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SIC MUR AD ASTRA

EDITORS
GERGELY GOSZTONYI
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DUNJA MILOTIĆ

Collection
of papers
on **Hungarian**
and **Croatian**
legal history 2022

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University of Zagreb / Faculty of Law / Chair of Croatian History of Law and State / 2023

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Josipa SUDAR: Development of civil law in Croatian territories from 1918 to 1945

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1. Introduction

The goal of this paper is to present the process of development of civil law in Croatian territories in the period from 1918 to 1945. I will explain how various historical, social and economic circumstances influenced the development of civil law and the application of the provisions of civil law. In this period we can't talk about Croatia itself as it wasn't an independent state as we know it today. Instead, we are talking about Croatian territories that were previously part of the Austro-Hungarian Monarchy, and then together with other provinces were united into different state-legal communities.

2. What is civil law?

Civil law is set of legal norms that regulate social relations that people enter into regarding things, actions and property. It is branch of law that includes obligatory law, real law, family law and inheritance law¹. It applies in relations between natural and/or legal persons. Civil law is very important part of law as we all directly or indirectly encounter it on a daily basis and it has a great influence on our everyday life. Also, principles that civil law is based on are the principle of autonomy, the principle of equality, the principle of traffic flow and the principle of property sanctions.²

¹ GAVELLA, Nikola (ed.): *Građansko pravo i pripadnost hrvatskog pravnog poretka kontinentalnoeuropskom pravnom krugu: teorijske osnove građanskog prava*. [Civil law and affiliation of the Croatian legal order with the continental-european legal family: theoretical basis of civil law]. Pravni fakultet u Zagrebu, Zagreb, 2005, p. 7.

² *Ibid.*, p. 6.

3. Brief history of civil law until 1918

Civil law developed from Roman law, so called *ius civile*. Roman law enabled the acquisition of rights and provided freedom of disposal and use of these rights. From such an understanding of law, general law or *ius commune* developed, and civil law followed on from it. The development of civil law began at universities where theory was gradually transferred into judicial practice. Even though civil law started to develop independently from Roman law and it was under the influence of various political, economic and social changes, it still retained its foundation which derives from Roman law.³ Over time, legislative bodies took over the role of creating civil law, which was especially the case during the 17th and 18th centuries when states began to enact civil codes. The peak of the codification of civil law was during the 19th century when French Code Civile from 1804 and Austrian Allgemeines Bürgerliches Gesetzbuch (ABGB) from 1811 were adopted. Since then the development of civil law acquired its national character instead of the previous universal one.

4. General Civil Code

The most important moment of the development of civil law for Croatian territories was the moment of introduction of Austrian General Civil Code. It was first brought in Austria in 1811, and over time it was introduced to the rest of Habsburg Monarchy. In the period 1812-1820 it was introduced in Vojna Krajina, Istria and Dalmatia, and only in 1852 in Hungary, Croatia and Slavonia. The introduction of General Civil Code modernized Croatian law. The Code was typical continental-European code consisting of three parts: law of persons, real law including inheritance law and obligatory law, and common provisions. It applied to all residents regardless of class affiliation. The main principle of the Code is the principle of legal equality along the freedom and

³ *Ibid.*, p. 5.

consent of parties and freedom of bequest.⁴ At the heart of the code is private property as the most important institute. It received three amendments (in 1914, 1915 and 1916). Amended Code was applied only in Austrian territories including Dalmatia and Istria.⁵

5. Period division

In this paper I decided to divide timeframe from 1918 to 1945 into two sections or periods of time depending on crucial political and social changes that influenced the development of civil law on Croatian territories. First period is from 1918 to 1941 and second one is from 1941 to 1945. I took the year of 1941 as a dividing year because that's the year when Croatian territories had kind of different role in the international community than in previous years, and it was consequence of World War II. It's also year between two periods which were significant for efforts made to create civil code. It's important to have in mind that in further text we don't talk about Croatia as one state, but about Croatian territories that were previously part of Austro-Hungarian Monarchy and then part of other state-law communities. Also, when we talk about Croatian territories, we talk about Croatia, Slavonia and Dalmatia, while Istria was part of Italy according to the Rapallo Treaty.

5.1. From 1918 to 1941

In 1918 Croats united with Slovenians and Serbs in the State of Serbs, Croats and Slovenians which existed from 29th October 1918 to 1st December 1918. It covered former territory of the Austro-Hungarian Monarchy inhabited by Serbs, Croats and Slovenians.⁶ On 1st December of 1918 the state united with the Kingdom of Serbia. From that on the Kingdom of Serbs, Croats and Slovenians had been established. The

⁴ ČEPULO, Dalibor: *Hrvatska pravna povijest u europskom kontekstu od srednjeg vijeka do suvremenog doba. [Croatian legal history in European context from middle age to modern era]*. Pravni fakultet u Zagrebu, Zagreb, 2021, p. 156.

⁵ *Ibid.*, p. 157.

⁶ *Ibid.*, p. 261.

kingdom changed its name in 1929 into the Kingdom of Yugoslavia. During all the period it was a unitary state and most of the time the legislative jurisdiction belonged to the king and to the parliament in Belgrade. Because of that Croatia couldn't pass its own laws in the field of justice, and therefore neither laws in the area of civil law.⁷ Thus, we can say that the development of civil law within Croatia itself, i.e. in Croatian territories, stagnated during that period. However, the development continued within the framework of the Yugoslav state. There was an aspiration to establish unified civil legislation for the entire state. Until such legislation was enacted, it was decided that the civil laws that had been in effect until then would still apply.

5.1.1. Legal areas

In such the Yugoslav state, there were six legal areas: Croatian-Slavonian, Dalmatian and Slovenian, Bosnian – Herzegovinian, Serbian, Montenegrin, Vojvodina.⁸ The Croatian-Slavonian and Dalmatian and Slovenian legal areas covered most of Croatian national territory. In the Croatian territories that were previously under Austrian rule, General Civil Code was still valid. For the rest of Croatian territories the Code was valid but without amendments. Each legal area had its own supreme court, which was considered as part of a single court of cassation. In Zagreb, such a supreme court was the Table of Seven with two divisions: division A (for amended Code) and division B (for non-amended Code).⁹ The decisions of the Table of Seven, in addition to the Code itself, were the immediate source of civil law. The Yugoslavian laws governing civil, non-litigation and enforcement proceedings were based on the Code.¹⁰ Basically, the entire civil law was based on the Code or it was directly valid in Croatian territories and therefore it had a certain liberal connotation, which was certainly commendable.

⁷ GAVELLA, *op. cit.*, p. 41.

⁸ ČEPULO, *op. cit.*, p. 287.

⁹ GAVELLA, *op. cit.*, p. 42.

¹⁰ *Ibid.*, p. 43.

5.1.2. Uniform codification

There was a great desire for a unified codification and harmonization of all law, including civil law within the Yugoslavian state. *“Since the proclamation of new state, unification of law became one of the supreme political values and a priority task of the government.”*¹¹ Work on this began immediately after the unification in 1919, when the Permanent Legislative Council was established at the Ministry of Justice. In 1929, when Kingdom of Yugoslavia was established, this work was taken over by the Supreme Legislative Council. The jobs were divided into sections according to the content of the General Civil Code, and one editor was in charge of each section. Some sections were, for example, *On Limitation and Maturity, On Matrimonial Law, On Property, etc.*¹² The main goal was to unify the law, which was quite different in those six legal areas. Therefore, the goal was not to reform, but to uniform law.

The basis for the new Civil Code was, of course, the General Civil Code, which was applied in Croatia. There were two reasons for such decision.¹³ First, the General Civil Code had a lot similarities with other sources of civil law in other legal areas. Second, legal science and judicial practice knew Austrian law very well, which was the basis for the functioning of such a civil law system and for its further development. The work on this “project” lasted twelve years before *The Pre-basis of Civil Code for the Kingdom of Yugoslavia* was printed in 1934. According to the Pre-basis, the civil code should have had a structure of 13 paragraphs of *the Introduction, On personal law, On property law* (including real and obligatory law) and *Common Orders*.¹⁴ German, Swiss, Liechtenstein, Czech and Hungarian civil codes were also used as inspiration in the creation. The Pre-basis was also subjected to some criticisms, such as that it was not modern enough, that it should have moved away from the General Civil Code as a

¹¹ PAVLOVIĆ, Marko: Problem izjednačenja zakona u Kraljevini Srba, Hrvata i Slovenaca/Jugoslaviji. [The problem of equating laws in the Kingdom of Serbs, Croats and Slovenes/Yugoslavia]. *Zbornik Pravnog fakulteta u Zagrebu*, Vol. 68., No. 3–4, 2018, p. 523.

¹² GAVELLA, *op. cit.*, p. 44.

¹³ *Ibid.*, p. 45., bilj. 70.

¹⁴ RADOVIĆ, Vesna: Pokušaj kodifikacije građanskog prava u staroj Jugoslaviji. [Attempt to codify civil law in the old Yugoslavia]. *Izdavački servis Liber*, Vol. 7., No. 1, 1975, p. 262.

model for the civil code, and that customary law should have been considered more.¹⁵ In the end, we don't know what would have happened with this code civile if it came into force as further work on it died down and nothing came out of it.

5.1.3. Influence of the Decree on the Banovina Croatia

In 1939 the Decree on Banovina Croatia entered into force, which gave to that part of the state certain independence and jurisdiction to enact laws. Thus, Banovina Croatia should have adopted its own civil code, but without the part of obligatory law.¹⁶ That was another reason why the Pre-basis would not have come to life - it could not be applied in that area, and that topic was no longer so relevant next to the Decree at the time.¹⁷

5.2. From 1941 to 1945

This period is the period of World War II, which in 1941 *de facto* led to the disintegration of the Kingdom of Yugoslavia. Although the international community recognized the refugee government, in the circumstances of war and unrest, the forces of the Triple Pact occupied Croatian territories, i.e. the territories of the Yugoslavian state, and divided them among themselves. This is how the Independent State of Croatia was born. In such a situation, a trinity was established on the Croatian territories - the government of the Independent State of Croatia, the government of the Partisan movement, and the government of the Yugoslavian government in exile.¹⁸

¹⁵ *Ibid.*, p. 261.

¹⁶ *Ibid.*, p. 257.

¹⁷ GAVELLA, *op. cit.*, p. 49.

¹⁸ ČEPULO, *op. cit.*, p. 298.

5.2.1. Application of civil law during the World War II

While a world war is raging outside Croatian territories, internal unrest is raging in its territories, so the question arises as to how much space there is for the development of law. It could have developed in a period when there were no war operations or they were of lower intensity, under the influence of judicial activity. Namely, the government of the Independent State of Croatia took over the courts that existed before, while the partisans tried to destroy those courts and introduce the so-called "people's judgement". That was the idea of judging according to the people's understanding of justice, not according to the laws. They categorically rejected the General Civil Code and the laws of the Independent State of Croatia and the laws of the Kingdom of Yugoslavia. Both sides opposed the liberal and individualistic principles that were woven into the law based on the General Civil Code.¹⁹ Unlike those principles, the Independent State of Croatia gave priority to the collective interests of the nation and the family. In such circumstances arises the question of the application of General Civil Code and in which direction the law will develop in the future. So, the partisans did not apply General Civil Code at all, while the authorities of Independent State of Croatia did, but only if that was not contrary to other provisions that derogated norms of the General Civil Code. What is more, Croatian territories were still divided into those to which the amended and those to which the non-amended General Civil Code was applied.²⁰ So, there still wasn't unified codification, but there were certain intentions to create a Croatian national code.

5.2.2. Work on the Croatian Civil Code

A new civil code was needed in order to harmonize everyday life with the ruling ideology. In just two years, *The Basis of the Civil Code for the Independent State of Croatia* was created. The base was the aforementioned Pre-basis created for the former

¹⁹ GAVELLA, *op. cit.*, p. 50–52.

²⁰ *Ibid.*, p. 53–54.

Kingdom of Yugoslavia, which in turn was based on General Civil Code. The Basis was supposed to regulate only general civil private law, which would include the law of persons, family law, real law, obligatory law and inheritance law. There was an idea of adoption of the so-called special laws that would regulate special legal groups such as trade, labor relations, peasant law and the special law of Muslim Croats. The Basis itself rested on the principles of the national-socialist worldview. More precisely, there were certain sayings that represented direct instructions to everyone. Some sayings were: *The highest law is the people's good, All movable and immovable things are the people's property.* In the beginning, the importance of household cooperatives and the development of peasant property law were emphasized. The peasant law should have protected the peasantry from decay.²¹ There were still certain racist provisions on the protection of Aryan blood and the honour of Croatian people. Those regulations applied to Jews and Gypsies, mostly about marriage-related affairs.²² Neither the Basis nor the Pre-basis came into force during the existence of the Independent State of Croatia. Even if they did, with the collapse of the ISC in 1945, it would have ceased to be valid. Thus, the General Civil Code remained valid in Croatian territories.²³

6. Conclusion

During the long history of Croatian law, many more or less significant changes took place that influenced and directed the development of Croatian law towards what we have today. If we look at the development of law, i.e. the development of civil law from 1918 to 1945 and even earlier, perhaps the only constant throughout that time was the General Civil Code. From time it entered into force in Dalmatia and Istria in 1810s and in Croatia-Slavonia in 1852, it was maintained and directly or indirectly applied in the following decades. We can see this through the fact that it was the basis for the creation

²¹ KREŠIĆ, Mirela: Nasljednopravna načela Općeg građanskog zakonika u praksi hrvatsko-slavonskih ostavinskih sudova. [Inheritance principles of the General Civil Code in the practice of Croatian-Slavonian probate courts]. *Zbornik Pravnog fakulteta u Zagrebu*, Vol. 63., No. 5–6, 2013, p. 1101.

²² GAVELLA, *op. cit.*, p. 56.

²³ *Ibid.*, p. 57.

of the Pre-basis and the Basis, and it remained in force until 1946, when the Law on Invalidation of Legal Regulations passed before 6th April 1941 was passed.²⁴

²⁴ KREŠIĆ, *op. cit.*, p. 1102.