

# Croatian Constitutionalism from Autonomy to the State

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## ABSTRACT

Croatian regions in Austro-Hungary, among which the autonomous kingdoms of Croatia and Slavonia, had a special significance, entered the newly created unitary Yugoslav kingdom in 1918. The initial enthusiasm for the unification was replaced by the dissatisfaction of Croats, whose interests were then satisfied within the autonomous Banate of Croatia formed in 1939. After the break-up of the Yugoslav kingdom, the short-lasting puppet state Independent State of Croatia was established in 1941, while the foundations of the Yugoslav communist federation with federal Croatia were laid down in 1943 and transformed into constitutional form in 1946 and 1947. For a long time, the federal centre dominated the formally sovereign republics, but the wide decentralisation in 1974 enabled Croatia to establish constitutional and legislative framework that later became the basis of its transition to independence. Only a few elements from that period are retained in the Constitution of the Republic of Croatia of 1990, which was set on a completely new basis modelled on Western constitutionality. The core line of Croatian constitutional development is grounded upon its autonomy in the decentralised and multi-cultural frameworks and building-up of independence.

## KEYWORDS

Croatian constitutional development, Croatian constitution, Croatian autonomy, self-determination of peoples, right to secession, dissolution of Yugoslavia.

## 1. Introduction

Croatian ‘proto-constitutionality’ developed in the autonomous kingdoms of Croatia and Slavonia in the Hungarian part of Austro-Hungary. Only few institutional relics from that period remained in the newly formed unitary Yugoslav state, but in 1939 Croatia gained autonomy at the quarter of territory of Yugoslavia. From 1941 to 1945, Croatia existed as the fascist puppet state that encompassed the whole of Bosnia and Herzegovina. From 1943/1944 and 1946/1947, Croatia was established as a republic within the Yugoslav communist federation in the current Croatian borders. The federal constitutional arrangement partly determined the process of achieving Croatian independence and affected the building-up of institutions of the new state.

We will set up our presentation of Croatia’s constitutional development following this historical scheme. We will first present institutions of the Kingdoms of Croatia

and Slavonia, continue with description of the Croatian institutional and territorial frameworks in the period after 1918 and through the twentieth century and pay special attention to the position of Croatia in the last phase of Yugoslavia as well as to the process of making and revising the contemporary Croatian constitution.

## **2. The Kingdoms of Croatia and Slavonia and the Croatian regions in Austro-Hungary**

Until 1918, all the regions that make up the present-day Republic of Croatia laid within the borders of Austro-Hungary. The autonomous position of Croatia-Slavonia in the Hungarian half of the monarchy was a residue of the medieval Croatian Kingdom that had joined the Hungarian Kingdom through the coronation of Coloman Árpád as Croatian King in 1102. From the feudal period, Croatia-Slavonia inherited institution of the *ban* as the king's deputy, its own diet and counties with extensive local autonomy. These institutions operated in complementary manner with the central Hungarian institutions, but the strengthening of Hungarian and Croatian nationalism in the nineteenth century challenged the common Hungarian-Croatian institutional framework.

Croatian-Hungarian relations were finally settled by the sub-dual Croatian-Hungarian Compromise in 1868, which guaranteed extensive Croatian autonomy but also provided the Hungarian government with control mechanisms. Croatia-Slavonia thus had its own diet, the *ban* and the Supreme Court, with presumptive jurisdiction in all matters not defined as 'common' Hungarian-Croatian affairs. The central figure was the *ban* who presided over 'the autonomous government', which consisted of administrative departments with all executive powers concentrated in the *ban's* hands.<sup>1</sup>

The inconsistent text of the Croatian-Hungarian Compromise gave ground to Croatian, Hungarian, Austrian as well as European public lawyers to interpret the position of Croatia-Slavonia in the range from extended provincial autonomy to state.<sup>2</sup> However, public finances were exclusively 'common' (i.e. Hungarian) competence, the Hungarian government participated in the nomination of the *ban*, and it also indirectly influenced autonomous legislation; thus, Croatia-Slavonia enjoyed only an extended autonomy, even though unique in the monarchy. The Hungarian government effectively blocked Croatian attempts to provide for more independent and 'state-like' forms of autonomy in the 1870s.<sup>3</sup>

The main Croatian national goal in the nineteenth century was the national unification into an autonomous or independent unit that would encompass lands – primarily Croatia-Slavonia and Dalmatia, which, according to their ethnic composition or historical affiliation with the medieval Croatian Kingdom, were considered Croatian. Since this goal could not be achieved in the union with Hungary, Croatian political parties looked

1 Čepulo, 2015, pp. 61 et seq.

2 See Heka, 2019, pp. 136–147.

3 Čepulo, 2006, pp. 70–80.

for other options. Two main concepts that emerged were the trialism i.e. establishment of the third unit of the monarchy, which would encompass South Slavic parts of the monarchy and had its capital in Zagreb, and the unification of the South Slavic parts of the monarchy with the kingdoms of Serbia and Montenegro into the new Yugoslav state. The Croatian national unification was thus perceived in the context of the South Slavic unification. The third idea of establishing the Croatian nation state did not fully correspond to the real conditions and had a weaker influence than the previous two ideas.<sup>4</sup>

The turbulent end of World War I saw the establishment of the State of Slovenes, Croats and Serbs (State of SCS) that was formed at the intersection of the first two ideas on 29 October 1918. This highly decentralised state provisorium with the capital in Zagreb encompassed the South Slavic parts of Austro-Hungary; the state was not internationally recognised, and it was burdened with serious internal and external problems. These conditions dramatically accelerated the intended unification of that state with Serbia and Montenegro into a new Yugoslav state, which was projected at the Versailles Conference. The delegation of the State of SCS, burdened with the problems and confronted with the pressure of the Serbian side at the negotiations in Belgrade, gave up decentralisation as the main precondition for unification. The Kingdom of Serbs, Croats and Slovenes was then proclaimed by the Serbian regent Alexander on 1 December 1918.<sup>5</sup>

Such a way of formation of the Yugoslav kingdom did not provide for the persuasive legitimacy of the new state, but it only had to be built *a posteriori*, through the practice of state institutions.

### 3. The Yugoslav state and Croatian–Serbian tensions

The new state was based on the idea of the single ‘three-tribal Serbo-Croatian-Slovene people’ with a single ‘Serbo-Croatian-Slovene’ language, which was to be effectively united as against the previous historical divisions, with Macedonians and Montenegrins presumably absorbed by Serbs. It was the basis of the unitary structure of the state grounded in the undemocratically passed Vidovdan Constitution of 1921. The administrative division of the country into 33 circuits was conducted according to natural and social conditions with the intention of deconstructing previous historical, ethnic and cultural identities.<sup>6</sup> The circuits were subordinated to the government in accordance with the Serbian administrative tradition, lacking an intermediate level of self-governing districts characteristic of the Croatian administration.

However, the inherited legal heterogeneity of the country prevented a faster legal unification; thus, contrary to strict administrative centralization, there remained six so-called ‘legal regions’ with inherited different forms of judicial organisation,

4 Survey of the Croatian national ideologies seen in Banac, 1984, pp. 70–115.

5 Goldstein, 2011, pp. 111–112.

6 Lampe, 2000, p. 133.

including their own supreme courts as well as inherited private and criminal law. Among these regions were ‘the Croatian-Slavonian region’, with the judiciary and the law inherited from the Kingdom of Croatia and Slavonia, and ‘the Slovenian-Dalmatian region’, with the inherited Austrian judiciary and law. The Table of Seven in Zagreb, organised in two sub-sections, acted as the Supreme Court for both these regions.

Yet, the new order generally followed traditions of the Serbian nation state based on a single (Serbian) language and cultural identity, centralised administration and Serbian military tradition. The Serbian political elite considered Serbs the ‘war winners’ and ‘liberators’ with tradition of its own state that suffered great casualties in the war and due to such role deserved to have dominant position in the new state.<sup>7</sup> Such a posture contradicted the Croatian expectations of equal position of ‘the tribes’ with their particular self-governments. These expectations stemmed from the long Croatian tradition of life in decentralised and multi-cultural constitutional frameworks with their own autonomy – i.e. differences between Croatian and Serbian political cultures were significant.<sup>8</sup> The projected merge of the ‘three tribes’ met the resistance and, from the very beginning, resulted in the division of political parties in Yugoslavia into a dominant centralist-unitarian bloc and opposing federalist bloc, with unstable governments led by Serbian parties.

Among the federalist parties, Stjepan Radić’s Croatian Peasant Party was in the lead, advocating decentralisation and the establishment of an autonomous Croatian unit. The party evolved into the mass Croatian national movement, yet without serious prospects of changing the country’s political direction. Instead, this direction changed with Radić’s coalition with Svetozar Pribičević, a disappointed leader of Serbs from the former Austro-Hungarian territories who replaced his radical Yugoslav-Unitarian views with support for Radić’s federalism. Pribičević advocated the cooperation of Croats and Serbs in the former Austro-Hungarian regions, believing that their conflicts were encouraged and exploited by the ruling Serbian elite.<sup>9</sup>

Political tensions caused by the new constellation culminated in the assassination of Radić and two Croatian Peasant Party’s deputies in the parliament by a member of the (Serbian) National Radical Party. The assassination provoked mass demonstrations in Croatian regions and the fall of the government. The king took political destabilisation as an excuse for a *coup d’etat*, which he used to concentrate all power in his hands and impose a policy of radical Yugoslav integralism. The state was renamed Kingdom of Yugoslavia, and the use of ethnic denominations in political life was banned or severely restricted. The state was divided into nine *banovinas* designed to provide for their multi-ethnic composition, with Serbs included in as

7 Goldstein, 2011, pp. 112-113.

8 See Banac, 1984, pp. 141 et seq.

9 On Svetozar Pribičević see Banac, 1984, pp. 170 et seq.

many units as possible.<sup>10</sup> Such situation remained unchanged after the Constitution of 1931 imposed by the king as well as after assassination of King Alexander in 1934, which was organised by the Croatian radical nationalist *Ustasha* movement and the Macedonian nationalists. However, the fear of a possible disintegration of the state in the case of war or serious international crisis prompted the Royal Regency to search for a solution to the ‘Croatian Question’ in 1939.

#### 4. The Banate of Croatia (1939–1941)

Prime Minister Dragiša Cvetković and Vladko Maček, leader of the Croatian Peasants’ Party, reached a political agreement in 1939, the content of which was turned into the Decree on the Banate (*Banovina*) of Croatia passed by the Royal Regency. The decree established the new autonomous unit of the Banate of Croatia based on ethnic criteria and covering a quarter of the territory of the state, including a large part of Bosnia and Herzegovina.<sup>11</sup>

The decree was based on the constitutional provision on the state of emergency that gave the Royal Regency legislative powers with an obligation to submit such decrees for parliament approval, but the parliament was dissolved on the same formal ground. Thus, the decretal establishment of the autonomous Banate of Croatia was not only a constitutional *provisorium* but also the *de facto* revision of the unitary 1931 constitution; it was the way by which the Royal Regency avoided the lengthy procedure of regular revision and possible obstruction by military circles and Serbian deputies in the parliament.<sup>12</sup> Nevertheless, Maček accepted such *provisorium* as a good basis for the Croatian interests, believing that reversal to previous conditions was not possible.

The Banate of Croatia had a complete structure of power, with its own public finances and the king as the only superior power. The Banate’s organisation resembled to the former Kingdoms of Croatia and Slavonia with the *ban* as the head of the administration and focus of all executive powers. Yet, its autonomy was wider and better protected from external influences than former Croatia-Slavonia, and the Banate encompassed a much wider territory than its predecessor. The Banate’s government began to introduce new institutions partly modelled upon the institutions of the Kingdom of Croatia and Slavonia yet tending to strengthen position of the *ban*, but the process was not completed due to the breakdown of Yugoslavia in the short war of 1941.<sup>13</sup>

10 On King Alexander’s dictatorship, see Lampe, 2000, pp. 163–176.

11 On the territory and ethnic composition of the Banate of Croatia, see Šlabek, 1997, pp. 60–61.

12 Opinions of constitutional experts in regard to the Banate of Croatia, see Šlabek, 1997, pp. 94–112.

13 On the organization of the Banate of Croatia, see Šlabek, 1997, pp. 62–66.

## 5. Independent State of Croatia (1941–1945)

The German plan of breaking up Yugoslavia provided for the establishment of the Croatian state, but Vladko Maček turned down the German offer to be its leader, which opened space for Italy to put the *Ustashas* and their leader Ante Pavelić – whom Italy had supported since foundation of that movement – into power.<sup>14</sup> The Independent State of Croatia (ISC) that was soon established was based on a typical totalitarian concept with all powers embodied by ‘the Head’ (*Poglavnik*) as an incarnation of the nation, with a merging of the state and party apparatus and the *Ustasha* as the only allowed political party. Both Germany and Italy had a decisive influence on the politics of the ISC and stationed their troops there.

As early as 1941, racial laws modelled upon the Nuremberg Laws were enacted, and a policy of extermination of Jews, Serbs and Roma was executed. The territory of the ISC encompassed the whole of Bosnia and Herzegovina, but Italian patronage was paid for by ceding to Italy large parts of Dalmatia and the coastal areas. The Roma Agreements between the ISC and the Kingdom of Italy from 1941 would allow the ISC to become the Kingdom of Croatia. These agreements were soon implemented by the legislation of the ISC, but the Italian Duke of Spoleto withdrew his acceptance to become the Croatian king; thus, the ISC formally remained a kingdom but practically without any traces of the monarchy.<sup>15</sup>

## 6. The beginnings of the communist federation and federal Croatia in 1943

Although the establishment of the Banate of Croatia announced a possible federalist reorganisation of Yugoslavia, the building up of the communist federation that begun in 1943 was not a continuation of these tendencies but a part of the communist approach to the national question. From 1924, the Communist Party of Yugoslavia (CPY) abandoned its previous unitary concept of the nation and state and criticised Yugoslavia as an artificial, imperialistic product based on Serbian hegemony, advocating its dissolution into independent states that would form the Balkan socialist federation.<sup>16</sup> Such a solution reflected Lenin’s solution of the national question in Russia, and at the same time aimed at breaking up Yugoslavia as a part of the *cordon sanitaire* around Soviet Russia. This plan was replaced with the more realistic policy of transformation of Yugoslavia into a federation in 1937, when the communist parties of Croatia and Slovenia were founded within the CPY.<sup>17</sup>

14 Goldstein, 2011, pp. 126 et seq.

15 On Independent State of Croatia, see Goldstein, 2011, pp. 131–140.

16 Vujošević, 1985, pp. 98–99.

17 Vujošević, 1985, pp. 144, 150–151.

Shortly after the breakdown of Yugoslavia, the CPY organised an uprising, and in addition to military organisation, it also established a civilian government. In 1942, the Anti-Fascist Council of the People's Liberation of Yugoslavia (ACPLY) was formed as a political representative body of the Yugoslav countries, which at its 1943 session proclaimed itself a parliament and passed some fundamental decisions. The most important were that the final decision on the form of government of Yugoslavia would be made by the people after the war and that a new democratic Yugoslavia would be built as a federation of the peoples of Yugoslavia – Croats, Montenegrins, Macedonians, Serbs and Slovenes – united in Yugoslavia based on the right to self-determination and secession of each people. The following year, the Land's Anti-Fascist Council of the People's Liberation of Croatia proclaimed itself the parliament of Croatia and, based on the right of the Croatian people to self-determination and secession, proclaimed the unification into federal Yugoslavia.<sup>18</sup> Thus, federal Yugoslavia was built top-bottom and upon the fictional narrative that representatives appointed within the partisan movement were legitimate representatives of the respective lands. Again, the legitimacy for that construction was to be searched *a posteriori*.

## **7. Sovereignty of the republics and right of the peoples to self-determination and secession**

The actual control of the communist authorities on the ground eliminated the effective presence of a political alternative, and the Communist Party members or communist sympathisers were the predominant majority of the Constitutional Assembly that in 1946 accepted the Constitution of the Federal People's Republic of Yugoslavia based on the Soviet model; only afterwards did the individual republics pass their own constitutions. The Constitution of the People's Republic of Croatia from 1947 constituted Croatia on the basis of the right of the Croatian people to self-determination as a state that formed the Yugoslav federation together with other republics. The new Croatian internal borders with other Yugoslav republics, which are still present, were set in 1945 and 1947 by the Yugoslav communist and state leadership through a combination of historical and ethnic as well as pragmatic criteria.<sup>19</sup> The Croatian borders with Italy and Hungary are the inherited international borders of Yugoslavia.

The Yugoslav federation was set upon the concept of shared sovereignty with republics as the bearers of the original sovereignty, which was partly delegated to the federal state and partly remained in the republics. In reality, especially in the first period, the broad federal jurisdiction and political power concentrated in the Communist Party made republican sovereignties half-empty institutional shells. Yet, the individual republican identities were emerging, and their importance was gradually

18 Stefanović, 1950, pp. 174–181, 208–213.

19 Radelić, 2006, pp. 134–151.

growing. The split of Yugoslavia with the Soviet Union in 1948 led to introduction of the concept of self-management with elements of a market economy as well as to the constant search of the communist leadership for balanced constitutional solutions. In these debates, the Croatian and Slovene communist leadership continuously advocated political and economic decentralisation, while the centralist views were represented by the Serbian leadership.<sup>20</sup>

An important legitimising basis of the federal system and theoretical fundament of the federal structure was the right to self-determination and secession of the peoples, which was included in all federal and republican constitutions. That right was rooted in Lenin's doctrine as a guarantee of the freedom of small nations against the hegemony of big nations. The Constitution of the USSR from 1936 formulated that right in its 'normative' part (Art. 17) as an explicit right of every republic to secede.<sup>21</sup> Conversely, the Yugoslav federal constitutions formulated it (only) in their preambles as the right of the peoples to self-determination, which included the right to secession and the right to associate with other peoples and states. Republican constitutions then proclaimed the right to self-determination and secession of 'their' own nations, except 'mixed' Bosnia and Herzegovina.<sup>22</sup> Of course, both in the Soviet and the Yugoslav reality, the right to secession only had a 'semantic' meaning, it was not seen as a real right, and no particular attention was paid to it in constitutional theory; yet, it still had symbolic significance.

Some Yugoslav constitutional theorists have disputed the existence of republican sovereignty as well as of the right to self-determination and secession of the peoples. They have denied their actual meaning as being 'consumed' at the moment of the formation of the federal state or as conceptually inexistent due to exclusivity of state sovereignty.<sup>23</sup> Slovenian and Croatian constitutional experts have opposed this thesis, warning that the right to self-determination is permanent by its nature.<sup>24</sup> Nevertheless, a general consensus has been reached on the right to self-determination and secession belonging to 'the peoples' listed in the federal constitution, i.e. Croats, Macedonians, Montenegrins, Serbs and Slovenes.<sup>25</sup> Yet, there is no disagreement about whether the right to self-determination could be claimed by these 'peoples' as ethno-national groups, regardless of republican borders, or whether it can be claimed

20 Radelić, 2006, pp. 340 et seq.

21 1936 constitution of the USSR.

22 On the right of self-determination and secession in Yugoslavia, see Čepulo, 2021, pp. 366–369.

23 Stefanović, 1956, p. 415.

24 Šnuderl, 1950, pp. 178 et seq.

25 The Yugoslav federal constitutions explicitly listed these five 'peoples' that enjoyed the right to self-determination and secession upon which they formed the federation – the constitutional doctrine called them 'the constituent peoples'. Other ethnicities were considered national minorities that did not enjoy these rights. The term 'national minorities' was replaced with '*nationalities*' in the federal and republican constitutions of 1974. See Stefanović, 1950, p. 177.



only by the particular ‘constituent people’ of its own particular republic with a reference to that republic, similar to the Soviet constitution.<sup>26</sup>

## 8. Yugoslav and Croatian constitutions of 1974

The search for an optimal constitutional solution in Yugoslavia was reflected in the constitutional experimentation through four periods in which new federal and republican constitutions or constitutional acts were adopted (1946, 1953, 1963 and 1974). The position of the republics evolved from strictly reduced autonomy in 1946 to a strengthened position in the 1974 constitutional arrangement.

The Constitution of the SFRY of 1974 introduced much broader competences for the republics, their equal representation in all collegial bodies of the federation, and compulsory consensus of all republics and autonomous provinces in the adoption of the most important federal laws. Challenges of such a complex decision-making system were reduced by the integrative function of the League of Communists of Yugoslavia (LCY) and the charismatic role of Josip Broz Tito.<sup>27</sup>

The decentralisation of 1974 was reflected in the Constitution of the Socialist Republic of Croatia of 1974, which emphasised the republic’s state attributions. The Croatian constitution provided for new definition of Croatia in Article 1 stating that Croatia was “the nation state of the Croatian people, the state of the Serbian people in Croatia and the state of other peoples and nationalities living in it”.<sup>28</sup> For the first time, the constitution provided the national anthem, and it was the only such case in Yugoslavia. The transfer of federal jurisdiction to the republican level was used in Croatia to create its own legal system more independently, especially in the areas of family law, criminal law, public administration and organisation of courts. Thus, Croatia was the only republic to establish, in 1977, a special administrative court that remained part of the Croatian legal system up to today. The same goes with the Constitutional Court that was introduced in the federation and all republics in 1963. The Croatian Constitution of 1974 also paid considerable attention to the Territorial Defence – a sort of national guard in each of the republics with its own organisation, command and weaponry, which was soon set under the control of the Yugoslav People’s Army (YPA) and disarmed in early 1990. Together with Slovenia, Croatia took advantage of the possibility of international cooperation within the framework of the federal

26 The first federal constitutions mentioned only ‘the peoples’ as the constituent element of the federation; yet, the 1971 amendments incorporated into the 1974 Constitution of SFRY declared for the first time that the federation was constituted by the peoples and *their* republics, which supported the latter interpretation. Even without this provision, the understanding of individual republics as the federal states of particular nations (except Bosnia and Herzegovina) was built in the logic of the system; thus, in 1950 Stefanović stated that “each constituent people of Yugoslavia got its own particular unit” Čepulo, 2021, pp. 357, 368; Stefanović, 1950, p. 177.

27 Čepulo, 2021, pp. 359–363.

28 Art. 1 of the Constitution of SFRY, see Ustav Socijalističke Federativne Republike Jugoslavije.

foreign policy provided by the federal constitution, and together with several Italian, Austrian and German provinces, it established the Alps-Adriatic Working Community in the fields of transport, agriculture, ecology and culture, arousing suspicion and discrete objections by other republics. Thus, the constitutional framework of 1974 strengthened the constitutional and political identity of Croatia without challenging the federal arrangement.<sup>29</sup>

## 9. Disintegration of Yugoslavia and multi-party elections in Croatia

The death of Josip Broz Tito in 1980 opened up the possibility for disintegrative processes in Yugoslavia and increased tensions between the republics and the autonomous provinces. By far, the most important role was played by the Serbian mass nationalist movement led by the Serbian communist and populist leader Slobodan Milošević. At the same time, new political movements emerged in Slovenia and Croatia demanding democratic elections. A political decision on multi-party elections in Croatia was made in December 1989 by the Croatian communist leadership not only due to the political pressure in Croatia but also due to the estimation that Milošević's Greater Serbian policy was leading to the break-up of Yugoslavia and endangered Croatia's territorial integrity.<sup>30</sup> Thus, the transition to a multi-party system was partly motivated by the necessity to provide democratic legitimacy to the republican authorities in future challenges.

In January 1990, the League of Communists of Yugoslavia disappeared from the political scene after Slovenian and Croatian delegations left its extraordinary Congress in Belgrade, and the communist parties in the republics reconstituted themselves into independent social democratic parties.

The League of Communists of Croatia changed its name to the Party of Democratic Changes, but instead of its expected victory on the ground of d'Hondt's electoral model, the nationalist Croatian Democratic Union won the absolute parliamentary majority. Soon, the constitutional amendments removed the ideological features from the Croatian constitution, introduced new national symbols and re-designed the government's organisation into a more state-like look. Franjo Tuđman was elected President of the Republic but also retained the position of president of the Croatian Democratic Union.<sup>31</sup>

29 On the institutional individuality of Croatia after 1974, see Čepulo, 2021, pp. 365–366.

30 Bilandžić, 1999, pp. 767–768; Radelić, 2006, pp. 590–591.

31 Goldstein, 2011, p. 218.

## 10. Constitution of the Republic of Croatia 1990

The new Constitution of the Republic of Croatia, proclaimed on 22 December 1990, was in a principle based on the Western model of constitutionality. The committee that prepared the constitution explicitly stated that it should be grounded on “the positive Croatian constitutional tradition” and on “the return to the European tradition with consideration of the North-American tradition”.<sup>32</sup> As it regards the Croatian tradition, the committee explicitly stated that the stress should be on the nineteenth and twentieth centuries, including constitutional heritage based on the Land’s Anti-fascist Council of the Peoples Liberation of Croatia and the Anti-fascist Council of the Peoples Liberation of Yugoslavia up to contemporary times,<sup>33</sup> which included all constitutional acts from 1943 up to the last Constitution of 1974. In reality, history was present only in the debates about the extensive, predominantly ‘historical’ preamble that reconstructed all main events of the Croatian constitutional development from the ninth century to 1990<sup>34</sup>; thus, the proclaimed inspiration from tradition was not reflected in practice.

The core position at the constitution had the French semi-presidential model with strong powers of the president of the republic elected in direct elections. The main reason for the implementation of that model was that it reconciled democracy and concentration of powers in one person, necessary in the turbulent conditions of the time.<sup>35</sup> ‘Supportive’ arguments were that the semi-presidential model was already accepted in some other post-communist states as well as that it corresponded to the Croatian tradition.<sup>36</sup> Other constitutional provisions were also based on comparative constitutional legislation and common juridical sense without inspiration from tradition. Thus, despite definition of Croatia as a unitary state and contrary to the tradition of a single-chambered Croatian parliament (except during the communist era), this was established as bicameral, consisting of the House of Representatives and the County House with suspensive veto power. The latter chamber was introduced upon strict insistence of President Tudjman, who followed advice of his American adviser

32 Šarin, 1997, p. 10. The term ‘positive’ should be taken as value-oriented and neglecting the heritage of the Independent State of Croatia as well as the ideological and authoritarian dimensions of the regulation during a period of the communist federation.

33 Šarin, 1997, p. 11.

34 Interesting enough, most of the experts consulted when drafting the constitution criticised such preamble as overly historical and too long, and they pleaded for a shorter and more apprehensive one. It was obviously due to President Tudjman’s conviction that such preamble was necessary at the course of the time that it remained in the constitution. See Šarin, 1997, pp. 90–91, 96–97, 119, 173–174.

35 Šarin, 1997, pp. 93, 97. Semi-presidential model definitely proved itself as the rational solution at that time; yet it is also true that such concentration of power corresponded well with the authoritarian style of President Tudjman. In addition, it is interesting that Professor Smiljko Sokol, the main constitutional adviser of President Tudjman, was specialised in French constitutional law.

36 That argument probably referred to the position of the *ban* in the Kingdom of Croatia and Slavonia and in the Banate of Croatia.

– yet, it was the Spanish and Italian bicameralism with much weaker competences of the upper house, rather than the US Senate, that served as the final model.<sup>37</sup> The State Judicial Council, which appointed and relieved judges of their duties, was also rooted in the Italian model.<sup>38</sup>

An important provision that was extensively discussed was the definition of Croatia as the Croatian nation state. The Constitution of 1990 proclaimed in the preamble that

Republic of Croatia is established as the nation state of the Croatian people and the state of other peoples and minorities who are its citizens: Serbs, Muslims, Slovenes, Czechs, Slovaks, Italians, Hungarians, Jews and others, who are guaranteed equality with citizens of Croatian nationality and exercise national rights in accordance with the democratic norms of the OUN and countries of the free world.<sup>39</sup>

The list of minorities was significantly extended in 2010. Apart from such a definition, in the preamble, the constitution proclaimed people's sovereignty and the equal rights of citizens as the fundament of the Republic of Croatia in its Art. 1.

The definition of the nation state was obviously adapted from the Croatian Constitution of 1974; yet, unlike the original version, the 1990 definition did not mention Serbs in Croatia separately and as a collective unit ('the Serbian people in Croatia') but as (individual) Croatian citizens equated with members of other peoples and minorities. Representatives of Serbs in Croatia as well as leadership of Serbia protested against such definition on the ground that it deprived Serbs of the status of 'constituent people' in Croatia granted with the previous definition.<sup>40</sup> This difficult-to-accept objection<sup>41</sup> was one of principal declared reasons for the armed rebellion of the Serbian population in Croatia and their secession proclaimed on the basis of the historical sovereignty of the Serbian people and its right to self-determination.<sup>42</sup>

37 Constitutional experts unanimously opposed the idea of bicameralism with various arguments – tradition being among important ones – but could not persuade Tudjman, who had the final word in everything. Šarin, 1997, p. 128. Replacing the US model with Spanish and Italian bicameralism was in fact the damage control, yet this peculiar provision lasted only until 2001.

38 Uzelac, 2000, pp. 31 (n. 21), 35.

39 See the Constitution of the Republic of Croatia.

40 Rudolf, 2017, p. 52.

41 The intention of the 1974 Croatian Constitution makers was to stress the particular importance of Serbian people in Croatia and not to provide them with the status of 'constituent people' that would imply their respective right to self-determination and secession. Neither semantic nor contextual or historical approaches support this interpretation, even though the definition sounds ambiguous.

42 Brekalo, 1991, p. 556; Martinović, 2018, p. 381. The Serbian rebellion in Croatia, effectively supported by Serbia and the Yugoslav People's Army, turned into a real war in 1991–1992 and then into the lower-scale conflict that lasted until the Croatian offensives in 1995. Yet, neither the state of war nor the state of emergency was proclaimed in Croatia since it was estimated that it would be counterproductive to shift the activity of all institutions – and life in general – towards such a regime.

The Constitution of 1990 defined Croatia as a sovereign state but did not proclaim its independence; instead, it proclaimed that Croatia would remain within the SFRY until it was reorganised on the basis of agreement of the republics or until another decision of the Croatian Parliament – the latter part of the sentence announcing the possibility of a full independence. The constitution also contained provisions on the Croatian armed forces and foreign policy, which were suspended for the time by the constitution itself; the army and foreign policy were vital parts of the federal constitution, and their enforcement in the Croatian constitution could provoke the intervention of the Yugoslav army.<sup>43</sup> The Croatian leadership was still advocating the transformation of Yugoslavia into a confederation of sovereign states at that time, but it was ready to declare secession from Yugoslavia in the case of radical aggravation or of secession of Slovenia.<sup>44</sup>

## 11. Independence of Croatia

Since it was obvious that Serbia and Montenegro would not accept a confederal solution, a referendum was held in Croatia in May 1991 under international supervision. Almost a plebiscite support (93.24% of 83.56% of all voters) was given to the possible accession of Croatia to the Yugoslav confederation, and independence was proposed as an alternative if the confederal solution could not be achieved.<sup>45</sup> The Croatian Parliament then set 30 June as the deadline for agreement on confederation, and it was Slovenia's definite decision to proclaim independence that urged Croatia to follow.

Shortly before the expiration of the pronounced deadline, on 25 June 1991, the Croatian Parliament passed the Constitutional Decision on the Proclamation of the Sovereignty and Independence of the Republic of Croatia. Significantly, the decision referred to the “right of the Croatian people to self-determination, including the right to dissociate, and to associate with other peoples and states” and not to the right to secession guaranteed by the 1974 SFRY constitution and the 1990 Croatian Constitution. Reasons given for the decision on independence were that the SFRY did not act as a constitutionally regulated state and that it grossly violated human and minority rights and the rights of federal units, while the federal regulation did not provide for solution of the crisis, and the establishment of confederation had not taken place.<sup>46</sup>

43 Čepulo, 2021, p. 376.

44 Goldstein, 2011, p. 226.

45 The referendum question was a complex ‘umbrella question’ that did not mention independence explicitly but only implied it – yet, in the circumstances of the time, it was clear that it was the referendum for independence. The referendum question also noted that “the Republic of Croatia as a sovereign and independent state (...) grants cultural autonomy and all rights of citizens to Serbs and members of other nationalities in Croatia” (Goldstein, 2011, p. 222; Rudolf, 2017, pp. 498 et seq.).

46 Constitutional Decision on the Proclamation of the Sovereignty and Independence of the Republic of Croatia.

Such reasoning corresponded to the arguments commonly cited in international law as a justification for remedial secession on the basis of the right to self-determination that cannot be exercised within the existing state.<sup>47</sup>

However, although the Constitutional Decision on the Sovereignty and Independence stipulated that it would enter into force when proclaimed by the Croatian Parliament, the parliament did not do so, and the decision did not formally enter into force. This was a pragmatic move of the Croatian government to avoid escalation of the conflict with the YPA and condemnation by the international community. Yet, such formally non-existent decision still produced legal effects considering Croatia's reciprocal recognition with Slovenia and Lithuania, and the enforcement of the hitherto suspended constitutional provisions on the Croatian armed forces and foreign policy.<sup>48</sup>

The proclamation of independence has been interpreted by the Croatian side as the beginning of a multilateral process of 'dissociation' and not as a unilateral secession. 'Dissociation' was perceived as the process of resolving rights and obligations between the republics and the federation and at the same time as the process in which the new states are created and the existing state disappears. This projected outcome did not seem quite likely at that time, but the proclamations of independence of Macedonia and then of Bosnia and Herzegovina that followed provided a different perspective that would lead to the acceptance of 'dissolution' as the basis for the emergence of the new states and the disappearance of the SFRY.

On 8 July 1991, Croatia and Slovenia, the federal presidency, the federal government with YPA, and Serbia accepted the EEC's initiative for negotiations and a 3-month *moratorium* on further activities related to the independence of the two republics. Since no progress was made, the Croatian Parliament passed a decision on 8 October 1991, terminating all constitutional bonds with the SFRY. The decision proclaimed that the SFRY no longer existed and that the Republic of Croatia did not recognise legal acts on behalf of the federation, but it recognised the independence and sovereignty of other republics and continued the process of determining mutual rights and obligations.<sup>49</sup>

The majority of Croatian constitutional lawyers as well as part of international lawyers agree that Croatia gained independence with the decisions of 8 October 1991, which completed the process of dissociation that had begun on 25 June 1991, and that the Constitutional Decision on the Sovereignty and Independence of June 25 entered into force and began to produce legal effects on 8 October. A similar attitude was taken by the Croatian Supreme Court in 2010 and the Constitutional Court in 2015, which became the basis for the respective judicial and administrative practice.<sup>50</sup> However,

47 Thürer and Burri, 2008, p. 10; Thürer and Burri, 2009, p. 5.

48 Čepulo, 2021, p. 359.

49 Decision on the Sovereignty and Independence of the Republic of Croatia.

50 Omejec, 2015, pp. 49–71.

some experts believe that Croatia gained independence on 25 June 1991, when it had all attributes of a state and acted effectively as an independent state.<sup>51</sup>

## 12. International recognition of Croatia and constitutional guarantees

The process of establishment of Croatia's independence continued in the field of international law, with the important role of the International Conference on Yugoslavia and its Arbitration Committee, which consisted of the presidents of the constitutional courts from five EEC countries.<sup>52</sup> EEC set substantial preconditions for the recognition of new Eastern European states – protection of human rights, rule of law, democracy and protection of minorities – that necessarily affected the constitutions of former Yugoslav republics searching for recognition. In its opinion on the Croatian application for recognition, this committee pointed out that the country met these requirements but with the need to amend the Constitutional Law on Human Rights and Freedoms and the Rights of Ethnic and National Communities or Minorities, which Croatia did shortly after its recognition in January 1992.<sup>53</sup>

The committee further provided that the declarations of independence of individual republics were not 'secessions' (as claimed by Serbia) but part of the process of 'dissolution' of the federal state, which disappeared while each of the five proclaimed states<sup>54</sup> was to be considered a new state and an equal successor to the missing SFRY (as claimed by the four republics).<sup>55</sup> The commission also proclaimed that under international law, the right to self-determination did not include the right to secession of the Serbian people in Croatia and Bosnia and Herzegovina as one of 'the constituent peoples' of Yugoslavia, as claimed by Serbia. Instead, the Arbitration Committee found that the right of self-determination granted by international law provided each citizen of these two republics, including Serbs, a right to be recognised as a member of certain ethnic and other group and enjoy other human and minority rights in these republics. The committee also proclaimed that the borders between the republics cannot be unilaterally changed and that they turn into the international borders on

51 Rudolf, 2015, pp. 5–19; Šeks, 2015, pp. 21–48.

52 See Ragazzi, 1992, pp. 1488–1489.

53 See Ragazzi, 1992, p. 1492. Amendments of the respective Croatian Constitutional Law referred to the extended local autonomy of two special districts with the Serbian majority (Knin and Glina) and to the rights of national minorities making up over 8% of the population (only Serbs matched that criteria) as well as to establishment of the Provisional Court of Human Rights comprising five members, three of whom were to be appointed by the European Community and two by Croatia. Degan, 2002, pp. 247, 250–252.

54 I.e. Bosnia and Herzegovina, Croatia, Macedonia, Slovenia and the Federal Republic of Yugoslavia.

55 See Ragazzi, 1992, pp. 1490–1491.

the basis of the principle of *uti possidetis iuris*, as claimed by Croatia and Bosnia and Herzegovina.<sup>56</sup>

In fact, the successful self-determination of Yugoslav republics was primarily the product of rearrangements of power, and these formally non-binding opinions of the Arbitration Committee were not implemented immediately but only with time.<sup>57</sup> Yet, they gained a prominent place in international law, and together with the persuasive influence of rules and political expectations set by EEC, they were indirectly reflected in the constitutional law of the four new countries ‘tested’ before the Arbitration Committee.

However, the largest part of the occupied Croatian territory was reintegrated by force in 1995, after the rebel Serbian leadership definitively rejected the international plan for peaceful reintegration into the Republic of Croatia. At the same time, almost the entire remaining Serbian population from those areas permanently fled to Serbia, which reflected the respective special constitutional guarantees.<sup>58</sup> The remaining part of the occupied territory was peacefully reintegrated into Croatia under international supervision in 1998; thus, Croatia gained control over its entire territory and gradually moved from actual semi-war conditions to normality.

### 13. Constitutional revisions of 1997–2013

Stabilisation in the country affected the gradual turn of political activity towards international relations, as reflected in the constitutional amendments of December 1997, which provided the procedure for Croatia’s association with other countries and prohibited any association that might lead to the renewal of a South Slavic state union or any form of the Balkan state.<sup>59</sup> The latter provision reflected Croatian concerns with plans for the establishment of a post-Yugoslav association from Croatia

56 Ragazzi, 1992, p. 1491. The principle of *uti possidetis iuris* determines the borders on the land in principle, but the detailed and concrete determination of these borders requires the formal consent of the respective countries. Croatia reached such an agreement only with Bosnia and Herzegovina, although it still has not been ratified by either of the two parliaments and is thus applied in practice as provisional. In addition, the principle of *uti possidetis iuris* does not refer to the borders at the sea that were not previously determined and are still a matter of dispute in principle between Croatia and other neighboring former republics. It is the same with almost every other border between former Yugoslav republics.

57 Thürer and Burri, 2008, p. 9.

58 On the events in summer 1995, see Goldstein, 2011, pp. 252–254. The provisions on two special autonomous districts were suspended in September 1995 as inapplicable regarding the demographic changes, together with the Provisional Court of Human Rights. These issues are currently regulated by the Constitutional Act on the Rights of National Minorities, which, since 2010, guarantees national minorities that make up more than 1.5% of the total population (only Serbs) one to three seats in Parliament, while other minorities are organised in ‘clusters’, each of which is represented by one deputy (Degan, 2002, pp. 252–253. See also the Constitutional Act Amending the Constitutional National Minority Rights Act).

59 See the Constitution of the Republic of Croatia.



to Albania. However, despite internal stabilisation, the President of the Republic Franjo Tuđman continued to influence the legislature and the executive in a way that significant part of the professional and general public perceived as inconsistent with the spirit of separation of powers. This was an important reason for the turnover of the 2000 parliamentary and presidential elections that followed Tuđman's death in 1999. The same year, the new left-liberal majority significantly amended the constitution, reducing the president's powers and banning his membership in a political party, yet leaving him competences in foreign relations and in the control of secret services as well as direct elections for that position.<sup>60</sup> With these amendments, Croatia moved from a semi-presidential to a parliamentary system of government, but the popular legitimacy of the president of the republic as well as his 'residual' competences resulted in a system of political cohabitation and constant tensions between the president and the government. Informal initiatives for the replacement of such system with the president of the state elected by a two-third parliamentary majority did not get popular support.<sup>61</sup> The amendments of 2000 also extended the range of guarantees for human and minority rights. Further significant changes included the already mentioned abolition of the County House in 2001 due to its dysfunctionality, which made the Croatian Parliament unicameral, amendments related to NATO and European Union in 2010 and the inclusion of the definition of marriage as a union of a man and a woman, which followed the 2013 civil referendum<sup>62</sup>; this was only the third referendum in contemporary Croatian history, following the referendums on independence and on the accession to the EU.

## 14. Conclusion

The main distinctive factors of the Croatian constitutional development in the twentieth and twenty-first centuries was the break of the Croatian autonomous institutional particularity in 1918 and the establishment of Croatia as a state only in 1991 (apart from the excessive appearance of the ISC in 1941). The Yugoslav kingdom, with its unitary institutions that basically neglected Croatian identity and institutional particularity, has never been considered part of the Croatian tradition, and the provisory Banate of Croatia could not influence further development, less so the ISC. In fact, both the constitutional individuality and the territory of the Republic of Croatia at the time of independence in 1991 were directly determined by the Croatian federal constitutionality from 1943 to 1974, which was in principle accepted by the makers

60 Cf. the Constitution of the Republic of Croatia.

61 One of the first proposals for the introduction of this German-type chancellor system came from Professor Smiljko Sokol, the main author of the semi-presidential system in the Constitution of 1990. Sokol criticised the 2000 constitutional revision as an introduction of a 'quarter-presidential system' that generated tensions between two presidents. See *Inicijativa Smiljka Sokola*.

62 Smerdel, 2014, pp. 197–201.

of the Constitution of the Republic of Croatia as part of the Croatian constitutional tradition.

Yet, the new Constitution of 1990 was set on a new paradigm based principally on comparative constitutional legislation with the French semi-presidential model at its core. Even though this model was supported with the argument that it complied with the Croatian tradition, it was soon replaced by the parliamentary government as more adequate for the Croatian conditions.

The Constitution of the Republic of Croatia is not based on the return to tradition, yet the influence of tradition can still be seen in certain important provisions. It is present in the dominantly 'historical' preamble, in the adopted definition of Croatia as the nation state as well as in the continuity of the Constitutional Court. As it regards deeper institutional and political layers of Croatian constitutionality, of the utmost importance is its principle of self-determination. It served as a political fundament for the formation of the State of Slovenes, Croats and Serbs and the Banate of Croatia and was explicitly and continuously present as part of the Croatian constitutions since 1943 as well as in the formation of the Republic of Croatia. The Croatian political experience in the nineteenth and twentieth centuries embodied two in a way 'opposing' characteristics – one is the long experience of participation, with its own constitutional identity, in the broader multi-cultural structures, and the other is the tendency to constitute its own independent state. Deeper cultural and mental layers that might have influenced modern and recent Croatian development might be searched for upon this basis.

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