
КОДИФИКАЦИЈА ГРАЂАНСКОГ ПРАВА

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RECENT CIVIL LAW CODIFICATIONS IN SOME EU MEMBER STATES AS POSSIBLE MODELS FOR THE WEST BALKAN REGION

Summary

Serbia is currently preparing for a new Civil Code. Similar efforts are made in other parts of the West Balkans (Macedonia, Kosovo). This contribution deals with the most Código Civil recent codifications in Europe (new Civil Codes of Hungary, Romania and Czech Republic) before the background of the European private law.

Key words: *new Serbian Civil Code, civil law reform in West Balkan, EU private law, Hungarian Civil Code, Romanian Civil Code, Czech Civil Code.*

I Introduction

The topic of codification of the civil law has for the West Balkan region a special significance. In comparison with other parts of continental European, codification has in this region much less tradition. It is of course true that positive examples exist. Thus, the Kingdom of Serbia adopted a Civil Code in 1844 which was mainly based on the Austrian Civil Code. Under Prince Nicholas I, Montenegro in 1888 adopted the General Property Law

which at the time received broad international attention and was translated into several foreign languages.¹ However, these two codes are by now far-away legal history.

During the Kingdom of Yugoslavia efforts were made for the creation of a Yugoslav Civil Code² which, however, never came into being. In 1946, the People's Republic of Yugoslavia in one single stroke repealed all legal provisions which had been adopted prior to 6 April 1941.³ Since then, neither Yugoslavia, nor after the disintegration of Yugoslavia, any of the successor states have adopted a Civil Code. In former Yugoslavia, civil law was regulated in special acts, for certain matters on the level of the central state, for others (namely family and succession law) on level of the Yugoslav Republics and Autonomous Provinces. The most prominent of these acts was of course the Yugoslav Law on Obligations of 1978 which, although it has formally been repealed in several of the successor states, still has a dominating influence in all of them.

The Albanian approach⁴ towards the issue of codification has been quite different. After Albania's finally gaining independence in 1912, the first Civil Code was adopted in 1929, as a modern codification which was shaped mainly after French and Italian models. After the Second World War, in the early years of the People's Republic of Albania the same tragic mistake was made as in the People's Republic of Yugoslavia (and also in the People's Republic of Bulgaria), namely: all pre-war legislation was repealed in one single legal act.⁵ The Civil Code of 1929 was in the following years replaced by separate acts regulating property, obligations, family and succession law, which were based on the communist ideology. Civil law was again codified in 1982, more or less as a compilation of the already existing separate acts. After the collapse of communism, a new Albanian Civil Code has been adopted in 1994.⁶ In other words Albania can within one century already look back on

1 The library of the Max Planck Institute in Hamburg possesses translations of the Montenegrin Code into German and French, see Shek, *Allgemeines Gesetzbuch über Vermögen für das Fürstenthum Montenegro*, Berlin, 1893; Daresté, Rivière, *Code général des biens pour la principauté de Monténégro de 1888*, Paris, 1892.

2 See Eisner, Pliverić, *Mišljenja o predosnovi Gradjanskog Zakonika za Kraljevinu Jugoslaviju*, Zagreb, 1937; Vorentwurf des Bürgerlichen Gesetzbuchs für das Königreich Jugoslawien (1933).

3 *Službeni list FNRJ*, no. 86, 1946.

4 For details see Dollani, "Indirect Germanic influences on Albanian private law regarding the legal regulation of juristic acts. The deviation of Supreme Court jurisprudence concerning registration of the transfer of immovable", in: Vasiljević, Kulms, Josipović, Stanivuković, *Private law reform in South East Europe. Liber Amicorum Christa Jessel-Holst*, Belgrade, 2010, pp. 352–374.

5 Law no. 61 of 1945, *Official Gazette* no. 12/1945.

6 For the 1994 Code, an English translation exists.

three successive comprehensive civil law codifications, reflecting quite different values and influences.

It should be mentioned that near-by Bulgaria, in its whole modern history, from liberation from the Ottoman rule until today never had a Civil Code. Several times attempts were made for codification but they all failed. Therefore Bulgarian civil law is still regulated in a piecemeal-approach. Currently, no comprehensive reform seems in sight.

II Ongoing regional reform projects

Some West Balkan regions are at present preparing for a codification of their civil law. Various motives for such large-scale projects are conceivable, besides the modernization and further development of the civil law. The creation of one comprehensive Civil Code instead of partial regulations will strengthen the internal coherence and uniform systematics of the civil law of the respective country. The law will also be made more easily accessible. It may be supposed that the aspect of national identity also plays a role in West Balkan countries.

In preparation of a future Serbian Civil Code, which is the most advanced project, proposals on all five parts of the codification have already been published and it is clear that Serbia intends to follow the Pandects' approach. The structure of the Draft is similar to that of the German BGB, with a general part and special parts on obligations, family, property and succession.

Another country preparing a Civil Code is Macedonia; this would be the first Macedonian Civil Code ever. Apparently no parts of the Draft have been published yet, but the reform seems to be in an advanced stage.

There is also a more recent EU project on the way for a Civil Code of Kosovo, on the progress of which no detailed information is yet available.⁷

III National civil law reform and the EU law

Although the EU has become more and more active in the field of private law, it would be unrealistic to expect a European Civil Code in the foreseeable future. The *Acquis communautaire* so far contains only fragmentary regulations. It deals intensively with issues of consumer protection which are regarded of essential importance for the functioning of the internal market. For the simplification of cross-border trade, the Commission has made a pro-

⁷ In past years, Kosovo has already adopted separate pieces of legislation on family law, obligations, property and succession.

posal for the adoption of a Common European Sales Law (CESL).⁸ In many parts of the civil law, intensive comparative research is done and will have to be continued. Principles, definitions and model rules of European private law have been analyzed and elaborated in the so-called Draft Frame of Reference⁹ which is also intended to serve as a kind of tool-box to national legislators.

EU-harmonization may, or may not be an objective of a civil law codification. The candidate countries for EU accession are in their respective Stabilization and Association Agreement obliged to gradually adapt their legislation to the EU law. However, it is up to the individual state to choose the form and methods for transposition of EU directives into the national legal order. E.g. the recent Consumer Rights Directive¹⁰ has by some Member States been integrated into the Civil Code, whereas others have enacted special legislation on issues regarding the consumers. The same freedom of choice applies for the candidate countries.

To give just two examples: France has transposed directives on consumer protection not in the Code Napoleon but in a separate *Code de la consommation*. In contrast, Germany has integrated into the Civil Code (BGB¹¹) not only the Consumer Rights Directive but also many other directives.¹²

8 See Proposal for a Regulation of the European Parliament and of the Council on a Common European Sales Law of 11.10.2011, (COM2011) 635 final, available at: http://ec.europa.eu/justice/contract/files/common_sales_law/regulation_sales_law_en.pdf.

9 See von Bar, Clive (eds.), *Principles, definitions and model rules of European private law, Draft Common Frame of Reference (DCFR)*, prepared by the Study Group on a European Civil Code and the Research Group on EC Private Law (Acquis Group), full ed. vol. 1 to 6, Munich, 2009.

10 Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council, *OJ L* 304/64.

11 For an English translation of the BGB see http://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html#p0022.

12 Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (*OJ L* 39 of 14 February 1976, p. 40); Council Directive 77/187/EEC of 14 February 1977 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses (*OJ L* 61 of 5 March 1977, p. 26); Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises (*OJ L* 372 of 31 December 1985, p. 31); Council Directive 87/102/EEC for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit (*OJ L* 42 of 12 February 1987, p. 48, last amended by Directive 98/7/EC of the European Parliament and of the Council of 16 February 1998 amending Directive 87/102/EEC for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit (*OJ L* 101 of 1 April 1998, p. 17); Council Directive

These were not integrated *en bloc*, but in the respective context, with due regard to the systematics and terminology of the German law, so as to preserve the internal coherence of the BGB. Throughout the text of the BGB, official notes indicate when a provision, or a set of provisions, serves to transpose EU law (and also indicate the specific directive). Certain provisions are marked as “*also serving to implement a directive*”. This information is provided for the correct interpretation of the provisions of the BGB, as purely national law, as transposed EU-Directive or as a combination of both.

IV New civil law codifications in Romania, the Czech Republic and in Hungary

In this contribution the focus shall be on three EU Member States which have only recently adopted new Civil Codes, namely Hungary, Romania and the Czech Republic. For these countries, this is not the first codification of the civil law but a re-codification. It is not possible to provide in this paper a detailed analysis of three rather comprehensive Civil Codes. Instead, the intention of the author is to give a more general overview and to highlight some matters which may be of special interest in the context of the ongoing Serbian civil law reform.

1. Hungary

The first systematic civil law codification to be applied on Hungarian territory was the Austrian Civil Code (ABGB) of 1811 which was imposed

90/314/EEC of 13 June 1990 on package travel, package holidays and package tours (*OJ L 158 of 23 June 1990, p. 59*); Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (*OJ L 95 of 21 April 1993, p. 29*); Directive 94/47/EC of the European Parliament and of the Council of 26 October 1994 on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a timeshare basis (*OJ L 280 of 29 October 1994, p. 82*); Directive 97/5/EC of the European Parliament and of the Council of 27 January 1997 on cross-border credit transfers (*OJ L 43 of 14 February 1997, p. 25*); Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts (*OJ L 144 of 4 June 1997, p. 19*); Articles 3 to 5 of Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems (*OJ L 166 of 11 June 1998, p. 45*); Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees (*OJ L 171 of 7 July 1999, p. 12*); Articles 10, 11 and 18 of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (“Directive on electronic commerce”, *OJ L 178 of 17 July 2000, p. 1*); Directive 2000/35/EC of the European Parliament and of the Council of 29 June 2000 on combating late payment in commercial transactions (*OJ L 200 of 8 August 2000, p. 35*).

on Hungary by an Austrian imperial order of 1852. Due to the political background, the ABGB was formally in force in Hungary less than ten years, but has nevertheless had a considerable influence since then on the development of the Hungarian civil law.¹³ The Draft for a Hungarian Civil Code of 1928 failed. The first Hungarian civil law codification was finally accomplished in the year of 1959, that is: in the socialist period. After the fall of the communist regime the 1959 Code has been partially revised; it has since been amended numerous times.

The 1959 codification has been abrogated and replaced by the Law No. V/2013 on the Civil Code which went into force on 15 March 2014. The new Hungarian Code is by now available in German as well as in English translation.¹⁴

The prehistory of the Hungarian Civil Code may only be described as unusual. A first version was prepared by leading Hungarian scientists who after ten years of work submitted their draft to the government. However, the Ministry of Justice and the Parliament introduced so many changes that the codification committee, led by Prof. Lajos Vékás, withdrew and published their original draft instead.

The version prepared by the Ministry was adopted in Parliament as the Act No. CXX/2009 on the Civil Code. The entry into force was regulated in a special act from early 2010. However, the Constitutional Court declared the Act on entry into force of the Civil Code as unconstitutional. Then, elections were held and the government changed.

The newly elected government in 2010 enacted a law on the non-entry-into-force of the Civil Code of 2009. Then a new codification committee, again led by Prof. Vékás, was established which submitted a new draft by the end of 2011. However, this draft was again changed substantially by the Ministry and the Parliament. Finally, in February 2013 the Hungarian Parliament again adopted a Civil Code, this time successfully, although controversies with parts of the Hungarian legal community remained. Thus, Professor Vékás as head of the former codification committee, before the adoption of the Code, published an article on “Critique and proposals for improving the draft for the new Civil Code” in a leading Hungarian law journal.¹⁵

13 See Vékás, “Das ABGB und das ungarische Privatrecht”, in: *Festschrift 200 Jahre ABGB*, Vienna, 2011, pp. 307–318.

14 *Polgári törvénykönyv – Bürgerliches Gesetzbuch* [Hungarian and German], Wolters Kluwer, Budapest, 2013; *Polgári Törvénykönyv – Civil Code* [Hungarian and English], Wolters Kluwer, Budapest, 2013.

15 See Vékás, “Bírálat és jobbitó észrevételek az új Ptk. Törvényjavaslatához (a zároszavazás előtt)” [Criticism and improvement suggestions regarding the legislative proposal for the new Civil Code (before the final vote)], *Magyar Jog*, 2013, p. 1.

The Hungarian Civil Code¹⁶ contains no provisions on the repeal or amendment of provisions in other legislative acts which are not in line with the Code. Since November 2013 quite a number of acts have been adopted for harmonizing certain segments of the legislation with the new Civil Code, but this seems to be still an ongoing process. The complexity of the task of adapting the existing Hungarian legislation to the new Civil Code can be demonstrated by Act No. CCLII/2013 “on the amendment of individual acts in connection with the entry into force of the new Civil Code”. This act amended not only 183 Hungarian legal acts. It also amended many provisions of the Civil Code itself, in the very year of adoption, before the Code could enter into force.

The Code stands in the line of Hungarian legal tradition, but has also been influenced in particular by the civil law of the Netherlands, Germany, Switzerland, France, Italy, not to forget Quebec (Canada). The Civil Code of the (French speaking) Province of Quebec entered into force on January 1, 1994; the other parts of Canada are under common law. The Quebec Code received attention in Europe not only from the point of view of comparative law scholarship, but also from legislators especially in Romania, but also in Hungary or the Czech Republic. An indicator for such influence is the introduction of the concept of “trust” in both the Hungarian and the Romanian new Civil Code.

The Hungarian Civil Code also transposes altogether 18 EU directives, in the field of consumer law, company law etc., which are listed in § 8:6 of the Code which is entitled “on conformity with the law of the EU”. The 2009 Hungarian Civil Code (the one which never entered into force) indicated in every single case which provision of the EU directives was transposed in which provision of the Code. This concept has been abandoned. It is therefore not obvious from the 2013 Civil Code which provisions originate from the European law and which don't. Time-sharing has remained outside the Civil Code; for it, a special regulation exists.

The Hungarian Civil Code of 2013 comprises altogether 1,596 provisions (from the three Codes considered in this paper, it is the shortest) and is divided into Eight Books as follows:

- Introductory provisions,
- Natural persons,

16 See in this context Küpper, “Ungarns neues BGB”, *Wirtschaft und Recht in Osteuropa (WiRO)*, 2014 (Teil 1: Entstehung und Inhalt – p. 129 et seq.; Teil 3: Familien- und Erbrecht – p. 205 et seq.; Teil 4: Juristische Personen – p. 234 et seq.; Teil 5: Gesellschaftsrecht Allgemeiner Teil – p. 266 et seq.; Teil 6: Gesellschaftsrecht Besonderer Teil und Sachenrecht – p. 327 et seq.; Teil 7: Allgemeines Schuld- und allgemeines Vertragsrecht – p. 366 et seq.); *WiRO* 2015 (Teil 8: Besonderes Vertragsrecht – p. 12 et seq.; Teil 9 – Gesetzliche Schuldverhältnisse, Wertpapiere, Zivilprozess – p. 46 et seq.).

- Legal persons,
- Family Law,
- Property Law,
- Law of obligations,
- Law of succession,
- Final provisions.

Hungary follows the monistic approach so that the Civil Code covers also the commercial transactions (other than for example the German law).

To begin with a couple of technical remarks: the numbering of provisions is not consecutive, but by Books (for example: § 6:250 indicates section 250 from Book Six), as in the Civil Code of the Netherlands. In the final provisions, the Civil Code provides for (very few) legal definitions (such as: consumer, trader, relatives). It does not follow the Anglo-Saxon tradition of an extensive list of definitions.

There is no General Part. The First Book is very brief and only stipulates some basic principles such as the principle of loyalty and good faith, or prohibition of abuse of rights.

The Second Book on Natural Persons *inter alia* contains an extensive regulation of personality rights, including sanctions for violations. Provisions on the legal consequences of sex change surgery (gender reassignment) were contained in the first draft but have since been deleted from the Code.

The Third Book on Legal Persons covers also most of the company law. For Hungary this is a new concept. Before, associations and foundations were regulated in the Civil Code and commercial companies in the Company Law Act. As a consequence, the Company Law Act has meanwhile been repealed.

Family law has previously been regulated by special legislation and is now transferred to the Civil Code. The Fourth Book on Family Law may be described as following a rather conservative approach. It begins with some general principles (protection of marriage and of family, protection of children, equal rights of spouses, protection of the weaker party). Marriage is defined as a union of man and wife (no same-sex marriage).

Some (few) provisions deal with “domestic partnership”. The legal definition of domestic partnership is provided in the obligation law (§ 6:514 *et seq.*), in the sense of cohabitation of two persons without marriage. This includes heterosexual as well as same-sex cohabitants. The family law section of the Code regulates the consequences of the termination of a partnership, that is: the right to maintenance claims and the right to use the former common home.

The Civil Code in a random way also refers to “registered” domestic partnership (§ 6:514). The first attempt to regulate registered partnerships

was at the time stopped by the Constitutional Court which argued that the introduction of a registered partnership, for same-sex as well as for heterosexual couples, would damage the institute of marriage which enjoys special protection under the Hungarian Constitution. The matter has been regulated separately, in Act No. XXIX/2009 on the registered partnership which applies only for same-sex couples.

Book Five now regulates the “property law”. Previously, the 1959 Civil Code regulated in one part of the Code the “ownership”, and limited real rights in the context of another part, namely the part on obligations as was the socialist tradition. The new part on property law extends also to pledge, including registered pledges on movables and mortgage. It also regulates the substantive land registry law. The Act on land registry has been amended accordingly. Apartment ownership is regulated by special legislation.

Book Six on Obligations regulates the contractual and non-contractual obligations, as well as securities. The Special part contains a very long list of standardized contracts, including modern types of contracts. For provisions on trust see § 6:310 et seq. The individual labor contract is, however, regulated in the Labor Act.

At the very end of the list of standardized contracts we find the contract on the afore-mentioned “domestic partnership” (§ 6:514 et seq). Cohabitants may conclude an agreement on their property relations. Failing such agreement, each partner is entitled to compensation for the property growth which has been acquired during the time of cohabitation, depending on the individual contribution to the increase in value.

Book Seven deals with the law of succession and contains only few novelties. Book Eight regulates entry into force as well as transposition of EU directives.

2. Romania

The first Romanian Civil Code was adopted in 1864; it was heavily influenced by the French Code Civil. The 1864 Code was not repealed, but substantially amended in socialist times. In 2009 a new Romanian Civil Code was adopted which went into force on 1 October 2011. There is a French translation available.¹⁷ The reform of the Romanian Civil Code has a complex prehistory. Before the Second World War, the Kingdom of Romania prepared a new Code which was adopted in Parliament but never went into force. Repeated attempts for re-codification in the socialist period also failed. Then, in

17 See Laporte-Legeais, Moreau (eds.), *Noul cod civil-Nouveau code civil roumain, traduction commentée; traduction de la loi roumaine n. 287 du 17 juillet 2009 portant Code civil, telle que modifiée par la loi no. 71 du 3 juin 2011 de mise en application*, Paris, 2013.

the 90ies a codification committee was formed which included leading Romanian experts. They prepared a draft, but then the government changed and the draft was published but not adopted. Another committee finalized the draft, which was adopted in 2009, however without fixing the date of entry into force.

For this purpose, another committee was founded in 2010 which prepared a separate act for entry into force. The Act on entry into force of the Civil Code was adopted in June 2011 (and amended by Act No. 60/2012). In the Official Journal it fills no less than 50 pages. The reason for preparing such a lengthy act was that it contains not only transitory provisions and amendments in other pieces of legislation, but also many changes in the Civil Code itself (from p. 4 to p. 47 of the Official Journal). A large number of amendments to the Code were thus made even before the entry into force.

The Romanian Civil Code on the one hand carries on the Romanian (French-oriented) tradition. But on the other hand there was also a very strong influence from overseas, from the already mentioned Canadian Province of Quebec. The *Agence Canadienne pour le Développement International* supported cooperation between Canadian and Romanian experts. Official language of Quebec is French, the Romanian language belongs to the family of Romanic languages. In Quebec as well as in Romania there has traditionally been a strong influence of the French law. As a consequence of the dialog of experts, the new Romanian Civil Code follows the concept of integrating elements from the Quebec law into a French-based legal system, in combination with transposition of EU law, integration of international transactions law etc.

In the Romanian Code also solutions with origin in the common law can be identified. In addition, there is a substantial influence from soft law sources, e.g. as regards torts from the Draft Common Frame of Reference (DCFR) or, on contracts, from the Principles of European Contract Law (PECL). It is not surprising that the Romanian Civil is not always enough consistent, which may create problems in the practice.

The Romanian Civil Code comprises altogether 2,664 provisions and is divided into seven Books. Following French tradition, there is no general part. The structure of the Code is as follows:

- Introductory provisions,
- Persons,
- Family,
- Property,
- Succession,
- Obligations,

- Prescription etc,
- Private international law.

As regards scope, the Romanian Civil Code reintegrated the family law which previously had been regulated by a special act. The Code extends to private international law but does not regulate company law.

Romania now follows the monistic approach so that the Civil Code covers also commercial transactions. This is a new development. Before, Romania had a dualistic system. Commercial transactions were regulated in the Commercial Code from 1887 which was disregarded in socialist times but applied again after 1990. The new Civil Code will apply to business-to-business, business-to-private and to any other civil law entities (Art. 3).

As has been mentioned before, the Code introduced the concept of “trust” into the Romanian law, by regulating in detail “fiduciary” (Articles 773 to 791) and “administration of another’s property” (Articles 792 to 857). Romanian trust reflects various influences. Many provisions were copied from the Quebec Code, others are based on the French Civil Code as amended in 2007.

The Romanian Code does not expressly refer to any EU directives. As can be seen from the following remarks, EU consumer contract law was on principle transposed outside the Code, by special legislation. The same holds true for product liability (Art. 1.349).

Thus, the Distance Selling Directive (97/7/EC) and the Directive (85/577/EEC) regarding contracts negotiated away from business premises were at the time transposed by separate governmental regulations. The Unfair Terms Directive (93/13) was transposed in the Act No. 193/2000. As regards the Consumer Rights Directive 2011/83/EU, deadline for implementation was 13 December 2013, and for applicability of harmonized provisions – 13 June 2014. To this purpose the Romanian government passed Emergency Regulation no. 34/2014 on 4 June 2014 on the rights of consumers in respect to contracts concluded with traders and on modification and supplementation of some legal acts.¹⁸

The Code also extends to private international law. The Romanian private international law has first been codified in the Act No. 105/1992 on private international law relationships. This Act has been repealed and the rules on conflict of norms are now to be found in Book Seven of the Civil Code. However, a large number of issues from the field of private international law are now dealt with in regulations of the EU. Within the scope of application of such regulations, the Member States are no longer competent. As regards contractual and non-contractual obligations and maintenance, the Civil Code simply refers to “regulations of the European Union”.

¹⁸ *Monitorul Oficial* no. 427/2014.

In 2010 the EU adopted a regulation on the law applicable to divorce (Rome III Regulation).¹⁹ The Rome III Regulation was promulgated in the Official Journal of the EU on 29.12.2010. It is applicable in Romania as from 21 June 2012. The Romanian Civil Code was amended in June 2011 and went into force on 1 October 2011. EU law has priority over the national law (Art. 5 Civil Code). Nevertheless, the Romanian Civil Code reserves no fewer than six provisions to the law applicable to the dissolution of marriage (Articles 2597 to 2602 CCiv.). These provisions are not even a copy of Rome III, although similarities exist. Articles 2597 et seq. applied for only a few months, because then the Regulation went into force, but they still have not been deleted from the Civil Code.

It should be mentioned that in the context of private international law, the Romanian Civil Code regulates also the law applicable to fiduciary (Articles 2659 to 2662).

3. Czech Republic

Former Czechoslovakia adopted a first Civil Code in 1950 and a second in 1964. The 1964 Code was taken over after the breakup by the Czech Republic and has since been amended many times. It has now been replaced by the new Civil Code (Act 89/2012 Sb.) which went into force on 1 January 2014. In 2012 the Czech Republic also adopted new Acts on company law and on private international law, both of which are regulated by separate acts. So far, apparently no translation of the Civil Code exists.²⁰

The Czech Civil Code follows the monistic approach and applies also to commercial transactions. The Code comprises 3,081 provisions and is divided into five parts. The structure is the following:

- General part,
- Family law,
- Absolute property rights,
- Relative property rights,
- Transitional and final provisions.

The “absolute property rights” include property and succession. The expression “relative property rights” designates the law of obligations.

19 Council Regulation (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation, *OJ L* 343/10.

20 For details see Bohata, “Neugestaltung des tschechischen Zivilrechts”, *WiRO*, 2011 (Teil 1: Allgemeiner Teil des zukünftigen BGB – p. 353 et seq.); *WiRO*, 2012 (Teil 2: Sachen und Rechtsgeschäfte – p. 7 et seq.; Teil 3: Verjährung und Präklusion – p. 105 et seq.; Teil 4: Juristische Personen – p. 133 et seq.; Teil 5: Internationales Privatrecht – p. 193 et seq.); *WiRO*, 2014 (Teil 6: Einführungsgesetz zur Privatrechtsreform – p. 1 et seq.).

In 2013 an Introductory Act to the Civil Code was adopted. Adaptation of the Czech legal order to the new Civil Code is dealt with in a brief omnibus clause (§ 3029 of Civil Code). The Introductory Act limits itself to those amendments which directly result from the entry into force of the Civil Code. Therefore, in the Czech Republic adaptation of the legal order to the Civil Code is a step-by-step process.

The Czech Civil Code combines various influences. Besides continuation of the own legal tradition, in particular of the draft Civil Code from 1937, it contains elements from the EU law and also reflects the experience from continental civil codes such as Austrian ABGB and German BGB. But also the Quebec Civil Code has been taken into consideration.

The Czech Consumer protection act has remained in force but deals only with the public law aspects. The civil law aspects of the Acquis in the field of consumer law have been integrated into the new Civil Code, including the Consumer Rights Directive. Product liability has been transferred from special legislation to the Civil Code.

Family law has been re-integrated into the general civil law; before, it was regulated by special legislation. Same-sex partnership will also in future be regulated by special legislation and not in the Civil Code.

From the three Codes discussed in this paper, only the Czech Civil Code contains a genuine General Part. In this respect, it follows a pattern similar to that of the Serbian reform project. However, the Czech General Part is much larger and comprises no less than 654 sections. It regulates in detail:

- Selected general principles,
- Persons (natural persons, legal persons),
- Agency,
- Movable and immovable things,
- Arising, change and termination of legal relationships.

As regards the general principles of the civil law, the new Code emphasizes party autonomy. The scope of application of party autonomy has been extended considerably.

Legal person regulated in the Civil Code are in particular associations, foundations and institutions. Section 489 of the Code provides a legal definition of a “thing” (“all that is not a human being and is destined to fulfil human needs”). Therefore under Czech law, even energy, or intellectual property are considered “things”. As regards movable and immovable things, the Code re-introduces in Section 506 the principle of *superficies solo cedit*, meaning that buildings are legally considered part of the land.

V Final remarks

Continental Europe can look back on a unique heritage of civil law codifications: French Code Napoleon, Austrian ABGB, German BGB, Italian Codice Civile, Swiss Civil Code, Código Civil of Portugal, Código Civil of Spain, Greek Civil Code, Civil Code of the Netherlands, Civil Code of the Russian Federation and others. Intensive comparative legal research has been made on all of these and has proved exceptionally fruitful. The intention of this paper is to draw attention to the new Civil Codes of Hungary, Romania and the Czech Republic as the most recent codifications in Europe.

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НОВЕ КОДИФИКАЦИЈЕ ГРАЂАНСКОГ ПРАВА У НЕКИМ ДРЖАВАМА ЧЛАНИЦАМА ЕУ КАО МОГУЋИ МОДЕЛИ ЗА РЕГИОН ЗАПАДНОГ БАЛКАНА

Резиме

Србија ипренуићно иприићрема нови Граћански законик. Слични наићри се чине и у друићм деловима Заићадноић Балкана (Македонићја, Косово). Овај рад се бави наићновићјим кодификацићјама ићраћанскоић ићрава у Евроићи (нови Граћански законик Маћарске, Румунићје и Чешке Реићублике) имајућћи у виду ићозадићну евроићскоић ићриваићноић ићрава.

Кључне речи: *нови српски Граћански законик, реформе ићраћанскоић ићрава у Заићадном Балкану, ићриваићно ићправо ЕУ, маћарски Граћански законик, румунски Граћански законик, чешки Граћански законик.*