

**Assemblee rappresentative,
autonomie territoriali,
culture politiche**

**Representative Assemblies,
Territorial Autonomies,
Political Cultures**

Studies Presented to the International Commission
for the History of Representative and Parliamentary Institutions

Volume LXXXIX

A cura di
Annamari Nieddu e Francesco Soddu

edes

EDITRICE DEMOCRATICA SARDA

Kommunalpolitik vor dem Jahr 1914 am Beispiel Mährens, Documenta Pragensia XIV, Prag 1997, S. 73 - 93.

³ Vgl: Jiří Kořalka, Evropský význam Prahy jako metropole národa bez státu (Die Bedeutung Prags als Metropole einer Nation ohne Staat) in: Praha - Čechy - Evropa (Prag - Böhmen - Europa) 110 Jahre kulturelle, wirtschaftliche und politische Metropole Mitteleuropas. Publikation zur Ausstellung, Prag 2003, S. 88 - 9.

Dalibor Čepulo

Croatian Autonomy and Ministerial Impeachment from 1868 to 1918: Model and Reality¹

1. Introduction

Ministerial impeachment, i.e. the formal procedure by which a minister is charged with unlawful activity in his official capacity, and can be sanctioned by removal from office, was considered one of the basic constitutional institutions in continental European countries during the 19th century. Impeachment was seen as an instrument through which representative diets could control ministers, who were appointed by and subjected to the king, and safeguarded his interests – political responsibility of ministers at that time was unknown or, in a very few countries, still in an early formative phase. Impeachment was considered a compromise device through which the bourgeoisie, who had reached a balance with the aristocracy as represented in the diets, could restrain the power of the king's governments without a radical turnover of the political system. In fact, it was a conservative-liberal solution that was particularly suitable for countries with weak diets that could hardly remove ministers from office on the basis of bad governance. Because of this the introduction of impeachment became one of the principal demands of liberal movements in continental Europe, inspired as they were by English parliamentarianism, as well as by the French revolutionary model of impeachment of 1791. The political breakthrough of liberal ideas resulted in the introduction of constitutions, in a number of countries, which usually provided for the principle of ministerial responsibility, which at that time implied responsibility for violations of law. The institutionalisation of impeachment particularly flourished in the 1860s and 1870s.² However, impeachment was not considered simply as an opportunity for constitutionally based repression. With the exception of revolutionary France, it played the role rather of a value-oriented, symbolic institution with *a priori* effect, which saw parliament with a middle class majority as the source of political power and sovereignty, and as a check to the king's power. In most countries, impeachment was not applied in practice at all or it was applied only exceptionally.³

In Croatia-Slavonia, the legal responsibility of the *Ban* (the head of the executive) to the Diet (the *Sabor*) was proclaimed in 1868 and regulated in 1874. But in Croatia-Slavonia, impeachment appeared in the specific structural and political context that was primarily

determined by the autonomous position of that territory in the Kingdom of Hungary. Because of this, the form and the role of impeachment in Croatia-Slavonia had specific and complex features. An analysis of that institution in the context of historical reality can shed light on the functioning of the autonomous Croatian political system, as well as complement an understanding of similar political systems, and the institution of impeachment in general.

2. *Croatian autonomy, the structure of power, and demands for responsible government, to 1868*

Croatian political identity dates back to the emergence of the principality in the 9th century which became the Kingdom of Croatia in the 10th century. At the beginning of the 12th century, the empty Croatian throne was occupied by the Hungarian Arpád dynasty after the compromise reached between the new king and the Croatian aristocracy. Croatia preserved its own aristocracy and institutions and was ruled as a distinct territory from Hungary. The institutional basis of Croatian autonomy was comprised of the Ban, the highest executive official and deputy to the king, and the legislative Sabor. A Croatian delegation participated in the Hungarian Diet, and the laws enacted there were enforceable in Croatia and Slavonia, unless they had been vetoed by the delegation.⁴

The medieval Croatian kingdom consisted of the regions of Dalmatia, Croatia and Slavonia, but the continuity of autonomous institutions was preserved only in the single administrative area of the Kingdoms of Croatia and Slavonia; the south coastal region of Dalmatia was annexed by Venice at the beginning of the 15th century, and from 1797 to 1918 was part of Austria.⁵ In the nation-building process of the 19th century the denomination Croatia-Slavonia (as well as Croatia-Slavonia-Dalmatia) interchanged with the denomination Croatia.⁶

The Croatian-Hungarian union, which for centuries was based on constitutional harmony and feudal solidarity, developed into competing national tensions in the first half of the 19th century. Hungary attempted to degrade an already diminished Croatian-Slavonian autonomy, which was seen as a challenge to the unity of the Hungarian state. The Croatian national movement defended existing traditional and legitimate rights, but also looked to building a more complete Croatian political independence on modern principles. Because of this, one of the principal demands of the Croatian national movement was the establishment of a Croatian (autonomous) government. This demand appeared most explicitly in the political programme of 1832, and since then continued to be one of the central goals of the national movement.⁷ However, it was

probably just before 1848 that the demand for *responsible* government appeared.⁸ The most probable reason for this discrepancy was the novelty of the principle of 'responsible government' at that time; another reason might be the concentration on establishing an autonomous government in the first place, while demand for its control might seem less important and perhaps too provocative.

The Hungarian-Croatian disputes culminated in March 1848 when the Hungarian Diet unilaterally reduced Croatian-Slavonian power; Ban Jelačić and the Sabor reacted by proclaiming a break with all constitutional bonds with Hungary. The petition of rights of the Croatian national movement from March 1848 explicitly demanded the introduction of a government accountable to the Sabor.⁹ In 1849, the Sabor's legislative committee drafted the law on the State council which provided for ministerial impeachment and the collective responsibility of the government, following the model of the Hungarian law of 1848,¹⁰ but that draft was not enacted because the Sabor, which had been dissolved in 1848, was not convened again.

After the crush of the Hungarian revolution in 1849, a centralised system was established in the whole Monarchy; both Hungary and Croatia-Slavonia were turned into imperial 'crown-lands' and administered from Vienna. After the end of Bach's absolutism in 1860, Croatian institutions were partly restored (the Sabor and the counties) but the territory continued to be ruled by central government from Vienna. The short-lasting Sabor of 1861 and the Sabor of 1865-67, both dissolved because for political reasons, demanded the establishment of a Croatian-Slavonian government accountable to the Sabor, but the King ignored both demands.¹¹

The provisory constitutionalism ended with the adoption of the Austrian-Hungarian Compromise of 1867, which divided the Monarchy into two halves. The sub-dual Croatian-Hungarian Compromise that followed set up a stable basis for Croatian autonomy in the framework of the Hungarian state.

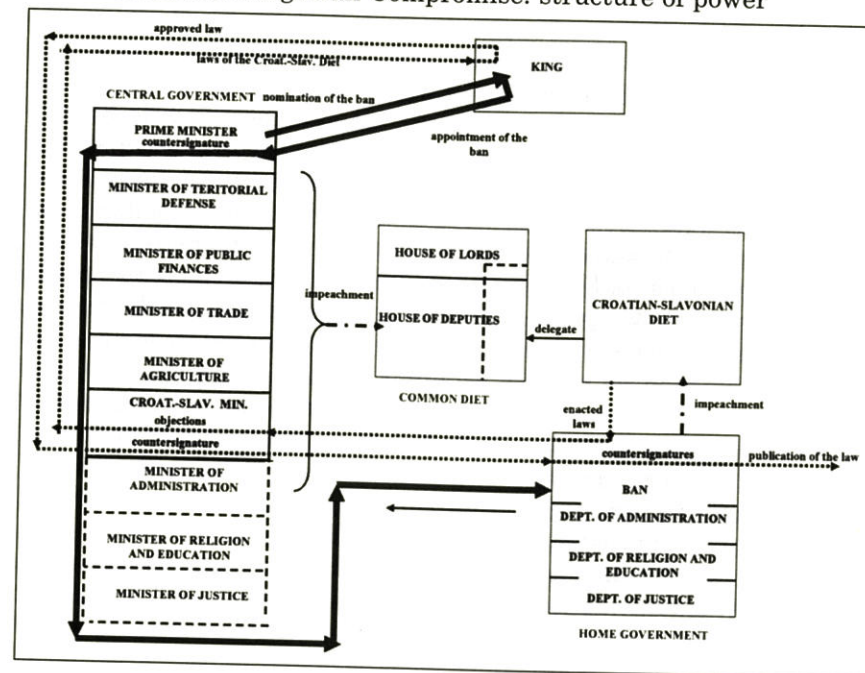
3. *The Croatian-Hungarian Compromise of 1868 and government in Croatia-Slavonia*

The Croatian-Hungarian Compromise was concluded between the Hungarian Diet and the Sabor, with the majority of the pro-Hungarian Unionist Party supported by the government in Budapest. The opposition National Party withdrew from the Sabor, protesting against electoral law imposed by a king; it also opposed the Croatian-Hungarian Compromise as an unconstitutional act adopted by an unconstitutional Sabor which had been elected on the basis of unconstitutional law.

The Compromise delimited both common and autonomous competences, granting Croatia autonomy in governance and administration, religion and education, and a judiciary with its own legislature (the Sabor), Home government with the Ban accountable to the Sabor, and its own judiciary with a Supreme Court (established in 1862). The Common Diet and the Central Government were in fact a slightly modified version of the Hungarian Diet and the Hungarian Government. The structure and composition of these bodies, with only minor Croatian participation, granted unchecked Hungarian dominance.¹²

The main institutional mechanisms in favour of the Hungarian position were: a) the Ban was appointed by the king at the proposal and with the consent of the Hungarian Prime Minister; b) Croatian delegates participated in both chambers of the Common Diet, but they were an insignificant minority possessing only individual votes; c) the Croatian-Slavonian Minister charged with Croatian affairs was an ad hoc member of the Central Government responsible to the Common Diet and did not rely in any sense upon Croatian institutions; d) all public finances were defined as part of common competences, so the Sabor did not have any financial instruments; a quota of 45% of the taxes collected in Croatia-Slavonia was allotted to the Croatian-Slavonian budget; e) laws enacted in the Sabor were sent to the king by the Ban through the Croatian-Slavonian Minister (i.e. via Central Government) who could complain to the king that the Croatian laws breached common competences or violated common interests – in practice, the king always accepted the arguments of the stronger party i.e. of the Central Government, and withheld approval (sanction) of contested Croatian laws. Approved laws were countersigned by the Croatian-Slavonian Minister and by the Ban. A similar procedure existed regarding the pre-approval of draft laws, except that countersignatures were not needed – a procedure which was not regulated by the Compromise but by king's order, and one which was therefore not transparent to the public. Because of the possibility of Hungarian influence, the Croatian government and the Sabor had to estimate in advance the likelihood of successfully enacting, or even proposing, an autonomous law.¹³ In addition to this, the political situation in Croatia-Slavonia and in Hungary also affected the political and legal actions of the relevant actors.

The Croatian-Hungarian Compromise: structure of power



Thus, although the Croatian-Hungarian Compromise granted extensive Croatian autonomy it also allowed indirect control by Budapest. However, in spite of such constraints, the Compromise set up a stable constitutional framework for Croatian-Slavonian autonomy, which was a precondition for building modern institutions.

The autonomous Home government was constituted in 1869. It consisted of three departments: for governance and administration, religion and education, and the judiciary. In 1914, the fourth department of national economy was created, derived from the department of governance and administration. It was a presidential government – the Ban was president of the government and the head of all departments, and only he countersigned the laws approved by the king, after they had been countersigned by the Croatian-Slavonian Minister in Budapest.¹⁴

The Law on the Establishment of Home Government of 1869 provided for the enactment of special laws to regulate the responsibility of the Ban and the department heads. However, the actual pro-Hungarian government formed by the Unionist Party avoided drafting such a law fearing that it could turn against the government.¹⁵ The law on the Ban's responsibility was drafted in 1871 by the, at that time, moderately Unionist government – but the Central Government neutralised the proposal by postponing its decision on the draft in the

process of pre-approval, probably fearing that such law could strengthen Croatian autonomy.¹⁶

4. Liberal reforms and the Law on Responsibility of the Ban of 1874

The public's dissatisfaction with the Compromise, and with the policy of the Unionist Party, resulted in the victory of the National Party at the polls in 1872. The National Party set a course for political compromise with the Central Government, and its member Ivan Mažuranić was appointed Ban. His government immediately initiated an extensive set of liberal reforms that regulated the responsibility of the Ban, granted judicial independence, rationalised the organisation of the judiciary and the administration, granted freedom of the press, and introduced modern criminal procedure and the jury trial for publishing offences, etc. These reforms were at first tolerated by the weak central government in Budapest, but were slowed down and blocked after the coming to power of the Hungarian liberal nationalist Kálmán Tisza, who ruled from 1875 to 1890. The Ban Mažuranić withdrew in 1880 faced with the impossibility of ruling.¹⁷

The Law on the Responsibility of the Ban and the Department Heads of the Autonomous Provincial Government was one of the first and the most important of the mentioned laws. The law was based upon the Austrian law on ministerial responsibility of 1867,¹⁸ with procedural modifications that were necessary because of the unicameral structure of the Sabor as distinct from the bicameral Austrian Parliament. In both laws, responsibility was based on a violation of law committed in office, but the scope of reasons for the indictment of the Ban was a lot narrower, and focused on the protection of Croatian autonomy and the Croatian-Hungarian union; in contrast to that, Austrian ministers could be indicted for any serious violation of law committed in office deliberately or by negligence. The position of the Ban was also protected by a more complicated procedure of indictment. In both cases the sanction was impeachment; however, if elements of penal responsibility existed then the indictment and verdict in Austria could also include reasons and sanctions from the Penal Code, whereas in Croatia-Slavonia the two responsibilities and procedures were strictly separated, which put the Ban in a de facto privileged position regarding the factual potential of his influence on the judges of competent courts.

The Ban could be indicted on the grounds of a deliberate, serious offence committed in his official capacity in the context of fundamental state law, and particularly of the Croatian-Hungarian Compromise, or law related thereto. He could also be indicted for deliberately causing severe damage, or deliberately causing severe danger to, the 'constitutional independence of the kingdom of Croatia and Slavonia in

the union with Hungary or to the union itself.¹⁹ Negligence was not indictable. Heads of departments of the Home Government were responsible to the Sabor only subsidiarily, i.e. they were responsible for the execution of the Ban's legal orders, unless they gave notice in writing of their objection. In relation to a breach of their official duties they were, in a disciplinary sense, responsible to the Ban.²⁰

Sanctions for the Ban were disciplinary only in a political sense – removal from office and a permanent bar from holding public office, or dismissal from office. As regards elements of criminal or civil liability, the Ban could be tried or sued only before a competent court, and in 1884 judicial independence from government was permanently suspended, broadening the space for the indirect influence of the government on the judiciary.²¹

The Ban's responsibility belonged to the type of responsibility processed before the High Court, with characteristic procedure and adjudication; this type of responsibility was characteristic for Central European and Balkan states.²² In the case of Croatia, as elsewhere, it comprised a combination of juridical and political elements.

Complicated procedure was based on the model of general penal procedure from the Austrian Penal Procedure Code of 1873; an adapted Croatian version was enacted in the Sabor in 1875.²³ The procedure began in the Sabor with the initiative of 20 deputies to be passed by a majority of votes; it continued with the preparation of the indictment, and with the decision on indictment to be passed with a two-thirds majority of all deputies.

The procedure then continued before the special Court of the Kingdoms formed by the Sabor at the beginning of each new session; its only and exclusive jurisdiction was to decide on the Ban's responsibility. The court was a considerably modified version of the Austrian *Staatsgerichtshof*,²⁴ adapted to meet specific features of the Croatian political system. The broader composition of the court consisted of the 12 highest judges of the competent courts (judges of the Table of Seven, i.e. the Supreme Court; presidents of the Ban's Table, i.e. the Higher Court; and the county courts in the two largest towns of Zagreb and Osijek) and 12 citizens 'skilled in law' who were not deputies in the Sabor. The senate in each particular case consisted of at least 12 members equally representing both mentioned groups (judges and laymen) selected by the free disposition of the parties or by lot. The main trial was oral and public, the Ban could have a solicitor, adversarial elements were more stressed in the procedure, and the judgment was based on the free evaluation of evidence. The commission of three judges prepared the case in no longer than six months, during which time the Ban was obliged to halt his official activities. During that time the Sabor could cancel the indictment with a two-thirds ma-

majority of all deputies. The senate passed verdict with a two-thirds majority of judges' votes (at least 10 judges had to be present in each phase of the process). Appeal was not possible but the king could 'rehabilitate' an indicted Ban with the consent of the Sabor.²⁵

As regards the legal nature of the Ban's responsibility, it could be said to have had elements of disciplinary responsibility regarding the nature of sanctions, criminal responsibility regarding procedure, constitutional responsibility regarding the nature of protected values and bodies participating in the procedure, as well as a political dimension regarding the political implications of the indictment.²⁶

Parliamentary debate and reactions in the press of the time showed that the reformers were aware that, in reality, it was not be easy to implement such law. But they insisted on the symbolic and moral value of the law, whose main purpose was not repression *a posteriori* but effectiveness *a priori*. They insisted that checks in proceedings and the complicated procedure were necessary in order to filter superficial and politically motivated initiatives, and decisions that could trigger a constitutional crisis or block the work of government.²⁷ The Croatian press greeted the law by stressing its symbolic and moral-political characteristics, which were important for strengthening autonomy, but it also expressed disappointment regarding the narrow scope of the Ban's responsibility and the merely administrative, rather than political, position of the heads of departments.²⁸

A small liberal-democratic opposition in the Sabor criticised the law as useless and impossible to implement in the legal and political framework set down by the Croatian-Hungarian Compromise. They alleged that the Ban would remain politically dependent on Central Government, and that he would maintain a strong influence on political life in Croatia and on deputies in the Sabor – whose two-thirds majority was needed for his indictment.²⁹ On the other hand, the Hungarian press expressed the fear that Croats would implement the law on responsibility of the Ban in a way that would endanger the unity of the Hungarian state³⁰, while the Austrian press welcomed parliamentary development in Croatia-Slavonia, but also expressed the expectation that it would raise tensions with Hungary.³¹

5. Responsibility of the Ban in practice

In fact, the decision on indictment of the Ban was never passed in the Sabor in spite of a great number of serious violations of Croatian autonomy, particularly during the governance of the Ban Karoly Khuen-Héderváry from 1883 to 1903.³² Only two initiatives were raised in 1885 and in 1907 but they both failed. The first initiative was raised against Ban Khuen-Héderváry, though there was not the smallest chance that it would be accepted in a Sabor whose majority was

controlled by the government. The Ban was charged with ordering that certain documents from the Croatian Land Archives be transferred to the Hungarian Archives, by which he violated his competences as provided for in the Croatian Law on the Land Archives, and caused severe damage to Croatian autonomy considering the importance of these documents. The initiative did not get enough votes and the Sabor's debate on this issue ended with confusion during which the Ban was kicked in the back by one deputy. The press expected the Ban to withdraw because, according to the 'code of honour', he was humiliated by being kicked; in fact, it was not unimaginable that the Ban's withdrawal would have set a precedent for the development of political responsibility. However, Khuen-Héderváry denied that he was kicked at all, while the majority in the Sabor repealed the immunity of the two deputies involved in the incident, both of whom were later sentenced to prison.³³ The other case was against Ban Aleksander Rakodczay in 1907. He was charged with omitting to prevent the king's approval of the law of the Common Diet which introduced Hungarian as the official language in the Hungarian State Railways which operated in Croatian-Slavonian territory; this law indirectly and seriously violated the Croatian-Hungarian Compromise. The State Railways were part of the common jurisdiction so the Common Diet was competent to regulate on issues related to them. However, the Croatian-Hungarian Compromise declared the Croatian language as (the only) official language in Croatia and Slavonia, so the mentioned law breached the Compromise. It was an obvious conflict of competences, but the body that could have decided on the issue did not exist, and the Ban's political protest to the king was the only instrument by which the Croatian side could react to such a breach of competences by the Common Diet. The Sabors's proposal for a revision of the Croatian-Hungarian Compromise of 1872 demanded the establishment of the Court of Royalties that would decide on a conflict of competences between the Hungarian and Croatian diets – the latter proposal was inspired by the model of the Austrian *Reichsgericht*³⁴ – but it was bitterly rejected by the Central Government.³⁵ However, this time the initiative for indictment had much better chances since a majority of the Sabor's deputies in fact formed an effective opposition to the government. This was the main reason for the king dissolving the Sabor immediately after the initiative was submitted to the plenum, so the attempt failed at the very beginning.³⁶

Even though it is probably not possible to estimate accurately the preventive efficiency of such an institution, it can be said that, in the case of Croatia, it proved rather inefficient considering the large number of violations of Croatian autonomy, and the authoritative style of rule of the Bans.

Political responsibility of the Ban never materialised in Croatian parliamentary practice, neither did there exist a normative, and even less a factual, ground for such a notion. Interpellation in the Sabor did not imply taking a vote of no-confidence, while the voting down of the government's budget proposal did not result in the removal of the Ban from power; he could continue to rule with individual ordinances due to the fact that his executive competences were not fully regulated.³⁷ In fact, the wording of the law on the responsibility of the Ban allowed for the interpretation of his responsibility on the grounds of the (political) inappropriateness of his official actions;³⁸ however, the political reality was completely inappropriate for a claim on such grounds to be implemented.

6. *The Ban as minister?*

An important question implicit in the role of the Ban is whether such a position could be seen to represent the position of a minister at all. Ban Mažuranić was eager to build the position of his government as a real parliamentary government, and submitted several proposals to the Central Government in that direction, notably: the proposal that the Ban be entitled 'the Ban-Minister of the Land'; that he be appointed without the participation of the Hungarian prime-minister; that the right of countersignature of Croatian laws should belong exclusively to the Ban, while the countersignature of the Croatian-Slavonian Minister should be abolished; and that the heads of the deputies should become more independent and directly responsible to the Sabor. However, the Central Government insisted on the provincial status of Croatia and Slavonia, and rejected such initiatives either on the basis of formal arguments or by explicit exposition that the Croatian Sabor was only a provincial assembly with extended jurisdiction, whereas the Ban was a high administrative official, the governor, with disciplinary responsibility; for these reasons, regulations that upgraded these institutions to the status of parliament and real government were not acceptable.³⁹

However, the institutional position of the Ban was much closer to that of minister than that of governor for two main reasons: first, the Ban's responsibility was fully contained within the Croatian autonomous political system without any institutional possibility of external influence; second, the Ban's position was coordinated with the position of the Croatian-Slavonian minister as well as with other ministers of Central Government. It could also be said that both the Croatian-Slavonian Minister and the Ban had a right of countersignature; that the Croatian-Slavonian Minister could not intervene in the Ban's official proposals to the king; that the Ban's proposal of the Sabor's laws for the king's approval and the minister's complaint were theo-

retically equal; that the procedure of the Ban's responsibility before the Sabor was typical for ministerial responsibility, drafted on the basis of the Austrian model. In addition, the extensive competences and the legal-political position of the Ban in the Croatian political system, as well as his traditional legitimacy, indicate a constitutional, and not simply an administrative, dimension to his functions. The legal-political dependence of the Ban on the Hungarian prime minister – regarding the procedure of his appointment – was equal to the position of any other minister in the Hungarian government appointed through the same procedure. In fact, the Ban's political position was even more autonomous than that of the Hungarian ministers: the latter were responsible to the Hungarian Diet where the Prime Minister could politically influence deputies, while the Ban was responsible to the Sabor which was beyond the direct influence of the Hungarian Prime Minister. Thus, the institutional position of the Ban could be said to be that of a minister.⁴⁰

However, the political reality was different. In spite of the Ban's responsibility to the Sabor, as well as his extensive competences and virtually autonomous position, all Croatian Bans after 1880 focussed their attention more on the Central Government than on the Sabor; this was due to the overall framework of relations set down by the Croatian-Hungarian Compromise, and the structure of political power.

Another consequence of such a legal and political context was that the position of the deputies' heads did not develop towards a *de facto* political status, in spite of the fact that important persons from Croatian political and cultural life occasionally occupied these positions. In a different scenario, the position of the Ban would probably have developed into the position of *de facto* prime minister. However, department heads remained purely administrative officials due to their not having a right of countersignature; because of this, the collective responsibility of the government could not develop either.⁴¹

7. *Conclusion*

The institution of the Ban's responsibility was a specific version of ministerial impeachment whose particularity was determined by the autonomous position of Croatia-Slavonia. The institute of the Ban's responsibility shared standard normative features of legal ministerial responsibility, but it also had certain specific variations and functions. The specificities were determined by the semi-open structure of the Croatian political system, and by political ambiguity in relation to Budapest consisting of tensions between dependence and independence.

The Ban's responsibility lay at the crossroads of constitutional law, disciplinary law, penal law and politics; it belonged to the type of re-

sponsibility processed before a High Court with a juridical-political composition, in a quasi-judicial procedure, and was based on grounds of severe violations of law with implications on the political nature of the Ban's role. The content of these regulations reflected Croatian specificities such as the unicameral Diet, and a focus on the autonomy of the position.

In Croatia, impeachment was not implemented in practice and its function was, as elsewhere, considered primarily as moral-political and preventive. However, the degree of this *a priori* effectiveness was even more doubtful which is clear from the number of violations of Croatian autonomy in the interests of Budapest. This would indicate that merely legal means were not enough for the control of political power concentrated in government, and that indirect political dependency on Budapest affected the functioning of autonomous institutions, and the system as a whole. However, the introduction of the Ban's impeachment was not useless – it had a structural, value-oriented and symbolic importance in the building of a modern Croatian political system.

The most important and the most specific characteristic of the Ban's impeachment regarded its essential function. In the case of Croatia, the function of impeachment was twofold, unlike conventional examples where the origin and main function of ministerial impeachment was the control of government by parliament. In the Croatian case, the primary function of impeachment was the protection of Croatian autonomy, while the original function of impeachment, i.e. the limitation of government by representatives of society, was in fact of secondary importance.

Notes

¹ This paper was written as part of the research project Croatian legal culture in the European context: tradition and modernisation (2007), supported by the Croatian Ministry of Science and Technology.

² A-É. Lair, *Des hautes cours politiques en France et à l'étranger et de la mise en accusation du Président de la République et des ministres* (Paris, 1899), pp. 435-436 ff.

³ Lair, *Des hautes cours, passim*; A. Esmein, *Eléments de droit constitutionnel français et comparé* (Paris, 1921); See also D. Čepulo, 'Odgovornost i položaj bana i članova hrvatske zemaljske vlade 1868-1918. i ministarska odgovornost u Europi', *Zbornik Pravnog fakulteta u Zagrebu*, 49 (1999), pp. 231-239.

⁴ For the Croatian constitutional and legal development see G. Benacchio, *La circolazione dei modelli giuridici tra gli slavi del sud. Sloveni, croati, serbi* (Padova, 1995); D. Čepulo, 'Autonomy, dependence and modern reforms in Croatia-Slavonia 1848-1918', in *Separation of powers and parliamentarism: the past and the present: law doctrine, practice* (Warsaw, 2007); D. Čepulo, 'Building of the modern legal system in Croatia 1848-1918 in the centre-periphery perspective', in T. Giaro (Hrsgb.), *Modernisierung durch Transfer im 19. und 20. Jahrhundert* (Frankfurt am Main, 2006), pp. 47-91; D. Čepulo, 'Modernity in Search of Tradition: Formation of the Modern Croatian

Judiciary 1848-1918', in A. Uzelac and C. H. Van Rhee (eds.), *Public and Private Justice. Dispute Resolution in Modern Societies* (Antwerpen-Oxford, 2007), pp. 105-127.

⁵ I. Beuc, *Povijest institucija državne vlasti kraljevine Hrvatske, Slavonije i Dalmacije (pravnopovijesne studije)* (Zagreb, 1985), pp. 87, 159-160, 223-246.

⁶ Čepulo, 'Building', p. 50.

⁷ Dalibor Čepulo, 'Razvoj ideja o ustroju vlasti i i građanskim pravima u Hrvatskoj 1832-1849', *Pravni vjesnik*, 16 (2000), pp. 36.

⁸ J. Horvat, *Povijest novinstva u Hrvatskoj* (Zagreb, 1962), p. 149.

⁹ Čepulo, 'Building', 41-44. Cf. also D. Čepulo, M. Krešić and M. Hlavačka (eds.) *Croatian, Slovenian and Czech Constitutional Documents 1818-1849*, München, 2010, pp. 37-44.

¹⁰ T. Markus, 'Zakonske osnove Sabora Hrvatske i Banskog vijeća 1849. godine', *Časopis za suvremenu povijest*, Zagreb 28 (1996), pp. 145-150. Cf. also Čepulo, Krešić and Hlavačka, *Croatian*, pp. 117-121.

¹¹ Čepulo, 'Odgovornost', pp. 243-244.

¹² The Hungarian government consisted of the prime minister and eight ministries; when deciding on issues of common competence ministers of internal affairs, religion and education, and justice were excluded (these issues belonged to the exclusive Croatian jurisdiction) while the Croatian-Slavonian-Dalmatian Minister without Portfolio (Home minister) was included. The Croatian departments that were established in all ministries in fact served only as technical support, for translation etc. As regards the Common Diet, the Sabor sent two delegates (later three) to the House of Lords with 400 members, and 29 delegates (later 40) to the House of Deputies with 453 deputies. M. Gross and A. Szabo, *Prema hrvatskom građanskom društvu* (Zagreb, 1992), pp. 232 ff; Beuc, *Povijest*, pp. 277-280.

¹³ On the Croatian-Hungarian Compromise see Čepulo, 'Building', pp. 64-67; Gross and Szabo, *Prema*, pp. 232-239; D. Čepulo, 'Hrvatsko-ugarska nagodba i reforme institucija vlasti u Hrvatskom Saboru 1868-1871', *Zbornik Pravnog fakulteta Sveučilišta u Rijeci*, 22, Supplement 1, (2000) pp. 117-148; J. Pliverić, *Beiträge zum Ungarisch-kroatischen Bundesrecht* (Agram, 1886).

¹⁴ Cf. M. Smrekar, *Priručnik za političku upravnu službu u kraljevinah Hrvatskoj i Slavoniji* (Zagreb, 1899), vol. I, pp. 49 ff.

¹⁵ Čepulo, 'Odgovornost', p. 247.

¹⁶ Čepulo, 'Building', p. 71; Gross and Szabo, *Prema*, p. 274.

¹⁷ Čepulo, 'Building', pp. 70-80.

¹⁸ Cf. Čepulo, 'Odgovornost', p. 259.

¹⁹ Cf. § 1. of the law on the responsibility on the Ban published in *Sbornik zakonah i naredabah valjanih za kraljevinu Hrvatsku i Slavoniju. Godina 1874* (Zagreb, 1876), pp. 3-10.

²⁰ Čepulo, 'Odgovornost', p. 265.

²¹ Ibidem, p. 248; D. Čepulo, 'Izgradnja modernog hrvatskog sudstva 1848-1918', *Zbornik Pravnog fakulteta u Zagrebu*, 56 (1999), pp. 231-239, 365-366, 368-370.

²² Lair, *Des hautes cours*, pp. 355-379.

²³ N. Ogorelica, *Kazneno procesualno pravo* (Zagreb, 1899), vol. I, pp. 73-76, 86-89, 91-94 ff; V. Ljubanović, '120. obljetnica donošenja i sankcioniranja hrvatskog Zakona o kaznenom postupku od 17. svibnja 1875.', *Hrvatski ljetopis za kazneno pravo i praksu*, 1 (1994), pp. 244 ff.

²⁴ On *Staatsgerichtshof* see W. Brauner, *Österreichische Verfassungsgeschichte* (Wien, 2005), pp. 161, 175, 186.

²⁵ Čepulo, 'Odgovornost', pp. 248-251.

²⁶ Ibidem, pp. 262-263.

²⁷ Ibidem, pp. 260.

²⁸ Ibidem, pp. 257-258.

²⁹ Ibidem, p. 252.

³⁰ Ibidem, pp. 257 (nt. 85), 258.

³¹ Ibidem, p. 257 (nt. 85).

³² On the period of the Ban Karoly Khuen-Héderváry see J. Šidak et al., *Povijest hrvatskoga naroda g. 1860-1914*. (Zagreb, 1968), pp. 120 ff.

³³ Čepulo, 'Odgovornost', pp. 260-261.

³⁴ On the *Reichsgericht* see Ch. Eisenmann, *La justice constitutionnelle et la Haute Cour constitutionnelle d'Autriche* (Paris, 1928), 129 ff.

³⁵ Gross and Szabo, *Prema*, pp. 252-254.

³⁶ Čepulo, 'Odgovornost', p. 261.

³⁷ Ibidem, p. 267; L. Polić, *Nacrt hrv. ugarskog državnog prava* (Zagreb, 1912), pp. 282-283.

³⁸ Čepulo, 'Odgovornost', p. 263.

³⁹ Ibidem, pp. 258-259; Šidak et. al., *Povijest*, p. 72; M. Gross, "Mađarska vlada i hrvatska autonomija u prvim godinama nakon Nagodbe", *Historijski zbornik*, 38 (1985), pp. 21-22.

⁴⁰ Čepulo, 'Odgovornost', p. 266; L. Polić, *Nacrt*, pp. 249, 256; V. Krišković, *Upravna nauka i ug. hrv. upravno pravo* (Zagreb, 1912), vol. I, p. 63.

⁴¹ Čepulo, 'Odgovornost', pp. 265-266; 267.

Luigi Compagna

August 1897: a New Parliamentary Assembly is born in Basel

During the winter of 1884 a conference of Chibbat Zion was held in the Silesian Voivodeship at Katowice. But it wasn't there that the Zionist movement transform itself into the Jewish nation parliament there. It happened only in Basel during august 1897. Unlike Herzl, Pinsker did not succeed in mediating between diverse political factions and free thinkers, between traditionalism and modernism, between the difficulties of the emigration to Palestine comparing to the appeal of America, between the idealism and socialism of the Lovers of Zion and the paternalist capitalism of Baron Maurice de Hirsch and Baron Edmund de Rothschild. In sum, between the Eastern and the Western branches of European Jewry.

Early Zionism was not only missing a leadership, a Moses in a sense, it also seemed to be bound to support grassroots initiatives, marked by an inherent inaptitude toward national and liberal parliamentarianism. Herzl was able to modify exactly this fateful path, moving its course from East to West.

At the end of the nineteenth century, Theodor Herzl defined Great Britain as the 'Archimedes' Point' upon which the lever of Zionism ought to be placed. In his opinion, two main reasons displayed strong connection with Disraeli's England: the first one was the political geography between Britain and Turkey which would have, in fact, inspired the diplomacy of Zionism. The second was the presence of a kind of parliamentarianism (most likely *tory* – namely national-popular – than *whig*, considering the need to involve as active participants the Jews of Eastern Europe) by which shaping Zionism as a movement with a strong statual inspiration.

In political terms, both in Disraeli's view as in Herzl's, sephardite ideas in favour of tradition, authority and hierarchy, were conceived as *tories* ideas. However, the *Tories* themselves were responsible for opposing the motion, proposed in 1847, that would have allowed observant Jews to sit in Parliament. On that occasion, as mentioned in Disraeli's *Life of George Bentinck*, merely four conservative deputies had voted in favour of the measure: Disraeli himself, the same Bentinck, Thomas Baring and Milness Gaskell. It was precisely the speech that Bentinck gave on that occasion that actually determined the fading of its leadership. Nevertheless, by defeating Bentinck, the *tories* had in fact indirectly contributed to paving the way for Disraeli's leadership.