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RELATIONSHIP BETWEEN LEGISLATIVE AND EXECUTIVE POWERS IN THE YUGOSLAV SOCIALIST CONSTITUTIONS

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ABSTRACT

The aim of the work is to examine the relationship between the legislative and the executive power in socialist Yugoslavia, in order to answer the question whether and to what extent the principles of the assembly system had really been constitutionally guaranteed. The author analyzes competencies and mutual relationship between the legislative and executive power in the four constitutional acts (1946, 1953, 1963, 1974). The constitutional acts proclaimed that the Assembly was the supreme organ of power, while the constitutional theory claimed that it was the assembly system of power although the constitutional acts contained competencies of the political-executive organs which gave them considerable influence. This had been the least visible in the 1953 and 1963 constitutional acts, while the 1946 and 1974 constitutions seriously strengthened the position of the executive power. Therefore, the author only reluctantly concludes that the Yugoslav constitutional system had the features of the assembly system. More precisely, it had been a kind of mixed system with the elements of the assembly system and the separation of powers, at least in the 1946 and 1974 constitutions.

Keywords: Yugoslavia, assembly system, constitution, Federal Assembly, Federal Executive Council, President of the Republic, Presidency of SFRY

RELAZIONE TRA IL POTERE LEGISLATIVO E QUELLO ESECUTIVO NELLE COSTITUZIONI JUGOSLAVE SOCIALISTE

SINTESI

Il contributo si propone di esaminare il rapporto tra il potere legislativo e quello esecutivo nella Jugoslavia socialista per rilevare se realmente e in quale misura la Costituzione garantisse i principi del sistema assembleare. A questo scopo, l'autore analizza le competenze conferite agli organi legislativi e a quelli esecutivi nonché i loro reciproci rapporti qualificati nelle quattro Carte costituzionali (del 1946, 1953, 1963 e 1974). Mentre tutte le Costituzioni definivano l'Assemblea come organo supremo del potere e la teoria costituzionale sosteneva che lo Stato era organizzato a sistema assembleare, la Costituzione nominava anche competenze degli organi politici esecutivi assegnando

loro una considerevole influenza. Tali competenze erano più circoscritte negli atti del 1953 e 1963, mentre in quelli del 1946 e 1974 la posizione del potere esecutivo era notevolmente rafforzata. Pertanto, l'autore conclude che sì, il sistema costituzionale jugoslavo possedeva proprietà del sistema assembleare, ma si trattava più propriamente di un ordinamento misto caratterizzato sia da elementi del sistema assembleare sia dalla separazione dei poteri, almeno secondo le Costituzioni del 1946 e del 1974.

Parole chiave: Jugoslavia, sistema assembleare, Costituzione, Assemblea federale, Consiglio esecutivo federale, Presidente della Repubblica, Presidenza della RSFJ

INTRODUCTION

The second Yugoslavia, which had defined itself as a socialist state and society, had three constitutions (1946, 1963, and 1974) and one constitutional law (1953). Although constitutional provisions changed considerably during the decades of Yugoslavia's existence, one of the principles which had been constant was the supposed prevalence of the legislative over executive power. Yugoslav constitution-makers and political elites advocated the principles of the assembly system, which had theoretically been defined as a system in which legislative dominated over executive power.

The main hypothesis of this work is that although the assembly system had been proclaimed as one of the cornerstones of the constitutional system, it was constitutionalized with some deviations. The principle of unity of powers was enacted in different ways in above-mentioned constitutional acts. However, its development was not straightforward.

The political aspect of the problem shows that the process of decision-making was monopolized by the tiny oligarchy on the top of the ruling political party. This fact caused strengthening of the executive bodies, such as the Government (according to the 1946 Constitution), the Federal Executive Council (from 1953 on), and the Presidency of Yugoslavia (after 1971). The fact that the most important and powerful members of the political elite were at the same time members of these political institutions, decisively influenced strengthening of these institutions. These facts limited the importance and possibilities of dominance of the assembly. It will be shown that the strengthening of the assembly had been most visible in the 1953 Constitutional Law, at the peak of the ideological and political offensive against the Stalinist ideology, when the most important ideologists of the regime thought that the dominance of the assembly in the decision-making process had to become one of the means in the struggle for the democratization of the political system. The 1963 Constitution established the balance between legislative and executive powers, which was caused by the stabilization of relations with Soviet Union and abandoning of the offensive against

bureaucratic distortions in the circumstances of stabilization of the new self-managing system established after 1950 with ultimate guidance of the political elite. The 1974 Constitution had been a step backward. It meant strengthening of the collective head of state since the political elite sought an instrument for stabilization of the Federation. The Presidency of Yugoslavia, composed of one representative of each federal unit and autonomous province, seemed as the most appropriate instrument for achievement of this aim. In order to achieve political stability of Yugoslavia through effective Presidency, whose members had to represent interests of their respective federal units, this collective head of state had to have effective and wide competencies, both at the expense of the Federal Executive Council and the Assembly.

Therefore, we shall try to explain that the principle of unity of powers although nominally one of the cornerstones of the constitutional system had been differently prescribed in constitutional provisions and realized in political practice during different phases of constitutional and political development.

This paper analyzes only constitutional provisions on the relationship between legislative and executive powers at the federal level. We find this analysis methodologically correct for two reasons. Firstly, although federal units widened their right to self-organization from 1963 on, their constitution-makers did not introduce even slightest differences regarding relationship between legislative and executive powers comparing Yugoslav constitutional acts.

Two first constitutional acts at the Yugoslav level, those from 1946 and 1953, even contained relatively detailed provisions on the organization of state power in federal units, which prevented the latter from autonomous constitutionalization of their respective state organizations. Chapters IX and X of the 1946 Constitution were dedicated to highest organs of state power in people's republics and to organs of state administration of people's republics. Chapter III of the 1953 Constitutional Law was dedicated to the principal provisions on the republican organs of power. Both constitutional acts regulated relationship between legislative and executive powers in detail which did not leave much room for federal units to arrange this issue on their own.

Secondly, Yugoslav constitutional acts were legal expression of the political will, programme and ideology of the political elite which included political elites of the federal units as its inseparable parts. Therefore, it was unimaginable for the political elites in federal units to enact such organization of state power which would mean departure from the assembly system of government. Even if they legally could do that, they would never go in that direction since the assembly system, as more democratic system than parliamentary system, was one of the sources of legitimacy of the constitutional and political system. For Yugoslav political elite, as well as for all other political elites, it was very important to ensure its citizens that the main principles of the constitutional and political system would be preserved. Therefore, although it made serious changes in the contents and functioning of the assembly system during the decades, it had to claim that the system had not changed considerably. It had never questioned the very existence of the assembly system although constitutional provisions changed.

THE MIXED SYSTEM OF THE FIRST CONSTITUTION

The first Yugoslav constitution (1946) described the National Assembly as the supreme organ of state power which meant that it established hierarchical relationship between legislative power and two other state powers (executive and judiciary). Two reasons influenced this outcome. Firstly, the first Yugoslav constitution was modelled on the 1936 Soviet Constitution which also introduced, at least on paper, the principle of the legislative body's supremacy.

Secondly, the first Yugoslav Constitution introduced the principle of popular sovereignty in its Article 6. Although the same principle had been proclaimed in bourgeois constitutions as well, socialist (or self-proclaimed socialist) constitution-makers had different attitude on this principle. In their opinion, the principle of popular sovereignty could not be limited to general voting right and free elections but also required particular organization of state power based on the dominance of parliament over other state organs. If parliament (i.e. assembly) was representative body of the people, which included members from different social classes and layers, it had to have more power than other state organs, since the latter were not popular representative bodies (Stefanović, 1950, 474–475). Therefore, the assembly had to concentrate legislative power but also to indirectly exercise executive power as well.

Despite these theoretical considerations, the Constitution had prescribed that the National Assembly shared its legislative power with the Government. This fact considerably influenced the very functioning of the system as well as the real power of the Assembly. The Government did not have the formal power to enact the laws. The National Assembly could not delegate legislative power to the Government for if it could, the system could not be defined as the assembly system. However, the very Constitution had prescribed that the Government had the right to enact two types of regulations. The first one was the ordinary regulations, which existed also in other constitutional systems and which were necessary for the execution of laws as basic legal acts. These regulations were not autonomous legal acts since the Government had to enact them in the framework of the principles and concrete solutions prescribed in the laws.

Another type of the regulations was the ones with the strength of law. According to Article 78 of the Constitution, the Government had the right to enact the regulations for the fulfilment of laws as well as the regulations enacted according to the authority given to the Government in and by the laws. The Government could enact these regulations only if the National Assembly authorized it (Stefanović, 1950, 597), as could be seen form their name. These regulations were in fact the ones which had the strength of laws. They were not the laws in formal sense but in material sense.

Although it had not been prescribed explicitly in the Constitution that the second type of regulations was the regulations with legal strength, it was clear that this was the intention of the constitution-maker (Mratović et al., 1981, 143–144). Namely, the usual or ordinary regulations were enacted in order to enable fulfilment of laws. Therefore, if the constitution-maker prescribed the regulations which were based on

the legal authorization, his intention had been to give the strength of law to these regulations (for more details cf.: Stefanović, 1950, 597–604). This contradicted Article 51 of the Constitution which had prescribed that the National Assembly had the exclusive legislative power in the sphere of competencies of the federal state. In other words, the National Assembly did not have the exclusive legislative power but it had to share it with the Government, which was contrary to the very nature of the assembly system.

The National Assembly had the right to limit the competence of the Government regarding enactment of such regulations. Namely, the National Assembly could give free hands to the Government regarding enactment of such regulations in the sense that the Government could totally independently draft these regulations. Therefore, the Government could completely regulate most areas of social life. On the other hand, the National Assembly could give to the Government only limited right to enact regulations with legal strength if it would draft some guidelines. The right of the Government to participate in legislative function of the state was limited since some issues, according to explicit constitutional provision, could be enacted by the National Assembly only.

In practice, the Government enacted many regulations with the strength of law. In this way, it practised the legislative function which originally had belonged to the National Assembly. The delegation of legislative power from the National Assembly to the Government occurred. In the period between 1946 and 1950, the Government enacted 345 regulations with the strength of law, while the National Assembly enacted 148 laws (Nikolić, 1973, 60), particularly in the areas of economic system and public finances, according to the law enacted in February 1946 (Nikolić, 1973, 59–60). This meant that the Government had substituted the National Assembly in exercise of the legislative function to some extent. It was true that the Government had to submit such regulations to the National Assembly for approval but it was also true that the National Assembly had approved them all. This was not surprising since the National Assembly had the one-party composition while the Government was composed of the most prominent party leaders. The constitution-maker could not expect that the National Assembly, composed of both top and middle-level party leaders, would question the exercise of the legislative power by the Government, which was composed of the most influential party leaders. Even in a political system with true opposition, such competence of the Government would cause its domination over the National Assembly since the MPs who belonged to the parliamentary majority would support the Government's decisions. Such an outcome was even more expected in an assembly without true opposition. Since the concentration of legislative power in the hands of assembly is one of basic features of the assembly system (Nikolić, 1973, 663), it follows that the 1946 Constitution did not prescribe this system.

The fact that the National Assembly could limit the Government's right to participate in the exercise of legislative function did not mean much in practice. Since the Government was composed of the most influential members of the political elite, the National Assembly enabled it to enact regulations with legal strength whenever the Government found it necessary. Even the duty of the Government to submit such

regulations for approval of the National Assembly at its next session, as it had been prescribed in the 1946 law[1] did not mean much because it could not be really expected that the National Assembly would deny such an approval. After such a regulation was enacted by the Government, it immediately came into effect. Since the National Assembly met rarely, these regulations were of great influence even if the National Assembly would decide to deny their approval.

In its initial phase, the introduction of self-management in 1950 had been partial and entirely at the micro level. Constitutional position of the Government and its relationship to the National Assembly had not changed a bit. The Government continued to act in the same way, since its political power as well as its constitutional competencies had given to it the possibility to continue to substitute the National Assembly as the lawmaker.[2]

Another legal limitation of the Assembly's legislative function could be found in the fact that according to Article 60 of the Constitution the National Assembly had had two regular sessions a year, each lasting only for few days. It was obvious that the National Assembly could not really become the supreme power in the state if it had to work only for a few days a year. It could exercise more real power only if it would be in a permanent session, and if its members could receive permanent technical, organizational, and legal assistance from experts employed in the National Assembly and other institutions. The lack of information, experience, and knowledge seriously limited the role of MPs comparing to the Government's constant access to all necessary information, and professional assistance of civil servants employed in ministries.

The political reason which caused the secondary role of the National Assembly could be found in the fact that the most important party leaders had been members of the Government. Like in the parliamentary systems, such composition of the Government prevented the Assembly from having more prominent role in the decision-making process.

All these legal and political reasons justified the opinions that the system of government established in the 1946 Constitution had important elements of the system of the separation of powers, i.e., the elements of the parliamentary system (Lukić, 1953, 59–60). It would be an exaggeration to claim that the system was the parliamentary one since the instruments of mutual dependence of legislative and executive powers were missing. While the National Assembly controlled the work of the Government, and according to Article 77 of the Constitution the latter had been responsible to the former, there were no constitutional provisions which gave the right to the Government to resign or to pose the question of confidence. The Government did not have the right to ask the head of state (the Presidium of the National Assembly) to dissolve the National Assembly as well.

1 It was the Law on authorization of the Government of the FPRY for enactment of regulations in the area of people's economy.

2 Even after the introduction of self-management in 1950, but before the enactment of the 1953 Constitutional Law, the Government had enacted 104 regulations with legal strength, while the National Assembly had enacted 56 laws (Nikolić, 1973, 60).

As one could see, the Government was formally subordinated to the National Assembly. However, abovementioned political and constitutional reasons for domination of the Government over the National Assembly prevailed, and that was the reason why the principle of unity of powers neither had been prescribed consistently nor functioned as it had been theoretically and ideologically conceived. It was not just the real political circumstances which caused the domination of the Government. The constitutional provisions also gave it considerable independence from the Assembly, in the first instances through its right to participate in the exercise of the legislative function. The Government had been a real inspirer of the state policies and laws (Đorđević, 1964, 189) while the National Assembly had not really shaped the policies but simply approved the Government's proposals. Although the National Assembly had the right to reject the Government's proposals, it never happened. Moreover, the Government's proposals were adopted with no substantial discussion or amendments.

Other authors claimed that the system which had been established in the 1946 Constitution essentially had all the main characteristics of the assembly system (Krbek, 1955, 49), and that the Constitution wholly prescribed the principle of unity of powers (Stefanović, 1950, 476). According to this opinion, there had not been relative independence in the relationship between the state organs which fulfilled different functions of state power (Krbek, 1946, 184), which was the proof that the system had been based on the principle of the unity of powers. Although there is some truth in these claims, we do not think that this system could really be defined as the assembly system. Namely, formally speaking, there had not been relative independence in the relationship between legislative and executive in the sense that legislative had formal means of influence over executive while vice versa had not been prescribed at least in the sense that the executive could not influence the existence of the legislative. On the other hand, the executive had been independent in the sense that it had the right to participate in the exercise of legislative function, while the legislative in practice could never impose its will on executive since the political monopoly rested in the hands of the latter.

Some authors argued that it was the illusory assembly system (Mratović et al., 1981, 428). Although this opinion substantially neglected that the system had the features of the assembly system, its shortcoming was that it did not clearly define it. It would be methodologically more correct to claim that the system had been a mixture of the assembly and parliamentary systems than to claim that it had been the illusory assembly system for the latter definition more revealed what the system had not been than what it had been.

According to another opinion, the constitutional provisions only at first sight reminded on parliamentary system since the Government could not influence the existence of the National Assembly (Fira, 2007, 106).

The abovementioned authors evaluated the formal characteristics of the system that had been prescribed in the Constitution. However, even this formal approach could not lead to the conclusion that the system had the nature of the assembly system. It was true that most elements of this system formally were present. However,

one important element was missing, namely the right of the National Assembly to be sole legislator since the Government, as mentioned before, had the right to enact regulations with the strength of law. Therefore, we agree with those authors who have claimed that the Constitution prescribed a mixed system of government. The system was similar to the parliamentary system because it introduced relative independence of the legislative and executive, since the executive participated in the legislative function and it decisively shaped all the policies. On the other hand, difference with the parliamentary system could be found in the fact that the executive could not formally influence the existence of the legislative since the National Assembly could not be dissolved either by the Government or the Presidium of the National Assembly.

Other authors reached the conclusion that the system had the features of the assembly system having in mind only relationship between the National Assembly and other organs in respect of their election and accountability (Stefanović, 1950, 476–477). According to this opinion, the very fact that the National Assembly elected the Government and could depose it, while the Government could not dissolve the National Assembly, was enough for conclusion that the principle of unity of powers was enacted. Although these features of the Yugoslav system were important for conclusions on its legal nature, it was nevertheless necessary to take into consideration its other features, such as competencies of both the National Assembly and the Government in exercising legislative function of state power. When one takes into consideration these competencies, the explicit and firm conclusion on the assembly system in the first Yugoslav constitution has to be question as we have already done.

The institution of the Presidium of the National Assembly also limited the powers of the National Assembly. The Presidium had triple legal and political nature. It had been at the same time the executive body of the National Assembly, its substitute in some occasions, and the collective head of state. According to Article 74 of the Constitution, the Presidium, among other competencies: had given obligatory interpretation of laws; ratified international treaties; nominated and recalled, on the proposal of the President of the Government, individual ministers; changed the structure of the Government; etc. Indeed, the National Assembly had to approve some of these decisions. However, since the Assembly met rarely, the Presidium's decisions had real political impact. In practice, the Presidium did not become influential decision-maker since this role had been reserved for the Government.

Considering this fact as well as the constitutional competencies of the Presidium, it could be said that its existence contributed to the strengthening of the principle of unity of powers (Krbek, 1946, 185). Namely, the fact that the Presidium had, among other things, the nature of the collective head of state, the absence of the individual head of state meant that there was no potential for constitutional or practical strengthening of the head of state, which could additionally endanger the formal domination of the National Assembly.

ОДЛУКА

УСТАВОТВОРНЕ СКУПШТИНЕ

ФЕДЕРАТИВНЕ НАРОДНЕ РЕПУБЛИКЕ ЈУГОСЛАВИЈЕ

О ПРОГЛАШЕЊУ

УСТАВА

ФЕДЕРАТИВНЕ НАРОДНЕ РЕПУБЛИКЕ ЈУГОСЛАВИЈЕ

Уставотворна скупштина Федеративне Народне Републике Југославије, као врховни претставник народног суверенитета и израз једнодушне воље свих народа Федеративне Народне Републике Југославије, на заједничкој седници својих домова, Савезне скупштине и Скупштине народа,

одлучује:

да се Устав Федеративне Народне Републике Југославије, усвојен од Савезне скупштине и Скупштине народа, прогласи и објави народима и грађанима Федеративне Народне Републике Југославије.

Чланови:

Fig. 1: Decision on enactment of the Constitution of the Federal People’s Republic of Yugoslavia 1946 (Wikimedia Commons).

TOWARD ASSEMBLY SYSTEM IN THE CONSTITUTIONAL LAW

After the 1948 split with the USSR, Yugoslav regime decided to adopt radical social and political changes introducing workers' self-management in 1950. These changes were fundamental in the sense that they aimed at considerable and radical reform of the very system. Therefore, the new constitution had to be enacted since the nature and the content of the changes were such that the new constitution was necessary. It was not possible to realize radical changes in the constitutional framework which had been drafted according to Stalinist model. However, the political elite had decided that for the first phase of the reform it would be enough to enact the constitutional law which would replace considerable portion of the 1946 Constitution (Rusinow, 1978, 70–71).

Yugoslav constitution-makers developed the idea that the political power had to be concentrated in the assemblies (Kardelj, 1977, 162–163). If the bureaucracy had to be weakened and eventually defeated, the power had to be concentrated in the assembly since bureaucracy could not as easy control the assembly as it could control the executive (Kardelj, 1980, 15, 19–20). The executive organs became "natural" strongholds of the bureaucracy since they were composed of the most influential politicians, which had at their disposal material means and the aid of experts in different fields. The main ideologists thus implicitly admitted that bureaucracy became the new ruling class or at least ruling layer which drew its power, among other sources, from their positions in the Government and its practical domination over the National Assembly.

The 1953 Constitutional Law on the Bases of the Social and Political Order of the Federal People's Republic of Yugoslavia and on the Federal Institutions changed considerable parts of the 1946 Constitution since the Constitutional Law had prescribed new constitutional principles of the social and political order of the state such as workers' self-management, decentralization, stronger position of the assemblies, introduction of the socio-economic bicameralism etc.

The Constitutional Law prescribed in Article 13 that the Federal People's Assembly was the representative of the people's sovereignty and the supreme organ of power of the Federation. This very definition meant that the constitution-maker intended to preserve and possibly to strengthen the assembly system of government. The Assembly exercised both legislative and executive functions (Đorđević, 1977, 314), which was one of the most important features of the assembly system. This was also the new feature of the constitutional system since the constitution-maker intended to concentrate both legislative and executive functions in the hands of the Assembly which had not been the case until then.

This intention could also be seen from Article 15 of the Constitutional Law, which had prescribed *exclusive* competencies of the Federal People's Assembly such as: 1) enactment of laws, annual social plans and budget; 2) election of the Federal Executive Council (FEC); 3) election and removal of the President of the Republic; 4) election and removal of the judges of the Federal Supreme Court; 5) amending the Constitution; etc.

The Assembly had not shared its most important competencies with other institutions (i.e., with the FEC and the President of the Republic), which was one of important differences comparing with the 1946 Constitution. Namely, the Constitutional Law excluded the executive from direct exercise of the legislative function since the government (i.e., the FEC) no longer had the right to enact the regulations with the strength of law. This was the most important difference between the 1946 Constitution and the 1953 Constitutional Law, testifying the intention of the constitution-maker to strengthen the principles of the assembly system.

The principal relationship between the Federal People's Assembly, on one side, and the FEC and the President of the Republic, on the other side, was marked by the fact that two latter organs were defined as the executive organs of the former while the Assembly, according to the assembly system, exercised both the legislative and executive functions (Đorđević, 1964, 189). The President of the Republic was elected by the Assembly, which also had the right to recall him for political and other reasons. This meant that the President of the Republic formally had been subjected to the Assembly. The President had to be elected among the MPs, on the proposal of at least twenty MPs. The facts that the procedure for his election had to begin and finish in the Assembly, as well as the fact that he was responsible to the Assembly, were clear elements of the assembly system.

The President had not had the right to legislative initiative or the right to veto, which meant that he had not had the possibility to influence the legislative power directly, which were important elements of the assembly system. His power rested in the fact that he had been the chairman of the FEC. He could influence the Assembly through the FEC's right to legislative initiative and the FEC's right to exercise the executive function. Of course, these were the FEC's competencies, which the President could exercise only through the FEC. If the President had not agreed with a decision of the FEC, he could veto it until the Assembly would take the final decision. This constitutional provision also gave to the President important competence and the means of control over the FEC, which had not been in accordance with the role of the head of state in the assembly system. Some authors argued that the President of the Republic had been the first among equals in the FEC but at the same time that he had been the political chief of this state organ (Đorđević, 1958, 323). In our opinion, he could not be both, and in fact he had been the political head of this institution which gave him serious political influence. In this way, the President of the Republic preserved for himself real political power rising directly from the Constitutional Law.

Development of the assembly system in the 1953 Constitutional Law could be primarily seen in the fact that the FEC did not have the right to enact the regulations with the strength of law. This meant that it could not exercise the autonomous normative power but only to enact regulations which were necessary for the execution of the laws. This fact considerably weakened the position of the FEC in comparison to the position of the Government according to the 1946 Constitution and strengthened the elements of the assembly system.

However, the FEC still had the most powerful practical role in the system due to one constitutional and one political reason. The constitutional reason was its constitutional right to legislative initiative, which it used very widely. The consequence was that most laws were adopted on the FEC's initiative. Some authors thought that the FEC had even had important constitutional powers as well (Đorđević, 1964, 189). The Federal Executive Council had under its control whole federal administrative apparatus, composed of experts with knowledge and information which were necessary for drafting laws. The members of the Assembly could not count on such an expert aid. In fact, the only important competence which could and did give considerable power to the FEC was the right to legislative initiative (including drafting budget and social plans).

The political reason for the powerful role of the FEC in the system laid in the fact that it had been composed of the most influential political leaders. Since these leaders, with Tito himself, who was the FEC's chairman, exercised considerable political power, it was quite natural, although contrary to the principles of the assembly system, that the FEC was more influential than the Assembly. If the FEC had been composed of the non-political experts or of the second-class members of the political elite, and if the most important members concentrated their work in the Assembly, the latter could become more powerful in comparison with the former.

In order to strengthen the Assembly constitutionally and in practice, the political elite had to fulfil one constitutional and one political condition. Constitutionally speaking, members of the Assembly had to be prevented from being at the same time members of the FEC. This would be departure form the principles of the assembly system but its positive consequence would be that there would not be too much concentration of power in the hands of one small group of members of the political elite. Politically speaking, the political elite had to decide not to elect its members to the FEC but to the Assembly.

Another interesting and potentially important issue was the solution according to which the state administration had been separated from the FEC. According to Article 90 of the Constitutional Law, state secretariats and other organs of state administration had the duty to directly execute affairs which were in the competence of the Federation. The state secretaries headed the state secretariats. However, only two of them were members of the FEC *ex officio* which had not excluded those other members of the FEC could also be nominated as secretaries. In this way, the Constitutional Law tried to diminish the political power of the state administration since it was separated from the FEC as a political-executive body. The idea was to separate political-executive function from the administrative function of state power (Festić, 1969, 155–158; Mratović et al., 1981, 153) in order to weaken the position of the administrative bodies, such as the state secretariats. The constitution-maker feared that the FEC could keep the political power which the Government had after 1946 since the ministers as the heads of the administrative organs (the ministries) had also been members of the Government. According to some authors, this was the Kardeljian antibureaucratic device

(Rusinow, 1978, 72). In practice, however, the heads of the administrative organs were too often nominated among the members of the FEC (Marković, 1980, 182). It seems that the Constitutional Law had to explicitly prescribe that the state secretaries could not at the same time be members of the FEC with possible exception of state secretaries for defence and foreign affairs.

It has to be emphasized that the FEC still had the right to initiate legislation and to overview its execution while it had been composed of the most influential members of the political elite. Therefore, the very separation of the political-executive and the administrative functions did not produce the dominance of the Assembly over the executive. Despite all this, the practice prevailed that the members of the FEC were at the same time the heads of secretariats which meant that the elements of the parliamentary government were present in the structure and method of functioning of the FEC (Nikolić, 1973, 67). It seems that the constitution-maker did not find the FEC's right to initiate legislation as a political problem which could have as its consequence the dominance of the former over the Assembly. Or, maybe the constitution-maker even wanted to keep strong constitutional and political position of the FEC. Whatever the case was, the constitution-maker (un)intentionally exacerbated fulfilment of the idea that the Assembly should become the supreme organ of state power.

In our opinion, the main source of the executive's dominance was in the fact that the FEC, composed of influential members of political elite, had the monopoly over the legislative procedure. Two solutions to this problem were possible. Either the FEC would not be composed of the most influential members of the political elite, or the right to legislative initiative should rest in the working bodies of the Assembly. In our opinion, the second solution would be better for two reasons. Firstly, if the FEC would be composed even of second-class members of the political elite, its political power would still be considerable since these members of the FEC would have to follow instructions of the ruling party, at least in the most important cases. Secondly, if the legislative initiative would become the monopoly of the Assembly's working bodies, the whole legislative procedure would begin and end in the Assembly, and other political institutions would have less influence on it although it would be illusory to expect that there would not be any influence at all.

The right of the FEC to submit collective resignation after 1953 also gave it considerable political influence (Nikolić, 1973, 68). This was one of departures from the principles of the assembly system which had not been enacted initially in the Constitutional Law but had been enacted later on in the 1958 Assembly's Rules of Procedure (Đorđević, 1961, 514). Firstly, this raised the issue of the constitutionality of such a solution since the Rules of Procedure could not give this right to the FEC if it had not already been prescribed in the Constitutional Law. Secondly, the right to submit collective resignation was a means of political influence of the FEC on the Assembly, i.e. it was a source of the political threat which the FEC could use if necessary to subdue the Assembly.

Previous analysis leads to the conclusion that the constitutional basis of the assembly system was laid down in the 1953 Constitutional Law.

“THE CHARTER OF SELF-MANAGEMENT”

The 1963 Constitution of the Socialist Federal Republic of Yugoslavia (SFRY) had been enacted at the moment when self-management had been stabilized as the basic feature of the Yugoslav socialism, and when leading ideologists believed that the system had been stable but needed some improvements. These improvements were necessary in order to combat bureaucracy which had been understood as the main enemy inside the system.

The Federal Assembly had been defined both as the supreme organ of state power and as an organ of self-management. Its double nature emerged from the theory of withering away of the state. If the state had to wither away, the assembly could not be typical state institution any more. It had to begin to transform itself into the organ of society. Whether one examines the assembly as a state organ or as an organ of self-management, the conclusion had to be the same: the assembly had to be the supreme power. Firstly, as a state organ, it had to exercise the supreme power since it represented the bearer of sovereignty, namely the working people and other citizens. Secondly, as an organ of self-management, the assembly had to exercise the supreme power since it was the only possible organizational form of realization of self-management at macro level.

Therefore, the idea that self-management, as the cornerstone of the social system, had to be strengthened and developed, demanded further changes in the role of the Assembly. That was the reason why this constitution had also proclaimed the assembly system, although some authors thought that it introduced the elements of the separation of powers (about this cf. Nikolić, 1973, 73). The Assembly had been defined as the supreme organ of power which by itself was a clear sign that the assembly system had been introduced. However, some changes were visible comparing to previous solutions. The Assembly exercised the legislative function directly, while it exercised the executive function indirectly, through two institutions which formally were responsible to it – the President of the Republic and the FEC. The basic principles of the assembly system remained – the Assembly elected both the President of the Republic and the FEC, and it had the right to overview their work and to remove them from office. On the other side, these organs could not influence the existence of the Assembly since none of them had the right to dissolve it.

The constitutional position of the President of the Republic changed. He was not any more the chair of the FEC, but the autonomous political-executive institution. He was not the political-executive organ of the Assembly. Furthermore, the X Chapter of the Constitution had been dedicated to the President of the Republic, while the XI Chapter had been dedicated to the political-executive and administrative organs of the Assembly. The very structure of the Constitution coupled with the constitutional definition of the President of the Republic indicated the intention to strengthen his constitutional position which at least implicitly reduced the power of the Assembly.

Fig. 2: Session of the Federal People's Assembly of Yugoslavia 1958 (Wikimedia Commons).

He was elected by the Assembly, although it was not obligatory that a candidate was an MP. Since it had not been necessary for the President of the Republic to be elected as an MP before nominated for the President, it could not be said for sure if a candidate for the President's office had the voters' legitimacy.

If a candidate had been an MP, and he/she had been elected, his post as an MP would cease. The President of the Republic still did not have considerable powers, while his political role was highly important due to the fact that the post had been occupied by Tito, the undisputable state and party leader. Contrary to the nature of the assembly system, the Constitution did not explicitly prescribe the right of the Assembly to recall the President (Article 164) although it prescribed in Article 219 his responsibility to the Assembly according to the Constitution and law (Đorđević, 1964, 403). However, some authors argued that the Assembly still had this right since without it the very accountability of the President to the Assembly would be meaningless (Nikolić, 1973, 86). On the contrary, we think that such a conclusion is too strong since according to it the Assembly would have the right to recall the President, which would be in accordance with the assembly system, but which nevertheless had not been explicitly prescribed. The constitution-maker had to prescribe the right of the Assembly to recall the President of the Republic at any time and for any reason, but this solution simply was missing, in our opinion because the constitution-maker thought it improper for the function occupied by President Tito.

It is interesting to note that the Federal Assembly had the right to recall the President of the Republic according to the Constitutional Law while the President was the chair of the FEC. This right of the Assembly was missing in the 1963 Constitution when the President was an independent political-executive institution. Not only that he was not the chair of the FEC but his position was strengthened even more since he was not defined as a political-executive organ of the Assembly. The fact that the President of the Republic could not be recalled by the Assembly was an element of the parliamentary system.

In our opinion, it had been contrary to the nature of the assembly system, and more in accordance with the parliamentary system, that the President of the Republic had the right to propose a candidate for the post of the chair of the FEC (logically, he also would have the right to propose dismissal of the chair), and that he had the right to convoke the FEC and to propose to it the issues which it had to discuss and to vote on. This provision was in accordance to the fact that the President of the Republic was not any more the executive organ of the Assembly but relatively autonomous political institution. However, principally speaking as well as considering the fact that the post had been held by the most important political leader, this provision could not be justified by the standards of the assembly system. It would be better if the chair of the FEC had been nominated by the special Assembly's commission. In that case, the procedure of the FEC's election would begin and finish in the Assembly, which would be completely in accordance with the principles of the assembly system. The President of the Republic, as the political-executive institution, should not have the right to participate in the procedure of election of another political institution.

The same could be said about the election of the judges of the Constitutional Court of Yugoslavia, whose members had been elected by the Assembly on the proposal of the President of the Republic, which gave him considerable importance and power. Some authors rightly argued that the FEC to some extent had been in the position of dependency toward the President (Mratović et al., 1981, 165). The Constitution did not explicitly prescribe the right of the Assembly to abrogate the President's legal acts, which was deviation from the assembly system. Since the Assembly had been the highest power institution, it had to have this right.

The Federal Executive Council had been defined as the political-executive organ of the Assembly, which was in accordance with the nature of the assembly system. The FEC was elected by and responsible to the Assembly, and it was not able to influence the existence of the Assembly either directly or indirectly. This was one of the most important features of the assembly system. The members of the FEC were elected among the members of the Federal Assembly by the Federal Council of the Federal Assembly. This solution was positive and natural since it was in the nature of the assembly system that the members of the FEC had been at the same time the members of the Assembly.

The FEC was often described as a political committee of the Assembly. This theoretical definition had to describe the FEC as an Assembly's working body which had not been based on the principles of mutual dependence and balance of forces but rather

on the principles of the hierarchical subordination of the former to the latter. However, the fact that the FEC had been the *political* committee of the Assembly meant that in practice it had been the institution which considerably (or even decisively) influenced the policy-making process.

According to Article 227 of the Constitution majority of the members of the FEC could resign which would lead to the resignation of the FEC as a whole. This solution meant the possibility of mild pressure of the FEC on the Assembly since it was hardly possible, except in the case of serious political crisis, that majority of the FEC's members could resign. On the other hand, the chair of the FEC could submit collective resignation on behalf of the FEC. This right of the FEC had been potentially strong means of pressure on the Assembly which had not been in accordance with the nature of the assembly system.

The FEC's formal competencies were not as strong as it was the case with the government in the parliamentary system or with the Yugoslav Government according to the 1946 Constitution. The FEC had not the right to enact regulations with the strength of law. It could only enact regulations which were necessary for the implementation of laws. This meant that the legislative function rested solely in the Assembly. However, Article 225 of the Constitution prescribed that the FEC was responsible for the implementation of policies whose basic features had already been decided by the Assembly. The Assembly decided only on the outlines of the policies while the FEC formulated more precise content of these policies. Although the FEC had to act in the legal and political framework outlined by the Assembly it nevertheless had some autonomy, and this was not convergent with the very idea of the assembly system.

The most important competencies of the FEC were the right to initiate legislation as well as the right to implement adopted laws. These two rights gave considerable political and constitutional weight to the FEC since it continued to be a master of the legislative process and of everyday functioning of the Federation. Great majority of adopted laws were drafted by the FEC, while the MPs rarely used their right to initiate legislation. In this way, the dominance of the FEC continued. Instead of being executive organ of the Assembly, the FEC in practice continued to play the role of the primary policy-maker. The reasons for such practice were the same as during the period of the Constitutional Law validity.

The relationship between the legislative and the executive could be different if one political-executive organ (such as the FEC) had been abolished and replaced with a series of executive bodies (such as committees for finance, defence, labour relations, etc.), composed of members of the Assembly and responsible to it. Since this never happened (although there had been such proposals during the preparation of the Draft Constitution), another solution for reduction of the power of the FEC could have been found in its composition, i.e. in the decision of the political elite to concentrate its activities in the Assembly while abstaining from the membership in the FEC. The fact that the FEC had been the main initiator of the laws would not be negative in itself if the relationship between the Assembly and the FEC had been such that the Assembly highly critically examined draft bills of the FEC and rejected serious percentage of

them. This would mean that the Assembly became politically independent from the FEC and ready to cooperate with it and not just to confirm its draft bills. This outcome could be possible only if the FEC ceased to be a political institution and be composed entirely or predominantly of professionals who did not belong to political elite. Only such composition of the FEC would guarantee freedom of the Assembly to discuss and decide on draft bills without political dependence on the initiators of legislation.

After 1963, the Assembly became more active and more important political institution.[3] The number of adopted laws significantly rose, including the systemic laws, which had often been drafted by the Assembly. It was more important that the Assembly disapproved with some legislative proposals of the FEC, which would be unimaginable in the parliamentary systems. For the first time, the Assembly had become really active political institution (Rusinow, 1978, 152–153), which gave more vitality to the idea of the assembly system.

Although this was positive move forward, the Constitution still gave important rights to the FEC. According to Article 228, the FEC had the right to express the attitude on the draft laws submitted by other initiators. Potentially, this was strong competence of the FEC since it was highly probable that its negative attitude on a bill would mean that the Assembly would reject it. Although this competence was prescribed in order to improve good relations between the Assembly and the FEC, it was not convergent with the very nature of the assembly system since it gave considerable power to the FEC in the legislative procedure. Since the FEC had great political authority, its negative attitude on a draft bill almost automatically meant that a draft bill would be rejected. However, the Constitution had prescribed in Article 232 that the FEC had the right to collective resignation if the Assembly, contrary to the opinion of the FEC, adopted a draft bill or other act. This solution was more in accordance with the parliamentary than the assembly system since it gave to the FEC the possibility to blackmail the Assembly.

The FEC did not have the general constitutional competence to enact the regulations necessary for the implementation of the laws. It had had this right according to the 1953 Constitutional Law and it got it again in 1971.[4] The 1963 Constitution solution was good since it limited the power of the FEC to enact regulations. The Assembly had the full right to decide when and to what extent the FEC should have the right to enact regulations. In this way, the Assembly could additionally control the work of the FEC. The right to enact regulations was indeed important aspect of the shaping policies and their implementation considering the fact that laws were quite general and that they had to be made more concrete in order to be implemented. Therefore, it could be said that the absence of this general constitutional competence is in accordance with the assembly system.

3 Although most of the adopted laws had been submited by the FEC, the working bodies of the Federal Assembly actively used its right to legislative initiative than before. From April 1963 to December 1965, these bodies submitted 160 draft bills, while other subjects (mostly the FEC) submitted 855 draft bills (Nikolić, 1973, 76, 81).

4 Some theorists questioned this solution – cf. Đukić, 1973, 57.

According to Article 226 of the Constitution, the federal secretaries and the federal state secretaries (both were the heads of administrative departments – "ministries") were *ex officio* members of the FEC, although as members of its "wider team", having the right to participate in decision on general issues (in fact, on the most important issues, such as draft bills, draft budget, etc.). This meant one step back comparing to the 1953 Constitutional Law. The constitution-maker departed from the idea that the administrative organs should be separated from the political-executive ones in order to limit the power of the executive, and this new solution could be criticized as a departure from the principles of the assembly system. Since the heads of administrative departments were at the same time influential party officials and the members of the FEC, it was clear that their role was not only administrative but also political, i.e. that they participated to considerable extent in policy-making. It would be better if they were not members of the FEC at all (Đorđević, 1964, 463).

THE LAST CONSTITUTION

The 1974 Constitution of the SFRY was the last constitution of this state which at the moment of its enactment had already been highly confederalized. This fact, which was confirmed in the Constitution, influenced very much the competencies and the relationship between three main federal political institutions – the Assembly of Yugoslavia, the Presidency (the collegial head of state), and the FEC.

Although the constitutional system had officially rested on the assembly system, the latter changed considerably. The competencies of the FEC remained unchanged to some extent which meant that it preserved its powerful position in the political system although in line with the changes in the federal system which tended to become more a mixture of federation and confederation. The strong position of the Presidency of Yugoslavia also influenced lesser competencies of the FEC. The Constitution introduced the principle of incompatibility of membership in the Assembly and the FEC, out of fear that double membership in these organs would considerably strengthen political influence of the members of the FEC. In this way, the Constitution adopted solution similar to the one in the Swiss Constitution, which often has been described as a departure from the assembly system (Marković, 1976, 136) although the intention of the constitution-maker seemed well-founded. Namely, according to one theoretical opinion, members of the executive council ("government") had to be at the same time members of the Assembly because the former had only been the working body of the latter. Since the executive council did not have its own policies, its role was only to execute the political will of the assembly. The will of the assembly would be best executed by those who participated in shaping the policies, i.e. members of the assembly.

The Constitution did not bring considerable changes in the position of the FEC. It had the right to enact regulations for execution of laws based on the general constitutional authorization. This was contrary to the 1963 Constitution which did not recognize general authorization for enactment of regulations. This new solution enabled the FEC to practically widen its power since it could regulate with these regulations issues which had to be

regulated by laws. Of course, this could happen only regarding second-class issues when the laws had not regulated particular issues in sufficient details. The federal secretaries (who headed the secretariats as the federal administrative organs) as well as the heads of other federal administrative organs were members of the FEC, which made the latter to look like the government in the parliamentary system.

Article 348 of the Constitution prescribed that the Presidency had the right (and duty) to propose a candidate for the post of the president of the FEC (about practical aspects of this solution, cf.: Kamberović, 2012, 179–227). This was departure from the principle of the assembly system and it was more in accordance with the principle of separation of powers. The Assembly had to approve a proposal but however it was limited with the Presidency's proposal and it had to behave according to "take it or leave it" principle. Since the Presidency was composed of very (or most) influential members of the political elite, whose attitudes were considered as joint interest of republic and autonomous province, it was very hard for the Assembly to disagree. In any case, the only solution completely in accordance with the assembly system would be that the procedure of election of the FEC began and finished in the Assembly.

The method of election of the FEC revealed true impotence of the Assembly. The V Amendment to the Constitution gave the right to the Socialist Alliance, as a socio-political organization, to lead the procedure for harmonisation of opinions and interests of republics and autonomous provinces regarding the nomination of the president of the FEC. After that, the Presidency had to nominate him/her. The role of the Assembly had been only to approve the nomination. This meant that the Assembly had to take into consideration opinions of many political subjects: six republics and two autonomous provinces, the Socialist Alliance, and the nine-member Presidency.

According to the Constitution, the Assembly of SFRY remained, at least nominally, the highest organ of state power and of self-management, although its' constitutional position weakened (Marković, 1980, 224), since the political-executive organs exercised considerable influence over it. The FEC, for example, had the right to collective resignation. This was the means of pressure of the executive on the legislative which was quite natural for the parliamentary system but was not in accordance with the principles of the assembly system. The FEC's right to collective resignation meant that it could make a pressure on the Assembly to adopt its policies or it would resign, which would be a gross political problem decreasing the very legitimacy of the Assembly itself. This constitutional institute, prescribed also in the 1963 Constitution, potentially strengthened the position of the FEC and decreased the power of the Assembly since it gave the FEC considerable blackmailing potential.

In the second half of 1980s the FEC offered its collective resignation four times. In 1985, the FEC under the presidency of Milka Planinc offered its resignation twice, and the FEC under the presidency of Branko Mikulić did it also in 1988 (Sarač-Rujanac, 2020, 143–196). At last, the latter finally submitted its collective resignation in December 1988. These were political moves characteristic for parliamentary system and directly opposite to the nature of the assembly system since in the latter the "government" can not offer its resignation since it is only a working body of the assembly. These moves of

the FEC in 1985 and 1988 were discussed between the FEC and the Presidency of SFRY. In other words, the Assembly of SFRY played only secondary role. If the FEC finally decided, up to December 1988, not to resign, it was entirely thanks to its relationship with the Presidency. The reason why the FEC intended to resign could not be seen primarily in its misunderstanding with the Assembly but in the fact that the republics and autonomous provinces did not accept the FEC's policies while the Assembly in some cases was not able to act efficiently. For example, it was not able to adopt the draft budget for 1989 primarily due to blockades by some republics and autonomous provinces. At the end, the FEC resigned in December 1988 after the Assembly of SFRY rejected to adopt nine acts in the field of economics and finances. Only at first sight it seems that the FEC had to surrender to the Assembly which did not approve of its policies. However, true reasons had to be found in the fact that the Assembly, as a kind of diplomatic conference of republics and autonomous provinces, had not been able any more to shape policies based on consensus of all subjects of the Federation. In fact, the FEC had not been a "victim" of the Assembly's supremacy but of bad political relations between republics and autonomous provinces.

The Federal Executive Council had the constitutional right to pose the question of the Assembly's confidence in its work. In this way, the FEC had the possibility to make a pressure on the Assembly either to conform to its policies or to remove it. This was typical means of influence of the executive on the legislative in the parliamentary system, completely inappropriate for the supposed hierarchical relations between the Assembly and the FEC. However, the 1981 amendments potentially strengthened the position of the Assembly since after two years in office the FEC had to submit the report on its work, and the Assembly had to debate about it and at the end to vote confidence or no confidence in the FEC (Potts, 1996, 310).

These changes of relationship between two political institutions in the direction of separation of powers were result of the constitution-maker's intention to strengthen an executive organ which could effectively shape and fulfil federal policies. Since the Assembly of Yugoslavia made decisions according to complex procedures, including very often consensus of representatives of republics and autonomous provinces (Mirić, 1984, 84–90) there was a need for an institution which could act effectively. Such an institution had to have wide competencies in order to be able to shape and enforce state policies.

The constitutional position of the collective head of state increased, and the Presidency of SFRY became politically influential institution, in the legal framework of Yugoslav federation which, comparing to its federal units, had much narrower competencies than before 1974. The Presidency of SFRY had quite particular constitutional and political position, as a coordinating political body participating in the process of shaping policies. It had the right to legislative initiative as well as the right to propose the content of policies to the Assembly and to the FEC. This had been another deviation from the assembly system since the head of state should not have the right to participate in shaping state policies in different areas. Some authors rightly observed that the position of the President of the Republic according to the 1963 Constitution was more in accordance with the assembly system (Đorđević, 1977, 554). The Presidency was not at all the organ of the

Assembly, since the Assembly did not elect it, and it was not responsible to the Assembly. All of this was contrary to the assembly system principles.

Although the Presidency's proposals had not been obligatory, they nevertheless influenced the process of decision-making. According to Article 319 of the Constitution, the Presidency could make a pressure on the Assembly in order to achieve the enactment of its proposals. If a chamber of the Assembly would not be ready to adopt a draft bill or other proposal of the Presidency, even after the Presidency submitted it for the second reading, a chamber would be dissolved, while the mandate of the Presidency would simultaneously cease. Through this solution, the Presidency got the formal possibility to influence the process of decision-making although this meant that the hierarchical relationship between the Assembly and the Presidency had been undermined.

The Presidency had the right to veto a legal act enacted by the FEC which had the general political importance, although this was suspense rather than absolute veto, since a competent chamber of the Assembly had to make final decision on the act. This competence also showed that the Presidency should have bigger political weight than the FEC since it had been composed of the representatives of the federal units (including the autonomous provinces) and the president of the leading (and the only) political party. Therefore, the Presidency had become the meeting point of often different positions and interests of the republics and autonomous provinces, and its constitutional competencies gave it the possibility to moderate between opposing interests in order to guarantee the balance between the constituent parts of the Federation.

The fact that the Presidency was not elected by the Assembly and responsible to it was one of the major deviations from the assembly system. As some authors rightly argued, it had been a political actor in itself (Potts, 1996, 301). The method of election of the Presidency (by the republican and provincial assemblies) was the result of the strengthening of federal units' position. However, it seems to us that the only appropriate solution would be for the federal state to have the right to elect its head of state, and, according to the assembly system principles, this right had to belong to the Assembly of Yugoslavia.

Only at first sight it seems that the method of election of the Presidency was not convergent with its competencies. One could conclude that indirectly elected Presidency had to have much narrower competencies. We have to agree since all abovementioned competencies strengthened the head of state to the degree that the system looked more like parliamentary or semi presidential than the assembly system. However, the very purpose of the Presidency and its election by federal units considerably diminished imperfection of the method of its election. Since it served both as an instrument of inter-republican negotiations and making compromises and as an instrument for shaping joint interests of federal units, its indirect election by federal units was quite natural although it more inclined to confederal than to federal model.

CONCLUSION

The official attitude of constitution-makers and political elite in second Yugoslavia was that the assembly system as the form of government was one of the cornerstones of the

constitutional and political system. Although the constitutions had changed, the assembly system remained the basic feature of the political system in each of them. The ideological and theoretical reasons for its preservation in all constitutional acts, despite serious differences between them, were clear and strong. The Yugoslav constitution-makers thought that the principle of unity of powers, which is the basis of the assembly system, was more democratic than the principle of separation of powers, and that the assembly, as the organ of self-management and the expression of sovereignty of working people, had to be supreme power in the structure of the state which had to wither away. Therefore, the assembly system was unavoidable choice of the socialist constitution-makers.

Despite this principal theoretical viewpoint, Yugoslav constitution-makers experienced two main problems trying to constitutionalize the assembly system. Firstly, despite the fact that there were some experiences with the assembly system in other countries, this system had been almost unknown in modern constitutions and political systems. The Swiss model could not be taken over since the Swiss social and constitutional systems were not acceptable for ideological reasons. Yugoslav supposedly socialist system could not be based on the Swiss bourgeois system. Socialist models which appeared in the past could be useful only to limited degree. The model of Paris Commune lasted only two months which was not enough for thorough explorations and conclusions although it could and did serve for ideological purposes as the first socialist model of organization of state power. Model established in the Soviet constitutions, commencing with the first constitution from 1918, could be more useful since it had been adopted in all Soviet constitutions.

The principles of the assembly system had been developed to different degrees and with different contents in four Yugoslav constitutional acts. These differences were so huge that the question if all of them really institutionalized this system was quite reasonable. Socio-political and historical context influenced differences of the constitutional solutions. The first post-war constitution (1946) even introduced a kind of mixed form of government with some elements of the separation of powers despite the definition of the Assembly as the supreme organ of power. The theoreticians as well as the politicians explained this as a result of the hard post-war economic situation which had to be overcome through effective and active role of the state. Despite some truth in this argument, total dependence of the Assembly could be explained only with the desire of the political elite to concentrate political power in its hands. If the Assembly could meet more often, and could have the possibility to question the Government's policies, it could participate in the creation of state policies in meaningful way, while the Government still could have active and influential role in order to overcome post-war difficulties.

The reasons for strengthening of the assembly system, which happened in 1953 and 1963 constitutional acts, had to be found both in the socio-political context and the ideological and practical-political reasons. The clash with Stalinism in 1948 and orientation of the political elite on self-management necessarily led to strengthening of the assembly system since the political-executive organs were rightly seen as a basis of bureaucracy. Reform-minded members of top political elite as well as important sections of the middle layers of political elite were in favour of strengthening the role of assembly since they

could fulfil their democratic ideals and/or reach more political power. Democratic reforms which were proclaimed in 1950s and 1960s, based on the idea of self-management, were incompatible with the concentration of power in a dozen or so of the most influential politicians who were members of the powerful Government.

However, constitutional strengthening of the assemblies was not straightforward and it had been done with some deviations. Although strengthening of the political role of the federal assembly had been visible in the second part of 1960s, it had less been the result of its systematic independence from the executive power and party elites than the fact that the assembly deputies had shown less dependence from the political elites while representing local or republican interests during the debates and voting in the assembly.

This was the case even more in the last Yugoslav constitution (1974). Despite the constitution-maker's claims that the principles of the assembly system were strengthened (Kardelj, 1977, 11), it was not the case. In fact, it was quite the opposite. The fact that Yugoslav federation lost some of its competencies and that the Presidency of SFRY had to become a kind of organ which had to make balance between federal units considerably influenced this outcome. The fact that the Assembly of SFRY could make decisions only with delays and complicated procedure of searching for compromises of republic and provinces, as well as the fact that there was need for operative and efficient political institutions, which the FEC and the Presidency turned out to be, decisively influenced weakening of the assembly system. It was visible that political elite tried to solve or at least to control political crisis not through strengthening of assembly as the supreme organ but through negotiations of republican and provincial political elites. Such political and constitutional orientation meant that the assembly had to become second-class political institution.

Although constitutional provisions were different in analyzed constitutional acts, it was noticeable that some institutions characteristic for the systems of separation of powers were accepted in all or in some of them (delegation of legislative powers, right to collective resignation, political irresponsibility of head of state, etc.). The fact that at least some of these institutions were explicitly prescribed in particular constitutional acts indicated that the constitution-maker intended to strengthen the executive to some degree, or at least to deprive the assembly of its superior position.

All in all, the assemblies never became the supreme organs of power in practice although in some periods their influence strengthened and they could with some justification be marked as important political institutions. It seems that the political elite abandoned the idea of assembly system in the last constitution even formally although it had never been officially proclaimed.

ODNOS MED ZAKONODAJNO IN IZVRŠNO OBLASTJO V JUGOSLOVANSKIH SOCIALISTIČNIH USTAVAH

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POVZETEK

Namen prispevka je preučiti ustavne norme v socialistični Jugoslaviji z vidika razmerja med zakonodajno in izvršno oblastjo, da bi odgovorili na vprašanje, ali oziroma v kolikšni meri so bila načela skupščinskega sistema dejansko zagotovljena z ustavo. Avtor analizira določila štirih jugoslovanskih ustav (iz let 1946, 1953, 1963 in 1974), in sicer v njih opredeljene pristojnosti Zvezne skupščine, Zvezne vlade (od leta 1953 dalje Zveznega izvršnega sveta) in predsednika republike (oziroma Predsedstva SFRJ) ter odnose med temi telesi. Čeprav je bila skupščina v temeljnem zakonu države opredeljena kot najvišji organ oblasti in so tudi ustavne teorije jugoslovanski sistem razlagale kot skupščinski sistem oblasti, pa je vsaka od štirih preučevanih ustav določala tudi pristojnosti politično-izvršnih organov in jim s tem omogočala določen vpliv. Te pristojnosti so bile manjše v ustavnem zakonu iz leta 1953 in ustavi iz leta 1963, ki sta utrjevala vlogo skupščine, večje pa v ustavah iz let 1946 in 1974, ki sta močno okrepili vlogo izvršnih organov. Na podlagi tega avtor priznava jugoslovanskemu ustavnemu sistemu lastnosti skupščinskega sistema, vendar precizira, da je šlo pri njem za mešanico prvin skupščinskega sistema in delitve oblasti, vsaj glede na ustavi iz let 1946 in 1974.

Ključne besede: Jugoslavija, skupščinski sistem, ustava, Zvezna skupščina, Zvezni izvršni svet, predsednik republike, Predsedstvo SFRJ

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