

**REGIONS (FORMS OF TERRITORIAL AUTONOMY)
IN THE THEORY OF LAW AND HISTORY OF LAW**

UDC 353.1:340.12

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Abstract. *This treatise consists of two main parts: theoretical and empirical. The objective of the first one is to establish the concept of a region as such, a problem that has not been sufficiently cleared up so far. Namely, a region shall indispensably be separated both from the concept of local self-government and from the concept of a state. A region differs from the local self-government in possessing qualitatively higher degree of power, power of original regulation of legal relations, legislature in the material sense. A region differs from a state in that only the social legal norm as the contents of the collective legal act of the stronger part of people of a state is, in principle, above the power of the state (constitutional) power. On the contrary, a region must be subordinated to the constitutional power of a state within which boundaries it exists. There are two principal types of regions: region state fragment and region public service. The former is similar to a state because it is in possession of its own state organs (organs featured by their own power of coercion), while the latter is not in possession of such organs. Further, regions may, in more details, be divided into nonincorporated autonomous territories, separate original parts of a state and regions within a regional state. This treatise shall adopt as politically most relevant division of regions the division into regions within a monarchy and regions within republics. (The third category, regions under the international legal regime, because of the limited space of this treatise is not incorporated). Naturally, in view of regions, this treatise cannot be an all-inclusive one, so that the most interesting examples are considered: out of regions within a monarchy, considered are dominions within the British Empire and Finland within the Russian Empire; regions considered within a republic are those of Italy.*

Key Words: *region state fragment, region public service, social legal norm.*

THEORETICAL FOUNDATIONS

In spite of the practical importance, in the theory of law region (formerly often named province) is one of the "provincial" concepts, which would, if it were noticed, soon be forgotten. A capital reason for this is a circumstance that the greatest number of states have not "luck" or "misfortune" to be divided into regions or to have provinces. But, another reason for this must also be an exceptionally complex concept of the region, which demonstrates similarities with both the concept of state and with the concept of local self-government, but qualitatively differing from them. It is essential, at the same time, to have in mind the fact that the concept of state, which is the key of understanding the concept of region, has not yet been sufficiently cleared up, testimony on which are a lot of theories on it.

There are, in fact, **two basic types of regions**. Naturally, of no importance here is a region in the sense of international affairs, which may comprise whole hemispheres and continents, neither a region in geographical and economic sense, which appears as a subject of different administrative and political measures.

Characteristic of both types is territorial autonomy in its literal meaning. Of crucial importance for it is authority of the regional organs (most frequently by the inhabitants elected assembly) to sourcefully regulate certain legal relations, consequently, to pass **laws in the material sense**, although those legal acts are not sometimes called laws, but regulations and the like, so as to emphasise the difference between those regulations of the region and the same highest acts of the state power. But, with the first type of region that legislative power usually is concerned with the cultural and economic functions of the state, so that cultural and/or economic autonomy is in question there. That form of regions is in pure form in certain West-European states, for example, in Belgium and the United Kingdom, here in the form of autonomies of Wales and North Ireland. In addition, some other forms of autonomy show a **tendency** to that form, since the basic reason of establishing autonomy with them is also implementation of those functions. Such forms of autonomy would be regions in Spain. Sometimes, however, autonomous legislature also extends to the principal institutions of the civil society, consisting in that sense even in passing criminal and civil laws. Then, "social autonomy" is in question. Belonging to this form of regions are certain British colonies and territories of the United States of America. Since implementation of social functions of a state is in question in all these cases, this basic type of regions is called **region public service**.

The other basic type is in possession of a more wide autonomy in the qualitative sense. In addition to the source legislative power, that region is also in possession of its **own governmental organs**, that is, organs in possession of its **own power of coercion**. For, even nonstate organizations can pass laws in the material sense for its members and stipulate what is rightful in disputes among them. But, it is only a power, applying physical force to implement under the law prescribed goals and carry out judgements of its courts, that is typical to a modern state, only it has a **monopoly of legitimate physical force over one territory**.¹ That central trait of a modern state is made relative when

¹ Cf. M. Weber, *Gesammelte politische Schriften*, herausg. v. J. Winckelmann, 4. Aufl., Tübingen 1980, 506.

"**state fragment**", as we, relying on Jellinek, call this second type of regions², is in question. For, since in a state that includes state fragments, there are also, in addition to state organs of the subject state, state organs of the state fragment (or state fragments), then state monopoly of physical force can no more be in question, thus neither a modern state that appeared in the West Europe in the 17th and 18th centuries through a fight of a national state against the forces of feudal estates, the result of which was just monopolization of physical force in the hands of an absolute monarch. The state fragment is, therefore, the holder of "refeudalization" of a state. In connection with that, Jellinek himself speaks of "disorganization of a state".³ Nevertheless, since a national state has not yet lost all of its forces, a state fragment is an extremely unstable phenomenon. Most frequently, it itself either becomes an independent state (such as, for example, dominions of the British Empire) or a component state of any complex state (such as, for example, federal units of Canada and Australia), or disappears from the historical stage (such as, for example, Alsace-Lorraine, Sub-Carpathian Russia, Territory of Memel).

There are certain similarities between regions and the **forms of local self-government**. First of all, both regions and forms of local self-government appear as the forms of **state decentralization**. Regions usually perform the function of the highest (widest) units of local self-government in its territory.⁴ Further, the forms of local self-government may, exceptionally, be in possession of their own state organs too. A typical West-European (Franco-German) local self-government, the which type of the local self-government was established after the Constitution of the Republic of Serbia had been passed in 1990, is not in possession of state organs, but may be entrusted, by the state, some of its affairs in the form of "public authorizations" for performance of which the self-government organs are hierarchically subordinated to the state organs. It was different in the states of proletarian socialism, in which the state was anyway considered a mere instrument of the communist party, to which type of state Yugoslavia also belonged over the 1945-1990 period. The organs of local self-government in those states were set up as basic state organs. That became particularly apparent in the concept of "socio-political communities" stipulated under the Constitutions of the Socialist Federal Republic of Yugoslavia of 1963 and 1974. The "socio-political communities" were also states: federation and republics, and autonomous provinces as regions, but community was declared as the "basic socio-political community". Only, even then when the units of local self-government are also in possession of their own state organs, there is a substantial difference between them and the region: the unit of local self-government may never be in possession of power of original regulation of legal relations, the power of passing laws in the material sense, while region must be in possession of that power.

Naturally, of importance here are not the words, that is, names, but things. The author of these lines was the only author in Serbia who ascertained in a scientific paper that the

² G. Jellinek, *Ueber Staatsfragmente*, Heidelberg 1896. But, our view on "state fragment" substantially differs from that of Jellinek. On that later on.

³ G. Jellinek, *Allgemeine Staatslehre*, 3. Aufl. v. W. Jellinek, Berlin 1914, 655, 660.

⁴ At one time those units were called "regions" and "regional self-government" (L.M. Kostić, *Administrativno pravo Kraljevine Jugoslavije, I: Ustrojstvo uprave*, Beograd 1933, 53 idd.). Today, such terminology can cause confusion.

Constitution of Serbia of 1990 had abolished the autonomous provinces as such preserving their name and territory because it had deprived them of their autonomy and turned them into some kind of "local self-government of higher level".⁵ For, that Constitution not only that does not recognize any more the constitutional power they were entrusted according to the Constitution of the Socialist Republic of Serbia of 1974, but deprives them of the legislative power that has been left over to them according to the Amendments to the Constitution of SR Serbia of 1989. That attitude came under the criticism of a young colleague that I could not fully understand, indeed, but the point of which seemed to be a view that my classifications were too severe and that did not take into consideration national, historical, cultural and other specifics of "these regions": "The life here also slips out to severe classification", he concludes, "since elements of different theoretical categories are represented in the given solution, because of which the subject phenomenon cannot without reserves be classified in some of them."⁶ But, more deeper meaning of this criticism lies in the conviction of its writer, which is, unfortunately, widely spread in this country, that the legislator (that is, politics) does not prescribe only the rules of conduct, but also competently passes judgement on the things of scientific truth. That conviction is legal dogmatism and death of a true law science.

There are even greater similarities between a region – in the form of a state fragment – and a state. A state fragment as well as a state has its own territory, which sometimes cannot be changed by a state without the consent of the regional organs, its population, which sometime can even hold citizenship of the state fragment and, finally, has state organs, the population of the region being sometimes subordinated to those organs.

So, what is the difference between a state and a state fragment? At first glance, one can think of sovereignty. But, sovereignty is not an essential characteristic of a state. History knows nonsovereign states. In general, the category of sovereignty can neither be applied to a West-European estate monarchy with its dualism "rex" and "regnum", the fact that even Bodin, founder of the doctrine on sovereignty, had to admit unwillingly.⁷ On the other hand, liberal writers are inclined to see in the state sovereignty one of the principal sources of political evil: Montesquieu equalizes it in his work "Esprit des Lois" (1748) with tyranny and despotism.⁸ Duguit, his compatriot of the 20th century, goes even further, augmenting that dogma of the state sovereignty as an indivisible, inalienable and not-subject-to-time power not only leads to despotism, but is also unjoinable with reality, consequently a fiction.⁹

The essential characteristic of a state is, on the contrary, presence of a **holder (subject) of state power**.¹⁰ Upon the French Revolution of 1789, which has introduced an ep-

⁵ M. Petrović, *Mesna samouprava i autonomne pokrajine u Ustavu republike Srbije sa stanovišta pravne politike*, Arhiv za pravne i društvene nauke, 2-3/1991, 335 idd.

⁶ D. Milovanović, *Pravno ustrojstvo lokalne samouprave*, Beograd 1994, 109.

⁷ J. Bodin, *Les six Livres de la République*, 2-e réimpression de l'ed. de Paris 1583, Aalen 1977, 228, 267.

⁸ *Esprit des Lois* par Montesquieu, Paris 1894, I. XI, ch. VI, I. XII, ch. VII, I. XII, ch. X sqq.

⁹ L. Duguit, *Traité de Droit constitutionnel*, 3-e éd., II, Paris 1928, 117 sqq.

¹⁰ The term holder or subject of state power or state sovereignty there appeared also with some older German writers, who, however, have neither embarked on the job to work it out as a concept nor opposed it to the concept of a sovereign (sovereignty). See, for example, P. Laband, *Das Staatsrecht des Deutschen Reiches*, 5. Aufl., I, Tübingen 1911, 97.

och of written constitutions in Europe, the holder of a state power is identical with the **holder (subject) of constitutional power**.¹¹ The French Revolution has also initiated a fight on the subject who is the holder of the constitutional power: **nation or legitimate monarch**. That fight was finally won in favour of a nation in the 20th century. The constitutional power of the nation is in its essence a **revolutionary right**: it is the right to destroy the existing constitution and to define organs to pass a new constitution. Its is, generally speaking, **the right to make decision on one's own existence**. That right of the nation has in the best possible way been described by Sieyès, a leading lawyer of the French Revolution: "Nations on the earth can be imagined as individuals beyond the social connection, or, as it is said, in the natural state. Performance of their will is free and independent of all civil forms. Existing only in the natural order, their will, to produce all its effect, shall necessarily have only **natural** properties of a will. In whatever way the nation wish, it is sufficient that it wishes; all forms are good, and its will is always a law ... A nation never gets out of the natural state ... Not only that a nation is not subjugated to the constitution, but it **need not** be ... There is only **natural** law prior to it and above it."¹²

Only, since "natural law" acquires the compulsory power only when adopted by some positive law, until which moment it is nothing else but mere postulate of legal policy, it is necessary to say that there are no legal norms above the holder of the constitutional power **in that capacity** – except in a particular case a report on which immediately follows

The holder of the constitutional power and, in general, the holder of the state power is **constituted** by a legal norm we have called "**social legal norm**",¹³ and which, as such, appears as a state "proto-constitution". That norm, as an expression of the will of the stronger part of populations of a territory, has clearly been recognized by theoreticians of the "social contract" (**Hobbes, Rousseau, Kant**, to mention only the most prominent).¹⁴ But, they immediately formed an essentially mistaken concept imputing a contractual nature to it. That norm, however, comes from a multitude of individual will actions leading to the same objective, from a so-called "single-sided aggregate act", the theory of which was founded by Otto von Gierke.¹⁵ When Renan called nation "a plebiscite of all days",¹⁶ he said by it a great truth on the origin and permanence of a state. In case of the constitutional power of the nation, stronger part of the people and nation are identical: the nation constitutes itself by the social legal norm as a holder of the constitutional power.

Our understanding of the social legal norm will be delimited in the basic features from the similar views.

¹¹ On that concept, see particularly: C. Schmitt, *Verfassungslehre*, 5. Aufl., Berlin 1970, 75 sqq.

¹² E. Sieyès, *Qu'est-ce que le Tiers état?* Par E. Champion, Paris 1888, 69, 68, 67 (underlined in the source text).

¹³ Understanding on the "social legal norm" was for the first time expounded in a text published in English: M. Petrović, *Yugoslav War Occurrences and the International and "Municipal" Law Problem Relations*, *Facta Universitatis, Series: Law and Politics*, 4/2000, 467.

¹⁴ On the history of that term, see: O. Gierke, *Das deutsche Genossenschaftsrecht*, III, Berlin 1881, 576 sqq., 628 sqq.

¹⁵ Otto von Gierke, *Die Genossenschaftstheorie und die deutsche Rechtsprechung*, Berlin 1887, 133 sqq. That theory is also adopted by Duguit: L. Duguit, *Traité de Droit constitutionnel*, 3-e éd., I, Paris 1927, 374 sqq., 398 sqq.

¹⁶ E. Renan, *Qu'est-ce qu'une nation?* 2-e éd., Paris 1882, 27.

Let us mention, first of all, Duguit's view on "legal rules" or "legal norms". Legal rules (legal norms) for the outstanding French author are not at all laws or other formal or technical sources of law as acts of a state will. Those and such acts of law are only "constructive or technical state rules" that appear only as an ascertainment independently of the state will of the existing "normative legal rules" as the only true legal rules. The basis of these latter is "social solidarity" or "social mutual dependence" governing within a group, that is, "intersocial solidarity" and the "sense of intersocial justice" when "interstate legal norm" is in question as a realistic legal norm of international public law.¹⁷ Thus, the norm that forbids murder would be a normative legal rule regardless of that whether it is contained in the criminal law or not, while provisions of that law that sanction that norm as well as the provisions of the law on criminal proceedings that enable punishment of those who have violated it, represent only constructive rules; Code Napoléon would contain only three legal norms (with the exception of the law concerning domestic relations): freedom of contracting, respect of property and obligation of compensation of damage caused by a guilt, and all the rest of nearly two thousand of provisions would be technical or constructive.¹⁸ Also, the French Declaration on Rights contains rules that are imperative regardless of the state will.¹⁹

For us, on the contrary, "technical or constructive legal rules" are only truly legal rules. Other rules of conduct, being such that their violation is not endangered by an organized sanction, that is, the implementation of which is not provided by the state organs, do not possess a particular criterion of legal norms. The social legal norm as we understand it is also a legal rule in the fullest sense of the word. It is an **authorizing norm**. Its sanction reflects in the law by the it empowered titular, holder of the state power, to stamp out by force any attempt of endangering its position, in particular to most severely punish a high treason or treason against it. At the same time, the overall state organization is not, basically, anything else but an instrument of the implementation of that norm.

In spite of all that, we are far from the fact to dispute a great significance of Duguit's discovery. We, namely, do not deny the very existence of that which Duguit calls "normative legal rules" in the positive legal order. Only, they are not legal rules for us, but **legal principles**.²⁰ Of course, Duguit should be given his due that some of them are of such significance that certain legislator must prescribe them as compulsory legal rules. In contrast to Duguit, however, we say "only" that, until they have been prescribed they are not still legal rules. Legal principles may go through three development stages. First, they can be **economic norms** or **ethical ideals**. Further, those norms or ideals may enter the legal consciousness, which requires the state to provide their application; then they are **legal ideas**. Finally, they are **shaped legal principles** when state organs begin to apply them, that is, to protect them by their sanctions as **supporting elements of a state normative order**. The holder of the state power (holder of the constitutional power) is not **legally** bound by the economic norms, ethical ideals and legal ideas. But, it is often **factually**

¹⁷ Duguit, op. cit., I, 82 sqq., 89 sqq., 105 sqq., 184 sqq., 713 sqq., II, 56 sqq.

¹⁸ Duguit, op. cit., I, 108 sqq.

¹⁹ Duguit, op. cit., II, 182 sqq.

²⁰ On the difference between the legal rule and the legal principle see, first of all, H. Heller, Die Souveränität, in: Gesammelte Schriften, herausg. See M. Drath u.a., II, Leiden 1971, 151 sqq.

bound by them, which means that if it violates them, it may sometimes impose to him hard consequences, maybe even harder than if violation of some legal norm would be in question. As the case is, so it is here as well, violation of **opportunism** may be a cause of by far greater evil than violation of **legality**.

It is also possible to delineate the social legal norm from the basic norm of H. Kelsen.²¹ That famous Austro-American law theoretician has exposed one theory of law (and state), which aspires to be strictly normativistic and positivistic one. It means two things. First, a legal order is only an order or system of norms that are as contents of human wills something that "should be" (**Sollen**), which stands in an absolute opposition to that which "is"; therefore, in law, there is no anything real in the sense of "nature". Accordingly, neither a state, for Kelsen, is anything that is, but it is the same as the legal order is, its personification. Second, legal norms are only those norms prescribed by the state. But, since the state is also something prescribed, something that, accordingly, prescribes it itself, the legal norm upon which effectiveness of all other is grounded is one unprescribed, assumed legal norm, "basic norm" (**Grundnorm**). For us, on the contrary, law is a part of reality; although not only of reality in the sense of nature, but also of higher reality, the **realm of spirit**. For the knowledge on legal norms as an element of the "objective" and "objectivised" spirit we are indebted to Hegel.²² In the 20th century, an important renovator of that understanding is E. Husserl.²³ and particularly N. Hartman.²⁴ The main reason for incorrectness of Kelsen's theory lies exactly in the lack of his adequate consciousness on the spiritual being. The central concept of that theory, the "basic norm", cannot, therefore, be anything more than a mere **fiction**. The social norm is, on the contrary, a reality, that much as much the state is realistic, that is, the constitutional power it constitutes.

A region, in particular a state fragment, may be in possession of its own constitution as its highest legal act, which, first of all, regulates its organization. Since that organization – when a state fragment is in question – is also a state organization, it is then that the constitution of the state fragment is a **state constitution**. Only, in the region in general, and in the state fragment in particular, there can be no the holder of the constitutional power that could have the right to make decisions on the existence of the state fragment. The Constitutions of the Socialist Federal Republic of Yugoslavia and the Socialist Republic of Serbia of 1974, in spite of many shortages they contained and which are no the topic herewith, did not neglect that circumstance, although they in a far-reaching way equalized the republic and the province. According to them, "socialist republic" is a state founded on the "sovereignty of people", that is, on the constitutional power of the nation, while the "socialist autonomous province" is a socio-political community in which "working people and citizens, peoples and national minorities shall exercise their sovereign rights", accordingly, a conglomerate that cannot be in possession of absolute prerogatives of a people-nation, but according to the very nature of things. It should, further, be kept in mind

²¹ See particularly, H. Kelsen, *Reine Rechtslehre*, 2 Aufl., Wien 1960, 196 sqq.

²² Cf.: G.W.F. Hegel, *Enzyklopädie der philosophischen Wissenschaften im Grundrisse* (1830), herausg. von F. Nicolini und O. Pöggeler, Hamburg, 1991, §§ 483 sqq.

²³ E. Husserl: *Ideen zu einer reinen Phänomenologie und phänomenologischen Philosophie, II: Phänomenologische Untersuchungen zur Konstitution*, herausg. von M. Biemel, Haag 1952, 190 sqq.

²⁴ N. Hartman, *Das Problem des geistigen Seins*, 3. Aufl., Berlin 1962, 175 sqq., 313 sqq., 406 sqq.

that the then Yugoslavia was a one-party dictatorship of the Republics' Leagues of Communists as **effective** holders of state power, the legal position of which corresponded to the best to the legal position of estates of the Western Europe in the times prior to the bourgeois revolutions; the Leagues of Communist were a kind of the "fourth estate". Provinces, however, did not have their own Leagues of Communist.

That what Laband has at one time said about the former German state fragment Alsace-Lorraine is still valid also for all other state fragments; "The view that Alsace-Lorraine is a state could be, probably, defended, because she is organized as a state and because she performs all functions of a state in the same way and to the same volume as a components state of the German Federation. But, that Alsace-Lorraine state would miss **her own** state living strength, her ruling power would be borrowed from the state (Reich); she would have only a **form** of a state and appearances that accompany it, but never a legal authority of self-preservation; she would be a state patched from the legal paragraphs, prepared in the legislature retort; a state homunculus next to realistic states."²⁵ In this connection, Jellinek's view is quite correct that the constitutions of all state fragments are "component parts of the complete constitution of the state they belong to".²⁶

Added to this presentation should be the difference between a state fragment and the component state (federal unit) of the federal (federative) state, since some states may be organized as a **federation of state fragments**.

Not penetrating the thicket of theories on a federal state, presented herewith will be only views we think as correct. Both a federal state and a state of which it is a component part must be in possession of their own state organization including separate holders of a state (constitutional) power established under the different social legal norms. But, neither the federal nor the component states are fully states, but a state is their **totality**, their **community**. It is a consequence of the **organic mutual dependency** of two state organizations. On the one hand, the constitution, laws, judgements and administering acts of the federal state are binding for the component states. On the other hand, the component states appear as the holders of the constitutional power of the federation and at the same time as its legislative organs (usually by means of a separate federal legislative assembly house). At the same time, administrative and judicial organs of component states often execute federal regulations, which intensifies dependence of the federal state upon its member states. But, to avoid a complete fusion, the holder of the state power of the federation and holders of the state power of its member states rest upon the mutually harmonized, but still different social legal norms.

In that regard, it is another thing in case that the state is a federation of state fragments. The assumption of such federations is that the holder of the state (constitutional) power in them is **the same** both at the level of the federation and at the level of federal units, so that in the state, therefore, is valid only **one** social legal norm. Usually, in a one-nation, ethically homogenous republican federation, people as a holder of the constitutional power act both through the federal organs and through the organs of the federal units; the result is a high level centralization, which makes those federations similar to the decen-

²⁵ P. Laband, *Das Staatsrecht des deutschen Reiches*, 5. Aufl., II, Tübingen 1911, 234 (underlined in the source text).

²⁶ Jellinek, *Allgemeine Staatslehre*, 656.

tralized unitary states, which, in the essence, they are. Generally belonging to such type of "unitary federations" are Ibero-American federations, Austria, Germany and Russia.

In addition to the basic division into regions public service and regions state fragments, regions may also be divided according to the level of integration into the state they belong to. Here, one can start from regions in the form of "nonincorporated autonomous territories" with no impact on the life of the state of which they are component parts. Those are all colonies provided with sovereign autonomy, but deprived of direct possibility to influence the existence of the mother-state, territories of the United States of America, Finland as a component part of the Russian Empire. Following further are integrated regions with higher independence than the territorial units of the rest part of the state, regions "separate original parts of the state". Belonging to that type, most frequently historically, are Åland Islands within Finland, island autonomies in Portugal (Azores, Madeira), regions of the United Kingdom (Scotland, Wales and North Ireland) as a well as a series of former regions, for example: autonomous provinces in the Socialist Republic of Serbia; autonomous republics, autonomous provinces autonomous districts within the member republics of the former USSR; Croatia-Slavonia within Hungary according to the Agreement of 1868; Alsas-Lorraine within the German Reich, Territory of Memel in Lithuania; Sub-Carpathian Russia within Czechoslovakia. The third type, with regard to this division, make "regional states" the whole territory of which is divided into regions. A historical example of such state is Austrian Empire from 1861 to 1918 with her 17 crown lands. Those are today Belgium and Italy – the latter for the following reasons. There are regions in Italy of real autonomy and regions without it, but they are so called under the Constitution. Nevertheless, since the former are in possession of autonomy of a very low level and the latter represent the forms of territorial self-government of a very high level of self-government, which makes their statuses greatly identical, Italy is as a result a "regional state". The 1978 Constitution of Spain does not stipulate, but allows establishment of regions. In view of that, a part of the territory has been regionalized, while the other not. Therefore, Spain is at the same time a state with "separate original parts" and a "virtual regional state".

The advantage of this classification is its all-inclusiveness and clearness. But, it is burdened by a not small formalism because it does not take into consideration historical and political relations and circumstances. However, a legal theory of state comes to life only when soaked by historical and political causalities. That is why we would adopt one more typology, which takes into consideration these relations and circumstances. According to it, regions would be divided into regions within a monarchy, regions within republics and regions the status of which is regulated or protected under the international law. We will stick to the latter classification further in this presentation, noting that it, in view of the abundance of material, cannot be an in-depth one, but we must stick to the main guidelines and most relevant examples. Having that in mind, we will completely leave the analysis of regions of the international law character out; we hope that we will be able in the future to pay special emphasis discussing that problem.

The character of this presentation will primarily be historical. As we have already pointed out, the legal appearance of regions often changes. Let us trigger our memories on how many metamorphoses have the autonomous provinces in Serbia have come through since 1968 to date, when they became "constitutive elements of the Yugoslav Federation". A theory of law, being a morphologic discipline, may work only upon a crystallized,

complete legal bodies, which are, in our case, first of all, those regions belonging to the past. Exceptions are only those today existing regions that are legally stabilized because their political development has basically been completed. Such exception would be, first of all, regions in Italy, for which reason they are, together with the examples from the past, subjected to this analysis.

REGIONS WITHIN MONARCHIES

Within this group of greatest importance are naturally "main dominions" of the **British Empire**: Canada, Australia, New Zealand and Union of South Africa. We say "main dominions" because the form of dominion was used for some states – former colonies, which have only for a short time dressed her on their way to full independence. Here are those mainly formal dominions: India, Pakistan, Ceylon and Irish Free State (Soarstat Eireann). Interesting from the legal and historical point of view is the destiny of the dominion Newfoundland, which has voluntarily renounced its independence to become a federal unit of Canada.

The British Empire was the largest empire in the history of mankind. But, the Empire was at the same time a very complex and original creation, because of which its qualification from the legal and logical point of view is exceptionally hard. For, its builders were not legal and political architects starting from the general principles, but pragmatists searching for solutions for actual cases, which otherwise suits to the English way of thinking. Sir Austin Chamberlain, the British statesman, knew, on the occasion of a political speech, delivered in 1925, at the League of Nations Assembly, how to underline that in a striking way: "We are actuated by tradition, by affection, by prejudice ... We are fearful of logical conclusions pushed to the extreme. It has been our practice to eschew... large declaration of principle; we have proceeded from the particular to the general instead of from the general to the particular. We have been content to deal at any one moment with the evil of the day and to provide the remedy which that evil required. It is not out of a logical system proceeding from general hypotheses that our freedom, our liberties, our safety have grown. It is from the wise spirit of compromise which has inspired all British parties in critical moments and from our concentration upon the immediate problems which required a solution at the moment."²⁷

The British Empire has passed through, in view of the constitutionality development of the "main dominions" in particular, three main stages of its existence. "The First Empire", the lifetime of which lasted from 1607 to 1776 or 1783, was a colonial empire of the old school, like Spain, Portugal and France,²⁸ and, therefore, represented a purely unitary and politically centralized state. "The Second Empire", the epoch of which can possibly be counted from 1776 or 1783 to 1917, features gradual independence of crown colonies inhabited mostly by the population of Anglo-Saxon origin. First, they were granted a **representative government**, that is, legislative assemblies the members of which were elected by the people of the colony, in a word, social autonomy. Then they

²⁷ VI-e Assemblée, Session Plénière, 38.

²⁸ A. Zimmern, *The Third British Empire*, 2nd ed., London 1927, 2.

were granted, following the constitutional development that occurred in Great Britain herself, "**responsible government**", that is to say, the administration responsible to the representative bodies. Here, a parliamentary monarchy of the English type is in question, where the ruler is only formally in possession of the executive power while it in reality belongs to the government responsible to the parliament, the governor or governor general representing the king or queen in the subject colonies. Upon introduction of the responsible government, the names of those colonies were changed, and since then they were called "**self-governing colonies**", to be finally all of them, in 1907, officially renamed into dominions. The three of them: Canada, Australia and South Africa will even be federations. For, upon the forcible secession of the thirteen North American colonies, the future United States of America, England tried to save her Empire by meeting the demands of the dominion population, even by training them for independent national life. In keeping with the spirit of those changes, "colonial conferences" as a permanent institution of the British Empire had come on the scene since 1907, which after 1907 bore the name of "imperial conferences", where the questions of the Empire as an entirety were resolved.

The "Third Empire" existed from 1917, the next to the last year of the First World War, up to 1926 or 1931. Over that period, dominions within the British Empire were almost equalized with Great Britain gradually acquiring the international subjectivity. Respecting the contribution of dominions in the war efforts of the British Empire, the resolution of the Imperial War Conference dated April 16, 1917, recognized "equality of the status of Dominions". The Resolution leaves out the question of the Empire internal affairs restructure to a particular post-war imperial conference, but sets up the principle that they should be grounded "upon the full recognition of Dominions as autonomous nations of an Imperial Commonwealth" as well as upon the recognition of the "rights of Dominions and India to an adequate voice" in the British foreign policy. Canada, Australia, South Africa as well as India appear as the signatories of the Treaty of Versailles and the member founders of the League of Nations – although in the texts of the Treaty somewhat indented below the British Empire. Soon after that Canada will open her separate mission in Washington.

The final outcome of that process took place at the Imperial Conference of 1926 being expressed in the "report of the Committee for Imperial Affairs". The objective of the report is to clear up the basic legal relations among the principal parts of the British Empire, namely its "self-governing communities", of Great Britain, on the one hand, and the six dominions, on the other. That part of the Empire has been called British Commonwealth of Nations since then. The essence of those relations is full equality of Great Britain and the dominions and in connection with this the relevant report reads: "They are autonomous Communities within the British Empire, equal in status, in no way subordinate one to another and in any aspect of their domestic or external affairs, although united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations." Those principles were embodied under a particular British statute; the so-called "Statute of Westminster" dated September 11, 1931. Further, stipulated under it is that "the Crown is the symbol of the free association of the members of the British Commonwealth of Nations, and as they are united by a common allegiance to the Crown", each change in rights referring to the succession to the throne or royal names and titles shall need a consent of both parliaments of all dominions and the Parliament of the United Kingdom. Finally, under the Declaration of 1949 the British Commonwealth of

Nations was renamed into Commonwealth of Nations, because its members are no more only subjectivities with British citizenship. At the same time, the very name dominion comes out of use and is replaced by a more neutral "land".

Now, let us subject to more concrete understanding and legal analysis that development of the pars pro toto example of Canada.

Canada was a British colony from 1763 to 1773 autocratically governed by a governor general, supported by an appointed executive council. An appointed legislative body was introduced under the **Quebec Act** of 1774. A "representative government" was assigned to the state under the Canadian Constitution Act of 1791. The colony was divided into two provinces: Upper and Lower Canada. The Upper Canada was predominantly English and Protestant, while the Lower Canada was predominantly French and Roman Catholic. A "responsible government" was first introduced into Canada. That is why it will serve as a model of the constitutional shaping in other dominions. Lord Durham, who was sent to the North American colonies in 1838, to establish order after a great number of uprisings, interceded in favour of the constitutional reform in his famous report which made a sensation all over the British world and initiated far-reaching changes. That Report on Canadian Constitutional Affairs, in its part where the principle of the responsible government is opposed to the purely representative principle is worth reading again: "Surrendering to strange illusions is he that imagines that the mere constitutional texts or system of oligarchical rule will ever make an elected body, which is conscious of representing the majority of views, to willingly renounce disposal of total public incomes, to restrict itself to the legislative function in the very meaning of the term and to accept the role of an indifferent observer while the laws they have passed are being executed by people in the capability and intentions of which it has none confidence. Such is, however, the role for which there are efforts to be imposed on the elected assembly of Lower Canada: it can pass laws or renounce them, approve or deny financial support necessary for the public services operation, but, in return, cannot effect the least influence on appointment of not a single councillor to the Crown. The members of the executive power are elected regardless of any considerations to the wishes of people and their representatives and there are a lot of examples where enmity towards the elected majority of the assembly was the only reason because of which incapable individuals were appointed to the important and honourable posts. Even when the policy of the government was formally condemned by the elected assembly, the persons counselling that policy remain in power and retain the possibility of implementing it further on. If a law were sanctioned after a series of arguments, that law should be applied by the same people who had most fervently attacked it."²⁹ (Original text is in French).

Following that, in 1840 there occurred unification of the two provinces, Upper and Lower Canada, with a Parliament for the common legislature and "Canada", as it is called now, got the **responsible government** in the same year. That system started functioning practically in 1848, at the times of governor Lord **Elgin** in Canada. His ministers withdrew in March after the nonconfidence had been voted in the Parliament, but he did not take any measure to hold them in the service although he ruled to the full agreement with them. Self-government and responsible government were introduced into the Canadian

²⁹ Cit. in: H. Speyer, *La Constitution juridique de l'Empire Colonial Britanique*, 1906, 103.

provinces: in Ontario and Quebec in 1839; in Nova Scotia and New Brunswick in 1848; on the Prince Edward Island in 1851; in Manitoba in 1870; in British Columbia in 1871 and in Alberta and Saskatchewan in 1905.³⁰

Concurrently with this transition of the state power into the hands of Canadians, the process of shaping Canada as federation was also underway; since the provinces of Canada, Nova Scotia and New Brunswick had expressed their will to be federally united in a dominion under the Crown of the United Kingdom of Great Britain and Ireland, under the constitution that was "in principle similar to that of Great Britain", the English Parliament had passed the British North America Act – abbreviated BNAA (1867), which together with its numerous later amendments represented the Constitution of Canada, according to which Canada had a status of a dominion, "as a part of the British Empire" (Article 132) and organization of a federal state. Thus, the original federal units (provinces) of the Dominion of Canada were: Ontario, Quebec (two provinces by the unification of which, as Upper and Lower Canada, Canada was established in 1840), Nova Scotia and New Brunswick. However, under BNAA a possibility was stipulated that other colonies could join that federation; that possibility was realized by the act of the English Government ("**Queen in Council**") to the address (request) of the Canadian Federal Parliament and the address of the legislative body of the colony asking for admission: Newfoundland, Prince Edward Island and British Columbia, as well as to the address of the Federal Parliament for the Northwest Territory. Thus, entering the federation were: Manitoba in 1870, Prince Edward Island in 1873, British Columbia in 1871, which was established as an independent crown colony in 1858; Alberta and Saskatchewan, which were the to that time parts of the Northwest Territory, became federal units in 1905. Finally, in 1949, Newfoundland with East Labrador, as the tenth province and former dominion, joined the Canadian Federation (procedure: referendum of population of that future federal unit, address of the Federal Parliament of Canada, amendment of **BNAA** by the British Parliament).³¹

Here, an insight into the state of Canadian armed forces is necessary. Their forming was underway along with the independence process of Canada. Already in 1815 the Canadian Law on Militia stipulated introduction of active militia, recruited on a voluntary basis, and which existed along with the British army stationed in Canada. That militia consisted at first only of companies and squadrons of cavalry, but from 1859 of regiments as well. The Department of Militia and Defence was established in the Canadian government in 1868. In addition, British troops were gradually leaving the colony: it was in 1906 that the last British soldier left Canada. In the First World War, Canadian expedition corps fought against the Germans, but by the end of the war, the English CO was replaced by a Canadian general. In the Second World War, Canada already acted quite independently; on September 10, 1939, she declares war on Germany, and her 1st army took part in the battles on the West front. It was then that Canada built a powerful air forces and navy. Her navy was the third in power among the Allies navies.³²

³⁰ J.L. Kunz, *Die Staatevnerbindungen*, Stuttgart 1929, 728 sq., 781 sq.

³¹ Sir I. Jennings, *Constitutional Laws of the Commonwealth, I: The Monarchies*, Oxford 1957, 130 sqq.

³² *Vojna enciklopedija*, 2nd ed., 4, Beograd 1972, 216 id.

Until 1840, when responsible government was introduced in Canada, there could hardly have been a word on the autonomy of that colony. The "representative government" that existed to those times, that is, the right to pass laws by the Canadian national representatives in addition to the compulsory approval – sanction by the British Crown, but without any impact on the execution if those laws, formally was a social autonomy, but in essence was nothing more than certain democratization of the legislative process. It was only when the people of the colony were vested the right to independently administer according to the laws they had passed, the colony (dominion) became a **state fragment** with exceptionally wide autonomy, because after the withdrawal of the British troops the dominion was in possession of a **full monopoly of physical force** upon its territory.

Having all that in mind, a question can be raised was not the dominion already then anything more than a state fragment, and namely some kind of a state. For, its autonomy was much more wider than the statehood of a series of member states of federal states, vassal states and protectorates. Nevertheless, quality did not result here from quantity. Dominions, in the times of responsible governments, lacked the holder of the state power: the territory of the dominions was British territory, their inhabitants were the subjects of the British Crown, their constitutions were British laws. To be sure, at the beginning of the 20th century encountered is a view of an author who claims that the right of the British Parliament to pass laws without the assent of the autonomous colonies that would be effective for them is obsolete.³³ But, with regard to the alleged obsolescence there are no examples that would support it. On the contrary, just because all the British laws that regulated the legal position of dominions were one-sided privileges, the consequence of which was not the birth of a new holder of the state power, the British legislative factors could change them without offending whatever legal norm, that is, anyone's subjective law. The inhabitants of the dominions, being British subjects who reside in the British territory, would be obliged to obey the new laws, otherwise would be guilty of mutiny.

That legal state did not change until 1917 when dominions, as we have seen, were recognized the status of "autonomous nations of an imperial community". Only that recognition means recognition of a **holder of state power** and indirectly renunciation from the rights of the British Parliament to voluntarily regulate the status of dominions; for, it is contrary to the nature of things that between the two equal nations there are relations of superiority and subjugation.

Nevertheless, dominions were not still fully independent states. The international subjectivity still belonged to the Great Britain; it was only her who conducted politics of the whole British Empire holding in her hands the supreme command over all armed forces of the Empire. It is, however, possible to understand the then statehood of the dominions starting from one, in particular rather rare today, type of complex state, **state of states (suprastate)** included in which are **autonomous states (substates)**. Consequently, the dominions were autonomous states within the British Empire as a state of states.

The state of states is partially identical to a federal state. Acting in the territory of an autonomous state are two state organizations, state organization of the suprastate and state organization of the substate, which have two different co-holders of the state power established by the two different legal norms, neither the suprastate nor the substate are,

³³ Speyer, op. cit. 78, 86, 104.

taken for themselves, fully states, but the state is only their entirety, unity. Only, in contrast to the federal state, that unity **does not here extend over the whole state territory**, but exclusively over the territory of the autonomous state. It is because the autonomous state like "nonincorporated autonomous provinces" does not share functions of the state of states beyond its territory, so that the suprastate, because of that, may also be unitary beyond the territory of the autonomous states, moreover a centralized state. But, for that reason, the autonomous state, in return, usually has greater internal independence than the component state of the state of states. The difference between a dominion upon gaining independence and the most frequent subtype of the autonomous state, a vassal state, would consist only in that the vassal states had their own ruler, while the state head of a dominion was the British ruler. Here, because of that, one can talk of the British real union that was, due to inequality of the Great Britain and dominions, a **real union of nonequal law** (*Unio realis inaequali iure*).

We know that that governmental structure was only a short interval on the way of dominions towards the full independence. After gaining independence they are in a union with the Great Britain only through a common parliamentary monarch, consequently in a mere **personal union**. A legal witness of the dominion independence gaining process in 1926 observes that the then British Empire is "something that is more loose than confederation or mere alliance because there is no a written link between the dominions and the Great Britain or among the dominions themselves. The British Empire... became the British Entente", the league of nations in the League of Nations, "a group of states of which each one is independent, but which are mutually linked by the cordial sentiments and agreements to counsel each other." The same writer admits that the British Empire is an entente of states that is "constitutionally in rapid disintegration". If, in spite of that, there are no fears that the "British Empire draws to a close", than it is not conditioned by the legal links, but by metajuristic factors that hold the Empire together.³⁴

The legal position of **Finland within the Russian Empire** is also very important to understand the problem we are dealing with.

Sweden conquered Finland in 1312. "The law and the social organization of Sweden were adopted in a state which had not had that far either law or organized society. The people adapted themselves to the new forms, applied them following their own character and finally completely assimilated them."³⁵ In the 16th century, in the times of Reformation, adopted by the Finns with the rest of Sweden, there occurred the birth of the Finnish literacy, by means of which a spiritual foundation for the creation of the Finnish nation was laid. Until the Russian conquest at the beginning of the 19th century, Finland was an ordinary Swedish province, the legal position of which did not differ in any way from the legal position of any other Swedish province; she was an integral part of the Swedish Kingdom as an estate restricted monarchy.

During the 1808-1809 Russian-Swedish war, the whole Finland came under Russian rule. However, emperor Alexander I did not want only to annex Finland, he wanted to make Finns resign from Sweden and voluntarily enter of the Russian Empire. While the battles were still fought, the Emperor forwarded a declaration to the European powers in-

³⁴ Zimmern, op. cit., 44 sqq.

³⁵ Cit. in: R. Redslob, *Abhängige Länder*, Leipzig 1914, 244. Note 1.

forming them on his intentions to annex Finland to Russia forever. Then, on March 20 (April 1), 1808, he addressed the Finnish people by a manifesto, proclaiming the annexation and requesting them to swear fealty. But, the Finns refused to take an oath of loyalty and continued, together with the Swedes and backed by the English, to fight against the Russians. Then, on June 5/17, the Emperor again addressed the Finnish people and declared that the province of Finland had become a province of the Russian Empire for good. In return, he promised that that province would remain undisturbed and unchanged, so that the old laws and privileges of its population would remain untouchable. It was only on March 25, 1809, that the Finns would put their arms down because the Swedes were forced to leave Finland. But, it was already by a decree of January 20 (February 1), 1809, that the Emperor had convened a diet of the "Great Principality of Finland" in the town of Borg in keeping with the constitutional laws and the assembly operation procedure of Sweden. It was under that decree that the Emperor, for the first time, called himself a great prince of Finland.

On March 15/27, 1809, the Emperor announced the "act on guarantee" to be later designated as the "Magna Carta of Finland", under which he promised to steadily keep the faith, basic laws, rights and privileges of each estate and of all inhabitants of Finland they had previously enjoyed. The next day, the Emperor opened the diet in the form usual for the Swedish parliament, on which occasion he repeated the promise from the act on guarantee, and on March 17/29 he received the oath of loyalty of estates according to the ceremony usual in Sweden. Besides, the estates did not take the oath to the Emperor only, but to the constitution of the state as well. Since the Emperor's proposals relative to the government organization, taxes and finances, organization of army and mint of coins were legalized by the diet, the Emperor closed it on July 6/18 declaring in his final speech the people of Finland were raised to the level of nation living under the rule of their own laws. The Finnish citizenship was also established, different with regard to that of Russia.

The process of incorporation of Finland into Russia was formally ended by a peace treaty between Russia and Sweden concluded on September 5/17, 1809, after the military operations had already extended to the Swedish territory. The contents of that peace treaty reads as follow: Sweden shall renounce a territory of Finland; it shall belong in future to the Russian Empire and shall be annexed to it. Since the Emperor has already, in a noble way, promised to the Finns that he will keep their religion, their property rights and their privileges, the Swedish king is, therefore, considered freed from the duties to request guarantees for his former subjects.

In order to more strongly bind his new subjects to himself, the Emperor annexed the region of the town Vyborg to Finland as well as territories Russia had conquered from Sweden in wars of 1721 and 1743. (When in 1939 the Soviet Union requested, for safety reasons, that some of these territories should be given back to her, after all, replacing them by some other territories, Finland renounced the proposal, which caused outbreak of the 1940-1941 war).

Later, after Alexander I, each successor to the Russian throne used, on taking over the power, to confirm the basic laws of Finland.³⁶

³⁶ Kunz, op. cit. 201, 206 Note 2.

Finland remained within the Russian Empire until the Bolshevik Revolution; the diet of Finland declared independence on December 6, 1917, followed by the approval of the Council of People's Commissars of the Soviet Russia on December 31, 1917.

In the meantime, since Swedish basic laws effective in Finland were not more closely stipulated under the Emperor's act on guarantee, there ensued two interpretations of that concept, one pro-Finish and the other pro-Russian..

The Finns claimed that the Emperor's guarantee held in power two constitutional laws, one of 1772 and the other of 1789. Under the former, "**Regerings-Form**" dated August 21, 1772, the legislative power was granted to the king and the estates. No new law can be passed, no old law can be amended without the mutual will of both factors. The king, on the other hand, does not convene estates within the firm time periods, but only when he estimates that it is to the interests of the state. For, a wide range of questions was left, under the constitutional custom, to the king, which, after all, resulted, among other things, in the impossibility to clearly draw a line between the legal and regulative matters. Nevertheless, military and tax regimes were explicitly directed to the legislature sphere of activity, thus being a common competence of the king and estates. Also belonging to the king was the administrative power, but, first of all and with regard to it, he was limited by some authorizations of the Council of the Kingdom. Revision of the Constitution was possible only with the consent of the state estates. "Regerings-Form" was amended on February 21 and April 3, 1789, by the "**Förenings-och-Säkerhets-Akt**". Then, the king's power field of activity within the administration was considerably expanded, while the Council of the Kingdom lost a share in the rule. In contrast to that, legislative functions remained unchanged. As earlier, in order to pass a law, approval of both the king and the estates was indispensable. According to the widely held views of the Finnish writers, approved also by the Finnish diet in 1899, those very principles had to be competent with regard to the relations of the Russian Emperor with the Great Principality. They could be changed only by the consent of the Finnish estates, which would cause Finland to have such constitution that she could not be deprived of without her assent. Only, that doctrine was disputed. In 1887, Ordin exposed arguments in favour of the contrary, pro-Russian thesis, that the guarantee of Alexander I did not confirm Swedish constitutional laws of 1772 and 1789, but only the General Law of 1734 (under which civil, criminal, police, court and trade laws were covered), Church Law of 1686 and documents on privileges of certain estates.³⁷

The public life in Finland until 1899 was lived within the frameworks of the aforementioned Swedish constitutional laws. As for the Emperor in the capacity of the Finnish great prince, there was not a particular law in Finland on the succession to the throne, so that the Russian rule was in effect; who would come to the Russian throne, he would accordingly be the great prince of Finland. Complete foreign affairs and commanding the army were also excluded from any Finnish interference.³⁸

Belonging to the Emperor was a complete government power, being an absolute ruling monarch in Russia, he was a constitutional ruler in Finland of restricted power. The Emperor could transfer his ruling authorizations, retaining the right to recall them. He en-

³⁷ On Ordin's view, see: Redslob, op. cit. 253 sq.

³⁸ Cf.: Kunz, op. cit., 203.

acted a series of regulations for Finland until 1899, not convening the Finnish diet until 1863. In spite of all that, the Swedish king was also empowered to that on the grounds of a centuries old customary law. Under the regulation of August 6/18, 1809 and the decree of February 9/21, 1816, the Emperor established the Finnish Senate the seat of which would be three years later in Helsingfors (Helsinki), capital of Finland. The members of the Senate were appointed by the Emperor, the members being all Finns; but that rule was not valid for the governor general of Finland. The Senate was divided into two departments. The first was a supreme court; the other dealt with economic affairs and functioned as the supreme administrative unit. The governor general was in possession of double competence: on the one hand he was the President of the Senate and, as such, with regard to other senators was only the first among equals, "**primus inter pares**". On the other hand, he had his own competences. Predicted was a case of disagreement of the governor general with some conclusion of the Senate. Then, the governor general could unfold his objections to the ruler. In certain things, the Senate would be empowered to resolve problems only in agreement with the governor general, which particularly were the questions of appointment. In case of disagreement, it was the Emperor who would cut the Gordian knot.

As of February 3/15, 1899, the Emperor's decree was enacted which spanned the gap between the Russian and Finnish legislature. The laws effective for Finland could now be passed without the consent of the land diet; the Emperor empowered himself to pass laws for Finland of his own will, autocratically, in the matters concerning the general interests of the Empire or connected with the Russian legislature. It was again his free will to estimate whether it is the matter in the subject case to be resolved by himself or the matter to be resolved in conjunction with the diet of the Great Principality. If he would take the first path, the function of the diet would only be an advisory function. Soon after that, in an autocratic form, the Emperor enacted a new military law for Finland. The Finnish estates, asked for an opinion on the new method of legislature, but persisting on the old constitutional procedure, renounce the draft law. In spite of that, the Emperor finally enacted it on June 29 (July 12), 1901. After that, a wave of discontent spread all over Finland; the new law was widely challenged. But the Emperor remained unyielding and granting extraordinary authorizations to the governor general he introduced a dictatorship in Finland. But, upon the unfortunate war against Japan, a revolution was stirred up all over the Russian Empire. The Russian revolutionary movement made for the support to that in Finland. It was only then that the Emperor began to yield. Already on March 16/29, 1905, application of the military law of 1901 was suspended, and then, by a manifesto of October 22 (November 4), of the same year, the overall controversial legislature of 1899 and further was abolished. But, no sooner the revolutionary uproar ended and Russia stabilized as a constitutional monarchy (official name: State of Russia), the government started to rearrange the constitutional structure of Finland.

According to the protocol of the ministerial council, which was approved on June 17/30, 1908, the administration was broken up into two parts and the ministerial council made a decision which of the affairs of Finland touched the interests of the State and, therefore, they should be resolved by the ministries and head offices. One Russian law, adopted by the new legislative factors, State Duma and the State Council, and which was sanctioned by the Emperor on June 17/30, 1910, differentiates two categories of laws and regulations for Finland. Falling into the first category are the things of importance to the

State as a whole; the law lists a whole catalogue of things. Falling into the second category are the things of purely Finnish importance. The first things come under the competence of State, the second ones under the competence of estates and governmental offices of the Great Principality. Therefore, since Finland was, in that way, to a great extent brought under the governance of Russian laws, it was naturally that Finland would also be conferred the right to participate in the Russian legislature. That is why, under the law of 1910, the Finnish diet was invested with the right to elect four members for Duma and two members for the State Council. Thus, the constitutional development of Finland within Russia came, at the same time, to an end.

When the Russian-Finnish constitutional conflict was provoked, it was a motive to stir up the centuries-old Russian-phobia in the public of the West-European countries. A great number of prominent law writers had accused Russia for breaking Finnish constitutional rights and policy of "Russification" of the Finnish nation; several scientific magazine were started primarily dealing with in that way opened "Finnish question"; also, there appeared, however, a lot of texts which, based upon legal arguments, defended the Russian policy.³⁹ For the sake of the truth, a mention should be made here that the intention of the Russian government was in no way to abolish the autonomy of Finland, but to reduce it to a certain extent; obviously, Hungarian solution of the "Croatian question" under the Croato-Hungarian agreement of 1868⁴⁰ served as an example to the Russian government. A variety of "common things", the solution of which was within the Hungarian constitutional factors competence, were also determined under that constitutional chart, while other things were the subject to the Croatian "self-governing (autonomous) right". But, the West-European public did not have any good ear for the outpouring discontent of Croats.

Many writers held the view that the Finnish interests would be defended in the best possible way if Finland were qualified as a separate state. Our attention will be focused upon the two most characteristic views of that kind.

The relation between Russia and Finland was understood by Delpech, a Frenchman, as a **real union**. He says: "Finland and Russia may just look like two different states offering more than one feature of similarity with confederation (... a real union is only a variant of a confederation of states); because both of them are in possession of separate institutions having internal sovereignty performed by separate organs; otherwise unity of the sovereign exists only from the physical point of view since, from the constitutional point of view, the Emperor is a great prince as well uniting thus over his head two different legal personalities."⁴¹

This view can easily be denied. Real unions, as well as confederations, are communities of fully equal states, which assumes that their territories are individual, fully separated one from another. That was not the case with Russia and Finland. Relevant legal docu-

³⁹ Literature dedicated to the "Finnish question" is usually cited by: Redslob, op. cit., 242 sqq. Note 1; Kunz, op. cit., 202 Note 1; R. Erich, *Das Staatsrecht des Grossfürstentums Finnland*, Tübingen 1912; idem; *Das öffentliche Recht in Finnland*, *Jahrbuch des öffentlichen Rechts*, 1913, 203.

⁴⁰ On the political occurrences preceding conclusion of the Agreement, see: V. Krestić, *Hrvatsko-ugarska nagoba 1868*, Beograd 1969, 233-330 in particular.

⁴¹ Delpech, *La Question finlandaise, les droits du Grand-Duché et le manifeste du Tsar du 3/15 février 1899*, *Revue générale de droit international public*, 1899, 552.

ments of those times expressly pointed out and repeated that Finland is an integral part of Russia. Consequently, Finland could neither be equal to Russia, but had to be subordinated to her. But, here a new question arises. Was not Finland, after all, a state anyway, although subordinated, autonomous state within Russia as a state of state, just in relation of a "real union of *jure inequalis*", such as was, as we have seen, at one time, relation of dominions and the British Empire?

Such view was supported by Rehm, a German theoretician of state, although he did not use the term "real union of *jure inequalis*". According to him, Russia and Finland are two states in the dependence relation, forming a specific complex state. There are three types of such states: federal state (federation), a state resting upon the suzerain and vassal states relation, as well as a community of the principal state (principal land) and a secondary state (secondary land). Russia and Finland belong to this last category, where Russia appears as the principal state and Finland as a secondary state. The principal and secondary states relation reflects in that the principal state is at the same time the subject of state power of a secondary state, that is, the government of the principal state is at the same time the government of the secondary state. This relation differs from the international protectorate in that the protecting state exercises the power of the protected state as its defender, that the power is also restricted to the performance of foreign affairs, so that there is no state community between them, while the power is exercised here according to one's own right and on behalf of one's own name; the power of the principal state as such is also in possession of the **ipso jure** power of the secondary state, therefore, the link between them is narrower.⁴² Also, Rehm says: "In the being of the secondary state there lies the fact that the ruler of the principal state over the secondary state does not have only the rights as a state ruler, but also have them as the ruler of the principal state. From the secondary state concept follows superiority of the principal state over the secondary state. The principal state is for the secondary state a suprastate. The ruler of the principal state also holds the suprastate power over the secondary state. Applied to the relation of Russia and Finland: the Emperor holds the rights over Finland not only as a great prince, he holds them as an emperor as well, as the Emperor of the Russian Empire."⁴³

This theory proves just that what it does not intend – that Finland within Russia was not a state. A state deprived of the holder of the state power cannot be a state; it may be at best a state fragment. Rehm correctly points to the fact that the holder of the state power in Finland is only the Russian Emperor. And, that Finland would be a real union of *jure inequalis*, it would be indispensable that the land diet, besides him, appears as a **co-holder of the state power**. But, the diet was not that, because it was, as far as its power is in question, far from being equal to the Russian Emperor. An organ that only for four time over a hundred years comes up on to the political stage to approve or does not approve some laws, cannot exercise influence on the destiny of the state. Truly, the constitutional and legal situation was the same in Sweden too. There, the only holder of the state power was the king, while the estates, to use the term we have determined with regard to the territorial autonomy, were only in possession of the "social autonomy". In spite of all that,

⁴² H. Rehm, *Allgemeine Staatslehre*, Freiburg i. B. 1899, 104, 80; idem, *Allgemeine Staatslehre*, Leipzig 1907, 28 sqq.

⁴³ H. Rehm, in: *Deutsche Juristenzeitung*, 1900/V, 22.

the king, however, could neither enact the laws nor amend the constitution without their consent, because he was forbidden to do that under an indisputable constitutional provision, which was of the **identical contents as the social legal norm of Sweden**, and which established Sweden as a restricted monarchy. Whether it was a case with Finland too, will be discussed later on.

In his time, Jellinek used to understand Finland as a state fragment. Here, it is good opportunity for us to differentiate our view on the state fragment from his. The prominent theoretician of state defines "land" or "state fragment" as parts of a state which, in contrast to a state, "are in possession of one or more necessary independent elements of a state (territory, people, state organs) differentiating thus from the mere state part or separation (communal formation), but, on the other hand, lacking independent power resting upon its own will".⁴⁴ But, there is no such power in a state that would rest "upon its own will"; each state power is grounded upon a legal norm, in the end upon a social legal norm. "Independent power resting upon its own will" must, according to Jellinek as well, be a power of some state organ (or more of them together). Only, that some person should be qualified as a state organ, some legal norm is indispensable that would attribute it that capacity. Jellinek himself says that Finland (as well as Croatia, which he rightfully considers to belong to the same legal category)⁴⁵ is not a state, because her supreme state organ, monarch, is identical to the monarch of the state ruling her. Here, however, one can find another mistake. We have seen that states in a real union also have the same monarch; therefore, according to Jellinek, either states in a real union are not states, or state fragments are states!

Kunz, one of the prominent members of the formalistic "Vienna Law School", the founder of which is Kelsen, also expounds a general theory on regions, calling them "lands" and classifying also Finland among them. The problem of his defining is solved, according to him, by means of a theory of "establishing a legal structure per levels", first reported by Merkl and worked out by Kelsen, and connected with the concept of a state decentralization.⁴⁶ In this connection, "land" is contrasted to a member state of a federal state as a state in the sense of "state law". That state is in possession of the highest autonomy, which is possible in a state which is within some state in the sense of "international law" such as a federal state, which autonomy is at the constitution level, competence of passing its own constitution as the highest legal act. The autonomy of a "lands" is, on the contrary, brought down to a lower level, to the level of legislature, exercised for the territory of a "land" by a specific land parliament. "Land" is also in possession of a wide own competence at the level of performance of laws. A key to solve the problem of defining regions would lie, consequently, in different levels and forms of decentralization of the procedure of passing legal acts within a state.

The principal mistake of this theory lies in its relativism and one-sidedness, which neglects concrete actual facts of the positive law. Constitution and law need not have different legal power, need not be at different levels of construction of the legal order (as far as their content is referred to, it does not play in that, exceptionally **process-legal theory**,

⁴⁴ Jellinek, *Allgemeine Staastlehre*, 657, sq.

⁴⁵ Jellinek, *Staastsfragmente*, 40 sqq., 35 sqq.

⁴⁶ Kunz, *op. cit.*, 243 sqq., 673.

any role). Thus, in Finland, the same factors were competent for passing both the constitution and the laws. On the other hand, legal life understands not only regions, but also the states granted to which was the constitution by some other state (dominions upon gaining independence). Moreover, possible also are cases when a constitution of a state or of a region is the subject to international legal norms, because of which interference of state or regional organs is excluded in respect with its amendment.

That formalistic and processualistic theory definitively sinks facing the problem of a vassal state, which Kunz used to determine as a state in the sense of "state law".⁴⁷ For, as he says, "constitutional autonomy" or at least not "full" does not belong "as a rule" to a vassal state. The renowned author owes us an answer in what that state **qualitatively** differs from a "land" in the sense of a state fragment.

That problem, however, can easily be disentangled if seen in the light of our, previously exposed, theory of state. In conformance with it, a vassal state, as a subgroup of an **autonomous state**, is in possession of its own holder of a state power missing to a state fragment. For, over the territory of a vassal state also acting are two state organizations with two co-holders of the state power established by two different social legal norms, the which organizations produce a complete state only in conjunction with each other. But, here, as a co-holder of a state power usually appears a hereditary state head of a vassal state, while as the other usually appears a hereditary state head of the suzerain state as a suprastate.

Although Jellinek and Kunz supported the opinion that Finland within the Russian Empire was not a state, whereby they showed their indisputable scientific integrity, both of them considered the Emperor's decree of 1899 and the Russian law of 1910 violations of both Finnish and Russian Constitutions, moreover "the rape of Finland".⁴⁸ Their arguments, however, consisted of a full acceptance of the pro-Finnish thesis: 1. that the guarantee granted to the Finnish diet by Emperor Alexander I in 1809 was irrevocable and 2. that the subjects of that guarantee were just Swedish constitutional laws of 1772 and 1789. But, neither the former nor the latter are correct.

It is extremely unusual that nobody has paid any attention to a circumstance that each successor to the Russian throne after Alexander I considered it necessary, when enthroned, to **confirm** the guarantee of 1809. That circumstance, however, is of essential importance to us. Belonging to the Russian Emperor was supreme autocratic power resembling that of the late Roman emperors in regard with which Ulpian's principle was valid: "**Quod principi placuit, legis habet vigorem.**" Therefore, the Russian Emperor was neither bound by his former laws nor by laws of his predecessors. That what he thought necessary to confirm the 1809 act on the guarantee when enthroned, meant that he deemed himself **ipso jure** not bound under it, that it had vanished upon the death of his predecessor. On the contrary, if the Russian emperors had thought that the act on guarantee was not irrevocable, they would not have confirmed it anew, its repeated confirmation would have been senseless. Further, under the guarantee, effectiveness of the Swedish "basic laws" was maintained; which laws were covered by that concept, no word could be heard from the Russian Emperors. Naturally, scientists and different state organs can in-

⁴⁷ Kunz, op. cit., 552 sqq., 529.

⁴⁸ Jellinek, Allgemeine Staatslehre, 656 sqq. Note 2; Kunz, op. cit., 206 sq.

interpret that concept. But, legally most competent interpretation of the content of the decree on guarantee, its **authentic interpretation**, falls within the authority of the maker of the act, it is again the Russian Emperor. On the contrary, that is, when the interpretation of the Emperor and that of the diet were of the same legal force, the decree on guarantee could not be at all applied if those interpretations were different.

REGIONS IN A REPUBLIC

It is a striking fact that monarchies have more often and more easily granted wide autonomy to certain parts of its state territory. The reason for that is that they are less sensitive to separatism than republics. At the moment of grave crises, a monarch can always say: "L'Etat c'est moi" – that he could save the unity of the state. Characteristic, however, of a republic is – if we put aside the one-time patrician republics – a tendency towards anarchy and establishment of anonymous powers.⁴⁹ It is, therefore, that a national republic must resort to centralism as an antidote and to allow territorial autonomy only when inevitable. National communists of Croatia and Slovenia, who were the ruling class of the Titoist Yugoslavia, when dictating autonomous provinces in Serbia did not take care at all of the Serbian people, because they were for them means of fight "against the colonising methods of the Serbian bourgeoisie".⁵⁰ Also, it is obvious that a part of the West-European public opinion, nowadays striving for abolishment of states within the European Union and partition of their territories into regions, intends to destroy politically creative nations, in order to subordinate those amorphous masses that would remain on that occasion to a Politbureau of worldwide bankers. Belonging here is, obviously, a so-called "independent group of experts" with its proposal of the "Constitution of the Republic of Serbia", one of whose members says: "Our proposal is a persistent breaking with the idea on Serbia as a national interest of the Serbian people..." ("Danas", October 6-7, 2001).

Let us now deal with the regionalism in **Italy**.

Italy is at the same time a very old and very young state. In the geographic, ethnic and cultural view, Italy may be considered the closest successor to the most significant state creation in the history of mankind, the Roman Empire. But, upon the fall of the western part of the Roman Empire, Italy found herself divided into three quite different political entities. In the north of the Apennine Peninsula there sprouted a series of city-states, which were promoters of cultural and economic growth of Europe, among which Venice (Venetian Republic) and Genoa were for centuries naval major powers. In the middle part of Italy, however, there arose theocratic Papal States, an important factor of the worldwide politics. South Italy was, on the other hand, a separate kingdom absolutistically ruled by different foreign dynasties. In the second half of the 19th century wars for unification of Italy, led by the Kingdom of Sardinia (Piedmont), were waged that succeeded, first of all, because of their national liberation, antifeudal and liberalistic character. It was only on September 20, 1870, that a new state was finally established (nine and a half

⁴⁹ Cf.: Ch. Maurras, *Enquête sur la Monarchie*, éd. définitive, Versailles 1928, pp XVII, 87 sqq., 206 sq, 208.

⁵⁰ Document cited in: B. Petranović/M. Zečević, *Jugoslovenski federalizam, Ideje i stvarnost. Tematska zbirka dokumenata, I. 1914-1943*, Beograd 1987, 615.

years upon the Kingdom of Italy was proclaimed) when the governmental forces occupied Rome and destroyed Papal States.

But, prior to the completing battles for unification, doctrinally discussions on the future structure of the entire Italy broke out. Bordering on each other were the views in favour of centralism and unitarianism versus those in favour of regionalism, federalism even confederative association of Italian states. The conservative philosophers like Gioberti and Rosmini made every efforts in favour of federation of Italian states the head of which would be the Pope. The idea of federalism was also received by the revolutionary circles; Giuseppe Ferrari's view was that Italy should be a federative republic that would joint the idea of revolutionary liberation of European peoples. In opposition to all of them, Mazzini, the apostle of the Italian unification, saw Italy as a unitary republic. With the people like Italians, within which individualism was deeply rooted, federalism would be a forerunner of struggles and a "new overall slavery".⁵¹ Political victory was that of the centralistic Unitarianism concept; under the Law of March 20, 1865, No. 2248 Piedmont's laws on communities and provinces, the model of which was partially Belgian legislature, and partially a system introduced in France by Napoleon, were spread all over Italy by the Parliament.

The fascist regime, governing Italy from 1922 to 1943, in keeping with its concept of "authoritarian, totalitarian, hierarchical and corporative state",⁵² would impose extreme centralism: municipal self-government was abolished, all its authorizations were assigned to the municipal chiefs ("podestà") appointed by the king. In provinces, the provincial prefect was granted even higher power and became a mediator and interpreter of general guidelines of the government with regard to all services belonging to the state or local institutions.⁵³

The ruling powers, upon the destruction of fascism, primarily relying upon the United States of America, returned to the idea of regionalism. For them, in particular for the Christian-Democratic Party, regions invested with the legislative authorizations appear as a necessary reaction to the former centralism and indispensable element of restoration and democratization of the state. But, at the same time, the purpose of the regionalism was weakening of separatisms, which began to waken upon the defeat of Italy in the Second World War; in Sicily, separatism even took a form of armed mutiny.⁵⁴ Because of that, already during 1944 and 1945, even before the Constitution was enacted, certain regions such as Sicily, Sardinia and Valle d'Aosta were established.

Under the provision of Article 115 of the Constitution of the Republic of Italy of December 27, 1947, (amended for the last time on January 20, 2000) regions are determined as "autonomous institutions that are in possession of their own authorizations and functions in accordance with the principles stipulated under the Constitution". All regions – 20 of them - are listed in the Constitution under its Article 131, establishing difference be-

⁵¹ Cf.: G. La Barbera, *Diritto pubblico regionale, I: Parte generale*, Milano 1973, 9 sqq. accompanied by principal literature.

⁵² Th. Schieder, in: M. Seidlmayer/Th. Schieder, *Geschichte des italienischen Volkes und Staates*, Leipzig 1940, 489.

⁵³ G. Volpe, *Geschichte der faschistischen Bewegung*, Roma 1940, 172 sq.

⁵⁴ E. Gizzi, *Manuale di diritto regionale*, III ed., Milano 1976, 12 sqq., 17.

tween **regions of special status** and **regions of regular status (region of general law)**. According to Article 116, autonomy on the grounds of special statutes shall be granted to five regions: Sicily, Sardinia, Trentino-Alto Adige, Friuli-Venezia-Giulia and Valle d'Aosta.

The first difference between those two types of regions lies in the legally higher rank of norms that regulate the form and conditions of autonomy of regions of special status. Those norms as special statutes of the subject regions shall be enacted by the State Parliament as **constitutional laws**. Regions of general law shall enact their statutes, under which – in conformance with the Constitution of the Republic – the form of power and the basic principles of organization and the method of operation of regions shall be regulated, as **regional laws**. Originally requested as a prerequisite for coming into force of a regional statute was approval of the State Parliament, issued by the same in the legal form; refusal of the statute approval was deemed such a legal act against which there was no legal remedy.⁵⁵ Nowadays, there is no any more that restriction of the organizational independence of the region. According to the revised Article 123 of the Constitution, the Government of the Republic may deny constitutionality of the regional statute only before the Supreme Court 30 days from the date of its announcement.

Both types of regions are empowered to pass legal provisions. Only, the laws of the regions of special status are in possession of **higher legal power**. The regions of general law, as for the things listed under the Constitution, shall pass legal provisions within the "basic principles stipulated under the laws of the state", which at the same time must not disturb the "welfare of the nation or interests of other regions" (Article 117, paragraph 1 of the Constitution). That competence is, therefore, usually called divided or competitive competence. Also stipulated under the same Article of the Constitution is purely delegated competence through the possibility of the state laws to empower the regions to pass regulations serving the performance of those laws. Consequently, the regions are in no possession of the competence to originally regulate legal situations.

As for the things stipulated under their statutes, the regions of special status may, mostly, regulate those things under their laws in a original way, that is, in a different way than the state laws do. The borderline of that legislature, according to the formula encountered in the statutes of these regions, consists of the Constitution, principles of the state legal order, international obligations and the basic norms of the social and economic reforms of the Republic. That competence is called "integrative" competence. In certain cases, these regions too are in possession of the competitive competence, while they can also be the holders of the delegated competence. Along with this, a part of the population of Trentino-Alto Adige enjoys **international guarantees** as well. A historical South Tyrol is in question, of which Austria was deprived after the First World War and assigned to Italy, the population of which predominantly speaks German as its mother tongue. The autonomy of the South Tyrol (Alto Adige) was guaranteed under the agreement of September 5, 1946, between Italy and Austria, known as the De Gasperi-Grüber Agreement (after the then prime ministers of the two states). But, Italy tried to evade that agreement by annexing the South Tyrol to the province of Trentino, the population of which were ethnic Italians, establishing thus Italian majority in the region. It was only after a series of

⁵⁵ Gizzi, *op. cit.*, 192 sq.

protests and terrorist attacks of the members of the Austrian minority and the intervention of the United Nations General Assembly that Italy greatly gave in. At first, in 1967, Italy agreed that the future disputes concerning the application of the De Gasperi-Grüber Agreement should be resolved – according to law, but according to fairness or an arbitration procedure – before the International Court of Justice in the Hague. Later, under the constitutional law of 1971 and an ordinary law of 1972, the region was practically divided into the Austrian and Italian part, so that the provinces of Bolzano and Trento were invested with new legislative and administrative competences, while left to the region were only insignificant legislative attributions with regard to the activities of the local institutions. On the other hand, intensified and completed were cultural and economic autonomy of the German and Ladin dialectal groups and introduced was ethnic proportional representation in the state, regional and provincial organs and services on the territory of the region.⁵⁶

In the matters in which the regions pass regulations, they also perform administrative tasks (Article 118 of the Constitution). Exempted from that are administrative tasks of the exclusively local importance the performance of which may be, under the state laws, entrusted to the provinces, communities and other local institutions. However, the state may also, under the law, entrust regions with performance of administrative tasks in the matters on which the regions are not empowered to pass regulations. Again, in the sense of as wide decentralization and deconcentration in performance of the administrative function as possible, a standard is set up that the regions **usually** transfer their administrative tasks to the provinces, communities and other local institutions or when performing them to use organizational units of those independent bodies.

Regulated under the Constitution are organs of the regions (Article 121). Those are: regional council as a legislative organ of the region; regional board as a political and executive organ of the region; and president of the regional board who is practically the president of the region (while in the regions of specific status he is officially a president). For, he represents the region (which is also a juridical personality with its own domains and property); conducts policy of the regional board and is responsible for that assignment; promulgates regional laws and regulations; takes care of performance of administrative tasks the state has transferred to the region, observing the instructions of the Government of the Republic. Presidents of the regions of special status hold the rank of ministers and, consequently, participate in the session of the Government at which questions of importance for their regions are discussed.

The matters on which the regions of general status hold competitive legislative competence are usually cultural and economic questions (Article. 117 of the Constitution). Those questions mainly form integrative legislative competence of the regions of special status. But, this competence is wider than that. Say, while included in the competence of the regions of general status are "vocational and expert education and improvement of the school system", at the same time regions of special status may have their own universities. Included in the competitive competence of the regions are municipal and rural police, "municipal and rural guards". Only, since protection of the public order and public safety represent substantial objectives of the state activities, regions are considered to have no

⁵⁶ Cf.; Gizzi, *op. cit.*, 21, 34 sqq.

their own police power. Therefore, when it is necessary to forcibly execute their legal acts, the regions have to ask for the state police help. The presidents of the regions or of the boards, when entrusted with the responsibility to maintain public order and public safety, are in charge of the state police and, therefore, their capacity is that of the "mediatory organs of the state administration".⁵⁷

No court power is, in general, conferred to the regions. Nevertheless, some regions of special status have been granted certain rights of mediation in the part of the judiciary. In Sicily, where departments of the supreme courts are otherwise in function, a "Council of Administrative Judiciary for the Region of Sicily" has been established as an administrative appellate court in the administrative matters from the regional competence and as an administrative-legal advisory office of the regional government, a part of its members designating a regional board. Only, even then the courts remain state organs, because regions have no any impact on the structure of courts and court procedure. After all, all members of the Council for the Region of Sicily are appointed in a similar way, under the decree of the President of the Republic.⁵⁸

The most far-reaching form of the state control over the regions is dissolving of the regional council and release of the president of the council (Article 126 paragraph 1 of the Constitution). That measure is pronounced under the explained decree of the President of the Republic and must be preceded by a certain procedure. Conditions to pronounce a measure emerge when the persons in question have done unconstitutional actions or hard violations of a law, or when reasons for national security are requested.

The character of Italy as a "regional state" is being emphasized by electing one house of the Parliament, Senate of the Republic, on a regional basis (Article 57 of the Constitution).

In spite of all that, Italy is not a state of "regional autonomies". The regions of general status are not forms of territorial autonomy because they lack the power of original regulation of legal situations. That is why the laws of these regions are not the laws in the material sense, but substatutory general legal acts mostly corresponding to regulations. As such, those regions are only forms of territorial self-government, but neither anything more than it. Qualitatively, that self-government falls in the same category like the self-government of a community as a "social and political community" according to the Constitution of the Socialist Federal Republic of Yugoslavia of 1974.

In contrast to the regions of general status, regions of special status are the real forms of territorial autonomy because, within their integrative competence, they may pass laws in the material sense. Save that they are only regions of public services with cultural and economic autonomy.

⁵⁷ Gizzi: op. cit., 175 sq., 362 sq., 687.

⁵⁸ Gizzi: op. cit., 365, 426 sqq.

REGIONI (OBLICI TERITORIJALNE AUTONOMIJE) U TEORIJI PRAVA I PRAVNOJ ISTORIJI

Milan Petrović

Ova rasprava ima dva glavna dela: teorijski i empirijski. Zadatak je prvoga utvrđivanje pojma regiona kao takvog, jedan problem koji do danas nije dovoljno rasvetljen. Region je, naime, neophodno odvojiti kako od pojma mesne samouprave, tako i od pojma države. Od mesne (lokalne) samouprave region se razlikuje po posedovanju kvalitativno višega stepena vlasti, vlasti izvornoga uređivanja pravnih odnosa, zakonodavstva u materijalnom smislu. Od države se region razlikuje po tome što vlast nosioca državne (ustavotvorne) vlasti ima načelno iznad sebe samo društvenu pravnu normu kao sadržinu zbirnog (kolektivnog) pravnog akta jačeg dela države. Region, naprotiv, mora biti potčinjen ustavotvornoj vlasti države u čijim se granicama nalazi. Postoje dva osnovna tipa regiona: region državni fragment i region javna služba. Prvi je sličan državi jer poseduje sopstvene državne organe (organe sa sopstvenom vlašću prinuđivanja), dok drugi nema takve organe. Regioni se, dalje, iscrpno mogu podeliti na neinkorporisane autonomne teritorije, zasebne izvorne delove država i regiona u sastavu regionalne države. Ova rasprava usvaja kao politički najrelevantniju podelu regiona podelu na regione u sastavu monarhije i regione u sastavu republika. (Treća kategorija, regioni pod režinom međunarodnog prava, zbog prostornih organizacija nije mogla da stane u okviru rasprave). Razume se da ova rasprava nije mogla da u pogledu regiona bude sveobuhvatna, pa su razmotreni samo najinteresantniji primeri: od regiona u monarhijama uzeti su tako dominioni u sastavu Britanskog Carstva i Finska u sastavu Ruskog Carstva, a od regiona u republikama, regioni u Italiji.

Ključne reči: *region državni fragment, region javna služba, društvena pravna norma.*