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Constitutionality in the Kingdom of Serbs, Croats, and Slovenes/the Kingdom of Yugoslavia – Between Covert and Overt Dictatorship

ABSTRACT

The Kingdom of Serbs, Croats, and Slovenes was created on December 1, 1918 by proclamation of Regent Alexander I Karadjordjevic. The most important step regarding the organization of the newly formed state was the adoption of the constitution. The first constitution of the newly formed state was adopted on June 28, 1921, and in science it is usually called the Vidovdan Constitution. Due to a series of internal problems, on January 6, 1929, the king suspended the Vidovdan Constitution, dissolved the assembly and banned the work of political parties, and justified the coup by the highest national and state interests. The transition to an open dictatorship did not solve any of the political, economic, or national problems that led to the crisis. Despite the fact that the king announced his return to the constitutional order as soon as possible, this would happen only after two years. With the enactment of the constitution on September 3, 1931, there was no democratization of Yugoslav society, but the king's open dictatorship was replaced by a constitutional one. The existence of the Kingdom of Serbs, Croats, and Slovenes/Yugoslavia in the period 1918–1941 in a political sense, was marked by the changes of a covert and open dictatorship, whereby the proclaimed democratic rights and freedoms represented only a show for the public. Through the paper, the author will analyze those constitutional provisions and the king's actions that indicate this.

Key words: Kingdom of Serbs, Croats and Slovenes (SCS); Kingdom of Yugoslavia; The 1921 Constitution; The 1931 Constitution; dictatorship

The Vidovdan Constitution

After the creation of a joint state of Serbs, Croats, and Slovenes¹ was proclaimed by the, December 1 act, necessary steps were taken in the direction of its constitutional organization.² The importance of that issue is also evidenced by the number of submitted constitutional drafts. Namely, six constitutional drafts were submitted to the Constituent Assembly within the set deadline. The draft submitted by the government of Nikola Pašić was first taken into consideration. The remaining five constitutional drafts were submitted by opposition representatives. During the discussion on the submitted drafts, the most debated was about the state system and socio-economic issues.

The first constitution of the newly created state was adopted on June 28, 1921, and according to the holiday on which it was adopted, it is usually called the Vidovdan Constitution.³ Deputies from the Croatian Peasant Party, the People's Club, the Communist Party, and the Yugoslav Club did not take part in the vote on the constitution. 223 deputies voted for the constitution, 35 were against, and 161 did not vote.

According to Article 1 of the Constitution, "The state of Serbs, Croats, and Slovenes is a constitutional, parliamentary, and hereditary monarchy." Namely, the important features of the parliamentary system are the government that emerges from the parliamentary majority, and the budgetary right of the parliament, as well as its autonomy.⁴ According to the provisions of the Vidovdan Constitution, the National Assembly was limited in all these rights.

When it comes to the position of the government, Article 91 stipulates that ministers are accountable to the King and the National Assembly. However, although the National Assembly had the opportunity to vote no confidence in the government, during the validity of this Constitution, the survival of the government really depended on the will of the king.⁵ So in the period 1921–

¹ See more about the name of the country: J. Tomić, *Naša nova država u kolevci*, Novi Sad 1918, p. 4-7.

² See the contents of the December 1 act in: D. Janković, B. Krizman, *Građa o stvaranju jugoslovenske države I-II*, Beograd 1964, p. 673-676.

³ „Službene novine“ 1921, no. 142.

⁴ F. Čulinović, *Državnopravni razvitak Jugoslavije*, Zaručak 1963, p. 199-200.

⁵ D. Janković, *Vidovdanski ustav*, „Iz istorije Jugoslavije 1918–1945“, Beograd 1958, p. 187. See also: S. Pribičević, *Diktatura kralja Aleksandra*, Beograd 1952, p. 117.

–1929 there were 24 governments, of which only two fell in the assembly; the rest were replaced by the king's decision.⁶

The issue of budget law of the National Assembly is regulated by Articles 113 and 114 of the Constitution. The National Assembly passed the budget, but in case of its dissolution, the king had the right to extend the old budget by decree for four months. Therefore, the National Assembly was limited in terms of budget law.

The National Assembly exercised its autonomy through the possibility of free choice of representation and adoption of rules of procedure (Articles 76 and 77), but the king had the right to decide on its convocation and dissolution. Thus, by analyzing the constitutional provisions, it can be concluded that the king had an advantage over the National Assembly, so that it did not enjoy the freedom and independence that is characteristic of parliamentarism.⁷

Although the Constitution proclaimed the principle of the division of power into legislative, administrative, and judicial, it was also not consistently implemented. Namely, the legislative power was exercised by the King and the National Assembly (Article 46). However, when analyzing the constitutional provisions on royal powers (he decided to convene and dissolve the assembly, had the right of legislative initiative, and confirmed the laws adopted by the assembly) in relation to the National Assembly, it is clear that he had the upper hand. This may best be inferred from the example of the ratification of legislative proposals adopted by the Assembly. Namely, the king's confirmation was the last step in the process of creating a law. However, his right to confirm the laws was unlimited, which means that he could refuse to confirm any legal proposal, regardless of whether the initiative for passing that law came from the king or the Assembly. Also, the king could refuse to give as much confirmation as he wanted. So, no matter how many times the Assembly took a certain bill into consideration and adopted it, it could force the king to give his confirmation to that bill if he did not want to.⁸ Even a change in the constitution was not possible without the king's consent, so the survival of the monarch as the supreme body of state power could not be influenced.⁹ When it comes to the executive, the king was the head of the administrative authority (Article 47). The administrative power consisted of ministers appointed and dismissed by the king. In terms of influencing the judiciary, the king had the right to amnesty and pardon. Thus, we can conclude that despite the proclaimed principle of separation of powers,

⁶ Lj. Krkljuš, *Pravna istorija srpskog naroda*, Beograd 2016, p. 316.

⁷ S.P. Orlović, *Načelo podele vlasti u ustavnom razvoju Srbije*, Beograd 2008, p. 114.

⁸ S. Jovanović, *Ustavno pravo Kraljevine Srba, Hrvata i Slovenaca*, Beograd 1924, pp. 333-334.

⁹ J. Stefanović, *Ustavno pravo FNR Jugoslavije i komparativno*, Zagreb 1950, p. 153.

all functions were reserved for the monarch.¹⁰ Thanks to this position, the king was essentially the first constitutional factor.

The Vidovdan constitution proclaims classic personal and political rights. However, these rights are limited by special laws. Thus, Article 10 stipulates that a citizen may not be expelled from one place to another, nor may he be detained in one place, except in cases provided by law. However, the law allowed expulsion without a court verdict, by a simple police order.¹¹ It is the same with Article 14, which guarantees freedom of association, except in the case of legally punishable goals. The Law on the Protection of Public Security and Order in the State from 1921 suspended those constitutional provisions which guaranteed freedom of speech and association, as well as freedom of the press.¹² Article 70 stipulates that the right to vote of women will be decided by law; then the Election Law of 1922 denied women this right.¹³ According to Article 127, the National Assembly could, in case of war or general mobilization on the entire state territory, and in case of armed rebellion in one part of it, temporarily suspend the following civil rights by law: the right of association, assembly, and agreement; the freedom of movement and inviolability of the residence, letters, and telegraphic announcements. Thus, many constitutional provisions guaranteeing civil rights and freedoms were in practice restricted or repealed by law.¹⁴

January 6 dictatorship

The political crisis that the state faced in the period 1921–1929, culminated in an assassination in the National Assembly. Taking advantage of this event, the king repealed the Vidovdan Constitution with a proclamation of January 6, 1929 and dissolved the assembly, justifying his decision with national and state interests. The proclamation addressed to the people states that the only goal was “to achieve the realization of those institutions, the state administration and the state system, which will best suit the general needs and interests of the state, in the shortest possible time.”¹⁵

The legal basis of the dictatorship consisted of several laws, the most important of which was the Law on Royal Power and Supreme State Administration.¹⁶ With its adoption, the king formally became the bearer of all power in the state

¹⁰ F. Čulinović, *Dokumenti o Jugoslaviji*, Zagreb 1968, p. 222.

¹¹ S. Jovanović, p. 434.

¹² „Službene novine“ 1921, no. 170.

¹³ „Službene novine“ 1922, no. 150.

¹⁴ J. Broz-Tito, *Politički izveštaj sa V kongresa Komunističke partije Jugoslavije*, Beograd 1948, p. 28.

¹⁵ „Politika“ 1929, no. 7430.

¹⁶ „Službene novine“ 1929, no. 9.

(Article 2). Thus, in terms of executive power, the king appointed and replaced members of the Council of Ministers at his own discretion, passed laws, and judicial power was exercised in his name. In this way, an absolutist regime (monarchodictatorship) was established, which lasted until the adoption of the new constitution in 1931.

The Law on the Protection of Public Security and Order in the State prohibited the work of all political parties, and abolished the freedom of expression, as well as the right of association, assembly, and agreement.¹⁷

Although initially approved by both internal and external political factors, the king's dictatorship did not provide a solution to the political, national, and economic problems that existed in the country, and therefore lost its earlier support over time.

Constitution of 1931

The dictatorship that the king introduced in order to solve the existing crisis in the country failed to solve any political and economic problems. On the contrary. Due to numerous internal and external reasons, the king decided to look for a way out by restoring constitutionality. The new constitution was enacted on September 3, 1931.

The enacted or September constitution, as it is often called, defined the state as a hereditary constitutional monarchy. Unlike the Vidovdan Constitution, the label "parliamentary" was missing.

The biggest novelty brought by the new constitution was the introduction of a bicameral representative body, which consisted of the National Assembly and the Senate. Despite the principled equality of the houses, analysis of the composition and position of the Senate can conclude that this body was formed in order to strengthen royal power. Thus, e.g. the king had the right to appoint the same number of senators as were elected. If we keep in mind that one third of the members were enough for quorum, it can be concluded to what extent the monarch had authority in the legislation. The National Assembly, as a whole, was significantly limited in terms of its powers. So it was, for example, that the king could extend the budget by decree for a year, which would mean that the Assembly was given the opportunity to force the government to withdraw only when the old budget could no longer be extended.¹⁸ Thus, although the National Assembly, according to the constitutional provisions, was a legislative factor, when analyzing its composition and attitude towards the executive, it can be concluded that the king had complete control over this body.

¹⁷ Ibidem.

¹⁸ D. Jevtić, *Vidovdanski i Oktroisani ustav od 3. IX 1931. godine*, „Anali Pravnog fakulteta“, Beograd 1988, p. 124.

The enacted constitution also proclaims the principle of division of state power.¹⁹ According to Article 26, legislative power belonged to the King and the National Assembly, administrative power was exercised by the King through responsible ministers (Article 27), and judgments were pronounced and executed on behalf of the King, who had the right to amnesty and pardon (Article 28. and 30.) From the above, it can be concluded that the Constitution is based on the principle of unity of power, and the only thing that is divided are its functions.²⁰ Thus, analysis of the constitutional provisions clearly shows that most of the powers still belonged to the king.

In terms of civil rights and freedoms, the 1931 Constitution largely retained the same wording as the 1921 Vidovdan Constitution. Thus, Art. 12, guaranteed freedom of expression, but within limits set by law. Under the same condition, the following article guarantees the right of association, assembly, and agreement. Thus, the rights and freedoms guaranteed by the constitution could still be restricted by law.

Special attention is paid to Article 116 of the Authorized Constitution, which reads: "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 endangered to such an extent, the King may, in that exceptional case, order by decree to temporarily undertake all extraordinary necessary measures in the whole Kingdom or in one of its parts, regardless of constitutional and legal regulations. All exceptionally taken measures will be submitted to the National Assembly for approval at a later date." Thus, this article of the Constitution enabled the monarch to act in a way that contradicted constitutional or legal provisions, i.e. he could suspend all such provisions as he deemed necessary. In fact, the possibility of suspending the constitutional provisions also existed according to the Vidovdan Constitution. However, according to its provisions, that right belonged to the legislative power, while according to the provisions of the Authorized Constitution, that right belonged to the king.²¹

Bibliography

- „Politika” 1929, no. 7430.
- „Službene novine” 1921, no. 142.
- „Službene novine” 1922, no. 150.
- „Službene novine” 1921, no. 170.
- „Službene novine” 1929, no. 9.

¹⁹ Articles 26, 27 and 28 of the Constitution.

²⁰ L.M. Kostić, *Komentar Ustava Kraljevine Jugoslavije od 3. septembra 1931. godine*, „Jugoslovensko ustavno pravo”, Beograd 1934, p. 76.

²¹ D. Jevtić, p. 125.

- Broz J. Tito, *Politički izveštaj sa V kongresa Komunističke partije Jugoslavije*, Beograd 1948.
- Čulinović F., *Dokumenti o Jugoslaviji*, Zagreb 1968.
- Čulinović F., *Državnopravni razvitak Jugoslavije*, Zagreb 1963.
- Janković D., Krizman B., *Građa o stvarawu jugoslovenske države I-II*, Beograd 1964.
- Janković D., *Vidovdanski ustav, „Iz istorije Jugoslavije 1918–1945”*, Beograd 1958.
- Jevtić D., *Vidovdanski i Oktroisani ustav od 3. IX 1931. godine, „Anali Pravnog fakulteta”*, Beograd 1988.
- Jovanović S., *Ustavno pravo Kraljevine Srba, Hrvata i Slovenaca*, Beograd 1924.
- Kostić Lazo M., *Komentar Ustava Kraljevine Jugoslavije od 3. septembra 1931. godine, „Jugoslovensko ustavno pravo”*, Beograd 1934.
- Krkljuš Lj., *Pravna istorija srpskog naroda*, Beograd 2016.
- Orlović S.P., *Načelo podele vlasti u ustavnom razvoju Srbije*, Beograd 2008.
- Pribićević S., *Diktatura kralja Aleksandra*, Beograd 1952.
- Stefanović J., *Ustavno pravo FNR Jugoslavije i komparativno*, Zagreb 1950.
- Tomić J., *Naša nova država u kolevci*, Novi Sad 1918.

SUMMARY

Constitutionality in the Kingdom of Serbs, Croats, and Slovenes/ the Kingdom of Yugoslavia – Between Covert and Overt Dictatorship

The two constitutions adopted during the existence of the Kingdom of Serbs, Croats, and Slovenes / Yugoslavia differed in the manner in which they were adopted. The first constitution, known in the literature as Vidovdan, was adopted in 1921, while the second was drafted ten years later, in 1931. The provisions of the Vidovdan Constitution gave the king the opportunity to influence all the levers of power, which in a parliamentary system have the task of limiting his power. Thus, the king became the most important factor in the system of government. After the adoption of the Vidovdan Constitution, the king aspired to expand his power beyond the set boundaries. This was achieved in January 1929 with the introduction of the absolutist regime. Along the way, the period between the creation of the Kingdom of Serbs, Croats, and Slovenes and the introduction of the dictatorship was marked by numerous crises, both parliamentary and political. Despite the fact that the regime established on January 6 was based on law, it did not imply the existence of the rule of law. The adoption of the new constitution in 1931 did not contribute to solving the existing political, national, and social problems that the state was facing. On the contrary. The enacted constitution enabled the king to replace his two-year open dictatorship with a constitutional one. Comparative analysis indicates the existence of both certain similarities and differences between the two constitutions. Namely, analysis of the constitutional provisions concerning the position and authority of the people's representation shows that both the Vidovdan Constitution and the

Constitution of 1931 provided only limited parliamentarism. Furthermore, with regard to the organization of state power, both constitutions proclaim the principle of separation of powers. However, analysis shows that power was concentrated in the hands of the monarch, which leads us to the conclusion that both constitutions were still based on the principle of unity of power. With regard to certain civil rights and freedoms, both constitutions provided for the possibility of restricting or abolishing them in practice through legislation. Therefore, their proclamation in the constitutions did not mean their introduction into life. Whether certain rights and freedoms would exist and to what extent, depended exclusively on the legislature. When it comes to differences, they are first visible in the way they arise. While the Vidovdan Constitution was adopted in a democratic procedure before the Constituent Assembly, the Constitution of 1931 was created as a result of the king's arbitrariness. Another important difference concerns the organization of the representative body. Namely, the Constitution of 1921 envisages a unicameral representative body – the National Assembly, while the Constitution of 1931 introduced a bicameral system, so the representative body consisted of the National Assembly and the Senate. Although these two houses were in principle equal, it can be said that the introduction of the Senate was aimed at contributing to the strengthening of the king's power. It is important to note that the Constitution of 1931 allows the possibility to give the decision to suspend certain constitutional and legal provisions to the monarch, as the holder of executive power, while that right under the Vidovdan Constitution belonged to the National Assembly. Based on all the above, it can be concluded that the king managed to impose himself as the undisputed ruler through the Constitution of 1921, and even more through the Constitution of 1931.