THE NATIONALITY OF SHIPS IN YUGOSLAV LAW WITH REFERENCE TO PRESENT INTERNATIONAL DEVELOPMENTS

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In this contribution we will not consider the rules of law concerning the nationality of ships on the Yugoslav Littoral in medieval times, but will limit our brief historical aperçu to the laws in force from the 18th century.¹

The first Austrian law which comprehensively treated maritime matters, and inter alia the nationality of ships, was published in 1774 under the title Editto politico di navigazione and in German Politisches Navigations Edict.² This law admitted to the Austrian Register of Ships only those ships that were entirely owned by Austrian nationals. The ship’s master was obliged to declare any change of ownership that contravened this rule, and failure to do so incurred heavy penalties, including death. Additionally, master, officers and crew all had to be Austrian subjects.³

This 18th century law was fundamentally modified by an Austrian law of 7 May 1879 (Gaz. 65) concerning the registration of merchant ships and by a Hungaro-Croatian Law (Art. XVI ex. 1879) of identical text.⁴

This Austro-Hungarian legislation limited the requirement of national ownership to two-thirds. The master and first officer on board and two-thirds of the crew also had to be Austrian or Hungaro-Croatian nationals.

After the constitution of the Yugoslav state (until 3 October 1929 called the Kingdom of the Serbs, Croats and Slovenes and from that date the Kingdom of Yugoslavia) the Yugoslav law concerning the registration of merchant ships of 30 March 1922 largely reproduced the Austro-Hungarian legislation, of course substituting Yugoslav nationals for Austrian or Hungaro-Croatian.⁵

¹ Scientific Counsellor, Adriatic Institute of the Yugoslav Academy of Science and Arts.
³ See Gertscher-Schreckenthal, op.cit., p. 555.
⁴ See Sammlung und Verordnungen etc., vol. I pp. 270 et seq. By the Austro-Hungarian compromise of 1867 some matters concerning legislative and operational activities were common to both halves of the monarchy, and in some matters only the legislation was common. Maritime private law was common until 1908, after which it ceased to exist. Thus the nationality of ships ceased to be a common matter but the text cited remained in force until the dissolution of the monarchy.
After the Second World War and the Constitution of the new Yugoslav state, with a political and economic structure very different from the old one, it was also necessary to reform maritime legislation, and in the first place the law on the nationality of ships, so that socio-economic changes could be reflected in the new rules. The Decree Concerning the Registration of Yugoslav Ships and Barques, 12 May 1951 (Gaz. 25/51) admitted to the Yugoslav Register only ships totally owned by Yugoslav legal entities, or by Yugoslav citizens residing in Yugoslavia, or under foreign ownership but with a Yugoslav operator. The Federal Minister of Maritime Affairs could at his discretion allow the registration of ships under foreign ownership and with a foreign operator. This decree was slightly modified by the Law Concerning the Registration of Seagoing Ships, 1965. Finally a codifying law on maritime and internal navigation was passed (Gaz. 22/1977) which entered into force 1 January 1978. We will limit our consideration of this law to seagoing ships only.

Under the 1977 law it is mandatory to register in Yugoslavia a ship which is entirely in social ownership; or under the ownership either of a citizen of the Socialist Federal Republic of Yugoslavia (hereafter Yugoslavia) residing in Yugoslavia, or of private law legal individuals residing in Yugoslavia (Art. 174). As a result of these rules the link between the flag of the ship and the Yugoslav state is genuine from the personal and economic point of view. Articles 119 and 128 rule that the ship's master and the entire crew must be Yugoslav citizens, with the proviso that the operator and the master may in case of need, but only in case of need, replace part of the crew by foreign nationals. This rule is valid for all ships under the Yugoslav flag. Optional registration of ships in the Yugoslav Register of Ships is possible for seagoing vessels only in two cases (Art. 175, para. 1, 3): ships under foreign ownership with a Yugoslav operator, and yachts under foreign ownership.

The first case, 'social ownership', is when a Yugoslav organization of associated labour or some other legal entity, or a physical person of Yugoslav citizenship residing in Yugoslavia is operator of a ship under foreign ownership, the owner being a foreign citizen, a stateless person or a Yugoslav citizen residing abroad. For registration of this type the agreement of the shipowner must be produced in the correct form. A condition for the registration of ships in the Yugoslav Register is removal from a foreign register (Art. 178). The documents to be produced for such registration must be in accordance with the different procedural rules of the 1977 Law (Part IV, chapter 4, of the Law regarding the procedure on the registering of ships, Articles 239-377). This possibility for optional registration has been utilized in some cases of demise charter ships, the Yugoslav party being a demise charterer. There is no involvement of the Yugoslav administrative authorities in the completion of these operations, except for those stipulated in the above articles concerning procedural rules.