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Federalization of the Kingdom of Yugoslavia: The Banovina of Croatia Case

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Федерализация Королевства Югославия: кейс Хорватской бановины

Abstract: This study analyses constitutional structure and territorial organisation of the Kingdom of the South Slavs from 1918 to 1941. The Constitutions of 1921 and 1931 were compared in matter of territorial organisation. A trend towards decentralisation and integration has been identified, one step of which was the creation of the Banovina of Croatia. Different theories of its legal status are analysed in terms of comparison.

Keywords: federalization, Kingdom of Yugoslavia, Banovina of Croatia, legal status, centralisation.

Анотация: Статья анализирует государственное устройство и территориальную организацию королевства Югославия в период с 1918 по 1941 год. Конституция 1921 года и Конституция 1931 года сравниваются с точки зрения территориальной организации государства. Выявлен тренд на децентрализацию, одним из проявлением которого стало выделение Хорватской бановины. Сравняются различные подходы к ее правовому статусу.

Ключевые слова: федерализация, Королевство Югославия, Хорватская бановина, правовой статус, централизация.

1. Unitarist centralism of the Kingdom of the South Slavs

The work titled “The Federalisation of the Kingdom of Yugoslavia – the Banovina of Croatia case” aims to depict the constitutional structure and territorial organisation of the Kingdom of the South Slavs from 1918 to 1941. The term “Kingdom of the South Slavs” is used in the paper as a common name for the Kingdom of Serbs, Croats, and Slovenes (1918-1929) and the Kingdom of Yugoslavia (1929-1941). The Kingdom of Yugoslavia was established in 1929 when King Aleksandar Karađorđević, following the

principle of integral Yugoslavism, changed the state's name to the Kingdom of Yugoslavia. In the second part, this work will discuss the legal validity of the Agreement on the creation of a new territorial decentralisation unit within the Kingdom – the Banovina of Croatia. The third part of the paper will deal with the status of the Banovina of Croatia and the elements of its statehood.

A new state was created on December 1st, 1918, after the Great War – the Kingdom of Serbs, Croats and Slovenes (hereinafter: The Kingdom of SCS), by uniting the Kingdom of Serbia and the territories of the former Austro-Hungarian Monarchy, where South Slavic peoples lived. “Serbia brought statehood and tradition to the new state, sacrificed more than a quarter of the total population for it in the war (...) At the end of the war, it found itself in the camp of the victors, thereby enabling other Yugoslav nations to leave the side of the defeated through the establishment of the newly formed Yugoslav state and join the victors, almost without casualties”¹. On the other hand, representatives of the Croatian people viewed the act of unification and formation of a common state as “Serbianisation” and an obstacle to the formation of their national state².

The Kingdom of SCS was a unitary, centralised monarchy, headed by the Serbian Karađorđević dynasty. In the period between the two world wars, constitutional discontinuity was inherent in the Kingdom of the South Slavs, since the Kingdom went through two periods of constitutionality (1921-1929 and 1931-1941) and through two periods of the absence of constitutional regulations (1918-1921 and 1929-1931).

1.1. Territorial organisation of the Kingdom of Serbs, Croats and Slovenes according to the Constitution of 1921

The first constitution of the Kingdom of Serbs, Croats, and Slovenes of 1921, known as the “Vidovdan Constitution”, proclaimed the principles on which the newly formed Kingdom of Serbs, Croats, and Slovenes would be based. The foundations of statehood included: a monarchical form of governance; the principle of a flexible division of power, exemplified by a parliamentary system of government; and the principle of compromise unitarism and state centralisation³.

The principle of compromise unitarism was adopted as a model for addressing the complex issue of multi-ethnicity within the newly established state. The monarchical form of governance implied a unified state with strong centralised executive authority, which clashed with the existence of three distinct nations – Serbs, Croats, and Slovenes. The idea of integrating Yugoslavism as a principle was therefore woven into the foundations of the

¹ Radojević M., Dimić L. Serbia in the Great War: 1914-1918. Belgrade, 2014. P. 285.

² Barton D. Croatia 1941-1946. The Church in History Information Centre, 1993. P. 12.

³ Mirković Z.S. Serbian legal history. Belgrade, 2017. P. 225.

new state¹. In line with the ideology of integral Yugoslavism, the common state changed its name to the “Kingdom of Yugoslavia” in 1929. The Constitution of the Kingdom of Serbs, Croats, and Slovenes of 1921 established a territorial organisation of a centralised nature.

Administrative authority in the Kingdom was exercised on the basis of administrative units, namely regions, districts, counties, and municipalities². The position of local self-government units was regulated according to the electoral principle³. “Essentially, local self-government was a combination of elements of local administration. The municipality was a purely self-governing unit, while the county and region were units where both state and self-governing authorities were exercised. In districts, where they existed, only state authority held sway”⁴.

1.2. Territorial organisation of the Kingdom of Yugoslavia pursuant to the Constitution of 1931

In the period from January 6th, 1929, until the adoption of the new Constitution of 1931 (Octroic Constitution), the Kingdom of Yugoslavia was under the dictatorship of King Aleksandar Karađorđević. This historical period is known under the name of the January 6th Dictatorship. With the suspension of the Constitution of 1921, the Kingdom became an absolute monarchy⁵. With the repeal of the Law on Regional and County Self-Government on October 3rd, 1929, local self-government was abolished. On the same day, the Law on the Name and Division of the Kingdom into Administrative Areas was adopted. It established nine local government units – banovinas. Later, the Constitution of 1931 adopted the territorial organisation from the Law on the Name and Division of the Kingdom into Administrative Areas. The Kingdom included Drava, Sava, Vrbas, Littoral (Primorska), Drina, Zeta, Danube, Morava and Vardar Banovina⁶. By their nature, banovinas were

¹ Integral Yugoslavism does not recognise different nationalities; according to this principle, the idea of the common ethnic origin of Serbs, Croats, Slovenes, and other nationalities making up the new state is advocated. Serbs, Croats, and Slovenes are defined as three parts of the same ethnic group – a “three-tribal” nation. The principle of compromise unitarism was a unique pragmatic solution that reconciled the principle of integral Yugoslavism with the thesis of the multiple nations existence within the framework of the Kingdom of Serbs, Croats, and Slovenes. (*Mirković Z. S. Op. cit. P. 227*)

² Article 95 of the Constitution of the Kingdom of SCS of 1921.

³ Article 96 of the Constitution of the Kingdom of SCS of 1921.

⁴ *Stanković M. Territorial organization of the Kingdom of Serbs, Croats and Slovenes (Kingdom of Yugoslavia) // Proceedings of the Faculty of Law, Novi Sad. 2019. Vol. 53. № 3. P. 1033–1045, 1035*

⁵ *Stanković M. Op. cit. P. 1038.*

⁶ Article 83 of the Constitution of the Kingdom of Yugoslavia of 1931.

administrative units with elements of local self-government, divided into counties and municipalities¹.

The borders of the banovinas were arranged in such a way that they did not coincide with the borders of the expansion of nations, historical areas or other lines that would introduce tendencies towards separatism into the heterogeneous body of the Yugoslav people. In this way, centralism was promoted and the ideology of integral Yugoslavism was reinforced.

At the head of each banovina, serving as the representative of supreme authority, was the Ban, who was appointed by the King upon the exclusive recommendation of the Ministerial Council². There were certain elements of local self-government in the banovinas, incarnated in the bodies of the banovina self-government, the Banovina Council and the Banovina Board. Members of Banovina Councils were elected in general, equal and direct elections. The Banovina Board, as the highest executive body of the banovina, emerged from the Banovina Council. The banovina self-government was responsible for passing banovina's decrees, which within the banovina had the force of law and had to be drafted in accordance with the Constitution and laws of the Kingdom³. The State Council decided *ex ante* on the constitutionality and legality of banovina's decrees. In the event that the State Council did not decide in favour of the banovina's ordinance, the Ban did not have the authority to promulgate them⁴.

2. Agreement on the creation of the Banovina of Croatia

The Banovina of Croatia was created in 1939, with the Agreement on the Creation of the Banovina of Croatia, the so-called Cvetković-Maček Agreement. Dragiša Cvetković was the Prime Minister of the Kingdom of Yugoslavia, which was governed by a triple Viceroyalty headed by Prince Pavle Karađorđević, after the assassination of King Aleksandar. Vladko Maček was the leader of the parliamentary Croatian Peasant Party and represented the interests of the Croatian people in the negotiations with Dragiša Cvetković.

The main task of the Cvetković's Government was to find a compromise solution to the issue of the territorial status of the Croatian people in the Kingdom – the so-called Croat question. Negotiations between Dragiša Cvetković and Vladko Maček began in April 1939 and lasted until August 1939. On August 26th, 1939, the Viceroyalty confirmed the text of the Agreement. The Cvetković-Maček Agreement was by its nature a political act of a general nature, and for the sake of its practical application, the Regulation

¹ Article 84 of the Constitution of the Kingdom of Yugoslavia of 1931.

² Article 86 of the Constitution of the Kingdom of Yugoslavia of 1931.

³ Article 91 of the Constitution of the Kingdom of Yugoslavia of 1931

⁴ Article 91 of the Constitution of the Kingdom of Yugoslavia of 1931.

on the Banovina of Croatia was also adopted. In order to give legal force to the Agreement, additional acts were adopted, as well¹.

The Cvetković-Maček Agreement marked the end of the era of centralism in the Kingdom of Yugoslavia. The Agreement brought novelty to the territorial organisation of the Kingdom, establishing the Banovina of Croatia as a new unit of territorial organisation, the autonomy of which exceeded the powers of other banovinas. The territory of the Banovina of Croatia included Littoral and Sava Banovina with the attached counties of Dubrovnik, Šid, Ilok, Brčko, Gradačac, Travnik and Fojnica. “The territorial gains of the Croats, included in this document, had a long antecedent history of their claim and Serbian refusal to make concessions to them”². Within this chapter, the paper considers the demands of the Croatian and Serbian sides, as well as the course of negotiations, which preceded the conclusion of the Agreement.

The domestic legal theory underscores the unconstitutionality of the creation of the Banovina of Croatia. As a matter of fact, the very text of the Agreement refers to Article 116 of the Constitution of 1931, which was interpreted very extensively in that regard. Article 116 provided that “In case of war, mobilisation, disorder or disturbances endangering public order and the security of the State, or in general if public interests are endangered, the King may, in such extraordinary case, decree all absolutely necessary extraordinary measures to be taken throughout the entire Kingdom or in any part thereof, irrespective of constitutional and legal prescriptions.” Paragraph 2 of the same article reads that: “All exceptional measures taken shall subsequently be submitted to Parliament for approval”. The regular procedure for amending the Constitution involves the participation of the King and the Parliament, that, in accordance with Article 114 and 115, approve the proposed amendments to the Constitution with the appropriate majority *ex ante*. The regular procedure for constitutional change was not applied in the case of the Agreement on the Creation of the Banovina of Croatia, nor was the Agreement, i.e. Decree on the Banovina of Croatia considered before the Parliament.

Therefore, the paper considers the question whether the government of the Kingdom and the Viceroyalty acted *ultra vires* when concluding the Agreement on the Banovina of Croatia and whether that act can be qualified as a necessity for the purpose of protecting the country’s public interests.

¹ Decree on the extension of regulations on the Banovina of Croatia to other banovinas, Decree on the dissolution of the Senate, Decree on the dissolution of the Parliament and Decree on political laws (*Ćutuk Z.* Establishment and organization of the Banovina of Croatia. Zagreb, 2022. P. 10).

² *Radojević M.* The Cvetković-Maček Agreement and the issue of demarcation in Srem // Journal of the Institute for Contemporaraz History. 1992. № 1–2. P. 62–63.

3. The territorial status of the Banovina of Croatia in the Kingdom of Yugoslavia from 1939 to 1941

When it comes to the status of the Banovina of Croatia, the opinion of legal scholars was divided. Certain Croatian authors¹ believed that the centralism of the Kingdom was not violated by the creation of the Banovina, since the Banovina did not have elements of statehood. On the contrary, the state organisation remained centralised, and the process of federalisation of the Kingdom was just in its initial stages. There was also an opposite point of view, which found elements of statehood in Banovina's position. The latter authors advocated the thesis of the Banovina of Croatia as a federal unit within the Kingdom. In point of fact, the Banovina of Croatia enjoyed the right to legislative, executive and judicial power, which represent the powers of federal units. The legislative power of the Banovina should have been constituted by the Parliament, but the constitution of the Banovina Parliament never occurred, and the legislative power was exercised jointly by the Ban and the Viceroyalty.

There is one common denominator of all theories about the status of the Banovina of Croatia: its formation was certainly only the beginning of the federalisation of the Kingdom of Yugoslavia. And whether the federalisation of the Kingdom on a national basis would lead to its dissolution remains a historical dilemma. There is a basis for an affirmative answer to this question, bearing in mind the breakup of the common Yugoslav state (SFRY) in the 90s of the 20th century and the creation of national states.

¹ *Ćutuk Z.* Op. cit. P. 27–28.