

Corporate enterprises in Albania and Macedonia in comparative law

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Abstract

Transformation is a process closely connected with reforms in the property-rights regime, but retransferring the ownership has been the core of this process in all post communist countries.¹ The objective of this article is to analyse the drafting of commercial legislation in Albania and Macedonia and in which way corporate enterprises were affected from the structure of economic organizations during socialism.

Keywords: Corporate enterprises; Commercial Law; Private law; limited liability company; joint stock company.

Historical development of private law (Property and Commercial law)

During communism, the Albanian economic organization was defined as a state structure and by the literature of that time “state-owned enterprises had a huge advantage not only to small, but also in comparison to big corporate enterprises, because through their socialist nature not only the exploitation of the masses disappeared, but especially because the nature of economy and modern technology could be applied to the maximum”.²

In the Albanian socialist legislation, it didn't exist a definition about “the enterprise”, but according to Article 8 of the Constitution of 1946 only the basic principles of planned economy were defined, which designated the general annual plan of state-owned enterprises, cooperatives and other professional organizations. State-owned enterprises were managed by a director who was responsible for its economic and financial management and who was appointed from Ministries or the Executive Committees (bodies) in the districts. He was assisted by an advisory body named techno-economic Council, which was responsible for the technical, economic and financial management of the enterprise. The Administrative Governing Body was

¹ *Gärtner*, Die Eigentums Garantien in den Verfassungen Polens, Ungarns, der Tschechischen und der Slowakischen Republik - Verfassungsrechtliche Grundlagen und Verfassungspraxis, in *Roggemman* (Hrsg.), Eigentum in Osteuropa (1996) 219. (Citation as of *Friedl/Loebenstein*, Allgemeine Zitierregeln (2012).

² *Marjani/Malindi/ Shtepani*, Krijimi dhe zhvillimi i ndërmarrjeve bujqësore në Shqipëri, in *Studime Historike* 2 (1982) 16.

the third institution of the state-owned enterprise, which managed the activity of the depending small enterprises or affiliates.

Macedonia, as a Republic of the Yugoslav Federation established from 1951 to 1990 the so-called system of “social ownership”.³ While in the system of planned economy, private property was negated from “means of production”, in the economic system of self-management of workers (Yugoslav Federation) an object (thing) that was in social property had no owner.⁴

In Albania, the right of ownership during this period consisted of state property in the urban and rural areas and cooperative property in agriculture,⁵ while in Macedonia it consisted of public and private property. Social Property was the fundament of the economic system of self-administration of workers.⁶ Yugoslavia was the first socialist state which allowed foreign investors through the establishment of joint ventures.⁷

In Macedonia, from 1974-1990, the “Basic organization of associated labour” was the institution which met the needs of the economic system of self-management and social property. The “Basic organization of associated labour” was defined in Article 14 of the Yugoslav Constitution from 1974 as “a workers union, in which workers fulfill directly or equally their social, economic and self-administering rights, and decide on issues dealing with the socio-economic situation of the organization”. Based on Article 463 of the law “On associated labour” from 1976, this organisation consisted of the Council of Workers, which was also the central and the decision-making body responsible for all economic, financial, and administrative issues. The Executive Council was the executive body of this organization and the Council of Directors was the Supervisory Board talking in the definitions of commercial legislation.⁸

Macedonia declared its independence on 17.11.1991. The constitution which entered into force on 20.11.1991 was drafted from former German President *Roman Herzog* and former French minister of justice *Georges Badinter*.⁹ According to the Macedonian constitution of 1991, which is in force and has undergone only 5 amendments, the right of private ownership is guaranteed.¹⁰

³ Savremena Administracija, Pravna Enciklopedija (2000) 248.

⁴ Borić, Entwicklung der Unternehmensumwandlung und Privatisierung in Kroatien, Slowenien und Ungarn, in *Boric/Posch*, Privatisierung in Ungarn, Kroatien und Slowenien im Rechtsvergleich (1993) 134

⁵ Article 17 of the Socialist Constitution of the Republic of Albania 1976.

⁶ Terminology „work -product“ implies the work that is realized by the worker or the economic organization.

⁷ *Messman*, Die Errichtung einer Tochtergesellschaft in Jugoslawien, in *Zeitschrift für Unternehmens- und Gesellschaftsrecht* (2000) 490.

⁸ *Höcker-Weyand*, Die Rechtsinstitute und Rechtsinstitutionen des jugoslawischen Selbstverwaltungs-systems (1980) 80 (81).

⁹ *Slaveski*, Privatization in the Republic of Macedonia: Five Years After, in: *Eastern European Economics*, (1997) 33.

¹⁰ Article 30 of the Macedonian Constitution.

Organisation of corporate enterprises in Albania and Macedonia

Unlike Slovenia and Croatia, Macedonia's policy during 1990-1991 was not the independence from the Yugoslav Federation, but only after their independence in late 1991, Macedonia pursued this policy.¹¹ Macedonia was the only Yugoslav Republic that seceded from Yugoslavia without a war and also the only one that had problems with its recognition.¹² This situation deteriorated, on Greece's arguments, that the name "Republic of Macedonia" and "Star of Vergina" pervaded its historical heritage.¹³

With the declaration of independence on 17.11.1991 and the entry into force of the Constitution on 20.11.1991, Macedonia had a big possibility to draft its own legal system, but the difficult internal and external political situation, Greece's unofficial Embargo and the United Nations Embargo against Yugoslavia, which created a loss of around 80 million USD a year for the ex-Republics of the Yugoslav Federation slowed down the legislation reforms.¹⁴

Yugoslav Companies Law from 1988,¹⁵ which replaced the system of the "Basic organization of associated labour" with "commercial companies" as a key term,¹⁶ consisting of limited liability companies and joint stock companies was in force in Macedonia until 30.5.1996, date in which the first Macedonian commercial law was released.¹⁷ This code consisted of 728 articles and contained rules on sole proprietor, transfer of trade names, commercial companies, general rules of the seat of commercial companies, statute, liability of members and shareholders, commercial register, balance books of companies, foreign companies and their branches.

Commercial companies were divided according to Article 18 of the commercial code in: general partnerships, limited partnerships, limited liability companies and joint stock companies. This code contained rules for a more extensive materiae,¹⁸ but was not a Commercial Codex that regulated all matters concerning trade and commerce like in most western countries. At the same time this Code was not in compliance with the *acquis communautaire* of the EU. For this reason a new commercial code entered into force on 30.4.2004.¹⁹ This code laid the basis for reforms in the field of commercial law and its approximation with the EU law.²⁰ It consists of 617 articles and 11 chapters.

¹¹ *Melcic*, Jugoslawien-Krieg 146.

¹² *Pintaric*, Jugoslawien, JOR 2010, 112.

¹³ *Schrameyer*, Makedonien, JOR 2008, 413.

¹⁴ *Schrameyer*, Makedonien, JOR 2008, 413.

¹⁵ Article 6-14 of the Yugoslav law on enterprises (Izmena i dopuna Osnovnog zakona o proizvedjima, SI 1 SFRJ 1990/46).

¹⁶ *Borić*, Eigentum und Privatisierung in Kroatien und Ungarn im Rechtsvergleich (1997) 99.

¹⁷ Zakon za trgovski društva (Law on commercial companies), SI V RM 1996/28.

¹⁸ *Jashari*, Subjektet e së drejtës afariste (Subjects of the commercial law) (2009) 36.

¹⁹ Zakon za trgovski društva, SI V RM 2004/28.

²⁰ *Nedkov*, Zasto nov zakon za trgovskite društva. Bilten na Ministerstvo za Ekonomija (2003) 20 (23).

Article 1 of this code contains rules on the commercial activity, the sole proprietor; capital; company agreement or company charter; the duration of the company; the capacity of a legal person (legal status); the branch offices; the liability of the company; the responsibility of members or shareholders; the consolidated annual accounts and the consolidated financial statements; the transformation of the company; accession, merger and division of companies; the liquidation of company; and the principle of one-stop-shop;

The Macedonian commercial code from 2004 did not change the definition of sole proprietor compared to the 1996 Code.²¹ The Commercial register was defined as a public electronic book, which contained the registration acts (Article 82). The registration procedure (Articles 82-109) was facilitated by the principle of “one stop shop”, which offers a multitude of services such as the establishment of a business, financial liabilities, tax statements at the same location. The registration of sole proprietor and commercial companies was regulated by law “On the system of one stop shop and commercial registration of legal records” dated 10.03.2005.

In Albania, commercial companies were established by two or more persons as of Article 3 of Law no. 9901 “On Entrepreneurs and Companies” dated 14.4.2008 (hereinafter Albanian commercial code 2008). Scope of this law is the regulation of the status of sole proprietor; rights and obligations of founders, partners, members, and shareholders and the liquidation of companies. Corporate enterprises are divided, same as in Macedonia in: general partnerships, limited partnerships, limited liability companies and joint-stock companies. Article 2 defines the sole proprietor as a natural person, whose independent economic activities require a normal business organization. Limited liability companies and joint stock companies may also be established by one person (single member company) in both countries. In order to possess the capacity to act, all corporate enterprises including the “single member company” must register in the Commercial Register in Albania (Article 22 of Law no. 9723 “On the Commercial Register” dated 3.5.2007) and (Article 33 of law “On the system of one stop shop and commercial registration of legal records” dated 10.03.2005 in Macedonia).

The registered capital of an Albanian limited liability company consists of 100 lek (less than 1 Euro), instead of 5,000 EUR expressed in denar counter value in Macedonia.

In both countries the limited liability company statute shall include the following provisions: full name; unique ID number; passport number or ID number if the member is a foreign natural person and/or the number of any other identification document valid in his country; as well as the place of his residence; or the business name; registered office and registration number, if the member is a legal person; business name and company’s registered office; company’s scope of operations;

²¹ According to Article 12 of the Macedonian commercial code 2004.

duration of the company; amount of the charter capital and the amount of each member's separate contribution and if the contribution is non-monetary, a detailed description and designation of its value; manner and time period for payment of the monetary contributions that are not paid up in full; the full name, unique ID number of the manager, or managers, passport number or ID number for a foreign natural person and/or the number of any other identification document, valid in his country and under his citizenship, as well as the place of his residence; representation of the company; rights and liabilities of members towards the company in addition to the payment of their contributions, as well as the rights and liabilities of the company towards its founders.²²

Limited liability company in both countries consists of two bodies: the General Meeting and Executives with the possibility in Macedonia of freely establishing a Supervisory Board, which should consist of at least three members elected from the General Meeting for a 4 years term as of article 244 and 247 of the Macedonian commercial code.

General Meeting is a meeting of all shareholders and it is the supreme body of the Limited Liability Company. It decides on all matters entrusted to it by law (*e.g.* the change of Articles of Statute, the increase or decrease of the registered capital of the company, the choice and recall members of the Executives). Ordinary General Meeting must take place at least once a year.²³ In Albania, General Meeting is convened by the Executives or members, who dispose of assets amounting to more than 5% of the company's annual turnover in the last accounting year, in contrast to Macedonia where it is needed at least more than 10% of the company's assets that resulted in the recent certified financial statements. The General Meeting in both countries shall decide by three-quarter majority of votes of members participating in the voting about the increase or reduction of registered capital, profit distribution, company restructuring and dissolution, unless the Statute requires a higher majority for these decisions.

Executives of a limited liability company are the company's statutory organ.²⁴ The Executive can be one or there can be more Executives. Each of the Executives, if there is more than one, has the right to act independently in the name of the company, unless the Deed of Association or the Statutes provide otherwise. The Executive officer of a company is responsible for its business management. Should the company have appointed several Executives, the mutual consent of a majority of them is required for a decision on the company's business management, unless the deed of association

²² According to Article 171 Macedonian commercial code 2004 and Article 56 of the Albanian commercial code 2008.

²³ According to Article 81 of the Albanian commercial code 2008 and Article 215 of the Macedonian commercial code 2004.

²⁴ According to Article 95 paragraph 3 of the Albanian commercial code 2008 and Article 235 of the Macedonian commercial code 2004.

provides otherwise. Executives are elected and recalled by the General Meeting from the members of the company or other natural persons for 5 years term in Albania and 4 years term in Macedonia.²⁵ The Executive shall be personally liable without limitation towards the limited liability company and towards third parties for the activities conducted contrary to law and other regulations, which are caused by the failure of professional standards.

The Albanian and Macedonian joint stock company is defined as a company registered capital of which is divided into certain number of shares of certain nominal value. The joint stock company in both countries is liable for breaches of its obligations by its entire property. Its shareholders are not liable for breaches of the company's obligations at all. In both countries, the joint stock company can be established by one or more natural or legal persons and is divided into joint stock companies with public and private offer.²⁶ The advantages of public offer compared to private offer consist in the possibility of easily getting loans from banks.²⁷ As of article 107 of the Albanian Commercial Code 2008 the registered capital of an Albanian joint stock company with private offer shall not be less than 2.000.000 Lek (about 14 285 Euro), while that of a joint stock company with public offer shall not be less than 10.000.000 Lek (about 71 428 Euro). In Macedonia the registered capital of a joint stock company with private offer is 25,000 Euro in denar counter value, while that of a joint stock company with a public offer is of 50,000 Euro in denar counter-value.

In both countries, joint stock company bodies consist of: the General Meeting and the Board of Directors as single administrative organ combining management and supervision in one-tier system, or Supervisory Board and Board of Directors distributing administrative competences in the two-tier system. In Macedonia, Board of Directors shall consist of at least 3 and not more than 15 members, while in Albania it consists of at least 3 or a higher uneven number of members, but of not more than 21 members.

In both management systems, the general meeting is the supreme body of the company. General Meeting is a meeting of all shareholders and it is the supreme body of a joint stock company. It decides on all matters entrusted to it by law²⁸ (e.g., the increase or decrease of the registered capital of the company, the election and recall members of the Board of Directors and the Supervisory Board). Ordinary General Meeting must take place at least once a year. Extraordinary General Meeting must be called if asked by shareholders who own at least 3% of the registered capital. In case of matters requiring ordinary majorities, the General Meeting in both countries may

²⁵ According to Article 95 of the Albanian commercial code 2008 and Article 232 of the Macedonian commercial code 2004.

²⁶ According to Article 105 paragraph 1 of the Albanian commercial code 2008 and Article 270 of the Macedonian commercial code 2004.

²⁷ Albanian Authority of Financial Supervision, Public Offer (2009) 5.

²⁸ According to Article 383 of the Macedonian commercial code 2004 and Article 135 of the Albanian commercial code 2008.

only make valid decisions if attended by shareholders holding more than 30% of the subscribed voting shares.

In Albania and Macedonia the Board of Directors is a collective statutory body, which manages a company's activity and acts in its name. Board of Directors ensures proper management of the company's business. It decides all company matters, unless they fall within the competence of the General Meeting or Supervisory Boards. Unless otherwise decided in the Statute, any member of the Board of Directors may act in the name of the company toward other parties. The names of the members of the Board of Directors whose acts are binding on the company and the nature of such acts are entered in the Commercial Register.

The Board of Directors in Albania consists of 3 to 21 members, who have a 3-year term,²⁹ while in Macedonia it consists of 3 to 15 members with a maximum term of 6 years.³⁰ In both countries, the main duties and rights of the Board of Directors include: the implementation of business policies; examination of the company's books, documents and assets.

In both countries, Supervisory Board is a statutory body monitoring how the Board of Directors exercises its range of powers and how the business activity of the company is conducted. It is primarily an inspection organ. It is entitled to examine all documents and records relating to the company's activities and to check whether bookkeeping entries are made in accordance with the actual facts and that the business activities of the company conform to the statutory provisions, the statutes and the instructions of the general meeting.

Supervisory Board must consist at least from three members and the number of its members must be divisible by three (without remainder). Members of the Supervisory Board are elected and recalled by the General Meeting, however, in both countries, the company's employees elect one-third of the Supervisory Board members if there are more than fifty full-time employees at the time of the election. Tenure for members of the Supervisory Board shall be five years, unless the statute of a joint stock company determines a shorter tenure.

Conclusions and recommendations

The new Albanian and Macedonian commercial codes are in accordance with the EU legislation. The changes that occurred in the structure of companies in Macedonia after socialism are not that substantial, as a consequence of the system of self-management of workers, foreign investments in the Yugoslav Federation and the system of social

²⁹ According to Article 155 of the Albanian commercial code 2008.

³⁰ According to Article 345 of the Macedonian commercial code 2004.

property belonging to anyone and everyone, compared to Albania where state property prevailed and private property was totally abolished as a legal concept. In Albania, the commercial legislation had no tradition and the first modern commercial code of 1932 was not in force throughout the territory, taking into account, not only the existence of the Turkish legislation in some rural areas, but also its 12 years of implementation, which applied only to companies with foreign capital, mainly Italian.

In 1992, after 50 years socialism, with law no. 7638 dated 19.11.1992 "On Commercial Companies" the terminology, content and organization of corporate enterprises entered into force. It took 16 years until law no. 9901 dated 14.4.2008 "For the sole proprietor and commercial companies", a modern commercial code entered into force that still hasn't summarized all commercial practices in a single codification, as in some modern western countries, such as Austria, Germany, Holland, etc., but it does regulate the 4 basic forms of corporate enterprises and the liquidation proceedings. However, given the chronology of the development of commercial legislation, this law should be complimented. The compliance of legislation with the EU is a precondition for the candidate status and this need has been achieved in the basic principles of commercial law in Albania, which are part of the commercial legislation of EU countries, such as those of article 14, which include the Principle of Loyalty; the Right to get informed (Article 15); the Prohibition of Competition (Article 17); Trade Secret (Article 18); as well as the principle of "One Stop Shop" regulated by law no. 9723 "On the Commercial Register" dated 3.5.2007.

It is worth noting, the short presentation of the economic organizations, the right of ownership and the development of legislation in both countries during socialism, for a better understanding of the consequences in the elaboration of commercial reforms after the 90's

In this article, became evident that the commercial legislation in both countries, is in accordance with the requirements of EU, but on the other hand Macedonia and Albania have yet a lot of work to do in the improvement of commercial legislation.

I hope that the vacuum left in the area of commercial legislation in Albania and Macedonia, which is vital for the economy of these countries will be completed soon, considering their EU-Membership.

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