Introduction to Macedonian private law

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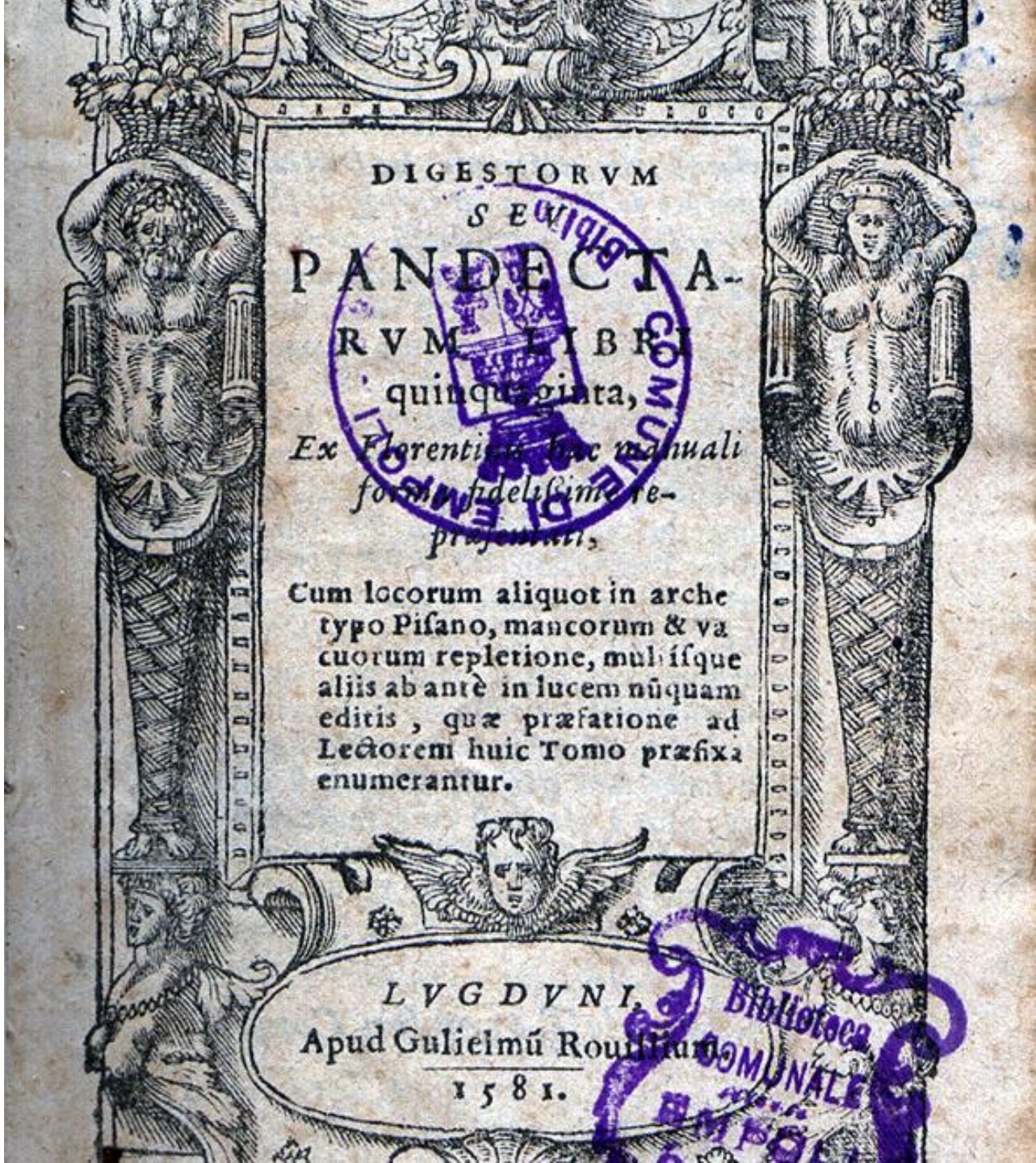
Private vs. Public law

- basic division of law known since Roman law, according to which we distinguish between private and public lawPublic 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

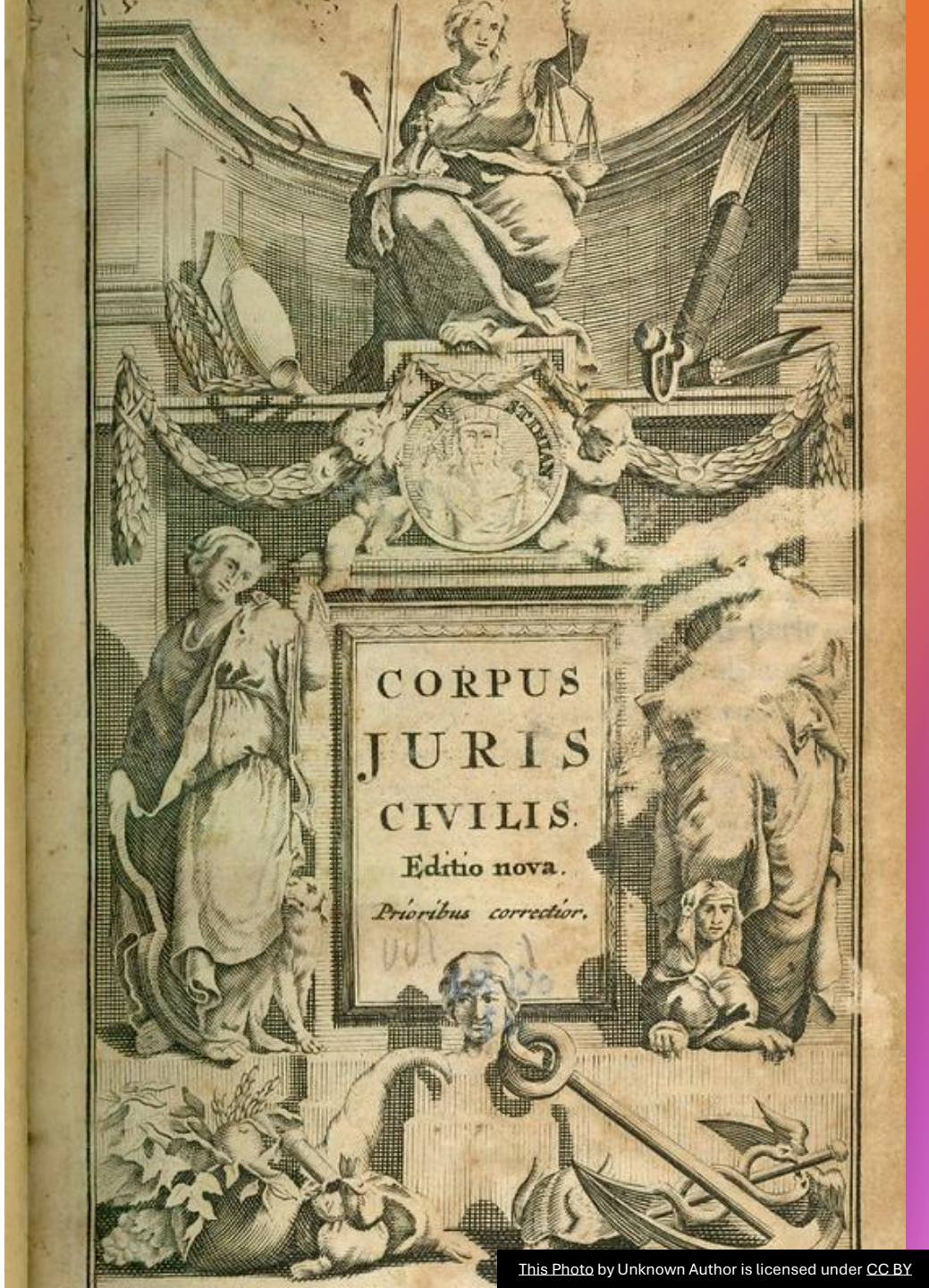
International private law

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 Thiboult, 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.

The idea of codifying private law

- Although the creators of European codifications of civil law proceeded from different premises, natural law, general and immutable principles of reason and justice, on the one hand, and ancient Roman law as the source of rules for resolving disputed cases, on the other hand, the content similarity allowed for the essential unity of the European-continental (Roman-Germanic) system of law. One of the creators of C.c., Portalis, noticed and expressed the relationship between the creation and application of law, which is an essential feature of European-continental law. The legislator must establish principles for application, not offer solutions to each specific issue. The legislative skill is to shape principles, and the judge brings these principles to life, extending them to special cases with the wise and rational skill of applying law. Thus, the creators of C.c. devoted only five articles to the matter of responsibility, and creative application did not force the legislator for 200 years to amend the code. Planiol did not criticize the systematics of C.c., which inherited the systematics of law from Guy's institutions and Justinian’s code.

CODE CIVIL

DES FRANÇAIS.

TITRE PRÉLIMINAIRE.

DE LA PUBLICATION, DES EFFETS ET DE L'APPLICATION DES LOIS EN GÉNÉRAL.

ARTICLE 1.er

Les lois sont exécutoires dans tout le territoire français, en vertu de la promulgation qui en est faite par le PREMIER CONSUL.

Elles seront exécutées dans chaque partie de la République, du moment où la promulgation en pourra être connue.

La promulgation faite par le PREMIER CONSUL sera réputée connue dans le département où siégera le Gouvernement, un jour après celui de la promulgation; et dans chacun des autres départemens, après l'expiration du même délai, augmenté d'autant de jours qu'il y aura de fois dix myriamètres [environ vingt lieues anciennes] entre la ville où la

Code Civil (persons, things, actions)

- In C.c., civil law matter is divided into an introductory part, book first – persons (status, marital and family law), book two – things and other restrictions of property (real, obligation and inheritance law) and book three – different ways of acquiring ownership (civil court proceedings). Planiol defended this systematics with arguments that scientific systematics correspond to a scientific work or textbook, but is not necessary or even useful for the code. The code is not for teaching students but for application by educated and experienced practicing lawyers. Therefore, Planiol considered it sufficient for the matter in the code to be presented clearly and adequately, and not in accordance with strictly established scientific rules. The real and obligation law from C.C. is still valid today. This code affirmed the principle of freedom of contract and liaibility on the basis of fault, which is an achievement of imperishable value.

BGB

- The German Civil Code is a product of the historical school of law that has shaped the concepts and systematics of the code, especially the "general part" that permeates all the special parts of the code. The School of Law of History inspired the Pandectistic Law School, for which the legal system is closed the order of institutions, ideas and principles developed from Roman law. The creators of H.J. divided 2,385 paragraphs into five books: the general part, the law of obligations, property law, family law and inheritance law. A sixth book, private international law, was added to the introductory law.

Austrian and Serbian civil code

- Sources of the Austrian Civil Code(A. g. z.) In 1811, Roman law, the teaching of natural law and the ideas of the Enlightenment, but the draft was prepared by Franz von Zeiller, a judge and professor of natural law at the University of Vienna. AGZ follows the institutional system.
- The first part of the Code regulates persons, legal capacity, matrimonial law, parental law; the second part of things (real rights on property, property, pledge and easement, and in personal rights includes contracts and the right to compensation for damages.
- The Serbian Civil Code, the only complete collection of civil law in the legal history of Serbia, was adopted in 1844, at the beginning of the process of national liberation, unification and emancipation of the Serbian people. It was among the first in Europe at the time (French GZ 1804, Austrian GZ in 1811, Dutch GZ in 1838). The Serbian GZ is an eclectic transplant predominantly by taking over the provisions of the Austrian GZ, with the presence of the French GZ, Roman and customary law.

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 from1844 was valid

Yugoslavian code?

- Despite the development of the case law from the time of the application of the so-called The "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.

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 inspirated 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".

Court practice influence

Price in construction contracts

- The influence of Yugoslav court practice is present in many provisions of the Law. Thus a policy was adopted by the Law, chrystalized from numerous court decisions, regarding the alteration of the agreed price in construction contracts, should the price of materials forming the ground for calculation of the price of works increase.
- The relevant text of the law provisions provides for three different situations in such a case (Article 636 and the following), depending on the degree of fair fulfilment on the part of the operator.

Nullity of insurance contract

- Along the same lines, court practice supplied a solution for nullity of an insurance contract, not only if the insured event had occurred at the moment of conclusion of contract, but also if it was certain at that moment that such event would materialize.

The 1964 Hague Convention on the Uniform Law of Sale of Corporeal Movables and the 1964 Hague Convention on Concluding Contracts of Sale of Corporeal Movables.

The relevant example concerns the conditions (prerequisites) for invoking contractual liability. The Law does not provide for debtor's liability for violation of contract in the case of his fault. In order to be exempted from liability for damage done to the other party to the contract due to violation of contract, the debtor should prove his inability to meet his obligation, or his delay in this respect, as being due to circumstances occuring after the entering into contract which were impossible for him to prevent, eliminate or avoid. According to Yugoslav court practice, also, in the case of goods perishing in transport due to a defect of a loaded truck, the carrier may not avoid liability simply by proving regular maintenance of his motor fleet, which would exclude his fault. The damage is considered to have taken place in the course of the carrier performing his professional activity, and the defect of a truck is but a normal element of his business risk.

The comparative law method

Rule taken

from the English and French laws

- Liability of a debtor violating the contract is limited to the damage which was his duty to foresee at the time of entering into contract as a possible consequence of such violation, while taking into consideration the facts known, or likely to be known, to him at the time.
- The former Serbian Civil Code did not provide for such limitation of contractual liability. The liability of a debtor for breach of contract was limited but, as a rule, the debtor owed redress only for simple damage (*damnum emergens*). Compensation for the profit lost (*lucrum cessans*) was his liability only if he violated the contract by wilful misconduct or gross negligence.

Second example

- a claim by one contracting party of changed circumstances after the conclusion of contract (the *rebus sic stantibus* clause) which, according to the Law, is possible not only if performance of his duty become more difficult - which is the rule in the General Trade Usages. Rescission or amendment of the contract is also possible, according to the Law, should changed circumstances prevent realisation of the purpose of contract - which amounts to acceptance of the English concept of frustration of contract.

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

Commercial contracts

- In Yugoslavia there are no special civil and special commercial laws, as is the case in some other European countries. The Law of Contract and Torts is applicable both to contractual and other obligation relations among persons not engaged in any kind of economic activity (i.e. citizens), and to relations among enterprises and other economic organisations. However, the Law takes into consideration the specific nature of economic obligation relations. In a series of its provisions there are stipulations that they are not to be applied to commercial contracts or that some special solution is provided for such cases. And contracts of that type are ones entered into by enterprises and other corporate bodies engaged in business operations (such as banks, insurance organisations, cooperatives), as well as by shop-owners and other individuals registered for the performance of some kind of economic activity in order to do their business.

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.

Novelty in ZOO from 2001

The Law on Obligations was adopted by the Assembly of the Republic of Macedonia, which was held on February 20, 2001. What the newspaper consisted of:

1. the introductory provision of the Law in Article 1 is simplified,

2. in Article 2, as participants in obligation relations, legal and financial persons are defined,

3. the definitions of the principles of the law of obligation are adapted to the new legal and political system,

4. the provisions of Articles 118–120 relating to self-governing agreements were deleted, Articles 167 and 168 are in line with the Council of Europe's Civil Convention for Corruption, the European Convention for the Compensation of Victims of Crimes Committed by Violence; Article 169 governs liability for damage caused by international military or other organizations.

7. the provisions of Articles 1099–1105 were deleted due to the unitary character of the state, The 8th category "morality of a socialist self-governing society", in all the provisions in which it appeared, was replaced by the category "good customs",

9. the classic definitions of contracts of sale, exchange and loan have been returned by deleting the "right of disposal" from the existing definicia,

10. a written form of a contract for the sale of immovable property is provided, regardless of the status of the buyer,

11. the gift contract /articles 555–569/, partnership (community) /members 667–703/, servants /articles 603–618/, lifetime maintenance contract /articles 1029–1035/ and a contract on the distribution of property during life /Article 1022–1028 is regulated

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 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

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).

Foreign persons

- In accordance with the *Law on ownership and other real rights*, the Foreign natural persons and legal entities, residents of the member states of the European Union and OECD may acquire the right of ownership of an apartment and business premises in the territory of the Republic of North Macedonia in the same manner as the citizens of the Republic of North Macedonia.
- Foreign natural persons and legal entities, residents of the non-member states of the European Union and OECD may acquire the right of ownership of an apartment and business premises in the territory of the Republic of North Macedonia in the same manner as the citizens of the Republic of North Macedonia, under the same conditions of reciprocity.

Land ownership

- When it comes to land ownership, the law stipulates that Foreign natural persons and legal entities, residents of the member states of the European Union and OECD may acquire the right of ownership and the right to a long-term lease of construction land in the territory of the Republic of North Macedonia in the same manner as domestic legal entities and natural persons, citizens of the Republic of North Macedonia.
- Foreign natural persons and legal entities, residents of non-member states of the European Union and OECD may acquire the right of ownership and the right to a long-term lease of construction land in the territory of the Republic of North Macedonia under the conditions of reciprocity.

Agricultural land

- More specifically, when it comes to the acquisition of real rights over agricultural land the law states that foreign natural persons and legal entities cannot acquire the right of ownership of agricultural land in the territory of the Republic of North Macedonia.
- Foreign natural persons and legal entities may, under the conditions of reciprocity, acquire the right to a long-term lease of agricultural land in the territory of the Republic of North Macedonia, on the basis of a consent of the minister of justice, upon previously acquired opinion of the minister of agriculture, forestry and water resource management, and the minister of finance.

Registration of ownership

- The ownership of the RE assets is registered in the public books kept by the Real Estate Cadaster of the Republic of North Macedonia. In the public book is registered the right of ownership and other real rights of the real estate, of the real estate data, as well as of other relevant rights and facts whose registration is determined by law.
- The entries in the registry are publicly available on the website of the Real Estate Cadaster Agency. On the website is presented partial data related to the owner of the RE property and the property itself. For more detailed information regarding the RE (whether there are registered encumbrances, *etc*.) it is necessary to get a property list as a title deed, which can be issued by a cadaster or a notary, and this service is chargeable and such list can be obtained by any third party.

Protection

- Property entries are binding. No person may be deprived or restricted of ownership and the rights deriving from it, except in the cases of public interest determined by law, and the owner has the right of judicial protection. The normative regulation of property lawsuits in the legal system of the Republic of North Macedonia is contained in several laws. Lawsuits for protection of property according to the *Law on Ownership and Other Real Rights* are the following: ownership lawsuit for return the possession of the RE (*rei vindication*), a lawsuit by a presumed owner (*actio publiciana*), a lawsuit against disturbance of ownership (*actio negatoria*), a lawsuit for protection of co-ownership, *i.e.* joint ownership, a declaratory lawsuit, and an extraction lawsuit. Lawsuits for protection of the RE right are lawsuits for change, *i.e.* for deletion of the entries in the Cadaster.

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 shell 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.

TRIPS agreement

- Relationship with the World Trade Organization (WTO) – TRIPS contains intellectual property conditions for accession to the WTO.
- The TRIPS Agreement requires states to have certain provisions relating to the copyright regime, the Berne Convention, provisions of civil proceedings, punitive law and procedure, administrative procedure and special customs control to be fully implemented in national legislation.

Paris Convention for the Protection of Industrial Property (1883)

- The Convention contains material-law provisions (Art. 1-12), organisational provisions (13-17) and other articles relating to these parts (18–30)
- The Paris Convention applies to industrial property in the widest sense, including patents, trademarks, industrial designs, utility models (a kind of "small-scale patent" provided for by the laws of some countries), service marks, trade names (designations under which an industrial or commercial activity is carried out), geographical indications (indications of source and appellations of origin) and the repression of unfair competition.

Main principles

The substantive provisions of the Convention fall into three main categories: national treatment, right of priority, common rules.

national treatment

- Under the provisions on **national treatment**, the Convention provides that, as regards the protection of industrial property, each Contracting State must grant the **same** protection to nationals of other Contracting States that it grants to its nationals. Nationals of non-contracting States are also entitled to national treatment under the Convention if they are domiciled or have a real and effective industrial or commercial establishment in a Contracting State.

right of priority

- The Convention provides for the **right of priority** in the case of patents (and utility models where they exist), marks and industrial designs. This right means that, on the basis of a regular first application filed **in one** of the Contracting States, the applicant may, within a certain period of time (12 months for patents and utility models; 6 months for industrial designs and marks), apply for protection **in any of the other** Contracting States. These subsequent applications will be regarded as if they had been filed on the same day as the first application. In other words, they will have priority (hence the expression "right of priority") over applications filed by others during the said period of time for the same invention, utility model, mark or industrial design. Moreover, these subsequent applications, being based on the first application, will not be affected by any event that takes place in the interval, such as the publication of an invention or the sale of articles bearing a mark or incorporating an industrial design. One of the great practical advantages of this provision is that applicants seeking protection in several countries are not required to present all of their applications at the same time but have 6 or 12 months to decide in which countries they wish to seek protection, and to organize with due care the steps necessary for securing protection.

The Convention lays down a few **common rules** that all Contracting States must follow. The most important are:

- **Patents.** Patents granted in different Contracting States for the same invention are **independent of each other**: the granting of a patent in one Contracting State does not oblige other Contracting States to grant a patent; a patent cannot be refused, annulled, or terminated in any Contracting State on the ground that it has been refused or annulled or has terminated in any other Contracting State.
- The inventor has **the right to be named** as such in the patent.

Marks

- The Paris Convention does not regulate the conditions for the **filing and registration of marks** which are determined in each Contracting State by domestic law. Consequently, no application for the registration of a mark filed by a national of a Contracting State may be refused, nor may a registration be invalidated, on the ground that filing, registration or renewal **has not been effected in the country of origin**. The registration of a mark obtained in one Contracting State is **independent** of its possible registration in any other country, including the country of origin; consequently, the lapse or annulment of the registration of a mark in one Contracting State will not affect the validity of the registration in other Contracting States.

Other rights

- **Industrial Designs.** Industrial designs must be protected in each Contracting State, and protection may not be lost on the ground that articles incorporating the design are not manufactured in that State.
- **Trade Names.** Protection must be granted to trade names in each Contracting State without there being an obligation to file or register the names.
- **Indications of Source.** Measures must be taken by each Contracting State against direct or indirect use of a false indication of the source of goods or the identity of their producer, manufacturer or trader.
- **Unfair competition.** Each Contracting State must provide for effective protection against unfair competition.

Berne Convention for the Protection of Literary and Artistic Works (1886)

- The oldest international multilateral act in the field of copyright
- Open to all countries, and our country is a member state.
- All authors of published works in a contractual state independent of their nationality should be assimilated in other contractual states to their own citizens, without being asked to fulfil any formalities
- It contains the principle of national treatment, assimilation and minimum rights.

Objective of Berne Convention

- The Berne Convention deals with the protection of works and the rights of their authors. It is based on **three basic principles** and contains a series of provisions determining the **minimum protection** to be granted, as well as special provisions available to **developing countries** that want to make use of them.

Basic principles

- Works originating in one of the Contracting States (that is, works the author of which is a national of such a State or works first published in such a State) must be given the same protection in each of the other Contracting States as the latter grants to the works of its own nationals (principle of "national treatment")
- Protection must not be conditional upon compliance with any formality (principle of "automatic" protection).
- Protection is independent of the existence of protection in the country of origin of the work (principle of "independence" of protection). If, however, a Contracting State provides for a longer term of protection than the minimum prescribed by the Convention and the work stops to be protected in the country of origin, protection may be denied once protection in the country of origin ends.

Minimum standards of protection

- As to works, protection must include "every production in the literary, scientific and artistic domain, whatever the mode or form of its expression" (Article 2(1) of the Convention).
- Subject to certain allowed reservations, limitations or exceptions, the following are among the **rights** that must be recognized as exclusive rights of authorization:
    - **the right to translate**,
    - **the right to make adaptations and arrangements** of the work,
    - **the right to perform in public** dramatic, dramatico-musical and musical works,
    - **the right to recite** literary works in **public**,
    - **the right to communicate to the public** the performance of such works,
    - **the right to broadcast** (with the possibility that a Contracting State may provide for a mere right to equitable remuneration instead of a right of authorization),
    - **the right to make reproductions** in any manner or form (with the possibility that a Contracting State may permit, in certain special cases, reproduction without authorization, provided that the reproduction does not conflict with the normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author; and the possibility that a Contracting State may provide, in the case of sound recordings of musical works, for a right to equitable remuneration),
    - **the right to use the work as a basis for an audiovisual work**, and the right to reproduce, distribute, perform in public or communicate to the public that audiovisual work

Moral rights

The Convention also provides for **"moral rights"**, that is, the right to claim authorship of the work and the right to object to any mutilation, deformation or other modification of, or other derogatory action in relation to, the work that would be prejudicial to the author's honor or reputation.

Duration of protection

- As to the **duration** of protection, the general rule is that protection must be granted until the expiration of the 50th year after the author's death. There are, however, exceptions to this general rule. In the case of anonymous or pseudonymous works, the term of protection expires 50 years after the work has been lawfully made available to the public, except if the pseudonym leaves no doubt as to the author's identity or if the author discloses his or her identity during that period; in the latter case, the general rule applies. In the case of audiovisual (cinematographic) works, the minimum term of protection is 50 years after the making available of the work to the public ("release") or – failing such an event – from the creation of the work. In the case of works of applied art and photographic works, the minimum term is 25 years from the creation of the work

Free use

- The Berne Convention allows certain limitations and exceptions on economic rights, that is, cases in which protected works may be used without the authorization of the owner of the copyright, and without payment of compensation. These limitations are commonly referred to as "free uses" of protected works, and are set forth in Articles 9(2) (reproduction in certain special cases), 10 (quotations and use of works by way of illustration for teaching purposes), 10*bis* (reproduction of newspaper or similar articles and use of works for the purpose of reporting current events) and 11*bis*(3) (ephemeral - brief recordings for broadcasting purposes).
- The Appendix to the Paris Act of the Convention also permits developing countries to implement non-voluntary licenses for translation and reproduction of works in certain cases, in connection with educational activities. In these cases, the described use is allowed without the authorization of the right holder, subject to the payment of remuneration to be fixed by the law.

International Convention for the Protection of Artists – Performers, Phonogram Producers and Broadcasting Organizations concluded in Rome in 1961

- First international convention on the regulation of related rights and their relationship with copyright. Macedonia joined it in 1997.
- It does not regulate copyright protection.
- It is based on the principles of assimilation of foreigners with domestic citizens and national treatment of them.
- It defines the terms performers, phonogram, phonogram manufacturer, publishing, broadcasting and broadcasting.
- Each Member State may provide for exceptions to the protection guaranteed by this Convention

Performers

- **Performers** (actors, singers, musicians, dancers and those who perform literary or artistic works) are protected against certain acts to which they have not consented, such as the broadcasting and communication to the public of a live performance; the fixation of the live performance; the reproduction of the fixation if the original fixation was made without the performer's consent or if the reproduction was made for purposes different from those for which consent was given.

Producers of phonograms

- **Producers of phonograms** have the right to authorize or prohibit the direct or indirect reproduction of their phonograms. In the Rome Convention, “phonograms” means any exclusively aural fixation of sounds of a performance or of other sounds. Where a phonogram published for commercial purposes gives rise to secondary uses (such as broadcasting or communication to the public in any form), a single equitable remuneration must be paid by the user to the performers, to the producers of the phonograms, or to both. Contracting States are free, however, not to apply this rule or to limit its application.

Broadcasting organizations

- **Broadcasting organizations** have the right to authorize or prohibit certain acts, namely the rebroadcasting of their broadcasts; the fixation of their broadcasts; the reproduction of such fixations; the communication to the public of their television broadcasts if such communication is made in places accessible to the public against payment of an entrance fee.

limitations and exceptions

- The Rome Convention allows for **limitations and exceptions** to the above-mentioned rights in national laws as regards private use, use of short excerpts in connection with reporting current events, ephemeral fixation by a broadcasting organization by means of its own facilities and for its own broadcasts, use solely for the purpose of teaching or scientific research and in any other cases where national law provides exceptions to copyright in literary and artistic works. Furthermore, once a performer has consented to the incorporation of a performance in a visual or audiovisual fixation, the provisions on performers' rights have no further application.

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.

PILA 2020

- It can be said that the PILA 2020 represents a significant step forward for the Macedonian private international law, bridging the new tendencies in private international law and Europeanizing the core understanding of its institutes. The systematization that has been introduced in this new PIL code, provides for much easier implementation from practitioners soliciting in N. Macedonia. It will represent a challenge for the judiciary to consume such large structural change of private international law, however to achieve the main goal of the law, that is to bring closer the EU private international law rules, this mustn't represent an obstacle.
- When the judiciary adopts to these provisions in the PILA 2020, then the impermanent move to the EU private international law regulations would not represent tremendous problem. With that, the PILA 2020 solves two problems with one act, it evolutionary modernizes the national private international law and provides for easier adaptation to the EU regulations.

transposed EU regulations in PILA

- Very important provisions in the PILA 2020 are the rules for interpretation regarding the provisions which represent fully transposed EU regulations. These rules would allow the judiciary to comply its national law to the standards and interpretations of the EU institutes and with that to go in line with the interpretation provided in EU, although N. Macedonia is still just a candidate country to the EU. Without these provisions, there would still be a possibility of distortion of the understanding of EU legal institutes and with that the goal of harmonization of the internal law with the EU law would not be achieved. The PILA 2020 will also represent a model for a modern national private international law act that other countries can follow.

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

LAW OF PERSONS (NATURAL AND LEGAL)

- questions related to the civil and legal capacity of the natural and legal persons as subjects of law

- contractual capacity and accountability (capacity for torts) - regulation in the Law on obligations (the Law on Amendments to the Law on Obligations (Official Gazette no. 84 of 11 July 2008).

- the Law on Family (Official Gazette no. 83 of 24 November 2004) also contains provisions regarding legal capacity referring to the diminished capacity and the deprivation of legal capacity

CODIFICATION OF MACEDONIAN CIVIL LAW

In the beginning of 2011 in the Republic of Macedonia started the process of codification of the civil law.1 The process of preparation of the first Macedonian Civil Code is still ongoing, given the fact that this will be one of the biggest reforms in the civil law area and in the legal system from its existence

TWO MAIN GOALS OF THE CODIFICATION

To improve the quality in the regulation of the civil law relations in the Republic of Macedonia and to overcome the existing legal gaps, problems and contradictions in the current law. This particularly applies to the Macedonian inheritance law that has not undergone significant changes for more than seven decades.

Despite this, in the contemporary societies, in the beginning of this century inheritance law has undergone many dramatically changes. Several factors influenced the changes in the inheritance law. In some post-socialist countries, the reforms of the inheritance law were influenced by political, legal and economic changes. In other European countries those changes were necessary because of the social and cultural transformations that occurred as a result of integration processes. However, the greatest influences on inheritance law, in almost all European countries, were result of the radical transformations in the marital and family relations. With these challenges is faced and Macedonian Inheritance Law that will be regulated in Book 4 – Inheritance Relations of the Civil Code.

FAMILY LAW

In the begging, during the preparation of the Civil Code of the Republic of Macedonia, there were certain opinions according to which family law should not be an integral part of civil codification, but that family relations should be regulated by a special law. The idea that family law should not be included in the Civil Code is based on the division of civil law relations on personal relationships (which should be regulated in a separate family code) and proprietary relationships (which should be regulated in the Civil Code). However, in the reality it is not easy to separate personal and proprietary relationships, because they are closely intertwined. In addition, there are other, more important reasons why family law should be an integral part of civil codification. The main aim of codification is to cover a wide field of law and to be the most important source of law in a particular area. Codification must not have gaps and its introduction should reduce the number of sources of law. Moreover, codification should be simple, understandable for every citizen. Thus, the main reason for the inclusion of Family law in Civil Code is to provide regulation of all issues important to the citizens, from birth to death, in one legal text, in a comprehensive and systematic way. Furthermore, family law is an integral part of the most significant civil codes in Europe, as French and German Civil Code, and such is the situation in all countries of Western Europe that have civil codifications.

PROPOSALS

The authors believe that the Family law, which will be included in the Fifth Book of the Civil Code, should undergo serious reforms. The reason for this is that there were deep transformations in marital and family relations in the last few decades, but despite that the lawmakers in Macedonia did not made any significant reform of the Family law. Within the reform of the Macedonian family law the authors propose detail regulation of the cohabitation. In addition, they propose that Macedonian Civil Code should accept the marital agreement, which will enable the spouses to regulate their property relations in a way that suits their needs and interests. The authors believe that the Civil Code should provide for joint exercise of the parental rights after divorce, that is a general tendency in much European legislation. One of the most important reforms will be predicting the children's right to express their opinion in all the situations when the courts and other institutions are deciding on their rights and interests, which is not the case in the current legislation. One of the most important reforms of the Macedonian Family law, according to the authors, should be the special protection of the family home. According to the authors, that will be in the best interests of the children, because they will not have to change their habitat in the event of divorce.