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CODIFICATION OF THE CIVIL LAW IN THE REPUBLIC OF MACEDONIA

Abstract: *This paper analyses the process of codification in Europe in 19th century and its influence on the codification of civil law in post-socialistic countries. In light of the analysis of the codification process in post-socialistic countries, the paper puts the accent on the ongoing process of codification of the civil law in Republic of Macedonia.*

The idea for codification of Macedonian civil law was introduced for the first time in a project prepared by the Ministry of Justice in 2009. However, the first official activities in regard of the codification started in 2011 when a Commission for drafting the Civil Code of Republic of Macedonia was instated by decision of the Government of the Republic of Macedonia. During 2012 the Commission held a meeting where the main point of discussion was the systematization and content of the Civil Code. It was concluded that the pandect system should be accepted regarding the draft of the code. After the meetings separate working groups started with the preparation (the draft) of three parts of the code - property, obligations and succession. At the moment the process of drafting the property law is still ongoing.

Key words*: civil law, civil codes, codification, obligations, property law, successions.*

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1. Introduction

In Europe today there are two different legal traditions Common Law and the Civil Law (continental). Scholars point out that these two legal traditions have crucial differences as a result of different conditions in which Common Law and the Civil Law system have emerged and developed in the past. The crucial differences between the common law and the civil law system, according to civil doctrine, are found in their structure, the manner that legal statutes are classified, the basic principle of the legal systems and the legal terminology (Pejovič, 2001:819–820).

The common law legal system has started developing during the 11-th century in England. The development of this legal system was a result of political changes that followed in the period after 1066 (the Norman conquest of England). In the legal history of England this period is marked as time when the central authority of the king has been very strong. As governing authority, the king issued royal orders that functioned as laws. However, the courts found the royal orders to rigid and inapplicable in certain cases especially regarding the achievement of the principle of justice. That was the reason why courts have began to apply the principles of equity in their judgments derived from Roman law or natural law. In time the decisions of the higher courts were regarded as precedents and as such were followed in the courts legal practice, creating the so called "precedent law". The existence of precedent law as legal source is one of the main characteristics of the common law legal system that differ it from the civil law legal systems based on written law. However, as scholars point out, the common law legal system, besides the precedent law is partly based on statute law passed by the Parliament (Hale, 1971: 11; Pejovič, 2001: 820; O'Connor, 2012: 11).

The civil law (continental) legal tradition is considered as dominant type of legal system in Europe since it was accepted in most European countries. This legal tradition has developed by reception and modernization of Roman law. According to historians this process has began in the period of the 11th century in the Italian city-states (Merryman, 1985:10). By accepting the Roman law in the period of the 11th until 15th century the European countries gradually abandoned the customs that served as law, and oriented towards written law – legal statutes that in certain degree incorporated the customs from that time period (Glenn, 2004: 135).

The main characteristic of civil law traditions is the written law that contains abstract legal rules (articles) that can be applied in different legal situations (cases). The role of the courts in countries that have accepted civil law legal tradition is not to pass law, only to apply the written law.

Other important characteristic of civil law legal tradition is the tendency for the written law to be systematically classified in one integral legal text – codification. The process of codification of civil law in European countries, according to historians began during the 18th and 19th century when the so called "modern codifications" have emerged[1]. Among the first codifications of civil law in these period are: the Prussian Code from 1794; the French Civil Code from 1804, the Austrian Civil Code from 1811, the German Civil Code from 1896 (that came into force in 1900), the Swiss Civil Code from 1907, the Italian Civil Code from 1942, the Serbian Civil Code from 1944, the Greek Civil Code from 1946 and others. As most important and influential civil codes in legal history are considered to be the French Civil Code, the Austrian Civil Code and the German Civil Code (Murillo, 2001: 5–6)[2]. The French Civil Code, according to civil doctrine had significant influence during the draft of the Italian Civil Code, the Portuguese Civil Code and the Spanish Civil Code. The Austrian Civil Code influenced the draft of the Serbian Civil Code. And the influence of the German Civil Code is recognized in the draft of the Greek Civil Code and the Swiss Civil Code. The German Civil Code is considered to have influenced the revision of the Austrian Civil Code.

In counties from Western Europe the process of codification of civil law become a pressing issue during the 19th century, however in 20th century the economic and political development of countries in the European Union demanded the harmonization and unification of laws in the European Union. The need for harmonization in the European Union brought on a process of de-codification, creation of international law, and necessity for re-codification of civil law. The process of de-codification, according to scholars, resulted from social, economical and political changes during the 20th in the European Union. All the changes on social, economical and political level demanded regulation that was enforced by passing special laws to regulate the new legal relations. These special laws are enforced together with the enforcement of the civil codes, and they usually refer to matters not regulated by the civil codes. The creation of international laws in the European Union, or more precisely European laws such as: conventions, covenants, international agreements, directive and other legal documents that bind the European countries also influenced the application of the existing

1 Historians point out that the term " codex" in the past was used to express law written in wooden tables. Although, historians consider that the codification of civil law is a process that started in the period of 18th and 19th century, they point out that in history of law early codifications are known such as the Hammurabi Codex, Codex Theodosianus and others (Zimmerman, 2012).

2 Some authors consider that the draft of the German Civil Code is inspired by the French Civil Code regardless of the fact that the two codes are different in their content, the approach in regulating civil law relations, and the manner of regulation of certain civil law institutes (Murillo, 2001: 5)

civil codes (Murillo, 2001:12–13). The changes in the legislation of European countries lead to the process of re-codification of civil law. According to civil doctrine, the process of re-codification is a process that provides new legal solutions (the modernization of law) that need to be implemented in existing civil codes dating from the 19th century. The process of re-codification will ensure the modernization of the law by taking articles from recently passed special laws and incorporating such articles in the civil codes[3].

Although, the process of codification in Western Europe is considered as finished, and the European countries now-days face the challenges of de-codification, creation of international laws and re-codification, the civil doctrine notes that for some European countries the process of codification is just starting. Therefore, the issues regarding codification are still in the spot light in legal theory and practice, especially in the legal system of the countries from East Europe (post-socialistic countries). Most of the East European countries, due to the changes (transitions) in their economic and political system have not codified the civil law in the past, and have only recently started the process of codification of civil law (Zimmermann, 2003: 21).

The codification of civil law in the so called post-socialistic countries, as some authors have noted, is one stage during the transition process that involves more than codification. It is pointed out that transitions process also includes crucial changes in economic development, legal regulations, politics and other areas. Some of the most significant changes deriving from the process of transition are the acceptance of parliamentary democracy, civil society, political pluralism, free market and etc. The codification of civil law is the next logical step in the process of transition where all of these crucial changes will reflect directly or indirectly in the structure and content of the new civil codes in these countries. In legal system of countries in transition the changes in legislation during the process of transition are in some degree inspired by the aspirations of these countries for membership in the European Union. Regarding the pos-socialistic countries that are already member of the European Union, it is pointed out that their primary goal is to harmonize their national laws with the legislation of the European Union[4].

In some countries in transition such as Estonia, Poland and the Czech Republic the codification of the civil law was done by revision and restatement of civil

3 The process of re-codification, according to some author, already began in countries such as France, Italy, Germany and others. These countries have made changes in the civil codes relating personal rights, property relations and family law. Ibid,14.

4 More on the process of harmonization, and its effects in legal system of post-socialistic countries see: P. Cserne, (2011) at http://www.propublicobono.hu/pdf/Cserne%20P%20Tamop%201.pdf.

codes from the past. Other countries such as Latvia and Romania have promulgated the old civil codes without any revision (Cserne, 2011). The countries from the former Socialistic Federal Republic of Yugoslavia, have also gone forward with the process of transition, some already become member of the European Union – Slovenia since 2004 and Croatia since 2013. However, the process of codification of civil law in the present moment is officially started only in Republic of Macedonia[5] (candidate for EU membership) and Republic of Serbia[6] (also candidate for EU membership).

2. The Process of Codification in the Republic of Macedonia

The idea for drafting a Civil Code of Republic of Macedonia was initially presented in 2009 in the Project for Drafting the Civil Code of Republic of Macedonia prepared by the Ministry of Justice of the Republic of Macedonia. However, almost 3 years have passed since the idea for codification of Macedonian civil law was first presented, until the Government undertook decisive steps in direction of its realization. In 2011 a Commission for drafting the Civil Code was promulgated with Decision of the Government of Republic of Macedonia. The first meetings of the Commission were held in 2012. These meetings were dedicated to discussions regarding the systematization of the Civil Code of Republic of Macedonia, and there were also discussions regarding the content of the Civil Code.

The discussion regarding the systematization of the Civil Code ended with the conclusion that the Macedonian Civil Code will be drafted according to the pandect system rather then the institutional system. This conclusion is derived from the fact that in Republic of Macedonia the pandect system is already accepted in the drafting of laws. For example the pandect system was followed during the drafting of the Macedonian Law of Ownership and Other Real Rights (1999–2001)[7]. This Law was drafted following the example of the Croatian Law of Ownership and Other Real Rights from 1996[8], and the Croatian Law of Ownership and Other Rights was drafted following the pandect system evident in the German Civil Code from 1896.

5 Decision for constituting a Commission for drafting the Civil Code of Republic of Macedonia (Одлука за формирање на комисија за изготвување на граѓански законик на Република Македонија, Сл. весник на РМ, бр. 4/2011).

6 Decision for constituting a Commission for drafting the Civil Code (Odluka o obrazovanju Komisije za izradu Građanjskog zakonika, Službeni glasnik 104/06).

7 The Law of Ownership and Other Real Right after a three year drafting period was passed by the Parliament of Republic of Macedonia on the 20th of February 2001, and came into force after a six month vacation legis.

8 Zakon o vlasništvu i drugim stvarnim pravima, Narodne novine», broj 91/96.

The other important issue subject to discussion in the meetings of the Commission in 2012 was regarding the content of the Civil Code of Republic of Macedonia. The Discussion showed that there are many different opinions regarding the question what parts should constitute the future civil code. There was a consensus among the working groups that the future civil code should consist of general part, property law, obligations and successions. However, suggestions were given that family law and commercial law should also be integrated in the Civil Code. These suggestions were given mainly by working groups consisted of professors and experts in the area of family law and commercial law. The civil law professors, among whom professor Rodna Zivkovska (one of the authors of this paper) considered that the suggestions for incorporating family law and commercial law in the Civil Code will burden the content of the Civil Code. Incorporation of family law and commercial law in the civil Code will mean that the first part of the code (the general part) should be supplemented with articles regulating these independent areas of the law. If such articles found their place in the general provisions, they would not be fully applicable regarding property, obligations and successions since the family law and commercial law are governed by different principles of regulation that are not completely compatible with the principles for regulating civil law (property, obligations and successions).

Considering the fact that family law in Republic of Macedonia is already regulated by single integral law – the Law of Family[9] most of the professors in the working groups opposed the idea for family law to be incorporated in the Civil Code. In their arguments they pointed out that the Law of Family already codifies (to some extend) the family law in Republic of Macedonia. The Law of Family use to contain articles regarding the marital property but those articles were taken out of the Law of Family and incorporated in the Law of Ownership and Other Real Rights during its drafting. If family law is to become a part of the Civil Code that will mean reversing this process and putting those articles back in the Law of Family. Such action will undoubtedly cause confusion in the legal practice. The professors also advised that the Law of Family regulates the civil procedure regarding family disputes (parental rights, divorce etc.) which, if family law is incorporated in the Civil Code, will become part of the Civil Code. The possibility for incorporation of articles regulating civil procedure in the Civil Code was opposed by civil procedure professors who also consider that family law should remain as it is now – regulated by the Law of Family as special law.

Regarding commercial law the majority of members of the working groups took the stand that it also should not be integrated in the civil code mainly because commercial law regulates relations between juridical persons, and civil

9 Службен весник на РМ, бр. 80/92, 9/96, 38/2004, 33/2006, 84/2008, 67/10, 156/10, 39/12, 44/12 и 38/14.

law regulates relations between natural persons, or relations between natural persons on one side and juridical persons on the other. It was recommended that commercial law should be codified but in Commercial Code of Republic of Macedonia separate from the Civil Code of Republic of Macedonia.

2.1. The General Part of the Civil Code of Republic of Macedonia

The working group authorized for drafting the General Part of the Civil Code of Republic of Macedonia is intended to start on the draft after the drafts of the special parts of the Civil Code (property, obligations and successions) are finished. However, in spite of that the working group has undertaken some preparatory work such as comparative analysis of the modern civil law legislation in order to determine the content of general part in the existing civil codes. It was decided that the comparative analysis should involve the civil codes with significant influence in the process of codification in Europe such as the German Civil Code (drafted according to the pandect system) and the French Civil Code (drafted according to the institutional system). The working group considered that in the comparative analysis it would be beneficiary to take in consideration a civil code drafted in a former socialistic country which is why the Russian Civil Code was also analyzed. Civil Codes from neighboring countries such as the Greek Civil Code and the Albanian Civil Code were also a part of the comparative analysis made by the working group.

1. The analysis of the GERMAN CIVIL CODE, as main representative of the pandect system, is showing that the articles from the General Part are placed in BOOK I of the code. The General part consists of seven divisions: Persons (division 1): Things and animals (division 2); Legal transactions (division 3) Periods of time and fixed dates (division 4); Limitation (division 5); Exercise of rights, self-defense, self-help (division 6); Provision of security (division 7).

As the analysis has shown the general part of the German Civil Code regulates the presumptions for civil law relations (the persons, the object and the legal facts). Also, as it can be concluded, the general part of the German Civil Code regulates the exercise of rights and limitation.

2. The FRENCH CIVIL CODE consists of four books: BOOK I - Of persons; BOOK II- Of Property and of the various modifications of ownership; BOOK III - Of the various ways how ownership is acquired; BOOK IV - Of securities.

The analysis of the French Civil Code (as representative of the institutional system) has shown that this code does not contain civil law articles like those found in the German Civil Code. However, it is notable that BOOK I – Of persons contains some general provisions divided in 11 titles: TITLE I - Of civil rights;

TITLE II- Of records of civil status; TITLE III - Of domicile; TITLE IV- OF Absentees; TITLE V- Of marriage; TITLE VI - Of divorce; TITLE VII - Of parent and child; TITLE VIII - Of adoption; TITLE IX - Of parent and child; TITLE X - Of minority, of guardianship and of emancipation; TITLE XI - Of majority and of adults who are protected by the law.

It may be concluded that the French Civil Code contains general provisions regarding civil rights and civil status.

3. THE CIVIL CODE OF THE RUSSIAN FEDERATON as an example of civil code drafted in former socialistic country is consisted of three parts, and the general provisions are in the first part of the civil code. The First part of the code is divided into three sections: SECTION I - The general provisions; SECTION II - The right of ownership and the other rights of estate; SECTION III - The general part of the law of obligation.

It was noted that the Civil Code of the Russian Federation has one distinguishing feature – the first section named General provisions contains articles regulating: persons (natural and juridical), objects of civil law relations; legal transactions, period of time and limitation. The code also contains articles regulating property and general provisions regarding obligation which is also specific when compared with the German Civil Code[10].

4. The GREEK CIVIL CODE, as a civil code from a neighbor country contains general provisions found in BOOK I of the Code. The general provisions regulate international private law, natural and juridical persons, representations, limitation and abuse of rights. The systematization of the Greek Civil Code shows that the general provisions primarily regulate personhood and realization of civil rights.

5. The ALBANIAN CIVIL CODE as another civil code of a neighbor country also contains general provisions found in BOOK I of the code, and it is consisted of four titles: TITLE 1 - Subjects; TITLE 2 - Representation; TITLE 3 - Legal transactions and TITLE 4 – Prescription.

It can be concluded that the Albanian Civil Code in the general provisions regulates personhood, also legal transactions and prescription.

The analysis of the content of civil codes shows that the civil codes contain general part – general provision that regulate: personhood, exercise of rights, limitation, representation, and in certain cases object of civil law relations (primarily things). Taking in consideration the present state of the civil legislation in Republic of Macedonia it is imperative that the Civil Code contains general

10 The contracts are regulated in the Second part of the Civil Code of the Russian Federation.

part – general provisions. The question emerging from this conclusion is: What should be regulated by the general provisions of the Civil Code?

The working group authorized for the draft of the general part of the Civil Code, after evaluating the results of the comparative analysis, made their suggestion regarding the possible content of the general part of the Civil Code. The opinion of the working group is that the general provisions should regulate personhood (of natural and juridical persons), exercise of rights, representation, limitation, preclusion and legal transactions. In the legal system of Republic of Macedonia provisions regulating personhood, representation, preclusion and legal transaction are regulated in different laws, mostly in the Law of Obligations[11], but relevant provisions are found and other special laws as well. The working group considers that the codification in this part will require to some extent incorporation of some articles from the Law of Obligations. Since the Law of Obligation regulates special types of civil law relations the incorporation of some articles from the Law of Obligation in the general part of the Civil Code will require change and adaptation of those articles so they may serve as general provision regarding all legal transactions not just obligations. Regarding the content of the Civil Code, the working group also considered the possibility for incorporation of general provisions in each part of the code (property, obligations and succession). Such general provisions would relate to the specific nature of different civil law relations (the property relations, the obligations and the succession).

In respect of the draft of the general part of the Civil Code of Republic of Macedonia the question remains should a small number of articles regulating juridical persons from the Law of Commercial Juridical Persons[12] so that the personhood of juridical persons may be precisely defined in the general provisions.

2.2. Property Law in the Civil Code of the Republic of Macedonia

During the process for drafting the Civil Code of the Republic of Macedonia it was undisputed that the Civil Code should regulate property law. The same conclusion could also be derived by comparative analysis of the existing civil codes (regardless weather they accepted the institutional or pandect system) because they all regulate property law.

1. The GERMAN CIVIL CODE regulates property relations in BOOK III of the code. The BOOK III consists of eight divisions Possession (Division 1); General provisions on rights in land (Division 2); Ownership (Division 3); Servitudes

11 Службен весник на РМ, бр. 18/01, 4/02, 84/08 и 161/09.

12 Службен весник на РМ, бр. 28/2004, 84/2005, 25/2007, 87/2008, 42/2010, 48/2010, 24/2011, 166/2012, 70/2013, 119/2013, 120/2013 и 27/14.

(Division 4); Right of preemption (Division 5); Charges on land (Division 6); Mortgage, land charge, annuity land charge (Division 7) and Pledge of movable things and over rights (Division 8).

2. The FRENCH CIVIL CODE regulates property relations in BOOK II - OF PROPERTY AND OF THE VARIOUS MODIFICATIONS OF OWNERSHIP and BOOK III - OF THE VARIOUS WAYS HOW OWNERSHIP IS ACQUIRED. The second book of the civil code is consisted of four titles: Of the various kinds of property (Title 1); Of ownership (Title 2); Of usufruct, of use and of habitation (Title 3) and Of servitudes or land services (Title 4). The third book regulates the ways for acquiring ownership by succession, by legal transaction (contract, will) and on the bases of law. This part of the code also regulates possession.

3. The right of ownership and other real rights are regulated in the first part of the CIVIL CODE OF THE RUSSIAN FEDERATION, more precisely in SECTION II - THE RIGHT OF OWNERSHIP AND THE OTHER RIGHTS OF ESTATE.

4. The GREEK CIVIL CODE regulates right of ownership and other real rights in BOOK III of the Code named – PROPERTY LAW. This part of the code regulates: right of ownership, other real rights, servitudes and pledge.

5. In the ALBANIAN CIVIL CODE regulates property in BOOK II - OWNERSHIP AND PROPERTY. This part of the Code consists of eight titles: Definitions of Property (Title 1); Ownership (Title 2); Co-ownership (Title 3); Usufruct (Rights to beneficial possessions of

non-owned property) (Title 4); Usage and Habitation Rights (Title 5); Servitudes (Title 6); Remedies for ownership (Title 7) and Beneficial Possession (Title 8).

Codifying property law in the legal system of Republic of Macedonia would be a difficult process considering the present state of the legislation regulating property relations.

The working group authorized to draft the part – Property Law of the Civil Code of the Republic of Macedonia has started the first phase in the process of codification by drafting a new Law of Ownership and Other Real Rights. In this phase of the codification process the working group took up a task to harmonize the new Law of Ownership and Other Real Rights with the vast number of special laws regulating property law that were passed after the enforcement of the Law of Ownership and Other Real Rights from 2001. Some of the laws that will be taken into account during the harmonization process are: the Law

of Construction Grounds from 2011[13], Law of Construction from 2009[14]; Law of Agricultural Land from 2007[15], Law of Real-estate Cadastre from 2013[16]. The harmonization process between the new Law of Ownership and Other Real Rights and the special laws involves incorporation of articles from the special laws in the new Law of Ownership and Other Real Rights[17].The incorporation of articles from the special laws in the new Law of Ownership and Other Real Rights is accompanied with modification of such articles which is necessary for their adjustment as an integral part of the property law, and also for harmonization with the laws in the European Union.

During the draft of the new Law of Ownership and Other Real Rights the working group found it necessary to supplement the part of the general provisions of the law with new principles for property relations that are not found in the present Law of Ownership and Other Real Rights such as the principle of superficies solo cedit, priority and other. Also there are changes in the legal terminology. The term "ownership and other (limited) real right" is abandoned, and instead the term "real rights" is used. It is considered that the term "real rights" is a general term that relates to ownership and other real rights as well.

In the process of drafting the new Law of Ownership and Other Real Rights changes are also made in regard of the regulation of things as object of property relations. The changes involve reformulation of present articles, and incorporation of new articles that regulate legal regime of future things, buildings, infrastructural objects, temporary objects, urban equipment and etc.

The draft of the new Law of Ownership and Other Real Rights contains novelties regarding regulation of the right of ownership and other real right. Also contemporary articles are incorporated in the regulation relating to neighbors rights.

13 Службен весник на РМ, бр. 17/11, 53/11, 144/12, 25/2013, 137/2013 и 163/13.

14 Службен весник на РМ, бр. 130/09, 124/10, У.бр. 262/2009, 18/11, 36/11, 54/11, 13/12, 144/12, 25/13, 79/2013, 137/13, 163/13, 27/14 и 28/14.

15 Службен весник на РМ, бр. 135/07, 18/11 и 42/11 – Исправка, 148/11, 95/12, 79/13, 87/13, 106/13 и 164/13.

16 Службен весник на РМ, бр. 55/13.

17 At the beginning of the codification process of civil law in Republic of Macedonia, the author of this paper professor Rodna Ziviovska stated that in the current state of Macedonian property law the more rational approach in the process of codification would be to first harmonize the property law. Professor Rodna Zivkovska, also suggested that in the process of gradual harmonization of property law it may be possible for smaller codes to be drafted in certain areas of property law such as urbanism, agriculture and etc. However, this issue was not debated during the first discussions regarding the draft of the Civil Code of the Republic of Macedonia.

Important novelty in the draft of the new Law of Ownership and Other Real Rights is abandonment of the present concept where the right of ownership had main (private ownership, ownership of the state and ownership of municipalities) and sub-types (co-ownership, joint ownership and condominium) of ownership. In this regard the concept of the Croatian Law of Ownership and Other Real Rights was followed. According to the Croatian Law of Ownership and Other Real Rights ownership is indivisible category, and the right may be acquired by natural and juridical persons (and in sense of the law the term "juridical persons" involves the state and the municipalities).

Changes are drafted regarding co-ownership, joint ownership and condominium. As it was said before, ownership is considered as indivisible category, so co-ownership, joint ownership and condominium are not considered as sub-types of ownership, instead they are considered as situations when the right of ownership is acquired by several persons together. The working group, considering the need for harmonization, proposed changes in the manner of acquiring ownership. In this regard the Law of Real-estate Cadastre must be taken into account because it prescribes that the ownership of real-estate is acquired in the moment of its registration in the real-estate cadastre (art.143).

Regarding other real rights in the new Law of Ownership and Other Real Rights, the working group considers that all real right should be regulated by the Law of Ownership and Other Real Right and not by special laws. That means that the new Law of Ownership and Other Real Right besides the servitudes, pledge and real charges should also regulate the right of long-term lease presently regulated by the Law of Construction Ground. This will ensure the full implementation of the principle – numerus clausus. The working group also decided that the real right presently know as long-term lease should be renamed as right of construction (on land owned by some else) in order to avoid the confusion between this real right and the right of long-term lease regulated in the Law for Privatization and Lease of Construction Ground Ownership of the State from 2005[18] which is an obligation by its nature[19].

In the process of drafting the new Law of Ownership and Other Real Rights the working group planes to incorporate more articles regulating servitudes and

18 Службен весник на РМ, бр. 4/05, 13/07, 156/08, 146/09, 18/11, 51/11 и 27 /14.

19 Mean vile, the right of long-term lease regulated by the Law of Privatization and Lease of Construction Grounds Ownership of the State also underwent some changes and the right of long-term lease was renamed as right of lease with the same purpose – avoiding confusion between the obligation and the real right. See: The Law for Amendment and Supplementation of the Law for Privatization and Lease of Construction Grounds Ownership of the State (Службен весник на РМ, бр. 27/14).

especially the right of pledge since so few articles regulate pledge in the present Law of Ownership and Other Real Rights.

The draft of the new Law of Ownership and Other Real Rights, as the first phase in the process of codification of property law, is ongoing at the moment. The goal of the working group authorized to draft the new Law of Ownership and Other Real Rights, (whose members are the authors of this paper) is primarily concentrated in harmonization of all law regulating property in the legal system of the Republic of Macedonia. In the same time, another goal of the working group is to modernize the Macedonian property law so it could respond to the changes in civil law relations. The termination of the first phase of the codification of property law is a condition for starting the second phase of the codification – merging the property law, obligations and successions in integral legal text.

In the same time the working groups authorized to draft the other two parts of the Civil Code – obligations and successions submitted their proposals regarding the existing regulation. The proposals given by the working groups regarding obligation and successions should be taken into consideration during the draft of the new Law of Ownership and Other Real Rights so there are no inconsistencies in the regulation. However, during the incorporation of all parts of the civil code in one integral text further revisions might be needed.

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Кодификација грађанског права

Резиме

Предмет овог рада су становишта у вези начина кодификације општег дела и стварноправног дела Грађанског законика Републике Македоније, који је у фази израде. Аутори овог рада сматрају да у Републици Македонији и даље треба задржити традицију пандектног система на терену уређивања грађанскоправних односа. У том контексту, аутори сматрају да, осим Општег дела законика, његови саставни делови треба да буду: Стварноправни део, Облигације и Наслеђивање.

1. У погледу Општег дела Грађанског законика, аутори овог рада износе своје становиште да већи број општих одредаба из постојећег Закона о облигационим односима треба преузети у Општи део Грађанског законика. Реч је о издвајању најопштих карактеристика следећих института: способности, заступање, општи појам правног посла, класификације, општа разматрања о услову и року, мане воље, форма уговора, обезбеђење, застарелост, преклузија, тумачење и њихово „пресељење“ у Општи део Грађанског законика. При томе аутори се залажу за праву меру у ком обиму ове институте треба обрадити у Општем делу, а у ком обиму у делу који се односи на облигационе односе. У погледу израдње Кодекса све радне групе, као и аутори овог рада, сматрају да Општи део треба израдити након израде посебних делова Кодекса.

2. У погледу израде Стварноправног дела Грађанског кодекса, у овом раду аутори се залажу да друга књига насловљена „Стварноправни односи“ треба да садржи следеће главе: ствари, државина, право својине, службености, залог, реалне гаранције, грађење на туђем земљишту и стварна права страних лица. Аутори овог рада приказују да у Републици Македонији од 2001. године (од доношења Закона о својини и другим стварним правима) до данас је донет огроман број специјалних закона који уређују стварноправне односе (у вези ствари од општег интереса, заложног права, дуготрајног закупа грађевинског земљишта и други). Кодификација,

према ауторима, треба остваривати на начин да опште одредбе садржане у овим специјалним законима треба „преселити" у другу књигу законика (стварноправни део), а део њих треба и даље да остане у специјалним законима (с обзиром да транзициони период који још траје).

Аутори (као творци новог Закона о својини и другим стварним правима), исто тако сматрају да треба допунити листу основних начела која се односе на стварноправне односе. У овом погледу аутори подижу принцип савесности, принцип *superficies solo cedit* и принцип уписивања стварних права на ниво основних начела Стварноправног дела законика. Аутори указују да у време доношења Закона о својини и другим стварним правима није било детаљно уређено право залоге, право грађења и етажна својина па је зато и у овом погледу потребно унети детаљне одредбе. Произлази да ће Закон о својини и другим стварним правима, тј. Стварноправни део Грађанског законика садржати дупло већи број одредаба у поређењу са бројем одредаба у постојећем Закону о својини и другим стварним правима.

На крају, аутори указују на чињеницу да се у Републици Македонији истовремено ради на изради књиге из области Облигација и Налеђивања које су интергрални део Грађанског законика.

Кључне речи: грађанско право, грађански кодекс, кодификација, облигације, право својине.