

Dr. Arne Mavčič

The Slovenian Constitutional Review



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THE SLOVENIAN CONSTITUTIONAL REVIEW

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I. CONSTITUTIONAL HISTORY

In 1848, Slovenian intellectuals drafted the first original amendments to the Austrian Constitution in the Slovenian language: (Address of the Vienna Slovenians (1848), Petition of the Slovenians (1848), Slovenian Petition (1848), Petition of the Slovenia Society (1848), Petition of Matija Majer (1849) ¹

Further national programmes formulated between 1861 and 1914 united Slovenians and gave rise to the notion of a union of southern Slavs.

The May Declaration of 1917 demanded the unification of all Slovenians, Croats and Serbs living under Habsburg rule as one constitutional entity, and that same year the Corfu Conference and Declaration led to the establishment of the Kingdom of Serbs, Croats and Slovenians (SHS), which was finally proclaimed on 1 December 1918. Between 1919 and 1920 the Kingdom's frontiers with Italy and Austria were settled.

The first Yugoslav Vidovdan Constitution was adopted on 28 June 1921 as a Serbian-dominated centralist constitution.

In 1929, King Alexander abolished the Vidovdan Constitution and declared a temporary royal dictatorship. A new strongly centralistic constitution was adopted in 1931 to provide a fig leaf for the royal dictatorship. Following King Alexander's assassination, the Regency Council was established. This lasted from 1934 to 1941.

However, by the Draft Decree of the Banovina Slovenia of August 1939 (which was drafted on the basis of the Decree of the Banovina Hrvatska, Službeni list Kraljevske banske uprave Dravske banovine, X, No. 70, p. 606-608) some elements of constitutional review were framed ².

After the invasion of the Axis powers in 1941, Slovenia was divided between Italy, Hungary and Germany. In that same year, the Slovenian Communist Liberation Front was founded. Communist and anti-communist resistance followed between 1941 and 1945. In May 1945, the National Committee established the Slovenian parliament and declared the united Slovenia to be part of federal Yugoslavia, known between 1945 and 1980 as Tito's Yugoslavia. The Federal Constitution was adopted in 1946, establishing a federation consisting of six republics, includ-

1 Published in *Constitutions of the World from the late 18th Century to the Middle of the 19th Century Online*, *Verfassungen der Welt vom späten 18. Jahrhundert bis Mitte des 19. Jahrhunderts Online*, Sources on the Rise of Modern Constitutionalism, Quellen zur Herausbildung des modernen Konstitutionalismus, Edited by / Herausgeben von Horst Dippel, <http://www.modern-constitutionns.de/>

2 Šmid, Gašper. *Uprava Dravske Banovine 1929-1941*. Ljubljana 2003, Arhiv Republike Slovenije v Ljubljani, p. 103 in Mahnič, David. *Razvoj sodne presoje ustavnosti v državah na območju nekdanje Jugoslavije*, magistrsko delo, Fakulteta za podiplomske državne in evropske študije, Kranj, 2006, p. 104-107.

ing Slovenia. The right of the people to self-determination, including secession, was stated in Art. 1 of the Federal Constitution.

The people's rights were repeated in the Constitution of the People's Republic of Slovenia of 1947 (Arts. 2 and 10). Under the Slovenian Constitution of 1947, the organization of Slovenia as a constituent republic of the Yugoslav federation was based on the principles of unity of power, democratic centralism and dual responsibility. The supreme bodies of the people's power in Slovenia were the People's Assembly and its Presidium, while the government was at the head of the state administration. The judges of the Supreme Court were elected by the People's Assembly, other judges by the People's Committees.

The later Federal Constitution of 1963 was the basis for further decentralization and the concept of a "self-managed society". This was also reflected in the new Slovenian Constitution of 1963. Under the Slovenian Constitutional Act of 1953 the People's Assembly was bicameral, comprising the Chamber of the Republics and the Chamber of Producers. The Presidium and the government were abolished, the Executive Council (e.g. the Government) was introduced and administrative bodies were given a higher degree of independence.

The Slovenian Constitution of 1963 introduced some changes relating to the parliamentary chambers, but in the area of the judiciary and communal system there were no major changes. The constitutional review exercised by the constitutional court was introduced totally following the European/German/concentrated/continental(Kelsen's model of constitutional review.

In the years between 1968 and 1974 a thorough reform of the federation was conducted, which strengthened the position of the republics and provinces. In 1969 the Assembly's structure was modified. Under the constitutional amendments of 1971 the position of President of the Assembly was strengthened, acquiring some of the powers of the head of state. The Executive Council (e.g. the Government) became increasingly linked to the administrative bodies. The Federal Constitutional Amendments of 1971 gave wider powers to the Federal Chamber of Nationalities and the Republics at the expense of the federation.

The new Federal Constitution of 1974 as well as the new Slovenian Constitution of 1974 strengthened the concept of a "self-managed socialist society". The Slovenian Constitution of 1974 introduced a tricameral parliament. Members of the Republic Assembly were elected indirectly, via delegations, and acted on the instructions of their delegation base. The office of president as head of state was introduced, the president being elected by the municipal assemblies. The Executive Council (e.g. the Government) was responsible for all areas, while administrative bodies were responsible for areas specifically assigned to them. Besides ordinary courts, so-called self-managing courts were established. The organization of municipalities was very similar to that of the Republic.

The then Slovenian constitutions were only constitutions of a federal unit and not constitutions of a sovereign state. There was an absolute necessity for the transition from a system characterized by the privilege of a certain belief, by the monopoly of a certain political organization, and by an electoral system that was opposed to the principle of the equal right of all citizens to participate in the decision-making process on public matters to a system involving the right to freedom of political organization, to simplified and clear electoral proceedings, free from the monopolistic role of any political organization.

In March 1987, the magazine *New Review (Nova revija)* published the Contributions to the Slovenian National Programme. The Materials on the New Democratic Slovenian Constitution were published in April 1988. In June 1988, the Committee for the Defence of Human Rights was formed as the first democratic forum and in May 1989 Slovenian writers organized an informal referendum on Slovenia's constitutional status (the May Declaration).

Amendments to the 1974 Slovenian Constitution adopted in September 1989 introduced pluralism of the political system. Amendment X established the permanent, unlimited and inalienable right of the Slovenian people to self-determination, including the right to secession and union. In December 1989 the Political Organizations Act and the Parliamentary Elections Act were adopted. The constitutional amendments XCI-XCV passed in March 1990 eliminated the term "socialist" from the Republic's name and established the freedom to found political organizations and equal rights for all political organizations.

A fully elaborated Draft New Slovenian Constitution was published in April 1990, while on 2 July 1990 the Declaration on the Sovereignty of the Republic of Slovenia was proclaimed. In September of the same year the Slovenian parliament established the National Guard (territorial defence force) under the Republic's control and in October, in implementing the Declaration on Sovereignty, the Slovenian Assembly passed the constitutional amendments XCVI-XCVIII, which invalidated all constitutional laws of the Socialist Federal Republic of Yugoslavia that were not in conformity with the Slovenian Constitution. The plebiscite of 23 December 1990 showed 88.2% of the voters (93.2% of the electorate) to be in favour of independence. The ultimatum of the Belgrade government to Slovenia demanding the disarmament of Slovenian territorial defence units was rejected by the Slovenian government in January 1991. "The independence amendment" was passed by the Slovenian parliament on 22 February 1991, providing the normative basis for the sovereign conduct of internal and international affairs.

On 25 June 1991 the Slovenian parliament declared independence and adopted The Basic Constitutional Charter on the Sovereignty and Independence of the Republic of Slovenia. Under Art. I(2) of the Charter, the Constitution of the Socialist Federal Republic of Yugoslavia ceased to be in force for the Republic of Slovenia. However, on 8 July 1991 Slovenia agreed – through the Brioni Declaration

– on the moratorium to “freeze” further activities directed towards the exercise of its sovereignty for three months. On 20 November 1991 the Denationalization Act was passed and on 23 December of that year the Constitution of the Republic of Slovenia was adopted (Official Gazette RS, No. 33/91).

On 16 December 1991 the EC foreign ministers in Brussels declared Slovenia’s international recognition by 15 January 1992. On 24 March 1992 Slovenia was accepted as a member of the CSCE and on 22 May 1992 as a member of the United Nations, while on 12 May 1993 it became a member of the Council of Europe. On 14 May 1993 Slovenia signed the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, including the 11 Protocols ratified on 8 June 1994 (Official Gazette of the RS, International Contracts, No. 33/94). In September 1993 Slovenia concluded a Simple Cooperation Agreement with the European Communities, but on 12 July 1995 it concluded a European Treaty with the European Union. On 11 September 1995 Slovenia joined CEFTA.

During the period of Slovenia’s accession to the European Union some constitutional amendments were adopted: on 14 July 1997 the constitutional amendment of Art. 68(2) (Official Gazette RS, No. 42/97); on 25 July 2000 the constitutional amendment of Art. 80 (Official Gazette RS, No. 66/00); on 7 March 2003 the First Chapter (Art. 3a added) and Arts. 47 and 68 of the Constitution were amended (Official Gazette RS, No. 24/03).

On 23 March 2003 the majority of the Slovenian electorate voted in favour of accession to the European Union and NATO. On 2 April 2004 Slovenia joined NATO and on 16 April 2003 signed the EU Treaty of Accession, joining the European Union on 1 May 2004. Later, on 23 June 2004, Arts. 14, 43 and 50 of the Constitution were amended (Official Gazette RS, No. 69/04).

The Slovenian Presidency of the Council of the European Union from 1 January to 30 June 2008 was a great challenge for Slovenia as one of the youngest EU Member States. The programme of the Slovenian Presidency was basically determined already in the 18-month programme of the EU trio Presidency of Germany, Portugal and Slovenia, however, Slovenia itself defined some priority areas of its action. The EU Council Presidency also offered an opportunity for the promotion of the country throughout the six-month period.

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