FOREWORD

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1. After the deep and intense social changes witnessed in the 1990s, the codification of private law was on the agenda of every state in East Central Europe, as well as in the Baltic States. However, the possibility of codification of private law in the late 20th century was questioned in principle by many authors. Their view was that the age of codification was over. With life changing ever so fast and paths of social development becoming highly unpredictable, they felt that not enough stability was maintained to create a code.[1]

The great classical codes were written in the 19th century. The social conditions for these codes have undergone fundamental changes. Another important point owing to which the classical codes were created has also lost its significance now: the creation of a single private law for a single nation-state. This was an important aspect in the drafting of the French Code civil, the Austrian Civil Code (ABGB), and the German Civil Code BGB as well as the Swiss codification. Presently, this argument is also irrelevant.

1 Fikentscher, 1977, pp. 135 et seq.; Kübler, 1969, pp. 645 et seq.; Esser, 1977, pp. 13 et seq., 31, 37 et seq.; from the point of view of the development of EU law, questioning the possibility of national codification, *Vareilles-Sommières,* see De Vareilles-Sommières, 1998; for historical analysis, see Wieacker, 1954, pp. 34 et seq., 47 et seq.

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However, the passage of time applies only to the ideological-political views underlying the creation of the classical codes. An important practical reason for codification surviving the 19th century is now evident: the need to systematise norms using a homogeneous method. Systematic standards are better suited to keeping pace with changing circumstances than *ad hoc* rules, which are quickly amended. Legal certainty can be served more effectively by a well-founded code than by the legislator's daily frenzy over an unmanageable mass of statutes and other norms. As Theo Mayer-Maly stated forty years ago, the assertion that it is impossible to make a code today is largely an attempt by the legislator to escape from pursuing the task. 'So macht man Schuld zum Schicksal', he wrote.[2] In 1985, Karsten Schmidt published a lengthy study on the future of codification. Carefully analysing the pros and cons, he concludes that the codex can prove to be a valuable form of legislation in the present circumstances.[3]

The post-socialist countries were also encouraged by successful codification in the Netherlands (Burgerlijk Wetboek). In Lithuania (2000), Romania (2009), the Czech Republic (2012), and Hungary (2013), a comprehensive code has been created. In Estonia, Slovenia, and Croatia, specific areas of private law have been recast in separate statutes. In Latvia, the 1937 Code was renewed and enacted in 1992 and 1993.

2. After four decades of non-democratic governments and misguided policies that led to an economic and social deadlock, the post-socialist countries began to pave the path for a social order based on private property and free enterprise. The legislations were a departure from the premise that the new civil code has to establish the conditions for a constitutionally protected market economy interwoven with social elements in private law. The code primarily lays down the legal frameworks for property transactions. However, it also aims to provide protection for the personality rights of individuals and legal persons and for personal relationships within the family.

The social model of codification chosen by post-socialist countries is that of a social market economy prevailing in the old Member States

2 Mayer-Maly, 1982, pp. 4, 213.

3 Schmidt, 1985, p. 79.

of the European Union (EU). This social model required comprehensive acceptance of the private autonomy of owners, particularly the full recognition and protection of private property. This principle (as the first pillar of private autonomy) pervades the entire code. The other fundamental condition of private autonomy (the second pillar) is the acceptance of the principle of freedom of contract. Any limitation to this is justified only to the extent that this is rendered indispensable by the demand for social justice, and it is still possible under the conditions of free market competition. This equilibrium is not easy to achieve. The law governing consumer contracts is crucial in maintaining this balance. The third pillar of private autonomy is freedom of association, the demands of which are to be served by the institutions of associations, companies, and cooperatives following the tested models of traditional private law legislations.[4]

3. The post-socialist countries realised that the legislation of the EU would have a direct influence on their reforms in several fields (e.g., in consumer contract law and company law) while developing codifications. Therefore, these countries intended to integrate the lasting core of EU private law directives into their codes, as far as possible. However, the legislatures did not try to build the entire corpus of EU private law into the Civil Code because the rules in the EU private law directives are mostly fragmented, casuistic, and often subject to change, and thus are not suitable in all their detail for codification planned with a long-term perspective. Therefore, the decision was to include only some more durable rules based on European directives as the basis for codifications and to leave the others in separate acts, in a way opting for the lesser evil. (Similarly, the old Member States also applied different codification solutions. For example, the German legislator has integrated the Consumer Directives into the BGB. In Italy, the rules of the same directives have been integrated into the Consumer Protection Act from 2005.)[5]

4. The doctrine of no gaps is not advocated by the proponents of codification, but by its opponents. Even the classical codices were not without gaps. Similarly, one cannot expect post-socialist codes to be free of gaps.

4 Vékás, 2023, pp. 329 et seq.

5 Vékás, 2020, pp. 1273 et seq.

As a code is built to last many decades, it is important that it is based on sufficiently abstract terms. We agree, however, with Luhmann's view that norms should not represent sociological notions.[6] Social problems must be transformed into legal terms in the code.

5. In terms of the social influence of the private law codifications of the last two hundred years, one can differentiate between four generations of codices. My classification is as follows:

- classical codes (Code civil, Austrian ABGB, German BGB, and Swiss ZGB),
- second-generation codes (e.g., the first Belgian, Dutch, Italian, and Romanian codes in the 19th century, largely copies of the previous ones),
- socialist codes in a society without private property of productive assets, and
- post-socialist codes.

The codifications in Eastern Europe and the Baltic states from the last thirty years belong to the fourth generation. These civil codes originated during the course of the historically late reestablishment of a private property-based society. Although the privatisation of state property was affected by separate statutes, the new codes play an important social role, almost similar to that played by the classical codes in the early 19th century.[7]

Allow me to dedicate these opening remarks to the memory of Professor Attila Harmathy. Our careers ran parallel for many decades, and his death last year is a painful loss for European jurisprudence, for Hungarian private law, and for me personally.

6 Luhmann, 1974, pp. 50, 99.

7 Vékás, 2023, pp. 329 et seq., 338.

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