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THE CONSTITUTIONAL COURT OF YUGOSLAVIA AND THE BREAKUP OF THE SFRY, 1988–1991.

The Constitutional Court of Yugoslavia (USJ) was introduced into the system of federal institutions by the 1963 Constitution. It was only with the establishment of this (nominally) independent court that the equal status of republican and federal authorities was formally ensured. The introduction of the Constitutional Court of Yugoslavia, meant that higher federal bodies were no longer able to use administrative decisions to derogate decisions made at the republican level. The equal status of government at the federal state level and the level of its constituent states is a prerequisite for a system of mutual control. This concept can be already found in the writings of the founders of American federalism in the 18th century. In legal science the general opinion is that in the absence of mutual control one cannot speak about true federalism.[199] A federal system of government cannot exist when one government is subordinated to another, regardless of their domain of competence. In his classical study of federalism, Kenneth Wheare reasoned that when a regional government was subordinate to the federal government, it created a model of power devolution; when the federal government was subordinate to regional governments, the result was a confederate system of government.[200] In recent times, the criterion of equal status has been reaffirmed by John Law, who holds that this principle should not be attenuated by

199 "Federalist Paper No. 51", in: *The federalist: a collection of essays, written in favour of the new Constitution, as agreed upon by the Federal Convention*. Vol. II, New York: J. and A. M'Lean, 1788, pp. 116–122.

200 Quoted in: John Law, "How Can We Define Federalism?", *Perspectives on Federalism*, Vol. 5, Issue 3, 2013, p. 103.

conceptions of shared sovereignty.[201] Today, one of the most controversial issues of American federalism concerns the (un)equal status of the federal government and the governments of the constituent states. Many authors believe that the balance of power has been upset in favor of the federal government and that equal status has not existed for a long time.[202]

In the case of the Yugoslav socialist state, the lopsided balance of power and unequal legal status of the federal and republican governments were the norms between 1946 and 1963. This is evident from the provisions of the 1946 Constitution and the 1953 Constitutional Law, which stipulated that the federal bodies (the Presidium of the National Assembly, later the Federal National Assembly, the Federal Executive Council and its Secretariats) could repeal or suspend the validity of the laws, regulations and orders made by republican authorities.[203] In the United States, in similar situations of dispute in the vertical axis, the decision is made by the Supreme Court which is, at least in principle, independent in decision making, despite being a federal government body. In the Yugoslav case, a similar independent institution did not exist until it was introduced by the 1963 Constitution, which stipulated that in the event of any disagreement or dispute between the republican and federal governments, the decision would be made by the Constitutional Court.[204] With the introduction of the Constitutional Court into the legal system of socialist Yugoslavia, the republican and federal bodies acquired equal status, the federal bodies were no longer superior to the republican ones and, as already mentioned, could no longer arbitrarily annul the decisions and laws made at the republican level.

201 Ibid., p. 101.

202 Malcolm Feeley, Edward L. Rubin, "Federalism: Some Notes on a National Neurosis", *UCLA Law Review* 41 (1994), pp. 903–952.

203 See Articles 74, 130 and 131 of the 1946 Constitution and Articles 16, 34, 89 and 95 of the 1953 Constitutional Law.

204 See Articles 241, 244–51 of the 1963 Constitution.

After the federal-confederate reorganization of the Yugoslav constitutional system by the 1968–1971 constitutional amendments and the 1974 Constitution, the Constitutional Court was one of several institutions in which the principle of consensual decision making was not formally established. The republican delegations to the Federal Assembly elected two Constitutional Court judges each, while the provincial delegations could choose one Constitutional Court judge each, so that there was a total of 14 judges. However, the Constitutional Court did not make decisions by consensus, but rather by a majority vote of the judges creating a quorum at the session. This specificity of the Constitutional Court would have direct consequences when the Yugoslav crisis intensified and appeal to this court became the last line of defense of the constitutional foundations of the Yugoslav state union. It also became a space for manipulation by outvoting. Before the final phase of the Yugoslav crisis, the Constitutional Court was primarily focused on the everyday problems faced by the citizens of the SFRY. Out of 179 Constitutional Court decisions and opinions published in the 1988 Yearbook, 46 dealt with labor law issues (employment, income, the right to pension, etc.), 37 dealt with housing issues, and 23 interpretations referred to court process issues, involving the functioning of regular courts.[205] Only two cases dealt with the escalating national, that is ethnic, problems associated with defining the official use of language in the Constitutions of SR Croatia and SAP Kosovo.

In its Opinion of 22 December (No. 59/86) the Constitutional Court concluded that the definition of the official use of the languages of the peoples and nationalities in the Kosovo Constitution violated the provisions of the SFRY Constitution, which stipulated that the language of the people should precede the languages of the nationalities. The SAP Kosovo Constitution listed the Albanian language in first place, followed by the Serbo-Croatian and Turkish languages. Thus, the Constitutional Court decreed that the Federal Assembly should

205 *Odluke i mišljenja USJ 1988*, Belgrade: USJ, 1989.

take appropriate steps to remove these unconstitutional provisions from the SAP Kosovo Constitution.[206] The opinion of the Constitutional Court regarding the provision relating to the official use of language in SR Croatia was adopted on 7 December 1988 (No. 15/85) by a majority vote. The opinion stated that the wording of the official language in Article 138 of the Constitution of the SR Croatia was ambiguous and thus contrary to the provisions of the federal Constitution. The Croatian Constitution defined the "Croatian literary language" as the republic's official language. In the same sentence, however, the language was defined as the "standard form of the language of Croats and Serbs in Croatia, and called Croatian or Serbian". The Constitutional Court rejected this wording, because it was not clear whether one or two languages were in official use in Croatia.[207] Thus, in the formative period of Milošević's antibureaucratic revolution and the beginning of the intensification of a crisis in inter-republic and international relations (1987–1988), very few state-legal controversies in the area of identity or ethnic relations had their epilogue in the Constitutional Court.

A similar conclusion can be derived from the 1989 Yearbook of the Constitutional Court of Yugoslavia, which contains only 86 reasoned opinions and decisions. The subjects of the cases again involved regular circumstances and everyday problems in the areas of labor relations, tenancy laws, economic and trade issues and the like.[208] The only decision involving identity issues centered on provisions of the SAP Kosovo Constitution that guaranteed the right to use and display the flags of the peoples and nationalities in the province. Since the use of flags throughout the entire territory of SR Serbia was regulated by its Constitution, the Constitutional Court held that the provision of the Constitution of SAP Kosovo was in conflict with that Constitution as well as with some provisions of the SFRY Constitution. Thus,

206 Ibid., pp. 379–381.

207 Ibid., pp. 377–378.

208 *Odluke i mišljenja USJ 1989*, Belgrade: USJ, 1990.

Opinion No. 210/85 of 25 January 1989 requested that these provisions be altered.[209] In September 1989, the Constitutional Court began considering the Slovenian amendments, but the relevant material was published only in the 1990 Yearbook.

Ivan Kristan, a Constitutional Court judge delegated by Slovenia, wrote in his memoir that in this period it became clear that there was a "pro-Serbian lobby" on the Court or, in other words, a majority of judges were making decisions that were being dictated by Belgrade. In 1989, apart from two judges delegated by Serbia, the Milošević regime also had influence with the judges delegated by Montenegro, Vojvodina and Kosovo, one judge delegated by Croatia (ethnic Serb Dušan Štrbac) and one by Bosnia and Herzegovina (ethnic Serb Milovan Buzadžić). The Court needed only eight out of 14 judges to make qualified decisions by a majority vote. Kristan also wrote that, apart from ethnic partiality, the "problem" with the composition of the Constitutional Court also stemmed from the fact that the judges mostly lived with their families in Belgrade and thus, often agreed with majority decisions that, at that time, tended to favor the Milošević regime.[210]

However, is it true that the Constitutional Court was fully instrumentalized for political ends and lacking in professional integrity as Kristan suggests? Some court decisions show that this was not always the case and Kristan himself writes about them in his memoir. For example, when the Serbian member of the SFRY Presidency, Borisav Jović, tried to obtain the Constitutional Court's opinion about the Slovenian draft amendments on 26 September 1989 – the day before voting about them in the Assembly of SR Slovenia – he succeeded only to some extent. Namely, using his influence on the already mentioned judges Buzadžić and Štrbac, he managed to have the Constitutional Court convene a session dedicated to this topic. However, the Constitutional Court, by a majority vote, refused to take a stand

209 Ibid., pp. 177–178.

210 Ivan Kristan, *Osamosvajanje Slovenije: Pogled iz Ljubljane in Beograda*, Ljubljana: GV Založba, 2013, p. 70.

on the constitutionality of the draft amendments. The decision was explained by the fact that the Constitutional Court could decide only on current regulations and not on those in draft form.[211] For the Serbian leadership, which conducted an active political campaign in the party and state bodies against these amendments, the decision on their being contrary to the SFRY Constitution would have been of utmost importance. Nevertheless, the Court refused to take a stand on this issue by a majority vote. However, this integrity was squandered only two days later.

The procedural offence referred to the fact that the Constitutional Court's procedure was initiated by the Federal Council of the SFRY Assembly on 28 September 1989, the day after the amendments were adopted and at the time when they were still not published in the *Official Gazette of SR Slovenia.* The Amendments (60–90) were quoted from daily newspapers, which is an unacceptable practice in any domain of authoritative decision making relating to constitutional matters. Nevertheless, at the session held on 4 October 1989, the Constitutional Court accepted the proposal to assess the constitutionality of the amendments and started its opinion-giving procedure. An integral part of this procedure was a public hearing, which was held on 5 December 1989 and to which 11 Yugoslav constitutional law experts were invited. Only three judges responded to the invitation. Two of them, Gavro Perazić from the University of Titograd and Pavle Nikolić from the University of Belgrade, were persistent in challenging the 10th Amendment, which proclaimed that SR Slovenia was in the SFRY "on the basis of a permanent, complete and inalienable right of self-determination, including the right of secession". Kristan writes that Perazić and Nikolić challenged the Slovenian right of self-determination invoking the principle of the consummation of a right, that is, the fact that this right was already consummated once (1943), or even twice (in 1918 and 1943). In other words, it was consummated by Slovenia's commitment to the first and second Yugoslavia.[212]

211 Ibid., p. 68.

212 I. Kristan, *Osamosvajanje Slovenije*, pp. 70–76.

Out of 81 amendments requested for constitutional review by the Federal Council only six were ultimately considered by the Constitutional Court. As for the 10th Amendment, Kristan triumphantly writes in his memoir that, thanks to his exchange of arguments with the aforementioned legal experts, the majority opinion in the Constitutional Court prevailed in his favor. Decision making relating to the constitutionality of the mentioned amendments took place on 16–18 January 1990 and out of 13 judges only three voted for the unconstitutionality of that amendment.[213] In view of the fact that this issue especially disturbed the Serbian public and Slobodan Milošević's regime, one could reason that Kristan's "pro-Serbian lobby" still did not act solely for the sake of political expediency. In order to obtain a complete picture of the motives of the majority of the Constitutional Court judges, one should take into account the decisions relating to the remaining five amendments out of 89, which were adopted by the Slovenian Assembly. Namely, although Kristan argues that the declarative 10th Amendment was "defended" and thus the right of the Republic of Slovenia to self-determination was confirmed, it was concluded at the same session that the parts of the 68th and 72th Amendments, which stipulate the manner of exercising this right, were contrary to the federal Constitution. According to the interpretation of the Constitutional Court, the issue of altering the SFRY borders cannot be decided by an act proclaiming sovereignty and independence without the consent of all the republics and provinces and the decision of the Federal Assembly. In addition, all issues relating to the exercise of the right to self-determination and secession are the subject of the SFRY Constitution and not the republican constitutions.[214]

Owing to this interpretation, procedural acts and decision-making processrelating to self-determination were retained by federal institutions. This significantly complicated Slovenia's path to independence. In making this decision, the Constitutional Court judges

213 Ibid., p. 77.

214 *Odluke i mišljenja USJ 1990*, Belgrade: USJ, 1991, pp. 216–222.

invoked Article 5, paragraphs 1 and 3, which prescribed the territorial integrity of the SFRY and disallowed alteration of SFRY borders without the consent of all the republics and autonomous provinces. In addition, Article 283 (Item 4) and Article 285 (Item 6) of the SFRY Constitution prescribed that a decision on altering the SFRY borders could be brought by the Federal Council of the SFRY Assembly. Thus, regulating the issue of Slovenia's self-determination was not part of the competences of Slovenian institutions but of federal ones. As long as the SFRY could still be considered a functional state, the constitutional principle of consensual decision making relating to the alteration of state borders was legally sustainable. When the Badinter Commission, in interpreting the development of the Yugoslav crisis, took the stand that the SFRY was in the process of dissolution (Opinion No. 1 of 29 November 1991),[215] the possibilities for a different interpretation of the content of Article 5 of the SFRY Constitution opened up.

Despite the evident political instrumentalization, the decision-making procedure of the Constitutional Court relating to the Slovenian amendments was still largely based on strong constitutional grounds. After all, in their separate opinions about the Constitutional Court Decision of 18 January 1990, the Slovenian judges, Ivan Kristan and Radko Močivnik, set forth only reasons of a formal nature involving procedural deficiencies. They did not touch on the substantive legal interpretation of the aforementioned articles of the SFRY Constitution.[216] Božo Repe holds that the Slovenian amendments were partly the Slovenian leadership's response to the Serbian amendments of March 1989, which had already affected the constitutional system of the SFRY.[217] If we accept this reasoning, Serbia's unilateral decisions to change the constitutional configuration of its provinces in March

215 Alain Pellet, "The Opinions of the Badinter Arbitration Committee. A Second Breath for the Self-Determination of Peoples", *European Journal of International Law* 3, 1 (1992), pp. 182–184.

216 *Odluke i mišljenja USJ 1990*, pp. 223–224.

217 Božo Repe, *Milan Kučan: Prvi predsjednik Slovenije*. Sarajevo: Udruženje za modernu historiju, 2019, p. 112.

1989 would act as a legal precedent under Anglo-Saxon law. Namely, when a legal principle is violated once or introduced into practice for the first time, and when the court instances do not annul that novelty, it becomes a source of law or, in our case, a source of the violation of a right.

The Constitutional Court proceedings on the amendments to the Serbian Constitution took place simultaneously with decision making relating to the Slovenian amendments (from 4 October 1989 to 18 January 1990). Unfortunately for jurisprudence, but favorable for Kristan's stance on the existence of a pro-Serbian majority in the Constitutional Court, the decision-making process relating to the Serbian amendments did not imply the same measure of principledness as in the case of the Slovenian amendments. Namely, the Constitutional Court refused to rule on the most significant violations of formal law (with respect to the enactment procedure) and substantive law (with respect to the content of positive legal regulations), involving the constitutional status of the autonomous provinces. In other words, it refused to review these aspects of the Serbian amendments. Judge Ivan Kristan presented in a reasoned manner the proposals to the Constitutional Court to discuss these issues. According to him, the nature of the formal objections was such that they should be considered as a substantive burden in terms of assessing their constitutionality. Due to the fact that the Kosovo Assembly adopted the proposed amendments during a state of emergency, when tanks, military and police forces were on Priština's streets, the legality and constitutionality of these changes are highly questionable.[218] Namely, can the supreme legal act of one country be radically changed during a state of emergency?

The material objections made by Kristan asserted that the amendments changed the relationship between the competences of constitutional courts at the levels of the provinces, SR Serbia and the Constitutional Court of Yugoslavia, as well as abolished the right of the autonomous provinces to give their consent for changes to the

218 *Odluke i mišljenja USJ 1990*, pp. 232–233.

republican constitution. Kristan holds that the latter was illogical because, according to the regulations in place, the autonomous provinces still had to give their consent for any change to the SFRY Constitution. According to him, the competences of the Constitutional Court of Serbia and the Serbian Assembly to repeal the constitutions of the autonomous provinces, thus completely changing the nature of the constitutional relations stipulated by the federal Constitution, were problematic. Instead of going into the merits of these issues, the Constitutional Court decided without explanation not to consider any of them. Ivan Kristan was thus forced to express his dissent by submitting a separate opinion about the Constitutional Court's decision.[219]

Of all the Serbian amendments (9–49), the Constitutional Court established that only three amendments (20, 27 and 39) contained matters contrary to the SFRY Constitution. Those were the provisions related to the possibility of restricting the purchase and sale of real property; the provisions stipulating the primacy of Cyrillic over Latin in official use; and the provision related to the determination of the delegate base for choosing delegates for the Federal Council of the SFRY Assembly.[220] One gets the impression that this was done for the sake of form in order to provide the illusion of impartiality in decision making relating to the Serbian amendments. In January 1990, in addition to the Serbian and Slovenian amendments, the Constitutional Court also rendered opinions and decisions about the constitutionality of Croatian, Macedonian, Kosovo, Vojvodina, Bosnian-Herzegovinian and Montenegrin amendments. With the exception of the amendments to the Constitution of SR Montenegro, which were in full compliance with the SFRY Constitution, some of the amendments from the other republics and provinces were considered unconstitutional. The majority did not deal with inflammatory issues such as interethnic relations or the reorganization of relations with the federal state.[221] As for the amendments to

219 Ibid., pp. 233–255.

220 Ibid., pp. 229–231.

221 Ibid., 225–228, 236–245.

the Constitutions of the SAPs Vojvodina and Kosovo, the unconstitutional ones were those dealing with the primacy accorded to the Cyrillic alphabet in official use in Vojvodina and the right of the provincial authorities to determine the use of the flags of the peoples and nationalities in Kosovo.

The work of the Constitutional Court during 1991 and the structure of the cases being reviewed point to the dramatic situation during the last months of the common Yugoslav state. According to the 1991 Yearbook of the Constitutional Court of Yugoslavia, out of 165 judgments passed by this court, only 47 dealt with everyday problems of the SFRY's society and institutions, while 118 judgements dealt with extraordinary circumstances created by the declarations and concrete acts of "disunion" and independence by Slovenia and Croatia. The members of the Constitutional Court of Yugoslavia from these two Yugoslav republics participated in its work even after their states' proclamations of independence, that is, after 25 June. The European Community-sponsored peace negotiations, which ended the Ten-Day War in Slovenia, resulted in the so-called Brioni Declaration of 7 July 1991. The Declaration introduced a three-month moratorium on the implementation of the decision on the independence of these two republics. Until 8 October, Croatia and Slovenia still formally recognized the sovereignty of the SFRY and their representatives participated in the work of the federal bodies. As can be seen from Kristan's memoir, the so-called European troika and Slovenian authorities insisted on the active participation and cooperativeness of the Slovenian judges in the work of the Constitutional Court of Yugoslavia.

Kristan writes in his memoir that he was not in Belgrade during the war in Slovenia and returned only in July 1991. He reveals that in taking the stand in this court during the moratorium period, he constantly consulted Milan Kučan, taking into account the current and strategic interests of the Slovenian state in the making.[222] Thus, for example, he tried his best to prevent putting the constitutionality of the SFRY Presidency's decision about the withdrawal of the Yugoslav People's

222 I. Kristan, *Osamosvajanje Slovenije*, pp. 85, 90.

Army from Slovenia on the agenda of the Constitutional Court. It was in Slovenia's state interest not to challenge this decision. Moreover, a declaration of the SFRY Presidency's decision as unconstitutional would serve as an excuse for the military circles to take over the competences of the country's executive authority.[223] The Constitutional Court did not comment on this issue until October 1991, when it took a formalist stand that, despite the evident violations of the constitutional norms, it could not discuss this decision of the SFRY Presidency because it was not published in the Official Gazette.[224]

By mid-1991, the instrumentalization of the Constitutional Court of Yugoslavia had reached such proportions that two prominent government officials and politicians (Ratko Marković and Vladimir Šeks, leaders of the Serbian Socialist Party /SPS/ and the Croatian Democratic Union /HDZ/ respectively, which were in power in the two republics), took up the duties of the judges from Serbia and Croatia. In his memoir, Šeks mentions that the decision to delegate him to the Constitutional Court of Yugoslavia was made by Franjo Tuđman himself, while Marković was included in all constitutional projects of Milošević's regime from 1989 to Rambouillet.[225] Both of them, as constitutional law experts and members of the executive or legislative authorities in their republics, already participated in the preparation of enactments whose constitutionality was assessed by the Constitutional Court. This led not only to a specific conflict of interest, but also to entirely paradoxical situations. Šeks, for example, points

223 Ibid" pp. 88–90.

224 *Odluke i mišljenja USJ 1991*, p. 279.

225 Vladimir Šeks, *1991.: Moja sjećanja na stvaranje Hrvatske i domovinski rat*, Zagreb: Grafički zavod Hrvatske, 2015, pp. 45–46. About Marković's work on the amendments to the Serbian Constitution see the transcript of his testimony at the trial of Slobodan Milošević at the International Criminal Tribunal in The Hague on 20 January 2005: *http://www.hlc-rdc.org/Transkripti/Milosevic/Transkripti/Transkripti%20sa%20sudjenja%20Slobodanu%20Milosevicu%20%2815%29/Transkript%20sa%20sudjenja%20Slobodanu%20Milosevicu%20-%2020.%20januar%202005..pdf.*

out in his memoir that, as a coauthor and collaborator in the preparation of most of Croatia's constitutional declarations and laws denying the existence of Yugoslavia, he had a serious problem with swearing an oath to the Constitution of that country on 5 July 1991[226]. Like Kristan, Šeks also points out that his participation in the Constitutional Court of Yugoslavia was the result of the European troika's mediation and should be viewed in the context of the agreed three-month transition period, that is, the moratorium during which the preconditions for the disunion of Slovenia and Croatia had to be created.[227]

However, Šeks stayed in Belgrade only until 16 July 1991, when he left his position as a Constitutional Court judge, allegedly of his own accord. He claims resignedly that he remained completely alone during court proceeedings dealing with Slovenian and Croatian constitutional acts and declarations. Namely, the two Slovenian judges, Kristan and Močivnik, had not yet returned to Belgrade, after having left during the Ten-Day War in Slovenia. As for the Croatian judge, Hrvoje Bačić, he was allegedly loyal to the majority in the Constitutional Court and excluded from Zagreb's political combinations. Šeks says about him that, despite being delegated by Croatia, he lived in Belgrade for ten years, which had influence on his decision making.[228] According to the 1991 Yearbook of the Constitutional Court of Yugoslavia, Vladimir Šeks participated in only one session, which was held on 10 July of that year. Out of the five decisions adopted at that session, two dealt with Croatia. The most important decision, in constitutional terms, involved the implementation of the Constitution of the Republic of Croatia of 21 February 1991, which was declared unconstitutional[229]. As Šeks testifies

226 Vladimir Šeks, *1991.: Moja sjećanja...,* p. 160.

227 Ibid., p. 111.

228 V. Šeks, *1991.: Moja sjećanja...*, pp. 45, 175.

229 *Odluke i mišljenja USJ 1991*, pp. 271–272.

in his memoir, he openly pointed out in court that he was the "main author" of that law.[230]

As already mentioned, the 1991 Yearbook primarily included decisions related to the extraordinary circumstances created by controversial laws and declarations of independence and sovereignty. Out of 118 decisions, 47 referred to the enactments adopted in Croatia, 29 referred to those adopted in Serbia and 26 referred to those adopted in Slovenia. There were only 15 decisions about the enactments adopted in Bosnia and Herzegovina, Macedonia, Montenegro, Kosovo and Vojvodina. All enactments relating to Slovenia's and Croatia's declarations of independence and suspensions of federal laws were repealed or declared unconstitutional by the Constitutional Court. This also referred to the enactments of the Serbian government relating to the disturbance of the unified Yugoslav market and unauthorized recourse to the primary issue and intrusion into the SFRY payment operations.[231] These issues were among the political priorities of Milošević's regime. An embargo on Slovenian goods and a possible imposition of taxes on goods from the other republics also occupied an important place in the populist phraseology of the regime. One gets the impression that, despite the instrumentalization of its role, the Constitutional Court respected professional principles in deciding about the essence of legal enactments. Abuse and manipulation cases were recorded as such in the procedure prior to giving a legal opinion, namely in deciding on whether to initiate the procedure or not, not in the provision of legal expertise itself.

The three-month moratorium period (July–October 1991) was the last period in which the Slovenian judges Kristan and Močivnik

230 "I fiercely defended the Croatian Constitutional Law using all possible legal arguments and persistently arguing that it was not in conflict with the SFRY Constitution. At one moment, Serbian judge Ratko Marković remarked that I defended this law so fervently 'as if I were its father'. I answered that he was right, because I was the 'main' author of this Constitutional Law." Ibid., p. 176.

231 *Odluke i mišljenja USJ 1991*, pp. 75–76, 111–112, 124–126, 167–168, 181–182, 215–216, 230–233.

participated in the work of the Constitutional Court. Mutual anxiety and heated interethnic tensions were reflected in the attitude towards them. The Serbian authorities, Serbian public and Ratko Marković himself were especially outraged by the attitude of Ivan Kristan, who most persistently represented the Slovenian interests in the Constitutional Court.[232] Unknown persons twice broke into Kristan's official apartment in Novi Beograd and changed the lock on the front door. When he returned to Belgrade on 23 July, he could not enter his apartment, so that he spent the night in a hotel. The next day he apologized to his colleagues for coming unshaven to the Constitutional Court session. After an intervention, the apartment was returned to him, but only until 2 August, when a police officer from the Federal Secretariat for Internal Affairs moved into it. Kristan obtained a hotel room where he remained until the end of his stay in Belgrade.[233] An anecdote in Vladimir Šeks's memoir is also interesting. He wrote that he came to Belgrade carrying a Scorpion automatic pistol in his luggage.[234]. He allegedly came to the Constitutional Court session with this pistol and two hand grenades for the sake of personal safety and showed them to Ratko Marković[235].

The Constitutional Court held sessions until 27 April 1992. In the Yearbook of the Constitutional Court of Yugoslavia, which covers this

232 Ratko Marković, Svedočenje u Haškom tribunalu na suđenju Slobodanu Miloševiću od 13. januara 2005, pp. 615–616. Accessible at: *http://www.hlc-rdc.org/Transkripti/Milosevic/Transkripti/Transkripti%20sa%20sudjenja%20Slobodanu%20Milosevicu%20%2814%29/Transkript%20sa%20sudjenja%20Slobodanu%20Milosevicu%20-%2013.%20januar%202005.pdf.*

233 I. Kristan, *Osamosvajanje Slovenije*, pp. 86–87, 91–92.

234 V. Šeks, *1991.: Moja sjećanja...*" p. 158.

235 "After the vote, I opened a leather bag to put my papers into it. Judge Marković, who sat opposite me, remarked: 'Wow, colleague, I see that you have convincing evidence.' When I opened the bag, he saw the Scorpion pistol and two hand grenades at the bottom. I added: 'I prepared this evidence for some other 'talks' and I have them just 'in case of need'. They may be necessary given the place we are in. The others listened [to] our 'dialogue' silently.", V. Šeks, *1991.: Moja sjećanja...,* p. 176.

four-month period, there are only 96 decisions. No more than nine can be characterized, conditionally speaking, as regular issues normally considered by such an institution. In deciding on legal enactments relating to the irregular or extraordinary circumstances created by the process of secession and dissolution of the Yugoslav state, the Constitutional Court was mostly focused on legislative enactments by the Republic of Croatia. Out of 87 "extraordinary" decisions, 65 referred to the enactments and regulations adopted by Croatia.[236] There were only four decisions relating to the Slovenian legislation which, from the aspect of the SFRY Constitution, was no less controversial, unconstitutional or "secessionist" than the legislation of the Republic of Croatia. Obviously, Slovenia was no longer considered a real domain of the Constitutional Court's competences either territorially or constitutionally. This corresponded with the political strategy of Milošević's regime, which was preoccupied with resolving the status of the Serbian population in Croatia.

The Constitutional Court's Opinion No. 4/1–91, which was submitted to the SFRY Assembly on 14 February 1991, provides a good summary of the influence of its activities on the harmonization of legal matters at the provincial, republican and federal levels. The Opinion states that republican and provincial authorities (with the exception of the Bosnian-Herzegovinian authorities) ignored the decisions and opinions of the Constitutional Court by failing to harmonize the texts of their constitutional amendments with the federal Constitution within the given time limit. The Constitutional Court points out that the federal authorities also failed to harmonize their laws with the amendments to the SFRY Constitution adopted in 1988. The new Constitutions of Croatia and Serbia only intensified the relationship maladjustment of constitutional matters at all levels. As for the Constitutional Court, the general complexity of the prevailing circumstances required changes in constitutional matters, including to the SFRY

236 *Odluke i mišljenja USJ 1992*, Belgrade: USJ, 1992.

Constitution, and their harmonization at all levels.[237] Consequently, the murky situation was brought about not only by the problematic inclusion of individuals who were continuously politically instructed and frequently in conflicts of interest; nor by the frequent instrumentalization of the Constitutional Court by Milošević's regime; but also by the non-observance of the adopted decisions, with the exception of the Bosnian and Herzegovinian leadership. The Constitutional Court worked as a team of 11 judges until the end of its existence. Namely, After the expiry of the moratorium in October 1991, the two Slovenian judges stopped coming to sessions, while Vladimir Šeks had already left Belgrade in July of that year. The aforementioned Hrvoje Bečić, delegated by Croatia but loyal to the environment where he had spent a great part of his life, participated in its work until its end. In his memoir, Šeks mentioned that, immediately after his departure for Croatia, the Kosovo judge also left – he later practiced law in Istria.[238] However, Kosovo judge Pjeter Kola was registered in the Yearbook of the Constitutional Court of Yugoslavia under "Decisions and Opinions" until April 1992.

What conclusion can be drawn about the role of the Constitutional Court in the last episodes of the SFRY's existence? With regards to the professional integrity of this institution, it is difficult to give an unambiguous or simple answer. As for decision making relating to the essence of legal matters, it is rare to find open partiality or an omission involving unfounded decisions or opinions of the Constitutional Court with respect to the wording of the SFRY Constitution. The instrumentalization of this institution occurred in procedures preceding meritorious decision making. For example, the Constitutional Court simply refused to rule on the formal and material violations to the norms of the federal Constitution contained in the 1989 Serbian amendments without explanation. It also refused to comment on the decision of the SFRY Presidency to withdraw the Yugoslav federal

237 *Odluke i mišljenja USJ,* 1991, pp. 267–269.

238 V. Šeks, *1991.: Moja sjećanja...,* pp. 176, 80.

army from Slovenia, because such a decision was nowhere published. On the other hand, this court agreed to give its opinion about the 1989 Slovenian amendments, although at the time this procedure was initiated the amendments had not been published in any official publication, but were merely quoted from daily newspapers. When the Constitutional Court had an opportunity to declare itself meritoriously, it always decided in compliance with the SFRY Constitution. Almost all enactments of the Republic of Serbia which came to this court were assessed as unconstitutional. Among these decisions there were some the Serbian regime especially cared about. They involved the primacy of the Cyrillic alphabet in public use, real estate transactions in Kosovo, the law allowing the use of primary issue of banknotes from the National Bank of Yugoslavia and the imposition of trade restrictions and special taxes on goods from other republics. During the last two years of the common state, all of these decisions, together with a huge corpus of legislation from all the Yugoslav republics and provinces, were declared unconstitutional. The intensity of the violations against the SFRY's constitutional order certainly indicates that this state actually ceased to exist far earlier than the occurrence of the formal events that took place in mid to late 1991.