

# **AN OUTLINE OF SLOVENE LEGAL HISTORY**

## **Handouts for study purpose only**

### I. The problem of Slovene legal history

#### Slovene or Slovenian

Slovenia is a new state but its people are known as Slovenes from 16<sup>th</sup> century on. Slovenia as the name for the territory inhabited by the Slovenes is known from 1810.

#### 1. Slovene legal history or German (Austrian)/ Hungarian / Venetian (Italian) legal history

Slovene territory was a part of the empire of Franks from 8<sup>th</sup> century then of the German empire till 1804 and Austrian empire till 1918. North-eastern part was part of Hungarian state and its successors from 9<sup>th</sup> century till 1918. The coastal towns came under Venetian control by the end of 13<sup>th</sup> century and remained Venetian till 1798. Western part of Slovenia was part of Italy between 1918 and 1943. All the named states regulated with their law the sections of life usually regulated at the given time. It should be stressed that medieval state saw its basic function in organisation of the army and provision of means for its functioning. The rulers were beside that interested in keeping the jurisdiction over most important persons and criminal cases. Till the end of 18<sup>th</sup> century a great deal of life was regulated by custom.

#### 2. Slovene legal history or legal histories of territories of present Slovenia

Since present territory was within one state only in the Roman period and since 1945 there were several legal systems in power most of the time. This

is not the case only for Slovenia but for the most European countries and yet they give the national name to their legal histories.

### 3. The Slovene Law and the Slovenian Law

The expression Slovene law is used for the law by which Slovenes lived regardless of its origin because it is known that even using foreign law Slovenes have shown certain differences in application of this law.

Slovenian law is the law created by Slovenian authorities from 1945.

## II. The territory of present Slovenia before the arrival of Slavs

### 1. Prehistoric period

Very little is known about the period prior to Roman rule. Even if we know the names of some peoples we can not be sure of their ethnic origin. We know that Celts have formed political units in which the ruling layers were warriors, about which we know from excavations. These show also that they formed rather big settlements which were fortified and some of the inhabitants were dealing also in metal industry and trade. Social differences, division of labour and trade proves that some elementary law must have existed but we know nothing about it.

### 2. Roman period

Slovene territory was only partly in Italy and mainly in different provinces. The provinces were partially settled by Roman population, which to some extent Romanized the previous settlers. So when speaking about Roman law in this territory before 212 AD we speak about provincial law and even after 212 AD we know from sources from other parts of the empire that local

customs were still valid. As far as continuity of Roman law is concerned, we could speculate about it in the coastal area bearing in mind that it was partially under influence of Byzantine tradition.

### 3. Late antiquity

The Slovene territory is on the shortest way from central and Eastern Europe to Italy, which was the way of different barbaric peoples in search of rich plunder in Italy. For this reason part of the population withdrew to Italy and part of it went out of the way and sought refuge from invaders in the mountains where they built fortified settlements. The Slaves who moved in the territory together with Avars found much of the territory empty. The local names as Ajdovščina, show that the territory was deserted. However names like Laško prove that part of population remained. The two peoples lived in most of the cases apart and each according to their own rules. The Slaves settled the eastern Alps from two directions Part of them came from north and were part of Slavic peoples which are nowadays called Checks, Slovaks and possibly Poles. The other part came from southeast and is related to present Croats, Serbs and in general to those Slaves that are described by Byzantine authors.

## III. The law of Slovene territories in the middle Ages

### 1. Slovene territory in the middle Ages

The territory of present Slovenia belonged in the middle ages to different political units and states. Between 6<sup>th</sup> and 8<sup>th</sup> century there was no dominant power in the territory, which was populated by different ethnic groups organised as tribes. In the first half of 7<sup>th</sup> century the Slaves in the eastern

Alps together with the neighbouring tribes organized an alliance, federation of tribes which were led by the “ king ” Samo. The Slavic tribes from Carinthia were part of this alliance. The alliance was formed in order to defend themselves from the Franks and Avars. After the death of Samo the Slaves called Carinthians were politically independent till they asked the Bavarians in the middle of the 8<sup>th</sup> century for help in their wars against Avars. Together with the Bavarians they were christianized. When the Bavarians became part of the state of Franks that meant that the Slavs in the eastern Alps also became part of their state.

When the state of Franks fell apart the Slovene territory followed the fate of the eastern part of this state, which eventually became the German Empire.

## 2. Carinthians and Slovenes

Carinthians is the name for the population of the southern part of the eastern Alps. The population was ethnically a mixture of the Romanised population from the antiquity and the ethnic mixture of the newcomers among which the ruling layer was of Slavic origin. The Slaves from this region together with those living south of Carinthia eventually became Slovenes.

## 3. Political formations of Slaves in Eastern Alps

The tribes of Slaves in the eastern Alps were first united under the leadership of Samo. From the middle of 7<sup>th</sup> till the middle of 8<sup>th</sup> century the Slaves in the territory of Carinthia formed an independent principality which developed first characteristics of a feudal state. It seems that south of Carinthia; the territory which is nowadays the core of Slovenia another

political formation was made. The name of it was Carniola but we have sources so scarce that nothing definitive can be said about it.

#### 4. The “State” of Carinthians?

The Slovenes pride themselves that they formed the oldest state among the Slaves because they consider Karantanija a state. Carinthia has several characteristics of a state however it remains disputable if that was really a state. In any case it should be stressed that present Slovenian state can not be considered a successor of Carinthia.

#### 5. Administrative division of Slovene territories under Franks and the first legal norm in Slavic language

Under rule of the Franks the Slovene territories were divided into new administrative units called counties and along the border of the state those were called Marks - marches and were bigger than ordinary counties. Within the counties the manors, smaller units were under control of the lords who led the administration and organised the defence.

#### 6. Reorganisation of agrarian production and the consequences for Slovenes: changes of ethnic structure of the population and destruction of basic political units

The lords reorganised the agrarian production introducing the family farms called huba after the Frankish model. This meant abolishment of the prior organisation when the population was divided into units called župa. This reorganisation caused also changes in ethnical structure of population. The lords from Bavaria colonised the land with their peasants and where these

peasants were the majority of population they eventually assimilated the rest of the population which happened basically in most of the present Austria.

## 7. “Slovene“provinces

The provinces developed with the autonomy of the nobles, which was particularly important because with this autonomy certain rules of constitutional character developed. In Slovene history the history of Carinthia is of particular interest, partly because some try to establish a link between the principality of Carinthia with its ruling Slavic class and the Slovene state. Another object of interest was a ceremony known as the installation of the Dukes of Carinthia. This ceremony partly took place in Slovene language and a specific group of kosezi had an important role. But rather as of national identity we should speak of provincial identity that developed within the provinces and had an important role as long as those provinces existed.

## 8. Urban and peasant autonomies

The medieval cities enjoyed a rather broad autonomy and in Slovene territory we can observe two kinds of urban autonomies. The older is the autonomy of the coastal towns, which came by the end of 13<sup>th</sup> century under Venetian control. Venice left most of the matters to the towns and protected only their economic interests and controlled the organs of autonomy by making sure that the presiding person called podesta came from Venice. His main duty was to block any decision that might be opposite to the interests of Venice. The structure of town government was similar to that of Venice and so was the greatest part of legislation created by the major councils of the towns.

The towns on the mainland were similar as far as autonomy was concerned. The town magistrate usually called judge was the representative of the lord of the town and had pretty much the same function as podesta in the coastal towns. However he was the principal administrator of the town and performed the function of a judge only as the chairman of the city council, which functioned as a court as well. Since the population of the towns was ethnically mixed it is difficult to claim that there was Slovene law that ruled the life of the citizens. There were efforts to find Slovene law in the statute of Ptuj, but comparison with other laws of towns elsewhere in Central Europe shows great similarity.

Medieval villages enjoyed certain autonomy as well. This was closely connected with the administration of the open field, the undivided common land, which was used by village community but we know that the assemblies of the farmers also settled disputes and even set punishments as the lowest courts. This kind of autonomy survived to certain extent till most recent times limited however to management of village property.

Among those autonomies the most researched was the autonomy of the holders of the vineyards because we have plenty of sources about them and because the researchers expected to find in them traces of Slovene law. Though not being able to find law that could be labelled as specific Slovene law the research proved that Slovenes were quite able to manage their affairs themselves and that they were very inventive without professional lawyers and that no state was necessary to make the law.

#### IV. The early modern Age

## 1. Reformation and Slovenes

Reformation in 16<sup>th</sup> century is a religious movement, which had some importance for legal development later on especially in the field of human rights. In Slovene history Reformation is important because the reformers wrote first books in Slovene language where the word Slovenes was used for the first time. This started the building of Slovene literary language as opposite to different dialects of spoken language.

## 2. Translations of legal norms into Slovene

From 16<sup>th</sup> century on we can find translations of legal norms into Slovene. Some translations are rather closer to vernacular than to written language of the reformers. However it is evident that the authorities went into trouble to translate the norms they wanted to present to Slovene population. Some translations were however due to private initiative of the translators. Translations show that Slovene legal vocabulary was appropriate to express simple legal relations but newer concepts were translated often so that Slovene endings were added to German or Latin words.

## 3. Absolutism

From the beginning of 17<sup>th</sup> century on the absolutist state brings changes that modernize economy, government and law. The autonomy of the nobles was the first to suffer. The estates lost their role and from the middle of the 18<sup>th</sup> century that happened to the autonomy of the towns as well and the role of the central administration grew ever more in its importance. The unification of administrative and legal systems was gradual or sometimes even slow but

it brought also germanization, which was not ethnically minded but seemed rational to rulers who were under influence of the natural law. For the same reasons as previously however some legislation was still translated into Slovene. The peasant autonomies were the least affected in spite of the fact that the situation of peasants changed a lot by the end of the 18<sup>th</sup> century.

## The modern age – the birth of a nation

### 1. The end of the feudal system

Certain characteristics of feudal system were abolished from 14<sup>th</sup> century on. Definitely the economic system was losing its feudal character. Peasants in Slovene territory were not so strictly bound to their land from the second half of the 16<sup>th</sup> century. Legally this bondage was abolished in 1781 and the peasants were allowed to choose freely their occupation, to marry freely and to move from their land without an obligation to pay to their lords for it. However they were still bound to pay their lords certain duties and remained under their judicial authority.

The revolution in 1848 abolished the last remains of the feudal system. Peasants became owners of their farms but had to pay compensation to their lords. The land that was previously not divided but exploited by village communities was divided in a long process, which was not ended by 1941. The state administration and judiciary substituted the power of the lords.

## 2. Program “United Slovenia”: demands of constitutional character and Language Law

After the model of their German and Italian peers the young Slovene intellectuals studying at German universities created the first Slovene national program. Several petitions of very similar content written in spring of 1848 have now the name of “Program of United Slovenia”. The program demanded that all the areas with Slovene majority should be united into one political unit called the Kingdom of Slovenia, which would remain a part of Hapsburg monarchy. The kingdom should have autonomous status, which was not elaborated but from the expression provincial diet we can assume that it was supposed to be similar to that of the provinces. The authors of the program opposed that the Austria should join the German empire and called for boycott of the election for the Frankfurt parliament. The program was supported by a big petition movement, when thousands of Slovenes signed the petition. The political part of the program was never realized in spite of the repeated interpellations in both state and provincial parliaments and massive gatherings called tabori from 1867 on. The division of Slovene territories into different provinces remained till the end of the empire.

## 3. The endeavour to introduce Slovene language as official language

The program particularly stressed the language rights, according to which the Slovene language would become the official language of administration and courts. These rights were justified by the natural law. Similar demands of other ethnic groups in the empire and recognition of this right in the constitution were the cause that a new branch of law called language law

(Sprachenrecht) came to existence. This law divided official language into two segments: the internal language was used in communication between different offices and courts, while the external language was used in communication with the population. Slovene was used as internal official language only within some autonomous regions. The supreme Austrian court never issued any decision only in Slovene so that the appellate court in Graz would not have to do the same.

#### 4. The autonomy of provinces and elections in the second half of the 19<sup>th</sup> century

Since 1861 the parliamentary system in the empire existed on two levels. There were the parliament of the empire and the parliaments of the respective provinces. Because the majority of the population in the province of Kranjska was Slovene this was the only provinces where the Slovenes gained the upper hand. From that time on Kranjska became the central Slovene region and Ljubljana was considered the capital of Slovenes. From the second half of the 19<sup>th</sup> century Slovenes are divided into two groups: one rather traditionally oriented, in which the catholic clergy played a very important role and the liberal group. The first group was at the end of the century organized in the conservative People's party, the latter in liberal National progressive party. The social democrats had minor role.

#### 5. The division of Hapsburg monarchy

After the big reorganization of the empire which was divided into two halves in 1867 Slovenes in alliance with other southern Slaves demanded a new reorganization, which was called trialism. According to those demands a

new unit uniting the southern Slaves should be created and the unit should have status similar to that of the two parts of the Austro-Hungarian Empire. This idea was expressed for the last time in 1917 during the war in the May declaration. This was also the last time that the southern Slaves were prepared to remain in the empire. The May declaration was supported by a big petition movement, when thousands of signatures were gathered. The following events went in other direction and the empire could not be preserved any more. After more than thousand years the Slovenes were politically separated from Central Europe.

## VI. Slovenia in Yugoslavia

### 1. Integration of Slovene territory into Yugoslavia

After the foundation of Slovenian state the historiography stresses other sides of the process of uniting southern Slaves. After the unification the trends of history were shown as a natural way to union, which was supposed to be desired by all the peoples united into Yugoslavia.

The southern Slavs in Austro- Hungarian Empire did collaborate in order to achieve their national goals because they were small in numbers but their political unification was not really elaborated and mainly did not include southern Slaves out of the empire. The Serbian state wanted to unify Serbs living in different states and planed a Greater Serbia.

During the war 1914-18 there were two solutions of the national problems of the Slaves in the empire. One demanded a separate part within the empire in the form of trialism. The politicians who had emigrated however demanded a secession of southern Slaves from the empire. They were looking for an

ally in Serbia and eventually agreed to union with it. The nature of union was not elaborated during the war and only the principles of equality were formulated to a certain extent, providing for equality of languages, writing, religions.

## 2. The State of Slovenes, Croats and Serbs

At the end of October 1918 a political unit of a very short duration called the State of Slovenes, Croats and Serbs was formed. It consisted of the territories inhabited by southern Slaves, which previously belonged to the Hapsburg empire. The state was not formally recognised by any state but Serbia and lasted only one month, which is a period too short to give any reliable assessment of its character. It did have some characteristics of a confederacy and Slovenes see in the Narodna vlada (National government) their first own government. The state was definitely very weak, which showed in the fact that it could not effectively defend its western border to Italy and was often also not able to keep order within the state. So the government of the state agreed to unite with the Kingdom of Serbia in December 1918 without a formal agreement about the details of the political system of the new state, which was called the Kingdom of Serbs, Croats and Slovenes.

## 3. Yugoslavia: its constitutions, legal system and unification of law

Yugoslavia was unofficial name of the Kingdom till 1929. The expression Slovenia was not used in official documents in most cases. Shortly after the unification (January 1919) Narodna vlada lost most of its competences and

was named Deželna vlada (Provincial government) and this one changed name again into Pokrajinska uprava (Regional administration) in 1921. The constitutions of 1921 and 1931 determined the state as a kingdom and the one from 1921 provided for autonomous regions, which could have at most 800.000 inhabitants, which meant that none of the nations in the state would live in one autonomous region. This was particularly disappointing for Croats who enjoyed more autonomy in empire but also for Slovenes, who were politically divided into minorities staying out of Yugoslavia and two regions within it. However Slovenes did use the autonomy of the regions to a greater extent than the other nations and the authorities of both regions collaborated closely in issues they considered common. Such a case was the financial support of the new Slovene university in Ljubljana.

Since none of the Yugoslav nations was satisfied with the situation in the kingdom and Slovenes and Croats demanded more autonomy the country was reorganized into regions called banovinas, which were led by ban who was a representative of the king. The Slovenes fared better than most other nations since they were united into Dravska banovina.

The legal system in Yugoslavia was not unified immediately. The constitutional and administrative law was unified first by 1921 then the penal law and administrative, penal and civil procedures were unified in 1929. For this reason the Supreme Court was a fiction and actually there were six supreme courts. The one for Slovene territory was in Zagreb named Stol sedmorice (the Court of seven), because there was one supreme court for Slovenia and Dalmatia till 1939, when Dalmatia was integrated into Banovina Hrvatska and a new Supreme court in Ljubljana was established.

#### 4. Federalisation of Yugoslavia after 1945

During the war 1941-45 the leaders of resistance in the country decided to reorganize the country into federation of six republics and Slovenia was one of them.

## 5. Republic of Slovenia from 1945

According to constitution from 1946 the republics were sovereign but they were under strict control of the federal government, dominated by the communist party. Eventually the competences of the authorities of the republics have grown and again the Slovenes used the occasion to manage their affairs better than in the rest of the country.

## 6. The socialist legal system

The socialist legal system was first based on state property, which was created by massive confiscations of the property of the so called collaborators in 1945 and then by three nationalisation between 1945 and 1956. Eventually the grip of the state over the economy was relaxed and more initiative was left to enterprises, which introduced the new system of socialist self management. The economic changes however did not bring immediate political changes as the government was under strict control of the communist party even after it changed its name into Alliance of communists.

## 7. Legal systems after 1974

The constitution of 1974 enlarged the competences of the republics and the issues in the federal assembly were supposed to be decided by consent. By late eighties the communist party lost the grip and the other cornerstone of the unity the army was not able to keep the country together. More developed republics demanded turning to market economy and the change of the economic legislation which was opposed by the less developed republics.

## 9. Epilogue

This caused nationalist frictions and eventually the country went apart in a war which started in Slovenia, escalated into a wild bloody war in Croatia and even worse in Bosnia and finished with massive expulsions of Albanians in Kosovo.

From 1991 Slovenia is an independent state, which became a part of NATO alliance and a member of European Union in 2004. So again the law of the territory is not only the law of the Slovenian state but of the European Union as well.