HARMONIZING THE SERBIAN LEGISLATION WITH THE EU LAW

collection of paper summaries
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The “Long and Winding Road” of Serbian Law (back) to Europe

Summary

In this article, the author analyses the development of law of the SFRJ and the contemporary Serbian Law since the 1980s up to date in selected areas of law, and examines how “European” it has been throughout this period. In this context, the term "European" is not to be understood in terms of harmonization with the acquis but rather as a pre-stage in this course which implies a general orientation towards continental European principles and openness towards other European states (in particular, concerning the legal provisions on foreign investment). The analysis has yielded the following conclusions:

- Under a “socialist layer” (including, for example, the Constitution of SFRY, the Law on Associated Labour and some provisions of the Criminal Law such as Article 133), the law of the SFRJ in the 1980s was much more European than it is actually known in Western Europe.

- The examples may be found in the substantive provisions of the 1978 Law on Obligations and in the field of procedural law, particularly in the Law on Civil Procedure was tailored upon the model of the Austrian Civil Procedure Code (called the “Klein’sche ZPO”).

- Moreover, in the field of constitutional and administrative judiciary, the SFRY was not only ahead of the other socialist countries but also ahead of a lot of other Western European countries.

- The opening towards other European states was also reflected in the legislation on foreign investment. In this context, it is worth noting that the SFRJ was the first socialist state which enacted such legislation as early as in 1967.

- By enacting the Law on the Social Capital and the Law on Enterprises, the SFRY began the transformation of its legal system in 1988, well before the fall of the Berlin wall and considerable earlier than the traditional socialist states.

- For these reasons, it is justified to say that the law of the SFRY and Serbia during the socialist time was (underneath the layer of socialist law) already more European than a foreign observer might assume.

- Therefore, Serbia would actually have a good starting position for a further “Europeanisation” of its law. However, there have been some developments lately which seem to leading Serbia in the opposite direction. Namely, in the field of Company Law and particularly Criminal Procedure Law, the Serbian legislator has introduced some elements of the Anglo-American law. Not only does it make the Europeanisation of the Serbian Law more difficult but it is also inconsistent with
the Serbian legal tradition. It additionally causes superfluous discrepancies and contradictions in the Serbian legal system.

The author concludes that Serbia would be better off if it would only listen to the many voices from Serbia and remember its own European tradition, instead of following foreign advisors urging for the change the legal system or at least the isolated transplantation of particular legal institutes which are fully inconsistent with the Serbian legal tradition and, thus, stand out like “aliens” in the Serbian legal system. Ultimately, the road from Serbia to Europe does not go through America, either geographically or in terms of law.