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## **THE UNION OF SERBIA AND MONTENEGRO**

*PROPOSAL FOR THE CONSTITUTIONAL RECONSTRUCTION OF FRY*



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### ***Present conditions – the invalid Constitution***

The federation of Serbia and Montenegro, FR Yugoslavia, was formed with the establishing of the Constitution on April 27<sup>th</sup> 1992. The decision to proclaim this Constitution was made by the Federal Council of the Parliament of the Socialist Federal Republic of Yugoslavia. Although this body, according to the SFRY Constitution, had the authority to decide on the Constitutional amends, delegations of the four republics, which were in the meantime internationally recognized as independent, and sovereign countries, did not participate in the work of the Council. Thus the legal status of this body became constitutionally and legally problematic, and, consequentially, the Council lost the authority to perform any function, much less to proclaim a new Constitution.

Such an act of establishing the union of Serbia and Montenegro cast a shadow over the choice of the majority of population in the two countries to continue living within the common state, after the former federation had disintegrated. The best way to express that choice was contained in the democratic procedure of establishing the two-part federation, which would guarantee the legitimacy and legality of the new federation. Instead of that, the representatives of the two republics decided that the very act of proclaiming the new Constitution should be the link between the former and the new federation.

Establishing of the Constitution of FRY was rather in connection with the international circumstances of the disintegration of the former state, than with the internal conditions or the true need to ensure the stable constitutional foundations for the new state union of Serbia and Montenegro. The new Constitution was supposed to ensure legal and state continuity of the existing and former state, which would confirm the thesis of the secession of the four republics from the former federation. The Constitutional establishing was governed by the foreign political interests of the Government officials of that period, and it was therefore done in a hurry, without legal foundation or the necessary democratic procedure. The Constitution was, in other words, an act of unsuitable political engineering, not of general declaration of those for whom it would further on represent the principle and standard of their lives.

The entire procedure of establishing the Constitution of FRY was completely initiated and fully controlled by high officials of the two parties in power in Serbia and Montenegro. The first and only concept that was the basis for the text of the Constitution (*Bases of the System and Functioning of Yugoslavia as a Common State*) was formed within a small circle of the most influential politicians of the two republics. It contained basic constitutional principles and all the important institutional solutions that were the ground plan for the Constitution. This plan was accepted without discussion in the Parliaments of the republics, which were dominated by the political parties of the real framers of the Constitution. Finally, the Constitution was proclaimed in the legally non-existent Parliament of a non-existent state. Between the first initiative and the proclaiming of the Constitution only two and a half months passed by, during which time both the initiative and the ground plan were almost unknown to the citizens of the both republics. It is true the referendum was held in Montenegro, however not on the ground plan of the Constitution, but on the principal issue of common state with Serbia. The great majority of the electoral body was in favor of the common state, but this kind of referendum could not replace the necessary public and expert discussion on the ground plan of the Constitution. Neither the referendum on the ground plan of the Constitution, nor the referendum on the issue of common state with Montenegro was held in Serbia.

The manner in which the Constitution of FRY was proclaimed indicated the future bad fortune of the country. The Constitution was observed as ill as it was proclaimed, and most of all by those who proclaimed it. Eight years later the constitutional life in FRY is just hopeless. It is not enough to say that the Federal Constitution is not being observed, or that it is constantly violated by certain people in power. Our politicians violate the Constitution on a daily basis, sometimes by an isolated act and sometimes by creating a lasting nonconstitutional situation. For instance, the president of the federal state appearing at the congress of a political party and being elected a leader of that party, in spite of the regulation (article 97. paragraph 4. of the Constitution FRY) that expressly forbids the president of the republic to perform any other public function or profession, except his constitutional duty as chief of state.

The example for creating a nonconstitutional situation is refusal to verify the mandates of Montenegrin representatives in the Council of Republics, after changes have been made in the republic law of Montenegro. Legally elected Montenegrin representatives cannot take their seats in the upper house of the federal legislative body, while some other Montenegrin representatives whose mandates have expired are still members of the Council. The activities of the Federal Parliament are thus made nonconstitutional, the federal authorities are illegitimate, and this situation continues to exist for months and years.

The violations of the Constitution are alarming neither from the point of view of political life, for which the Constitution is supposed to set strict rules, nor of the political factors and constitutional authorities. The concern of the ordinary citizen is much worse. Due to the numerous and constant violations of the Constitution by the authorities, the fundamental civil rights are endangered. What is more, the citizen does not believe that he can ensure and protect his rights and interests by turning to the authorities in charge of the protection of these rights. In other words, the Yugoslavia of today is endangered by legal insecurity, chaos and anomie.

Moreover, a great number of federal laws are not in conformity with the Federal Constitution. The constitutional law passed together with the Constitution prescribes that the legislator should bring a number of laws into conformity with the Federal Constitution, until the end of 1994. The time has been extended on several occasions, but up until now the Federal legislator has not fulfilled his obligation to bring many important laws into conformity with the Federal Constitution (for example, Law on Criminal proceedings). Also, the Constitution of the Republic of Serbia is still not in conformity with the Federal Constitution. In other words, although Serbia is a member of the Federation, its system is not in agreement with the federal.

Although the extant constitutional solutions have ensured, at least in theory, for FRY to be a common economic market, soon after the Constitution was proclaimed, the constitutional system derogated also in the field of economy. Political control over economy caused the economies of Serbia and Montenegro to be treated as two competitive companies "Serbia" and "Montenegro", which fight over the bigger share of the national product. The real interests of particular companies were neglected. Different strategies were used as regards buying foreign currency on formal and informal market, monetary policy, customs policy, black- marketing etc.

Soon after the proclaiming of the Constitution begins the violation of the constitutional system, concerning the distribution of authority between the federal and the republic levels of government. For instance, the Government of Serbia has by its regulations

temporarily controlled specific areas, which were under the jurisdiction of the federal state, such as foreign trade and antimonopolistic policy.

During 1997 the financial relations between the Federal Government and the Government of Montenegro were seriously disturbed. The Federal Government gradually stopped paying in the prescribed subsidies to the pension-fund of Montenegro, while at the same time the Government of Montenegro gradually stopped paying in the prescribed incomes into the Federal Budget.

After the elections in Montenegro in 1997, the illegal status of the remaining representatives of Montenegro in the Council of Republics of the Federal Parliament, and Montenegro breaking off the relations with the Federal Government, has no information of the federal monetary, fiscal, customs, foreign exchange and other policies.

In autumn 1999 the Government of Montenegro took extreme measures. First, it took over both customhouses in Montenegro, claiming the right to collect customs duties and to have independent customs policy. Second, Montenegro declares fiscal sovereignty, i.e. claims the right to keep all the collected income in Montenegro and to revoke the obligation of paying in certain incomes to the federal budget. Besides, fiscal sovereignty means the right for an independent tax policy, disregarding the regulations in the Federal Law. Third, Montenegro introduced deutsche mark on an equal footing with dinar, in order to replace dinar in the financial transactions, which put an end to the common monetary system of FRY.

Federal and Serbian authorities responded by stopping the financial transactions between Montenegro and Serbia, and prohibiting the trade of almost all kinds of merchandise between Serbia and Montenegro.

As a result of all these measures, the common economic area of FRY ceased to exist, and two separate areas divided by the border between the republics were created. Not one important feature of the common market and the common economy is functioning properly: there is no free circulation of money and goods, no common customs system, no common fiscal system, no common monetary system, no common foreign exchange and foreign trade system. The difference between the constitutional solutions and actual circumstances is getting bigger and we cannot claim any more that the economy of FRY functions according to the federal regulations. What's more, the question is whether Serbia and Montenegro make one economic area, common market, or even a customs union, or not. Essentially, the answer is no. Except for the fact that the customs duties on trade between the Serbia and Montenegro have not (yet) been introduced, we can say that at this moment these two republics are economically separate states.

The breaking of economic relations between Serbia and Montenegro is not to the advantage of any of the republics. Many companies are oriented to the market of the other republic as a result of the decades of business in the same country, complementary capacities, and the buyers being accustomed to the goods from the neighboring republic.

This condition is economically harmful, politically unacceptable, and legally untenable. It clearly justifies the necessity of separation or urgent reconstruction of the state union of Serbia and Montenegro.

## ***Basic principles of the state union of Serbia and Montenegro***

The manner of proclaiming the Constitution of FRY and its open violation by the republic authorities of Serbia and Montenegro, and even by the federal organs themselves, clearly manifest the complete failure of this two-part federation. In order to survive, it has to be re-established on different political grounds and new constitutional principles. Since both in Serbia and in Montenegro still exists widespread and deeply rooted orientation towards the common state, despite the dissatisfaction with the present federation, the new state system must be the result of well considered and mutually accepted conditions, principles and concrete institutional solutions of the future union. It has to express not only historical aspirations of the people of Serbia and Montenegro towards living together, but also the need of the citizens to live in an well-organized and functional community, which would be able to promote their interests and satisfy their everyday needs. In this sense, every functional model of a state community must be complementary in its system to the processes of regional and European integration.

The main principles stated here follow the need for modernization of the public policy and administration, and they should respect the unique singularity of this union. Serbia and Montenegro are not equal in population, territory and economic potentials. The condition of equality is unusually difficult to fulfill in system and institutions, and especially in everyday life of the community, although it is a crucial condition. Because of that, both the main principles and the actual institutional solutions, which should follow them closely, will have as a starting point the idea of “minimal federation” (model of the common functions, which is achievable in the extant social, economic and political circumstances. Although the state crisis of the present federation is politically induced, organizing the state union of two parts of unequal size, which want to retain their important political and national autonomies, is an extremely difficult task.

The main principles of the state union, which are to be turned into operative and functional institutional solutions are:

- **Minimal and efficient government.** It is presumed that both Serbia and Montenegro will turn to the liberal state concept, to that type of government in the widest sense, whose main characteristic is minimal regulative approach to the public affairs. If both the units and their state union turn to the concept of modern market economy and the rule of the law, then the principal orientation towards minimal and efficient state is the only justified solution. The condition is that such a concept of administering public affairs should prevail in the republics, in order for the common functions transferred to the federation to be small in number and performed by a reasonable number of representative and expert individuals.
- **Principle of subsidiarity.** The federation will have only those functions which, in the common interest of the members, can be performed better and more efficient on the level of union than on the level of the member republics. This is the principle for the distribution of authority between the union and the members, which should be carried into effect in the Constitution. The supposition of authority is on the side of the members, which means that the federal authorities should be enumerated in the Federal Constitution. It does not mean that these authorities are effectuated only by the federal organs, since the Constitution would also include the right of federal and republic organs to cooperate in effectuating the federal authority. The principle of subsidiarity would also be applied to the member republics. Its effect would be the decentralization of power in the republics, in

Serbia in favor of the regions and municipalities, and in Montenegro in favor of municipalities. The common goal is to create a system in which the decisions will be made on the levels closest to the citizens.

- **Constitutional principle.** The Federal Constitution, being a result of democratically expressed and general will of the citizens of the republics, becomes a relevant standard for all the decisions within its scope. It is the fundament and guarantee of the principle of the rule of the law in a state community. For that principle to be consistently brought into effect, it is necessary that the Federal Constitution should guarantee not only the equality of the members, but also the legal equality (fundamental rights and freedoms) of all citizens of the federation. Without the efficient protection of fundamental rights and freedoms, the Federal Constitution would have a limited legal jurisdiction on the level of the rights of the members, and it would be practically reduced to interstate treaty. The federal principle (equality of members) would not be in balance with the democratic principle (equality of citizens) and the rule of the law would not have its full constitutional sense. Besides, the constitutional principle thus established is an important condition for the future entering the process of European integration, since only the state of constitutional type is authorized to start the integration and capable to fulfil the obligations which ensue.
- **Principle of cooperation in the state union.** The new institutions of the union of Serbia and Montenegro should contribute to the establishing of trust between the political representatives of the citizens. For that purpose, the Constitution is to establish new mechanisms of cooperation between the member republics and the union, as well as between the members themselves. Besides the usual institutional solutions, according to which the members are directly represented in the union through their representatives (upper house of the Federal Parliament), there are also the rights of the members to cooperate directly in the performing of the executive and judicial functions in the field of federal jurisdiction. This principle increases the responsibility of the member republics for the functioning of the state union and contributes to the strengthening the federal trust. Besides, they should cooperate in the autonomous fields of jurisdiction in regulating and performing the adequate functions on the interparliamentary and intergovernmental level. For that purpose, the member republics can make adequate contracts and form common bodies, independent from the federal organs, to make sure the terms of the contract are fulfilled.
- **Principle of the distribution of authority on the federal level.** Besides the vertical distribution of authority between the federation and the member republics (principle of subsidiarity), there is also a horizontal distribution between the branches of government (legislative, executive and judiciary) and their constitutional distribution between different federal bodies. The system of government on the federal level should represent a federal parliamentary republic, where the branches of government will be democratically balanced, with the rights and obligations of mutual control and cooperation. The Constitution should specify the way of electing, structure and authority of every federal organ, the procedures of decision-making and mechanisms of performing their functions. This system of government should include the instruments of the Constitutional Court for the control of constitutionality and legality as guarantees of the principle of the rule of the law.

- **Democratic procedure of establishing the Federal Constitution.** The bearers of constitutional power are the citizens of Serbia and Montenegro. In the original and residual sense the sovereignty belongs to them. They are also entitled to make a final decision, either directly or through their representatives, on the amendments to the Federal Constitution. Since the Republic Parliaments have a significant role in the procedure of establishing the Constitution, it is necessary that their decision be preceded by democratic elections. Democratic conventions in the republics also imply public debates, in which political will of the citizens and opinions of the experts are expressed. After the public debate, the newly formed Parliaments of Serbia and Montenegro should declare themselves for or against the ground plan of the Constitution. If it is accepted by the majority of the representatives, referendums are held in the republics. The ground plan is accepted provided that more than fifty percent of the voters in both republics decide in favor of it. The Constitution is proclaimed by Council of Republics of the Federal Parliament, after which elections for the Council of Citizens are held according to the regulations included in the new Constitution.

The basic principles stated here should fulfil two essential conditions: equality of the member republics and functionality of the federal state. The state union has no political purpose, unless both conditions are fulfilled. The degree in which these conditions are fulfilled can be observed and estimated only in the institutional mechanism of the new Constitution, which should operationalize the basic principles.

## ***Fundamental rights and freedoms***

### General approach

The fundamental rights of the citizens of the federation of Serbia and Montenegro must be inviolable, guaranteed by the Federal Constitution and equal throughout the whole country. The fundamental rights of the citizens of the federation must be in concordance with the Convention of the European Council on the protection of human rights and basic freedoms, as well as with the additional protocols to the Convention. The extent of protection of the basic rights of citizens of the federation cannot fall short of the one guaranteed by the aforesaid Convention, nor can the regulations on the fundamental rights of the citizens of the federation of Montenegro and Serbia be interpreted or applied in opposition to the terms and spirit of the Convention, in the institutions of the federal union and member republics.

The fundamental rights of the citizens are established by the Federal Constitution, and the regulations of the Constitution on the fundamental rights are directly applied. They do not need to be concretized in the laws, nor must the possible laws be in opposition to the constitutional regulations.

The fundamental rights of the citizens determine the scope of the influence of the Federal Government and simultaneously they are the source of concrete obligations for the state union and its member republics.

The fundamental rights of the citizens are guaranteed by the federation and simultaneously by its member republics, which are primarily responsible for the protection of the fundamental rights, whose standards are, according to the European criteria, set by the federal state.

The federal legal system will provide protection for the fundamental rights of a citizen, if such protection is not provided by the legal system of the member republic. The citizen of the federation will be entitled to start legal proceedings against the federation in the European Civil Rights Court, if the protection is not provided by the legal system of the federal state.

### Catalogue of the fundamental rights of the citizens

The fundamental civil rights of the citizens of the federation of Serbia and Montenegro must particularly include:

- 1) the right of life,
- 2) the right of human dignity,
- 3) the right of protection of physical integrity,
- 4) the right of personality and name,
- 5) the right of equal treatment by the law and fair trial,
- 6) the right of freedom of conscience and religion,
- 7) the right of freedom of thought, media and scientific research,

- 8) the right of peaceful rallying,
- 9) the right of forming associations,
- 10) the right of privacy of mail and communications,
- 11) the right of joining properties and inviolability of the private property,
- 12) the right of family and protection of children,
- 13) the right of education,
- 14) the right of inviolability of habitation,
- 15) social and economic rights,
- 16) the right of addressing the state institutions, participating in the administration of the federal state and efficient supervision of the authorities.

The fundamental rights of the citizens must not be limited neither by an act of the state union, nor by an act of a member republic, nor by an act of any of their organs, nor by an act of any individual. Only in the state of emergency or war, can certain of these fundamental constitutional rights (8, 10, 11, 13, 15) be suspended, only in principle and by a general act of the state union, and only until the termination of the state of emergency or war.

The fundamental rights of the citizens of the state union as included in the Constitution, present the least guaranteed degree of these rights. The state union, as well as the member republics, is required to extend the catalogue of the fundamental rights of the citizens.

#### Legal protection of the fundamental rights of the citizens

The fundamental rights of the citizens are protected by the regular courts of the member republics. In order to provide this protection, there must be a multi-stage legal proceedings.

Besides, the fundamental rights of the citizens can be protected by the Constitutional courts of the member republics.

The corpus of the fundamental rights of the citizens of the state union, as included in its Constitution, has the protection of the Federal High Court, Federal Constitutional Court, as well as the European Human Rights Court.

#### Protection of minority rights-rights of national and ethnic groups

Minorities enjoy a special protection of the state union and its member republics. The protection of minorities must be in concordance with the regulations of the Pact on the political and civil rights, the 1992 Declaration of UN and the 1995 European Council General convention on the protection of national minorities.

The subject of protection of minority rights is a collectivity. The organ of the protected collectivity is authorized to start the procedure for protection of rights, whether the right of the entire collectivity, its part, or an individual is violated.

Minority rights must particularly include:

1. The right of protection from assimilation,
2. The right of use of language,
3. The right of protection of the cultural identity,
4. The right of education,
5. The right of protection of the cultural heritage.

The member republics are responsible to the state union for protecting the minorities in practice. State union is authorized to warn the member republic about the problem of protection of minorities on its territory, and to demand the balancing of that protection with generally accepted and constitutionally guaranteed principles of minority protection. The chief of state can ask for the opinion of the Federal Constitution Court.

## ***Distribution of authority between the union and the members***

The constitutional starting-point for determining the functions of the state union is that they are consensually given by the republics to the federation and that they are being rationally performed, to the interest of both member republics and the federation as a whole. Many functions of common interest for both the republics and their citizens, which are under the jurisdiction of the member republics, can be performed in close cooperation of the institutions of the republics. For that kind of joint control, which will certainly include a great number of fields (energy, transportation, telecommunications, science, technological development, social policy, culture, ecology, internal security, etc.), there should be a constitutional recommendation on the direct cooperation of the republics. In this sense, there would be less fields of authority of the Federation, compared with the existing Federal Constitution (article 77), and they would be covered by federal organs or by federal and republic organs together.

### **Federal fields of authority would be:**

- **The fundamental rights and freedoms of the citizens, including the rights and protection of ethnic (minority) groups and communities;**
- **International relations and foreign policy;**
- **National defense;**
- **Bases of the economic system for protection of the common market.**

As it is obvious, the starting-point of this concept is the minimum authority of the federation, considering the fact that the modern federations are not characterized by the number of the functions but by the way they are performed. Starting from the liberal idea of the minimal state, the federation of Serbia and Montenegro will perform only those functions, without which the system of union could not be efficient. However, in distinction from confederate type of union, this federation (its institutions) will have the necessary functional autonomy in organizational, legal and financial fields.

The original authority of the federation is determined by the Constitution, which contains consent of the units for the aforesaid fields of authority to be transferred to the federal level. Also, all other possible fields of authority, which can be more efficiently performed on a federal level than in the member republics separately or in cooperation, can be transferred to the federal organs only with the consent of member republics. So, the federation does not have the possibility to expand its authority by itself (*implied powers*), but only based on the consent of the members.

This way of transferring the authority to the federation is similar to the confederate solution, although it is being used since the beginning in the European Community, which has, by all criteria, overgrown the level of confederate interstate arrangements. The classic distinction between the federation and confederation is based on the criterion on which level of government has the authority to distribute authority. If it is the members, then it is a confederation, and if the union has such an authority, then it is a federation (German theory of *Kompetenz-Kompetenz*). Our orientation to the first approach is not, however, the orientation to state union of Serbia and Montenegro as a confederation. Concerning the function, within its authority, the union will be based on

federal principles, and it will be, as it is already mentioned, a federal parliamentary republic. But we believe that the fundamental problems of the union should be solved with the mutual consent of the members.

When the particular proposal on the federal authority is concerned, besides the efficiency, this proposal is also governed by another reason. It is the strategic orientation of the state union of Serbia and Montenegro towards the European integration. Precisely in the aforesaid fields of federal authority –fundamental rights and minority protection, foreign policy and defense, common market with four freedoms (free trade, capital, labor and services) –this state union must gradually adjust its policy and legislature to the valid regulations of the European organizations, whether it is the European Council, OSCE, or European Community. It could not be performed unless the state union itself possesses an efficient system of decision-making in these fields.

Within its jurisdiction, the union would, through its organs and with the cooperation of the republic organs, establish and conduct the policy, pass and execute the federal laws, other regulations and general acts, and provide the proper constitutional and legal protection. In all the other fields, which would, according to the principle of supposition of authority being on the side of the members, be under the authority of the republics, the common interest would be realized in an interrepublic system of relations with the possible aid and assistance of the federal organs.

In order to ensure the maximum equality of the member republics, as well as the functionality of the federal state, the performing of federal authorities is defined as following:

- Principle decisions (laws and other decisions) would be made by the Federal Parliament in a bicameral procedure for every legal act or decision, by majority of votes of federal representatives in both Councils of the Parliament. Orientation towards the comparatively small number of jurisdictions of the state union, some of which would be mixed and some independent, stipulates that the efficient mechanism of decision-making in the Federal Parliament must exist. Therefore, only absolute majority is required in both Councils of the Parliament, without qualified majority for any issue within the federal authority (as opposed to the solution provided in the article 90, paragraph 2 and 3 of the present Constitution).
- A number of federal functions would be in the system of mixed jurisdictions, where the Federal Parliament establishes the bases of the system and the Parliaments of the Republics perform specific legal regulation of the matter in question. These federal decisions are made in the member republics through certain acts of the Republic Parliaments and the republic administrative organs, with possible aid and necessary control by the Federal Government and Federal Courts. These are the jurisdictions which should function according to this system of decision-making and executing: fundamental rights and freedoms of the citizens, property relations, tax system, banking system, commercial law, old-age benefits and insurance of property and person.
- The rest of the federal jurisdictions –foreign policy, civil defense, monetary system, contract law, equities and customs system – function according to the system of exclusive jurisdiction of the federal organs. When the executing of laws, regulations and general acts from this field is in question, the Federal Government can transfer its authority to executive and administrative bodies of the republic, providing them with its assistance and control.

- The Federal Constitution should include the possibility for the republics to participate independently in various fields of international cooperation (different regional economic, cultural and ecological integration) and enter into international agreements. The only restriction is that such forms of international cooperation are not made to the disadvantage of the other republic or the state union, on which subject the Federal Constitutional Court makes the final decision.

As it is obvious, the suggested concept of the distribution of authority aims at balancing the two levels of government (federal and republic), in the specific conditions of the two-part federation, in order to ensure the autonomy for both levels of government and constant cooperation in performing their tasks. The fact that the member republics are left with wider authority represents the contribution to the decentralization of the entire system of government and, simultaneously, establishes a practice new in our conditions, of direct horizontal linking the republic levels of government (on the Swiss model of *Konkordanzdemokratie* or the American model of *intergovernmental relations*). On the other hand, the republics, in the field of federal mixed jurisdictions, by the additional regulation of the federal regulation, concretize the federal legislature and through their executive and administrative organs apply the federal regulations. (This is also known to be the practice of Swiss and German federalism). Finally, in the field of exclusive authority of federal institutions, there is still a possibility of transferring the authority for executing the federal regulations from the federal to the republic organs.

In all three cases, the Constitution insists upon the responsibility of the republic institutions for the functioning of the state union, which excludes the possibility of outvoting one republic and strengthens the confidence in the federation. In this way we can avoid the system which makes it possible for one member to put a veto that would block the decision-making on the federal level, as it is the case with the suggested document of the Montenegrin Government on the redefining of the federation. Considering that this will be the first constitutional and democratic federation in this region, we believe that this model of distribution of authority, the most delicate issue of every federalism, provides a good foundation for a democratic and functional federation of Serbia and Montenegro.

As an addition to this concept of distribution of authority, there should also be a system of federal institutions that would be able to provide the functioning of the government on the level of state union.

## ***Economic system***

### Suppositions and principles

The suggestion for the distribution of economic authority in the union of Montenegro and Serbia will be based on two essential suppositions:

- that the liberal and democratic system will be established in the whole Yugoslavia, which means that the economic system will progressively aim at liberalization and creating of the real market economy. This will diminish the role of the state in the economic life, including the financial transactions, and that will reduce the tension both between the republics and within them,
- that the peoples of Serbia and Montenegro want to live in a free and prosperous union, which means that the political factors will not be a significant impediment to finding good solutions in the economic area. However, because of the bad experience during the last decade, we suggest the lower degree of the economic integration than the one we find the most favorable, because it is much better to start from the lower degree of integration and gradually increase it, if such interest is shown, than to insist upon the optimum immediately without paying attention to the public opinion (especially in Montenegro). Consequently, whenever we face a problem on whether to centralize a function or leave it to the republics, with equally strong arguments or with relatively low expenses, we will decide in the favor of the latter.

The basic principles of the union in the economic area should be:

- unlimited freedom of circulation of goods, services, production factors, foreign currency, gold, real estate etc. on the entire territory of the union, with the prices and conditions not being controlled by the state,
- creating of the real market economy, with the domination of the private property, competition and rule of the law as the main principles,
- opening to the world and entering the international institutions,
- efficient performing of the state functions, with respect towards the interests of the republics, individuals and their organizations, i.e. the principle of subsidiarity, which implies that the responsibility for the making and executing the decisions is transferred to the lowest instance of government where this can be successfully performed.

The economic theory does not approve the confederate system, unless it is the first step in creating a more closely connected federal union. The analysis of the efficiency of negotiating of the sovereign participants in the process of bringing state decisions, whether it is performed by the model of the Nobel-prize winner Ronald Coase, or on the basis of the theory of games, points out the inferiority, compared to the decision-making in parliamentary system of the federal type. An example of unsuccessful negotiation is SFRY, when many necessary economic decisions could not have been made as a result of the right of veto of every participant. The confederate concept may have the advantages of political nature as compared to the federal, but it is beyond the range of economic analysis.

In the event that an economic union cannot ensure efficient decision-making on the minimal common economic functions, there are two possibilities: this union should either cease to exist, or grow into a functional union. This is a consequence of the fact that such a union would frequently come into the crisis of decision-making and confrontations between the members, which would cause economic damage and annul potential advantages of being a part of the union.

The most important and best known economic argument in favor of the state unions is expanding the market, followed by significant profits from the scale economy, division of labor, and exchange based on comparative advantages. Unrestricted trade is certainly to the benefit of all and in the common interest, so it is necessary to find the way to ensure it and maximize the gain. This is particularly important for a small country, which unites with a much larger country (or group of countries), because the gain due the expansion of the market is much bigger to it than to its partners. Creating the economic union (or federal state) makes it impossible for the governments of the members to, through the regulation of the interstate trade, give preference to their citizens and companies to the disadvantage of the foreign citizens and companies, which would lead to the decreasing of the trade and losses for all the members.

The reason of the economy of the extent in the state functions (services) is an argument for the creation of the common states. For example, it is cheaper for the state members of the federation to have only one Ministry of Foreign Affairs, one Customs Administration, or one army, than to form these (and other) institutions separately.

Every government, influenced by its own ideas and the ideas of interested groups, inevitably aims at the monopoly of government and power, which endangers economic efficiency and brings damage. A good way to limit the monopoly and disperse the power is the existence of several governments on different levels, which would be competitive to a certain extent, and represent a limitation and control to each other. In the individual states, especially smaller ones, the interested groups gain influence over the executive and legislative power much easier than in federations, where the competition between numerous interested groups is stronger and therefore the influence of each of them is smaller. Consequentially, from the point of view of economic efficiency, federation is better than a smaller unitary state.

#### Common economic area

The economic union of Montenegro and Serbia can take different forms, since there are different kinds of economic integration. There are four basic types of the integration.

*Free trade zone:* there is no customs for the trade between the members, but every member has an independent trade policy towards the non-members.

*Customs union:* there is no customs for the trade between the members, and there is a common trade (customs) policy towards the non-members.

*Common market:* there are no restrictions for the trade between the members; there is a common trade policy towards the non-members and the freedom of circulation of production factors (labor and capital) between the members is guaranteed.

*Economic union (common economic area):* common market + common currency and monetary policy + harmonized tax policy + common fiscal policy.

The higher degree of economic integration, the bigger are the economic gains for the states members of the integration. A fuller integration is usually disturbed by other, mostly political factors.

Free market zones are inferior to the customs unions because the increase of the trade between the members is smaller. Therefore these zones are usually only the first step towards wider integration. Customs unions are frequent in the modern world. Their transformation into common market or economic union, as more efficient forms of integration, is determined by political factors.

There are sufficient reasons for the federation of Serbia and Montenegro to be based on the concept of economic union. These two republics have been a part of the economic union for eight decades, which created strong economic ties and habit of people to use goods and services from the other republic. The economic union is included in the Constitution of FRY and in the platform of the Montenegrin Government "*Bases for the new relations of Montenegro and Serbia*", which means that there is a general consent concerning this issue. The last but not the least, the economic union is, from the economic point of view, the best solution for the union of Montenegro and Serbia.

The essential characteristic of economic union and common market is the provision of free circulation of goods, services, labor and capital on the whole territory of the union. This freedom should be guaranteed by the Constitution, which would be a basis and a limitation for the legal regulations.

Numerous system laws influence the unity of the economic area. Besides the customs, monetary and fiscal legislature, we can mention company law, including banks and insurance, property law, stock markets, equities, old-age benefits etc. Comparative experience is various: for instance, in the European Community and the USA, company law is on the level of the national states, while, when the banking, stock markets and equities are concerned, the control in the European Community is on the national level, and in the USA on the federal level. A certain uniformity of the laws in the union of Serbia and Montenegro is necessary, whether concerning the civil rights and property of the citizens, who usually do not have the opportunity to get acquainted with the regulations of the other member, or concerning the protection of the common market. The common legislature of the federal level and level of the members is probably, in present conditions, the best solution concerning the company law, stock markets, property law and old-age benefits. The laws on the bases of the system would be passed on federal level, while on the level of the members, the regulations would be more detailed. Such a distribution of authority could ensure the unity of the market, and also enable the individual characteristics to be expressed, and even allow the competition between them, useful for the economic life, since it could lead to more favorable solutions in comparison with the centralized legislature. The equities law should be left to the federation, because of the fact that the equities are a delicate issue and are dealt with by individuals, and therefore the common regulations would help the citizens cope with it and help to avoid the errors made due to the unfamiliarity with the regulations in the other republic.

## Customs system

The minimal rational economic association of two states implies the customs union.

Customs system of the union of Serbia and Montenegro should be common. It is the only way to ensure the unity of the market and economic area.

Different customs policy of the members (higher or lower customs duties or policy of contingency) *a la* free trade zone, would lead to, through the right of free circulation of goods and services on the entire market, customs competition of the members and going round customs regulations in one member through the other member. These processes would lead to, either:

1. trade war between the members and possible disintegration of the common market, or,
2. creating common customs system.

The third possibility – constant voluntary cooperation between the governments of the members on balancing their customs policies – is only theoretical, because it would, for lack of obligation, bring inferior results too often. The alternative for the previously mentioned options is the imposing of the regulation on the origin of goods, i.e. to keep the customs control between the members and to allow duty-free trade only for the goods manufactured in the other member, and not in a third country, which requires complex administration and significantly decreases positive effects of removing the barriers for the trade.

Customs service must be common in order to execute customs policy in an equal manner and to avoid the loss of confidence between the members. Customs houses could be managed by the individuals from the member on whose territory the customs house is, but it would be good that in the beginning, until the confidence is established and until the rule of the law prevails, the manager and assistant manager of the customs house are from different member republics.

The union aims at being included in the World Trade Organization, which implies the reduction and standardizing of the customs duties, removing the non-customs barriers and general liberalization of foreign trade and foreign currency system.

## Monetary system

The union of Montenegro and Serbia should have a common currency, because they are areas connected by intensive trade, which had similar cyclic fluctuations, and between which there was a free circulation of the production factors (until recent events), and this fulfils the conditions of the Optimal currency area theory of the Nobel-prize winner Robert Mundell.

Common currency facilitates and instigates the trade on the common market. It is done in several ways:

- by avoiding greater fluctuations of the mutual trade and transfer of capital, as a result of the changes of the exchange-rates of the separate currencies of Serbia and Montenegro, appearing because of different monetary policies;
- by reduction of the costs of the transactions through avoiding losses (commission) in the process of money exchange and the costs of insurance against the risk of exchange-rate fluctuations;

- by simplification of economic calculation and creating the more predictable ground for business decisions as a result of less risks;
- by a complete transparency of the prices on the entire market, because they are expressed in the same units in all the members.

The Central Bank should be independent and, above all, concentrated on keeping the prices stable, as the leading central banks of today. The other goals of economic policy could be realized only if they do not endanger the first goal.

The independence of the Central Bank from the government and politics in general is necessary in order to avoid subjecting monetary policy to the short-term political criteria of opportuneness, which may endanger the quality of monetary policy.

The Central Bank being dedicated to keeping the stability of the prices is necessary, lest the tasks of instigating economic development, reducing the unemployment or improving the business of companies and banks are assigned to it, which the monetary policy neither can, nor should do, so that it would not create the inflation.

The Central Bank should not be the last resort to the banking system, in order to avoid proinflationary financing. The Federal Ministry of Finances should avoid it also, so that the members would be allowed neither to be irresponsible towards the banks, nor to try to transfer the costs of such policy to the federal level. It could be the role of the Republic Ministry of Finances, for the banks on its territory, because only it can have the real, long-term funds at its disposal.

The Central bank should not be the last resort to the Federal Government. Federal Government, as all the other governments in FRY, should not have privileges on the monetary market, but to incur debts, if it is necessary, on the commercial market under usual conditions. Every government should have a strict budget limitation by disabling it to transfer its costs to someone else (the other level, Central Bank etc).

Monetary policy of the Central Bank should be run by the Monetary Board, consisting of independent respectful individuals. In its first mandate, the Monetary Board should consist of the equal number of experts from Montenegro and Serbia, in order to establish the trust of the members in the beginning.

The Central Bank would not run the monetary policy through selective crediting or other selective arrangements, but in the way common to the modern market economies (open market transactions, escont rates and compulsory reserves).

Later, after more detailed analyses, we should consider reforms of the monetary system, where we have as possibilities the currency board and the introduction of Euro. Both concepts have its advantages and disadvantages as compared with the classic system of the central bank. Therefore, in the bases of the constitutional reform of FRY specific monetary arrangements should not be included, as it was done in the platform "*Bases of new relations of Montenegro and Serbia*" with the currency board. (A few months later Montenegro itself abandoned the idea of the currency board and accepted the idea of introducing Euro).

## Fiscal system

The fiscal system of a country can be formed in very different ways, which is confirmed by the general experience. Some countries have oriented towards significant fiscal centralization, and the others towards decentralization. It is similar with the federations, only with a higher degree of decentralization. It is interesting that centralization is more expressed in the less developed than in the developed countries.

The fiscal system in Yugoslavia is traditionally highly decentralized, significantly more than it is suggested by the theory of fiscal federalism, only without being accompanied by the necessary instruments of coordination and harmonization. Such a fiscal system was constantly criticized, among others by the IMF, from the macroeconomic and distributive point of view. Namely, according to the theory of fiscal federalism, the following functions should be performed on the federal level: stabilization, redistribution, general public goods (defense and suchlike), functions that have wide extern effects, i.e. those which surpass the individual members. As for the revenues, those are pro-cyclic taxes, taxes with mobile base, re-distributive taxes and taxes on the base with uncertain regional belonging, i.e. corporation tax, income tax for the citizens, tax on the added value and customs duties.

However, the union of Montenegro and Serbia, as defined in this document, will not be a usual federation, but a decentralized, minimal federation. Therefore, the solutions will also be somewhat different from the usual principles of fiscal federalism.

The federal level will have its budget, from which the agreed functions will be financed (army, federal administration etc.). The federation would have limited functions, starting from the concept of minimal federation, and so the budget would be relatively small.

There would be no transferring of revenues between the members through the federal level, i.e. there would be no re-distributive function through the federal subsidy, if only for the reason that Serbia and Montenegro are equally developed countries, and therefore there is no need for the transfers of this kind. Besides, redistribution of revenues through federal arrangements causes significant resistance and endangers even very stable and mature federations, and it should be avoided in the case of Serbia and Montenegro.

The federation revenues should come from the customs duties and the newly imposed tax on the added value, which would take the place of the existing excise tax, bearing in mind that the tax on the added value is a formal condition for a country for joining the European Community. Customs duties by their nature belong to the federal level, since it cannot be known in which member republic will the imported merchandise reach the consumers. Strong reasons of the administrative nature suggest leaving the added value tax on the federal level. The existence of two republic taxes on the added value would cause serious administrative problems, since this tax is collected in every phase of the processing. If the system of the added value taxes is not common, then it is necessary for the reproductive goods to have foreign trade treatment in the inter-republic trade, which would lead to serious administrative complications and annul the common market. For the same reasons –administrative problems, high costs and negative influence on the common market - the European Committee suggested the introduction of the common VAT on the level of union. Therefore it is best for this tax to be federal in the federation of Serbia and Montenegro.

If the revenues from the customs duties and the added value tax would exceed the amount necessary for financing the federal budget, two solutions are possible. First, to reduce the tax rates; second, to transfer the extra revenue to the members, according to the amount of the collected added value tax on their territories.

The right to incur debts, in the state and abroad, would have both the federation and the members. In many federations, the federal level controls the debts of other levels in order to prevent them from running into excessive debt, but it would not be suitable for the suggested character of the union of Serbia and Montenegro.

The federation would not be responsible for the finances of the members, and therefore it would not intervene (nor it could do so) when the fiscal systems of the members get into difficulties because of excessive debts, deficit and suchlike. It would discourage the excessive use of finances in the member republics, followed by running into debts, which would possibly be done with the intention to transfer their expenditures to the level of federation, as it is common practice among members of federation.

The member republics would organize the financing of all the needs that are not transferred to the federation, as well as the sources for these finances. As for the expenditures, they would be expenditures on social insurance, education, science, judiciary, police, administration etc. When revenues are concerned, the member republics would organize all kinds of revenues, except for those belonging to the federation.

Stabilization aspect of the fiscal policy in the federation would have modest influence, since the budget of the federation would be relatively small, the taxes important for the policy of stabilization (corporation tax, income tax) would belong to the member republics, debts would not be controlled by the federation, and there would be no stabilization transfers from the federation to the members. Therefore, as a minimum, the limits of the deficit financing of the budget of the federation and the members should be set in advance, as it is done in the European Community. In this way, a serious economic destabilization of the state as a result of an expansive fiscal policy would not be possible. Additional elements of the stabilization policy might be established by reaching an agreement, if the need arises.

Free organization of the taxes (and contributions) by the member republics has the advantage of understanding local particularities of the economic and social condition. However, it can lead to important inefficiencies: the members may discriminate citizens and companies from the other member; the members may have the policy of tax competition; there may be the unwanted double taxation of certain incomes and no taxation whatsoever of other incomes, etc. More importantly, different tax rates on the territorial principle make the business conditions different also, and in that way endanger the common market and represent an impediment to efficient allocation of resources.

Because of that, harmonization of the taxes is necessary, in order to protect the common market, avoid the mentioned inefficiencies, reduce administrative expenditures and increase the transparency of the taxes.

The bases of the tax system would be defined on the federal level, as it is suggested in the platform *"Bases of new relations between Montenegro and Serbia"*, in order to ensure transparency and avoid the "holes" in the taxation. Also, the bases of the tax policy would be harmonized according to the agreement between the Governments of the member republics. Such a harmonization could keep the advantages of the decentralization and avoid its potential weaknesses. The failure in harmonizing the tax

system and policy by an agreement could lead to harmonization through tax competition. However, the concept of competitive federalism, known in theory for a long time, is not the most favorable solution for the countries in transition.

Infrastructures of the common interest should be financed based on the agreement between the member republics.

## ***State institutions***

The government system of the state union will be based on the principle of distribution of power. The bicameral Federal Parliament will have the legislative power, President of the Republic and Federal Government will have the executive power, and the courts (Federal High Court and Federal Constitutional Court) will represent the judicature. It is already mentioned (in the section about the federal distribution of authority) that certain federal laws (from the mixed jurisdiction fields) are implemented by the republic organs, which can also be authorized by the Federal Government to implement certain laws from the exclusive jurisdiction of the federation. In that way, the republic Governments are being included in the federal system of government.

In the general concept of distribution of authority, it is important to establish efficient mechanisms of mutual cooperation and control of the constitutional authorities, as well as constant instruments of responsibility for every one of them. In the state union of two members, as it is seen in modern federations, this is a delicate issue and it must be given particular attention in the Constitution.

### Federal Parliament

Federal Parliament is the main representative and legislative body of the state union. It passes laws and other federal decisions, controls the federal budget and final bill, decides on the union entering the international organizations, ratifies the international treaties, controls the work of the Federal Government and other federal organs, elects and removes from office the President of the Republic and the president of Federal Government, Supreme Court judges, the Federal District Attorney and the Governor of the National Bank, declares state of war or state of emergency.

Federal Parliament consists of two councils: the Council of Republics and the Council of Citizens (as in the present Constitution of FRY). Decisions are made in a bicameral procedure, with the majority of votes of the representatives in each of the councils. The mandate of representatives in both councils is four years. Considering the manner of electing and structure of the parliamentary councils, we should keep the solutions of the existing Constitution.

The representatives of the Council of Citizens are elected from the electorate of 65000 voters on parliamentary elections in the republics, based on common federal election law. This principle is corrected by constitutional clause on at least thirty representatives from a republic in this council (article 80, paragraph 2 of the present Constitution), which practically refers only to Montenegro.

This is the constitutional solution that provoked serious public and expert debates, since it endangers the constitutional principle on the equality of the citizens in the federation. If the election of the representative for the Council of Citizens is based on 14000 voters in Montenegro, the result is that the vote of a Montenegrin voter is worth almost five times more than the vote of a voter from Serbia. Bearing this disproportion in mind, we still keep the same solution, because it, firstly, makes the parliamentary life more dynamic and, secondly, facilitates the choosing of the Federal Government and its work.

The representatives in this council have an independent mandate and, no matter which unit they were elected in, they represent the interests of the federation as a whole.

The representatives in the Council of Republics (twenty from each republic) represent the interest of the republics in the Federal Parliament. They, however, are not tied by the imperative mandate, but they act independently according to the recommendations of the Republic Parliaments. This suggestion is motivated by the same reasons as the suggestion of the minimum number of the representatives from one republic in the Council of Citizens: it makes the parliamentary life more dynamic, in this case by preventing veto of the representatives of one republic in this council. Its representatives are elected based on the appropriate republic election laws.

Since this council consists of the representatives of two republics, the usual procedure of the representatives being chosen by the Republic Parliaments is politically justified. But, we should introduce two constitutional corrections of the usual practice. First, we should introduce the constitutional recommendation that the structure of every republic delegation is proportional to the structure of the Republic Parliament. If the member republics would accept it, we could avoid the political manipulations concerning the structure of the delegations, which happened in Serbia 1993 and in Montenegro 1998. Second, we should introduce the constitutional regulation on the permanent mandate and acting of the republic delegation in this council for the period of four years. In this way we could avoid the blockage of the entire parliament (since it makes decisions in a bicameral procedure), which could ensue as a result of snap elections in some of the members. (It has already happened after the snap elections for the Serbian Parliament in 1992, when, because of the changes in the Serbian law on the election of representatives in the Council of Republics, the delegation was not formed in time, and so the Council of Republics did not function for several months).

Because of the bicameral manner of decision making in the Federal Parliament, the federal legislative procedure is a *process of joint decision making*. If the decision is not made because of the opposition of one of the parliamentary councils, the procedure of decision making is repeated after a year's time, and the existing law is being implemented during that period. If the process of decision making should fail on the same proposal (the propounder may change the proposal in the meantime), after a year, the Federal Parliament is dissolved and within sixty days the new elections are held.

The Councils of the Federal Parliament have their president and vice-president. The president and vice-president of the Council of Republics are elected from the republic delegations and they change offices with each other after two years. The president and the vice-president of the Council of Citizens are chosen by lot among the candidates proposed by the representative clubs in this council. Their mandate lasts four years.

The Federal Parliament can be dissolved by the President of the Republic in case the Federal Parliament is unable to constructively vote down the Federal Government.

The Federal Parliament has its commissions and boards. One of the reasons for the constitutional regulation on the minimum number of representatives in the Council of Citizens from a republic (Montenegro) is the adequate participation of the representatives of this council in the work of parliamentary commissions and boards. In their work, the commissions and boards must consult the Federal Government and Republic Parliaments. The initiators of the legislature in Federal Parliament are Federal Government, federal representatives from the both councils, and the Governor of the Central Bank in the field of monetary policy.

The work and authority of the Federal Parliament can be taken over by the Federal Government only in case of war or emergency. During that period, the Government passes the acts that have legal power, and which become invalid after the termination of the state of war or emergency.

## President of the Republic

President of the Republic is a person of undivided public reputation in the entire country. In the country, he acts as a politically neutral authority (*pouvoir neutre*), which is the best recommendation for representing the country abroad. Therefore, there should be a constitutional recommendation that the President of the Republic should not be a member of any party. It is understandable that, while holding this office, he/she cannot hold any other public office or perform professional duty.

The constitutional role and duties of the President of the Republic should be similar to those defined in the present Constitution. He signs federal laws and ratification instruments for the international treaties, proposes the mandator of the Federal Government, the judges of the Constitutional and High Court, Federal Prosecutor and the Governor of the Central Bank to the Federal Parliament. He schedules the elections for the Federal Parliament and dissolves it in case of failure to constructively vote down the Federal Government. He appoints and acquits the ambassadors and keeps diplomatic communication with foreign countries. As opposed to the present Constitution, where there is no such concept, for all the acts of the President of the Republic the signature of the President of the Federal Government or the Minister of the department in question is necessary. The exception is the appointing of the Federal Premier and the dissolving of the Federal Parliament.

The President of the Republic is the commander of the Army in war and peace, according to decisions of the Supreme Defense Council. The members of this Council are, besides the President of the Republic, presidents of the member republics. The President of the Republic presides over this Council and decisions are made by majority of votes.

The President of the Republic is elected by the Federal Parliament by the majority of the representatives' votes in each of the Councils, for the period of five years. The president can only have one term of office. The presidential candidate is nominated by the representative clubs of the Federal Parliament, consulting the Presidents of the member republics and the Presidents of the Parliaments of the member republics.

The Federal Parliament can suggest the impeachment of the president in case that the majority of the representatives in each of the councils think that the President has violated the Federal Constitution. In that case, a parliamentary council starts the proceedings to estimate the actions of the President of the Republic before the Federal Constitutional Court, which makes the final decision on whether he violated the Constitution or not. This is a solution from the Constitution of Montenegro (art. 87, par.2 and 3), which is better than the solution included in the Federal Constitution (art. 97, par. 7). It prevents the discretion of the Parliament concerning the President of the Republic, and it concentrates on the legal side of his responsibility, for which only the opinion of the Court is relevant.

It is recommended that the President of the Republic and the President of the Federal Government be not from the same republic, except in case of unintentional periodical overlapping of mandates because of the different length of the term of office.

## Federal Government

The Federal Government is the major institution of the executive power in the system of distribution of authority, although the concept of executive power represented here implies, on one hand, bicephalous executive power on the federal level (Government and President of the Republic as the bearers), and, on the other hand, cooperation in implementation of the federal laws and other decisions, between the Federal and Republic Governments. These two features of the federal executive power, however, in no way lessen the authority and the central position of the Federal Government in its constitutional position and the obligations that ensue. Moreover, we should keep the solutions contained in the present Constitution for their rationality. The problem is that, both in former and present practice of the executive power, the main role was unconstitutionally held by other political factors.

The Federal Government should be organized on the chancellor model, similar to its present constitutional position. The Federal Government appoints and acquits the President of the Government, as its mandator, on the suggestion of the President of the Republic. The mandator is authorized to form the Government and he is responsible for its functioning. His acquittal or resignation obligates the whole Government to resign. As a rule, the President of the Government is nominated by the party or the coalition that had the greatest number of votes in federal elections in any of the republics. To provide the parliamentary majority for the Government and, in that way, its stability, it is supposed that the inter-republic coalitions will take part in the federal elections for the Council of Citizens. This is especially important when the parties from Montenegro nominate the mandator, because the support of representatives from Serbia to the Government then becomes decisive.

All the members of the Federal Government are chosen solely by the mandator, which means that, in his choice, he is not governed by the republic criteria. His duty is only to choose the Deputy-Ministers of the Departments from the different republic than the Minister's. The inauguration of the Ministers is performed in both Councils of the Parliament, while for their acquittal, the majority in one of the Councils is necessary.

The Government organizes its work by itself and brings decision within its jurisdiction, starting from the principle of collegiality and departments. Bearing in mind the number of federal fields of jurisdiction, the Federal Government will have five members. These are the Prime Minister and the Ministers of Justice, Defense, Foreign Affairs and Finances.

The main duty of the Federal Government is to establish and lead the domestic and foreign policy, to suggest and implement federal laws and other decisions. In the process of performing its functions, it must cooperate with the republic institutions of the executive power. This is a new solution compared to the dual system of execution implied by the present constitutional system (on the contrary, the practice is various; while the federation functioned, the republic executive organs, mostly in Serbia, passed laws on the matters under federal authority). When the executing of the federal regulations from the field of federal authority is in the question, the Federal Government itself passes the administrative acts (regulations, decisions and other sub-legal acts),

and through its bodies performs the adequate administrative functions. In case it transfers some of these functions to the republic executive organs, its duty is to control the manner of execution and assist them if necessary. The Federal Government is also obligated to supervise and control the implementation of the federal regulations from the field of mixed jurisdictions, for which the executive and administrative organs of the republics are constitutionally responsible. In conducting the foreign affairs, the Federal Government must consult with the Republic Governments.

## Legal system

The member republics are responsible for the implementation of the laws of the state union. They are obliged to ensure three levels in the process of decision making in their legal systems.

The legal organs of the union of Montenegro and Serbia are Federal High Court and the Federal Constitutional Court.

### *Federal High Court*

Federal High Court decides on:

1. extraordinary legal means against the decision of the Republic Court, when the issue is the implementation of federal laws,
2. extraordinary legal means against the decision of the Republic Court, if this decision violates the fundamental civil rights,
3. the legality of the final administrative act of the state union,
4. the legal proceedings concerning property of the federation and the member republics,
5. the legal proceedings concerning elections.

The judges of the Federal High Court are chosen by the Federal Parliament, on the suggestion of the President of the Republic, and with consent of the Judicial Council, which consists of: three delegates of the Council of Republics from each member republic, two Judges of the Supreme Court from each member republic, the Public Prosecutors of each member republic and one lawyer from each member republic of the federation. The Judicial Council is presided over by the President of the Republic, but without the right to vote. The President of the Federal High Court is the oldest judge of that Court.

### *Federal Constitutional Court*

The Federal Constitutional Court decides on:

1. conformity of the constitutional regulations of the member republic with the Constitution of the federation of Montenegro and Serbia,

2. conformity of the laws of the federation with the Constitution of the federation,
3. conformity of the general acts of the federal organs with the Constitution of the federation,
4. conformity of the republic laws with the Constitution of federation,
5. conflict of authority between the organs of the member republics and organs of the federation, and also between the military and civil organs,
6. the constitutional complaint on the violations of the fundamental civil rights, done by an individual act or action of an organ, either of the federation, or the member republic. The constitutional complaint can be made by the citizen of the federation only when all legal means for the protection of his rights are exhausted, both in the federal and republic institutions,
7. conformity of the act of a political party or public association with the Constitution or a law of the federation. If the Court determines the existence of the conflict, it can prohibit the party or association in question, i.e. annul the unconstitutional or illegal regulation,
8. the responsibility of the President of the Republic for violating the Constitution of the federation,
9. the general issue of minority protection.

The procedure in the Federal Constitutional Court can be initiated by: the citizen whose right is violated (6), the Minister of Justice of the member republic or the Minister of Justice of the federation or the Public Prosecutor of the federation (7), the Federal Government, the Government of the member republic or ten members of the republic representative body or ten representatives of the Council of Republics (1-4), the President of the Supreme Court of the member republic or the President of the High Court and of the Government of the member republic or the Federal Government (5), Federal Parliament (8), and the President of the Republic (9).

The Federal Constitutional Court has eight judges. The Council of Republics and the Council of Citizens choose four judges each, on the suggestion of the President of the Republic, and with the consent of the Judicial Council. There must be four judges from the each member republic. The term of office of the judge is eight years. Every fourth year half of the judges are changed. The President of the Constitutional Court is the oldest judge of that Court.

The Judges of the Federal Constitutional Court must possess the degree at the Faculty of Law, the Judicial Exam, at least fifteen years experience and high reputation in the legal profession.

#### Dislocation of the federal institutions

The capital of the federation will supposedly be Belgrade. However, it does not mean that all federal institutions will be concentrated in Belgrade, as it was the case up until now. Some of them will be located in some of the cities of Montenegro. Dislocation of the federal institutions is a common practice in federations and it has symbolic meaning. For the federation with only two federal units this issue may be even more significant than in other modern federations.

## Balancing of power and the issue of responsibility

The system of government in the federation must be balanced both on vertical and horizontal plain. The manner of distribution of authority between the members and the federation, as well as rights and obligations of the cooperation between the federal and republic organs in the executive and the judicial area, which are suggested here, guarantee that the relations in the federation – between the republics, and between the republics and the federation – will be both functional and balanced. Concerning the mutual cooperation, control and appropriate balance between the federal organs themselves, the most important is the constitutional issue of responsibility.

The Constitution should establish certain mechanisms and instruments that will guarantee the responsibility of all constitutional power-bearers.

The Federal Parliament is elected by the citizens of the federation and by Republic Parliaments. It is dissolved only in two cases: first, if it is not able to approve the proposal of the law in both Councils, and second, if it is not able to vote down the Federal Government.

The President of the Republic is chosen by the Federal Parliament, but the Parliament can only suggest his impeachment and start the legal proceedings. The final decision is brought by the Federal Constitutional Court because this parliamentary suggestion is valid only when the President of the Republic has violated the Constitution. For his acts, the Federal Government (the President and the members) accepts the joint responsibility.

Finally, the most delicate issue is the responsibility of the Federal Government, because it holds the most operative state affairs and, potentially, the greatest political power, especially in a chancellor system suggested here. The Federal Parliament chooses and acquits the Federal Government through the mandator, and on proposal of the President of the Republic. The President of the Government is responsible before the Federal Parliament for the work of Federal Government and the members of the Federal Government are responsible to him. The President and the members of the Government must answer to the questions of the representatives within the previously appointed time (*question time*). In every parliamentary council minimum twenty representatives can challenge the Federal Government and, after the debate, vote it down. In order to acquit the Federal Government, it is necessary that it be voted down in one of the Councils. The question of trust can be started by the President of the Federal Government also, and the Federal Parliament decides upon it in the same way as when the question is started by the Federal Parliament itself (art.103, par.3 and 4).

As opposed to the existing constitutional solutions, both of these cases are constructive, which means that the Federal Parliament must have the alternative suggestion for the mandator of the Federal Government in advance. If this condition is not fulfilled, the Federal Parliament can be dissolved by an act of the President of the Republic and the new elections are held in sixty days. In that way the question of responsibility of the Federal Parliament itself is opened.

The Constitution should also regulate interpellation, as a powerful means of parliamentary control of the Government, which does not exist in the present Constitution, and it is not well regulated in the operating procedures of the Parliamentary

Councils. The issue of interpellation is started by certain number of representatives in any of the councils, after which the general debate ensues. In case the Government gives an unsatisfying answer, the representatives can initiate voting down the Federal Government.

#### Amendments to the Federal Constitution

Since the final decision on the establishing of the Federal Constitution is made by the citizens of the republics, they should also have the final word considering the amendments of the Constitution, partially or on the whole. Since we suggest the referendums of the citizens in both republics, the procedure is simpler than the solution in the present Constitution. The proposal on the amendment can be put forward by the voters themselves (100,000), at least thirty representatives in the Council of Citizens, at least twenty representatives in the Council of Republics and the Federal Government (art. 139, par. 1 of the Constitution of FRY). The proposal must be accepted by the majority of representatives in each of the councils of the Federal Parliament. On the referendum the majority of voters in both republics should vote in favor of the amendments, the referendum being valid if more than 50% of the entire electorate in the republics vote. In this way the final decision on the amendment of the highest act of the state union is left to the only bearers of sovereignty, the citizens of the member republics.

## **Center for Liberal-Democratic Studies**

Belgrade-Smederevska Palanka, FR Yugoslavia

The Center for Liberal-Democratic Studies (CLDS) is a nonparty, non-governmental and non-profit think tank institution.

The CLDS was founded to promote:

- individual liberty
- free market economy and economic development
- the rule of law
- responsible and limited government
- democracy

To achieve these goals activities of the CLDS are oriented toward:

- reforms of the political system
- economic transition
- building civil society
- cooperation between individuals, local communities, and states
- protection of human and minority rights
- education of citizens
- research and publishing of the liberal thought

The main lines of activity are:

- research
- influencing public opinion
- education

### Current Projects

Establishing Labor Market

Corruption in Serbia

Freedom and Development

Parliamentary Control of the Federal Government

Economy and Democracy: The Public Choice Approach

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