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Modernisierung durch Transfer zwischen den Weltkriegen

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Yugoslav private law between the two World Wars

I *The formation of a new state*

The First World War changed the political map of Europe considerably. The defeat of the Central Powers by the Entente and a number of subsequent peace settlements at Versailles, St. Germain, Neuilly and Trianon led either to the formation of new states or brought on territorial modifications for those already existing. Among the new states was the Kingdom of the Serbs, Croats and Slovenes (SCS Kingdom), emerging from the union between the State of Slovenes, Croats and Serbs (SCS State) and the Kingdom of Serbia which already included Montenegro. The Great Powers accepted such a state considering it a solid buffer zone against the expansion both of Bolshevik ideology and of a new German imperialism.[1]

At first, a national council of Slovenes, Croats and Serbs was established in October 1918 as the highest political representative body of the Southern Slavs in the Austro-Hungarian Monarchy. In its declaration of 19 October the Council called for a union of Slovenes, Croats and Serbs. Shortly afterwards, on 29 October, the Croatian *Sabor* (diet) brought up a decision by which all constitutional ties between Croatia and Hungary were broken off. Furthermore, the *Sabor* recognized as the supreme authority the National Council of the SCS State. This state comprised Croatia, Slavonia, Dalmatia, Rijeka, Istria, Sirmium with Zemun, Baranja, Bačka, Banat, Bosnia-Herzegovina,

1 Hodimir Sirotković, O nastanku, organizaciji, državnopravnim pitanjima i sukcesiji Države SHS nastale u jesen 1918 [Origin, organization, legal issues and succession of the SCS State in the Fall of 1918], in: Bogdan Krizman et al., *Hrestomatija povijesti hrvatskog prava i države* [Chrestomathy of Croatian law and state], vol. II, Zagreb 1998, pp. 161–174.

Trieste, Carniola, Gorica, Styria, Carinthia, Prekomurje and Međimurje as well as Boka Kotorska, Budva and the Adriatic coast down to Spič which is now the north-western district of the town of Bar.[2]

By virtue of the decision taken by the Central Committee of the National Council on 23/24 November 1918, the SCS State and the Kingdom of Serbia[3] and Montenegro[4] united on 1 December, thus forming a new state – the Kingdom of Serbs, Croats, and Slovenes. Apart from the never-ending discussions on the significance of this act, what is of importance here is the fact that the SCS Kingdom was a new state which had nevertheless maintained certain constitutional bonds to the former states which were its constituent units.

The interwar period, which is being analysed here, extends over more than two decades. In this quite short period of time the newly proclaimed state of the Southern Slavs succeeded in surviving throughout two periods of constitutional government and one dictatorship. According to the first constitution of the SCS Kingdom of 28 June 1921, the so-called St. Vitus' Day Constitution, the new state was a parliamentary and hereditary monarchy. It was divided into 33 districts – a measure with the aim to create conditions of unification and state centralism.

Yet already in the first years of its existence, the Kingdom suffered from inter-ethnic disputes, economic backwardness and political crisis. The climax was reached when some Croatian representatives were killed in the National Assembly in June 1928. Under the pretext of not being able to cope with the political crisis in a parliamentary way, in January 1929 King Alexander Karadjordjević abolished the constitution and dissolved the assembly. By thus proclaiming his dictatorship he hoped to save the Yugoslav unitary state. Subsequently, the SCS Kingdom was renamed the Kingdom of Yugoslavia.

However, domestic as well as international political factors demanded a restoration of the previous order. In September 1931, Alexander saw no other alternative than to declare a new constitution. Known as the Octroyed Constitution, it did not change the former political regime, but offered Yugoslavia a pseudo-parliamentarism together with an official legitimation for covert absolutism. The constitution continued to regard the king, who remained able to participate in all of the functions of the state both directly and indirectly, as a central part of the state power. After the assassination of Alexander in 1934, the regency was assumed by Duke Pavle due to the nonage of Alexander's son Peter II.

Yet five years later, as a result of constant political crisis, strong public discontent arose and the unsolved Croatian issue was called up once again and a separate region, the Banate of Croatia (*Banovina Hrvatska*) was formed. Considering its wide-ranging legislative, administrative and judicial autonomy, it had significant features of statehood which brought it close to the status of a federal unit.[5] The *Banovina* is commonly regarded as the first step towards future federalization, a direction which the Kingdom had to pursue in order to survive. However, this aim was never fully realized, due to domestic circumstances, i.e. territorial issues and conflicts on the jurisdiction of the federal units, as well as to the outbreak of the Second World War.

At the international stage, the regency oriented itself rather towards fascist states which, compared with King Alexander's inclination towards Great Britain and France, represented quite a political turn. Under the pressure of the Axis Berlin-Rome, the Yugoslav government was forced on 25 March 1941 to join the Tripartite Pact. Only two days later, on 27 March 1941, a coup d'état was carried out and although the new government was ready to fulfil all the obligations of the previous one, and in particular to join the Tripartite pact, this unexpected turnover prompted Hitler to attack Yugoslavia on 6 April. Subsequently, the country capitulated and its major part was occupied by the Germans and their allies.

II *Legal areas of the Yugoslav Kingdom*

The nations participating in the new Southern Slavic state had their own political, cultural and economic heritage. Yet despite all the differences, stress was laid upon the homogeneity of the state, which did not mean that its legal system was fully unified. On the contrary, this state with its six legal areas remained characterised by legal particularism throughout its whole existence.

2 After a truce with Austria in November 1918, to perform the 1915 London Treaty, Italy occupied Trieste, Gorica, a part of Carniola, Istria, Rijeka, Kvarner islands, Zadar and most of the Dalmatian islands, i.e. Slovenian and Croatian areas of the SCS State: Ivo Perić, *Hrvatska državotvorna misao u XIX. i XX. stoljeću* [The Idea of Croatian State], Zagreb 2002, p. 360.

3 The Vojvodina, which previously had belonged to Hungary, was also a part of Serbian Kingdom, as laid down by the National Assembly in Novi Sad on 25 November 1918.

4 On 26 November 1918 the National Assembly of Montenegro decided in Podgorica to dethrone the Petrović-Njegoš House and to unite with Serbia under the rule of Karadjordjević.

5 Neda Engelsfeld, *Povijest hrvatske države i prava: razdoblje od 18. do 20. stoljeća* [History of Croatian State and Law: the period from 18th to 20th Century], Zagreb 2002, p. 387.

Therefore, there could be no doubt that Yugoslavia represented – at least from this point of view – the much aspired ideal of a federal country.[6]

The Yugoslav Kingdom embraced in particular the following legal areas:

1. The territory of Slovenia and Dalmatia with its islands, where Austrian law as well as autonomous regional laws were in force. The highest judicial instance of this legal area was the "Table of Seven" in Zagreb, department B.
2. The Kingdom of Croatia and Slavonia governed by: a) autonomous Croatian law of the *Sabor* and the provincial government; b) Croatian-Hungarian law introduced, according to the Croatian-Hungarian Compromise of 1868, by the common diet in Budapest and approved by the Sabor; c) the so-called recipient law, introduced through royal charters during the Bach's absolutism and accepted by the *Sabor*. The highest court was the same "Table" in Zagreb, department A.
3. Vojvodina, Međimurje and Prekomurje. The law valid on these territories was: a) Hungarian law, i.e. regulations adopted by the Hungarian diet and b) Austrian law. The highest court of this legal area was the Court of Cassation, department B in Novi Sad.
4. Bosnia-Herzegovina, where the following applied: a) Ottoman law, especially the civil code *Mešele* of 1869–1876; b) particular law of Bosnia-Herzegovina; c) customary law on family and successions of non-Moslems; d) the *Shari'a* for Moslems; e) Austrian law introduced after the occupation of 1878. The highest court of this area was the Supreme Court of Sarajevo.
5. Montenegro with its laws preceding 1918, when the Great National Assembly in Podgorica decided to accede to the Kingdom of Serbia. The highest court for this area was the Supreme Court in Podgorica.
6. The former Kingdom of Serbia, where Serbian laws introduced before 1918, e.g. the Civil Code of 1844, were in force. The highest court within this area was the Court of Cassation in Belgrade.[7]

This kind of an extreme legal particularism induced intense governmental efforts to eliminate collisions between the areas[8] through a unification of Yugoslav laws, which was to begin soon after the common state had been founded.

The Constitution of 1921 tried to simplify the unification process by shortening law-making modalities (according to art. 133). Legal motions concerning the unification were handed down to the Legislative Committee through the presidency of the National Assembly. The committee itself had to forward the accepted motions, together with a report, to the assembly, where they were discussed and then voted on *en bloc*. The unification process had to be completed within a five-year term. However, the legislators subsequently made use of their constitutional right to prolong this deadline.

The unification process was supervised by the Ministry of Legal Unification as well as by the Ministry of Justice. Within this framework a permanent Legislative Council operated together with some other ministries and with the Legislative Committee of the National Assembly. In 1929 a Supreme Legislative Council took over the role of the former Permanent Council without any change of its responsibilities.

Later in the interwar period, legal unification in Yugoslavia was never conducted to the same extent and intensity as at the beginning. Some efforts were indeed made, but by and large the effects remained insignificant. Consequently, it became a common place in the legal history of the interwar Yugoslavia to speak of unified and non unified law branches. Private law fell within both categories. In the following a short review will be given on some of its branches, specifying further aspects of their codification.

III *Civil law*

1 The sources

Every single area of the Kingdom had its own civil code, although they all directly or indirectly originated in the Austrian ABGB. This code was effective, with or without the so-called war amendments, in Slovenia, Dalmatia, Croatia and Slavonia. In some parts of Vojvodina as well as in Bosnia-Herzegovina it was applied by judicial practice.[9] Moreover, the

6 Hodimir Sirotković, Lujo Margetić, *Povijest države i prava naroda SFR Jugoslavije* [History of State and Law of the People of SFR Yugoslavia], Zagreb 1988, p. 269.

7 Sirotković/Margetić, Povijest države (n. 6), pp. 270–272; Ferdo Čulinović, *Državnopravna historija jugoslavenskih zemalja XIX. i XX. vijeka* [Constitutional and Legal history of the Yugoslav countries in the 19th and 20th centuries], vol. II, Zagreb 1954, pp. 305–308.

8 Law collisions had been solved through the Supreme Court composed of representatives of the single legal areas. Its decisions were not mandatory, but lower courts followed them in practice. Since its sessions were quite rarely summoned, the number of decisions was fairly modest. See Ferdo Čulinović, *Državnopravni razvitak Jugoslavije* [Constitutional and Legal development of Yugoslavia], Zagreb 1981, p. 200.

9 Upon the Austro-Hungarian occupation of Bosnia and Herzegovina, further application of local law had been provided by the decree of 29 December 1878. In case of impossibility the courts had to decide "by analogy with the law of Austro-Hungarian monarchy". See Čulinović, Državnopravni razvitak (n.8), p. 322.

Serbian Civil code was merely an abbreviated translation of the ABGB. An exception was the Montenegrin area where the General Code of Property applied since 1888. It had been worked out by the Croatian professor Baltazar Bogišić, who relied on Montenegrin customary law which he adjusted to contemporary demands taking account of the theoretical achievements of his time.

It is possible that the civil law particularism did not confuse legal life too much, as the unification process went so slowly that it finally came to a standstill. But the reason might also lie rather in the fact that civil laws of various areas did not mutually differ to a significant degree. Apart from the fact that almost all of them had their starting point, directly or indirectly, in the Austrian ABGB, they also paid attention to liberal and individualistic principles of the Constitution of 1921, thus corresponding to the socio-economic background of the country.

As far back as 1919, the Department of Private Law was constituted as an expert body within the Permanent Legislative Council. The department dealt of course also with the civil law as a sort of general part of private law. Under the dictatorship the Permanent Council was replaced by the Supreme Legislative Council which was an advisory body to the government. With the purpose of drawing up a civil code, an apposite board was formed in 1930. This board continued its work until in 1939 the Decree on the Banate of Croatia was issued, by which this region was authorized to introduce an own civil law with the exception of the law of obligations, still subject to the common jurisdiction.

2 Unification and codification

The unification of civil law began after an agreement had been reached on how to construct a new civil code. Because the government's instructions did not provide for any sort of civil law reform, but were rather oriented towards a pure unification, it was considered reasonable to follow the Austrian ABGB, or precisely its Croatian translation of 1853 (GCC), because it was the basis for the majority of the legal areas within the new Yugoslav state.[10]

10 Against some proposals to lean on the Montenegrin Code its opponents stressed that it fitted rather a small state and left out some civil law sections. See Ivan Maurović, Nastojanja i pokušaji da se reformira opći građanski zakonik [Endeavours and attempts to reform the General Civil Code], in: *JAZU Yearbook* 52 (1940), p. 92; Bertold Eisner, Mladen Pliverić, *Mišljenja o Predosnovi Građanskog zakonika za Kraljevinu Jugoslaviju* [Thoughts on the Preliminary Principles of Yugoslav Civil Code], Zagreb 1937, pp. 6 f.

However, at an early stage the opinions of the board members took different directions, especially on the issue of how deep the changes of the GCC were to go. By the decision of the Department of Private Law, a revision of the GCC was not to be understood as its complete modification or production of a new code.[11] It was only expected that all the amendments of the GCC were to respect the Austrian war amendments of 1914, 1915 and 1916. The dissension of the board members on the extent of the revision was the obvious consequence of the different types of legal training received by the Yugoslav jurists. Unlike the Serbs, whose education rested in the Roman law tradition, the jurists of all other areas, graduated from Austrian law schools and trained in the GCC, held any significant modification of the code for unnecessary.[12]

Being free to operate a radical or only a modest revision, the board did not totally adhere to the framework that was set up by the amended ABGB. When the board went on writing the draft, it also used some other sources, in particular the Swiss Civil Code (ZGB), the German Civil Code (BGB), the Liechtenstein Civil Code and the Swiss Code of Obligations as well as parts I-II of the Czechoslovakian and parts I-III of the Hungarian civil code drafts.

Not only was the drafting process slow in advancing, but it was even stopped, albeit only for a short period, in the year 1925, as a motion was voted which required the board to prepare in the first place a draft of the law of obligations. As this project had not been finalized, the board proceeded with its work on the civil code.[13]

3 Preliminary Principles of the Yugoslav Civil Code

The outcome of the preparatory works, which lasted several years, were the *Predosnova* or Preliminary Principles (or literally "preliminary basis") of the Civil Code of 1934. Some experts thought this draft was issued too early, so they demanded another board to reassess the text, subject to both domestic and foreign critique. Consequently, in scientific and professional circles numerous discussions took place until it became obvious that the draft was

11 Vesna Radovčić, *Pokušaj kodifikacije građanskog prava u staroj Jugoslaviji. Predosnova Građanskog zakonika za Kraljevinu Jugoslaviju* [An attempt of codifying the civil law in the old Yugoslavia. The Preliminary Principles of Yugoslav Civil Code], Zagreb 1975, p. 259.

12 Maurović, Nastojanja (n. 10), p. 93.

13 Ivan Maurović, *Izvještaj o Predosonovi građanskog zakonika za Kraljevinu Jugoslaviju*, [Report on the Preliminary Principles of Yugoslav Civil Code], Zagreb 1935, p. 4 f.

not going to become a statute. The Kingdom of Yugoslavia ceased to exist without its own civil code.

A question that has been posed quite often was to what extent the Principles, apart from unification, also meant a modernization of Yugoslav civil law, especially taking into consideration the fact that their starting point was the ABGB of 1811 in its official Croatian version of 1853 (GCC). When at first the GCC was introduced, it was quite ahead of the society for which it was designed, but also in the interwar time "there was no proper reason to change that which turned out to be right, i.e. those things which, in practice, could be adjusted to the needs of the present time".[14]

The modification of the GCC implied a proper implementation of 1914–1916 amendments which mitigated the "individualistic and liberal characteristics of the GCC"; also the introduction of some new legal institutions was considered an "expression of humanization and socialization of civil law",[15] whereas the feudal background was gradually phased out. In its work, as already said, the board resorted to some sources supposed to be of avail to further modernization. But several advanced solutions of the German BGB or the Swiss ZGB were not fully pursued and so the impact of these codes, taken previously into account by the Austrian amendments, was only indirect.

The Preliminary Principles of the civil code dealt with property, obligations, successions and family. The provisions of the real property law coincided in most cases with the GCC; differences could be noted in the fact that many concepts following the BGB pattern were more distinctive and precise in their definition. Institutions of feudal background were abolished and at the same time numerous institutions absent to the GCC were introduced. Actually they followed the patterns of the BGB, the ZGB and part III of the Hungarian draft, meeting in this way the needs of a modern society.

Following the GCC pattern and in contrast with the BGB or the ZGB, the law of successions was included into the real property law. The Yugoslav civil code draft, however, adopted a definition of the inheritance law and left out its characterization by the GCC as real property law. Some strict hereditary regulations were omitted; others were reconstructed or modified to a certain degree. In this way for instance the circle of the intestate heirs was narrowed down and spouses' rights were improved.

As to the provisions of the Preliminary Principles concerning the law of obligations, some traditional institutions remained unmodified, whereas others were totally new. Several modern principles already known to legal science by the turn of the century were also adopted.

14 Eisner, Pliverić, Mišljenja (n. 10), p. 7.
15 Radovčić, Pokušaj (n.11), p. 303.

By accepting the Austrian amendments, the civil code draft made a certain progress in the realm of family law, for instance in protecting the interests of children, also in case of offspring born out of wedlock. However, these amendments, though improving the original, still acknowledged paternal authority. On the other hand, more advanced solutions of the BGB or ZGB, which also recognized paternal authority, had not been accepted.

During the interwar period the marriage law, different in each legal area, depending on ethnicity and religious affiliation, had become extremely complicated. It was mainly religiously oriented, whereas secular criteria dominated only the small area of Vojvodina, Međimurje and Prekomurje. Problems arose on the validity of interethnic marriages as well as on hereditary issues, because quite often one church acknowledged interreligious marriages and the other not. Provisionally such cases were left up to the competence of the church courts. The civil code draft tried to adopt a non-confessional basis, yet without totally abolishing the religious marriage.[16]

The Preliminary Principles, which never became a code, were regarded as an effort to overcome the legal particularism and to find solutions which – by keeping the majority of the GCC regulations and introducing certain necessary reforms – would help to modernize the civil law and to bring it into line with contemporary demands.[17] No sooner had the Principles been published than numerous discussions were set in motion. Both domestic and foreign critique was relentless; yet the more favourable appreciation came from abroad.[18]

IV *Labour law*

With regard to the unification problem, the development of labour law can be divided into two periods: a) from the foundation of the SCS Kingdom until the Constitution of 1921 and b) after 1921 when a basic framework of the labour system was set up and laws for the entire state were enacted.[19]

16 A comparative analysis of the draft and the GCC in Radovčić, Pokušaj (n.11), pp. 249–307.
17 Nikola Gavella, Građanskopravno uređenje u Hrvatskoj i pripadnost pravnog poretka kontinentalnoeuropskom pravnom krugu [Croatian private law and its affiliation to continental legal family] , in: Nikola Gavella et al., *Hrvatsko građanskopravno uređenje i kontinentalnoeuropski pravni krug*, Zagreb 1994, pp. 7–34; id., Die Rolle des ABGB in der Rechtsordnung Kroatiens, in: *Zeitschrift für Europäisches Privatrecht* 4 (1994), pp. 603–623.
18 Maurović, Nastojanja (n. 10), p. 93.
19 Nikola Tintić, *Radno i socijalno pravo* [Labour and social security law], vol. I, Zagreb 1969, p. 133.

Intensive work on the labour and social legislation was performed due to the fear of the communist ideology which has been often accompanied by labour movements and by the influence of various international bodies such as the International Labour Organization.

1 Labour legislation until 1921

During this period, regulations effective within the single legal areas were: (a) those valid before 1918, in particular the civil codes or specific ordinances which regulated labour conditions in crafts, trade, agriculture etc.;[20] (b) several norms introduced in the single areas between 1918 and 1922; (c) the first unified regulations of the working hours, the unemployment benefits etc. on the entire state territory.

2 Labour legislation after 1921

A more intensive unification work was initiated by the Constitution of 1921. Its chapter on "social and economic regulations"[21] referred to safety at work, working hours, social security, safety measures for disabled persons and the right of unionization. Significant regulations which originated from this chapter were: (a) Law on Workers' Welfare of 2 February 1922 as the most important labour statute which introduced the eight-hour working day, the forty-eight-hour working week and the Sunday break; furthermore, it prohibited night work for males and females under age, restricted and set a fee for overtime work, granted trade unions the right of association and permitted the creation of workers' representatives; (b) Law on Workers' Insurance of 14 May 1922 which implemented the constitutional provision (art. 31) on the insurance of the employees in case of illness or labour accidents; it covered moreover retirement insurance, but its application was constantly delayed until 1937, due to the employers' opposition to pay the benefit taxes for their employees; (c) Law on Labour Control of 31 December 1921 regulating the implementation of social security measures for employees in private firms; it did not apply to civil servants and government officers, addressed later in the following; (d) Law of 5 November 1931 Improving the Labour Conditions in the Public Sector.[22]

Most of the labour legislation was applied neither properly nor consistently, which was also due to the lack of financial resources. Consequently, many amendments were added to the legislation. Numerous workers' rights, valid at least on paper, were reduced to a minimum with the "January dictatorship" of 1929. As constitutionality was restored in 1931, those constitutional guarantees of the 1921 Constitution were not re-implemented. However, some collective agreements were then put into force in order to protect workers' rights. The entire legal framework actually allowed the conclusion of collective agreements, but the practice differed from the expectations, also because the government bodies interfered with labour liberties. On the other hand, numerous conventions of the International Labour Organization ratified by the Kingdom became sources of the labour law.

V *Commercial law*

1 The Sources

The importance of trade laws speaks in favour of their rapid standardization. However, the work on commercial law codification – for its close interrelations with the civil law of obligations – could either run parallel with the elaboration of a civil code or only follow its completion.

Within the single legal areas the trade law sources prior to 1918 remained unchanged. These were as follow: (a) the Trade Code of the Serbian Principality (1860); the Austrian Common Trade Code (1862) in Slovenia and Dalmatia; the Croatian-Hungarian Trade Code (1875) with the Croatian text effective in Croatia-Slavonia and the Hungarian text in Vojvodina, Međimurje and Prekomurje; the Trade Code of Bosnia-Herzegovina (1883); the Trade Code of Montenegro (1910); (b) customary trade law; (c) civil laws.

The trade law codifications effective in Yugoslavia could be classified into two categories: (a) the French type which embraced Serbian and Montenegrin Trade Codes modelled on the *Code de commerce* of 1807; (b) the German type covering Austrian law, patterned on the General German Trade Code of

20 For a cross-section view of the legislation see Tintić, Pravo (n. 19), pp. 103–133.

21 Since the opposition criticised the disregard of socio-economic problems, the government included some paragraph in its draft of "socio-economic provisions" as a sign of give-and-take-policy in order to obtain a majority at the constitutional voting. Neda Engelsfeld, Socijalno-gospodarski problemi u Vidovdanskom ustavu 1921 [Socio-economic problems in the Vidovdan Constitution], in: Krizman et al., Hrestomatija (n. 1), pp. 363–369.

22 Siroković, Margetić, Povijest (n. 6), pp. 277–279; Čulinović, Državnopravni razvitak (n. 8), pp. 191–192; Ivo Politeo, *Uvod u radno pravo* [Introduction to the labour law], Belgrade 1940, pp. 9–10.

1861, as well as the Croatian-Hungarian Code of 1875 following the Austrian model and finally the Bosnian-Herzegovinian Code of 1883 based on the Croatian-Hungarian one.[23]

Besides, a number of regulations, which can be grouped by and large under the heading trade law, were effective on the entire state territory, as for instance the Law on Bills, the Law on Cheques and the Law on Bankruptcy – all three enacted on 29 November 1928. Two years later they were followed by the Law on Public Warehouses of 23 August 1930 and the Law against the Disloyal Competition of 14 April 1930.

2 Unification and codification of commercial law

At the early stages of legal unification the question of a working method was posed. Should a trade code of some legal area be selected and extended to the entire state? This would make the situation simpler, but the restricting factor was the questionable suitability to the needs of contemporary business of the codes which originated from the nineteenth century. Or should a new uniform law be worked out?

The Unification Board of the Trade Law decided to follow the draft trade law for the Serbian Kingdom of 1912, considering also some regulations of the German Trade Code of 1897 and the Austrian draft. The decision in favour of German and Austrian sources was motivated by the interrelations between the trade and the civil law which was already founded on the Austrian GCC with amendments. In developing the trade law, the board did not ignore the fact that the entire post-war Europe kept pace with the advanced economy and, as a consequence, set out codifying or changing its trade law.

Moreover, the Yugoslav trade law draft incorporated some contemporary solutions from many different European statutes and codes, among them the Polish Law on Stock Companies of 1928, the Civil Code of Liechtenstein of 1926, the Swiss draft amendments to the Law of Obligations and the Italian trade law draft of 1925.[24]

23 Pavao Rastovčan, *Trgovački zakon Kraljevine Jugoslavije* [Commercial Code of the Kingdom of Yugoslavia], Zagreb 1937, pp. III-XII; Nikolaj D. Pahorukov, *Trgovački zakon za Kraljevinu Jugoslaviju*, Belgrade 1938, pp. 1–9; Obrad K. Gospavić, *Trgovačko pravo prema novom jugoslavenskom trgovačkom zakonu* [Commercial law according to the new Commercial Code of the Yugoslavia], Belgrade 1938, pp. 19–21.

24 Eugen Sladović, *Trgovačko pravo*, Zagreb 1934, pp. 105–129; Rastovčan, Trgovački zakon (n. 23).

The Yugoslav draft, presented in 1937, consisted of two parts on traders and on trade companies. A third part on real property and obligations was kept for the future as interrelated with the civil law. Therefore, this draft can be seen as a torso, even if justified by the urgent needs of the trade business. The draft was voted on in the Assembly and then sanctioned by the King in order to be published, but the Second World War prevented it from coming into force. A general section, planned before the first and the second part, was never realized.[25]

VI *Copyright law*

When the SCS Kingdom signed its peace settlements with Austria in 1919 at St. Germain and with Hungary in 1920 at Trianon, it was obliged to guarantee its citizens all the rights of intellectual property enjoyed by them under the Austro-Hungarian rule. The Austrian copyright law of 1895 was effective in Slovenia, Dalmatia and Bosnia-Herzegovina, whereas the Croatian-Hungarian copyright law of 1884 was valid in Croatia, Slavonia, Vojvodina, Međimurje and Prekomurje. But Serbia and Montenegro had no equivalent legislation.[26] Consequently, there were strong reasons to plunge quickly into work on a codification of copyright laws.

The draft, worked out by the Ministry of Education in 1922, did not pass, due to its incompatibility with contemporary needs and with the provisions of the Berne Convention of 1866 (amended in 1896, 1908 and 1914) – the most important convention on the protection of copyright. The second draft was forwarded in 1926 to competent institutions and to law faculties for reconsideration. After some amendments in 1927 the draft was submitted to the National Assembly. On initiative of the Ministry of Education, further work was delayed until the outcomes of the International Conference on the revision of the Berne Convention in Rome in May 1928 would be known. At this conference, the authors of the draft who represented the SCS Kingdom proposed certain amendments which were accepted as a sign of progress. Finally, the draft was completed according to the results of the Rome conference. [27]

25 Pavao Rastovčan, *Trgovačka društva, glavni nosioci privrede u kapitalizmu* [Commercial companies as the main exponents of capitalist economy], Zagreb 1958, p. 3; Pahorukov, Trgovački zakon (n. 23), p. 9; Juraj Vrbanić, Stanko Deželić, *Trgovačko zakonoslovlje* [Commercial law science], Zagreb 1942, p. 57.

26 Vojislav Spaić, *Teorija autorskog prava i autorsko pravo u SFRJ* [Copyright theory and copyright law], Zagreb-Belgrade 1983, p. 21.

27 Although the principles of the Berne convention were already implemented into the copyright law, the Yugoslav Kingdom joined the convention in 1930.

The law became so popular abroad that even the *Association littéraire et artistique internationale* held its congress that year (1928) in Belgrade where, among other issues, the new copyright law was discussed. Legislative work in its full swing was temporarily stopped in 1929 as a consequence of the disbandment of the National Assembly by the new dictatorial regime. After some trivial stylistic modifications, on 26 December 1929 the king signed the Law on the Protection of Copyright which was the most sophisticated European law on this matter.[28]

VII *Maritime law*

1 Maritime law sources until 1918

The territories of the Eastern Adriatic coast have a very rich, centuries-old maritime tradition. When they became part of the Southern Slavic state, they also brought along, as former parts of Austria-Hungary, the Austro-Hungarian maritime system. Because the monarchy had never possessed an own maritime trade law, the French Code de commerce of 1807 had been in force there. With the fall of the Venetian Republic in 1797, its Eastern Adriatic parts were annexed by Austria, which according to the treaty of Pressburg (1805) was to cede these territories to France. French rule meant in the first place the abolition of the old statutory law contained in the statutes of coastal towns.[29]

The second book of the French Trade Code, which included ordinances on maritime trade law, was introduced by the Decree of Bayonne in 1808. Upon the defeat of Napoleon and the Vienna Congress, in 1815 the Eastern Adriatic territories were re-integrated in the Danube Monarchy. French maritime law remained in force in Dalmatia as statutory, whereas in the Croatian littoral as customary law.[30] Although the *Code de commerce* suffered some modifications in France in response to the new needs of maritime traffic, on the Yugoslav territories it still preserved its original form.[31] The maritime law of Dalmatia was stretched down to the Montenegrin littoral, the part of the Eastern Adriatic coast assigned to Montenegro in 1878 by the Berlin Congress.

28 Janko Šuman, *Komentar Zakona o zaštiti autorskog prava i međunarodnih propisa* [Commentary on the Law on the copyright protection and international regulations], Belgrade 1935, pp. 10–16.

29 Split (1240), Zadar (1305) or Hvar (1331) and the most elaborated one of Dubrovnik (1272).

30 Another source of (administrative) maritime law was the statute on navigation of 25 April 1774; it contained only a few regulations on property law.

31 Branko Jakaša, *Udžbenik pomorskog prava* [Handbook of the maritime law], Zagreb 1983, pp. 9–11; Ivo Grabovac, *Pomorsko pravo Republike Hrvatske* [Maritime law of Croatian Republic], Split 1997, pp. 15 f.

2 Maritime Law after 1918

The ordinance of 6 September 1919, which set up the first maritime administration in the city of Bakar, maintained the entire maritime legislation valid up until then. The regulations introduced in this period prevailingly had an administrative character, while the French Code de commerce was supplemented by the ordinance of 30 May 1939, which dealt with the property rights on ships and maritime privileges according to the principles of the Bruxelles Convention. Another one, introduced in March 1940, was the Ordinance on Registration of Real Property Rights on Ships, based on the same principle as the land register. These legal sources were supplemented by custom, trade codes and civil law statutes.

Efforts towards a regulation of maritime trade law have very clearly shown the necessity for its autonomous codification. A draft on maritime trade law, based on the German maritime law (book IV of the Trade Code of 1897) and on the international convention on maritime law unification, followed in 1937. Domestic civil and trade law as well as contemporary achievements of other maritime states were also considered. Yet the draft did not lead to a codification of maritime trade law.

Contemporary jurists thought that the draft was poorly worked out and that it was necessary, even if modern sources had been consulted, to submit the text to further revision in order to achieve its better compatibility with contemporary needs of maritime life.[32] Although maritime law, including trade law, made significant progress both in Europe and worldwide, it remained in Yugoslavia on the level of nineteenth century ordinances and this legal gap lasted until the socialist rule.

VIII *Land registry law*

The land registry law was generally unified, although two systems of land registers remained in force until the very end of the Yugoslav state in the early

32 Milan Špehar, *Savremeni smjerovi pomorskog prava s obzirom na našu kodifikaciju* [Contemporary directions of maritime law with regard to our codification], Zagreb 1937, pp. 5–8.

nineties of the twentieth century. Serbia, Montenegro and Macedonia followed the so-called tapia-system,[33] which was a sort of deeds recording system inherited from the Turkish reign, but somewhat modified in the course of time.

On the other hand, from the mid-nineteenth century onwards, land registry certificates were gradually phased into the Austro-Hungarian Monarchy. In 1850 they were introduced in Croatia and Slavonia, in 1881 in Dalmatia and finally in 1884 in Bosnia-Herzegovina. These territories had no common land registry law: while in Croatia the land registry order of 1855 was in force, Bosnia and Herzegovina had their own law dating from 1884.

In order to unify the land registry law of those areas which already had a land registry system, the Law on Land Registry was issued on 18 May 1930. Yet it remained also necessary to establish a land registry system in the other areas; for this purpose a law on the internal system, organization and modification of the land registry was enacted soon afterwards. Since the groundwork for the land registers, the drawing up of a cadastral register, consumed large amounts of time and money, the whole procedure did not reach its end until the Second World War. In those parts of the state where land registers had not yet been introduced, the old *tapia-system* remained in force.[34]

IX *Private international law*

Only few states codified their private international law during the interwar period. The rules of Yugoslav private international law were comprised mainly in civil law statutes, such as the General Civil Code, the Serbian Civil Code and the Montenegrin Code of Property. In Vojvodina, Međimurje and Prekomurje there were two laws, on Will Forms, Hereditary Contracts and Gifts mortis causa of 1876 and on Inheritance Proceedings of 1894, which contained collision rules. The law on out-of-court proceedings of 26 July 1934, effective on the entire state territory, contained collision rules as well.[35]

33 "Tapia" was a public document on transfer of property which had to be first confirmed by courts and then put into a public register. Both confirmation and registration were only declarative. See Čulinović, Državnopravni razvitak (n. 8), p. 188.

34 Čulinović, *ibid.*, pp. 187–189; 320 f.; Vojislav Spaić, *Građansko pravo, opšti dio i stvarno pravo* [Civil law. General Part and Property Law], Sarajevo 1971, pp. 412 f.

35 Bertold Eisner, *Međunarodno privatno pravo* [Private international law], vol. I, Zagreb 1953, pp. 378 f.

International treaties were important sources for private international law worldwide. The Yugoslav Kingdom was signatory of several bilateral agreements which also contained collision norms: certain consular conventions (with Albania in 1926), agreements on trade and navigation (with Albania in 1926, Greece in 1927, Great Britain in 1927, the Netherlands in 1930 and Sweden in 1937) and many other bilateral international treaties.[36] In the mid-thirties, the Slovenian jurist Stanko Lapajne launched an initiative for a uniform private international law for Central and Southern Europe, yet with no countable success.[37]

X *Conclusion*

European countries regained their stability in the period between the two World Wars. Nevertheless this stability was more illusion than reality: problems resolved by the First World War created political constellations which generated new problems; a fragile political equilibrium led to recession and finally to a new war. Apart from that, scientific and technological achievements, economic development that had been at standstill during the war, as well as efforts towards international collaboration – all this necessitated the modernization of law in many European countries.

Many indicators demonstrate that Yugoslavia was among the most underdeveloped European countries in the interwar period, and yet the state was not immune to the aforementioned trends. The modernization of the law was an aspect of the legal unification. Modernization meant in the first place overcoming legal particularism. This was a complex process lasting a long period of time, which in some law branches did not even reach the end.

Perhaps legal particularism itself did not represent a significant problem, but in a country which brought together different political, cultural and economic heritages, and which had also unsolved national issues and poor economic growth, a uniform legal system was regarded as an integrative factor and was therefore of great importance. Is it then justified to talk about private law modernization in Yugoslavia between the World Wars? Perhaps it would be more correct to speak about modernization efforts of the board

36 Krešimir Sajko, *Međunarodno privatno pravo, opći dio*, Zagreb 1996, pp. 34–41.

37 Unification of international private law was successful in the thirties of the twentieth century in Scandinavian countries by the so-called Scandinavian conventions and within the Panamerican Union by the *Codigo Bustamante*. See Sajko, Pravo (n. 36), pp. 44, 51, 52; Eisner, Pravo (n. 35), p. 31.

members in charge of developing new laws and of single jurists, legal scholars and practitioners which put forward various critical reviews and proposals.

These efforts persisted irrespective of the political situation in the country. Legislative initiative did not abate during the dictatorship which in this field was no less productive than the parliamentary rule. Anyway, the achieved results did not always comply with the efforts undertaken. Many attempts, for example at systematization of civil legislation, were left unfinished, and since in this case it was a matter of the central authorities, no modernization was fully realized. After the Second World War the Yugoslav legal system changed considerably due to the attributes which drew it out of the continental legal tradition towards the socialist legal family.

Mirela Krešić (Zagreb)

Constitutional history of Yugoslavia 1918–1941

I *The kingdom of serbs, croats and slovenes 1918–1929*

1 Historical background

On 28 June (*Vidovdan*, or St. Vitus Day) 1914, the Austrian Archduke Francis Ferdinand attended a military review in Sarajevo – a rather pointed provocation on Serbia's national day.[1] He and his wife were assassinated by adherents of the secret society *Mlada Bosna* (Young Bosnia), aided and abetted by the organization of military officers *Ujedinjenje ili smrt* (Unity or Death), popularly called *Crna Ruka* or "the Black Hand". Consequently, the Austrian authorities issued an ill-considered ultimatum including demands for the suppression of anti-Austrian newspapers and the dismissal of anti-Austrian teachers and officers. The Serbian reply, though conciliative, was considered unsatisfactory. Consequently, the two countries entered the war on 28 July.

The Austrian offensive in August 1914 was thrown back, as was a second attack in November. In the winter of 1914–1915, however, a terrible epidemic of typhoid struck Serbia, devastating both the civilian population and the military. When the German Field Marshall August von Mackensen opened in October 1915 a third offensive with assistance of the Bulgarians, the weakened Serbs, unable to sustain a defence on two fronts, retreated across Albania to the Adriatic coast. Devastated by the ravage of the winter in the

1 On that day in 1389, the battle at *Kosovo Polje* (Field of the Blackbird) between the Serbian Prince Lazar and the Turks of the Ottoman Sultan Murad I took place. Because the Turkish victory determined the end of the mighty Serbian state, St. Vitus Day is the day of national mourning.