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The European Court of Human Rights in the States of the Former Yugoslavia*

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Abstract

The countries of the former Yugoslavia have in past decades failed to fully meet both the challenges of the socio-economic environment and of the full-fledged functioning of the rule of law and the protection of human rights. Their development was in the first decade halted by the inter-ethnic wars, while in the second decade their institutions have been hijacked by various populist interest groups. All the countries of the former Yugoslavia have been so far facing a constant crisis of liberal democratic institutions of the modern state, based on the rule of law. Only a small number of them have decided to accept effective measures to break away from such crises. In order to present the problems of the newly established democracies in the former Yugoslavia, this article presents and analyses the contributions of the European Court of Human Rights to establishing the rule of law and effective human rights protection in Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia and Slovenia. In the closing part of the article, conclusions are drawn on how those countries should proceed to internalize the values of human rights protections in liberal democracies.

Keywords: Ex-Yugoslavia, European Court of Human Rights, domestic implementation, the rule of law, human rights.

1. Introduction

The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR or the European Convention) is a fundamental regional human rights treaty on the European continent. The European Court of Human Rights (the European Court or the Court) is the main forum for examining alleged violations of the ECHR by states parties. It generally seizes its jurisdiction only after applicants have exhausted all legal remedies in the domestic legal orders. The countries of the former Yugoslavia have in past decades failed to meet the challenges both of the socio-economic environment and of the full-fledged function-

* I would like to thank Wojciech Sadurski and Martin Krygier for their useful comments to earlier versions of this paper.

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doi: 10.5553/EEYHR/258977642018001001003

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ing of the rule of law and the protection of human rights.[1] In the first decade after the dissolution of the former Yugoslavia, their development was halted by the inter-ethnic wars, while in the second decade, their institutions have been hijacked by various organized crime groups and populist interest groups.[2] All the countries of the former Yugoslavia have been so far facing constant crises of liberal democratic institutions of the modern state based on the rule of law.[3] Only a small number of them have decided to accept effective measures to break away from such crises. The ideological division of former Yugoslav societies often prevents them from considering only the relevant laws in their decision-making.[4]

This article presents and analyses the contributions of the European Court of Human Rights to establishing effective domestic human rights protection in Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia and Slovenia. They are all characterised by common features: weak institutions, low levels of trust in all three branches of government, weak rule of law,[5] systematic and widespread corruption and a low level of internalization of human rights protection and human dignity.[6] The article asks the following question: Has the European Court of Human Rights improved human rights protection in the states of former Yugoslavia almost several years after their accession to the European Convention on the Protection of Human Rights and Fundamental Freedoms?

This article is divided into five parts. It first provides in Section 2 an account of socio-economic conditions in the states of former Yugoslavia. Section 3 describes and briefly analyses statistical data of the results of the states of former Yugoslavia before the European Court of Human Rights. Section 4 critically presents and analyses the contribution of the European Court in Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia and Slovenia by highlighting the most important judgments and challenges for the domestic execution of judgments. In this way, the article explores interactions of the European Court with domestic fora in the former Yugoslavia. Section 5 summarizes the contribution of the European Court in the former Yugoslavia in a comparative account. Finally, Section 6 explores some challenges and future prospects for the European Court

1 T. I. Berend & B. Bugarič, 'Unfinished Europe: transition from communism to democracy in Central and Eastern Europe', *Journal of contemporary history*, Vol. 50, no. 4, 2015, pp. 768-785. For a more general discussion see J. Letnar Černič, 'Impact of the European Court of Human Rights on the Rule of Law in Central and Eastern Europe', *Hague journal on the rule of law*, Vol. 10, no. 1, 2018, pp. 111-137.

2 G. Zyberi & J. Letnar Černič, 'Transitional justice processes and reconciliation in the former Yugoslavia: challenges and prospects', *Nordic journal of human rights*, Vol. 33, issue 2, 2015, pp. 132-157.

3 B. Bugarič & A. Kuhelj, 'Slovenia in Crisis: A Tale of Unfinished Democratization in East-Central Europe', Communist and Post-Communist Studies, Vol. 48, no. 4, 2015, pp. 273–279.

4 M. Avbelj, 'Zadeva Patria – (ne)pravo v kontekstu', *Pravna praksa*, Vol. 26, 2014, pp. II-VII.

5 B. Bugarič, 'The rule of law derailed: lessons from the post-communist world', *Hague journal on the rule of law*, Vol. 7, No. 2, 2016, pp. 175-197.

6 M. Avbelj, 'Naše pravo in pravo ljudstvo: kako braniti ustavno demokracijo pred populizmom', *Dnevi slovenskih pravnikov, Podjetje in delo*, Vol. 42, No. 6/7, 2016, pp. 1221–1233. J. Letnar Černič, 'Iskanje najmanjšega skupnega imenovalca evropskih vrednot', *Poligrafi*, Vol. 21, No. 81-82, 2016, pp. 211-224.

doi: 10.5553/EEYHR/258977642018001001003

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in the former Yugoslavia. Equipped with this knowledge, this article concludes how Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia and Slovenia could more fully internalize the values of liberal democracy and fully internalize the rule of law in their democratic institutions.

2. Socio-economic Conditions in the States of the Former Yugoslavia

More than a quarter of a century has passed since the breakup of the former Yugoslavia and it is now 20 years since the end of the last Balkan wars.[7] How have the countries of the Western Balkans managed to face both socio-economic challenges as well as the rule of law and the protection of human rights during this period?[8] The usual urban neighbourhoods and villages in the countries of the Western Balkans reveal widespread poverty, a lack and denial of opportunities for ordinary people, particularly outside the majestic Adriatic resorts and the elite neighbourhoods of cities such as Belgrade, Ljubljana, Sarajevo, Skopje and Zagreb.[9] In their daily lives, ordinary people have struggled mainly for the survival of their families, while their societies still appear to be trapped in the symbolic remnants of the past.[10] On the one hand, there are the post-transition elites, the nationalist radical groups and parties, and the organized crime organizations; on the other hand, there is immeasurable inequality, vulnerability and poverty among the majority of the population.[11] The public spaces in these countries have continued to be filled with two often conflicting transitional processes: the first stemming from the remnants of the communist system and the other from the consequences of armed conflicts in the 1990s.[12]

Most political parties in countries such as Croatia, Bosnia and Herzegovina, and Serbia have continued to deny crimes and have accused the opposite side of all crimes, have only partially prosecuted alleged perpetrators and pay compensation to the victims. It is difficult for ordinary people to understand how responsible persons and elites cannot, after more than two decades, create a certain critical distance between themselves and the committed crimes. For example, after the acquittal of Vojislav Šešelj was pronounced at the first instance before the International Criminal Tribunal for the former Yugoslavia (ICTY), the radical Serbian nationalists triumphed over the streets of Srebrenica on the same day with flags of the Serbian state flying high.[13] The victims continue to be used throughout the countries of the Western Balkans to create tensions between different ethnic groups.[14] Each side of the inter-ethnic disputes continues to glorify its victims and create imaginative parks, such as in Višegrad on the Drina River, in Bos-

7 See Letnar Černič, 'Petindvajset let pozneje', IUS-INFO, 29 April 2016.
8 *Ibid*.
9 *Ibid*.
10 *Ibid*.
11 *Ibid*.
12 R. Svetlič, 'Political totalitarianism and the social contract: envisioning contractualism for the 21st century', *Anthropological notebooks*, Vol. 23, No. 1, pp. 27-41.
13 T. Escritt, 'U.N. tribunal acquits Serbian firebrand Seselj of war crimes', *Reuters*, 31 March 2016.
14 See Letnar Černič, 2016.

doi: 10.5553/EEYHR/258977642018001001003

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nia and Herzegovina, which do not have much in common with past events.[15] Some court proceedings were successfully concluded, and the perpetrators were convicted, mainly due to the influence of the ICTY; however, it seems that little has been done. It has only been established that the last transitional chapter has just begun, since these countries have so far addressed the issue only half way, ineffectively and selectively, without a uniform and equal approach to the crimes and responsibility of the alleged perpetrators.[16] There have only been small steps, all taken due to the pressure of the ICTY, which demanded that domestic judicial systems prosecute and condemn those responsible for crimes.[17] In spite of the numerous judgments of the European Court, a number of problems remain in the payment of compensation to victims or their relatives for having suffered human rights violations.[18] The former Yugoslav states simply appear to ignore such judgments.[19] Countries from Slovenia to Macedonia have often been subjected to various narrow interests, especially private financial ones of various interest and political groups.

The UN Human Development Index illustrates the current socio-economic conditions on the ground. It ranks Bosnia and Herzegovina 81st, Montenegro 48th, Croatia 45th, Macedonia 82nd, Serbia 66th and Slovenia 25th among all countries.[20] More worrying is the low economic growth in the last 20 years, since the Balkan states have not moved much for the better. Therefore, hundreds of thousands of individuals have moved abroad in the last 20 years. However, they continue to maintain contact with the former homeland, therefore remittances are very high.[21] Neon signs for Western Union and similar companies dealing with cross-border money transfers illuminate the streets of all the Balkan cities.[22] Families are mostly able to survive only due to the remittances sent by their family members who have managed to find work elsewhere.[23] This, in a way, has blurred the real situation in those societies and delays the necessary reforms.[24]

Due to its Dayton constitutional framework, Bosnia and Herzegovina finds it hard to move forward, as nationalist politicians still focus on gathering votes, instead of fully devoting themselves to raising the socio-economic standards of their population.[25] At the same time, the state of the rule of law and human rights protection in all countries of the Western Balkans is far from ideal, Alan Uzelac argues, stating that the third (post-socialist) legal tradition not only has

15 *Ibid*.
16 Zyberi & Letnar Černič, 2015, pp. 132-157. See also Letnar Černič, 2018, pp. 111-137.
17 See Letnar Černič, 2016.
18 *Ibid*.
19 *Ibid*.
20 United Nations Developement Programme, Human Development Index, available at: http://hdr.undp.org/en/composite/HDI (last accessed 28 March 2018).
21 Letnar Černič, 2016.
22 *Ibid*.
23 *Ibid*.
24 *Ibid*.
25 *Ibid*.

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survived but continues to consolidate.[26] As a result, external observers from the European Commission to the European Court have been constantly pointing out a number of shortcomings in the functioning of the rule of law and human rights.

3. Statistical Data

Statistical data may not illustrate all the facets of the position of the ECHR in domestic systems; however, they show that Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia and Slovenia have faced day-to-day difficulties in the exercise of the rule of law and the protection of human rights. Some data on the protection of human rights are quite clear.

Tabel 1 ***The European Court of Human Rights in the states of the former Yugoslavia***[27]

	Number of ECtHR judgments finding violations (1956-2017)	**Number of non-executed ECtHR's judgments in domestic systems (1-1-2017)**	**Pending applications before the ECtHR (1-8-2018)**	**Number of "pilot judgments"**
Bosnia and Herzegovina (2002-onwards)	49	31	853	1
Croatia (1997-onwards)	301	180	570	/
Macedonia (1997-onwards)	124	66	326	/
Montenegro (2004-onwards)	35	16	173	/
Slovenia (1994-onwards)	329	49	143	2
Serbia (2004-onwards)	161	162 (248 in 2015)	1577	1

Slovenia stands out among the states of the former Yugoslavia with the highest number of judgments (329) finding at least one violation. However, Slovenia has been the State Party of the European Convention the longest from all states. Croatia does not lag far behind with 301 judgments finding at least one violation.

26 A. Uzelac, 'Survival of the Third Legal Tradition?', *Supreme Court Law Review*, Vol. 49, No. 2., 2010, pp. 377-396. See also Letnar Černič, 2018, pp. 111-137.

27 European Court of Human Rights, Violations by Article and by States (1959–2017), available at: http://www.echr.coe.int/Documents/Stats_violation_1959_2017_ENG.pdf (last accessed 28 March 2018), and Council of Europe, Committee of Ministers, Supervision of the Execution of Judgments and Decisions of the European Court of Human Rights, 2016, available at: https://rm.coe.int/prems-021117-gbr-2001-10e-rapport-annuel-2016-web-16x24/168072800b (last accessed 28 March 2018), pp. 57-59.

doi: 10.5553/EEYHR/258977642018001001003

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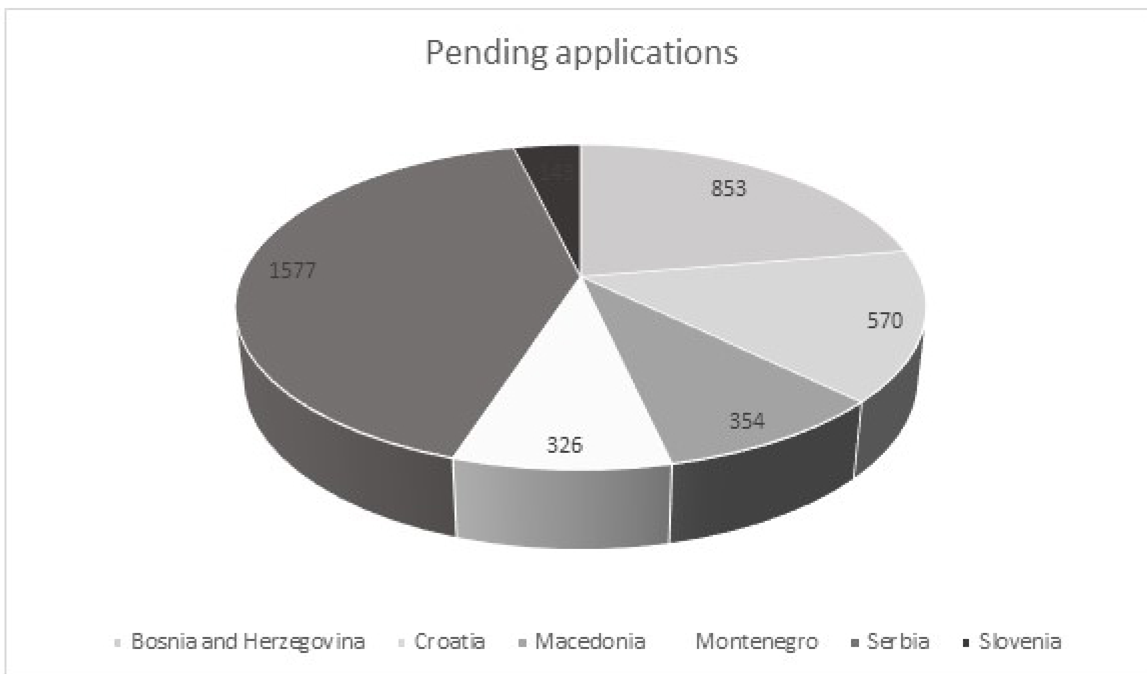
Additionally, in a relatively short period from 2004 onwards Serbia has already been found responsible of violating the European Convention, with 136 judgments finding at least one violation. Macedonia also has severe problems with the implementation of the Convention, whereas Bosnia and Herzegovina are the states with the fewest judgments; however, they are not lacking problems in domestic human rights protection. At the same time, the states of the former Yugoslavia also exhibit systematic and structural problems with the execution of judgments.[28] Eastern European states generally face difficulties in executing judgments of the European Court of Human Rights.[29] Bosnia and Herzegovina has executed only 18 of 49 judgments in which at least one violation was found, whereas Croatia still has not executed 180 judgments. Montenegro has faced similar problems. However, some positive developments can be observed. In 2016, Macedonia, Slovenia and Serbia have closed several cases and thereby immensely reduced their backlog with the execution of the judgments of the Court.

Figure 1 Pending applications before the ECtHR (1 January 2018)[30]



28 See, generally, J. Letnar Černič, 'A Glass Half Empty? Execution of Judgments of the European Court of Human Rights in Central and Eastern Europe', *Baltic Yearbook of International Law*, Vol. 15, 2015, pp. 285-302.

29 *Ibid*.

30 European Court of Human Rights, Pending Applications, 1 January 2018.

doi: 10.5553/EEYHR/258977642018001001003

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The number of pending applications shows that the European Court remains of relevance for applicants from most the countries of the former Yugoslavia, in spite of deficient domestic implementation of its judgments. The numbers of pending applications are particularly high for Serbia, Bosnia and Herzegovina, and Croatia, which may reflect that these countries are facing the most structural and systematic challenges in honouring their obligations under the European Convention.

4. The European Court of Human Rights in states of the former Yugoslavia

This section describes and analyses the contributions of the European Court of Human Rights in Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia and Slovenia.[31] Generally, it can be noted that the European Court has been well received by ordinary applications in the region of the former Yugoslavia and less by governing elites occupying public functions in state institutions and public administration.

4.1. Bosnia and Herzegovina

Bosnia and Herzegovina ratified the European Convention on 24 April 2002. However, in this relatively short period, the European Court has so far already delivered 49 judgments finding at least one violation of the Convention.[32] Most judgments against Bosnia and Herzegovina deal with violations of the right to a fair trial, particularly the length of proceedings and non-enforcement, the right to an effective remedy, and the prohibition of non-discrimination, whereas there are also judgments finding violations concerning freedom of expression, the prohibition on torture, inhuman and degrading treatment, the lack of effective investigation and the right to liberty and security.[33] There are currently 853 applications pending against Bosnia and Herzegovina.

Bosnia and Herzegovina has been in an unenviable position for many years now.[34] The state, which is divided into two federal parts, has been held together only by the international community through the High Representative of the Organization for Security and Cooperation in Europe.[35] Almost 20 years after the

31 See generally P. Leach, 'The Continuing Utility of International Human Rights Mechanism, The Continuing Utility of International Human Rights Mechanisms?', *EJIL Talk!*, 1 November 2017. See also G. *de Búrca*, Human Rights Experimentalism, American Journal of International Law. Vol. 1111, 2017, p. 277.

32 European Court of Human Rights, Violation by Article and by States (1959–2017), 2018.

33 *Ibid*.

34 See generally Jernej Letnar Černič, 'Užaloščena dežela', IUS-INFO, 6 February 2015.

35 J. Marko, 'United in Diversity: Problems of State-and-Nation-Building in Post-Conflict Situations: The Case of Bosnia-Herzegovina', *Vermont Law Review*, Vol. 30(3), 2006, pp. 503-550.

doi: 10.5553/EEYHR/258977642018001001003

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signing of the Dayton Peace Agreement, the country is still looking for its path.[36] There was no reconciliation between different nations; now they may live even more distinctly apart than before the break-up of the former common state. However, some judgments of the European Court cannot be executed due to the Dayton agreement.[37] For instance, the Court held in *Sejdić and Finci v. Bosnia and Herzegovina* that constitutional arrangements of Bosnia and Herzegovina violate Article 14 and Article 3 of the European Convention, as they prevent members of minorities outside three constituent ethnic groups from running for the Presidency of Bosnia and Herzegovina.[38] Similarly, the Court noted in *Zornić v. Bosnia and Hercegovina* that

> … the time has come for a political system which will provide every citizen of Bosnia and Herzegovina with the right to stand for elections to the Presidency and the House of Peoples of Bosnia and Herzegovina without discrimination based on ethnic affiliation and without granting special rights for constituent people to the exclusion of minorities or citizens.[39]

Another group of cases is related to systematic and general violations of the right to property. The only one pilot judgment so far delivered against Bosnia and Herzegovina falls in this category.[40] Moreover, victims of genocide, crimes against humanity and war crimes in Bosnia and Herzegovina (as well as in other former republics) face great difficulties in obtaining compensation because their rights are not at the centre of a political debate.

In the case of *Đurić and others v. Bosnia and Herzegovina*, the European Court again found violations in the exercise of the Republika Srpska's compensation obligations for violations of the prohibition of war crimes and crimes against humanity.[41] Similarly, all domestic trials to enforce the individual responsibility of alleged perpetrators of the worst crimes still have not been completed.[42] Such practices are no exception, as there is no agreement at the federal state level between the two federal units on adopting a systemic law on the rights of victims of torture and civilian victims of war.[43] Adoption of the law is closely linked to broader issues related to the political future of Bosnia and Herzegovina and,

36 P. Szasz, 'The Bosnian Constitution: The Road to Dayton and Beyond', *ASIL Proceedings*, Vol. 90, 1996, p. 479; S. Yee, 'The New Constitution of Bosnia-Hercegovina', *European Journal of International Law*, Vol. 7, 1996, p. 176; P. Szasz, 'The Protection of Human Rights Through the Dayton/Paris Peace Agreement on Bosnia', *American Journal of International Law*, Vol. 90, 1996, p. 301. See further Letnar Černič, 2015.

37 See for example *Al Husin v. Bosnia and Herzegovina*, application no. 3727/08, judgment of 7 February 2012, *Sejdić and Finci v. Bosnia and Herzegovina*, application nos. 27996/06 and 34836/06), judgment of 22 December 2009.

38 *Sejdić and Finci v. Bosnia and Herzegovina*, *ibid*.

39 *Zornić v. Bosnia and Hercegovina*, application no. 3681/06, judgment of 15 July 2014.

40 *Suljagić v. Bosnia and Herzegovina*, application no. 27912/02, judgment of 3 November 2009.

41 *Đurić and others v. Bosnia and Herzegovina*, application nos. 79867/12, 79873/12, 80027/12, 8020/12 and 115/13, judgment of 20 January 2015.

42 See generally Letnar Černič, 2015.

43 *Ibid*.

doi: 10.5553/EEYHR/258977642018001001003

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therefore, cannot be resolved locally within federal units.[44] However, Borelli argues in the context of war crimes that "the European Convention and the case-law of the European Court have undoubtedly played a significant role in shaping the domestic procedural rules applicable to the prosecution of war crimes. However, given the absence of relevant decisions by the Court directly implicating domestic war crimes trials, the impact has necessarily been an indirect one, which has been made possible by the particular institutional framework elaborated by the international community for BiH in the aftermath of the Balkan conflict, the special position and status accorded to the European Convention under the Constitution, and the receptive attitude which has been displayed by the domestic judiciary."[45]

Bosnia and Herzegovina has encountered several obstacles in enforcing the European Convention and executing judgments of the European Court. Several reasons may help to explain such failures, from the continuing legacy of the inter-ethnic conflicts to very weak democratic institutions, joined with particularities of its domestic constitutional framework.[46] Vehabović, therefore, rightly argues that the main reason for the non-execution of judgments of the European court lies in

> [t]he weak capacity of democratic institutions due to complex constitutional structure that allows that the entire legislative process can be blocked by small political or ethnic group by invoking veto on the basis of vital national interest of one's constituent people or vital interest of an entity.[47]

He further observes that

> [t]he institutions of Bosnia and Herzegovina, in the manner in which they were established by the Dayton Peace Agreement, are so weak that they cannot perform even daily duties due to an inefficient system of adoption regarding even very simple decision.[48]

Certainly, institutions in Bosnia and Herzegovina are not artificial and abstract forms, but they are filled with people who are tasked to perform public functions on the basis of the rule of law, integrity and transparency.

All in all, human rights protection and the rule of law have not been functioning properly in Bosnia and Herzegovina also due to the complex different federal

44 *Ibid*.

45 S. Borelli, 'The Impact of the European Convention of Human Rights in the Context of War Crimes Trials in Bosnia and Herzegovina', DOMAC/5, November 2009, p. 41.

46 See generally Letnar Černič, 2015.

47 F. Vehabović, 'Bosnia and Herzegovina: Impact of the case law of the European Court o Human Rights on postconflict society of Bosnia and Herzegovina', *in* I. Motoc & I. Ziemele (Eds.), *The Impact of the ECHR on Democratic Change in Central and Eastern Europe: Judicial Perspectives* (pp. 80-109). Cambridge: Cambridge University Press, 2015, p. 107.

48 *Ibid*, p. 109.

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and cantonal ministries that handle the same subject matters.[49] Bosnia and Herzegovina has not yet been freed from the vices of inter-ethnic conflicts, which has led to no consensus on its development in all areas.[50] Younger generations are still leaving because of the rule of law situation and adverse economic conditions.[51] Many families are living on remittances sent from abroad by their relatives.[52] It appears that the majority of challenges can be traced back to the Dayton agreement, which on the one hand is a guarantor of stability, peace and security in Bosnia and Herzegovina, and on the other hand has been undermining its development.[53] Bosnian-American writer Alexander Hemon once observed that "[t]he Dayton Agreement was actually a constitutional continuation of the war, which is to say that Bosnia was cemented in a structure that does not allow it to live in peace."[54] However, it is difficult to imagine that the United States and the most influential European countries would allow the Dayton Agreement to come to an end. This would very likely mean that the Republika Srpska would realize its wishes for a kind of confederation of three countries, or even for joining Serbia.[55] Until a blue agreement or plan arises, the status quo is likely to continue, which we know so well in our country and other former republics.[56] This approach probably means even more isolation of different ethical groups and, in some cases, the further radicalisation of the most radical individuals, who will continue to be involved in illicit activities.[57] Therefore, the future of Bosnia and Herzegovina is primarily to improve the quality of democratic institutions and the state of the rule of law. Equally important, however, is to ensure the continued effective prosecution of the perpetrators of the most serious crimes and to provide victims with adequate compensation.

4.2. Croatia

Croatia recently celebrated 20 years since it acceded to the European Convention. It ratified the European Convention on 6 November 1996.[58] By the end of 2016, the European Court of Human Rights issued 377 judgments against Croatia, in which it found at least one violation of the European Convention in 301 cases.[59] Of these, there were as many as 28 judgments with one established violation given in the last year.[60] Most of these violations have concerned the infringement

49 E.-T. Fakiolas & N. Tzifakis, 'Chapter 7: Establishing the Rule of Law in Kosovo and Bosnia and Herzegovina: The Contribution of the EU Civilian Missions', *in*: M.-S. Fish, G. Gill & M. Petrovic (Eds), *A Quarter Century of Post-Communism Assessed*, Basingstoke: Palgrave Macmillan, 2017.

50 *Ibid*.

51 *Ibid*.

52 Letnar Černič, 2015.

53 *Ibid*.

54 D. Matković, 'Elitne urbane moči Ljubljane so Sarajevo izdale takoj, ko se je ponudila priložnost, Pogovor z Aleksandarom Hemonom', *Delo - Sobotna Priloga*, 10 January 2015.

55 Jernej Letnar Černič, 2015.

56 *Ibid*.

57 *Ibid*.

58 See Jernej Letnar Černič, 'Med soncem in meglo', IUS-INFO, 16 June 2017.

59 European Court of Human Rights, Violation by Article and by States (1959–2017), 2018.

60 *Ibid*.

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of the right to a fair trial, the excessive length of judicial proceedings and ineffective remedies. Some cases also relate to the prohibition of inhuman and degrading treatment and the absence of an effective investigation. At the beginning of 2018, 570 complaints from Croatia were waiting for the Court's decision.[61] The Council of Europe's Committee of Ministers reports that out of 282 judgments, 180 judgments have not yet been executed in the Croatian legal order.[62] The European Court has dealt with several cases, with long-raging impact.

For instance, in the case of *Škorjanec v. Croatia*, the European Court decided that the Croatian authorities violated their procedural obligation under Article 3 (prohibition of inhuman and degrading treatment or punishment), as they did not effectively investigate racially motivated violence in 2013 in Zagreb against Mrs Škorjanec and her husband, who is a member of the Roma community.[63] The Zagreb Prosecutor's Office, without a careful investigation, suspended the prosecution of alleged perpetrators of the attack on Ms. Škorjanec, because racial violence was directed only against Mr Škorjanec and not against Ms Škorjanec.[64]

In an even more interesting case of *Marunić v. Croatia*, the applicant was employed by a municipal communal company owned by the Kostrena Municipality.[65] The applicant criticized the Mayor of the Kostrena Municipality in the newspaper *Novi list* by pointing out irregularities in local government and urging the responsible institutions to investigate the situation in the municipality of Kostrena.[66] She was later fired due to the publication of her article.[67] The European Court decided that criticism was not disproportionate and did not exceed the permitted standards, which led to the failure of the state to prevent termination of an employment relationship in a manner appropriate for a democratic society.[68]

In the case of *Fergec v. Croatia*, a member of the Croatian Army detonated a grenade in a pizzeria in Zagreb in December 1996.[69] The soldier and another person died, while the applicant suffered serious bodily injuries, and another applicant suffered severe mental pain.[70] The applicants went before the Croatian courts to demand compensation from the Croatian state for the damage suffered.[71] They demonstrated that he was a soldier in active duty at the time of the explosion, which was also proven by the fact that his mother received a pension after his death.[72] The Croatian courts, including the Constitutional Court,

61 *Ibid.*
62 Annual Report of the Committee of Ministers of the Council of Europe for 2016, p. 57.
63 *Škorjanec v. Croatia*, application no. 25536/14, judgment of 28 March 2017. See Jernej Letnar Černič, 2017.
64 *Ibid.*
65 *Marunić v. Croatia*, application no. 51706/11, judgment of 28 March 2017. See Jernej Letnar Černič, 2017.
66 *Ibid.*
67 *Ibid.*
68 *Ibid.*, Para. 64.
69 *Fergec v. Croatia*, application no. 688516/14, judgment of 9 May 2017. See Letnar Černič, 2017.
70 *Ibid.*
71 *Ibid.*
72 *Ibid.*

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rejected their claim for damages.[73] The European Court found that the Croatian authorities violated their procedural obligation under Article 2 of the Convention to conduct an effective and rapid investigation and provide applicants with compensation.[74]

Individual cases illustrate that Croatia has suffered from weak rule of law and human rights protection.[75] Statistics show that Croatia belongs to a group of the former Yugoslav countries that face structural and systematic problems in the implementation of the European Convention.[76] In contrast, Turković and Omejec noted that "Croatia shows a willingness to cooperate with the ECHR system and there were no major problems at the level of enforcement of judgments and corrections of injustices that had happened on the domestic level".[77] Such a statement is indeed an overstatement, as the reality of the domestic human rights protections in Croatia testifies to the contrary. Moreover, the structural deficiencies relate not only to isolated cases, but also to a pattern of ineffective action to by Croatian authorities at all levels. As a matter of fact, most of the established violations relate to the failure of the judicial system, which suffers from structural and systematic problems in dealing with fundamental standards of fairness, independence and impartiality.[78] More specifically, the Croatian authorities have faced structural difficulties in complying with their positive procedural obligations under Articles 2 and 3, as they have been found in numerous cases of not conducting efficient, diligent, swift and independent investigations in the cases of violations of the right to life[79] and the prohibition of torture, degrading and inhumane treatment.[80]

Therefore, the possibilities of every executive power are limited, as the greatest burden falls on the judiciary branch.[81] The domestic legal order first eliminates the violations, but not in the majority of cases, contrary to the principle of

73 *Ibid*.
74 *Ibid*.
75 See Letnar Černič, 2017.
76 *Ibid*.
77 K. Turković & J. Omejec (2016), 'Croatia: Commitment to reform: Assessing the Impact of the ECtHR's case law on reinforcing democratization efforts in Croatian legal order', *in* I. Motoc & I. Ziemele (Eds.), *The Impact of the ECHR on Democratic Change in Central and Eastern Europe: Judicial Perspectives*, Cambridge: Cambridge University Press, 2015, pp. 110-135.
78 Letnar Černič, 2017.
79 See cases *M and others v. Croatia*, application no. 50175/12, judgment of 2 May 2017; *Biblija in Blažević v. Croatia*, application no. 62870/13, judgment of 6 June 2016; *B and others v. Croatia*, application no. 71593/11, judgment of 19 October 2015; *Starčević v. Croatia*, application no. 80909/12, judgment of 13 February 2015. *Bljakaj and others v. Croatia*, application no. 74448/12, judgment of 16 February 2015; *Jelić v. Croatia*, application no. 57856/11, judgment of 13 October 2014; *Kudra v. Croatia*, application no. 13904/07, judgment of 18 March 2013; *Bajić v. Croatia*, application no. 41108/10, judgment of 13 February 2013; *Jularić v. Croatia*, application no. 20106/06, judgment of 20 April 2012; *Skendžić and Krznarić v. Croatia*, application no. 16212/08, judgment of 20 April 2011; *Branko Tomašič and others v. Croatia*, application no. 71463/01, judgment of 15 April 2009.
80 Letnar Černič, 2017.
81 *Ibid*.

doi: 10.5553/EEYHR/258977642018001001003

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subsidiarity, which then leads to a congested Strasbourg court.[82] The European Court was set up in order to deal with, in particular, the worst violations, but at the moment, due to the non-existent institutions of the Eastern European countries, it must carry out primarily the work that should have been done by nation states.[83] However, it appears that there is no real will to clean up the systems, to pursue the effective protection of human rights, and to justify it on the grounds of impartial, independent and fair trials.[84] As with most other states of the former Yugoslavia, it appears that the Croatian authorities have not yet incorporated the core values of the Convention.[85] More importantly, the state has at its disposal robust institutions of a democratic and legal state that are aware that their primary task is to protect the dignity of ordinary people.[86] As democratic institutions are people-dependent, it may be necessary to fully internalize the liberal values of the European Convention and fully execute the judgment of the European Court in order to bolster the quality of the domestic system of human rights protection in Croatia.[87]

4.3. Macedonia

Macedonia ratified the European Convention in 1997. Since then the European Court has already delivered 124 judgments against Macedonia that found at least one violation of the Convention.[88] Most judgments against Macedonia deal with violations of the right to a fair trial, particularly the length of proceedings; the right to an effective remedy; freedom of expression, assembly and association; the right to respect for private life and family life; the right to life; the prohibition of torture, inhuman and degrading treatment, as well as a lack of effective investigation;[89] the right to liberty and security; and the prohibition of non-discrimination.[90] Of those judgments, 66 remain unexecuted in the domestic legal system of Macedonia.[91] There are 326 applications pending against Macedonia at the moment.

Macedonia has suffered similar problems to those of the other former Yugoslav states, as it has encountered systematic deficiencies in implementing the values of the Convention. Several problems concern the functioning of the Macedonian judiciary.[92] The fundamental values of the European Convention, such as human dignity, have not been fully internalized in the various layers of Macedonian institutions. In this context, Lazarova Trajkovska and Ilo Trajkovski argue

82 *Ibid*.
83 *Ibid*.
84 *Ibid*.
85 *Ibid*.
86 *Ibid*.
87 *Ibid*.
88 European Court of Human Rights, Violation by Article and by States (1959–2017), 2018.
89 Dzeladinov And Others v. The Former Yugoslav Republic Of Macedonia, application *no*. 13252/02, judgment of 10 April 2008.
90 European Court of Human Rights, Violation by Article and by States (1959–2017), 2018.
91 *Ibid*.
92 Mitrinovski v. the former Yugoslav Republic of Macedonia, application no. 6899/12, judgment of 30 April 2015, at para. 56.

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doi: 10.5553/EEYHR/258977642018001001003

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that "it seems that the case law of the Court is used in a formalistic way without substantive analysis. It will take time, stronger political will, and, certainly a great deal of education and training of judges from all instances."[93] Macedonian authorities and society are yet to internalize liberal values of the European Convention. Again, it appears that the implementation of the European Convention and the execution of the Court's judgments suffers not only from weak democratic institutions but also from the potential inter-ethnic conflicts.

4.4. Montenegro

Montenegro ratified the European Convention in 2004. However, in this relatively short period the European Court has so far already delivered 35 judgments finding at least one violation of the Convention.[94] Most judgments against Montenegro deal with violations of the right to a fair trial, particularly the length of proceedings and non-enforcement, the right to an effective remedy, prohibition of non-discrimination, whereas there are also judgments finding violations concerning freedom of expression, the prohibition of torture, inhuman and degrading treatment, a lack of effective investigation and the right to liberty and security.[95] Only 6 of those 22 judgments have been executed in the domestic system. There are 173 applications pending against Montenegro at the moment.[96] Montenegro has, therefore, suffered from similar problems to those of other countries in the region, however, it has several problems particularly with ensuring the fair, independent and impartial investigation into alleged violations of Articles 2 and 3 of the European Convention,[97] and generally with the functioning of judiciary and state authorities.[98] The institutions of all three branches have faced difficulties in internalizing values of the European Convention, as has the Montenegrin society as a whole.

4.5. Slovenia

Slovenia has been a state party of the European Convention since 28 June 1994.[99] From then on, applicants may invoke the ECHR in cases that deal with

93 M. Trajkovska & I. Trajkovski (2016), 'Macedonia: The effect of the European Convention on Human Rights and the case law on the Republic of Macedonia', *in* I. Motoc & I. Ziemele (Eds.), *The Impact of the ECHR on Democratic Change in Central and Eastern Europe: Judicial Perspectives*, Cambridge: Cambridge University Press, 2015, p. 288.

94 European Court of Human Rights, Violation by Article and by States (1959–2017), 2018.

95 *Ibid*.

96 See, for example, N. Vučinić, 'Montenegro: The effect of the European Convention on Human Rights on the legal system of Montenegro', *in* I. Motoc & I. Ziemele (Eds.), *The Impact of the ECHR on Democratic Change in Central and Eastern Europe: Judicial Perspectives*, Cambridge: Cambridge University Press, 2015, pp. 289-304.

97 *Ranđelović and Others v. Montenegro*, application no. 66641/10, judgment of 19 September 2017; *Milić and Nikezić v. Montenegro*, application nos. 54999/10 and 10609/11, judgment of 28 April 2015.

98 *Garzičić v. Montenegro*, application no. 17931/ 07, judgment of 21 September 2010.

99 J. Zobec, 'Slovenia: Just a Glass Bead Game?', *in* I. Motoc & I. Ziemele (Eds.), *The Impact of the ECHR on Democratic Change in Central and Eastern Europe: Judicial Perspectives*, Cambridge: Cambridge University Press, 2015, pp. 425-456.

doi: 10.5553/EEYHR/258977642018001001003

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the violation of one or more articles of the ECHR. During this time, the inhabitants of the Republic of Slovenia completely internalized the content of the ECHR and took it as their own,[100] which is evident in the number of complaints to the ECHR.[101] At the same time, statistics of the Republic of Slovenia before the ECHR have not been the most promising, as state authorities have not fully protected the European Convention in domestic settings. By 1 January 2018, the Court has delivered judgments in 353 cases against Slovenia, whereas Slovenia was found responsible for violating at least one article of the ECHR in 329 judgments,[102] including in two pilot judgments.[103] Most judgments against Slovenia deal with violations of the right to a fair trial, particularly the length of proceedings and non-enforcement,[104] the right to an effective remedy,[105] prohibition of non-discrimination, whereas there are also judgments finding violations concerning freedom of expression,[106] the prohibition of torture, inhuman and degrading treatment,[107] a lack of effective investigation[108] and the right to liberty and security.[109] Most of those violations are consequences of failures of executive and judicial branches of government, which have suffered from a weak institutional framework often influenced by powerful interest groups.[110]

Slovenia, therefore, tops the rankings of the member states of the Council of Europe in the number of complaints and judgments with at least one established violation.[111] It is more than obvious that problems have arisen not only because of the lack of knowledge about the ECHR, but also due to insufficient awareness of the seriousness of the issues.[112] Human rights protection has suffered due to the persistent challenges of transitional justice processes.[113] The absence of serious treatment of such systematic and general problems arises from all branches of government in Slovenia, as well as bodies that are supposed to work in the field

100 See, for example, M. Avbelj, 'The sociology of (Slovenian) constitutional democracy', *Hague journal on the rule of law*, Vol. 9, no. 3, 2017, pp. 1-23.

101 M. Avbelj & J. Letnar Černič, 'Slovenia', *in*: L. Hammer, F. Emmert (eds.), *The European Convention on Human Rights and Fundamental Freedoms in Central and Eastern Europe*, The Hague: Eleven International Publishing, 2012, pp. 527-556.

102 Jernej Letnar Černič et al., *Sovenija pred Evropskim sodiščem za človekove pravice: (1994-2016)*, Ljubljana: Fakulteta za državne in evropske študije, 2017.

103 *Kurić and others v. Slovenia*, application no. 26828/06, judgment of 26 June 2012; *Ališić annd Others .v Bosnia And Herzegovina, Croatia, Serbia, Slovenia And The Former Yugoslav Republic Of Macedonia*, application no. 60642/08, judgment of 16 July 2014.

104 *Lukenda v. Slovenia*, application no. 23032/02, judgment of 6 October 2005,

105 *Ibid*.

106 *Mladina v. Slovenia*, application no. 20981/10, judgment of 17 April 2014.

107 *Mandić and Jovič v. Slovenia*, application no. 5774/10 and 5985/10, judgment of 20 October 2011,

108 *Šilih v, Slovenia*, application no. 71463/01, judgment of 9 April 2009, *Y v. Slovenia*, application no. 41107/10, judgment of 28 May 2015,

109 *L. M. v. Slovenia*, application no. 32863/05, judgment of 12 June 2014.

110 Jernej Letnar Černič et al., 2017.

111 *Ibid*.

112 *Ibid*.

113 J. Letnar Černič, 'Transitional justice in Slovenia', in: M. Čoh Kladnik (ed.) *Slovenia in 20th century: the legacy of totalitarian regimes*, (Zbirka Totalitarizmi – vprašanja in izzivi, 6), Ljubljana: Study Centre for National Reconciliation, 2016, 352-373.

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doi: 10.5553/EEYHR/258977642018001001003

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of human rights protection. Furthermore, the execution of judgments of the European Court in the Slovenian legal order remains a challenge.[114] Discounting those general and systemic challenges has been, therefore, reflected in the institutional malnutrition of state bodies representing Slovenia before the ECHR, the absence of institutions that are responsible for the implementation of the ECHR, and the enforcement of judgments of the European Court.[115] Indifference has often been the problem in the effective protection of human rights in Slovenia.[116]

These problems are certainly not insurmountable.[117] Judicial office holders should be properly trained to gain insight into the case law of the European Court.[118] Naturally, problems may arise if individuals are not inclined to acquire knowledge about the case law of the European Court, or if they do not wish to rely on it in their work or receive signals from superiors that such a reference is not desirable.[119] However, the administrative part of the executive branch of power should do more to disseminate the ECHR and other documents in the field of human rights protection.[120] More than 300 judgments finding at least one violation unambiguously testify that the Slovenian legal order and, in general, the Slovenian society have to deal with systemic and universal problems in ensuring the effective protection of human rights.[121] Therefore, it is essential that Slovenia improves the state of rule of law by reducing the number of complaints and judgments to finally achieve effective protection of human rights.[122]

4.6. Serbia

Serbia ratified the European Convention in 2004. However, in this relatively short period, the European Court has so far already delivered 161 judgments finding at least one violation of the Convention.[123] Most judgments against Serbia deal with violations of the right to a fair trial, particularly the length of proceedings, the right to an effective remedy, freedom of expression, assembly and association, the right to respect for private life and family life, the right to life, the prohibition on torture, inhuman and degrading treatment, a lack of effective investigation, and the right to liberty and security.[124] Like elsewhere in the former Yugoslavia, Serbia faces systematic and structural problems in guaranteeing the procedural limb of the right to a fair trial by guaranteeing individuals the

114 See in detail Letnar Černič et al., 2017.
115 Letnar Černič et al., 2017.
116 *Ibid*.
117 B. Bugarič & A. Kuhelj, 'Slovenia in crisis: a tale of unfinished democratization in East-Central Europe', *Communist and Post-Communist Studies*, vol. 48, no. 4, 2015, pp. 273-279.
118 Letnar Černič et al., 2017.
119 *Ibid*.
120 *Ibid*.
121 *Ibid*.
122 Verfassungsgerichtshof Österreich, XVIth Congress of the Conference of European Constitutional Courts: The Cooperation of Constitutional Courts in Europe: Current Situation and Perspectives, Vol. II, Verlag Österreich, Wien 2014, pp. 923–942.
123 European Court of Human Rights, Violation by Article and by States (1959-2017), 2018.
124 *Ibid*.

doi: 10.5553/EEYHR/258977642018001001003

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right to an effective investigation in the right to life.[125] It is clear that Serbia should show more commitment to providing efficient, careful and prompt investigation in cases involving the loss of human lives. The protection of human life is, of course, the sacred foundation of all societies. The latter is one of its negative and positive obligations under the European Convention. These are, after all, the demands of human dignity, which is a collective value that belongs to everyone in this society. Therefore, when investigating interventions in life and physical integrity, the courts must act particularly thoroughly, carefully, accurately and quickly. The European Court so far delivered one pilot judgment against Serbia, which thereafter adopted general and concrete measures required for its execution.[126] Several more applications against Serbia are yet to be decided before the Court.

The European Court has had a positive impact on the Serbian domestic system, however; a lot is still left to be desired, as systemic challenges remain for compliance with the European Convention. Popović and Marinković observe that

> [t]he Court's case law in respect of Serbia reveals that the Serbian judiciary suffers from systematic deficiencies, such as the non-enforcement of final judgements and non-harmonized cases law, which go contrary to some of the most important Convention values: fair trial, legal security, and equality before the law.[127]

They continue by stating that "the Serbian courts still do not follow the Convention case law sufficiently and systematically" and that

> deeper roots for this unflattering score should be sought elsewhere, primarily in the university teaching and scholarship that still underestimate the importance of the Convention case law and its impact on the domestic system.[128]

Serbia has a positive obligation on the basis of the rule of law to carefully, accurately and objectively investigate and prosecute all human rights violations that occurred on its territory. More importantly, it has to identify and prosecute alleged perpetrators. The state's obligation to investigate and prosecute is a positive obligation that requires active action and not the continuation of the situation, i.e. passivity. State authorities, including the criminal police, the state prosecutor's office and the judiciary, should do their utmost to investigate human rights violations and determine who is responsible for them. The state must pro-

125 *Mučibabić v. Serbia* case, application no. 34661/07, judgment of 12 July 2016, *Mladenović v. Serbia*, application no. 1099/08, judgment of 22 May 2012.

126 *Ališić annd Others v. Bosnia And Herzegovina, Croatia, Serbia*, Slovenia *And The Former Yugoslav Republic Of Macedonia*, application no. 60642/08, judgment of 16 July 2014.

127 D. Popović & T. Marinković, 'The emergence of the human rights protection in Serbia under the *European Convention* on Human Rights: The experience of the first ten years', *in* I. Motoc & I. Ziemele (Eds.), *The Impact of the ECHR on Democratic Change in Central and Eastern Europe: Judicial Perspectives* (pp. 373-400). Cambridge: Cambridge University Press, 2015, p. 399.

128 *Ibid*.

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doi: 10.5553/EEYHR/258977642018001001003

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tect evidence, hear witnesses and carry out effective, diligent and independent investigations. All in all, Serbian authorities and society as whole have shown resistance to internalization of liberal values of European Convention. The contribution of the European Court has for these reason not been as wide-ranging as it could have been.

5. The European Court of Human Rights in the Former Yugoslavia – A Comparative Account

Most of the states of the former Yugoslavia are still facing systematic and structural problems in the exercise of effective human rights protection and the rule of law. This is supported by statistics in section 3 of this article on the number of judgments with at least one established violation and the number of non-executed judgments of the European Court of Human Rights. Has the European Court improved the human rights protection in the former Yugoslavia?[129]

Some of its impact has, nonetheless, been straightforwardly positive. The European Court undoubtedly contributed to the improvement of the rule of law and human rights protection in the states of the former Yugoslavia. The most impactful contribution of the European Court has been the right to lodge an application against the alleged violation of the European Convention by respective authorities. It has brought to the region a possibility of subsidiary review of the conduct and of practices of domestic authorities. Furthermore, the Court contributed to the introduction and elaborations of human rights protections and the rule of law standards.[130] More specifically, it established and clarified standards for independent, impartial and fair court proceedings. In doing so, it attempted to eliminate systemic and general problems in trials,[131] as well as to ensure both the external and internal independence of the judiciary.[132] They have contributed to the imposition of strict rules, which indirectly contributed to the non-reoccurrence of the ethnic conflicts. The states of the former Yugoslavia have introduced legislative and judiciary reforms aimed at enhancing the functioning of the executive and judiciary branches, however, it appears that the changes have not been followed through in legal practice,[133] as is evident from the disheartening number of judgments finding violations. The law in books is still far from the law in action. The Court has made it clear that the former Yugoslav states have to fulfil procedural and substantive obligations regarding the right to life and the prohibition of torture, and inhuman or degrading treatment or punishment. It has been established that countries have positive obligations to find perpetrators

129 Wojciech Sadurski, *Postcommunist Constitutional Courts in Search of Political Legitimacy*, Florence: European University Institute Law Working Paper No. 2001/11.

130 Wojciech Sadurski, *Rights before courts – a study of constitutional courts in postcommunist states of Central and Eastern Europe*, 2nd edn. Heidelberg: Springer, 2014.

131 *Lukenda No. II v. Slovenia*, application no. 16492/02, judgment of 13 April 2006.

132 *Parlov Taklčič v. Croatia*, application no. 24810/06, judgment of 22 December 2009.

133 See, for instance, B. Bugarič, 'Administrative law developments in post-communist Slovenia: between West European ideals and East European reality', *European public law*, Vol. 22, no. 1, 2016, pp. 25-48.

doi: 10.5553/EEYHR/258977642018001001003

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and award compensation to victims and their relatives. However, most of the states in the former Yugoslavia still find it challenging to carry out effective, diligent and independent investigations in the alleged violations. Further, it has theoretically contributed to the construction of free societies based on pluralism and the free exchange of ideas.[134]

Societies in states of the former Yugoslavia still underestimate the importance of a public debate on important issues and neglect the values of pluralism, broad-mindedness and tolerance. A wide range of opinions on public issues in these countries have still not been welcomed. Freedom still seems to be exercised only for some individuals and groups, but not for others. They are still prosecuted for criticism expressed against local and state authorities. Similar problems occur in the exercise of freedom of assembly and association. As regards freedom of expression, association, assembly and religion, the European Court played a pioneering role and established standards of dialogue for the functioning of free and democratic societies and set at least the minimum basis for the conduct of a democratic debate. However, it seems that some elites in the the former Yugoslavia are still defending themselves against the consistent realization and internalization of the freedoms of democratic societies. Also, it reaffirmed the protection of the right to property in the post-transitional context of denationalization and post-war restitution. The positive contribution concerning structural and systematic problems can be seen in a wide range of pilot judgments, particularly against Bosnia and Herzegovina, Slovenia and Serbia.

The most structural and systematic impact has been seen in Slovenia, whereas some piecemeal progress is also seen elsewhere in the region. It seems that the liberal values of the European Convention have not been fully internalized. It is more difficult to convince governmental and institutional elites than the ordinary population to internalize these values and rights. The process of internalizing those core values depends primarily on the governmental and institutional environment of the former Yugoslav states. In the former Yugoslavia, the realization of fundamental values and conventional rights is, therefore, particularly dependent on people who carry out the functions of state authorities on a daily basis. State and public administrations in the former Yugoslavia should be based on the principles of meritocracy, independence, impartiality and professionalism. The European Court has provided Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia and Slovenia with an excellent theoretical basis for the exercise of effective human rights protection and the rule of law. They only have to be fully internalized and realised in the state institutions of domestic systems. The latter seems to be the most difficult but not impossible aspect.

All in all, the European Court has certainly contributed immensely to the establishment of standards of human rights protections, especially in legal environments in which both the judicial system and the wider society have not yet incorporated the fundamental values of human dignity, pluralism, broad-minded-

134 See, for example, J. Sladič, 'Svoboda izražanja slovenskega sodnika'. *Pravna praksa*, Vol 36, No. 23, 15 June 2017, pp. 18-22.

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doi: 10.5553/EEYHR/258977642018001001003

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ness and tolerance.[135] It has acted as a harbinger of structural and systematic reforms.[136] At the same time, the impact of the European Court has only been partial and limited.[137] The European Court and the Council of Europe as primaries have acted not only as subsidiary guardians, but also as primary guarantors of human rights protection.[138]

6. Challenges and Future Prospects for the European Court of Human Rights in the Former Yugoslavia

Ordinary people in the states of the former Yugoslavia have increasingly expressed concern about the state of law and the quality of state institutions. They mostly do not trust the ruling power structures. Different indicators show that many countries in this area are increasingly found in the hands of strong interest groups, which primarily pursue their own private interests. What are the reasons for the relatively limited contribution of the European Convention and the European court in the states of the former Yugoslavia? There are several reasons why the European Court has so far not had a more wide-ranging contribution in the former Yugoslavia. It appears that the primary reasons involve the governmental elites rejecting the liberal values that are included in the European Convention and the case law of the European Court. The latter has been reflected in the lack of effective subsidiary, i.e. domestic human rights protections, which in most cases exist only on paper and not in action.[139]

The states of former Yugoslavia have yet to develop independent and impartial institutions for the rule of law and constitutional democracy, which would serve a common public interest. Institutions are often subjected to authoritarian mentality, old practices, old boy networks' vested interests and *status quo*.[140] Weak institutions are also a legacy of the of inter-ethnic conflicts, which may have contributed to the lack of internalisation of values.[141] However, what is common to all domestic systems is the lack of knowledge about the European Convention and the case law of the European Court.[142] Most challenges of the judiciary in the former Yugoslavia have to do with the survival of socialist legal traditions; myth of apolitical judiciary and objective theory of law.[143] Ziemele submits that there are "…in some Central and Eastern European countries even

135 Letnar Černič, 2018, pp. 111-137.
136 *Ibid*.
137 *Ibid*. 127.
138 *Ibid*.
139 *Ibid*.
140 *Ibid*.
141 *Ibid*.
142 *Ibid*.
143 *Ibid*.

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more fundamental issues, such as the independence of the judiciary and relevant guarantees, are still in need of serious work…”.[144]

Over the past 20 and more years, the highest peaks of the judiciary have been trying to persuade the public in the former Yugoslavia that they act neutrally and objectively. However, their decisions, and especially their unconvincing and inadequately reasoned decisions, in some cases demonstrated clearly that judges may be closer to this or that ideological position. Zobec and Černič have argued in the respect of Slovenia that “its judiciary is characterised by a lack of mental and intellectual independence, lack of free, open, and courageous legal (as well as democratic) thought and internal autonomy of judges”.[145] The fact that the courts and their bearers act politically must be taken for granted, but it later also forces the courts to make even greater efforts to justify their decisions, improve them, if necessary, in separate opinions.[146] It thus often occurs that the adverse opinion of a particularly theoretical and practically rigged constitutional judge is more convincing than the opinion of the majority in the court.[147] There were then attempts to diminish this opinion by explaining in various professional and periodical publications that this judge or that judge has such an ideological conviction.[148] The judiciaries in the former Yugoslavia need to accept the fact that there is no such thing as a politically objective judiciary,[149] as politics has been often present in the daily functioning of all levels of judiciary.[150] The people on whose behalf they act will only accept their decisions if there are convincing and in-depth legal arguments, without the presence of actual and potential conflicts of interest.[151] Courts and judges must be aware of and accept the political nature of their actions, and they must, therefore, carefully ensure that they act as publicly as possible, and that they act impartially, independently and fairly in an effort to improve the quality of their judgments.[152] The convincing legal argument precludes the political condition of each judge, because judgment or voice stands or falls with solid and in-depth legal arguments.[153]

144 I. Ziemele, ‘Conclusions’, *in* I. Motoc & I. Ziemele (eds.), *The Impact of the ECHR on Democratic Change in Central and Eastern Europe. Judicial Perspectives*, Cambridge: Cambridge University Press, 2016, p. 497.

145 J. Zobec & J. Letnar Černič, The remains of the authoritarian mentality within the Slovene judiciary, in: M. Bobek (ed.), *Central European judges under the European influence: the transformative power of the EU revisited*, (EU law in the member states, vol. 2), Oxford; Portland: Hart, 2015, pp. 125-148.

146 Jernej Letnar Černič, ‘Nepolitično sodstvo?’, IUS-INFO, 29 September 2017.

147 *Ibid*. See also Letnar Černič, 2018, pp. 111-137.

148 *Ibid*.

149 Uzelac, 2010, pp. 377-396. See also Letnar Černič, 2018, pp. 111-137.

150 Michael Bobek, ‘The Fortress of Judicial Independence and the Mental Transitions of the Central European Judiciaries’, *European Public Law*, Vol. 14, 2008, pp. 1, 15, 16. Letnar Černič, 2018, pp. 111-137.

151 A. Kuhelj & B. Bugarič, ‘A day in the life of post-communist Europe’, *Hague journal on the rule of law*, Vol. 8, No. 1, 2016, 183-190,

152 Jernej Letnar Černič, ‘Nepolitično sodstvo?’, IUS-INFO, 29 September 2017.

153 *Ibid*.

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Further, it is necessary for domestic systems to distance themselves from systems that violated human rights in the past. For instance, the Constitutional Court of Slovenia observed that

> the former Yugoslav system … did not put human rights at the forefront and did not define any clear legal restrictions for the state authorities and their violence …[154]

It added that the system "did not function as a state governed by law and that within it human rights were grossly violated".[155] However, some features of the (post-)socialist legal traditions, such as lack of self-criticism, authoritarian mentality and formalism have remained,[156] as the judges who performed their functions in the communist system remained in the positions after the rupture.[157] Formally established democratic institutions and the rule of law are only helpful in first instance when rupturing with former arbitrary practices.[158] However, what is needed in the next steps is for societies and their members to internalize the liberal values of human rights protection and all the components of the rule of law.[159] More specifically, holders of public functions in all branches of governments are obliged to internalize those values in their daily work.[160] However, the majority of people holding public functions in the former Yugoslavia have failed to internalize those values. Therefore, challenges for the independence and impartiality of the judiciary in former Yugoslav states are lie mostly inside domestic judiciaries and executive branches of governments.[161] All in all, all of those reasons have affected the process of internalization of the European Convention in the countries of the former Yugoslavia.

7. Conclusions

This article has examined the implementation of the European Convention in the states of the former Yugoslavia, namely Bosnia and Herzegovina, Croatia, Mace-

154 No. U-I-158/94, 9 March 1995, para. 13.
155 Lovro Šturm, *Omejitev oblasti*, Ljubljana: Nova Revija, 1998, p. 23. See also concurring opinion of Judge Lovro Šturm, No. U-I-121/97, 23 May 1997, Point 2.
156 *See also* Letnar Černič, 2018, pp. 111-137. Zobec & Letnar Černič, 2015, pp. 125-148. *See also* R. Mańko, 'The Culture of Private Law in Central Europe After Enlargement: A Polish Perspective', *European Law Journal*, Vol. 11, No. 5, 2005, pp. 527-548. R. Mańko, 'Is the Socialist Legal Tradition "Dead and Buried?": The Continuity of the Certain Elements of Socialist Legal Culture in Polish Civil Procedure', *in* T. Wilhelmsson, E. Paunio & A. Pohjolainen (Eds.), *Private Law and the Many Cultures of Europe*, The Hague: Kluwer Law International, 2007, pp. 83-103. *Also see* Uzelac, 2010, p. 387.
157 Z. Kühn, *The Judiciary in Central and Eastern Europe: Mechanical Jurisprudence in Transformation?*, Leiden, Boston: Martinus Nijhoff Publishers, 2011, p. 163. *See also* Letnar Černič, 2018, pp. 111-137.
158 *See also* Letnar Černič, 2018, pp. 111-137.
159 *Ibid*.
160 *Ibid*.
161 *Ibid*.

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donia, Montenegro, Serbia and Slovenia. It has succinctly examined whether the European Court of Human Rights has improved human rights protections and the rule of law in each of those countries. The European Court has brought about positive changes in the domestic systems of human rights protection by introducing the minimum standards for human rights protection. Its judgments have been generally well received by the public in the states of the former Yugoslavia, thereby converting it into some kind of a myth that it can solve any violations. However, challenges still lie in the acceptance of liberal values by the governing elites in those states. It therefore seems that its standards have not been fully internalized in the practices of state institutions across the region.

Although ordinary people predict a similarly dark future, there are some signs that perhaps these countries may look optimistically towards the future, provided that the people holding public positions commit themselves to independent and impartial democratic and rule of law institutions and can learn from past mistakes. This article has identified that the states of former Yugoslavia have systematic and structural problems in implementing the European Convention and executing the Court's judgments. They have difficulties in meeting socio-economic challenges and standards for the protection of human rights. The article has found that some states such as Slovenia and perhaps Croatia and Serbia have fared better than most states in the region in addressing challenges in implementing the European Convention and executing the judgments of the Court. Nonetheless, what is necessary for improving the implementation of the European Convention in the former Yugoslavia is that institutions of all three branches become strong enough to be capable of efficiently protecting the rule of law and human rights. Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia and Slovenia should learn from past mistakes by effectively protecting human rights primarily in domestic settings and only secondarily in Strasbourg before the European Court of Human Rights. They should embrace the rights from the European Convention and the rule of law not only theoretically, but also in practice, by assessing the actions of state authorities related to human rights protection and the rule of law.

doi: 10.5553/EEYHR/258977642018001001003