

Commercial law developments in Yugoslavia with a focus in the Socialist Republic of Macedonia and Albania

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Abstract

Commercial law is an abstract definition in a central planned economy, but Yugoslavia had a system of its own and in the economic history books it has always a special chapter. It all started with the planned system economy, but very early Yugoslavia followed its own path, namely workers' self-government and a special property form, the so-called social property. Albania instead followed the path of all socialist countries – central planned economy and socialist property. This system can be considered a definition of administrative socialism or etatism.³ This manuscript aims to analyze the commercial reforms in Yugoslavia, Macedonia and Albania and its consequences towards free market economy. A historic and deductive method will be used to analyze the legal reforms that made Yugoslavia a specialty in the communist block.

Keywords: Yugoslavia, Macedonia, Albania, commercial law, property.

JEL Classification: K20, K22, K23.

1. Introduction

The Yugoslav socialism started with the first five-year plan (1947-1951), through which the entire economic life was planned in advance and monitored to the smallest detail. As in Albania, companies were legally independent legal entities. In fact, they were part of the state administration.⁴ In the following period, the Constitution of the Socialist Republic of Macedonia (hereinafter: SRM) from 31.12.1946 was issued.⁵ Although the Yugoslav constitution envisaged self-government of the Republics, this had only a very limited impact in the SRM. As a

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³ Horvat, B., *Wirtschaftssysteme – Jugoslawien*, in Albers/Born/Dürr/Hesse/Kraft/Lampert/Rose/Rupp/Scherf/ Schmidt/Wittmann (Hrsg), Handwörterbuch der Wirtschaftswissenschaft – Wirtschaft und Politik bis Zölle, 1982, p. 371; see also: Veljanovski, N., *Zur verfassungsrechtlichen Stellung Makedoniens im kommunistischen Jugoslawien*, in Lukan/Jordan/ (Hrsg), Makedonien Geographie-Ethnische Struktur-Geschichte-Sprache und Kultur-Politik-Wirtschaft-Recht (Makedonien) ÖOH 1998, p. 209.

⁴Teichert, J., *Die kollektive Selbstverwaltung der Betriebe im Rahmen der Arbeiter-selbstverwaltung in Jugoslawien*, Bonn, 1959, p. 35.

⁵ Ustav na Narodna Republika Makedonija, SI V VRM 1946/106.

result, the ministries in this Republic were able to carry out their central tasks with particular consistency.⁶

The "Basic Law on Economic Enterprises"⁷ of 24.7.1946 was of particular importance for the Macedonian company law as part of the Socialist Federal Republic of Yugoslavia (hereinafter: SFRY) because for the first time the legal position of the economic enterprises was regulated. With this law, the basic economic functions such as the activity and distribution of economic benefits were introduced by the so-called government administration. This law⁸ laid the basis for the "Albanian Law of 22.03.1947 on state enterprises", stating that state-owned enterprises had the status of a legal entity and were liable for the assets transferred by the state. The highest management body of the enterprise was the director. He was elected by the Ministry of Economy as the competent state institution.

In 1946, the Federal Planning Commission (Savezna planska komisija) was also set up with departments in the executive organs, as well as the planning commissions at the Republic-, County- and local level.⁹ Characteristic of this period for commercial law was that the state institutions could determine practically all important administrative competencies for the management of the enterprises. The Federal Control Commission, which was subordinate to the government, was able to intervene directly or through control committees in the management of enterprises. On the other hand, enterprises had no right to autonomously dispose of their revenues; they had to transfer them to the state budget.¹⁰ Because of the poor economic situation and because of the political break with the Soviet Union, the central planned economy had already failed in 1950 and became history.¹¹

2. Period 1950 to 1963

This period was characterized by the abolition of central planned economy and the end of collectivization in agriculture.¹²

The basics of the economic conception, which were implemented in Yugoslavia after 1950, are based on publications by *Kidrić*.¹³ These included the introduction of new socialist concepts and methods, a drastic decentralization of the entire state structure, the abandonment of a Soviet-style economic plan, industrial self-employment in industry and a competitive but not private-sector

⁶ See *Veljanovski*, ÖOH 1998, p. 208.

⁷ Zakon o drzavnim preduzecima (Gesetz über die Wirtschaftsunternehmen) Sl I FVJ 1946/62.

⁸ See *Teichert*, Die kollektive Selbstverwaltung, 1959, p. 33.

⁹ *Dobias, P., Das Jugoslawische Wirtschaftssystem – Entwicklung und Wirkungsweise*, J. C. B. Mohr (Paul Siebeck), 1969, p. 6.

¹⁰ *Hagemann, M. Klemenčić, A., Die sozialistische Marktwirtschaft Jugoslawiens*, 1974, p. 8.

¹¹ See *Horvat* in *Albers/Born/Dünn/Hesse/Kraft/Lampert/Rose/Rupp/Scherf/Schmidt/Wittman*, 1982, p. 372.

¹² *Gruenwald, O., The Yugoslav Search for Man – Marxist Humanism in Contemporary Yugoslavia*, South Hadley, Mass.: Bergin & Garvey Publishers, 1983, p. 110.

¹³ *Kidrić* proposes in his theses a mixture of market and planned economy; *Hagemann, M. Klemenčić, A., Die sozialistische Marktwirtschaft Jugoslawiens*, 1974, p. 13.

system.¹⁴ *Tito* and *Kardelj*, the two most important politicians of Yugoslavia, considered that workers' self-government was the key to "real individual freedom"; this can be achieved through the economic process.¹⁵ According to Yugoslavian legal theory, the mistake of Marx's theory was that Marx regarded property only as an economic and not as a legal concept, as the "fullest right in an object in a particular social formation."¹⁶ This mental starting point was the basis for the start of decentralization and the so-called workers' self-government. The process began with the Federal Law on the Administration of Business Enterprises and Business Associations by Working Collectives, adopted on 26 June 1950.¹⁷

The law introduced for the first time the management and administration of the enterprises through work collectives. The tasks of each institution have been broadly outlined and clarified, modified and supplemented by other regulations and instructions in subsequent years.¹⁸ Although the system of "workers' self-government" did not bring any real involvement of workers in decision-making processes, it was a prerequisite for extensive economic decentralization. It was ultimately a means of justifying the market by distinguishing it from capitalism in socialist theory.¹⁹ The decentralization also seized the state apparatus, so that competencies were increasingly transferred from federal authorities to the republics and provinces. Some Federal Ministries were dissolved; the Federal Planning Commission was reorganized.²⁰ The Federal Assembly (Parliament) contained as a second chamber a producers' council, which should represent the interests of self-governing enterprises.²¹ This first phase of decentralization was concluded with the constitution, which was adopted on 14.1.1953.

The constitution of 1953²² also determined the "new economic system" of the country. In Art 4 it was stated: "*The social ownership of the means of production, the self-government of the working people, the population in districts, cities and districts form the basis of the social and political system of the country ...*"

The Constitution also laid down the governance of enterprises through work collectives, organized into management committees, workers' councils and directorates, the right of economic enterprises to independently decide on their profits, and the workers' right to vote in the executive bodies of business enterprises. In this way, state property was not an option, and the uncommon concept of social property was introduced.²³ The Constitution of the People's Republic of Macedonia²⁴ was adopted in accordance with the Yugoslav

¹⁴ See *Gruenwald*, *The Yugoslav Search for Man*, 1983, p. 37.

¹⁵ *Jović, D., Yugoslavia – A state that withered away*, Purdue University Press, 2009, p. 75.

¹⁶ *Spaić, V., Das Recht der Unternehmen in Jugoslawien*, JOR 1960, p. 159.

¹⁷ *Zakon o administraciji preduzeca i trOALckih drustava kroz kolektivni rad*, SI I FVJ 1950/43.

¹⁸ See *Teichert*, *Die kollektive Selbstverwaltung*, 1959, p. 44.

¹⁹ *Lydall, H., Yugoslav Socialism*, Oxford University Press, 1986, p. 71.

²⁰ See *Dobias*, *Wirtschaftssystem*, p. 9.

²¹ *Höpken, W., Sozialismus und Pluralismus in Jugoslawien*, 1984, p. 290.

²² *Ustav Zakon o osnovama drustvenog i politickog uredenja i federativnim organima vlasti Federativne Narodne Republike Jugoslavije (Verfassungsgesetz über die Grundlagen der gesellschaftlichen und politischen Ordnung der Föderativen Volksrepublik Jugoslawien und über die Bundesorgane der Staatsgewalt)* SI I FVRJ 1953/3.

²³ See *Veljanovski*, ÖOH 1998, 213.

²⁴ *Ustav na Narodna Republika Makedonija*, SI V VRM 1953/37.

Constitution of 13.11.1953. This created a new legal status for economic enterprises in the Republican level, which should carry out their activities independently. From 1953 to 1964 Yugoslavia was able to register "ten extraordinary years of development."²⁵ For the first time in Macedonia's and Yugoslavia's economic history, agriculture's share of GDP in 1960 was smaller than that of industry.²⁶

In the period from 1961 to 1965, the second phase of socialist workers' self-government followed.²⁷

According to *Gruenwald*, this phase brought a "mix of the worst of both worlds", namely central planning- and market economy.²⁸ The thesis of Yugoslavia, according to which a competitive economy is possible even without private ownership of means of production, should be confirmed in practice.²⁹ However, income distribution was not well considered during this period. The increase in prices of raw materials and wages of workers led to the worsening of certain sectors of the economy and was the cause of the implementation of new reforms.³⁰

Allcock marks the period as follows: "Whenever the state has had problems with economic development, it answered in the form of a double attempt for the formation of socialism."³¹

An example of this was the third five-year plan, which began in 1961, because the second (1957-1961) was declared "fulfilled."³² The new reform was intended to bring it in line with the world market, with the help of foreign trade and the banking system to increase profitability and labor productivity and eliminate existing disproportions between the Yugoslav economic sectors.³³ The proximity of Yugoslavia to the market economy and the fundamental difference between Macedonia and Yugoslavia in relation to all central administrative economies were, according to *Roggemann*, based on federal restrictions and not on administrative acts.³⁴ However, the Yugoslav government counteracted the liberalization measures taken by the poor distribution of income in the enterprises, centralization of the funds invested, poor allocation of investments based on political and non-economic decisions³⁵ based on the "Law of 22.7.1962 on social price control". The foreign trade business of the Chamber of Commerce was also limited by the "Law on Trade in Goods and Services with Foreign Countries", which made it dependent on approval by the Federal Government.³⁶

²⁵ Dushi, A. Mihailović, T., *Sozialistische Autonome Provinz Kosovo*, 1981, p. 13.

²⁶ Idem, Dushi, A. Mihailović, T., *Sozialistische Autonome*, 1981, p. 14.

²⁷ See Lydall, *Yugoslav Socialism*, p. 65.

²⁸ See *Gruenwald*, Search for Man p. 110.

²⁹ *Wessely*, Jugoslawiens neuer Plan und Wirtschaftskurs, ÖOH 1961, 35 (35).

³⁰ Verli, M., *Ekonomia e Kosoves në vargonjtë e politikës jugosllave 1945-1990*, 2000, 62 (63).

³¹ Allcock, J. B., *Explaining Yugoslavia*, Columbia University Press, 2000, p. 79.

³² *Singleton*, A short History of the Yugoslav peoples (1999) p. 232.

³³ See *Verli*, *Ekonomia* 60 (61).

³⁴ *Roggemann*, H., *Das Modell der Arbeiterselbstverwaltung in Jugoslawien*, Europäische Verlagsanst., 1970, p. 137.

³⁵ See *Verli*, *Ekonomia*, p. 61.

³⁶ See *Dobias*, *Wirtschaftssystem*, p. 13.

In economic terms, Macedonia's GDP per capita in 1952 was 71.4 per cent of the Yugoslav average. In 1960, GDP in Yugoslavia increased to 191.7 per cent, while in Macedonia it reached only 111.4 per cent.³⁷

3. Period 1974–1990 as the last phase of socialism

The 1974 Constitution eliminated the contradictions of the previous constitutions of 1946 and 1963, comprised more than 400 articles and about 350 pages,³⁸ making it the longest constitution in the world.³⁹ Its characteristic feature was the territorial federalism by extensive transfer of economic rights and obligations to the Republics.⁴⁰ The state gave monetary and fiscal policy to the republics, with the result that Yugoslavia was decentralized to the point where it resembled a system of small independent economic entities rather than an integrated system of economic production and distribution.⁴¹ The legislative powers of the Republics and autonomous Provinces were also extended in the field of property law, unless they were regulated by federal law.⁴²

The new Constitution of the SRM was also adopted on 21.2.1974⁴³ and had no differences in corporate law compared to the federal constitution. The Constitution of the SFRY stated in Art. 10 that the socialist socio-economic order of the SFRY consisted of the free "associated work" with means of production in social property and in the self-administration of the workers.⁴⁴ This constitution tried to create a Pan-Yugoslav market. This was to be done through a union of labor and through the free sale of goods and services in a system of social planning through agreements of workers' self-management and social agreements on economic development in the interest of the country as a whole.⁴⁵ The new constitution increased cooperation in the higher level of labor organizations. More important for the further development of company law was the constitutional anchoring of the subunits of the companies, the Organizations of Associated Labour (hereinafter: OAL). The companies or workers' organizations were subdivided by the OAL into sub-areas, which had an autonomous working order as well as a direct management and income distribution.

OAL was entitled to secede from the original company. On the other hand, a merger of two companies was possible only with the consent of all OALs of both companies. The Constitution of 21.2.1974 ended the process of workers' self-management in the SFRY. The cooperation with capitalist states led to economic self-confidence in the whole of Yugoslavia and thus also in Macedonia and

³⁷ See *Allcock*, Yugoslavia, p. 83.

³⁸ Weissenbacher, R., *Jugoslawien – Politische Ökonomie einer Desintegration*, 2005, p. 65.

³⁹ Džaja, S. M., *Die politische Realität des Jugoslawismus (1918-1991) – Mit besonderer Berücksichtigung Bosnien-Herzegowinas*, Oldenbourg Wissenschaftsverlag, 2002, p. 128.

⁴⁰ See *Verli*, *Ekonomia*, p. 84.

⁴¹ Cooley, A., *Logics of Hierarchy – The Organization of Empires, States, and the Military*, Cornell University Press, 2005, p. 129.

⁴² See *Borić*, *Eigentum*, p. 45.

⁴³ *Ustav na Socijalistička Republika Makedonija*, Sl V SRM 1974/6.

⁴⁴ See *Borić*, *Eigentum*, p. 46.

⁴⁵ See *Gruenwald*, *Search for Man*, p. 116.

contributed to the economic stability until the early 1980s.⁴⁶ Due to the subsequent crises, there were then many clashes between the Republics and Provinces,⁴⁷ which should lead to the disintegration of the Federation in the early 1990s.

4. The social property as a special feature of Yugoslavia or Macedonia during the workers' self-government

In the SFRY and the SRM, in contrast to Albania and the other Eastern European states, a special type of property, the so-called social property, developed. Social property was not a well-defined legal institution. It also included the cooperative property. The social property was an "ownerless" property. It belonged to everyone and no one at the same time.⁴⁸ For the first time, social property was designated as a special conception of ownership by the "Law on the Administration of State Enterprises and Higher Trade Associations by Labor Collectives of June 27, 1950"; with the constitution of January 13, 1953, the administration of the means of production was transferred to the work collectives.⁴⁹ The collective, that is, the workers' organizations, not the worker personally, were granted rights of administration, use and disposal of the means of production in the social property, but it was not a kind of "group property".⁵⁰

5. Conclusions

Despite some parallels, legal developments in Macedonia and Yugoslavia were completely different from those in Albania, with this statement referring primarily to the period after 1945. At the beginning of the Macedonian state, on the other hand, as in Albania, there was neither a single civil law modification nor a commercial law applicable to the whole of Yugoslavia. A legal unification in Yugoslavia became applicable after WWII. In the main points of socialist property and economic theory, Yugoslavia, and thus also the Macedonian state, followed a completely different path after 1951 than Albania and the other states of the Socialist bloc. Nationalization quickly proved to be a failure, prompting attempts to flexibilise and decentralize the central planned economy. In this way, workers' self-government and the OALs emerged as the characteristic for Yugoslavia. The agrarian reform also failed; in 1956, 91% of the utilized agricultural land was once again in private hands. Since the 1950s, Yugoslavia's constant ambition was to combine the planned economy with market-based mechanisms; the failure of the "socialist experiment" was recognized there much earlier than in Albania. Finally, the legal developments in Macedonia and Yugoslavia differed from that in Albania and other communist states by a specific conception of ownership, social property.

⁴⁶ Lane, A., *Yugoslavia-When ideals collide*, Palgrave Macmillan, 2004, p. 151.

⁴⁷ See *Weissenbacher*, Jugoslawien, p. 204.

⁴⁸ Höcker-Weyand, Ch., *Die Rechtsinstitute und Rechtsinstitutionen des jugoslawischen Selbstverwaltungssystems*, 1980, p. 55.

⁴⁹ See *Carić* in *Brunner/Pfaff*, p. 40.

⁵⁰ See *Höcker-Weyand*, Rechtsinstitute, p. 49.

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