KOPAONIK SCHOOL OF NATURAL LAW

11th GATHERING

FINAL DOCUMENT

GENERAL STATEMENTS • WORD OF INTRODUCTION • MESSAGES

KOPAONIK, 13th – 17th December 1997

The Eleventh Meeting of Lawyers participating at the Mt. Kopaonik School of Natural Law took place in Kopaonik on December 13 – 17, 1997. Within the permanent theme – Justice and Law, this year's topic was *LAW AND REALITY.*

In keeping with the adopted Hexagon of the Kopaonik School of Natural Law, the several-day work was conducted through six chairs, i.e.:

I the Right to Life
II the Right to Freedom
III the Right to Property
IV the Right to Intellectual Creation
V the Right to Justice
VI the Right to the Rule of Law State

Following 28 sections have been active within the above chairs, namely:

Life; Health; Ecology *(First Chair).*

Statutory determinants of arrest; Freedom of personality; Protection of freedom in the sphere of administrative law; Law and technology *(Second Chair).*

Property; Codification, Denationalization and privatization; Taxes; Immovable property; Contract; Torts; Banking transactions; Companies; Business contracts; Insurance; Labor relations *(Third Chair).*

The right to intellectual creation *(Fourth Chair).*

General meaning of the right to justice; Constitutional courts; Judicial practice and the role of courts – independence of courts; Arbitration; Foreign element in law; the European Union law; Legal protection of refugees *(Fifth Chair).*

The right to a rule of law state *(Sixth Chair).*

*

A total of 342 papers have been prepared and published for the Eleventh Meeting of the Kopaonik School of Natural Law in four volumes of the periodical *Juridical Life*, containing 5,000 pages of printed text. Thus, the School's edition now consists of 34 volumes.

As in 1996, the Kopaonik School was open, by means of a widely advertised call, to all those interested, so that quite a number of new authors – mostly young, participated in 1997, witnessing in this way too their affinity for the principles and fundamental ideas of the Kopaonik School of Natural Law.

As an additional activity, a Round Table covering a current topic of Ownership Transformation has also been organized within the School.

Some 3,000 lawyers participated in the Eleventh Meeting from all Yugoslav universities and academic institutions, research institutes, and courts (of all instances and jurisdictions, i.e. regular, economic and constitutional courts, arbitration tribunals, etc.), as well as practicing lawyers, lawyers from other judicial organizations, administrative and other state agencies and bodies, enterprises in the sphere of economy, banking and insurance organizations, including those coming from many other social institutions.

More than forty distinguished jurists, legal scholars and practicing lawyers from abroad took part in the activities of the School either as authors of the published papers or as direct participants in the work of various chairs, among them three foreign ambassadors (of France, Switzerland, and Hungary).

Foreign participants came from the following countries: Argentina, Australia, Austria, United Kingdom, France, Greece, The Netherlands, Italy, Japan, Latvia, Hungary, Macedonia, Germany, Poland, Rumania, Russia, the United States of America, Slovakia, Czech Republic, Scotland, Spain, and Switzerland.

The entire program (principal work, information and artistic programs), which was more abundant than in previous years, has been successfully completed.

The work was conducted in plenary sessions and specialized working sessions in conformity with the Program conceived according to the conception of the Kopaonik School of Natural Law Hexagon.

The atmosphere in all working bodies and other forms of activity has been creative, scientific, professional and friendly.

Editors, authors as well as other participants, and particularly those from abroad, have all agreed in their high evaluation of the work of the Eleventh Meeting of the School.

*

The Kopaonik School of Natural Law has continued through this year's work as well, with affirming the ideas of natural law, namely of universal human rights based on centuries old philosophy of Law and Justice, expressed at present in the codification of human rights norms within the OUN documents and those of other international organizations.

The participants to the School have generally agreed that there is a considerable discrepancy between the formally adopted human rights norms and their realization in practice, which clash may be re-

more efficient protection of citizens' rights, of control and putting into effect the public responsibility of the administrative branch. That institution is, namely, a component and indispensable part of every state in the world adhering to the principle of the rule of law.

The significance is particularly emphasized of the organized training of personnel in state administration and local self-government bodies, and in the public sector in its entirety. Equally important is the creation of a network of authorized institutions to be engaged in an organized training of administrative staff, and in their preparation for carrying out the administration reforms.

The Kopaonik School of Natural Law considers that particular responsibility in initiating and drafting the administration reform programs pertains to the corresponding ministries, and particularly to the Federal Ministry of Justice, and the republic ministries of justice in Serbia and Montenegro. These programs should be based on world experiences, due to which it is necessary that our country be included, namely reinstated, in the international institutions and associations active in the sphere of administration, including the most outstanding one – the World Association of Administrative Sciences.

4. Law and Technology

Dr. STEVAN LILIĆ,
Professor, Belgrade University Law School

By establishing the Law and Technology Section, the Kopaonik School became directly included in the discussion about the most actual legal issues relating to an irresistible penetration of the information technology into all pores of our daily legal activities.

Eleven authors have elaborated in their papers within the framework of that section the complex and still not sufficiently studied questions in the fields of computer criminality, contract covering information services, the administrative decision-making, administrative reform, and the like.

Also treated were the following themes: "Computerization of legal transactions", "Transfer of legal information", "The use of computers in judicial practice", "Legal protection of integrated circuits and/or chips", "Legal aspects of transfer of foreign investor's technology", "Legal regime and efficiency of protection of personal data and privacy of individuals in automated official records". Finally, the central and currently actual theme treated in this section was dedicated to legal issues of the Internet – that fascinating technological and communication phenomenon of our planetary virtual reality.

An intensive interaction thus took place between the reporters and their audience, combined with corresponding software support and laser video-beam. Those participating in the section Law and Technology were acquainted with the latest bilingual Serbian – English edition of the periodical published by the Yugoslav Society for Legal Informatics, with the general title "Computer and Law", dedicated completely to the matters concerning the Internet.

The field of law and technology is in its substance diverse and dynamic as well as rich in legal and other questions (both related to blessings and to dangers) dealing with the application of technology.

In this occasion the members of the Law and Technology Section, within the Eleventh Gathering of the Kopaonik School of Natural Law, with its general theme "Law and Reality", have pointed out at an increasing presence of legal reality of informatics technology and of Internet as its symbol. The Internet itself gave rise to many new problems, and by that very fact, to considerable dilemmas to be resolved by the law. Its appearance has opened fissures on the mighty crust of the legal core. The virtual reality and the cyber-space require new solutions and the constructing of entirely new legal tenets. Their construction, however, will not be either easy or speedy.

Some developed legal systems have tried hard to resolve the new dilemmas. Many international organizations have quite promptly reacted and identified the relevant problems, but unfortunately were not as successful in their solution.

However, all that almost did not touch Yugoslavia, which is to a degree understandable because our law has not yet surpassed even the

classic problems of computerization. Disregarding this warning will bring to Yugoslavia genuine problems in this field both at national and international levels.

III. THE RIGHT TO PROPERTY

1. Property

Dr. DRAGOLJUB STOJANOVIĆ,
Professor, Kragujevac University Law School

Due to exceptional importance of property relations, it is considered that a more efficient protection of property rights has to be provided, since they make a fundamental institute of every legal system, and at the same time a core of a basic human right.

Particularly considered was the legal regime of property of the charitable foundations, as well as problems of property transformation the importance of which has been recognized as justified and necessary in case of these foundations.

It is contrary to the essence of the institute of charitable foundation that property rights, regarding the property brought in, are kept – as the situation is according to positive Yugoslav law. The property which is brought in, namely, may not belong to the state or be a so-called social ownership, just as it can not any more be privately owned by physical persons in their capacity of the founders. In other words, the entire property taken in the charitable foundation may belong to that foundation only in its capacity of a legal entity. The present-day legal regime of property relations is therefor contrary to the legal nature of the charitable foundation, to the autonomy of its subjectivity and to particular characteristics of its property.

Suggestions have been advanced concerning the issues arising out of the realization of the right to build onto and adapting of buildings.

Due to the lack of adequate building-sites, first of all in cities and towns, as well as to high costs of construction or buying houses, apartments or business premises, it became rather popular to build onto building tops, i.e. to construct apartments or business premises on top of those existing houses which were not built up to the maximum possible or permitted heights. The other similar way of acquiring property means adaptation (change) of specific joint-use spaces of the existing buildings into separate parts. A contract by which the investor and the building regulate their mutual relations is not, by its nature, a contract of sale of joint-use parts of the building (because such joint-use parts can not be sold as objects not in the sphere of trade), while a compensation on the ground of law is not a necessary element of that type of contract.

The investor does not acquire the right of original property over the joint-use parts which are adapted or built onto; instead, he acquires only a right of building onto, as a real-property right of use of another person's object (in this case a building) for the purpose of creating a new separate part (of the building). Only after realizing the right of building onto, that right ceases to exist, yielding its place to the right of ownership over the newly-created separate part of the building – by which the principle of accessoriness of the joint-use parts does remain intact.

The right to transform the joint-use parts of buildings into separate parts should be gradually eliminated as contrary to modern European tendency because of lowering down the quality of housing and living. On the other hand, only the trend of building onto existing houses should be encouraged.

In order to complete the existing forms of safeguarding of claims, it was proposed that fiduciary transfer of property rights be regulated by statute on the federal level; in that respect statutory solutions already applied by the legislation of the Republic of Montenegro may be appropriately used. Until that time, the issue of full validity and permissibility of contracts of fiduciary transfer of property could be considered at the general session of the Supreme Court or at the joint session of the Federal Court, which institutions could thus reach a corresponding conclusion or a standpoint of principle.

RIGHT TO FREEDOM

1. Statutory Determinants of Imprisonment

1. **Imprisonment in Yugoslav legislation and international obligations of Yugoslavia** – dr Đorđe Lazin, professor, Belgrade University Law School.
2. **Imprisonment and human rights** – dr Vesna Nikolić-Ristanović, senior scientific associate, Institute of criminological and sociological research, Belgrade.
3. **The limitations of the freedom of movement in criminal procedure** – dr Vojislav Đurđić, professor, Niš University Law School.
4. **Pre-trail detention in procedures against minors** – mr Milan Škulić, assistant, Belgrade University Law School.
5. **Tort liability in case of persons imprisoned without legal grounds** – Jasmina Kjurski, deputy district Public prosecutor, Belgrade.
6. **On the control of the police in Yugoslavia** – dr Budimir Babović, former vice-president of Interpol.
7. **Covert eavesdropping and audio recordings in criminal procedure** – Ištvan Feješ, assistant professor, University of Novi Sad Law School.

Editor: dr Živojin Aleksić, Belgrade University Professor.

---

2. Freedom of Personality

1. **On the right to identity as a human right** – dr Agneš Kartag-Odri, Institute of criminological and sociological research, Belgrade.
2. **Freedom of religion and the family** – dr Blaža Marković, lawyer, Belgrade.
3. **Marriage – equality or freedom** – mr Slobodan Panov, assistant, Belgrade University Law School.
4. **Common exercise of parental rights** – dr Olga Cvejić-Jančić, professor, University of Novi Sad Law School.
5. **Family law and reality** – dr Marina Janjić-Komar, professor, Belgrade University Law School.

Editors: dr Blaža Marković, lawyer, Belgrade and dr Olga Cvejić-Jančić, professor, Novi Sad University Law School.

3. Administrative Law Protection of Freedom

1. **Changes in public administration** – dr Dragoljub Kavran, professor, Belgrade University Law School.
2. **(Un)equality of parties in administrative court procedures** – dr Zoran Tomić, professor, Belgrade University Law School.
3. **Basic principles of the functioning of the state administration in Montenegro** – Dragan Radinović, Chief federal administrative inspector.
4. **Current issues of administrative misdemeanors in Montenegro** – dr Đorđije Blažić, deputy Minister of justice of Montenegro.
5. **Elements of state tort liability in French law** – dr Slavoljub Popović, Belgrade University Professor.
6. **Negative personnel selection and the rule of law** – dr Branislav Marković, professor, Kragujevac University Law School.
7. **General features of the organization of the administration** – Milan Vlatković, secretary of the Constitutional court of Serbia.
8. **Administratives agencies on financial market** – mr Dobrosav Milovanović, assistant, Belgrade University Law School.
9. **Reform of the administration** – dr Željko Šević, assistant, Dundy University (Scotland) and Zorica Vukašinović, post-graduate student, Belgrade University Law School.
10. **Administrative law and public administration in the process of training public servants** – Aleksandra Rabrenović, assistant, Belgrade University Law School and Sergej Uljanov, assistant researcher, Institute of criminological and sociological research, Belgrade.
11. **Hierarchy and decision-making in government administrative organs** – Nataša Tomić, post-graduate student, Belgrade University Law School.
12. **The role and influence of the court in deciding in administrative matters** – mr Miladin Kostić, assistant, Priština University Law School.
13. **Magna Carta Libertatum** – mr Maja Kostić, Podgorica University Law School.
14. **Public opinion and freedom as a pillar of natural law** – Dragan Sikimić, lawyer, Belgrade.

Editor: dr Dragoljub Kavran, professor, Belgrade University Law School.

---

4. Law and Technology

1. **Right to privacy** – dr Stevan Lilić, professor, Belgrade University Law School.
2. **Administrative decision-making and computer technology** – dr Predrag Dimitrijević, assistant professor, Niš University Law School.

3. **Internet in the legal profession** – dr Dragan Prlja, secretary-general of the Yugoslav society of legal informatics.
4. **Internet – the legal labirinth** – dr Mirjana Drakulić, professor, Belgrade University School of Organizational Sciences.
5. **Law and data transfer** – dr Milorad Ivović, assistant professor, Podgorica University Law School.
6. **Administrative reform and informatization** – mr Milan Marković, assistant, Podgorica University Law School.
7. **Responsibility for breach of information services contracts** – dr Dušan Nikolić, assistant professor, University of Novi Sad Law School and Bojan Pajtić, junior assistant, University of Novi Sad Law School.
8. **Technology as an investment share of the foreign partner** – Arsica Skandovski, senior advisor, Federal ministry for foreign trade.
9. **On computers and computerization** – Dragan Davidović, lawyer, Belgrade.
10. **Computers in court practice** – Mirko Jovanović, lawyer, Belgrade.
11. **Topography of integrated circuits and their protection by specific legal regulations** – Dušanka Dudić, senior advisor, Federal agency for intellectual property.

Editor: dr Stevan Lilić, professor, Belgrade University Law School.

Third Department

RIGHT TO PROPERTY

1. Ownership

1. **The norm and property reality** – dr Dragoljub Stojanović, professor, Kragujevac University Law School.
2. **Legal regime of the legacy property and problems of property transformation** – Sonja Bunčić, jurist, "Poslovni biro SB", Novi Sad.
3. **Property acquisition by over-constructing and adaptation of buildings** – mr Nina Planojević, assistant, Kragujevac University Law School.
4. **Fiduciary property transfer** – Bratislava Goravica, judge, Commercial court, Belgrade.

a. Codifications

1. **The validity of the Law of Contract and Torts in the Republic Srpska** – dr Branko Morait, professor, Banja Luka University Law School.
2. **The origin and development of civil law in Japan** – dr Tomoyoshi Ito, professor, Ebetsu University Law School (Japan).

Editor: dr Dragoljub Stojanović, professor, Kragujevac University Law School.

2. De-nationalization and Privatization

1. **The sellout of shares of social capital as company privatization model** – dr Momir Dragašević, professor, Podgorica University Law School.
2. **Property transformation and problems of capital value evaluation** – Borisav Čolić, judge, Supreme court of Serbia.
3. **Privatization processes** – dr Maria Bordas, professor, Public administration high school, Budapest.
4. **The state as the bearer of dominium or imperium in the filed of privatization** – Tatjana Pavlović, jurist, Belgrade.
5. **Foreign investments as a factor of acceleration of the privatization process** – dr Vjera Radović, professor, Podgorica University Law School.
6. **Privatization and collective property** – dr Miroslav Vitez, professor, School of Economics, Subotica.

Editor: Vladimir Todorović, lawyer, Belgrade.

---

3. Taxes

1. **Obligations and rights of income-tax payers** – dr Dejan Popović, professor, Belgrade University Law School and dr Gordana Ilić-Popov, assistant professor, Belgrade University Law School.
2. **Some issues of citizen taxation in our country** – dr Zoran Isailović, professor, Priština University Law School.
3. **Deformation of the tax relation** – dr Mileva Anđelković, assistant professor, Niš University Law School.
4. **Some issues related to taxes and sales tax** – Aleksandar Lojpur, lawyer, Belgrade.
5. **International aspects of price transfers** – Jelena V. Jovčić, associate, Deloitte-Touche, Belgrade.
6. **The inefficiency of the procedure of compulsory taxation** – Momo Kijanović, tax expert, head of Tax section, Prijepolje.
7. **Tax and legal status of foreign legal persons in the legislation of the Russian Federation** – Suzana Stefanović, assistant, Priština University Law School.

Editor: dr Dejan Popović, professor, Belgrade University Law School.