The prevention of corruption in Serbian constitutions up to the first world War

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Abstract:

The existence of corruption is closely related to the existence of the state, which is why the constitution, as the basic legal act of the largest number of states, is particularly significant as measures aimed at preventing corruption can significantly create conditions for the rule of law and the integrity of public bodies. Therefore, this paper addresses corruption in Serbia with a focus on anti-corruption provisions contained in the Constitution of the Republic of Serbia from 2006, comparing them with similar provisions contained in Serbian constitutions, from the Sretenje Constitution (Candlemas Constitution) until the Great War. A brief analysis of the historical context and measures aimed at preventing corruption shows that the social order at that time, as well as the (non)implementation of the constitution in practice, represented a risk factor for corruption in and of itself. However, among the anti-corruption provisions of Serbian constitution, there are some solutions that are more than current even today.

Keywords: corruption; prevention of corruption; constitution; onfl ict of interest; incompatibility of functions

INTRODUCTION

The evolution of corruption and corruption prevention is symbiotically connected with the creation and development of the state. The roots of the anti-corruption fight in Serbian legislation can be found in the Law of Saint Sava (Stanković, 2019) and we can trace the evolution of corruption prevention in Serbia from the creation of Serbian statehood, from 1132 to 1371 until the present, and this paper will focus on the period of creation of the modern Serbian state and constitutional documents from that period. The constitution, as the highest legal act, traditionally leaves the solution of specific social problems to laws. As corruption became an increasingly serious threat to the rule of law and the democratic order, the 21st century saw the birth of introducing anti-corruption provisions into constitutional material. In fact, what is the purpose of a constitution if not to protect citizens (and the state) from corruption? As the foundation of a state, a constitution should also be a barrier to corruption that will prevent corruption risks spilling over to lower legal acts. A step towards the preparation for such constitutional changes, but also for the construction of Serbia's constitutional identity[1], is the analysis of the anti-corruption provisions of previous Serbian constitutions. To that end, this article was created with the flexible use of the historical-legal method as the main method of content analysis, and the comparative-legal method as auxiliary.

For the purposes of this paper, corruption will be considered, "a relationship that arises from the use of an official or social position or influence for the purpose of obtaining an illegal benefit for oneself or another", (Law on Prevention of Corruption, 2019), and the prevention of corruption will include all types of preventive measures foreseen by the valid Serbian constitution and the aforementioned law.

Serbia has changed 18 constitutions throughout its modern history, from 1835 until the present day: three as a vassal state, three as an independent state, two during the Kingdom of SCS and the King-

dom of Yugoslavia, nine as a member of various state communities after the Second World War, and the Constitution of the Republic of Serbia from 2006 (hereinafter: CRS) . This paper will analyze the prevention of corruption in Serbian constitutions adopted before the First World War. The historical circumstances and the most significant elements of the organization of government will be briefly stated for each of the constitutions, so that the prevention of corruption will be more understandable in that context.

The 18th and 19th centuries brought wars and alliances that were quickly made and even more quickly disbanded. The backbone of such diplomatic and war games were the Russo-Turkish and Austro-Turkish wars and Turkish attempts to recover what was lost. Under such historical circumstances, from 1830 and 1833 the reform of government in Serbia was carried out by the hatisherifs (Bartulović & Ranđelović, 2012: 76). It was only in 1835 that Mileta's revolt, against Miloš's rule, prevailed so that vassal Serbia passed the shortlived so-called Sretenje Constitution (Candlemas Constitution). Not long after the adoption of the so-called Turkish Constitution of 1838, the defenders of the Constitution ousted Prince Miloš and his son Mihailo from power, and elected Karađorđe's son Aleksandar as prince. After 16 years of rule, Aleksandar Karađorđević was also overthrown ushering in the so-called second government of Miloš and Mihailo. After the murder of Prince Mihajlo in 1868, the Constitution of 1869 was adopted during the rule of the Deputyship[2]. After the Treaty of San Stefano and the Treaty of Berlin in 1878, and then the proclamation of the Kingdom in 1882, two constitutions were adopted within a relatively short but stormy period of time – the Radical Constitution from 1888 and the Octroic Constitution from 1901. After the May Revolution of 1903, the new constitution brought much-needed stability to Serbia. All the mentioned historical events are connected with constitutional struggles to such an extent that some authors (justifiably) believe that the political history of Serbia, in this period, is essentially constitutional history (Jovičić, 1989: 562).

The aforementioned historical circumstances influenced the adoption and content of Serbian constitutions and the existence of anti-corruption provisions in them. Such a stormy historical period makes the periodization of the development of corruption prevention in the Serbian constitutional system before the First World War, at first sight, a thankless task. Bearing in mind the seven periods of the constitutional history of Serbia in the 19th century distinguished by Slobodan Jovanović (Cvetković, 2023: 66–67), we can divide that development into three periods: from 1835 to 1869, from 1869 to 1888 and from 1888 to the First World War. Of course, the distribution of matter according to the mentioned periods is not even, both due to the scope and content of constitutional law and constitutional history in each of the periods as well as due to the practical (non)implementation of the declared preventive mechanisms. The first period includes the period of validity of the Sretenje and Turkish Constitutions, the second period of the Constitution of the Principality of Serbia, and the third period the period of validity of the Radical, April and the Constitution of 1903.

While conditional periodization of development is still possible, naming each of these three periods seems impossible. This is especially true for the first period, which includes the "age of the creation of the ruling power" and the "age of bureaucratic oligarchy" and the "age of the police state". Despite the fact that during the entire period we can recognize the idea of prevention of "oriental" corruption, embodied in the existence of kulaks as a kind of natural corruption, and the conflict of interests expressed in the unity of the ruler's power, one concise common denominator is difficult to find. During that period, so-called administrative or official corruption became increasingly pronounced and was left without a constitutional response until 1869. The second period coincides with Jovanović's "age of constitutionalism" and the reign of Prince/King Milan, during which period the constitutional response to administrative corruption was recognized, so we can use Jovanović's idea and call it the "period of constitutionalism". The third period includes the "age of parliamentarianism", the "age of reaction" and the "age of restored parliamentarism". Given the relatively short "age of reaction", we can use Jovanović's idea and call this third period the "parliamentary period". Despite numerous anti-corruption provisions during the second and third periods, their reach was not significant because everyday life was determined, to a significant extent, by the almost one-party composition of the

National Assembly and the transfer of that balance of power to other bodies, as well as shortcomings in the legislation which, for example, enabled the existence of so-called "disposal funds" available to ministers for the disposition of which they were accountable to absolutely no one.

In addition, the first period is characterized by the condemnation of corruption in the Serbian national tradition, but in the second period the condemnation would fade slightly and corruption would be justified and accepted as a way of survival, only to be deformed in the third period into the conscious and calculated bribery of voters (Joković, 2022: 1108).

THE CONSTITUTION FROM 1835 (SRETENJE CONSTITUTION)

The status of an autonomous principality and the position of the hereditary prince who manages the internal affairs of the country, in agreement with Parliament, in practice enabled the personal rule of Prince Miloš. Prince Miloš revived the so-called "regalia" from the Serbian medieval state the exclusive right of the ruler to certain sources of income. He filled his coffers by usurping land, leasing mines, scaffolding and customs duties; he traded, prescribing the rules of trading, with which he acquired fabulous wealth and became one of the richest people in the Balkans. Although he worked to build state power, he did not abide by the law; he interfered in the work of the courts, executive authorities, and the private relations of subjects, often determining the rules for people's behaviour by himself (Deretić, 2015: 1739).

Bearing in mind Miloš's character and manner of ruling, and especially Vuk's famous letter "of five sheets" from 1832 (Avramović, 2010: 36–65), most authors believe that the "trigger" for the adoption of the Sretenje Constitution was Mileta's Rebellion. Whatever factors may have influenced its adoption, the Sretenje Constitution is rightfully considered the first Serbian constitution (Bartulović & Ranđelović, 2012: 79), and the fact that it is the beginning of written constitutionalism in Serbia brings eternal glory to the document and a place of honour (Petrov et al., 2021: 16), regardless of the understanding of certain authors that, in the legal theoretical sense, Serbia, as a Turkish vassal, could not have constitutional power. The Ottoman, Russian and Habsburg empires attacked the adoption of the constitution and demanded the suspension of the constitution, which Miloš did six weeks after its adoption.

The Constitution of Sretenje belongs to the category of chartered constitutions, which, in addition, provided for the division of power into legislative, executive and judicial. The prince was the head of the state and the State Council was the highest authority in Serbia "up to the prince", but the prince had an advantage because he could stop the legislative proposal. Executive power was also exercised by the prince and the State Council. The National Assembly had neither a clear composition nor clear competences, but only limited financial competences.

When we talk about the provisions on corruption prevention, it should be pointed out that their scope was limited in advance, because the separation of powers did not imply the functional separation of legislative and executive powers, and therefore represented a risk factor of corruption. The position of the Serbian prince, who was above the law and legally untouchable, also contributed to this.

As expected, the Sretenje Constitution resolved conflicts of interest *ad hoc* and inconsistently. For example, in Article 43, the possibility for tutors of the minor prince also to be the members of the State Council was not explicitly excluded, nor could it be concluded by interpretation. Regarding the membership in the State Council, of special interest was the prohibition of conflicts of interest from Article 58, according to which "father and son and two brothers cannot sit in the State Council at the same time", especially because the CRS does not contain a counterpart to such a provision.

Provisions on the incompatibility of functions, on the CRS trail, can be found in several places: in Article 18, prohibition of the simultaneous exercise of the functions of a member of the Prince's Council

and a member of the State Council and, in accordance with the monarchical nature of Serbia, in Articles 37 and 39, specific incompatibility of the functions of members of the prince's family prohibition of entering the service of a foreign state. The provisions of Articles 66 and 67, permits the cumulation of trustee functions[3] and simultaneous performance of ministerial functions in two departments.

Regarding officials, the provisions of Article 138 strengthen the prevention of corruption – "no official may run a trade or work a trade alone and under his own name", which is actually the *ratio legis* of the provisions of Article 46 of the Law on Prevention of Corruption on the prohibition of performing other duties during public office. One of the most practical measures of prevention of so-called petty corruption was prohibited under Article 1124, according to which "Serbs are not required to work for any official"[4]. However, its scope is limited, because it does not prohibit other types of kuluk.

The provision of Article 96 on the relative prohibition of the simultaneous exercise of public and clerical functions is unusual as according to it, "neither the clerical nor the ecclesiastic can hold another title in Serbia", with the exception of the Metropolitan of Serbia and the partial exception of the Archbishops of Serbia who can be consulted by the prince and the State Council exclusively in church matters.

The Sretenje Constitution, as well as the CRS, contains revision as a significant measure of corruption prevention in the provisions of Article 107, which stipulates that the prince and the State Council will appoint a "chief accountant", who will "review all financial accounts" and see that "public money" is spent for approved purposes.

Although the Sretenje Constitution in Article 43 makes a distinction between the private property of the prince and state property, it is difficult to make a parallel with the declaration and verification of the property and income of public officials[5], but a similar *ratio legis* can be recognized in a rudimentary form.

The short-term implementation of the Sretenje Constitution deprived us of an answer to the question of the real scope of the constitutional provisions in general, in particular of its anti-corruption measures.

CONSTITUTION OF THE PRINCIPALITY OF SERBIA FROM 1838 (TURKISH CONSTITUTION)

Miloš's problems with personal enemies and enemies of his politics, the interference of the great powers and the conflict of interests of Great Britain, Russia and Austria over Serbia contributed to the constitutional issue being resolved in Constantinople (Bartulović & Ranđelović, 2012: 37–41), and hence the name, because the sultan issued it as hatisherif for his province of Serbia in 1838 giving it the character of an approved constitution, in the creation of which Russia and the Serbian delegation, made up of Miloš's opponents, took part. Its most significant consequences were the limitation of the absolutism of Prince Miloš and the onset of a new phase in the development of constitutionalism – the period of the Defender of the Constitution.

The Constitution did not have a strict internal division and it mostly prescribed the rights and obligations of the authorities. Prince Miloš's inheritance of princely dignity was confirmed, but his power was significantly limited. It was foreseen that the prince should appoint the Government, whose members are trustees, with three portfolios: of internal affairs, finance and justice. The Constitution also foresaw the Prince's Office, whose competence was foreign affairs. The character of the Constitution was determined by the provisions on the jurisdiction and position of the Counsel and the immutability of its members. The division between judicial and executive power was carried out, and the Constitution guaranteed private property, freedom of entrepreneurship and trade, and prohibited the establishment of feudal relations. Prince Miloš, having experienced the adoption of the Constitution as a personal defeat, abdicated and left Serbia in 1839.

Article 55 stipulated that judges cannot "change service", nor can they engage in other jobs, which in a rather rigorous way prohibited the performance of other jobs during the exercise of the judicial function. It remains unclear whether such a ban contained a kind of "pantoflage" as a ban on conflicts of interest[6]. The term *pantoflage* is of French origin, and the original meaning of the term was related to so-called "slipping" (from: *pantoufle*, f. – slipper), i.e., the stealing away (in slippers) of graduates, from the most elite French schools, from state administration and their quiet departure to the private sector (Milić, 2018: 55). The Constitution foresees a combined provision of the same type in Article 56, according to which "no official [...] can be appointed to the Courts, even temporarily". The Turkish Constitution also provides protection against abuse and the corruption of judges, defining under Article 21 that the relevant minister must receive and resolve complaints filed against judges.

Something different than in the Sretenje Constitution, Article 49 abolished the kuluk, as a practical measure of prevention against so-called petty corruption.

The number of constitutional provisions of an anti-corruption nature is smaller than in all other Serbian constitutions. In addition, the Turkish Constitution contributed to the fact that officials who were prince's servants became civil servants. In practice, however, during the rule of the Defender of the Constitution it went to the other extreme – officials were separated into a special social class that was no stranger to abuse and corruption (Deretić, 2015: 1742).

Less ambitious than Sretenje, the Turkish Constitution improved the prevention of corruption by turning clerks into civil servants, but unfortunately it was not enough.

THE CONSTITUTION FROM 1869 (REGENCY CONSTITUTION)

After the murder of Prince Mihailo in 1868, a kind of military coup took place, when the army "muscled" in as the heir to the throne, Milan Obrenović, and the subsequently convened Grand National Assembly confirmed the forced solution and elected the Deputyship, which raised the constitutional issue. The Constitution was adopted by the Great National Assembly in Kragujevac in 1869. Although Serbia was a vassal state, the Ottoman Empire did not react to the adoption of the Constitution. The most important provisions were devoted to the position and competences of the National Assembly, which for the first time in the history of Serbia became a legislative body, together with the prince. Ministers were officials of the highest rank, whom the prince appointed and dismissed at will. The State Council became an advisory body of the Government. The Regency Constitution was in force until 1888, as well as from 1894 to 1901.

Perhaps the most interesting provision on conflict of interest has been defined under Article 112, in a manner unknown to the CRS – that "the judges in one court cannot at the same time be relatives by blood in the true ascending or descending line, up to any degree, nor in the collateral line up to the fourth degree, and by in-laws up to the second degree inclusive". It seems that nepotism in the judiciary was a significant problem, which is why such a ban was elevated to the level of a constitutional ban.

The incompatibility of functions has been safeguarded in several provisions. The Constitution, primarily in Article 21, stipulates that three tutors who will take care of the upbringing and estate of the minor prince shall determine the deputyship while they cannot be deputies at the same time. Article 48 foresees for a relative ban on the cumulation of functions, according to which officials and attorneys cannot be elected as subsequent parliamentarians, but they can be elected as parliamentarians by the prince. In this way, the demands of the peasantry on the restriction of the voting rights of the mentioned group of persons were amortized. And finally, by the provision of Article 110, as a general anti-corruption mechanism, foresaw the incompatibility of legislative, judicial and administrative public functions, so that "the state power, neither legislative nor administrative, can perform judicial duties, nor can courts perform legislative or administrative power".

In the corpus of anti-corruption provisions, the Constitution introduces not only changed wording but also new ones. Article 33 foresees the possibility that "every Serb" (which implies that foreign nationals did not have this right) has the right to complain about "unlawful" actions of the government, which we saw in a different way in the Sretenje Constitution. The associated provisions of Articles 101, 102 and 103, foresaw, for the first time, that a minister can be charged, among other things, when he receives a bribe and when he damages the state out of self-interest. At least 20 people's representatives had to accuse him in writing and a two-thirds majority of people's representatives had to vote for the accusation.

Although the Regency Constitution in Article 95 distinguishes state and princely property, this provision is much narrower compared to a similar provision of the Sretenje Constitution and therefore, to an even lesser extent, is associated with the modern mechanism of transparency of the property of public officials. Perhaps the best example of nepotism and corruption from this period, but also an indicator of the non-application and ineffectiveness of constitutional mechanisms for the prevention of corruption, is the Belimarković affair. Minister of defense Belimarković was also formally accused in the National Assembly for manipulations in bidding procedures for the procurement of military equipment. The ruler himself lobbied for the release of Belimarković personally, so that on January 26, 1874, when the final vote on Belimarković's guilt took place, 22 representatives voted for conviction, seven representatives abstained from voting, and 56 representatives voted against. It was obvious that the constitutional mechanism of ministerial responsibility for corrupt actions before the National Assembly existed only on paper.

THE CONSTITUTION FROM 1888 (RADICAL CONSTITUTION)

The Constitution was adopted by the Great National Assembly in 1888. The King was forced to accept the adoption of the constitution due to numerous problems that called into question the survival of the Obrenović dynasty. The bankruptcy of Bontu's General Union, the Timok Rebellion in 1883, the war that King Milan declared against Bulgaria in 1885, and the infamous defeat at Slivnica, are just some of the problems.

The principle of separation of powers emerged from the constitutional provisions. Legislative power was exercised jointly by the King and the national assembly. Executive power was exercised by the King through ministers, whom he appointed and dismissed. The King was the head of the state, he had the right to legislative sanctions, he appointed all the judges and state officials in the country, and he had the right to convene, adjourn and dissolve the National Assembly. The judiciary was independent. The elections were direct and Serbia was among the first European countries to introduce a proportional electoral system, the National Assembly received the right to supervise the work of the government which introduced a system of parliamentary rule. Local self-government was introduced. In a coup in May 1894, King Aleksandar suspended the Radical Constitution and reinstated the Regency Constitution, replacing the party regime with his personal regime (Mirković, 2017: 136–138).

When it comes to conflict of interest, the Radical Constitution in Article 156 foresees that relatives cannot be judges at the same time in one court, nor adjudicate together: by blood in the direct line in any degree, in collateral up to the fourth degree, and by in-laws up to the final second degree.

Regarding the incompatibility of functions, the Radical Constitution was more comprehensive than all previous Serbian constitutions. The relative incompatibility of functions is referred to in Article 53, which provided that the King cannot be the head of another state at the same time without the consent of the Grand National Assembly. Article 97 foresees for the incompatibility of the public function of a representative and the function of a police officer. Related to this is the provision of Article 98, according to which representatives who become officials during their term of office, shall have their parliamentary mandate terminated. Such a ban was relativized by allowing such persons to be re-elected as representatives, and the ban did not apply to ministers (Mirković, 2017: 200). Article 99

stipulates that clerks and all those who are otherwise in the civil service lose their position upon election to parliament and acceptance of the mandate. The aforementioned prohibition was relativized by enabling the entire district of persons to continue performing both public functions: ministers, members of the State Council, extraordinary and plenipotentiary ministers accredited to foreign courts, ambassadors, and consuls general; presidents and members of higher and first-instance courts, professors of the Great School, vocational and secondary schools, engineers, and doctors in the civil service. These exceptions are actually related to Article 100, which stipulates that there must be two persons among the representatives of each district who, in addition to the general requirements, also must meet the educational requirements: that they graduated from university or higher professional school at the university level. The aforementioned provisions did not apply when convening the Grand National Assembly. Article 159 foresees the incompatibility of the function of a judge with any other state service, with the exception of a part-time professorship at the Faculty of Law. The prohibition of cumulation of functions is such that it does not allow even a temporary assignment, even with the judge's consent, to another paid or unpaid duty.

The Constitution abolished the so-called administrative guarantee of the official and in Article 28 foresaw that "every Serb had the right to directly and without anyone's approval sue state officials and clerks, as well as mayors of municipalities, serfs, municipal officials, if they violated his rights in their official work".

According to the Regency Constitution, Articles 137 to 140, it is foreseen that both the king and the National Assembly have the right to accuse ministers, among other things, of accepting bribes and of damaging the state out of self-interest, with a four-year statute of limitations; the motion for indictment must be written, with specific points of indictment and signed by at least 20 representatives, and in order to indict the minister, the consent of two-thirds of the votes of the representatives present was required. In such situations, a special State Court, composed of members of the State Council and the Court of Cassation, would adjudicate. The improvement of the provision is that a convicted minister cannot be pardoned or receive a reduced sentence by the King without the consent of the National Assembly.

In greater detail than in the previous constitution, Articles 180, 181 and 182 foresee an audit of public finances, for which a General Control was established "as a special jurisdiction and court of accounts".

Article 179 of the Constitution distinguishes between the state and the king's private property, as a hint of the transparency of the public official's property, although it is difficult to imagine a situation in which any state body of that time would check the king's property status.

Although it was intended for a more developed civil society than the Serbian one at that time, and placed Serbia in the group of modern constitutional parliamentary monarchies (Petrov et al., 2021: 35), the provisions on the inviolability of the king's personality, along with legal irresponsibility, but also the problematic application of the Constitution in practice, actually enabled a significant presence of corruption during the period of validity of this Constitution.

THE CONSTITUTION FROM 1901 (APRIL CONSTITUTION)

In January 1894, the old King Milan illegally returned to Serbia, after which King Aleksandar carried out a second coup on May 9, 1894, suspended the Constitution of 1888 and reinstated the Constitution of 1869. Serbia was then shaken by the Ivandan assassination in 1899, the marriage of King Aleksandar with Draga Mašin in 1900, and the death of King Milan in 1901. The tragic sequence of events was completed when King Aleksandar staged a third coup d'état on April 6, 1901, annulling the new constitution.

The powers of the king were the same as those present in the Constitution of 1888, in relation to the people's representative and with regard to its convening, adjournment and dissolution, the difference being that the Senate may never be dissolved. For the first time in the history of Serbian constitutionalism, a bicameral parliament was established – the National Assembly was an entirely elected body, while three fifths of the members of the Senate were appointed by the king. The possibility of dissolving the Senate was not foreseen thus giving the upper house an advantage. The local government was given less space and the possibility for a strong centralization of power.

The Constitution from 1901 was in force for a little longer than two years and was remembered primarily for the reluctance of King Aleksandar Obrenović to implement it. The climax took place in March 1903, when the king suspended the Constitution for an hour, dissolved the National Assembly and the elected part of the Senate, and repealed several laws. Then he reinstated the Constitution as if nothing had happened. Shortly after, at the end of May 1903, King Aleksandar and his wife Draga were murdered in a conspiracy (Mirković, 2017: 137–141).

The provision on the conflict of interest of judges simply disappeared from the Constitution, along with 13 others – with the chapter on judicial power being reduced to one article. The mere omission of such a provision speaks volumes about the attitude towards nepotism in Serbian courts.

Regarding the incompatibility of functions, there were no essential changes, except for those conditioned by the structure of the bicameral parliament. Article 9 foresees the incompatibility of the functions of the king with the function of the head of another state, without the prior consent of the People's Representative Office. In a similar way as in the previous constitution, with the expansion of exceptions, Article 68 defined the incompatibility of the public office of representatives in the National Assembly with the performance of work and the performance of public functions, among others, active clerks except for members of the Court of Cassation, the president and members of the Great School, the president of the Court of Appeal, professors of the Great School and secondary schools, administrators of Monopoly, (even) librarians of the National Library, doctors, engineers and those clerks who graduated from the university, presidents of municipalities and priests of both orders. Despite this, it can be said that in Article 69, paragraph 2, the ban had been improved to some extent by providing that the parliamentary mandate ends for those who, during the term of office, receive paid state or state-dependent service, permanent or temporary, as well as those who, if they are clerks, are promoted during that time. However, the aforementioned ban on cumulation of functions was relativized in paragraph 3 of this Article, by making it possible for such a person to be re-elected, if the new position allows it (Mirković, 2017: 249). For the newly established Senate, Article 73 stipulates that senators cannot be active officials, with the exception of extraordinary representatives and ambassadors, as well as all those who, according to Article 68, may be elected as members of the National Assembly. Paragraph 3 of this Article expressly stipulates that priests of both orders can be elected to the Senate, which is a step back in relation to the Sretenje Constitution, which provided for the incompatibility of public office and priestly office.

Like the provision of the Regency Constitution, Article 77 foresees the incompatibility of the function of a minister with the status of a member of the Royal House.

Article 39 stipulates that every Serbian citizen has the right to complain against the actions of the authorities, as well as to directly and without anyone's approval, sue state officials and self-governing authorities in court, if they have violated his rights, with the fact that ministers, judges and soldiers under the flag are subject to special institutions or legal provisions, in this respect.

Article 80 stipulates that the king and the People's Representative Office have the right to accuse the minister, among other things, of accepting bribes, and that the statute of limitations expires in five years.

Article 96 foresees the existence of the General Control, which in this order represents a significant anti-corruption mechanism for the control of public finances.

It can be said that the anti-corruption provisions of previous constitutions that found their place in this Constitution, as part of the entire system of the Constitution from 1901 and the king's intention not to apply it as such, are actually just a shadow of the anti-corruption provisions from the Radical Constitution.

THE CONSTITUTION FROM 1903

A few days after the murder of the royal couple during the May Uprising, the People's Representative Office practically reinstated the Constitution of 1888 in early June 1903. The basic provisions of the new constitution remained the same, and minor amendments (42 in total) were made with the aim of limiting the king's power. After all, it was the first constitution in the adoption of which the ruler or deputyship did not participate.

Therefore, it is not surprising that the anti-corruption provisions differ only by the numerical designation of the Article in which they are found, but they are also present in this Constitution: conflict of interests of judges, with the same circle of related persons (Article 155), incompatibility of functions of the king (Article 55), incompatibility of the functions of people's representatives with the functions of a police official (Article 96) and clerks, during the parliamentary mandate (Article 97), or before taking up a parliamentary position (Article 98), incompatibility of the function of minister and member of the Royal House (Article 133), and the incompatibility of the function of judges with any other state service and performance of other jobs, except part-time professorship at the faculty of law (Article 158).

It is no less significant that the anti-corruption provisions that allowed the minister to be charged and tried for bribery and damage to the state due to self-interest was retained (Articles 136 to 138). That principle was also transferred to lower levels of government, because provisions were retained that allowed complaints against illegal actions of the authorities, as well as lawsuits to the court directly and without anyone's approval against state officials and clerks, mayors, serfs and municipal officials, if they "violated his rights in their official work" (Articles 27 and 28). In relation to the Constitution of 1888, the circle of persons against whom a complaint can be filed had been expanded. In the same way, provisions related to the audit of public finances and the General Control were adopted (Article 179 to 181) from the Constitution of 1888.

Unlike 1888 and the prematureness of the parliamentary institutional model, the somewhat modified constitutional framework was largely respected until the First World War. As most authors point out, a golden period in the development of representative institutions in Serbia had arrived. However, this did not lead to a golden period in the fight against corruption, so that the young Serbian democracy was burdened by numerous corruption scandals.

CONSTITUTION OF THE REPUBLIC OF SERBIA FROM 2006

The CRS was taken as a basis for the comparison of Serbian constitutions, and contains several anti-corruption provisions, among which we can distinguish three types: the first refers to the conflict of interest[7], the second refers to the incompatibility of functions[8], and the third refers to the audit of public finances. In this paper, we will not go into inconsistencies in the use of terminology, nor will we make a distinction between concepts in relation to the Law on Prevention of Corruption.

Among the first, the most significant prohibition of conflict of interest in Article 6, was raised to the rank of a constitutional principle, which stipulates that no one can perform a state or public function that is in conflict with his other functions, jobs or private interests, and that the existence of a conflict of interest and responsibility for its resolution are determined by the Constitution and the law. Alt-

hough the mere existence of such a principle is rare in constitutional practice and extremely important for the prevention of corruption, its deficiency is actually reflected in the stylization. It seems that wording like "it is prohibited" would prevent the relativization of this constitutional principle in legislative practice. In this manner, the current situation would be avoided, in which, first in 2008 and then in 2020, in the provisions of the Law on the Anti-Corruption Agency, i.e., the Law on Prevention of Corruption, the distinction between state and public functions was omitted, with an overly broad definition of the term public official so that at the present moment there are slightly more than 44,000 active public officials in Serbia, because public officials include at the same time a member of the board of directors of the library and the president of the Government of the Republic of Serbia.

Another provision that explicitly mentions conflict of interest is found in Article 173, Paragraph 1, according to which a judge of the Constitutional Court may not perform any other public or professional function or work, except for a professorship at a law faculty in the Republic of Serbia. This provision has its roots in earlier Serbian constitutions, when professorships at the faculty of law were available to all judges. Another type of provisions includes those in which the CRS talks about the incompatibility of the functions of people's representatives, the president of the Republic, judges and public prosecutors. In the spirit of the tripartite division of power, the CRS in Article 102, Paragraph 3, in establishing the position of a representative, actually regulates the incompatibility of functions and the conflict of interests. Namely, it foresees that a member of parliament cannot be a member of the assembly of an autonomous province, nor an official in the bodies of the executive power and the judiciary, nor can he perform other functions, jobs and duties that are determined by law to represent a conflict of interest. A similar *ratio legis* is contained in the provisions according to which the president of the Republic cannot perform another public function or professional activity (Article 115); a member of the Government cannot be a member of parliament, a member of the assembly of an autonomous province and a counsellor in the assembly of a local government unit, nor a member of the executive council of an autonomous province or the executive body of a local government unit. In addition to these constitutional prohibitions, the law regulates which other functions, jobs or private interests are in conflict with the position of a member of the Government (Article 126); which functions, jobs or private interests are incompatible with the function of judge and lay judge (Article 148), i.e., the higher public prosecutor, the chief public prosecutor, and the public prosecutor (Article 161, Paragraph 3). It is noticeable that the mentioned provisions prohibit the political activity of judges but not of prosecutors. Lastly, but not the least importantly, CRS in Article 96 provides for the State Audit Institution, as the highest state authority for the audit of public finances.

CONCLUSION

The turbulent constitutional development of Serbia did not always move in an upward direction, whereby Serbia often tried to skip the necessary stages in the development of constitutionalism. Those attempts, instead of speeding up the development of constitutionalism, represented steps backwards primarily due to unlearned historical lessons (Petrov et al., 2021: 47–48). As presented above, the constitutional arrangement itself, of that period, was a risk factor for corruption. The dysfunctional division of power, the cumulation of functions of the rulers, as well as the absence of an efficient and effective system of supervision and control of those performing the functions, were the decisive factors in the risk of corruption that significantly limited the scope of the exposed anti-corruption provisions. Although the potential of Serbia can be recognized through the anti-corruption provisions of the mentioned constitutional documents, it was not enough for the young Serbian state to deal with the risks of corruption.

By definition, the constitution contains the anti-corruption principle, which should be given a central place in the constitutional matter, along with the separation of powers and civil rights. In this sense, the analysis of the Serbian constitutional history and, within that format, former corruption prevention measures, can serve to improve the current anti-corruption mechanisms, but they can also serve a future constitution adapted to the new needs in the fight against corruption – the integrity and

transparency of the work of public authorities and public officials to strengthen independent institutions in their fight against corruption and the building of a society that does not tolerate corruption.

No matter how much the constitutional rigidity in the Republic of Serbia, interwoven with a predominantly authoritarian constitutional tradition and the primacy of "state reason", makes it difficult to change the existing or adopt a new constitution as a whole (Simović, 2017: 615–630), it seems that changes to the CRS in the domain of corruption prevention are both possible and necessary. In the first place, we believe that there are no constitutional obstacles for such changes to the constitution. Namely, they would in no way violate the constitutional identity of Serbia, which, for example, is reflected in the position of the Autonomous Province of Kosovo and Metohija and inalienable human rights (Đurić, 2017: 272). On the contrary, according to Article 1 of the CRS, the Republic of Serbia is founded on European principles and values. Although this affiliation represents only a programmatic and principled determination, the prevention of corruption certainly represents its content, so such changes in the CRS could not only be of importance for European integration but, at the same time and primarily, could be of crucial importance for the well-being of the citizens of Serbia.

Those changes should strengthen the principle of prohibition of conflicts of interest, first of all with clear criteria for defining and delimiting state and public functions, which would direct the necessary changes in legislation. Although the existence of more explicit prohibitions in the text of the constitution with regard to conflict of interest, nepotism as its most recognizable form, as well as the illegal cumulation of functions, would be debatable from a theoretical point of view, practical needs simply impose such constitutional solutions.

Endnotes

[1]The term constitutional identity is used in constitutionalist theory and contemporary constitutional judicial practice in connection with two groups of interwoven issues – the transfer of sovereign rights to supranational organizations and changes to the constitution.

[2]There were three Deputyships during the Principality and the Kingdom of Serbia, which in cases when the ruler was a minor or when he was permanently unable to exercise power due to mental or physical illness, were actually a form of an "executive" of the ruler.

[3]The trustee is the title of a minister in the uprising government after the First Serbian Uprising, which lasted until the adoption of the Constitution in 1869.

[4]Kuluk is a type of tax that was imposed in the occupied territories of ancient Turkey in the form of personal labour. Over time, it took the form of paying bribes to various government representatives, which the poor population was forced to do in order to exercise their rights.

[5]The provisions of Articles 68 to 76 of the Law on Prevention of Corruption prescribe the obligations of submitting regular and extraordinary reports on the assets and income of public officials, the method of checking those reports and monitoring the property status of public officials.

[6]Symbolically, in the same Article (55), but of the Law on Prevention of Corruption, the so-called *pantoflage*, i.e., restrictions upon termination of public office, according to which two years after the termination of public office a public official cannot establish a working relationship, i.e., business cooperation with a third party who has a business relationship with the public authority in which that public official performed a public function, without the consent of the Agency. The aforementioned prohibition does not apply to public officials elected directly by citizens.

[7]The concept of conflict of interest is defined in a slightly different manner in Article 41, Paragraph 1.1. of the Law on Prevention of Corruption, so that term means a situation in which a public official has a private interest that influences, can influence, or appears to influence the performance of a public function. In addition, this law does not distinguish between state and public functions, but treats all functions exclusively as public.

[8]The concept of "incompatibility of functions" is defined differently in the provisions of Articles 45 to 56 of the Law on Prevention of Corruption, by distinguishing between the incompatibility of jobs (including membership in associations and political entities) with the exercise of public office and the cumulation of public office. At the same time, the law prescribes the obligation of the Agency for the Prevention of Corruption to determine whether this threatens the impartial performance of public office, whether there is a relationship of dependence or other relationship that threatens or could threaten his impartiality or the reputation of public office, or whether this is prohibited by law. Unauthorized cumulation of functions is characterized by a relative ban on the performance of another public function, unless there is an obligation for such a thing as fore-

seen by the Constitution, law and other regulation or the consent of the Agency, or, exceptionally, the consent of the Agency has been obtained for the performance of another public function. A significant exception to this prohibition is the possibility that a public official elected to a public office directly by the citizens may, without the consent of the Agency, perform several public functions to which they are elected directly by the citizens, except in cases of incompatibility of the established.

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