

## Opinion Article

# ALBANIAN CIVIL CODE 1929 AS PART OF THE EUROPEAN FAMILY OF CIVIL LAW

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Submitted on 08 Aug 2022 / Revised 1st 12 Oct 2022 / Revised 2nd 12 Dec 2022 /  
Approved **15 Mar 2023** / Published online: **20 Jun 2023**

**Summary:** 1. Introduction. – 2. The Adoption of the Civil Code of 1929 and its Affiliation According to Historical - Legal Studies. – 3. Description of Main Features of Different Civil Law Systems According to Most Prominent Authors of Western Countries. – 4. Civil Code of the Republic of Albania of 1994 – The Issue. – 5. Conclusion.

**Keywords:** civil code, civil law, civil-legal relations, legislative unity, Albania

## ABSTRACT

***Background:** The Civil Code would dictate the affiliation of Albanian civil law to the Romano-Germanic family, finally separating it from Ottoman law. This Code, to this day, preserves its contemporary character, individuality, and integrity, not only because it is based on the idea of protecting basic human rights and freedoms, as well as the democratic model of society that inspired it, which always remain valid, but also that it continues as a working tool for specialists in this field. Undoubtedly, foreign rights, especially French, Italian, and to some extent, German*

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**Corresponding author**, responsible for writing and research. **Competing interests:** Any competing interests were included by authors. **Disclaimer:** The authors declare that their opinion and views expressed in this manuscript are free of any impact of any organizations.

**Translation:** The content of this article was translated with the participation of third parties under the authors' responsibility.

**Managing editor** – Mag. Polina Siedova. **English Editor** – Nicole Robinson.

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**How to cite:** Liridon Dalipi and Ardian Emimi 'Albanian Civil Code 1929 as Part of the European Family of Civil Law' 2023 3 (20) Access to Justice in Eastern Europe 1-13. <https://doi.org/10.33327/AJEE-18-6.3-a000307>

and Swiss, would inspire the Albanian legislator to sanction in its provisions the equality of all citizens, the emancipation of land ownership, and the freedom to engage in economic activities.

**Methods:** The methodology used during the drafting of this paper is mainly based on Albanian and foreign doctrinal views, focusing in particular on the Italian and European doctrines, due to this doctrine and this legislation being referred to by our legislator at the time of drafting the Civil Code. Also, among the methods used in this paper are the analysis and comparative methods.

**Results and Conclusions:** The acceptance of foreign law in the Civil Code of Zog, more than “a matter of quality”, was a “matter of power”, because foreign rights, especially French and Italian, which found their sanction in this Code, they were rights belonging to the spiritual influence of modern civilization, and above all, to that of the “Italian Renaissance” and the “French Revolution.”

## 1 INTRODUCTION

The Civil Code of the Kingdom of Albania entered into force on 1 April, 1929<sup>3</sup>. This major achievement made it possible for the 1929 Albanian Civil Code to rank among the advanced civil codes of the time and, historically, Albanian Civil Law was included in the European family of Civil Law. This family of Civil Law is classified by two main groups, or schools, that of Latin and that of Germanic countries.

The 1929 Albanian Civil Code adoption and entry into force placed the Albanian Civil Law into the grouping of Latin (Romanistic) countries, in which the civil codes were based on the French Civil Code of 1804, known as the Code of Napoleon Bonaparte, due to his special support for this undertaking and his desire to be remembered as a great lawmaker. Napoleon referred to the Code as the greatest achievement of all his victories.

States in a developed legal system went through from partial regulation of civil law with special laws to the complete regulation of civil law through Civil Codes. Civil Codes legally regulate the civil law institutions and, in this way, enable the implementation of civil law more easily. All civil legal norms are in one legal text and their implementer retains all the necessary civil and legal norms in the same place. The Civil Code has realised the legislative unity in the civil law field<sup>4</sup>; in this regard, it brought Albania a unique right in terms of time and place and a uniform right under the influence and spirit of the European world. In Albania, this Code represents the monumental act in terms of time, and is concurrently conceived as a contemporary legal act. It should be highlighted that the Civil Code regulated civil-legal relations in a highly legal relationship.

3 *Kodi Civil i Vitit 1929: i kohës së Zogut* (Alb Juris 2010) 28.

4 Florjan Kalaja, ‘Refleksione në 90 vjetorin e Kodit Civil të vitit 1929’ (90 vjetori i Kodit të Parë Civil Shqiptar (1929) në 106 vjetorine Ditës Kombëtare të Drejtësisë. Përfaqje historike dhe aktuale. Baltasar Benussi – Themeluesi i doktrinës së të drejtës civile në Shqipëri: simpoziumit, datë 08.05.2019) <[https://www.academia.edu/44462608/Refleksione\\_n%C3%AB\\_90\\_vjetorin\\_e\\_Kodit\\_Civil\\_t%C3%AB\\_vitit\\_1929](https://www.academia.edu/44462608/Refleksione_n%C3%AB_90_vjetorin_e_Kodit_Civil_t%C3%AB_vitit_1929)> aksesuar më 14 qershor 2023.

## 2 THE ADOPTION OF THE CIVIL CODE OF 1929 AND ITS AFFILIATION ACCORDING TO HISTORICAL - LEGAL STUDIES

Albania's secession from the Ottoman tradition of feudal systems emanated in the years following the Declaration of Independence, but marks a qualitative step in the late 20s and early 30s of the last century. This step was made with the adoption of the Constitution of the Kingdom of Albania and, especially with the adoption of the Civil Code on 1 April, 1929.<sup>5</sup>

The Civil Code was based on the best achievements of the Civil Codes of France, Italy, Switzerland, and more. It was inspired by other Western countries' legal projects in that time, such as the "Joint Franco-Italian Project on Obligations."<sup>6</sup> This major initiative for the profound reform of the constitutional, legal, and institutional framework in our country emerged from the long-governing Ottoman rule and from foreign invasions during World War I, which inherited a great economic, social, educational, and cultural backwardness. It was difficult to achieve, not to mention that it was considered impossible to many people. Ottoman laws were applied in almost the entire territory of Albania together with the common law, in this country where a large part of population built and adapted their relations according to the norms of common law. Civil law through unification was a challenging mission.

The role and persistence of some prominent jurists for the preparation of the first Civil Code in the history of the Albanian state is well-known and highly-appreciated. The idea of creating and operating with a modern civil code in Albania was put forward for the first time in 1920. Additionally, opting for the western model to draft the civil code, which would be better suited to the conditions of the country's interests, was seen to many people as a novelty, as a sudden turning point, and was considered a risk to fail. It could not be merely a mechanical imitation or copy of any Western model. Certainly, it needed to be based on similar Franco-Italian codes, but more importantly, the country's traditions, the existing legal situation, and the Albanian mentality in the establishment of these new civil law institutions had to be considered.<sup>7</sup>

While referring to the writings of the time, we are acquainted with the arguments as to why the French Civil Code was considered the most suitable to the country's conditions, used in conjunction with the Italian Civil Code, and taking a few subjects from the Swiss Code. The French model was chosen as the most appropriate model; with the spreading teachings of French history and culture, the republican spirit for the creation and consolidation of state institutions, and the freedom to use French jurisprudence were considered advantages as the teaching of the French language and the preparation of jurists of French culture became widespread at the time.

A meaningful indication of this great change is the immediate repeal of the laws inherited from the long-standing Ottoman rule belonging to the feudal system, such as:

'Meghalaya, the Code of Lands, the provisions of Vesaja Feraiz, and all other provisions of Sharia and ecclesiastical matters pertaining to family law and other civil laws and generally all laws and regulations that are in conflict with the new Civil

5 Ardian Emini, Berat Aqifi and Minerva Dermaku, 'The Basis for Changing the Maintenance (ASSISTANCE) Measure for Children – the Case of Separation of Parents in the Republic of Kosovo' (2022) 12 (3) *The Lawyer Quarterly* 290.

6 Xavier Blanc-Jouvan, 'Worldwide Influence of the French Civil Code of 1804, on the Occasion of its Bicentennial Celebration' (*Cornell Law School Berger International Speaker Papers: Conferences, Lectures, and Workshops*, 27 September 2004) <[https://scholarship.law.cornell.edu/biss\\_papers/3](https://scholarship.law.cornell.edu/biss_papers/3)> accessed 14 June 2023.

7 Kalaja (n 4).

Code,<sup>8</sup>

as well as the anticipation of the provision, according to which:

*'Rules of the new Civil Code established on the interest of public order and good customs are applied from their entry into force for all the facts for which the new code has no exceptions. Therefore, with the entry into force of the new code, the rules of the previous laws could no longer be applied, which according to the new code, are against public order or good customs.'*<sup>9</sup>

### 3 DESCRIPTION OF MAIN FEATURES OF DIFFERENT CIVIL LAW SYSTEMS ACCORDING TO MOST PROMINENT AUTHORS OF WESTERN COUNTRIES

To better understand Albanian civil law's affiliation in different historical periods, referring to the codes and laws adopted and implemented according to the changes imposed by the political regimes of those periods, but especially to determine the affiliation of the Civil Code of the Republic of Albania in force, I think it is necessary to refer to the studies of Western countries' most prominent authors on comparative civil law.

There are authors who have historically and currently made different classifications of legal families. In 1950, Arminjon, Nolde, and Wolff classified all modern legal systems into seven families: French, German, Scandinavian, English, Russian, Islamic, and Hindu<sup>10</sup>. Professor Malmstrom offers the following groupings: the European-American (Western) legal family<sup>11</sup>, which, in his view, includes the Romanistic, Germanic, Latin American, Nordic, and *common law* systems, the socialist legal system, the Asian non-communist systems, and the African systems.

Rene David, defined two criteria for legal families' classification in 1950: the ideological criterion (product of theology, philosophy or political, economic or social structure) and the criterion of legal technique<sup>12</sup>. While the differences of legal techniques were of secondary importance, the principled basis of distinction lies in the philosophical basis or the concept of justice. According to this principle, he distinguishes five legal families: Western systems, socialist systems, Islamic law, Hindu law, and Chinese law.<sup>13</sup> After creating these, this author modified his position, defining three main legal families: the Romanistic-Germanic family, the Common Law family, and the Socialist family by identifying some groups of other systems, such as: Hebrew (Jewish) law, Hindu, Far East, etc.<sup>14</sup>

Zwegert and Kotz, make this classification for legal families or systems: Romanistic, Germanic, Anglo-American, Nordic, Socialist, Far East, Islamic, and Hindu.<sup>15</sup> These authors identify five elements that form the legal style of any legal system: historical background and development, the predominant and characteristic way of thinking about legal issues, distinct

8 Abdulla Aliu, *E drejta civile: Pjesa e përgjithshme* (Universiteti I Prishtinës "Hasan Prishtina" 2013) 71.

9 *ibid.*

10 Pierre Arminjon, Baron Boris Nolde and Martin Wolff, *Traité de Droit Comparé*, t 1 (Librairie Générale de Droit et de Jurisprudence 1950) 13.

11 Craig M Lawson, 'The Family Affinities of Common-Law and Civil-Law Legal Systems' (1982) 1 (6) *Hastings International and Comparative Law Review* 85.

12 René David, *Traité élémentaire de droit civil comparé: introduction à l'étude des droits étrangers et à la méthode comparative* (R Pichon; R Durand-Auzias 1950).

13 *ibid* 255.

14 René David, *Les grands systèmes de droit contemporains: (Droit comparé)* (Daloz 1964).

15 Konrad Zweigert and Hein Koetz, *An Introduction to Comparative Law* (3rd edn, OUP 1998) pt 1.

institutions, the type of law sources known and the way they treat them, and the ideology. With the legal ideology, the fifth element in their analysis, these authors understand the “political and economic doctrines, or religious belief” of the system in question.

They conclude,

*“The legal ideologies of the Anglo-Saxon, Germanic, Romanistic and Nordic families are essentially similar and it is because of other elements in their styles that they have become distinct...”*<sup>16</sup>

## 4 CIVIL CODE OF THE REPUBLIC OF ALBANIA OF 1994 – THE ISSUE

The civil legislation adopted by the Albanian state during the years ruled by the communist dictatorship interrupted the precious tradition created over a decade prior through the interpretation and implementation of the Civil Code of 1929. It was based on the Soviet law system, called socialist law, which essentially represented no particular novelty but was an amalgam that stood between the Germanic school's positivism and a particular sociological and ideological current called Marxism-Leninism.

The legal framework consisted of the Law on the General Part of the Civil Code, the Law on Legal Actions and Obligations, the Decree on Property, the Decree on Inheritance, etc. This legal framework was cut off at the extreme and subject to the dogmas of communist ideology after the Civil Code's adoption which entered into force on 1 January, 1982. Albania was in a period of considerable crisis during the dictatorial regime when the concept of private property was completely eliminated and the whole economic and social system was concentrated in the hands of the state. Legal principles were replaced by the so-called principles of the state party's managing role, of the struggle of classes, of the mass line, and the like.<sup>17</sup>

In the Civil Code of 1981's structure, like previous civilian legislation, preserved, in a mutilated form, institutes and norms borrowed primarily from the Soviet law. In the beginning of 1990s, after the change of the political system along with the constitutional changes, the preparation of the new legal framework of the new democratic state, based on the protection of fundamental human rights and freedoms and the rule of law, arose as a necessity and immediate requirement. In this context, the main requirement of the time was the preparation and adoption of a new Civil Code.

It was decided that the initial reference material to use during the preparation of the new code was the Civil Code of 1929, based on the civil codes of France, Italy, Switzerland, etc.<sup>18</sup> during that time, as well as to observe, to consider, and to reflect the changes and developments that were made to these codes in the respective countries up to that present time. The drafted Civil Code was presented to the Assembly and approved shortly after by Law No. 7850, dated 29 July 1994, and entered into force on 1 November, 1994.<sup>19</sup>

16 Mary Ann Glendon, Michael W Gordon and Christopher Osakwe, *Comparative Legal Traditions: Text, Materials, and Cases on the Civil and Common Law Traditions, with Special Reference to French, German, English, and European Law* (2nd edn, West Pub Co 1994) 100.

17 Juliana Latifi, 'Albanian Civil Law and the Influence of Foreign Laws' in S Farran, J Gallen and C Rautenbach (eds), *The Diffusion of Law: The Movement of Laws and Norms Around the World* (Juris Diversitas 2015) doi: 10.4324/9781315615493.

18 *ibid.*

19 *Kodi Civil i Republikës së Shqipërisë Miratuar: me ligjin nr 7850, datë 29.7.1994; ndryshuar* (Qendrës së Botimeve Zyrtare 2014).

Meanwhile, other developed countries' experiences shows us quite the opposite, i.e., the preparation of a new code requires time and intensive work, not only to prepare it on a high level, but also for testing by case law. An example is the process of preparing the draft Civil Code of the Netherlands, which started in 1947 by a commission headed by Professor E. M. Meijers, and followed after his death in 1954 by Professors J. Drion, F.J. de Jong, J. Eggens, and G. De Grooth. The first two books of the New Civil Code entered into force in 1970 (Law on Persons and Family) and in 1976 (Law on Legal Entities). Because the Dutch Government decided that the core of the new Code, which contained the right of ownership and the right of obligations, would enter into force on 1 January, 1992, the programme of the revision was close to achieving its goal: to replace the existing 150-year-old Civil and Commercial Code with a new 'consolidated' Code including civil law, commercial law, and consumer law, many parts of private law legislation that were adopted outside the Codes, and to codify the results of a large and significant amount of (*judge-made law*) law created by judges (Jurisprudence). Therefore, the Dutch Civil Code was adopted piece by piece after a long, scientific and responsible work, and has been tested over the years by case law.<sup>20</sup>

Taking this example, I do not think that the duration for the preparation and adoption of the new Albanian Civil Code should have lasted several dozens of years, because in our country, 'time would not wait', but want to draw attention to the fact that the preparation of new laws, especially of the Codes, requires the necessary time, dedication, and serious work with high-level professionalism, as well as scientific debate, inclusiveness, and transparency. Unfortunately, in Albania, the preparation of new laws in various fields, even changes to codes, continues to occur without preceding in-depth studies or serious evaluations of issues performed by the interpretation and implementation in practice.

It is worth mentioning, for the better, that to-date, not many hasty changes have been made to the Civil Code, thus serving the purpose of maintaining a fair relationship between statics and dynamics in the adoption of legal acts according to their hierarchical scale. On the other hand, the study and discussion materials in support of additions and changes, in particular the relations presented in the Albanian Parliament, appear shallow and, as such, do not serve to the process of interpretation and practical application of legal provisions, jurisprudence, and doctrine.

Following the adoption of the Civil Code, some authors have published texts and articles in which they make general positive evaluations, perhaps in some cases they were even slightly exaggerated, considering it as a contemporary civil code with a clear style and perfect legal terminology, understandable almost to any reader and not only to those with legal training. In the meantime, there are other authors who, in addition to evaluations, also make a series of remarks and criticisms not only to the Code's structure and internal organization, but also to its contents, and in some cases, for failing to entirely avoid some concepts and adjustments inherited from the so-called socialist law. In this aspect, remarks and criticisms have been made about adjustments considered inappropriate and unnecessary, such as the legal status of the agricultural family and co-ownership of its members as considered an unnecessary relic from the past, or for antiquated adjustments contrary to the reality of any contract, e.g., a supply contract.<sup>21</sup>

There were also remarks on inconsistencies in the internal organization of sections and chapters, on the terminology used, on the accuracy and coherence in constructing and

20 Jan M van Dunné, "'Lawyer's paradise' or 'paradise lost'? The Dutch civil code of 1992 as an exponent of the 19th century legislative tradition' en R Beauthier et I Rorive (eds), *Le Code Napoléon, un ancêtre vénéré ? : Mélanges offerts à Jacques Vanderlinden* (Bruylant 2004) 337.

21 Latifi (n 17).



applying definitions, in construction and formulation of special provisions, etc.<sup>22</sup> Referring to the structure and content of the Civil Code in force and all other legal framework complementary to it, it is necessary to conclude this Code, as well as our entire civil law, have followed the Romanistic or Germanic models, or has adopted a western system mixed with institutes and norms borrowed from both models. This would not be considered an easy undertaking, not only for our country, but also for the developed western countries with rich doctrine and jurisprudence.

Unlike the Civil Code of 1929, which published a “Coordination Table between the Albanian Civil Code and Foreign Codes” at the end of the text, in the Civil Code in force, we do not find such a mechanism that would help us in terms of in-depth studies.

The French Civil Code of 1804 follows the structure of the Justinian Institutes and incorporates in its substantive provisions the results of the intellectual, political, and social revolution. It represents a new way of thinking about man, law, and governance. The French Civil Code's three ideological pillars are private property, freedom of contract, and patriarchal family. In these three spheres, the state's primary role was to protect private property, execute legally-formed contracts, and ensure the autonomy of the patriarchal family.<sup>23</sup> The principles inherited from the institutional system include three groups of provisions regulating the subjects of civil law, objects, and the rights deriving from objects, as well as procedures for the protection of rights.

The Code consists of three main parts: I. Issues of status of subjects and family law; II. Rights over objects (property, servitudes, and other real rights) and; III. Law on obligations and contracts, inheritance, etc.<sup>24</sup> The French Civil Code as a popular, modest, and understandable code, convenient with easy-to-understand language, a beautiful style, and clear systematics, guided by the principles of equality of arms, protection of private property, the prohibition of abuse with civil rights, and the autonomy of the will of the parties in civil legal relations<sup>25</sup>.

Authors emphasise that

‘the Founding Forefathers of the French Civil Code, like those of the Constitution of the United States of America, have recognized the fact that the lawmaker cannot provide for all possible applications of fundamental principles.’<sup>26</sup>

The drafters recognised the option of general rules' flexibility rather than that of detailed provisions. In this regard, they referred to the words of one of the drafters of the code, Portalis, who spoke out on avoiding the dangerous ambition to regulating and predicting everything. The Latin (Romanistic) system represented in modern times by the French Civil Code has been followed by countries, such as Italy, the Netherlands, Belgium, Luxembourg, Spain, Portugal, and other countries in different continents, like Louisiana of the USA and the Quebec province in Canada.

On the other hand, according to these authors, the Germanic system is based on the German Civil Code adopted on 18 August, 1896 and entered into force on 1 January, 1900. This Code as being built in a heavy style, dominated by the doctrinal approach based primarily

22 *ibid.*

23 Blanc-Jouvan (n 6).

24 Code Civil des Français (promulgué le 21 mars 1804, telle que modifiée du 21 mai 2023) <[https://www.legifrance.gouv.fr/codes/texte\\_lc/LEGITEXT000006070721](https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006070721)> consulté le 14 juin 2023.

25 Jean Carbonnier, 'Le Code civil' in Pierre Nora (dir), *Les Lieux de Mémoire, t 2 La Nation : 2 Le territoire - L'Etat - Le patrimoine* (Gallimard 1986) 309.

26 Shael Herman, 'From Philosophers to Legislators, and Legislators to Gods: The French Civil Code as Secular Scripture' (1984) 3 *University of Illinois Law Review* 597.

on the Pandekists theory, characterized by a sophisticated, accurate, and systematized legal terminology, but unsuitable for an ordinary citizen to understand.<sup>27</sup>

B.G.B. is considered a masterpiece of German legal science with a highly professional style and perfect and precise systematisation. The German Civil Code (Pandektenrecht) Pandekists system, inspired by Justinian Digest and developed in modern times (*usus modernus pandectarum*), consists of six books: I. The General Part; II. Property Right (Ownership); III. Obligations; IV. Family Law; V. Inheritance Law; and VI. The Right to Work.<sup>28</sup> The German Civil Code model has impacted the codifications of German traditional countries, such as the Novels of the Austrian Civil Code of 1914. It has also been adopted by other countries, such as Switzerland, Poland, in the Civil Code of Greece of 1940, etc., but also in countries from other continents, such as Japan, Brazil, Mexico, and more.

It is also noteworthy that authors identify that, although the German and French Civil Codes differ in form, style, and structure, their similarities should not be overlooked. Firstly, the two have resolutely pursued both *jus commune* and their respective national rights. In both codes, the influence of the Romanistic *jus commune* prevails in the Law of Obligations and in the general structure of the system while the sources of national law have had more influence on the right of property and the Law on Inheritance.

Ideologically, both codes are based on 19<sup>th</sup> century liberalism, influenced by an individual's autonomy and laissez-faire economy, protection of private property and freedom of contract, and the like.<sup>29</sup> We should also bear in mind that the division between the two systems, the Romanistic (Latin) and the German system, is more doctrinal than of practical character. Moreover, the conclusions as to whether civil legislations, in particular Western countries' civil codes, belong to one system or the other are not exhaustive. For this reason, we will review the Dutch Civil Code<sup>30</sup> as an example, which is classified by the above authors as being influenced by the French Civil Code.

On the contrary, the commentators of the Dutch Civil Code have stated,

*“Dutch private law no longer belongs to the group inspired by the French law system, but rather to the German group. There may be some truths as to this, such as the systematic approach, abstract language and a number of more technical details attracting attention. However, in terms of important innovations, some of which have been mentioned above, foreign influences are more balanced.”*<sup>31</sup>

B. Wessels further discusses inspirational, concrete cases from Franco-Belgian law, from *common law*, and German law, the Hague and Vienna Conventions on Uniform Sales (Uniform Sales Acts) in 1964 and 1980, and refers to the well-known authors, Kotz and Zweigert, whose work has been quoted above.<sup>32</sup>

27 Frederic William Maitland, 'The Making of the German Civil Code', in HAL Fisher (ed), *The Collected Papers of Frederic William Maitland*, vol 3 (CUP 1911) 480.

28 Bürgerliches Gesetzbuch (BGB) vom 18 August 1896 (geändert vom 14 März 2023) <<https://www.gesetze-im-internet.de/bgb/BJNR001950896.html>> abgerufen am 14 Juni 2023.

29 Arthur Taylor von Mehren and James Gordley, *The Civil Law System: An Introduction to the Comparative Study of Law* (2nd edn, Little Brown & Co Law & Business 1977) 245.

30 Dutch Civil Code (Civil Code of the Netherlands) <<http://www.dutchcivillaw.com/civilcodegeneral.htm>> accessed 14 June 2023.

31 Mariana Pargendler, 'The Rise and Decline of Legal Families' (2012) 60 (4) *The American Journal of Comparative Law* 1043, doi: 10.5131/AJCL.2012.0010.

32 Bob Wessels, 'Civil Code Revision in the Netherlands: System, Contents and Future' (2009) 41 (2) *Netherlands International Law Review* 163, doi: 10.1017/S0165070X0000317X.



With this brief summary of opinions, expressed by competent authors, about some of the common features, characteristics, and differences between the French and German civil law systems, regulated by the two respective civil codes, both belonging to the continental European civil law family and the Dutch Civil Code, my intention is simply and exclusively to promote in-depth studies of Western countries' codes, doctrine, and jurisprudence in order to better understand the positive achievements of the Albanian Civil Code along with its deficiencies and shortcomings, and to suggest serious initiatives that will improve the Code and all other complementary legislation in the future. I further consider it necessary to reflect on some of my findings and opinions about shortcomings observed in the process of interpretation and implementation of the applicable Civil Code provisions.

1. In the current Albanian Civil Code, it can be seen that, unlike other Western tradition codes, the problem of interpretation of legal provisions was not regulated, which should be considered a shortcoming. While referring to the Albanian Civil Code of 1929, we encountered the following wording:

*"In application, laws cannot be given any other meaning, except the one that is clear from the meaning of words, by taking into consideration their connection (connexion), as well as the purpose of the lawmaker. When a dispute cannot be settled by a specific provision of law, the provisions governing case studies or analogous matters are taken into account; and when despite all this, the case remains obscure, the resolution is made according to general principles."*<sup>33</sup>

Pursuant to article 4 of the French Civil Code, a judge cannot refuse to decide a case simply because the law is unclear or there are shortcomings; he must come up with a decision, however, which must be based on general principles and the spirit of the law. The Austrian Civil Code directs the judge to look at the "*Principles of natural law*." The Spanish Civil Code refers to the "*General principles of law*;" the Italian Civil Code refers to "*Those principles coming out from the legal order of the state*." The Swiss Civil Code provides, among others, that if a judge cannot find a rule in law, he must decide in accordance with the common law, and if the judge fails to do so, he must decide "*According to the rule he would adapt as a lawmaker*," given the adopted legal doctrine and judicial tradition.

2. In some Western countries' civil codes, the regulation of legal relations has historically and currently been included in separate parts, whereas in other countries, as well as in our country, it is considered not just regarding legal-civil relations, but relations belonging to other laws' branches, such as family law, the right to work, commercial law, administrative law, etc. Therefore, it is included in special codes, such as family code, labour code, commercial code, laws regulating administrative relations, copyright, etc. For example, in the Italian Civil Code, along with the regulation of the status of persons as subjects of civil law, the first book also includes the regulation of family relations, and the fifth book regulates labour relations.<sup>34</sup> The Dutch Civil Code,<sup>35</sup> considered one of the most modern codes, has a structure and content defined in nine books (parts) as follows:

*I. The Law of Persons and the Family Law (including the right of marital property);*

*II. Legal Entities (general part, associations, limited liability corporations, foundations);*

*III. Property Rights in General (i.e., provisions applicable to all subsequent books);*

33 'Kodit Civil i Mbretërisë Shqiptare, miratuar më 1 prill të vitit 1929' në *Kodi Civil i vitit 1929* (Alb Juris 2010) 37.

34 Codice Civile Italiano 16 marzo 1942 n 262 (1942) 79 Gazzetta Ufficiale <<https://www.codice-civile-online.it/regio-decreto-16-marzo-1942-xx-n-262/approvazione-del-testo-del-codice-civile>> accesso 14 giugno 2023.

35 Dutch Civil Code (n 30).

- IV. *Inheritance Law*;
- V. *Property and Real Rights*;
- VI. *General Part of the Law on Obligations*;
- VII. *Special Contracts*;
- VIII. *Transport Law*;
- IX. *Intellectual Property Law*.

This system has been preserved to this day, with the exception of book 9, which has been removed. This wide and developed field has been included in special laws for industrial and intellectual property, patents, trademarks, copyrights, trade names, designs and models, etc. The quoted text above provides complete arguments for this position. The same position has been maintained by our lawmakers towards intellectual property, adopting new contemporary laws in line with the requirements of approximation with EU legislation. In a general overview referring to the structure of the Dutch Civil Code, the impression emerges that, more or less, with minor changes, the same structure has also been adapted to our Civil Code, with the exception of parts included in other Codes or laws. However, this issue requires in-depth studies.

We must delve deeper into the content of each and every part, title, or chapter of the code to conclude what the shortcomings, contradictions, uncertainties, and ambiguities are. Given the content of the second book of the Dutch Civil Code, entitled “Legal entities (general part, associations, limited liability corporations, foundations),” part seven “Special contracts,” and the general position on inclusion of provisions in a single code, governing civil and commercial legal relations, we believe the solution recognised by our lawmakers to regulate trade relations from civil legal relations is a fair position for our country. Though between the provisions in force of these two separate branches of our law, civil and commercial, across different legal texts, ambiguities, contradictions, and overlaps emerge in terms of subjects, character, and content of specific contracts, issues of conclusion, interpretation, implementation, renunciation, resolution, validity or invalidity, and more. According to the legislation of Kosovo, commercial law is a separate branch of law, but in commercial legislation, commercial contracts are not specifically regulated, but are included in the Civil Code regardless of which are considered contracts of a purely civil nature and which are commercial contracts.

3. We must establish an appropriate relation between the Civil Code as the main source of civil law and other laws governing specific areas of civil law, which are complementary to the Civil Code, as these complementary laws regulate specific areas of socio-economic relations as referred to in article 116 of the Constitution of the Republic of Albania. These are at the same level with the codes in the hierarchy of normative acts. The Civil Code, as the main source of civil law, has a static character, while other complementary legislation, which regulates more extensively and complexly the legal relations in specific areas, is more dynamic. In the legislative process, the relation between the statics of the Code and the dynamics of other complementary legislation is difficult and complex.

4. In our Civil Code, along with the right of ownership and possession as real rights, there are a number of other real rights regulated, theoretically-named as real minor rights (*minor rights in rem*), such as usufruct, servitudes, right of use, and housing, but the real minor right of surfaces (*superficies*) is not regulated, which is the special real right over everything built by a person who is not an owner on and/or beneath the land surface owned by another person. This right is regulated by the Italian Civil Code and, in more detail, is regulated by the Dutch Civil Code.

According to the principle of Roman law *superficie solo cedit*, everything that is planted on the land of another person, or that is built on or beneath the land of another person, becomes the property of the land's owner. In Roman law, by accepting the principle of *superficie solo cedit*, *accessio* was accepted as a way of gaining ownership, while the right of surface (*superficie*) as a *minor right in rem* was not accepted. Both in Roman law and in our civil law to this day, the rule is accepted that everything built on the land or beneath the land by a third person belongs to the land's owner, adding, merging and embodying in one aspect alone, the land and everything built on and/or beneath it. Given the above, the question arises that while Italian, Dutch, and some Nordic civil law have renounced this Roman law's rule, accepting the minor real right of surface would it not be possible, appropriate, or useful for this right to be regulated in our Civil Code, too. Relevant arguments are given in the Italian legal literature.<sup>36</sup>

5. Referring to the structure and content of the Dutch Civil Code, it is concluded that concerning the real rights and rights of obligations, general parts are provided (the third book and the sixth book), containing general provisions applicable respectively to the special parts, which provide for provisions specifically regulating inheritance, ownership, and other real rights in the fourth and fifth books, as well as special contracts and, especially, transport in the seventh and eighth books. Unlike the Dutch Civil Code, in the German Civil Code (B.G.B.), the general part covers the entire code.

Given the similarities and differences of the Albanian Civil Code with the civil codes of Western countries, it may be possible to draw complete and accurate conclusions concerning the application of general parts' provisions and the respective detailed provisions of special parts, directed towards proper application in each and every case of the general rule and the exceptions to it. Referring to the Albanian Civil Code<sup>37</sup> in the first part, "General Part," the third title, the second chapter, and the regulating provisions, in general, the invalidity of legal actions are provided, while in the third part of the Code, "Inheritance," the third title, articles 403-409, given under the title "Invalidity of the will," provide for special cases when the will is invalid. Being used in all cases, the term "is invalid" concludes that in all these cases, we deal with absolute invalidity (nullity) of the will as a unilateral legal action, while if we are referring to the provisions of the general part for the invalidity of legal actions, we will notice that, according to these provisions, in some cases we will find ourselves before absolute invalidity. In other cases before relative invalidity, i.e., the will can be declared invalid on the request of the interested person who is legitimised to file a lawsuit.

Complying with the position that special provisions are regulated differently from the general provisions constitutes an exception to the rule provided in the general provision, it is then concluded that in all the cases above, we will find ourselves before absolute invalidity of the will and that this special part of the code does not provide for any case of relative invalidity of the will. Then, the expression used in the following article 410 would not make sense, according to which, "*When the will is declared invalid, the legal heirs are called to the inheritance, except when ....*" and article 411, which provides for a three-year prescription period of the lawsuit for the invalidity of a will, would not be necessary because according to the general rule, lawsuits for establishing the absolute invalidity of a legal action, such as the will, are not prescriptible. This is an obvious case indicating that various provisions of the Civil Code allowed inaccuracies, uncertainties, gaps, and alogisms, which are difficult to regulate by case law and to treat correctly by legal doctrine.

36 Francesko Galgano, *Diritto privato* (6a ed, CEDAM 1990) 123.

37 Kodi Civil i Republikës së Shqipërisë Miratuar (n 19).

## 5 CONCLUSIONS

The data presented have been contrasted and compared with the civil codes, doctrines, and jurisprudence of Western countries, in particular, with studies in the framework of endeavours to draft a unified civil code for the European Union countries.

Given the similarities and differences of the Albanian Civil Code with Western countries' civil codes, it may be possible to draw complete and accurate conclusions concerning the application of the provisions of the general parts and the respective detailed provisions of the special parts, directed towards proper application in each and every case of the general rule and the exceptions to it.

The acceptance of foreign law in the Civil Code of Zog, more than 'a matter of quality,' was a 'matter of power,' because foreign rights, especially French and Italian, that found their sanction in this Code, were rights belonging to the spiritual influence of modern civilization, and, above all, to that of the 'Italian Renaissance' and the 'French Revolution.'

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