
The Question of Croatian Statehood and the Right to Self-Determination and Secession in Yugoslavia (1918-1991)

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Abstract

With this article, the author analyzes the historical and legal circumstances that led to the founding of Yugoslavia in 1918, its federalization, and its disintegration in 1990/1991. with special reference to the legal significance of the Yugoslav Socialist Constitutions, and in particular the 1974 Constitution. It is well known that in the process of gaining independence from the SFRY, the Republic of Croatia invoked the alleged constitutional right to self-determination and secession, while the Yugoslav-Serbian side denied that right to Croatia on the basis of the same Constitution. Although federalism is considered the legacy of Tito's Yugoslavia, its political relevance dates back to the very beginnings of the Yugoslav state, which is also important to emphasize for a better understanding of the historical relations of the South Slavic peoples, especially Croats and Serbs. Namely, the federalization of the Yugoslav state was the political goal of the Croatian Peasant Party, which was half achieved by the establishment of the Banovina of Croatia, which significantly influenced the later structure

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of communist Yugoslavia. Within the state-legal framework of Tito's Yugoslavia, the Croatian federal unit emerged as a state of the working people and a national state of the Croatian people and the Serbian people and other nationalities. In their preambles and basic principles, the socialist constitutions emphasized the right to self-determination, including the right to secede, as the basis for the unification of the Yugoslav peoples, which was at the center of controversy in the process of disintegration of Yugoslavia. Finally, the article deals with the legal foundations of the establishment of the independent Republic of Croatia and the position of the Croatian constitutionalist in relation to the Yugoslav legal heritage. In conclusion, the topic of this paper is the existence or non-existence of Croatian state law in Yugoslavia, the legal position of the Croatian federal unit in Yugoslavia, as well as the legal position of the Croatian Constitution on Yugoslav and communist heritage, but also legal aspects of political and ideological myths about the 1974 SFRY Constitution.

Keywords: *Croatia, Yugoslavia, statehood, right to selfdetermination, constitution, independence*

Introduction

The beginning of the First World War (1914-1918) was greeted by the Croatian lands as part of the Austro-Hungarian Monarchy as the Triune Kingdom of Croatia, Slavonia, and Dalmatia, whose legal position within the Monarchy was regulated by the Croatian-Hungarian settlement of 1868. The settlement recognized the position of the Croats of the political people of that separate state within the Hungarian-Croatian Kingdom and the Monarchy under the Ban and the Parliament, and thus it was considered that the “Croatian question” in the Monarchy was finally resolved.² However, due to the centralist aspirations of Hungarian and Austrian politics and the division of Croatian lands, Croatian politics persisted in improving Croatia’s position in the Monarchy. One part of the Croatian political elite turned to dialogue with Austria, insisting on a trialistic arrangement of the Habsburg Empire, while one part of the Croatian political elite turned to Yugoslavia to resolve the national question. Despite the fact that the Franks received guarantees from Emperor Karl I on the unification of Croatian lands within the trialistic state system in the last days of the First World War, on October 29, 1918, the Parliament decided to sever all state-legal ties with the former Monarchy. After the disintegration of the Habsburg state, the Parliament, on the wings of the euphoria of the expected national liberation, declared the inclusion of the Triune Kingdom in the State of Slovenes, Croats, and Serbs, which included Croatian lands within the Austro - Hungarian Monarchy, Slovenia and Vojvodina. On December 1, 1918, the delegation of the People’s Council of the State of SCS read to the regent Aleksandar Karađorđević the previously compiled “Address,” which proclaimed the unification of the State of SCS with

² Raič, Marko: „Državopravni položaj hrvatskih zemalja u sklopu Austro-Ugarske Monarhije“, Obnova, No. 2, 2014, p. 165 - 175

the Kingdom of Serbia and the Kingdom of Montenegro. This act was carried out without the knowledge of the Croatian Parliament as the supreme legislative body, which has not yet discussed the conditions for the future unification of the South Slavic countries, nor has the Parliament ever sanctioned the act of unification with the Kingdom of Serbia. Thus was founded the state of South Slavic peoples, which will be called “Kingdom of Serbs, Croats and Slovenes” (since 1921 “Kingdom of Serbs, Croats and Slovenes”), and which in 1929 will change into “Kingdom of Yugoslavia”. Under the Yugoslav name, the state will exist until 1991, but it will become a communist federal republic after the Second World War. The political and legal position of the Croatian people in the new state was specifically regulated on two occasions: the establishment of the Banovina of Croatia and the establishment of the People’s (Socialist) Republic of Croatia.

In its existence, the Yugoslav state did not solve the “Croatian question”, which is why it disintegrated twice in the circumstances of great world political turmoil. Today’s Croatian Constitution, i.e., the so-called The Christmas Constitution, gives a seemingly contradictory and contradictory position of the Yugoslav legal heritage and considers it a historical state-legal sequence that continues to the Triune Kingdom, but at the same time excludes it. In this paper, I will try to analyze the importance of the Yugoslav Croatian statehood in relation to the Croatian state-legal tradition and the existence of an independent and sovereign Republic of Croatia. Namely, in daily social debates on the topic of Croatian statehood and its right to independence, its Yugoslav statehood is most often emphasized, which is partly caused by the lack of research on this topic. Constitutional science is generally satisfied with the constitutional solution, and the Yugoslav forms of Croatian statehood

are taken as a historical sequence that begins with the establishment of Croatian principalities from the 7th century, from which the Kingdom of Croatia emerged. Also, this paper seeks to give a new perspective, supported by scientific interpretations from Yugoslav and foreign sources, but from the Croatian Constitution and constitutional laws and declarations of Parliament from 1991.

The legal position of Croatia in Yugoslavia until 1939

In the new state, the position of Croats deteriorated, and national disenfranchisement continued in worse forms than was the case in Austro-Hungary. The central Belgrade government and court pursued a pronounced anti-Croatian policy, disenfranchising the Croatian people politically, culturally, and economically, and a special role was played by the repressive apparatus in the form of the gendarmerie, the army, and the police, which violently dealt with any attempt to resist Yugoslav-Unitarian policies using torture, beatings, murders, and assassinations. The source of such a policy was in the Greater-Serbian part of the political scene of the Kingdom of Serbia, but also in the official ideology of the new state called “integral Yugoslavism” according to which the inhabitants of the new state are ethnic and ethnic, and Croats, Serbs, and Slovenes are tribes within the Yugoslav people, which was, in fact, an ideological fiction based on a romantic interpretation of the early medieval history of the South Slavic peoples. In the Kingdom of Serbs, Croats, and Slovenes, Croats were denied national identity, and Croatian statehood was abolished for the first time in history.

Despite the establishment of the Kingdom of Serbs, Croats, and Slovenes, Croats retain their political institutions and symbols of statehood; ban and Parliament, even though the Belgrade government deprived them of all real powers. The King dissolved the Parliament in November 1920, and on July 3, 1921, the last Croatian Ban, Dr. Tomislav Tomljenović, had to resign from the Ban’s honor because it was abolished by the Vidovdan Constitution and a new function of a royal governor in Croatia was established, which was taken over by Juraj Demetrović.³

³ Horvat, Rudolf: *Hrvatska na mučilištu*, Školska knjiga, Zagreb, 1992, p. 112.

The Croatian people in a difficult political situation mostly give their political confidence to the program of the Croatian (Republican) Peasant Party (HSS) of Stjepan Radić, in which one of the most important goals is to resolve the Croatian issue in the new state. In order to organize ethnic relations, Radić advocated a (con) federalist and republican organization of the state. After entering the government in 1925, Radić determined himself as a federalist but recognized the Monarchy and the Vidovdan Constitution. The first ten years of the new Yugoslav state were marked by political unrest, staged trials, physical violence, assassinations, and assassinations organized by the government, all culminating in the Assembly assassination by Puniša Račić against HSS representatives on June 20, 1928. After the parliamentary assassination and the death of Stjepan Radić, as a result of his wounds, the HSS



leadership was taken over by Dr. Vladko Maček, who would be the unquestionable leader of the Croatian people until the outbreak of the April War. During Maček's leadership, the HSS grew from a peasant movement into a general national movement, and membership from the ranks of the peasantry spread to the citizens. The Kingdom of Yugoslavia entered the 1930s as a state of unresolved national issues, with an emphasis on the "Croatian question", but Montenegrins, Bulgarians, Macedonians, and Albanians were also dissatisfied with their position in Yugoslavia. Problems are piling up in the economy, especially among Serbian Prečani peasants and in Serbia, who have been pressured by debts from loans they received as support for the regime through government efforts in state and private monetary institutions.⁴ At that time, Croats were already in a difficult economic situation due to Belgrade's usual unfavorable economic and fiscal policies towards Croatian countries. In addition to poor domestic economic policies, the Yugoslav economic crisis was further deepened by the Great Depression, which in 1929 led to the collapse of world economies.

On the occasion of the deepening political instability of the state caused by the Assembly assassination, King Alexander I introduced the January 6 dictatorship in 1929 and suspended the Vidovdan Constitution from 1921 in order to try to solve the national problem. Thus, on October 3, 1929, the "Law on the Name and Division of the Kingdom into Administrative Areas" was passed. With the new law, the Kingdom of Serbs, Croats, and Slovenes changed its name to the Kingdom of Yugoslavia, and the new administrative reorganization divided the state into nine banovinas bearing hydrographic names in order to finally resolve the national question by not mentioning ethnonyms on behalf of the state and administrative units. The Croats received two banovinas with a Croat

⁴ Pilar, Ivo: *Uvijek iznova Srbija*, Consilium, Zagreb, 1997., p. 36.

majority: Primorska and Savska. With the new division, the Croatian people experienced another disappointment. In his critique of Yugoslavia and Serbian domination, Ivo Pilar writes about the new administrative division:

“Croats quickly realized that they were offered only a completely free concession called banovina, but the historical institution of the Ban was degraded and completely eradicated. Whereas once the bans were viceroys, “proreges,” they are now degraded to ordinary district superiors without any autonomy. The division itself was made in such a way that Serbs would have a majority in six, Croats in two, and Slovenes in one banovina. Thus, five and a half million Serbs, who make up only about 42% of the state’s total population, gained 72% of the entire state territory under their political rule. At the same time, the former single territory of Bosnia and Herzegovina, which in the new state behaved like a sick child, as it once did in Austro-Hungary, was divided into four banovinas, one of which, Vrbaska, received with a cleverly arranged division operated, with a Serbian majority, like a wedge between two Croatian banovinas, Savska and Primorska”⁵

Also, Pilar points out the annexation of the districts of Vukovar, Vinkovci, Županja, Šid, and Mitrovica to the Drina Banovina with its headquarters in Sarajevo as a national injustice inflicted on Croats during the new administrative structure.⁶ It should be added to Pilar’s comment that the Boka Kotorska and Dubrovnik areas were annexed to the Zeta Banovina with its headquarters in Cetinje, thus annexing the ethnic and historical Croatian territory to an administrative unit consisting of Montenegro and Eastern Herzegovina with a majority Serb population. Such amputations and unnatural changes to the borders of Croatian historical countries and the Ban on the use of national names and symbols inflict-

⁵ Ibid., p. 55.

⁶ Ibid., p. 54.

ed new injustice by the authorities, especially as Serbs continued to retain national symbols using the Serbian Orthodox Church flag under the pretext of freedom of religion.⁷ In order to improve the reputation of the government and the state further damaged by his personal dictatorship, on September 3, 1931, Alexander I proclaimed the Octroic Constitution, which he “gifts” to his peoples, ending the dictatorship, but in essence, the dictatorship is legally confirmed as a constitutional document.

From the new legal, administrative and political situation, it was clear how the January 6 dictatorship and the 1931 constituted constitution led to the disintegration of Yugoslavia. In terms of national issues, the political situation has become further aggravated by the establishment of the Croatian separatist organization “Ustasha - Croatian Revolutionary Movement” (UHRO) in response to the assassination and dictatorship. The Ustasas further destabilized the state with a series of military-terrorist actions, especially the assassination of Alexander I in Marseille on October 9, 1934, which they carried out in cooperation with the Internal Macedonian Revolutionary Organization (VMRO).

In the HSS after Radic’s death and the introduction of the dictatorship, resistance to centralism intensified, and some party members went into political emigration to advocate a solution to the “Croatian question” such as Juraj Krnjevic and August Kosutic. However, the party leadership continues to insist on the transformation of Yugoslavia into a federal state without questioning its legal integrity. Meanwhile, the issue of the federalization of Yugoslavia finds its supporters among Serbs and their more moderate politicians. Thus, Pribicevic’s Independent Democratic Party (SDS), one of the builders of Yugoslavia and a party that stood on

⁷ Ibid., p. 59.

the lines of integral Yugoslavia and gendarme terror, became an advocate of the state's federalization as the only way to solve the national crisis. Svetozar Pribicevic, as the party leader, writes from political exile:

„...if the Yugoslav name of the state must be paid for by the loss of national and human freedoms, then it is paid too expensively... It is not the primary name of the system, but the main thing is that the state is organized so that Croats and Slovenes are as satisfied as Serbs.“⁸

The movement for the federalization of Yugoslavia gained even more importance on the political scene when the president of the Slovenian People's Party, Dr. Anton Korošec, gave a statement on New Year's Eve 1933, known as "Ljubljana Punctuations", to the foreign media in five points. In Yugoslavia it should have its own national identity through distinct national characteristics and national status.⁹ The statement was important for Slovenes and for members of the HSS and SDS because another of the founders of the Yugoslav state joined the demands for national equality through the federalization of the state. Dr. Korošec's statement contained five points, just like the joint statement of the HSS and SDS of November 7, 1932, entitled "Zagreb Punctuation", which called for the reorganization of the state on the principle of abolishing the domination of one people.¹⁰

The HSS and SDS formed the Peasant-Democratic Coalition (SDK), which on October 8, 1937, concluded an agreement with the United Serbian Opposition (USO), which consisted of the People's Radical Party, the Democratic Party, and the Agrarian Party. Although the notion of federalization is not directly mentioned in the program of the Agreement, in point IV. The political intentions of

⁸Tudman, Franjo: *Hrvatska u monarhističkoj Jugoslaviji - Knjiga druga (1929.-1941.)*, Hrvatska sveučilišna naklada, Zagreb, 1993., p. 80.

⁹Op.cit. Pilar, Ivo, p. 66.

¹⁰Op.cit. Horvat, Rudolf, p. 518.

the new alliance are clear:

“Our parties, aware that they represent both the Serbian people and the Croatian people, stand on the position that the final hour has come, to end all non-democratic systems and regimes once and for all, and to enable Croats and Serbs and Slovenes to agreeably organize their state union to the equal satisfaction of Serbs, Croats, and Slovenes.”¹¹

In the 1930s, therefore, a political climate was created to resolve national issues through the federalization of the state. Such attitudes will be joined by Bosnian Muslims from the Yugoslav Muslim Organization, bringing the Sarajevo punctuation. In Montenegro, the federalization program is supported by Montenegrin federalists Dr. Sekula Drljevic. During the strengthening of the federalist movement, the regime's terror did not abate, moreover, it took even worse forms through rigged trials and assassinations of Croatian political activists and peasants, while on the other hand, Croatian separatists organized a series of terrorist actions.¹² Due to the escalation of political violence, the HSS also organized paramilitary security detachments through the Civil and Peasant Protection to protect party gatherings and leaders.

¹¹ Op.cit. Horvat Rudolf, p. 589.

¹² In the book „Hrvatska na mučilištu“, historian and Radić supporter Dr. Rudolf Horvat described all the murders, unjust fiscal policies, torture, assassinations and staged trials of the royalist regime, terrorist actions of Croatian right-wing nationalist youth and Ustashes, but also violent demonstrations by HSS and communist activists and gives a good insight into the level of violence and injustice that accompanied Yugoslav political life and I recommend it to those who want to understand the full nature of the royalist regime. (op.a.)

Banovina Hrvatska and its legal position in the Kingdom of Yugoslavia

After the Governorship headed by Prince Pavle Karađorđević removed Prime Minister Milan Stojadinović and his government, on December 11, 1938, elections were held for the National Assembly, at which a single list of the SDK and USO was published. The SDK list caused disappointment among some Croats because, in addition to the political leaders of the Croatian people, the lists also included proven supporters of the regime who carried out political terror against Croats, such as Petar Živković and Bogoljub Jevtić.¹³ However, despite the presence of Serbian unitarians on the opposition's electoral lists and electoral manipulation, the opposition coalition achieved an excellent election result, and the HSS imposed itself as the exclusive representative of the Croatian people. Maček described the election result as a confirmation of the Croatian people's united will for freedom.¹⁴

On February 4, 1939, the Governorship handed over the mandate to form a new government to Dragiša Cvetković of the Yugoslav Radical Union (JRZ), a former minister in Stojadinović's government. Cvetković believed that the Croatian question must be resolved through dialogue and not through state terror.¹⁵ Realizing that a new world conflict is on the doorstep and the independence of Slovakia, which Croatian nationalists welcomed, the Belgrade government understands that for the survival of Yugoslavia, it must be ready to make concessions to the Croatian leadership.

In order to resolve the "Croatian issue", the Prime Minister of the new government, Cvetković, started negotiations with Vladko

¹³ Horvat, Rudolf, p. 597.

¹⁴ Ibid., p. 599.

¹⁵ Ibid., p. 603.

Maček and the HSS, which will be interrupted several times due to various pressures from Serbian politics and the social elite towards Cvetković. Serbian resistance appeared in the ruling JRZ and among some opposition politicians, as well as in the Serbian Orthodox Church and the Serbian Cultural Club (SKK), a supra-party elitist association whose goal was to take care of the position of the Serbian people throughout Yugoslavia. On the other hand, the Ustashas, Croatian nationalists, and home guards considered the ideal historical moment for Maček to declare an independent Croatian state.

Negotiations began in April 1939, and a draft Agreement was passed on April 27, which was final, but the Governorate refused to approve it due to the upcoming visits of Prince Paul to Hitler and Mussolini.¹⁶ Negotiations eventually lasted until August 1939 with several interruptions, primarily due to disagreements over the borders and powers of the future autonomous unit. There was an open question of borders in particular, in the case of Bosnia and Herzegovina and Vojvodina for which Maček proposed special autonomy, or in the alternative, to be divided according to national key between the Banovina of Croatia and the rest of Yugoslavia in which case the Croatian border would run on Subotica - Sarajevo - Herceg Novi.¹⁷ Maček did not benefit from the fact that his political allies in other nations opposed such a solution until yesterday, insisting that a solution on all future autonomies be reached immediately in the same negotiations, nor the fact that his coalition partners from the SDS thought that Croatia should have as little autonomy as possible and sought the smallest possible range of borders, primarily believing that within the borders of the future Croatian unit should not be Dubrovnik and that Dalmatia should have a separate autonomy.¹⁸ At the same time, some Serbi-

¹⁶ Boban, Ljubo: *Hrvatske granice 1918. - 1993.*, Školska knjiga, HAZU, Zagreb, 1993., p. 40.

¹⁷ Ibid.

¹⁸ Ibid.

an politicians, the Serbian Orthodox Church, the SKK, and Chetnik associations began obstructing the negotiations. On February 10, 1939, Croatian Serbs in Zagreb founded the Serbian Patriotic Society "Krajina", which demanded from Cvetković the separation of "Serbian" municipalities in the Banovina of Croatia into a separate Serbian autonomous unit "Krajina", about which they printed a brochure in Krajina, "which project will be revived by the" Log Revolution "in 1990.¹⁹ After failing to break off negotiations or win Serbian autonomy in the Banovina of Croatia, SKK is launching a political campaign under the slogan "Serbs for Reunion." Thus, the Serbian Cultural Club in Vukovar and other cities and towns with a significant share of Serbs in the population initiates petitions and campaigns for their separation from Croatia, as well as those municipalities that must be part of Serbia for the interests of the Serbian people. Croatian municipalities and cities where they did not exist until 1938. In that direction, the Serbian propaganda, centered in Belgrade, published a series of articles that the Croatian leadership called out for fascism and clericalism, and terror against the Serb population.²⁰

Despite all the difficulties, the negotiations ended with the Cvetković-Maček Agreement of August 24, 1939, and the Royal Governor's Office, at the suggestion of the government according to Article 116 of the 1931 Constitution of the Kingdom of Yugoslavia, passed a Decree on the Banovina of Croatia,²¹ which contained 16 articles which regulated the territorial scope of the Banovina of Croatia and its competencies. According to Art. I. Regulations the territory of the new autonomous unit consisted of the Savska and Primorska banovina, and the districts of Dubrovnik, Šid, Ilok, Brčko, Gradačac, Derventa, Travnik, and Fojnica, which tried to cover most of the territories where Croats make up the majority.

¹⁹ Nazor, Ante: „Kontinuitet velikosrpske politike i uloga Hrvatske u obrani BiH od velikosrpske agresije i spašavanju Muslimana u BiH 1990-ih na primjeru Bihaća“, *National security and the future*, 3(19), 2018., p. 56.

²⁰ Regan, Krešimir: „Srpski kulturni klub i Banovina Hrvatska“, *Journal of Contemporary History*, no. 2., 2008., p. 397-424

²¹ Horvat, Rudolf, p. 608-612

Furthermore, Article II. The decrees stipulate that the scope of the Banovina includes “affairs of agriculture, trade, industry, forests and ores, buildings, social policy and public health, physical education, justice, education, and internal administration. The Banovina of Croatia remains competent for all affairs, which according to the currently valid regulations fall within the competence of the Banovina “, and Article III. the Banovina is given financial independence, but it is not defined to what extent, but a new regulation is determined, which will regulate this issue.

The Decree re-installed the symbols of Croatian state law; Ban and Parliament. However, the King and Parliament are designated as legislative bodies and the Ban as the executor of the King’s legislative will, and it is determined that the Ban must sign every legal document that the King brings for the Banovina area in order for it to have legal validity. Despite the fact that the Parliament was established as the highest legislative body of the Banovina of Croatia, in its short existence, no elections were called for the Parliament due to the delay of the central authorities despite Maček’s insistence. In addition, it is important to note that in the absence of Parliament, the King was responsible for passing laws in the Banovina area. According to the Decree, judicial power is exercised by courts and renders judgments “In the name of the king”, and judges are appointed by Royal Decree. As for the function of the Ban, all the affairs of the Banovina fall within his jurisdiction, and he is appointed to office and dismissed by the King with the co-signature of the new Ban. The great victory of the Croatian Peasant Party was the provision of the Decree from Art. X. by which the police service, which until then had been in the function of intimidating opponents of the central government, was subordinated to Ban. The Decree designates the Constitutional Court

as having jurisdiction in the form of potential legal differences between the Banovina and the central government. When the Banovina was founded, there was a doubt about the appointment of the first Ban. Two candidates emerged from the Croatian Peasant Party. The party champion from its beginnings and son-in-law of Stjepan Radić, August Košutić and Ivan Šubašić, a prominent lawyer, Thessaloniki volunteer, a friend of the Karadorđević family and holder of the highest state decorations. Although Maček's personal choice was Košutić, he was unacceptable to the central government and the court, primarily because of his emigration, where he cooperated with Pavelić. Thus, Ivan Šubašić was appointed to the position of a Ban.

Apart from the rejection of the settlement by Croatian nationalists, it was also rejected by Serbian social circles in Serbia and Prečani. For the Serbian social and political elite, the Agreement marked the beginning of the disintegration of Yugoslavia and the breakup of state unity, while for Croatian nationalists, it represented betrayal and capitulation to the Serbs. In 1940, the Serbs prepared a draft of the structure of the federal unit called "Serbian Lands", which, along with Serbia, Macedonia, and Montenegro, would include parts of BiH and Vojvodina with its headquarters in Skopje, while Belgrade would be the capital of Yugoslavia. Macek, JMO, Montenegrin federalists, and Vojvodina Croats refused to establish a Serb unit to that extent, which additionally contributed to Serb negative mood towards Banovina.²² The communists had a negative attitude towards the Agreement, considering the new arrangement as an agreement between the Serbian and Croatian bourgeoisie. After the end of the Second World War, the communist assessment of the Banovina of Croatia changed, and Tuđman wrote in his doctoral dissertation from the perspective of a Marxist intellectual:

²² Tudman, Franjo, p. 287-288

“In essence, despite the half-heartedness of the Agreement and the danger of the reactionary regime trying to abuse it to consolidate the bourgeois order, the very fact that the Agreement was an introduction to the reorganization of the centralist-hegemonic state and a positive contribution to solving the internal national-political problem allowed the Communist Party to expand the basics of the struggle for the recognition of the national rights of all the peoples of Yugoslavia, and for the democratization of the political life of the country. As current demands of the legal, political struggle of the working classes, the CPY set: the application of the Decree on the Banovina of Croatia to other countries and historical provinces of Yugoslavia,...”²³

It is evident that Tadjman is giving credit to Maček for the beginning of the federalization of Yugoslavia, emphasizing that this only gave an additional reason for the Communist Party to persist in its program.

With the establishment of the Banovina of Croatia, any other pro-Yugoslav option could not achieve a return to the old unitarian system, not even the Greater Serbia one, as Tomislav Jonjić points out.²⁴ Also, Jonjić correctly points out the constitutional and legal inconsistencies of the Banovina of Croatia. According to Article 116 of the Constitution of the Kingdom of Yugoslavia of 1931, “in the event of war, mobilization, riots, and rebellion, which would jeopardize the public order and security of the state or when public interests are so generally endangered, the King may, in that exceptional case, order by Decree to temporarily take all extraordinary, necessary measures in the whole Kingdom or in one of its parts, regardless of constitutional and legal regulations.”²⁵ Based on the cited article, the Governor’s Office, instead of the minor King Peter

²³ Ibid., p. 284

²⁴ Jonjić, Tomislav: „Planovi federalizacije Jugoslavije“ Republika Hrvatska, year. XLVI, September 1997., No. 196., p. 58.

²⁵ „Ustav Kraljevine Jugoslavije“, Collection of the Official Gazette, Vol. XLIV, Croatian printing house, Split, 1931.

II, passed the Decree on the Banovina of Croatia, which was not a constitutional solution to the Croatian question, but a provisional without revision of the constitutional order of Yugoslavia.²⁶ Namely, the Decree could receive a guarantee of survival only after it was confirmed by the National Assembly in accordance with paragraph 2 of Article 116 of the Constitution, which never happened, although the Agreement stipulated that the definitive competencies of the Banovina of Croatia would be determined only during the state reorganization and that the competencies and position of the Banovina will be guaranteed by a special constitutional provision which cannot be changed without the consent of the Banovina. Therefore, the survival of the Banovina of Croatia depended exclusively on the political situation. In addition, the authorities delayed and slowed the transfer of power to the Ban and Parliament. The constitutionality of the Banovina was the subject of scientific controversy immediately after its creation, the then-contemporary prominent legal scholars of the Zagreb and Belgrade Faculty of Law, whose opinions and views were conflicting.²⁷

According to the “Source Basis” of the Constitution of the Republic of Croatia, the establishment of the Banovina of Croatia was declared proof of Croatian state independence in the Kingdom of Yugoslavia, which is a wrong conclusion of the author of the Constitution. Namely, the Croatian-Hungarian settlement recognized the status of a separate state in a real union with Hungary, while the 1939 Agreement agreed that the Banovina of Croatia would be created by merging the existing administrative units with the Croatian majority into a separate administrative unit, i.e., without the status of a separate state - legal unit. Furthermore, the ban and the Parliament are returned to Croatia by a banovina settlement, but the ban and the Parliament do not inherit the traditions of Croa-

²⁶ Op.cit. Jonjić, Tomislav., p. 44

²⁷ Sirotković, Hodimir – Margetić Lujko: *Povijest država i prava naroda SFR Jugoslavije, Školska knjiga, Zagreb, 1988.*, p. 268.

tian statehood in the period from the Middle Ages to 1918, except in the name. In the Banovina of Croatia case, it would be more truthful to speak of proof of Croatian national identity because its establishment defeated the policy of integral Yugoslavia, and the Croats were again recognized as separate people, not a tribe within the Yugoslav people. Although Maček and his associates promised to extend autonomy to the army and finances, its existence was interrupted by the April War, in which the Yugoslav army was defeated in just twelve days, and Croats responded to the call of nationalists and Ustashas and did not participate in the uprising within the military ranks, which shows that they had no motive to defend Yugoslavia even with their separate Banovina.

The Independent State of Croatia and Yugoslav Federalism in the Second World War

After the outbreak of the April War in Zagreb, a member of the Homeland Ustasha movement, Colonel Slavko Kvaternik, proclaimed the Independent State of Croatia on April 10, 1941, on behalf of the head of the Ustasha movement, Ante Pavelić. From the position of the leader of the Croatian people, Maček, who refused to take over the leadership of the new state after the proclamation of the Independent State of Croatia, nevertheless called on the people and administration of the Banovina of Croatia to make themselves available to the new government.

The Ustashes regulated the new state following the Ustasha ideology, which was a fusion of Starcevic's orthodoxy and fascism, and those elements of Croatian political life who were not members and sympathizers of the Ustasha movement, but were opponents of the Yugoslav state idea, also participated in the new political, social and cultural life. The official ideology of the Ustasha government will introduce terror that will result in racial policies against Jews, Roma, and Serbs and political persecution of dissidents among Croats.

With the establishment of the Independent State of Croatia, the new government immediately took a legal position towards the Kingdom of Yugoslavia. Pavelić himself wrote about the Ustasha understandings of Croatian state law in his memoirs during the second emigration, quoting his position from the time of the NDH: "The issue of the Karadjordjevic dynasty in Croatia does not exist legally" *de jure* " , and now not even" *de facto* " ! According to the old constitution of the Croatian nation, the kings of Croatia were

always elected by a legitimate electorate of a certain time. Thus King Tomislav was elected, and thus all his successors were elected until 1102, because at that time, the right of inheritance by birth had not yet been established. However, when the medieval right of inheritance was introduced, the choice was unconditionally necessary with the extinction of the dynasty, and in Croatia, a new dynasty was never enthroned and recognized. The Karadjordjevic dynasty was never elected by any legislative body of the empire, or by any illegal - or legal body.”²⁸

Furthermore, commenting on the delegation of the National Council and the act of unification of December 1, 1918, Pavelić interprets:

„By this act, the Karadjordjevic dynasty did not become the dynasty of the Kingdom of Croatia, nor did the Croatian people submit to it, because, “first” - neither the National Council, nor a constitutional act, since that Council was exclusively an administrative body, and “second”, such a statement contained that act.

The Karadjordjevic dynasty was never elected nor in any way proclaimed the dynasty of Croatia and the Croatian people. The “de facto” situation from December 1, 1918, to April 10, 1941, was completely illegal, so today, we cannot dethrone a dynasty that “de jure” never existed in Croatia. “²⁹

As the head of the Independent State of Croatia, Pavelić denies any legality and constitutionality of the situation that lasted from 1918 to 1941 therefore, he denies any state identity and the Banovina of Croatia, which was his position even before the establishment of the Independent State of Croatia. Furthermore, Pavelić claims in his memoirs that the only dynasty that the Parliament

²⁸ Pavelić, Ante: „Doživljaji – Kako sam osnovao Nezavisnu Državu Hrvatsku“, Despot Ininitus, Zagreb, 2015., p.144

²⁹ Ibid, p. 145.-146

could dethrone was the Habsburg dynasty, which was never legally dethroned by the Parliament, which shows that Pavelić considered the NDH the legal successor of the Triune Kingdom of Croatia, Slavonia, and Dalmatia.³⁰In this direction, the NDH government passed the “Legal Provision on May 15, 1941, on Zvonimir’s Crown,” which determined that the sovereignty of the NDH was the historical crown of King Zvonimir, and Zvonimir’s crown would be offered to the Italian ruling dynasty of Savoy, i.e., Prince Aimone, Duke of Spoleto.³¹

As the next act of confirming his legal understanding of Croatian statehood, Pavelić decided to convene a session of Parliament to which representatives elected by Croats in the 1938 elections, living representatives from 1918, and members of the Ustasha movement were invited. Thus, despite the non-recognition of Yugoslavia, the Ustasas recognize the will of the Croatian people expressed in 1938 and recognize the status of MPs from 1918, given that legally this convocation was never dissolved. After some time, due to parliamentary criticism of the Ustasha regime, Pavelić stopped convening the Croatian National Parliament.

After the capitulation of the Yugoslav Army, resistance to the Axis Powers and the new Croatian authorities in the NDH continues; the “Yugoslav Army in the Homeland” consists of a small number of officers of the Kingdom of Yugoslavia who wanted to offer active resistance to the Germans, which are being joined in Serbia and the Independent State of Croatia by members of pre-war Chetnik associations and Chetnik military units. At the head of the resistance movement was Colonel Dragoljub Mihailović-Draža, who represented the armed forces of the government in exile and had the support of Great Britain and after the United States. The

³⁰ Ibid.

³¹ Matković, Hrvoje: *Povijest Nezavisne Države Hrvatske*, Publisher, P.I.P. Pavičić, Zagreb, 2002., p. 156.

political program of Dragoljub Mihajlovic's Chetnik movement was contained in the political brochure "Homogeneous Serbia" by Stevan Moljevic, a Banja Luka lawyer and prominent member of the Serbian Cultural Club who became Dragoljub Mihajlovic's political adviser during the war. Moljevic believes that the new world war is an opportunity for Serbia to correct the "mistakes" from 1918, and this time to determine the borders of the Serbian ethnic country. According to Moljevic, the post-war Greater Yugoslavia would consist of a Slovene autonomous unit, a Croatian autonomous unit that would include the "remnants of the remnants of the Croatian Kingdom" and central Slavonia separated from the motherland by Serbian territory. In particular, in relation to Croats, Moljević points out that, for the future happiness of the people in Yugoslavia, population exchanges should be carried out, but Stevan Moljević's theoretical ideas were carried out on the ground through mass killings and ethnic cleansing of the Croatian Catholic and Muslim population by Mihajlovic's Chetnik army.

After the German attack on the Soviet Union, a partisan resistance movement led by the Communist Party of Yugoslavia and its leader Josip Broz Tito emerged in Yugoslavia. At the beginning of the war, Tito's and Mihajlovic forces formed a political alliance that their mutual war would disrupt due to ideological and strategic differences and by the collaboration of the Chetniks with the Axis Powers. In the interwar period, the Yugoslav communists officially took several positions on the state reorganization of Yugoslavia, which were in essence completely contradictory. In the first years of the existence of the Kingdom of Serbs, Croats, and Slovenes, the Yugoslav communists called for the overthrow of the monarchy and the establishment of a centralist Yugoslav republic.³² At the Third National Conference of the CPY, the principle of self-deter-

³² Jonjić, Tomislav: „Komunisti iz Hrvatske i hrvatska država (I)“, „Politički zatvorenik“, No. 87, June 1999., p.19.

mination of the people was adopted, but the reason was the decline in support for the Party, which until then ignored national problems in Yugoslavia, considering it a “tribal conflict” or “hegemony of the Serbian tribe” which would resolve via class revolution. Croatian communists, in particular, advocated the principle of federalization, realizing that communism in Croatia has no future if it insists on neglecting national issues due to the class and social orientation of the Communist Party.³³ At the Third Party Congress held in Vienna in May 1926, the Yugoslav Communists, on the instructions of the Comintern, accepted the program of founding a “federation of workers’ and peasants’ republics in the Balkans.”³⁴ After the proclamation of the January 6 dictatorship in February 1929, the Croatian Communists in the CPY called on the workers and peasants to revolt and establish independent nation-states, including Croatia, but only as a transitional form into an imaginary Soviet Balkan federation.³⁵ However, all the interwar attitudes of the Yugoslav communists regarding national self-determination were conditioned by the attitude of the Soviet Union, which was a matter of political tactics to achieve a socialist revolution, which is why the CPY could not impose itself as a political option that could solve national and social issues within Yugoslavia.³⁶

During World War II, the Communists pursued their own federal political program, primarily based on Leninist and Stalinist views of federalism. Therefore, they establish legislative bodies as national anti-fascist councils in future federal units and the Anti-fascist Council of the People’s Liberation of Yugoslavia (AVNOJ) as the supreme political body of the partisan movement. At the second session, AVNOJ adopted a Declaration confirming the federal principle of the new state structure.³⁷

³³ Jonjić, Tomislav: „Komunisti iz Hrvatske i hrvatska država (III)“, „Politički zatvorenik“, No. 90, September 1999., p.14-15

³⁴ Jonjić, Tomislav: „Komunisti iz Hrvatske i hrvatska država (V)“, „Politički zatvorenik“, No. 92, November 1999., p. 13

³⁵ Jonjić, Tomislav: „Komunisti iz Hrvatske i hrvatska država (VI)“, „Politički zatvorenik“, No. 93, December 1999., p. 23

³⁶ Ibid.

³⁷ Mratović, V., Filipović, N., Sokol, S.: *Ustavno pravo*, University publisher Liber., Zagreb, 1977., p. 160

In Croatia, according to the instructions of AVNOJ, the National Anti-Fascist Council of the People's Liberation of Croatia (ZAVNOH) was established as the supreme federal body. During the war, and especially after the capitulation of Italy, the partisan movement through well-organized propaganda, the policy of the broad popular front, violence of the Ustashas and their allies, and violent recruitment became a numerically significant resistance movement. Although Yugoslavia actually disintegrated in the April War, it did not legally cease to exist and was represented through the Government in exile in London and Dragoljub Mihajlović as the resistance leader. After the royalists lost the trust of the Western allies, Tito and the partisans took over the leading resistance movement in Yugoslavia, which led to the formation of the Tito-Šubašić government in November 1944 establishment of Democratic Federal Yugoslavia.

In March 1945, the Šubašić-Tito government proclaimed a Democratic Federal Yugoslavia still a monarchy with Peter II as king and Tito as prime minister. However, such a constitutional and legal position did not derive from the Octroic constitution but from the agreements concluded by Tito and Šubašić.³⁸ Within the DFJ, under the political program of the CPY and the views expressed in the work of AVNOJ, federal units were established, i.e., the Federal State of Croatia, which was represented through ZAVNOH.³⁹ Within communist Croatia, the work of the Parliament, which emerged from ZAVNOH, began without democratic elections, and by 1990 it would be the highest legislative body of the Croatian federal unit composed exclusively of Croatian communists in the spirit of the left-wing one-party system. Communist terror against political enemies began during the war, culminating in the postwar period when the Communists de jure had not yet

³⁸ Op.cit. Sirotković – Margetić, p. 371

³⁹ Ibid., p. 372

established their full power and ensured the consolidation of the dictatorship through the mass liquidations of defeated armies and civilians. After the end of the war, the elections for the Constituent Assembly were held on November 11, 1945, in an atmosphere of communist terror, and the People's Front list won, marking the legal end of the monarchist system of Yugoslavia and the reorganization of the state into the Federal People's Republic of Yugoslavia (FNRJ), which was proclaimed on November 29, 1945.

The constitutional position of Croatia in communist Yugoslavia

The elections of November 1945 established the Constituent Assembly, which adopted the first Constitution of the Federal People's Republic of Yugoslavia on January 31, 1946. The constitution confirmed the new state republican federal system, and the state was divided into six republics (Slovenia, Croatia, Bosnia and Herzegovina, Montenegro, Serbia, and Macedonia) and two autonomous provinces within Serbia (Vojvodina and Kosovo). Within the Second Yugoslavia, the People's Republic of Croatia was founded, which received its own republican constitution on January 18, 1947.

Article 1 of the new federal constitution defined the FPRY as a "federal people's state of republican form, a community of equal peoples who, based on the right to self-determination, including the right to secede, expressed their will to live together in a federal state."⁴⁰ In comparison, Article 1 of the Republic Constitution of the People's Republic of Croatia defines it as a people's state of the republican form. Furthermore, Article 2 of the Croatian Constitution states the following:

"Achieving in their liberation struggle, in fraternal unity with the Serbs in Croatia, and in the common struggle of all the peoples of Yugoslavia, their nation-state - the People's Republic of Croatia, the Croatian people, expressing their free will and the right to self-determination - including the right to secede and unification with other people's - united based on the principle of equality with other peoples of Yugoslavia and their people's republics: the People's Republic of Serbia, the People's Republic of Slovenia, the People's Republic of Bosnia and Herzegovina, the People's Republic of

⁴⁰ New FNRJ Constitution, Edition "Official List of FNRJ", p. 51

Macedonia and the People's Republic of Montenegro into a joint federal-state The Republic of Yugoslavia. "⁴¹

In the same section of the republican constitution, the "Basic Principles" define the territory of the new Croatian federal unit as "the area of the current area of Dalmatia and the current districts: Osijek, Slavonski Brod, Daruvar, Bjelovar, Varaždin, Zagreb, Sisak, Karlovac, Sušak and Gospić, and the area of the city of Zagreb."⁴² These borders still exist today as the borders of the internationally recognized Republic of Croatia, which were then determined to the detriment of the Croatian people and the Croatian federal unit.⁴³ In order to further understand the constitutional position of the People's Republic of Croatia, it is important to single out the constitutional provisions from Art. 10. which stipulates that the People's Republic of Croatia exercises state power sovereignly, transferring to the Federal People's Republic of Yugoslavia only those rights which are determined by the Constitution of the Federal People's Republic of Yugoslavia. The sovereign rights of the People's Republic of Croatia, its security, as well as the social and political system are under the protection and defense of the Federal People's Republic of Yugoslavia and Art. 11. which is in accordance with Art. 2. It is determined that Serbs and Croats are equal peoples in the People's Republic of Croatia, while other peoples have the status of national minorities whose Art. 14. Recognize all the rights that adopted the position of ZAVNOH expressed in Article 1 of the Declaration on the Fundamental Rights of Peoples and Citizens of Democratic Croatia, which defines that the Croatian and Serbian people in Croatia are equal while national minorities are guaranteed all rights to national life.

In Art. 12. The Constitution emphasizes that any act of direc-

⁴¹ „Zbirka zakona, uredaba i naredaba NRH - Ustav NRH“, „Narodne novine“, Zagreb 1947.

⁴² Ibid.

⁴³ Usp. Boban, Ljubo, p.53-60

tion against the independence, equality, and sovereignty of the Croatian people is unconstitutional and against the equality of Croats and Serbs, which in essence corresponded to Art. 10. of the federal constitution, which prohibited any act directed against the freedom of the people. The new constitution was not written in the spirit of integral Yugoslavism, which communist Yugoslavia broke with, and the new ideological dogma that replaced integral Yugoslavism was “brotherhood and unity.”

The Federal Constitution in Art. 44. the powers of the federal state over the republics are determined, and further articles stipulate that in case of disagreement, the legal provisions of the republic and the federation strengthen the legal force and enjoy the regulations of the federation. As for determining the territory of the federation, it is in Art. 45. defined as the entire territory of all republics and provinces and as a single state territory.

It is clear from the constitutional provisions of the 1946 Constitution that the FPRY was determined as a federal republic of all South Slavic peoples who consumed their right to self-determination and secession in the People’s Liberation Struggle by uniting in the federation of Yugoslavia. In the same way, in Art. 2. The Croatian Constitution defines the Croatian right to self-determination, including the right to secede and associate with other nations, as a right consumed by the participation of Croats in the partisan movement. Despite the constant emphasis on sovereignty and independence, the Republic of the Federal People’s Republic of Yugoslavia was defined as a single state territory, which in constitutional and legal terminology means its indivisibility. The Constitution of 1946 was, in essence, a rewritten and adapted Constitution of the USSR from 1936, better known as the “Stalin Constitution”, but which, un-

like the Constitution of 1946 in Art. 17. gives all Soviet republics a unilateral right of secession without any conditions.⁴⁴ Like many other liberal provisions of Stalin's constitution, the cited provision was a "dead letter on paper," especially given that some Soviet republics were militarily occupied and deprived of their independence by annexation to the Soviet Union. Moša Pijade, as a political and legal authority, says in the explanation of the 1946 Constitution that the right to self-determination, including secession from the Constitution, does not legally legalize secession. An important source of law in Yugoslavia were the speeches and opinions of Josip Broz Tito, as the supreme leader, who emphasized the new Yugoslavia as "monolithic".⁴⁵

Due to new political and ideological circumstances conditioned by the severance of the alliance with the Soviets and the emergence of the Non-Aligned Movement, the Yugoslav leadership adopted a new federal constitution on April 7, 1963, giving constitutional legal force to self-government as a fundamental value of the Yugoslav state and society. A few days later, the federal constitutional republics proclaimed their own republican constitutions to align with the new constitution. With the new constitution, the state changed its name to the Socialist Federal Republic of Yugoslavia (hereinafter SFRY) and the People's Republic of Croatia to the Socialist Republic of Croatia (hereinafter: SRH).

Concerning the Yugoslav peoples, the right to self-determination, including the right to secede, is mentioned in Art. I. Basic principles:

"The peoples of Yugoslavia, starting from the right of every people to self-determination, including the right to secede, based on common struggle and free will in the national liberation war and

⁴⁴ Radan, Peter: „Secession and Constitutional Law in the Former Yugoslavia“, „University of Tasmania Law Review“, Vol 20, No 2, 2001., p. 191

⁴⁵ Ibid., p. 190

socialist revolution, and in accordance with their historical aspirations, are aware that their brotherhood and unity common interest, they united into a federal republic of free and equal peoples and nationalities and created a socialist federal community of working people - the Socialist Federal Republic of Yugoslavia, in which in the interest of each people separately and all together they realize and provide: socialist social relations and protection of the socialist social system, national freedom and independence, brotherhood and unity of peoples and solidarity of working people, opportunities and freedoms for all-round development of human personality and rapprochement of people and peoples in accordance with their interests and aspirations on the way to creating richer culture and civilization, unification and harmonization of efforts to develop the material basis of the social community and the well-being of the people, combining their own aspirations with the advanced aspirations of mankind, the unique basis of the economic and political system to achieve common interests and equality of peoples and peoples, working people and peoples of Yugoslavia this is established in the common interest by this constitution, and in all other respects - in the socialist republics.”⁴⁶

It is clear from the previous article that the new constitution defined the right of the Yugoslav peoples to self-determination, including the right to secede, as a right consumed by the peoples of Yugoslavia by uniting into socialist Yugoslavia and thus achieving final national liberation and equality. Moreover, the constitution stipulates that it is in the interest of all peoples to strengthen brotherhood and unity further, and the existence of the SFRY is indicated as the realization of national freedom for all its peoples. The new federal constitution, the right to self-determination and secession, in which the notion of the right to self-determination of peoples in

⁴⁶ Constitution of SFRY, “Savremena administracija”, Belgrade, 1964, p. 3

Article VII of the “Basic Principles” refers to other peoples in the sense that Yugoslavia will internationally support peoples in their right to self-determination, especially in the fight against colonialism and national oppression, which was essentially a constitutional evaluation of the Yugoslav policy of non-alignment, and does not apply to the peoples and national minorities in the SFRY.

According to the Constitution of 1946, the territory of the SFRY was determined as unique and composed of all the territories of the socialist republics, and the federation is competent and responsible for the protection of sovereign rights and equality of peoples maintaining the political and social order of the republic. In addition to protecting the rights of the republics, the federation is explicitly designated as responsible for the protection of the sovereignty, independence, territorial integrity, security, and defense of Yugoslavia, and according to Articles 252 and 255 of the Constitution, it is the duty of the people and the JNA.

With the 1963 Constitution, Yugoslavia decided to move away from the Soviet bloc by giving legal and ideological legitimacy to self-governing socialism, while the people’s right to self-determination and secession under the new constitution did not differ significantly from that of the 1946 Constitution and was still associated with the communist revolution. According to Djordjevic, “the people of Yugoslavia exercised this right on the basis of a common struggle and freely expressed will in the national liberation war and the socialist revolution, uniting into a federal republic of free and equal peoples and nationalities, which they created and later developed, and are developing today, as a socialist federal community of working people.”⁴⁷ Furthermore, the 1963 constitution retains the current interpretation of the republic’s subordination

⁴⁷ Dorđević, Jovan: *Ustavno pravo*, „Savremena administracija”, Beograd, 1967., p. 100

relationship and defines it as an integral part of Yugoslav territory that is not a sovereign state but a socio-political community in which the working people exercise sovereign rights. Moreover, republics must not make such decisions that would economically or politically create a barrier between it and other republics.⁴⁸ Thus, we can conclude that any arbitrariness of the republic was unconstitutional and illegal, especially one that would endanger the political and economic order of the federation.

After the enactment of the 1963 Constitution, Yugoslavia would enter a political and economic crisis. In addition to the deepening economic problems, Yugoslavia, despite its federal structure, was plagued by national issues and centralization. After the Brijuni Plenum and the fall of Aleksandar Ranković, there was a greater dynamics of political life. New circumstances led to the awakening of Croatian national consciousness, especially among intellectuals and students, and the SKH political leadership launched a broad social campaign to decentralize the state and increase the republic's independence in state and economic affairs, which the central authorities called the Mass Movement (MASPOK). After a meeting in Karadjordjevo on November 29, 1971, the Croatian political leadership withdrew its demands and resigned from political office, and the communist authorities initiated thousands of fabricated proceedings against MASPOK participants, i.e., the Croatian Spring, while terrorist actions were taken abroad against political opposition on a larger scale than ever before it would last until 1991. In the period from 1963 to 1974, the Yugoslav legislature passed as many as 42 amendments due to the constant expansion of self-governing bodies in the political and economic system, which was the reason for the new constitution since the political crisis was resolved using repressive apparatus.

⁴⁸ Ibid., p. 456-458

After the stabilization of the regime through repressive measures taken against communist dissidents and the anti-communist movement within MASPOK, the SFRY adopted a new and last federal constitution on February 21, 1974, which will be in force until the breakup of Yugoslavia. The new constitution defines the right of the people to self-determination with the right to secede in the same way as in the previous Constitution: “The peoples of Yugoslavia, starting from the right of every people to self-determination, including the right to secede, on the basis of their freely expressed will in the common struggle of all peoples and nationalities in the national liberation war and socialist revolution, and aware of their historical aspirations fraternities and unity in the common interest, together with the nationalities with which they live, united into a federal republic of free and equal peoples and nationalities and created a socialist federal community of working people - the Socialist Federal Republic of Yugoslavia, in which, in the interest of each people and nation all of them together, achieve and ensure socialist social relations based on the self-government of working people and the protection of the socialist self-governing system, national freedom and independence, brotherhood and unity of peoples and nationalities, unique interests of the working class and solidarity you and freedoms for the all-round development of the human person and for the rapprochement of people and nations and nationalities, in accordance with their interests and aspirations on the way to creating an increasingly rich culture and civilization of socialist society, unifying and harmonizing efforts to develop the material basis of socialist society socio-economic relations and the unique foundations of the political system, which ensure the common interests of the working class and all working people and the equality of peoples and nationalities, combining their own aspirations with the advanced aspirations of mankind...”⁴⁹

⁴⁹ „Ustav SFRJ – Ustavi socijalističkih republika i pokrajina i ustavni zakoni, registar pojmova“, „Prosveta“, Beograd, 174., p. 3

In relation to the territory of the SFRY, Art. 5. It is established that it is unique and consists of the territories of all republics and provinces, but the same article stipulates that the external border of the SFRY may be changed only with the consent of all republics and provinces while the border of the republic can be changed only with the consent of the republic. However, in the further constitutional text, some provisions could be violated by a unilateral act of secession, such as the provision from Article 203, which prohibits the use of constitutional freedoms in a way that leads to national or religious hatred. Then in Art. 237. obliges the citizens of Yugoslavia to defend its territorial integrity, while Article 244 expressed the territorial integrity of the SFRY as a constitutional value realized and ensured by the peoples of Yugoslavia.

The new constitution, like the previous one from 1963, was written with a mixture of legal vocabulary and ideological Marxist vocabulary, but the number of articles increased to a total of 406 articles, making it the most extended constitutional text in the world, making it very difficult and illegible for legal laymen.

The Constitution of the SRH from 1974 repeats the same ideological formula in the basic principles as in the previous republican and federal constitutions: "The Croatian people, together with the Serbian people and nationalities in Croatia, in accordance with their historical, libertarian aspirations, won national freedom, the power of the working class and the working people in a joint struggle with other peoples and nationalities of Yugoslavia in the national liberation war and socialist revolution and established its state - the Socialist Republic of Croatia and on the basis of the right to self-determination, including the right to secede and associate with other peoples, by their freely expressed will, and to protect their national

independence and freedom, freedom, all peoples and nationalities living in the Socialist Republic of Croatia, ensuring the building of a socialist society and all-round social and national development, convinced that the further strengthening of the brotherhood and unity of the peoples and nationalities of Yugoslavia is in their common interest, voluntarily united with other peoples and nationalities in the Socialist Federal Republic of Yugoslavia, in which, in the interest of each people and nationality separately and all together, it realizes and ensures...⁵⁰

Furthermore, Art. 1. The SRH is defined as the national state of the Croatian people, the state of the Serbian people, and the state of other nationalities within the SFRY, thus resolving the national question, but the national question in Yugoslavia had no political significance, and the federal republics were established primarily to implement international socialism. It is clear from the federal constitution that they interpreted the socialist republics as states in which the bearer of sovereignty is the working people, i.e., the working class and not the nation, in accordance with Art. 3: *“A socialist republic is a state based on the sovereignty of the people and on the government and self-government of the working class and all working people, and a socialist self-governing democratic community of working people and citizens and equal peoples and nationalities.”*⁵¹

Like the Yugoslav constitution, the 1974 Croatian constitution did not make any significant changes to the position of the Croatian people or republic regarding sovereignty or the right to unilateral secession. Moreover, the new constitution reaffirmed the separate position of the Serb people in Croatia, but the sovereign republic was still a working people as in previous constitutions, while the socialist republics were not sovereign states but part of a single Yu-

⁵⁰ Ibid., p. 279

⁵¹ Ibid., p. 12

goslav territory as defined in Art. 2 of the Federal Constitution and Article 4 of the Republic Constitution.

The 1974 constitution will be a stumbling block between the republics and provinces in the coming years, culminating in a significant constitutional crisis initiated by Serbian communists. The reasons for adopting the new constitution have been a frequent subject of legal and political debates that continue to this day. Moreover, in this sense, the current interpretation is that Tito, together with the party leadership, wanted to ensure the peaceful disintegration of Yugoslavia, especially after the experience of the Croatian Spring. However, such motives are denied by contemporaries and participants in political events. Bilandžić states that the 1974 Constitution was a natural legal sequence after the 1963 Constitution and subsequent amendments, and that the 1974 Constitution was an ideologically and legally credible successor to the latter and did not go beyond Tito's political intentions and that the idea of a new constitution with Tito and a small circle of associates appeared in the mid - the 1960s, shortly after the adoption of the 1963 Constitution.⁵² Therefore, according to Bilandžić, the spring events did not motivate the party leadership to change its ideological direction and adopt a new constitution, which is logical from legal and historical experience. Namely, after the Belgrade and Croatian hardline communists broke the Croatian people's movement, there was no need to respect their demands, giving them constitutional legitimacy. Finally, the historical and legal experience of the birth of states and constitutions teaches us that no state was created with the aim of disintegrating, so Tito's motive for adopting a new constitution was not to ensure the peaceful disintegration of Yugoslavia, especially since the 1974 Constitution an identical incomplete and unclear definition of "the right to self-determination including the right to

⁵² Bilandžić, Dušan: „Geneza ideje o Ustavu iz 1974. godine“, „Politička misao“, Vol. XXI/1984/, No. 4, p. 73-77

secede". The revolutionary nature of the 1974 Constitution was reflected in its conferral of more powers on the republics, that is, it was determined that decisions at the federal level would be made by agreement, which was primarily inspired by self-governing socialism as the ideological dogma of Titoist socialism. That the constitution-maker did not intend to give the republics the right to secede is evident from several constitutional and legal scientific texts on the nature of the Yugoslav constitution, but the absence of constitutional laws regulating political processes in the event of secession. In relation to the rights to self-determination with the right to secede, it is clear from the text of the Constitution that the same applies to the peoples of the SFRY and not to the republics, as Tomac explains. Moreover, Tomac relates the 1974 Constitution to the principles of AVNOJ and presents it as an extension of the communist revolution that is in constant improvement of Yugoslav federalism and the state system until the moment when Yugoslavia ceases to be a state and becomes a self-governing community.⁵³ It is clear from the above that this is a constitutional legitimation of the Yugoslav type of socialism and not the affirmation of national or republican rights or the constitutional and legal solution of the coming disintegration of Yugoslavia and national revolutions.

In relation to the constitutional right to self-determination with the right to secede, the then Yugoslav legal science also gave its position.

Thus, the Legal Encyclopedia of Yugoslavia states: "In the Yugoslav socialist federal self-governing community, the emphasis is certainly not and cannot be on secession, but on brotherhood and unity, on a community that provides common and special interests."⁵⁴ However, not only science dealt with the issue of the legality of the

⁵³ Tomac, Zdravko: „Jugoslavenski federalizam“, „Politička misao“, Vol. XXIII/1986/, No. 3, p. 4-14

⁵⁴ „Pravna enciklopedija 2, O-Ž“, Contemporary Administration, Belgrade, 1989, 1239.

unilateral secession of the Yugoslav republics, but also the Constitutional Court of Yugoslavia, and on several occasions declared secession illegal. However, such an attitude was characteristic not only of Yugoslavia, but also of democratic federations such as the United States and Canada, whose Supreme Courts also took a position on the illegality of the unilateral secession of the federal state. Moreover, the United States carried out a military invasion and forcibly restored to its composition the federal states that in 1861 declared independence within the Confederate States of America.⁵⁵

Taking into account all Titoist federal and republican constitutions, it is clear that Yugoslavia was a territorially unique and indivisible state consisting of states - socialist republics that voluntarily joined the federation by participating in the communist revolution in order to achieve their independence, national equality, and economic progress through self-governing socialism. The constitutional provisions indicate that the external border of the SFRY could not be changed without the consent of all republics and provinces, which clearly indicates its indivisibility as well as the constitutional duty of each of its citizens to defend the integrity of Yugoslavia. Likewise, the republican constitution of the SRH, like other republics, defined it as an integral part of the SFRY, and its statehood was linked to the statehood of the SFRY and its integrity.

⁵⁵ Usp., Radan, Peter, p. 181-183

Legal foundations of Croatia's independence

At the end of the 1980s, the constitutional crisis and the efforts of the Serbian leadership to derogate from the 1974 constitutional changes provoked resistance from the Slovene and Croatian communists, but also to the strengthening of the democratic movement in Croatia. The SKH, despite resistance to Milosevic, did not take the breakup of Yugoslavia as a realistic political solution. Under the pressure of public opinion, and the collapse of communism in Central and Eastern Europe, they passed amendments to the constitution that allow for multi-party elections in which the Croatian Democratic Union wins a convincing victory. The new multi-party Parliament is writing a new Croatian constitution, which was passed on December 22, 1990, which is why it is called the Christmas Constitution. Giving legitimacy to the independence of Croatia, the writer of the Christmas Constitution in "Basic Provisions" chronologically cites the Croatian legal sequence, citing the Banovina Hrvatska as a confirmation of state independence and the decision of ZAVNOH and the special position of Croatia based on Tito's constitutions. However, in the exact text, the constitutional writer denies the legality of the existence of the Yugoslav state, emphasizing that the Parliament never sanctioned unification. The following text emphasizes the break of the modern Croatian state with the socialist political system at a historical turning point, based on the will of the Croatian people expressed in democratic elections.⁵⁶

Furthermore, the writer of the constitution invokes legal reasons starting from generally accepted principles in the modern world and the inalienability and indivisibility, non-transferability and inexhaustibility of the right to self-determination and state

⁵⁶ <https://www.zakon.hr/z/94/Ustav-Republike-Hrvatske>, "Constitution of the Republic of Croatia" accessed, 25 January 2021

sovereignty of the Croatian people, including stability of the international order, the Republic of Croatia is established as a national state of the Croatian people and states belonging to other peoples and minorities, who are its citizens: “Serbs, Muslims, Slovenes, Czechs, Slovaks, Italians, Hungarians, Jews, and others, who guarantee equality with citizens Croatian nationality and the exercise of national rights in accordance with the democratic norms of the UN and the free world”.⁵⁷ Consequently, the Croatian leadership relies on the principles of international law that guarantee the right to independence of Croatia. However, in the Final and Transitional Provisions, more precisely in Art. 140. points out that, despite the promulgation of the constitution, Croatia remained in the SFRY until the decision of the Croatian Parliament.⁵⁸ It is precisely based on Art. 140 of the Constitution, on June 25, 1991, the Croatian Parliament passed the Constitutional Decision on the Independence and Sovereignty of the Republic of Croatia, and on the same day passed the Declaration on the Proclamation of the Sovereign and the Independent Republic of Croatia.⁵⁹ In the Constitutional Decision, the legislator does not refer to the legal acts of the former state, which is superfluous considering that it refers to the new Croatian constitution and even derogates from them by unilaterally taking over all the powers that the SFRY had under the Constitution. Before adopting the Christmas Constitution, there was no explicit legal basis in socialist constitutional acts for the Parliament to declare independence, and the definition of the Republic of Croatia as an integral part of Yugoslavia was omitted from the Christmas Constitution.

In the latter Declaration in Art. IV states that “under the previous constitutions of the FPRY and SFRY, the Republic of Croatia had the right to self-determination, including the right to secede.”,

⁵⁷ Ibid.

⁵⁸ Narodne novine, 56/90

⁵⁹ Narodne novine, 31/91

But also states that it derives its right from thirteen centuries of statehood and that the SFRY was forcibly imposed on the Croatian people. The Brijuni Declaration postponed the application of the Constitutional Decision on the Independence and Sovereignty of the Republic of Croatia and imposed a moratorium on it for three months, which expired on October 7, 1991. The next day, October 8, 1991, Parliament passed a Decision terminating all state ties with other republics and provinces of SFRY and, as a legal basis, presents the will of the citizens expressed in the referendum of May 19, 1991, and the Constitutional Decision and Declaration.

It is evident that from the stated position, the Croatian legislator takes, in some places, a contradictory position towards the socialist constitutions. But, in its essence, the Christmas Constitution is a negation of the former republican and federal constitutions, which is evident from the constitutional definition of sovereignty as inalienable, indivisible, and non-transferable. Furthermore, the right to self-determination is defined in the text of the preamble as inexhaustible, which was not the case in the Yugoslav constitutions, and the adoption of the Christmas Constitution laid the foundations for Croatian constitutionalism, which springs from liberal-democratic and Western political and legal sources, but rather, Yugoslav constitutionalism and federalism based on the unilateral imposition of a constitutional order within a Leninist federal doctrine that viewed the national question exclusively in the context of achieving the Marxist revolution.

On the other hand, on the occasion of the Day of the Serbian Uprising in 1990, the rebel Serbs adopted a Declaration on the Sovereignty and Autonomy of the Serbian People, explicitly quoting the federal constitution on the right of peoples to self-determina-

tion and secession and the constitutional provisions of the SRH. On the one hand, this was not a misinterpretation of the constitutional text, but the fact is that such a constitution did not bind the new Croatian state because it had already started writing a new constitution. Communist constitutions were from the very beginning a “dead letter on paper” which did not guarantee the rights of the people or the individual. As indicated in all constitutional documents on the declaration of independence of the Republic of Croatia, the state often violated them.

From the then political circumstances of the coming war, it is logical that the Croatian leadership in its negotiations with the JNA and the then Yugoslav communist leadership had to refer to the constitutional provisions of the then constitutions, although according to all cited sources of Yugoslav law the act of independence was illegal. It must be borne in mind that at that time, the SFRY, and therefore its legal order, enjoyed the support of the international community. However, all the ambiguities of the Yugoslav constitutions, despite the existence of the Badinter Commission, were resolved only by an armed conflict, i.e., the victory of the Croatian army over the Yugoslav aggressor and then the liberation of the state territory occupied by domestic Serbian terrorists. Seen from a Yugoslav perspective, I repeat that the Croatian leadership led an illegal rebellion against Yugoslavia, but that does not mean that it was so from the perspective of international law because the international legal order can give legal legitimacy and legality to governments that come to power by rebellion, war or coup. According to the principles of international law, such governments can be legal and legitimate, and the then Croatian government confirmed its legitimacy and legality with free elections and a referendum, which any previous communist government did not do.

After the disintegration of Yugoslavia in the war, unilateral secession in the Yugoslav constitution attracted the interest of foreign legal experts. Thus, Radan states that taking into account all constitutional provisions on the integrity of Yugoslavia and the immutability of its external borders, one cannot speak of the constitutionality of unilateral secession of Yugoslav republics, which is confirmed in the political work of Yugoslav executive bodies and the case-law of the SFRY Constitutional Court. Moreover, Radan compares Yugoslavia to Canada and the United States and clarifies that no federation considers the act of unilateral secession to be constitutional.⁶⁰ Concerning the constitutional right to self-determination and secession, Detrez assesses that this right was “hypothetical in nature as long as Yugoslavia existed as a stable state”. Among other things, he points out that the cited law is stated only in the preamble of the 1974 Constitution, which is essential considering that the constitutional science of the preamble is not considered a legally binding text of the constitution. Furthermore, at the time of the disintegration of Yugoslavia, Detrez pointed out as an essential legal fact that many republics, including Croatia, adopted their constitutions that replaced the federal constitution so that it had no legal force in the territories of the republics that declared secession. Detrez sees one of the reasons for the constitutional inconsistencies in the ideological vocabulary of the Yugoslav constitutionalists in which the term “people” has at least three meanings.⁶¹ In his critique of Yugoslav federalism and constitutionalism, Bagwell states that most Yugoslav legal experts claim that the right to secession cannot be presumed in the constitutional text and points out that the constitutional text emphasizes the “duty of loyalty” that obliges citizens to defend the country’s integrity. Bagwell states that Pijade interpreted that the Constitution does not guarantee the right to secession, but in the case of a gram-

⁶⁰ Usp. Radan Peter, p. 181-204

⁶¹ Detrez, Raymond: *The Right to Self-Determination and Secession in Yugoslavia: A Hornets' Nest of Inconsistencies*, *Contextualizing Secession: Normative Studies in Comparative Perspective*, Oxford Press, 2003., p. 112-132

mational interpretation of the constitution, there may be a right to secession but only in revolution or counter-revolution. Thus, the separation from Yugoslavia by one of the communist government's leading persons was considered only in the case of a violent turn in the state. Bagwell confirms the thesis that the constitutional law of the Yugoslav people was consumed in World War II through the National Liberation War under the 1946 constitution and that later the Federal Executive Council declared any unilateral secession a violent change in the Yugoslav constitutional order. Finally, Bagwell concludes that the only legal basis for Croatia's secession in the summer of 1991 was the Christmas Constitution, as contained in the text of the constitutional documents by which Croatia declared independence.⁶² However, there were other views, so Iglar states that there may have been a constitutional republican right to self-determination and secession, but Croatia and Slovenia did not have this right according to the international legal order, although it was necessary to recognize them solely for a peaceful solution to the armed conflict. Despite his position, Iglar also states that numerous provisions of the 1974 constitution significantly limited the right to secession, and only with the adoption of their constitutions in 1990 did Croatia and Slovenia gain the right to independence. However, Iglar also allows for the possibility that both Croatia and Slovenia could prove an unequal position in the SFRY, which would entitle them to secession under the 1970 Declaration of Friendly Relations, and that both republics met the basic requirements of statehood with separate ethnicities, identity, language, culture and religion, and specific boundaries.⁶³ Degan mentions the Declaration, as stated earlier, as an instrument of international law that the creation of a state by secession from another state cannot be excluded entirely.⁶⁴

⁶² Bagwell, Ben: „Yugoslavian Constitutional Questions: Self-Determination and Secession of Member Republics“, Georgia Journal of International and Comparative Law, Vol 21, No. 3, 1991. p.489-523

⁶³ Iglar, Richard F.: „The Constitutional Crisis in Yugoslavia and the International Law of Self-Determination: Slovenia's and Croatia's Right to Secede“, Boston College International and Comparative Law Review. Vol XV, No 1, 1992 p. 213-239

⁶⁴ Degan, Vladimir – Đuro: Međunarodno pravo, Školska knjiga, Zagreb, 2011., p.235

The beginning of international legal activism on the issue of Yugoslav constitutions can be marked by the establishment of the Arbitration (Badinter Commission) which was supposed to resolve the constitutional crisis of the SFRY composed of constitutional judges of the European Union led by French lawyer Robert Badinter, which was a kind of innovation of the international community. The Commission issued several legal opinions related to the disintegration of Yugoslavia. However, according to Roth, it essentially decided on the interpretation of the constitutional right to self-determination, i.e., the legal position of the Croatian and Slovenian leadership and the legal and political position of the Yugoslav and Serbian leadership. Roth cites the vagueness of the Yugoslav constitutions and cites the opinion of Zoran Oklopcić, according to which it has never been determined whether the right to secession belongs to the ethnic communities or the working people of the republics. However, according to Roth, all ambiguities can be resolved by adopting Michele Pomerance's position that peoples' rights to self-determination and secession are the legal basis for establishing communist Yugoslavia, not for its disintegration.⁶⁵ The Commission finally issued ten opinions presented to the international community, and already in the first opinion, they clearly pointed out that the Yugoslav federation was falling apart. Thus, the Badinter Commission took the legal position of Croatia and Slovenia, which claimed that there was no secession but dissolution. Such an understanding has established that there are no longer federal bodies and, therefore, no federation. If there is no federation, there is no legal obligation to respect the federal constitution. In this sense, Domljan points out that Badinter himself publicly stated that the only legally relevant act for the Commission was the Christmas Constitution, and concerning the communist notion of Croatian statehood, Domljan says the following:

⁶⁵ Roth, Brad R.: „Ne-konsensualna disolucija država u međunarodnom pravu: Inovacija Badinterove komisije u retrospektivi“ *Politička misao*, god 52, br. 1, 2015. p. 48-78

"In the left-wing press, there were claims that Croatia owed the recognition primarily to documents from the communist era, the conclusions of ZAVNOH and the constitution from 1974, and that the Arbitration Commission based its decisions on them. If it were not for the 1974 constitution, there would be no free Croatia - that is how the thesis roughly goes. That is the complete opposite of the truth. The communists had forty years old to create a Croatian state, and they did not do so. Even if they had ruled for another forty years, they would not have done so for the simple reason that they did not see the creation of the Croatian state as their historical task but the spread of proletarian internationalism. Moreover, even worse, for them, an independent Croatian state was a retrograde idea, contrary, as they thought, to natural and historical laws, as evidenced by Tito's terrible sentence that the Sava would sooner flow upstream rather than Croatia becoming independent. That is why there could be no talks or settlements with communism or, to put it more simply - communism and the Yugoslavia created on it had to disappear in order for Croatia to live!"⁶⁶

The only legacy of AVNOJ Yugoslavia was the borders of the independent Republic of Croatia, which the new state inherited following the principle of international law *uti possidetis*, which the international community applied in independent colonial states. As for the legal personality of Yugoslavia, the Badinter Commission considered it non-existent at the time of disintegration and that each republic created by the disintegration of Yugoslavia retained part of that legal personality. Based on this position, the Commission refused to recognize the right of Croatian Serbs to secede from Croatia, believing that the republic's borders established a legal personality that Serbs in the SRH, therefore, did not have.⁶⁷ On the one hand, the Commission did not recognize the legal pro-

⁶⁶ <https://www.matica.hr/vijenac/414/raanje-hrvatske-drzave-2562/>, Domljan, Žarko: „Radanje hrvatske države“, accessed 31. January 2021

⁶⁷ Op.cit. Roth, Brad, R.

visions of the former SFRY. On the other hand, it gave the republics a legal personality that they did not have in the former SFRY, accepting the Croatian and Slovenian position that the republics existed before the federation incorrect, i.e., fiction especially in the Croatian case whose borders are damaged, especially concerning Bosnia and Herzegovina and Serbia. The end of the work of the Arbitration Commission, which will later be the subject of criticism by the professional public, legally ended the disintegration of Yugoslavia in favor of Slovenia and Croatia, to the detriment of Yugoslav communist dogmatists and Greater Serbia extremists who were especially revolted by the Commission's opinion. BiH does not have the right to self-determination and secession, which it will resolutely reject through an armed uprising, although this position will not be respected by the international community in the later years of the war, proposing the Z4 plan and recognizing the Republika Srpska.

Conclusion

Yugoslavia as a state was a product of the will of the victorious countries of the First World War, which they confirmed after the victory in the Second World War. Its survival was strongly linked to the authoritarian regimes that governed it and the stability of the international political order, which is evident because Yugoslavia really fell apart twice with the outbreak of World War II and the collapse of the communist bloc when it ceased to exist as a subject of international law. Thus, it should be emphasized that *de jure* Yugoslavia disintegrated only once, in 1991, given that the international legal order did not recognize the states created by the occupation of Yugoslavia. Therefore, Yugoslavia in its existence should be viewed as a single state-legal entity, and use the colloquial names First (monarchist) and Second (Tito's) Yugoslavia only to indicate a change in the internal structure and regime of the state, because today in public the same colloquial names are used to distinguish two separate states, which is a legally incorrect conclusion.

During the existence of Yugoslavia, the most critical internal political issue for Croats and Croatian politicians was the so-called national question, that is, the "Croatian question" which divided Croatian politics into supporters of two solutions: the solution of the Croatian question within the framework of Yugoslavia and the solution of the Croatian question with the establishment of an independent Croatian state. Proponents of Croatian national independence within the Yugoslav state saw the solution in the federalization of Yugoslavia and established the Banovina of Croatia in 1939 and during the Second World War, the Federal State of Croatia (later the People's Republic of Croatia, i.e., the Republic of Croatia). Unlike communist Croatia, the Banovina of Croatia

did not have a regulated constitutional and legal status. However, its advantages were that it was defined as a separate autonomous unit of the Croatian people in Yugoslavia, and there were significant political, economic and religious freedoms compared to communist Croatia. On the other hand, socialist federal Croatia was founded as a state of Croatian and Serbian people, subordinated to the communist dictatorship in which the bearer of sovereignty was the working people represented in SKH as an integral part of SKJ, and it did not have its foundations in the historical statehood of the Croatian people but in the victory of communism in the Second World War.

In their legally non-binding part, the Titoist federal constitutions emphasized the right of the Yugoslav peoples to self-determination, which included secession. However, it is clear from the constitutional texts that there was no constitutional right of republics and peoples to unilaterally declare the severance of state-legal ties with Yugoslavia based on constitutional powers, which would be contrary to their legal and political purpose established in order to prevent the disintegration of Yugoslavia by resolving the national question, and not to accelerate it. Even the Croatian socialist constitutional-legal science defined the establishment of the Croatian federal unit and its statehood as a revolutionary process that took place in parallel to the building of federal bodies and federal statehood, and are inextricably linked to the National Liberation War, and it is the formation of federal units in this context that represents the right to self-determination of the people. In that direction, the mentioned legal experts pointed out that the statehood of a nation is reflected not only in the right to self-determination but also in self-government, which did not exist outside the framework of the constitutional order of the SFRY.⁶⁸ Yugoslav

⁶⁸ Op.cit., Mratović, Filipović, Sokol, p.163-164

legal and political science unanimously cited the creation of a special type of Yugoslav self-governing socialism as the motivation for leading the 1963 and 1974 constitutions. Degan described socialist Yugoslavia as a federation in which the unit and its citizens “were not an independent subject of decision-making” until 1971 when the republics were given the right to connect independently with foreign organizations, but not the right to diplomatic relations and representation in the UN and political organizations like the republics of the Soviet Union had.⁶⁹ The validity of socialist constitutions should also be called into question here. Although representative bodies passed them, i.e., the Parliament of the SRH and the National Assembly of the SFRY, the notorious fact is that the convening of representative bodies was the will of the communist dictatorship, not the people of Yugoslavia, and thus the Croatian people. Moreover, the constitutional provisions were not adhered to by the government either, as is evident from some constitutional guarantees such as the right to freedom of speech, press, religion, etc., which did not exist in everyday life.

Croatia acquired its right to independence by adopting the Christmas Constitution in Art. 140. With the then constitution, Croatia denied all the values of the Yugoslav constitutions and joined the circle of Western countries. By amending the Constitution, the Republic of Croatia also valued our Yugoslav and communist past in Art. 135 of the Constitution prohibits any future association in the Yugoslav and Balkan state alliances in any form.⁷⁰

The Christmas Constitution as the foundation of Croatian independence is supported by the opinions of the Badinter Commission, which legal experts have criticized. However, the fact is that the principle of people’s self-determination is a very sensitive issue for the

⁶⁹ Op.cit. Degan, Vladimir – Đuro, str. 254-255

⁷⁰ <https://www.zakon.hr/z/94/Ustav-Republike-Hrvatske>, „Ustav Republike Hrvatske” accessed 31. January 2021.

international order, but Croatian independence has legal bases in international legal acts as it was stated. Indeed, the most significant merits in the process of independence are the merits of Croatian volunteers from the ZNG, MUP, and HOS, who successfully rejected Serb-communist aggression until Croatia's international recognition, thus imposing the existence of an independent Croatian state as a fact to international recognition after which the Republic of Croatia became a subject of international law starting on October 8, 1991. Concerning the aggression, it should be noted that ideological formulations of the right to self-determination but also other constitutional fictions without foundation in real political life, such as the proclamation of a separate position of Serbs in Croatia, contributed to the escalation of the conflict, as a reason for JNA aggression thousands of lives lost in the war and war crimes of the JNA and Serbian paramilitaries.

Perhaps the grammatical contradictions of the constitutional provisions of the Croatian constitution and the unnecessary mention of the socialist period lead to daily debates and politicization of the topic of the Croatian position in Yugoslavia. Therefore, in the event of a change in the Constitution, the constitutional writer should change the preamble of the Croatian constitution and state law based on the state tradition of the Croatian crown, the right to self-determination of the Croatian people, and victory in the Homeland War and skip the period between 1918 and 1990, thus excluding all undemocratic regimes from its legal history as Slovakia did. Such a solution would also satisfy the constitutional-legal criterion of state succession because state law arising from the state-legal tradition of the Kingdom of Croatia is not identical to the state-legal foundations of the Banovina of Croatia and SRH, given that Yugoslavia drew its legal integrity as a subject of internatio-

nal law from the statehood of the Kingdom of Serbia, i.e., by the decision of the European powers on the recognition of the independence and sovereignty of Serbia at the Berlin Congress in 1878. If the Croatian legislator and constitutional-legal science insisted on state law from the period of Yugoslavia, it would mean at the same time renunciation of Croatian state law and the beginning of our state and constitutional history with the Kingdom of Serbia as a legal ancestor, which would contradict even “Basic Provisions”. Therefore, the choice of Croatian legal science and politics remains whether the modern Croatian state will affirm itself as the legal successor of the Croatian state created in the Middle Ages within European culture and tradition, which is confirmed by the democratic declaration of the Croatian people and victory in the Homeland War or within a Balkan artificial creation marked by dictatorships that took tens of thousands of lives.

In conclusion, this paper presents a new perspective of recent Croatian legal history that gives a new interpretation of the legal foundations of the modern Croatian state, omitting the legacy of the communist Yugoslav regime, relying on the constitutional interpretation of SFRY constitutional experts and international legal experts who studied Yugoslav constitutions during the constitutional crisis and its international relevance during the Homeland War, but also during the trials before the International Tribunal for the Former Yugoslavia. Indeed, it is clear from the above texts that Yugoslav, and even then Croatian, constitutional experts saw in the new constitution only one stage in developing self-governing socialism, but not a legal basis for secession. It was only with the disintegration of Yugoslavia that an interpretation emerged which sought to give the 1974 Constitution a state-building significance for the former Yugoslav republics, which shows that such an atti-

tude was taken because of external and internal political circumstances at the time, and not because the right to self-determination along with secession was an inalienable constitutional right of the people of the former SFRY. Furthermore, as already mentioned, the international profession took the same position, stating that the right to self-determination in the context of Tito's constitutions was a kind of excuse for the existence of Yugoslavia. Indeed, the constitutional position of the Croatian people in Yugoslavia and the affirmation of its statehood within Yugoslav constitutionalism is still an insufficiently researched topic, and each of the three socialist constitutions deserves a thorough scientific analysis for a better understanding of modern Croatian history but also for future relations between Croatia and neighboring former Yugoslav republics, Serbia and Bosnia and Herzegovina due to unresolved legal, border, and diplomatic issues that have remained unresolved since the breakup of Yugoslavia and the resolution of the "Croatian issue" in BiH. The decision of the Croatian people and the victory in the Homeland War defeated the idea of Yugoslavia, but it still exists in certain spheres of political, cultural, and scientific life, while it is clear that it has not lost its appeal to the international community through its policy towards former republics and forced regionalization and defining the Western Balkans as a political concept, ignoring the fact that Yugoslav ideology, in its integral and communist form, was a spark of bloody wars and suffering of all South Slavic peoples and a justification for the existence of violent and authoritarian totalitarian regimes.

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