

The historical development of corporate- and property law in Macedonia until Communism as part of the Kingdom of Serbs, Croats and Slovenes

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Abstract

Macedonia is a candidate state for EU Membership. During Communism, Macedonia followed the communist pattern (as a consequence of the system of selfadministration of workers as part of the Yugoslav Federation) and the transition process in the beginning of the 90's was followed by a fundamental change not only in the whole economic system but in the whole society. But before the transition, with the coming of Communism, Macedonia as part of the Yugoslav Federation followed the Soviet pattern from 1945-1951 with: nationalization of major enterprises, state direction of investment and production through a series of Five-Year Plans, emphasis on heavy industry and collectivization of agriculture. After 1951, Macedonia followed its own system with the selfadministration of workers a mix of central planning- and free market economy until 1990. The problem with transition in Macedonia after 1990 was closely connected with the extent and form of implementation of economic reforms and especially privatization, because some enterprises had at least to be transformed, others restructured and others had to be completely liquidated. Another problem with transition was closely connected with two questions: the question of economics and the question of politics. In fact, it can be argued that what has happened in Albania and Macedonia, but also in all post-communist Balkan states and the new countries that have emerged since 1989, is historically unique (Papajorgji 2013). But before the transition, and Communism, lie some very important questions which will be analyzed in this paper: What tradition and family law followed Macedonia before Communism? How did this tradition of law especially in the field of corporate and property law affect the new democratic legal system of Macedonia? These are the main objectives of this article.

Keywords: *Macedonia, corporate law, property law, history, EU.*

Introduction

The territory of today's Republic of Macedonia, also known as ("Former Yugoslav Republic of Macedonia"), was part of the First Bulgarian Empire from the seventh century. After the Battle of Kosovo, Macedonia became part of the Ottoman Empire from 1389 to 1913 (Razumovsky, 1991, 35).

During the disintegration of the Ottoman Empire and the emergence of the Balkan independent nations, Macedonia was the classic example of the fights for National identity. On the territory of Macedonia, Bulgaria, Serbia and Greece raised ethnic and historical claims during the early 19-th century (Hösch, 2008, 180). The classic concept of state, which was developed by Jellinek, according to which a State consists of people, a territory and sovereignty (Maier, 2001, 29), was missing from the population of the territory of the

three vilayets Thessaloniki, Monastir and Kosovo, where the Slavic element predominated on essential requirements, namely language, and a viable Macedonian community awareness towards the Albanian, Greek and Turkish, (Hösch, 2008, 181).

The Sandzak Üsküb or Skopje (today's capital of Macedonia) became part of Sandzak Prizren to Monastir in 1874 and in 1877 was a territory of Albania and Kosovo (Birken, 1976, 72). Following the two Balkan wars of 1912 and 1913 and the dissolution of the Ottoman Empire, the territory of Macedonia was divided between Greece, Bulgaria and Serbia. Bulgaria got as a loser the smallest territory, the area of the so-called Pirin Macedonia, Greece the territory around Thessaloniki and Serbia the largest area above river Vardar. The nowadays territory of Macedonia was then "Južna" or South Serbia (Banać, 1988, 34).

After the end of World War I negotiations were undertaken with the aim of uniting Yugoslavia as a state (Federation). A "Yugoslav Committee" represented by politicians from Croatia and Slovenia led the negotiations with the Serbian government. There were many disagreements, but on 20.07.1917 the so-called "Corfu Declaration" on the unification of Serbia, Croatia and Slovenia was proclaimed with the aim of establishing a democratic parliamentary monarchy based on the self-determination of peoples. On .1.12.1918 Macedonia as a territory of Serbia proclaimed the Kingdom of Serbs, Croats and Slovenes under the authority of Prince Karađorđević (Calić, 2010, 79). The diverse political, social and economic problems of the country were not solved by the new government (Boškowska, 2009, 64).

On 6.1.1929 King Alexander I therefore annulled the 1921 constitution and dissolved the Skupstina (Parliament). The next days, the dictatorship of the King was awarded with "Law on the Powers of the King" that was entered in force and the state was transformed and renamed in "Kingdom of Yugoslavia" ("Kraljevina Jugoslavija") with "Law on the amendment of the existing municipal and district administration" until the end of World War II (Bartl, 1985, 102). Economically, Macedonia was among the most backward and poorest territories of the Kingdom. Thus Macedonia remained in this period mainly raw material exporter and processing industry was not established (Boškowska, 2009, 169). In 1925 there were only 50 industrial enterprises in Macedonia, of which most were steam-powered mills (Boškowska, 2009, 173).

The Constitution of 28.6.1921 (the so-called Vidovdan Constitution) provided in Article 26 (Hösch, 2008, 230), that:

"The State (...) in the interests of the Community and in accordance with the laws, [has] the right to intervene in the economic relations of citizens with the aim of justice and equalization of social injustice."

The concept of property was defined in Article 37 of the Constitution. It was stated that it should "not harm the public interest" and thus contained a social function. Articles 22-44 of the Vidovdan Constitution also guaranteed all citizens the right to engage in economic activity, and full freedom of signing a contract, however, subject to the condition that no Community interests were violated (Janković, K. Culinović, Z. Guzina, T. Danilović, F. Mirković, I. Petrić, W. Pavicević, T. Nikcević, H. Hristov, T., 1979, 544).

A unified Civil Code for the whole Yugoslavia did not exist. The scope of the Serbian "Law on Joint Stock Companies" from 1899 was extended to the territories of Macedonia and

Montenegro. On 12.12.1919 a "Government Decision on the establishment of joint-stock companies" entered in force, requesting for the entire territory a prior approval from the Ministry of Trade and Industry for the founders of a joint stock company. After 1922, however, this requirement was abolished (Zebić, 1925, 73).

During the period of the Kingdom - from 1929 - the most important duty in the legal field was the unification of the legal system. Therefore a Ministry for the unification of laws was established (Janković, K. Culinović, Z. Guzina, T. Danilović, F. Mirković, I. Petrić, W. Pavicević, T. Nikcević, H. Hristov, T., 1979, 543).

In Macedonia and Serbia, the Serbian Civil Code was applicable from 25.3.1844. The Montenegrin general property law book from 1888 was in force in the territories of Montenegro, the Austrian Civil Code from 1811 in the territory of today's Slovenia, Croatia and Dalmatia, and the Hungarian civil law was applicable in the northern part of Vojvodina (Hamza, 2002, 207). The Serbian Civil Code consisted of 950 articles and three parts: the first part (Articles 36-155) governed the general rights, the second part (Articles 187-826) the real rights and the third part (Art 827-950) the Community provisions governing the people - and real rights. Therefore, the Ministry of Justice set up a Commission in 1930 for drafting one Civil Code for Yugoslavia. The draft of the Yugoslav Civil Code from 1935 followed the traditions of Western European Privatrechtskodifikationen; particularly the institutions about the immovable property were inherited from the Austrian Civil Code (Janković, K. Culinović, Z. Guzina, T. Danilović, F. Mirković, I. Petrić, W. Pavicević, T. Nikcević, H. Hristov, T., 1979, 543).

Because of the outbreak of World War II, the draft of the Civil Code remained "stuck", and in all territories of the Kingdom the forementioned laws remained in force (Hamza, 2002, 208). Also in the field of general commercial law, the legal fragmentation was unable to be overcome. The unification of laws was only achieved in the field of labor legislation (Janković, K. Culinović, Z. Guzina, T. Danilović, F. Mirković, I. Petrić, W. Pavicević, T. Nikcević, H. Hristov, T., 1979, 544).

With the "Law from 27.1.1919 on the legal provisions for the preparation of agrarian reform" a general agrarian reform was implemented in the whole Yugoslavia, including Macedonia. This consisted of two phases, namely the dissolution of the feudal and the colonization of the agricultural land and the subsequent distribution of the land to the peasants (Lorenzoni, 1942, 58). But this law did not lead to the complete overcoming of the feudal system. According to the "Law from 5.12.1931 on the regulation of agricultural relations in the territories of Serbia and Montenegro"¹ all previous dependencies should be completely eliminated. The land should be used by the farmers as tenants or leaseholders of the owner, based on this law. This reform provided compensation for former owners whose agricultural land was expropriated (Janković, K. Culinović, Z. Guzina, T. Danilović, F. Mirković, I. Petrić, W. Pavicević, T. Nikcević, H. Hristov, T., 1979, 544). In Macedonia there were 501 large estates (Tschiftliks), after the First World War, from which the state bought up to 308. The rest were sold by the owners themselves (Boškowska, 2009, 206). The agricultural reform of this period can be described as positive because of the dissolution of the feudal system; unlike the communist reforms that were implemented in Yugoslavia after World War II.

¹Zakon za reguliranje na odnosite vo zemjodelskite oblasti na Srbija i Crna Gora, Sl K SKS 1931/32.

As it is known, World War II reached Yugoslavia and thus Macedonia. After eleven days of fighting the leadership of the Yugoslav Army had to surrender unconditionally on 17.4.1941 (Wimmer, T. Braun, F. Spiering, L., 1991, 33). Yugoslavia was divided between Germany, Italy, Hungary and Bulgaria. On 26.11.1942, in the northwest of Bosnia in Bihac the Anti-Fascist Council for the National Liberation of Yugoslavia (Antifasističko narodnog oslobodjenja Jugoslavije = AVNOJ) under the communist leadership was established as the supreme legislative body for the liberation of the Yugoslav people (Bartl, 1985, 138). Although the AVNOJ - Executive Council was organized as a cabinet scheme it was not proclaimed as the supreme organ of the state (Schweissguth, 1967, 185). Only after the second AVNOJ conference in Jajce (Bosnia and Hercegovina) held from 21-29.11.1943, it was appointed as the supreme executive body (Goldstein, 2004, 150). With the AVNOJ decision from 21.11.1944 on "the transfer of enemy property into state property", about "the state management of the assets of absent persons and of the property forcibly confiscated by the occupying powers" the whole "enemy property pertaining to the German Reich and its nationals as well as the Yugoslav war criminals" was expropriated (Bartl, 1985, 143). The above mentioned Decision, the "Confiscation law on war profits" from 24.5.1945 and the "Law on Agrarian Reform" from 23.8.1945 were the main pillars for the establishing of the socialist economy (Teichert, 1959, 27).

Conclusions

This paper showed one thing that Macedonia, just like all the countries of the Balkan region had many difficulties building its own legal tradition. In the first years of the 20-th century, Macedonia didn't have a unified Civil or Commercial law Codex, like in Albania, Romania, Bulgaria and Greece, but there were different laws applicable in different territories of Yugoslavia. Macedonia, didn't manage to implement its own Civil Code, instead the application of the Serbian Civil Code was broadened. Property as an institute was foreseen in Article 37 of the Vidovdan Constitution and it could be expatriated only for public interest and social clauses. The developments in Macedonia, in the first years of the Kingdom of Serbs, Croats and Slovenes, reshaped the structure of the Macedonian economies in favor of agriculture, trade and service sectors. As if the organizational and procedural problems were not enough, another one was added, that included the lack of government financial resources. The Macedonian authorities were totally overwhelmed with the above mentioned Agrarian Reform. This is largely due to the fact that there were no prescribed legal structures and frameworks that were able to ensure a proper procedure. Neither existed sufficient legal criterias or a committed administration. In addition the old technology, the lack of investment (savings were in short supply) and especially competition from abroad (imported products) made it hard for the Macedonian undertakings to survive and grow in the industrial sector. Macedonia remained a rural country with investments only in agriculture until World War II. To evaluate the legal process in Macedonia as part of the Kingdom of Serbs, Croats and Slovenes in the fields of corporate- and property law in organizational terms, the adequate word would be "confusion".

All in all: this process in Macedonia can serve as a partly negative example of how legal

and economic transformation processes should not be performed.

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