Pavla Ribić: The Rights of Citizens in the Conception of Socialist Constitutionality

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1. Introduction

From the end of World War II until 1990, Croatia was part of a socialist system characterised by a collectivist understanding of society. At the same time, Croatia was a federal unit within the Yugoslav state.[1] This work analyses the rights of citizens in socialist Croatia through different constitutional texts starting from the "Declaration of fundamental rights of the people and citizens of democratic Croatia" of 1944 until the last federal and republic constitutions enacted in 1974.

2. The concept of a citizen in the "Declaration of fundamental rights of the people and citizens of democratic Croatia"

At the third session of ZAVNOH in Topusko in 1944, ZAVNOH accepted Declaration on fundamentals rights of the people and citizens of democratic Croatia (in the following: Declaration).[2] The Declaration mentions two basic subjects of fundamental rights: the people and citizens of Croatia. The declaration guarantees individual civil and social rights.

In the first article, the political equality of the Croatian and Serbian peoples is especially emphasised. It is also mentioned that: "*all citizens of the federal state of Croatia are equal, regardless of nationality, race, and religion and the nation national minorities are guaranteed all rights to national life".* [3] Point 3 states the full equality of men and women. In

[1] Kosnica, Ivan: Koncept građanina u hrvatskom i jugoslavenskom ustavnom poretku od 1944. do 1990. godine [The concept of a citizen in the Croatian and Yugoslav constitutional order from 1944 to 1990]. *Pravni vjesnik [Legal Bulletin]*, 2022, No. 3–4, pp. 45–46. https://doi.org/10.25234/pv/22509

[2] „Deklaraciju o osnovnim pravima naroda i građana demokratske Hrvatske" [„Declaration of fundamentals rights of the people and citizens of democratic Croatia"]. In: Bačić, Arsen: *Ustavno pravo Republike Hrvatske: praktikum [Constitutional law of the Republic of Croatia: practicum]*. Split, 1997, Pravni fakultet, p. 71.

[3] Sirotković, Hodimir: Državnopravno značenje odluka ZAVNOH-a za izgradnju državnosti Hrvatske u drugom svjetskom ratu [State legal significance of ZAVNOH decisions for building Croatian

addition, personal safety and security of property, property rights, and "private initiative in economic life" are also guaranteed.

The Declaration states the right to free education as the only social right in point 11. The Declaration enables the realisation of political rights. It is determined that freedom of speech, press, public assembly and freedom of association can only be exercised within the National liberation movement (NOP). All fighters of the People's Liberation Army of Yugoslavia and partisan units, regardless of age, had active and passive voting rights.[4] The judiciary was part of the unified power of the revolutionary movement and acted toward the achievement of a common goal.

3. The concept of a citizen in the Constitution of the FNRJ of 1946

In the Constitution of the Federal People's Republic of Yugoslavia (FNRJ) of 1946 and the Constitution of the People's Republic of Croatia of 1947, a different concept of a citizen is visible than in the previous period.[5] The Constitution of the Federal Republic of Yugoslavia was drawn up under the great influence of the Constitution of the USSR from 1936.[6]

The Constitution of the FNRJ outlines the rights and duties of citizens in a separate chapter. In Art. 21. paragraph 1 of the FNRJ Constitution states the equality of citizens before the law and their equality regardless of nationality, race, and religion. The equality of men and women is also guaranteed by Art. 24 of the FNRJ Constitution, as well as freedom of conscience and religion. The persecution of one's own citizens is prohibited; the inviolability of the home is guaranteed (Article 29 of the FNRJ Constitution) and the freedom of correspondence and communication. All citizens over the age of 18 years had the right to vote, unless it was revoked. A number of social rights have also been prescribed, of which the state's special care for war invalids and children of fallen soldiers stands out. Art. 36 of the Constitution of the FNRJ prescribes the competences of the state in the health care system and the obligations of the state to care for the health of the people.

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statehood in the Second World War]. *Državnopravnost odluka ZAVNOH-a [State legality of ZAVNOH decisions],* 1995, No. 3, p. 512.

[4] KOSNICA, *op. cit.,* pp. 46–47.

[5] Ustav FNRJ, *Službeni list FNRJ [Constitution of the FNRJ, Official Gazette of the FNRJ]*, 10/1946; Ustav NRH, *Narodne novine – službeni list Narodne Republike Hrvatske [Constitution of the Republic of Croatia, Narodne novine – official newspaper of the People's Republic of Croatia],* 7/1947.

[6] SRUK, J., *Ustavno uređenje Socijalističke Federativne Republike Jugoslavije [Constitutional arrangement of the Socialist Federal Republic of Yugoslavi].* Zagreb, 1982, Informator, pp. 52–53.

Education was state-run, and schools and other institutions were established to be accessible to the people. The FNRJ Constitution also contains provisions on the duties of citizens. It is mentioned that "*every citizen is obliged to work according to his abilities* and that *he who does not give to the community cannot receive from it* " (Article 32 of the FNRJ Constitution).[7]

The basic characteristic of the socialist system is the degradation of law and the legal system into an instrument for realising the interests of the ruling class. Thus, the legal system was only a framework within which the ruling class implemented its political ideas. The principle of equality had a class content, and civil rights and general rights were often neglected.[8]

4. The concept of a citizen in the Constitution of the NRH of 1947

The Constitution of the People's Republic of Croatia (NRH) was adopted in 1947, and the People's Republic of Croatia was designated as a federal unit within the FNRJ.[9] The Constitution of the People's Republic of Croatia followed the concept of the Constitution of the Federal People's Republic of Yugoslavia of 1946 with some exceptions. The Constitution of the People's Republic of Croatia contained identical provisions on the socio-economic organisation and on the rights and duties of citizens, and what distinguishes it is the provision on the republic citizenship. Cooperation between Croats and Serbs is mentioned in the Constitution ("fraternal unity with Serbs", Article 2 of the Constitution of the People's Republic of Croatia) and the equality of Serbs with Croats (Article 11 of the Constitution of the People's Republic of Croatia) as specific provisions of the Constitution. "Every act that is directed against Croatian sovereignty, equality, and national freedom of people, against the equality of Croats and Serbs in the Republic, against NRH as well as other people, and of the People's Republic of the FNRJ" is unconstitutional according to Art. 12 of the Constitution of the People's Republic of Croatia.[10]

We call this constitution as well as the constitution of the USSR from 1936 semantic constitutions because in reality they were inapplicable. The Communist Party achieved considerable influence in the Constituent Assembly and also control over the social life of the people. The constitution was a political declaration, and the rights that were guaranteed in the constitutional text were not implemented in the real life of the addressees to whom the text refers.[11]

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[7] KOSNICA, *op. cit.,* p. 49
[8] MIHALJEVIĆ, *op. cit.,* pp. 32-34
[9] Ustav Narodne Republike Hrvatske, *Narodne novine – službeni list Narodne Republike Hrvatske [Official newspaper of the People's Republic of Croatia]*, 7/1947.
[10] KOSNICA, *op. cit.,* p. 49.
[11] MIHALJEVIĆ, *op. cit.,* p. 34

5. The concept of a citizen in the Constitutional Law of the FNRJ of 1953 and the Constitutional Law of the NRH of 1953

In 1948, a crisis followed, and the conflict between Yugoslavia and the countries of the Informbiro intensified. All relations between Yugoslavia and the Union of Soviet Socialist Republics were severed. As a result, significant changes were implemented in the Constitutional Law of Yugoslavia and the constitutional laws of the republics in 1953.[12]

The Constitutional law on the foundations of social and political organisation of the Federative People's Republic of Yugoslavia and federal authorities (further in the article the Constitutional Law of the FNRJ) art. 2 states: "*all power in the FNRJ belongs to the working people".* [13] The central concept of the Constitutional Law is self-governance.[14] The provisions of the FNRJ Constitution from 1946 on the rights and duties of citizens were still in force, and an individual was defined as a member of a working collective and a citizen of a socialist society.

The Constitutional Law of the Republic of Croatia on the Basics of Social and Political Organization to republican authorities (further below: Constitutional Law of the Republic of Croatia) was adopted in 1953.[15] The constitutional laws of 1953 strengthened the class dimension, and the civil and ethnic dimension was retained in the Constitution of the Republic of Croatia from 1947.[16]

The order in Yugoslavia was not actually constitutional because all those constitutional solutions and changes were inapplicable in reality. In the constitutions and constitutional laws of Yugoslavia, there were numerous norms on the rights and freedoms of citizens that were not protected or respected. In contrast to the norms on workers' self-management and the construction of a socialist society, which were always emphasised and strictly applicable.[17]

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[12] SRUK, *op. cit.*, pp. 60–64.
[13] Ustavni zakon o osnovama društvenog i političkog uređenja Federativne Narodne Republike Jugoslavije i saveznim organima vlasti [Constitutional law on the foundations of social and political organization of the Federative People's Republic of Yugoslavia and federal authorities], Službeni list *Federativne Narodne Republike Jugoslavije [Official Gazette of the Federative People's Republic of Yugoslavia],* 3/1953.
[14] KOSNICA, *op. cit.*, p. 50.
[15] Ustavni zakon Narodne Republike Hrvatske o osnovama društvenog i političkog uređenja i republičkim organima vlasti [Constitutional Law of the Republic of Croatia on the Basics of Social and Political Organization to republican authorities], *Narodne novine [Official Gazette],* 9/1953.
[16] KOSNICA, *op. cit.*, pp. 50–51.
[17] BARIČEVIĆ, V., *Ustavi socijalističke Jugoslavije i država sljednica: kontinuitet ili diskontinuitet u koncepciji ustavnog identiteta [The constitutions of socialist Yugoslavia and the successor state:*

6. The concept of a citizen in the Constitution of the SFRJ of 1963

The Constitution of the SFRY of 1963 brought numerous changes in the organisation of Yugoslavia at that time. The name of the state was changed; the socialist character was emphasised with the primacy of self-governance. The Constitution of the SFRY of 1963 is often called the "charter of self-governance".[18]

In article 23, citizens are guaranteed the right of ownership of items for personal use, consumption, and satisfaction of their own needs, as well as residential buildings and apartments for personal needs and performance of activities through work.[19] Chapter Three of the Constitution of the SFRY states that: "*the freedoms and rights of man and citizen are an inalienable part and expression of socialist and democratic relations protected by the Constitution" (...)* and that these same rights and freedoms are realised in the mutual solidarity of people. Citizens are equal in rights and duties, and everyone is equal before the law. The active and passive right to vote is guaranteed by Art. 35 of the Constitution of the SFRJ. Every worker has the right to limited working hours, daily and weekly rest, insured health care, and a minimum personal income is determined by federal law. Article 41 refers to freedom of language use, expression of nationality and culture, freedom of the press, association, speech, and information. Great attention is paid to the health protection of mothers and children, military invalids, and the family enjoys social protection.

The Constitutional Court of Yugoslavia was established as an autonomous and independent body entrusted with the task of protecting constitutionality and legality. The shortcoming of the Constitutional Court was the initiation of proceedings by competent state bodies, whereas citizens could initiate proceedings before the court to a lesser extent. Thus, the competence of the Constitutional Court in deciding on violations of freedoms and rights was reduced, and thus individuals remained unprotected.[20]

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continuity or discontinuity in the conception of constitutional identity]. Zagreb, 2007, Hrvatska u regionalnom kontekstu, pp. 52–53.

[18] MIHALJEVIĆ, *op. cit.*, pp. 36–37.

[19] Ustav Socijalističke Federativne Republike Jugoslavije [Constitution of the Socialist Federal Republic of Yugoslavia], *Službeni list Socijalističke Federativne Republike Jugoslavije [Official Gazette of the Socialist Federal Republic of Yugoslavia],* 14/1963.

[20] ČEPULO, Dalibor: *Hrvatska pravna povijest u europskom kontekstu; od srednjeg vijeka do suvremenog doba*. Zagreb, 2023, Pravni fakultet Sveučilišta u Zagrebu.

7. The concept of a citizen in the Constitution of the SRH of 1963

The Constitution of the Socialist Republic of Croatia was adopted shortly after the federal constitution in 1963. The Constitution of SRH had a structure similar to the federal one, and the Constitutional Court of SRH was also introduced, and the Parliament then became a five-chamber.[21]

The first article of the Constitution of SRH defines SRH as a state socialist democratic community of the people of Croatia, which is based on the government of the working people and self-governance.[22] The similarity between the constitutional law from 1953 and the constitution from 1963 is the determination of Croatia as a state, but the provisions of the newer constitution do not clearly emphasize the sovereignty of the Croatian people or the position of Croatia within the federation.[23]

An important difference between the Constitutions of SRH and SFRY is that the Constitution of SRH does not contain a separate chapter on the rights of man and citizen. Accordingly, the position of the citizen is determined under the heading "social organisation" and the "political organization".[24]

In comparison, the Constitution of 1963 does not limit active and passive voting rights and brings numerous innovations in the rights of workers. The work was very appreciated and is based on the principles of reciprocity and solidarity. Also, the Constitution of 1963 defines criminal procedure and custody more precisely than the Constitution of 1946. Nevertheless, the legal system served as a means to achieve the goal, so many rights were given a secondary role.[25]

8. The concept of a citizen in the Constitution of SFRJ of 1974

In the period from 1963-1974, the Constitution of SFRY of 1963 was supplemented by constitutional amendments. The constitutional amendments of 1967, 1968 and 1971 were colloquially called "workers' amendments" because they defined the position of workers in collective work.[26]

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[21] MIHALJEVIĆ, *op. cit.*, p. 35.
[22] Ustav Socijalističke Republike Hrvatske [The Constitution of the Socialist Republic of Croatia]. *Narodne novine [Official Gazette]*, 15/1963.
[23] RADELIĆ, Zdenko: *Hrvatska u Jugoslaviji 1945–1991. od zajedništva do razlaza.* Zagreb, 2006, Školska knjiga.
[24] KOSNICA, *op. cit.*, p. 53.
[25] MIHALJEVIĆ, *op. cit.*, p. 35.
[26] MIHALJEVIĆ, *op. cit.*, pp. 37–38.

The new Constitution of the Socialist Federal Republic of Yugoslavia (hereinafter referred to as the 1974 Constitution of the SFRY)[27] and the Constitution of the Socialist Republic of Croatia (the 1974 Constitution of SRH) were adopted in 1974. A novelty was the introduction of a delegate system, while the concept of self-governance also appears in the 1974 Constitution. The Constitution of SFRY of 1974 elaborates provisions on freedoms in a separate chapter called the rights and duties of a man and a citizen. It also states that these rights are realized: "*in the mutual solidarity of people and by fulfilling the duties and responsibilities of each to everyone and everyone to each*" and are limited by *"constitutionally established socialist interests communities"* (Art. 153 of the Constitution of the SFRY 1974). Self-management is an inviolable and inalienable right of working people and citizens. Everyone is guaranteed to decide on their personal and common interests. Anti-regime behaviour is prohibited by Article 203 of the Constitution of the SFRY from 1974.[28]

The concept of rights and duties of citizens continues tradition of the Constitution of 1963, but some rights and duties have been expanded. For example, the Constitution of 1974 emphasises the importance of the protection of tenancy rights, the right to a healthy environment, the freedom to decide on the birth of children, information, etc., and thus a great step forward was made compared to previous periods.

9. The concept of a citizen in the Constitution of SRH of 1974

The class element and ethnic determination of the state of SRH is evident from the first article of the Constitution of SRH of 1974, according to which "*the state is based on the sovereignty of the people and on the power and self-management of the working class and all working people and the socialist self-governing democratic community of working people and citizens and equal nations and nationalities* and that SRH *is the national state of the Croatian people, the state of the Serbian people and the state of the nationalities that live in it.*"

The Constitution of SRH of 1974 regulates republican citizenship, as did previous constitutions (Article 5 of the Constitution of SRH from 1974), but without much practical meaning because "*citizens of other republics of Yugoslavia have on the territory of the Republic of SRH the same rights and duties as its citizens*". Despite the strengthening of republics in federal bodies and the expansion

[27] Ustav Socijalističke Federativne Republike Jugoslavije [Constitution of the Socialist Federal Republic of Yugoslavia]. *Službeni list Socijalističke Federativne Republike Jugoslavije [Official Gazette of the Socialist Federal Republic of Yugoslavia]*, 9/1974.; Ustav Socijalističke Republike Hrvatske [Constitution of the Socialist Republic of Croatia], *Narodne novine [Official Gazette]*, 8/1974.
[28] KOSNICA, *op. cit.*, pp. 53–55.

of their autonomy, the concept of republican citizenship did not grant special rights in SRH to a person who would invoke them.[29]

10. Conclusion

The research work presents the development of the concept of a citizen and their rights in the constitutional order in a certain period of time. The collectivist elements of citizens' duties towards the community were emphasised in the Constitutions from 1946 and 1947. The federal and republican Constitutional laws of 1953 use the term working people. Class determination is also present in the later Constitutions of 1963.

Yugoslavia declared itself as a federal state in which there is no discrimination, but in everyday life, citizens were unequal, especially if they were opponents of the regime or politically unfit. In reality, the constitutions did not guarantee the rights of citizens that would protect them from the arbitrariness of the government. The constitutions apparently stated numerous rights and freedoms, but the citizens could not refer to them, and thus correct the injustice.[30]

[29] *Ibid,* p. 55.
[30] MIHALJEVIĆ, *op. cit*., pp. 48–49.