constitution, which the Serbian Government invoked, offers disputable grounds to pass this Decision. Under point 2 of this Article, the Government "enacts decrees, decisions and other acts necessary for the enforcement of laws", specifically, *republic* laws, bearing in mind that point 1 requires from the Government to "execute laws, other regulations and general enactments of the National Assembly". Therefore, the Serbian Government is not competent to adopt enactments for the enforcement of Federal Government decrees. Section VI of the Decision prescribes that "the bodies and organizations operating in the sphere of information shall channel their activity… towards the achievement of as large as possible propaganda effects, efficient opposition to all forms of hostile activity and especially towards preventive action to suppress misinformation". If the Government establishes the objectives ("propaganda effects" and "preventive action to suppress misinformation") the public media should be guided by, these media are unfree, mere minions to those in power. That amounts to a substantial limitation of the freedom of the press and other forms of public informing which may be imposed exclusively by the Federal Government and only in the interest of the public.

Limitation and Abolishment of Specific Constitutional Freedoms and Rights in a State of War

Immediately following the attack of the North-Atlantic Treaty Organization on our country, the President of the Republic of Serbia on 24 March 1999, enacted a Decree on the Organization and Work of Republic Bodies During the State of War (Official Journal of the RS", no. 13/1999) on the basis of Article 83, point 7 of the Serbian Constitution. Although its validity was terminated by another Decree enacted the very next day, ("Official Journal of the RS", no. 14/1999), it should still be examined to demonstrate the lengths the former power holders were ready to go. This disputable Decree, among other things, restricted a right guaranteed by the Federal Constitution, which only the Federal Government could have done. Specifically, Article 29, para 1 of this Decree stipulates that "an appeal against the original

verdict in misdemeanour proceedings may be lodged within three days from the date of oral communication or service of the verdict". Although the time limits in misdemeanour proceedings are established by the republic law, the President of Serbia could not shorten the deadline for appeal so radically, since he has thereby substantially limited, and even rendered senseless, the right of appeal guaranteed by Article 26, para 2 of the Federal Constitution. That right is, as already demonstrated, *inviolable* even in a state of war and therefore cannot be restricted in any way whatsoever.

On 31 March 1999, the President of the Republic of Serbia, invoking Article 83, point 7 of the Serbian Constitution, enacted a Decree Regulating Internal Affairs During the State of War ("Official Journal of the RS, no. 17/1999). The Decree, in a number of ways, limits the freedom of movement which, as already explained, only the Federal Government could do.

This Decree allows for the limitation and deprivation of liberty without valid legal grounds. This was done in Article 2, which reads:

> "If a person who disrupts the public order and peace, speculates in the market during a state of war, withdraws goods from trade, builds stocks by purchasing large quantities for the purpose of illegal trade, increases the prices without authorization, makes the purchase of basic foodstuffs conditional on the purchase of other goods or payment in foreign exchange or in another way disrupts the prescribed channels for the supply of citizens with basic foodstuffs and goods under a special regime and in other cases of endangering the safety of citizens and the defence and security of the Republic, the Ministry may restrict the person's movement (detain the person) if so required to restore public order and peace and prevent the danger for the defence and security.
>
> A person may be detained longer than 24 hours if irremovable impediments preclude the possibility of misdemeanour or criminal prosecution.
>
> Decisions to detain persons referred to in para 1 of this Article are carried out by "institutions for the execution of institutionalised sanctions".

Despite references to offences of sorts (disruption of public order and peace, speculation in the market, stockpiling for illegal trade, etc.) this is clearly a case of granting general authority to the minister of the interior and his men to arrest and, without any time limits, keep the alleged offenders in detention as they see fit. Right after listing six highly vague offences, comes the so-called contingent clause: "or in another way disrupts the prescribed channels for the supply of citizens with basic foodstuffs and goods under a special regime" This means that an offence may be committed in *any of the afore-mentioned undefined ways* if the minister and his staff qualify that *act* as an offence. As if that was not sufficiently vague "other cases of endangering the security of citizens and the defence and security of the Republic" had to be added. The description of the body of punishable offences thus

become a blanket discretionary norm which enables the above-mentioned minister and his men to do as they please and subsume under it any act they may consider an offence, which the drafter of this Decree could not have had in mind.

This provision violates the principle of legality in penal (criminal and misdemeanour) law, guaranteed under Article 27, para 1 of the Federal Constitution, which reads:

"No one may be punished for an act which did not constitute a penal offence under law or by-law at the time it was committed, nor may punishment be inflicted which was not envisaged for the offence in question." According to Article 2, para 1 of this Decree, an alleged offender may be arrested and imprisoned not only for the offence referred to in this provision, but also for any other *similar* act which the minister and his men may read into this provision.

Particularly worrying is the *time-wise unlimited nature* of this kind of deprivation of liberty, since para 2 of this Article stipulates that a person may be detained longer than 24 hours if irremovable impediments preclude the possibility of misdemeanour or criminal prosecution, without specifying the time limit. Bearing in mind that para 3 continues that this measure of detention is carried out by institutions for the enforcement of sanctions, it turns out that a person is serving a prison sentence even before the trial is held and the sentence proclaimed.

The second far-reaching violation of the Federal Constitution is contained in Article 3 of this Decree which reads:

"If the reasons of the Republic's defence so require, the Minister may determine a protective measure whereby the person who represents the danger for the security of the Republic is confined to a specific place.

The measure referred to in this Article lasts as long as the reasons for the pronouncing thereof, but not longer than 60 days. After that, the person concerned is handed over to the judicial bodies.

The Ministry provides the conditions for the execution of the measure referred to in para 1 of this Article."

This punishment was, at a time, applied in Russia and implied banishment to Siberia (a specific place in it which the person concerned was prohibited to leave), while it is here referred to it as confinement and could be reduced to house arrest. It is, in effect, *preventive* deprivation of liberty which is not preceded by the commitment of a prohibited act or any court or misdemeanour proceedings. It is, thus, the minister's *assessment* that a certain person, due to his beliefs or previous attitudes and acts, *as such* represents a danger for the security of the Republic, although he has not done anything that represents an offence under the laws and regulations in force. Furthermore, the minister, in this matter, appears in a number of different roles: he picks

the dangerous and suspicious persons, arrests them and "tries" them, decides on their confinement and ensures the execution of this punitive measure, all by himself. The confinement so introduced accounts for a breech of Article 23, para 2 of the Federal Constitution which stipulates that "no one may be deprived of his liberty except in cases and according to the procedure laid down by federal law".

The third violation of the Federal Constitution is found in Article 4 of this Decree which reads:

"Authorized officials of the Ministry may, for security reasons and without a search warrant search a person during arrest, detention or deprivation of liberty.

Authorized officials may also search persons, their belongings, vehicles and premises without a search warrant, in order to check whether these persons are in an unauthorized possession of arms, ammunition, explosives and other points suitable for attack or sabotage, goods under a special regime during the state of war, or propaganda material of hostile contents".

This is, again, the case of granting the police *general* authority to search people, their belongings, premises and vehicles as they see fit, without appropriate warrants. At that, this authority does not concern the search of people and things in order to uncover hidden arms and explosives, which may be understandable in a state of war, but of the allegedly hidden goods and propaganda material, which proves that the protected object of the provision is not the nation or the state, but rather the regime.

In its part related to the search of premises and persons and things therein, this provision runs counter to Article 31 of the Federal Constitution which guarantees the inviolability of home and any search against the will of the tenant is permissible only on the basis of a court warrant and in the presence of two witnesses. True, the guaranteed freedom and inviolability of home could be suspended in a state of war, but only by the Federal Government.

The fourth grave violation of the Federal Constitution is committed by Article 5 of this Decree which reads:

"When the interests of security and defence of the country so require, authorized officials may, on the basis of a warrant of their immediate superior, open the letters and other mail due to a reasonable doubt that a criminal offence is involved."

This provision is contrary to Article 32 of the Federal Constitution which guarantees the privacy of mail and other means of communication and allows departures from the inviolability of this privacy only on the basis of a court decision in cases prescribed by federal law. The inviolability of privacy of mail and other means of communication may be suspended in a state of war, but, once again, this may only be done by the Federal Government.

Finally, this Decree introduces a thus far unknown punishment of deprivation of liberty due to serious or minor breaches of work obligations and duties. This was done by restricting a person's movement up to 60 days for serious violations of duties (Art. 9) and up to 30 days for minor violations of the kind (Art. 10). Bearing in mind that this punishment is carried out in the facilities of the Ministry of the Interior, this, to all appearances, means the prohibition to leave the barracks or another facility during working hours and confinement to the guardhouse in the barracks compound for the remaining part of the day. This punishment is, otherwise, applied in the army, especially during a war, but it could have been introduced for police members and other officials of the Ministry of the Interior only by the Federal Government.

Another restriction of constitutional liberties and rights was imposed by the Decree on the Rallying of Citizens During the State of War, enacted by the President of the Republic of Serbia on 1 April 1999. This was done by Article 2, which reads:

"A public rally may be convened, i.e. addressed, only with the approval of the competent body, whether held indoors or in the open, and regardless of its nature."

This provision infringes Article 40, para 1 of the Federal Constitution which guarantees the freedom of assembly and other peaceful gathering, without the requirement of a permit, subject to the prior notification of the authorities, while the disputable provision of the Decree requires previous *approval* even to convene a rally. This constitutional freedom could be suspended during a state of war, but only by the Federal Government.

At last, the Federal Government decided to make a move itself and on 4 April 1999, enacted a Decree concerning the enforcement of the Code of Criminal Procedure During the State of War ("Official Journal of the FRY", no. 21/1999). The Decree substantially limits and even suspends certain constitutional freedoms and rights and extremely important legal guarantees of human safety and freedom, contained in the Code of Criminal Procedure. The Decree thus introduces the possibility of searching the home and other premises and persons without a written court warrant and without the consent of the person concerned (Art. 7), based on the reasonable doubt that a criminal offence punishable by imprisonment of at least five years, has been committed. The Decree, furthermore, allows investigation not only by an investigative judge but also the state prosecutor, and permits the law enforcement officers to pursue certain investigative activities (Art. 6), thus making the state prosecutor simultaneously the judge and party in criminal proceedings. In addition, the Decree allows that detention may be ordered not only by the investigative judge but also by the state prosecutor and a law enforcement body (Art. 8), which

also results in a confusion with respect to the role of the judge and parties in a dispute.

While this kind of limitations of constitutional and legal guarantees of human security and freedom may be understandable, although not always justifiable, in a state of war, the above-mentioned Decree of the Federal Government contains provisions which are practically incomprehensible. This, in the first place, applies to the nonsensical shortening of deadlines. Thus the main hearing may start if the indictment was served at least forty-eight hours before (Art. 10), which renders the preparation of defence and finding the counsel impossible, since the indictment may be raised without an investigation wherein the participation of the defence counsel is necessary. Then, the deadline for lodging the appeal is only three days (Article 15), which makes the drawing up of a well-conceived and articulated appeal substantially more difficult. What is the most wicked is that the enactor of this Decree apparently did not reckon with the appeal of those sentenced by the trial court, since Article 14 prescribes that "a certified copy of the verdict within the jurisdiction of an individual judge", who pronounces prison sentences of up to five years, "is served only if explicitly requested by the party concerned". The convicted are thereby deterred from appealing, since their defence council could only do that on the basis of the certified copy of the verdict. Thus it could happen that a person serves five years in prison without ever seeing the verdict on the basis of which he was incarcerated.

The largest suspicions are arisen by Article 4 of this Decree which stipulates that the provisions of point 6, Article 39 of the Code of Criminal Procedure shall not apply. The suspended provision requires the exception of the judge or juror "in circumstances arising doubt as to his impartiality". *Impartiality* is the most important characteristic of the judge ahead even of his professional knowledge. Without it, there is no judiciary as the third factor in a dispute between two parties – the plaintiff and the accused. Therefore, the one who cancelled the possibility of exempting a judge whose impartiality is doubted has thereby made it clear that he does not really need a proper judiciary in a state of war.

Breech of International Obligations with the War Decree

We have already demonstrated that all decrees enacted in public exigencies were in serious violation of the FRY Constitution and the rights and freedoms guaranteed by it. Fewer references are made to the fact that they simultaneously breech numerous obligations under the international law this country has undertaken by ratifying the International Covenant on Civil and Political Rights.

The freedom of the press and other forms of public informing, which was seriously abrogated if not completely abolished by the Decree on Special Measures in Conditions of Threats of NATO Attacks On Our Country of 8 October 1998 and the Decision of the Serbian Government of 23 March 1999, does not enjoy special protection of the International Covenant on Civil and Political Rights, which only specifies the freedom of thought as inviolable in all exigencies of government. But, the above mentioned enactments infringe the fundamental principle of this Covenant, requiring that the undertaken measures be proportionate to the danger that threatens, i.e. "to the extent strictly required by the exigencies of the situation" (Article 4, para 1).

Much more serious violations of international-legal obligations were made by the Decree enacted by the President of the Republic of Serbia on 31 March 1999. It limited the freedom of movement and, on the basis of a *general* authorization of the minister of the interior, introduced the possibility of the deprivation of liberty as well as of house arrest and confinement to a specific place. This is a grave breech of Article 15, para 1 of the International Covenant on Civil and Political rights which prohibits the abolishment of strict legality in criminal and even misdemeanour law. This, in particular, refers to the introduction of analogy into the penal law and the general authorization for the deprivation of liberty and the so-called confinement. Particularly inadmissible was the abolishment of important legal safeguards of human safety and freedom, presumed by the requirement of due process in criminal law.

A similar thing may be said of the Federal Government Decree on the Enforcement of the Code of Criminal Procedure During the State of War. It also violates the principle of strict legality in criminal law by suspending important legal safeguards of human safety and freedom.

Finally, all measures undertaken in the state of immediate threat of war and in the state of war shared an inadmissible flaw in that they were not proportionate to the danger which really threatened, since there were no war operations on land, but only bombing from the air. And this was contrary to Article 4, para 1 of the International Covenant on Civil and Political Rights which requires such proportionality

Naturally, it is not our intention to particularly emphasize all breeches of international obligations undertaken 28 years ago, committed by the administrators of this country during the recent war when they shamelessly trampled on the Constitution they themselves had adopted, thus showing once again that their self will always remained above the law.

(translated by: Ljiljana Nikolić)

III

HUMAN RIGHTS IN THE POLICE

Normative and Real Aspects of Human Rights Protection in the Police

Budimir Babović

Members of the police force in Yugoslavia enjoy a special status compared with the staff of other administrative bodies. They have specific rights and authorities which distinguish them from other civil servants. The police tend to emphasize precisely those specific features so as to avoid the restrictions other employees of the public administration are subjected to. These specific characteristics do not derive from the Serbian State Administration Act (1992), but rather from other statutes and by-laws.[178]

Members of the police force form a component part of the state administration and that is clearly stated in the relevant legislation (governing the establishment of ministries and management of internal affairs). A substantial part of the police work is of purely administrative nature: keeping of citizens' records (personal numbers of citizens), issuing of identity cards, passports, drivers and traffic licenses, residence records, control of foreigners, issuing of licenses to keep or carry firearms, etc. In order to perform these jobs, the police are authorized to issue administrative acts, take administrative measures and perform administrative control.

But, the duties of the police go beyond those of administrative nature to include state security, crime suppression and maintenance of public order and peace, as well as the protection of certain personalities and facilities. It is precisely these duties that account for the predominant part of the police mission as a whole.

That is why police officers form a special category in the state administration, and there are a few constitutional provisions distinguishing law enforcement officers from other employees of the state.[179]

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[178] For a more detailed comparative analysis of this issue, covering a number of countries including Yugoslavia, see : Budimir Babović, Ljudska prava i policija u Jugoslaviji (Human rights and the police in Yugoslavia), Beograd, "Prometej", 1999.

[179] Thus the FRY Constitution (1992) and the Constitution of Montenegro (1992) deny the right of profesionall policemen to join the membership of political parties.

For instance, the terms of employment in the Serbian Ministry of the Interior are primarily governed by police regulations, while state administration and labour laws only apply as subsidiary and residual.

Although the members of law enforcement bodies have a number of specific rights, they are denied some other rights acknowledged to other citizens. Not only in Yugoslavia, but also in other countries, the process of winning the human rights for the police has been a time-consuming process, which has not been finalized yet. In England and Wales the police were recognized voting rights in 1887, but they still do not have the right to form trade unions (notwithstanding the existence of various associations of the police with substantial rights and influence). In France, the right of the police to form trade unions was not recognized before 1945. Now, they have two types of trade union organizations: the independent (National Federation of Policemen's Trade Unions, Trade Unions of Police Commissioners, Trade Unions of Inspectors), also majority unions, and branches of large trade union federations (CGT, CFDT, FO, CGC). In Spain, four police trade union organizations were legalized in 1984 and they now have 12 representatives in the National Council for the Police. Quite a few countries have not yet recognized their police the right to form trade unions. The example of Canada is a good illustration of the disparate solutions in this respect: the federal police do not have trade unions, as opposed to law enforcement officers of certain provinces (e.g. British Columbia) where trade union organizations do exist and are moreover important factors in police forces.

Due to the specific position of police officers, the obligation of the competent minister to protect the members of the police from threats, insults, violence and similar assaults they may be exposed to is, in some cases, especially underlined (Ethic Code of the National Police of France[180]).

The situation with respect to the fundamental human rights of the police in Yugoslavia is as follows:

1) The abandoning of the one-party system has, in a way, broached the principle of the depoliticization of the police (as well as the army). This principle has been articulated in the Federal and Montenegrin constitutions, but not in the one of Serbia. The Federal Constitution (Art. 42, para 4) denies "the professional members of the FRY police" the right to join the membership of political parties. The Montenegrin constitution regulates this issue in a similar way (Art. 41).

Naturally, the purpose of the above-mentioned provisions of the Yugoslav and Montenegrin constitutions is not to prohibit the mem-

[180] See : Sophie Porra, Claude Paoli, Code de deontologie policiere, Paris, L.G.D.J., 1991.

bers of the police forces (or, e.g. the president of the Federal Court to whom the same provision applies) to have a membership card of a party or pay membership fees. Rather, these provisions create the constitutional-legal conditions and frameworks for the political neutrality and impartiality of those who are concerned with law enforcement and must refrain from public political activity and engagement in favour of any political party. This impartiality is also requested by the UN Code of Conduct of Law Enforcement Officials (1979)[181], and two centuries before that also by the Declaration of the Rights of Man and of the Citizen, proclaiming that public force which should guarantee the rights of man and the citizen must be in the service of all, and not only those in whose trust it has been placed.

Members of the Serbian Ministry of the Interior are not prohibited from joining the membership of political parties by the Republic Constitution, the Internal Affairs Act or another legal document.

The Serbian Constitution and the Internal Affairs Act[182] neither refer to the principle of depoliticization, although it has been established by the State Administration Act of Serbia [183] (1992). Namely, Article 6, para 1 of this Act stipulates:

"Employees of state bodies and *appointed officials* (author's italics) are obliged to perform their respective duties conscientiously and impartially and, in doing that, may not be guided by their political convictions, *nor can they express or advocate such convictions"* (author's italics).

Therefore, police officers in Serbia are not prevented from joining the membership of political parties, but are prohibited from expressing and advocating their political views in the performance of their duties. The prohibition also applies to *appointed* officials. Furthermore, the law also prohibits "the establishment of political parties and other political organizations or their branches in state administration bodies" (Art. 6, para 2 of the Act).

We must emphasize that Art. 49 of the same Act anticipates that the competent "minister may not perform a public, professional or other duty which is incompatible with his ministerial office".

Just how strongly the practice of the Socialist Party, the Yugoslav Left and the Serbian Radicals diverged from this provision need not be emphasized. They liberally used the offices and privileges of min-

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[181] Zbirka međunarodnih dokumenata o ljudskim pravima (Collection of International Human Rights Documents), II, Beograd, Beogradski centar za ljudska prava, 1996.

[182] *Službeni glasnik Republike Srbije (Official Journal of the Republic of Serbia),* 44/91.

[183] *Službeni glasnik Republike Srbije(Official Journal of the Republic of Serbia),* 20/92.

isters, their deputies and assistants to promote the views of the parties the holders of these offices belonged to.

The question if the members of the police should be prohibited to join the membership of political parties and denied the human rights otherwise acknowledged to other citizens, was discussed at the International Conference on Monitoring the Police, held in October 1997 in Belgrade. A number of participants, especially from foreign countries, rightly objected a proposal along these lines articulated in the code of police ethics presented to them on that occasion.

They pointed out that a proposal of this kind amounted to an attack on the civil rights "of those who chose to be policemen, rather than politicians or plumbers". The trade unions of the Hungarian police went to the European Court for Human Rights with the provision of the Hungarian Constitution which prohibits police officers to join political parties and partake of political activities.

We should note that the above-mentioned proposal incorporated into the ethic code resulted from the conclusion that the crucial problem related to the role of the police, especially in Serbia, lies in the overcoming of a situation wherein the ruling parties retain exclusive control over the police. Although the respect for constitution and law is not considered the primary characteristic of the Serbian regime, the constitutional prohibition of the political engagement of the police could help challenge this domination. The demand for the observance of the proclaimed political neutrality of the police should contribute to the depoliticization of the police and democratization of the regime.

The connotations of political rights of the police in Serbia and Yugoslavia (and probably other transition countries) are not identical with those assigned to this issue in countries with developed democracies. Until the democratic rules become generally accepted and strictly observed, it seems that democracy would be better served if the ruling parties were prevented from placing their posters and pictures of their leaders in police premises, than if this right were extended to include other parties.

Finally, the political rights of law enforcement officers should be viewed against the problem of depoliticization, i.e. politicization of the police.

The prohibition of joining the membership of political parties may, probably, have substantial influence on the process of depoliticization of the police. If a person is a member of a certain political party one may realistically expect that this fact will, to a degree and in a certain manner, be reflected in his use of discretionary rights in the performance of his duties.

2) The right to form trade unions has been denied only to the federal police (Art. 42, para 3 of the FRY Constitution). Constitutions of

Serbia and Montenegro as well as republic legislations governing internal affairs neither contain provisions whereby this right is withheld.

In the context of relations such as exist in Yugoslavia, this situation appears illogical: members of the Montenegrin and Serbian police forces enjoy the right to form trade unions in their respective republics, but lose it when assigned to the federal police.

It would certainly be necessary to define the right to form trade unions. Members of the police do have a specific status and in order to defend it, they should be given the possibility to articulate their specifics outside the service, within a trade union organization.

The existence of trade unions and their active engagement (which must go beyond the assistance in the case of death in the family or facilities for the supply of foodstuffs, etc.) may, in a sense, also represent a means of control. Within a trade union organization the members of the police shall protect their rights and thereby contribute to the respect for human rights within the frameworks of the force.

The right to form trade unions thus understood and exercised compensates for the denied right to join the membership of political parties.

3) As for the policemen's right to strike, the Serbian solution is more liberal than the relevant federal and Montenegrin provisions. Namely, the Constitution and the Internal Affairs Act of Serbia do not limit the right to strike of the police. On the other hand, the constitutions of the FRY (Art. 57) and Montenegro (Art. 54) deny the right to strike to employees in state bodies and professional members of the police.

4) The policemen's freedom of expression is substantially limited. They may not state their views on official issues without an approval of the competent superior officer. They, as a rule, may not attend a meeting or participate in its work, unless they have a permission to do so. In Serbia, for instance, a professor at the Police Academy is not permitted to give an interview to a journalist about a book he has written, which has only been published by the Police Academy and used as a textbook.

5) Of particular importance in discussing the civil and professional rights of law enforcement officers is the issue of discipline in carrying out one's orders.

In police forces orders must be obeyed, but the question is if all orders have to be carried out.

Not all. Moreover, some must be disobeyed.

Internal affairs acts (Montenegrin Internal Affairs Act, Art. 37 and Serbian, Art, 33) prescribe that members of the Ministry of the Interior are obliged to "carry out all orders of the minister or another superior, given in relation to police work, except for those ordering them to commit such acts which constitute criminal offences". This, in

effect, establishes the right of police officers not to carry out orders which amount to criminal offences.

Both Acts (Serbian, Art. 50; Montenegrin, Art 57) define fifteen grave violations of duties which are subject to disciplinary measures ranging from fines to discharge from service. These violations as established by the law apply to the employees of state bodies and include specific violations of work obligations and duties in the police, mostly in relation to discipline. The following violations may be considered breaches of law the consequences of which go beyond the Ministry of the Interior:

- issuing or carrying out of orders which unlawfully endanger the security of the people and property;
- unlawful acquisition of personal or material gains for oneself or another person, in relation to one's work;
- engagement in work incompatible with official duties;
- commitment of any act which constitutes a criminal offence in the performance of one's work or in relation to it;
- issuing of orders the execution of which constitutes a criminal offence.

On the basis of the above-mentioned, the responsibility for issuing an unlawful order is born by the person who has issued it, whereas the responsibility for carrying out that order is born by whoever has executed such an order.

In brief, what is punishable in such cases is obedience whereas a refusal to obey is both legal and legitimate.

The Declaration on the Police, adopted by the Council of Europe in 1979, demands from a policeman to oppose any unlawful act and any pressure he may be exposed to in order to violate the law. A policeman punished for manifesting his opposition would have the possibility to apply to the highest European bodies. Resolution No. 690 to adopt the Declaration, stipulates that the community should offer physical and moral support to the policeman who adhered to ethic principles. The Declaration moreover obliges policemen to disregard unlawful orders (Art. 3), especially those involving torture and other inhuman and degrading treatment as well as summary executions (Art. 4).

The UN have taken the matter still further with the adoption of the Basic Principles on the Use of Force and Firearms.[184] The Principles establish that policemen who refuse to carry out an unlawful order are entitled to immunity with respect to disciplinary and criminal sanction (Principle 25).

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[184] Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 1990, U.N. Doc. A/Conf. 144/28.

The above-mentioned Code of the UN relating to the conduct of law enforcement officers, stipulates that superior orders or exceptional circumstances and the danger for national security may not justify torture or other cruel, inhuman or degrading treatment (Art. 5). Law enforcement officers shall "to the best of their abilities, prevent and rigorously oppose any violations" of the law and the Code (Art. 8). The official commentary of this paragraph underlines that: "It is understood that law enforcement officials shall not suffer administrative or other penalties because they have reported that a violation of this Code has occurred or is about to occur. "

The Convention against Torture[185] (Art. 2) emphasizes that "an order from a superior officer or a public authority may not be invoked as the justification of torture". The same Article furthermore excludes the possibility of invoking any "exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency" to justify torture.

These provisions allow the subordinated officer to draw appropriate conclusions relevant for his obeying or disobeying of an unlawful order.

The work and the verdicts of the International Tribunal in The Hague will presumably reinforce this approach and enhance the awareness of the police that one may decreasingly reckon with the crimes remaining unpunished and the possibility to conceal behind superior authority.

Greater knowledge of police officers about the work and decisions taken by the bodies for the protection of human rights established by the UN or at the European level will certainly contribute to this end. Highly instructive in this respect is the Pinochet case, as are also the trials to members of secret and other police formations in the formerly socialist countries.

The following two examples may add to the understanding of the problem:

The Code of the National Police of France points out that the superior body is responsible for the orders it gives and for their implementation and consequences, as well as for the acts of subordinate officials performed within their regular duties and in line with the orders they have been issued. A policeman is obliged loyally to carry out the orders of his superior officers and is responsible for the implementation thereof as well as for the consequences of the failure to do so. A subordinate official shall observe the instructions of his superiors, ex-

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[185] Konvencija protiv torture i drugih svirepih, nehumanih ili ponižavajućih kazni ili postupaka *(Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment),* in *Zbirka međunarodnih dokumenata o ljudskim pravima*, II Beograd, Beogradski centar za ljudska prava, 1996.

cept when an order is manifestly unlawful and may seriously endanger the public interest. If the subordinate official judges that he has been issued such an order, he is obliged to bring the fact to the attention of the issuing body. In the event that the order remains in force and the subordinate officer persists in challenging it despite the explanations he has been given, he should report that to a superior body he may appeal to. His opposition must be noted. Any refusal to carry out an order implies the responsibility of the subordinate official unless the above-mentioned conditions are met.

The Royal Canadian Mounted Police Regulations prescribe that "a member shall obey every lawful order, oral or written, of any member who is superior in rank or who has authority over that member (Art. 40). He shall also "report promptly, in accordance with procedures approved by the Commissioner, any contravention of the Code of Conduct by any other member" (Art. 46) and shall see to it that the unlawful conduct of members is not concealed or allowed to repeat (Art. 47).

Yugoslav regulations, too, sanction not only the carrying out of unlawful orders, but also the concealing thereof.

As already pointed out, the last of the fifteen serious violations of work obligations and duties listed by the Serbian and Montenegrin internal affairs acts (Articles 50 and 57 respectively), is the concealing of one of the fourteen preceding offences committed by one's superior officer. This means that a law enforcement officer would be seriously violating his work obligations and duties if he concealed the fact that his superior officer had committed one of the above-mentioned offences.

The Yugoslav Criminal Code (Art. 199) anticipates a prison sentence of three months to three years for an official employed in federal bodies and organizations "who fails to report a criminal offence which has come to his knowledge in the performance of his duties, if the offence concerned is punishable by five-year imprisonment or a stricter sentence and if it is prosecuted ex officio". The relevant republic criminal codes of Serbia and Montenegro contain identical provision (Art. 203 and 179 respectively).

Article 8 of the above-mentioned UN Code reads: "Law enforcement officials who have reason to believe that a violation of the present Code has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial power."

The issues of discipline in the Serbian Ministry of the Interior have been regulated by the Internal Affairs Act (1991) and the Decree on Disciplinary Responsibility in the Serbian Ministry of the Interior

(1992)[186]. These regulations establish the frameworks and procedures for the protection of the policemen's rights.

The Decree on Disciplinary Responsibility deals with this matter in detail, establishes the system of internal control and elaborates the course of the procedure, appeals and extraordinary legal remedies. It also gives the precedence of disciplinary bodies starting from the disciplinary investigative officer to the disciplinary prosecutor and Disciplinary Court (established at the ministry level) ending with the Higher Disciplinary Court (at the Republic level).

The procedure in the event of minor offences of duties is pursued by the immediate superior and the decision is taken by the "competent superior officer", while the appeals are decided upon by the Disciplinary Court.

Serious offences require a preliminary procedure, followed by proceedings before the Disciplinary and Higher Disciplinary Courts.

The preliminary procedure for serious offences is carried out by the immediate superior officer. In the case of offences which simultaneously constitute criminal acts, the preliminary procedure is carried out by the disciplinary investigating officer who questions the workers, witnesses and experts, collects the evidence and looks into all relevant circumstances. If he harbours a reasonable doubt that a serious offence has been committed, the competent superior officer shall approach the disciplinary prosecutor with a request for institution of disciplinary proceedings.

Decisions on serious offences are, in the first instance, taken by the Disciplinary Court. The president of the Court, presidents of disciplinary chambers, their deputies and members, as well as disciplinary investigative officers, prosecutors and their deputies are all appointed by the minister for a term of four years.

Decisions in the second instance are taken by the Higher Disciplinary Court. Its president, presidents and members of court chambers are appointed by the government for a term of four years, and one third of presidents of chambers, their deputies and members may be external to the Ministry of the Interior.

Both Courts, the Disciplinary and Higher Court, try in chambers consisting of a president and two members and the decisions are taken by the majority vote. The president and members of disciplinary court chambers are appointed by the president of the Disciplinary Court. The Decree does not specify who has the competence to appoint the president and members of the Higher Disciplinary Court chambers.

As a rule, "hearings before the disciplinary courts are open to public" (Art. 54 of the Serbian Internal Affairs Act). But they may

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[186] *Službeni glasnik Republike Srbije(Official Journal of the Republic of Serbia)*, 71/92.

also be held in closed court if the data and documents disclosed at such hearings are considered business, state or military secrets or if the "ethical reasons so require".

At least in principle, the work and composition of these bodies are open to the public. It would therefore be useful if the information on their proceedings and decisions were publicized more than it has been the case so far. The demand for the transparency of the work of disciplinary bodies to the extent possible is based on two assumptions. First, this would provide full assurance that the rights of the policemen are protected in line with the law and other regulations. Second, we may presume that this would be in the interest of the police since it would, at least in certain cases, show us how the police enforces the law in its own ranks.

A member of the Serbian Ministry of Interior who is subjected to a disciplinary procedure may be defended by a person external to the Ministry except in cases when the hearing is closed to the public. The institute of the defence counsel has not been specifically defined in any public document.

The Decree on Disciplinary Responsibility leaves a very important issue outstanding – namely who has the right to demand the institution of disciplinary proceedings in the case of minor offences of work obligations and duties of law enforcement officers?

The situation with grave violations is not entirely clear either. In such cases the immediate superior carries out the preliminary procedure and then submits charges to the competent commanding officer who formulates the demand for the institution of proceeding. However, no one explains who initiates the preliminary proceedings *carried out* by the immediate superior officer.

Do the citizens have the right of initiative in this respect and if so under what conditions? If the response were affirmative it could represent a form of external control. In any case, these issuers ought to be properly elaborated and articulated.

The FRY 1992 Constitution (Art. 44) as well as the Constitution of Serbia (Art. 48) acknowledge the right of citizens "to publicly criticize the work of state and other bodies and organizations and officials as well as to submit complaints, petitions and proposals and receive the response thereon, if so requested". If the above-mentioned Decree of the Serbian Ministry of the Interior were to address any submissions by citizens it would probably be necessary to indicate the deadline for the Ministry's response, either in that or in another relevant document.

The practice of certain countries, which do not have special bodies for the external control of the police (France), stresses the obligation of internal affairs bodies to take the citizens' submissions into consideration.

As for the disciplinary responsibility of the Montenegrin police, the procedure in the case of violation of work obligation is carried out

and the relevant decision proposed by the Disciplinary Commission appointed by the Minister (Internal Affairs Act, Art. 57). The procedure is conducted "in line with the relevant rules of the Ministry" (Rules of Procedure in establishing disciplinary responsibility of the Montenegrin law enforcement officers, which define the competences of the Disciplinary Commission and the prosecutor, acting upon an oral statement of the competent official of the Montenegrin Ministry of the Interior. The Commission applies the effective Code on Criminal Proceedings.)

The policeman who has been fined or discharged for refusing to carry out an official order or for disparaging the orders of his superior officer, may lodge a complaint with the minister, i.e. the same body which took the decision concerned.

In the period from November 1997 until November 1998 the Disciplinary Commission of the Montenegrin Ministry of the Interior took 132 decisions against 175 members of the police. These include 149 decisions on disciplinary measures, which means that one in each fifteen police officers in Montenegro was subject to a disciplinary measure. Forty-five members were discharged (their employment contracts were terminated). Most cases were instituted for damaging the reputation of the state or disrupting the interpersonal relations in the service, which may be due to the political situation and turmoil in Montenegro aggravated precisely in that period.

The right to initiate disciplinary proceedings is granted to "all employees" (Art. 58, para 2). Here again, same as in the relevant Serbian Decree, there is no mention of the citizens' complaints in relation to the conduct of the police, i.e. the members of the force.

Insistence on the respect of political and civil rights of law enforcement officers has a multiple meaning.

In the first place, it is a matter of principle to remove any discrimination in the protection of human rights.

Second, the more the policemen are aware of their civil and political rights the more sensitive they will grow to the respect of human rights of ordinary citizens.

Finally, the reinforcement and promotion of civil rights of law enforcement officers reduce the (quite often realized) possibility for the instrumentalization of the police by political actors.

The democratic authorities in Yugoslavia shall make a major step forward by defining the civil and human rights of law enforcement officials in the legislation governing the activities of the internal affairs bodies.

(translated by: Ljiljana Nikolić)

IV

COMPARATIVE EXPERIENCES

Protection of Conscripts' Rights in Peacetime: Problems and Perspectives in East European and Central Asian Countries[187]

Ilona Kiss

I. Introduction: How to Identify the key Problems?

"M. P. 's father was a former military man and so, when his son was conscripted in June 1999, he wanted him to serve in an elite unit. So he went into Military Unit x of the Strategic Assignment Rocket Forces in the city of L. M. had really wanted to serve and advance in the ranks. However, he simply could not reconcile himself to the fact that senior servicemen ("dedy") demanded money, food, cigarettes and clothing from him and other soldiers. The senior conscripts establish these rules with the tacit agreement of the officers. On one occasion they demanded 600 roubles from M. He begged his father for the money, but he, in indignation, informed the commander about the existing system of extortion and demanded from him to sort out the situation and protect his son. After this, the attitude towards M. became much worse: he faced open hostility of senior conscripts and incomprehension of the officers. On 6th June 2000 M. was standing guard. At 17.40, shots were heard from a sub-machine gun and M. was found dead hit with several bullets. The conclusion of the investigation was that M. had committed suicide. M.'s parents were not informed of the results of the autopsy. An examination of the crime scene aroused serious doubts regarding the official version of the inquest. However, on 1st September 2000 criminal proceedings concerning M.'s death were closed due to the absence of criminal acts."

[187] The paper is based on the findings of the needs assessment, initiated and financed by the Constitutional and Legal Policy Institute/Open Society Institute-Budapest (COLPI/OSI) within the framework of the Military Justice and Conscript's Rights Advocacy Project, led by Ilona Kiss. The key goals of the project are to avoid the unjustified casualties in peacetime and prevent violations of the human rights of conscripts, as well as to elaborate proper judicial and non-judicial remedies and develop complaint mechanisms and possibilities for access to justice in East European and Central Asian Countries. Since the late 1999, COLPI facilitated the creation several new advocacy groups and supported the publications and courses on conscripts' rights, and also developed a model curriculum, teaching package, and methodological guidelines on military justice for Judicial Training Centers.

This is only one – unfortunately, very typical – case from the huge collection of a Russian non-governmental human rights organisation "*Soldiers' Mothers of Saint Petersburg*",[188] that defends the rights of conscripts, recruits and their relatives. According to a recent assessment of the Russian army, an average of two unjustified conscript deaths occur each day. These qualified murder cases, which do not comprise accidental death and suicide, are officially motivated by the so-called non-statutory or non-regulated military relations ("*neustavnie otnoshenia*"). In reality this is the phenomenon of *dedovshina*, the extreme form of violence and harassment of young soldiers by older ones. It is a covert system of second-year servicemen to control the first-year soldiers and force them through humiliation and beatings to do the things which they are not normally required to do. *Dedovshina* has become an almost integral part of the armed forces, and is presently widespread in the post-Soviet armies, especially the Russian army. "Paradoxically, the Russian army would collapse without *dedovshina,"* said a member of the Russian State Duma said at a recent conference. "It has become the *cement* of contemporary armed forces. If today, by some miracle, we could instantly eliminate this phenomenon, the next day there would be no army at all," he added.

Whether one accepted it or not, *dedovshina* has truly become a method used by officers to control the conscripts. *Dedovshina* involves a tacit informal agreement between officers, commanders, and "senior" conscripts who act as a surrogate control unit toward the newly recruited soldiers. This is a chain of control mechanisms, based on an unofficial hierarchy in the barracks, effected on prison-like terms of human formation, subjugation and manipulation. This dismal situation is usually explained by the low morale of officers due to the appalling living conditions, miserable salaries, and totally inadequate food and ammunition supplies. As for the social conditions, the average monthly salary of a battalion commander (with the rank of lieutenant-colonel) in the Far East region is 2391 roubles, which is equal to 46% of the minimum living standard in this region. Although this is

[188] The organisation "Soldiers' Mothers of Saint Petersburg" is one the key partners of COLPI projects in conscripts' rights advocacy. Their practice in monitoring, data collecting, lobbying etc. is an excellent model for our other partners. Founded in 1991, the Soldiers' Mothers collected an enormous number of accounts by witnesses of violations of human and civil rights, especially regarding military recruitment and military service. The most recent report of the organisation, addressed to the UN Commission for Human Rights, the Council of Europe, the European Parliament and other institutions, contains a non-governmental, civilian view on the current situation in the Russian army, in military units throughout the whole country and on the battlefield in Chechnya. The report is based on ten years of experience, eyewitness accounts and other materials from the Soldiers' Mothers' archives.

an unacceptable fact, it cannot be considered as justifying or explaining the use of *dedovshina* as a means for controlling the conscripts.

Most of the experts allege that the above vicious circle can only be stopped by eliminating the compulsory military service and transforming the conscription system into a professional service. On the other hand, it is often argued that hazing, booting, and other forms of humiliation of young military men by older ones can occur in a professional army as well. But those who take this kind of view fail to take into consideration one of the most important characteristics of *dedovshina* in Russian and other eastern European armies, namely that *dedovshina* is a covert means for internal control in the hands of officers. I would therefore, in this paper, argue for the implementation of the legally based forms of relationships and inner structure of the military service even after the change from a conscription system to a professional army.

II. Motivation: Why Should the Conscripts' Rights be Observed?

"S. S. was conscripted by the Moscow Regional Military Commissariat on 10th November 1999 into Military Unit X, from which he was later transferred to military unit Y in the Jewish Autonomous Region. There, in one of the unit bathhouses, a lieutenant saw that S's arms, from his elbows to his shoulders, had been badly beaten, and were totally black and blue. He sent him to a military hospital where he stayed for about a month. On 18th November 2000, S. was sent to Shali, in Chechnya. There, a drunken officer bullied S. and his fellow conscripts. At night, he would force them to sing and if they did not sing he kicked them in the ribs, beat their backs with a belt-buckle, with trowels and bricks. In order to protect his dignity, life and health, S. left his unit. He walked for 2 days and nights. At that time he was already running high fever. In the mountains, he encountered a herdsman, a Chechen, who ordered him to wait until evening. In the evening he led S. home, and next morning took him to the hospital where he was given medication. Later he was transported to Mozdok, where a local inhabitant telephoned S's mother. At home he was examined by the Military Medical Commissary and declared fit to serve. At the moment S. is appealing this decision" (from the files of Soldiers Mothers, St. Petersburg).

Reading cases like the one above, one can argue that in such circumstances any request to observe the human rights of conscripts is pure utopia and idealism (or just the mockery of young victims). Although the view that human rights and the military are mutually exclusive concepts is widespread and popular, not all arguments to this effect are accepted by military personnel. It is also true that arguments supporting the opinion that human rights and military service are contradictory have a real psychological, historical or cultural basis. However, a set of motivations which may compel the military to recognize

the importance of observing human rights can be set out for methodological purposes.

Following the categorization of Marco Sassoli, professor of international law, we can distinguish between categorical, utilitarian, national security, professional, social, pedagogical, humanitarian, and individual reasons which may motivate military personnel to observe the conscripts' rights[189].

Categorical reasons: The conscripts' rights are protected by law and military personnel is ordered to respect them.

Utilitarian reasons: Discipline is the basis of the armed forces and the key point for military success and failure both in peacetime and in war. Discipline largely consists of the respect of rules and presupposes a relation between superiors and subordinates. Conscripts' rights are such rules and concern this relation. Furthermore, conscripts' rights are part of the law, and only a law-abiding force is a disciplined force.

Professional reasons: The respect for conscripts' rights corresponds to *an imperative of military efficiency.* When the rights of conscripts are systematically violated, or when the very lives of the soldiers are at stake, the armed force cannot reach its objectives, and cannot possibly work, either in combat or in peacetime. Discipline itself cannot be ensured by illegal and anarchical means, training cannot be carried out in such an environment, nor can military equipment be used in such an atmosphere of disregard of the rules.

Communicative reasons: Communication and information is an essential tool for every commander. If he does not know his troops, he cannot lead them. Military justice and the respect of the right to bring complaints, suggestions and appeals help a commander to obtain crucial information about his forces. He will in particular learn about the disciplinary problems and their causes, about the reliability of his subordinate units, and their commanders. He will also discover the real training needs of his subordinates.

National security reasons: In peacetime, *security is one of the major concerns of armed forces*. It is ensured by detailed regulations and procedures for training exercises. Their aim is to protect the soldiers from unnecessary risks. Only such armed forces can provide national security for the state, and ensure compliance with its international obligations.

Social reasons: Armed forces are part of the society. They *must adhere to its common social values*. The record of modern warfare clearly demonstrates that military effectiveness depends

[189] Methodological Reference guide for Military Justice Training, COLPI/OSI, Budapest, 2001. Manuscript.

upon armed forces being an integral part of the societies they serve, not being isolated from them. The armed forces can only maintain their credibility in society, and get the necessary resources from the parliament, if they work in accordance with domestic and international law.

Educational/pedagogical reasons: The armed forces as part of the State structure confronted with young people should contribute to educate them as future law-abiding citizens. If conscripts experience an atmosphere of arbitrariness, disrespect for the law and for their rights in the armed forces, they cannot believe in the rule of law as a tool for social and economic development. Such armed forces instead act as a school of crime, egoism and profiteering.

Public opinion based reasons: In peacetime and even more so in wartime, *armed forces need the support of their domestic public opinion to maintain national cohesion and the support of international public opinion to defend their country's interests.* The domestic image of the armed forces and the international image of their country are seriously affected if the media report on systematic violations of conscripts' rights. The media today are part of every mission environment, whether peacetime training, international peace operations, domestic or international combat. Every officer has the right to receive training permitting him or her to be efficient in such an environment, just as he or she has the right to be trained to survive chemical warfare. The respect of human rights and of international humanitarian law is an essential tool for every armed force to "survive" in the contemporary environment.

Humanitarian reasons: Even in uniform, *every conscript is a citizen and a human being* with his dignity and inherent rights. The most important function of the State is to protect those rights of its citizens and to favour their free development. Armed forces defend the rights of all citizens against external and internal threats.

Specific individual reasons: There are three groups of military personnel who may have some specific individual reasons to observe the rights of conscripts: military commanders, military legal advisors and representatives of the military justice system.

(1) Military commanders: A thorough investigation of disciplinary offences is not only prescribed by law and military instructions, but is also *essential for the credibility of the commander and of the disciplinary system in the eyes of the person who is punished and of other subordinates*. All sanctions are legitimised through the procedure in which they are decided. If punishment is decided arbitrarily, it has no deterrent effect on the punished or on others, as it is not necessarily linked to individual fault, *i.e*. to what the individual can avoid in the future.

(2) The military lawyer is the legal advisor of the commander. He or she prepares and scrutinizes the commander's decisions from a legal point of view, makes sure that legal aspects are not forgotten among many other concerns and answers any questions on legal matters. Conscripts' rights are part of the law, which justifies the very existence of military lawyers. A good legal advisor can convince the commander that conscripts' rights are not an obstacle to military efficiency, but rather part of the solution to operational, training and disciplinary problems.

(3)The military justice system has to *respect conscripts' rights* in any judicial proceeding against the conscripts. Part of its task is to apply the law, to apply it impartially in a fair procedure. The respect of procedural rights contributes to the efficiency, legitimacy and humanity of the system. It ensures that all available elements are taken into account. Sanctions are more easily accepted by those punished and by society if the sentenced had "their day in court." Human dignity requires that an accused be treated not as an object of rules but as a subject of rights and obligations. Second, the military justice system, as a part of the disciplinary system and of the law enforcement system of the country, has to *ensure respect for conscripts' rights* by initiating and conducting criminal proceedings against persons violating those rights.

III. Justification: How and Why can Human Rights be Limited?

"A. was assigned to Military Unit X, stationed in K. in the L. region, on 20th November 2000. According to the testimony of an eye-witness: "On the night of 16th to 17th February (2001) I was a witness to the beating and moral humiliation of A. and V. A. was forced by senior soldiers to do a striptease, to imitate sex, to stand on an upturned stool. They punched his chest with their fists and then tortured him like "a dried crocodile" (This means tying the victim's feet and hands to either end of a bed-frame and forcing him to suspend himself by placing lighted candles or sharp objects below his body). On 17th February 2001 A. was found hanged. The autopsy revealed signs of struggle but the investigator insisted that A. had committed suicide. Case closed" (from the files Soldiers Mothers, St. Petersburg).

The above case is a "classic" example of violation of human rights almost in all aspects: the right to life and to human dignity, the right to liberty and security of person, the right to equal protection of law were all violated, while at the same time the prohibition on torture, cruel, inhuman, and degrading treatment, etc, was not observed. A common argument of military personnel in justifying a case of this kind is that human rights are not valid during military service. But one can rightfully ask: If human rights are unalienable, why can they be

limited in the armed forces? The answer to this question is complex, both theoretical and practical.

In the CIS countries and in the Baltic states, issues relating to (compulsory) military service are regulated by the laws concerning liability for national military service, conscription, status of servicemen, etc., and by corresponding by-laws: statutes, regulations, orders of the defence minister and others. In general, military legislation covers principal issues concerning conscript military service: the age of the conscripts, term of service, recruitment, warrants and procedures for exemption and deferment of military service, conditions of conscript military service, etc. However, because these regulations in some cases directly contradict the general principles of human rights, the question really is how these laws are implemented in everyday practice. I would like to focus on the methodology of the simultaneous consideration of national legislation and international standards of human rights.

The term of conscription itself involves major human rights restrictions. It is sufficient to refer to the right to life and to liberty (i.e. freedom from slavery, and forced labour), freedom of movement and residence, right to security of person, and the freedom to choose a residence or employment. Even if we accept that restrictions may be imposed on these and other rights, the key point to examine is the following: How large is the possible and necessary dimension of the restriction, or in other words, what is the inviolable essence of individual rights in the case of conscription.

The existence of conscription cannot be questioned from the point of view of human rights. Human rights are not infinite; in the interests of certain state purposes, reasonable restrictions are permissible. In countries where conscription exists, this entails a legitimate restriction of some human rights. International human rights treaties – including the European Human Rights Convention – also allow for the existence of conscription. But a human right can only be restricted in the interest of a certain constitutional objective if the restriction is necessary and unavoidable, providing it is not disproportionate to the objective pursued.

The fundamental objective of maintaining military forces is the defence of the homeland. Defence belongs to the exclusive functions of the state and it is, therefore hardly disputable that to realize this function the state, if necessary, may restrict some human rights. However, to ensure the observance of human rights to the largest extent possible is also an equally important state objective in a democracy.

These two aims are not diametrically opposed; nevertheless, they may be in a real or apparent contradiction in some cases. Conscript

service in peacetime contributes to home defence by enabling the masses of citizens to be trained and prepared for armed combat and other activities directly supporting it. The training and preparation take place in a unique environment, within the system of the military, and the maintenance of this system as partly different from civilian society may also justify some restrictions on human rights. Thus, when we judge the legitimacy or necessity of a restriction concerning the conscripts, we must ask the following questions:

- Does the given restriction truly serve the training purposes?
- Does the preservation of the military system require the restriction?
- Is it justified in the given case that the system of the military differs from the values and norms of civilian society?

The specific characteristics of the military that are different from other systems or work organizations in society are the following:

- Soldiers must endure extreme situations and they must be prepared for them.
- Obedience and discipline must be maintained in all circumstances.
- Permanent operability and readiness must be ensured.
- Certain uniformity must be maintained and military cohesion must be facilitated.
- The military must meet some expectations of society.

The simulation of the mentioned conditions during training is acceptable, provided that the soldier's life, health and bodily integrity are not directly endangered. These particular burdens (or suffering) can only be caused for training purposes; and cannot be a form of punishment, retaliation or any other arbitrary act. The military is a dangerous institution, and thus even only one undisciplined soldier can cause immense damage, while the operation of an army consisting of undisciplined soldiers may be incalculable. Maintaining discipline is a vital social interest and therefore, more stringent sanctions for soldiers' disciplinary offences are justified. It is questionable, however, what other means may or should be used aside from the more stringent disciplinary and criminal sanctions in order to prevent offences.

To what extent should we restrict soldiers' freedom of expression, right to complaint and court appeal, or freedom of assembly and association to suppress breaches of discipline entirely? It is difficult to agree with the view that human rights necessarily cause disciplinary problems in the military, and that their restriction thus serves a preventive purpose. On the other hand, it appears necessary to increase the protection of the military hierarchy by imposing more stringent restrictions on the freedom of expression than in civilian society. As a result, we cannot find definitive answers in human rights cases of soldiers in general. However, I believe that the presented method of

analysis and comparison of legitimate or illegitimate restrictions on human rights in order to provide an effective preparation of conscripts may serve as the legal basis for the inviolable essence of conscripts' rights.

IV. Implementation: How can the international Standards of Conscript Service be taken into Consideration?

"A. was commissioned in June 2000 into Military Unit X of the Border Forces, stationed in Vyborg near the Finnish border. The following is from a letter sent by A.'s mother to the organisation: "In August, A. wrote to us that he was in hospital (because) he had been fed manganese. He wrote, 'I took a piece of bread and carried it away to my bedside table. In the evening I was hungry. I ate it and then drank some water, then I felt awful, someone had spread manganese on my bread'. A. sustained 2 cm of burns". A. stayed in hospital for 21 days. Then, a show trial took place in which A. was convicted of self-maiming with a view to evading military service and sentenced to 18 months in a disciplinary battalion" (from the files of Soldiers Mothers, St. Petersburg).

The European Convention on Human Rights contains several articles which may be relevant to the rights of conscripts:

- Article 3: prohibition of torture, cruel, inhuman or degrading treatment and punishment;
- Articles 4.2 and 4.3 b: prohibition of forced labour;
- Articles 5.1, 5.3, and 5.4: liberty and security of person (the lawful arrest or detention of a person, right to be brought before a competent legal authority, and right to a trial within a reasonable time;
- Articles 6.1 and 6.3 c: right to fair court trial;
- Article 8.2: right to private life, privacy of the home and correspondence;
- Article 9: freedom of opinion, conscience, and religion;
- Article 10: freedom of speech and information;
- Article 11: freedom of assembly and association;

Article 3 of Protocol 1: right to free political expression and right to free elections by secret ballot

- Article 2 of Protocol 4: freedom of movement

The European Court has determined that the Convention should apply in its entirety to the rights of conscripts. At the same time, the Court recognized that limitations could exist in regard to the implementation of the conscripts' rights. Thus restrictions of fundamental freedoms in the situation of conscript service or voluntary contract to serve in the army are possible.

The Court developed a table of rights, which would be guaranteed to conscripts, and determined several possible limitations of basic rights. However, this decision does not allow the states to limit the conscripts' human rights in general. On the contrary, this decision shows the states that, as mentioned above, during military service circumstances may be created which justify specific temporary limitations of certain human rights, in accordance with the European Convention. In this regard there are considerable differences between the member-states concerning the legal status of conscripts. For example, conscript legislations in Finland and Germany are good models, as they provide better guarantees of the respect of human rights than the legislations of other countries.

By way of illustration of the above, according to Article 3 of the Universal Declaration of Human Rights, Article 6 of the International Covenant on Civil and Political Rights, and Article 2 of the European Convention on Human Rights and Additional Protocol no. 6, every person has the right to life. This right is guaranteed by law and no one can be deliberately or arbitrarily deprived of life.

According to Article 7 of the above-mentioned Covenant and Article 3 of the European Convention, no one can be subjected to torture or to other cruel, inhuman or degrading treatment or punishment. The military service is characterized by the principle of hierarchy and obeying orders, which has both positive and negative consequences. The negative side of that principle is that it leaves room for non-statutory treatment. Military commanders often abuse or exceed their powers. Consequently, soldiers follow the model of interaction set by commanders, which results in abuse and non-statutory treatment among soldiers. Non-statutory treatment ranks second, after desertion, on the list of crimes committed by conscripts. It includes physical abuse, degrading treatment and humiliation, which often result in death or serious injury.

A discussion on the rights of draftees organized by the Committee on Legal Issues and Human Rights in Helsinki on July 4, 1996 clearly demonstrated significant differences between the member-states in regard to the legal status of conscripts and their rights. The discussion showed that in several countries, the implementation of certain articles of the European Convention was unlawfully hindered, and that the conscripts did not enjoy their fundamental rights in the same way as ordinary citizens.

The conference determined that many of such limitations of conscripts' civil rights cannot be tolerated. Therefore, the Committee recommended the member-states to amend the relevant national legislations and practices, as they cannot be considered consistent with the limitations allowed by the European Convention on Human Rights. The conference invited the member-states to expand the implementa-

tion of civil and social rights of conscripts in peacetime, to expand them to the extent possible in wartime, and to amend national legislation if necessary.

The Helsinki Committee on Legal Issues and Human Rights obtained confirmed information on facts of cruel and degrading treatment and even physical and psychological torture of conscripts in certain countries, which is a clear violation of Article 3 of the European Convention on Human Rights. The cases are connected with non-statutory treatment, a system of sadistic intimidation of newcomers by the majority of old soldiers, which functions either with the tacit approval or active encouragement of the commanders. The suicide rate among conscripts is very high. Many young conscripts die of hunger or the lack of medical treatment, especially in Eastern parts of the country. According to the official records of the Russian Defence Ministry, there were 423 suicides and 2500 casualties as a result of crimes committed in 1994, and 392 casualties (other than combat) in 1995, of which one third were suicides.

Though Russia is an exceptional case, such countries as Belarus, Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, and Slovakia, join the "Black List" of the violations of conscripts' human rights in Central and Eastern Europe, published by the European Council of Conscripts Organizations (ECCO).

For instance, there were 118 crimes committed in the Latvian army in 2000. The percentage of different crimes is the following:

1. Violation of special regulations of military service – 1.60%
2. Violation of terms of exploitation of military ammunition – 2%
3. Physical abuse, imparting of injury, humiliation (non-statutory treatment) – 22.08%
4. Arbitrary leave of military residence and desertion – 48.95%

The above facts may lead to the following conclusions: safety within military service is a means for armed forces to perform their functions with minimal personnel losses and moral consequences. A system of the safety of military service should include a complex set of professional security standards: instruction of military personnel, a system of internal regulations, organization of combat training, management of military logistics, the character of interpersonal, group and inter-group relations among conscripts, and a system of internal duties.

V. Limitation: How to Provide the Right to liberty during Military Service?

"V. was drafted into the army on 12th May 1999. After a year of service, a huge sum of money was suddenly demanded of him by the "elders" (dedy). He begged an acquaintance to give him the money, claiming that if he didn't get it he would have serious problems. On 11th May 2000, V.'s

mother received a telegram telling her that her son had ostensibly deserted his unit on 7th May. A search was announced. V. later returned to his unit. On 1st April 2001, V. was convicted of desertion according to Article 338. He is now serving 18 months in a disciplinary battalion" (from the files of the Soldiers Mothers, St. Petersburg).

Let us examine the above case from the point of view of Article 3 of the Universal Declaration of Human Rights, Article 9 of the International Covenant on Civil and Political Rights, and Article 5 of the European Convention of Human Rights, all of which clearly guarantee the right to liberty and security of the person. The European Convention of Human Rights, Article 5, on the right to liberty and security states:

1. Everyone has the right to liberty and security of his person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

a. the lawful detention of a person after conviction by a competent court;

b. the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

Article 5 of the European Convention of Human Rights ensures the fundamental protection of the individual. The first sentence of the article "Everyone has the right to liberty and security of person" repeats the wording of Article 3 of the Universal Declaration of Human Rights, which places the word "life" before the word "liberty." This wording is repeated in other main documents on human rights, such as Article 9 of the International Covenant on Civil and Political Rights, Article 7 of the American Convention on Human Rights, and Article 6 of the African Charter on Human Rights and Rights of Nations. Clause 1 of Article 5 of the European Convention of Human Rights stipulates that "no one shall be deprived of his liberty." However, this right cannot be absolute. The same clause includes a list of situations in which arrest and detention are legal. At the same time, clauses 2-5 of Article 5 stipulate that a person under arrest enjoys certain procedural protections from arbitrary and humiliating arrest or detention. Sometimes, the terms "liberty" or "freedom" are placed in connection

with other terms, which are much broader than the notions set out in the Convention. Overall, Article 5 stipulates issues of physical freedom, in particular freedom from arbitrary arrest and detention. Part of the general restrictions, which derive from Article 5 recognize the legality of the requirement to register one's place of residence with local authorities, to comply with traffic rules, etc.

Nonetheless, the Commission and the European Court ruled that in the case of detention in police headquarters or prison, or in the case of physical confinement, Article 5 applies. Sometimes it is a question of degree. The European Commission ruled that certain limitations of an individual's liberty, for instance, a requirement to remain in his residence or to report his place of residence to police headquarters once a week, cannot be qualified as a limitation of liberty in the meaning implied by the Convention.

Yet, in other cases, for example, in the case of *Guzardi* (11. 06. 1980), the European Court ruled that forced residence on an island, where the individual's freedom of movement was restricted to a building at night and to the island during the day, can be qualified as the limitation of liberty in the meaning of the Convention.

In the case of *Engel*, people were subjected to military disciplinary punishment, including "light arrest" and "expansive arrest," which did not prevent them from carrying out their military duty. The court ruled that, though military service and, in particular, the punishment, did limit the freedom of movement; those limitations were not severe enough to qualify under Article 5 of the European Convention. However, in the case of "expansive arrest" the court ruled that the limitation was oppressive enough to qualify under Article 5 (Court decision in the case of *Engel and others*, 06.08.1976).

The notion of legality, on which Article 5 is pinned, can be defined in two ways:

The *first* one "stipulated by law", is connected with procedural issues whereby a government can limit a person's liberty, i.e. "in the following cases (sub clauses a-f of the clause 1, Article 5 of the Convention) and in accordance with law."

The *second* aspect of legality is more important. In the *Sunday Times* and *Melone* cases, the court stressed that the word "law" should be interpreted as encompassing not only written but also common law (Court decision in the *Sunday Times* case (06.26.1979) and in the *Melone* case (08.02.1984).). The law should be accessible and a norm cannot be considered as having the force of law if it is not formulated clearly enough for a citizen to be cognizant of it.

The disciplinary arrest of conscripts in the CIS countries and Baltic States raises the following contradictions with the above-mentioned international acts:

1. Arrest (disciplinary arrest) can be used for any disciplinary misdemeanour, including benign ones, which stands in contradiction with Article 9 of the International Covenant on Civil and Political Rights, and can be qualified as "arbitrary" according to the commentary of the Committee on Human Rights. For example, there were cases of application of disciplinary arrest for more than 5 days when a conscript had dropped a cigarette butt on the drill ground instead of a trashcan. According to the commentary of the Committee on Human Rights, this punishment is "inappropriate" and "unfair."
2. Conscripts are sentenced to disciplinary arrest not by a judge or other officer authorised by law to exercise judicial power, but by a commander of a military unit or regiment, who is neither neither a judge, nor an officer authorised by law to exercise judicial power. This is a clear breach of Article 5, clause 1 (a) of the European Convention.
3. After arrest, conscripts are not taken to court or to an officer authorised by law to exercise judicial power, as it is stipulated in part 3 of Article 5 of the European Convention, but are transferred to military detention headquarters, where they stay for the term of the arrest.
4. The character of the disciplinary arrest cannot be qualified as the permissible limitation of the right to liberty according to clauses (a), (b), and others of part 1, Article 5 of the European Convention, because this kind of arrest is not "the lawful detention of a person after conviction by a competent court." Neither is it a measure "effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence."
5. In all countries of the CIS and in Baltic states, the right to rest and free time and the freedom of movement are provided for by the statutes of internal service in the same way: military servicemen must remain on the location of their military units, and have the right to leave the base only to perform service-related duties or by virtue of leave or discharge from the military unit, authorized by a commander. These restrictions are not considered violations of the military service members' rights, since they are justified by the specific tasks of the armed forces. In most countries, the conscripts have the right to leave the locations of their military units once a week. However, these stipulations are not observed anywhere. Interviews with conscripts clearly revealed that they were given leave once every two to three months, and sometimes even less frequently, instead of having a free day once a week. These facts point to severe violations of the servicemen's right to free movement, even during their off-service time. The right to leave the place of

their military units' locations necessarily entails the duty of the commanders to provide the leaves. In this respect, the commanders exceed the restrictions concerning the service in conscript military forces.

6. In Russia, Moldova, Georgia, Ukraine, Armenia, Azerbaijan, and other countries, soldiers are frequently engaged in various services both on and off the property of military units, and rarely participate in military drills. They build houses and garages, guard harvest fields, gather crops, dig ditches and trenches, lay down communications, work on logging, build roads and perform other manual tasks that have no relation to military service. These activities represent a form of "grey labour". Since military service is not viewed as compulsory (slave) labour, there is no connection between the national security and such labour. Grey labour is in a way even more harmful than black labour. This practice contravenes the Resolution of the Parliamentary Assembly of the Council of Europe No. 1166 ii, adopted in September 1998, which in particular stipulates "the necessity to guarantee that conscripts are not deployed for tasks not compatible with the fact that they have been drafted for the national defence service, and are therefore not deployed for forced or compulsory labour in cases when it is not justified by extraordinary circumstances" (in accordance with Articles 10 and 11 of the European Convention on Human Rights).
7. The legislations of the CIS countries and Baltic states prescribe that members of the armed services must be provided with accommodation, clothes, food, hygiene items, etc. during their term of conscript military service. In reality, they receive meals which are low in vitamins, low in calories and insufficient in amount. As a result, cases of dystrophy have been registered among soldiers in Georgia, Azerbaijan, Moldova, etc. The barracks of military units in Georgia, Azerbaijan and other countries are often cold and damp, which causes frequent and severe cases of diseases among the soldiers. In Azerbaijan, for example, exhaustion, pneumonia, tuberculosis and meningitis have been the most commonly diagnosed diseases. In Georgia, soldiers often suffer from cardiological disorders, contagious diseases, tuberculosis, and gastrointestinal disorders. In Belarus, individuals with chronic diseases are often drafted into the army, where their condition deteriorates further. In 1998, in Azerbaijan, approximately seventy military service members died of tuberculosis, and during the first three months of the year 2000, fifteen soldiers died of meningitis. Medical offices and hospitals of military units are not sufficiently supplied with drugs and medicines, and consequently military service members do not receive adequate medical treatment.

8. In all the CIS and Baltic countries, statutes of the Armed Forces, and especially disciplinary statutes and the statutes of internal service, are almost literal reproductions of their respective Soviet military statutes. They contain numerous violations of servicemen's rights, and are largely outdated with respect to contemporary norms. In order to ensure the elimination of these shortcomings, it would be advisable to adopt new statutes, which would conform to the national constitutions and international standards on human rights protection.
9. The strictest disciplinary punishment of the conscripts is disciplinary arrest. The imposition and implementation procedure of this disciplinary punishment severely violates the rights provided for by international documents on human rights protection. The inconsistencies between the disciplinary arrest procedure and the international requirements are as follows:
   ● Military regulations do not list the offences sanctioned by disciplinary arrest.
   ● Any conscript can be subjected to an arrest for any offence if the (military) commander considers such a measure appropriate.
   ● Disciplinary arrest can be applied in the case of any disciplinary offence (even minor ones), which contravenes Article 9 of the International Covenant on Civil and Political Rights, and represents an "arbitrary" measure, according to the explanation of the Committee on Human Rights.
   ● Taking into account its term (fifteen to twenty days), and implementation procedure (it is served in solitary or common lockable cells, which are usually guarded), the disciplinary arrest is considered as strict punishment, according to the European Court's decision in *Engel* v. *the Netherlands* (1968). Therefore, disciplinary arrest represents an infringement on the freedom of an individual because such a measure can be undertaken only in the cases listed in Article 5 of the European Convention on Human Rights.
   ● The relevant grounds for such measures are absent with respect to disciplinary arrest: this type of arrest is not the "lawful taking of a person into custody on the ground of his/her conviction by a competent court".
   ● There is no measure undertaken to ensure the presence of an individual before a competent court, provided there is sound cause to believe that an offence has been committed by the accused.
   ● Military servicemen are not subjected to disciplinary arrest by a judge of another official, legally authorized to perform the judicial function. The decision is made by the commander of a military unit or department, who is not a judge or another official perform-

ing a judicial function, which clearly contravenes Article 5, Ch. 1: a, c, of the European Convention on Human Rights.

● Servicemen apprehended by the commander are not immediately handed over to a judge or another official performing a judicial function, as stipulated by Art. 5, Ch. 3 of the European Convention, but are instead delivered directly to the guardhouse, where members of the conscript military service serve their arrest term.

● They are in an unprivileged position compared with other citizens. The conscripts can be subjected to disciplinary arrest by their military commanders for other (not specifically military offences), while civilians, who commit a civilian offence, can be subjected to an (administrative) arrest only by a judge or an appropriate court establishment. Disciplinary punishment in the form of disciplinary arrest may be imposed on the military by any superior commanding officer and can last for any of the abovementioned terms.

● Not infrequently commanders impose punishment in the form of disciplinary arrest for terms longer than envisaged by the law. For example, in the Republic of Moldova in 1998 and 1999, there were cases where, within a disciplinary procedure, conscripts were arrested on orders of the commanders of military units for lengthy, continuous terms (25 days, 36 days, 48 days, 54 days, etc.). Arrested conscripts are kept in common or solitary cells. They have the right to sleep seven hours a day. However, while in confinement, they are not supposed to sleep or sit on beds during the day: the beds are taken away from the cells, and those that are left inside are lifted and fixed to the walls, and the arrested servicemen are prohibited from sitting. At nights they sleep on wooden bedsteads without any sheets, covers or mattresses, on bare planks. On the days when the conscripts do not work, they are taken out for walks which do not usually exceed fifty minutes a day. If not brought out for work, the arrested are kept in common or solitary cells locked during the day. An armed watch guards the cells. During the entire period of their custody, members of the conscript military service are not supposed to have cigarettes, matches or lighters in their possession. All these dispositions indicate severe violations of Art. 5 of the Universal Declaration of Human Rights, Art. 7 of the International Covenant on Civil and Political Rights, art. 3 of the European Convention on Human Rights, and he Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishments, since such a procedure of punishment undoubtedly represents a form of torture of the arrested servicemen and a measure degrading their human dignity.

Estonia is the only country where the types of disciplinary punishment and the procedures for their implementation entirely meet the requirements of the European Convention on Human Rights and the interpretations of the European Court. Military disciplinary legislation of this country envisages three types of restraint on the accused's freedom and movement: prohibition to leave the property of the military unit; disciplinary apprehension; disciplinary arrest. The Administrative Court operating in Estonia must be immediately informed of the imposition of a disciplinary arrest. The Court then decides whether such punishment is in line with the law.

In some countries, disciplinary punishment imposed by military commanders cannot be appealed in courts (Belarus, Latvia, Kyrgyzstan and others), and the right to defence is also violated. Therefore, serious infringements of the rights of conscripts take place in the countries in question. This is in particular the case with the right to judicial control over decisions involving restraints on personal freedom and the right to a fair trial.

VI. Excursion: How to Provide the Rights to the Health Protection?

"A. was conscripted into the Northern Fleet on 30th October 2000 and served on a ship based in Severomorsk. According to his mother's testimony: "He ate practically nothing for three weeks, saying that while they waited for the food to get to them, the "dedy" would have already eaten it all up (in the canteen) and declared "the meal-time over". He only managed to watch the others eat. His under-clothes were dirty, they did not change them in the washroom. His boots were torn, damp, worn on bare feet. At night he could scarcely sleep since the "dedy" had decided not to give out blankets for the first half year. On two occasions they lowered A. through a window on sheets with demand to bring back vodka and sausage. If you do not bring it, there's either a beating or sexual abuse. Now he throws up after every bite of food. When he told me about all of this, his hands were shaking, his head was spinning, and tears were pouring from his eyes. He said he would hang himself". After an examination by an independent doctor, A. was sent to the Military Medical Commission and he was discharged in April 2001" (from the files of Soldiers' Mothers, St. Petersburg).

According to Article 7 of the International Covenant on Economic, Social, and Cultural Rights (12.16.1966), the signatory states recognize the right of everyone to fair and favourable conditions of labour, to equal pay for equal work, and to conditions of labour matching the safety and hygiene standards. Legislations of the CIS countries and the Baltic States stipulate that conscripts must be provided with housing, clothes, meal, and means of hygiene, etc, free of charge. In fact, this legislation is not implemented. Conscripts receive a very small financial compensation,

which does not cover even half of the necessary costs (tooth paste, tooth brush, shampoo, matches, cigarettes, etc.). For example, conscripts in the Republic of Moldova receive monthly compensation worth 7-18 Moldavian lei ($0.5-1.5) which cannot cover the cost of tooth paste (7-18 lei), toothbrush (15-20 lei), shampoo (8-20 lei), etc. It is necessary to increase the financial compensation for conscripts. Despite the regulations, existing in all the CIS countries and Baltic States, that conscripts should be provided with nutritious and balanced meals, they usually have a poor and insufficient diet, lacking in necessary vitamins. As a result there were cases of dystrophy of conscripts (in Georgia, Azerbaijan, Moldavia and other countries). Barracks in Georgia, Azerbaijan and some other countries are described as cool and humid. In addition to poor nutrition, this contributes to frequent cases of serious illnesses. The most frequent diagnoses among the conscripts in Azerbaijan are exhaustion, pneumonia, TB, meningitis. In the armed forces of Georgia the most frequent are heart and infectious deceases, TB, and stomach pathologies. There is evidence that in Belarus persons of unsatisfactory health were drafted and that their inferior health condition exacerbated in the course of their service. In Azerbaijan around 70 conscripts died of TB in 1998 while 15 conscripts died of meningitis during the first three months of 2000. Medical headquarters of military units usually lack necessary drugs, and the conscripts are therefore unable to receive proper medical treatment.

There is a huge discrepancy between the legislation and the actual state of affairs in the exercise of economic, social, and cultural rights of conscripts in the CIS countries and Baltic states.

In the spring of 2000, the Soldiers' Mothers organisation was approached by the command of Military Unit X for assistance in compiling a medical report on a group of their young conscripts. It was initiated following a warning of a military psychologist who registered a dangerously high level of suicidal tendencies within the unit. As a result of this report and the subsequent petitions made by the conscripts' families, many of the young men mentioned below were discharged on account of their health. This list is indicative of how many young men should have never been allowed into the Russian army. It also reveals the level of chronically poor health in the Russian army today and shows the diverse areas of the country from which these boys were drafted. These diseases are not localised, they are Russia-wide. Furthermore, physical and psychological conditions are found in equal measure. It appears that the psychologist's concerns about mass suicidal tendencies were more than justified.

Name and Date of birth	**Location of the conscription**	*State of health*
M. A., 1982	Kuz'min province, Moscow	Bed-wetting, toxic dependency, 3rd degree of flat-foot, hyperhydrosis of the palms
V. B., 1982	Kirov province, Omsk. 2000.	Myocarditis, otitis, deafness in right ear, headaches
A.V. 1981	Kotlas(Archangelsk Province)	Underweight, logo-neurosis
Y.G, 1980	Kamen'-on-the-Obi (Altai)	Heart pains, anxiety, constant phobia.
D. G, 1982	Lazo Khabarovsk Region)	Depression, psychopathy; before conscription he was in a hospital psychiatric ward
D. G, 1981	Komsomol'ska-on-the-Amur (Khabarovsk Region)	Leg spasms, phobia, depression, fatigue
D. D, 1981	Kotovo, (Nizhyegorod Province)	Scoliosis, suicide attempt (cut his vein)
A. D, 1980	Armavir (Krasnodar Region)	A fracture to the collar-bone (45' angle), swollen larynx, heart pains, neurological disorders
R. D, 1981	Sochi (Krasnodar Region)	Psychiatric disorders, bed-wetting, kidney pains
A. Z, 1982	Kalinin district, Tveri.	Concussion and loss of consciousness on 3 occasions
A. I, 1980	Roslavl' (SmolyenskProvince)	Hysteria, loss of consciousness, psychopathy, bed-wetting, concussion
D. I, 1981	Pryeobrazhyenski district, Moscow	Swelling on the chest (near the nipple), opaque consciousness, suicide attempt
A. K, 1981	Oktyabr district, Omsk.	Hepatitis, tonsillitis, heart-pains
V. K, 1982	Sochi (Krasnodar Region)	Neurological disorders, cranial-cerebral trauma
I. K, 1982	Khaibulin district, Bashkortostan	Tuberculosis resistance (previous contact), fracture to the left collarbone
K.M, 1981	Amursk Khabarov Region)	Spasms, leg pains, pains in the left side, head-aches, pain in the forehead, psychopathy, paresis in the left hand, suicidal state
Y. N, 1980	Zelenograd (Moscow Province)	Tuberculosis resistance (previous contact), on the register of the Tuberculosis Dispensary, loss of consciousness, mitre valve prolapse, ambiopathy, photophobia, spasms, angulation of the gall bladder, bronchial asthma, cranial-cerebral trauma, nervous ticks, dizziness
A. M, 1981	Moscow district, Nizhni Novogorod	Leg cramps, lost consciousness 2 times on parade, visual and auditory hallucinations, underweight, anaemia, myocarditis, psychopathy

P. P, 1982	Moscow	Drug poisoning, memory loss (admitted to Filatov hospital), loss of sight, haematoma to the brain, sluggish flow of blood to and from the brain, head-aches, cramps in the eyes, dizziness
V. P, 1981	Omsk region (Omsk Province)	Ptosis of the kidney for 5cm, bed-wetting (3-4 times a night), pre-ulcerous condition, pains in the kidneys, lower back pains, neurological disorder
A. S, 1978	Omsk	Leg spasms, pains in the spine, lower back, and chest area. Was released from service on after an orthopaedic examination (spine)
D. S, 1982	Apatita (Murmansk Province)	Loss of consciousness on more than one occasion, suicide attempt (cut his veins), nightmares, cries out during sleep, nose-bleeds, pains in the heart, legs and arms go numb at night, darkening in the eyes when raising his head, fainting-fits
A. S, 1982	Omsk	Suicide attempt (hanging), beaten on the head with a stool on 2 occasions, delayed development, concussion, narcotic and alcoholic dependency, on the register of the Psycho-Neurological Dispensary since the age of 8 years
S. S, 1978	Bogorodsko (Nizhyegorod Province)	2 cranial-cerebral traumas, hymoritis, headaches, nose-bleeds, leg and lower back pain, fatigue, heavy perspiration, drowsiness
D. T, 1981	Krasnokamsk region, Bashkortostan	Severe conjunctivitis, nephropathy, 2-3 degree hypotrophy, spasms in a toe on the right foot, atrophy in the thumb on the right hand, tension of the right ear, Quinke's edema
I. T, 1982	Kotlas region (Archangel Province)	Premature birth, tongue-tied, bed-wetting, neuritis of the foot, sleep-disorders, personality disorder, organic damage to the brain
V. T, 1979	Siktivkar (Komi)	Bed-wetting, organic damage to the brain, hydrocephaly, stuttering, gastro-dyodenitis, trachial bronchitis, nose-bleeds, hyperhydrosis of the palms, likelihood of hereditary illnesses, was registered for observation by a neuropathologist
N. F, 1981	Zelenogor (Moscow Province)	Logo-neurosis, likelihood of hereditary illnesses, bed-wetting until 14 years, leg-spasms, underweight, gastritis, psychopathy, hyperhydrosis of the palms, heartburn, mobility of the kidneys, his birth had complications

M. F, 1980	Bezenchuk (Samar Province)	Stressful state after the death of his mother, headaches, quick-tempered, irritability, psychopathy, fatigue, drowsiness, hyperhydrosis of the palms, developmental delay
A. S, 1981	Tolyatti (Samar Province)	Sleep-talking, spasms, headaches, former alcoholic dependency, use of drugs, premature birth
Y. Sh., 1981	Tolyatti (Samar Province)	Premature birth

This situation is mainly accountable to the fact that draft committees along with military medical boards in most of the countries of our region are negligent in the performance of their duties while conducting medical examination of the draftees. This frequently leads to cases where persons who are not fit for conscript military service due to their health condition are registered and consequently called up. In order to remove these shortcomings, it would be desirable to include only highly qualified and experienced specialists into the composition of military medical boards, and allow the presence of the representatives of the public during the boards' proceedings, for example representatives of soldiers mothers' committees (as in Armenia, e.g.), or other non-government organizations. Such novelties would preclude the negligent performance of the members of military medical boards.

VII. Conclusions and Recommendations: How to Improve Conscripts Rights Advocacy?

"M. comes from Ingushetia but he was drafted into a unit far away from home – Military Unit X, stationed in Vyborg near the border with Finland. An extract from a letter that M. wrote to his family states: "From the first days of my service, I have felt that they don't like me and treat me badly, calling me 'sensitive'. The sergeants commanded other soldiers to beat us up, the Ingushetians. Fights were often started." M.'s had a pregnant wife at home, and a mother, who had already been through 2 heart-attacks. In March 2001, M. found out from a letter that his wife was not feeling well. He was not sent on leave. On 31st March M., disappeared. The unit commander claimed that he left his unit voluntarily. Criminal proceedings have been instigated against M. Until this date, M.'s location is still not known" (from the files of Soldiers' Mothers, St. Petersburg).

COLPI facilitated several organizations to expand their activities on conscripts' rights advocacy and to build capacities in this field. The best examples are the following: in Moldova with COLPI assistance, a centre for the protection of conscript servicemen and draftees' rights was created; in Azerbaijan, where there was no civil initiative for this activity, the NGO "Lawyers of the XXI. Century" affiliated a new branch for this purpose; the Belarus organization VIT also established

a group for this activity. These organizations set up permanent consultation points for conscripts, involving experienced lawyers as well as young student volunteers.

COLPI also facilitated the creation of channels for active communication among similar organizations. Presently, a real network of conscription-related NGOs is being formed. In particular, the young generation of activists communicates regularly. The most important field of activity is the public awareness-raising: COLPI initiated a publication project on Conscripts Rights. The brochures were elaborated by ten organizations and distributed among conscripts.

Other special projects were initiated by COLPI in order to introduce some non-judicial remedies for the situation described above.

1. *Legal clinics on conscripts' rights advocacy:* To fulfil the great need of conscripts and their parents for consultation on conscripts' rights, several groups of lawyers are willing to launch legal clinics.

2. *Seminars for school children**:*** Conscription-aged young people need special courses on their rights. Organizations taking over this task would like to adopt teaching materials developed by COLPI and ECCO.

3. *Training:* There is a general need to train special lawyers for the protection of conscripts. Civilian lawyers cannot access the arrested conscripts because of the lack of permission. Specialized legal counsels could give lectures and provide consultations in the barracks. They are independent from the military hierarchy, but are professionally prepared. There is also a general request to arrange training or a workshop for medical officials in the sphere of international standards.

4. *Lobbying for legislative drafting and access to medical information:* In several countries there is no mechanism for lodging the complaints against medical decisions on the suitability for military service, and the list of relevant diseases is closed (Uzbekistan, Tajikistan).

5. *Monitoring:* There is an urgent need to monitor the system of punishment in the barracks. It currently develops without any form of control.

The above initiatives are very useful and sometimes very successful, however they have a common disadvantage: they are all separated from the military service and are based on external control. Therefore, a new model has been initiated in some regions (St. Petersburg, Armenia, Azerbaijan) for internal control of conscript service, mainly to provide internal and alternative complaint mechanisms. I will return to this point at the end of my paper.

In some of the CIS and Baltic states, legislation anticipates the right to appeal to a court of justice against the decisions of military commanders imposing disciplinary punishment. However, this right remains solely on paper: conscripts do not know their rights, lawyers do not have free access to the property of military units, and so on. That is why conscripts rarely appeal to courts for the protection of their rights. For example, in Moldova, during the entire period of existence of the Military Court (from 1992 to the present date), no member of the conscript military service who was arrested within a disciplinary procedure was brought before the Court. The right of conscripts to a fair trial within a reasonable period is not implemented. This occurs for various reasons:

- Military lawyers do not inform the servicemen of the contents of laws and statutes and of the conscripts' rights and freedoms in a proper way. Quite often, they do not have sufficient knowledge of the general and military legislation themselves, and for that reason cannot give efficient explanations concerning the legislative contents and their application to the military personnel.
- In most countries there is no institution of military lawyers, neither are there commissioners on human rights, who would deal with the cases of the military and with the issues regarding the protection of the servicemen's, particularly conscripts', rights and freedoms. Furthermore, there are no non-governmental organizations engaged in dealing with these problems.
- Having no legal assistance from anyone, the conscripts have to face their commanders alone, while these commanders appear in the roles of their chiefs, "lawyers", "prosecutors" and "judges" – all at the same time. As a result, the human rights of conscripts are very often violated; sometimes in minor ways and sometimes more severely.

In order to resolve these problems, we consider it appropriate to create an alternative complaint system. This representation or spokesman system could provide conscripts with additional or alternative channels and mechanisms for complaints. It comprises spokesmen/representatives from platoon level up to the central level of the armed forces. This model was elaborated in Sweden and the Netherlands, and adopted in Finland, Austria and in several other countries. It is also a good model for cooperation between defence ministries and conscripts rights advocacy groups in respective countries. The introduction of this model is very difficult, and would meet with a lot of opposition from the officials. But, at the same time, it is an excellent opportunity for real grass-roots involvement in the internal and external control of conscript service.

State of Human Rights in the Army of the Russian Federation

Željko Ivaniš

INTRODUCTORY NOTES

The internal situation of Russia (the Russian Federation – RF) was, throughout the last decade characterized by a crisis reflected in all segments of the country's life. With the economy in an extremely difficult situation, the prerequisites for solving the accumulated problems cannot be secured. Particularly affected by this situation is the sphere of security and defense and the way out is perceived in finding the means to reform the army.

According to the Constitution of the Russian Federation the most important authorities responsible for military issues are the President of RF, the Duma (the Lower House of the Russian Parliament) and the Ministry of Defense. The legal basis of the national system for the protection of the members of the armed forces are the Constitution of RF, laws on "Defense", "Military Obligation, Service and Army", "Status of Members of the Armed Forces", "Providing the Pensions for Persons who Performed Military Service and Officials of Internal Affairs and Their Families" and a number of other legal acts.

An instructive document in this field is the Concept of National Security of the Russian Federation. It gives a short analysis of the position of Russia in today's world, establishes the national interests along with the threats to national security, and points to the ways providing for national security. It emphasizes that "the existing military organization is a burden to the state" and that its reform is required.[190] References to military reforms, first of all imply reductions in the number of members of armed forces, restructuring of some segments of the army, fewer military districts, modernization of some types of armaments and military equipment etc.

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[190] Указ Президента Российской Федерации Об утверждении Концепции национальной безопасности Российской Федерации, Москва, Кремль, 17 декабря 1997 года, № 1300.

The army of the RF has such proportions that the fulfilling of its needs requires an exceptional effort of the society as a whole. Therefore, the armed forces are being scaled down[191] and reorganized, in order to lessen the burden of the defense expenditures for the economy. Some believe that the Russian military forces should not exceed 0.75 % of the total population, or that they should not have less than 1,050,000 people, excluding border units and armed members of the Ministry of Internal Affairs.[192] This means a decrease of around 150,000. Others envisage a still greater reduction. At the beginning of the 21st century, the planned reduction of the Russian armed forces and other structures of power combined, numbers over 400,000 men. The cutback of reserve units anticipated to start in 2001, should, for the most part, be completed by 2003. Land troops should be reduced by 180,000, while the navy and air forces ought to dispense with 50,000 and 40,000 respectively. In addition, the administration of the Ministry of Defense and rear structures, including army medical personnel, strategic rocket forces, and the forces of the Ministry of Internal Affairs etc.,[193] should also undergo certain changes.

Connected with the shrinking of the armed forces is the problem of professional career reorientation and adjustment to the new circumstances of life for a large number of active officers and noncommissioned officers who will be relegated to the army reserve.[194] Despite some responsibility of the society to help them adjust to the new situation, these persons are generally left to their own devices to manage as best they can.

Many misunderstandings arise with the redeployment, dissolution or merging of units, military schools and bases, or other measures the society undertakes seeking to rationalize the armed forces. That elicits adverse reactions from employees, generally for personal or even more extensive social reasons. This situation, in some cases, arises conflicts between the local and central authorities, while the suspense so created is sometimes used to score points in various political games etc.

The Russian army is still a huge secret organization and its everyday activity is not entirely exposed to view.

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[191] From the total of 2,800,000 members it had in 1991 the Russian army was reduced to 2,100,000 in 1993, 1,700,000 in 1995 and 1,200,000 in 1999.

[192] Ф. Бражник: «Нескоько практических предложений по реформе Вооруженных сил», в Военные доктрины и реформы России в XX веке, И. центр «Ветеран Отчизны», Агентство «Мегаполис», Москва, 1997, стр. 254.

[193] Russia's Armed Forces And Other Power Structures To Be Reduced By Over 400 000 Servicemen, Interfax, 7 September 2000, http://perso.club-internet.tr/kozlowsk/sources.htm

[194] Андрей Корбут: "В Армии – очередная кадровая чехарда" // «Независимое военное обозрение», 3-9 декабря 1999, стр. 3.

In 1996 president Yeltsin issued a decree on military reforms and announced that the army would become entirely professional, but it, in real life, still remains far from the designed objective.

The debate was intensified by Putin's election to the presidency. Namely, President Putin advocates the cutback of the armed forces, as a way to improve training and overall combat readiness. The main barrier is the shortage of funds. Army opinions on the future course are different. Some support the preservation of the Soviet-era doctrine, implying significant spendings on nuclear arsenal. Others try to pare the army down to the size that would be realistic in the international context and one that the RF would be able to sustain financially and materially. A downsized army would release the funds for drills and production of modern conventional means. The President of the RF asked for an increase in the military budget for 2001 and started to relieve the army of older top-ranking personnel. Making the army professional is the path Russia will follow, but it is also a long and expensive one.

The bulk of discussions on army reforms left the questions of interpersonal relations in the army itself largely unattended, although they occasionally do come to the forefront. Thus, in 1997, a member of one of Yeltsin's commissions for human rights, called the conditions in the Russian army "inhuman", substantiating his claims by a series of facts.[195]

The status of human rights in the armed forces of the RF is still a subject of a lot of debate inside as well as outside Russia, invoking the relevant reports developed by numerous European commissions and other international bodies. The European Parliament, which systematically undertakes measures in this field on the old continent, on March 11, 2000, adopted a resolution expressing its concern for the freedom of religion and respect for human rights in the RF. The European Parliament invited the Russian Government to fight the acts of anti-Semitism, racism and intolerance, to upgrade the conditions for the life of soldiers, change the law on recruitment, introduce alternative military service and improve conditions of imprisonment.[196]

THE PUBLIC AND HUMAN RIGHTS IN THE ARMY

The Soviet political organization did not allow the security and defense topics to reach a wider audience, without the approval of the party or state authorities. Ever since the inauguration of the principle of "glasnost" the Russian media have been paying full attention to the

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[195] Walter Parchomenko: "The State of Russia's Armed Forces and Military Reform", Parameters, US Army War College Quarterly, Winter 1999-2000

[196] From Report of HRW for 2000. In Russia: www.hrw.com

issues of defense and, in that context, especially to the armed forces. Information related to this particular sphere is given by all public media. In addition, a number of newspapers, radio and TV stations and Internet sites are thematically profiled so as to address all defense and security aspects. Actually, that is precisely where the disclosing impact of the "Perestroika" was the most conspicuous. The media stopped writing about the army in the old way and this coincided with the diminishing of its reputation due to its withdrawal from Afghanistan, the disintegration of the USSR, the war in Chechnya, etc. In the mid-nineties the positive impression of the armed forces and members of the army, ingrained in the public opinion during the years of the communist past, faded away. Some believe that the new, negative image has been "additionally stimulated by the intensive anti-military campaign pursued by the mass media."[197]

Table 1

DIRECTION OF PUBLICATIONS IN CONNECTION WITH PROBLEMS OF ARMED FORCES IN PERIODIC PUBLICATIONS

Name of Issue	Total Publications		Direction of Publications	
Issue		Positive	**Neutral**	**Negative**
Аргументы и факты	8	1	3	4
Известия	131	8	61	62
Комсомольская правда	138	12	65	61
Московский комсомолец	32	-	2	30
Независимая газета	14	5	3	6
Правда	120	12	50	58
Российские вести	19	13	4	2
Советская Россия	63	2	34	27
Труд	95	5	53	37
TOTAL	620	58	271	291

Source – С. С. Соловьев, И. В. Образцов: Российская армия от Афганистана до Чечни, Национальный Институт имени Екатерины Великой, Moscow, 1997, page 404.

However, a number of studies show that this is not the question of "a campaign" but rather of the advance of critical journalism whereby the journalist profession sought to improve its reputation and social

[197] See – Национальные интересы и проблемы безопасности России, Доклад по итогам исследования, проведенного Центром глобальных программ Горбачев-Фонда в 1995-1997 гг., Москва, 1997, стр. 43.

position. In the modern world all outstanding social issues are invariably in the public eye, and increasingly so the observance and protection of human rights of the RF army members. Just how much attention is given to this issue is the best revealed by comparing the writings of the magazine "Nezavisimaya gazeta" (issued in Moscow five times a week except on Sunday and Monday) on this and other aspects of life in the Russian army. The magazine has a circulation of 48,000 of copies a day and shows an upward trend.

The decision to analyze precisely the writings of this magazine is based on a number of reasons:

– The Center for Military-Sociological, Psychological and Legal Studies (CVSPPI) of the armed forces of the Russian Federation made a content analysis of the writings of 9 central publications with high circulation, in the October 1994 – March 1995 period. Positive, neutral and negative "directions of publications" in the case of "Nezavisimaya gazeta" are balanced better than with others, as may be seen in Table 1 (above).

– According to the results of a poll conducted by the All-Russia Center for Public Opinion Studies (VCIOM),[198] the "NG", as one of the central newspapers, is rated in the upper half of the list in terms of objective writing (Table 1);

– The "NG" ranks among those quoted most often by various papers of general political contents;

– In addition to newspaper articles, this paper also offers the writings authored by experts with high academic titles.

The analysis of one issue per month selected at random, in the period between two military campaigns in Chechnya, from January to September 1998, suffices for an overview of the paper's writings on the defense issues (Attachment 1). These are the editions of January 13 (Tuesday) with one article; February 6 (Friday) – 0 articles[199]; March 11 (Wednesday) – 5 articles; April 18 (Saturday) – 1 article; May 19 (Tuesday) – 3 articles, June 18 (Thursday) – 3 articles; July 29 (Wednesday) – 3 articles; August 8 (Saturday) – 5 articles. In all, the total number of articles dealing with the issues of interest to this paper is 21. According to their contents these articles may be classified under six general headings, as shown in Table 2.

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[198] Source, «Московский комсомолец», 26 апрель 1998.

[199] A weekly special supplement of "NG" comes out on Friday, as separate newspaper with title «Независимое военное обозрение».

Table 2

"Независимая газета" about AF of RF

	General heading	Number of articles	Number of characters	Page of article	Author's attitude
1	**Military reform**	9	6448	3 – 16	Negative
			4340	4 – 16	Neutral
			4557	Negative	Negative
			51456	14 – 16	Negative
			3927	13 – 16	Positive
			6138	5 – 16	Negative
			31496	8 – 16	Negative
			6200	6 – 16	Neutral
			3906	10 – 16	Negative
			Total:118468		
2	**Arm. and mil. equipment**	5	3720	2 – 16	Neutral
			3100	6 – 16	Positive
			3534	2 – 16	Positive
			2852	8 – 8	Positive
			3968	4 – 8	Negative
			Total: 17174		
3	**Internation. peace forces**	2	6448	5 – 16	Negative
			2790	2 – 8	Positive
			Total: 9238		
4	**Endangering the RF**	2	2604	5 – 16	Neutral
			12865	9 – 16	Negative
			Total: 15469		
5	**Military maneuvers**	2	576	1 – 16	Neutral
			3038	2 – 8	Positive
			Total: 3614		
6	**Position of AF members**	1	496	3 – 8	Negative
			Total: 496		
	TOTAL	21	164459		

* The authors' attitudes are qualified as:

a) positive: if the article reflects the author's agreement with the existing situation,

b) neutral: if no specific attitude is expressed,

c) negative: if the article reveals the author's disagreement with the existing situation.

As shown in the table, the share of specific topics in the above-mentioned articles with the total of 164,459 characters, is as follows:

– Military reform: 118,468 (72.0 %),

– Armament and military equipment 17,174 (10.4 %)

– Endangering the security of the Russian Federation: 15,469 (9.4 %),

– International peace forces: 9,238 (5.6 %),

– Military maneuvers: 3,614 (2.2 %)

– Position of members of armed forces: 496 (0.3 %).

The analysis shows that the authors manifested positive attitudes towards the army only in the historic context and with respect to some achievements in the field of production and use of modern military resources (28 %). Neutral attitude was shown by journalists who reported on specific events (24 %). As for the treatment of outstanding issues related to the general situation in the Armed Forces and the efforts to find new solutions, both journalists and other experts displayed negative attitudes (48%). Judging by the ratio of the number of articles with positive and negative determination (1:1.7) we may conclude that the influence of the "NG" on its readers in connection with issues related to the AF was stimulating in terms of finding a way out of an objectively very difficult situation. Due to that *Nezavisimaya gazeta* and its specialized issues on Friday ("Nezavisimoe voennoe obozrenie") are sources of a significant part of the data quoted in this paper.

Of the analyzed copies of the newspapers included in this study, 0.3 % of space is dedicated to the human rights in the army of the RF which, compared with other issues, is not enough to provide a deeper insight into the problem.

However, taking into account the activity of the numerous Russian media, and especially those specialized in military issues, we may say that the problems related to the status of human rights in the armed forces in mid and late nineties were becoming increasingly present in public. More and more often the media disclosed various cases of disrespect for human rights in the army. By doing that they significantly reinforced the feeling of a need for civil, democratic control over the

army, despite the still outstanding commitment of the army and the entire society to do just that.[200]

Other subjects of the society have started to show growing interest in this issue. In addition to state institutions, there are also quite a few organizations belonging to the third sector. As early as 1991 a non-governmental organization called the "Soldiers' Mothers of Saint Petersburg" was founded. Throughout the years this NGO has been revealing increasing influence on the protection of the soldiers' human rights. It, occasionally, addresses significant appeals to the President of the Russian Federation, the state Duma of the RF, the Council of Federation of Russia, Minister of Defense of the RF, the European Council, European Commission, European Parliament and officials of many countries. The authority of this organization is based on the direct connection with those whose human rights in the army are jeopardized. In the period of only one recruitment cycle (April – June 1999) this NGO was approached by 2,566 recruits in need of protection of their rights.[201] During the six years of its existence, from 1991 until 1997, this same NGO, was informed about the improper treatment of 4,000 recruits, including cases of torture.[202]

The youth of Moscow and Saint Petersburg seeking the protection of their rights have found a reliable strongpoint in a volunteer organization Antimilitaristic Radical Association (ARA) founded in 1995. The program document of this non-governmental organization, with a UN category A consultative status, among other things, states that it advocates the abandoning of the system of general military obligation for the replenishment of armed forces and supports its effective civil control.[203]

The social movement "For Rights of Members of Armed Forces" was founded in mid-nineties in Moscow. The magazine "Law in Armed Forces" appeared in June 1997, published by this association, and was subsequently printed on monthly basis, along with a number of feuilletons.[204]

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[200] See – A. Kozlov: "Проблема гражданского контроля над военной политикой и разоружеческим процессом" / Россия: в поисках стратегии безопасности, Moscow, Наука, 1996, pages 270-271.

[201] http://perso.club-internet.tr/kozlowsk/mothers.html.

[202] Human Rights of Conscripts, Report, Doc. 7979, 3 June 1998, Committee on Legal Affairs and Human Rights

[203] http://www.glasnet.ru/ara.

[204] Newspaper – "Правда", 14-20 мая 1999.

ORIGINS OF ENDANGERED HUMAN RIGHTS IN THE ARMY

Based on the insight into the range of the publicly presented spectrum of problems related to the position of the army in the society and an individual in the armed forces, three dimensions may be pointed out as revealing the state of human rights in the army of the RF. First, the question of the status and behavior of active officers in the army, with corruption as the common denominator. Second, the attitude of the young towards recruitment, including both those who are ready to don the uniform and complete the usual regular military service and those looking for an alternative solution, and even avoiding the draft altogether. The third dimension has to do with the position of an individual from the moment of entering the barracks until he is out of it, described in the Russian sociological literature by the concept of "unconstitutional relations", characterized by violence in most cases.

1. Corruption

Of late, corruption has been used as a word to define the situation in some segments of life in Russia, and even in the sphere of the military. The relevant entry in the S. I. Ozhegov's Dictionary of the Russian Language, published in 1961, states that corruption is a word that is used and has a meaning only in bourgeois countries. Today it is frequently brought up to describe the deplorable situation in army circles, denoting occurrences of bribery and fraud in order to obtain illegal gains. It is mostly related to the behavior of professional members of the armed forces, often of high rank and positions. The benefits so acquired by individuals close to the top of the hierarchy, as a rule, mean that their subordinates (or generally those of lower rank) have been deprived of something they were actually entitled to, which is why this practice may be considered as jeopardizing the human rights of members of the Russian AF.

The position of army members is the focus of all materials addressing the problems related to the AF. The basic cause of the unfavorable position in the second half of the nineties was a sharp decrease in financial resources on the account of the Ministry of Defense. Thus, out of 3 trillion rubles planned for this purpose in 1997, only 1.8 trillion were placed at the Ministry's disposal by October 1, that year. Throughout 1997 the Russian AF got only 55.6 % of the funds

planned for national defense.[205] That year, members of the armed forces ranked among the low-income social strata. The following year the government of the RF decided to increase the army budget from 2.4 % to 3.1 % of the GNP.[206]

Low income, salaries in arrears for several months, housing problems, loss of jobs, unemployment of family members etc. are all revealing of the difficult material position of the entire sector of defense and security. Dissatisfaction of the members of AF is manifested as discontent with their personal position, position of the AF and the overall situation in the society. This discontent may be characterized as moderate to distinct, although the new administration tries to mitigate the problem.

The monthly income, in addition to being from being irregular,[207] does not meet the existential requirements of the members of the AF and their families, amounting – at least until recently – at less than 100 USD on the average. Officers and their families are in a difficult position and forced to manage in other ways in order to compensate for insufficient income. That is why, not infrequently, even colonels drive taxis or engage in other additional jobs when off duty. Due to that efforts are being made to find the solutions to increase the army personnel's income. Since January 2002, salaries paid by the army have been increased by 10%. However, that is less than the anticipated annual inflation rate.[208]

Housing, too, is a difficult problem. According to the official data close to 100,000 officers awaited the advent of the 21st century without a place of their own. They live in the barracks, in abandoned warships, in collective accommodation facilities or rented apartments. About 50,000 of them are entitled to improved conditions of life.[209] As a rule, only those who have spent six-seven years in professional military

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[205] Владимир Георгиев: "Главний итог года састоит в том, что военная реформа все же началась" // «Независимое военное обозрение», 26 декабря 1997 – 8 января 1998, стр. 1.

[206] Владимир Мухин: "Правительство согласилось на частичное увеличение военных расходов" // «Независимое военное обозрение», 11-17 декабря 1998, стр. 1.

[207] "Today salaries of active members of armed forces are delayed for almost 20 months", Source: Владимир Мухин: "Правительство согласилось на частичное увеличение военных расходов" // «Независимое военное обозрение», 11-17 декабря 1998, стр. 1.

[208] http://perso.club-internet.tr/kozlowsk/corruption.html (Selected by Johnson's Russian List #4448 "Moscow Tackles Military Corruption"; Richard F. Staar: "Russia's Military: Corruption in the Higher Ranks")

[209] А. Батьковский, Е. Хрусталев, В. Яакуничев: "Острейшая армейская проблема" // «Независимое военное обозрение», 26 декабря 1997 – 8 января 1998, стр. 1.

service are assigned apartments regardless of Article 15, paragraph 1 of the Law on the Status of Members of the Armed Forces anticipating the obligation to provide each one of them with an apartment according to the established norms within three months from their new posting at the latest.

The difficult position of the army is, in general, additionally aggravated by the difficult position of its units. Individual units often have to make their own living. The situation in some of them is so bad that their soldiers are sometimes left without regular meals. That is why soldiers resort to stealing, bribery and extortion in order to obtain the necessary material resources. Given the chance they would steal arms to sell it, even to the enemy. Far from being an occasional occurrence, such cases are fairly widespread and continual. That undermines the morale and even leaves the army without resources required for normal functioning.

Precisely due to the less than enviable material position, the RF is faced with corruption among its officers, even high-ranking officers and generals. Corruption occurs because the members of armed forces feel deceived. In most instances, abuse of this kind essentially seeks to offset the difficult material position. However, there are also cases of corruption in the true meaning of the word, resulting in material benefit, various privileges etc.[210] Military equipment gets stolen, as is food. Information on all such cases released so far indicates that the Russian authorities are ready to confront corruption on all levels in the army. President Putin has issued orders to prevent occurrences of this kind. In connection with these problems the issue of the army reform has also been actualized, since it is obvious that restrictive measures against the perpetrators alone cannot eliminate the causes of this phenomenon. Corruption in the army – by contrast from corruption in politics and business – cannot be eliminated by penalties, arrests, threats, new laws, private agreements, etc. The state needs soldiers and cannot afford to dismiss them from service. However, the military prosecutor's office is very active in stamping out corruption .[211]

In order to implement anti-corruption measures in the Russian army, President Putin judged that he had to undertake steps within the army itself as well as in its social surroundings. Bringing charges against perpetrators signalizes the start of a forceful struggle against the agents of corruption. However, corruption in the army may only be suppressed successfully when its soldiers are fed and its officers paid well.

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[210]Александр Шабуркин: ”Система защиты военнослужащих неэффективна” // «Независимое военное обозрение», 20 марта – 26 марта 1998, стр. 3.

[211] Ibid.

2. Treatment of Recruits

The basis of a mass army is recruitment and it obligates young people to serve in the army for a certain period of their lives and, after that, to remain in the reserve. To maintain such an army takes both money and men. It also requires a large number of recruits. It seems that in Russia there is not enough young people for recruitment. Therefore recruits are generally declared to be fit for army service. The seriousness of this situation represents one of the factors that significantly influence the discussion on the number of members of the Armed Forces and the entire army formation of the Russian Federation.

As a rule, a recruitment army is made of a majority without university education and a small group of professional soldiers. Quite often, the recruits are not trained for technological, educational and administrative functions that characterize a professional army. As a matter of fact, Russian soldiers generally come from rural environments or very poor social strata where survival is more important than education.[212] Some recruits have not completed primary school and therefore have problems writing and counting.

Young people are registered as future recruits at the age of 17. At that time they are called "pre-recruits". The age of recruits is from 18 to 27, and the military service lasts for 2 years. There are two recruitment periods in a year: from April 1 until June 30, and from October 1 until December 31. A provincial governor or a mayor is responsible for recruitment on the local level. That is how the entire territory of Russia is covered. The Law on Military Obligation and Military Service stipulates that the man with highest authority in a local community appoints one of his closest associates president of the Recruitment Commission.

According to the same regulation, the president of the Recruitment Commission has the right to transfer the relevant authorities to his deputy, i.e. a military commissar. In reality, the president always gives this authority to his deputy so that the commissar actually carries out the recruitment procedure. Civil authorities do not control the military commissar. They even voluntarily delegate some of their authorities to the army. Thus, the army performs that sensitive work itself, without real civil control. The militia helps the army do that and its main task is to collect the young people under a recruitment obligation and send them to recruitment centers.

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[212] Among the recruits who joined the armed forces in the autumn of 1997, only 70 % graduated from a secondary school, by contrast from 1985 when 93% of recruits finished secondary schools – Владимир Георгиев: "Армейскайа преступност угрожает безопасности России" // «Независимое военное обозрение», 13 марта – 19 марта 1998, стр. 1.

Many civil society actors in Russia have a very critical attitude towards the Law on Military Obligation and Military Service. Article 4 of this law – Responsibilities of State Authorities, Authorities of Local Autonomy and Organization that guarantee the citizens' compliance with the military obligation – in paragraph 1 states the obligation of directors and other officials responsible for the registration of people who are subject to military obligation to advise the military commissariat or other relevant military registration authorities within two weeks from their request. The related provisions of articles 2, 3 and 4 are formulated along the same lines. These provisions are contrary to Article 24, paragraph 1 of the Constitution of the RF which reads: "Collecting, keeping, using and spreading of information on the private life of individuals is forbidden without their approval." In the same way, paragraph 1 of Article 11 (Obligatory Preparations of Citizens for Military Service) of the Law on Military Obligation and Military Service, includes a provision indicating that obligatory preparations of citizens for military service, among other things, also include military-patriotic preparations. This may be considered in collision with Article 29, paragraphs 1 and 2, of the Constitution of the RF which read:

1.The freedom of thought and speech is guaranteed;

2.Propaganda and agitation that stimulate social, racial, national or religious hatred and hostility are not allowed.

Young people in Russia have the constitutional right to opt for alternative military service. This issue is regulated by Article 59, paragraph 3 of the Constitution which reads: "A citizen of the Russian Federation, if his beliefs or religion are opposed to military service and in other cases established by the federal law, has the right to replace military service by alternative civil service". It follows that obligatory military preparations in schools (according to Article 13 of the Law on Military Obligation and Military Service) are unsustainable, because every young man has the right to take up alternative civil service instead of a military one. According to that, military preparations in schools should be voluntary. A difficulty in exercising the right of alternative military service is found in the fact that there is no law to precisely define that issue. In order to use their constitutional right young people have to go to court. Many are reluctant to make this step and a relatively small number has actually availed of this possibility.

In accordance with the Law on Military Obligation and Military Service, a person may refuse the draft invoking health-related reasons, studies or other social circumstances.

In recruitment centers, recruits come in contact with doctors, members of recruitment commissions. They belong to an official structure which often jeopardizes the elementary rights of recruits, e.g. by

declaring a young man fit for army service on the basis of examination from a distance, even without any medical checkup. Recruitment commissions use lists of diseases to define the fitness of young men. Doctors who work in these commissions usually find them fit for army service. In that sense the problem is not the one of law, but rather of the doctors' ethics. Bearing in mind that health is the legal reason most often invoked to avoid military service, it is very important that the doctors act professionally. At the same time, it is the most reliable way to be released from the military obligation. For example, a young man, even when he studies, is not sure that he will be able to postpone military service, because the military police and military commissariats can find the ways to prevent him from doing so.

The right to refuse recruitment invoking social reasons has become more restrictive in the new version of the Law compared with the previous ones: under many circumstances an only sustainer of a family – even the one that includes disabled, minor or elderly members – or a self-supporting mother, still has to respond to recruitment. The Law of this kind often leaves entire families without any protection, which may have serious consequences considering the economic situation characteristic of Russia in recent times.

Under such circumstances it is very difficult to fulfill the recruitment plan. That is why the Prosecutor's offices sometimes instruct the militia to assist the military authorities. Militiamen then set about checking identity cards in the streets, in student centers etc. This happens because the recruitment authorities are very concerned as to where and how to find the required number of recruits. About 90% of young people are not ready for military service due to poor health. Almost every "pre-recruit" suffers from 3 to 4 chronic diseases on the above-mentioned lists. Thus the army, in order to fulfill the recruitment plan, consciously violates the existing Law on Military Obligation and Military Service, i.e. its part related to diseases. However, the military authorities have started the procedure to have the Law amended.[213]

3."Unconstitutional relations" in Army Collectives[214]

[213] www: coe.fr – EUR 46/10/97 "Russian Federation: Torture, ill-treatment and death in the army"

[214] The analysis that follows is based on studies published in the book – С. С. Соловьев, И. В. Образцов: Российская армия от Афганистана до Чечни, Национальный Институт имени Екатерины Великой, Москва, 1997, стр. 333-344.

The issue of "unconstitutional relations"[215] in army collectives of the former USSR was long treated as an utmost secret. Discipline is an important component of the army morale and an element of combat readiness. Not before the mid-eighties has this problem been addressed outside the military circles. The new approach gave rise to various educational-methodological manuals, recommendations and instructions aimed at preventing this specific form of jeopardizing the military discipline.

After the disintegration of the USSR, the Baltic countries and all members of the Commonwealth of Independent States, took with them their respective shares of these problems. Still, the bulk remained in the Russian Armed Forces. Efforts to solve the problem of "unconstitutional relations" in the Russian army have been under way ever since. Measures were taken to relocate units, reduce the number of personnel in military collectives, stimulate tolerance on national basis, etc. The decrease in the number of registered cases of unconstitutional relations during 1993 and 1994 was not a result of any special changes in the relations among soldiers, but rather of decreasing the armed forces. Sociological studies from that period show that 50-70% of soldiers and sailors confirmed the instances of unconstitutional relations in their respective units. One in every four interviewed soldiers characterized the atmosphere in his unit as amicable, 52% of regular soldiers spoke of indifference in inter-relations, while 23% characterized the situation as tense and complex due to frequent conflicts.[216]

Hopes that this problem will be diminished by introducing the institution of "soldiers on contract" have not come true yet. The reasons for this may be found in the lack of higher quality (more educated) personnel. On the other hand, the existence of soldiers on contract itself causes tensions between them and other (common) soldiers in the same unit.

We may presume that the system of engaging soldiers on contract will not redress the personnel deficit in the army or decrease the number

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[215] In the works of Russian authors in the field of sociology and military psychology a syntagm "neustavnie vzaimootnoshenia"is used in this context (somewhere "antiustavnie otnoshenia"), to denote negative occurrences in relations between the members of the armed forces, which are not ordinary disciplinary mistakes, but come from the disrespect of constitutional and legal regulations and violation of international conventions on human rights. We are of the opinion that in the Serbian language the content of this expression may cover by the term: "unconstitutional relations", as part of the content of the expression "illegal behavior", in spite of all the disadvantages of such a solution.

[216] С. С. Соловьев, И. В. Образцов: Российская армия от Афганистана до Чечни, Национальный Институт имени Екатерины Великой, Москва, 1997, стр. 334.

of regular soldiers. Thus, the problem of unconstitutional relations remains outstanding.

Statistically, the discipline in the Russian army has been deteriorating over the past few years. In all structures of power of Russia 11,501 violations of discipline were registered in the first eight months of 1997, followed by 12,219 in the same period next year. In the armed forces there were only 7,382 in that year, and 8,243 in 1998. These and similar data make some analysts conclude that the increasing indiscipline shows that some segments of the Russian army are practically not ready for combat, i.e. that the Russian authorities have lost control over the armed forces.[217] The Collegium of the Ministry of Defense of the RF in March 1998 – during a discussion "About the state and measures for establishing the rights, strengthening the military discipline and eliminating the violations of law in the AF of the RF" – indicated that of all the violations in 1997 even 25% were related to unconstitutional relations among military persons.[218] The situation is so difficult that "recruits have no guarantees that they will not be killed in times of peace or become perpetrators themselves".[219]

One of the numerous reasons for the existence of negative occurrences in relations among regular soldiers has for several decades been the low effectiveness of protection by the officer contingents. According to some studies the situation is much better in cases where direct subordinates and all officers in the barracks show some concern for preventing the negative occurrences than in cases where soldiers are left to fend for themselves.[220]

The process of education in military schools, and also the contents of manuals dealing with the prevention of unconstitutional relations, are to a significant extent oriented towards the means an officer may use to fight such phenomena. Furthermore, a detailed analysis of the essence of negative occurrences along with their development trends and manifest forms, has often gone missing. In consequence, officers who lacked sufficient experience in organizational and educational work could not achieve much in terms of strengthening the military discipline without a more intensive engagement to this end.

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[217] В. Соловев, А. Шабуркин: "Наша Армия практически небоеспособна" // "Независимая газета", 25 сентября 1998, стр. 1.

[218] Олег Фаличев: "Дисциплина – основа боеготовости" // "Красная звезда", 11 март 1998, стр. 1.

[219] Сергей Лесков: "Призивники не хотяат погибать или становиться преступниками" // "Известия", 28 января 1998, стр. 1.

[220] Владимир Мухин: "Все меньшее количество молодежи желает служить в Российской армии" // «Независимое военное обозрение», 5-18 июня 1998, стр. 3.

"Unconstitutional relations" generally denote every act illegally jeopardizing an individual and the rights of soldiers on the part of members of armed forces of all categories, or groups thereof. At the same time, the social-psychological content of unconstitutional relations includes separate, individual or group ways of humiliating the dignity of a soldier. It is obvious that these occurrences which, to some extent, affect all categories of members of the armed forces, appear in their worst form precisely with regular soldiers.

In that way the center of all negative occurrences are the conflicting situations which affect the social and social-psychological status of an individual or a group, their material or spiritual interests, honor and dignity. In that context it is necessary to make a difference between different levels of these negative occurrences.

Conflicts and conflictive situations that appear in relations on a personal level, on the basis of personal animosity or hatred, carry less social danger (due to their situational and short-term character) than the analogous incidences on inter-group and individual–group relations levels. In the latter case we actually deal with occurrences which represent a serious threat for the normal functioning of not only a specific segment but of the entire military organization. That is because conflicts in individual–group and group–group relations stem from an informal division of soldiers (contrary to the formal division foreseen by regulations: by duty, rank etc.). This division creates hostile social groups that incline to fulfill their domination in a military formation. At the same time, the social status of such a group within a military collective gives it some informal "privileges" and "responsibilities" in relations with other groups and individuals, which it fortifies by using psychical and physical violence.

The informal division of soldiers tends to expand fast and is persistent as well as self-perpetuating due to a real possibility that the dominating group may draw its privileges from the oppressed groups. The potential possibility of vertical social tensions leads the members of the oppressed groups to accept the "rules of the game", which significantly reduces the efficiency of their protection. That is how, in the early nineties, a system of organized physical and psychical violence was created in the armed forces of the RF, pervading all aspects of army life. This should have been countered by a system of practical preventive activities.

Each concrete activity should have been preceded by a detailed analysis based on the understanding of findings of the related studies.

Studies devoted to unconstitutional relations reveal six different bases for the classification of the informal systems and mechanism whereby the human rights are violated in the army: "dedovschina", "compatriotism" and the "cult of force"; and such occurrences based on religious, criminogenic and socio-political factors.

The studies also show that none of the analyzed unconstitutional relations can be found in a "pure" form, whether widespread as "dedovschina" and "compatriotism" or sporadic as rare instances of such conduct based on a socio-political factor. Each of the mechanisms was dominant in a certain period, but that does not mean that other forms of unconstitutional relations did not exist at the same time.

Judging by the structure of group signs at the basis of unconstitutional relations, "dedovschina and "compatriotism" appear dominant as of mid-nineties until recent times, and will therefore be given more space as opposed to others which will only be mentioned in this paper.

The "cult of force" is an informal division of soldiers depending on certain individual qualities. Representatives of the dominant group are, as a rule, characterized by high willpower and physical strength. Inadequate selection of officer personnel often leads to the emergence of a dominating group of soldiers – informal leaders who violate the rights and personal dignity of other soldiers, and even their formal superiors (officers). This component appears practically in all forms of unconstitutional relations.

The "religious factor" – as a form of unconstitutional relations among the members of an army unit – is based on the division of soldiers according to their religion. Due to that many recruits try to avoid military service, or at least go through it without carrying arms. They rarely succeed.[221] Military practice registers examples of bonds between soldiers who feel significant hostility towards the members of other religions. This has happened in collectives comprising members of various nationalities, but without a clear majority of a single one (the prerequisites for compatriotism were lacking and dedovschina did not exist due to the short period of service).

Such circumstances gave rise to groups whose members glorified the Orthodox Church and all that's Slavic, manifesting intolerance towards the members of other national-religious structures and violating their rights. In other instances, subject to the existence of a critical mass, groups of members of national and religious minorities are also created. The most numerous among them are those who profess Islam, whose activities jeopardize the rights of "non-Moslems". A form of unconstitutional relations is also based on the informal division of soldiers determined by their belonging to various criminal groups even before their military service. In this case we are talking about young men who have already been convicted, or spent some time in correctional institutions, as well as those who have never been convicted but belong to certain criminal groups. (The official data confirm the importance of this problem: 8% of those recruited in the spring of 1992 had been arrested

[221] www: coe.fr – EUR 46/05/97 "Russian Federation: the right to conscientious objection to military service".

by the militia while 1.5 % had been convicted. The relevant percentages for the autumn of the same year were 18.3% and 3.7%). Individuals in this category, before being called to the army, had contacts with various criminals and adopted their ways and style of living. The assumption that the "criminal factor" defines a separate kind of unconstitutional relations does not imply an exact copy of crime in the society concerned. It is rather the case of similar elements existing in the army and out if it.

Young people in this category, while in the army, often had much more privileges than those whose status may be characterized in terms of dedovschina or compatriotism. If several persons of this kind were assigned to the same army collective, conditions were in place for their joining together into a group with the image of an upper "cast", characteristic of places of imprisonment.

Characteristics of the "prison subculture" were not addressed by special studies but references to similar research in the field show that the substance and origins of this concept are similar to those of dedovschina. Under these circumstances there are several categories of convicts, those with privileges and others with responsibilities, as well as traditions of crime prevailing in that society.

The socio-political factor of unconstitutional relations is based on the soldiers' belonging to different political and social organizations. Considering the low level of political culture in society in general, this type of relations will – at least for some people – have more significance as a negative concept, in spite of the proclaimed depoliticization of the army.

Because of the depoliticization of the army it may seem that this problem is pushed hard, but it should be taken into account that, in present times, parties form their own youth. Active involvement of young people in politics may lead to the formation of groups of party supporters in army collectives. Clashes of these groups, on their part, could lead to the violation of the rights of soldiers caught in their struggle for the dominant position in the barracks.

VIOLENCE IN THE ARMY

Dedovschina

Dedovschina (year-ship in the navy) represents a form of unconstitutional relations wherein the length of army service predetermines the status of a certain group.[222] Dedovschina is a system of physical and

[222] For more detailed information on this topic see, e.g.: С. И. Съедин, В. М. Крук: Дедовщина в воинских коллективах – причины, пути выявления и иско-

psychical violence that permeates all spheres of army life and provides for the dominating position of older soldiers (according to the time spent in army) compared with the young soldiers. This results in a severely-enforced hierarchy and a high rate of violence in the Russian Army.[223]

The division of soldiers into categories with corresponding functions is strong and firmly defined. Older soldiers subject the rookies to vicious rituals, which may vary but are essentially aimed to affirm the division among the regular soldiers based on the period of their service and to remind them of their respective roles in the structure of collective inter-connections permeated by the phenomenon of unconstitutional relations.

A young man who finds himself in a military environment, no matter whether he comes from an incomplete family (without a mother or father), or from a complete, exemplary family, has equal chances of passing through the brutal "school" of his "grandfathers" to make him accept unconstitutional relations. The difference may exist only in the degree of using the "privileges" reserved for soldiers with a longer period of service. That is why it would be unjustified to speak about small groups of soldiers who violate the rights and dignity of others and to believe that their elimination will make the negative phenomenon disappear: practically every soldier in the second year of service is an agent of unauthorized relations. A person who wants no part of the scheme runs a serious risk of being sanctioned for jeopardizing the "tradition", including debasement or "reversal" to the previous status etc. The message thus sent to the army collective makes the concept of unconstitutional relations in the army resistant to influence. Because of that dedovschina has become a common and widespread phenomenon in the Russian army. It has to do with mass humiliation, beating (whipping), torture and even the killing of inexperienced recruits by older soldiers, officers and commanding personnel.[224]

The inhuman treatment of raw soldiers on the part of their older colleagues ("grandfathers") based on the concept of "dedovschina", is part of a caste system, supported and encouraged by unit commands in order to "secure" order and discipline in the barracks. Brutal beatings are everyday practice in many units of the Russian army and include the use of a series of different instruments (chains, belts, chairs etc.). Sexual

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ренения, Москва, 1990; Ю. И. Дерюгин: «Дедовщина: социально-психологический анализ явления» // Психологический журнал, Т. 11, 1990.

[223] See, www: coe.fr – Resolution 3-0062/94 adopted by the European Parliament on January 20, 1994.

[224] See – Black Book on Rights of Conscripts in Central and Eastern Europe, European Council of Conscripts Organizations, Utrecht, The Netherlands, June 29, 1996; this document includes Russia, Byelorussia, Czech Republic, Estonia, Hungary, Leetonia, Lithuania and Slovakia.

abuse (rape) has also become very frequent. Young people in the barracks are exposed to the risk of losing their health, and even life.

Faced with these dangers the army is at a loss for arguments to continue concealing these and similar phenomena in the army. However, many officials and other "well-informed" sources do not wish to show the army in an inappropriate light, deliberately hiding and disregarding the truth. Namely, official sources interpret every piece of information in their own way, depending on their own interests. In many cases journalists simply refuse to be misinformed and are in the position to quote witnesses or describe a concrete situation.

a) History

Dedovschina is rooted in the system and psychology of GULAG (Chief Administration of Camps). This institution was introduced with the system of repression in the Soviet Union in the late 1920s. At that time the Soviet state was making an effort to increase its exports of cash crops, wood and ore in demand at foreign markets. The work of the rural population to produce export commodities required at least some compensation. Therefore, the party authorities decided that this work should be done by convicts. Tyrannical use of millions of people as free labor in Gulags represents a continuance of the "red terror". It marked the struggle of the Soviet authorities against the part of the population that actually and potentially was in conflict with the communist regime. In the period between 1935 and 1938 convict camps could count on new contingents of several tens of thousands of people who, in that period, came under the attack of the "Bolshevik terror", introduced in the legal system by the Soviet Constitution of 1936. Mass use of forced labor in Gulags, opened the question of effective control over the work of convicts. One of the ways to deal with this was to engage the inmates of longer standing to maintain discipline. The use of violent methods and humiliation of masses of convicts by the guards and "more experienced" convicts became extremely extensive.

The 1950s – marked by Stalin's death – announced many changes in the functioning of the USSR. The system of Gulags disintegrated. A question arose of finding the jobs for a large number of people who were professionally engaged in them. The answer was found in assigning a significant part of that personnel to the army. Prison guards, transferred to the armed forces to work as army officers, brought along brutal methods of working with people.

In the next twenty odd years the system of camp-management was transferred to the army and additionally improved and adjusted to the conditions of the new environment. A soldier who entered the second year of military service, thus an older soldier, was increasingly be-

coming the basis of an army collective. Officers counted on him as the agent of their functions related to the internal order of units. The shortage of officers in army units during the seventies and the practice of dragging the soldiers off to work in the country did not let the commissars fulfill their daily plan normally. In such a situation sergeants lost their authority. Commands increased pressure on officers of lower rank. They were controlled and punished, discharged from the army, or else stayed and often sunk into alcoholism. The commanding personnel were losing control over units, while dedovschina grew ever stronger.

The disintegration of the USSR in the early nineties imposed many problems on the armed forces of Russia.

Personnelwise, this huge army was left without a part of army professionals due to several reasons, which, in principle, favored dedovschina. On the other hand, engagement in the war in Chechnya tied many officers to jobs of primary interest for the state. In units taking part in combat actions as well as those on the alert, officers looked on dedovschina as a possibility to spare themselves the effort of attending to the internal life of army collectives, in order to be able to devote their attention to other more important issues.

At the beginning of the twenty first century dedovschina remains one of the biggest problems in the armed forces of the Russian Federation.

b) The principle of Torture

An informal hierarchical structure exists practically in every army collective. It offsets the lack of formal (constitutional) structures, and even the lack of institutions of junior commanders. Alike the formal structure, the informal one includes specific forms of relations and a moral code that should provide for the normal functioning of army collectives. This informal system implies that younger soldiers fulfill their "obligation" which guaranties them timely transfer among the older soldiers, whereby they are relieved of obligations and vested with "privileges".

The existing system of informal penalty sanctions, it is a very effective regulator of soldiers' behavior and includes an entire complex of various forms of physical and psychical violence that permeates all forms of their lives. Speaking of physical and psychical violence in a specific informal system (dedovschina), such forms of behavior which are very persistent and repetitive should be considered first of all.

Sometimes, it is very difficult to distinguish between physical and psychical violence, or to decide which of the two forms prevails. For example, some forms of psychical violence often change into physical or are additional to it. Therefore, the dominant role of one or the other form

of violating the human rights of young soldiers cannot be generally determined.

Soldiers, newly arrived in the barracks, are left alone until they take an oath. Taking an oath obtains the characteristics of a pagan ritual. That is when mistreatment, beatings and torture start, carried out by older soldiers. The youngest soldiers have to fulfill various tasks – from cleaning shoes through buying cigarettes to thefts. But, no matter whether they do what they are asked to or not, they get beaten up and mistreated in various other ways. That is what they go through during the first year of their military service. When older soldiers are demobilized, former recruits, now with a year of service, take over and beat the new recruits.[225] This caste system is now widespread in army units. It gives rise to criminal behavior that does not stop even when these young men go home.

Recruits who run away trying to avoid crippling, or even death, are labeled deserters and in ten days charges are brought against them for leaving the unit without permission.[226] Those who mistreated these soldiers and were the actual cause of their flight from the unit are often released since the army discipline system protects "its" men. The initial investigations are always carried out by somebody from the same unit, thus a person who cannot be impartial. In the end, the whole thing comes before the military court which sides with the investigator – i.e. the tyrant – and convicts the victims.

Systematic beating and moral pressures are at the basis of the suicidal behavior of the victims of that kind of violence. The following data reveal the proportions of such occurrences. In 1998, suicides accounted for 22.7 % of deaths in the army. In other words, 30 in 100,000 members of the armed forces committed suicide.[227]

Compatriotism

One of the problems in the Russian army units is the division of the newly arrived servicemen according to the exterritorial principle. This principle has been retained from the Soviet period when Russian soldiers were sent to other Soviet republics or the WP (Warsaw Pact) member states to establish Russian control. In military terms, young people may react less emotionally when in distant areas. Yet, military service away

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[225] www: coe.fr – EUR 46/04/97 "Torture in Russia: this man-made Hell"

[226] According to the data revealed by the Chief Army Prosecutor's Office in the period January 2, 1992 – January 1, 1998 about 17,000 members of the armed forces left their units of their own volition – See: Главная военная прокуратура: "Обращение к военнослужащим, продолжающим уклоняться от военной службы" // «Независимое военное обозрение», 5-18 июня 1998, стр. 3.

[227] Source: ИТАР-ТАСС, 20 апрель 1999.

from their homeland makes recruits uncomfortable due to different climate, their ignorance of local habits, etc. Therefore, soldiers tend to join with others who come from the same parts, which often leads to conflicts between different national groups, occasionally even with racist characteristics. With this kind of experience acquired in the army, some young people are afterwards prepared even to kill the members of another nationalist group. Various nationalist groups and parties of Russia build their power precisely on this fact.

Compatriotism is a form of unconstitutional relations with the longest tradition. It is also the most widespread concept in army collectives. Compatriotism is based on the informal division of soldiers according to nationality or region of their origin. From 1970s until the early nineties dedovschina was hard-pressed by compatriotism (on national basis) flourishing in a demographic situation marked by a substantial number of soldiers from Middle Asian and Transcaucasus republics.

After the disintegration of the USSR the problem of compatriotism lost its actuality. However, the possibility of conflicts on national basis is still strong based on the following factors: first, the integrative processes in the creation of multinational peace units with Trans-Caucasus countries as part of international forces in the Balkans and elsewhere; and second, the significant departures from the territorial principle of unit forming. Thus, young people complete their military service in the region wherein they live, which is convenient for compatriotism. In certain circumstances, compatriotism in the army and the navy assumes negative characteristics, including the jeopardizing and often violation of human rights of those who do not belong to a certain group of countrymen.

Due to that, efforts to organize protection against the negative influence of compatriotism on the situation of human rights must take into account the basic tendencies and characteristics of the functioning of compatriotism over the last two decades.

A national group with the leading position in the barracks, as a rule, consists of soldiers of one or only a few nationalities (due to its numbers, internal connections and aggressiveness). Members of all other nationalities are subjects of mistreatment.[228]

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[228] "Notwithstanding the reasons for the occurrence of compatriotism (various factors such as national-psychological, social, historic and socio-cultural), it was noted that the largest internal and external aggressiveness was manifested by groups made of members of Transcaucasus nationality, followed by those from the republics of Middle Asia. Internal inconnection, presence of transient microgroups and indifference for the mistreatement of their countrymen, were characteristic of Slav nationalities.» – С. С. Соловьев, И. В. Образцов: Российская армия от Афганистана до Чечни, Национальный Институт имени Екатерины Великой, Москва, 1997, стр. 342.

Compatriot ties with a negative character spread to individual army collectives as well as to the adjacent collectives, and even garrisons. A group so formed is compelled to continually maintain its status by violent methods. That is why its members drive soldiers from other units into inter-group conflicts, which in some cases leads to serious problems (group fights using sidearms). If a dominating group gets replaced along with many complications that is due to the change of personnel of the unit and the arrival of new soldiers. Young soldiers of the dominating nationality do not have the chores otherwise envisaged for soldiers with the shortest time of service. Because of that, soldiers of other nationalities are burdened by responsibilities towards the dominating nationality as well as towards their own countryman – the "grandfathers".

National groups with the dominating position develop a hierarchy based not only on the length of the time spent in the army but also on the group members' belonging to a nationality and a tradition, general educational level, material status, region in which their families live, family ties etc. Furthermore, conflicts inside the group, as a rule, do not reach the level of the army collective, and the parties to the conflict quickly reunite faced with an external danger. Sometimes, a member of another nationality is permitted the access of the one-nationality group. In that case the decisive factors are the place of that person's residence before he had been called to the army, knowledge of languages, affiliation to the same religion etc.

Military experience testifies that the most effective protective measures, where compatriotism is concerned include the keeping of contacts with parents of regular soldiers, local authorities and social organizations from the region where the soldiers come from, in order to develop a positive motivation of countrymen groups, and individual-educational work with the groups' leaders.

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(translated by: Dubravka Alić)

Attachment 1

TITLES AND SUBTITLES OF ARTICLE IN NEWSPAPERS
"Независимая газета"

1/ January 13, 1998 (Tuesday) – 1 article:
– THE MINISTRY OF DEFENSE OF RUSSIA IS READY TO MEET ALL CLAIMS OF GEORGIA. Russian party's agreeing that a number of military installations are handed over to Tbilisi undermines the position of Moscow in the region (p. 5)

2/ February 6, 1998. (Friday) – no article on AF

3/ March 11, 1998 (Wednesday) – 5 articles:
– MECHANISM OF ADMINISTERING NATIONAL DEFENSE. Today series of vital interests of Russia are in danger (p. 3)
– ROCKET LABYRINTH. Politicians of Perm are for months in it (p. 4)
– SCANDAL AT TAKEOFF RUNWAY. Pilot regimen from Bresovac will be taken care of (p. 4)
– RUSSIAN NORTH CAUCASUS: NEW VIOLATIONS AT THE BORDER WITH CHECHNYA. The latest provocations were used for increasing the tensions (p. 5)
– CONTOURS OF NEW RUSSIAN STRATEGY. State can be saved only by central position on geo-economic map of Euro-Asia (p. 14)

4/ April 18, 1998 (Saturday) – 1 article:
– Minister of Defense postponed departure (p. 1)

5/ May 19, 1998 (Tuesday) – 3 articles:
– MOSCOW AND ANCARA RENEW MILITARY CONTACTS. Turkey does not lose hope that Russia-Cyprus Contract will be cancelled (p. 2)
– OMINOUS SHADOWS OF SVASTIKA. Grandsons of winners of the World War II come under influence of fascists and anarchists (p. 9)
– DON'T BE LAZY, COSSACK, AND YOU WILL BECOME ATAMAN. In June the first generation from Kubavski Cossack cadet corps of ataman Babic will come (p. 13)

6/ June 18, 1998 (Thursday) – 3 articles:
– IS "WILD DIVISION" NECESSARY. Ingushetian Cossacks consider themselves neglected (p. 5)???
– OUR ARMS ARE ESTEEMED IN THE WORLD. That is how general Nicolai Dimidjuk summed up results of international exhibition of Eurosafari – 98 (p. 6)

– STRATEGY OF RUSSIA IN THE 21ST CENTURY: ANALYSIS OF STATE AND PROPOSALS (STRATEGY – 3). Theses of the Council for Foreign and Defense Politics (p. 8)

7/ July 29 1998 (Wednesday) – 3 articles:
– NEW HELICOPTER PRODUCED. The machine will be used for military and civil purposes (p. 2)
– RUSSIAN NUCLEAR POTENTIAL FOR TACTICAL PURPOSES 20 TIMES BIGGER THAN NATO'S. Minister of Defense of Italy Beniamino Andreta is very concerned (p. 6)
– HOW TO KEEP THE CRADDLE OF RUSSIAN AVIATION. Appeal of heads of Kacinsko uciliste of military pilots (p. 10)

8/ August 8, 1998 (Saturday) – 5 articles:
– REPRESENTATIVES OF UN RECOGNIZED OUR PILOT FOR THE BEST. Rotation of peacemakers in Angola finished (p. 2)
– RUSSIAN-AMERICAN MILITARY MANEUVERS COMPLETED. Participants did not mind bad weather (p. 2)
– SPOUSES OF MEMBERS OF ARMED FORCES CONTINUE BLOCKADE OF AIRPORT (p. 3)
– MILITARY-COMMERCIAL COMPLEX IS GETTING READY FOR FIGHT. Association of enterprises that manufacture products for defense requirements decisively asks the state for earned money (p. 4)
– Pilot who won the ″cobra″ (p. 8)

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