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The Demise of the High Court Or between Absolutism and Rule of Law

So-called "demise of the High Court" showed all absolutistic features of Prince Mihajlo's character whose regime was, until then, regarded as strict, but based on laws. Plot against Prince Mihajlo named after its leader "Majstorović's plot" provoked collapse of rule of law in Serbia. High Court for Criminal Procedure pronounced not guilty verdicts on all conspirators, finding that culpability of the plotters was not proved. As a result, High Court judges were sentenced by an ad hoc court for discharging the conspirator's group, which was considered an unlawful, premeditated act. They were condemned to three years in prison and two years of deprivation of all civil rights. This article offers an overview of the High Court judges' trial, called by the contemporaries "the demise of the High Court". Furthermore, paper deals with reaction of Belgrade intellectuals and Serbian scholars, who characterized this trial as flagrant violation of judicial independence and rule of law. Common impression was that judges were only sentenced as they did not interpret the law according to the expectation of Justice Minister, and this trial seriously jeopardized authority of the High Court.

Keywords: "Demise of the High Court" – High Court judges' trial – "Majstorović's plot" – Mihajlo OBRENOVIĆ – Rule of Law –

The event that compromised the second rule of the Serbian Prince (Knez) Michael (Mihajlo) Obrenović (1860–1868) the most was the scandal relating to the so-called "demise of the High Court". When Knez Mihajlo succeeded to the throne, he declared: "May each and everyone know that as long as Prince Mihajlo is in power, the rule of law shall reign in Serbia." Four years later, after the destruction of the judicial system, it was absolutely clear that the Knez's absolutistic character had prevailed. All hopes of Serbian society, especially of the young liberals, that the rule of law could be established in Serbia under the regime of Prince Mihajlo, were buried. What really happened?

Historical Background

When Knez Mihajlo Obrenović¹ acceded to the throne for the second time (1860), he had a very

¹ Mihajlo Obrenović (1823–1868) was the second son of Prince Miloš (1780–1860), the leader of the Second Serbian Uprising against Turkish rule (1815) and the founder of the Obrenović dynasty. At the age of seventeen, in spring 1840, Mihajlo succeeded to the Serbian throne after the abdication of his father in June 1839 and a very short rule of his eldest brother Milan, who, seriously ill at that time, died less than a month after having formally ascended the throne. Soon after he had ascended the throne, Mihajlo came into severe conflict with his opponents, resulting in the emigration of 37 prominent politicians in autumn 1840. Yet two years later, due to the intervention of the Great Powers, they returned and organized the so-called Vučić's rebellion (Toma Vučić Perišić was one of the most powerful chieftains), which raised Alexander, Karadjordje's son, to the throne. Alexander Karadjordjević ruled until 1858, when the

clear concept of his rule. Upon coming to power, on 14 September 1860, Prince Mihajlo presented the programme in his proclamation to the Serbi-Serbian people, as well as in his throne speech when opening the first Assembly of his rule on Transfiguration Day 7 August 1861 (so-called *Preobraženska skupština*). The concept had two essential points: in foreign policy it was a liberal-liberation war against the Turks, which would lead to the creation of a great South Slavs (Yugoslav) State, with the leading role of Serbia. The goals of the home policy were the establishment of the rule of law and the increase of the nation's welfare.

At the beginning, the ideas of Knez Mihajlo were accepted in Serbia with great sympathy, but very soon his regime became unpopular. It was true that the public opinion wanted a powerful monarch, but at the same time they were asking for freedom of the press and the responsibility of ministers. According to the law of 1862, ministers were completely subjected to the Knez's orders. The ministry's council was established and worked under direct instructions of the Knez, who could appoint and dismiss ministers.

St. Andrew's Assembly voted for a change on the throne. Following an initiative of the liberals, the former Knez Miloš ascended the throne in January 1859, but died already in September 1860. The successor to the throne became his son Mihajlo, who ruled until 1868, when he fell victim to a conspiracy. The greatest success of Mihajlo's foreign policy was the withdrawal of the remaining Turkish garrisons from six fortresses in Serbia. The Turkish forces finally left Serbia on 6 May 1867, which was the end of five centuries of Turkish rule, although the legal status of Serbia as a principality did not change. Serbia remained a vassal state until 1878, when the Treaty of Berlin established Serbian independence. On the second rule of Mihajlo Obrenović see the excellent monograph by JOVANOVIĆ, *Druga vlada*. See also MILIČEVIĆ, *Druga vladavina*, with the list of references for further reading; PETROVICH, *History of Modern Serbia*; DRAGNICH, *Development of Parliamentary Government*.

The autocratic power of the Knez disappointed especially the young liberals, most of them educated abroad,² who came into prominence at the St. Andrew's Assembly. Following their initiative, the Assembly voted for a change on the throne, which meant that they were asking for liberal reforms in the Serbian State and society. Beside freedom of the press and ministerial responsibility, the liberals insisted on granting legislative power to the assembly (*skupština*), including the right of legislative initiative and the full budgetary right. Their request was that the assembly should meet every year. But, according to the Law on the National Assembly (*Zakon o narodnoj skupštini*) from 17 August 1861, the assembly was an advisory body which had to be in session once in three years.³ Betrayed in their expectations, the liberals from ex-supporters became great opponents of Prince Mihajlo's regime. The conflict increased in December 1861, when the Knez conferred the government to the members of the Conservative Party, the convinced adversaries of all liberal reforms and of all rights of the National Assembly. Coming to power, the conservatives, with the consent of the Knez, started the persecutions of the liberals.

The discontent was present especially among the peasants, the most numerous social class in nineteenth-century Serbia. Taxes were increased, economic problems were serious and the abuses of bureaucracy were present everywhere. The ordinary people could lodge their complaints

² People called them *Parizlije* (Parisians), although of course not all of them had been educated in Paris. The most prominent among them were Milovan Janković, Jevrem Grujić, Jovan Ilić, Ranko Alimpić and Vladimir Jovanović, who was the main liberal ideologist.

³ *Zakon o narodnoj skupštini* [The Law on The National Assembly], *Zbornik zakona i uredaba izdanih u Knjaževstvu Srbiji* [Collection of laws and regulations of the principality of Serbia], XIV, Beograd 1861, 137.

against the officials with the Assembly, but it was only rarely in session. The difficult situation in the country, caused by the economic problems and legal insecurity, was aggravated by the gossip on Knez Mihajlo's debts and especially on Princess' Julia squandering.⁴

"Majstorović's Plot"

The supporters of the Karadjordjević dynasty⁵ were persuaded that the time for the coup had come. Ex-Prince Alexander Karadjordjević, or, to be more precise, his energetic wife Persida, who were both living in Pest, made contact in 1863 with Filip Stanković, a merchant from Smederevo.⁶ Filip Stanković was very well known as a "master of conspiracies" – a man who was prepared to serve anyone for money. In the events of 1858 he was Knez Miloš' agent in his action against Alexander Karadjordjević. In

⁴ Princess Julia, Mihajlo's wife, belonged to the high, but poor Hungarian aristocracy. Her father was from the Hunyadi and her mother from the Zicsy family. Mihajlo married her in 1853, when he was in exile. A Roman-Catholic, Julia was never popular in Serbia. The relations between the consorts were never good. From 1863, they were separated, and in 1865 Julia and Mihajlo practically divorced (Julia, as a Roman-Catholic, could not obtain a divorce, but only a separation *a mense et thoro*). They had no children.

⁵ In June 1817 Karadjordje, the leader of the First Serbian Uprising against the Turks, returned from exile. He and Miloš Obrenović never had enjoyed an easy relationship and when Karadjordje was murdered under mysterious circumstances, Obrenović's complicity was suspected. A feud erupted between the Karadjordjević and Obrenović families, continuing throughout the century and dividing Serbian society into supporters and enemies of the rival clans. During his rule Miloš persecuted the adherents of the Karadjordjević's dynasty, while Mihajlo was tolerant in that respect.

⁶ A town in Serbia on the right bank of the Danube, forty kilometers east of Belgrade. Smederevo was the last capital of the mediaeval Serbian State. The capture of Smederevo by the Turks in 1459 meant the end of Serbian independence in the Middle Ages.

1863, Filip Stanković was prepared to serve his ex-enemy against Prince Mihajlo. He drew out from Princess Persida 2000 ducats (gold coins) and soon after he printed in Pančevo⁷ a proclamation to the Serbian people, saying that living conditions had been much better under the rule of Alexander Karadjordjević. In this pamphlet Filip Stanković made an appeal to the Serbian people to dethrone Prince Mihajlo and to restore the rule of Alexander Karadjordjević. When he tried to distribute the proclamation in the region of Smederevo and Požarevac,⁸ the police frustrated his action by capturing the majority of the copies. After the failure, Filip Stanković ran away to Pest, where he started preparing new plots.

In December 1863, another plot was revealed in Smederevo, the birth place of Filip Stanković. The police arrested forty-three people, led by Antonije Majstorović, a retired member of the State Council.⁹ People called it "Majstorović's plot" (Majstorovićeva zavera) after the conspiracy's leader.¹⁰ Among the conspirators were two

⁷ A small town in the Serbian province of Vojvodina, close to Belgrade (on the river Tamiš, a Danube tributary), but then on Austrian (Hungarian) territory.

⁸ A small town in eastern Serbia, about eighty kilometers south-east of Belgrade.

⁹ The Serbian constitution of 1838 (known as the Turkish Constitution as it was given in the form of a *hatti-sherif*) provided for a State Council (*Državni Sovjet*), consisting of seventeen members equal in legislation to the Knez. But, according to the Law on the Organisation of the State Council from 17 August 1861, councillors were no longer equal to the Knez, who was able to pension them off whenever he wanted, and bills of the council could not become effective without his consent.

¹⁰ Antonije Majstorović was a man of Prince Alexander's confidence. He was appointed member of the State Council in 1857, when Knez Alexander settled accounts with his opponents that had participated in the unsuccessful plot to assassinate him, organized by the president of the Council Stefan Stefanović-Tenka (known as Tenka's plot). When the St. Andrew's Assembly voted for the change on the

ex-members of the State Council from the rule of Alexander Karadjordjević, two prefects (*sreski načelnici*)¹¹ still in charge and one already retired, as well as three priests. The rest of the plotters were pig traders, rich landowners and the proprietors of small village shops. With the exception of one person, all the conspirators were adherents of the Karadjordjević dynasty, originating from the district of Smederevo, traditionally Karadjordjević's bastion. The only man who was not a supporter of Karadjordjević's dynasty was Milovan Janković, one of the most prominent leaders of the Liberal Party.¹² As he was born in the small village of Vlaška (in the Smederevo district, as well) he knew some of Majstorović's relatives very well and this was enough for the Serbian police to consider him suspicious and arrest him. Although Janković was against the regime of Prince Mihajlo Obrenović, he and Majstorović did not have the same goals: Majstorović wanted the restoration of the Karadjordjević dynasty, while

Janković was dreaming of the proclamation of a republic.¹³

There were no doubts that during the year of 1863, the adherents of Antonije Majstorović had numerous contacts and talks concerning the organization of the dynasty's coup d'état. Some of them insisted on an open rebellion with the centre in Šumadija, central part of Serbia, where the First Uprising against the Turks had broken out. The other group of plotters thought it was better to wait for the Assembly, which was to be in session next year (1864). According to the plans of these conspirators, the Assembly could take all the power and dethrone Prince Mihajlo Obrenović, like the St. Andrew's Assembly had dethroned Knez Aleksander Karadjordjević. Finally, the third fraction thought that the open rebellions and the assembly's coups were very dangerous as the Knez controlled the army and the police; so the best way would be to assassinate the Prince from an ambush, during one of his journeys through the country.

Those were only talks. The conspirators needed money for concrete actions and the money could only come from Prince Alexander. This was the reason why, at the meeting in the small village of Kovačevac (between twenty and thirty persons were present), a letter to ex-Knez Alexander was written, inviting him to come back to Serbia. In the same letter the amount of 6000 ducats was demanded to cover the expenses of the coup. It was decided that two pig traders, who had business contacts in Pest and travelled to Hungary very often, should deliver the letter to Prince Alexander. But, as they did not get their passports from the competent authorities, the plan of the plotters failed, and the letter was never delivered to Aleksander Karadjordjević. This was the situation concerning the plot when the police arrested the conspirators.

throne, Majstorović was pensioned (11 December 1858).

¹¹ According to the Law on the Organisation of Local Government (*Zakon o ustrojstvu okružnih načelstava i glavnim dužnostima sreskih načelnika*) from 12 May 1839, Serbia was divided into counties (*okrug*, plural *okruzi*), districts (*srez*, plural *srezovi*) and municipalities (*opština*, plural *opštine*). Heads of counties and districts, called *načelnici* (singular *načelnik*, from the Serbian word *čelo* forehead, front), were police officers subordinated to the central government.

¹² Milovan Janković (1828–1899) studied philosophy and political sciences in Germany. He was one of the founders of the Liberal Party. As he was devoted to the liberal reforms in Serbian society, he came into a severe conflict with Knez Mihajlo and Janković spent most of his rule in exile. After the assassination of Knez Mihajlo Obrenović on 29 May 1868, Milovan Janković came back to Serbia (1869) and took up government employment. In 1875 he was appointed Finance Minister and from 1880 until 1889 President of the General Finance Control.

¹³ JOVANOVIĆ, *Druga vlada* 433.

The Conspirators' Trial

When the investigation was over, the Government on 27 March 1864 issued an announcement informing the public at large that the police had uncovered very serious preparations for a dynastic coup. The meaning of the announcement was very clear: the Government was convinced of the existence of a plot against Prince Mihajlo's regime, and it expected the conspirators to be punished very severely.

The court of original jurisdiction for the conspirators' trial was the County Court (Okružni sud) in Smederevo. A verdict pronounced by the court found twenty six accused conspirators guilty of *lèse-majesté* according to article 91b, paragraph 1 of the Criminal (Penal) Code for the Principality of Serbia from 12 May 1860 (with amendments from 17 June 1861). As the plotters' intention had been to dethrone the Knez, the court concluded that they were also guilty of preparation for high treason (treason against the sovereign) according to article 90 of the Criminal (Penal) Code for the Principality of Serbia with the amendments of 17 June 1861.¹⁴ None of the conspirators was sentenced to more than two years in prison. Four of the plotters were released and another four members of the conspiracy-group (one of them was the liberal leader Milovan Janković) were discharged from the accusation for lack of evidence.

The Verdict of the High Court

Serbian authorities and legal experts found the verdict of the County Court from Smederevo "disarranged" and full of errors. Thus, the case

¹⁴ Kriminalni (kaznitelni) zakonik za Knjaževstvo Srbiju (sa svim izmenama i dopunama do 1864. godine), štampan u Državnoj štampariji Kneževine Srbije [printed by the state printing office of the principality of Serbia], Beograd 1864, 43–45. Further „Krivični zakonik“ [Criminal Code].

was transferred to the High Court for Criminal Procedure (Veliki sud za kriminalna dela)¹⁵ as a court of appeals and the supreme court at the same time. To everyone's astonishment, the High Court for Criminal Procedure¹⁶ pronounced not guilty verdicts on all conspirators (on 2 June 1864), finding that there were no elements of the crimes determined by the County Court in Smederevo. The High Court asserted that in the acts of the plotters there was no preparation for high treason, but only an attempt of preparation, which was not punishable according to the Criminal (Penal) Code for the Principality of Serbia of 12 May 1860. From the standpoint of the Court, not even an offence against the Knez had been committed; the plotters had only entered into confidential political conversation, criticizing the Knez's public actions and not his personality and private conduct.

The Reaction of the Government

The Government kept its point of view, i.e. that the culpability of the plotters was proved beyond a shadow of doubt and that the High Court had released conspirators because it had not wanted to judge the circumstances of the case with a fair mind. Besides, one of the judges was Jevrem Grujić,¹⁷ a close friend and a witness

¹⁵ In 1858 the Appellate Court (Apelacioni sud) became the supreme court in the Principality of Serbia. According to the law of 16 August 1860, the Appellate court was divided into the High Court for Civil Procedure (Veliki sud za građanska dela) and the High Court for Criminal Procedure (Veliki sud za kriminalna dela). This division remained until 20 February 1865, when a new law was promulgated, unifying the two courts into one – the Appellate Court (Apelacioni sud).

¹⁶ The ordinary people called this court simply High Court (in Serbian Veliki sud, literally Great Court).

¹⁷ Jevrem Grujić (1826–1895) studied law in Heidelberg and Paris and became one of the best Serbian jurists and statesmen. He was Minister of Justice twice (1860–1861 and 1876–1878) and once

to the wedding (kum) of Milovan Janković, as well as a convinced enemy of the two main ministers in the Government – Ilija Garašanin¹⁸ and Nikola Hristić.¹⁹ This was the reason why the Government questioned the judges' objectivity. According to the Government's opinion, the acquittal of the High Court judges would mean a tacit encouragement for conspirators to prepare new plots against the Knez without being punished. It would inevitably lead to legal insecurity and anarchy in the State.²⁰

Minister of the Interior (1875–1876). His diplomatic service was also very important: he was Serbian ambassador in Constantinople, London and Paris (1880–1892).

¹⁸ Ilija Garašanin (1812–1874), the greatest Serbian statesman from the epoch of the so-called regime of the "Defenders of the Constitution" (Ustavobranitelji, 1842–1858), when he was the Minister of the Interior (1843–1852 and 1858–1859). In 1844 he prepared the Memorandum (Načertanije) outlining the principles of the foreign policy according to which the Serbian government should support national movements for the liberation of the Serbs in the diaspora. In 1861 he became the Prime Minister in a government formed by the members of his Conservative Party. In the same Government he retained the duty of Foreign Minister. He made efforts to sign an alliance between Serbia, Greece and Montenegro for the purpose of a liberation war against the Turks.

¹⁹ Nikola Hristić (1818–1911) was a person of Prince Mihajlo's confidence. During the entire time of Mihajlo's rule (1860–1868), Hristić was Minister of the Interior. He became very "famous" for introducing a very strict police regime and for persecutions of the Knez's liberal opponents. After the assassination of Prince Mihajlo he was Prime Minister on several occasions (1867–1868, 1883–1884, 1888–1889 and 1894–1895) and a member of the State Council (1884–1888 and 1895–1901). He was probably the most unpopular politician in nineteenth-century Serbia, his nickname being Čiča Nikola (Uncle Nikola).

²⁰ JOVANOVIĆ, *Druga vlada* 435.

The Persecution of Judges Act (Zakon o davanju sudija pod sud)

In the session of 8 June 1864, the Council of Ministers decided to prepare a bill of attainder (retroaktivni zakon) for the purpose of determining the guilt of the High Court judges, because they, contrary to the provisions of the Criminal (Penal) Code, had pronounced a verdict of not guilty on Antonije Majstorović and the members of his conspiracy group.²¹ The prosecution of the High Court judges presented, however, several problems. Article 63 of the Civil Servants Act (Zakon o činovnicima građanskog reda) of 15 February 1864 referred to the responsibility of judges for the crimes and misdemeanours in the exercise of their duty. The judges could not be brought to disciplinary proceedings but only to court trials. A special act had to be passed on the subject.²² However, the Persecution of Judges Act contained another provision. According to article 3, the judges of the High Court were to be tried by an extraordinary court, composed of four State Council members and three judges of the High Court who had no interest in the case.²³ This special court acted as the first and last instance at the same time (article 5). The court was not obliged to accept current rules of evidence and it could pronounce a verdict according to its own cognizance. The sentence of the court was final and enforceable, i.e. it left nothing open to further dispute and could not be appealed against; the judge who had pronounced it could not be held accountable (articles 6–8). Upon the service of the verdict to the Minister of Justice, the court would be dismissed. The Minister of Justice had to inform the party (any person

²¹ See PAVLOVIĆ, *Preobraženski ustav* 338.

²² *Zbornik zakona i uredba izdanih u Knjaževstvu Srbiji* [Collection of laws and regulations of the principality of Serbia], XVII, Beograd 1864, 35–36.

²³ Contrary to the Civil Servants Act, providing the competence of trial courts for judges.

whose name was on record as plaintiff or defendant) about the content of the verdict (article 9).²⁴

The adoption of such an act brought the High Court judges in a very difficult position. They had to be tried by a court which was created ad hoc, just for one case, and where the majority of arbitrators were senior officials (members of the State Council) and not judges. Against a sentence of this court neither an appeal, nor any of the extraordinary remedies could be lodged.

According to the Persecution of Judges Act (*Zakon o davanju sudija pod sud*) a trinomial Committee of Inquiry was appointed. The Committee invited five High Court judges and the secretary of the High Court to explain why they had pronounced the verdict of not guilty on Majstorović and other conspirators.²⁵ The judges and the secretary responded to the Committee that they had issued the sentence according to their understanding of the law, and for his understanding of the law no one could be held responsible. Jevrem Grujić was the only judge who refused to answer the questions of the Inquiry Committee, arguing that the Persecution of Judges Act was unconstitutional.²⁶

When the investigation was over, Garašanin and Hristić wanted to hear the opinions of legal experts. One of the best jurists at that time in Serbia, especially in the matter of criminal law, was the Minister of Justice Rajko Lešjanin.²⁷ Lešjanin

elaborated his point of view concerning the Majstorović's conspiracy in a very detailed memorandum addressed to Prince Mihajlo. The Justice Minister's legal opinion was that the High Court had discharged the conspirators although, according to the regulations of the Criminal (Penal) Code, they would have had to be sentenced for crimes for which a penalty of twenty years in prison had been prescribed. The conspirators, led by Majstorović, had entered into a very serious preparation of a coup. They had requested money from Alexander Karadjordjević, they had been calling on other people to join them and, by false statements and intrigues, they had provoked hate and intolerance toward Knez Mihajlo, all necessary prerequisites for committing a dynastic coup.²⁸ Lešjanin thought that their acts had all the essential elements of the crimes of 'high treason arrangement' and 'high treason preparation' according to articles 88–90 of the Criminal (Penal) Code for the Principality of Serbia.

According to Lešjanin's point of view, during the trial of the High Court for Criminal Procedure the following errors had been made: 1) The High Court had not corrected the verdict of the court of original jurisdiction (County Court in Smederevo), which had not specified which crimes had been ascertained for each of the accused persons; 2) If the opinion of the High Court judges had been that the crimes cited by the court of original jurisdiction had not existed, the High Court had to investigate the existence of other crimes for which the conspirators could have been found guilty; 3) The High Court un-

²⁴ Zbornik zakona i uredba izdanih u Knjaževstvu Srbiji [Collection of laws and regulations of the principality of Serbia], XVII (Beograd 1864) 265–268.

²⁵ See JOVANOVIĆ, *Druga vlada* 437.

²⁶ On all questions of the Inquiry Committee, Jevrem Grujić opened his mouth just to say to the clerk: "Write down, Grujić remains silent" (Piši, Grujić ćuti). See "Srbske novine", broj 74 od 25 juna 1864, Beograd, 1–2. "Srbske novine" (Serbian newspaper) was the official paper of the Serbian government.

²⁷ Rajko Lešjanin (1826–1872) studied law in Heidelberg and Paris. Coming back to Serbia he started a university career, but very soon he took up government employment. In Garašanin's government

formed in 1861, Lešjanin became Minister of Justice and he remained in office until the assassination of Prince Mihajlo (29 Maj 1868). As one of the most distinguished Serbian jurists, Lešjanin participated in the drafting of numerous government bills in Serbia. He was the author of the first manual on Roman law in Serbian language, as well.

²⁸ Rajko Lešjanin knezu Mihajlu, 23. juna 1864, Arhiv Srbije, Pokloni i otkupi, k. 28, br. 124.

derstood the concept of crime preparation in a narrow sense, i.e. the preparation act had to be material. This opinion resulted in such a situation that very effective means of rebellion preparations, such as a secret arrangement and the spreading of false rumours about the sovereign, remained beyond the concept of preparation acts and therefore unpunishable; 4) The Court made an error speaking of attempt preparation as not punishable. The attempt of the preparation does not exist because the preparation consists in devising or arranging means or measures necessary for its commission, while an attempt is a direct movement toward committing an offence after preparations were made; 5) It is an error to think that *lèse-majesté* exists only when his personality and his private life were affected. The Criminal (Penal) Code forbids all acts which provoke hatred toward the Knez, relating either to his private life or public conduct. Besides, for the organising of a rebellion it is much more important to criticize the ruler's public work than his private life. Wrongly interpreting the crime essence of *lèse-majesté* from article 91b, paragraph 1 of the Criminal (Penal) Code for the Principality of Serbia, the High Court had discharged the conspirators from the accusation of a crime that they had undoubtedly committed.²⁹ This was the opinion of the Justice Minister.

The Sentence in the High Court Judges' Trial

Knez Mihajlo issued a decree appointing seven members of the court in accordance with the Persecution of Judges Act (*Zakon o davanju sudija pod sud*) and following the legal opinion presented in the memorandum of the Justice Minister. The court was established to try the High Court judges. The High Court judges were

accused of having pronounced the verdict of not guilty on Majstorović and his group of conspirators contrary to the law.³⁰ However, the judges of the High Court were not interrogated by the "new" (ad hoc composed) court, but they were sentenced on the basis of the accusation of the Justice Minister and the report of the Inquiry Committee. The judges were found guilty of the crime provided by article 127, paragraph 1 of the Criminal (Penal) Code for the Principality of Serbia as amended on 17 June 1861. The above-mentioned legal provision determined the criminal responsibility of judges who, during the interrogatory, hearing of evidence or deciding process, intentionally do injustice either to the detriment or in favour of the parties to the proceedings. Paragraph 2 of the same article concerned the same crime when committed negligently. The High Court judges were sentenced for discharging the conspirators' group, which was considered an unlawful, premeditated act. The sentence of the ad hoc court was three years in prison and two years of deprivation of all civil rights (liberties) for the High Court judges (Jovan Filipović, Jovan Mičić, Marinko Radovanović, Jovan Nikolić and Jevrem Grujić), while the secretary of the High Court Stojča Ivanković was sentenced to two years in prison and one year of deprivation of all civil rights (liberties). Stojča Ivanković, the secretary of the High Court, was immediately pardoned, while the judges were transferred to the prison in the city of Karanovac.³¹

The verdict was not pronounced unanimously. Judge Aleksa Romanović had a different opinion, based on his view that there was no evidence that the act of the High Court judges had

²⁹ Rajko Lešjanin knezu Mihajlu, 23. juna 1864, Arhiv Srbije, Pokloni i otkupi, k. 28, br. 124.

³⁰ ŽIVANOVIĆ, *Politička istorija Srbije* 102.

³¹ A small town in central Serbia. Karanovac received its present name Kraljevo (meaning the King's Town) on 19 April 1892 from King Milan Obrenović. In the period of 1949–1955 the name of the town was Rankovićevo.

been premeditated. He elaborated his point of view on the fact that it had not been proved that the accused High Court judges had released the conspirators contrary to the law, either for a gain or for a partiality. According to Romanović's opinion, the High Court judges had released the conspirators wrongly interpreting the Criminal (Penal) Code, thus being negligent and careless in exercising their duty. Thus they should be punished according to article 127, paragraph 2, of the Criminal (Penal) Code, which concerns the same crime, but committed negligently. However, as the public interest had been jeopardized by the judges' negligence, Romanović suggested that the High Court judges should be punished with the maximal penalty provided for that crime. So, according to the judge Romanović's opinion, the High Court judges should be deprived of their rank and the secretary of the High Court should pay a fine of hundred talers.³²

The judges had been arrested at the beginning of July 1864, but already at the beginning of September 1865 they were released, when Knez Mihajlo, under the strong pressure of the public opinion, pardoned them. This way the so-called Majstorović's plot was terminated by a paradox: the conspirators were released, but their judges were sentenced to prison!³³

The Reaction of the National Assembly

The National Assembly was in session in Belgrade on the Assumption Day Fair (so-called Velikogospojinska skupština), 15 August 1864. Upon the election of the presidency and the secretaries of the Assembly, Knez Mihajlo inaugurated the Assembly session with a throne

speech (16 August). The Prince mentioned in his speech the issue of the High Court case.³⁴ The Assembly approved the sentence on the High Court judges in its address presented to the Knez. According to the opinion of the deputies, the conspirators had to be punished as well; therefore the Assembly requested a new trial for the conspirators. With great efforts Garašanin and Hristić succeeded in convincing the Assembly that it would be illegal, viz. against the principle *non bis in idem* (not twice for the same) – that is, a man shall not be tried twice for the same crime. Still, the Assembly made the decision all civil servants involved in Majstorović's conspiracy should be deprived of their pensions, which in fact was an act contrary to the law. The civil servants involved in the plot had already been pensioned and were deprived even of the right to a pension by the Assembly's decision.³⁵

The Reaction of Belgrade Intellectuals

Although the National Assembly and ordinary people approved of the sentence on the High Court judges, the verdict met with strong opposition in the intellectual circles in Belgrade. The general impression was that the judges were sentenced because they had not understood and had not interpreted the Criminal (Penal) Code as it would have been expected by the Justice Minister. According to the opinion of the majority of intellectuals, the culpability of the judges was never proved. Besides, the judges were sentenced by a tribunal which was composed of three judges and four members of the State Council, i.e. the educated jurists were the minority. Further, the tribunal which sentenced the judges acted on the basis of the report compiled by the Inquiry Committee, which was composed

³² Srbske novine, broj 82 od 14. jula 1864. godine, Beograd, 1.

³³ JOVANOVIĆ, Druga vlada 438.

³⁴ ŽIVANOVIĆ, Politička istorija Srbije 106–107.

³⁵ JOVANOVIĆ, Druga vlada 438–439.

of two high officials and only one judge.³⁶ The judges were tried summarily, i.e. according to a procedural device available for prompt and expeditious disposition of controversy without trial (without investigation and the possibility to present a defence). In nineteenth-century Serbia such a summary judgement existed only for the crime of brigandage (*hajdučija*,³⁷ i.e. the defection from the authorities in order to commit a crime). However, the greatest defect in the whole High Court judges' case was the fact that the judges were tried and sentenced on the basis of a bill of attainder (*retroaktivni zakon*), which was adopted after the judges had already committed the crimes for which they were charged. A general impression of the Belgrade intellectuals was that the Knez and the Government wanted to sentence the High Court judges at any price.

According to the opinion of the Belgrade intelligentsia such a flagrant violation of the independence of the judiciary seriously jeopardized the authority of the High Court. In the future, the High Court judges should interpret the law according to the expectation of the Justice Minister; otherwise they might risk being sentenced to prison. It practically meant that the Supreme Court of the country became merely a tool of the Government.³⁸ The sentence on the High Court judges provoked very negative reactions among the foreign countries' consuls in Belgrade, as well. Longworth, consul of the United Kingdom, in a letter (29 June 1864) to his superior Bulwer, Her Majesty's Ambassador at the Sublime Porte,

writes that all consuls were shocked and surprised.³⁹

Serbian Scholars on the Demise of the High Court

The contemporaries of the High Court judges' trial called the whole case "the demise of the High Court" (*Propast Velikog Suda*). This term was used for the first time by Jevrem Grujić in his booklet entitled *Legal Treatise on The Demise of The High Court in Serbia 1864*⁴⁰ and it was later accepted by Serbian historians. In his treatise Grujić concluded that the High Court judges were sentenced to prison only because they had not understood the law as it was expected by the Justice Minister.⁴¹

Živan Živanović⁴² thought that the demise of the High Court was Knez Mihajlo's final clash with the liberals. The High Court judges were sentenced to prison because of an interpretation of the Criminal (Penal) Code different from that of the Justice Minister. As one of the judges was Jevrem Grujić and one of the accused Milovan Janković (both prominent liberal leaders), it was

³⁹ On the reaction of foreign consuls see PAVLOVIĆ, *Preobraženski ustav* 343–344.

⁴⁰ GRUJIĆ, *Pravni pretres*. The name of the author was not mentioned, but from the content it is very clear that it was Grujić.

⁴¹ GRUJIĆ, *Pravni pretres* 53.

⁴² Živan Živanović (1852–1931) studied philosophy and history in Jena and Berlin. Coming back to Serbia in 1879, he worked as a professor in several Serbian towns (Veliko Gradište, Niš, Pirot and Belgrade). He started a political career in 1887, when he became a deputy in the National Assembly as a member of the Liberal Party. Živanović was the President of the Assembly (1893), member of the State Council, Minister of Economics (1899–1900) and Minister of Education (1903). A member of the Liberal Party, Živanović was a person of confidence and a very close collaborator of Jovan Ristić, a long-standing leader of the Party. His most important work was ŽIVANOVIĆ, *Politička istorija Srbije*.

³⁶ The members of the Inquiry Committee were the Deputy Justice Minister, the Belgrade County Prefect and the President of the Belgrade City Court.

³⁷ Turkish 'hajdud' refers to a brigand attacking on roads. During the Turkish rule in Serbia the word *hajduci* meant men fighting for liberation from the Turks. Yet even then not only Turks were robbed, but also rich Serbs.

³⁸ JOVANOVIĆ, *Druga vlada* 439–440.

a good excuse for Knez Mihajlo for the final rump with the liberals (his ex-supporters).⁴³

Among the Serbian scholars that have written on the demise of the High Court, the most detailed comment came from Slobodan Jovanović, one of the best Serbian jurists and historians.⁴⁴ According to Jovanović's opinion all parties involved in the High Court judges case had made significant errors. The first error of the High Court was the pronouncement of a not guilty verdict on all accused conspirators, although the evidence for the crime of high treason agreement and high treason preparation could be found. The conspiracy had not been as dangerous as the police thought, but it had not just

been empty phrases and gossip, as the High Court had thought. Even if the judges wrongly understood and interpreted the law and made errors in judgement, it does not mean that the Government could hold them responsible. The judges acted upon their judicial cognizance, and for their interpretation of the law, they could not be held accountable.

The Serbian police wanted to present the first attempts of Majstorović's group as a "great conspiracy against the regime" and according to Jovanović, this was a great mistake of the police. The error of the Government was the announcement (before the judicial decision), saying that the culpability of the conspirators was proved beyond of any shadow of doubt. Finally, the ad hoc tribunal set up to try the High Court judges made a great mistake by sentencing them without proving the act of premeditation.⁴⁵

According to the opinion of Slobodan Jovanović, the greatest errors were made by the Justice Minister Rajko Lešjanin and the legal expert and ex Justice Minister Djordje Cenić.⁴⁶ The public opinion in Belgrade was convinced that Djordje Cenić was a person who formulated the verdict on the High Court judges. Although Lešjanin and Cenić were the most eminent legal experts of Serbia at the time, they responded to the Government's question that to put the High Court judges on trial was not contrary to law, even on the basis of a bill of attainder. The Government was of the opinion that from the legal point of

⁴³ ŽIVANOVIĆ, *Politička istorija Srbije* 103–105.

⁴⁴ Slobodan Jovanović (1869–1958) was a son of Vladimir Jovanović, the ideologist of Serbian liberalism. He studied law in Munich, Zurich and Geneva. Upon graduation Jovanović went to Paris, where he studied constitutional law and political sciences at the *Ecole libre des sciences politiques*. Coming back to Serbia he worked in the Foreign Office and in 1897 became professor at the Faculty of Law, University of Belgrade (until 1905 it was called „High School“, *Velika Škola*). He taught constitutional law and his university career lasted for 43 years. He was a member of the Serbian Academy of Science and from 1928–1931 its President. His scholarly reputation made him a member of numerous academies and institutes all over the world. Jovanović started his political career in 1939, and during World War II, he was a prime minister in the Yugoslav government-in-exile (January 11, 1942–June 26, 1943). For that reason the communist authorities after the war sentenced Jovanović in absence to twenty years in prison. He never came back to Yugoslavia and died in exile (London, December 12, 1958). Slobodan Jovanović was perhaps Yugoslavia's greatest authority on constitutional law and also a master of Serbian prose style. Among his numerous works the most important are four monographs concerning the constitutional and legal history of Serbia from 1838 until 1903: JOVANOVIĆ, *Ustavobranitelji*; JOVANOVIĆ, *Druga vlada*; JOVANOVIĆ, *Vlada Milana Obrenovića*; JOVANOVIĆ, *Vlada Aleksandra Obrenovića*. In 1990 his complete works were republished.

⁴⁵ JOVANOVIĆ, *Druga vlada* 441–442.

⁴⁶ Djordje Cenić (1825–1903) studied law in Halle (Germany). Coming back to Serbia he became one of the most prominent Serbian jurists. Cenić was professor of Criminal law and Criminal procedure at the Law Faculty of Belgrade, a judge and the president of the Appellate Court and three times Justice Minister (June–December 1861, June 1868–July 1869, when he was also Prime Minister, and October 1873–November 1874). From 1860 until 1875, Cenić was a member of the State Council and from 1875 until 1889 its President.

view there were no objections, as Lešjanin and Cenić had approved the trial of the High Court judges, considering the great reputation they had in the circles of jurists. This was the reason why Jovanović found Lešjanin and Cenić to be more responsible for the demise of the High Court than Garašanin and Hristić.⁴⁷ Two main ministers in the Government were old bureaucrats, educated in the spirit of omnipotent police rule. They regarded judges like any other civil servants, i.e. the government could hold them accountable for any conduct contrary to law. Garašanin and Hristić remembered the times when the Justice Minister, using his decrees, interpreted the law and gave instructions to judges on how to act. They did not understand the importance of the principle of the independence of the judiciary, according to which judges were to try on the basis of the law, interpreting it upon judicial cognizance. Contrary to Garašanin and Hristić, their legal advisors were educated in the best European Law Schools and they knew very well what the principle of the independence of the judiciary meant. The opinion of Lešjanin and Cenić that there were no obstacles to the High Court judges' trial was contrary to their legal knowledge and the reputation that they had as excellent experts in the area of criminal law. However, Knez Mihajlo was very angry with the High Court judges and he was determined to sentence them at any cost. As Lešjanin and Cenić did not have the courage to arouse his anger, they simply decided to ap-

prove everything he wanted in relation to legal issues.⁴⁸

Epilogue

The goal of the Majstorović's plot was to dethrone and possibly assassinate Prince Mihajlo. The conspiracy did not achieve its purpose, but it diminished the moral reputation of Knez Mihajlo's regime. Until the Majstorović's plot people believed that Mihajlo's rule was a strict regime but one that respected the law. After the plot it became clear that Mihajlo's regime was despotic and autocratic. Contrary to his father Miloš, an illiterate Serbian peasant, Mihajlo was a well-educated person with the manners of a gentleman. He disappointed the Serbian liberals who expected him to establish the rule of law in Serbia. The demise of the High Court showed all absolutistic features of his character that could be compared only to the later coups d'état of King Alexander Obrenović.⁴⁹ It seems that Serbia had to wait for another ruler who would be devoted to the principles of the rule of law.

Are we still waiting?

⁴⁷ On Cenić's role in the formulation of the verdict on the High Court judges see a very detailed comment by VASILJEVIĆ, Djordje Cenić 52–82. According to Vasiljević's opinion of the responsibility for the sentence on the High Court judges was not on Lešjanin and Cenić. The verdict was legally explained without any objection; simply, the High Court was guilty of pronouncing the verdict of not guilty on the conspirators (ibid. 81).

⁴⁸ JOVANOVIĆ, *Druga vlada* 440–441; VASILJEVIĆ, Djordje Cenić 81–83.

⁴⁹ See NIKOLIĆ, *Sudovi, sudije i suđenje* 63.

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Abkürzungen:

Siehe das allgemeine Abkürzungsverzeichnis:
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