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Conceptual Disputes over the Notions of Nation and National Minority in the Western Balkan Countries

Ljubica Djordjević

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The paper analyses the texts of the constitutions of Bosnia and Herzegovina, Montenegro, North Macedonia, and Serbia as a basis for exploring how these states deal with the (ethnic) diversity and balance between civic and ethnic concepts of nation. The four countries offer an interesting spectrum of different approaches, caused by different social contexts: the main feature of the approach in Bosnia and Herzegovina is the category of "constituent peoples"; Montenegro has opted for a civic concept; North Macedonia tries to balance between multiculturalism and a binational state; and Serbia juggles the concept of the nation-state combined with comprehensive protection for national minorities. The analysis shows that the constitutions struggle to various degrees with the balance between the civic (political) concept of a (supra-ethnic) nation and the ethnic (cultural) concept of nation(s), and, in essence, fail to contribute to interethnic interaction and wider social cohesion. Although it is clear that the recognition of specific group identities and accommodation of (minority) rights is essential for pursuing peace, stability, diversity and genuine equality in each of the four analysed countries, it is also evident that imbalance favouring the ethnic concept of nation and failure to establish stronger institutional links of common citizenship, inevitably leads to parallel (one could even argue "segregated") societies where different groups simply live next to each other but do not genuinely interact, which is detrimental to social cohesion and social stability and prosperity in the long run.

Keywords: constitution, nation, national minority, Bosnia and Herzegovina, Montenegro, North Macedonia, Serbia.

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1. Introduction

All countries in the region of the Western Balkans that have emerged from the former Yugoslavia face difficulties in defining and conceptualising the relationship between state and nation. The main reason for this is the dominance of the ethnic paradigm and the perception of the nation through ethnicity. This raises a sensitive and problematic question of inclusion/exclusion and, consequently, of ownership over the state. In essence, the ideology of the nation-state and of rigid national identities prevails, which shows to be highly problematic in a context of ethnically (linguistically- and confessionally-) heterogenous societies. This calls for the introduction of instruments that acknowledge group identities, underpin equality and, if not fully eliminate, at least mitigate the dominance of one group. Yet, the instruments established in these countries did not result from a genuine democratic dialogue and openness toward intercultural links, but rather from international pressure and/or as a response to interethnic conflicts. These concepts are mostly only segmental (addressing "hot" issues), whereas a sincere willingness to set up a constitutional framework that supports and fosters pluralist society is missing. Two additional factors hinder the positive effects of the established models. The first of the two is inadequately dealing with the recent past, in the absence of a clear break with the ideologies and narratives that have caused violent interethnic conflicts and still perpetuate interethnic distances. The second is the general weakness of democracy and rule of law in these countries, which affects the quality of political dialogue and the quality of human and minority rights implementation.

The paper analyses the texts of the constitutions of Bosnia and Herzegovina, Montenegro, North Macedonia, and Serbia as a basis for exploring how these states deal with the (ethnic) diversity and balance between civic and ethnic concepts. The four countries offer an interesting spectrum of different approaches, caused by different social contexts: the main feature of the approach in Bosnia and Hercegovina is the category of "constituent peoples"; Montenegro has opted for a civic concept; North Macedonia tries to balance between multiculturalism and a binational state; and Serbia juggles the concept of the nation-state combined with the comprehensive protection for national minorities. The paper points out the relevant constitutional provisions pertaining to state and (national) identity: preamble, definition of the state, language, state symbols, status of religious communities, protection of national minorities. The analysis also looks at the dynamics influencing the development of constitutional provisions or interpretations thereof, as provided by the constitutional courts. Although constitutional texts are the main focus of the present analysis, it has to be acknowledged that a constitution is not only a legal text, but also a political document, which produces effects in a specific social context. For this reason, some contextual or political aspects will also be presented, but only insofar as this is needed to explain the rationale behind the constitutional formulations, and without delving into a deeper political or social analysis.

2. Bosnia and Herzegovina: Constituent Peoples and Others

The specific and complicated constitutional structure in Bosnia and Herzegovina (BiH) resulted from the need to put an end to the war and find solutions that would satisfy the conflicting sides, thus securing peace. The conflict and post-conflict context have shaped constitutional arrangements that were primarily concerned with the balance of powers and the stability of the (state and constitutional) structure, rather than with its functionality. This causality and interlinkage between the conflict/post-conflict context and the constitutional framework is most directly manifested in the fact that the Constitution of BiH, which serves as a source for the entire constitutional order, has been enacted as part of a peace agreement (Annex 4 to the Dayton Agreement). This procedural feature of the constitution affects its substance, in that it is clearly aimed at securing peace and stability.

The most significant response to the challenge of securing peace and stability in a society torn by an interethnic war that the Constitution of BiH provides is the establishment of the constitutional category of "constituent peoples". It could even be argued that the concept of constituent peoples is central to the whole constitutional structure, as many constitutional norms reflect the need to protect the constituent peoples and their equal status. A pivotal provision regarding the constitutional entrenchment of constituent peoples is the concluding recital in the Preamble which states that "Bosniacs, Croats, and Serbs, as constituent peoples (along with Others), and citizens of Bosnia and Herzegovina" determinate the Constitution of the BiH. This provision is interesting for several reasons. It conceptualizes the *pouvoir constituant* along the ethnic-civic and group-individual dichotomy. The constitution detaches from the liberal concept of individual–based citizenry as bearer of constitutional power (and thus sovereignty) and recognizes specific groups as essential components for the construction of constitutional power. Three groups are listed and given the status of constituent peoples: Bosniaks, Croats and Serbs. Thus, the concept of constituent peoples rests on ethnicity, as belonging to any of these groups is in fact perceived through an ethnic lens. The reference to the category of "Others" in the constitution is also interesting. The capital "O" indicates that the term designates a separate/additional group, whose members are implicitly defined through *not* belonging to either of the three constituent peoples. The constitution thus places individuals who identify as neither Bosniaks, Croats, nor Serbs in the imaginary group of "Others", which does not have the status of a constituent people, but is recognised as an element in constitution–making. Through reference to Others, the constitution tries to soften the ethnic division and exclusivity of Bosniaks, Croats, and Serbs, and to recognise the group dimension of identities of persons not belonging to the former three. Yet, the recognition provided for Others reaches below the status of a constituent people. The wording of the constitutional provision invites the conclusion that there is a hierarchy among groups, whereby Bosniaks, Croats, and Serbs – being constituent peoples – enjoy a stronger status than those who do not identify with either of them and are thus placed in a blurry category of Others. Furthermore, the

provision is formulated in such manner that constituent peoples are placed above citizens, which implies that the focus is laid on the group (ethnic) identity rather than on the more neutral supra-ethnic citizenship (Trnka, 2009, pp. 49-50; Grewe, 2015, p. 251). In consequence, ethnic groups – in their capacity as constituent peoples – are positioned as "intermediators" between citizens and the state, as they have become the main channel for citizens' mobilisation and communication with the state (Orlović, 2015, p. 38).

The constitutional status of constituent peoples for Bosniaks, Croats, and Serbs has three important implications. First, bearing in mind that "the rights of constituent peoples are being exercised in cooperation and interdependence" (Trnka, 2009, p. 50), the Constitution of BiH has institutionalised a complex mechanism of power-sharing that ensures not only that all three constituent peoples participate in decision-making, but also protects each of them from being excluded or outvoted on important decisions. The arrangements in BiH are considered to fall into the category of so-called corporate power-sharing, a model that is "characterised by institutional safeguards of group identity and […] mechanisms that reinforce group membership" (Bieber, 2013, p. 144). The arguments for such a qualification rest on the findings that "the ethnic quotas are rigid and the link between territory (i.e., entity or canton) and ethnicity functions as a mechanism to exclude those who do not follow the rigid ethnonationalist logic of the political system" (Ibid.). Through the institutional entrenchment of constituent peoples, a category that in essence reflects ethnic grouping, power-sharing arrangements in BiH perpetuate the ethnicisation of the polity. Although said power-sharing arrangements are generally justified as necessary and helpful for stabilizing a divided society, they nevertheless entrench ethnic divisions in several ways, through overemphasising the ethnic element in the electoral system, ethnic quotas in central institutions and the veto mechanism (Grewe, 2015, p. 252) – to name just a few.

The second implication of the special constitutional status of constituent peoples is the marginalization of groups other than Bosniaks, Croats, and Serbs. Although BiH ratified both European conventions pertinent to national minority protection (the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages), complicated – and, at times, tense – relations between the three constituent peoples dominate (one could even say, capture) the public realm, to the extent that effectively no space is left for national minorities. In specific aspects, the marginalization of national minorities amounts to discrimination, as the prominent case *Sejdić and Finci* (2009) plausibly indicates. This case is striking not only for the reason that the court (European Court of Human Rights – ECtHR) found that reserving the eligibility to stand for election to the House of Peoples of BiH and to the Presidency of BiH only for Bosniaks, Croats and Serbs amounts to discrimination of persons who do not affiliate with either of them. It is also striking for the reason that more than ten years after being delivered, the judgment remains unimplemented, and the overt discrimination of citizens of BiH who do not affiliate with constituent peoples persists in the electoral

process (Council of Europe, 2019). This example clearly shows the unwillingness of the three constituent peoples to change the power structures, to strengthen "civic" elements in the institutional arrangements, and to open political decision-making for more pluralism. By ignoring the judgment, the constituent peoples (represented by nationalist political elites)[1], show acceptance for ethnic discrimination as "modus operandi" as long as it does not affect "us".

The third implication of the strong entrenchment of constituent peoples that is perpetuated through their constitutional status is the lack of an overarching supra-ethic identity that would be based on the status of citizenship and affiliation to some common "civic" culture and society. The qualification of BiH as a "deeply divided society" is commonplace and has become almost a cliché. The legacy of the war, combined with the ethnicised conflict-resolution, have created reality in which "almost every aspect of state and society became seen through the ethnic lens" (Marko, 2005, p. 9). An integrative form of nation-building is (almost?) inexistent, and even when there are some positive steps taken at the institutional level, they are driven by international actors. Illustrative of this is the example of how state symbols were determined. The Constitution of BiH did not determine the symbols of BIH, but has left to the Parliamentary Assembly and the Presidency to decide on this (Article I.6 of the Constitution). Interestingly enough, as no agreement could be reached in the Parliamentary Assembly on the state symbols, the current BiH flag, coat of arms and national anthem have been determined by the respective decisions of the High Representative.[2] The symbols are neutral and deprived of any historical, ethnic or religious connotation, although not without their symbolism: the yellow triangle in the flag and the coat-of-arms resembles the shape of the country and symbolises the three constituent peoples, whereas the colours (blue and yellow) and stars bear European connotations. The presence of strong ethnic sentiments in the society (societies?) can be observed in the fact that the state symbols are perceived as strictly formal and the vast majority of the population has "little emotional connection to them" (Lakic, 2017).

However, it would be misleading to take ethnic cleavages in BiH for granted and see them as "fate". BiH has a long history of more or less peaceful multi-ethnic and multi-confessional coexistence, undone by the strong ethno-nationalism that erupted in the context of the dissolution of Yugoslavia. Furthermore, in the past, BiH has experienced the development of some features of "panethnic" Bosnian (not to be confused with Bosniak) society (Doubt et. al., 2017, pp. 59-60), which has not completely vanished despite the strong pressure from ethnic nation-building present in all three constituent peoples. Thus, fostering some overarching Bosnian identity (as one layer in the multilayer identity concept) would not be fully artificial; yet, the very possibility of flexible and multilayer identities is the opposite of the nationalist perception of clear dividing lines between identities, which place people into "identity boxes", a concept that is still dominant in BiH reality.

The constitutional framework in BiH goes beyond the Constitution of BiH and comprises 13 additional

constitutions: constitutions of two Entities, 10 Cantons and the Brčko District. Interesting for this analysis are the constitutions of the two Entities, given that they contain provisions pertaining to identity and that they have experienced interesting evolutions, relevant for the constitutional conceptualization of identity.

The territorial division of BiH into two Entities (the Federation of BiH and the Republika Srpska) has been recognised by Article I.3 of the Constitution of BiH and represents one of the crucial features (the other being the "constituent peoples") of the constitutional arrangement in BiH. The constitutions of both Entities predate the Dayton Agreement and thus the Constitution of BiH, but have undergone extensive amendments over the years, so as to be brought into compliance with the Constitution of BiH. As such, amendments have mostly resulted from the duty to implement the decisions of the Constitutional Court of BiH: in some cases, the respective parliaments have enacted the amendments, whereas in others the High Representative had to intervene and enact the amendments instead of the inactive parliament.

Interestingly enough, one of the most controversial constitutional norms proved to be one on the identity of the Entities and the status of different groups. The main conceptual question was that of the interconnection of territory and ethnicity, and of whether and which group(s) "own" a respective Entity. From the perspective of conflict resolution, the territorial division into Entities was partly about the division between the conflicting sides: Serbs on one side and Bosniaks and Croats on the other. Against this background, the Republika Srpska has been perceived as a "Serbian Entity" and the Federation as "Bosniak–Croat Entity". The initial constitutional texts[3] of both Entities followed this line of thought: the Republika Srpska was conceptualised as a state of the Serbian people, while the Federation recognised Bosniaks and Croats as constituent peoples. References to the Serbian people were intensive in the Preamble, and Article 1 defined Republika Srpska as a state of the Serbian people. Initially, the group dimension in Article 1 was softened with the individual – civic dimension and recognition that the state also "belongs" to citizens. The norm was changed in 1994 (Amendment XXVII) and the "source" of the state has been reduced to the Serbian people only, whereas the equality of all citizens of the Republika Srpska was proclaimed. The wording and structure of the norm was changed again in 1996 (Amendment XLIV), after the Dayton Agreement was signed. The Preamble to the Constitution of the Federation did not contain any ethnic references, but neutrally referred to peoples (along with citizens) and full national equality. On the other hand, in proclaiming the establishment of the Federation, Article 1 made references to Bosniaks and Croats as constituent peoples, to others and to citizens.

The most prominent manifestation of such "ethnic exclusivity" were the constitutional norms on the official language. In the Constitution of the Republika Srpska, the guiding rule in this respect was that "the Serbian language of iekavian and ekavian dialect and Cyrillic alphabet" (the wording of Article

7.1 until 2002) are in official use. The Latin alphabet was given a lower status, as the use thereof was referred to the regulation with the law. The constitution provided for the possibility that other languages and alphabets could also be in official use, in areas inhabited by other linguistic groups, if regulated by law (Article 7.2). The initial language provisions in the Constitution of the Federation on the status of the official language(s) mirrored the provisions in Republika Srpska: official languages were Bosnian and Croatian, and the official script was Latin (Article 6.1, in the wording valid until 2002). The constitution opened the possibility for other languages to be used as a means of communication and instruction (Article 6.2, still valid), and for the parliament of the Federation to decide (according to the power-sharing, i.e. double majority vote) on the official status of other languages (Article 6.3, invalid since 2002).

Another manifestation of "ethnic exclusivity" of the Entities were the official symbols. The respective constitutions did not define the symbols, but entitled the parliament to do this according to the prescribed procedure (in Republika Srpska, in the form of a constitutional law, Article 8; in Federation, based on a double-majority vote, Article 5). In both cases, the defined symbols reflected the national/ethnic identity of the dominant group(s).[4]

This constitutional conceptualisation of the Entity as resembling a nation-state was terminated with the landmark ruling of the Constitutional Court of BiH on the status of constituent peoples in the Entities. In the so called "constituent peoples case" (Constitutional Court of BiH, 2000), "the Constitutional Court decided that the three constituent peoples have to be also constituent peoples on the Entity level" (Marko, 2005, p. 11). Such a position aimed at detaching territory from ethnicity and preventing further ethnic homogenisation of Entities (Ibid., also Grewe, 2015, p. 252). The decision provoked substantial changes in constitutions of both Entities. The Preamble to the Constitution of the Republika Srpska was fully reformulated in a more neutral and integrative tone, and all references to the Serbian people were removed. Terms now used are, among others: constitutive peoples, citizens, equality of ethnic communities, pluralistic society, guarantees for and protection of minority rights, prohibition of discrimination, friendly relationships among nations (Amendment LXVI). Article 1 has also been fully amended. In its valid version, it does not define the source of the state (power), but it proclaims Serbs, Bosniaks, and Croats as constituent peoples, Others, and citizens, shall participate in exercising functions and powers in the Republic of Srpska equally and without discrimination (Article 1.4 as stipulated in Amendment LXVII). The constitutional provision on official languages is interesting, because it uses a peculiar terminology to name such languages: the language of the Serb people, the language of the Bosniak people and the language of the Croat people (Article 7.1 as stipulated in Amendment LXXI). Both Cyrillic and Latin scripts are official (ibid.).

The Constitution of Federation was also amended to fully resemble the "formula" envisaged in the Constitution of BiH: Bosniaks, Croats, and Serbs as constituent peoples, Others and citizens. Preamble

to the Constitution and Article 1 were reformulated along this line (Amendments XXVII and XXVIII). The norm on the official language was also changed: Serbian language was granted official status, same as the Cyrillic script (Article 6.1 as stipulated in Amendment XXIX). The competence of Parliament to grant official status to other languages was removed.

At a later stage, the symbols of the Entities were also affected. The Constitutional Court declared both the symbols of the Republika Srpska and of the Federation to be in breach of the Constitution of BiH, as being discriminatory in that they did not reflect the constitutional equality of the constituent peoples (Constitutional Court of BiH, 2006). As a consequence, the symbols of the Republika Srpska were redesigned to be more ethnically neutral; on the other hand, the Federation has by now remained for years without official symbols, as its Parliament cannot reach an agreement.

Amending the constitutions of the Entities has not always been a smooth process, and the High Representative has had to intervene. In the matter of fact most (all?) constitutional changes that define the "identity" of the Entities were imposed through the decisions of the High Representative. This fact reflects the prevalent position of the three constituent peoples' political elites: they accept the multi-nation-character of BiH at the (hollow) state level, but only so as to trade it off for mono-national and strong Entities. Consequently, the respective dominant constituent people were not very eager to reshuffle power structures at the Entity level and to open up for a full equality. Indicative in this respect is the latent idea of establishing a third ("Croatian") Entity, which occasionally resurfaces in political discourse (see, for instance, Karabeg, 2017). Although generally rejected or considered as a last resort, this idea mirrors the claims that Croats are marginalized in the Federation, and the fact that interlinkage between territory and ethnicity has not been fully abandoned as a concept.[5]

The constitutional norms on the status of constituent peoples for Bosniaks, Croats, and Serbs throughout the territory of BIH (i.e. on both state and Entity levels) have not thus far managed to achieve effective equality, and the dominance of Serbs in the Republika Srpska or of Bosniaks in Federation is still, in reality, present. As the Advisory Committee to the FCNM (ACFC) found in the Fourth Opinion on BiH, "persons belonging to constituent peoples residing in a territory not corresponding to their ethnic affiliation continue to suffer discrimination" (ACFC, 2017, p. 1). Against this background, the ACFC has recommended that BiH authorities consider "extending, on a case-by-case basis, the application of the Framework Convention to persons belonging to 'constituent peoples' in a minority situation" (Ibid., p. 9). As the ACFC argues, extending the protection of the FCNM to the constituent peoples "could provide an additional tool for promoting their access to rights and addressing the issues they are faced with" (Ibid.). However, the application of the FCNM to the constituent peoples would not imply "a weakening of their status" (Ibid.). The recommendation on the extension of the protection of the FCNM to the constituent peoples in minority situation has appeared in several monitoring cycles,[6] but the BiH authorities have not addressed the issue so far. Reluctance toward the idea is not surprising, bearing in

mind the complicated power-structures and the sort of a stalemate existing between the constituent peoples.

3. Montenegro: A Civic Concept Challenged with an Identity Dispute

Montenegro adopted its new constitution in October 2007, in the aftermath of declaring independence and exiting the state union with Serbia. In the context of regaining independence, conceptual questions surfaced about how to shape state identity and national identity(/ies). The answers were not straightforward, and conceptual disputes arose over the civic character of the state and the constitutional status of different ethnic groups. The adopted text of the constitution endorses the principle of a civic state and has a strong civic connotation.[7] It recognizes the ethnic diversity of population, acknowledges tolerance and multiculturality as one of the basic constitutional values, but keeps the focus on individual citizenship. In essence, it remains neutral towards ethnic groups, although not fully "ethnically blind". Yet, all these features of the constitution were not taken for granted, and in the process of adopting the constitution some other solutions have been proposed, envisaging different conceptualization(s) of the state. Interesting in this respect were the draft formulations of the Preamble and of the norms pertaining to defining the basic principles of the state, its sovereignty, symbols, language, and relationship to religious communities.

The adopted wording of the Preamble to the Constitution has a strong emphasis on the civic legitimacy of Montenegro:

> Stemming from
>
> The decision of the citizens of Montenegro to live in an independent and sovereign state of Montenegro (…);
>
> The commitment of the citizens of Montenegro to live in a state in which the basic values are freedom, peace, tolerance, respect for human rights and liberties, multiculturalism, democracy and the rule of law;
>
> The determination that we, as free and equal citizens, persons belonging to nations and national minorities living in Montenegro: Montenegrins, Serbs, Bosnians, Albanians, Muslims, Croats and others, are committed to democratic and civic Montenegro.

In the third recital of the Preamble, the constitution refers not only to citizens, but also to nations and national minorities. In doing so, however, it does not deviate from the individualistic civic concept: the reference is made to "persons belonging to nations and national minorities" and these are then listed in more individualistic terms (Montenegrins and not Montenegrin people, and so on). Nations and national

minorities are listed according to their demographic strength, but the constitution does not establish any hierarchical distinction between them (ACFC, 2008a, p. 10). What is interesting is that this recital was not present in the initial draft, and was added only at a later stage of the drafting process.

Of interest is also the fact that the initial draft of the Preamble contained the recital referring to:

> Historic right of the Montenegrin people and the rights of other autochthonous peoples and citizens to a free state of Montenegro.

Alternative formulations have also been proposed:

> Proceeding from the historic right of the Montenegrin and Serbian people to own state;
>
> The historic right of citizens of Montenegro to own state;
>
> The statehood tradition of Montenegrin, or Serbian people and the commitment of other autochthonous peoples to consider Montenegro as their own state; or
>
> The historic right of Montenegrin and the right of other autochthonous nations (Serbian, Bosniac, Albanian, Croatian...) and the citizens of Montenegro, or the enumeration to be replaced with the words: »peoples of Montenegro« (Cited according to: Venice Commission, 2007a, p. 2).

In the end, the initial first recital was deleted, the legitimacy of the state was grounded in the will of citizens, whereas their belonging to different peoples and national minorities has been acknowledged in the added third recital.

The genesis of Article 1, which defines the nature of the state, is also striking. In the adopted version, it stipulates that Montenegro is an independent and sovereign state, with a republican form of government (Article 1.1). Furthermore, it is constitutionally defined as a civic, democratic, ecological state, committed to the upholding of social justice, based on the rule of law (Article 1.2). However, there were also proposals to define Montenegro as a multinational state:

> Montenegro is the state of Montenegrin and Serbian people and all equal citizens, regardless of their national or ethnic background, language and religion; or
>
> Montenegro is the state of Montenegrin, Serbian, Bosniac and other nations and all the citizens residing therein (Ibid. p. 3).

The differences in conceptualising the character of the state were then reflected in the different conceptualisations of sovereignty. According to the wording of the adopted Article 2.1, bearer of sovereignty is the citizen with Montenegrin citizenship.[8] But there were also proposals to vest with powers not only citizens, but nations as well: “the sovereignty belongs to all nations and all equal

citizens", or "the power is vested in its nations and citizens" (Ibid.).

Drafting constitutional norms on state symbols is also revealing. There have been five alternative proposals for state symbols, in addition to the official draft text. In short, the question was around a golden or silver (and crowned) double-headed eagle in the coat of arms, a red or tri-colour flag and different songs as anthems.

The language issue has proved to be one of the most controversial, not only in the drafting process, but highly disputed and politicised even today. The adopted constitutional norms on language and alphabet stipulate Montenegrin as the official language of Montenegro, whereas the Cyrillic and Latin alphabets are equal (Articles 13.1 and 13.2). The constitution proclaims that Serbian, Bosnian, Albanian and Croatian languages shall also be in official use. There is a difference in status between the Montenegrin language as being "the official language" and other listed languages as being "in official use", but the status of the latter is not quite clear, with the status of the Serbian language being a highly contentious matter. The initial formulation in the draft was that Montenegrin shall be in official use in Montenegro (with the equal status of Cyrillic and Latin scripts), and in local units with a majority or a substantial number of population belonging to national minorities, respective minority languages and their scripts will be in the official use (Article 12 of the Draft Constitution, Venice Commission, 2007a, p. 6). However, some other proposals with regard to the official use of languages were present in the discussion:

> In Montenegro the Serbian language of Iekavian dialect shall be in the official use;
>
> In Montenegro a single language, referred to by citizens as Serbian, Montenegrin, shall be in the official use; or
>
> In Montenegro, Montenegrin, Serbian and Bosnian languages will be in the official use.

Disputable was also the constitutional position towards religious communities. The constitution–maker has followed the principle of separation of state and church and of the neutrality of the state in religious matters. The constitutional norm in Article 14 is simple and clear: religious communities are separate from the state, equal and free in exercise of religious rites and religious affairs. Alternatives were less neutral in formulation and followed the concept of cooperative secularism, proposing a much stronger constitutional position for churches and religious communities:

> Orthodox Church, Roman Catholic Church, Islamic Religious Community and other religious institutions shall be equal and separated from the state.
>
> The state shall respect and not violate the status and orders of churches and religious communities. Recognising their identity and a special contribution to the enhancement of the society, the state shall maintain an open and continuous dialogue

> with churches and religious communities.
>
> Churches and religious communities shall autonomously regulate their internal organisation and shall be free in the exercise of their religious rites and matters.
>
> Churches and religious communities shall have the right to establish their vocational schools, social, humanitarian, charity and educational institutions and to manage them, and in their activity they shall enjoy the protection and assistance from the state. (Ibid., p. 7)

Finally, there were certain dynamics with regards to the constitutional regulation of minority rights: there were alternative proposals, and the adopted constitutional norms derived from the initial proposal. Initially, the draft contained only one provision directly dealing with minority rights. As worded in the draft of Article 7, the right to express, preserve and openly manifest national and religious identity was guaranteed. It was also stipulated that the standards for the exercise of these rights would be provided by international conventions and rules for the protection of human and minority rights. An alternative proposal was to insert a separate chapter that would exclusively deal with minority rights and freedoms. This would have regulated in more detail the protection of identity, the usage of symbols and names, of language, education and information, the protection of cultural heritage, representation, contacts, and the establishment of minority councils (Ibid., pp 16-18). In its Interim Opinion on the Draft Constitution of Montenegro, the Venice Commission expressed the position that the choice on whether or not to list specific minority rights, in principle, belongs to the Montenegrin parliament (Venice Commission, 2007b, p. 4). Yet, it also was of the opinion that "if the rights are not listed the constitution must contain an explicit reference to the relevant (constitutional?) law" and recommended to add such a reference in Article 7 (Ibid.).

The Venice Commission also made some more specific comments on the formulations in the draft Article 7, but they lost relevance due to the decision of the constitution–maker to fully change the concept. The wording of Article 7 was fully reformulated, and in its adopted version it simply states that "infliction or encouragement of hatred or intolerance on any grounds shall be prohibited". The conceptual change was the introduction of Chapter 5 in Part Two of the Constitution, entitled "Special Minority Rights". The chapter consist of two articles: Article 79 lists guaranteed rights and Article 80 prohibits forceful assimilation. The Venice Commission criticised using the word "special" in the title, but it positively assessed Articles 79 and 80 as "rather comprehensive" and covering the main minority rights as contained in the FCNM (Venice Commission, 2007c, p. 9). Highly interesting is the choice of formulation with regards to the titular of minority rights. While the initial draft referred to "members of minority nations and other minority, national and ethnic communities", the alternative proposal referred to "members of minorities" and "minorities", whereas the adopted constitution uses the phrase "persons belonging to minority nations and other minority national communities". The latter

formulation is even more interesting, bearing in mind that the constitution in the Preamble uses the term "national minority", but in the normative part abandons it and uses specific terminology. As the constitution contains neither a list nor a definition of minority nations and minority national communities, it remains unclear who is who and why this distinction was made, when they are equal in rights.

The conceptual disputes that were present in the process of drafting and adopting the constitution in Montenegro stem mostly from the fact that it is not easy to make a clear distinction between majority and minority. They also stem from disputes over the Montenegrin and Serbian identity and respectively over the (constitutional) status of these two groups. The 2011 census data clearly show this complexity. The data on the national structure of the population reveal that no single national group constitutes an absolute majority: most numerous are Montenegrins with 44.98% share in the total population, followed by Serbs (28.73%), Bosniaks (8.65%), Albanians (4.91%), Muslims (3.31%), Roma (1.01%) and Croats (0.97%) (MONSTAT, 2011, p. 8). In addition to these, 17 other groups/identities have been identified in the census, out of which some reflect multiple identities (Bosniak–Muslim, Montenegrin–Muslim, Montenegrin–Serb, Muslim–Bosniak, Muslim–Montenegrin, Serb–Montenegrin). The picture gets even more complicated when the data on "mother tongue" are taken into consideration, according to which the most spoken language is Serbian (42.88%), followed by Montenegrin (36.97%), Bosnian (5.33%) and Albanian (5.27%) (Ibid., p. 12). Interestingly enough, around 2% have declared their mother tongue to be "Serbo-Croat" (Ibid., p. 13). Other languages are present in lower shares. The fact that Serbs constitute almost one third of the population, taken together with the fact that a majority of the population identify their language as Serbian has provoked among Serbs a strong opposition to being treated as a national minority. There was an intense internal debate in the Serbian community on whether to establish a national minority council, and although this was established, the issue remains contested. Furthermore, there is a strong opposition in the Serbian community to treating the Serbian language as a minority language; accordingly, the Committee of Experts under the European Language Charter does not monitor the application of Part II of the Charter to the Serbian language (Committee of Experts, 2020, p. 9). The identity conflict (language, symbols, status of the church) between Montenegrins and Serbs is additionally perpetuated through the political cleavage earlier drawn along the "unionist–separatist" line with regards to relationship to Serbia, and more recently along the line of being for or against NATO membership. In such a context, the civic character of Montenegro remains under pressure and claims for its restructuring as a multination-state are continuously present.

4. North Macedonia: The Symbolic of 20%

North Macedonia provides for an interesting example because its identity has been contested both externally and internally. The most prominent external dispute was the one with Greece, which opposed

that the state be named Macedonia, and denied any linkage between the identity of the Slavic population identifying themselves as Macedonians and ancient Macedonians (MFA, n.d.). For years, Greece and "Macedonia" were stuck in the name dispute, and until relatively recently, the official international name for the state was the Former Yugoslav Republic of Macedonia. In addition to this, there was a sort of "war of symbols" that reflected the conflict over the "ownership" of Alexander the Great (a.k.a Alexander Macedon), the traces of which can clearly be observed in the new visual identity of the capital city of Skopje (Janev, 2015). The dispute, at least formally, was settled in 2018 with the so-called "Prespa Agreement" with the central feature being the adoption of "North Macedonia" as the official name for the country.[9] The agreement addressed some other identity features, such as nationality, official language and the usage of the adjectival reference "Macedonian". This external dispute and its international settlement had internal repercussions: a change of constitution in an environment of strong internal polarisation.

The other external identity dispute is the one with Bulgaria over language and history, which, in essence, is about Bulgaria denying the existence of a Macedonian identity, the argument being that the Macedonian language is a dialect of Bulgarian and that historical events that occurred on the territory of Macedonia are in fact part of Bulgaria's historical heritage, twisted through false interpretation in Macedonia (Bulgarian Academy of Sciences, 2019; Georgievski, 2020). Following this line of argument, Bulgaria also denies the existence of a "Macedonian minority" on its territory (ACFC, 2020, p. 9). On the other hand, the official position of the Macedonian side has been that the Macedonian language is distinct from Bulgarian, and that Macedonian cultural and historical traits are "authentic", therefore not Bulgarian. However, the interstate dispute was formally resolved through the Treaty of Friendship, Good Neighbourly Relations and Cooperation, signed between Macedonia and Bulgaria in 2017. The fact that the treaty was signed in two languages and that in this context it explicitly mentioned the Macedonian language was perceived (at least by the Macedonian side) as an official recognition of the Macedonian language as distinct from Bulgarian.[10] The treaty also prescribed the establishment of the Joint Multidisciplinary Expert Commission on Historical and Educational Issues, with the aim to address (and offer some solutions for) different interpretations of history (Article 8.2 of the Agreement). Interesting was also that the agreement recognised the possibility of the two states to protect citizens residing on the territory of the other state (in line with international law), yet it explicitly stated that Macedonia will not interfere in the issues pertaining to the status and rights of persons in Bulgaria who are not Macedonian citizens (in line with the Bulgarian position of not recognizing Macedonians in Bulgaria as a separate ethnic group). Unfortunately, the treaty, like the established Joint Commission, has so far failed to settle the disputed issues. It seems that the Commission cannot overcome conceptual and methodological misunderstandings (Ristevska Jordanova & Kacarska, 2020, p. 8). The dispute re-emerged and escalated with the Bulgarian veto of EU membership talks with North Macedonia in late 2020, and remains pending (Barigazzi, 2020).

When it comes to the internal identity dispute, this goes along the Macedonian–Albanian line, and is built around the question of the Albanian population's status in North Macedonia. The main question in this regard is that of how to conceptualise state identity and on which principles to define the state's approach to ethnic, linguistic, and religious diversity of population. In essence, the conflict was about the Albanian claim to be treated not simply as a national minority, but as a "constituent" element of the state, versus the (ethnic) Macedonian claim to keep the dominant position as "titular nation". This conflict has been present ever since the state declared independence in 1991, although it has manifested itself in different ways. It has mostly been contained within the bounds of political and public discourse, but in 2001 it erupted into armed conflict, which was settled through the Ohrid Framework Agreement (OFA). The OFA was a landmark document, as it served as a basis for the constitutional amendments in 2001, which brought significant changes with regards to "diversity management" and introduced power-sharing mechanisms.

The latent issue of the (ethnic) Albanian–Macedonian relationship surfaced again in early 2017, in the context of a political crisis over whom and under what conditions the Albanian political parties would support in forming a government. The initially intraethnic political crisis (its main issues being clientelism, corruption and state capture) gained a strong interethnic dimension when the ethnic Albanian parties elaborated a set of conditions (known as the Albanian or Tirana Platform) outlining their conditions for support in the formation of the government. The core of these conditions affect the status of the Albanian community in Macedonia and the multi-ethnic character of the state: a strict implementation of the principle of multiethnicity in the constitution and constitutional recognition for Albanians as a state–constituent population; full linguistic equality with an official status for the Albanian language and script, and an inclusive debate on state symbols, so that they reflect the multi-ethnic character of the society and ethnic equality.[11]

Finally, the process of solving the name issue has at almost all stages involved the question of the character of the Macedonian state and the position of ethnic Albanians within it. When searching for the appropriate name, it was not only important to find one that is acceptable for Greece, but also one that will not cause further polarisation within Macedonia itself. Thus, any solution that reflects/symbolises the Slavic origin of Macedonia or the exclusive ownership of ethnic Macedonians over the state was off the table (see, for instance: Latifi & Nicolaidis, 2017; also, Jones, 2018, Ismaili, 2018). In addition to this, the question of the versions of the name in different languages was raised, in the sense that the name should be such that it enables reasonable translation into Albanian (Ibid.). Interestingly enough, when the constitutional changes were to be adopted so as to implement the agreement on the name change, this provoked calls for amendments to go further and to also address the status of Albanians and the Albanian language (Makfaks, 2018).

This context, as briefly presented here, has influenced the constitutional dynamics: the formulations in

the initial text of the constitution, the timing for the constitutional changes, and the formulations in the constitutional amendments.

The text of the constitution adopted in 1991 conceptualised Macedonia as the nation-state of the Macedonian people, proclaimed the equality of its citizens and recognised minority protection for "nationalities" living in Macedonia. Although the constitution tried to keep a balance between the ethnic Macedonians and other groups and to place a focus on the citizen, the dominance of the former was obvious in the preamble and in the norms regulating the use of language, religion, protection of cultural heritage. This was most evident in the area of minority language use and of national symbols at the local level, as the constitution suspended more favourable provisions that existed when Macedonia was part of the Yugoslav federation (Cekik, 2014, p. 225). On the symbolic level, however, it was the preamble that favoured the role of (ethnic) Macedonian people in establishing the Macedonian state. Although in the preamble a reference was made to Albanians, Turks, Vlachs, Roma, and other nationalities living in Macedonia, the struggle of the Macedonian people for the creation of its own state was highlighted as decisive for establishment of independent Macedonia. The wording of the preamble and the emphasis placed on the Macedonian people was justified through the need to strengthen the identity of the Macedonian people and state in the context of a strong contestation of Macedonian identity by neighbouring countries (Ibid.). However, the wording of the preamble emphasized inter-ethnic cleavages, pushed away those who did not identify as ethnic Macedonians, and put an obstacle to supraethnic social cohesion. In the normative part, notwithstanding the proclaimed ethnic equality, the constitution made open references to the Macedonian language (Article 7.1), the Macedonian Orthodox Church (Article 19.3), Macedonian "diaspora" (Article 49), protecting the cultural heritage of the Macedonian people (Article 56), whereas the position of nationalities regarding these rights was rather secondary (however, this does not mean that it was *per se* discriminatory).

The landmark change of the constitution occurred in November 2001, when fifteen amendments (Amendments IV-XVIII) were adopted, which aimed to modify state identity and better reflect its multiethnic, multilingual and multiconfessional character. The amending of the constitution came as a consequence of the OFA, the agreement that ended the armed conflict between Macedonian forces and Albanian rebels, and which contained basic principles for the constitutional reorganization of the state. Interestingly enough, in its Annex A, the OFA proposed constitutional amendments that were used as a basis for the constitutional change adopted in the parliament several months later. The preamble to the constitution and the provisions on the language underwent substantial changes, whereas the provisions on the fundamental values of the constitutional order, the status of churches and religious communities, minority protection and the protection of cultural heritage were modified. The most significant change in the organisation of power was the introduction of a double majority for the adoption of certain decisions,[12] and the strengthening of local self-government (as a sort of

compensation for territorial autonomy; see, for instance, Lyon, 2011).

In the new preamble, the identity of the state was conceptualized differently; the dominance of the Macedonian people was downplayed and other groups were put on a more equal footing:

> The citizens of the Republic of Macedonia, the Macedonian people, as well as citizens living within its borders who are part of the Albanian people, the Turkish people, the Vlach people, the Serbian people, the Romany people, the Bosniak people and others (…)[13]

The preamble is now more inclusive: the Republic of Macedonia is defined as "the common good", as the "fatherland" to all, and the establishment thereof as the result of "sacrifice and dedication" of all, just as its preservation and development is responsibility of all. The preamble also makes a reference to "the rich cultural inheritance and coexistence within Macedonia".[14]

The terminology used in the constitution is also striking. Through the amendments the term "nationalities" used in the initial text was abandoned and replaced with the term "communities". What is of interest here is that the constitution does not use the term "minority" at all, and when, in a few instances, it refers to "minority" communities, it uses the formulation "communities not in the majority in the population of Macedonia". Of note is also the fact that the constitution does not make any reference to the special status of the Albanian community, although the rationale behind the constitutional amendments was to empower this community. The constitutional amendments are neutrally formulated, although from the context it is clear that they target the Albanian community. The provisions on language use set a clear example. According to Amendment V to the Constitution, the Macedonian language written in Cyrillic script is the official language throughout the territory of the state, whereas in the second paragraph it is prescribed that any other language spoken by at least 20% of the population is also an official language, within the scope specified in the constitution. The constitution then regulates in detail said aspects of language use. For the languages spoken by less than 20% of the population, the constitution entitles the local authorities to decide on their use at the local level. Another example is the power-sharing mechanism: although nowhere in the constitution it is stated that the majority of Albanian representatives must vote for the decision to be adopted if the double-majority is needed, this is the factual effect of double-majority rules. This tendency to neutralize the Albanian–Macedonian dichotomy in the constitution can be observed in Amendment VII, which widens the circle of listed churches and religious communities that enjoy the protection, beyond the initially explicitly mentioned Macedonian Orthodox Church, now also covering the Islamic Religious Community in Macedonia, the Catholic Church, Evangelical Methodist Church, and the Jewish Community.

The 2019 amendments to the constitution were a result of the so-called Prespa Agreement that resolved

the name-dispute with Greece, and consequently at heart of the change lied the replacement of the term "Macedonia" with the term "North Macedonia" (Amendment XXXIII). Interesting in this respect is the clarification made in the Constitutional Law for the Implementation of the Amendments: the citizenship reference "Macedonian/citizen of the Republic North Macedonia" does not define or imply the ethnic identity of citizens (Article 2.2).

The opportunity of the constitutional change was used to slightly reformulate the preamble:

> The citizens of the Republic of Macedonia, the Macedonian people, part of the Albanian people, the Turkish people, the Vlach people, the Serbian people, the Romany people, the Bosniak people and others (Amendment XXXIV).

The reference to the OFA was also made in the text of the preamble, so that now it was, too, acknowledged as "a constitutive element of the state" (EWB, 2018).

Notable is also Amendment XXXVI to the constitution, which regulates the relationship between the state and its diaspora, and which, in the proposed version, referred only to the Macedonian people. In its final version the norm (in paragraph 3) stipulates:

> The Republic shall provide for the diaspora of the Macedonian people and of part of the Albanian people, Turkish people, Vlach people, Serbian people, Roma people, Bosniak people and others and shall foster and promote their ties with the fatherland.

The concept of the kin-state has been modified to the extent that it can be interpreted as multi-layered. Whereas the ruling principle is to "protect, guarantee and foster the characteristics and the historical and cultural heritage of the Macedonian people" (paragraph 1 in the Amendment XXXVI), the concept has been supplemented with the duty to provide for the diaspora, which also includes persons belonging to other groups. Thus, the concept of a kin-state (referring to the ethnic Macedonians) is complemented by the concept of fatherland, which encompasses all communities.

5. Serbia: The Janus Face of the Civic and Ethnic

The constitution of Serbia was adopted in 2006, in the context of the dissolution of the State Union Serbia and Montenegro, resulting from the independence referendum in Montenegro. Debates over the need for Serbia to adopt a new constitution were present in the public and political discourse since 2000, in light of the break-up of the authoritarian regime and country's democratic transition, but no political consensus could be reached on the topic of the constitutional (dis-) continuity, and so the issue was simply left aside. The dissolution of the state union opened (again) the "window of constitutional opportunity". However, instead of using it for a genuine consideration grounded in an open public debate about the basic principles and rules of the polity, the (multi-)party elite created a "patchwork"

constitutional text and had it hastily adopted by the parliament, even without accompanying debates (YUCOM, 2013, pp. 11-14). Such an approach, which was not only unprofessional but also undemocratic, was justified by virtue of the need to constitutionally preclude the independence of Kosovo and to constitutionally entrench its position as a part of Serbia. Indeed, the statement that the province of Kosovo and Metohija is an integral part of the territory of Serbia dominates the preamble to the constitution, where it also establishes the obligation for "all state bodies [to] uphold and protect the state interests of Serbia in Kosovo and Metohija". As a matter of fact, the constitution only refers to the establishment of the substantial autonomy for this province, but left all details of the concept of substantial autonomy to be further defined by the lawmaker. This lack of substance, combined with the establishment of the constitutional obligation to "protect Kosovo" can indeed be interpreted, as some critics did, as the introduction/reflection of the (mythical) "Kosovo oath" in the constitution.[15] The protection of Kosovo (and Metohija) is placed as the very foundation of the state and almost set as a primary goal thereof. Territorial integrity is indeed one of the core elements of the state and counts as one of the basic principles of the international law, but in reality the call to protect Kosovo transcends the rational claim for the inviolability of state territory and involves emotional (and mythical) categories of the holy Serbian land, or the cradle of Serbian nationhood (just to name a few), thus becoming strongly nationalist in essence. If the state builds its identity on the duty to protect Kosovo, which is emotionally strongly interlinked with the Kosovo myth[16] as the central myth in Serbian nation-building, then it demonstrates (even if only on a symbolic level) a preference for one ethnic group and pushes others aside.

The "prioritised" status of the Serbian people can be read from the preamble and Article 1 of the constitution. The preamble starts with the formulation:

> Considering the state tradition of the Serbian people and equality of all citizens and ethnic communities in Serbia (…).

This creates two conceptual pillars: on the one hand, the state tradition of the Serbian people and, on the other hand, the equality of citizens and ethnic communities. The very foundation of the state results from the tradition of only one community: the Serbian people. It is the titular nation and the "primary source" for the formation of the state. To counterbalance this statement, the principle of equality has been introduced. It has both an individual and a group dimension: citizens, but also ethnic communities, are equal. Through reference to ethnic communities, the constitution deviates from the "classic" individualistic (civic) concept and recognizes the ethnic diversity of the society. The terminology is interesting, because the term "ethnic communities" is mentioned once, in the preamble. In the normative part, the constitution uses the term "national minorities". It could be interpreted that the term "ethnic communities" is a generic one, which comprises both the Serbian people and national minorities. It remains, however, problematic that the Serbian people was explicitly mentioned in the preamble, even

when this has no effect on the status and the quality of rights and duties.

Article 1 is even more problematic than the preamble:

> Republic of Serbia is a state of Serbian people and all citizens who live in it (…).

The message here is clear: the Serbian people first. Although in the preamble the reference was made to ethnic communities, they do not appear in Article 1. The constitution relies on a mixture between a nation-state and a civic state, but implies the primacy of the Serbian people over the others. Interestingly enough, such a formulation and conceptualization of the state is retrograde compared to the previous 1990 constitution, which referred only to "citizens". In its Opinion on the constitution of Serbia, the Venice Commission acknowledged that "this definition may be criticised for emphasising the ethnic character of the state", but it found that "no legal consequences should follow from it in practice" (Venice Commission, 2007d, p. 4). On the other hand, the European Commission against Racism and Intolerance (ECRI), expressed much stronger criticism. It found that the norm "indirectly distinguishes between a native population, namely the Serbs, and other citizens", and called upon the authorities to "ensure that no legal consequences detrimental to the national or ethnic groups making up the population of Serbia arise in practice from Article 1 of the Constitution" (ECRI, 2008, p. 9). Again, this was counterbalanced in Article 1 through the stipulation that the state is based (among other things) on the principles of civil democracy, and human and minority rights and freedoms. Furthermore, the concept of sovereignty is fully civic ("Sovereignty is vested in citizens", Article 2.1) and discrimination is prohibited (Article 21).

The symbolic dominance of the Serbian people can also be interpreted from the norms on language and on state symbols. Article 10.1 of the constitution proclaims the Serbian language and Cyrillic script to be in official use in the Republic of Serbia. This norm has been strongly criticized for the exclusion of the Latin script from official use. The norm is problematic for several reasons. First, it violates the principle that the attained level of human and minority rights may not be lowered (Article 20.2), because the use of Latin script was protected in the 1990 constitution (Venice Commission, 2007d, p. 5; Pajvančić, 2009, p. 22). Second, it deepens the linguistic distance between different groups living in Serbia, as many national minorities use Latin script and feel more familiar with this script. Third, the norm assumes that using the Cyrillic script is a specificity of the Serbian language, thereby denying the duality of its alphabets and contributing to the existing politicization of the Cyrillic script. The constitution opens the possibility for the official use of other languages and scripts, and entitles the lawmaker to regulate the matter ("based on the Constitution", Article 10.2). The constitution implicitly makes a reference to the usage of minority languages, which is guaranteed in the form of a minority right in Article 79.

With regards to state symbols, the constitution defines that these are the coat of arms, flag and national anthem, but (except for the anthem) it does not define their design, entitling the lawmaker to do so

(Article 7). According to the constitution, the anthem is a slightly rephrased version of that of the first (modern) Serbian kingdom – "Bože pravde", or "God of Justice", adopted in 1882 – with references to the king and the kingdom now replaced. The anthem frequently refers to Serbs and "prays" to save them. As such, it can by no means establish any emotional/identity links to citizens who do not identify as Serbs. The design of the coat of arms and the flag are not defined in the constitution, but their imagery, as prescribed in the law, rests on the Serbian state and national tradition. The Serbian tricolour flag is used, and the coat of arms resembles that of the Kingdom of Serbia (1882). The state symbols draw upon the state and national tradition of the Serbian people, and in no way reflect the multicultural character of the state. Although this might be only on a symbolic level, such an approach implies the dominance of one group over the others, and as such complicates the prospects of social cohesion. Indeed, the constitution guarantees for persons belonging to national minorities the right to use their own symbols in public places (Article 79), but it creates sort of "parallelism" of symbols, as the state symbols are exclusive.

It is also important to mention here the constitutional regulation of the position of the Republic of Serbia as a kin-state. Article 13.1 proclaims the general rule that the state protects the rights and interests of its citizens abroad. However, the second paragraph of the same Article also obliges the state to develop and promote relations between Serbs living abroad and the kin-state. The title of the Article is revealing: Serbia protects citizens (i.e. individually) and Serbs (i.e. as part of the Serbian nation, collectively). The constitution proclaims the right of persons belonging to national minorities to undisturbed relations and cooperation with their co-nationals outside the territory of Serbia (Article 80.3), but it does not stipulate any positive obligation for the state, at least in the terms of good neighbourly or interstate relations that would foster this cooperation.

The symbolic dominance of the Serbian people in the constitution is counterbalanced by the extensive catalogue of national minority rights. The protection of national minorities is stipulated as one of the principles of the constitution (Article 14) and the constitution regulates key minority rights in detail (Articles 75-81). It is also positive that the constitution obliges the state to "promote understanding, recognition and respect of diversity arising from the specific ethnic, cultural, linguistic or religious identity of its citizens through measures concerning education, culture and public information" (Article 48, in similar wording also in Article 81).[17] In reality, however, state policy is focused on protecting the identity of national minorities, whereas the integration and strengthening of cohesion of a multicultural society are almost fully neglected. The state (with the support of minority elites) has "pushed" national minorities under the remit of national minority councils (bodies of minority cultural autonomy), but has omitted to establish and promote channels for genuine dialogue and interaction between communities. For this reason, criticism arguing that the system of minority protection in Serbia has resulted in the "segregated multiculturalism" seems reasonable (Bašič & Pajvančić, 2015).

It has to be mentioned here that the concept envisaged in the constitution of Serbia does not prevail throughout the country. The Autonomous Province of Vojvodina, well-known for its tradition of (generally) stable interethnic relations, has endorsed a more integrative concept. According to Article 7.1 of the Statute of the AP Vojvodina "multilingualism, multiculturalism and freedom of confession" are of particular interest to the province. In line with this, the province is committed to "preserve and develop multilingualism and cultural heritage" of national minorities and "support mutual learning about and respect of languages, cultures and confessions" (Article 7.2). The statute also proclaims that the Hungarian, Slovak, Croatian, Romanian and Ruthenian languages and their scripts are in official use by provincial authorities, in addition to the Serbian language and Cyrillic script (Article 23). The symbols of Vojvodina are also more neutral and reflect regional, rather than national identity (although the so-called "traditional symbols" draw upon the Serbian heritage; Article 9 of the Statute). In short, in the AP Vojvodina there is a potential to develop a regional identity that transcends ethnic differences. As a symbolic step forward, upon adopting the statute, the authorities of the AP Vojvodina abandoned the term "national minority" and used the term "national communities" instead. The rationale was that the term "minority" implies the existence of a majority and its potential dominance over minority(ies), so the term "communities" was chosen as implying the equal status of all groups. Interestingly enough, when assessing the conformity of the Statute with the Constitution, the Constitutional Court of Serbia found the term "national community" unconstitutional. The constitutional court first found that "to give the status of 'persons belonging to a national community' to persons belonging to the constitutive people in its own, unitary state – that is according to Article 1 of the Constitution the state of Serbian people and all citizens who live in it – is a constitutional nonsense" (Constitutional Court of Serbia, 2013, in the part pertinent to the constitutionality of Article 6 of the Statute). Then, the constitutional court found that the constitutional order rests on the principles of civic democracy, as sovereignty rests in citizens and not in any kind of communities. Finally, it found that the constitution exclusively uses the term "national minority" and there is no justification for using the term "national community". The findings of the Constitutional Court are striking not only for using the term "constituent people" and later arguing that sovereignty is vested in citizens, but also because they uphold the constitutional concept of the nation-state and on that basis annul the more inclusive approach taken by the authorities of the AP Vojvodina. The response of the latter was to modify the terminology into "national minorities–national communities": they did not abandon the term "national community", but just added the term "national minority" to please the court.

Both civic and ethnic concepts of nation, dominance and equality, protection of specific identity as well as integration and social cohesion can be found in the constitution of Serbia. This confirms the critique that in Serbia there is no consensus on how to manage ethnic diversity and that a clear multicultural policy is missing. Against this background, the implications of the constitutional norms mainly depend on the social climate, which is unfortunately more often than not nationalist, rather than integrative.

6. Conclusion

Different contexts in the four analysed countries have called for different constitutional approaches to ethnic diversity. The main feature of the approach in BiH is the constitutional status for Bosniaks, Croats, and Serbs as constituent peoples. Although this concept was needed to achieve peace and is still essential for the stability of the state, it has provoked the strong ethnicization of the polity, perpetuated ethnic divisions and excluded persons who do not affiliate with any of the three constituent peoples. Montenegro has opted for a civic concept and tries to achieve social cohesion through citizenship and civic patriotism, although it acknowledges diversity and guarantees minority rights. However, this concept has been internally contested as genuinely assimilatory and discriminatory towards persons identifying themselves as Serbs and/or speaking Serbian. North Macedonia has faced identity disputes both externally and internally, which has significantly shaped its constitutional regulations and gradual opening of the nation-state towards a stronger multicultural state. Interestingly, despite some features of a binational state, the reluctance can be observed both at the symbolic and normative level to recognise a "special status" for Albanians. Finally, Serbia wanders between the nation-state and the protection of national minorities, between group dominance and individual equality, a concept that has resulted in creation of parallel majority and minority societies.

In sum, all these concepts and constitutional dynamics reflect complicated, delicate, and at times still tense interethnic relations in the four countries. They also show that ethnicity and ethnic group identity still play a significant role and that neither of the four countries has achieved the level of "normalisation" of ethnicity, in which ethnicity, diversity, and interethnic relations are "ordinary" topics of political and social debate, but they are still fuelled by emotions and latent tensions, and, as such, bear conflictual potential. The presented constitutions struggle to various degrees with the balance between the civic (political) concept of a (supra-ethnic) nation and the ethnic (cultural) concept of nation(s), and, in essence, fail to contribute to interethnic interaction and wider social cohesion. Although it is clear that the recognition of specific group identities and accommodation of (minority) rights is essential for pursuing peace, stability, diversity and genuine equality in each of the four analysed countries, it is also evident that imbalance favouring the ethnic concept of nation and failure to establish stronger institutional links of common citizenship, inevitably leads to parallel (one could even argue "segregated") societies where different groups simply live next to each other but do not genuinely interact, which is detrimental to social cohesion and social stability and prosperity in the long run. In this context, the constitutional texts only correspond to the wider social reality, which unfortunately remains nationalist in its essence. On the other hand, the weak, or rather "selective", rule of law in all four countries also contributes to the weak authority of their constitutions and their inability to effectively regulate the polity. In fact, it is the wider social (mainly political) context that influences the interpretation and implementation of constitutional provisions, and not vice versa: the constitutions are

impotent to penetrate and set limits to political processes and power dynamics.

Notes

[1] Political mobilization remains predominantly within the three 'ethnic' parties: SDA for Bosniaks, SNSD for Serbs and HDZ for Croats.
[2] The position of the High Representative has been established with Annex 10 to the Dayton Agreement, with the main task of supporting implementation of the civilian aspects of the peace settlement (Article I.37 of Annex 10). Relevant for the respective state symbols are: Decision imposing the Law on the Flag of BiH, Decision on the shape and design of the coat-of-arms, and Decision Imposing the Law on National Anthem of BiH.
[3] The constitution of Republika Srpska was adopted in 1992 and the Constitution of the Federation of BiH in 1994.
[4] An interesting analysis of the role of symbols in BiH offers Iva Pauker (Pauker, 2012).
[5] The international actors present in BiH are indeed the strongest opponents to this concept and use their leverage to detach territory from ethnicity (see, for instance, Aljazeera, 2018).
[6] See ACFC, 2005, p. 11; ACFC, 2008, p. 10; ACFC, 2013, p. 11.
[7] Interestingly enough, in light of the accession to the Council of Europe, the authorities of Montenegro committed to incorporating seven principles into the new Constitution, one being that "the Constitution must stress that the Republic of Montenegro is a civic state, based on civic principles by which all persons are equal and not on the equality between constituent peoples" (Venice Commission, 2007, p. 3).
[8] Initially the norm did not contain the reference to the Montenegrin citizenship, and this was added later.
[9] Article 1.3 (a) of the Agreement.
[10] The formulation in the agreement is not straightforward and it could be argued that Macedonian has been recognised only in the context of being the official language in Macedonia, but not in general terms.
[11] See Point 1 of the "Tirana Platform", available in: Daskalovski & Trajkovski et. al., 2017, p. 10.
[12] Amendment X to the Constitution; majority vote of MPs plus majority vote of MPs "who belong to communities not in the majority in the population of Macedonia".
[13] Interestingly enough, the formulation of the preamble proposed with the OFA was fully civic: "The citizens of the Republic of Macedonia (…)".
[14] See Amendment IV to the Constitution. The formulation in this respect fully corresponds with the text proposed in the OFA.
[15] The Kosovo oath is a part of the Kosovo Myth, and refers to the imaginary oath not to "betray" and abandon Kosovo, as a "holy Serbian land", and plays a significant role in the Serbian national(istic) paradigm. Its origin lays in the Kosovo battle of 1389 between Serbian and Ottoman armies.
[16] The myth is essentially built around the Kosovo battle of 1389 and its heroes, developing it into the symbolic and ideological foundation for the creation of the modern Serbian state in the nineteenth century. "Since the early 19th century to this day, [the myth] served the purpose of legitimizing various political and military projects" in Serbia (Čolović, 2019, p. 12).
[17] The duplication of the norm in Article 48 and Article 81 serves as an example of the messy redaction of the constitution (Pajvančić, 2009, p. 65).

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ABOUT THE AUTHOR

LJUBICA DJORDJEVIĆ

Ljubica Djordjević is a Senior Researcher and Head of Justice and Governance Cluster at the European Centre for Minority Issues (ECMI).

djordjevic@ecmi.de

FOR FURTHER INFORMATION SEE

EUROPEAN CENTRE FOR MINORITY ISSUES (ECMI)
Schiffbruecke 12, 24939 Flensburg
+49 461 14 14 9 0 19
E-Mail: info@ecmi.de
Website: http://www.ecmi.de