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THE EVOLUTION OF THE LEGAL INSTITUTE OF CONVALIDATION OF NULL AND VOID CONTRACTS IN THE YUGOSLAV LEGAL TRADITION: HISTORICAL INFLUENCES AND LEGAL LEGACY***

Summary: Contract law is fundamentally shaped by the tension between fairness and enforceability, a balance that defective contracts often disrupt. While formal requirements are introduced above else to safeguard public policy goals—such as ensuring legal certainty—subsequent validation of defective contracts (convalidation) serves to rectify them, primarily focusing on the private interests of the parties involved. This paper examines the role of convalidation in Yugoslav contract law, a common legal tradition shared by West-Balkan countries that formerly belonged to the SFRY, tracing its development in the context of legal pluralism and the political transformations of the era. It further explores the contemporary implementation of convalidation across the successor states: Croatia, Slovenia, Serbia, Bosnia and Herzegovina, Montenegro, and North Macedonia. Through the lens of the 1978 federal Obligations Act, the paper investigates the historical evolution of contract law in these states, questioning whether local legal traditions, influenced by regional legal particularities, have shaped the application of convalidation in divergent or uniform ways. The study clarifies the concept of ‘convalidation,’ which, while not always explicitly mentioned in legal texts, has been a part of the legal framework, primarily applied to voidable contracts and, less commonly, to irremediable, null and void contracts. It facilitates their transformation into valid contracts, allowing them to produce legal effects previously unavailable to them, if specific conditions are met. By exploring the flexibility of convalidation and its aim to vindicate both on both private and public interests, the paper sheds light on how it contributes to fairness

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and legal certainty in the legal systems of post-Yugoslav states. The research is structured around three historical periods, reflecting key socio-political shifts in the region, to trace the evolution of convalidation in the common Yugoslav legal tradition.

Keywords: convalidation, contract law, defective contracts, void contracts

1. INTRODUCTORY REMARKS

The basic principles of contract law, such as fairness and enforceability, are challenged by defective contracts because they weaken the legal validity and certainty of contractual obligations. Formal requirements are often established for purposes of public policy objectives, such as legal certainty and transparency. On the other hand, convalidation emphasises the private interests of contracting parties.

The legal principle known in Yugoslav legal literature as ‘convalidation’¹ has traditionally been applied to voidable contracts, allowing them to become completely binding and lawful², as they violate private interests rather than public ones. On rare occasions, nevertheless, it might also apply to irremediable (null and non-existent) contracts, but only under specific legal conditions.³

The idea represents a change from legal invalidity to validity, hence giving contracts the ability to have legal consequences that they are initially deprived of. Convalidation helps to permanently solidify the results of voidable, null and void and non-existent contracts. For a contract to be convalidated, there must be a valid reason based on either relevant legal regulations or factual circumstances, thus in some specific cases, the law explicitly prevents convalidation to serve broader legal or societal interests.⁴ It shows the elasticity of convalidation and its trend towards adaptation to specific legal situations, proving how far it can be applied in excess of the traditional principles of contract law.

¹ Convalidation, in the sense of remedying an invalid contract by subsequent performance, should be carefully distinguished from both ratification and conversion. Ratification (*ratihabitio*), which is an adaptation from Roman law, is summarised in the maxim *ratihabitio mandato comparatur* and signifies that subsequent ratification by a principal of an unauthorised act effects the same consequences as a mandate would have done *ab initio*. For more see: Mirela Šarac, ‘*Ratihabitio mandato comparatur*’ (2008) 29(2) *Zbornik Pravnog fakulteta Sveučilišta u Rijeci* 761–762. Conversion, on the other hand, is the transformation of a null and void contract into another legal act that is valid, subject to the conditions of the latter being satisfied and in accordance with the assumed will of the parties. For more see: Katarina G. Dolović Bojić, ‘About Contract Conversion in Serbian Law with Special Reference to the Court Conversion’ (2020) 68(1) *Anali Pravnog Fakulteta u Beogradu* 146–147.; Vilim Gorenc and others, *Komentar Zakona o obveznim odnosima* (Narodne novine d.d. 2014) 523–524; Zimmermann, Reinhard, *The Law of Obligations: Roman Foundations of the Civilian Tradition*. Oxford: Oxford University Press, 1993, 683–684. Thus, while ratification validates acts performed without authority, and conversion substitutes a clear valid contract for an invalid one, convalidation directly corrects formally defective contracts by giving effect to the parties’ executed performance.

² Katarina G. Dolović Bojić, *Pravno nepostojeći ugovori* (Univerzitet u Beogradu – Pravni fakultet Centar za izdavaštvo 2021) 196–197, Vilim Gorenc and others, (n 1) 533–534, Petar Klarić and Martin Vedriš, *Gradansko pravo* (14th edn, Narodne novine 2014) 177–179.

³ *Ibid.*

⁴ Dolović Bojić (n 2) 198–199.

The dichotomy between public and private interests forms the core of understanding the role of convalidation in contract law. This paper explores the historical development of the legal institute of convalidation of defective contracts in the Yugoslav legal tradition, in the context of legal pluralism and socio-political developments, which shaped the tradition. In addition, the paper provides an overview of contemporary application of the institute of convalidation from the Yugoslav legal tradition in the successor states: Croatia, Slovenia, Serbia, Bosnia and Herzegovina, Montenegro, and North Macedonia.

The evolution of contract law was greatly impacted by the shared legislative framework of the former federal units of Yugoslavia, which are now independent states.⁵ The federal Obligations Act, enacted in 1978, was essential to this framework.

This common legislative framework provides a useful starting point for examining how particular legal institutions, like convalidation, have changed over time in the successor states.

Before delving into the main topic of this paper, the term ‘convalidation’ should be properly clarified. The roots of the concept can be traced back to Roman law, which provided theoretical and doctrinal foundation for later codifications such as the ABGB.

Firstly, it is essential to clarify how the Roman legal tradition handled the relationship between form and consensus. Namely, Roman law never fully discarded formalism in favour of unrestricted consensualism; instead, it developed a nuanced framework in which both elements coexisted.

Stipulatio remained the archetypal formal contract, enforceable only through a precise verbal question-and-answer format, which illustrates how ritualistic forms were essential to creating binding obligations.⁶ Although the classical period witnessed the emergence of consensual contracts, these were carefully tailored exceptions, and the general rule remained that contracts required either formal acts or legally recognised categories to be valid.⁷

These formal requirements were not merely technicalities but served multiple functions: they protected the parties’ interests by providing clear evidence of their obligations and safeguarded public interests, especially in matters involving property transfers or taxation.⁸ The formal elements also offered legal certainty in transactions that could affect third parties, thus supporting broader social and economic stability.⁹ Regardless of some relaxations—such as the gradual softening of the requirement for the immediate question-and-answer sequence or the interpretation of presence in the formation of the *stipulatio*—these did not signify a determinant departure from formality.¹⁰

5 Ivan Tot, ‘Poredbenopravni utjecaji na Zakon o obveznim odnosima’ in Ivan Tot and Zvonimir Slakoper (eds), *Hrvatsko obvezno pravo u poredbenopravnom kontekstu: Petnaest godina Zakona o obveznim odnosima* (Ekonomski fakultet Sveučilišta u Zagrebu 2022) 3.

6 Zimmermann (n 1) 80.

7 Shpresa Alimi-Memedi, ‘Formalism in Roman Contract Law’ (2019) 34(5) *Knowledge – International Journal* 1458.

8 Magdolna Sič, ‘Posebna forma ugovora u antičkom Rimu – radi sigurnosti stranaka ili zaštite interesa države?’ (2000) in Popović M (ed), *Rekonstrukcija pravnog sistema Jugoslavije na osnovama slobode, demokratije, tržišta i socijalne pravde II*. (Novi Sad: Pravni fakultet) 60.

9 *Ibid.*

10 Tomislav Karlović, ‘Neka razmatranja o nastanku stipulacijske obveze’ (2012) 62(3) *Zbornik Pravnog fakulteta u Zagrebu* 926.

Furthermore, with the expansion of economic activities, the growth of commerce, and the increasing distances involved, excessive formalism became an obstacle to practical business dealings.¹¹ For this reason, the praetors and legal practice gradually mitigated the strict significance of forms, but they still preserved them as safeguards for legal certainty and securing evidence.¹²

Roman law, therefore, did not develop an explicit doctrine of convalidation as understood today. The formal requirements of contracts were so strict that a contract would be rendered ineffective if the prescribed form was not observed.¹³ Nevertheless, over time, performance of an obligation, *causa* and praetorian remedies foreshadowed the idea that certain formal defects may be remedied under specific conditions, provided that legal certainty and public interests were not undermined.

Building on the Roman foundations, it is important to position the discussion within the broader Pandectist framework. Namely, it seems to articulate a more relaxed regime than the earlier, highly formal Roman phase: a contractual claim could arise from any validly declared agreement, while form was exceptional and required only where the law expressly necessitated it.¹⁴ Non-observance of a statutory form generally entailed nullity, although in limited settings subsequent performance might have healed the defect.¹⁵ Forms which served as a precondition only to the enforceability or merely the evidentiary admissibility of a contract, but not to its validity, were not recognised by the German law of the time.¹⁶

Parties were given the right to stipulate a form for themselves, but its legal effect depended on their intention—either as an evidentiary device (leaving the contract binding even if the formal step was later omitted), as a pre-contract to conclude in the agreed form (so that formal completion can be compelled), or as a condition precedent to any binding effect (so that no obligation arises until the form is completed, with the usual hand-money consequences).¹⁷

This theoretical framework strongly influenced nineteenth-century codifications. The German Bürgerliches Gesetzbuch adopted the Pandectist taxonomy.¹⁸ It seems to have retained the insistence on form as a condition of validity,¹⁹ but still allowing performance and good faith to temper formal rigidity.²⁰

¹¹ Sič (n 8) 61–62.

¹² *Ibid.*

¹³ Zimmermann (n 1) 83.

¹⁴ Bernhard Windscheid B, *Lehrbuch des Pandektenrechts* [Textbook of Pandect Law], vol 2, 8th edn, (Frankfurt a. M.: Rütten & Loening 1900) 258–259.

¹⁵ *Ibid.* 259.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ Gabor Hamza 'Private Law: Development and Codification in Germany' (2004) 44 *Annales U Sci Budapestinensis Rolando Eotvos Nominatae* 64.

¹⁹ § 125 of the Bürgerliches Gesetzbuch in the version promulgated on 2 January 2002 (Federal Law Gazette [Bundesgesetzblatt] I p. 42, 2909; 2003 I p. 738), last amended by Art. 1 of the Act of 10 August 2021 (Federal Law Gazette I p. 3515), available at <<https://www.gesetze-im-internet.de/bgb/BGB.pdf>> accessed 3rd September 2025. Hereinafter referred to as: BGB.

²⁰ Under the BGB, "true" curing of a formal defect occurs only in narrowly defined cases: for example, a real-estate contract that lacks notarial form becomes valid once conveyance and land-register entry have been effected; a gratuitous promise becomes

The French Code civil, on the other hand, had a stronger insistence on consensualism, yet retaining form within significant areas such as donations, fixed-term employment, life insurance, and transfers of real property.²¹ Similarly to the BGB, the French Civil code does not seem to encompass the term convalidation. However, for the specific case of immovables, the French Civil code provides for a different approach than the BGB. Namely, according to French legislation the mere consent of the parties' transfer of ownership *inter partes*²² is sufficient, but only an authentic notarial deed enables land registration, and registration alone confers the *erga omnes* effect.²³ French legislation does not seem to explicitly foresee a specific form for the validity of contracts on the conveyance of ownership rights over immoveable property, thus the institute of convalidation would be redundant. Consequently, an unregistered private deed or an oral agreement would suffice as legal title for the conveyance of rights. A problem would occur in the case the seller sold the immoveable property to another buyer as well, who registered their rights. In this case both agreements would be valid, but only the registered one would protect the buyer against third parties.

The *Allgemeines Bürgerliches Gesetzbuch*,²⁴ positioned between French consensualism and German formal rigour, preserves Roman-formalist elements—most visibly a stronger, constitutive publicity regime for immovables—yet increasingly articulates its solutions through general principles of justice and good faith.

Within the broader comparative context, a doctrine such as performance-based convalidation in the Yugoslav 1978 Law on Obligations does not appear to be isolated innovation, but rather the extension of a long-standing European argument on whether or not it is possible to balance formal protection with identification of real contractual intention.

Building on this historical foundation, the term 'convalidation' later appeared in Yugoslav legal practice and still exists in the successor states. Although the concept is reflected in legislation, the term as such does not seem to appear in the texts of the applicable legal acts. Its existence is only indicated by legal interpretation and application in given cases.²⁵

This paper aims to establish whether the Yugoslav successor states have developed independent legal solutions to the convalidation of form-defective contracts or whether there is still a common Yugoslav legal heritage with the power to impact contemporary judicial prac-

valid upon performance of the gift; a suretyship undertaking becomes valid if the surety performs; and an agreement obligating the transfer of a limited liability company share becomes effective once the share is actually transferred. For more see: Petra Pohlmann, *Die Heilung formnichtiger Verpflichtungsgeschäfte durch Erfüllung* [Performance-based Curing of Undertakings Rendered Void due to Formal Deficiencies] (Münsterische Beiträge zur Rechtswissenschaft, vol 61, Duncker & Humblot 1992) 30.

21 Jan M. Smits, *Contract law: A Comparative Introduction*, 3rd edn. (Cheltenham-Northampton: Edward Elgar 2021) 104

22 Art. 1583 of the French Civil code in the version last amended 13 August 2025, available at <https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006070721/> accessed: 1 September 2025. Herein afterreferred to as: French Civil code.

23 Art. 710-1 of the French Civil code.

24 *Allgemeines bürgerliches Gesetzbuch* is the Civil Code of Austria, which was published on 1 June 1811 <<https://viewer.onb.ac.at/1074A4A2/>> accessed 30 August 2025. Hereinafter referred to as: ABGB.

25 Convalidation, however, is not exclusive to civil law traditions. Interestingly, canon law provides a structured example of convalidation, particularly in marriage law. According to the Code of Canon Law, a previously invalid marriage due to a formal defect can become valid if the original consent of the parties remains intact. This illustrates a more general legal tendency across different traditions to prioritise the intent and substantive commitment of the parties over strict adherence to formalities. Chapter X. Art. 1 of the *Codex Iuris Canonici* (1983) <https://www.vatican.va/archive/codiuriscanonici/eng/documents/cic_lib4cann9981165_en.html#TITLE_VII.> accessed 16 June 2025.

tice. Through the study of relevant court decisions and legislative frameworks, the research points out the degree to which performance-based validation is still a converging standard in all jurisdictions.

With an emphasis on the legal sources pertaining to the validity of contract, this research is structured into three distinct time periods based on Yugoslavia's socio-political development in order to achieve a more logically coherent structure and a higher level of clarity.

2. KINGDOM OF SERBS, CROATS AND SLOVENES, LATER KINGDOM OF YUGOSLAVIA (1918–1941)

Throughout the twentieth century, the Yugoslav nations' legal systems were marked by an apparent absence of consistency: no single legal act governed all branches of civil law comprehensively across the common state.²⁶ Traditional areas of civil law, such as contract law, inheritance law, family law, and property law, were governed by a combination of federal law and state laws.²⁷

Different regions applied varying rules inherited from Austro-Hungarian, Ottoman, and Serbian legal traditions.²⁸ Namely, the ABGB, in its modified version with the so called *Teilnovellen*²⁹ was in application in Dalmatia and the Slovenian territories.³⁰ Private law in Bosnia and Herzegovina was governed by a mix of church canons, customs, ABGB-based judge-made norms, and Sharia law, which mostly governed family and inheritance law.³¹ In the regions of Međimurje County, Prekmurje, and Vojvodina Hungarian customary and judicial law was in force with an exception applied to the jurisdiction of the District Court in Pančevo and the municipal courts in Banatski Karlovac, Bela Crkva, Kovin, Titel, and Žabalj, which covered

26 Attila Dudás, 'A polgári jog kodifikációjának történeti áttekintése Szerbiában' (2013) 1 Jogtörténeti Szemle 10.

27 Emőd Veress, 'Private Law Codifications in East Central Europe' in Pál Sáy (ed), *Lectures on East Central European Legal History* (Central European Academic Publishing 2022) 183.

28 Fikret Karčić, *A Study on Legal Formalism in the Former Yugoslavia and its Successor States* (Centre for Integrity in the Defence Sector 2020) 5.

29 The term *Teilnovelle* refers to a partial amendment of the ABGB, enacted through one of three emergency decrees issued by the Emperor due to the Reichsrat's failure to convene until 1917. For more see: Kamila Staudigl-Ciechowicz, 'Die Teilnovellen als letzter Akt der österreichischen Zivilgesetzgebung in Mitteleuropa' (2020) *Beiträge zur Rechtsgeschichte Österreichs* 289 <<http://dx.doi.org/10.1553/BRGOE2020-2s286>> accessed 10 February 2025.

The renewed ABGB adapted the law of obligations to reflect structural changes in commercial life, which had become outdated due to advancements in transportation and economic organisation. However, the title on settlement and general provisions on contracts and legal transactions remained largely unchanged from the resolution of the *Herrenhaus*. Consequently, the *Teilnovelle* did not bring about relevant changes concerning the paragraphs analysed within this paper. For more about the third *Teilnovelle* see: Kaiserliche Verordnung vom 19. März 1916, R. G. Bl. Nr. 69, über die dritte *Teilnovelle* zum Allgemeinen Bürgerlichen Gesetzbuch: mit Materialien. Wien, K. u. K. Hof- und Staatsdruckerei 1916. III, 433 S, 39 available at <<https://fedora.phaidra.univie.ac.at/fedora/objects/o:1160817/methods/bdef:Book/view#>> accessed 10 February 2025.

30 Dušan Nikolić, 'Dva veka Austrijskog građanskog zakonika (1811–2011)' (2011) *Zbornik Matice srpske za društvene nauke* 135/2011 <<https://doi.org/10.2298/zmsdn1135113n>> 320–321. For more see also: Gordana Drakić, 'Građansko pravo na vojvodanskom pravnom području u Kraljevini Srba, Hrvata i Slovenaca' (2013) *Zbornik radova Međunarodnog naučnog skupa „Harmonizacija građanskog prava u regionu“*, 107–109.

31 *Ibid.*

areas formerly part of the Military Frontier.³² In these territories, the Austrian Civil Code was applicable as a form of particular law.³³ On the other hand, Montenegro maintained its unique customary laws, and the General Property Code of 1888,³⁴ while in territories of Serbia and present-day North Macedonia the Serbian Civil Code of 1844³⁵ was in force.³⁶

Given the significant influence of the ABGB, the Serbian Civil Code of 1844, and the General Property Code of 1888 on the legal landscape of the region, the analysis in the following of this paper will focus on these three legislative instruments.

The ABGB does not seem to explicitly use the term 'convalidation', neither do its provisions indicate that contracts with formal defects could still have been valid under certain conditions.

Namely, according to its provisions pertaining to the form of contracts, unless otherwise mandated by law, a contract may be concluded verbally or in writing, made in or out of court, with or without witnesses, and these variations in form typically have no bearing on the legally binding nature of the agreement.³⁷ This indicates the presence of the principle of the freedom of form of contracts, i.e. that the lack of formality does not necessarily invalidate a contract.

The subsequent provision also supports this principle by stipulating, that a draft of a contract that covers the essential elements and has been signed by the parties was adequate to prove the rights and responsibilities outlined in it, even if the actual contract has not yet been prepared.³⁸

Although the ABGB foresaw the principle of freedom of form in its provisions regarding the formal requirements of contracts, it does not appear to include rules on the possibility of convalidating form-defective contracts or provisions pertaining to the legal consequences of omitting formal requirements.

It is equally crucial to look at the Serbian Civil Code of 1844, which constituted a unique legal heritage in the region, even though the ABGB functioned as a basic legal framework in some areas.

Namely, the content of the 1844 Serbian Civil Code and the evolution of Serbian civil law during the nineteenth century were significantly influenced by the ABGB.³⁹ Jovan Hadžić, a senator and lawyer from Novi Sad, then part of Hungary, was commissioned by Prince Miloš Obrenović to draft the Code following a number of unsuccessful legislative attempts.⁴⁰ Hadžić introduced a condensed and modified version of the ABGB of 1811, notwithstanding the in-

³² *Ibid.*

³³ *Ibid.*

³⁴ Opšti imovinski zakonik za Knjaževinu Crnu Goru, na Cetinju u Državnoj štampariji, 1888, hereinafter referred to as GPC 1888.

³⁵ Građanski zakonik za Knjažestvo Srbije, enacted on 11 March 1844, available at <https://www.harmonius.org/sr/pravni-izvori/jugoistocna-evropa/privatno-pravo/srbija/Srpski_gradjanski_zakonik_1844.pdf> accessed 21 January 2025, hereinafter referred to as: SCC 1844.

³⁶ Nikolić (n 30) 321.

³⁷ § 883 from the text of the ABGB as adopted in 1811, available at <http://digital.onb.ac.at/OnbViewer/viewer.faces?doc=ABO_%2BZ224537502> accessed 19 January 2025. Hereinafter referred to as: ABGB.

³⁸ § 885 ABGB.

³⁹ Nikolić, (n 30) 318–319.

⁴⁰ *Ibid.*

tention to develop a new code based on Serbian customary law.⁴¹ The provisions of the ABGB were significantly reduced in the Serbian Civil Code, which sometimes compromised clarity and systematic structure, but introduced certain new legal institutes, rooted in Serbian customary law, adding a degree of authenticity.⁴²

Influenced by the ABGB, the Serbian Civil Code of 1844 appears to have offered a broader approach to contract validity and convalidation, especially in the case of formal defects. Article 13 established the parameters for private contracts, suggesting that while individuals had the freedom to enter into agreements, such agreements could not have contravened public order or morality.⁴³ This provision reflected the underlying principle that contracts should respect the broader legal framework, particularly in relation to societal norms that cannot be overridden by private intentions.

Furthermore, in terms of contract validity, Article 540 suggests that once a contract is concluded, it holds equal legal force, whether verbal or written, or made in or out of court.⁴⁴ Namely, similarly to the ABGB, this provision foresaw the principle of freedom of form of contracts with the addition of the fundamental principle of contract law that agreements must be kept.⁴⁵ Consequently, if the intention of the parties to establish a legally binding agreement was evident, formal deficiencies such as the lack of a written agreement or witnesses did not always render a contract invalid.

In addition to the aforementioned, Article 541 specified that if the parties have explicitly agreed to a written contract, it was considered valid only with the addition of a signature.⁴⁶ The significance of signatures in formalising agreements was emphasised in this article, especially when parties had specifically consented to a written contract. However, the legislation does not appear to provide a sanction, or a remedy for the case of failure to comply with formalities.

In contrast to the ABGB, in the SCC 1844 the problem of contract formalities was further demonstrated by the regulations pertaining to real property transfers. These provisions set out specific requirements, such as the obligation of the transferor to personally appear before the court or be represented by an authorised person,⁴⁷ and the need for precise identification of the property being transferred⁴⁸. While these requirements appear stringent, Article 297 seemed to allow for provisional registration if certain formalities were initially overlooked, which could have later been rectified by presenting the necessary documentation.⁴⁹ However, in the event of failure to provide sufficient evidence of rights, the registration would have been deleted.⁵⁰ Although this provision appeared to provide a temporary remedy for formal

41 *Ibid.*

42 *Ibid.*

43 Art. 13 of the SCC of 1844.

44 Art. 540 SCC 1844.

45 Jožef Salma, *Srpski gradanski zakonik (SGZ, 1844) i obligaciono pravo (2004)* 2 Zbornik radova Pravnog fakulteta u Novom Sadu 320.

46 Art. 541 SCC 1844.

47 Art. 294 SCC 1844.

48 Art. 295 SCC 1844.

49 Art. 297 SCC 1844.

50 *Ibid.*

deficiencies, it cannot be concluded that the analysed regulation pertained to convalidation. Instead, it seems to primarily regulate the registration process of rights in cases of ownership transfer rather than addressing the validity of the title of transfer itself.

Likewise, building on the influence of the ABGB and regional customary practices, the General Property Code for the Principality of Montenegro was officially enacted by Prince Nikola I Petrović-Njegoš through a decree, as he held legislative power at the time.⁵¹ The Code was proclaimed in Cetinje on April 26, 1888, with a religious service and a speech by Prince Nikola that recognised the important efforts of its author, Valtazar Bogišić.⁵² The prince praised Bogišić's scholarly expertise and efforts in creating a Code that harmonised modern legal principles with Montenegro's customary law and social needs.⁵³

The adoption of the Code represented a major legal and political milestone for Montenegro, enhancing its international reputation and showcasing its commitment to legal modernisation. Among its many progressive features, unlike the ABGB and the SCC 1844, the Code included provisions that addressed the validity of contracts, reflecting a pragmatic approach to rectifying formal defects and ensuring that agreements complied with both legal requirements and the parties' intentions.

Namely, Article 498 emphasised that formalities are generally unnecessary for the validity of a contract unless specifically required by law.⁵⁴ However, according to paragraph 2 of the same article, when formal criteria were not met, the contract was unenforceable in court.⁵⁵

The legislator seems to have taken a step further from the provisions of the ABGB and the SCC 1844 by foreseeing a sanction when mandatory formalities could not have been observed. Nevertheless, similarly to the previously analysed two Codes, the GPC 1888 does not seem to have provided a solution or remedy for situations where convalidation and enforceability could have been achieved by compliance with the proper form at a later stage to correct the flaw.

Furthermore, Article 500 addressed circumstances in which the parties voluntarily agreed to specific formalities that were not required by law. It emphasised the importance of some formalities. If the parties agreed on a specified form but initially failed to accomplish it, the contract was considered incomplete until those requirements were met.⁵⁶ This provision, although it seems to have implicitly promoted convalidation by allowing an initially incomplete contract to become valid once the agreed-upon form is finalised, does not seem to have provided for convalidation in the sense understood in this article. Namely, the GPC 1888 foresaw that the contract remains incomplete until the formalities were fully satisfied, but it did not specify if the incomplete contract could have produced any legal consequences or it was considered null and void until its completion.

51 Miloš Luković, *Bogišićev Zakonik: Priprema i jezičko oblikovanje* (Balkanološki institut SANU 2009) 11–12.

52 *Ibid.*

53 *Ibid.*

54 Art. 494, para. 1 GPC 1888.

55 Art. 494, para. 2 GPC 1888.

56 Art. 500 GPC 1888.

Based on the analysis presented above, it seems that the legal systems of the Yugoslav republics in the twentieth century reflected numerous historical traditions, including influences from the ABGB, as well as Ottoman and Serbian legal frameworks, resulting in fragmented approaches. The ABGB, the Serbian Civil Code of 1844, and the Montenegrin General Property Code of 1888 all aimed to strike a balance between codification and local customs and implicitly addressed contract validity and convalidation. While the ABGB and Serbian Civil Code showed a tendency toward flexibility in correcting formal flaws, the Montenegrin Code prioritised conformity to law-mandated and agreed-upon formalities. This multiplicity of legal traditions emphasised the difficulties of uniting legal ideas during the socialist Yugoslavia era which will be described in the following chapter of this paper.

3. SOCIALIST YUGOSLAVIA (1945–1991)

The legal unification of the Kingdom of Serbs, Croats, and Slovenes faced significant challenges due to legal particularism, which hindered economic, political, and administrative integration. There was no social or political power in the Kingdom capable of unifying and codifying civil law, let alone swiftly and efficiently adopting a codification capable of addressing legal particularism in civil law.⁵⁷ Efforts to harmonise the legal system began almost immediately after the unification by primarily focusing on the establishment of a functional state apparatus, while the unification of private law was delayed due to concerns over disrupting legal continuity and regional traditions.⁵⁸

By the 1930s, work on the creation of a unified Civil Code had begun, with the ABGB acting as the primary model due to its significant influence in pre-unification territories. However, the draft, completed in 1934, faced criticism for relying on the ABGB instead of more contemporary models like the Swiss Civil Code or for failing to create an original codification reflecting Yugoslavia's diverse traditions.⁵⁹ Political instability and the assassination of King Alexander in 1934 further derailed these efforts, leaving the draft unfulfilled.⁶⁰

Subsequent plans for codification, which aimed to combine European legal traditions with local demands, were abandoned with the onset of World War II, delaying substantial legal reform until much later.⁶¹

Following World War II, Yugoslav authorities broke legal continuity by invalidating all legislation produced under Yugoslavia's occupation and prior to April 6, 1941.⁶² Laws adopted under the regime of axis powers were declared null and void, while pre-occupation legislation

57 Dragan Pantić, 'Privatnopravni partikularizam i pokušaji unifikacije građanskog prava u Jugoslaviji između dva rata' (1983–1984) 20 *Zbornik radova Pravnog fakulteta u Splitu* 126.

58 Zoran Mirković, 'Mihailo Konstantinović o radu na Građanskom zakoniku u međuratnoj Jugoslaviji' (2022) *Anali Pravnog fakulteta u Beogradu, Poseban broj u čast profesora Mihaila Konstantinovića* <https://doi.org/10.51204/anal_i_pfbu_22mk03a> 80.

59 Dušan Nikolić, 'Dva veka građanskog prava u obnovljenoj Srbiji (1804–2004)' (2005) 4 *Glasnik advokatske komore Vojvodine Časopis za pravnu teoriju i praksu* 171.

60 *Ibid.*

61 *Ibid.*

62 Petr Lavický and others, *Private Law Reform* (1st edn, Masaryk University Faculty of Law 2014) 298–300.

was deemed to have lost its legal power.⁶³ However, individual provisions could have been reinstated by legislative bodies with necessary amendments, and particular legal solutions from pre-war legal orders could have been applied in cases not regulated by post-war legislation.⁶⁴

In the aftermath of World War II, the newly founded socialist state made considerable amendments to the legal system, among others, in obligations law. These amendments were part of a broader effort to align the legal framework with socialist principles and the state's socioeconomic ambitions.⁶⁵

Legal standards prioritising community interests and public ownership have replaced the previous ones emphasising private autonomy and individual property rights.⁶⁶ These changes also included the introduction of new principles, such as the subordination of private obligations to state and societal interests, while the nationalisation of private property and the establishment of socially owned enterprises influenced the evolution of obligations law.⁶⁷

The adoption of the Obligations Act (ZOO)⁶⁸ in 1978 marked the pinnacle of the development of the law of obligations in Yugoslavia, unifying it across the federation's entire territory. This legislative act was a crucial step toward harmonising the diverse legal traditions of the member states, establishing a comprehensive framework for contractual and non-contractual responsibilities.⁶⁹ By offering a single codification, the ZOO was able to increase the level of legal certainty and consistency, reflecting both socialist values at the time and the necessity for a contemporary approach to obligations law.⁷⁰

However, leading legal experts of the time were convinced that merely reflecting the legal understandings of the social environment in which it was founded would be insufficient and may fall short of the standards established by the advancement of law in other countries.⁷¹ Consequently, the act had to be of the highest quality in all respects with the task of its drafters to closely observe developments in comparative law and draw on the lessons learned from the establishment of the most modern civil codes.⁷²

The ZOO was a modern legal instrument that drew inspiration primarily from Swiss, but also from German and French legal traditions, while adjusting to the unique qualities of Yugoslav society.⁷³

63 *Ibid.*

64 *Ibid.*

65 Dragoljub Stojanović, 'Društvena svojina u novom Ustavu i osnovni instituti izvedeni iz nje' (1974) 14 Zbornik radova Pravnog fakulteta u Nišu 51.

66 *Ibid.*

67 Stojanović (n 65) 59.

68 Zakon o obligacionim odnosima was enacted on 1 October 1978, hereinafter referred to as ZOO.

69 Radomir Đurović and Miodrag Orlić, 'Od Opšteg imovinskog zakonika do Zakona o obligacionim odnosima' (1978) 26 Anali Pravnog fakulteta u Beogradu 245.

70 *Ibid.*

71 *Ibid.* 259.

72 *Ibid.*

73 Tot (n 5) 23.

The act was preceded by the so called ‘*Skica*’⁷⁴ from 1969 prepared by Mihailo Konstantinović, which itself borrowed comparative elements from a diverse array of systems of civil law. *Skica* and, in turn, the ZOO, took on a significant amount of influence from contemporary European codifications, such as the French Code civil, the Italian Codice civile, the German Bürgerliches Gesetzbuch and Handelsgesetzbuch, the Swiss Obligationenrecht, and the Austrian Allgemeines bürgerliches Gesetzbuch.⁷⁵ Besides these traditional continental models, earlier regional codifications, e.g., the Serbian Civil Code of 1844 and the General Property Code of Montenegro of 1888, were also taken into account.⁷⁶ Apart from that, the Hague Uniform Laws on International Sales of Goods and Contract Formation (ULIS and ULFC, 1964) had a direct influence on it, most notably in the field of contract termination, non-performance, and contract formation.⁷⁷ The ZOO also included the General Usages for the Trade in Goods of 1954, the Draft Law on Damages of 1951, and the Law on Prescription of Claims of 1953.⁷⁸ Consequently, the ZOO of 1978 emerged as a hybrid product of Romanist and Germanic traditions, complemented by socialist legal elements and international conventions.

It established general regulations for obligations that were to be followed where particular issues concerning a specific type of obligation were not addressed differently by other applicable laws.⁷⁹ This framework established the ZOO as the official source for interpreting and applying any other legal provisions or regulations governing obligations.⁸⁰ By acting as both a foundational and interpretive guide, the ZOO achieved consistency and coherence in the regulation of the law of obligations throughout the legal system.

By analysing the relevant provisions of the ZOO, it can be concluded that it provides a more detailed regulatory framework regarding contract validity.

Similarly to the previously analysed codes it establishes the general principle that contracts are not subject to formal requirements unless mandated by law.⁸¹

Following the tradition established by the provisions of the SCC 1844, the ZOO in Article 69 supports party autonomy in determining the formal requirements for contract validity. Likewise, it allows for informal changes to contracts that once required formalities and considers contracts valid concluded in the event parties agreed upon the conditions, even if the form

74 *Skica za zakonik o obligacijama i ugovorima* [Sketch for the Code of Obligations and Contracts] from 1969, drafted by Mihailo Konstantinović, was the direct source of inspiration for the 1978 Yugoslav Obligations Act. The *Skica* was characterised by modernised terminology, explicit style, and systematic accuracy. It included substantive innovations such as the doctrine of contractual equivalence alongside *pacta sunt servanda*, application of the *clausula rebus sic stantibus*, and wider scope for judicial intervention. In practice, courts occasionally employed the *Skica* to fill normative gaps, which brought it close to the status of a source of law. Although the definitive text of the 1978 ZOO varied from the draft on numerous aspects—partly due to constitutional development—the *Skica* definitively shaped both the content and the technical form of the codification adopted. For more see: Obrad Stanojević, ‘The Sketch’ of Mihailo Konstantinović’ (1978) *Anali Pravnog fakulteta u Beogradu* 26(3–5) 270–271.

75 Tot (n 5) 44 *sqq.*

76 *Ibid.*

77 *Ibid.*

78 *Ibid.*

79 Borislav T. Blagojević, ‘Zakon o obligacionim odnosima u svetlosti svog vremena’ (1978) 26 *Anali Pravnog fakulteta u Beogradu* 249.

80 *Ibid.*

81 Art. 67 ZOO.

is completed later.⁸² This provision seems to support convalidation by validating contracts upon subsequent fulfilment of formalities.

Moreover, Article 70 establishes a default rule that contracts without the required form, whether the specific form was mandated by law or agreed upon by the contracting parties, do not produce legal effect, but it also allows for exceptions if permitted by the purpose of the form.⁸³

However, the strongest ground for convalidation, a novelty compared to the previous codes, can be found in Article 73, which validates contracts requiring a written form if the parties have fully or in preponderant part performed their obligations, unless the prescribed form's purpose dictates otherwise.⁸⁴

This paragraph explicitly recognises the possibility of validating form-defective contracts through the performance of obligations. Unlike the previously outlined approach, which focused on correcting formal defects subsequently (such as adding signatures or fulfilling the prescribed form), this framework stresses the parties' substantive actions. By allowing the rectification of initial defects by performance, the provision emphasises the intention and behaviour of the parties over rigid adherence to formal requirements. This approach reflects a pragmatic balance between maintaining legal certainty and ensuring that agreements aligned with the true intent of the parties are upheld, even when formalities are initially overlooked.

Although the ZOO was Yugoslavia's attempt to establish a uniform legal framework by combining various legal traditions with socialist ideas, while improving legal cohesiveness, the system encountered increasing obstacles as Yugoslavia gradually dissolved. As political tensions rose and the federation fractured, the united legal order began to fray at the edges, eventually giving way to the different legal systems of the newly independent states.

4. THE DISSOLUTION OF YUGOSLAVIA (1991)

The breakup of Yugoslavia in the early 1990s was a turning point in the region's legal history. As the federal state crumbled, its legal system, founded on socialist ideals and designed to create unity among its varied republics, faced insurmountable obstacles.

The fragmentation of the state resulted in the formation of distinct legal systems, each of which tailored its laws to the new political conditions. This transition underlined the conflict between the legal history of the socialist federation and the necessity for legal autonomy in the newly established republics.

The dissolution process highlighted fundamental problems about the continuation of legal responsibilities, the protection of rights, and the role of international law in driving the development of new legal frameworks.

82 Art. 69. ZOO.

83 Art. 70. ZOO.

84 Art. 73. ZOO. See more in: Leposava Karamarković, *Rasprave iz ugovornog, odštetnog i procesnog prava* (Glosarijum 2004) 28–29.

The dissolution of Yugoslavia eventually led to the formation of several independent successor states: Slovenia, Croatia, Bosnia and Herzegovina, North Macedonia, Montenegro and Serbia. In general, they maintained continuity with the federal legislation, incorporating much of the existing legal framework into their own national laws. This adherence to prior legal norms facilitated a smoother transition during the early years of independence, although each state eventually undertook reforms to tailor legal system to its specific needs and political context.

After Slovenia gained independence in 1991, former Yugoslav laws remained to apply as Slovenian law until a new legislation was adopted, providing it did not violate Slovenia's legal order.⁸⁵ The new Slovenian Code of Obligations was enacted in 2001, and came into force in January 2002. Until then, the 1978 Yugoslav federal Law of Obligations was in effect.⁸⁶ The Slovenian Ministry of Justice commissioned a study group to design the new Code of Obligations, which decided that the 1978 law was mostly appropriate, requiring only minor changes and the addition of new contracts.⁸⁷

Similarly, in Croatia, the new Obligations Act, enacted in 2005 and entered into force in 2006, retained many of the comparative law elements of the ZOO of 1978.⁸⁸

Furthermore, in Bosnia and Herzegovina and Serbia, the Obligations Act of the former Yugoslavia continued to be applied in the versions incorporated into the legal systems of these states with subsequent amendments.⁸⁹ In Bosnia and Herzegovina, due to its unique federal structure and the division of legislative competence among its three constituent units, three distinct versions of the ZOO are in force. In the Federation of Bosnia and Herzegovina, the Obligations Act of 1978 is in force with its last amendments in 2011, in the Republic of Srpska, the Obligations Act is applicable as well, in its amended form of 2004, while in the Brčko District, the original version of the ZOO 1978 remains in force.⁹⁰

Lastly, in Montenegro and North Macedonia new Obligations acts have been adopted similarly to Croatia and Slovenia, which were based on the foundation of the ZOO, with their content largely corresponding to its provisions.⁹¹

5. ASSESMENT OF THE REGULATION OF CONVALIDATION IN THE SUCCESSOR STATES OF YUGOSLAVIA

Despite the various legal developments and reform trajectories pursued by each successor state of the former Yugoslavia, the founding principles of the ZOO of 1978 continue to be cen-

85 Lavický and others (62) 308–309.

86 *Ibid.*

87 *Ibid.*

88 Tot (n 5) 55.

89 *Ibid.* 7.

90 Lavický and others (62) 122.

91 *Ibid.*

tral. Provisions relating to the freedom of form of contracts, the formal requirements of contracts, and the potential of performance-based validation show significant continuity across Slovenia, Croatia, Bosnia and Herzegovina, Serbia, Montenegro, and North Macedonia. This ongoing legacy demonstrates the ZOO's framework's versatility and practicality in shaping the region's approach to contract law.

Namely, the notion of contractual freedom is retained as a key component of contract law in all successor states, having its origins in the ZOO of 1978. The basic concept that contracts are not subject to precise formal requirements unless mandated by law or agreed upon by the parties, remains at the foundation of these legal systems.

The Slovenian Code of Obligations reflects the ZOO's liberal approach, allowing contracts to be formed with no formal restrictions unless specifically required.⁹² Likewise, the Croatian Obligations Act reflects this approach by distinguishing between general and specialised standards while allowing for flexibility in formal requirements.⁹³

Despite its complex federal system and three versions of the ZOO, the idea of contractual freedom is consistently followed in the Federation of Bosnia and Herzegovina, the Republic of Srpska, and the Brčko District.⁹⁴

Serbia⁹⁵, Montenegro⁹⁶, and North Macedonia⁹⁷ have all preserved the ZOO's emphasis on the parties' substantive intent over rigorous formality, with provisions encouraging flexibility in formal requirements.

A hallmark of Article 73 of the ZOO of 1978 that persists in the successor states is the possibility of convalidating form-defective contracts through performance. This principle ensures that contracts lacking formal validity may still be upheld if the parties have fully or at least substantially performed their obligations.

Article 58 of the Slovenian Code of Obligations allows for such convalidation, safeguarding the genuine intent of contracting parties and preventing unjust enrichment.⁹⁸

92 Art. 51 of the Slovenian Code of Obligations, *Obligacijski zakonik* (Uradni list RS, No. 97/07 – officially consolidated text, 64/16 – decision of the Constitutional Court and 20/18 – OROZ631), hereinafter referred to as: SloCO.

93 Art. 286 of the Croatian Obligations Act, *Zakon o obveznim odnosima* (Narodne novine, No. 35/2005, 41/2008, 125/2011, 78/2015, 292018, 126/2021, 114/2022, 156/2022 and 155/2023), hereinafter referred to as: CrOA.

94 Art. 67 of the Obligations Act of the Federation of Bosnia and Herzegovina, *Zakon o obligacionim odnosima* ("Službeni list SFRJ", No. 29/1978, 39/1985, 45/1989 – decision of the Constitutional Court and 57/1989, "Službeni list RBiH", No. 2/1992, 13/1993 and 13/1994 and "Službene novine FBiH", No. 29/2003 and 42/2011), hereinafter referred to as: BiHOA; Art. 67. of the Obligations Act of the Republik of Srpska, *Zakon o obligacionim odnosima* ("Službeni list SFRJ", No. 29/1978, 39/1985, 45/1989 – decision of the Constitutional Court and 57/1989 and "Službeni glasnik RS", No. 17/1993, 3/1996, 37/2001 – other statute, 39/2003 and 74/2004), hereinafter referred to as: SrpOA; Art. 67 of the ZOO 1978.

95 Art. 67 of the Obligations Act of Serbia, *Zakon o obligacionim odnosima* ("Službeni list SFRJ", No. 29/1978, 39/1985, 45/1989 – decision of the Constitutional Court and 57/1989, "Službeni list SRJ", No. 31/1993, "Službeni list SCG", No. 1/2003 – Constitutional Charter and "Službeni glasnik RS", No. 18/2020), hereinafter referred to as: SrbOA. For more see: Dudás, Attila, 'General Rules of Invalidity of Contracts in Serbian Law' (2022) *Review of European and Comparative Law* (No 2) 51–70, DOI: 10.31743/recl.13441.

96 Art. 60 of the Obligations Act of Montenegro, *Zakon o obligacionim odnosima* ("Službeni list CG", No. 47/2008, 4/2011 – other statute and 22/2017), hereinafter referred to as: CGOA.

97 Art. 59 of the Obligations Act of North Macedonia, *Zakon za obligacionite odnosi*, *Služben vesnik RM* 18/2001, 78/2001, 4/2002, 59/2002, 5/2003, 84/2008, 81/2009, 161/2009, 23/2013, 123/2013 and 215/2021, hereinafter referred to as: SMOA.

98 Art. 58 of the SloCO.

The Croatian Obligations Act adopts a similar approach, emphasising the substantive relationship between the parties over procedural deficiencies.⁹⁹

All three versions of the Obligations Act applied in Bosnia and Herzegovina recognise the principle of convalidation by performance, complying with the federal law's original intent.¹⁰⁰

The Serbian Obligations Act continues to permit the convalidation of contracts under conditions akin to those outlined in Article 73 of the ZOO of 1978.¹⁰¹

Both Montenegro¹⁰² and North Macedonia¹⁰³ have integrated provisions for convalidation into their modern Obligations Acts, maintaining the balance between legal formalism and the need to vindicate the parties' will, if they have performed their respective contractual obligations, established by the ZOO of 1978.

6. CASE LAW IN THE SUCCESSOR STATES OF YUGOSLAVIA

In order to understand how the legal institute of convalidation functions in practice in the successor states of the former Yugoslavia, the following section presents a comparative overview of selected judicial decisions. These cases exemplify the judicial application of convalidation principles in cases involving form-defective contracts. They also illustrate how courts across different jurisdictions interpret and apply the provisions of their respective obligations acts that derive from the Yugoslav federal Law of Obligations of 1978.

A number of significant court decisions demonstrate the application of Article 73 of the ZOO of 1978 which allows for the convalidation of contracts not concluded in the required form, if the obligations were substantially or entirely performed.

Research in judicial practice is based on published supreme and appellate court rulings in the successor states between 2000 and 2025 with the exception of Slovenia, where a decision from 1994 is analysed. Case selection focused on judgements explicitly addressing form-defective contracts and citing provisions corresponding to Articles 69–73 of the ZOO of 1978 and its national successors. Nine illustrative decisions were retrieved from official databases of courts, law journals, and internet archives to represent the different jurisdictions.

The research method was comparative and qualitative: rather than pursuing complete quantitative reach, the analysis identifies recurring patterns of judicial reasoning and examines how courts balance public policy, formal requirements, and the parties' substantive performance. This method enables testing whether convalidation based on performance remains a unifying principle across the region or whether national development has led to different outcomes.

⁹⁹ Art. 294 of the CrOA.

¹⁰⁰ Art. 73 of the BiHOA; Art. 73 of the SrpOA; Art. 73 of the ZOO 1978. For more see: Petrović Anita and Jukan Emina, 'Obavezna forma ugovora nakon presude U 2/16' (2019) *Zbornik radova Pravnog fakulteta u Tuzli* (No 1) 53–54.

¹⁰¹ Art. 73 of the SrbOA.

¹⁰² Art. 68 of the CGOA.

¹⁰³ Art. 65 of the SMOA.

In North Macedonia, in case Rev1.br.115/2015,¹⁰⁴ the Supreme Court acknowledged that under Article 65 of the SMOA contracts that were concluded without the observance of the prescribed form may still produce legal effect if performed in preponderant part. Furthermore, in this specific case the court ruled against the convalidation of contracts that are absolutely null due to substantive illegality or lack of competence, such as notarisation by a territorially incompetent notary or disposal of property not included in a bankruptcy court's order.

In Bosnia and Herzegovina, the Federation's Supreme Court addressed convalidation in the two following rulings. In case Rev-531/04,¹⁰⁵ it held that even an oral contract on apartment use, if fully executed based on a valid allocation decision and without defect from the part of the parties, is valid despite the lack of written form. In the 2021 decision (58 0 P 120081 20 Rev),¹⁰⁶ the Court ruled that a construction contract concluded without written form could be convalidated if the works were carried out, emphasising the purpose of the formal requirement and the role of performance in validating the transaction.

In Croatia, two important appellate decisions reaffirm the same logic. In Gž-388/15,¹⁰⁷ the court accepted that performance in preponderant part can validate an otherwise void contract due to formal defects. In Pž-23/2024-2,¹⁰⁸ the High Commercial Court addressed issues of written form and obligations under Articles 294 and 295 of the Croatian Obligations Act, and validated the agreement due to the substantial fulfilment of its content.

The Slovenian case law, for example in the ruling of the Supreme Court ECLI:SI:VSR:1994:II.IPS.402.93 (VS00942),¹⁰⁹ also upholds convalidation through performance. The court found that the execution of construction works justified payment despite the contract's formal invalidity, citing the Slovene equivalent of Article 73.

In Serbia, the Supreme Court in case Rev 29231/2023¹¹⁰ addressed a dispute over a real estate transaction in which a written contract existed without notarisation. The court validated the contract under Article 73 of the Serbian Obligations Act and Article 4 of the Law on the Transfer of Real Estate, noting that the contract had been fulfilled in substantial part and there was no breach of public interest or pre-emptive rights. The judgement confirmed that contracts concluded in written form but not notarised may still have legal effect if executed. In addition, the legal view expressed in the session of the Civil Department of the Supreme

¹⁰⁴ Supreme Court of the Republic of North Macedonia, Rev1.br.115/2015 (13th November 2014) Bulletin of the Case Law of the Supreme Court of the Republic of North Macedonia 2016–2017.

¹⁰⁵ Supreme Court of the Federation of BiH, Rev-531/04 (5th May 2005) Bulletin of the Case Law of the Supreme Court of the Federation of Bosnia and Herzegovina 2005.

¹⁰⁶ Supreme Court of the Federation of BiH, 58 0 P 120081 20 Rev (13 April 2021) Bulletin of the Case Law of the Supreme Court of the Federation of Bosnia and Herzegovina 2021.

¹⁰⁷ County Court in Dubrovnik, Gž-388/15 (10th February 2016) available at: <<https://www.iusinfo.hr/sudska-praksa/ZSRH2015GzB388>> accessed 30 August 2025.

¹⁰⁸ High Commercial Court of the Republic of Croatia, Pž-23/2024-2 (11th December 2024) available at: <<https://www.iusinfo.hr/sudska-praksa/VTSRH2024PzB23A2>> accessed 30 August 2025.

¹⁰⁹ Supreme Court of Slovenia, ECLI:SI:VSR:1994:II.IPS.402.93 (Registration number: VS00942) (17th March 1994) available at: <[https://sodnapraks.si/?q=id:2100&database\[SOVS\]=SOVS&database\[IESP\]=IESP&database\[VDSS\]=VDSS&database\[UPRS\]=UPRS&_submit=išči&page=0&id=2100](https://sodnapraks.si/?q=id:2100&database[SOVS]=SOVS&database[IESP]=IESP&database[VDSS]=VDSS&database[UPRS]=UPRS&_submit=išči&page=0&id=2100)> accessed 30 August 2025.

¹¹⁰ Supreme Court of Cassation of Serbia, Rev 29231/2023 (13th March 2025) available at: <<https://www.vrh.sud.rs/sr-lat/rev-292312023-31122>> accessed 30 August 2025.

Court of Cassation in 2018¹¹¹ supports this conclusion. The Court held that even after the adoption of the 2014 Law on Real Estate Transactions¹¹², convalidation remains possible for contracts concluded under earlier legislation that expressly allowed for it. The legal opinion emphasised that legal certainty and the principle of non-retroactivity require the evaluation of validity under the law applicable at the time of conclusion. Thus, despite changes in the statutory framework, earlier contracts lacking formal notarisation may still be validated if all other statutory requirements are met. It is important to emphasise, however, that according to the 2014 Law on Real Estate Transactions, contracts on the conveyance of real estate that lack the required notarised form cannot be convalidated if concluded after the law's entry into force. This rule clearly restricts the possibility of convalidation only to contracts concluded prior to 2014, when the law allowed for such convalidation.¹¹³

Although Montenegro is not included due to lack of publicly accessible recent judgements, the legal framework seems to remain harmonised with ZOO principles.

7. CONCLUDING REMARKS

Convalidation, the process by which a form-defective contract becomes legally effective through subsequent correction or performance, has evolved significantly throughout the Yugoslavian history of contract law. Originally, in earlier years, convalidation was not explicitly mentioned, but was rather implied. This implied application emerged from the understanding that, in the absence of explicit prohibitions against rectifying incomplete contracts, there could be a possibility for their completion. The essence of this implicit convalidation was based on the premise that a contract, while initially invalid due to formal deficiencies, may potentially become enforceable through subsequent repair or clarification.

However, as legal systems evolved, particularly in the setting of modern contract law, convalidation became increasingly linked to the concept of completing the contractual obligation, either entirely or in preponderant part.

This transformation marks an important turning point in the evolution of convalidation, as it transitioned from a correction of defects in form to a broader concept of meeting a contract's substantive goals. Over time, the emphasis shifted from correcting incomplete or faulty documentation to ensuring that the parties fully or in preponderant part fulfilled their responsibilities, even if some formal requirements were initially ignored or missed. This

111 Legal position adopted at the session of the Civil Department of the Supreme Court of Cassation of Serbia held on November 2, 2018 available at:

<<https://www.vrh.sud.rs/sites/default/files/attachments/Pravni%20stav%20%20konvalidacija%20ugovora%20o%20prometu%20nepokretnosti%20-%20Vesna%20Subic.pdf>> accessed 30 August 2025. For more see: Attila Dudás and Emma Sztitás, 'Convalidation of Form-Defective Contracts on the Conveyance of Ownership of Real Property in Serbian, Croatian, and Slovenian Law' in Tomislav Karlović and Elizabeta Ivičević Karas (eds), *Legatum pro anima: Zbornik radova u čast Marku Petraku* (Pravni fakultet Sveučilišta u Zagrebu 2024) 1007.

112 Art. 4 para 4. Zakon o prometu nepokretnosti, Službeni glasnik RS, No. 93/2014, 121/2014 and 6/2015.

113 For more see: Dime-Ilijevska Pandora, 'Konvalidacija ugovora o kupoprodaji nepokretnosti' in Đekić Dragoslav (ed), *Zakon o obligacionim odnosima 1978–1988* (Savez udruženja pravnika SR Srbije 1988) 320.

approach represents a more thorough evaluation of fairness and the practical implementation of contractual obligations.

The development of convalidation in legal history demonstrates the relationship between private and public interests. On the one hand, convalidation served the contracting parties' private interests by providing a way to ensure that an agreement that would have otherwise been null and void due to defects in form may be enforced and executed. This protected the parties' intent and economic interests by permitting contractual agreements to continue even after form faults were found. On the other hand, the shift toward a more structured approach to convalidation, which requires the execution of contractual commitments, reflected the growing engagement of public interests. This indicates an increasing concern for the preservation of public order, fairness, and legal certainty.

Despite regional legal reforms and the adoption of new codifications, the aforementioned judicial decisions illustrate the continuing influence of the Yugoslav federal Law on Obligations. The principle of convalidation by performance—whereby contracts lacking the required form become valid upon execution—is consistently upheld in the courts of all examined successor states. This uniformity supports the thesis that the legal legacy of the ZOO of 1978 remains resilient in the practical adjudication of contractual disputes across the post-Yugoslav region. The rulings demonstrate that substantive performance prevails over form, especially when contractual obligations have been executed and there is no public policy reason for nullity. These case studies provide a robust empirical foundation for further comparative analysis.

In contemporary contract law, convalidation is no longer merely an implied or informal correction but is more formally integrated into legal systems. The concept has come to embody the balance between private autonomy and public policy, ensuring that the correction of form-defective contracts does not come at the expense of legal transparency and fairness. The development of convalidation, therefore, reflects both a practical and a normative evolution, one that continues to shape how modern legal systems navigate the complexities of contract law.

While Slovenia and Croatia exhibit strict adherence to the performance-based model of convalidation, Serbia restricts its application after 2014, indicating a divergence in legislative development compared to shared doctrinal roots. North Macedonia and Bosnia and Herzegovina adopt a comparatively liberal interpretation, allowing convalidation where the contracts are performed in preponderant part, even in the absence of written form. Montenegro remains less accessible for empirical assessment, as recent case law is not publicly available through official databases. However, statutory provisions in the CGOA mirror the legacy of the ZOO, and there seems to be no indication that judicial interpretation would deviate significantly. To avoid conjecture, this study limits its conclusions to the accessible statutory framework, while noting that comparable outcomes remain likely given the common legislative basis.

Overall, such differences reveal convergence and divergence in the approach to convalidation across the region, guided by regional legislative reforms, judicial discretion, and divergent balances between public policy interests and private autonomy.

Future research could explore the normative implications of maintaining performance-based convalidation in legal systems with strict formal requirements. Moreover, legislative clarity may be enhanced by codifying the scope and limits of judicial discretion in such cases, thereby ensuring both legal certainty and contractual fairness.

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RAZVOJ PRAVNOG INSTITUTA KONVALIDACIJE NIŠTETNIH UGOVORA U JUGOSLAVENSKOJ PRAVNOJ TRADICIJI: POVIJESNI UTJECAJI I PRAVNO NASLJEĐE

Sažetak

Ugovorno pravo u svojoj je biti obilježeno napetošću između pravičnosti i provedivosti, ravnotežom koju manjkavi ugovori često narušavaju. Dok se formalni zahtjevi uvode ponajprije radi zaštite ciljeva javnog poretka – osobito osiguranja pravne sigurnosti – naknadno osnaženje manjkavih ugovora (konvalidacija) služi njihovu ispravljanju, pri čemu je naglasak primarno na zaštiti privatnih interesa ugovornih strana. U radu se analizira uloga konvalidacije u jugoslavenskom ugovornom pravu, kao zajedničkoj pravnoj tradiciji zapadnobalkanskih država koje su nekoć bile u sastavu SFRJ, te se prati njezin razvoj u kontekstu pravnog pluralizma i političkih preobrazbi toga razdoblja. Nadalje, istražuje se suvremena primjena konvalidacije u državama sljednicama: Hrvatskoj, Sloveniji, Srbiji, Bosni i Hercegovini, Crnoj Gori i Sjevernoj Makedoniji. Polazeći od saveznog Zakona o obveznim odnosima iz 1978. godine, rad razmatra povijesni razvoj ugovornog prava u tim državama te propituje jesu li lokalne pravne tradicije, oblikovane regionalnim pravnim posebnostima, dovele do divergentne ili ujednačene primjene konvalidacije. U radu se razjašnjava pojam „konvalidacije“, koji, iako nije uvijek izričito normiran, predstavlja sastavni dio pravnog sustava te se ponajprije primjenjuje na pobjodne ugovore, a rjeđe i na ništetne ugovore. Konvalidacijom se omogućuje njihova pretvorba u valjane ugovore, čime oni mogu proizvoditi pravne učinke koji im prethodno nisu bili dostupni, pod uvjetom ispunjenja određenih pretpostavki. Analizom fleksibilnosti instituta konvalidacije i njegove uloge u zaštiti kako privatnih tako i javnih interesa, rad ukazuje na njegov doprinos ostvarivanju pravičnosti i pravne sigurnosti u pravnim sustavima postjugoslavenskih država. Istraživanje je strukturirano kroz tri povijesna razdoblja, koja odražavaju ključne društveno-političke promjene u regiji, kako bi se prikazao razvoj konvalidacije unutar zajedničke jugoslavenske pravne tradicije.

Ključne riječi: konvalidacija, ugovorno pravo, manjkavi ugovori, ništetni ugovori



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