

# Position of the Head of State in Serbia in the XIX<sup>th</sup> and XX<sup>th</sup> Centuries

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## **ABSTRACT**

The objective of this study is to analyze and present the evolution, specificities, and changes regarding the role of the head of state in Serbia and in the states of which Serbia was part in the period from the First Serbian Uprising in 1804 until the dissolution of the Socialist Federal Republic of Yugoslavia in 1991. During this period, Serbia had 11 rulers—three of whom lost their lives due to assassinations, two of whom were deposed, and two of whom abdicated—and two dynasties. More than 15 constitutions and constitutional acts were adopted shaping, among other issues, the position of the head of state. This period comprises constitutional issues of three countries—the Principality/Kingdom of Serbia, Kingdom of Serbs, Croats and Slovenes/Kingdom of Yugoslavia, and the Federal People's Republic of Yugoslavia/Socialist Federal Republic of Yugoslavia, in which the position of the head of state continuously changed due to the will of the ruler to strengthen it and the attempt of other institutions to limit it. Furthermore, six coups d'état were executed and the state also passed through phases of dictatorship or autocracy. The content of this paper follows the form of state and its modifications in a periodic fashion.

## **KEYWORDS**

Dynasty of Karadorđević, Dynasty of Obrenović, Josip Broz Tito, Prerogatives of the Head of State

## **Poziția șefului statului în Serbia în secolele al XIX-lea și al XX-lea**

## **REZUMAT**

Obiectivul acestui studiu este de a analiza și de a prezenta evoluția, specificitățile și schimbările privind rolul șefului statului în Serbia și în statele din care Serbia a făcut parte în perioada de la Prima Răscoală Sârbă din 1804 și până la dizolvarea Republicii Socialiste Federative Iugoslavia în 1991. În această perioadă, Serbia a avut 11 conducători — dintre care trei și-au pierdut viața în urma unor asasinat, doi au fost destituiți iar doi au abdicat — și două dinastii. Au fost adoptate peste 15 constituții și acte constituționale care au conturat, printre altele, poziția șefului statului. Această perioadă cuprinde probleme constituționale din trei țări – Principatul/Regatul Serbiei, Regatul Sârbilor, Croaților și Slovenilor/Regatul Iugoslaviei și Republica Populară Federală Iugoslavia/Republica Socialistă Federală Iugoslavia, în care poziția șefului statului s-a schimbat continuu din cauza voinței conducătorului de a o întări și a încercării altor instituții de a o limita. În plus, au fost executate șase lovituri de stat, iar statul a trecut, de asemenea, >>

>> prin faze de dictatură sau autocrație. Conținutul acestei lucrări urmărește sistematic forma statului și modificările acesteia.

#### CUVINTE CHEIE

Dinastia Karagheorghevic, Dinastia Obrenovici, Josip Broz Tito, prerogativele șefului statului

## I. INTRODUCTION

This paper provides a brief overview of the position of the head of state in Serbia from the resurrection of Serbian statehood in 1804 until the dissolution of the Socialist Federal Republic of Yugoslavia in 1991. The struggle for the liberty and independence of the Serbian people and further development of the Serbian state or of the states of which Serbia voluntarily or involuntarily formed part in the XIX<sup>th</sup> and XX<sup>th</sup> centuries conditioned the specific position of the head of state. It is challenging to cover this almost 200-year-long period in one article: first, because of the quantity of legal sources governing the issue of this study that were adopted as a direct consequence of radical changes that occurred throughout this period; and second, because of its length. Contemplation of the historical development of the institution of head of state is also essential for a better understanding of its contemporary constitutional status in Serbia. However, by utilizing the chronological method in the analysis and division of chapters, the objective of this paper is to fully present the constitutional position, peculiarities, and changes concerning the function of the head of state in Serbia, while indirectly covering the main political issues and events of this 200-year-long period.

## II. THE FIRST SERBIAN UPRISING OF VOŽD KARAOĐORĐE

### 1. Constitutional Act of 1805 and Constitution of Rodofinikin

The history of the resurrection of the Serbian statehood, lost in 1459 with the Ottoman conquest, commences in 1804, with the First Serbian Uprising. On the Christian festival of Candlemass (February 15) in Orašac, insurgents elected Đorđe Petrović, also known as Karađorđe (the Turkish word *kara*<sup>1</sup> signifies “black” or “dark”), to be the leader of the uprising against Turkish rule. According to the Serbian historian and statesman Stojan Novaković, the election of Karađorđe was “the first step towards the state organization.”<sup>2</sup> The German historian Leopold von Ranke characterized the

1 <https://sozluk.gov.tr/> (accessed: 20 September 2021)

2 Stojan Novaković (1954): *Ustanak na dahije 1804: ocena izvora, karakter ustanka, vojevanje 1804* [Uprising against the Dahije: Evaluation of Sources, Character of the Uprising, Warfare in 1804], Srpska književna zadruga, Belgrade, p. 134.

election of Karađorđe as the beginning of “the Serbian Revolution” in his famous book *A History of Serbia, and the Servian Revolution*, first published in 1847.

In the first year of the uprising, owing to the continuous warfare against Turks, the only power over the liberated territories was military, and it was entirely concentrated in the hands of Karađorđe.<sup>3</sup> Other military chiefs wanted to limit his excessive personal power, for which purpose the Governing Council (Правитељствујушчи совјет/*Praviteljstvujušči sovjet*) was founded in 1805. Božidar Grujović, a Serb from the Austrian Empire (Hungary), lawyer, and professor of law history at the University of Harkov, who was inspired by the ideas of the French Revolution, played a fundamental role in its creation. Decisions (laws) passed separately by the Governing Council and by the Assembly<sup>4</sup> (Скупштина/*Skupština*) in Smederevo in October and November 1805, taken together, represented the first Constitutional Act regulating the relationships between Karađorđe and the Governing Council, establishing the Governing Council as the supreme executive institution.<sup>5</sup> Karađorđe became its chairman with the official title of Supreme Chairman of the People’s Council (Председатељ верховни Совјета народна/*Predsdatelj verhovni Sovjeta narodna*). He also exercised the supreme military command, diplomatic function, and certain administrative and judicial functions.<sup>6</sup>

The help of the Russian empire to the insurgents in 1807 gave birth to the project drafted by the Russian diplomat of Greek origin Constantine Rodofinikin named the “Foundation of the Serbian government.” According to this project, the Serbian Governing Senate (Правитељствујушчи сенат сербски/*Praviteljstvujušči senat serbski*) would have the supreme power and Karađorđe, as prince (књаз/*knjaz*), would be the chairman of this institution with the right to grant pardons.<sup>7</sup> This act tended to seriously limit the powers of Karađorđe because the title of prince was not hereditary nor for life.<sup>8</sup> The project of Rodofinikin never came into force because the Russian emperor did not confirm it.

3 Marko P. Atlagić, Aleksandar L. Martinović: Udaranje temelja savremenoj srpskoj državi u Prvom srpskom ustanku 1804–1813 [The Foundation of the Modern Serbian State in the First Serbian Uprising], *Baština*, Priština-Leposavić, 2021, p. 360.

4 During the First Serbian Uprising the Assembly gathered at least once a year. The participants to these Assemblies were not elected by the people, but became participants owing to their position and reputation. Assemblies decided on the most important military and political issues.

5 Atlagić, Martinović (2021): pp. 361–362.

6 Ljubomirka Krkljuš: Povodom dvestote godišnjice Prvog srpskog ustanka (On the Bicentennial of the First Serbian Uprising), *Zbornik radova Pravnog fakulteta U Novom Sadu*, 2004/2, p. 12.

7 Krkljuš (2004): p. 13.

8 Srđan Šarkiћ: Ruski projekti državnog uređenja Ustaničke Srbije (Drugi deo—Rodofinikinov projekat) [Russian Attempts on the Constitutional Issue of Insurgent Serbia (Part Two—Establishment of a Serbian Government by Constantine Rodofinikin)], *Zbornik radova Pravnog fakulteta u Novom Sadu*, 2014/2, p. 33.

## 2. Constitutional Acts of 1808 and 1811

The Assembly in Belgrade adopted the second Constitutional Act in 1808. Its content is fundamental for the determination of the position of Karađorđe, who officially became leader (предводитель/predvoditelj). Until the adoption of this constitutional act, his official title was that of commander (командант/komandant). With a mutual obligation confirmed by oath, it was decided that the Council, military commanders, and the people would recognize Karađorđe and his male descendants as the first and supreme leader of Serbia, promising him fidelity and obedience. Conversely, Karađorđe promised that he would paternally take care of the people and recognize the Council as the highest judicial institution in the country. This act, by establishing the hereditary right of the head of state, represented the foundation of the dynasty of Karađorđević. In addition, it was stipulated that all the commandments and ordinances were imposed mutually by the leader Karađorđe and the Council.<sup>9</sup>

The second Constitutional Act, recognizing the hereditary right of the leader Karađorđe and obliging him to act in cooperation with the Council, did not pacify the dissatisfaction of other military commanders who wanted to limit his power. The third Constitution Act, adopted in 1811 by the Assembly in Belgrade, which had a contractual form expressed through two acts exchanged by Karađorđe, Council, and military commanders, put an end to their attempts. Karađorđe gained the official title of “vožd” (this word was taken from Old Church Slavonic (вождь), meaning “leader” or “chief”). Other military commanders and the Council took an oath of fidelity first to the vožd and then to the fatherland, which reflects the monarchical nature of the oath, also swearing that they would consider every other claimant to the Serbian leadership as a foe and that they would deliver him to the court.<sup>10</sup> The Council undertook the obligation of not acting without the consent of the vožd. Vožd Karađorđe swore to justly lead the people, to maintain an eternal alliance with the Russian Empire, to rule in cooperation with the Council which would be empowered to inflict the most severe punishments and to be entitled to relieve punishments and grant pardons, and that he would not permit the abuse of power.<sup>11</sup> His hereditary right was confirmed. Vožd Karađorđe, as the president of the reformed Council, was also entitled to nominate its members (ministers and other members, including his substitute).<sup>12</sup>

The Constitutional Act of 1811, considering the fact that the function of vožd as head of state and the function of president of the Council as head of government were united in the personality of Karađorđe, strengthened his position and crushed opposition. The almost unlimited power he exercised, given that he was also the supreme military commander with the prerogative to represent the state externally, did not last long. After the Treaty of Bucharest ending the Russo-Turkish war in 1812, the Ottoman Empire defeated the Serbian insurgents in 1813.

9 Radoš Ljušić (2008): *Srpska državnost XIX veka [Serbian Statehood of XIX<sup>th</sup> century]*, Srpska književna zadruga, Belgrade, p. 70.

10 Vladan Mihajlović (2009): *Ustavno pravo [Constitutional Law]*, Vladan Mihajlović, Kraljevo, p. 177.

11 Ljušić (2008): p. 72.

12 Atlagić, Martinović (2021): p. 370.

### III. THE PRINCIPALITY OF SERBIA (1815–1882)

#### 1. The reign of prince Miloš Obrenović (1815–1838) and the period until 1860

##### 1.1. Period from the end of the Second Serbian Uprising until the Constitution of 1835

The Second Serbian Uprising, which was a natural reaction to the unbearable Turkish terror, was spearheaded by Miloš Obrenović, whose official title during the rebellion was also vožd. The oral agreement concluded in 1815 between Miloš Obrenović and Marashli Ali Pasha, the commander in chief of the Turkish troops, put an end to this armed conflict. According to Vuk Stefanović Karadžić, the prominent reformer of the Serbian language and contemporary of the reign of Miloš Obrenović, this agreement instituted the duality of powers in such a way that “the pasha then remained master of the Turks and muslims in the cities, and Miloš ruled over the people and knezes.”<sup>13</sup> The Turkish pasha was the competent power for the Turkish population, while Miloš Obrenović ruled over the Serbs and was empowered to appoint and remove the knezes, chiefs of administrative-territorial units called nahije, who exercised certain administrative and judicial tasks. The Turkish Port confirmed the oral agreement concluded with Marashli Ali Pasha by issuing eight fermans in the winter of 1815–1816 establishing a “semi-autonomy” of the Serbian people.<sup>14</sup> In 1817, after the assassination of Karađorđe<sup>15</sup> by order of Miloš Obrenović, the Assembly declared him a hereditary prince of Serbia, but the Turkish Port did not confirm this title because that act would have given Serbia an attribute of a state.<sup>16</sup>

The turning point for the position of Miloš Obrenović and the legal position of Serbia within the Ottoman Empire was the issuance of two legal acts in 1830—Hattı-sharif by the Turkish Port and Berat by the Turkish Sultan. According to the provisions of the Hattı-sharif, Miloš was recognized by the Sultan as the Prince of Serbia, and this title became hereditary in his family according to the principle of primogeniture. The prince was to administer the internal affairs of the country in cooperation

13 Vuk Stefanović Karadžić (1960): *Prvi i Drugi srpski ustanak: život i običaju naroda srpskog [First and Second Serbian Uprising: Life and Customs of the Serbian People]*, Matica srpska, Novi Sad, p. 300.

14 Ljušić (2008): pp. 96–97.

15 After the defeat of the insurgents in 1813, Karađorđe emigrated to the Austrian Empire and then to the Russian Empire in 1814, where he became a member of the Greek national society called “Filiki Eteria” whose objective was the liberation of the Christian peoples in the Ottoman Empire. With the intent to organize a new uprising against Ottoman rule, he returned to Serbia at the end of June 1817. By order of Miloš Obrenović, Karađorđe was viciously assassinated while he was sleeping on July 13, 1817, and his head was sent to the Ottoman sultan as a sign of Miloš’s fidelity.

16 Vladimir Ćorović (1989): *Istorija Srba—treći deo [History of Serbs—Third Part]*, Beogradski izdavačko grafički zavod, Belgrade, p. 66.

with the assembly composed of notables of the country (which was never instituted).<sup>17</sup> The Hatti-sharif also stipulated that the maintenance of the prince was a duty of the Serbian people. Serbia obtained the status of the vassal principality with independent internal administration. Furthermore, in the Berat, the Sultan stated that Miloš Obrenović was the most eligible and the most capable to administer the Principality of Serbia and once again recognized his hereditary title of prince according to the principle of primogeniture. It was prescribed that in the event of a vacant throne, the Sultan would adopt a new berat in the manner foreseen in the Hatti-sharif. The Sultan also recommended to Miloš to administer the Principality reasonably and devote all his attention and care to it.<sup>18</sup>

The best and the most plausible depiction of the absolutistic and despotic nature<sup>19</sup> of the reign of Miloš Obrenović, who even used to render judgment according to his personal convictions, was given by Vuk Stefanović Karadžić in a letter addressed directly to Miloš in 1832. Vuk described his reign in the following manner: "Today in Serbia there is no government; in the literal sense of the word, you are the entire government: When you are in Kragujevac, the government is also in Kragujevac; when you are in Požarevac, it is also in Požarevac; when you are in Topčider, it is also in Topčider; when you are on the road, it is also on the road; if you tomorrow, God forbid, die (one day it has to be like that), the government would die too...."<sup>20</sup>

## 1.2. Constitution of 1835

After the revolt of Mileta Radojković provoked by Miloš's unbearable absolutism, Miloš was forced to give the people the Constitution adopted by the National Assembly on February 15, 1835. The redactor of this constitution, also known as the Candelmass Constitution after the date of its adoption, was Dimitrije Davidović, a Serb from the Austrian Empire and the editor of the first Serbian newspapers ever published.<sup>21</sup> This Constitution was adopted without consultations with and without the consent of the Ottoman Empire.<sup>22</sup>

The prince shared the legislative and executive power with the State Council (Државни совјет/Državni sovjet). The right of legislative initiative belonged to the prince and ministers as members of the State Council. The prince had the right of absolute veto given the fact that he was entitled to reject the promulgation of laws

17 Dragoljub Popović (2019): Arduous Path to Constitutionalism, *Pravni zapisi*, 2019/1, p. 12.

18 Ljušić (2008): p. 106.

19 Assassinations were the manner in which Miloš Obrenović put an end to conflicts with those who dared challenge his unlimited power. For example, he ordered the assassinations of Bishop Melentije Nikšić in 1816 and of Mladen Milovanović, one of the most important military leaders of the First Serbian Uprising, in 1823. However, the most notorious case was the abovementioned assassination of Karađorđe in 1817, which was depicted in the film *Karađorđe's Death* in 1983.

20 Vuk Stefanović Karadžić (2012): *Izabrana dela—Pismo knezu Milošu Obrenoviću od 12/24. aprila 1832. godine* [Selected Works—Letter to knez Miloš Obrenović of 12/14 April of 1832], Izdavačka knjižarnica Zorana Stojanovića, Sremski Karlovci, pp. 121–122.

21 Popović (2019): pp. 14–16.

22 Ljušić (2008): p. 120.

and decrees passed by the State Council twice, but the third time the law or decree was submitted to him he was obliged to promulgate it if the law or decree was not to the detriment of the people or contrary to the Constitution. The prince executed laws and decrees through competent ministers. The personality of the prince was sacred and inviolable and he was not accountable for any act of rule or administration. The prince was empowered to appoint every official in the country, including the president of the State Council, ministers, and other members of this institution (whom he was entitled to remove from office). He was also empowered to grant pardons and give decorations. The title of prince was hereditary.

Even if Prince Miloš remained the most powerful figure, his power was significantly limited. The same prince in his speech stated that he would “stand under the law and in direct cooperation with the State Council.”<sup>23</sup> Under the pressure of the Ottoman, Austrian, and Russian empires, dissatisfied because of the liberal character of the Constitution, which, based on the Constitutions of France and Belgium, contained a chapter on fundamental rights, Prince Miloš suspended it six weeks after its adoption.

### 1.3. The Constitution of 1838 and the period until 1860

The Constitution of 1838, known in Serbian historiography as the Turkish constitution because it had the form of Hatti-sharif, was the fruit of discussions of Serbian, Russian, and Turkish deputies in Istanbul. The Serbian historian and constitutionalist Slobodan Jovanović stated that “the absolutism that was the feature of Prince Miloš’s rule was destroyed by the Constitution of 1838.”<sup>24</sup> The powers of Prince Miloš were additionally limited by the promulgation of the Law on Council in 1839 that partly modified the Constitution.<sup>25</sup>

The executive power was vested in the prince through a government composed of four ministers appointed and removed from office by the prince, while the legislative power was vested in the Council (Cabet/Savet), given the fact that according to Articles 11 and 13 of the Constitution, each law and decree had to be previously approved by the Council. The Law on Council limited the prince’s prerogative to appoint the ministers and remove them from office, stating that the prince could only appoint members of the Council as ministers, but it also gave the prince the right of legislative initiative. The prince was also entitled to nominate the members of the Council, but according to the Law on Council, he was obliged to accept proposals and opinions of the Council in the process of election of its members. The members of the Council could be removed from office only if their guilt was proven before the Ottoman Port if they violated a law or decree. This was the most disadvantageous part of the Turkish Constitution from the point of view of Serbian statehood because it rendered possible Turkish interference in the internal matters of the Principality

23 Ljušić (2008): pp. 173–174.

24 Ljubomirka Krkljuš (2012): *Pravna istorija srpskog naroda [Legal History of the Serbian People]*, Pravni fakultet u Beogradu, Belgrade, p. 160.

25 In this subchapter I will particularly stress the provisions contained in the Law on Council. Other provisions are from the Turkish Constitution.

of Serbia.<sup>26</sup> Unlike the Candelmass Constitution, the prince did not have an absolute veto right because he could not reject the promulgation of a law passed by a majority of votes of the Council. The hereditary right in the family of the prince was reconfirmed. He was the chief commander of the army. The determination of salaries for the officials he was entitled to appoint, taking care of the execution of laws and decrees, participation in the election of the metropolitan and bishop, and participation in the judicial sphere by granting pardons and abolition were also among the competences of the prince.

It is clear that the position of the Council was predominant and preponderant, making it the most powerful institution. Miloš would not accept the new status and he abdicated in favor of his son Milan and left Serbia in 1839. The following period, which includes the reign of the sons of Prince Miloš, Prince Milan (1839—he died less than one month after becoming the prince) and Prince Mihajlo (his first reign 1839–1842), and the reign of Prince Aleksandar Karađorđević<sup>27</sup> (1842–1858), was marked by the superior position of the Council, with the Turkish Constitution in force. In Serbian historiography, it is known as the period of the defenders of the Constitution.<sup>28</sup> With the death of Prince Milan in 1839 at the age of 19 without children, the hereditary right of the prince was extinguished and the title of the prince became elective. The legal acts of the Ottoman Port (Berats in 1839, 1842, and 1859) stated that the Serbian prince was elected.

The Council started to lose its prestige and influence after Prince Miloš Obrenović's return to power at over 70 years of age (the second reign of Prince Miloš; 1858–1860). The Turkish Constitution was still in force, but the prince did not honor it and, consequently, the Council was practically completely subordinated to him, executing his orders.<sup>29</sup> The prince attempted to re-establish his hereditary right by passing the Law on Succession of the Throne of the Principality of Serbia in 1859, but the Ottoman Port did not recognize it.

## 2. The Second Reign of Prince Mihajlo Obrenović (1860–1868)

The successor of Prince Miloš, his son Mihajlo, did not want to accept Turkish interference, expressed through the new constitution in the form of a legal act of the Ottoman Port (Hatti-sharif), in the suspension of the Turkish Constitution of 1839.<sup>30</sup> Thanks to the intercession of French and Russian diplomats to this constitutional dispute between Prince Mihajlo and the Ottoman Port, he was enabled to partly modify certain fundamental provisions of the Turkish Constitution according to his will and in his favor by promulgating organic (constitutional) laws. The most important laws for the strengthened position of the prince were the Law on State Council,

26 Ljušić (2008): p. 177.

27 He was the son of vožd Karađorđe and, therefore, the change of dynasty occurred.

28 The Serbian Civil Code was promulgated during this period, in 1844.

29 Mihajlović (2009): p. 184.

30 Miodrag Radojević: Jedan ogled o razvoju srpske ustavnosti – Namesnički ustav [An Observation on the Development of the Serbian Constitutionality—Governors' Constitution], *Politička revija*, 2010/1, p. 462.



promulgated in 1861, and the Law on Central State Administration in the Principality of Serbia, passed in 1862. These laws, together with laws regulating the position of the National Assembly, municipalities and municipal powers, public officials, popular army, and the payment of taxes, represented “the uncoded constitution.”<sup>31</sup>

With the promulgation of the Law on State Council, the Council lost, even formally, the predominant and preponderant position it had held during the period of the defenders of the Constitution. According to this law, the prince was entitled to freely nominate its members without the obligation to take into account or accept the proposals and opinions of the Council. He was also entitled to dismiss them at any time. The provision stipulating that the members of the Council should be summoned before an ordinary court in the event of a guilty verdict amended the problematic provision contained in the Turkish Constitution that rendered Turkish interference in the internal affairs of the Principality of Serbia possible. The Council could present legislative proposals to the prince and *vice versa*, but a legislative proposal could not become a law without the approval of the prince, who was entitled to withdraw the approval he had previously granted. The prince, only and exclusively, was empowered to represent the principality abroad and to conclude conventions.

Under the Law on Central State Administration, ministers became directly accountable exclusively to the prince, who freely nominated them. There was no longer an obligation to appoint members of the Council as ministers. The prince was also empowered to remove them from office. The Law on National Assembly, passed in 1861, instituted the Great National Assembly, which gathered to elect the prince or to recognize the adoption of the heir to the throne.

We can conclude that the prince had once again become the most powerful figure, marginalizing the role of the Council and controlling the ministers. Prince Mihajlo constituted a personal and absolutistic regime concentrating all power in his hands.<sup>32</sup> He lost his life as the victim of a private conspiracy<sup>33</sup> in Topčider (Belgrade) on June 10, 1868, at the age of 44.

### 3. The reign of Prince Milan Obrenović (1868–1882) and the Constitution of 1869

The successor of Prince Mihajlo was Milan Obrenović, the grandson of the brother of Miloš Obrenović Jevrem. Under the pressure from the army, the Great National Assembly confirmed that Milan was the only legitimate heir to the Serbian throne.<sup>34</sup> The Ottoman Sultan in his Berat recognized him as the Serbian prince and re-established the hereditary prince title according to the provisions of the Hatti-Sharif and Berat of 1830. Given the fact that Prince Milan was a minor, the governorship

31 Ljušić (2008): p. 156; Radojević (2010): p. 464.

32 Krkljuš (2012): p. 157; Mihajlović (2009): p. 187.

33 The assassination of Prince Mihajlo was organized and perpetrated by brothers of Ljubomir Radovanović, who had been sentenced to 7 years in prison because of his fierce opposition to the prince's absolutistic regime.

34 Ćorović (1989): p. 123.

(1868–1872) was introduced. The Great National Assembly promulgated the new Constitution in 1869, known in Serbian historiography as the Governors' Constitution due to the crucial role of the governorship in its creation. This Constitution, which formally repealed the Turkish Constitution, was adopted independently without the participation of the Ottoman Empire.<sup>35</sup>

Article 1 of the Constitution stated that Serbia was a constitutional hereditary monarchy. The personality of the prince was inviolable and irresponsible. He was the protector of all recognized religious confessions in the country and the chief commander of the army. Court sentences were rendered in his name. The Constitution also stated that the title of prince was hereditary in the dynasty of Obrenović. The prince and the National Assembly shared the legislative power, but the prince was a more powerful factor. The legislative initiative was the exclusive prerogative of the prince; the National Assembly could only express its desire to pass a law. The prince was entitled to appoint delegates, but they had to be "people of science or experienced in popular affairs" (one prince's delegate for each three elected delegates). He disposed of the right to convene the National Assembly, determine the time of its sessions, and dissolve it. No law could enter into force without the promulgation of the prince (the right of absolute veto). The prince was also empowered to pass laws when the public security of the country was at risk. He nominated and removed from office the ministers and president of the Ministerial Council and appointed all public officials. Under Article 100 of the Constitution, the competent minister was obliged to countersign the acts of the prince. He was also entitled to appoint the members of the State Council, which became the supreme administrative court. The traditional prerogatives of the prince, such as the right to grant pardons, represent the country abroad and conclude conventions with foreign countries, were also contained in the Constitution.

It is obvious that the position of the prince was predominant. He was more influential than the National Assembly in the legislative branch of government, given the fact that this institution did not have the right of legislative initiative. The executive power was practically monocephalous owing to the submission of the Ministerial Council to the prince, who could freely nominate and remove from office its members.<sup>36</sup>

## **IV. THE KINGDOM OF SERBIA (1888–1914)**

### **1. The reign of King Milan Obrenović (1882–1889) and the Constitution of 1888**

The independence of Serbia was internationally recognized at the Congress of Berlin in 1878. The following period was featured by the proclamation of the Kingdom of Serbia in 1882 and by the creation of the first Serbian political parties in 1881 (the

<sup>35</sup> Ljušić (2008): p. 159.

<sup>36</sup> Radojević (2010): p. 469.

Liberal Party, Serbian Progressive Party, and Popular Radical Party). Among these parties, the strongest one, with the greatest support among the people, was the Popular Radical Party, whose leader was the legendary Nikola Pašić, who was the main political figure until his death in 1926. Weakened by military defeat in the war against Bulgaria in 1885, King Milan decided to accept the adoption of a new constitution, the first Constitution of the Kingdom of Serbia, which was inspired by the Constitution of the Kingdom of Belgium of 1831 and by the French Constitutional Charters of 1814 and 1830,<sup>37</sup> as an independent state. It was adopted by the Great National Assembly in 1888 and it repealed the Constitution of 1869.

According to this Constitution, legislative power was vested in the king and National Assembly. Taking into account that the king was no longer the only one with the right of legislative initiative (the National Assembly also gained this fundamental right), that he was no longer empowered to nominate his own delegates, and that he could not pass laws when the public security of the country was at risk, the king and the National Assembly became equal factors in the legislative field.<sup>38</sup> The king promulgated laws, but the approval of both legislative factors was necessary for each law. He was entitled to convene the National Assembly in ordinary and extraordinary sessions, to delay its sessions for the maximal lapse of time of two months, and to dissolve it, in which case his decree had to contain the order for new elections carried out within two months and the order to convene the National Assembly within three months from the day of its dissolution. The king opened and concluded sessions of the National Assembly with his “sermon, decree, or epistle.” He was also entitled to extend with his decree for the period of four months the validity of the last year’s budget if the National Assembly was dissolved or delayed.

The executive power was vested in the king and he exercised it through the Ministerial Council. He nominated and removed ministers from office, who were accountable to him and the National Assembly,<sup>39</sup> and all public officials. Every act of the king had to be countersigned by the competent minister (including the above-mentioned acts on the convening of the National Assembly and its dissolution). The competent minister undertook the responsibility for the king’s every act by countersigning it, and any such act could not be enforced otherwise according to Article 56 of the Constitution. The king was also entitled to appoint judges, to nominate eight members of the State Council from the list of sixteen candidates proposed to him by the National Assembly, and to propose the list of sixteen candidates to the National Assembly that nominated eight members from that list. Finally, the king also exercised traditional prerogatives and rights, such as the right to give decorations, grant pardons, or represent the country abroad; he was the supreme commander of the army and his personality was inviolable. The hereditary right in the family of Obrenović was reconfirmed.

37 Isidora S. Miletić: *Pravni transplant i Ustav od 1888: uporedno—pravna studija* [Legal Transplants and Constitution of 1888: A Comparative Study], *Alan Watson Foundation*, 2013, p. 9.

38 Ljušić (2008): p. 231.

39 Their accountability was criminal and political.

This Constitution, which introduced the parliamentary system in Serbia, was the fruit of the compromise between the king and his main opponent, the Popular Radical Party.<sup>40</sup> King Milan, not being able to adapt to the new system, abdicated in 1889, two months after its adoption, in favor of his son Aleksandar.

## 2. The reign of King Aleksandar Obrenović (1889–1903) and the Constitution of 1901

Owing to the minority of King Aleksandar at the time of his father's abdication, a governorship was established, consisting of three governors. With the help of his father, he executed a coup d'état, dissolving the governorship and declaring himself prematurely adult. In the following year, he executed another coup d'état, suspending the Constitution of 1888 and restoring the Constitution of 1869. The period between 1897, when the former King Milan became the commander of the active army, and 1900 is considered the period of "the completely autocratic rule of King Aleksandar."<sup>41</sup> After his marriage to Draga Mašin in 1900, which was the cause of a quarrel with his father, who left Serbia and died in Vienna in 1901, and under the pressure of the Russian Empire, King Aleksandar decided to "octroy" the Constitution, which represented his third coup d'état because the competence of the adoption of a constitution belonged to the Great National Assembly according to the Constitution of 1869.<sup>42</sup>

This Constitution introduced the Senate, establishing bicameralism for the first time in Serbian constitutional history. The king was empowered to nominate the majority of its members (thirty senators for life, while eighteen senators were elected by the people). The adult heir to the throne was also among its members. The king could nominate solely the senators for life as members of the State Council. Unlike the Constitution of 1869, the legislative power was equally shared between the king and the National Assembly because they both had the right of legislative initiative. The rights of the king with regard to the National Assembly present in the Constitution of 1888 (the right to convene the National Assembly in ordinary and extraordinary sessions, to delay its sessions, etc.) were also contained in this Constitution. The king was entitled to extend the validity of the previous year's budget for the lapse of time of one year if the National Assembly was dissolved or delayed. The king appointed and removed from office ministers, who were responsible to him and the National Assembly,<sup>43</sup> and all public officials. The traditional rights and prerogatives of the king, such as the right to promulgate laws, to grant pardons, or to give decorations, and the inviolability of his personality present in the previous constitutions were also foreseen in this Constitution. It is noteworthy that the king was entitled to declare war and to conclude peace, alliance, and other treaties with the obligation

40 Krkljuš (2012): p. 212.

41 Krkljuš (2012): p. 215.

42 Đorđe Pavlović: *Ustav Kraljevine Srbije iz 1901* [Constitution of the Kingdom of Serbia of 1901], *Zbornik Matice srpske za društvene nauke*, 2013, p. 511.

43 Their responsibility was exclusively criminal. Given the obligatory and equal participation of the Senate in the law-making process, the predominant position of the king was more than evident.

to notify the National Assembly of the same. The Constitution introduced the novelty that if there were no male lineal and collateral descendants in the family of Obrenović, the female lineal descendant would be the successor to the throne.

King Aleksandar executed another coup d'état at 23:15 on March 24, 1903, suspending the validity of the Constitution and dissolving the National Assembly by decree because the National Assembly did not honor his constitutional rights and because of its requests for freedom of the press, which was not envisaged in the Constitution. He restored the Constitution after forty-five minutes, immediately after midnight, with another coup d'état.<sup>44</sup> The king and his wife were assassinated by the conspirators, a group of officers led by Dragutin Dimitrijević Apis and politicians led by Đorđe Genčić,<sup>45</sup> on May 29, 1903. This assassination, caused by the uncertainty created by the five coups d'état that characterized the reign of King Aleksandar, tragically extinguished the Obrenović dynasty.<sup>46</sup>

### **3. Constitution of 1903 and the reign of King Petar I Karađorđević (1903–1914)**

After the assassination, the National Assembly adopted a new Constitution and elected Petar Karađorđević, the grandson of Vožd Karađorđe and the son of Aleksandar Karađorđević, as the new king. The king did not take part in the adoption of the new constitution,<sup>47</sup> which was essentially the partly modified Constitution of 1888. The differences in the provisions on the position of the king concerned the fact that the king could not exonerate ministers from liability with his oral and written order, could not interrupt investigations against an accused minister, and was empowered to extend the validity of the last year's budget only with the consent of the State Council.<sup>48</sup> All other provisions regarding his position remained the same as in the Constitution of 1888.

The following period, characterized by severe international crises and nationally important events (the Customs War with the Austro-Hungarian Empire, Annexation Crisis of 1908, and Two Balkan Wars), was a period of a parliamentary system of government with a king who fully honored the Constitution and did not interfere in the work of the government or political issues.<sup>49</sup> On June 24, 1914, one month before the declaration of war of Austro-Hungary on Serbia, King Petar, owing to his age and aggravating health conditions, transferred the royal duties to his son Aleksandar, who became the regent. His regency lasted during the period of the First World War

44 Pavlović (2013): p. 520.

45 The Popular Radical Party led by Nikola Pašić did not take part in the conspiracy.

46 The assassination of the royal couple and the events that led up to it are depicted in the Serbian television series "The End of the Dynasty of Obrenović," released in 1995.

47 Ljušić (2008): p. 246.

48 Krkljuš (2012): p. 220.

49 Aleksandar Đurđev: Uvođenje parlamentarizma u Srbiji kao put njene evropeizacije [Institution of Parliamentarism in Serbia as a Course of its Europeanisation], *Zbornik radova Pravnog fakulteta u Novom Sadu*, 2008/3, p. 12.

and the birth and first years of the Kingdom of Serbs, Croats, and Slovenes, until the death of King Petar in 1921.

It is interesting to note that King Petar Karađorđević, alongside Prince Milan Obrenović, who died at the age of 19 in 1839, was the only Serbian ruler in the period of the Principality of Serbia and the Kingdom of Serbia whose reign ended with his natural death, without being dethroned or forced to abdicate. Prince Mihajlo Obrenović and King Aleksandar Obrenović were assassinated in 1868 and 1903, respectively, Prince Miloš Obrenović and King Milan Obrenović abdicated, in 1839 and 1889 respectively, and Prince Aleksandar Karađorđević was dethroned in 1858.

## **V. THE KINGDOM OF SERBS, CROATS, AND SLOVENES/ KINGDOM OF YUGOSLAVIA**

### **1. The reign of King Peter and the regency of Aleksandar Karađorđević (1918–1921); the creation of the new state and the Vidovdan Constitution of 1921**

Members of the Serbian government led by Nikola Pašić and members of the Yugoslav Committee<sup>50</sup> met in Corfu (Corfu Conference) and adopted the Corfu Declaration on July 20, 1917. The Declaration stated that the new state would be a free and independent monarchy ruled by the dynasty of Karađorđević, the name of the new state would be the Kingdom of Serbs, Croats, and Slovenes, and a new constitution would be adopted by the Constituent Assembly after the end of the war. The new state was solemnly proclaimed by regent Aleksandar in Belgrade on December 1, 1918. The period from the proclamation of the new state until the promulgation of the Constitution on June 28, 1921, is known as the period of provisorium, with the king (Regent Aleksandar on his behalf), Ministerial Council, and Temporary National Assembly as the main institutions. The Serbian Constitution of 1903 was still in force during that period.<sup>51</sup> The most important law passed by the Temporary National Assembly was the Law on Election of Deputies of the Constituent Assembly of 1920, which allowed the king to dissolve the Constituent Assembly.<sup>52</sup>

The first constitution of the new state was adopted on June 28 (Saint Vitus Day), 1921, hence its name of Saint Vitus Day Constitution (Видовдански устав/Vidovdanski ustav). According to Article 1 of the Constitution, the state of Serbs, Croats, and Slovenes was a constitutional, parliamentary, and hereditary monarchy. The king influenced the legislative branch of the government by having the following rights: the right of legislative initiative and legislative sanction; right to convene the National

50 Yugoslav Committee, consisting of politicians and intellectuals from the South Slavic parts of Austria-Hungary, was founded in 1915 with the objective to promote the idea of the creation of the South Slavic independent state.

51 Ljušić (2008): p. 283.

52 Krkljuš (2012): pp. 299-300, Mihajlović (2009): p. 214.

Assembly in ordinary and extraordinary sessions and to dissolve it with his decree, which must contain the order for new elections within three months; right to extend the validity of last year's budget with his decree for a period of four months; and his exclusive right to appoint judges. Similarly, the king influenced the government by being entitled to nominate and remove from office ministers who were accountable to him and the National Assembly. Finally, the Constitution envisaged the traditional prerogatives and rights of the king as the head of state (chief of the army, the right to represent the state in relations with foreign states, confer decorations, grant pardons, etc.) along with the inviolability of his personality, his rights to declare war and conclude peace and with the countersignature of his acts by the competent minister. Constitutional scholars define the parliamentary system introduced in the Kingdom as limited owing to the superior position of the king with respect to the National Assembly.<sup>53</sup>

King Petar died on August 16, 1921, less than two months after the promulgation of the Constitution. Regent Aleksandar became the king and, unlike his father, he was active and possessed the will and strength to interfere with alacrity in political issues. Substantially, he was the main political factor in the state who directly influenced the institutions using them as an instrument of his personal power.<sup>54</sup>

## **2. The reign of King Aleksandar Karađorđević (1921–1934), the coup d'état of 1929, and the Constitution of 1931**

Due to political tensions caused by assassinations in the National Assembly in 1928,<sup>55</sup> king Aleksandar executed a coup d'état on January 6, 1929, suspending the Constitution, dissolving the National Assembly, and prohibiting political parties. In his proclamation to the people, the king stated that intercessors were not needed between him and the people and that the preservation of national unity and integrity of the country was the highest aim. His dictatorship was legally expressed by the Law on Royal Power and Supreme State Administration, passed the same day. Under this law, all the power in the country was concentrated in the hands of the king, who passed and promulgated laws with his decree containing the same law and nominated the president and members of the Ministerial Council, who were accountable exclusively to him and were obliged to act upon his authorization. Ministers had to take an oath of fidelity to the king, whose personality was inviolable. The king's decrees had to be countersigned by the president of the Ministerial Council, competent minister, and minister of justice. The judicial power was conducted on behalf of the king. The dictatorship of King Aleksandar is defined as a "monarchic dictatorship"<sup>56</sup>

53 Krkljuš (2012): pp. 299, 316, Mihajlović (2009): p. 217.

54 Krkljuš (2012): p. 316.

55 After a heated argument in the National Assembly on June 20, 1928, a deputy of the Popular Radical Party, Puniša Račić, shot dead Pavle Radić and Đuro Basariček, deputies of the Croatian Peasant Party, which was the most popular Croatian party. Stjepan Radić, the leader of the party, was also shot, dying in Zagreb on August 8, 1929, due to the consequences of the attempt.

56 Krkljuš (2012): p. 321; Mihajlović (2008): p. 223.

and as an “authoritarian dictatorship.”<sup>57</sup> The country changed its name on October 3, 1929, with the promulgation of the Law on Name and Division of the Kingdom in Administrative Units and its official name became the Kingdom of Yugoslavia.<sup>58</sup>

Under the pressure of France and Czechoslovakia, countries considered friends and allies of the Kingdom, and because of the economic crisis, King Aleksandar “with the faith in God and the happy future of Yugoslavia” decided to “octroy” with his proclamation the Constitution on September 3, 1931, two years after the coup d’état. According to this Constitution, the Kingdom of Yugoslavia was defined as a hereditary and constitutional monarchy (the term “parliamentary” present in the Constitution of 1921 was omitted) and the king was the protector of national unity and the integrity of the country. The prerogatives of the king concerning his relationships with the National Assembly (right of legislative initiative, right to dissolve the Assembly, etc.) and traditional rights mentioned in the subchapter dedicated to the Constitution of 1921 were also contained in this Constitution. The Senate, whose legislative position was equal to the position of the National Assembly, was introduced and Parliament became bicameral for the second time in Serbian constitutional history. Given the fact that the king was empowered to nominate half the senators, it was an instrument for his control of the legislative branch of government.<sup>59</sup> In addition, the king was entitled to order by decree all extraordinarily indispensable measures to be undertaken independently of constitutional and legal provisions in the event of war, mobilization, turmoil, or rebellion that could put the public order and security of the country at risk or when the public interest was endangered to that extent. This provision, also known as the “little constitution,” put the king above the constitution and laws.<sup>60</sup> Ministers were politically accountable exclusively to the king, who nominated and unilaterally removed them from office. It can be freely said that all the power was still concentrated in the hands of the king and that the new constitution served only to give constitutional legitimacy to his dictatorship.

King Aleksandar was assassinated in Marseille on October 9, 1934,<sup>61</sup> and his successor was his son Petar II Karađorđević. Owing to the minority of the new king, a governorship was formed. The main political figure in the governorship was Prince Pavle Karađorđević, son of the brother of King Petar I. Under the Constitution, the

57 Stipica Grgić, *Neki aspekti poimanja uvrede vladara u vrijeme diktature kralja Aleksandra I Karađorđevića* [Certain Aspects of Lèse-majesté During the Dictatorship of King Aleksandar I Karađorđević], *Zavod za hrvatsku povijest*, 2009, p. 349.

58 The dictatorship introduced the politics of integral yugoslavism, with the intention to create a specific Yugoslav nation.

59 Anita Blagojević, *O Ustavu Kraljevine Jugoslavije iz 1931. godine* [On the Constitution of the Kingdom of Yugoslavia of 1931], *Pravni vijesnik*, 2012/1, p. 129.

60 Krkljuš (2012): p. 324.

61 The assassination of king Aleksandar was organized by Croatian and Macedonian fascist and separatist movements—the Ustashas and Internal Macedonian Revolutionary Organization. The perpetrator was Vlado Černozemski, a member of the Internal Macedonian Revolutionary Organization. Alongside King Aleksandar, the French Minister of Foreign Affairs Jean Louis Barthou was also assassinated.



governors held full and unlimited royal power. They took an oath of fidelity to the king and had a moral obligation to honor his privileges. The Kingdom of Yugoslavia, attacked by the Axis powers without an official declaration of war on April 6, 1941, ceased to exist on April 17, when it capitulated.

## **VI. FEDERAL PEOPLE'S REPUBLIC OF YUGOSLAVIA/ SOCIALIST FEDERAL REPUBLIC OF YUGOSLAVIA (1945–1991)**

### **1. Period of Josip Broz Tito (1945–1971): Creation of socialist Yugoslavia, Constitutions of 1946, Constitutional act of 1953, and Constitution of 1963**

The Anti-Fascist Council of the People's Liberation of Yugoslavia (ACPLY), formed in 1942, passed the Declaration proclaiming itself the supreme legislative and executive representative body of Yugoslavia at its session in Jajce on 29 November 1943 and deciding that Yugoslavia would be built on a democratic federal basis<sup>62</sup> as a state community of equal peoples. This conception put an end to the politics of integral yugoslavism recognizing the particularity of Serbs, Croats, Slovenians, Montenegrins, and Macedonians. The title of Marshall was conferred upon Josip Broz Tito, the leader of the Communist partisan movement. The official name of the country from November 29, 1945, when Yugoslavia became a federal republic<sup>63</sup> until 1963 was the Federal People's Republic of Yugoslavia (henceforth, "FPRY").

The Constituent Assembly adopted the first constitution of the new federal republic in 1946, based on the Soviet model.<sup>64</sup> Edvard Kardelj, who was the minister for the Constituent Assembly and president of the Commission for the Construction of the People's Power of the Central Committee of the Communist Party, played a fundamental role in its creation and adoption. Under this Constitution, the head of state was collective,<sup>65</sup> residing in the Presidium of the National Assembly, which according to Article 74 was entitled to dissolve the National Assembly, promulgate laws and issue decrees, give binding interpretations of laws, confer decorations, ratify international conventions, and assess the conformity of the laws of the republics to the Constitution and federal laws. The Presidium was accountable to the National Assembly, which was entitled to elect and impeach it. There was a parallelism between

62 Sergej Flere, The Authenticity of the Founding of Tito's Yugoslavia as a Federation, *Sociološki pregled*, 2018/4, p. 1120.

63 The Constituent Assembly passed the Declaration on Proclamation of the Federal People's Republic of Yugoslavia.

64 Ratko Marković (2016): *Ustavno pravo [Constitutional Law]*, Pravni fakultet u Beogradu, Belgrade, p. 133.

65 It consisted of the president, six vice presidents, secretary, and thirty members.

the Communist Party of Yugoslavia and state authorities.<sup>66</sup> Thus, Marshall Tito, as the general secretary of the Communist Party, became the prime minister of the federal state and a member of the Presidium. It is important to emphasize that, as in other totalitarian communist countries, all the power was concentrated in the hands of the Communist Party or Tito's hands and any form of pluralism was excluded.<sup>67</sup>

The institution of the President of the Republic as the executive organ of the Federal National Assembly was introduced in 1953 with the adoption of the Constitutional Act on Foundations of the Social and Political Organization of the FPRY and Federal Authorities<sup>68</sup> abolishing the Presidium of the National Assembly. This function was exercised by Marshall Tito. Along with traditional competences of the head of state (head of the army, the right to represent the country, promulgate laws with its decree, appoint ambassadors, confer decorations, etc.), according to Article 72 of the Constitutional Act, the President of the Republic was the president of the Federal Executive Council (some form of the political council of the Assembly to whom political-executive tasks were entrusted).<sup>69</sup> Additionally, the president was entitled to withhold from enforcement acts of the Federal Executive Council that the President of the Republic did not agree with, in which case he was obliged to present the issue before the Federal National Assembly. The President of the Republic was elected by secret ballot by the Federal National Assembly among its members, and a majority of the votes of the total number of deputies was needed for its election. Furthermore, the President of the Republic was accountable to the Federal National Assembly, which was also empowered to impeach the President,<sup>70</sup> and the term of office was tied to the term of this institution. It is important to emphasize that according to the Constitutional Act the Federal National Assembly was the highest state authority representing the sovereignty of the people, while the President of the Republic and the Federal Executive Council were defined as its executive organs to whom the Federal National Assembly assigned certain competences.

66 Vera Katz, *Ustavno—pravni i politički položaj Bosne i Hercegovine prema ustavima FNRJ i NR BiH 1946. godine* [The Constitutional, Legal and Political Position of Bosnia and Herzegovina According to 1946 Constitutions of the Federal People's Republic of Yugoslavia and the People's Republic of Bosnia and Herzegovina], *Historijska traganja*, 2011, p. 168.

67 The first years of the existence of the communist Yugoslav state were characterized by the elimination of anyone who could somehow challenge the new regime or put it at risk. The Commission on Concealed Graves of Killed After September 12, 1944, instituted by the Serbian Government in 2009, listed more than 60,000 people who were killed. For further information see: <http://www.komisija1944.mpravde.gov.rs/cr/articles/pocetna/> (accessed: 1 December 2021).

68 This Constitutional Act also introduced the notion of the self-management of the working people in the field of education, culture, and social services, which was a peculiarity of the Yugoslav system not present in other communist states.

69 Marković (2016): p. 135.

70 The Federal National Assembly elected and impeached the President of the Republic in a joint session of both chambers. A majority of votes was needed for his impeachment and the presence of a majority of deputies of both chambers was needed for the existence of a quorum.

With the adoption of the new Constitution in 1963, the country changed its official name and it became the Socialist Federal Republic of Yugoslavia (henceforth, “SFRY”). According to this Constitution, the President of the Republic was no longer the president of the Federal Executive Council, but was entitled to propose to the Federal Assembly the candidate for this position. Other novelties concerning its position were the introduction of the right to propose to the Federal Assembly the election of the President of the Constitutional Court of Yugoslavia<sup>71</sup> and the totality of ten constitutional judges, and of the right to propose to the Federal Executive Council the nomination and removal from office of members of the Council of Federation.<sup>72</sup> According to Article 217, the President of the Republic was empowered to pass decrees having legal force on issues belonging to the competences of the Federal Assembly upon the proposal of the Federal Executive Council, “during the belligerency period or in the event of imminent danger of war.” The Constitution in Article 220 determined the 4-year term of office of the President with the possibility of one consecutive re-election, but it stated that these limitations did not apply to Marshall Tito. Thus, Marshall Tito could essentially be president of the Republic for life. Provisions regarding the impeachment of the President were omitted, and therefore the Federal Assembly was solely empowered to elect the President. Under this Constitution, the Federal Assembly remained the highest state authority, while the President of the Republic ceased to be its executive organ. However, the Federal Executive Council was still defined as “an organ of the Federal Assembly to whom the politico-executive function within the framework of rights and duties of the federation is to be assigned” in Article 225.

## **2. Period of Josip Broz Tito (1971–1980) and the post-Tito period: Amendment of 1971, Constitution of 1974, and Amendment of 1988**

Constitutional Amendment XXXVI, adopted in 1971, introduced the institution of the Presidency of the SFRY, as the collective head of state consisting of presidents of the Assembly of the republics and autonomous provinces, two members from each republic, and one member from each autonomous province elected by the Assembly of the republic or the autonomous province. The Federal Assembly proclaimed the election of its members, whose term of office lasted 4 years. The introduction of the collective head of State was the fruit of the further federalization of the state desired

<sup>71</sup> This Constitution introduced the institution of the Constitutional Court of Yugoslavia, dedicating to it Chapter XIII (Articles 241–251). It consisted of the president and ten constitutional judges, and their term of office lasted eight years. SFRY was the only socialist country in Europe having such an institution entitled to protect legality and constitutionality and to resolve disputes between the federation and federal units regarding their rights and duties and jurisdiction disputes between courts and federal authorities.

<sup>72</sup> This is another institution introduced by this Constitution. According to Article 224, the Federal Council “considered the issues of state policy and of activity of the politico-executive and administrative authorities.”

by the aforementioned Slovenian politician Edvard Kardelj. Furthermore, Constitutional Amendment XXXVII regulated the position and competences of the President of the Republic, who was also the president of the Presidency. Owing to his “historical role,” the Federal Assembly elected Marshall Tito President of the Republic. His term of office was extended to last 5 years. The specificity of this duality of heads of state was that the constitutional prerogatives of the Presidency, which were the same as the traditional prerogatives of the President of the Republic mentioned in the previous subchapter and particular ones contained in the Constitution of 1963—among which were certain prerogatives, such as the right to represent the country, promulgate laws, appoint ambassadors, and confer decorations, that constitutionally belonged also to the President of the Republic—were not activated but incorporated into the competences of the President of the Republic, with the possibility of their activation if the function of the President of the Republic ceases to exist.<sup>73</sup> Thus, even if the Presidency of the SFRY was constituted in 1971, its prerogatives were not activated owing to the existence of the President of the Republic.

The new Constitution, adopted in 1974 and burdened by the epithet of the longest constitution in the world<sup>74</sup> for containing 406 articles, maintained the mentioned specific duality without fundamental modifications. The composition of the Presidency was different according to this Constitution, consisting of one member from each republic and autonomous province elected by the Assembly of the republic or autonomous province and by the president of the League of Communists of Yugoslavia<sup>75</sup> according to Article 313, and their term of office lasted 5 years. Another novelty was the election of Marshall Tito as the President of the Republic without limitation of the term of office (Article 333). Therefore, he even officially became the President for life.

After his death on May 4, 1980, the prerogatives of the Presidency of the SFRY were activated, 9 years after its creation, and it remained the collective head of state until the dissolution of Yugoslavia in 1991. The Constitution of 1974 was in force during that period. Amendment XLI, adopted in 1988, concerning the position of the Presidency, empowered the Assembly of the respective republic and autonomous province to remove its members from office. The president of the League of Communists of Yugoslavia, the political party which was dissolved in 1990, was no longer a member of the Presidency. Furthermore, during a period of belligerency or in the event of imminent danger of war, the Presidency was entitled, along with the competence to pass decrees having legal force on issues belonging to the prerogatives of the Assembly of the Socialist Federal Republic of Yugoslavia, to elect, nominate, and remove from office functionaries whose election, nomination, and removal from office was the competence of the Assembly.

73 Dimitrije Kulić: *Promene u ustavnom sistemu Jugoslavije od Ustava SFRJ 1963. do Ustava SFRJ 1974* [Changes in the Constitutional System of Yugoslavia from the Constitution of the SFRY of 1963 until the Constitution of the SFRY of 1974], *Zbornik Pravnog fakulteta u Nišu*, 1977, p. 93.

74 Marković (2016): p. 137.

75 The Communist Party of Yugoslavia changed its name to the League of Communists of Yugoslavia in 1952.

Regardless of the constitutional provisions stating that the National Assembly was the highest state authority, the President of the Republic or Josip Broz Tito was in reality the most powerful political figure, as evidenced by the existence of the one-party system and by the fact that the leadership of Tito within the Communist Party of Yugoslavia or from 1952 the League of Communists was adamant, creating a cult of personality surviving even until today.<sup>76</sup> Party functionaries who dared to challenge Tito's leadership within the party or to oppose his politics were removed from office.<sup>77</sup>

## VII. CONCLUSION

The position of the head of state in the period from the resurrection of Serbia in 1804 until the dissolution of the Socialist Federal Republic of Yugoslavia in 1991 oscillated. The common denominator of the period between 1804 and the creation of the Kingdom of Serbs, Slavs, and Slovenes in 1918 is a continuous attempt of the opposition, expressed through the Governing Council, State Council, or Council and National Assembly, to limit the power of the prince/king. Notwithstanding this attempt, the position of the ruler during the reign of the dynasty of Obrenović was predominant, with the exceptions concerning the last year of the reign of Prince Miloš, the first reign of Prince Mihajlo, the last year of the reign of King Milan, and the first years of the reign of King Aleksandar. Even when the members of the dynasty of Obrenović lost their predominant position in favor of the Council or National Assembly, they were able to regain it and restore unlimited power. However, the period of the reign of the dynasty of Karađorđević was characterized by a weak constitutional position of the ruler in favor of the Council during the reign of Prince Aleksandar and the National Assembly during the reign of King Petar. It can be stated that in this period, the position of the ruler depended more on his type of personality and his strong will to interfere in political issues than on the constitutional provisions. It can be said that attempts to limit the power of the ruler represented the natural development of Serbian society.

This natural development was interrupted by the creation of the Kingdom of Serbs, Croats, and Slavs in 1918. The nature of the dominant role of King Aleksandar after the adoption of the Saint Vitus Constitution in 1921 and of his dictatorship and the authoritarian regime was different, and it stemmed from his honest

76 Dražen Nemet: Povijesni mitovi o Josipu Brozu Titu kao sredstvo manipulacije narodima na prostoru bivše SFRJ [Historical Myth about Josip Broz Tito as a Means of Manipulation of the Peoples of the Former SFRY], *Pro Tempore*, 2006/3, p. 110.

77 The cases of two party functionaries—Milovan Đilas, who criticized the situation within the ruling party in his articles, making him the most famous Yugoslav dissident, and Aleksandar Ranković who was removed from office and retired in 1966 due to his idea of strengthening the federal powers instead of further federalization of the state—are the most interesting for Serbian historiography. Furthermore, Slobodan Penezić Krcun lost his life under mysterious circumstances in a car crash in 1964 after he had opposed Tito's politics regarding the position of Serbia within the SFRY.

attempt to save the country from far idyllic relations between the peoples and political parties.

Another radical interruption occurred after the end of the Second World War with the creation of the FPRY. During that period, the novelty was the introduction of a collective head of state (the Presidium of the National Assembly, which existed from the adoption of the Constitution of 1946 until the Constitutional Act of 1953, and the Presidency of the SFRY created by the Constitutional Amendment XXXVI of 1971, which lasted until the dissolution of the country in 1991). Taking into the account the existence of the one-party system and the indubitably solid position of Josip Broz Tito within the Communist Party of Yugoslavia/League of Communists of Yugoslavia until his death, it is clear that the position of head of state was predominant notwithstanding the constitutional provisions giving precedence to the National Assembly.

In the period between 1804 and 1991, assassination put an end to the reigns of three Serbian rulers—two belonging to the dynasty of Obrenović (Prince Mihajlo Obrenović and King Aleksandar Obrenović, assassinated in 1868 and 1903, respectively), and one belonging to the dynasty of Karađorđević<sup>78</sup> (King Aleksandar Karađorđević, assassinated in 1934). Prince Miloš Obrenović and King Milan Obrenović abdicated in 1839 and 1889, respectively, while Prince Aleksandar Karađorđević and the last ruler from this dynasty, Petar II, were deposed in 1858 and 1941, respectively. It can be said that only three rulers terminated their rule with natural death, without being forced to abdicate or ever being deposed—Prince Milan Obrenović in 1839, King Petar I Karađorđević in 1921, and Josip Broz Tito in 1980.

78 The assassination of Karađorđe in 1817 by order of Miloš Obrenović does not comprise this statement because he was not the ruler at the moment of his assassination. However, this infamous event predetermined the relationships between the two Serbian dynasties.

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POSITION OF THE HEAD OF STATE IN SERBIA

RULER	PERIOD	CONSTITUTIONAL DOCUMENTS
Karađorđe Petrović	1804–1813	Constitutional Act of 1805; Constitutional Act of 1808; Constitutional Act of 1811.
Miloš Obrenović	1815–1839 (first reign)	Constitution of 1835; Constitution of 1838.
Milan Obrenović	1839	Constitution of 1838 was in force.
Mihajlo Obrenović	1839–1842 (the first reign)	Constitution of 1838 was in force.
(Prince) Aleksandar Karađorđević	1842–1858	Constitution of 1838 was in force.
Miloš Obrenović	1858–1860 (the second reign)	Constitution of 1838 was in force.
Mihajlo Obrenović	1860–1868 (the second reign)	Constitution of 1838 was in force, but it was partly amended by a set of constitutional laws.
Milan Obrenović	1868–1889	Constitution of 1869; Constitution of 1888.
Aleksandar Obrenović	1889–1903	Constitution of 1901.
Petar I Karađorđević	1903–1921	Constitution of 1903; Constitution of 1921.
(King) Aleksandar Karađorđević	1921–1934	Constitution of 1931.
Petar II Karađorđević	1934–1941	Constitution of 1931 was in force.
Josip Broz Tito	1945–1980	Constitution of 1946; Constitutional Act of 1953; Constitution of 1963; Constitutional Amendments of 1971; Constitution of 1974.