

In the Eyes of the Press: The Croatian Judiciary in the Period of Pseudo-Constitutionalism (1849-1851)

Vlasta Švoger*
Mirela Krešić**

SUMMARY

In the 19th century, newspapers were the major public media in Croatia and the leading media for informing the public and disseminating new ideas aimed at a comprehensive modernization of Croatian society. During the revolutionary year 1848, Croatian newspapers discarded their former political pallidness that was conditioned by censorship. In conditions of (a short-lived) freedom of the press, they expanded the range of topics they covered and, in addition to news and official information, they began to cover various political, social, cultural and economic topics thus becoming a platform for spreading modern, mostly liberal ideas. Based on an analysis of newspaper articles published in the liberally oriented Zagreb press, the present paper follows the course of the reform of the judiciary in the Kingdom of Croatia and Slavonia in the period of pseudo-constitutionalism (1849-1851). This paper especially attempts to determine the Croatian public's position on the need for judiciary reform, reform itself and the difficulties accompanying its implementation. A significant number of newspaper articles pertained to the activities of the judge as a major factor in the judicial system.

Key words: Zagreb liberal press, reform of judiciary, Croatia and Slavonia, the March Constitution, pseudo-constitutionalism (1849-1851)

* Vlasta Švoger, PhD, Croatian Institute of History, Zagreb, Phone: 00385 1 4851 721; vsvoger@isp.hr

** Mirela Krešić, PhD, Faculty of Law University of Zagreb, Phone: 00385 1 4895 676; mirela.kresic@pravo.hr

Introduction

Newspapers, magazines, brochures, leaflets and posters were public media in the 19th century Kingdom of Croatia and Slavonia.¹ In circumstances when the majority of the Croatian population was illiterate, works of art also served, to a certain extent, to convey various political, ideological and social messages. However, newspapers were undoubtedly the most important medium and the principal tool for shaping public opinion (Horvat, 2003; Haramija, 1992; Bauer, 1942; Švoger, 2000: 451-462; Švoger, 2006a: 2149-2176). In addition to informing the general public (conveying news and notices issued by official authorities), they also served to convey political and other relevant messages as well as mobilise the public around certain current issues. They were of vital importance in political struggles of political parties and in election campaigns, as a corrective to the work of governmental bodies and individuals at national and local levels and as a platform for the dissemination of new ideas, aimed at developing all aspects of Croatian society. Newspapers covered a variety of topics related to political life, economic and social development and culture. Their editorial boards were aware of the newspapers' important role in shaping public opinion. In the late 18th century, Joachim von Schwarzkopf called this function *medienzentriert*, while contemporary authors use the term *agenda-setting function* of the media. This function became prominent not only in editorials and papers' general orientation, but also in the selection of topics and news they covered, attaching (greater) importance to them. In this manner, newspapers influenced the public's views (Wagner, 1993: 35-41). The role of newspapers in spreading modern ideas was paramount in the mid 19th century (and later), in the initial period of development of civil society and modern institutions in Croatia. According to estimates, since there is a lack of exact studies about the readership and influence of newspapers on 19th century Croatian society, newspapers reached out to a much broader readership than just subscribers and buyers, due to newspapers being exchanged and borrowed. Priests and teachers in particular informed their illiterate neighbours about major events and phenomena by, *inter alia*, reading them newspapers aloud (Švoger, 2007: 151-155, 167-175).

The revolutionary wave, which swept over Europe in the spring of 1848, put forward, among various other political requirements, demands to introduce civil and political rights. Among them was freedom of the press, perceived as one of the inalienable rights of an individual and nation, which was crucial for the further development of society and modern States based on the constitution and parliamentarianism. A quick sequence of events that ensued aroused great interest for newspapers due to their topicality and universality. As a result, the media market flourished. On the other hand, a short-lived freedom of the press (pre-emptive censorship, which still existed in some European countries, was abolished in most of them in February

and March 1848) during 1848 enabled newspapers to discard their political pallidness and expand their range of topics. Thus, in addition to news, Croatian newspapers covered various economic (development of transport infrastructure, commerce etc.) and political issues (constitutionality, parliamentarianism, government accountability, political parties, civil and political rights, modernisation of the judiciary etc.), cultural and social issues (modernisation of the school system, official language, foundation of cultural institutions...) (Švoger, 2007; Švoger, 2006b: 203-223; Markus, 2005).

From the revolutionary developments in the spring of 1848 to the consolidation of the absolutist system in the early 1850s in the Habsburg Monarchy, there was growing awareness in Croatia on the need to modernise all aspects of Croatian society and foundations for civil society were laid at that time. The liberally oriented press played a major role in the process (Korunić, 2001: 69-104; Švoger, 2007). This paper analyses the Zagreb political papers *Agramer Zeitung*, *Novine dalmatinsko-hervatsko-slavonske*, *Südslawische Zeitung*, *Slavenski Jug i Jugoslavenske novine*, which, unlike the majority of other Croatian political papers of the time, transcended local frameworks and had readers beyond Croatia's borders. Equally so, in comparison with other Croatian political papers appearing at the turn of the 1840s to the 1850s, the newspapers analysed published articles belonging to a much broader thematic range including various political, state and legal, ideological, cultural, social and economic issues (Horvat, 2003; Švoger, 2007; Markus, 2005). Articles on the need for judiciary reform as well as activities of judges as one of its most important and certainly the most visible aspect of the judicial system featured very prominently on their pages.

The Croatian Judiciary prior to 1848

The Croatian judicial system entered the revolutionary year of 1848 with a structure based on reforms that had been implemented in the 18th century. Thus, Croatia had its own judicial structure characterised by a social basis relying on estates, a municipal nature of lower courts, the merger of the judiciary and public administration, low competence and arbitrariness of poorly paid judges, as well as the general public's wide-spread belief that they were corrupt (Čepulo, 2007: 108-109).

The highest court with a seat in Croatia was the Ban's Table (Lat. *Tabula banalis*, Cro. *Banski stol*), presided by the Ban (Viceroy) or, in his absence, by the Vice-Ban. The *Tabula banalis* consisted of representatives of the high nobility and gentry appointed by the king. Appeals against the decisions of the *Tabula banalis* were brought before the Royal Judicial Table (Lat. *Tabula regia iudiciaria*) in Pressburg, which had the jurisdiction of a court of cassation, and from 1807 onwards, the Table

of the Seven (Lat. *Tabula septemviralis*) in Hungary had such jurisdiction. The Land Court (*Tabula iudiciaria*) in Zagreb was a court of lower jurisdiction and one of the four Hungarian district courts (*tabulae districtuales*). In counties, justice was administered by county courts (*sedes iudiciaria*), courts of county vice-prefects (*iudicium vicecomitis*), noble judges (*iudex nobilium*) and courts of estate owners (*sedes dominalis*). County courts were presided by the great county prefect or one of two vice prefects. The county courts consisted of a noble judge, a juror (*iurassor*), a notary (*notarius*) and a number of honorary assessors (*spectabilis tabulae iudicariae assessores*), appointed by the great county prefect. Courts of county vice-prefects were presided over by one of the vice prefects, and their members were noble judges and an unspecified number of jurors. The noble judge (*iudex nobilium*) administered justice in the territory of his district with respect to noblemen and freemen (yeomen) with at least one juror. The court of estate owners was in charge of resolving disputes between subjects and their lord of the manor (squire), or among subjects on one estate, and in cases when charges were pressed by a person outside the estate against subjects of the estate in question. Such a court had criminal jurisdiction only if the estate owner received from the ruler *jus gladii*. In the free royal cities, justice was administered by the town council or a special court (*officium iudicatus*), and their jurisdiction extended to civil and penal cases. Appeals against judgments in civil matters were brought before the Tavernical Court (*sedes tavernicalis*) or the Court of the Personnel (*sedes personalitia*) in Hungary, and in penal matters to the *Tabula regia iudiciaria*. Courts in market places that were granted royal privileges had similar jurisdiction, but appeals against their rulings were brought before county courts. The courts of special jurisdiction were: the court that heard disputes related to bills of exchange in Karlovac; spiritual (ecclesiastical) courts having jurisdiction in marital disputes and disputes over last wills and testaments; the mining court in Radobož; and cameral offices (with regard to toll affairs). The function of the prosecutor was performed by the Directorate of Royal Suits and Attorneys of St. Crown (*causarum regaliū director et sanctae coronae fiscalis*) as well as prosecutors (*fiscalis*) in counties, free and royal cities and on estates (Beuc, 1985: 305; Lanović, 1929: 323-334).

The rules applied by Croatian courts, whether in civil or criminal proceedings, were scattered in a number of regulations. For this reason, their numbers and variety made their application more difficult and distorted legal certainty. Court proceedings were slow and secret, they proceeded in writing, and hearings were convened when it suited the judges. The multitude of legal remedies and their skilful use by attorneys protracted court proceedings to much longer periods than the prescribed maximum of four hearings. Consequently, lawsuits lasted for decades. The rules of procedure defined the significance of individual pieces of evidence. Thus, full evidence could consist of a harmonised testimony of two witnesses on relevant facts, a

public deed or the opinion of an expert witness. Powers of the parties in the proceedings depended on their belonging to a certain estate and class. Consequently, the position of serfs before the court was much less favourable than the position of a nobleman, which was especially evident in criminal proceedings, where the right to legal counsel was restricted. Parties could be represented before the court by an attorney, but this was often a person with insufficient legal education. The problem of education was also present among judges, who were very often individuals without proper legal education, and this had an impact on the quality of trials giving rise to (a justified) belief in their incompetence (Bayer, 1995: 152; Čepulo, 2012: 154-157; Gross: 1985: 100; Šek Brnardić, 1997: 179-198).

The Press on the Croatian Judiciary prior to 1848

The judiciary regulated in this manner was the object of criticism addressed by the politically active part of the Croatian public. They proceeded from the understanding that judiciary and an orderly financial system were factors exerting a decisive influence on the overall functioning of the State, as well as on private interests of individuals.²

They believed that a well-regulated judiciary provided support and security to individuals and groups, guaranteed respect for rules and norms in society and developed awareness about what was ethical for an individual, as well as for society as a whole.³ Since this part of the Croatian public was convinced of the judiciary's important role in society, they assumed that publicity, freedom of the press, courts with juries and the accountability of judges were the only safeguard against terrible consequences of the arbitrariness of judges and a prerequisite for achieving "constitutional freedoms." Therefore, before a modern judiciary was established in Croatia, newspapers needed to inform the public of the situation in the judiciary, especially about negative occurrences.⁴ This understanding was based on a liberal interpretation of the public's role as one of the major correctives for the functioning of the State and as a safeguard from the abuse of power by state officials (Hölscher, 1978: 413-467). Liberally oriented legal experts who anonymously published newspaper articles on the Croatian judiciary - this way of publishing was customary at the time - estimated that Croatian legislative solutions as well as case law were insufficient, incomplete, ambiguous and unjust in comparison with other European countries.⁵

According to an anonymous author, who was a member of the legal profession, the majority of judges, except for a few exceptions, behaved arbitrarily, not administering justice based on the consideration of causes, motives, circumstances and evidence, but rather in line with their own benefit. Therefore, he cautioned judges that in the new structure of the judiciary, which would be separated from the public administration, they would no longer be able to conceal their own professional and

personal deficiencies, by invoking the power rendered to them by their position within the civil service.⁶ Other authors also warned of different abuses of office by judges who, for example, often adjudicated too harsh punishments of flogging, except in cases when they would receive bribes and thereafter adjudge inappropriately mild punishments of flogging, which was disproportional with the severity of offences committed. Another frequent abuse by judges was charging exceptionally high court taxes for the procedure of division of property. Often, court costs exceeded the value of the property to be divided.⁷ Moreover, newspapers informed the public of lawsuits in which plaintiffs, in order to obtain material gain, claimed material rights at the detriment of defendants on the basis of forged documents.⁸ In the view of the anonymous author, various abuses of authority, corruption and biased trial gave rise to public discontent with the government and could be an incentive for rebellion. Moreover, some judges continued to disregard equality of all before the law that had been recently guaranteed and sentenced members of the lowest social classes to harsher punishments than members of the nobility or rich bourgeoisie.⁹ The frequency of such cases is witnessed by the fact that several reputable citizens of the town of Križevci in 1848 filed charges with the Ban's Commissioner Ivan Kukuljević against the town judge for his negligent attitude towards his office and different malpractices.¹⁰ There were also other similar examples: a judge from Daruvar was removed from office due to many cases of abuse of office and improper judgements on the basis of a decision of the Supreme Prefect of the Požega County. In April 1850, the Ban's Council launched an investigation against judge Anastas Zamfir from the Syrmian County due to different complaints about his work (Markus, 1998: 492-493).

Newspapers negatively rated the legal expertise of Croatian jurists and the level of their legal education. Due to the connection between public administration and the judiciary in Croatia until 1848, one and the same individual had to perform both judicial and administrative tasks, which resulted in the fact that judges or civil clerks did not perform their tasks adequately, often making arbitrary decisions, not always founded on the law. Very often, they shared interests with certain individuals or groups, which greatly impaired their independence. All of this, along with many contradictions and ambiguous formulations in laws, caused the trust of citizens in laws and the legal system to waver.¹¹

The Beginning of the Organisation of a Modern Croatian Judiciary

A wave of revolutionary unrests, which spread throughout Europe in the spring of 1848, also affected parts of the Habsburg Monarchy. Although a revolution perceived as a comprehensive and violent change of the political, social and economic

system did not break out in Croatia, there was political and social turmoil here as well. The very first document formulating political demands of the Croatian Political Movement of 1848¹² was *the Wishes of the Nation* (22 March 1848). The document explicitly required, in addition to the achievement of Croatia's territorial integrity, the convening of the Croatian Parliament as a representative body of all estates, the establishment of a government that would report to the Croatian Parliament, the abolition of serfdom, the introduction of political rights and freedoms, the equality of all estates and each person before the courts as well as public and oral court proceedings and trial by jury (HDS 1848, vol. 1: 95-97; Šidak, 1979: 46-47). In the *Demands of the Nation*, one of the most significant programmatic documents of the Croatian Political Movement adopted on 25 March 1848, there was an explicit demand, in addition to those related to modernisation of the judiciary, for the accountability of judges (HDS 1848, vol. 1: 115-118; Šidak, 1979: 51-52; Čepulo, D. & Krešić, M. & Hlavačka, M. & Reiter, I., 2010: 39-46). This certainly proves the political elite's awareness of the need for modernisation of the Croatian judicial system. However, due to highly strained political relations between Croatia and Hungary in the summer of 1848, which resulted in a war between the two countries in autumn of the same year, and a brief period when the Croatian Parliament was in session, the Parliament focussed on resolving state and legal, and other social issues (relations with Austria and Hungary, abolition of serfdom, introduction of gradual reforms in the Military Frontier etc.).¹³ In such conditions, the modernisation of the judiciary did not appear on the agenda of the Parliament in 1848, but was implemented "from above and from outside" after the Habsburg authorities had re-established power in the entire territory of the Monarchy (Gross, 1985: 14).

The so-called March Constitution that was promulgated in March 1849 defined the Monarchy as a unified and indivisible State (§ 2).¹⁴ Moreover, the Constitution declared the separation of the judiciary from public administration (§ 102), the principles of a public and oral procedure, the accusatorial principle in trials, as well as trials by jury for severe and press felonies (§ 103). The judges' tenure was guaranteed (§ 101), as well as the equality of all individuals before the law (§ 27) and the equality of peoples within the Monarchy whose right to preserve their own nationality and language was recognised (§ 5). Although Croatia lost its traditional autonomy according to provisions of the March Constitution, the reform of the judiciary that had been initiated on these constitutional foundations left a mark on the Croatian legal system. The work on organising a modern judiciary began as early as the autumn of 1849, when a special Commission for the Introduction of Courts in Croatia and Slavonia was set up for the territory of Croatia (*K.k. Gerichtseinführungs – Commission für Kroatien und Slavonien*). Members of the Commission were Metel Ožegović, Herman Bužan, Ivan Mažuranić and Maksimilijan Rušnov as Chairman. Proposals that the Commission submitted emphasised Croatia's special char-

acter while rejecting attempts at organising the judiciary in the same manner as in Austria or at modernising feudal judiciary, as in Hungary. They believed that the Croatian Parliament should decide on the organisation of the judiciary. One of their demands concerned the establishment of a supreme court that would have jurisdiction not only over Croatia and Slavonia, but also over the Military Frontier, Dalmatia and Vojvodina. However, their proposals were not accepted (Gross, 1985: 102-103). As he did not wish to wait for the Croatian Parliament to make relevant decisions, the Minister of Justice Schmerling drafted a proposal for the provisional organisation of the judiciary, which was approved by the King in March 1850.¹⁵ Soon, the Ministry drafted a number of implementing instructions, following which the overhaul of Croatian judiciary began.¹⁶

As a result of the introduction of exclusively state courts and the abolition of courts of estate owners and municipal county courts existing until that time, it was envisaged that land courts (in Zagreb, Karlovac, Rijeka, Varaždin, Križevci, Požega and Osijek), district courts (57) and the Higher Land Court (the Ban's Table) exist as provisional courts, under this new organisation, with judges holding the position of civil servants. In addition to these regular courts, a completely new institution, the State Prosecution, was set up, headed by the Procurator General as an independent institution separated from courts. A Supreme Court of Cassation in Vienna was established as the highest court in the territory of the Monarchy.¹⁷

In the brief period of pseudo-constitutionalism, from the adoption of the March Constitution to its abolition and the introduction of the absolutist system through the Silvester Patent of 1851, old feudal (substantive and procedural) laws continued to be in force in Croatia, along with a small number of new regulations adopted for Croatia in the period of transition, which were supposed to bridge the gap between the (old) feudal and the (new) civil legal system.¹⁸

The Press on the Croatian Judiciary during the Implementation of Reforms

Since absolutism was soon introduced, all the principles proclaimed by the Constitution did not become reality. Nevertheless, the reform that was being implemented, although partial, modified the organisation of the judiciary prevailing up to that time. Thus, new courts were completely integrated into the structure of state authorities and separated from public administration. Judges were appointed by the king on the basis of a statutory procedure, and their salaries were regulated by state regulations and paid out from the state budget (Čepulo, 2003: 55). The accusatorial principle as well as the principle of publicity and orality were introduced into court proceedings.¹⁹ In criminal proceedings for press offences, trials by jury were intro-

duced for a very brief period of time. There was also one trial by jury against the publisher of *Slavenski Jug* (Markus, 2001: 199-203).

However, this provisional organisation of the judiciary retained the weaknesses from the period prior to 1848, giving rise to general insecurity and chaos and demonstrating that the situation in the judiciary was extremely difficult (Gross, 1985: 100). The Croatian public, expecting that judiciary reform would be implemented quicker and that the provisional organisation would not last long, expressed discontent with its duration. Moreover, only provisions referring to the organisation of the Ban's Table and land courts took hold in reality. In the land courts, provisional clerks and judicial assessors were appointed during the summer and autumn of 1850 (Gross, 1985: 103). The appointment of highest court clerks did not follow the organisation of courts of first instance. The reason for this was that preparations for introducing blatant absolutism had already been underway at the highest state level. Its aim was to merge public administration with judiciary in first instance again. Thus, the work on organising the judiciary came to a halt as early as the beginning of 1851.

In the general public's view, the introduction of the provisional court system made the situation in the Croatian judiciary even more complex because simultaneous implementation of old and new regulations allowed for further abuses by judges. Poor quality of laws contributed to this unsettled situation in the judiciary, and according to an anonymous author, such a situation prevailed at all levels of the judiciary in Croatia.²⁰

Newspapers especially cautioned on problems in the work of district/circuit judges. These judges were appointed temporarily in that former judges of county courts were re-appointed as provisional district judges and were entrusted with exclusively judicial affairs. However, there were no clear territorial demarcations of the areas in which they acted, and some judges did not have offices or a separate room that could be used as a prison.²¹ For this reason, judges moved from one place to another along with their staff, often failing to remand prisoners in custody, although they should have. They did not want to jeopardise their own reputation for their inability to implement such a decision.²² The lack of convenient prison facilities resulted in the punishment of flogging, as a rule, being pronounced to peasants, i.e. lower social classes, even for minor misdemeanours.²³ Although in April 1850, Ban Josip Jelačić banned the execution of corporal punishments adjudged by courts of first instance until their judgements be upheld by a higher court, the Ban's deputy Mirko Lentulay requested permission from the Ban to retain corporal punishments given the large number of prisoners, an unsatisfactory political and security situation in the country (as a result of the recent revolutionary turmoil) and organisational and financial difficulties in court proceedings (Markus, 1998: 514-515). An anonymous author iron-

ically stated that this Ban's decision had negative impact on the authority of judges, which was based on making decisions on the basis of common sense. Consequently, only commoners were punished by flogging and the punishment depended on bribes given to the judge.²⁴ Another, also anonymous, author put the sentence of corporal punishments in the context of the principle of equality before the law declared in 1848. He stated that equality before the law was not implemented in practice, because only commoners continued to be sentenced to flogging. He concluded that there would be no justice in Croatia until quality laws be passed, professionally competent judges appointed, nepotism in counties abolished, a reorganisation of courts completely implemented, and judges better paid and held accountable for every act they did in the line of duty.²⁵

Individuals are a very important part of the judiciary. Their lack of quality and efficiency is, as a rule, the real indicator of the situation in the judiciary. The impression about Croatian judges was, as demonstrated, rather negative in the period prior to 1848, burdened with suspicions about their educational and moral qualities. Therefore, it is no wonder that many articles were written about the professional and human qualities that the new Croatian judge, or the judge whose practice would be aligned with the streamlining reforms in judiciary. One of anonymous authors – to all appearances a judge or a lawyer – frequently invoked foreign legal experts, German legal practice and Greek and Roman jurists, philosophers and historians while presenting his arguments.²⁶ Thus, based on the notes of an anonymous jurist from Zagreb, his own experience and professional literature, the author of the article analysed the qualities of a good judge, and emphasised that the causes for the deficiencies and abuses in the judicial system were the poorly regulated scope of the judges' work, an unsatisfactory level of their professional competence and the vaguely determined relations among the courts.²⁷ In the author's view, impeccable morality based on sincere faith is the main quality required of a judge in all countries of Western Europe, in which modern political institutions and civil society exist. This was an exceptionally important quality since the judge, under the scrutiny of higher bodies, was entrusted with the implementation of the essential duty of the ruler – administration of justice – and with judging someone's acts. Assuming that succumbing to passions was the source of evils and crimes, the author expressed his view that it was particularly important for the judge to be able to control his passions in order to be able to judge impartially and justly, because each and every of his mistakes may have very serious consequences. Therefore, the judge's morality should be founded on faith because, in the author's view, faith was the power that governed man and held his passions under control.²⁸ Patriotism, which he defined as an endeavour of every individual to support interests of the State, should be a quality possessed by every citizen, including the judge, because otherwise his personal interests and the interests of the State might be in collision, for example in an en-

deavour to obtain material gain or to relieve his relative or friend of a punishment. Since the judge would heavily damage the reputation of the State and law by such decisions, his patriotism should motivate him to always think of the common good and make decisions based on law.²⁹ Moreover, he emphasised that the education of judges was an important factor in the quality of court decisions. Therefore, the judge needed vast knowledge, not just of the laws of the country where he lived, but sometimes of the laws of other countries as well, in order to adequately perform his service as a judge. The judge should also have specific knowledge in various fields in order to be able to carefully consider the circumstances of an individual case, witnesses' testimonies, evidence, interrelations among the parties involved; judge motives; distinguish the truth from a lie; and pronounce an impartial and fair judgement. The author believed that the judge needed to be especially sharp-witted and skilled in applying the law, and therefore advised young jurists to study case files, seek advice from seasoned jurists and judges, but always think through before making decisions.³⁰

The level of professional knowledge of Croatian jurists was poor indeed. In spite of many candidates competing for service in new courts, those were mainly jurists who had studied before 1848. In other words, those were feudal clerks or persons who knew feudal Hungarian law and who, as part of the implemented reform, had to learn new regulations (Gross, 1985: 103). Among them were some who did not want to educate themselves but also some who were ready to acquire the necessary education and adjust to the new system. Nevertheless, the shortage of skilled personnel was more than evident, especially in the stalling of proceedings and mediocre court decisions (Gross, 1985: 104).

The author who wrote about the qualities a judge needed emphasised that a judge should be just and should administer justice independently of the material and social position of the accused, respecting the dignity of every man regardless of his material and social status. He should not judge people based on his first impression, or based on slander and unverified information, but should make an effort to understand the motives of the accused and take into consideration mitigating circumstances. A judge should be strict, however, not stricter than the law, because then he would become cruel. On the other hand, his philanthropy must not prevent him from passing a fair judgement.³¹ If judges passed fair judgements, citizens would respect laws more and there would be fewer crimes. However, even if a judge passed judgement according to the law, one party to the proceedings was very frequently dissatisfied with it or both. A judge was therefore often exposed to pressure of the powerful and rich, threats of criminals, and sometimes his life was in danger. In such circumstances, according to the view that newspapers conveyed to the Croatian public, an insufficiently courageous and unwavering judge could pass an unfair judgement and inflict great damage to the State and its legal system. An impartial, unwavering,

bold and intrepid judge, who was not impertinent and arrogant, represented the greatest support to the poor against oppression and the arbitrariness of power-wielders. Such a judge would oppose pressure and threats, thoroughly and carefully consider all the circumstances and then pass a fair judgement.³² In order to be able to pass a just judgment, a judge should be very hard-working and attentive, carefully study the evidence and circumstances of the crime committed. In addition, he had to keep secret the information that he found out during the investigation or court trials, because their disclosure might have significant repercussions for the individual and the State. At the same time, a judge was not allowed to conceal any evidence or information which the public should know, especially with regard to the principle of the publicity of the proceedings. Negligence in the performance of a judge's office might cause distrust towards the judicial system, as well as towards the judge himself. The office of the judge itself required certain strictness, but if the office was held by a person who did not behave in a civilised and decent manner, this might cause distrust towards him. Equally so, a judge should not socialize with people who disregard laws, because a judge should be an example to his fellow citizens how laws are to be respected, and in this case, he might give rise to doubts whether he himself truly respects laws.³³

Aware that he might be criticised for presenting the image of an ideal judge, the author of the articles analysed on the qualities of judges expressed his view that every judge should aspire to reach this ideal as much as possible.³⁴

In the articles mentioned, the author truly described the prototype of an ideal judge and enumerated the qualities that might have been difficult to realise in practice. This was especially true of Croatian judges who, until 1848, got accustomed to the old system of work in which judges administered justice and performed administrative works simultaneously without their work being subject to any scrutiny. On the other hand, the anonymous author of the newspaper articles, as a legal professional, could well estimate which professional and personal qualities were needed for a quality performance of the office of a judge in circumstances of the modernization of the Croatian judiciary, as well as which of these were achievable. In that context, the articles analysed need to be viewed as the author's attempt to inform readers on the qualities of a good judge and, on the other hand, as an encouragement to his fellow jurists to adjust to new circumstances.

Final Remarks

Newspapers were, no doubt, the leading public medium in Croatia in the mid 19th century. Editorial boards of the newspapers analysed in this work accepted a liberal interpretation of the role of newspapers as a public medium in society. They emphasised the usefulness of newspapers due to their influence on shaping public opinion

and on spreading education and ideas about civil and political rights and duties of individuals. The editorial boards of these newspapers were also aware of the very important agenda-setting function of the newspapers demonstrated in the selection of topics and news they wrote about. They appeared as spokespersons of the general public on the pages of their newspapers.

The Croatian judiciary was, among others, a frequent topic on the pages of Croatian newspapers in the observed period of pseudo-constitutionalism. This was the time when changes marked the broader European framework. They were directed towards organising the judiciary as a special branch of power, which was considered to be the foundation for shaping modern legal systems and States. Changes in the Croatian judiciary were part of broader reform processes unfolding in the territory of the Habsburg Monarchy as a consequence of the revolutionary year 1848.

Authors who wrote in Croatian political newspapers at the turn of the 1840s to the 1850s on the problems in the judiciary demonstrated excellent knowledge of the legal system of the Habsburg Monarchy, as well as the legal systems of countries of Western Europe. In line with their own liberal views, they championed the reform of the traditional Croatian judicial system and the introduction of modern solutions in its organisational framework and practice. Their cooperation with the newspapers, which had several functions, should also be observed within this context. They proceeded from the understanding that the judiciary plays an important role as a social corrective and a major factor significantly contributing to a successful or unsuccessful functioning of the State, and greatly influencing the private and business lives of individuals. Therefore, they wanted to inform the Croatian public about problems related to the judiciary in order to raise the general public's awareness of the need for reform and its role in the functioning of the State. Moreover, the intention was to encourage legal professionals to professionally develop themselves in order to be able to successfully master future tasks in a reformed judicial system. Aware that judges are an important and, by all means, the most visible part of the judiciary, they particularly advocated better quality and more complete legal education of judges, as well as the application of the principles of accountability and independence of judges.

A comprehensive modernization of the Croatian judiciary was neither implemented in the observed period of pseudo-constitutionalism nor in the next twenty years. The reason for this was that the Croatian Parliament was not convened (in the period of absolutism), and when it was in session, the Parliament focussed on resolving important state and legal issues – Croatia's state and legal relationship with Hungary and Austria / Austrian Lands – after the abolition of absolutism. However, this was certainly a period that represented a watershed in the effort to organise a modern judiciary, which would culminate in the 19th century during the term of office of Ban Ivan Mažuranić (1873-1880). Despite difficulties encountered in the implementation of the initial reform, abolition of the traditional (municipal) court organisation and introduc-

tion of rational principles in the organisation and functioning of courts was of extraordinary importance for the modernization of the legal system as a whole.

ENDNOTES

- ¹ Hereinafter, the abbreviated term Croatia is used instead of the official name “Kingdom of Croatia, Slavonia and Dalmatia” with corresponding derivatives, except where it is explicitly necessary to emphasise that this is the area of Croatia and Slavonia.
- ² The politically active part of the Croatian public in the mid 19th century consisted primarily of politicians, the intelligentsia, government employees, teachers, clergy and military officers, predominantly from urban environments. They were interested in politics, followed political developments in newspapers or personally took part in them, wrote newspaper articles and in this way, as well as by spreading (political) ideas among their (illiterate) fellow citizens (by reading them newspapers aloud or having discussions), influenced the shaping of public opinion in Croatia. About the influence of the liberal newspapers in Croatia at the turn of the 1840s and 1850s, cf Švoger, 2007; 151-155, 167-175.
- ³ “Der klägliche Stand unserer Justizpflege. I.”, *Südslawische Zeitung* (SZ), issue no. 130 dated 7 June 1851.
- ⁴ P., “Aphorismen,” SZ, issue no. 5 of 12 January 1849; “U Zagrebu,” *Novine dalmatinsko-hrvatsko-slovenske* (NDHS), issue no. 63 dated 26 May 1849. The term in inverted commas was taken over from an article in NDHS.
- ⁵ This was very clearly expressed in the article “Nešto o naših zakonih i sudbenom postupanju,” *Jugoslavenske novine* (JN), issue no. 34 [33!] dated 16 May 1850.
- ⁶ “Kakov treba da bude sudac,” JN, issue no. 125 dated 6 September 1850. On concrete examples of the abuse of their position by judges cf Josephine Jelačić de Bužim, verehelichte Andrašević, “Bureaukratische Rache,” *Agramer Zeitung*, issue no. 93 dated 19 August 1848.
- ⁷ B. Š. [Bogoslav Šulek], “Najprečiji zakoni,” NDHS, issue no. 56 dated 10 May 1849; “Od Drave 22. travnja,” JN, issue no. 27 dated 8 May 1850.
- ⁸ “U Zagrebu,” NDHS, issue no. 63 dated 26 May 1849.
- ⁹ “Iz Zagreba,” NDHS, issue no. 36 dated 24 March 1849.
- ¹⁰ “Iz Križevcih dne 25. kolovoza,” NDHS, issue no. 95 dated 2 September 1848. The authors have not found a piece of information about the outcome of this suit.
- ¹¹ “Zur Justizreform. III.,” SZ, issue no. 47 dated 26 February 1850.
- ¹² In Croatian historiography, the term Croatian (Political) Movement of 1848 denotes the actions of the Croatian Ban, the Croatian Parliament, the Ban’s Council (a *de facto* independent Croatian Government that operated from the spring of 1848 to June 1850), the liberally oriented press and the educated elite in the revolutionary years of 1848 and 1849. Their main goals were the realisation of the territorial integrity of Croatian lands, a broad autonomy within the framework of the Lands of St. Stephen’s Crown (Kingdom of Hungary), with its own parliament and a government accountable to it, as well as the reorganisation of the Habsburg Monarchy into a federation of equal states, based on the ethnic principle (the so-called Austroslavism). More on this political phenomenon cf Nikša Stančić, 1998: 103-128; Markus, 2000; Markus: 2009.
- ¹³ On the work of the Croatian Parliament in 1848 cf Stančić, 2001, 29-63. The most important documents of the Croatian Parliament in 1848 are printed in: Čepulo, D. & Krešić, M. & Hlavačka, M. & Reiter, I., 2010: 47-144.
- ¹⁴ Carski patent od 4. ožujka 1849 saderžavajući državni ustav za carevinu austrijsku, *Zemaljsko-zakonski i vladni list za krunovinu Hrvatsku i Slavoniu* (ZZVL), part I, 1850, pp. 9-27.

- ¹⁵ Ustanovljenja u pogledu privremene uredbe sudovah za krunovinu Hèrvatsku i Slavoniu. Potvèrdjena po nj. veličanstvu Caru 1. ožujka 1850., *ZZVL*, part II, 1850, pp. 41-51.
- ¹⁶ Raspis ministarstva pravosuđja od 16. sèrpnja 1850, kojim se obznanjuje uslied previšnjega odobrenja od 24. svibnja 1850 učinjeno razdieljenje krunovine Hèrvatske i Slavonie na sudbene kotare i ustrojenje sudovah u istih, a ujedno ustanovljuju se i propisi o području istih sudovah, *ZZVL*, part II, 1850, pp. 52-56; Naredba ministarstva pravosuđja poradi obstojećih sada u krunovini hèrvatskoj i slavonskoj sudovah, za put prokèrčiti uredbi sudovah od 1. ožujka 1850., *ZZVL*, part II, 1850, pp. 66-75.
- ¹⁷ Carski patent od 7. kolovoza 1850 kojim se ustanovljuje ustrojenje vèrhovnog i ukidnog (cassacionalnog) suda u Beču, *ZZVL*, part II, 1850, pp. 56-66.
- ¹⁸ Cf f.e. Carska naredba od 24. sèrpnja 1850. kojom se za Hèrvatsku i Slavoniu ustanovljuje nadležnost i postupanje sudovah u stvari kaznenih, *ZZVL*, part II, 1850.
- ¹⁹ There were obviously problems with the application of these principles in practice since a correspondent of *Südslawische Zeitung* from Požega wrote that “a new adversarial, oral procedure is at times understood in a way – that the minutes need not be taken!” Gross, 1985: 105.
- ²⁰ “S jadranskoga mora,” *JN*, issue no. 45 dated 1 June 1850; “Zur Justizreform. V.,” *SZ*, no. 49 dated 28 February 1850.
- ²¹ Gross writes that some district judges temporarily performed tasks for two or even three of the planned district courts. Some of them had no assistants and in addition performed all the manipulative tasks. Gross, 1985: 104.
- ²² “Der klägliche Stand unserer Justizpflege. I.,” *SZ*, issue no. 130 dated 7 June 1851: “Der klägliche Stand unserer Justizpflege. II.,” *SZ*, issue no. 131 dated 10 June 1851.
- ²³ Before 1848, the editor of *Novine dalmatinsko-hervatsko-slavonske* Bogoslav Šulek wrote about the punishment of flogging, expressing his view that judges should enjoy the reputation and respect in the community, but should not use flogging as a means to establish their authority. He believed that it would not be good to completely abolish flogging until some alternative punishments, or some orderly prisons and prisons with workshops are introduced. The purpose of punishment was to prevent offences and crimes, but he doubted that the purpose could be achieved by flogging, which, in his view, made a person even duller and destroyed every noble temperament in him. Šulek believed that the best contribution to prevention of crimes and reduction of their numbers would be education which should be made accessible to the broadest social classes. –k. [Bogoslav Šulek], “Batina ili tamnica,” *NDHS*, issue no. 98 dated 7 December 1847.
- ²⁴ “Od Drave 22. travnja,” *JN*, issue no. 27 dated 8 May 1850.
- ²⁵ “Nešto o naših zakonih i sudbenom postupanju,” *JN*, issue no. 34 [33] dated 16 May 1850.
- ²⁶ “Kakov trèba da bude sudac,” *JN*, issue no. 115 dated 26 August 1850, no. 116 dated 27 August 1850, no. 118 dated 29 August 1850, no. 119 dated 30 August 1850, no. 123 dated 4 September 1850, no. 124 dated 5 September 1850, no. 125 dated 6 September 1850.
- ²⁷ “Kakov trèba da bude sudac,” *JN*, issue no. 115 dated 26 August 1850.
- ²⁸ Ibidem.
- ²⁹ “Kakov trèba da bude sudac,” *JN*, no. 115 dated 26 August 1850.
- ³⁰ Ibidem.
- ³¹ “Kakov trèba da bude sudac,” *JN*, issue no. 124 dated 5 September 1850.
- ³² “Kakov trèba da bude sudac,” *JN*, issue no. 118 dated 29 August 1850, *JN*, issue no. 123 dated 4 September 1850; Editorial without a title, *JN*, issue no. 21 dated 1 May 1850; “Porota u naše doba,” *NDHS*, issue no. 64 dated 29 May 1849.
- ³³ “Kakov trèba da bude sudac,” *JN*, issue no. 119 dated 30 August 1850; *JN*, no. 125 dated 6 September 1850.
- ³⁴ Ibidem.

SOURCES

- Čepulo, D. & Krešić, M. & Hlavačka, M. & Reiter, I. (2010) *Croatian, Slovenian and Czech Constitutional Documents 1818–1849*, vol. 9 of *Constitutions of the World from the late 18th Century to the Middle of the 19th Century. Sources on the Rise of Modern Constitutionalism*, (ed.) Horst Dippel, Berlin–New York: De Gruyter.
- Iveljić, I. & Kolanović, J. & Stančić, N. (2001) *Hrvatski državni sabor 1848.*, vol. 1 (HDS 1848, vol. 1), (ed.) Kolanović, J., Zagreb: Hrvatski državni arhiv.
- Markus, T. (1998) *Korespondencija bana Jelačića i Banskoga vijeća 1848.-1850.* Zagreb: Hrvatski institut za povijest – Dom i svijet.
- Markus, T. (2005) *Zagrebački politički listovi 1848.-1850. godine. Izabrani članci.* Zagreb: Hrvatski institut za povijest.
- Markus, T. (2009) *Hrvatski politički pokret 1848–1849. godine. Izabrani dokumenti na njemačkom.* Zagreb: Hrvatski institut za povijest.
- Zemaljsko-zakonski i vladni list za krunovinu Hèrvatsku i Slavoniu (ZZVL), komad I., 1850., Zagreb: Narodna tiskarnica dra. Ljudevita Gaja u Zagrebu.
- Zemaljsko-zakonski i vladni list za krunovinu Hèrvatsku i Slavoniu (ZZVL), komad II., 1850., Zagreb: Narodna tiskarnica dra. Ljudevita Gaja u Zagrebu.
-

LITERATURE

- Bauer, E. (1942) *Die Entwicklung der Publizistik in Kroatien.* Zagreb: Europa Verlag.
- Bayer, V. (1995) *Kazneno procesno pravo – odabrana poglavlja, knjiga II. Povijesni razvoj kaznenog procesnog prava*, (ed.) Krapac, D., Zagreb: Ministarstvo unutarnjih poslova.
- Beuc, I. (1985) *Povijest institucija državne vlasti Kraljevine Hrvatske, Slavonije i Dalmacije*, Zagreb - Čakovec: Zrinski.
- Čepulo, D. (2007) *Modernity in Search of Tradition: The Formation of the Modern Croatian Judiciary 1848-1918*, 105-127, in: Uzelac, A. & Van Rhee C.H. (ed.), *Public and Private Justice: Dispute Resolutions in Modern Societies*, Antwerpen - Dubrovnik: Intersentia – Inter University Centre Dubrovnik.
- Čepulo, D. (2003) *Prava građana i moderne institucije. Europska i hrvatska pravna tradicija.* Zagreb: Pravni fakultet Sveučilišta u Zagrebu.
- Čepulo, D. (2012) *Hrvatska pravna povijest u europskom kontekstu.* Zagreb: Pravni fakultet Sveučilišta u Zagrebu.
- Gross, M. (1985) *Počeci moderne Hrvatske. Neoapsolutizam u civilnoj Hrvatskoj i Slavoniji 1850-1860.* Zagreb: Globus – Centar za povijesne znanosti Sveučilišta u Zagrebu, Odjel za hrvatsku povijest.

- Haramija, P. (1992) Stoljeće političkog plakata u Hrvatskoj. Katalog izložbe. Zagreb: Kabinet grafike Hrvatske akademije znanosti i umjetnosti.
- Hölscher, L. (1978) "Öffentlichkeit," 413–467, Otto Brunner et al. (eds.): *Geschichtliche Grundbegriffe. Historisches Lexikon zur politisch-sozialen Sprache in Deutschland*, vol. 4, Stuttgart: Klett-Cotta.
- Horvat, J. (2003) *Povijest novinstva Hrvatske 1771-1939*. Zagreb: Golden marketing – Tehnička knjiga.
- Korunić, P. (2001) "Osnovice građanskog društva u Hrvatskoj za revolucije 1848-49. Godinem" *Radovi – Zavod za hrvatsku povijest*, Zagreb, 32-33, 69-104.
- Lanović, M. (1929) *Privatno pravo Tripartita*, Zagreb: Tipografija d.d.
- Markus, T. (2000) *Hrvatski politički pokret 1848–1849. Ustanove, ideje, ciljevi, politička kultura*. Zagreb: Dom i svijet.
- Markus, T. (2001) *Slavenski Jug 1848.-1850. godine i hrvatski politički pokret*. Zagreb: Hrvatski institut za povijest – Dom i svijet.
- Šek Brnardić, T. (1997) *Tavernik, tavernikalni sud i tavernikalno pravo*, in: *Arhivski vjesnik*, 40 (1997), 179-198.
- Šidak, J. (1979) "Narodna zahtijevanja' od 25. ožujka – program hrvatske Četdesetosme," 33-74., in: Šidak, J., *Studije iz hrvatske povijesti za revolucije 1848-49*. Zagreb: Institut za hrvatsku povijest, Centar za povijesne znanosti.
- Stančić, N. (1998) "Das Jahr 1848 in Kroatien: unvollendete Revolution und nationale Integration," *Südost-Forschungen*, München, 57, 103–128.
- Stančić, N. (2001) "Hrvatski državni sabor' 1848: na razmeđu epoha i sukobljenih legaliteta," 29-63, in: Iveljić, I. & Kolanović, J. & Stančić, N. (2001) *Hrvatski državni sabor 1848.*, vol. 1, (ed.) Kolanović, J., Zagreb: Hrvatski državni arhiv.
- Švoger, V. (2000) "Novinstvo kao javni medij sredinom 19. stoljeća u Hrvatskoj," in: *Časopis za suvremenu povijest*, Zagreb, 32 (3), 451-462.
- Švoger, V. (2006a) "Das kroatische Pressewesen," 2149-2176, in: H. Rumpler & P. Urbanitsch (ed.): *Die Habsburgermonarchie 1848-1918, Band VIII, Politische Öffentlichkeit und Zivilgesellschaft, 2. Teilband – Die Presse als Faktor der politischen Mobilisierung*. Wien: Verlag der Österreichischen Akademie der Wissenschaften.
- Švoger, V. (2006b) "Zagrebačko liberalno novinstvo o slobodi tiska i društvenoj ulozi novina od izbijanja revolucije 1848. do uvođenja neoapsolutizma 1851. godine," in: *Povijesni prilozi*, Zagreb, 25 (30), 203-223.
- Švoger, V. (2007) *Zagrebačko liberalno novinstvo 1848.-1852. i stvaranje moderne Hrvatske*. Zagreb: Hrvatski institut za povijest.
- Wagner, H. (1993) "Das Fach-Stichwort: Medienwirkung," 33-49, in: V. Schwarzkopf, J.: *Ueber Zeitungen (und ihre Wirkung)*. Reprint of the work with the same title from 1795. München: Verlag Reinhard Fischer.

PERIODICALS

Agramer Zeitung

Jugoslavenske novine

Novine dalmatinsko-hrvatsko-slavonske

Slavenski Jug

Südslawische Zeitung

U svjetlu tiska: hrvatsko sudstvo u razdoblju pseudoustavnosti (1849.-1851.)

Vlasta Švoger

Mirela Krešić

SAŽETAK

Novine su u 19. stoljeću bile najvažniji javni medij u Hrvatskoj te glavni medij za informiranje javnosti, ali i za diseminaciju novih ideja usmjerenih prema cjelovitoj modernizaciji hrvatskoga društva. Tijekom revolucionarne 1848. godine novine u Hrvatskoj odbacuju dotadašnju političku bezbojnost uvjetovanu cenzurom. U uvjetima (kratkotrajne) slobode tiska šire krug tema koje obrađuju te osim vijesti i službenih informacija počinju obrađivati i različite političke, društvene, kulturne i gospodarske teme te postaju platforma za širenje modernih, uglavnom liberalnih ideja. U radu se na temelju analize novinskih članaka objavljenih u liberalno usmjerenom zagrebačkom tisku prati kako je tekla reforma pravosuđa u Kraljevini Hrvatskoj i Slavoniji u razdoblju pseudoustavnosti (1849-1851). Posebice se nastoji utvrditi kakvo je bilo stajalište hrvatske javnosti o potrebi reforme pravosuđa, samoj reformi te poteškoćama koje su pratile njezinu provedbu. Značajan dio novinskih tekstova odnosi se djelovanje suca kao važnog čimbenika pravosudnog sustava.

Ključne riječi: zagrebačko liberalno novinstvo, reforma pravosuđa, Hrvatska i Slavonija, Ožujski ustav, pseudoustavnost (1849-1851)