A Review of the Development of Private Law in Croatia 1848–1945

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1. Introduction

The 1848 revolutionary developments brought about the demise of the existing social, economic and legal system in the territory of the Habsburg Monarchy and paved the way for shaping new relations and accelerating modernisation processes that had set in by that time. Under the new circumstances, it was necessary to begin to modernise institutions, develop civil society, capitalist economy and a new legal system in Croatian regions. Considering that the political division of Croatian ethnic space (Croatia and Slavonia had a very limited degree of autonomy, Istria, Dalmatia and the Military Frontier were subject to Vienna's direct rule while Međimurje and Baranya were within the borders of Hungary), the primary goal was to achieve territorial integrity and regulate the status of present-day Croatia within the framework of the Monarchy. Although the issue of integrating Croatian regions became important, Istria, Dalmatia, Međimurje and Baranya retained their separate status until 1918, while the Military Frontier was demilitarised and finally integrated into Croatia and Slavonia in 1882. Moreover, modernisation resulted in many problems such as a prolonged process of removing the feudal system, underdevelopment of infrastructure, slow industrialisation and urbanisation, insufficient education as well as the predominance of village population in the total population.[1]

After 1918, present-day Croatia (without Istria) became part of the new South-Slavic state – the Kingdom of Serbs, Croats and Slovenes (since 1929, the Kingdom of Yugoslavia). Within this short period, the newly proclaimed state underwent two periods of constitutional government and one dictatorship as a result of a persistent political crisis which plagued it. The crisis was partly due

[1] For more about the period 1848–1918 see in: ČEPULO, Dalibor: Autonomy, dependence and modern reforms in Croatia-Slavonia 1848–1918. Urusczak, Waclaw et al. (eds.) Separation of powers and parliamentarianism. The past and the present. Law, doctrine, practice. Studies presented to the International Commission for the History of Representative and Parliamentary Institutions, vol. 84, 2007, 511–524.

to tensions between Croatians and Serbs, the so-called "Croatian issue". In an attempt to resolve it, the Banovina of Croatia (*Banovina Hrvatska*) was formed as a separate region with wide-ranging legislative, administrative and judicial autonomy. The *Banovina* is commonly regarded as the first step towards future federalisation, a direction which the Kingdom had to pursue in order to survive. However, this aim was never fully realised, due to both domestic circumstances and the outbreak of the Second World War.[2]

After Germany's attack on Yugoslavia on 6 April 1941, the King and the Government fled abroad while the Yugoslav Army, after its resistance was crushed, signed unconditional surrender. Nevertheless, the Government in exile proclaimed the continuity of the Kingdom of Yugoslavia and the continuation of fighting. In occupied Yugoslavia, Germany and Italy established their interest zones. Some parts of the territories were annexed by Germany and Italy, some by Hungary and Bulgaria. In other territories, governments were set up by domestic forces under the supervision of German or Italian authorities. One example was the Independent State of Croatia (*Nezavisna Država Hrvatska*, NDH). At the same time, the Communist Party of Yugoslavia decided that the struggle against the occupational forces should continue and the Military Committee was founded under the leadership of J. Broz Tito (the so-called partisan movement). Thus, referring to the territory of present-day Croatia during the war, its territory was under two or even three governments – the NDH, partisan authorities, and the Yugoslav government in exile.[3]

The establishment of the Croatian private law system that began in 1848 continued throughout the next one hundred years. The diversity of public law orders that marked the position of Croatian lands in this period (the Habsburg/Austro-Hungarian Monarchy, the Kingdom of SCS and the Kingdom of Yugoslavia, dual/triple government during the Second World War) did not have significant impact on the essential normative determinants of the private law system, which would more or less remain in force intact until the enactment of the Law on Immediate Voiding of Regulations Passed Before 6 April 1941 and During the Occupation (1946).

[2] For the formation of a new state and political situation in the interwar period see: KREŠIĆ, Mirela: Yugoslav private law between the two World Wars. Modernisierung durch Transfer zwischen den Weltkriegen (T. Giaro, ed.), Vittorio Klostermann Verlag, Frankfurt am Main, 2007, 151–153.

[3] For the political situation during the war see: ČEPULO, Dalibor: Hrvatska pravna povijest u europskom kontekstu – od srednjeg vijeka do suvremenog doba, Pravni fakultet u Zagrebu, 2012, 285–290., 293–301.

2. A New Croatian Private Law System in the Making (1848–1918)

From 1848 to 1918, the Monarchy underwent different stages of political and constitutional development. After the turbulent 1840s and 1850s, the stability of the Monarchy was established after the signing of the Austro-Hungarian (1867) and the Hungarian-Croatian (1868)[4] Compromises. Each of the periods introduced some novelty in the development of the private law system. However, the foundations of the system were definitely laid in 1848 when the Croatian Diet, among others, abolished serfdom and manorial jurisdiction over serfs and proclaimed the principle of equality of all citizens before the law. This was the beginning of a break up with the feudal social and legal system that continued in the following year when the March Constitution was imposed. The brief period of false constitutionality was followed by Bach´s absolutism, which made free political life in the Monarchy impossible. However, it fully accepted private ownership and capitalistic entrepreneurship and introduced numerous reforms. With the introduction of a uniform model of administrative and judicial organisation, the application of some existing (Austrian) laws was expanded to all the lands of the Monarchy by imperial patents, and several new laws were introduced as well. Within a short period, the largest and most important part of the Croatian legal system was considerably changed. Almost all of these laws remained in force even after the abolition of absolutism, and the major ones among them were in force until 1929 or 1946. Thus, they significantly influenced Croatian legal doctrine, practice and culture.

Civil Law. The most important piece of legislation introduced during the period of absolutism in Croatia, Slavonia, Međimurje and Baranya was the Austrian General Civil Code (*Allgemeines Bürgerliches Gesetzbuch*, ABGB). Since it was introduced during absolutism, it was not quite welcome. Nevertheless, after the abolition of absolutism, the enforcement of the *ABGB* continued pursuant to a decision of the Croatian Diet, evolving into a kind of a Croatian *General Civil Code*, independent of the Austrian model. This differentiation was the result of the fact that once introduced, the Croatian application of the *ABGB* developed independently from Austrian jurisdiction, although attention was paid to Austrian judicature and commentaries on the *ABGB*. The situation was different in Međimurje and Baranya, where *Tripartitum* was reintroduced in 1861. Prior to its introduction in Croatia and Slavonia, the *ABGB* was introduced in Istria, Dalmatia and in the Military

[4] For more about the Hungarian–Croatian Compromise see: ČEPULO, Dalibor–KREŠIĆ, Mirela: Horvát–magyar kiegyezés: intézmények és valóság. Šokčević, Dinko (ed.) „Mint nemzet a nemzettel"…Tudományos konferencia a magyar–horvát kiegyezés 140. évfordulója emlékére / "Kao narod s narodom"…Konferencija u spomen 140. obljetnici Hrvatsko-ugarske nagodbe, Budimpešta: Croatica, Budapest/Budimpešta, 2011, 141–155.

Frontier as of 1815. Since then, the development of the Croatian legal system based on the *ABGB* continued for the next one hundred years, making it an important part of Croatian legal tradition.[5]

The enforcement of the *ABGB* had significant impact on the economy and society. It facilitated a break with the feudal social and legal system, and largely contributed to the process of modernisation of the legal system and civil society. However, there were many problems and the *ABGB* was considered to be their source. Since the *ABGB* in its "closed system" of property rights did not recognise the institute of joint ownership, Croatian communal households and their typical household property – i.e. property jointly owned by all the members of the household who were not necessarily related, and without clearly established individual shares in the property – could not fit into the existing legal framework created by the *ABGB*.[6] In spite of the significance of communal households for Croatian society, they were regulated by customary law, and not by special legislation. The encounter of the concept of individual ownership as provided for in the *ABGB* with the concept of joint ownership from customary law proved to be an encounter of two different legal traditions leading to pluralism in Croatian private law: the *ABGB* legal order based on individual ownership and the communal household order based on household ownership.[7]

When the *ABGB* was introduced in Croatia and Slavonia, it provided for the non-application of the provisions of marriage law with respect to Roman Catholics, Greek Catholics and Orthodox. With respect to them, religious, church law providing for the mandatory church marriage continued to apply. At the same time, the integral *ABGB* remained in force in Istria and Dalmatia, including its amendments (dating from 1868 and 1870). According to it, a special form of civil marriage was introduced, permitting spouses who were barred from marriage under canon law to enter a civil marriage (*Not-Zivilehe*), if no obstacle to marriage existed under civil law. Furthermore, civil marriage became mandatory for all persons who did not belong to any recognized denomination. In Međimurje and Baranya, a (re)introduced Hungarian law was effective since 1861, a law whereby civil marriage was mandatory. However, in 1939, religious marriage would be recognized as well. Also, marriage could be terminated regardless of religious affiliation of spouses, and secular courts had exclusive jurisdiction over all marital disputes.

One of the typical examples of changes resulting from the introduction of the *ABGB* was the establishment of inheritance law equally for all types of property

[5] GAVELLA, Nikola: Die Rolle des ABGB in der Rechtsordnung Kroatiens. Zum 140. Jahrestag seiner Einführung in Kroatien. Zeitschrift für Europäisches Privatrecht, 4, 1994, 603–623.
[6] KREŠIĆ, Mirela: Entitlement of Female Descendants to Property of Croatian Communal Household. Journal on European History of Law, 2, 2011, 74–76.
[7] ČEPULO, Dalibor: Tradicija i modernizacija: "Iritantnost" Općeg građanskog zakonika u hrvatskom pravnom sustavu. Liber amicorum Nikola Gavella (Gliha, I. et. al., eds.), 2007, 1–50.

and all persons. The *ABGB* provisions on succession, unlike previous regulations, did not recognise the distinction between hereditary and acquired, movable and immovable property. Also, the circle of potential heirs was broadly defined, based on kinship and marriage and regardless of gender. As a result, two new very important principles were introduced – the principle of universal succession and the principle of equality, including equality of spouses regardless of gender. In practice, the rights of female heirs to inherit an equal portion of the estate caused a great stir, particularly among some social classes, as this practice was considered unjustified, and was a cause of great adversity. This was particularly the case when land was concerned. Nevertheless, this principle of equality had to be accepted in practice, albeit with varying modifications.[8]

Civil Procedure. In addition to civil law reform that was achieved by the *ABGB*, the reform of civil procedure that had previously been regulated by royal edicts, customs and judicial practice was of great importance. The new civil procedure was regulated by the *Temporary Rules of Civil Procedure*, which were introduced in Croatia and Slavonia in 1852. According to these procedural rules, parties had a decisive and exclusive initiative during litigation. However, the judge also had a strong position, especially during the oral hearing. The role of the judge would become more important with the introduction of the new, quite modern and progressive Austrian, so-called Klein´s *Civil Procedure Code,* which was introduced in Istria and Dalmatia in 1895.[9] The *Temporary Rules* were also in effect in Međimurje and Baranya, however only until 1861, when the old Hungarian rules were restored. The New Hungarian *Code of Civil Procedure* (Act LIV), which mainly followed the Austrian *Temporary Rules*, was passed in 1868. Finally, a new and modern Hungarian *Code of Civil Procedure* was introduced in 1911, and consequently in Međimurje and Baranya.

Non-Contentious Law. The first codification of non-contentious law was adopted in 1854, as the *Non-Contentious Proceedings.* The Proceedings were valid for all Croatian regions, with the exception of Međimurje and Baranya after 1861. This piece of legislation was of special significance due to the conduct of inheritance procedures as a result of changes in the rules of inheritance introduced by the *ABGB*.

Land Registry Law. The first step in the process of establishing unified land registry law in the territory of the Monarchy was made in the early 19th century when the so-called Franciscan cadastre was introduced, primarily for the purposes of taxation, in the Austrian part of the Monarchy, including Istria and

[8] For more about inheritance rights of females see in KREŠIĆ, Mirela: Intestate succession of female descendants according to the Austrian General Civil Code in the Croatian-Slavonian legal area 1853–1946. Annals FLB – Belgrade Law Review, LVIII, 3, 2010, 121–136.

[9] About Franz Klein´s Civil Procedure Code see: VAN RHEE, C.H.: Introduction, European Traditions in Civil Procedure, C.H. van Rhee (ed.), Intersentia, Antwerp–Oxford, 2005, 11–14.

Dalmatia. The result of this extensive work was, among other laws, the *Land Registry Law* from 1871. The introduction of the modern cadastre in the Hungarian part of Monarchy began in 1850, and part of the land registry legislation was the *Land Registry Order* of 1855, which was valid for Croatia and Slavonia.

Commercial Law. There were attempts in the Monarchy to codify commercial law from the beginning of the 19th century, but all attempts failed. So, the *German Law on Bills of Exchange* was introduced as a provisional regulation, first in the Austrian lands, including Istria and Dalmatia, and then in 1850 in Croatia and Slavonia. Finally, the Monarchy introduced the *German General Commercial Code* (1861) in 1862, but only the first four of its books excluding the fifth one, which dealt with maritime law. This Austrian *Commercial Code,* based on the *German Code,* was in effect in Istria and Dalmatia. A decade later, in 1875, the Hungarian (-Croatian) *Commercial Code*, also based on the German Code, was adopted as Art. XXXVII. According to the provisions of the Hungarian-Croatian Compromise, commerce was part of joint affairs, so the law adopted was valid for Croatia and Slavonia. Moreover, according to the provisions of the Compromise, the laws passed by the Joint Diet were required to be published in the Croatian original version, and forwarded to the Croatian-Slavonian Diet for publication. The fact that the Code had to be published in the Croatian language, among other reasons, gave rise to differences between the Croatian and the Hungarian version of the text. Since the application of the Commercial Code also depended on effective civil law, more differences arose because of the fact that in Hungary after 1861, previous (Hungarian) private law was reinstalled, primarily *Tripartitum*, whereas Croatia and Slavonia retained the *ABGB* that had been introduced in 1852.

Copyright Law. For a long time, the Monarchy showed little interest in modernising copyright law, therefore the Austrian as well as the Hungarian part of the Monarchy, gained a copyright law relatively late. The Hungarian *Copyright Law* (1884) was applied in Croatia and Slavonia, while the Austrian *Law on Copyright in Works of Literature, Art and Photography* (1895) was introduced in Istria and Dalmatia.

3. Croatian Private Law: The Interwar Legal Unification and Wartime Changes

From the first years of its existence, the Kingdom of Yugoslavia was plagued by political crisis and inter-ethnic disputes, as well as economic backwardness. These problems had their roots in the fact that nations that made up the new state had their own political, cultural, economic and legal heritage. Legal

diversity resulted in legal particularism as well as six legal areas i.e. jurisdictions: a) the area of Slovenia and Dalmatia; b) the former Kingdom of Croatia and Slavonia; c) the area of Vojvodina, Međimurje, Baranya and Prekomurje (the so-called ex-Hungarian legal area); d) the former Kingdom of Serbia; e) the former Kingdom of Montenegro; and f) the area of Bosnia and Herzegovina.[10]

This kind of extreme legal particularism gave rise to intense government efforts to eliminate collisions between legal areas through a process of unification, which began soon after the establishment of the common state. However, the result of these attempts at legal unification was not completely successful, since it became common place in the legal history of the interwar Yugoslavia to speak of unified and non-unified law branches. Private law belonged to both categories.

Civil Law. Every legal area had its own civil code, although most of them, directly or indirectly, originated from the *ABGB*. An exception was the ex-Hungarian legal area with *Tripartitum* and the Montenegrin legal area where the *General Code of Property* was applied. Apparently, civil law particularism was not too confusing in legal life, since the unification process progressed very slowly and finally came to a standstill. Also, mostly all civil codes, because of their liberal and individualistic principles, corresponded with the socio-economic background of the country. Nevertheless, the result of the unification/codification process was the *Preliminary Principles of the Yugoslav Civil Code* (1934), which never became law.

Civil Procedure. The Kingdom was more successful in its attempt regarding civil procedure. The result of the codification process was the *Code on Court Procedure in Civil Litigations* (1929) which, as a literal translation of the Austrian *Zivilprozessordnung* (1895), adopted a different model of civil proceedings. This was a model of quick, efficient, simple and concentrated proceedings, in which the judge held a public hearing and pronounced his judgement immediately.[11]

Non-Contentious Law. For the sake of adjustment to the new *Code on Court Procedure,* a *Non-Contentious Procedure Code* (1934) was successfully codified and adopted. The Code took over the rules of Austrian non-contentious law of 1854, however it was additionally required to remove gaps and unclarities that appeared in practice. The provisions of this Code continued to be applied in the territory of Croatia even after the Second World War as an additional legal source.

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[10] For each of these legal areas see KREŠIĆ, 2007, 154.

[11] UZELAC, Alan: Accelerating civil proceedings in Croatia – A history of attempts to improve the efficiency of civil litigation. van Rhee, C.H. (ed.): The Law's Delay. Essays on Undue Delay in Civil Litigation. Ius Commune Europaeum, Intersentia, Antwerp–Oxfort–New York, 2004, 283–313. https://bib.irb.hr/datoteka/195152.C-3.8_Uzelac_Accellerating.pdf (last accessed on 4 October 2017).

Commercial Law. Europe between the two World Wars kept pace with advanced economy, and as a consequence, set out to codify or change its commercial law in general, as well as its commercial codes. The same process evolved in Yugoslavia and resulted in a 1937 *Commercial Code*. The Code was based on the *German Commercial Code* (1897), the Austrian Commercial Code draft (1920) as well as the Commercial Code draft prepared for the Kingdom of Serbia (1912) but incorporated many contemporary solutions from different European codes. Although enacted by the Parliament and sanctioned by the King, the Code was never in effect, which means that previous commercial codes remained the main source.[12] But, many other laws were codified and in effect in the entire state territory, as for instance the *Bills of Exchange Law, Cheques Law*, *Bankruptcy Law* (all three from 1928), and the *Public Warehouses Law* or the *Law against Unfair Competition* (1930).

Maritime Law. Unlike the process of codification of commercial law, the process of codification of maritime law remained a draft version. Since the Monarchy never had its own maritime trade code, the French *Code de commerce*, which had been introduced during the brief period of the French rule over the Croatian coastal region, was in effect even in this interwar period. It was supplemented in 1939 and 1940 by ordinances which dealt with property rights on ships and maritime privileges. Although maritime law, including maritime trade law, made significant progress both in Europe and worldwide, in Yugoslavia, it remained at its nineteenth century level, and this legal gap lasted until after the Second World War.[13]

Land Registry Law. Although land registry law was unified, everything remained the same for Croatian territories within the Kingdom. Namely, the new *Land Registry Law* (1930) accepted the system of land registers that had already existed in Croatian territories, therefore its "task" was to introduce this system to other parts of Yugoslavia.[14] But, this process was very time-consuming and money-consuming and was not brought to an end until the Second World War.

Labour Law. Money, or the lack of it, was also the reason why some of the labour legislation was not applied either properly or consistently. During the interwar period, great efforts were made on drafting labour and social legislation due to the fear from a forthcoming communist ideology. This was accompanied by the activities of labour movements and the influence of various international bodies, such as the International Labour Organization, whose conventions ratified by the Kingdom became sources of labour law. Nevertheless, many of

[12] KREŠIĆ, 2007, 161–162.
[13] KREŠIĆ, 2007, 164–165.
[14] The legal area of the former Kingdom of Serbia and Montenegro followed the so-called tapia-system, which was a sort of deeds recording system inherited from the Turkish reign but somewhat modified in the course of time. For more about tapia-system see ČULINOVIĆ, Ferdo: Državnopravni razvitak Jugoslavije, Zagreb, 1981, 188.

the introduced laws were very important since, for instance, they introduced an eight-hour work day, a forty-eight-hour work week and a Sunday break, and prohibited night work for minors. Numerous workers' rights (valid at least on paper) were reduced to the minimum during the dictatorship and were not re-implemented later.[15]

Copyright Law. International conventions were also very important in preparing and codifying copyright law just as they were for labour law. For example, the principles of the Berne Convention (adopted in 1886 with amendments from 1896, 1908, 1914 and 1928) were incorporated into the *Law on the Protection of Copyright* (1929). This Law was very well accepted, abroad as well, and was considered the most sophisticated European law on the matter.[16]

Some of these laws were in effect even during war time.

The NDH took over regulations that were in force in the previous periods making some conceptual and stylistic, but also politically-motivated changes. Despite efforts to draft a new civil code – the *Principles of the Civil Code for the Independent State of Croatia* (1943) – the *ABGB* remained in force. However, this system had quite a distinctive character due to extraordinary legislation. For example, a law was introduced regarding the preservation of Croatian property, which annulled all legal transactions concluded by Jews among themselves or with third parties two months before the proclamation of the NDH, while all the transactions concluded after the establishment of the NDH had to be submitted to the government for authorisation.[17]

At the same time, the partisan movement began to set up its military structure and its civil authorities as well. These authorities were known as national liberation committees (*narodnooslobodilački odbori* – NOOs). The entire network of NOOs stabilised with the establishment of the Anti-Fascist Council for the National Liberation of Yugoslavia (*AVNOJ*). Also, anti-fascist councils were set up for each of the Yugoslav lands, including the Anti-Fascist Council for the National Liberation of Croatia (*ZAVNOH*). These bodies were the backbone for the establishment of a new legal system. The creation of a legal system within the framework of the partisan movement implied a complete overhaul of the former structures and was characterised by the principle that "the old law is no longer applicable". Initially, the main sources of law were regulations issued by the new government, customs that had existed in a certain area or developed under the influence of the new government, court and administrative practices.[18] A new phase began in 1943 and laws adopted at the time could be divided into federal laws and laws of federal units, where the

[15] KREŠIĆ, 2007, 159–161.
[16] KREŠIĆ, 2007, 163–164.
[17] ČEPULO, 2012, 290–292.
[18] ČEPULO, 2012, 302–304.

latter were enacted by the federal units and pertained to their territory. The *ZAVNOH* was particularly prolific in drafting law, since there were many lawyers in its ranks.

The most important piece of legislation that influenced subsequent development was a Decision issued in 1945 by the Presidency of the *AVNOJ*, later confirmed as the *Law on Immediate Voiding of Regulations Passed Before 6 April 1941 and During the Occupation* (1946). The Law declared that all the laws that had been enacted during the occupation were non-existent, while those enacted before 6 April 1941 ceased to have legal effect. According to the Law, the contents of certain pre-war provisions could be applied, but not as a positive law but rather as a "legal rule", and only to the extent that they pertained to relations not regulated by the new regulations or principles of the constitutional order. One of the most important examples of these provisions was the *ABGB*.

After 1946, a new phase in the history of Croatian private law set in characterised by the abandonment of the continental legal family and inclusion into the socialist one, where private law, in contrast to public law, became marginalised. The exceptions were some traditional private law areas such as family law or labour law, which started their independent development.

4. Final Note

The development of the modern Croatian private law order began with the introduction of the *ABGB* as the backbone of development of the legal system for the next one hundred years. In relation with this, the differences among public law orders that marked the position of Croatian lands in this period (the Habsburg subsequently Austro-Hungarian Monarchy, the Kingdom of SCS later the Kingdom of Yugoslavia, dual/triple government during the Second World War) did not exert more significant influence on the essential normative determinants of the private law system, which more or less remained unchanged and part of the continental European legal circle. Almost all the laws that had been introduced during the Monarchy remained in force even after its dissolution, and the most important ones among them were in force until 1929 (i.e. the Temporary Rules of Civil Procedure/Civil Procedure Code) or until 1946 (i.e. the *ABGB*), influencing thus significantly Croatian legal doctrine, practice and culture. During the interwar period, the development of private law, in accordance with the developments in Europe of that time, was focused on the modernisation of law. However, in Yugoslavia, this modernisation was part of a much more important process of unification of law due to the existence of several legal areas with different legal sources. This was a complex process that lasted long and in some private law branches did not reach its end. After the Second World War, the Croatian legal system (now as part of new socialist

Yugoslavia) changed due to the attributes which drew it out of continental legal tradition towards the socialist legal family where it would remain for the next forty-five years. However, development in the period under consideration, now as part of the Croatian legal tradition, enabled changes in the legal system of the Republic of Croatia after its independence, especially with regard to private law and its position and meaning within the framework of the entire legal system.

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Edited text from the 1st Croatian-Hungarian Summer School held in Budapest on the 15th of July 2016.

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