

THE PATH TOWARDS THE CODIFICATION OF CIVIL LAW IN NORTH MACEDONIA AND THE BALKAN COUNTRIES - THE DILEMMA BETWEEN MODERN AND TRADITIONAL

Abstract

The codification of civil law represents one of the most significant legal and civilizational achievements in the history of law. Codification as a notion represents the process of collecting and scientifically arranging the laws that regulate legal and social relations into a single legal document, i.e. code, officially promulgated by the legislative organ of the state. The codification of civil law remains one of the greatest challenges of our legislation, with our legislation being among the rare legislations that deviates from the European tradition of codification of civil law, and struggles with the dilemma between modern and traditional. The complexity of the contemporary legal systems, and the rapidly changing social aspects, create many challenges that require a constant review of the legal frameworks and innovative solutions to overcome the challenges with which our legal systems are confronted. The aim of this paper is to contribute to our knowledge regarding the process of the codification of the civil law internally, regionally and internationally. The focus of the author is particularly on providing a comparative analysis of the process of the codification of the civil law in the Republic of N. Macedonia, the Western Balkan countries, and the European tradition of codification of the civil law. The objective of this analysis is to highlight the benefits of the enactment of the Civil Code in general, and in our state in particular, considering it as a step that would contribute in the improvement of the legal system, the facilitation of interpersonal legal relations, and the work of legal practitioners. The results presented through the elaboration and study of the findings from the domestic and foreign literature, from the comparative analysis of the various legal solutions in the above-mentioned research, emphasize the need for the swift adoption of the Civil Code and the importance of abandoning the habit of our legislators to separately regulate civil law regulations, as well as accepting the European tradition of codification of the same. This will enable greater legal and economic certainty, systematization of legal regulations and harmonization of domestic and European legislation.

Key words: civil law, codification, comparative analysis, modernization, harmonization.

1. INTRODUCTION - NOTION AND IMPORTANCE OF THE CODIFICATION OF THE CIVIL LAW

The codification of civil law represents one of the most significant legal and civilizational achievements in the history of law. Codification as a notion represents the process of collecting and scientifically arranging the laws that regulate legal and social relations into a single legal document, i.e. code, officially promulgated by the legislative organ of the state. The idea of

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codification of the law, though primitive, derives from the ancient times. In the following pages, we will briefly address the historical overview of the process of codification of the law.

Anyone may wonder, why is the codification of civil law so important, why is it even required? Why not proceed with the traditional approach of enacting special laws for each area of the civil law? First of all, the complexity of the contemporary legal systems, and the rapidly changing social aspects, create many challenges that require a constant review of the legal frameworks and innovative solutions to overcome the challenges with which each legal system is confronted. Thus, by codifying the civil law in one legal act, the legislator will reinforce the concept of the rule of law. Currently, in our legislation, and not only, there are many ambiguities between the legal acts, due to the fact that our legislators keep regulating the civil law relations through the special laws, failing to unify them with the provisions of the general laws. Another important reason that justifies the enactment of the Civil code, is the greater accessibility and better visibility of solutions for different issues.

Given the fact that one of the most important steps toward the integration of our state and the remaining Balkan states in the EU will be the harmonization of our legislations with the legislation of the EU, the codification facilitates the process of harmonization of the domestic legislations with the legislation of EU, by providing a general framework and points of reference for the specific legislation in question. However, the codification of civil law remains one of the greatest challenges of our legislation, with our legislation being among the rare legislations that deviates from the European tradition of codification of civil law, and proceeds struggling with the dilemma between modern and traditional.

2. THE CURRENT SITUATION OF CODIFICATION OF THE CIVIL LAW IN THE BALKAN COUNTRIES, WITH PARTICULAR EMPHASIS IN NORTH MACEDONIA

When talking about the Balkan countries, we must emphasize the fact that with some of the countries of the Western Balkans, North Macedonia has a common past, that is, they were under one legal system within Yugoslavia. The legal system of Yugoslavia was influenced by the Austrian common law, which had a great influence on the preparation of the Serbian Civil Code. Within the countries that were part of Yugoslavia, the first important codification, i.e. Serbian Civil Code was adopted in 1844 and remained effective in the Kingdom of Serbia and the respective part of Kingdom of Yugoslavia until 1946. Essentially it represented a locally customized (by incorporating some Serbian legal customs) and abbreviated version of the General Civil Code of Austria (ABGB). In the territory of former Yugoslavia (with exception to Macedonia), the following codes were applicable:

- Austrian Civil Code of 1811
- Serbian Civil Code of 1844 and
- General Property Code of the Principality of Montenegro of 1888¹.

Apart from these already applicable civil codes that were used in the legislation of the former Yugoslavia, the federation did not succeed to adopt its' own codified law and therefore “... *in Yugoslavia there was neither legal uniformity nor a uniform civil code*”²

¹ Opšti imovinski zakonik za Knjaževinu Crnu Goru, 1888.

² Cserne P.:Drafting civil codes in central and eastern Europe – A case study on the role of legal scholarship in law-making, Pro Publico bono online, 2011, available on 15th October 2013 on <http://www.propublicobono.hu/pdf/Cserne%20P%20Tamop%201.pdf>

The legal authorities in Yugoslavia attempted to codify the civil law as well, but only as a partial codification of the *property law, law on obligations and law on inheritance* that had resulted in the enforcement of several federal laws important for the civil law. These laws were the following: Law on inheritance, “Official Gazette FPRJ”, No. 20/55;³ Law on basic property relations, “ Official Gazette SFRY” No.6/80, 20/80 and 36/90;⁴ Law on obligations, “Official Gazette SFRY “No. 29/78, 39/85 and 45/89⁵.

After the collapse of the Federation, initially, in all former socialist republics, the existing federal legislation continued to be applied, but in accordance with their constitutions, now as republican. Where new laws were passed, the existing federal laws were still adopted as republican, only amended and supplemented.

Cases of completely new laws being passed were rare. However, over time, the process of regulating legal areas and completely new legal regulations was initiated. Each of the independent republics began its own path towards undertaking activities to regulate, among other things, civil law matters. For us, for the purposes of this paper, the steps regarding the codification of the civil law area are particularly important, so we will refer to that part.

In **Bosnia and Herzegovina**, the regulation of civil legislation is within the competence of the entities, i.e. Republika Srpska and the Federation of Bosnia and Herzegovina. Thus, in the sphere of property law, in Republika Srpska the ZOSPO is still applied, while in the Federation of Bosnia and Herzegovina a new *Zakon o osnovnim vlasničkopravnim odnosima*⁶ However, a Draft Law on Real Property Rights of Republika Srpska/Federacije Bosne i Hercegovine has also been developed.⁷

As a result of the abovementioned, Bosnia and Herzegovina holds the status of the most fragmented civil law among the ex-Yugoslavian republics. According to the 1995 Dayton Agreement⁸, there is no legal uniformity in the state in civil law matters: the two entities (the Federation of Bosnia and Herzegovina and the Republic Srpska) and Brcko district have legislative competence and separate laws. The legal system of Bosnia and Herzegovina and the civil law is based on the Yugoslavian law tradition. To be more precise, on the territory of Bosnia and Herzegovina the Austrian Civil Code was applicable (*Allgemeines Bürgerliches Gesetzbuch*).

After the breakup of Yugoslavia, the Federal Law on basic property relations (ZOSPO/ Official Gazette SFRY “No.6/80)⁹, proceeded to be in use in Republic Srpska; on the other side, in the Federation of Bosnia and Herzegovina a new Law on basic property relations was adopted in 1998 (“Official Gazette FBiH”, br. 06/98), although these two acts don’t differ substantially.¹⁰ In Brcko district, a new Law on property and other rights in real things was adopted (“Official Gazette Brcko District BiH”, br.11/01, 08/03 and 40/04). With this act, the property law of Brcko

³ Law on inheritance, “Official Gazette FPRJ”, No. 20/55

⁴ Law on basic property relations, “ Official Gazette SFRY” No.6/80, 20/80 and 36/90

⁵ Law on obligations, “Official Gazette SFRY “No. 29/78, 39/85 and 45/89

⁶ Sluzbene novine FBiH, br.06/98.

⁷ D.Medić, *Hipoteka u budućem zakonodavstvu Bosene i Hercegovinu*, Zbornik radova “Aktualnosti građanskog i trgovačkog zakonodavstva i pravne prakse”, 6, Pravni fakultet, Mostar, 2008, strp.201.

⁸ More on the agreement available on 16 November 2013 on <http://www1.umn.edu/humanrts/icty/dayton/daytonaccord.html>

⁹ Available in English on http://www.eulex-kosovo.eu/training/justice/docs/Law_on_Basic_Property_Relations.pdf on 17 October 2013

¹⁰ D.Medić D.:*Hipoteka u budućem zakonodavstvu Bosne I Hercegovine*, Zbornik radova”Aktuelnosti građanskog I trgovačkog zakonodavstva I pravne prakse”, 6, Pravni fakultet, Mostar, 2008, page 201

District was reformed along the lines of Croatian law¹¹. The law of inheritance is still regulated with the Federal Law of inheritance (“Official Gazette SR BiH”, No 07/80. As for the area of obligations, in the entities, it was regulated with the Federal Law on Obligations that was enacted in 1978. However, in 2003 a Draft of Law on obligations of Republic Srpska and the Federal Bosnia and Herzegovina¹² was prepared. The draft presents a thorough reform of the Federal law of obligations of 1978, including all the relevant decisions from the EU Directives in this area, and also regulating the relations that were not regulated with the federal law, such as lease of real estate and offices, leasing, franchise, etc.

Nevertheless, analyses show that in Bosnia and Herzegovina “*There is no uniformity or a general tendency towards harmonization in the state, i.e. between entities. Up to now, the two entities have harmonized their new laws only in two particular areas (land registry, public notaries) but even this does not include the laws of the Brcko district. Thus, a new uniform civil code is clearly not on the near plans in Bosnia and Herzegovina. The most urgent and most complicated reforms concern property law which is currently a rather chaotic conglomerate of the remnants of socialist property rules and transplanted Austrian, German and US laws.*”¹³

In **Serbia**, property law is still regulated by the provisions of the ZOSPO, which has undergone one amendment¹⁴, which has resulted in a certain purification of some outdated solutions from the socialist system, and the name of the law itself has also been changed (now it reads: Law on the Fundamentals of Property Relations). A number of special laws have been adopted in the area of property law, and a procedure has been initiated for a draft general law in this area, but it has not yet been adopted.¹⁵

Discussions on a new uniform civil code in Serbia started in 2002. As an important argument towards the codification was the historical reference to the first Serbian codification from 1844 (which was itself an adaptation of the ABGB). Thus, in 2006, upon a governmental decision, a commission was appointed for the drafting of a new civil code. In 2007, they published a book on the general aims of the codification and a set of questions and possible answers on diverse legal issues in order to generate public debate. In 2009 a draft of book 4 on the law of obligations was published. The Code itself was planned to follow the German model, including general rules and principles of private law (Book 1), family law (Book 2), and the law of succession (Book 3), the law of obligations (Book 4) and property law (Book 5). The drafters rely on an eclectic mix of foreign models, including European law and PECL¹⁶

In **Montenegro**, property law is still regulated by the provisions of the ZOSPO, renamed the *Zakon o osnovama svojinskopравnih odnosima*. Since 2009, the new *Zakon o svojinsko-pravnim odnosima* has been in force.¹⁷ However, the first codification in Montenegro dates from

¹¹ Ibid, pg.200.

¹² Available on 17 October 2013 on <http://ruessmann.jura.uni-sb.de/BiH-Project/Data/Obligacije.pdf>

¹³ Cserne P.: Drafting civil codes in central and eastern Europe – A case study on the role of legal scholarship in law-making, Pro Publico bono online, 2011, available on 15th October 2013 on <http://www.propublicobono.hu/pdf/Cserne%20P%20Tamop%201.pdf>

¹⁴ Службени лист СРЈ, бр.29/96.

¹⁵ see: B.Xhaferi Beqiri, “Acquisition of the right of ownership in the macedonian and comparative law”, PhD Thesis, Skopje, 2025, pg.179.

¹⁶ Rad na izradi Građanskog Zakonika Republike Srbija – Izveštaj Komisije sa otvorenim pitanjima, Komisija za izradu Građanskog Zakonika, Vlada Republike Srbije, Beograd, 2007 p. 83. See also: M.Ampovska, R.Ilioski, The process of civil law codification in Western Balkans, pg.14.

¹⁷ “Sl.list CG”, br. 19/2009

1888 (Opšti imovinski zakonik za Knjaževinu Crnu Goru)¹⁸. The structure of this code does not follow the Gaius systematic (the Institutional system), or the pandectist system. It doesn't include family and inheritance law, and has therefore been designated as property code. This code was in force on the territory of the Principality of Montenegro (1852– 1910) that later became the Kingdom of Montenegro (1941-1944) in the area of the law of property and obligations. The family and inheritance relations, which were left out of this code, were regulated with the customary law.

With the formation of the Federal People's Republic of Yugoslavia (FPRY) and the constitution that came into force in 1946, all the legislation was proclaimed out of force, including this code. Its' rules continued to be in use, but only as a rule of law that were in accordance with the new constitution and the new social, political and economic situation. This code was applied until 1970's when in SFRJ new federal laws in the area of obligations, property and inheritance came into force. Currently, this code is part of the history of the Montenegro's legal system and Montenegro does not have civil law codification in force. The civil law areas are partially codified and regulated with the following separate laws: Law on property relations, "Off. Gazette of Montenegro" No.19/09; Law on Obligations "Off. Gazette of Montenegro", no. 47/08; Family Law "Off. Gazette of Montenegro", no. 01/07 and the; Law on Inheritance "Off. Gazette of Montenegro", no. 74/08.

The Republic of **Croatia** and the Republic of **Slovenia**, in a similar way to Montenegro, codify civil law only sectorally, by adopting a general law and special laws for specific areas.

In **Kosovo**, civil law has not yet been codified, with property law being regulated only through particular laws. In addition, in Kosovo, based on a decision of the Government in 2015, and in cooperation with the EU project "Support to the Preparation of the Civil Code and Regulation of Property Law Relations", concrete steps have been taken towards the codification of civil law.

The Commission's commitment to the preparation of the Civil Code is aimed at strengthening the rule of law in Kosovo, and in particular at improving and harmonizing Kosovo's legislation with European legislation. In relation to these activities, the Commission has prepared a Draft Civil Code of the Republic of Kosovo, which remains to be voted on and adopted by the Assembly of the Republic of Kosovo.¹⁹ After the end of the war in 1999, Kosovo's jurisdiction became complex due to the simultaneous application of different laws: the UNMIK regulations (since Kosovo was initially placed under the UNMIK administration²⁰, and declared its independence on 17 February 2008 consolidating the state organization based on the Constitution of the Republic of Kosovo²¹), previous laws, and the legislation adopted by the Assembly of Kosovo from 2001 onwards. Thus, these circumstances have had an impact and caused different interpretations and inconsistent application of the laws in the same cases, which among other issues points to the need for codification.

The lack of clear and uniform law implementation in court cases related to the civil law matters is also considered an issue that can be resolved by the harmonization of civil law through

¹⁸ The original text of this code can be found in: Stupar M.: Zbornik građanskih zakonika stare Jugoslavije, Titograd, 1960, page 1-151.

¹⁹ See more at: Official web page of Ministry of Justice of Kosovo: <https://md.rks-gov.net/page.aspx?id=1.94>

²⁰ United Nations Interim Administration Mission in Kosovo or UNMIK (hereafter UNMIK). For more information, see UNMIK Regulation No. 1999/1, promulgated on 2 July 1999, available at: https://unmik.unmissions.org/sites/default/files/regulations/02english/E1999regs/RE1999_01.htm (15 March 2022)

²¹ See Constitution of the Republic of Kosovo, adopted on 9 April and entered into force on 15 June 2008, Gazeta Zyrtare e Republikës së Kosovës, K-09042008, 9 Prill 2008 (Official Gazette of the Republic of Kosovo), available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702>

a civil code.

As a result of that, changes also occurred in the field of civil law, so that special laws were enacted.²² Since 1999 there has been a mixture of legislation in force²³ which causes difficulties in implementation²⁴.

In the period after the war, the harmonization of civil law through a process of codification was seen as a solution to distinguish the legal system of Kosovo from that of former SFRY and remove any conflicting or confusing elements thereof. In this regard, harmonization of civil law was recognized as the first step in the harmonization and modernization of Kosovo's legislation, and strengthening of the rule of law in Kosovo.²⁵ The aim of the codification has been to consolidate civil law regulations, resolve inconsistencies and fill the gaps.

The idea of codifying civil laws was formally brought to the forefront again in 2014-2015, when the Ministry of Justice initiated the process of drafting of the Civil Code, and the Government established the State Commission for the Civil Code²⁶. This process was also supported by the European Commission through a project for supporting the Civil Code (divided into two phases: Phase 1, 2014-16, and Phase 2, 2017-2020, with an extension until the end of April 2022). The first phase of the project included the preparation of many research documents and publication of the first draft of the Civil Code, which included four books, i.e., Book on Obligations, Ownership,

²² See Law No. 2004/26 on Inheritance, *Gazeta Zyrtare e Kosovës* (Official Gazette of Kosovo), no. 2005; Law No. 2004/32 on Family, *Gazeta Zyrtare e Kosovës* (Official Gazette of Kosovo), no. 4/1 September 2006; Law No. 02/L-17 for social and family services, *Gazeta Zyrtare e Kosovës* (Official Gazette of Kosovo), no. 12/01 May 2007, with changes in 2012; Law No. 03/L-154 on ownership and other real rights, *Gazeta Zyrtare e Republikës së Kosovës* (Official Gazette of the Republic of Kosovo), no. 57/4 August 2009; Law No. 04/L-077 on Obligations, *Gazeta Zyrtare e Republikës së Kosovës* (Official Gazette of the Republic of Kosovo), no. 16/19 Jun 2012; Law No. 2002/5 on the establishment of the register of immovable property rights, *Gazeta Zyrtare e Republikës së Kosovës* (Official Gazette of the Republic of Kosovo), no. 34/1 August 2008, with subsequent amendments of 2011 and 2013, *Gazeta Zyrtare e Republikës së Kosovës* (Official Gazette of the Republic of Kosovo), no. 7/10 August 2011; Law No. 04/L-013 on cadaster, *Gazeta Zyrtare e Republikës së Kosovës* (Official Gazette of the Republic of Kosovo), no. 13/11 September 2011

²³ UNMIK Regulation No. 1999/24 on the Law Applicable in Kosovo, amended by Regulation no. 2000/59, Article 1.1 and 1.2: "1.1 The law applicable in Kosovo shall be: (a) The regulations promulgated by the Special Representative of the Secretary-General and subsidiary instruments issued thereunder; and (b) The law in force in Kosovo on 22 March 1989. In case of a conflict, the regulations and subsidiary instruments issued thereunder shall take precedence. 1.2 If a court of competent jurisdiction or a body or person required to implement a provision of the law determines that a subject matter or situation is not covered by the laws set out in section 1.1 of the present regulation but is covered by another law in force in Kosovo after 22 March 1989 which is not discriminatory and which complies with section 1.3 of the present regulation, the court, body or person shall, as an exception, apply that law.

²⁴ Gashi, H., The legal conflict regarding the privatization of socially owned enterprises: Amendments to the Law on the Special Chamber of the Supreme Court, the Law on PAK and other relevant laws, *Hanse Law Review*, vol. 8, no. 1, 2012, p. 67-68.

²⁵ European Union Office in Kosovo, Support to Civil Code and Property Rights, Press release, Pristina, 9th October 2014. The declaration states: "The EU funded Project Support to the Civil Code and Property Rights" was presented today in Pristina. The overall objective of the project is to strengthen the rule of law and harmonize Kosovo legislation with the European standards in the area of civil law and property rights. The project aims to draft a comprehensive Civil Code and to start the process of improving the overall coherency of the regulatory framework on property rights in Kosovo, in compliance with EU Acquis and European best practices

²⁶ See Government Decision on the Establishment of the State Civil Code Commission no. 09/18 dated 11 March 2015. The author of this paper was also a member of the Commission and an expert in other working groups from 2017-2021.

Family, and Inheritance, but lacked Book 1 – General Part.²⁷

Frequent changes of the government affected the legislative responsibilities regarding the Civil Code, which led to a transfer of responsibilities to the Ministry of Justice in 2017. The frequent changes in governments and ministers of justice also impacted the composition of the Civil Code working group, resulting in a delay in systematic work on the codification. The Final Draft of KDCC was immediately sent to the Assembly for further proceeding of approval and was distributed to the members of the Assembly on 17 January 2022.²⁸

When speaking of **Albania**, it is important to mention that before the official Civil Codes during its existence as an independent state, it had some customary codes, which were applied in different regions of Albania. One of the oldest and renowned Albanian code was the Kanun of Lek Dukagjin (Kanuni i Lekë Dukagjinit). It is a type of collection/codification of Albanian customary law. This collection of customary law was named after Lek Dukagjini (1410–1481), a medieval prince of the Dukagjin region who ruled Northern Albania and codified customary law²⁹.

Albanian customary law is one of the oldest in Europe, dating from 1400–1900. The difference is that it is not born from a legislator or parliament, but rather from the predecessors of the state, as the customary rules were orally transmitted from generation to generation, for 500 years in a row. The first systematized copy was published in the 19th century, more precisely in 1933, by Shtjefen Gjechovi. This Kanun was mainly applied in the northern part of Albania, but, in addition to it, there were other Kanuns or collections of customary laws, depending on the territorial application (such as the Kanun of Debar, the Kanun of Laberia, the Kanun of Skanderbeg, the Kanun of Luma, the Kanun of Chamëria, etc.)³⁰

Later on, during its existence as an independent state, Albania has had two different Civil Codes. The first, adopted in 1928, as a draft prepared by a Commission of five members, which was strongly patterned on the French (1804 Code Civil) and Italian (1865 Codice Civile) models. The second Civil Code of Albania, adopted in 1981, inspired by Marxist-Leninist doctrine. “In consequence, at the start of the transition in 1990, very basic legal institutions were missing, such as general full legal capacity, freedom of contract and unlimited debtor’s liability”³¹ After the breakup of the communist regime, in the early 1990s, there was a relatively quick legal reform in the country, with massive assistance from a large number of international organizations and foreign entities, including the IMF, the World Bank, the German, Dutch, Italian governments, the Soros Foundation, the “International Development Law Institute”, the American Bar Association, and Task Force Albania set up by the Council of Europe.

The drafting process of a new civil code was long and complex, at least compared to other statutes that were adopted with much haste³². Even though the drafters relied on existing codes, they mainly relied on more recent Western European models (like: the Italian Civil Code, the Swiss Civil Code, the French Civil Code, the new Dutch Civil Code, the old Communist code and an IMF draft). “The project stressed as particularly important the adoption of new legislation in the field of civil and commercial law for three main reasons. The civil code entered into force on 1

²⁷ See First Draft of Civil Code, available at: <https://md.rks-gov.net/desk/inc/media/A1CCB78F-9020-41D5-826E-14D67A90F369.pdf> (22 March 2022).

²⁸ Gashi H, Codification of Civil Law in Kosovo: An analysis of the main principles of Book one- General part of the Kosovo Draft civil code, pg.10.

²⁹ https://en.wikipedia.org/wiki/Code_of_Lek%C3%AB_Dukagjini

³⁰ <https://kanuni.org/rreth-kanunit>.

³¹ Larouche P., Cserne P.: National legal systems and globalization: New role, continuing relevance, Springer, 2012, p.61.

³² According to <http://www.propublicobono.hu/pdf/Cserne%20P%20Tamop%201.pdf>

November 1994³³ (Law No 7850 of 29 July, 1994). It is consisted of five parts, following the German tradition: general part, ownership and property, inheritance, obligations and contracts, and other laws in the civil law area.

As for the codification of the civil law of the Republic of **North Macedonia**, we can analyze from the period before the adoption of the Constitution of the Republic of Macedonia in 1991, up to the present day. Thus, until 1912, in the territory of today's N.Macedonia as a province of the Ottoman Empire, the so-called Medzhele (Ottoman Civil Code) was in force, which was a kind of substitute for the Civil Code, and for the Macedonian citizens, customary rules were predominantly in force.³⁴

After this period (with a short interruption during the First World War when Bulgarian law was in force in Macedonia) it was incorporated into the Serbian, and after 1918 into the state and legal system of the Kingdom of Serbs, Croats and Slovenians. This means that during this period the Serbian Civil Code of 1844 was in force in Macedonia, which left wide scope for the application of customary law.³⁵ Despite the efforts of the then Yugoslav state to codify civil law, this was not achieved, so the federal state enacted laws by which the three main parts of civil law (property, obligations and inheritance) were legally regulated, i.e. codified at the sectoral level (through the adoption of the Law on Inheritance of 1955³⁶; The Law on Obligations of 1978³⁷, and the Law on Basic Property and Legal Relations of 1980³⁸).³⁹

With the adoption of the Constitution of the Republic of Macedonia in 1991, the first step was taken in the process of codification of civil law, so that ownership pluralism was elaborated through several laws. However, this process was slow, because the pivotal civil law laws in the Republic of Macedonia were adopted only ten years after the adoption of the Constitution of the Republic of Macedonia.⁴⁰

The beginning of the idea for codification of civil law in the Republic of Macedonia dates back to 2009, when the idea for drafting a Civil Code by Professor G.Galev was presented by the Ministry of Justice of the Republic of Macedonia. However, it took 3 years for the Government of the Republic of Macedonia to decide to form a Commission for drafting a Civil Code. In fact, this process was formally and legally initiated in 2011, with the launch of the Project for Drafting the Civil Code, based on a Government Decision.⁴¹ But even though almost 15 years have passed since that decision, our civil law still remains uncoded.

According to Professor G.Galev, who participated in the work of the Commission for the compilation of the Civil Code, the most appropriate model to follow in codification is the model

³³ Cserne P.: Drafting civil codes in central and eastern Europe – A case study on the role of legal scholarship in law-making, Pro Publico bono online, 2011, available on 15th October 2013 on <http://www.propublicobono.hu/pdf/Cserne%20P%20Tamop%201.pdf>

³⁴ See more at: P.Живковска, *Кодификација на граѓанското право на Република Македонија*, Zbornik radova prezentovanih na međunarodnom naučnom skupu održanom na Pravnom fakultetu u Nišu 21-22 maja 2003, u okviru nacionalnog projekta “Građanska kodifikacija”, pg.78.

³⁵ *Ibidem*.

³⁶ Сл.лист на ФНРЈ, бр.20/55.

³⁷ Сл.лист на СФРЈ, бр.29/78.

³⁸ Сл.лист на СФРЈ, бр.6/80.

³⁹ See more at: P.Живковска, *Кодификација на граѓанското право на Република Македонија*, Zbornik radova prezentovanih na međunarodnom naučnom skupu održanom na Pravnom fakultetu u Nišu 21-22 maja 2003, u okviru nacionalnog projekta “Građanska kodifikacija”, стр.79. See also: B. Xhaferi Beqiri, “Acquisition of the right of ownership in the macedonian and comparative law”, PhD Thesis, Skopje, 2025, pg.175-176

⁴⁰ *Ibid*, pg.80.

⁴¹ Decision of the Government of R.Macedonia „Official Gazette of R.Macedonia“ бр. 4/2011.

of complete codification (completely of all parts of civil law), as opposed to gradual codification (part by part).⁴²

However, there are opposing opinions that with the full codification, some of the legal acts that should be included in the Civil Code are already “codified” (as is the case with the inclusion/non-inclusion of the provisions on family law in the Civil Code, because some of the members of the commission, such as Professor Zivkovska, who believes that the Family Law is a “sufficient” codification act for this area, and their incorporation into the Civil Code will only make the work of practitioners more difficult).⁴³

However, the arguments of Professor G.Galev (and some of the members of the Commission) for choosing/following the model of full codification consist in the fact that: full codification will avoid certain repetitions, which is not always the case with the gradual codification of individual parts in separate legal books; furthermore, when it comes to full codification, it is more likely that the legal matter in it would be better arranged and upgraded systematically, so that taken together it would represent a more coherent, logical and functional whole of the individual principles, institutes and special provisions incorporated into that whole; and of course, it will be more easily applicable in practice, which will also strengthen legal certainty and increase the legal culture of a wider range of subjects.⁴⁴ A model of complete codification is represented by: the German Civil Code, the Austrian Civil Code, the Serbian Civil Code, etc.; while a model of gradual codification is represented by: the Dutch Civil Code and the Civil Code of the Russian Federation.

The Civil Code of the Republic of N.Macedonia is one of the fundamental pillars on which our legal system and order should rest and be realized. With its adoption and implementation, it is logical that the maturity and undoubted aspiration of the country's institutions towards strengthening the democratic society and the rule of law and a legal state will be determined. Therefore, the aspiration to adopt the Civil Code should remain a strategic goal of the country, with the realization of which, our country would join the European modern family and the ranks of modern civilized and democratic countries in general, as well as ensure the stabilization of the civil law system, as well as legal certainty in legal transactions.

3. COMPARATIVE ANALYSIS OF CODIFICATION OF CIVIL LAW WITHIN THE EU COUNTRIES AND THE INTERNATIONAL LEVEL

Comparatively speaking, there are different approaches on the codification of the civil law in different states. However, most of the EU states have their own civil law codes. In this part of the paper, it is important to have a short overview of the history of the civil law codification, and a resume of the modern civil law codes.

Historically, there have been different endeavors to have codified laws. Even though primitive undertakings, those documents have served as the first sprouts of the codification of the law in general, and the civil law in particular. The first known codes include the The Code of

⁴² G.Galev, *Во пресрет на кодификацијата на граѓанското право на Република Македонија*, Зборник на Правниот факултет “Јустинијан Први”-Скопје, Во чест на проф.Д-р.Георги Ганзовски, 2010, рг.10.

⁴³ See more at: Р.Живковска, Т.Пржеска, “Кодификација на стварното право во Република Македонија“, Зборник радова Правног факултета у Нишу, бр.68, 2014, стр.256.

⁴⁴ G.Galev, *Во пресрет на кодификацијата на граѓанското право на Република Македонија*, Зборник на Правниот факултет “Јустинијан Први”-Скопје, Во чест на проф.Д-р.Георги Ганзовски, 2010, рг.10. See also: Д.Мицковиќ и А.Ристов, *Семејното право во Граѓанскиот законик на Република Македонија*, 2014.

Hammurabi, c.1780 BCE³ and the Law of the Twelve Tables called *Lex Duodecim Tabularum*. The importance of these codes of primitive laws, whether for the Romans or for us, cannot be overestimated⁴⁵. Other known Roman law codifications are: *Codex Gregorianus* (291 AD), *Codex Hermogenianus* (295 AD) and *Codex Teodosianus* (438 AD), and the most significant codification of Roman law is *Corpus Juris Civilis*. The Roman legal tradition is the basis of most European codifications, as a simple reception of the legal rules of Roman law, or through conversion into new legal rules and the making of generic codes or laws.⁴⁶

The idea of law codification in the field of civil law represents the integration of the norms that regulate civil law relations in a complex, complete and harmonized manner. At the initial time, the process of codification had the purpose of uniting the fragmented feudal law and to create law that regulated the relations in society in a methodical way. This purpose served the bourgeoisie's needs to make national states with one market and one law system⁴⁷. The creators of the first civil codes enacted in the early 19th century were adherents of the Natural - Law School, which proclaimed the doctrine of equal rights of all people and their equality under the law.

The first modern civil law codification is the French Civil Code⁴⁸, known as *Code Civile*, enacted in 1804, and still in use today in France. The method of creating the French *Code Civile* was through the preparation of thirty separate laws in the civil law area which were consolidated into one law - *Code Civile*, which became a model for many countries that made codifications of their own private law. This code accepts the Gaius systematic, or the Institutional system that divides the private law into three areas: law of persons (*personas*), law of things (*res*) and law of lawsuits (*actions*). This system was adopted in the civil code of Austria, enacted in 1811⁴⁹.

On the other hand, the German Civil Code⁵⁰, adopted in 1896 and entered into force in 1900, is structured according the pandectist system: general part, law of obligation, property law, family law and law of inheritance. This system was adopted later in the Swiss Civil Code of 1911.⁵¹ Other modern civil codes include: the Italian Civil Code (*Codice civile*); Turkish Civil Code; The Dutch Civil Code in 1992; Civil Code of the Russian Federation since 1994; Greek Civil Code, etc.

Within the EU, a Study Group on a European Civil Code⁵² was formed to conduct comparative law research in private law in the various legal jurisdictions of the Member States and to produce a *codified set of Principles of European Law* for the law of obligations and core aspects of the law of property. The idea behind this idea of a common European private law was expressed in a work document called: *The private law systems in EU: Discrimination on grounds of nationality and the need for a European Civil Code*, issued in 2000⁵³. This document examines, on the basis of a comparative study of legal provisions, the scope and need for the creation of a European Civil Code and the competence of the European Union to create such a code.⁵⁴

⁴⁵ Johnson, Coleman-Norton & Bourne, *Ancient Roman Statutes*, Austin, 1961, pp. 9-18, n. 8

⁴⁶ Amos S.: *The history and principles of the civil law of Rome: An Aid to the Study of Scientific and Comparative Jurisprudence*, Littleton, Colorado, 1987

⁴⁷ *Enciklopedija imovinskog prava i prava udruženog rada (tom prvi)*, Beograd, 1978

⁴⁸ *Code civil des Français*, 1804 (Ordonnance n° 2004-164 du 20 Feb.2004)

⁴⁹ *Allgemeines bürgerliches Gesetzbuch (ABGB)*, 1811

⁵⁰ *Bürgerliche Gesetzbuch*, 1896 (new version by promulgation of 2 January 2002 I 42, 2909; 2003, 738; last amended by Article 2 (16) of the statute of 19 February 2007 I 122).

⁵¹ *Das Schweizerische Obligationenrecht*, 1911.

⁵² Official site <http://www.sgecc.net/pages/en/home/index.html>

⁵³ More on this document: http://www.europarl.europa.eu/workingpapers/juri/pdf/103_en.pdf, on 27 october 2013

⁵⁴ See document: *The private law systems in EU: Discrimination on grounds of nationality*

Even though several groups were formed in EU for this purpose, with the task of covering different areas of private law, their work resulted with the enactment of legal instruments known as Principles that codify different part of the civil law. Such Principles are: Principles of European Contract Law (PECL), result of the work of the Commission on European Contract law (Lando commission)⁵⁵; Principles of European Tort Law, result of the work of The European Group on Tort Law (formerly also called “Tilburg Group”)⁵⁶; Principles of European Family Law, result of the work of Commission of European Family law⁵⁷.

Apart from EU, there were also global international attempts to codify areas of the civil law, like the United Nations Convention on Contracts for the International Sale of Goods (CISG the Vienna Convention, signed in Vienna in 1980)⁵⁸ which codifies rules that govern contracts for the international sale of goods, as a significant part of the contract law, but mainly this attempts are effectuated through the work of UNIDROIT⁵⁹, The International Institute for the Unification of Private Law. Some of the legal instruments through which UNIDROIT aims to promote and help modernizing, harmonizing and co-coordinating private and in particular commercial law as between States and groups of States are: the Convention relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods (The Hague, 1 July 1964)⁶⁰; Convention relating to a Uniform Law on the International Sale of Goods from 1964⁶¹; Principles of international commercial contracts from 1994, 2004 and 2010 (three editions until current data)⁶²; Unidroit Convention providing a Uniform Law on the Form of an International Will (Washington, D.C., 1973)⁶³; Unidroit Convention on International Factoring (Ottawa, 1988)⁶⁴; Unidroit Convention on International Financial Leasing (Ottawa, 1988)⁶⁵.

4. THE BENEFITS FROM THE CODIFICATION OF THE CIVIL LAW

The codification of civil law represents one of the most significant legal and civilizational achievements in the history of law. Our legislation is one of the few countries that deviates from the European tradition of codification of civil law.

In case anyone is wondering what the benefits of codifying civil law are, it is important to mention some of them. First of all, the codification helps a state to have an organized-systematic

and the need for a European Civil Code available on :

http://www.europarl.europa.eu/workingpapers/juri/pdf/103_en.pdf

⁵⁵ Official site http://frontpage.cbs.dk/law/commission_on_european_contract_law/, on 30 October 2013

⁵⁶ Official web site of the group: <http://www.egtl.org/>, were the text of the principles is available

⁵⁷ Official web site of the commission: <http://ceflonline.net/>, where the principles are available

⁵⁸ Available on <http://www.cisg.law.pace.edu/cisg/text/treaty.html>

on 27 October 2013

⁵⁹ Unidroit’s official web site is <http://www.unidroit.org>

⁶⁰ Available on <http://www.unidroit.org/english/conventions/c-ulf.html> on 27 October 2013

⁶¹ Available on <http://www.unidroit.org/english/conventions/c-ulis.html> on 27 October 2013

⁶² The third, new edition of the Principles is available in English on <http://www.unidroit.org/english/principles/contracts/principles2010/integralversionprinciples2010-e.pdf> on 27 October 2013

⁶³ Text available on <http://www.unidroit.org/english/conventions/1973wills/1973wills-e.html>, on 27 October 2013

⁶⁴ Text available on <http://www.unidroit.org/english/conventions/1988factoring/main.html> on 27 October 2013

⁶⁵ Text available on <http://www.unidroit.org/english/conventions/1988leasing/1988leasing-e.html> on 27 October 2013

legal system, by providing a general framework of the legal norms. By that, it also provides integration of the norms of the civil law in a comprehensive, harmonized text, without having to go through different legal acts that often have ambiguities between them. One of the main problems of the modern legal systems, in particular our system, is the inconsistency between special and general laws. By codifying the civil law, it would benefit for removal of confusions and uncertainty in practice. One of the main benefits of the codification of the civil law is that it would provide the legal subjects with legal certainty and a better visibility of the general principles of the law, and also provide a greater accessibility for better solutions.

The drafting of the Civil Code of N.Macedonia began almost fifteen years ago, but, despite the fact that it was planned to be adopted within five years, it has not yet been adopted. Whether that idea, that work will finally see the light of day, depends on the legislator, if he has understood the role and significance of the Civil Code for our legal system. Until then, private law remains forgotten by the legislator. There are almost no reforms in private law, although legal solutions and partial amendments are adopted depending on the needs of politics, which are very often in contradiction with legal principles and logic.

5. CONCLUSIONS

The process of the modern civil law codification started taking place in the legal systems of different states during the 19th century. The first modern civil law codification is the French Code Civile, enacted in 1804, and still in use today in France. This code sets up a model of codification that is accepted by many states and used as a basis for their codification. Another model of codification is set by the German civil code which differs from the French model.

The codification of the civil law in the EU and in international level is in progress and is partially achieved through the enactment of the sets of principles and conventions by EU Commissions and UNIDROIT.

From what was above mentioned, the process of codification in Western Balkans shows two different situations: one in the former Yugoslavian republics and another in Albania. Starting with Albania, we can say that the process of codification of civil law that took place in this country was finished long ago. On the other hand the process of codification in the former Yugoslavian republics has partially started from the time of the existence of the federation but is not yet completed.

During the existence of Yugoslavia separate areas of civil law were codified in separate laws that were in use as a federal law in all of the republics. The civil law was codified in the Law on basic property relations, Law on inheritance, and Law on obligations. These three laws were the foundation on which the former Yugoslavian republics started building their own partial civil law codifications.

Today, we can say that steps have been made towards codification of the civil law but only in separate areas, and not on the civil law as a branch of law. From what we researched as a civil law codification in separate areas in different Balkan states we can conclude that all the states are on a similar if not same level regarding the process of the codification of the civil law, facing the same dilemmas and challenges as they work towards this codification, but different results have been achieved.

The process of codification has started officially in Serbia, Kosovo, as well as in Macedonia, and it is only an idea for Montenegro, Croatia, Slovenia (continuing to codify the civil law with separate laws) and BiH. It appears that BiH struggles more to follow through with this

process, having in mind the fragmentation of the civil law, the abundance and diversity of legislation in this area and the lack of their full horizontal compliance. These facts lead us to the conclusion that it would be useful to seriously re-examine the possibilities, needs and expediency for civil law codification in Bosnia and Herzegovina, while Macedonia and Serbia are expecting to get new modern civil codes that will provide modernization of the legal decisions in the civil law area and to contribute to building a consistent system of civil law.

One of the weaknesses of the aforementioned former Yugoslav countries in general, as well as our legal system in particular, is that despite the initiated process of drafting the Civil Code of the Republic of N.Macedonia, to this day, no consensus has been reached on the same issue. Given the current knowledge regarding the problems that are present in practice, regarding real legal relations, in the future it can be expected, with the introduction of the proposed reforms in the Civil Code, that the legislator's many years of failure to regulate them in a single legal regulation will be corrected, as well as ensuring certainty and legal security among citizens.

Such a solution will also contribute to achieving greater systematicity and completeness of the Civil Code, which, on the other hand, should be one of its basic characteristics. Therefore, the general conclusion is that a necessary future step in our legislation is to adopt the Civil Code, which will resolve most of the dilemmas raised in this paper, the Republic of Macedonia will join the ranks of countries that have codified their civil law, and of course, will facilitate its further path towards harmonizing our legislation with that of the EU.

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