| Chapter 7 |

# Private Law Codifications in East Central Europe

Emőd VERESS

**ABSTRACT**

The codification of civil law implies the creation of a fundamental law in a private context. The process itself is fascinating: the social and political context that shaped East Central Europe's civil codes. What models were used in the codification process and who were the key players? English-language legal history works generally speak very briefly of East Central Europe as a region of the model being followed and may dedicate a few lines to mentioning which civil code is a translation or adoption of which Western model. In fact, this story is much more complex. Adaptation included innovative elements, and the way in which the courts applied these codes revealed the region's specificities. Most civil codes of East Central Europe cannot be considered transplants and are as original as the important codes in different world regions. This chapter firstly analyzes the two 19th-century waves of codification. Secondly, the chapter examines the other three waves of codification in the 20th century. The emphasis is on the specificities of East Central Europe and on the comparative legal method.

**KEYWORDS**

codification, civil codes, East Central Europe, Croatia, Czechia, Hungary, Poland, Romania, Serbia, Slovakia, Slovenia.

## 1. Codification: origins and purposes[1]

A code, that is, a 'codex' or a 'book,' is a symbol of a written, organized, logical, coherent legal text. The creation of codes is codification: high-order legislation of great cultural significance.[2] The process of major civil law codification dates back to the 19th century. It started as a result of bourgeoisie revolutions aimed at overthrowing feudalism. Thus, the name 'civil' = 'bourgeois' code also indicates these revolutions' achievements: These codes implement a system of ideas based on private property, which removes feudal ties and puts the citizen at the center of society. Codification "*was based on principles of the equality of all citizens, the inviolability of private property*

1 The author would like to thank David Kolumber, Tomasz Tomczak and János Székely for their valuable comments on the chapter.

2 Nizsalovszky, 1984, p. 103.

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*and contractual freedom*."[3] For example, the abolition of the firstborn male heir's privileged legal inheritance status and the introduction of equal inheritance for children were an essential means of consciously demolishing large estates.[4] Gustave Flaubert (1821–1880), a French writer (who also studied law), writes the following in one of his important novels, demonstrating the effects of codification:

> *But simple-minded people get enraptured about the Civil Code, a work fabricated – let them say what they like – in a mean and tyrannical spirit, for the legislator, in place of doing his duty to the State, which simply means to observe customs in a regular fashion, claims to model society like another Lycurgus.*

In reality, civil codes are meant to endure over a long period, and they have a conservative nature. This is true even in the case of the French codification:

> *The revolutionary upheaval in the legal and economic status of the individual, equality before the law, civil liberties, the abolition of class privileges, the radical reform in the tenure of real property, in the order of inheritance, in the system of mortgages, the introduction of civil marriages and civil divorces – all these fundamental measures amounting to the abolition of the feudal system were already affected by a number of statutes enacted by the National Assembly and the Convention starting in 1789.*[5]

Therefore, Code Napoléon consolidated, not introduced, the revolutionary ideology; hence, the term 'post-revolutionary' legislation is accurate.[6] The conservative nature of German and Swiss codification is evident. This does not mean that the civil codes cannot be instruments of reform, but these reforms are generally minor corrections and not fundamental changes.

Revolutions in private law necessitate transitory legislation, and these norms, in general, are exterior to the civil codes. In East Central Europe, several such transitions took place. First, a transition occurred from a 'feudal' legal order to a capitalist, bourgeoisie legal order (the first and second waves of codification in the 19th century). In Western Europe, this legal order has evolved organically since this transformation. This evolution was limited in East Central Europe, as a detour prevented organic development. After the Second World War, the property regime underwent forced transformation, and a Soviet-type economy was introduced, based on the dominance of state ownership and planned economy. This reform was also realized outside the civil codes, through transitory norms. Finally, there was a return to the capitalist legal order, based on private property and market economy, necessitating the third set of transitory, 'revolutionary' norms. In this context, civil codes are conservative,

3 Stanković, 2014, p. 882.
4 Vékás, 2017, pp. 220–221.
5 Rudzinski, 1965, p. 34.
6 Ibid., p. 35.

and these norms are meant to represent permanence. Dynamism is realized through means other than the civil codes.

Codification in private law from this perspective ends an era of change (the transition), fixes the novel system of norms for a new epoch and for a longer period of time, and demands the systematization of the previous transformations. The requirement of legal certainty is served more effectively by a well-crafted code than by the daily zeal of the legislature and an untraceable flood of legislation.[7] In general, codification cannot lead to a fully comprehensive or complete code, as such a creation is utopian. On the other hand, "*Codification can be successfully applied to summarize the interlinked parts of the legal system, in particular, a given field of law or part of a field of law.*"[8] However, after acknowledging that not even the French code is in itself revolutionary, we can find truly revolutionary codes in East Central Europe, such as those used to foster the bourgeoisie transformation of a 'feudal' society. This is the case in Romania, where the adoption of a civil code in 1864 was not preceded by the formation of a new economic order; rather, the code itself was a tool in these transformations.

The main reasons for codification are:

— ensuring general knowledge of legislation;
— where appropriate, standardization and systematization of legislation;
— servicing legal certainty as a precondition for stability and economic development;
— strengthening citizens' political identity;
— expressing value choices;
— in some cases, codification is an instrument of reform and modernization.[9]

Codification in East Central Europe was deeply rooted in common European trends, but it also had its specificities. In order to proceed with a comparative analysis of the legal history of codification, several factors can be taken into consideration: (1) Is there a unitary code or are several distinct acts used to regulate private law? (2) Is there a dualist system (that is, a specific commercial code besides the civil code) or a single code that also serves the needs of private persons and businesses (monist system)? (3) Differentiation is possible based on the models used for codification (Austrian, French, German, Swiss regulation). (4) Important criteria can determine the intensity of model-following: There are cases of direct introduction of a civil code, of an almost complete adoption and translation of a civil code, of medium-intensity model tracking (e.g., the use of multiple models), and finally, low-intensity model tracking, where the act presents original solutions. These questions are answered in the final compendium at the end of the present chapter.

7 Vékás, 2017, pp. 216–219.
8 Varga, 2002, p. 377.
9 Veress, 2022, pp. 22–23.

## 2. Codification: models

For the purposes of the historical analysis, we have to consider the main different models that served as a guiding point for codification in East Central Europe. As a general trend, it was noted that "*The countries concerned* [...] *are traditionally accustomed not to look at the solutions devised by the others among them, preferring instead to shop for solutions in vogue in Western countries.*"[10]

Practically, the Austrian empire was the home of the first modern codification of private law: After the 1786 project, an experimental version of the Austrian civil code entered into force in 1797 in the province of Galicia (at present, this historical region is divided between Poland and Ukraine).[11] These were the modernization efforts of enlightened absolutism. The 'final' version of the Austrian civil code (Allgemeines Bürgerliches Gesetzbuch [ABGB])[12] "*was enacted in 1812 for the non-Hungarian part of the Austrian monarchy.*"[13] Therefore, the Austrian civil code served as a starting point for modern codification in several states within the region. From the beginning, it was a codification for different nationalities: "*Immediately after the enactment of the ABGB, official translations were published. All in all, translations existed in all languages spoken in the Habsburg Empire so each nationality could hold the ABGB for a law of its own.*"[14] The Austrian civil code was applied by courts and commented on in different languages in the region. It was stated that:

> *Contrary to France, where in the effort to apply even more radical idea of equality of all men with consciously abandoning the historical regions and, more importantly, merging the concept of a French citizen with that of a member of a French nation, citizenship in the Austrian Empire was never merged with a unitary concept of nationality. Alongside the historical regions, the constitution recognized the fact of the existence of different nationalities (Stäme) and conferred upon them certain important rights, as well. It goes without saying that one was faced here with an inherently dualistic communal identity (or better, pluralistic one: apart from national, also that of pertaining to a historical province on one hand and being a citizen of the Austrian Empire on the other.*[15]

Another possible model was the French civil code (*Code Civil*) adopted in 1804.[16] The French code's main merit is that its definitions are clear and easy to understand,

10 Izdebski, 1996, p. 6.
11 Brauneder, 2013, pp. 1019–1020; Veress, 2020a, p. 42. The 1794 *Allgemeines Landrecht* of Prussia was not a civil code but rather a general set of rules intended to cover the whole legal order.
12 Van Caenegem, 2004, pp. 124–125.
13 Brauneder, 2013, p. 1019.
14 Ibid., p. 1025.
15 Škrubej, 2013, p. 1076.
16 Van Caenegem, 2004, pp. 147–151.

which allows lay people to understand the code (as opposed to the German code). Its main flaw, on the other hand, is superficiality.[17]

The French and the Austrian codes

> *differed fundamentally in the question of whose will it was that the two nominally represented, the first the so called general will of the people whereas the latter, the will of the monarch (although expertly couched into the principles of the rationalistic natural law theory)*.[18]

The third codification that influenced this region was the German code. The antecedent of German codification was the Prussian *Allgemeines Landrecht* (1794).[19] This legislation contained 17,000 paragraphs in a manner that was too casual, overshadowing general rules and abstraction. It covered all fields of law, not just civil law, and its content was influenced by the school of natural law. However, after the Landrecht, the momentum for codification in the German territories slowed because the school of natural law was replaced by the historical school of law, the main tenet of which was that law appears not as a free creation of the wisdom of the legislature but as a result of organic historical development. That is, the correct way to legislate in this view is not codification but rather the development of customary law. According to Friedrich Carl von Savigny (1779–1861), the leading scholar of the historical school, German jurisprudence was not yet ready for the task of codification. Moreover, codification was not absolutely necessary, as the tools for legal development were included in the *Volksgeist* ('national spirit'). The *Volksgeist*, a carrier of Roman and Germanic legal thought, is the appropriate bearer and developer of customary law.

The task of the legislature and the science of law is not codification in its sense as an instrument of social transformation but rather the ascertainment of the law developed organically by the people's soul. In the long run, however, the opposing position, the pro-codification views of Anton Friedrich Justus Thibaut (1772–1840), a law teacher in Heidelberg, prevailed.

Thus, the German civil code (*Bürgerliches Gesetzbuch*, BGB)[20] was not adopted until 1896, and it came into force in 1900. Regarding the German civil code:

> *This vast work excels with its logical and consistent system, precise conceptualization, and regulation of all major issues of private law. These advantages are counteracted by its excessive abstractness and complexity of structure, which is accompanied by a lack of comprehensibility.*[21]

17 Szászy, 1947, p. 34.
18 Škrubej, 2013, pp. 1068–1069.
19 Van Caenegem, 2004, pp. 123–124.
20 Ibid., pp. 155–159.
21 Villányi, 1941, p. 5.

In Switzerland, several separate laws cover the classic areas of the regulation of civil codes: the Obligations Act (*Obligationenrecht*), which was passed in 1881 and came into force in 1883, and the regulations for persons, family, succession, and property (*Schweizerisches Zivilgesetzbuch*), which were adopted in 1907 and entered into force in 1912.

> *It is worded in vernacular language, it is easy to understand even for a non-lawyer… It consists of few sections, is short… Allows the judge wide freedom. In addition to the Austrian Civil Code, the Code Civil and the BGB, it is the best code in the world.*[22]

The German and the Swiss codes, born after decades of social and political stability, "*fulfilled only one function in common with such revolutionary codes as the French code. They unified the civil law which was diverse in the different parts of Germany and the Swiss cantons as it was in pre-revolutionary France.*"[23]

In Italy, the first civil code was adopted in 1865 and repealed by the 1942 Codice civile. The date of its adoption is debatable: The code was developed and enacted during Mussolini's fascist dictatorship and was described as an excellent achievement of the new Mussolini civilization. However, "*fascist ideology did not leave a significant mark on the code… Thus, after the fall of fascism, it was enough to stylistically amend the Italian Civil Code and remove some specific institutions from it.*"[24] Traces of the idea of corporatism can indeed be found in the Codice civile.

All the abovementioned codes are still in force, with some reforms and amendments. We will undoubtedly see that these codes exerted a great influence on codification in East Central Europe. Codes were used as tools of reform and modernization. In some cases, they were implemented as strange bodies into the organism of agrarian society, but they ultimately served as the engines of deep transformation.

Even in cases where model-tracking was intense, these codes, when implemented and adapted to suit a certain milieu, also created something beyond the model. A civil code, applied by the courts, became a living text that was adapted to suit local realities, became part of the culture, and in certain cases was even altered by local specificities. East Central Europe was also a terrain of legal innovation. This was not a 'copy and paste' zone for Western codification. The codes became organic parts of the legislation and culture; their adoption was also possible only because they also represented the legal ethos and values of this geographical area. Identical legal texts came to exist independently, raising original interpretations in a specific context. Several codes within the region can be considered truly original. This development shows that there is a common East Central European legal tradition.[25]

22 Szászy, 1947, p. 37.
23 Rudzinski, 1965, p. 35.
24 Kecskés, 2004, pp. 260–261.
25 Izdebski, 1996, p. 3.

As a structural model, in connection with the systemic approach to private law, two solutions are possible. On the one hand, there is the traditional model, the dualistic regulation of private law. In this system, private law can be subdivided or subclassified into two basic subsystems: civil law itself and commercial law. Thus, trade, more precisely, economic life, has its own partial private law differentiated from the general rules of common private law. The main argument that can be invoked in support of maintaining the dualistic system is that trade and business must be conducted in conditions of speed, flexibility, transparency, and maximum predictability, with ample protection offered to creditors, which cannot be achieved through civil law because this branch of private law seeks to defend the public interest and the balance between the interests of the creditor and those of the debtor and is therefore unable to ensure the conditions of efficient trade. The dualistic system, in fact, finds its origin in customary commercial law (*lex mercatoria*), which developed concurrently with but separate from the rigid system of private feudal law, which different states subsequently codified. According to Ödön Kuncz, commercial law is 'a lace-like refinement of private law' that differs from private law in the same way as "*intense and planned trade is different compared to relations of private [economic] life*."[26] Manifestations of the dualistic principle are constituted, for example, by the French norms pertaining to land and maritime trade (the *Ordonnance de commerce* of 1673 and the *Ordonnance de la marine* of 1681) and the Commercial Code of France (1807), the Commercial Code of Spain (1829), the Common Commercial Code of the German States (1861), the Commercial Code of Germany (the *Handelsgesetzbuch* of 1897), and the Italian Code of Commerce (1861, 1883). It follows from the data that the principle of the dualistic concept was most prevalent in the 19th century. In East Central Europe, similar legislation was enacted, such as the Romanian Commercial Code (1887), based mainly on the Italian model, and the Trade Act in Hungary (Act XXXVII of 1875), based on the model of the *Handelsgesetzbuch* of 1861.

The alternative is the monistic concept of private law. There is no separate commercial law in this system, as civil legal relations and those born in the course of commercial activities are subject to and determined in accordance with an identical set of rules. Even in the age that was the apogee of the dualistic concept, that is, in the 19th century, the conclusion was already drawn according to which the differentiation of civil law from commercial law is due to extrinsic, relative reasons of historical origin, and this separation jeopardizes the unitary character of positive substantive law and legal security. In the 20th century, the monistic perception spread unambiguously. For example, Italy, through the civil code adopted in 1942, switched to the monistic concept. The French, German, and Austrian legal systems, however, maintained the dualistic tradition and concept of regulation. The fundamental argument that supports the introduction of the monist system is that private law, which was rigid in ancient times, accelerated and has been transformed today to such an extent that it has become apt to ensure the flexibility required for trade activities, and therefore, no

26 Kuncz, 1946, p. 79.

need subsists for a separate and distinct trade law. General civil law has taken on the character of commercial law, assimilating itself to the latter. In this transformation, commercial law played the main role that contributed to the increase of the flexibility of civil law to the degree known today. Commercial law sculpted the face of civil law to its likeness, and through this – in the states that assumed the monistic position in place of the dualist one, making the transition to the first regulatory model – it finally liquidated itself. In East Central Europe, both the dualistic and monist systems are present.

## 3. The first wave of modern codification in East Central Europe – the first half of the 19th century

### *3.1. Overview*

The territory that forms the subject of analysis at the beginning of the 19th century was not the present-day variety of states. Practically, East Central Europe was ruled in 1815 by the Kingdom of Prussia, the Empire of Austria, the Russian Empire, and the Ottoman Empire. The period was characterized by the emergence of national movements and a call for modernization, both – in most cases – a source of conflict and crisis within the ruling empires.

### *3.2. Territories of Croatia, Slovenia, and Czechia*

The first encounter with civil codes in the region occured when parts of the present-day Croatia and Slovenia (then parts of the Habsburg Empire) were occupied by the French, who organized the French Illyrian provinces (1809–1814).[27] Here, for this period, the first French governor, Auguste de Marmont introduced the French civil code.

However, the ABGB was intended for all Austrian provinces, except those ruled as provinces of the Hungarian crown. Hence, the ABGB entered into force in Bohemia and Moravia (present-day Czechia) and in Istria, Dalmatia, and the Military Frontier Zone. In general, the Austrian civil code was in force in these territories from 1812–1815, and remained in force in the succeeding territories until 1946 (Croatia and Slovenia) and 1950 (Czechia).

### *3.3. Walachia and Moldova*

The two principalities were a collision zone of Russo-Turkish antagonisms. In the Russo-Turkish War of 1806–1812, Turkey sought to regain its former position in the Black Sea. Kutuzov defeated the Turkish forces in 1811, and the Peace of Bucharest was concluded in 1812. Eastern Moldavia (Bessarabia) was annexed to Russia. When the Russian troops withdrew from the two Romanian principalities, the Turkish Porte appointed Ioan Caragea as prince of Walachia for 7 years and Scarlat Calimach as prince of Moldavia.

27 Škrubej, 2013, p. 1067. For details, see Petrak, 2019, pp. 344–349.

For Greek officials who held high positions in the Turkish administration (dragoman or interpreter), becoming a prince of the Wallachian or Moldavian principality was a career highlight. Since the Greeks originated from the Fener district of Istanbul, this period in the two principalities' history is known as the Fanariot period (from the early 18th century to 1821). This period was generally characterized by a rapid turnover of princes and a high degree of corruption. The same prince could rule in one principality at one time, in another at other times, and several times in the same principality. These princes were educated, men, speaking several languages, who were familiar with Western culture as well as Eastern culture. The reigns of Caragea and Calimach mark the very end of the Fanariot period.

Calimach introduced economic and educational reforms in Moldova. In 1817, he promulgated the *Codul Calimach* or *Codica Țivilă a Moldovei*, a civil code in Greek. In 1819, he was deposed by the sultan. However, his code survived the unification of the two principalities and remained in force until 1864, when the civil code came into force. The Calimach Code was translated into Romanian in 1833. The code followed Byzantine traditions, but the direct influence of the 1811 Austrian civil code and the 1804 French civil code was also evident. The strong Austrian influence can be explained by the fact that Christian Flechtenmacher (1785–1843), a Saxon from Brasov who had studied in Vienna, played a major role in drafting the code, alongside Anania Cuzanos and Andronache Donici. In his work, Flechtenmacher often referred to the works of Franz von Zeiler, a leading figure in Austrian codification. Prince Calimach invited Flechtenmacher to become a lawyer, and he remained in Moldavia for the rest of his life, later receiving the rank of boyar. He departed from the Byzantine tradition and marked a rapprochement with the West. This code did not aim at a universal synthesis of laws; rather, it concentrated exclusively on one branch of law, civil law.[28] It was structured in three parts: rules on persons, rules on things, and rules on both persons and things. The French code's impact is evidenced by the rules on guardianship, succession, and contracts including marriage contracts concluded in a foreign state.

In 1818, a code was adopted in Walachia on Caragea's initiative: Condica lui Caragea. Caragea was condemned for his excessive profiteering (selling off provincial offices, elevation to the rank of boyar for money, excessive tax increases). During his 6 years as a prince, he amassed considerable wealth, and when he felt he was losing the sultan's support, he fled. His legislation remained in force until 1864. This code was published in Greek and printed in Vienna, and a Romanian translation emerged later. The law was

> *deposited with the Metropolitan Bishop, by order of the Prince, who was also responsible for checking that the new law remained in accordance with the imperial laws and ancient, canonized customs of the Byzantine Empire, which had more permanent links with the Byzantine and Balkan worlds, and also placed greater emphasis on its legal traditions*.[29]

28 Demeter, 1985, p. 209.
29 Ibid.

As a reason for codification, Caragea stated that the

> *old, sanctioned collections of rules, unclear, unwritten customs, and the few codes that had not been developed, written laws, were not fit to do justice to anyone, and it became necessary to resort to the laws of the Roman emperors. Thus three groups of sources of law were formed, which often contradicted each other, and the dangerous situation arose whereby the law which was dictated by the pleasure of the strongest, the shrewdest, and the most learned was applied.*[30]

The aim of codification was, in fact, to strengthen legal certainty by unifying old rules and creating new ones. The Condica lui Caragea contained civil law, criminal law, and procedural law, that is, it can be considered a traditional general code, without specialization. Its drafting was mainly the work of the logothete (chancellor-general) Nestor and Atanasie Hristopol, who produced a Greek text of literary quality, but the Romanian translation was not of the highest quality due to the immaturity of the Romanian legal language.

### *3.4. Hungary*

Hungary had a very strong legal culture deeply rooted in medieval customary law.[31] In 1840, company law and bills of exchange were regulated in a modern manner. Act XV, adopted in the context of the revolution of 1848–1849, provided for the drafting of a civil code on the basis of the abolition of the *aviticitas* (the bound succession and circulation regime of the noble estate). The proposal was submitted in the next parliamentary session. The codification would have been led by a truly competent jurist, László Szalay. However, this could not take place due to the fall of the revolution; therefore, in general, the old customary private law was in force until 1853, when the Austrian civil code was introduced for a short period (1853–1861).

### *3.5. The territory of Poland*

At the end of the 18th century, Poland was partitioned between Prussia, Russia, and Austria, and it lost its independence, which resulted in the fading of the Polish legal system and tradition.[32] Practically, this meant that in the territory of Poland, several legal systems were in force: German, Austrian, French (in the Grand Duchy of Warsaw created in 1807 during the Napoleonic wars), Russian, and Hungarian.

### *3.6. Serbia*

Serbia gained its independence and statehood gradually from under Ottoman rule. After the first (1804–1813) and the second revolution (1815–1830), the Ottoman empire was obliged to recognize Serbia's autonomy, with Miloš Obrenović recognized as the

30 Ibid.
31 Van Caenegem, 2004, p. 178.
32 Zoll, 2014, p. 126.

prince. Serbia even adopted a constitution in 1835. In 1837, Miloš Obrenović commissioned a civil code from the lawyer (and poet) Jovan Hadžić. Hadžić studied law in Pest and Vienna, obtaining his doctorate in law in Pest in 1826.[33] He presented the code's text, influenced mainly by the Austrian civil code.[34] The code was adopted in 1844, under the rule of Aleksandar Karađorđević. This work is also important as the source of modern legal language. The code consisted of 950 paragraphs and was practically an abbreviated version of the Austrian civil code (1,502 paragraphs).[35] The reception of the Austrian regulation was favorable for commercial relations with the Habsburg monarchy.[36] However, regulations on family and inheritance were adapted to local realities, as Hadžić was forced to "*give preference to the significantly more conservative Serbian customary law. At that time in Serbia, the position of men in society was better than that of women, and male children had advantages over female children in matters of succession*."[37] Practically, in the *zadruga* – a family cooperative, a self-sufficient organization, and an association of life, work, and property – the possessions were family-owned and the right to inherit was reserved for male descendants.[38]

> *They remain in the family, and the property they inherit remains within the community because they do not depart from it. Female descendants generally marry and join other families (unions), so that what they inherit goes to a different community. In this situation, traditions prevailed and the exclusion of female children from succession became the norm*.[39]

This was criticized, since this family model was not the only one that existed in Serbia, and in more urban areas, the rule was a retrograde norm. Owing to the norms that made the dissolution of or separation from a *zadruga* possible, Hadžić was considered the destroyer of this traditional social unit. The realities were more complex. The norms may have facilitated these changes, but other changes were more important: these structures' economic self-sufficiency was threatened by the growing number of members; coexistence in the context of modernization was no longer smooth, and personal (intergenerational) conflicts were frequent; individualism overtook large-family collectivism under the changed social circumstances; new fiscal policies considered the individual as the subject of taxation, etc.[40] The dusk of the *zadruga*

33 Hadžić is also the founder of the Matica Srpska, an important cultural–scientific institution that is still active today.
34 Horváth, 1979, pp. 254–255.
35 It is stated to be the 'fourth' modern codification in Europe (see Stanković, 2014, p. 881). This does not seem to be precise. For example, the Austrian civil code was implemented in Liechtenstein in 1811 or in a specific version in Moldova in 1817.
36 Horváth, 1979, p. 255; Dudás, 2013, p. 10.
37 Stanković, 2014, p. 887.
38 Bíró, 2000, pp. 51–52; Stanković, 2014, pp. 887–888.
39 Stanković, 2014, p. 888.
40 Bíró, 2000, pp. 57–58.

began decades before the Serbian civil code. The idea of the *zadruga* as an ideal way of life sometimes reoccurred thereafter in idealist movements of thought.

However, the code was a tool for modernization as well, and it consisted of many positive institutions.

> *One of the most important aspects of the codification was that it clarified property law in Serbia. No less relevant was the establishment of a framework for the development of capitalist commerce and financial relations… The dream of a connection to Western Europe also became a reality.*[41]

Paragraph 211 of the code stated "*that every Serb is the total master of his possessions, so that he is entitled to enjoy them and dispose of them at will, to the exclusion of all others, within the limits of the law.*" This definition was a revolutionary change compared to the many limits of the exercise of property rights in the context of Serbian customary law.

Serbia gained its de facto independence in 1867–1868 and was internationally recognized in 1878. In 1882, the principality was transformed into a kingdom.

In the first phase of the code's application, there was a problem with the human resources needed to properly understand and apply the new legislation, but in a decade, this problem started to be solved, and reform of the inefficient civil procedure was requested.[42] The 1844 civil code was in force until the Soviet-type dictatorship emerged.

## 4. The second wave of codification in East Central Europe – the second half of the 19th century

### *4.1. Walachia and Moldova; Romania*

In 1859, Walachia and Moldova integrated under the name of the United Principalities, and in 1862, the new state took the name Romania. It gained independence from the Turks in 1877. A modernization process was set in motion, characterized by a move away from Byzantine traditions and Turkish influences and the adoption of Western models.

A unified civil code had already been adopted in united Romania: the Codul civil, which repealed the two principalities' previous codes, the Calimach and Caragea codes. The civil code entered into force on May 1, 1865. This code is essentially a transposition – in practice, a translation – of the French code of 1804. The Belgian Mortgage Act of 1851 served as a model for mortgage regulation, and to a lesser extent, Italian influence can be detected. "*The source of law for the very specific Romanian*

41 Stanković, 2014, pp. 886–887.

42 Hadrovics, 1944, pp. 61–63. The Code of Civil Procedure of 1853, fundamentally modified in 1865, also took the similar Austrian regulation as a model.

*situation remained customary law.*"[43] The process of the legal transplant was uneasy: it was criticized by the contemporaries as a failure to produce a Romanian code, as the society lacked the resources to produce such a legislation in a short period.[44] The process also had a positive effect: the adoption of French legal culture soon produced a quality, well-trained Romanian legal elite.

### *4.2. Hungary*

In 1853, the Austrian civil code was introduced as a forced measure of imperial unification initiated by the Habsburgs. The application of the AGBG lasted only until 1861. The reason for resentment toward the AGBG was that after the defeat in the war of independence in 1848/49, the code was artificially forced (octrooted) on the country by the means of absolute power, and the issue of the preservation of old Hungarian law as an outstanding cultural achievement was also raised. Thus, from 1861, the old Hungarian law became applicable again, but the issue of codification also came gradually to the fore.[45]

As for Transylvania, in 1861, Elek Dósa (1803–1867), a law professor at the Reformed College in Marosvásárhely (presently Târgu Mures), published an extremely interesting summary of Transylvanian Hungarian private law, which had developed over centuries based on customary law and had only been partially codified. The second volume of his great work, *Transylvanian Jurisprudence* (*Erdélyhoni Jogtudomány*), deals with private law. Dósa's work is the last, very interesting snapshot of Transylvanian law, which had been developing continuously since the Middle Ages and which was a special branch of Hungarian law. Modernization was partly forced. In historical Transylvania, the Austrian civil code was enacted in 1853 during the absolutist Habsburg rule, as in Hungary. However, in Transylvania, unlike in Hungary, the AGBG remained in force after 1861, despite the fact that in 1867, the Transylvanian Great Principality was reunited with Hungary, both under Habsburg rule (from which it had detached in the 16th century following the Turkish invasion and occupation). Practically, in Transylvania, the ABGB remained in force until the end of the Second World War.[46]

The last decades of the 19th century were characterized by an intellectual struggle between the defenders of customary law and the adepts of codification. A commercial code (Act XXXVII of 1875) was adopted, which modernized company law and commercial obligations. The source of inspiration was the Common Commercial Code of the German States (*Allgemeine Deutsche Handelsgesetzbuch* [ADHGB] of 1861).

Several partial projects toward a civil code were also presented starting in 1871.[47] In 1900, a complete version was ready, but intense intellectual work continued in the first decades of the 20th century in order to finalize the text.

43 Demeter, 1985, p. 210.
44 Guțan, 2021, pp. 149–166.
45 Vékás, 2011, pp. 262–266.
46 Veress, 2020b, pp. 287–304.
47 Nizsalovszky, 1984, p. 111.

### *4.3. Croatia and Slovenia*

The ABGB was introduced in 1853 in the territories that were qualified as provinces ruled by the Habsburgs in their capacity as kings of Hungary.[48] However, unlike in Hungary, the application of the ABGB lasted until the establishment of the Soviet-style dictatorships. The introduction of the Civil Code in these territories is viewed not only as a moment of radical change, but also as a protracted process of implementation. [49] Once applied, the ABGB became internal law and developed its own interpretation, even though developments in Austria were closely observed.

### *4.4. Serbia*

In the second wave of codifications, Serbia, in 1860, adopted a commercial code that was a transplant of the French commercial code and the German rules on bills of exchange.

The General Property Code (*Opšti imovinski zakonik za Knjaževinu Crnu Goru*) was an exciting original piece of legislation adopted in the principality of Montenegro in 1888. The code was drafted by Valtazar Bogišić, who was, at that time, a professor of law in Odessa and a proponent of the historical school who believed that the transposition of a foreign code as a method of codification was far from ideal. Instead, he studied local customary law and based the code's text on it. The work is original in both content and structure. In terms of content, it regulates the law of persons, real rights, and the law of obligations because Bogišić believed that the area of family law, particularly the law of succession, had not yet reached a level of coherence that would require codification and that customary law could settle these issues.[50]

In Serbia, the law professor Dragoljub Aranđelović criticized the civil code of 1844 and called for the adoption of a new law. He drafted a project toward this purpose based on the BGB, with a structure reflecting the Montenegrin codex (the draft was finalized in 1914). However, as a consequence of the war and the enormous changes that followed the war, the draft was not adopted.

## 5. The third wave of codification in East Central Europe – the first half of the 20th century

### *5.1. Poland*

Poland regained its independence in 1918. As previously mentioned, Poland inherited a fragmented legal system. To unify the legislation, the Codification Commission was founded; It operated until 1939 and even continued to function underground during German occupation.[51]

48 In these territories, the Hungarian Tripartite was the backbone of the private law system. Čepulo, 2020, p. 36.
49 Ibid., p. 35.
50 Dudás, 2013, pp. 10–11.
51 Zoll, 2014, p. 127.

In the context of civil law, the commission's major achievement was the adoption of a new law on obligations in 1933. As stated, every rule was a result of broad comparative analysis that merged different European traditions and aimed to create the best rules.[52] Initially a Franco-Italian draft Code of obligations was taken into consideration as a model, but one influential member of the commission, Professor Roman Longchamps de Bérier opposed this and finally the draft was used only as a distant inspirational source alongside the Swiss, Austrian and French legislation. (Roman Longchamps de Bérier was executed by the Nazis in 1941 in the 'massacre of Lwów professors'). In 1934, a commercial code was adopted alongside the Bankruptcy Act and a different Act on Composition Agreement Proceedings.[53] In general, the codification efforts were substantial, and the work was thorough and of outstanding quality.

Other parts of the proposed codification acquired a different status in 1939 when the Second World War interrupted progress. The matrimonial bill (the Lutostański Draft) was perceived to be too progressive and was rejected. Property law reached the first draft phase; regarding succession law, only theses were formulated.

The work continued after the war. In 1946, proposals were ready, and through different decrees, the different domains of civil law came into force (property law, succession law, matrimonial law). Parallel to these developments, the Soviet-type dictatorship took over all aspects of life in Poland, and the original context of this legislation changed totally: A totalitarian dictatorship seized power, and through the courts, these rules were interpreted according to the new regime's goals.

### *5.2. Hungary*

In Hungary, this was a fervent period of codification, at least from the point of view of the creation of high-quality official projects. The main result was a perfected version of the 1900 project: the 1928 Private Law Bill – a complete, complex civil code.[54] However, this project was not adopted either.

There are several reasons the Private Law Bill of 1928 was not adopted. The Great Depression, a global economic crisis (1929–1933), can be mentioned in particular. Secondly, the strength of the defense of the old customary law could not be underestimated either. Károly Szladits (1871–1956), one of the most renowned civil lawyers of the age, argued for the need for codification, but he basically blamed those protecting customary law for the failure of the Private Law Bill. The third reason is "*the idea that a civil code should not disrupt the unity of private law that still exists in part with the former territories of the country transferred to other states as a result of the Treaty of Trianon*." Bálint Kolosváry also argued the same: Hungarian private law, which is still in force in the annexed territories,

52 Ibid., p. 128.
53 Izdebski, 1996, p. 5.
54 Veress, 2019, pp. 17–32.

> *surrounds the Hungarian nation here and beyond as an invisible spiritual wall. Although it is ready for codification, this codification would also be an irreparable loss… The private law of the new code would be pushed back into the narrowed geographical area of the truncated country, triggering (unfortunately, among many other things) a slow process of alienation, which would lead to the formation of more harmful spiritual barriers.*

As a counter-argument, in favor of codification, it has been argued that the Private Law Bill is, in fact, a codification of customary law, and if this customary law becomes a codified law, it "*should not stand in the way of continuing to be applied in the former Hungarian territories as a customary law; it does not detract from the customary nature of the law if here is included into an act*."

The fourth reason codification failed is perhaps the early death of Béla Szászy (at age 65), who was responsible for codification, as he had to contribute to the finalization process, accurately assess the impact of possible amendments on the entire text, and manage and carry out coordination work. Perhaps it is worth quoting from his obituary, written by the Reformed Bishop László Ravasz, highlighting Szászy's codifying and personal qualities:

> *Legislation is the highest intellectual work… Codification requires a virtuoso technique. Nowhere is maturity, clarity, objectivity and punctuality desired in the wording of the law… Should I add to this that he was one of the kindest, most humble and best people? He could love deeply, served with mortal fidelity, never noticing his own greatness, augmenting everyone he met.*

Nevertheless, the draft text of this code was taken up by judicial practice and applied in many cases as a text fixing the content of customary law.

### *5.3. Czechoslovakia*

After the First World War, Czechoslovakia was created, incorporating the historical Czech territories (Bohemia, Moravia) and those territories obtained from Hungary (Slovakia, Subcarpathian Ruthenia), from Austria (Feldsberger and Weitraer Regions) and Germany (Hlučín Region). From the point of view of private law, the ABGB was in force in the Czech parts and the former territories of Austria. In contrast, in the Slovakian parts Hungarian law prevailed,[55] with its partially customary character. One of the first measures of the new state was to create a basis for provisionally maintaining the previous legislation. In 1918, it was regulated that "*all current land and imperial laws and regulations remain valid, for the time being*."[56] However, the unification of private law in the interwar period did not succeed, despite genuine efforts to prepare a civil

55 The Hungarian private law had been partly repealed by amendments (e.g., Act No. 244/1922 Coll.) and finally by the Czechoslovak Civil Code of 1950.
56 Falada, 2009, p. 53.

code. The efforts started in 1919, under the supervision of Jan Krčmář (1877–1950) and Emil Svoboda (1878–1948). The first draft was published in 1923. The project was also translated into German. The discussions continued in revision committees, with the final draft being submitted to the government in 1936, which initiated the legislative procedure in parliament in 1937.[57]

As the sources of inspiration,

> *some of the invited experts advocated the German BGB of 1896 as the model for the new Czechoslovak Civil Code. Czech legislators, however, considered this a step supporting German political aspirations to dominate Central Europe. They preferred that the draft Czechoslovak Civil Code should follow more closely the legislative pattern of the Austrian ABGB of 1811*.[58]

The parliamentary codification committees' last sessions occured in the summer of 1938.[59]

After the Munich Agreement (1938), which forced Czechoslovakia to cede territories to Germany, the state was dismembered: in 1939, the Protectorate of Bohemia and Moravia became part of the German Reich,[60] and Slovakia formally converted to an independent territory but was, in reality, a puppet state of Nazi Germany. Codification was impossible under these circumstances.[61] After 1945, when Czechoslovakia was reestablished, codification was possible only in the context of a Soviet-type dictatorship.

### *5.4. Kingdom of the Serbs, Croats, and Slovenes (Kingdom of Yugoslavia)*

The Kingdom of Serbia, Croatia, and Slovenia (from 1929, the Kingdom of Yugoslavia) was a new state formation created after the First World War. It was formed by the merging of Serbia, which had been independent since 1878, with the territories formerly belonging to the Austro-Hungarian monarchy (Croatia, Slovenia) and Montenegro. This period was characterized by legal particularism, with several parallel legal regimes: the 1844 civil code in the former Kingdom of Serbia, the Austrian civil code in Slovenia and Croatia, and the General Property Code of 1888 and local customary law in Montenegro. In Bosnia and Herzegovina, the Austrian civil code was also in force. At the same time, in the area of family law, especially inheritance law, Sharia law applied to Muslim citizens, while canon law applied to Christians.[62] In the

57 Ibid., p. 54.
58 Ibid., p. 55.
59 Schelle, 2016, p. 746.
60 In the territories ceded to Germany under the Munich Agreement, the BGB was applicable. In the Protectorate, the ABGB remained in force, but for ethnic Germans living there who became German citizens, the BGB was applicable. See Falada, 2009, p. 57.
61 Glos, 1985, p. 223.
62 Šarkić, 2020, p. 176.

territories annexed to the former Kingdom of Hungary, Hungarian customary law was in force.[63]

The political aim was to eliminate legal particularism. In the field of civil law, a codification committee was set up in 1930, which, by 1934, had drawn up a preliminary draft based on the ABGB. The reason for this was that Austrian law was the closest to the existing law, and organic development was possible on the basis of it. Critics, however, argued that there were more modern codes (Germany, Switzerland) and that the choice of model was therefore incorrect. The political situation did not allow this codification work to continue.[64]

### *5.5. Romania*

In Greater Romania, substantially enlarged in the territory after the First World War, six different private law regimes coexisted, each with its own particularities. On the territory of the Old Kingdom of Romania (also called the Regat or 'Kingdom' using the traditional term), the Romanian Civil Code – developed based on the Napoleonic Code – remained in force. In Dobrogea and in the so-called Cadrilater (a territory acquired from Bulgaria), the law of the Old Kingdom of Romania was in force for the most part, but with significant derogations applicable to Muslims. In Bessarabia, in addition to Russian law, the *Hexabiblos* of Constantine Harmenopoulos (1345) was still in force, but since 1921, apart from negligible matters, the transition to the law of the Old Kingdom had been gradually taking place. In Bucovina, the Civil Code of Austria from 1811 (the ABGB) and its various amendments up to November 1918 were preserved in force. This code was also in force on the territory of Transylvania, but with the amendments put in place by Hungarian laws since 1867. Finally, in the regions of Banat and Crişana, the rules of Hungarian private law adopted before 1 December 1918 were in force, as was the case also in Maramureş. Due to the difficulties encountered in applying the law that arose due to the parallel existence of several legal systems, each with its own peculiarities and resulting from the political purpose of unification of the law, an ample process of legal integration was initiated following the formation of Greater Romania. Legal unification could only be accomplished by unifying the whole country as a territory, subject to a single normative regime. This solution could be implemented with any measure of speed only by extending the laws of the Old Kingdom over the entire state. This was the proposal of Minister of Justice Constantin Hamangiu (1869–1932). He, as of 1 January 1932, would have wanted to see the law of the Old Kingdom in force in the whole of Romania, except for a few areas where the implementation of Romanian law would have meant a significant regression in the evolution of regulation (especially in what concerned the age of adulthood for women, matrimonial law, guardianship, the land books, or the inheritance rights of the surviving spouse). The proposed

63 For a detailed analysis of the Hungarian private law applicable in the Kingdom of Yugoslavia, see ibid., pp. 176–205.
64 Dudás, 2013, p. 12.

solution resulted in vehement protests. For example, the Bar Association of Cluj considered the extension of the laws of the Old Kingdom over Transylvania to be no less than catastrophic and called on fellow bar associations to formulate positions in similar wording. Because of this reluctance and the death of Minister Hamangiu, this plan was doomed to failure. Another way of the complete unification of law was the development of new normative acts and new codes with valences in private law. This process began after the territorial unification but was the longest-running solution for unifying the law.

The unification of the law was initiated by adopting acts governing a narrower circle of social relations (for example, an act on literary and artistic property was adopted in 1923). Considering the failure to extend the civil law of the Old Kingdom to Greater Romania, unification of private law was deemed possible by developing new codes. Therefore, the elaboration of the bills of the two codes of private law (the Civil Code and the Commercial Code) was initiated. The drafts were adopted during the dictatorship of King Carol II of Romania and were considered to be works of great significance of Romanian legal thinking.

The new Civil Code was published in the Official Gazette on 8 November 1939. The entry into force was expected to take place on 1 March 1940. The then Minister of Justice declared that he had to express the greatest gratitude and reverence to His Majesty King Carol II, at whose high instructions and initiative – concerned exclusively with the homeland's prosperity – this work of truly extraordinary scale had been achieved. The Commercial Code was adopted in 1938 and amended in 1940, and the rules on general meetings of joint-stock companies entered into force as early as 7 October 1939. The full entry into force of the two codes was set for 15 September 1940, subsequently postponed to 1 January 1941, but, finally, on 31 December 1940, the date of their entry into force was again postponed, this time indefinitely. The reason was constituted, among others, by the territorial losses suffered by Greater Romania: Bessarabia was to be ceded to the Soviet Union (in June of 1940), and in the sense of the Second Vienna Award, the north of Transylvania had to be ceded back to Hungary (on 30 August 1940). These territorial losses of Romania, and the abdication and forced exile of King Carol II, the events of World War II, and the rise of the Soviet-style dictatorship after the war prevented the entry into force of the two codes, and thus the unification of private law by new codification could not be achieved.

The Romanian legislator finally accomplished the project of Hamangiu: extended Romanian private law to Southern Transylvania as early as 1943 and following the 1945 restitution (by Act 260 of 1945) of Northern Transylvania – in this case, with lightning speed –, overwriting the substantiated scientific plan for the unification of private law, which characterized the period before the Second World War.

## 6. The fourth wave of codification in East Central Europe – the second half of the 20th century

### *6.1. Overview*

The fourth wave of codification corresponds to the period of Soviet-type dictatorship in the region. Initially, communist theory predicted the disappearance of civil law or law in general. Soviet practice rejected this theory, and as the great thinkers of communism were infallible, the communists did not openly deny the disappearance of law, they just relegated it to the distant future. The reality was compatibility between the existence of law and socialism.[65] The works of A. V. Venediktov had a great influence on civil law codification in the region.[66]

The civil law of this period was characterized by the following:

a) A break with legal tradition because the new political, economic, and legal system in which civil law had to perform was imposed from outside: As a great power, the Soviet Union and the local servants of Soviet policy reshaped the states of the region as much as possible to confirm with its own image.

b) In some states a new civil code was adopted, while in others, the old codes remained in force, but in all cases, the role of classical civil law was reduced: Private property was primarily replaced by state and cooperative property, and personal and private property played only a limited secondary role. This period was known as one of 'private law without private property.'[67] Special rules on state-owned enterprises formed the core legislation. Separate legislation dealt with their role in the planned economy, their control, the contracts they concluded, their investments, dispute resolution through state arbitration, public agricultural enterprises, and cooperatives. As stated, "*the classical (capitalist) form of civil law regulation assumes market equilibrium and has traditionally developed a corresponding institutional system. The market is marginalized by the socialist planned economy and this intersects with the pure solutions of civil law.*"[68]

c) Therefore, civil codes and civil legislation declined, but they existed. Civil codes' limited survival facilitated the possibility of subsequent regime change: The main corpus (on state property called and disguised as socialist property, controlled by the *nomenklatura*) had to be abolished, and the dominance of the existing subsidiary corpus (on private property) had to be re-established.

d) Family law, in the spirit of socialist morality, was regulated in a separate code and became a separate branch of law.

65 Rudzinski, 1965, p. 36.
66 Kuklík and Skřejpková, 2019, p. 13.
67 Vékás, 2013, p. 226.
68 Sajó, 1986, p. 102.

e) The quality of legal science and the totalitarian regime were not necessarily mutually exclusive. It was noted as a parallel that the classical Roman jurists and Justinian's excellent jurists worked in an autocratic empire.[69]

### *6.2. Czechoslovakia*

In Czechoslovakia, the radical legislation change came into the center right after the Communist Party seized power in 1948. Then the '2-year legal codification plan' was adopted, and work on a new civil code started in November 1948. The new code was conceived as expressing the will of the working class and standing as a fundament for social transformation, primarily through the liquidation of bourgeoisie property relations, the creation of socialist ownership, and the subservience of contract law to the requirements of the planned economy. In addition to being a tool for promoting Soviet-type ideologies, the code was intended to unify the legislation of Czechia and Slovakia

> *which was something that the whole interwar period tried to achieve but did not succeed. Various outcomes of codification drafts from the interwar period were used to speed up the preparation. Communists took advantage of these drafts and presented them as another example of the effectiveness of People's Democracy, in comparison with the unsuccessful twenty years of bourgeois interwar democracy.*[70]

The codification commission was subordinated to a political committee and also to the Central Committee of the Communist Party, which ensured that the code is aligned with party expectations. As a principle for the interpretation of the entire legal text, a clause was included stipulating the predominance of the common social interest over individual interests.[71] The code, adopted in 1950 (Act 141/1950 Coll.), was shorter (570 articles) than its Austrian predecessor (1,502 articles).[72] Furthermore, the code had a provisional character because it incorporated social relationships that the Communist Party could not immediately abolish, but these became relatively rapidly obsolete because the conditions changed as the transformation of Czechoslovak society travelled further along the path of the Soviet model.[73]

The so-called 'Middle Civil Code' unified civil law and eliminated legal dualism as a remnant of the 1918 reception. There were significant changes in civil law: abolition of the '*superficies solo cedit*' principle, the regulation of co-ownership, retention of possession, the right to build, and the right of pledge and retention. New types of contracts were introduced. The idea of abolishing the classical division of law into private and public law was also reflected in the act, considerably weakening the

69 Földi, 2020, p. 27.
70 Kuklík and Skřejpková, 2019, p. 14.
71 Art. 3 of the code stated that "Nobody may abuse his civil rights to the detriment of the entire society."
72 Falada, 2009, p. 59; Kuklík and Skřejpková, 2019, p. 16.
73 Glos, 1985, pp. 238–239.

private-law nature of civil law. The 1950 Civil Code did not regulate commercial law and its adoption effectively meant abolishing the entire commercial legislation.[74] In 1949, the regulation of family law was incorporated into a separate act.[75] However, it was a certain irony that the Civil Code of 1950, although adopted under the conditions of a brutal dictatorship, was essentially mainly based on a modified historical tradition.

In 1960, a new Czechoslovak constitution was adopted, which declared the achievement of socialism. The 1950 Civil Code was deemed outdated, so in December 1960, the Central Committee of the Communist Party of Czechoslovakia decided to prepare a new code focusing on 'living socialist relations'.[76] The focal point of the code was the citizen, whose personal needs were primarily provided for by socialist organizations. The code was to abandon supposedly abstract concepts, the contract of sale was oriented primarily towards selling goods in commerce, and the concept that the contracting parties were opposed in their interests was abandoned. The Civil Code of 1964 (Act 40/1964 Coll.) regulated only a partial area of law, focusing on the relations that arose in the satisfaction of citizens' needs. The law introduced many changes in terminology (service instead of an obligation, personal use of a dwelling instead of rent, liability for unjust pecuniary gain instead of unjust enrichment, etc.).

This 1964 code declared that civil law could be applied in the context of the socialist order. The development and protection of socialist ownership were everyone's duty. In civil law relationships, the code declared, there are obligations not only between the participants (e.g., the contracting parties), but the same relationship gives birth to obligations towards society. This piece of legislation was in force during the Soviet-type dictatorship and was only amended four times before 1989.[77] Consisting of 510 articles, this code was comparatively short.[78] As Article 130 stated, "*Things accumulated contrary to the social interest in excess of the personal needs of the owner, his family, and his household do not enjoy the protection of personal property.*" Relations between socialist organizations and individuals were not governed by contractual freedom and were not even perceived as contracts but rather as services. Article 224 provided that "*If the duties of an organization include the provision of a service, the organization shall have the duty to provide it at the request of an individual unless it is precluded by the scope of its operational possibilities.*"

The 1964 Civil Code symbolized the so-called 'decodification' of civil law. It was atomized, with the Civil Code no longer being a basic regulation of a subsidiary nature. On the contrary, the Family Code (94/1963 Coll.), the International Trade Code (101/1963 Coll.), the Economic Code (109/1964 Coll.), and the Labor Code (65/1965 Coll.)

74 Schelle, 2016, p. 747.
75 However, the ABGB remained partially in force until 1965, when the new Labor Code repealed the last 15 provisions of the ABGB.
76 Bičovský, 1974, p. 27.
77 Dulaková Jakúbeková, 2021, p. 84.
78 Rudzinski, 1965, p. 37.

in particular existed alongside it.[79] This could be interpreted as rejecting the Soviet principle of the unity of civil law.[80] "*This demonstrates that the same type of economy is not mechanically reflected in the legal superstructure of the communist countries but dearly leaves a choice between different solutions to the communist legislators.*"[81]

The Czechoslovak civil codes of 1950 and 1964 implemented important changes and created the first socialist codes in East Central Europe. As it was perceived,

> *they introduce a new spirit, a new application of the law. They have profound political eloquence and importance as well. To put it crudely in Marxist terms: the superstructure has changed. There is no longer the same legal form borrowed from the capitalist world but covering a different socialist content. Now there is a new socialist form as well.*[82]

The absence of the traditional institutes (possession, retention, relative nullity) proved unsustainable even under socialism, so they were brought back by a significant amendment in 1982 (131/1982 Coll.). Thus, the amendment did not respond to modern trends in civil law but corrected mistakes resulting from the erroneous setting of the Code. However, it could not overcome the Code's low scientific and legislative-technical level.[83]

Compared to the Czechoslovak codes, the Hungarian and Polish codes had a more moderate spirit, as if some of the drafters had attempted to rescue the bourgeoisie past in places.[84] Although the Czechoslovak Civil Code of 1964 was to a large extent an example of a peculiar approach to civil law, it served as a model for the East German Civil Code.[85]

### *6.3. Hungary*

The codification works started in 1953 in the context of a certain relaxation of the dictatorship under Prime Minister Imre Nagy. However, there was an interruption due to the 1956 revolution.[86] The first Hungarian civil code was adopted during the Soviet-type dictatorship (Act IV of 1959), when

> *the ruling dictatorial political power and the nationalizations that took place almost completely eliminated the natural social conditions for the development of*

79 Jehlička and Švestka, 1997, pp. 4–5.
80 Izdebski, 1996, p. 5.
81 Rudzinski, 1965, p. 38. The case was similar in East Germany.
82 Ibid., p. 46.
83 Kanda, 1991, p. 519.
84 "*In a crass contradiction to the Czechoslovak code, a strong effort is evident* [...] *to preserve and maintain the integrity and unity of civil law inside its new confines (after family law has been left out), not merely in the purely scholarly sense, as an academic teaching subject or in juridical textbooks, but as a branch of legislation as well.*" Rudzinski, 1965, p. 48.
85 Knapp, 1996, p. 115.
86 Nizsalovszky, 1984, p. 114.

> *private property and human personality, including private property. In the given economic, social, and political circumstances, we must especially appreciate the establishment of the Code… Due to the outstanding professional standard, the Hungarian Code of 1959 survived for decades the profound economic and social transformation that began in the second half of the 1980… It is understandable, however, that these changes, as a result of which a market economy based on private property was re-established in Hungary, had to be followed by the legislator with frequent amendments*.[87]

The principal authors of the draft were Miklós Világhy, Gyula Eörsi, Endre Nizsalovszky, Elemér Pólay, and Béla Kemenes. This code, as mentioned before, unlike the Czech code, did not radically break with the past and also served to preserve the traditional values of civil law. The involvement of the non-communist Nizsalovszky is remarkable.[88] The code was criticized for using concepts and solutions that were linked to a bygone stage of legal development: It was described as a late flowering of civil law following the liberal–capitalist small commodity model. Thus, the legal solutions included in the code would have strengthened the position of obsolete economic interest groups.[89] The communists who were convinced of this at that time, Eörsi and Világhy, could, as exceptionally talented and highly qualified lawyers who also wielded strong political influence, "*successfully insist that a number of classical traditions of private law be preserved*."[90] The code represented a radical change for lawyers compared to the past: Hungarian private law, based on customary law, was replaced by a much narrower law. Judges had to switch from an inductive to a deductive method of interpretation.[91] Only the Soviet-style dictatorship was able to overcome the common law-based private law. The code entered into force on 1 May 1960, and it was reformed in 1967 and 1977.

### *6.4. Poland*

The Soviet-type dictatorship practically inherited the different pieces of civil law legislation prepared by the interwar Codification Commission, which were adopted either before the Second World War (the Law of Obligations in 1933) or after the war, all reflecting the past ideology of freedom and private property. First, the General Provisions of Civil Law were adopted separately. This was a piece of legislation reflecting Marxist views, and it formed the ideological base for the interpretation of other civil law legislation. However, this was insufficient. The party wanted a new civil code reflecting the ideology of the new times. An ideologically burdened draft was hastily prepared but never adopted.

87 Vékás, 2014, p. 82.
88 Földi, 2020, p. 27.
89 Sajó, 1986, pp. 99–101.
90 Földi, 2020, p. 27.
91 Eörsi, 1960, p. 312.

> *It was so strongly criticized by the legal doctrine, which despite of the lack of the academic freedom, limiting the possibility of running the necessary discussions, managed to present the flaws of this draft in such a very clear way, that even the communist government has not decided to adopt this draft*.[92]

Practically, after Stalin's death (1953), pressure to adopt a legal text that could erase the previous codification achievements eased.

A new Codification Committee was set up, consisting of members with personal links to the former commission, including those whose academic mentors were participants on the former commission.[93] This committee intended to preserve the pre-World War II achievements (which are perceived even today as important legislative and cultural achievements), but they accepted the price of surrendering to the regime. From a political point of view, this period was a strict epoch of the political system: After limited relaxation after 1956, the regime returned to a more severe version. Even so, compared to Stalinist politics, the very narrow easing that occurred was enough to facilitate the Codification Committee's work.[94]

The committee rejoined the distinct pieces of civil law legislation to form a unitary code. They attempted to include family law as a book in the code, but this deviated from the Soviet model, and a separate family law code was adopted in 1950 (*Kodeks rodzinny*), as a result of the joint effort of a Polish and Czechoslovakian commission.[95] Because this law was an effect of the consent in this international working group, all issues on which the parties could not agree upon were left out and therefore the short code was full of gaps. The case-law of both countries was quite different and the Polish-Czech family code was not treated as a successful example of transnational unification of the law.[96]

The civil code was adopted in 1964 and had 1088 articles.[97] This code could be regarded as the completion of the work of the pre-war Codification Commission. Almost all essential legal concepts and institutions were taken over from the Law of Obligations from the year 1933 and the post-war decrees.[98]

However, it was more abstract, as the political regime required legal notions that could be interpreted on an ideological basis. As it was stated,

92 Zoll, 2014, p. 129.
93 "*It does not mean that all of the members of the Commission from the year 1964 were rebels against the communist regime. Some of them were quite closely associated with this political direction, but they were also excellent jurists and they perceived themselves as a part of the tradition of this deep comparative discussion between the wars. Therefore the Polish civil law tradition has not been broken*." Ibid., p. 133.
94 Ibid., p. 126.
95 Ibid., p. 132.
96 Ibid.
97 Rudzinski, 1965, p. 48.
98 Zoll, 2014, p. 130.

> *this more abstract technical approach was not ideologically neutral. It is easier to fill the rules by contents harvested from the intrusive political ideology, if they are more abstract and by this way more flexible and can be easier bended by the means of interpretation.*[99]

The code includes general provisions, property law, the law of obligations, and succession law. The text stated that it has to be interpreted in accordance with the official ideology. Several norms reflected the ideology of those times (stronger protection of state property, regulation on contracts between state-owned enterprises as tools of the planned economy, etc.). The justification of the legal text stated that:

> *In legal systems based upon private ownership of the means of production, civil law is a branch of law that regulates first and foremost the private sphere of individuals... In a socialist system, the vast majority of ownership relationships are outside the realm of private ownership by individuals.*[100]

In 1964, the 1934 commercial code was partially repealed, except for the rules on general partnerships, limited liability companies, and joint-stock companies.[101] In the same year a Family and Guardianship Code was adopted.

### *6.5. Yugoslavia*

During the first phase of the socialist dictatorship, in 1946, the Act on the Invalidity of Regulations Adopted Prior to 6 April 1941 and During the Occupation (1946) was adopted. This act practically abrogated all previous legislation, such as the 1844 Serbian civil code and the Austrian civil code that had been in force in Croatia since 1812, as a manifestation of legal nihilism. A new legal system was intended to be introduced. However, the old legislation (*stara pravna pravila*) was still practically applicable in all fields where the envisaged new set of rules had not been introduced and the old norms were coherent with the new social realities.[102] Civil law was a prominent domain in which the former legislation survived. For example, in the socialist Republic of Croatia, the Austrian civil code was still applied to segments of family law, inheritance law, real property, and obligations, not as positive law but rather as simple rules to theoretically fill the gaps in the new legislation.[103] The case of Serbia was similar with regard to the 1844 civil code.[104] This continuation of the old law was considered a temporary solution intended to be maintained until the new law was enacted. This is why different segments of private law were regulated progressively through new pieces of legislation. The need to abolish the old law resulted in

99 Ibid.
100 Radwański, 2009, pp. 136–137.
101 Izdebski, 1996, p. 9.
102 Dudás, 2013, p. 13.
103 Josipović, 2014, p. 111.
104 Dudás, 2013, p. 13.

new partial regulations of particular social relations. Creating fragmented norms included in different acts was significantly faster than the time-consuming process of drafting a unitary civil code. Therefore, instead of a new, unitary code, in Yugoslavia, the subdivisions of civil law were regulated through different acts, such as the Marriage Act (1946), the Inheritance Act (1955), the Obligations Act (1978), and the Act on Basic Ownership Relations (1980).[105] The results of this legislation were outstanding in terms of quality, for example, the Obligations Act, having mainly utilized a Swiss model, was said to be "*one of the most outstanding products of the liberal socialist legislation of the time, which has shown its merits in the course of its almost forty years of application*."[106] However, because these new rules did not cover all the fields of a civil code, in the case of Croatia, it was stated that the provisions of the Austrian civil code would continue to be applied to donation contracts, neighborhood law, and private easements.[107] We can observe that despite the tradition of a unitary code in Serbia and Croatia, regulation via separate pieces of legislation was chosen. Nevertheless, the ultimate, though yet unrealized, goal was to create a unitary code at the end of this decades-long transitory period. Professor Mihailo Konstantinović, who completed university and doctoral studies in France, played a leading role in the creation of the new legislation. For instance, the Obligations Act was compatible with the capitalist order and was kept in force in the former Yugoslav states even after the regime change (e.g., in Croatia until 2006; in Serbia, it is still in force).

### *6.6. States without new codes in the fourth wave of codification*

In Romania, the 1864 civil code was in force during this period, playing a secondary role in the context of the serious limitation of private property. Some efforts were made to create a socialist civil code, but these processes did not succeed.

## 7. The fifth wave of codification in East Central Europe – after the collapse of the Soviet-type dictatorship

### *7.1. Overview*

Some states had pre-World War II civil codes that could naturally be maintained after the collapse of the communist regimes.

The civil codes adopted under the Soviet-type dictatorship were maintained even after the collapse of these political regimes. The reasons are, in relation to Poland, for example, as follows:

> *The core of the civil code was however not strongly affected by the time of its origin.* [...] *After the events of 1989 and the great political and economic transition the code*

105 Josipović, 2014, p. 112.
106 Dudás, 2015, p. 79.
107 Josipović, 2014, p. 112.

> *could be maintained without too far-reaching economic legislative intervention. The code was drafted in a way that the parts clearly affected by the communist ideology or the adjusted to the communist economic legal system were very easy to delete from the text without infringing the structure of the code. They have formed simply the alien component in the body of the code.*[108]

The change was informal: Civil codes have risen from the relative shadow in which they were placed under Soviet-type dictatorships, with separate regulations pertaining to the planned economy now disappearing. In addition to democratic constitutions, civil codes assumed their well-deserved place as basic laws governing private property and contractual freedom.

During the transition period, the reform of the civil codes was not of utmost importance; after a regime change, "*civil codes are not the first pieces of legislation to be amended or drafted.*"[109] The explanation is simple: The civil code expresses the status of normality. Instead, it was necessary to create a transition from the Soviet-type property regime to a system based on private property. This required a special set of norms in order to create this shift from a planned economy to a market economy. Once this change is realized, the question of reform of the existing or implementation of a new civil code could be raised.

Some changes were introduced in the civil codes in order to abolish the special status of state ownership and level the field regarding private property. The fifth wave of codification is a characteristic of the 21st century, decades after the collapse of communism in the region. Croatia and Slovenia adopted new acts to regulate the traditional domains of civil law. Czechia, Hungary, and Romania adopted new civil codes. Other states (Poland, Serbia, and Slovakia) are working on a new code: The fifth wave of codification is still ongoing in the region.

### *7.2. States with new civil codes*

#### *7.2.1. Czechia*

After the socio-political changes in 1989, it was evident that the Civil Code, as a result of the codification work after adopting the socialist constitution of the 1960s, could not be maintained without changes because it "*overtly neglected many traditional rules concerning ownership and other real rights or obligations.*"[110] A total of two possible scenarios were considered: an accelerated preparation of a new Civil Code or a provisional revision. Ultimately, it was decided that change would be affected by amending the Civil Code and replacing the Economic Code.[111] Viktor Knapp was the leading figure behind the 1991 regulations. He had already contributed to the middle Civil Code in

108 Zoll, 2014, p. 132.
109 Izdebski, 1996, p. 4. In general, minor changes were sufficient to make those codes, especially the pre-World War II texts, fully applicable under the new conditions.
110 Izdebski, 1996, p. 9.
111 Knapp, 1992, p. 5.

1950. The resulting law therefore largely resembled a return to some of the concepts of the 1950 Code. The intervention in the Civil Code was illustrated by the absence of sections 181 to 414. Democratization was also illustrated by the replacement of the Economic Code with the Commercial Code (513/1991 Coll.), the modification of the Family Code (91/1998 Coll.) and the adoption of the new Labor Code (262/2006 Coll.). In its original wording, the latter reflected a nonconceptual approach; the Civil Code was not subsidiary to the Labor Code but was to be applied only via explicit reference (delegation). However, in 2008, this innovative and untried concept was replaced by classical subsidiarity.[112]

After adopting the provisional amendment, work on a new Civil Code began under the leadership of Viktor Knapp and Karol Plank, but was interrupted by the dissolution of Czechoslovakia (1992). Plank's work in Slovakia was terminated by the change of government in 1998, while in the Czech Republic, the work was continued by František Zoulík. In the meantime, the 1964 Civil Code was almost completely amended, mainly to adapt it to European law. Additionally, part of the matter was regulated in other laws (in addition to the Family Act and the Labor Code, for example, the Act on Liability for Damage Caused in the Exercise of Public Authority or the Act on Insurance Contract).[113]

In 2000, the then Minister of Justice Otakar Motejl began preparing a new Civil Code. The work was entrusted to Karel Eliáš and involved 39 lawyers during the following years. The draft was presented in 2008, but the government's crisis terminated the legislative activity in 2009. The new Civil Code was adopted in 2012 and its scope caused the Ministry of the Interior to wait for its publication, which assigned it the number 89 (as a reminder of 1989). The Law on Commercial Corporations (90/2012 Coll.) and the Law on Private International Law and Procedure (91/2012 Coll.) were also published. [114]

The 2012 Civil Code was based on traditional continental civil codes and was intended to present a discontinuity with existing legislation and court decisions and to summarize all civil regulations within a single code.[115] While the Code restored traditional institutions, it was also criticized as too casuistic, not sufficiently internally coherent, its language and terminology as problematic (a return to interwar legal terminology); some perceive that the Code was significantly damaged by inconsistent final drafting.[116]

### *7.2.2. Hungary*

Hungary adopted a new civil code decades after the regime change. In place of the 1959 code, Hungary adopted Act V of 2013, which entered into force on March 15, 2014. It is an original piece of legislation that has built on previous drafts and aims

112 Bělina, 2008, pp. 20–23.
113 Tauchen et al., 2023, pp. 79–81.
114 Ibid., pp. 81–83.
115 Ibid., p. 83.
116 Ibid., p. 85.

to ensure continuity. It is 'supermonist' in nature, as it often regulates legal relations between private individuals (consumers) in a business-like spirit and also includes company law.

During the drafting of the code, the following problem was raised: Is codification still relevant in the 21st century? Some founding principles of the classical civil codes, such as the unencumbered ownership of property and the freedom of the parties to form contracts became relative. The pace of social change is accelerating, and the direction such variations will take is unpredictable. Under these conditions, legislators become hyperactive: More and more specialized legal rules are being created, abstraction is difficult, and private law norms outside the civil codes proliferate. In the EU, directives must be constantly integrated into national laws in fields like company law, consumer protection, and intellectual property. The president of the codification committee, Professor Lajos Vékás concluded:

> *One of the classic arguments in favor of codification, namely the need for a systematization of law, has survived the glory days of codification. Sufficiently abstracted, systematised, and codified rules are necessarily better suited to enabling the judicial practice to keep pace with the rapid changes in the circumstances of life than an unclear mass of individual and ad hoc laws, which are chasing each other at speed and getting lost in detail. This is why we have put forward as a further argument in favor of codification the need to give the judge the opportunity to develop the law, to fill the inevitable gaps in the written rules, and a code provides a more solid framework for this than the daily efforts of the legislator to grasp the detailed problems at all costs and to react nervously.*[117]

### *7.2.3. Romania*

At the time of the regime change, Romania still had two 19th-century codes in force: the civil code and the commercial code (the latter having been dormant during the Soviet-type dictatorship).[118] Romania was perceived, thanks to its tradition of formally preserving these pieces of legislation, as having "*at its disposal a civil law infrastructure better adapted to market conditions than that of many states which attempted completely to modernize their law under real socialism*."[119] Paradoxically, as stated above, civil codes are the norms representing normality; hence, Romania missed an opportunity to quickly convert to a market economy. A normality regulation was useless if the return

117 Vékás, 2021, p. 102.

118 The code lost the object of its regulation due to the abolition of private property. Sipos, 2003, pp. 41–43. Following the regime change, the code was applied again. The fate of the Romanian commercial code is also interesting for this reason: It would go on to survive its own model (Italy's commercial code was repealed during the Second World War, and Italian private law – which was used as the initial model – transitioned to a monist regulation of civil law through the civil code of 1942). The Romanian commercial code survived totalitarianism and revived itself after 1989, along with its natural environment, capitalism.

119 Izdebski, 1996, p. 5.

to regularity from the Soviet-type system was not properly paced due to ideological barriers.

The arguments in favor of adopting the French model were the masterly drafting technique; the clear, simple, and comprehensible provisions; and the avoidance of unnecessary theoretical generalizations and abstractions. Obviously, societal and legal development in the 20th century surpassed the original French code in many respects, so the Romanian adaptation (translation) has lost much of its relevance. The modernization of the French code has been and is still being carried out, together with amendments, judicial practice, and legal doctrine, maintaining continuity with the original Napoleonic Code.

Romania, on the other hand, having abandoned its historical traditions, has opted to adopt a new code. A new civil code was already drafted before the Second World War, but its entry into force was prevented by the outbreak of the conflict, the territorial losses the country suffered, and, later, the establishment of a Soviet-type dictatorship.

The issue of codification came back into focus after the regime change, and thus, Act 287 of 2009, the new Romanian civil code, was adopted. The code entered into force on 1 October 2011. Apart from abandoning historical continuity, another criticism can be levelled regarding the abandonment of the old legislation. Previously, following the French model and complying with the French code undoubtedly had its advantages: The direct use of French legal literature and the richness of the French case has raised the standard of Romanian civil law scholarship significantly. Obviously, the French model of regulation was prone to criticism because it did not reflect the specific Romanian legal culture.

The sources on which the new Romanian civil code are based are complex: The legislator departed somewhat from the classical French model but also draws heavily on the modern French-language civil code of the Canadian province of Quebec (Code civil du Québec), which was adopted in 1991 and entered into force on 1 January 1994, and which can be interpreted as a strong modernization of the original French code. However, the Italian civil code and the Draft Common Frame of Reference (DCFR) have been used as a model. The extent to which this new legislation is a product of Romanian legal culture, compared to the previous civil code translated from French, remains a matter for debate. One change is that the single-model code has been replaced by a multi-model code.

The reform ended the dualism between civil and commercial law, thereby achieving, at least in principle, the transition from the dualistic system of the regulation of civil law to the monistic model. Nevertheless, to some measure, the differentiation of business law within the civil code was preserved because in the matter of relations between professionals, both this new code and other special rules continued to provide for derogations from the general norms.[120]

120 Veress, 2017, pp. 27–34; Fegyveresi, 2017, pp. 35–42.

The new civil code again included and integrated into a unitary whole from a systematic point of view the numerous norms of private law enacted during the Soviet-type dictatorship outside the civil code framework, for example, Decree No. 31/1954 Concerning Natural and Legal Persons, Decree No. 167/1958 Regarding the Statute of Limitations, and the Family Code; the legislator even merged the rules applicable to private international law into this new norm.

However, the changes were not purely formal or structural; they were also of substance. The new civil code reformed private law in several areas: personality rights, matrimonial law, real property rights, the general rules on obligations, those on certain special contracts, the debt guarantee system, and in particular, mortgages on movable property. These measures – although they could certainly have been achieved by reforming the 'old' civil code – have significantly contributed to effective application in the practice of Romanian private law, including in the context of the 21st century.

### *7.2.4. Croatia*

Croatia gained its independence in 1991. It inherited the civil law of the former Yugoslavia and also tried to re-establish the broken link with the former legislation in force, including some provisions of the Austrian civil code not covered by Yugoslav civil law, through the Act on the Application of Regulations Adopted Prior to 6 April 1941 (1991).[121]

New civil law, based on a modernized concept of the former Yugoslav legislation, was adopted: the Act on the Ownership and Other Real Property Rights (1997), the Family Act (1998, 2003), the Inheritance Act (2003), and the Obligations Act (2006). As the Austrian civil code became to a certain extent part of Croatian legal culture, it influenced the new legislation[122] and also granted a certain continuity of regulation. We can observe that Croatia followed the model of separate acts for different civil law segments instead of adopting a unitary civil code.

> *An integral concept of codification of individual private law segments has not been adopted… [T]he contents of individual pieces of legislation either overlap or are mutually conflicting. Different terminology is used. This all leads to the question about whether it would be better to synthesize various individual regulations into an integral civil code or keep this segmented approach to the development of the Croatian private law system.*[123]

### *7.2.5. Slovenia*

After gaining its independence, Slovenia gradually reformed its legislation. In 2001 and 2002, the Obligations Act and the Property Act were adopted, respectively. The

121 Josipović, 2014, p. 113.
122 Ibid., pp. 114–115.
123 Josipović, 2014, p. 122.

classical domains of civil law are regulated through separate pieces of legislation, as in Slovenia, there is no unitary civil code. The Inheritance Act was taken from Yugoslavia (1976) and modified slightly.

## 7.3. States with former codes still in force and the reasons for maintaining the legislation

### *7.3.1. Slovakia*

In Slovakia, which gained its independence in 1993, former Czechoslovakia's 1964 civil code remained and is still in force. However, this act was modified several times, the most fundamental revision being Act 509 of 1991, which changed or amended approximately 80% of the original text.[124] The reform of private law was completed with the adoption of a commercial code (Act 513 of 1991). Both of the abovementioned acts were adopted before the creation of independent Slovakia.

The civil code was modified frequently in independent Slovakia, and compared to the Czech version (in force until 2014), the two texts have drifted apart in some respects.

Recodification efforts started in 1996. A commission led by Professor Karol Plank had the unrealistically short timeframe of less than a year in which to propose a draft. A first draft was delivered in 1997. Coordination of the commission was entrusted to Professor Ján Lazar after Professor Plank's death in 1998, and a second draft was presented.

> *Despite the fact that this draft had also not been subjected to a wider expert discussion, it was approved by the Government of the Slovak Republic that same year. The expert public raised serious objections against the draft, which, combined with political and personal changes at the corresponding ministries, resulted in the draft not being picked up again, and it was withdrawn from the legislative process*.[125]

In 1999, recodification efforts restarted under the leadership of Professor Peter Vojčík, and a directional document was prepared, but the commission's mandate ended in 2002.

The year 2006 represented a new beginning, and Professor Ján Lazar led a new commission. Another directional document followed and was adopted by the government in 2009. Another latent 2-year period followed the 2010 elections. In 2013, Professor Ján Lazar, who was born in 1934, proposed Anton Dulak as his replacement. The new deadline to deliver a first working draft was set to 2015. The first unified working version of the new civil code, consisting of 1,756 paragraphs, was delivered on time in 2015. Later that year, due to political reasons, a new commission was nominated

124 Dulaková Jakúbeková, 2021, pp. 84–85.
125 Ibid., p. 86.

under the leadership of General Director of the Civil Law Section in the Ministry of Justice Marek Števček.

In 2018, the Ministry of Justice took a novel approach: recodifying private law *per partes* (i.e., to change the existing code), beginning with the law of obligations.[126] The new 2020 government seems to have embraced the former recodification approach. In this context, it was stated that:

> *Despite many attempts and specific activities within the Slovak Republic, and in contrast with the Czech Republic as well as with Hungary, Romania, Estonia, and Russia, this recodification process has not yet been completed. The Slovak Republic thus remains one of the last countries to adopt recodification of private law out of all the previously socialist states of Eastern Europe.*[127]

There exists a first draft text representing further efforts, but faith in a Slovakian civil code is uncertain at this time.

### *7.3.2. Poland*

In Poland, the 1964 civil code is still in force, with many adjustments. The 1964 text, based on the work of the pre-World War II Codification Commission, is of high quality and proved to be fit as a basis for the transition and the market economy, hence there was no need for its immediate replacement. In 1990, the code was amended, but compared to the Czechoslovak code, the Polish regulation was "*much closer to the continental tradition of civil codes*"[128] and could therefore be maintained in force.

A new Codification Commission began work on a new text in 2002, headed until 2010 by Zbigniew Radwański, with Tadeusz Ereciński assuming leadership after his resignation. In 2015, the commission's mandate ended without the completion of the task. It is true

> *that there is a space for innovation. In the world dominated by the technology, in the world, where services become more important than sales and in the world where the function of property also has to be redefined, in the world of essential changes of the structure of family, the law rooted in the pre-war time loses its capability to solve the contemporary problems. Hence it is inevitable to start the work on the new codification.*[129]

As an impediment to codification, it was stated that "*Polish lawyers are generally conservative and, when accustomed to a text, they do not think about a new one.*"[130]

126 Ibid., p. 89.
127 Ibid., p. 84.
128 Izdebski, 1996, p. 9.
129 Zoll, 2014, p. 134.
130 Izdebski, 1996, p. 10.

However, Poland modernized its company law, adopting a new commercial companies code (Kodeks Spółek Handlowych) in 2000. This regulation does not break with the monistic nature of civil law, as it regulates companies as civil law entities but does not create a separate commercial law. As stated, the name 'code' was given to it in an attempt to neutralize resistance from the supporters of the old commercial code of 1934.[131]

Finally, Poland maintains a monist system of private law, in the absence of a specific commercial law of obligation. This is perceived as a socialist law inheritance, that is, the principle of the unity of civil law, "*which bars the reintroduction of classical commercial codes*."[132]

### *7.3.3. Serbia*

After the collapse of the communist regimes and the former Yugoslavia, private law reform in Serbia manifested in the adoption of the new Inheritance Act (1995) and the Family Act (2005). Codification works to create a new unitary civil code started in 2006. A draft version of the code was prepared in segments under the leadership of Slobodan Perović. In 2015, the full bill was presented for public debate, proposing, in some cases, alternative legislative solutions. The final draft was prepared in 2019. After the death of Slobodan Perović in 2019, the codification work was completed under the leadership of Miodrag Orlić and submitted in 2020 to the government for further procedures. However, in Serbia, the scope is to create a unitary code to replace the segmented acts regulating the different domains of civil law. This demonstrates a change in optics in Serbia compared to the other former Yugoslav states (Croatia, Slovenia) that have decided, at least momentarily, to maintain the segmented regulation of civil law.

## Conclusions

Due to space limitations, any overview of the history of private law codification that fits in a single chapter is necessarily partial. Nevertheless, this chapter has offered an eye-opening look at the region's complex and captivating legal history. Historical analysis clearly indicates the political, ideological, economic, and legal influences that have shaped the region and the links between the models followed and the manifestations of a particular legal culture. The results of development process analysis show that each of these states adheres to its own private law culture and civil code, even though the EU member states have delegated specific issues to the supranational legislator in the interest of functioning as a single European market.[133] Therefore, a common body of private law was created, but that exceeds the scope of the present

131 Radwański, 2009, p. 137.
132 Izdebski, 1996, p. 14.
133 All states examined here, except Serbia, are now members of the EU.

analysis. In addition to these areas delegated to the EU, private law must also reflect local cultural specificities. Its dynamics must account for these specificities, which are, at the same time, special values. The process of the unification of private law in the region must be essentially organic and based on market needs in a way that does not preclude any state from developing its private law autonomously as far as is both possible and necessary. Coordinated autonomy in the development of law will create competition to reach innovative legal solutions essential for improving legislation.

## Compendium

| First (early) codification wave (first half of the 19th century) | | | | |
|---|---|---|---|---|
| | **Code** | **Purpose of codification** | **Model** | **Intensity of model tracking** |
| Grand Duchy of Warsaw | French civil code (1807) | Modernization | French | Total |
| Illyrian provinces | French civil code (1809) | Modernization | French | Total |
| Bohemia and Moravia, Istria, Dalmatia and the Military Frontier Zone | Austrian civil code entered into force (1812–1815) | Unification of law, imperial integration | Austrian | Total |
| Moldova | Codul Calimach (1817) | Clarification of legal sources | French, Austrian, Byzantine | High |
| Walachia | Condica lui Caragea (1818) | Clarification of legal sources | Byzantine law, local customary law, partially French and Austrian | High |
| Hungary | Regulation on company law and bills of exchange (1840) | Modernization | Austrian, German | High |
| Serbia | Civil Code (1844) | Modernization | Austrian, French | High |

| | | | | |
|---|---|---|---|---|
| **Second wave of codification (second half of the 19th century)** | | | | |
| Hungary | Austrian civil code entered in force for a short period (1853),<br>Commercial Act (1875),<br>first full civil code project (1900) | Imperial unification<br>Modernization<br>Modernization | Austrian<br>German<br>Austrian, German | Total<br>Medium-high<br>Medium-low |
| Croatia, Slovenia | Austrian civil code (1853) | Imperial unification | Austrian | Total |
| Serbia | Commercial code (1860) | Modernization | French, German | High |
| Romania | Civil code (1864),<br>Commercial code (1887) | Modernization | French<br>Italian | High<br>High |
| **Third wave of codification (first half of the 20th century)** | | | | |
| Hungary | Private law code project (1928) | Modernization | German | Low |
| Poland | Obligations Act (1933) | Unification of legislation, modernization | Swiss, German, French | Low |
| Czechoslovakia | Civil code project (1937) | Unification of legislation, modernization | ABGB | Medium |
| Romania | Civil code project (1940) | Unification of legislation, modernization | French, Italian | Medium |
| Kingdom of Serbs, Croats, and Slovenes (from 1929, known as the Kingdom of Yugoslavia) | Previous legislation in force | | | |
| **Fourth wave of codification (Soviet-type dictatorships)** | | | | |
| Czechoslovakia | Civil code (1950),<br>Civil code (1964) | Unification of legislation, creation of socialist civil law | Russian civil code of 1922, interwar Czechoslovak projects, 1936 Russian Constitution, Austrian | Medium-low |

| | | | | |
|---|---|---|---|---|
| Yugoslavia | Marriage Act (1946), Inheritance Act (1955), Obligations Act (1978), Property Relations Act (1980) | Unification of law, creation of socialist civil law | Swiss, Austrian, German | Medium |
| Hungary | Civil code (1959) | Codification of civil law, creation of socialist civil law | German, previous Hungarian projects | Low |
| Poland | Civil code (1964) | Creation of socialist civil law | German, Austrian, French | Medium |
| Romania | Preparatory works | | | |
| **Fifth wave of codification (after collapse of the Soviet-type dictatorships)** | | | | |
| Czechia | Civil code (2014), Commercial code (1991) | Modernization | German | Low |
| Croatia | Act on the Ownership and Other Real Property Rights (1997), Obligations Act (2006) | Satisfaction of the need to establish its own law, modernization | Former Yugoslav legislation, Austrian, German | Medium |
| Poland | Codification efforts not finalized | | | |
| Romania | Civil code (2011) | Modernization | Multi-model (Québec, Italian, French, Draft Common Frame of Reference) | Medium-high |
| Hungary | Civil code (2014) | Modernization | German | Low |
| Serbia | Project finalized in 2020 | | | |
| Slovakia | Codification efforts are ongoing | | | |
| Slovenia | Obligations Act (2001), Property Act (2002) | Satisfaction of the need to establish its own law, modernization | Former Yugoslav legislation, Austrian, German | Medium |

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