

0380

LAW AND ECONOMICS IN SERBIA

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Abstract

This chapter aims to present an overview of the development of law and economics as a scientific and academic discipline in Serbia from its very beginnings. It starts with an historical introduction describing the beginning of legal education in Serbia in the mid-nineteenth century, and the early development of legal and economic sciences and teaching in Serbia, until the fall of the socialist self-management system. The most prominent works in law and economics are discussed briefly by giving the prospective reader a broad idea of the state-of-the-art literature in the field published in Serbian (Serbo-Croatian) in the last few decades. All of this supports the final conclusion that law and economics in Serbia may be a very fast growing field of economic and legal literature in the years to come.

JEL classification: K00, B2, B3, K1

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1. Introduction

From the early 1990s onwards Yugoslav scholars have increasingly begun to recognise the importance of the economic analysis of legal institutions and practice.

In the former Republic of Yugoslavia, the development of legal and social science disciplines was strictly influenced and monitored by political bodies, but probably less so than in other socialist countries; hence the need to analyze this legal and economic development within the political and cultural frameworks of these countries. Given the traditional influence of universities on social life in Serbia, the teaching of these disciplines will be analyzed as well.

First, a brief chronicle of the developments in law and economics against the background of the changes in social and political structures in Serbia will be given. Second, the major works in law and economics in Serbia will be presented, and finally a conclusion will be provided (Section 4).

2. Historical Developments

Legal sciences have been taught in Serbia since the establishment of the Faculty of Law in 1841 (more correctly it concerned the legal division of the Great School). A number of economic subjects also were taught in courses from the mid-1850s onwards, to provide students with the broad educational background necessary for future employment, mainly in the civil service. With the reorganisation of higher education and the establishment of the University of Belgrade in 1905, a separate Department of National Economy and Finance was established within the Faculty of Law. The Faculty of Law educated aspiring lawyers, some of whom were specialising in economics and finance.

Until 1937, the Faculty of Law was the only institution offering training in economics, but only as a supplementary subject. The main degree (which was) granted to successful students was a classical LLB degree. A number of the best performing students continued their studies abroad, at the faculties of economics, and gained doctoral degrees in economics (political economy). In 1937, the Higher Economics and Commerce School (analogous to a polytechnic) was established. Although after World War II this school became the University of Belgrade's Faculty of Economics, the Faculty of Law retained its economics department.

After the socialist revolution during World War II, both institutions suffered great changes in their educational programmes and lost a number of 'unsuitable' staff (that is, despite their academic merit, a number of academics were arrested or expelled from the university). The syllabi were changed to be in line with mainstream socialist doctrine. Immediately after World War II the Soviet textbooks were simply translated and used for teaching. Even after the break with the Soviet Union in 1948, a few authors were still largely influenced by Stuchka-Pashukanis' legal, and Kondratyev's economic doctrine.

With the introduction of market reforms in 1965, changes in the universities' educational programmes were introduced. Some Western theories were slowly integrated into both legal and economic theory, and scholars gradually reestablished links with research institutions in Western countries. This resulted in a huge increase in the number of publications. Although these reforms lasted a year or so, it did not improve the openness of the research institutions. However, some academics, particularly lawyers, passed the 'Rubicon' of socially allowed political dissidence determined by the political censors, with their strong criticism of a final draft of the Federal constitution drawn up in 1973. Some of the scholars, for the first time, began to analyze the welfare effects of proposed legal acts from the point of view of comparative constitutional law, the legal system, social logic, social justice, and so on. But, it turned out that Tito's regime did not support academic freedom fully, and some academics were either imprisoned or isolated from the academic

community. Others simply fled the country. Fifteen years later the predictions of these academics proved to be correct, when the constitutional crisis caused the former Republic of Yugoslavia to disintegrate. The introduction of a concept of self-management, in connection with the institutions of 'associated labour' and 'social ownership without owners' ('non-ownership concept of social property') severely affected the universities' educational programmes.

3. Current Situation

The fall of the communist regimes in Eastern Europe has shown that the Yugoslav concept of 'socialism with a human face' was not socially sustainable either. The transition requires change, new proposals and social solutions. This implies both the return to the positive pre-socialist traditions and a critical adoption of advanced Western theory. In this respect, the 1990s marked the birth of law and economics literature in Serbia. A number of authors adopted a more or less economically-based approach to legal and economic phenomena. Generally, these works were devoted to the problems of property rights and their (social) efficiency. Some of the authors apply simultaneously both law and economics and the public choice approaches (Sevic).

Professor Vodinelic of Belgrade University's Faculty of Law first mentioned law and economics in his textbook 'Civil Law - Introductory Themes', in 1991. With simple and generalistic explanations of law and economics concepts, he introduced them to the first-year law students. The second and more significant move was made by Professor Labus, also from Belgrade's Faculty of Law, in his recent textbook: 'Foundation Economics: Contemporary Theory and Application', published in 1995. This book was aimed at second-year law students, and presented in an exhaustive fashion the Coase theorem and its possible application in legal practice with reference to the Yugoslav legal order. It also stressed, as had been done many times before, that the judge is more constrained by law in a continental legal system than in the Anglo-Saxon (Common Law) system. The author provided his students with many splendid examples referring to Yugoslav positive law and practice, especially in the field of torts. Until this work the economic aspects of damage had not been considered from the point of view of the classic restitution rules. Currently, law students are informed about the basics of 'the economic analysis of law' (in Professor Labus' words: 'Legal School in Economics'). In contrast, at the Faculty of Economics there is no mention of law and economics. Even the course in 'Contemporary Economic Thought' does not consider this discipline, and only one page is devoted to public choice. Economics students are taught positive commercial (or international commercial) law but they do not have an opportunity to learn about law and economics.

Professor Vracar's book: 'Reexamination of the Legal Methodology: Indications of State-Legal Integralism' published in 1994 as a textbook for masters and doctoral students in law is a very interesting publication worth mentioning as well. This book is, in fact, a collection of Professor Vracar's previously published and unpublished papers, written between the early 1960s and mid-1990s. The renowned Yugoslav legal philosopher, legal theoretician and methodologist did not try to solve all the existing controversies in law and its related disciplines, but simply to share his thoughts with colleagues. One of the most famous critics of the draft for the Federal Constitution in the 1970s, and a victim of state terror, he returned to his theoretical roots and to his favourite legal thinker Professor Hans Kelsen. In addition to the promotion of a socio-politically (and economically) efficient concept of legal system and legal order, the book revealed that Professor Vracar had been a proponent of the use of game theory in law and political science as early as 1962. It is a real discovery to find out that he tried to introduce 'game theory' (which he called 'theory of competition') as a method of legal research at that time. The paper on advanced mathematics might, at first sight, seem descriptive today, but in fact it is very analytical and rather overwhelming in its complex legal logic applications.

A recent work which should, certainly be mentioned is the textbook 'Tax Science and Tax Law' by Professor Dejan Popovic (1997), former Dean of Belgrade Faculty of Law. In a delightful manner he introduces basic and more advanced topics on taxation, utilising both legal and economic methodologies. However, the majority of recently published books using law and economics methodology are concerned property right problems in the light of the transition in Yugoslavia. The voluminous work by Professor Madzar, entitled 'Property and Reform', published in 1995, is certainly one of them. He examines the role of property in socialism and its shortcomings, arguing for the overall reform of property and privatisation, stressing the importance of property rights for the final outcome of the transition process in Yugoslavia. Recently, in 1998, a number of books were published under the auspices of the project 'Constituting Serbia as a Legal State', generously funded by the Serbian Ministry of Science and Technology. The book by Dr Hiber on 'Property in Transition' (1998) is one of those which may enrich the literature on property rights issues in Serbia. The author analyses the different aspects of property and modes of privatisation. However, he could not omit an analysis of the socialist and self-management property concepts as a point of departure in property reform in Serbia. The work is predominantly practice-oriented, focusing on the criticism of some positive legal provisions. Another important work is the book entitled 'Introduction to the Economic Analysis of Law' by Dr Jovanovic (1998). Written in a textbook manner, the monograph slowly introduces the reader to *some* basic concepts of law and economics within the Yugoslav context. It may be that the book lacks proper academic rigour, but it certainly

fills a gap in Serbian/Yugoslav legal and economic literature. As the first book of its kind, it really reaches its aims, and provides a basis to build upon. The main objection beside its over-simplicity may be the lack of use of up-to-date literature, and support of only some 'streams' in modern law and economics, equalising Law and Economics with New Institutional Economics, which the author refers to as 'Economics of Property Rights'.

The application of principles of law and economics is still not accepted in court procedures, even though an improvement in the field may be expected. At present a number of economists are sworn court experts (appointed by the Minister of Justice). They are supposed to formulate opinions on different economic, financial and accountancy issues, but in most cases they just estimate the losses. The sworn expert's opinion is not obligatory but (optional demonstrative) as the final decision is always in the hands of the court council, usually consisting of the presiding professional judge and two so-called 'jury judges'. Although experts only apply a classical utilitarian cost-benefit analysis, the judges usually base their sentence on the experts' opinion. Practice is not a formal source of law in Serbia, but lower courts take into account previous acknowledged decisions in order to avoid cancellation of the sentence in the appeal procedure later on. Although it is widely believed that judges in continental legal systems firmly stick to the legal norms stipulated in the law (Statute, Act), practice has recently shown a wide variety in sentencing, at least in Serbia.

What are the possible reasons for the present state of law and economics in Serbia? Besides the previously noted influence of a dominant socialist model in the past, a divergence of academic lawyers and economists can be observed. Both professions seem to try to keep their respective disciplines clearly separated from one another. For a while, there was open reluctance towards authors who tried to connect the two disciplines in their research. Historically, there has also been rivalry between the Faculty of Law and Faculty of Economics. The Faculty of Law kept its own department of economics, which is usually staffed very well. Even a well-known American property rights economist, Professor Svetozar (Steve) Pejovich, graduated from Belgrade's Faculty of Law in 1955.

4. Conclusion

It seems that Serbian law and economics is on its way to developing its own distinctive identity, rather than merely following the dominant American path. It is more European, and as a result more conservative with respect to certain typically Anglo-Saxon applications. The introduction of efficiency in the analysis of law, which comprises all three analyses (predictive, explanatory

and normative) can undoubtedly influence the further development not only of legislative activities, but also of legal and economic thought as a whole in the country. However, it is not clear whether legislators in Serbia understand that law enforcement is not free and whether they know how to deal with the existence of 'externalities'. At present, it seems that the Serbian/Yugoslav legislators strongly believe that the implementation of law and law enforcement does not bring about any costs. This can, consequently, influence the path of administrative and legal reforms. More particularly, the size of the state apparatus may be more important for the legislator than its actual efficiency level. However, some authors have recently pointed out this problem, and the legislation policy stance will hopefully change in the future.

The mid-1990s appeared to be a turning point in the development of law and economics in Serbia. Up to this moment the main subjects of interest in terms of research have been property rights and privatisation, given that these issues are crucial for the transition process. Papers dealing with the efficiency of (commercial) law and its influence on the dynamics of economic change can be found as well. Authors who started to show an interest in law and economics at the beginning of the 1990s are currently very research-productive. They have also obtained senior positions in academia, and it can be expected that law and economics as an academic discipline will have a prominent future in Serbia in the years to come.

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