

## FEDERALISM AND THE PROBLEM OF ITS REALISATION

PAVLE NIKOLIĆ - OLIVER NIKOLIĆ

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### *Introduction.*

The concept of federalism comprises, as it is well known, very different phenomena: from the name of one type of a state, i.e. the form of state organisation, as well as of certain characteristics of society, to the name of certain movements, and so on. After all, the explanation that "federalism is a simple formula that allows for respect of diversity while at the same time ensuring unity",<sup>1</sup> enables that federalism is used as the term in various areas of life and for denoting different phenomena. This is more so, if one accepts the explanation of Georges Vedel's that federalism is "a means of unification where diversity prevails, and that it is means of creating diversity and enriching it where unity becomes too difficult."<sup>2</sup> Hence, it is not spoken of federalism only in modern times, and only in one segment life, but the traces and forms of federalism as an idea and an actual phenomenon are to be found in ancient Greece, that is a few centuries before Christ, and then in the philosophy of the "Age of Enlightenment", etc.

Viewed from the constitutional point of view, despite the differences of opinion, federalism is one particular form of the state, more exactly the form of internal state structure. Although there is no unique model of federal structure, the clarity of the concept of federalism (federal organisation) does not come into question<sup>3</sup>, just as both in theory and practice the exceptional

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<sup>1</sup> G. BERGER, *Introduction psychologique et philosophique aux problèmes du fédéralisme, Le fédéralisme*, Paris, 1956, 28.

<sup>2</sup> G. VEDEL, *Les grands courants de la pensée politique et le fédéralisme, Le fédéralisme*, 44.

<sup>3</sup> See, M. MOUSKHELI, *La théorie juridique de l'Etat fédéral*, Paris, 1931; M.

significance of this form of organisation is not questionable, and consequently neither the problem of its implementation.

#### I. FEDERALISM AND DEMOCRACY.

As a form of internal organisation of the state, and hence of the state as a whole, federalism is democratic in the full sense of the word. As has been noted in theory, "le fédéralisme est un certain degré d'union... aussi... un certain degré de décentralisation"<sup>4</sup>. It can be said that the deeper meaning of federalism consists in, "combining some unity with certain diversity"<sup>5</sup>. By means of this the possibility of achieving hegemony over others is excluded. Thus, it has been reasonably remarked that, most generally speaking, the aim of federal organisation is to "... reconcile the unity of national power with the preservation of the rights of the state."<sup>6</sup> All this could be recast into a formula expressing the essence of federalism: "l'admirable équilibre qu'est le fédéralisme."<sup>7</sup>

If this is so, then we can accept the claim that federalism, as a form of internal organisation of the state, is capable to democratically, and in most cases the only possible way, solve certain national, ethnic, and other (political, economic) problems, and particularly those concerning certain historical situations existing at specific territories. Federalism brings this about by creating a common state in which national, ethnic and even some other groups or territories, find the solution to the problem of their survival, their safety and their development, but also the preservation of their own integrity and identity. This particularly applies to those groups and territories having their basis in historical existence. The practice of formation and existence of federal states in the last two centuries confirms this very fact. Of course, not in the same way and to the same extent. To some, maybe even to the most of these states, the establishment of federal structure was an urgent need, even an imperative.

Otherwise, as it is well known the specific causes (reasons) for establishing of federal states, and the introduction of federal structure, regardless of whether it was done by means of devolution or by means of aggregation, were very numerous and varied. In addition, it is clearly evident

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JOVIČIĆ, *Savremeni federalizam*, Beograd, 1973 (summary in french); P. NIKOLIĆ, *Federacija i federalne jedinice*, Beograd, 1989 (summary in english); etc.

<sup>4</sup> J.-F. AUBERT, *Traité de droit constitutionnel Suisse*, Neuchatel, 1967, vol I, 202.

<sup>5</sup> C. J. FRIEDRICH, *La démocratie constitutionnelle*, Paris, 1958, 163.

<sup>6</sup> M. MOUSKHELI, *op. cit.*, 245.

<sup>7</sup> J.-F. AUBERT, *op. cit.*, 201.

that in many cases, if not in all, there was no single reason, but several reasons that inspired the establishment of federalism. Among others, the following reasons (causes) were particularly frequent (and decisive).

Thus, for example, it is a historical reason expressed in the fact that prior to the creation of a common federal state there existed independent states, that is territorial entities with a certain degree of self-government, which joined together into a common state (in some cases, first in a confederation - the U.S., Switzerland). Next, it is a pervasive reason which relates to the resolution of national, ethnic or similar issues, due to the existence of several nations and ethnic groups or differences regarding language and religion (India, the USSR, Czechoslovakia, Yugoslavia, etc.). There are also geographical reasons represented in large territory of the country that opts for federalism (Brazil, Canada, Australia, etc.). Also, we should not neglect the economic and political reasons, as well as the need to protect the country from external pressures, i.e. to protect the attained independence, etc.<sup>8</sup>

The above mentioned reasons show (confirm) that federalism appears when it needs to resolve the mentioned problems by means of its mechanisms. Federalism as a form of organisation is not a question of technique and organisation, but a *par excellence* political instrument for solving the mentioned problems and thus guaranteeing certain democratic values in a complex community, i.e. a common state.

However, the significance and meaning of federalism as an instrument which democratically resolves certain vital issues in a state, are, it is said, only one side of the same coin. The other side is the fact that the existence of genuine, authentic federalism with such a democratic significance in a state depends on the existence of democracy and the degree of its development in that state. Namely, the rights and freedoms of man and the citizen, popular sovereignty, multiparty system, free elections, separation of powers, the rule of law, the independence of judiciary, etc. as constituent elements of democratic political regime, are a necessary condition, and necessary prerequisite for the establishment of federalism and its successful operation that would lead to the accomplishment of the aim (solution of the problem) for which federalism is established in particular country. In other words, only with the background of democratic principles and institutions, it is possible that the elements and devices of federal structure be successfully establish and operate in practice.

Hence, it is no coincidence that the development of democracy gives rise to increasing number of federal states, especially in countries where federalism imposes itself as a convenient mechanism for resolving the internal, previously mentioned problems. This is confirmed by the fact that

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<sup>8</sup> See, M. JOVIČIĆ, op. cit., 42 et seq.

after the formation of the first true federal state by the end of the eighteenth century (United States of America), in the nineteenth century only a few states with federal structure were formed (Switzerland, Argentina, Brazil, and others.), while in the twentieth century the number of such countries increased significantly (USSR, India, Germany, Mexico, Yugoslavia, Czechoslovakia, Austria, Nigeria, Malaysia, Russia, etc.). Of course, not all of these countries were equally democratic (some of them being not democratic at all), nor was federalism equally consistently implemented (in some of them it even broke down), and even the true function (aim) of federalism has not been achieved.

In considering the concept, mechanism, meaning and functioning of federalism, an indisputable phenomenon has been ignored, almost not even mentioned. It is the fact that, unfortunately, experience has shown that federalism as a form of state organisation can become merely a form, behind the scenery hiding a different reality. In this way originates what could be called a fictitious federalism. It is so, above all, because some of its principles and elements are deformed or inoperative. At the same time, which is connected to this, it fails to accomplish its goals, i.e. solving problems that true federalism can and must solve. This happens in countries with undemocratic regimes - authoritarian, dictatorial, single-party systems, etc. This, in its turn, only confirms the above mentioned view that there is no authentic federalism without democracy.<sup>9</sup>

Namely, under the rule of a single party, the omnipotence of a single centre of power, personalisation of power and dictatorship of a single man, not to mention the absence (violation) of rights and freedoms, absence of the rule of law etc., the essential elements of federalism cannot be achieved in practice, and even the goal it is established for. All this represents an insurmountable obstacle to maintaining the integrity and the status of federal units, to maintaining their functions and relationship with the Federation, the realisation of the functions of the Federation, etc., and all this in accordance with the spirit and the rules of true federalism. Of course, practice shows that this does not happen in the same way or equally in all such "federal" states.

## II. FAILURE OF THE FEDERALISM IN UNDEMOCRATIC STATES.

In modern times the number of states with distorted, i.e. fictitious federalism is, fortunately, small. The most characteristic and also the most drastic example was the Union of Soviet Socialist Republics, and also it was

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<sup>9</sup> Another view on federalism and democracy, see, M. JOVIČIĆ, *op. cit.*, 234 et seq.

the Socialist Republic of Czechoslovakia and the former Yugoslavia (1945-1990). Some other countries may also be included in this group - Nigeria, Malaysia, Ethiopia and others.

1. *"Federalism" in the Union of Soviet Socialist Republics.*

Created by devolution of hitherto unitary state, federalism in the Union of Soviet Socialist Republics was basically set up in order to resolve the national question due to the very large number of nations and ethnic groups, as well as to the existence of differences regarding language, religion and the like, as well as the large territory.<sup>10</sup> Already the Declaration of the Rights of Peoples of Russia (1917) had explicitly established the following principles: "1) The equality and sovereignty of the peoples of Russia, 2) The right of the peoples of Russia to free self-determination up to secession and the creation of an independent state, 3) the elimination of all kinds of national and national-religious privileges and restrictions, 4) free development of national minorities and ethnic groups inhabiting the territory of Russia," in order to proclaim in the Declaration of the Rights of the Working and Exploited People (1918) that: "The Russian soviet Republic is constituted on the basis of a free union of the free nations as a federation of Soviet national republics." The 1918 Constitution of the Russian Socialist Federal Republic has adopted this definition of the federal organisation, while the 1924 Constitution of the Union of the Soviet Socialist Republics stipulated that the Soviet Union was a voluntary union of equal nations, with each republic having the right freely to leave the Union and all the soviet socialist republics having the right to join the Union. The 1936 Constitution of the USSR again proclaimed the right of nations to self-determination including secession. The 1977 Constitution provides a slightly more comprehensive definition of federal organisation providing that "the Union of Soviet Socialist Republics is an integral federal multinational state, formed upon the principle of socialist federalism, according to the free self-determination of nations and the voluntary union of equal righted soviet socialist republics" (Art. 70). At the same time, the right of each of the federal republics to free withdrawal from the USSR has been retained.

So federalism provided a solution of the problem of multinational composition of the country, only the federal system changed over time.

However, at the very beginning there was a departure (even a drastic one) from the consistent and fair solution of the national question, as well as

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<sup>10</sup> See in details, M. LESAGE, *Le système politique de l'URSS*, Paris, 1987, 317 et seq., 333 et seq; M. JOVIČIĆ, *Veliki ustavni sistemi*, Beograd, 1984, 235 et seq.

from the rules and principles of an authentic federalism. Thus, for example., out of a hundred and more nations only a small number of them formed their own federal units - a federal republic (under the 1977 Constitution there were 15 of them, and in some earlier periods much less), while the others were organised as lower autonomous units.<sup>11</sup> Further, in a later period (1944-1945) some national and ethnic groups were unwillingly resettled to other parts of the country (however, in the period after Stalin's death, they were allowed to return to their old homes). Over time, the Russian nation and the Russian Federal Republic as the largest and most developed became dominant, with the most influential cadres in politics and state in general. The distribution of competences between the Federation and the federal republics (federal units) was visibly carried out in favour of the Federation, and for that and other reasons Federation was superior to the federal units. A unique organisation of government was proclaimed, so that the organisation of federal republics was, in effect, a copy of the Federation. Thus the proclaimed right to self-organisation was substantially violated (the 1977 Constitution establishes only the basic principles of organisation of government in the republics). It was all a harsh threat and unsettling of the proclaimed principle of equality of nations (causing discontent and friction) preventing the solution of the national question, which was the reason for establishing of federalism.

The cause of these negative phenomena, failures and distortions of federalism lies, in fact, in the absence of democracy, i.e. in the existence of a kind of authoritarian regime and in the policy of the ruling powers in this country. The dictatorship of the proletariat, proclaimed by the Constitution in 1918 (the Constitution of the Russian Soviet Federal Socialist Republic) at the very beginning, and then during the coming decades, became a regime of terror, with severe violation of rights and freedoms, persecution and internal terror, cruel action of the secret police, creation of the infamous gulags, Stalin's purges, and so on.<sup>12</sup>

Such a regime necessarily required a single party system, so that the mechanisms of government and managing of the state rested on unquestioned monopoly position of the ruling (the only) party - the Communist Party of the Soviet Union (formerly Federal Communist Party - of the Bolsheviks), fixed in a number of constitutional documents. In practice, it especially meant the unlimited power of the Central committee of this Party, its Politburo and the Secretary General (particularly during the

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<sup>11</sup> M. LESAGE, op. cit. 318 et seq; V. VASOVIĆ, *Savremeni politički sistemi*, Beograd, 1987, 209 et seq.

<sup>12</sup> See, M. LESAGE, *Istoria gosudarstva i prava SSSR*, Moskva, 1966, book II, 110 et seq; M. LESAGE, op. cit. 124 et seq, 130 et seq, 135 et seq, 144-146.

period of Stalin's rule and his personality cult).<sup>13</sup> The unavoidable accompanying phenomena consisted in amalgamation of the Party and state apparatus and in bureaucratisation, while state ownership and state management of economy lead to strong manifestation of statism. All this was marked by the principle of democratic centralism established in numerous documents.<sup>14</sup> Applied in the state and the Party, it meant unconditional submission of the lower to higher authorities, so that, among other things, the decisions of federal agencies were compulsory to the organs of the federal units. In doing so, the decisions of party organs were compulsory to state authorities at all levels. If we add that the decisions of the Communist Party of the Soviet Union were compulsory to the Communist Parties of the federal republics (which were, by the way, formally parts of it), it becomes clear how considerable concentration (centralisation) of power was in the hands of the central communist leadership.

Of course, in such circumstances it would be difficult to imagine that the rules and elements of genuine federalism, in particular those relating to the status of federal units, allocation of competences, the relationship between the Federation and its units, and the like, could be properly and consistently achieved. In doing so, it should not be forgotten that the constitutional documents themselves did not follow the rules of genuine federalism. All this then prevented the federal structure in the Soviet Union to achieve the goal for which it was established in this country after the October Revolution.

However, for the sake of truth it must be said that after the XX Congress of the CPSU in the Soviet Union began the process of de-Stalinisation, primarily with the condemnation of the personality cult, and then with the attempts to remove those phenomena and those failures that led to Stalin's reign of terror. However, it seems that this was accompanied by the desire to preserve the status of the ruling forces and the system itself.<sup>15</sup> Thus, for

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<sup>13</sup> M. LESAGE, *op. cit.* 73 et seq, 95 et seq, 116 et seq, 135 et seq, 169 et seq, 188 et seq, 205 et seq, 214 et seq; P. GÉLARD, in Jean Gicquel, *Droit constitutionnel et institutions politique*, Paris, 1987, 400 et seq.

<sup>14</sup> See, P. GÉLARD, *op. cit.*, 413-415 (especially with respect to federalism). Gélard believes that the institution of democratic centralism is the element that most transformed Soviet federalism, with the result that is expressed in the dual subordination (p. 414). M. LESAGE, *op. cit.*, 75 et seq, 91 et seq, 243 et seq, 270 et seq.

<sup>15</sup> M. LESAGE: "Mais pour le successeurs de Stalin, le problème était de condamner ses exactions sans condamner en même temps le système auquel il était indissolublement lié et la solution a été trouvée par le recours à la notion de culte de la personnalité" (*op.cit*, 150-151).

example, the notion of the dictatorship of the proletariat was replaced by the notion of the People's State (1961), the competences of the federal republics were extended, and the 1977 Constitution provided for some forms of direct democracy, the principle of socialist legality was introduced, citizens' rights were partially extended, the character of federal republics as sovereign states was emphasised, and so on. Particularly interesting was the introduction of hitherto unknown category - the "Soviet people."<sup>16</sup>

However, the Constitution again proclaims the principle of democratic centralism, again emphasising the role of the state. In addition, it seems that this Constitution reinforces the leading role of the Communist Party, which, among other things, "... determines the general perspectives of development of the society, the line of internal and foreign policy of the USSR..." etc. (Article 6 of the Constitution).

During the nineteen eighties the "perestroika" and "glasnost" were introduced, but this was quickly followed by a gradual secession of certain federal republics and the creation of independent states, so that the whole process resulted in the disintegration of the USSR. Thus, the federalism in the Soviet Union suffered a complete collapse, as well as the whole attempt to resolve by means of it the national question in this country. There remains a convincing impression that Soviet federalism was a fake federalism.

## 2. "Federalism" in the Czechoslovak Socialist Republic.

Federalism in the Czechoslovak Socialist Republic was established by the Constitutional Act of Czechoslovak Federation passed on October 27, 1968. Until then, Czechoslovakia was a unitary state consisting of two equal nations - the Czechs and the Slovaks (1960 Constitution). The Constitutional Act defines the state in the following way: "The Czechoslovak Socialist Republic is a federal state of two equal fraternal nations - the Czechs and the Slovaks" (Article 6, section 1). Such a definition of Czechoslovakia clearly shows the reason for the establishment of federalism in this country - the solution of the national question. After all, the Preamble of the Constitutional Act, it seems, explicitly stated that: "... the voluntary federal organisation of the state ... is the best guarantee of full internal national development, and of the protection of our national identity ...". Such a conclusion has been confirmed by the following constitutional provisions - the foundation of the Czechoslovak Socialist Republic lies in a voluntary association of equal national states, with the right of every nation to self-determination, Czechoslovak federation is an expression of the will of two

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<sup>16</sup> See, V. VASOVIĆ, op. cit., 208, 212; M. LESAGE, op. cit., 326 et seq.

sovereign nations, etc. However, by proclaiming federal organisation the Constitutional Act has established that both the republics, the Czech Republic and Slovakia, have equal status: both the republics accept the sovereignty of each other, as well as the sovereignty of the Czechoslovak Socialist Republic, also recognising the sovereignty of nation states. However, among other things, it is characteristic that the Constitutional Act regulates in detail the organisation of government of both federal units.

In Czechoslovakia, as a socialist state, were applied the principles and elements of political and social organisation typical of most of the then socialist countries, especially the USSR. Thus, in Czechoslovakia, there existed the state property, planned economy, state management, centralised management of the society and the state in accordance with the principle of democratic centralism (already established by the 1960 Constitution). Nevertheless, one of the most important characteristics of the political regime in Czechoslovakia was the undeniable and unconditional leadership of the Communist Party of Czechoslovakia.<sup>17</sup> Such a position of the Communist Party was established already by the Article 4 of the 1960 Constitution. Established upon the principle of democratic centralism and having an extensive network of committees, the Communist Party was a force active in all areas of social and political life. Its influence was particularly visible in personal union of the party and the state apparatus, especially within the supreme state authorities. Incidentally, the Communist Party of Slovakia was guided in its actions by the decisions of the Congress and the Central Committee of the Communist Party of Czechoslovakia. Since in Czechoslovakia there was a kind of a multi-party system, with the existing political parties and social organisations gathered within the National Front of Czechs and Slovaks, it is important to point out that the Communist Party had the leading role in the Front (1960 Constitution, Article 6). This has also contributed to the ruling position and role of the Communist Party in the state and society. Of course, all of this caused the birth and development of a type of authoritarian regime headed by the Communist Party as an all-powerful force.

Otherwise, the period of the existence of the Czechoslovak Socialist Republic, as a unitary or as a federal state, was filled with turmoil, crises, resistance and struggles for certain varying values, by means of replacement of the party and state leadership, purges, etc., and especially the famous military intervention of the Warsaw Pact.

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<sup>17</sup> See, I. P. ILINSKŮ, B. A. STRASHUN, V. J. JASTREBOV, *Politickeskaia sistema zarubeznih stran socialisma*, Moskva, 1981, 69 et seq, 87 et seq; P. GÉLARD, op. cit., 432 et seq.

Actually, leaving aside the course of development of Czechoslovakia up to the early or mid-sixties, the outbreak of discontent in the country due to stagnation and economic crisis, intensifying of political crisis, the state of interethnic relations, standard of living and so on, should be noted. This has led to changes at the top of the Party and the state (A. Dubček coming to power) in January 1968, followed by a change in the political system (introduction of federalism, etc.), some of which differ from the standards adopted in other socialist countries. The crisis in relations with the countries of the Warsaw Pact soon (August 1968) lead to the intervention of this Pact. This was followed by the change of party and state leadership, energetic rejection of the policy of the former leadership with the qualification that it was anti-Marxist and anti-Soviet, and that it meant abandonment of revolutionary communist policy.<sup>18</sup> A particularly important change consisted in strong insistence on undisputed leading role of the Communist Party of Czechoslovakia. This was, as it is well known, the main feature of the political system of the Soviet Union and other socialist countries.

Understandably, such an undemocratic regime lacked the conditions for realisation of federalism as the solution of the national question in the right way, which lead to the dissolution process of the Czechoslovak federal system, as well as the common state itself. So, after the so-called Velvet Revolution Czechoslovakia began to be called the "Federal Czech and Slovak Republic", with coming to the fore of the idea and demand for self-determination of Slovakia, of the right to secession, and the like, which was followed by the adoption of appropriate legal documents in order, ultimately, of coming to an agreement on the division of the then existing common state into two separate independent states - the Czech Republic and the Slovak Republic (which was legally and factually carried out at midnight, December 31, 1992).

### 3. "Federalism" in the Nigeria.

The origins of federalism in Nigeria, expressed in a kind of federal structure, emerged even before gaining the independence in 1960. Officially, federalism was established by the Constitution enacted in 1963, with the intention of solving the basic problem of the new state: the relationship between the numerous tribes and three large regions (fourth to be added later), in addition to federal territories. In other words "Le fédéralisme en

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<sup>18</sup> The Soviet literature, of course, gives exactly such an estimate of these events; see, L. D. VOEVODIN, D. L. ZLATOPOLSKII, N. JA. KUPRIC, *Gosudarstvennoe pravo zarubezhnih socialisticeskih stran*, Moskva, 1972, 136-137.

Nigeria constitue un dosage savant entre les nécessités des liens politiques et économiques et la diversité des régions".<sup>19</sup>

However, given the very complex and not always clear constitutional regulations introducing the federal system in the life of Nigeria,<sup>20</sup> its effective realisation was undoubtedly bound to be difficult. In addition, the conditions for the implementation not only of federalism, but also for the functioning of the whole apparatus of government and the political system in general, were not favourable. It is the major political, security and other problems that have obstructed the development of Nigeria in the period that followed its independence. Already at the very beginning (1962-1963), Nigeria was faced with a serious crisis. By the way, the Constitution stipulated that the Federal Parliament has full jurisdiction in case of a crisis. Over time, there has been an escalation of conflicts of interest between certain ethnic groups, expelling of about half a million members of a tribe of Northern Region, which was the cause of civil war, the secession of the Eastern Region and the proclamation of the Republic of Biafra (later returned to the Federation), the takeover by a group of officers and installation of a military regime (1966-1978), and there were also attempts at abolishing federalism, etc. Anyhow, during the first twenty years of its independence there were three (successful) coups (two in 1966 and one in 1977) and one attempted coup (1976).

The 1963 Constitution has essentially established a parliamentary system with mainly regional parties. However, the 1979 Constitution provides for a presidential system, but its practical application showed a tendency to hegemony of the President of the Republic elected by popular vote, so making the separation of powers illusory.<sup>21</sup>

Of course, in such circumstances Nigeria was developing into an autonomous, independent state, and there were no conditions for establishing, first of all, a democratic regime. Hence, the lack of democracy, but also of other conditions, inevitably made it difficult, or even impossible to achieve a true, authentic federalism, so there was no chance for federalism to exhibit its value and solve problems for which it was established by the 1963 Constitution.

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<sup>19</sup> D. G. LAVROFF, G. PEISER, *Les constitutions africaines*, Paris, 1964, tom II, 140.

<sup>20</sup> In theory there is an opinion according to which the interpretation of extremely complex constitutional provisions on the Nigerian system speaks of a system which is both federal and confederal (D. G. LAVROFF, G. PEISER, op. cit., 140).

<sup>21</sup> L. FAVOREU et autres, *Droit constitutionnel*, Paris, 1999, 369.

### III. FICTITIOUS FEDERALISM IN THE SOCIALIST YUGOSLAVIA (1945-1990).

The example of the socialist Yugoslavia fully confirms the foregoing opinion that genuine federalism cannot be established and successfully operate or achieve the objectives for which it is being introduced, if the country does not have a democratic political system

The reason for establishing the federal system in the former Yugoslavia, according to the then official comments, was an attempt to resolve the national question, since Yugoslavia was a multiethnic country.<sup>22</sup> However, this intention after almost five decades of existence of this state suffered a complete breakdown. The ultimate result was the collapse of the federal system, of the state itself, as well as inter-ethnic civil and religious wars in certain regions of the country.

The roots of federalism in Yugoslavia date from the time of the Revolution and the Civil war. The revolutionary government adopted in 1943 a Decision on building up Yugoslavia upon federal principles, while upon liberation of the country from foreign invaders the illegitimate Constitutional Assembly adopted the Declaration on Proclaiming the Federal People's Republic of Yugoslavia in November 1945. The same Assembly passed by the beginning of 1946 the Constitution of Yugoslavia, which fully shaped the federal system.

Otherwise, this was the time, following the Civil war and the Revolution, of already fully established absolute rule of the Communist Party of Yugoslavia and its leader J. Broz (Prime Minister and later President of the Republic). This period was characterized by pogroms, executions of tens of thousands of opponents (especially in Serbia), mostly without trial, forced acquisition of agricultural products accompanied by oppression, and then the creation of the infamous camp on a small rocky island in the Adriatic Sea, and so on. Of course, these were not suitable conditions for the establishment of genuine federalism, and by the will of the then rulers some wrong and harmful solutions were adopted.

The Constitution established six federal units (Peoples, later Socialist Republics) so that each of the Yugoslav nations got their "nation-state". This was impossible in Bosnia and Herzegovina since it itself was multinational. By the way, before the Second World War, Montenegrins and Macedonians

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<sup>22</sup> See, P. NIKOLIĆ, *La débâcle du fédéralisme en Yougoslavie (et en Serbie et Monténégro)*, in *Percorsi dell federalismo in Italia et non solo*, Roma, 2005, 167-170; P. NIKOLIĆ, *Rozpad socialističke federativni republiki Jugoslàvie a vytvoreni novych stati*, in journal *Právník*, Praha, VII/1994, 645 et seq; P. NIKOLIĆ, *Le nuove forme di federalismo, dell'autonomia e del regionalismo in Yugoslavia*, in *Federalismo, regionalismo ed autonomie differenziate*, Palermo, 1985 (1991), 131 et seq.

have not been treated as separate nations. In a later period by sheer arbitrariness the Muslims were proclaimed a separate nation.

One of the wrong solutions was the extremely voluntaristic determination of boundaries between the federal units so that they (except in the case of Slovenia) did not correspond to historical and national standards. Borders were never regulated by any legal documents. So they were, in most cases, artificial constructions within the common state not meeting the requirement that each of the Yugoslav nations should really get their national "states" (federal units) with borders as credible as possible, which was the reason for establishing the federal system.

Incidentally, creation of two autonomous units within Serbia (Kosovo and Metohija, and Vojvodina), was part of a deliberate policy by the then communist rulers to disintegrate and weaken the largest and the most populous federal unit (Serbia). This was done despite the fact that the officially announced reasons for the creation of these autonomous units also existed (sometimes in a greater extent than in Serbia) in other federal units - for example the territories of Istria, Dalmatia, Slavonia, Western Macedonia. The existence of autonomous units only in Serbia since the beginning violated the constitutionally proclaimed equality of the federal units (and the nations themselves). It should also be remembered that the same communist rulers issued at the end of World War II a ban on the return of 200,000 Serbs to Kosovo from which they were expelled during the War by the Albanian Fascists, and allowed thousands of Albanians from Albania to settle in Kosovo and thereby significantly change the demographic structure of the population in this Province.<sup>23</sup>

The 1946 Constitution established a more or less classical federal system. In addition to the above mentioned failures, this arrangement was characterised by very visible elements of centralism - broad competences were given to the Federation, the so-called Federal-Republican ministries were formed, etc., and later, the existing Federal House lost the status of a separate House of the Federal Assembly. In practice, the tendency of centralism got wider and wider, due to objective circumstances (wartime devastation of the country, economic underdevelopment, etc.) and, in particular, due to the monistic character of the political regime, the concentration of power in the hands of party elites, centralised structure of the ruling Communist Party of Yugoslavia (from 1952 - the League of Communists), and all this in the conditions of state property (later called

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<sup>23</sup> See in details P. NIKOLIĆ, *Federacija i federalne jedinice*, 29 et seq; P. NIKOLIĆ, *Le caractère et la position des provinces dans le système fédératif yougoslave*, in *Premières journées juridiques yougoslavo-suisse*, Zurich, 1984, 139 et seq.

social property), the state management of the economy, planned economy, etc.

However, in the period that followed the adoption of the 1963 Constitution of Yugoslavia, but also a few years earlier, there were certain tendencies of decentralisation, then of gradual strengthening of influence and independence of the republics as federal units and their communist parties, as well as the rise of nationalism in some republics. However, the Federation still held in its hands broad and important functions, which was, in the opinion put forth in the public of the time, making complicated the relations between the Federation and federal units, as well as between the federal units themselves.

Otherwise, it was a period, despite the proclamation of some new principles such as self-management, delegations system, etc., of total power of the League of Communists of Yugoslavia at all levels of government and society, personal connection between the Party and the state apparatus, and maximum personalisation of power in the person of J. Broz, the Party leader and head of state (a few years later to be elected a lifelong President of the Republic).

The 1974 Constitution of Yugoslavia, recasting the Amendments to the previous Constitution, adopted in 1967, 1968 and 1971, is the cornerstone of a new unusual system formally still called federal, while not being federal at all.<sup>24</sup> By performing this radical reform, the rulers of that time have, it seems, unconsciously admitted that the former federal system, whatever it was, did not solve the national question. Creating a new "federal" system was no longer justified by the need to solve the national question, but by the tendency, as was said, to give to the Federation only such rights and duties that are in the "common interest of nations and nationalities, working people and citizens", while the exercise of these functions shall provide decisive role of the republics and provinces, and hence their responsibility for the policy of the Federation in general. This was a very different conception on internal structure of the common state.<sup>25</sup> It presupposed, however, the introduction of significant elements of confederalism. It is interesting to note that the state and political officials, including a part of the intellectual community of the time, advocated the idea of a "new form of Yugoslav

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<sup>24</sup> See, P. NIKOLIĆ, *Rózpád socialistické federativni republiky Jugoslaviie a vytvoreni nových statu*, 648 et seq. See a general account of federalism and autonomy in Yugoslavia: P. NIKOLIĆ, *Le nuove forme di federalismo, dell'autonomia e del regionalismo in Jugoslavia*, 131-149.

<sup>25</sup> See, P. NIKOLIĆ, *Ustavno pravo*, Beograd, 1995, 438 et seq; P. NIKOLIĆ, *La disgregazione della Jugoslavia socialista, formazione e sviluppo della nuova Jugoslavia e dei membri costitutivi della federazione – aspetti costituzionali*, in *Europa e Balcani, stati culture nazioni*, Padova, 2001, 195 et seq.

federalism," which was to qualify the newly hybrid arrangement, in fact a distorted federal system. This attitude was accompanied by opinions, officially expressed, that the Yugoslav socialist federal state "... can not artificially be fitted into any of the classical forms of federalism and confederalism", and that outdated concepts cannot be used", and that these are outdated categories." Of course, all this was an expression of ignorance and political manipulation.

The main feature of the new "federal" system was the very strong, practically dominant position of the republics (and provinces), on the one hand, and on the other hand - the Federation was not, or it was only to a small extent, a separate and independent state and legal entity. In addition, the Constitution attributed, with special emphasis, the property of states to the republics. However, although not explicitly, the Constitution made the autonomous provinces "constituent elements of the Federation" (that is, equal to the Republics) with the notable characteristics of statehood. If the former paved the way for future disintegration and the eventual break-up of Yugoslavia, the latter was a deliberate act that opened the door to future separatist developments in Kosovo and Metohija, i.e. to the autonomy movement in Vojvodina.

So, gradually but firmly, a reversal of the federal system of the former Yugoslavia took place: from federalism with elements and tendencies of centralisation and statism, to "federalism" with elements and tendencies of confederalism, which led to a disintegration of such a system in general.

Among others, the elements that constitute the realisation of the mentioned conception provided by the Constitution of Yugoslavia, and confirmed by the constitutions of the republics and provinces constitutions, were as follows:

- The constitutional reduction of the competences of the Federation and increase of the scope of functions of the republics and provinces, which contributed to the strengthening of the statehood of the republics and the quasi-statehood of the provinces, as well as to weakening the status of the Federation as a separate and independent entity.

- Significant increase of the scope and the forms of participation of the republics and the provinces in performing the functions of the Federation (in some of these forms typical elements of confederalism may be identified), whereby the republics and the provinces were directly involved in the process of exercising the federal authority. Thus the republics and the provinces have become the dominant factor in this process.<sup>26</sup>

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<sup>26</sup> See in details, P. NIKOLIĆ, *Federacija i federalne jedinice*, 162-179, 187-192. The biggest and the most immediate impact of the republics and provinces upon the exercise of federal powers was carried out by the approval of the decisions of federal

- The priority of the Yugoslav Constitution in relation to the constitutions of the republics and the provinces was not consistently enforced, and there were no mechanisms for removing the provisions of those constitutions not in accordance with the Yugoslav constitution, which is grossly inconsistent with the principles of federalism and the rule of law.

- Inconsistent regulation of the priority of Federal legislation in relation to the legislation of the republics and provinces, which, as in the case of priority of the Constitution of Yugoslavia, substantially violated the principles of federalism and the rule of law.

- Republic were equally represented (this partly applied to the province) in all the organs of the Federation (except the government), and also took part in the constituting most of these bodies. In this way, the authorities of the Federation lost the quality of real federal authorities, becoming a kind of common organs of the republics. It is, of course, drastically contrary to the idea of federalism, introducing into the former Yugoslav system additional elements of confederalism, which has also contributed to the dominance of the republics and provinces throughout the "federal" system of the country. This kind of representation of the republics and provinces in the Federation had violated the principle of equality of citizens.<sup>27</sup>

A particular, important feature (in the negative sense) of this system were the autonomous provinces. At the end of the nineteen sixties, a process of radical transformation of the former more or less classical political and territorial autonomy took place. This process has led to a completely unknown and scientifically inexplicable and absolutely politically unacceptable "model" of autonomy that was not autonomy at all. By nature, this has significantly contributed to the total perversion of the Yugoslav federalism.

Specifically, as shown in the preceding pages, the provinces were almost made equal in general status with the republics, their impact on the performance of the federal authority, representation in the Federation, etc. Thus they became what was called in the former Yugoslav science and journalism "constituent element of federalism" with significant properties of "statehood".

Since the autonomous provinces existed only in Serbia, it is clear that all of this would lead to gross violations of the constitutional status of Serbia, to its unequal position compared to the other republics, to breaking of its integrity, and the like. The other disastrous consequences we should not talk about - separatism, rebellion, violence against Serbian residents, a complete

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agencies (e.g., changing the Constitution of Yugoslavia, et al.). Practically, it had the character of a veto (see, P. NIKOLIĆ, *Ustavno pravo*, 441 et seq.)

<sup>27</sup> See in details, P. NIKOLIĆ, *Federacija i federalne jedinice*, 110-123, 182-187.

dominance of Albanian national minority and its Communist League in Kosovo and Metohija or of proliferation of autonomy movement in Vojvodina.<sup>28</sup>

The process of turning into a confederation and even of disintegration of Yugoslavia began increasingly to be heating up in the nineteen eighties. The inefficiency and incompetence of the Federation in the performance of its constitutionally determined functions became apparent, the loss of state subjectivity of the Federation, closing of the republics within their borders, violation of equality of the republics and of the citizens at the federal level, violating the Constitution and federal statutes, withdrawal of government representatives from the federal authorities, the growing expressions of ethnic hatred, flourishing of nationalism in certain republics followed by separatist tendencies, passing of constitutional and other provisions in the republics containing proclamations of sovereignty and independence.<sup>29</sup> All this was followed by the secession of some of the republics and the creation of new states at the territory of Yugoslavia.<sup>30</sup> This was done with the generous help and support of some of the foreign countries. Unfortunately, this whole process was, in certain parts of the former common state, accompanied by armed conflict, ethnic cleansing, violence, civil victims, etc.

Federalism in socialist Yugoslavia's experienced, as has been shown, a double debacle. First, if the establishment of the federal system after the Second World War and the Revolution was aimed at solving the national question - it was not resolved in the least degree. Moreover, despite the slogans of brotherhood and unity of the Yugoslav peoples, equality and the like, the relations between nations have worsened. If the reason for the reform of federalism in 1974 was the intention that the Federation should perform only those functions which are of common interest, and to significantly strengthen the role of the republics and provinces, it should be noted that this intention was not realised because the new "federal" arrangement fell apart in less than twenty years since the beginning of the reform.

Second, the federal system of Yugoslavia's experienced failure. It was, over time, from one, more or less classical federal order, transformed into an

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<sup>28</sup> See in details, P. NIKOLIĆ, *Le caractère et la position des provinces dans le système fédératif yougoslave*, 149 et seq.; P. NIKOLIĆ, *Federacija i federalne jedinice*, 43-66, particularly 60 et seq.

<sup>29</sup> See, P. NIKOLIĆ, *Désagregation de l'organisation fédérative en Yougoslavie*, in *Föderalismus zwischen Integration und Sezession*, Baden-Baden, 1993, 70 et seq; P. NIKOLIĆ, *Problèmes de la confédéralisation et de la désintégration*, in *Federalismo e crisi dei regimi comunisti*, Torino, 1993, 9 et seq.

<sup>30</sup> See, P. NIKOLIĆ, *I sistemi costituzionali dei nuovi stati dell' ex-Jugoslavia*, Torino, 2002.

order that was not a federal order any more. It has become an extremely unusual and atypical arrangement, unknown in theory and practice of federalism in the world. In fact, it was a hybrid arrangement with prevailing confederal elements, which in practice could not function or survive. Finally, this system collapsed with the disintegration of the state itself.

In addition to other, already mentioned reasons that led to such a debacle of federalism in the former Yugoslavia, the main reason, indicated in the preceding pages, was the lack of democracy. Notwithstanding certain proclaimed democratic principles and slogans, the political regime created after the Civil War and the Revolution, was based upon a classical single-party system with absolute monopoly and absolute leadership of the League of Communists and the untouchable and all-powerful leader of the party and the state, J. Broz. Personal connection of the ruling and at the same time the only party and state apparatus made it impossible for the state authority to gain legitimacy.

However, over time, such a political regime began to experience major changes - moving of the centre of political and every other power to the forums of the League of Communists in the republics and provinces. This inevitably had to be reflected in the process of confederalisation, and then upon the disintegration of Yugoslavia.

All this clearly shows that the originators and promoters of confederalisation and disintegration of the former Yugoslavia were former communist leaders, so that the architects and implementers of the idea of centralism and statism in the federal state during the first twenty or thirty years of their reign were the same Communist leaders. This confirms, once again, that the genuine federalism with its democratic meaning and values, did not, in fact, have the chance to develop and endure in the socialist Yugoslavia.