

JULIJA SARDELIĆ

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## Constructing “New” Minorities: An Evaluation of Approaches to Minority Protection in Post-Socialist Slovenia from the Perspective of Liberal Multiculturalism

This paper deals with the construction of “new” minorities as opposed to “traditionally settled” minorities in Slovenia. Its aim is to conduct an evaluation of the foundations for minority protection in Slovenia from the perspective of liberal multiculturalism, as formulated by the political philosopher Will Kymlicka. The author argues that the distinction between “new” and “old” minorities in Slovenia, which takes for its basic criterion the principle of autochthony, cannot find any basis in the target approach of minority protection that is suggested by Kymlicka. The reason is that the members of former Yugoslav minorities were in most cases retroactively defined as immigrants, although most of them had settled in Slovenia before the disintegration of Yugoslavia. The paper also explores possible approaches to minority protection according to liberal multicultural policies in cases, where some minorities do not “fit” the traditional definition of old and new minorities.

Keywords: “new” minorities, liberal multiculturalism, Kymlicka, autochthony, minority rights

### *Konstruiranje »novih« manjšin: evalvacija pristopov manjšinske zaščite v postsocialistični Sloveniji s perspektive liberalnega multikulturalizma*

Članek se osredotoča na konstrukcijo »novih« manjšin v primerjavi s »tradicionalno naseljenimi« manjšinami v Sloveniji. Namen pričujočega članka je izvedba evalvacije temeljev manjšinske zaščite v Sloveniji s perspektive liberalnega multikulturalizma, kot ga je formuliral politični filozof Will Kymlicka. Avtorica tega članka namreč razvije misel, da razlikovanje med »starimi« in »novimi« manjšinami, katerega glavni kriterij je princip avtohtonosti, ne more biti utemeljen na podlagi ciljnega pristopa k manjšinski zaščiti, kot ga je predlagal Kymlicka. Razlog za to je v dejstvu, da je bila večina pripadnikov nekdanjih jugoslovanskih manjšin v Sloveniji retroaktivno definirana kot priselenci, čeprav se jih je večina naselila v Sloveniji še pred razpadom Jugoslavije. Avtorica članka prav tako raziskuje možne pristope k manjšinski zaščiti, ki bi bila v skladu s politikami liberalnega multikulturalizma v primerih, v katerih določene manjšine ne ustrezajo tradicionalni definiciji starih in novih manjšin.

Ključne besede: »nove« manjšine, liberalni multikulturalizem, Kymlicka, avtohtonost, manjšinske pravice

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**Correspondence address:** Julija Sardelić, Kranjčeva 8, 9220 Lendava – Lendva, Slovenia,  
e-mail: sardelic.julija@gmail.com.

## 1. Introduction

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After the disintegration of the Socialist Federal Republic of Yugoslavia (SFRY), the newly established independent state of Slovenia was regarded as one of the most successful countries to go through the democratization process in Central and Eastern Europe. In fact, even in the time of the SFRY, Slovenia was perceived as its most prosperous republic in the economic sense. Popular discourse (media and some politicians), and opinion polls (Slovenian Public Opinion research) carried out in the late 1980s showed that most people living in Slovenia thought that the country would be more prosperous in terms of its economy if it would continue its path as an independent state (Jović 2001, 102).<sup>1</sup> On June 25, 1991 Slovenia and Croatia declared their independence. However, the sole act of declaring independence would not have been decisive, if there had been no international recognition of the independent state, as Caplan (2002, 160) argues. On May 1, 2004 Slovenia was the first former Yugoslav republic to join the European Union (EU). Furthermore, it was the first new member state of the EU to change its national currency, the tolar, to the euro. Although all of these data was used to portray Slovenia as a success story, I will examine some other features that are also indicative of the same process of post-socialist transition in Slovenia. These features have been a part of independence “euphoria” as well as the subsequent Eurosis (i.e., European neurosis) of re-positioning Slovenia in Central Europe rather than in the Balkans, as suggested by Velikonja (2005).

Scholars have ascribed the prosperity of Slovenia to various factors. For example, the political philosopher Will Kymlicka (2007, 194) states that Slovenia was very successful in the democratization process, since it did not have to deal with major (and, in many cases, violent) minority nationalisms. Furthermore, according to Kymlicka (2007, 216), no violent manifestations of minority nationalisms occurred in Slovenia, since it was “essentially ethnically homogeneous” or, at least, the most ethnically homogeneous of the former Yugoslav republics. This can be, in fact, confirmed by the population census of 1991, in which 88 per cent of people with permanent residence in Slovenia declared themselves to be ethnically affiliated with the Slovenian (ethnic) nation (Statistical Office of the Republic of Slovenia, cited in Komac 2007c, 521). However, regardless how ethnically homogeneous a certain state might be, it still needs to address issues of ethnic diversity within its society, since in today’s world there is practically no state that is completely ethnically homogeneous (Rizman 1991, 10). Despite its perceived homogeneity, according to Medvešek and Komac (2005, 7), Slovenia is a multi-ethnic society. Furthermore, ethnic diversity raises questions of the accommodation of majority-minority relations and how these relations are affected by ethnic distinctions – as

102 stated by Šumi (2004, 14–40).

In the light of what is stated above, it still needs to be examined whether the fact that there were no major “incidents” concerning minority nationalisms in Slovenia also reflects a just political and legal approach towards all recognized and (constitutionally) unrecognized, but perhaps numerous minority communities. The position of the most numerous constitutionally unrecognized minorities as well as their claims have been analyzed by several different authors (Kržišnik-Bukič 2008; Roter 2007; Bešter et al. 2009; Medvešek 2007; Komac 2003). One of the most detailed research studies on the position of these minorities is (in translation) entitled “Albanians, Bosniaks, Montenegrins, Croatians, Macedonian and Serbs in the Republic of Slovenia: The Position and Status of the Former Yugoslav Nations’ Members in Slovenia” (Kržišnik-Bukič et al. 2003). In this article I will analyze how the distinctions between “old” (traditional) and “new” (immigrant) minorities have been made in Slovenia. My analysis will be based on the consideration as to whether this distinction is made in accordance with the political theory of liberal multiculturalism as developed by Will Kymlicka. I will examine whether the distinction made in minority protection in Slovenia can be a basis for what Kymlicka (2007, 77) calls a targeted approach to minority rights, founded on the distinction between old and new minorities. I have chosen this approach for the following reason: several Slovenian authors (Rizman 2006; Roter 2007; Kržišnik-Bukič 2008; Bešter 2007; Medved 2007), while discussing minority protection in Slovenia, have mentioned Kymlicka as a relevant source; they did not, however, use the theory of liberal multiculturalism as a basis for the evaluation of minority politics in Slovenia.<sup>2</sup>

Firstly, to shed light on majority–minority relations in Slovenia, I will investigate how the position of the Slovenian ethnic majority was reframed in the legal and political discourse in the new independent state. I will argue that supremacy was given to the ethnic majority based mostly on the alleged rootedness in the territory of the newly established Slovenian state. What is even more important, as I will argue in the next section, is that this rootedness in the territory became the only solid basis for the constitutionally recognized rights of a minority community such as the Italian and Hungarian communities in Slovenia. This rootedness was clearly indicated in what later became the only criterion for minority protection in Slovenia – autochthony (Janko Spreizer 2004). Although the usage of the term “autochthony” is clearly not a Slovenian invention, it did play a specific role with regard to minority protection in the Republic of Slovenia. In the following sections of this article, I will try to show that “autochthony” was not introduced to grant minority protection to Italian and Hungarian minorities, but to ensure that those minorities not considered autochthonous would not be entitled to any minority

protection. The distinction between autochthonous and non-autochthonous minorities, who were often perceived as a threat, was reflected not only in legal, but also in scientific, media and political discourse. These instances even became trivialized with regard to the interplay of the dichotomy between an imaginary Europe (the alleged home of the Slovenian ethnic majority and two autochthonous communities) and the Balkans (the place where non-autochthonous minorities migrated from). In addition, the “non-autochthonous” and “Balkan” minorities were created and stigmatized as the Slovenian Other.

## 2. Reframing the Position of Ethnic Majority in Post-socialist Slovenia

One of the most common “myths and misconceptions in the study of nationalism”, according to Rogers Brubaker (1998, 16), is the so-called “return of the oppressed” point of view concerning the rise of ethnic nationalism in Eastern Europe. According to Brubaker (*ibid.*) it is mistaken to think that various socialist policies completely abolished all references to ethnic nationalism, although that was perceived as the official policy in most countries with socialist régimes. Paradoxically, using Brubaker’s argumentation, socialist policies even nurtured nationhood to some extent:

It [the return of the oppressed view] suggests that these régimes repressed not only nationalism but nationhood; that they were not only *antinationalist*, but also *antinational*. / ... / The régime repressed nationalism, of course; but at the same time, it went further than any other state before or since in institutionalizing territorial *nationhood* and *ethnic nationality* as fundamental social categories. In doing so it inadvertently created a political field supremely conducive to nationalism (Brubaker 1998, 16).

In this quotation, Brubaker was referring specifically to policies in the Soviet Union. Although the SFRY was in many ways a very different system from the Soviet Union, it featured similar tendencies towards the institutionalization of both territorial nationhood and ethnic nationality. Mazower (2002, 140) characterizes the Yugoslav system as follows: “Tito’s régime had been based upon a highly elaborate system of official national groups, and even created several ‘new’ ones. / ... / Yugoslavia was one of the last countries where the old Habsburg distinction between ‘nation’ and ‘nationalities’ was preserved.” According to the preamble of the Constitution of the Socialist Federal Republic of Yugoslavia of 1974 (SFRY Constitution of 1974), all nations and nationalities were equal. However, already in the first basic principle of this Constitution we can see a certain ethnic hierarchy

104 between these two categories, since only constitutive nations had the right to self-determination, including secession.<sup>3</sup> The narratives of the 1974 Constitution were also put forward as one of the reasons for the disintegration of Yugoslavia, as stated by Jović (2001, 105):

By treating Yugoslav constitutive nations as completed (as Kardelj formulated it in 1970) and their republics as sovereign states (as formulated in the 1974 constitution), the ideological narrative of Yugoslav communism in practice shielded and promoted nationalism in its constitutive nations. While Yugoslav nationalism and the Yugoslav state were being weakened, the nationalism of the constitutive nations was getting stronger. The same concept that kept Yugoslavia together by consensus between its leaders held in itself also a destructive and disintegrative potential.

Following political scientist Miran Komac (2007b), I will try to show how the formulation of both the Constitution of the Socialist Republic of Slovenia (Constitution of the SRS), also formulated in 1974, and the SFRY Constitution of 1974 were both important grounds for the definition of the position of the Slovenian ethnic majority nation, as well as for the legal protection of minorities in the newly established Slovenia as an independent state in 1991.

According to the first paragraph of Article 3 of the 1991 Constitution of the Republic of Slovenia (Constitution of the RS 1991), "Slovenia is a state of all its citizens and is founded on the permanent and inalienable right of the Slovene nation to self-determination." This article was not an invention of the new Slovenian independent state. It was practically copied from the preamble of the Constitution of the SRS from 1974, when "ownership" of the Republic of Slovenia was already given to the Slovenian ethnic nation, as Komac (2007b, 40) argues. The preamble of the 1974 Constitution of the SRS states: "Slovenian nation / ... / undividedly bound with other nations in Yugoslavia, after thousands of years of oppression established its own Slovenian State."

The sociologist Kovačič (2005, 224) argues that Slovenia was founded on the basis of an open type of ethnic nationalism.<sup>4</sup> As seen in the constitution, although primacy is given to the Slovenian (ethnic) nation based on its right to self-determination, the Slovenian state is still portrayed as an equal union among all of its citizens, regardless of their ethnic origin. However, Kovačič (2005, 226) argues that, in reality, the predisposition for the formation of the Slovenian state was a rather illiberal one that gave the primacy of rights to the Slovenian (ethnic) nation as a collective rather than to individuals that lived in its territory. Kovačič (2005, 224) states that although all citizens are supposed to be equal under the 1991 Constitution of the RS, we can see that legal and political discourse gives supremacy to the ethnic majority. According to this understanding, the Slovenian

state can be characterized as an ethnic democracy, as described by Sami Smootha (2002, 425):

Nicknamed “ethnic democracy”, this type is based on the contradictory combination of democracy with ethnic ascendancy. Ethnic democracy is conceptualized as a second-rate democracy, a system that falls in between consociational democracy and non-democracy. It lacks features of “civic equality” and “civic nation” that propel other kinds of democracy.

### 3. Autochthony as a Defining Criterion for Granting Minority Protection to Italian and Hungarian Communities in Slovenia

Smootha (2002, 425) states that ethnic democracy not only acknowledges the supremacy of the core ethnic group, i.e., the majority, but also the rights of only those ethnic minorities that are neither numerous nor threatening. In the Slovenian state, there are two minorities with constitutionally recognized rights (as traditional minorities) which grant them a development of their own “societal culture”, using Kymlicka’s (2001, 28) terms. Although it is perhaps wise to be cautious, when using Smootha’s categorization, we can see that Slovenia fully recognized two minorities that were not numerous<sup>5</sup> (only 0.57 per cent of the population in 1991) in Slovenia (Statistical Office of the Republic Slovenia, cited in Komac 2007c, 521). They did not pose any direct threat to the sovereignty of the newly formed Slovenian state. Therefore, minority rights were granted to the Hungarian and Italian communities due to their status being defined as “old” minorities in Slovenia. However, they cannot simply be equated with a sub-state nation, but rather seen as minorities with nearby kin-states (Kymlicka 2007, 27). Their special legal minority rights are recognized and protected under Article 64 in the 1991 Slovenian Constitution, entitled Special Rights of the Autochthonous Italian and Hungarian National Communities in Slovenia.<sup>6</sup> There are three different grounds on the basis of which these two minorities are recognized: as being autochthonous, as being national, and as forming a community. The term community was preferred to the term minority, since many members of these communities understood the term minority as derogative, implying inferiority to the majority population. However, this extent of community rights can be equated with minority rights, as argued by Kymlicka (2007, 17) and Brunner and Küpper (2002, 16–17).

Analyzing Article 64 of the 1991 Slovenian constitution, we can, first of all,

106 conclude that the Hungarian and Italian communities in Slovenia have rights that can be understood mostly as personal autonomy, using Brunner and Küpper's (2002, 26–32) definition. However, these rights cannot be understood in the sense of territorial autonomy, since the minority does not form a majority in any region. Rather, this form of minority protection can be understood as "territory-based models as one of the forms of minority self-government" (Brunner and Küpper 2002, 33). Secondly, it is in compliance with most articles, especially those of the Framework Convention for the Protection of National Minorities (henceforth FCNM) that can be defined as targeted minority rights, using Kymlicka's (2007, 8) phrasing. For example, Article 64 of the Slovenian Constitution includes minority rights, as described in the following articles of the FCNM (Council of Europe 1995): Article 10.2 (usage of minority language before administrative authorities), Article 11.2 (minority language signs), and Article 13 (establishing minority education facilities). Furthermore, taking into account the legal protection provided to the Hungarian and Italian communities, Slovenia could be considered a strongly multicultural state, according to the indicators of multicultural policies for national minorities developed by Banting and Kymlicka (2006, 60). When it comes to the Hungarian and Italian communities in Slovenia, all six recommendations for multicultural policies are included: "(1) /.../ quasi-federal territorial autonomy /.../, (2) official language status /.../, (3) guarantees representation in the central government /.../, (4) public funding of minority-language /.../ schools/media, (5) constitutional or parliamentary affirmation of 'multinationalism', (6) according international personality" (Banting & Kymlicka 2006, 60). Although Slovenia can be considered a strong multicultural state, when the status of these two particular minorities are considered, it cannot be perceived as such, if we take into account that it has not put much effort into developing multicultural policies for migrants. In 1999, The Resolution on Immigration Policy in the Republic of Slovenia was adopted by the parliament. However, although this resolution includes and defines the term integration, it is not in compliance with the multicultural policies set out for migrants by Banting and Kymlicka (2006, 73). For instance, the resolution does not presuppose ethnic representation or "the funding of bilingual education or mother-tongue instruction" (Kymlicka 2007, 74) for migrants. In addition, the question remains: What is the position of the most numerous minorities in Slovenia, the former Yugoslav minorities? In the following sections I will examine the grounds for recognizing the Italian and Hungarian communities as old minorities and the way in which these two communities were distinguished from the "new" minorities, i.e., the former Yugoslav minorities, on the basis of autochthony.

## 4. Autochthony as a Decisive Criterion for Granting Minority Rights?

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Kymlicka (2007, 77) defines the distinction between old and new minorities in the following way: “The most common distinction between ‘old’ minorities, who were settled on their territory prior to it becoming a part of a larger independent country, and ‘new’ minorities, who were admitted to a country as immigrants after it achieved legal status”. At its formation, the authors of the 1991 Slovenian constitution decided to follow a different path and define “old” minorities in accordance with autochthony. Autochthony was constitutionally attributed to two “old” minorities, who have their rights legally protected as nationalities in the Constitution of the SRS from 1974 (Article 250). The content of minority rights protection is almost equivalent to that seen in Article 64 of the Constitution of the RS from 1991. However, the only major difference is that now these two communities are defined as autochthonous<sup>7</sup> (Komac 2007b, 42).

Because the hierarchy between nations and nationalities was not “invented” by the Yugoslav system, but inherited from the Habsburg monarchy, autochthony was not an “invention” of the newly established independent Slovenian state either. We can find a similar approach in, e.g., the Austrian legal approach towards minority protection (Predan 2004, 89). According to the publication “Minorities and the Central European Initiative” (Predan 2004), other European countries also make a distinction between old and new minorities in their legislation. However, most of them (e.g., Italy, Hungary, Albania, Bosnia and Herzegovina, Croatia, the Czech Republic, Poland, Romania) do not describe them as autochthonous, but rather as traditional or traditionally settled (Predan 2004). For instance, Austria recognizes Slovenians in Carinthia, Hungarians, Croats and Roma in Burgenland as autochthonous ethnic groups. In its legislation, Austria sometimes refers to minorities as being autochthonous and sometimes to the actual areas, where these minorities reside as autochthonous (Predan 2004, 89–99).

Although autochthony is used as one of the decisive factors for drawing a boundary between “new” and “old” minorities in some other countries, Slovenia has been criticized by different writers<sup>8</sup> for implementing this term. First of all, it has been criticized because of its arbitrary nature, meaning that there had been no legal definition of the term in any official document; this has led to various instances of confusion, as I will discuss in the next section. The term autochthony itself was finally defined by the Decision of the Constitutional Court of the Republic of Slovenia (No. U-I-283/94) in 1998 – nine years after the term was first introduced – as “since time immemorial”. Komac (2007b, 61) emphasizes that the definition is

108 also highly arbitrary. However, this definition has persisted until now.

Second, the usage of the term autochthony has also been criticized by the Council of Europe. For instance, in its second opinion on Slovenia, adopted on May 26, 2005, the Advisory Committee of the FCNM (Council of Europe 2005b, 5) concluded as follows in one of its critical remarks: "The Advisory Committee considers that the distinction based on the concept of 'autochthonous' should not be retained as the determining criterion to define the personal scope of application of the Framework Convention."

At first glance, this recommendation of the Advisory Committee may seem to be an appeal to returning to a more generic approach to minority rights, without the usage of a distinguishing criterion as described. It can be concluded that, as a general trend, the FCNM has become more generic (in spite of the fact that it was designed only for national minorities) in its approach to minority protection (Kymlicka 2007, 217). Here, we can see several other concerns as well. Namely, in Slovenia, autochthony had become the only basis for granting any group-differentiated rights (Kymlicka 2001b, 22). This was also noted by the Advisory Committee of the FCNM (Council of Europe 2005b, 11):

In view of the situation outlined in the preceding paragraphs, the Advisory Committee has serious doubts regarding the relevance and justification, for the purpose of the application of the Framework Convention, of the distinctions made in Slovenia between the various ethnic groups present within the country. It notes that these distinctions are based on insufficiently defined concepts – such as that of "autochthonous" – and do not take into account the specific situation linked to the dissolution of the former Yugoslavia (SFRY).

However, when it comes to recognizing the rights of so-called new minorities or migrants, we can see that Slovenia is not an exception in comparison with other countries. Since the Advisory Committee of the FCNM took a more generic approach (Kymlicka 2007, 219) toward minority protection, it has emphasized that not only old minorities but also Roma and migrants deserve minority protection. Taking a glance at opinions about other signatory states of the FCNM, we can see that the Advisory Committee came to a similar conclusion with respect not only to Slovenia, but also to all the countries neighboring Slovenia, such as Austria (Council of Europe, 2007) and Italy (Council of Europe, 2005a) as well as countries that do not neighbour Slovenia.

Having stated all of the above, we still have to consider the specifics of the Slovenian case. If we examine the Constitution of the Republic of Croatia from 1991, we can observe that all the former Yugoslav constitutive nations<sup>9</sup> (including Slovenians) are constitutionally recognized as national minorities. In contrast, the

former Yugoslav constitutive nations are not even mentioned in the Constitution of the RS. However, when a population census was conducted in 1991 in Slovenia, almost 10 per cent of Slovenian residents identified themselves as belonging to one of those constitutive nations. The major shortcoming of the Slovenian minority legislations therefore lies in the fact that people belonging to the former Yugoslav constitutive nations (Croats, Serbs, Montenegrins, Macedonians and Bosnians) and some nationalities (such as Albanians) were retroactively defined as new minorities or migrants. This kind of retroactive definition contradicts, in fact, the definition by Kymlicka (2007, 77) quoted earlier: his definition of new minorities “who were admitted to a country as immigrants after it achieved legal status.” The fact that former Yugoslav minorities were retroactively defined as migrants can also be confirmed by the research study on former Yugoslav communities, conducted by Kržišnik-Bukić and others (2003). This study reports two population census figures, according to which 160,000 people living in the Socialist Republic of Slovenia defined themselves as belonging to former Yugoslav minorities,<sup>10</sup> while in 2002, 165,000 citizens of Slovenia stated the same, i.e., only 5,000 more (Kržišnik-Bukić et al. 2003, 20). Most people from the above-mentioned communities were not admitted to Slovenia as immigrants, but were in fact migrating within the borders of the single state of Yugoslavia. From this, we can conclude that unlike other countries, autochthony was not introduced to strengthen minority protection of all “old” minorities as compared with new minorities. Paradoxically, what Slovenian scientific literature defines as “new” minorities or as immigrants (e.g. Komac 2003; Roter 2007; Medvešek 2007; Bešter 2009) are actually old minorities, since they had resided in Slovenia before it gained its independence from the larger structure, according to Kymlicka’s (2007, 77) definition. Autochthony was thus introduced to distinguish between two different kinds of old minorities. It can be argued that the term autochthony was introduced not to ensure or to strengthen the rights of the Italian and Hungarian communities (since they had already been protected in the 1974 Constitution of the SRS), but to exclude all other potential claims for minority protection.

## 5. Granting Minority Rights for “Post-imperial” Minorities: A Challenge for Post-socialist States?

According to Komac (2007a, 1), the use of the term autochthony in the minority legislation of Slovenia was the foundation for a tri-dimensional hierarchical granting of minority rights. At the top of this ladder, Hungarian and Italian minorities were

110 defined as "old" historical minorities based on autochthony, and were granted constitutionally recognized minority protection. Next, the Roma community was recognized in the constitution; however, their minority rights were not granted in the constitution. On the lowest rung on this hierarchical ladder of minority rights were the non-dominant, but numerous national communities, who were defined as being non-autochthonous. For these minorities (as for all other citizens) basic generic rights (Brunner & Küpper 2002, 17) were constitutionally granted, such as non-discrimination (Article 63 of the 1991 Constitution of the RS: Prohibition of Incitement of Discrimination and Intolerance) and equal rights (Article 22: Equal Protection of Rights). In addition, their rights are also protected by Article 61 entitled Expression of National Affiliation and Article 62 entitled Right to Use One's Language and Script.

In 1991, when the Slovenian independent state was established, there were 135,564 people having permanent residency in Slovenia (Statistical Office of the Republic of Slovenia, cited in Komac 2007c, 510), who defined themselves as belonging to the other five constitutive nations of former Yugoslavia. This represents 7.09 per cent of the population. Members of these minorities were not given any minority rights since, according to some social scientists (e.g., Mastnak 1992; Kuzmanić 1999) their potential claims were a threat to the new Slovenian state. The issue of granting minority rights became "securitized" and a question of historical injustices, in Kymlicka's (2007, 190) terms. That is the reason why the criterion of autochthony was needed (Komac 2007b, 61). However, as Kymlicka (2007, 190) argues,

an issue only becomes "securitized" if certain political actors decide to describe it in these terms – as an existential threat to the state and its dominant national group – and succeed in persuading enough others of this description. In some cases, this may reflect a sincere belief about the objective threat, but in other cases it represents a conscious choice and political strategy.

According to a sociological analysis by Velikonja (2005, 12–30), representatives of the newly established independent state of Slovenia tried to reposition it as having always been a part of Central Europe. They also tried to distance it from the Balkans, which were mainly understood as other parts of former Yugoslavia, and it is the minorities discussed here who were representatives of the Balkans. In sociologist Tonči Kuzmanić's (1999, 34) terminology, in Slovenia the dominant group performed ethnic cleansing not with physical violence, but by the use of discourse, such as naming these minorities derogatively as "southerners from the Balkans" or as "beings with half a diacritic"<sup>11</sup> (ibid., 34). This kind of discourse was, according to Kuzmanić (1999, 92), employed to give notice that such foreigners

were not welcome in Slovenia since they had their own nation state, to which they should return since they threatened Slovenian identity. The other form of ethnic cleansing employed in Slovenia was, as Kuzmanić (1999, 34) argues, taken up in administrative form in the form of erasure from the registry of permanent residency.

To some extent, the position of the former Yugoslav communities may be compared to the position of Russian speakers in the Baltic states, who were named as post-imperial minorities (Galbreath & Muinieks 2009) or ex-imperial minorities (Miller et al. 2001, 175). The position of Russian speakers in the Baltic states is unique and even considered as one of the hard cases in Eastern and Central Europe for defining minority rights. Kymlicka (2001a, 77) describes their position of as follows:

Yet these post-war Russian settlers in the Near Abroad did not think of themselves as a “minority”, or as “immigrants” to another country. Instead, they saw themselves as moving around within a single country – a country where Russians formed a majority throughout the country as a whole. Hence, they expected to find, and did find, a full set of Russian-language institutions and services whenever they moved in the Soviet Union, and they increasingly came to see the whole of the Soviet Union as their “homeland”, not just Russia.

However, Jović (2011, 114) argues that it is mistaken to perceive former Yugoslavia as a multiethnic empire: “It is difficult to see how Yugoslavia can be compared with real empires, in which there generally was a dominant nation and which used colonial expansion in order to lower tensions inside the metropolis. Yugoslavia was perhaps an ideological empire, but similarities with real empires of the past are certainly exaggerated.” However, people who identified themselves as ethnically belonging to another constituent nation of former Yugoslavia had found themselves in a similar position as Russian speakers in the Baltics. They found themselves in their new setting defined as immigrants or even illegal immigrants (since many of them had been erased from the records). While, for example, 25,000 people who had permanent residence in Slovenia were thus “erased”, 330,000 Russian speakers were left without citizenship in Estonia, and 650,000 in Latvia (Pettai 2001, 267).

However, although there are some similarities between the positions of Russian settlers in the Baltics and the former Yugoslav communities (especially Serbs and Croats) in Slovenia, there are also some major differences. The first and most obvious difference is that in Slovenia we are considering more diverse groups of minorities, while in Estonia and Latvia only the Russian speakers are involved. Furthermore, according to Pettai (2001, 265), although Russian speakers in

**112** Estonia and Latvia define themselves as national minorities, they were settled in the Baltic states due to a “planned russification policy”. It is not possible to draw a similar conclusion for former Yugoslavian communities in Slovenia, since most of them came to Slovenia as internal migrants (moving freely between the Yugoslav republics). Dolenc (2007, 78) argues that most of them came to Slovenia as workers due to its extensive industrial development, while many Slovenians became migrant workers in nearby Austria. Moreover, according to Pettai (2001, 265), Estonia and Latvia were under Soviet occupation and they restored their independence in 1991. It would be absurd to say that Slovenia was under Yugoslav occupation; it became independent in 1991. The Soviet occupation was the reason why Latvia and Estonia, after the restoration of their independence, defined Russian speakers mostly as illegal migrants (Pettai 2001, 265). On the other hand, most people from former Yugoslav communities were able to attain citizenship over a certain period of time. However, those who did not request Slovenian citizenship were not only left without it, but were also erased from the registry of permanent residency and retroactively identified as illegal migrants (Zorn et al. 2003). Therefore, they were excluded not only from the political organization of society (Pettai 2001, 265), but also from all social benefits they would have been entitled to as permanent residents. However, even those who were able to obtain citizenship did not obtain any special minority rights, although they frequently made claims on them (Komac 2007b, 61).

According to Komac (2007b, 38), most representatives of these communities argued for their minority rights on two grounds: first, they had lost a set of rights, as they were constitutive nations in Yugoslavia; second, many of them referred to the notion of autochthony, since there are in Slovenia some smaller territorially bound groups of Croats and Serbs, who trace their presence back to over 500 years ago in certain regions such as Bela krajina (Komac 2007b, 61). However, Komac (2007b, 46) argues that none of these criteria form a solid ground for minority protection of these groups, so new forms of minority protection should be employed. They were, in fact, constituent nations in former Yugoslavia as a whole, but not according to the Constitution of the SRS, where the Slovenian nation was the only constituent nation. Hence, that means that their position is slightly different from the position of Russians in the Baltics. While the Baltic Russians had a full set of Russian language institutions, other constituent nations of Yugoslavia did not possess such rights in Slovenia (Komac 2007b, 46). Furthermore, in Komac’s (2007b, 62) view, reference to autochthony is also problematic in this case, since it would give territorially based rights only to several hundred Serbs and Croats. However, the more numerous and territorially dispersed communities are left out.

## 6. Possible Solutions?

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Similarly to Komac, Roter (2007, 29) argues that it is difficult to understand the minorities in question as traditional minorities, since they are territorially dispersed in Slovenia. Therefore, their minority rights would not be necessarily granted, if they were simply included in Article 64 of the 1991 Constitution, which defines special rights for the Hungarian and Italian communities in Slovenia. However, according to Komac (2007b, 46), although this is not a solution for granting special rights to the former Yugoslav minorities, the state is “excused” from granting them any such rights. In addition, I would also argue that the Resolution on Immigration Policies (1999) cannot be the sole foundation for minority protection of the former Yugoslav minorities, since they cannot be simply defined as new minorities or immigrants according to the perspective of liberal multiculturalism.

According to Kymlicka (2001a, 73–79), Russian speakers in the Baltics are considered to be hard cases, when it comes to defining minority rights in Eastern and Central Europe. Analogously, it can be also argued that former Yugoslav minorities in Slovenia can be perceived in this way. Kymlicka (2001a, 71) states that Russian speakers in the Baltics belong to “more complicated cases in ECE for which there are no obvious analogues in Western Experience, and for whom the West provides no useful models or principles”.

The question that arises is how to address the position of the former Yugoslav minorities in Slovenia. The most elegant solution of this dilemma, if one were to speculate, would be the system of minority rights suggested by Kymlicka (2001a, 78) for the Baltic Russian speakers. Although their situation in the past was slightly different (even if it is still comparable), they are presented with similar dilemmas in contemporary society. Therefore, Kymlicka (2001a, 78) suggests that they should be treated in accordance with multicultural policies for migrants (since they are dispersed and not territorially concentrated), as defined by Kymlicka and Banting (2006, 56), and this solution would also include certain forms of cultural autonomy. Considering the latest development in Slovenia, we can see that the former Yugoslav minorities did receive a certain amount of recognition as being a special group of minorities. Namely, in February 2011 the Slovenian parliament adopted the Declaration on the Position of National Communities of the Members of Former SFRY Nations. This declaration acknowledges the fact that former Yugoslav minorities have a special minority status that cannot be simply equated with the status of other immigrants. However, it has to be noted that although such a declaration represents a big step forward in minority protection in Slovenia, it is still far from what has been recommended by the policies of liberal

## 114 7. Conclusion

In this article I examine how Slovenia, which was in many instances considered a post-transitional success story, legally defined majority-minority relations. Firstly, I look at how the position of the ethnic majority was re-framed in new constellations and concluded that the rootedness of the Slovenian (ethnic) nation in the territory of the contemporary Slovenia was already present in the 1974 Constitution of the SRS. However, the Slovenian nation was equal to other Yugoslav constitutive nations under the Yugoslav ideology of "Brotherhood and Unity". I argue that this degree of equality of constitutive nations diminished in Slovenia after 1991. Before 1991, Italian and Hungarian minorities had been constitutionally recognized as nationalities and had had constitutionally granted minority rights. After 1991, the scope of their minority rights remained the same. However, they were now renamed autochthonous national communities. As I argue, the distinction based on autochthony was not introduced to guarantee minority rights for the Italian and Hungarian communities; it was not even introduced to make a distinction between "old" and the "new" minorities, as was perhaps the case in other countries. Rather, this distinction was introduced to ensure that certain more numerous minorities, who represented an (alleged) threat to majority nationalism, would not have any constitutional recognition and hence would not be granted certain minority rights. On the basis of autochthony, these minorities (individuals defining themselves as belonging to former Yugoslav constitutive nations or nationalities, such as Albanians) were retroactively defined as immigrants, although most of them had come to the Socialist Republic of Slovenia by internal migration in the former Yugoslavia.

Slovenian media and scientific discourse has frequently described "non-autochthonous" minorities derogatively as newcomers from the Balkans, whereas the Slovenian nation was described as primarily central European (Velikonja 2005). "The Balkans" was usually just a synonym for the other former republics of Yugoslavia. This was possible because both Europe and the Balkans were imaginary units. "Imagining the Balkans" was perhaps best described by Todorova (1997, 482) in her book with the same title:

The Balkans have been ill served by discovery and invention. Balkanism and its subject are imprisoned in a field of discourse in which "Balkans" is paired in opposition to the "West" and "Europe," while "Balkanism" is the dark other of "western" civilization. /.../ With the rediscovery of the east and orientalism as independent semantic values, the Balkans is left in Europe's thrall, anti-civilization, alter ego, the dark side within.

In this dichotomy between Europe and the Balkans, Europe too has been invented

to serve a certain nationalistic ideology, as argued by Vidmar Horvat (2006, 70):

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Joining the European Union produced ambiguities. In opposition with the postmodern market of crossing identities and hybrid in-betweens, the Slovenian society started a project of hygienization of the national character and cleansing of foreign elements. After the disintegration of Yugoslavia, the appeal for the establishing a [Slovenian, added by the author] national / ... / identity anew became the fuel for nationalistic / ... / sentiments. Paradoxically, the background of the cleansing of the Balkan elements was included in the frame of Europe, which was a multi-ethnic and multicultural formation. / ... /. The Euro-Slovenianness project, which was fueled from local nationalism, invented its own imaginary Europe. However, this invention was possible because Europe itself is a territory perforated with censored memories and signified vacuums.

The tragedy of such invented or imaginary units lies in the fact that it regulates a distinction on the basis of which people become defined as non-autochthonous and foreign. They are basically constructed as Others, for whom the imaginary “We” can define whether they belong to “Our” territory or not.

## 116 Notes

<sup>1</sup> On December 23, 1990 there was a plebiscite, in which 88.5 per cent of voters (out of the 95 per cent who did vote) voted in favor of an independent Republic of Slovenia. It is very telling that the turnout had never been higher in any other election or referendum in Slovenia.

<sup>2</sup> These authors refer to Kymlicka's earlier works, such as "Multicultural Citizenship" (1995). In this paper I will frequently refer to Kymlicka's later publications, such as "Can Liberal Pluralism be Exported" (Kymlicka & Opalski 2001) and "Multicultural Odysseys" (Kymlicka 2007), where he revised his views on the distinctions between old and new minorities. In the work "Can Liberal Pluralism be Exported" Kymlicka and others (e.g. Varady, Pettai, Opalski) attempt to analyse whether the "western" theory of liberal multiculturalism can be accommodated in post-socialist Central and Eastern Europe. There is, however, no contribution in this book dealing with the case of Slovenia.

<sup>3</sup> Since this right was only inscribed in the preamble of the constitution, it had merely a symbolic value (without any legal measures as to how it would be conducted in reality). However, as I will show in the next paragraphs, this also became very important in the political and media discourse in Slovenia after (but also right before) the collapse of Yugoslavia.

<sup>4</sup> Similar opinions are also held by others, e.g. Medved (2007, 148).

<sup>5</sup> However, it is important to emphasize that a numerical criterion alone cannot be the only decisive factor in defining "minority". Other factors need to be included, such as non-dominant position and awareness of group members of the minority's special characteristics, e.g. different language, religion, culture (Brunner & Küpper 2002, 15; Roter 2007, 7–35).

<sup>6</sup> For the purpose of a better understanding of my argument, I quote the entire Article 64 in this footnote:

"The autochthonous Italian and Hungarian national communities and their members shall be guaranteed the right to use their national symbols freely and, in order to preserve their national identity, the right to establish organizations and develop economic, cultural, scientific, and research activities, as well as activities in the field of public media and publishing. In accordance with laws, these two national communities and their members have the right to education and schooling in their own languages, as well as the right to establish and develop such education and schooling. The geographic areas in which bilingual schools are compulsory shall be established by law. These national communities and their members shall be guaranteed the right to foster relations with their nations of origin and their respective countries. The state shall provide material and moral support for the exercise of these rights.

In order to exercise their rights, the members of these communities shall establish their own self-governing communities in the geographic areas where they live. On the proposal of these self-governing national communities, the state may authorize them to perform certain functions under national jurisdiction, and shall provide funds for the performing of such functions. The two national communities shall be directly represented in representative bodies of local self-government and in the National Assembly. The position of the Italian and Hungarian national communities and the manner in which their rights are exercised in the geographic areas where they live, the obligations of the self-governing local communities for the exercise of these rights, and those rights which the members of these national communities exercise also outside these areas, shall all be regulated by law. The rights of both national communities and their members shall be guaranteed irrespective of the number of members of these communities.

Laws, regulations and other general acts that concern the exercise of the constitutionally provided rights and the position of the national communities exclusively, may not be adopted without the consent of representatives of these national communities."

<sup>7</sup> Autochthony was suggested as a principal term in the constitutional amendment in 1989 and became a part of the Slovenian Constitution in 1991 after its independence (Komac 2007b, 44).

<sup>8</sup> According to Alenka Janko Spreizer's (2004, 196) critique from an anthropological perspective, autochthony is based on "primordial and biological conceptions of cultures as if they were 'naturally' connected to certain territories". The term autochthony has been also criticized by Komac (2007b, 44).

<sup>9</sup> When I speak of Former Constitutive Yugoslav nations, I refer to those nations in Slovenia and also Croatia that are not recognized as an ethnic majority in either independent country. In the Slovenian case, when I refer to former constitutive nations of Yugoslavia, I refer to all of those nations, except the Slovenians, and in the Croatian case, I exclude the Croatian nation.

<sup>10</sup> The criterion taken for this figure was the self-identification of the mother tongue.

<sup>11</sup> Kuzmanić (1999, 29) here refers to a difference between Slovenian and Croatian last names which can be recognized on the basis of a different letter or, more precisely, different diacritic. While a Slovenian last name would, e.g., be Kovačič with a final č, the Croatian version is Kovačić with a final ć. Therefore, in the Slovenian version it looks like a complete diacritic, while in the Croatian version it looks as if one half is missing.

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