



Introduction to Macedonian private law

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Private vs. Public law

- basic division of law known since Roman law, according to which we distinguish between private and public law. Public law concerns things, clergy, magistrates, while private is tripartite: it consists of provisions of natural, general and civil law.
- Today, public and private law are still the main two areas in which we share the law and although the spirit of division under Roman law is reserved, it should be borne in mind that their definition is adapted to the degree of development of social relations, and in parallel to the development of law.



Private law

CIVIL LAW

1. Obligation law
2. Contract law
3. Tort law
4. Family law
5. Inheritance law



Private and Public law

1. Commercial law
2. Labor law
3. Intellectual property law



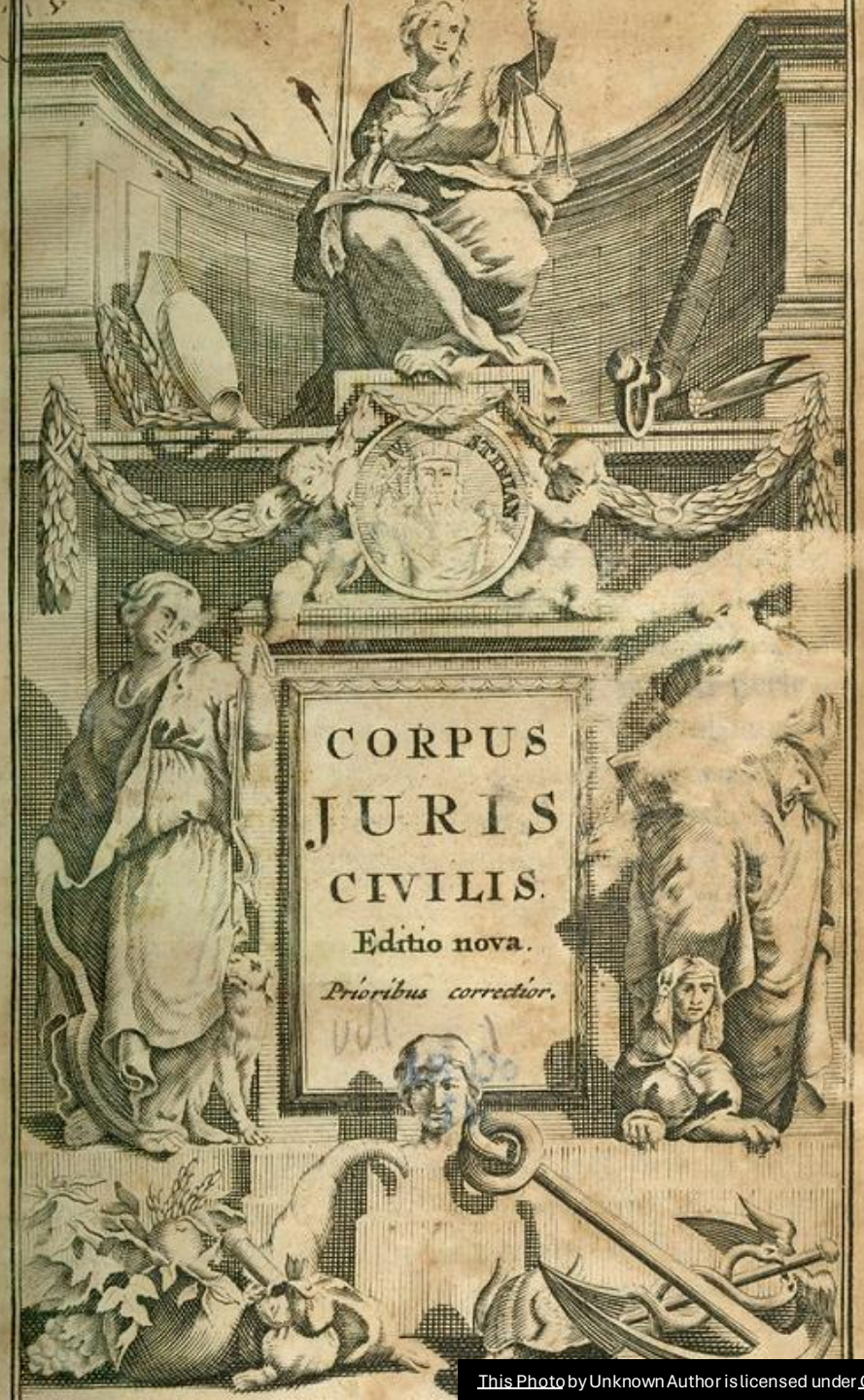
International private law

CIVIL LAW

- Modern civil doctrine rightly finds that real, bond and the last right as members of the civil family of today's degree of development of objective civil law are so developed that each of them has its own general and special part.

Justinian's Code in Western Europe

- The discovery of Justinian's code in western Europe at the end of the 11th century prompted, through a school of glossators and post-glossators, the study of Roman law at European universities with the aim of building a model of law in accordance with justice and rational theory of natural law. During the 17th and 18th centuries, codification was approached, i.e. The transformation of the aforementioned model of law into positive law, as suggested by the most famous university professors at the time.





New century codes

- The adoption of the French Civil Code (C.c.) and the Austrian Civil Code (A.g.z.) obliged case law in France and Austria to interpret the letter of these codes faithfully, and such an approach was supported by the legal science of the time, which started from the premise that natural law norms were translated into positive law in those laws. This affirms legal positivism, the school of conceptual jurisprudence in Germany, as well as dogmatic attitudes about law as the will of state rulers or the ruling class, and that outside such and such a right there is neither natural, just nor positive right.
 - The codifier momentum in Germany went beyond the policy of German unification and independence, which was advocated by Hegel and Fichte in their works. The basis for the adoption of the German Civil Code (H.E.L.) was the wish of Professor Thibault, who, as an important precondition for the political unification of Germany, proposed the removal of various territorial rights (so-called legal particularism) by the adoption of the general German Civil Code. Savinji rejected Thibault's ideas of adopting a single code modelled on the French and Austrian civil codes, but having already started from the reception of Roman law formatted into Corpus iuris civilis, he developed the so-called "Corpus iuris civilis". Pandectistic school.
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System of civil law in codifications

- The basis of the systematics of AGZ and C. c. is an institutional system that originates from Roman law (Gaius institutions) which divides civil law into: 1) persons, 2) property (property) and 3) lawsuits. The pandect system applied in the German GZ (1896) grew out of the teachings of the German legal theorists of the time and divides civil law into: 1) general part, 2) law of obligations, 3) real law, 4) family law and 5) inheritance law.
- In our country, the theory of civil law is divided and expounded through: 1) the general part, 2) real law, 3) obligation law and 4) inheritance law. Family law, in the current system of law, was outside the system of exposing civil law cases.

A brief historical
overview-
geography aspect



During the existence of Yugoslavia (1918–1941)

There were six regimes of application of civil law, namely:

- 1) the Austrian Civil Code of 1811 was valid on the territory of Croatia. (in revised and original editions depending on individual regions);
- 2) in the territory of Montenegro, the General Property Code for Montenegro was valid from 1888. (the work of Balthazar Bogišić);
- 3) the Serbian Civil Code was valid on the territory of Serbia from 1844;
- 4) in the area of Vojvodina, Hungarian law was in force, which was strongly influenced by the Austrian Civil Code;
- 5) the Austrian Civil Code was applied to the territory of Bosnia and Herzegovina in terms of obligations and property law, while in the area of family and inheritance law, Sharia law was valid as well as customary law;
- 6) in the territory of Macedonia (after the Balkan wars), the Serbian Civil Code from 1844 was valid



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Yugoslavian code?

- Despite the development of the case law from the time of the application of the so-called "old legal rules" of civil codes the systematization of norms of civil law in time went in a different direction. Yugoslavia, during its state-legal existence, did not enact the codification of civil law, but by special laws processed the basic branches of civil law, with the exception of the general part that remained scattered in a series of laws. So, e.g. the rules of the law of obligation contained in the norms of the Law on Obligations/78 do not rely on either A.g. z. or Srp. g. z., but on commercial customs (Assumptions) and modern laws (SHS) and international legal sources (Hague Uniform Law for the International Sale of Goods). This way, even today, efforts are made to go in the field of codification of civil law, i.e. to take into account international and European legal sources, such as the UN Convention on the International Sale of Goods (CISG), the Principles of the European Law of Obligation (PECL), the Sales of Consumer Goods Directive and the Proposal for a Regulation on the European Law of Obligations. But the problem of the source exceeds the scope of this topic.
- The curricula of the Faculties of Law in Yugoslavia as well as the countries created by its dissolution shared a teaching subject entitled Civil Law to: Introduction to Civil Law or The General Part of Civil Law.

After the Second World War

- All legal regulations, including those in the field of civil law, were abolished, which means that they lost their legal force, which broke the legal continuity with the law of pre-war Yugoslavia. This was done by passing the Law on Invalidity of Legal Regulations passed before 6. April 1941 and during the enemy occupation from October 25, 1946. (Official Gazette of the FNRJ, no. 86 of October 25, 1946). According to this law, courts could resolve civil case relations based on general legal rules that do not contradict the new social and legal ones in order.





Civil law regulation

- In such a state of affairs, immediately after the Second World War (1946, 1947, etc.), some parts of civil law were regulated by special laws such as laws in the field of family law rights (Basic Law on Marriage, Law on Guardianship, Law on Adoption, Law on Parental Relations and children), and then (1955) the area of inheritance law was regulated. The field of obligation law was only partially regulated (e.g. the matter of statute of limitations on claims) until 1978. when the Federal Law on Obligations was passed. As far as property relations are concerned, the so-called revolutionary laws that referred to the nationalization of certain objects of certain economic branches as well as the nationalization of construction land and residential space under the conditions specified by law.
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1978 Importance

- In 1978 the Assembly of the SFR of Yugoslavia adopted the **Law of Contract and Torts**, and that Law is still in force today in the Federal Republic of Yugoslavia.
- Some states originating through secession from Yugoslavia have also taken over that Law incorporating it into their legislation.
- There have been several amendments to the Law, including one in 1993 when all formulations which had political connotations and which referred to self-management socialism, self-management agreements and social understandings, as well as to the category of social ownership were eliminated.
- Several more detailed regulations followed, such as the Law on Default Interest Rate (1993), with amendments effected in 1994 and 1996.

Konstantinovic influence

The basis for preparing the draft of the Law was the "Sketch of the Law of Obligations and Contracts", drafted by Professor of the Belgrade Law School, Mihailo Konstantinovic. That draft provoked wide professional and academic discussion among Yugoslav legal experts, while in many cases the courts have been inspired by solutions suggested by the author of the Sketch, so that, in a way, the Law was applied even before being formally promulgated.

The law is considered a popular legislative text, characterized by an easily understandable style and wording. Not a single paragraph in the Law contains more than one sentence, and there is no reference to other articles either. There is also no insistence on professional legal terminology. Consequently, it is not a text which can instruct one about contracts and torts – but it can be understood by one not familiar with that branch of law.

Opinion on this law

Significance and characteristics

- The adoption of this Law had an enormous positive effect on Yugoslav law. It meant codification of the contract and torts law in Yugoslavia. After its coming into force there was no more need to apply legal rules from the old codes formerly in force in some regions of later Yugoslavia in the nineteenth century. In the case of Serbia, this was the 1844 Civil Code, and in Montenegro, the 1888 General Property Code. In the sphere of economic contractual relations, valid prior to the Law, these were the General Usages of Sale of Goods, of 1954. The usages, *per definitionem* are codified, i.e. written customs intended for the regulation of business transactions.
- However, since such transactions were not treated by statute, while the economy did not tolerate legal uncertainty, the General Usages of Trade included numerous rules covering the issues to be normally regulated by legislation (such as entering into contract, or contractual liability.). After the coming into force of the Law of Contract and Torts, the General Usages ceased to be applicable. The provisions of the Law, are applicable although it has, in fact, taken over a whole series of rules from the General Usages. For instance, a rule by which a contract is considered concluded even if the statement of acceptance of offer, made on time, reached the person making the offer after the deadline for acceptance – if he was aware or should have been aware that the statement was dispatched on time. The application of the General Usages is based, under the Law, on agreement, between the contracting parties, while only those customs of trade which are treated as usual practice may be applied. This, for instance, is the case in the meaning of the clauses "at the beginning of the month" or "immediate delivery".

Content and scope

GENERAL PART

- Provisions relating to the foundations of obligation relations (contracts and torts): their origin, the effect, and termination.
- The provisions concerning the interpretation of contracts found in this part apply regardless of the kind of contract in question.

SPECIAL PART

- various kinds of contracts. The largest number of articles in that Part of the Law cover the contract of sale

Current situation with Macedonian civil law

- Issues that are part of the area of general civil law under the pandect law system in our legislation are not regulated in one place. There is no separate law that contains common rules and principles for all parts of civil law, such as provisions on personal and status rights of physical and legal persons, provisions on deadlines, obsolescence and other issues.
- The legal subjectivity of financial and legal entities is regulated by law. The regulation on legal and legal capacity of financial and legal persons is contained in the Law on Obligations, more precisely they are introduced by the Law on Amendments to the Law on Obligations (Official Gazette No. 84 of July 11, 2008). Part of the provisions on the legal capacity of physical persons, the provisions on deprivation and limitation of legal capacity and the institute of custody, are contained in the Law on family (Official Gazette No. 83 of November 24, 2004 (consolidated text)). The provisions on tort ability are found in the Law on Obligations, in part 2 "Causing damage".

UNCODIFIED CIVIL LAW REGULATION

- lex generalis in special areas-

1. Law on obligations (Contract law and Tort law are regulated)
2. Law on property and other real rights
3. Law on inheritance
4. Law on family
5. Law on industrial property
6. Law on copyright and neighboring rights
7. Law on trade companies
8. Private international law act



2001 importance for Obligation Law

- The Law on Obligations of the SFRY was applicable in the Republic of Macedonia until 2001, when the (new) Macedonian Law on Obligation Relations was adopted. The application in the period from 1991 to 2001 was based on Article 5 of the Law on the Implementation of the Constitution. Activities for the adoption of the Macedonian law began in 1996, and already in 1997, the Ministry of Justice drafted a Proposal on Amendments to the Law on Obligations.
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Novelties in 2001

12. changes have been made in the regulation of monetary obligation societies that mean a modification of the solution of the market economy – the amendments refer to the principle of monetary nominalism and the validity of currency and index clauses, both contractual and default,

13. with the adoption of the Law on The Pledge of Movable Property and Rights (Official Gazette RM 21/98), the provisions of the law relating to the pledge agreement ceased to be valid (Article 966–996), so they were deleted,

14. Article 540 (now Article 528) was amended in order to harmonize with the new legal and political order,

15. in the transitional and final provisions, it is regulated that upon the entry into force of the Law on Obligation relations, the Law on Trade of Land and Buildings from 1975 with amendments ceases to apply, due to the fact that the issue of the form of the contract on the trade of immovable property has already been regulated by the Law.

After its entry into force, the Law on Obligations was amended several times.

NOVEL 2008

- Amendments to the Law in 2008 (Official Gazette of the Republic of Macedonia 84/08) are significant and multilateral. The main idea of these amendments was to harmonize with the law of the European Union and regulate issues from the matter of civil law that were not yet legally regulated. When harmonizing the Law on Obligations with the Law of the European Union (an obligation arising from the concluded Stabilization and Association Agreement), it was borne in mind that the Law on Obligations is a systemic law, which in a coherent way regulates the issues of trade in goods, services and rights, so that any intervention should be carried out in such a way that the achieved balance is not disturbed. He also had in mind, of course, that the aim of the directives is not to transpose into national legislation the solutions they contain, but to adapt the legislation in such a way as to achieve the tasks set out in the directive. Some of the amendments were necessary to address the needs of practices that saw deficiencies in some existing solutions as well as the need to regulate some issues legally.



Property regulation

- The General Law regulating the right of ownership and other rights of remit (lien, official duty and real encumbrance) is the Law on Property and Other Real Rights (Official Gazette No. 18/2001 with amendments – Official Gazette No. 92/08, Official Gazette No. 139/09 and Official Gazette 35/10). The only real right that is not regulated by the general law is the right to a long-term lease of construction land, which is regulated by lex specialis – law on construction land (Official Gazette No. 17 of 11 February 2011 with amendments from The Official Gazette No. 53 of 14 April 2011). There are other lex specialis that regulate other real rights. The lien is regulated by the Law on Contractual Pledge (Official Gazette No. 05/03), and the real burden is regulated by the Law on Inheritance (Official Gazette 47/96) in the part that regulates the legacy as a type of real cargo).
 - Pledge, longtime lease for construction land, servitudes – real and personal
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Real estates laws and regulations

- The right of ownership over real estate (RE) is guaranteed in the *Constitution of the Republic of North Macedonia*. Additionally, the rights regarding RE are regulated in the following laws: *Law on Ownership and Other Real Estate Rights* (Official Gazette of the Republic of Macedonia, No.18/2001 and its subsequent amendments); *Law on Construction Land* (Official Gazette of the Republic of Macedonia, No.17/2001 and its subsequent amendments); *Law on International Private Law* (Official Gazette of the Republic of Macedonia, No.87/2007 and its subsequent amendments); *Law on Cadastre of Immovable Assets* (Official Gazette of the Republic of Macedonia, No.55/2013); *Law on Obligations* (Official Gazette of the Republic of Macedonia, No.18/2001 and its subsequent amendments).

Intellectual property law

Industrial property

- Patent
- Trademark
- Utility model
- Industrial design
- appellation of origin
- and geographical indication
- Know-how

Copyright and neighboring rights (related rights)

- Copyright
- the rights of performers,
- phonogram producers,
- video gram producers (film producers),
- broadcasting organizations, publishers
- and database makers

State office of industrial property

Industrial property registration in administrative procedure

meaning

- Patent shall be used for protection of invention.
- Industrial design shall be used for protection of new form of a body, picture, drawing, contours, composition of colors or a combination of these features-design.
- Trademark shall be used for protection of trade sign.
- Appellation of origin and geographical indication shall be used for protection of geographical name.

new Private International Law Act

The new Private International Law Act of the Republic of North Macedonia (hereinafter the PIL Act 2020) has been adopted in 2020. It represents one of the most comprehensive codification of European Union private international law (hereinafter the EU PIL) provisions in national private international law act. The PIL act 2020 implements most of the EU conflict of law rules and EU jurisdictional criteria especially those that have universal application. The most significant characteristics of PILA 2020 are: firstly, the act has limited the exclusive jurisdictional criteria; secondly, it introduced habitual residence as one of the main jurisdictional and conflict of law criteria; and thirdly, the act 'mirrors' the provisions that are present in the EU regulations. Moreover the PILA 2020 has positioned direct link between the decisions of the Court of Justice of the European Union regarding the EU PIL Regulations and the national courts, although N. Macedonia is still a candidate country to the EU. This Europeanisation of the Macedonian PIL has been done for two reasons: first, to modernize the rules in line with the new PIL trends, and secondly to prepare the Macedonian judges for the forthcoming radical change in the PIL when N. Macedonia becomes a full member in the EU. The intention of this article is not to give full detailed analyses of every provision in the new PILA 2020 but rather to provide for general overview of the solutions present in this act, as well to determine the main principles and new tendencies that would define the Macedonian private international law in future.



CIVIL LAW CODIFICATION

- ongoing project
- state project/Commission of eminent professors in the referring area
- positions taken by the Commission

1 /consumer law and consumer contracts that are subject to daily changes will not be an integral part of the Civil Code

2/the area of intellectual property rights would not be an integral part of the Civil Code

3/the monistic approach of a law on obligations between natural persons, natural and legal persons and between legal and legal entities

4/ no special trade codification for contracts in the trade law - dominant position on the need for a unified regulation of obligations