CIVIL LAW CODIFICATION IN SLOVENIA

MIHA JUHART

ABSTRACT

The Civil Code of Slovenia, inspired by – and successor to – the 1811 Austrian ABGB, continues to be the major source of civil law of the country. Slovenia, as a post-Yugoslav state, found itself having to develop and modernise its legal system in the new economic, social, and political context, after achieving independence in 1991. Private (civil) law, for a long time, remained regulated by norms adopted during the time Slovenia was a member of the Yugoslav state. This was particularly true regarding the law of obligations, regulated in a separate act dating from 1978. Property law presented similar difficulties in application and modernisation. The Slovenian state and its legislator decided not to pursue codification, but rather focus on modernisation of the various sources of civil law (the law of obligations, property law, inheritance law, family law) leading to a peculiar and fragmented legal system and a continued possibility of civil law codification.

Keywords: *Yugoslavia, Slovenia, civil law codification, law of obligations, property law.*

Juhart, M. (2024) 'Civil Law Codification in Slovenia' in Veress, E. (ed.) *Codification of Civil Law: Assessment, Reforms, Options*, pp. 339–366. Budapest – Miskolc: Central European Academic Publishing. https://doi.org/10.54171/2024.ev.ccl_13

1. INTRODUCTION

In the Republic of Slovenia, civil law is not regulated by a single comprehensive codification, but rather, individual classic fields of civil law are regulated by distinct acts. Such a situation is the result of historical development. Slovenia gained independence only in 1991; prior to that, it was part of the Austro-Hungarian Empire and, later, Yugoslavia. The last comprehensive codification of civil law in Slovenia dates to the 1811 Austrian General Civil Code (*Allgemeines bürgerliches Gesetzbuch* – ABGB). With the collapse of the empire after World War I, the ABGB remained the primary legal source of civil law in Slovenia. While it was not officially legislated, courts often referred to the ABGB's legal rules as long as they did not contravene the constitutional framework. This practice persisted for many years, even under the socialist regime. For some civil law relationships in the field of obligation law (e.g. gift), the ABGB was applied until 2002, and in the field of property law, such as usufruct, it remained in use until 2003.[1]

Therefore, the ABGB has significantly shaped the development of civil law in the Republic of Slovenia. Not only were the legal rules of the ABGB used as a legal source for a long time, but Slovenian legal vernacular was also developed based on these rules. Much of the civil law terminology originates from the translation of the ABGB, which was prepared by the legal and translation profession since the ABGB was never published in Slovenian during the empire's reign.[2] Under the influence of the ABGB, both case law and the legal profession in Slovenia matured over the years.

1 The opinion of the profession is that the ABGB's legal rules could still be applied to issues not regulated by the applicable law of the Republic of Slovenia. See Brus, 2013, p. 104; Juhart, 2013, p. 69; Keresteš, 2011, p. 8.

2 Bezek, Regally, 1928.

2. REGULATION OF CIVIL LAW UPON THE INDEPENDENCE OF THE REPUBLIC OF SLOVENIA (1991)

In the Kingdom of Yugoslavia, numerous attempts were made to establish a unified civil law codification. However, these efforts never came to fruition. A Civil Code was drafted in the 1930s, but it was never enforced.[3] The onset of war and the subsequent post-war events sidelined its adoption.

In socialist Yugoslavia, creating a uniform civil law became even more challenging. Initial resistance stemmed from a rejection of bourgeois ideologies. Later, disputes arose over legislative competence between the Federation and its republics. Under the 1974 Constitution of the Socialist Federal Republic of Yugoslavia (SFRY), civil law jurisdiction was split. While some aspects were overseen by the Federation, others fell under the purview of the then-Socialist Republic of Slovenia. Specifically, the Federation was responsible for regulating the foundations of obligation relationships (the general part of obligations) as well as contractual and other obligation relationships in the field of trade in goods and services, fundamental property law relationships, fundamental relationships that ensure the unity of the Yugoslav market, fundamental property law, and other substantive law relationships in the field of maritime, inland, and air navigation and copyright.[4] All other parts of civil law were legislated by the individual republics. As a result, between 1974 and 1991, civil law in Yugoslavia operated on two distinct tiers: one for the entirety of Yugoslavia and the other exclusively for the Republic of Slovenia.

Following the establishment of socialism, socialist Yugoslavia swiftly addressed civil law areas, specifically inheritance and family law. Initially, federal laws governing these areas were applied across the entire Federation. However, once legislative powers shifted to the republics, the Republic of Slovenia introduced its own statutes. For family law,

3 Perić, 1939.

4 Art. 281(1)(4) of the 1974 Constitution of the SFRY.

the Marriage and Family Relations Act (*Zakon o zakonski zvezi in družinskih razmerjih* – ZZZDR) was enacted.[5] It covered marital relations, relations between *de facto* partners, parent-child relations, foster care, guardianship, and adoption. The area of inheritance was regulated by the Inheritance Act (*Zakon o dedovanju* – ZD).[6] The law regulates intestacy and testamentary inheritance and special procedural rules for inheritance matters. Preceding this, the Republic of Slovenia had already passed the Act on Inheritance of Agricultural Land and Private Agricultural Holdings (Farms).[7] This act regulated special rules for the inheritance of privately owned farms. A farm was defined as an economic entity capable of providing its owner with adequate economic security through agricultural activity. The basic principle of the act is that the farm shall be inherited by a sole heir to avoid its division, as fragmentation might undermine its economic viability. Other inheritors were to receive their share of the inheritance in monetary form.

The most important civil law act that was adopted in the SFRY is the 1978 Law on Obligations (*Zakon o obligacijskih razmerjih* – ZOR).[8] Despite the Federation's constrained legislative competence, the ZOR is a fairly comprehensive obligations law framework. In addition, it encompasses a series of legal rules in the general part of civil law in civil law's classic codifications. Its reach is broad, with some foundational principles covering the entirety of civil law, particularly regarding declarations of will and legal transactions. A monistic approach was favoured by the legislator, with the law addressing legal relations between all individuals, including economic entities. Only a few special rules apply to business entities, the most important of which is the rule on the shorter duration of the general limitation period, which is three years (art.374 of ZOR). For non-economic persons, the general limitation period is five years (art. 371 of ZOR). The ZOR was structured with both a general and special part. Alongside the basic principles and regulation of legal transactions, the general part also regulated damages and the law of unjust

5 Official Gazette of the Socialist Republic of Slovenia, no. 15/76.
6 Official Gazette of the Socialist Republic of Slovenia, no. 15/76.
7 Official Gazette of the Socialist Republic of Slovenia, no. 26/73.
8 Official Gazette of the SFRY, no. 29/78.

enrichment. The rules on performance and termination of obligations applied to all types of obligations. It is fascinating that the ZOR also regulated the issuance of securities as a unilateral legal transaction (Arts. 241 to 261 of ZOR). In a special section, ZOR regulated various types of contracts. The central part had a sales contract regulation (arts. 454 to 551 ZOR). Due to the monistic approach, the ZOR also regulated some typical contracts concluded between economic entities, such as licensing agreements (arts. 686 to 711 of ZOR), commercial agency contracts (arts. 790 to 812 of ZOR), contracts on the control of goods and services (arts. 847 to 858 ZOR), and contracts of allotment (arts. 885 to 896 of ZOR). Banking transactions were also sparingly regulated, such as bank deposits (Arts. 1035 to 1046 ZOR), safe deposit contracts (Arts. 1061 to 1064 ZOR), letters of credit (Arts. 1072 to 1082 ZOR), and bank guarantees (Arts. 1083 to 1087 ZOR). Although ZOR occasionally underscored socialist values, these instances were minimal, demonstrating its contemporary orientation. Therefore, we can conclude that ZOR was a modern regulation, as some rules consider the development trends of civil law in the European area. For example, ZOR specifically regulated producer liability (Art. 179 of ZOR); the concept of liability regardless of fault was broadly established (Art. 173 of ZOR), and contractual compensation was limited to expected damage (Art. 266 of ZOR). Above all, within the framework of instalment sale arrangements, it established the right of the buyer (art. 554(2)) to withdraw from the contract without providing reasons and without serious consequences if he changes his mind (the cooling-off right in consumer law). The same chapter also contained a provision that contractual provisions that are less favourable for the buyer than statutory provisions shall be void (art. 551). Finally, ZOR was an exemplary nomotechnical product, especially if contrasted with present-day legislation. The legal rules are abstract, the language is clear and fluid, devoid of excessive cross-references, repetitions, or over-explanation. The majority of its legal rules are captured succinctly, often in a singular sentence, a clarity seldom seen in more recent laws.

Another important regulation the SFRY adopted in civil law was the Basic Property Law Relations Act (*Zakon o temeljnih lastninskopravnih* *razmerjih* – ZTLR).[9] This act was also considered to regulate the institutes of classical property law, although the fact remains that in socialist Yugoslavia, private property was limited in relation to social property. The ZTLR regulated the property rights of natural persons and legal persons under private law (these were allowed to a limited extent). Therefore, the regulation of property rights on movable property prevailed (Arts. 9 to 48 of ZTLR). Property rights on real estate were regulated sparingly, as the authorities at the time allowed individuals to acquire real estate in a very limited scope. Nevertheless, easements (Arts. 49 to 60 of ZTLR) and mortgages (Arts. 61 to 69 of ZTLR) had to be arranged,[10] as these rights *in rem* could be established on real estate owned by individuals. The ZTLR also regulated possession and, above all, the protection of possession (Arts. 70 to 81 of ZTLR). In doing so, it interestingly moved away from the Austrian concept of subjective possession and replaced it with the German concept of objective possession. The regulation of commonhold was the responsibility of the Republic of Slovenia. The Rights on Parts of Buildings Act was adopted (*Zakon o pravicah na delih stavb*),[11] which introduced the concept of commonhold as the right of an individual to own an apartment as part of a multi-apartment building. The regulation of real estate registration also significantly impacts the law of property relationships. In Slovenia, the Austrian regulation of the land register, which was introduced in the second half of the 19th century, has been preserved. Community property was also registered in the land register, for which special rules applied. However, since these entries were not mandatory, they were often not carried out, leading to inconsistency and unreliability of the land register, which had to be corrected after the fall of socialism.

Thus, in 1991, Slovenia found itself in a rather intricate situation regarding the sources of civil law. The conventional codification of civil law was dispersed among multiple legislations and legal rules. The area of the law of obligations was regulated by ZOR, some contracts of the law of obligations were regulated in ZD, and for the remaining relations,

9 Official Gazette of the SFRY, no. 6/80.

10 The lien on movable property was regulated in ZOR.

11 Official Gazette of the Socialist Republic of Slovenia, no. 19/76.

the provisions of the ABGB were applied as legal rules. The property law was largely regulated by ZTLR, while some republican rules were applied to a lesser extent, such as the Rights to Parts of Buildings Act (*Zakon o pravicah na delih stavb*) and some substantive rules of the Non-Contentious Civil Procedure Act (*Zakon o nepravdnem postopku*).[12] In instances where legal relationships were not explicitly defined, some provisions of the ABGB were invoked. The field of inheritance law was regulated by the ZD and the Act on Inheritance of Agricultural Land and Private Agricultural Holdings (*Zakon o dedovanju kmetijskih zemljišč in zasebnih kmetijskih gospodarstev*). The field of family law was regulated by Marriage and Family Relations Act (*Zakon o zakonski zvezi in družinskih razmerjih* – ZZZDR). After gaining independence, an opportunity emerged to unify these varied areas under a consolidated civil code.

3. INDEPENDENCE OF THE REPUBLIC OF SLOVENIA

With Slovenia gaining independence on 24 June 1991, the civil law framework remained unchanged. The Constitutional Act Implementing the Basic Constitutional Charter on the Independence and Sovereignty of the Republic of Slovenia (*Ustavni zakon za izvedbo Temeljne ustavne listine o samostojnosti in neodvisnosti Republike Slovenije* – UZITUL)[13] stipulated in Art. 4 that until the relevant regulations of the Republic of Slovenia are issued, the federal regulations that were in force in the Republic of Slovenia at the time of the entry into force of the UZITUL shall be applied *mutatis mutandis* as republican regulations, provided they did not contradict the new Slovenian legal order. This provision ensured continued applicability of ZOR and ZTLR. UZITUL also set an ambitious timeline for the new country to adopt its own set of laws, transitioning away from the former national regulations.

After the independence, there was a possibility of pursuing a comprehensive codification of civil law, mirroring the model found in most European countries grounded in the Roman law tradition.

12 Official Gazette of the Socialist Republic of Slovenia, no. 30/86.

13 Official Gazette of the Republic of Slovenia, nos. 1/91-I and 45/94 – UZITUL-A.

This would allow the consolidation of all four classical areas of civil law into a singular code. To bind these distinct areas, general provisions could be introduced, serving as a cohesive element. This unifying element is often referred to in legislation and theory as the general part of civil law. The profession also advocated for the creation of a uniform civil code. In his outline of the state and development of the law of obligations in Slovenia, Ilešič advocates for the obligation relations to be regulated within the framework of the general codification of civil law.[14]

The Constitutional Act Implementing the Basic Constitutional Charter on the Independence and Sovereignty of the Republic of Slovenia (UZITUL) had set the deadline for 31 December 1993, but Slovenia could not adopt its own civil code by then to replace the Yugoslavian laws. The new country also failed to adopt any act to replace ZOR and ZTLR. The two main civil law statutes that were adopted from the former Yugoslavia continued to be applied. The case law had no particular problems with this continuation. Specific provisions within both acts, which pertained to social property and socialist self-management, were no longer applied because the prerequisites for these were no longer met. Others were skilfully bypassed by the case law with the interpretation and general provision of Art. 4 of the UZITUL, whereby the provisions of the regulations of the former Yugoslavia were to be applied as long as they did not contradict Slovenia's legal order. This mechanism ensured a smooth transition in civil law, echoing a similar transition after the two World Wars, maintaining the legal rules of the ABGB in Slovenia even into the new millennium. This continuity in the civil law system is the main reason for not implementing a comprehensive codification of civil law, maintaining instead distinct acts governing separate areas of civil law. Post-independence, Slovenia witnessed an evolution rather than a revolution in civil law development. Changes in inheritance and family law emerged due to the evolving societal conditions and their inherent challenges. For property and obligations law, the decision was to individually replace ZTLR and ZOR. The first shift came with the introduction of the Obligations Code (*Obligacijski zakonik* – OZ) on 1 January 2002, followed by the Law of Property Code (*Stvarnopravni zakonik* – SPZ) on 1

14 Toplišek, Ilešič, 1995, p. 495.

January 2003. Both statutes predominantly mirrored the rules of ZOR and ZTLR, with most rules enduring without any substantial change, except for linguistic updates and clarifications. Hardly any substantive interventions were made in the existing rules, making it difficult to discuss any important changes. However, both new codes regulated areas that ZOR and ZTLR could not regulate, because the Federation lacked necessary legislative competence. These are primarily legal relations for which special laws or legal rules of the ABGB were applied. The OZ introduced new regulations on gifts and articles of association, largely modernising terminologies from the ABGB. Since some *mortis causa* contracts (delivery contracts, life care contracts) were regulated in the ZD due to the defective regulation of the ZOR, the legal text was moved from the ZD to the OZ. In property law, the same applied to the regulation of personal easements and charges on property. The regulation of relationships under distinct statutes was also transferred to the SPZ. The regulation of plots of land boundaries was transferred to the SPZ from the Non-Contentious Civil Procedure Act and the regulation of commonholds from the Rights to Parts of Buildings Act.

The new legislation is distinctive not only in its content but also in its terminology. In the Republic of Slovenia, the term *'Act'* is generally used for broad regulations. Meanwhile, *'Code'* has traditionally been reserved for regulations concerning obligation and property law. This terminological distinction has historical roots, linked to the ABGB, which in Slovenian was called the *'Code'*. However, this specific naming does not suggest any particular hierarchy in the legal sources. It is an intriguing characteristic. This tradition was subsequently upheld in the new family law regulations.

The adoption of OZ and SPZ did not signify the end of the idea of codifying civil law. In fact, academic circles have made attempts at drafting such a code, urging primarily for the legal regulation of the general part of civil law.[15] The absence of a general part in civil law can harm the development of civil law.[16] It means the danger of a vast field of law developing without a concept instead of all branches of civil law being

15 The project is presented in Novak, 2004.

16 Novak, 2016, p. 54.

based on the same legal principles and legal terminology. The fact that the branches of civil law must be coordinated with each other and linked by general principles and rules applies regardless of whether these legal branches are legislatively and technically covered in individual chapters of the Civil Code or are regulated in individual statutes. Adoption of the general part of civil law is, therefore, necessary. The legislator who will not take a decision on the formation of the Civil Code will have to decide whether to regulate these rules in a separate statute or, in accordance with the current practice, to include them in the Civil Code.[17] However, that is where the conversation seems to have halted. Presently, Slovenia's civil law system functions within the bounds of existing legal frameworks, and there does not appear to be a pressing need to change the entire system and establish it on entirely new foundations.

Perhaps we should be relieved that the euphoria surrounding the establishment of a new nation did not prompt us into a hasty adoption of civil law legislation, akin to the rapid harmonisation of the Slovenian legal system with EU regulations. Unfortunately, such a rush to enact laws often results in low quality of legal text and major or minor irregularities that can cause unwanted effects. An example of this can be found in the OZ, concerning the rule where interest stops accruing once the unpaid interest matches the principal sum.

Choosing not to pursue a comprehensive codification of civil law, despite the available opportunity, significantly influenced the development of civil law sources. Above all, this meant the possibility of maintaining the continuity of existing texts and not approaching the terminological harmonisation that would be required by merging the four laws into a single civil law code. For the area of property and obligations law, this meant that the preparation of the new Slovenian law could be carried out by adapting ZTLR and ZOR. This was also firmly confirmed by case law, which continued to apply the provisions of ZOR seamlessly, even amidst significant societal shifts. The validity of this approach is underscored by the parallel evolution of civil law in other nations of the former Yugoslavia. Originating from largely identical

17 Ibid.

foundations, their modern frameworks are either influenced by ZOR, or they continue to uphold it directly.

4. APPLICABLE LEGAL SOURCES OF CIVIL LAW

4.1. LAW OF OBLIGATIONS

The central legal source of civil law in the Republic of Slovenia is the OZ. Beyond encompassing the traditional realm of obligations law, the OZ also serves extensively as a general source, the rules of which are also applied in other fields. Essentially, the OZ is an evolution of the ZOR. The majority of its provisions remain intact, albeit with altered numbering. Most modifications pertain to editorial refinements and modernisation, devoid of profound or conceptual shifts. The structure of the act, which is divided into general and special parts, remained the same. The regulation of some contracts, which were not regulated by ZOR, was added to the special part. However, with the adoption of the OZ, the ZOR did not cease to be applied in its entirety, but the provisions on banking contracts remained in force (art. 1061(2)). These were not transferred to the OZ; no other regulation was adopted in Slovenia to supersede these provisions.

To date, the OZ has been amended just once. Even this amendment stemmed from oversight during its drafting. One of the few substantive changes of the OZ compared to the ZOR was the re-enactment of the rule that interest ceases to accrue when the sum of due and unpaid interest reaches the principal amount (*ne ultra alterum tantum*). In ZOR, this rule was the first part of art. 401 among the contractual interest provisions. However, this provision was subsequently removed.[18] In the former Yugoslavia, the legislator realised that it was a rule that contradicted the developing financial market and a different way of doing business, so it justifiably abolished it. Hence, its removal was deemed

18 Art. 2 of the Act on Amendments to the Obligations Act, Official Gazette of the SFRY, no. 57/89.

logical and did not lead to any significant issues. The Slovenian legislator, however, revived the *ne ultra alterum tantum* rule within the OZ, albeit with a rather clumsy integration into the overarching interest regulation. The provision of art. 376 of OZ fully mirrors that of art. 401 of ZOR. However, its placement was among the general provisions regarding interest, affecting both contractual and default interests, rather than solely contractual interest as designated by ZOR. The implications of this relocation are severe. If the rule also applies to default interest, this means that at a certain point, the debtor is in a position to benefit from delaying the monetary payment of debt to the creditor. As long as default interest accrues, it puts pressure on the debtor to pay its debt due to the high late interest rate. However, when the unpaid default interest reaches the principal amount, interest ceases to accrue instantly. Thus, the debtor owes the creditor twice the principal regardless of when he pays it. No additional consequence befalls him if he pays it when the default interest has reached the principal or at any time thereafter. This provision starkly contrasts with the intended consequence of a debtor's default and the purpose of default interest. The Commentary of OZ interprets the placement of art. 376 of OZ as an editorial error and recommends ignoring the rule for default interest.[19] Such an interpretation, which makes sense in terms of content, directly conflicts with the legal wording, rendering its acceptance challenging. Further, the constitutionality of such legal provision was challenged. The Constitutional Court concluded that the provision of art. 376 of OZ was consistent with the Constitution.[20] The Court stressed that the legislator holds extensive discretion in shaping economic and social policy. Thus, there is no single *'correct'* legislative solution. The Constitutional Court did not assess whether such a legal arrangement is the most appropriate but found in it sufficient reasons for assessing that it is consistent with the Constitution. The Constitutional Court, therefore, did not, in principle, prohibit the rule for default interest and allowed the legislator to enforce this rule if it deemed that such an arrangement is appropriate. Shortly after

19 Plavšak, 2003, p. 533.

20 Decision of the Constitutional Court of the RS U-I-267/06 of 15 March 2007.

the decision of the Constitutional Court, the OZ was amended.[21] The legislature deemed the inclusion of the rule within the scope of default interest as untenable, thereby proposing an alternative resolution.

The default interest is regulated by a distinct act. After Slovenia achieved independence, the regulations concerning default interest rates have undergone multiple revisions. These were ultimately established following the Euro's introduction with the Statutory Default Interest Rate Act.[22] Currently, the default interest rate is pegged to the benchmark interest rate – specifically the rate employed by the European Central Bank for primary refinancing operations executed prior to the first calendar day of the respective half-year, augmented by eight percentage points.

Increasingly, obligation relationships in the Republic of Slovenia are regulated outside the OZ and are found within individual statutes. This question first arose in the process of approximation of the Republic of Slovenia with the EU when directives in the field of consumer protection had to be properly transposed into the legal order. This transposition commenced in the late 1990s, predating the OZ's adoption in Slovenia. Therefore, the legislator had no real choice. If the rules on consumer protection were to be embedded within the system of general obligations law, ZOR would have to be amended. Instead of amending the regulations from the former country, they were replaced by new ones. As the OZ adoption process was still ongoing, the legislator decided to regulate consumer protection in a distinct statute. In 1998, the Consumer Protection Act was adopted.[23] The subject matter of regulation of this Act spans multiple legal fields, and in a significant part, the subject of regulation is the contractual legal relationship between businesses and consumers (B2C). For the first time, the Act incorporated the definition of *'consumer'* into the legal order and introduced some rules for consumer legal relations that belong to the general part of the law of obligations; but, above all, it regulated some special legal relations, such as product liability, general contractual conditions, special forms of sales,

21 Official Gazette of the Republic of Slovenia, no. 40/07.
22 Official Gazette of the Republic of Slovenia, no. 11/07.
23 Official Gazette of the Republic of Slovenia, no. 20/98.

and some special types of tourist contracts. This gave rise to the challenge of having dual regulations for identical legal relationships. Even minor discrepancies in legal texts can lead to debates over whether such differences necessitate distinct interpretations in individual cases. These discrepancies deepened with subsequent legal changes and additions, and consumer law is increasingly being formed as a distinct legal field. This is exemplified in the regulation of buyer notification statements in cases of latent defects, where three divergent rules are currently applicable. Art. 462(1) of the Civil Code lays down the general rule: for contracts that are not categorised as commercial or consumer, the buyer must inform the seller of a latent defect within eight days from when the defect was noticed. A special rule within the same article for business-to-business contracts (B2B) mandates immediate notification of any defect by the buyer.[24] For consumer contracts, however, art. 84 of the Consumer Protection Act stipulates that the defect must be reported within two months of its discovery. While the appropriate rule can be applied to specific cases by considering the parties' nature, it remains a pertinent question whether such differences are both necessary and justified based on party characteristics. At least from an application perspective, things are straightforward. The Act is considered special regulation in relation to the general rules of the law of obligations.[25] The new text of the Consumer Protection Act applies presently.[26] The general Consumer Protection Act was followed by the Consumer Credit Act, instituting specific regulations for consumer credit. This pertains to loan agreements, credit contracts, and other agreements with comparable economic effect.[27] Although the legislator could potentially have integrated this within the general act, a standalone act was chosen. This act has seen multiple amendments, with its latest iteration currently in force.[28]

24 It is one of the few peculiarities that applies to commercial contracts in the monistic system of the OZ.

25 Judgement of the Administrative Court of the Republic of Slovenia, ref. no. U 978/2005 of 25 April 2007.

26 Official Gazette of the Republic of Slovenia, no. 130/22.

27 Official Gazette of the Republic of Slovenia, no. 70/00.

28 Official Journal of the Republic of Slovenia, nos. 77/16 and 92/21.

In general, we can conclude that the OZ remains largely untouched by the transposition of content from European directives into the Slovenian legal framework, especially when it concerns the regulation of contractual relationships. As a result, numerous sector-specific laws, such as those governing insurance, the financial instruments market, banking, and portfolio management, contain specific provisions detailing the conditions for concluding contracts and their contents. To illustrate, the Insurance Act[29] has a dedicated section on insurance contracts (Arts. 516–531), which defines unique rules for various insurance types and, above all, the special rights of the policyholder. The insurance contract is generally regulated in a special part of the OZ (Arts. 921–989). Application and interpretation challenges arise due to inconsistencies in terminology, as the special Act takes its cue from the language of European directives rather than the established terms used in the OZ. The same applies to some of the more general requirements of European directives that affect the regulation of contractual relationships. A case in point is Directive 2011/7/EU,[30] which has been transposed into the Slovenian legal system by the Act on Prevention of Late Payments (*Zakon o preprečevanju zamud pri plačilih* – ZPreZP-1).[31] However, issues arise with supplementary regulations where the legislator fails to employ established terms and concepts from the OZ, opting instead to paraphrase specific directive texts. This leads to inconsistencies in wording, despite their similar intent and content. For instance, the notion of a *'commercial contract* in the directive aligns with what is considered a commercial contract under art. 13 of OZ in Slovenian law. Yet, the legislator did not adhere to this exact definition in the specific act; it slightly modified the conditions, drawing directly from the Directive's language. The difference between art. 13 of OZ and art. 6 of the special act is trivial, making it challenging to envision someone fitting the economic entity criteria under one regulation but not the other. Therefore, the legislator could

29 Official Gazette of the Republic of Slovenia, no. 93/15.

30 Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions (OJ L 48, 23.2.2011, p. 1).

31 Official Gazette of the Republic of Slovenia, nos. 57/12 and 61/20 – ZDLGPE.

certainly have acted more wisely if it had used an established concept from the general law in a special law.

The development of the regulation of special rules pertaining to the sale of real estate is interesting. There are two statutes through which the legislator endeavoured to fortify the legal stance of the real estate buyer, typically perceived as the weaker party in the transaction. The Real Estate Agencies Act[32] sets out special rules for the contract between the real estate agent and their client. Compared to the general rules, the agent is bound by certain special obligations that extend beyond merely facilitating contact between the parties. This significantly impacts the legal nature of the relationship, imbuing it with elements reminiscent of a mandate. The special rules are of a mandatory nature, with deviations allowed solely if they manifestly favour the client – a hallmark of consumer protection principles. The agent is obliged to conduct a thorough inspection of the property on behalf of their client and provide a written notice of any deficiencies. Should the agent represent the buyer, they are duty-bound to disclose all relevant attributes of the property they are either aware of or ought to have been aware of based on diligent inspection, as these factors are crucial for the buyer's decision-making process. If acting on behalf of both seller and buyer, the agent is mandated to uphold the interests of both parties and share all the pertinent details as mentioned. Failure to uphold this obligation makes the agent liable for damages.[33] Another such special regulation is the Protection of Buyers of Apartments and Single Occupancy Buildings Act.[34] Special rules apply to the sale of single occupancy buildings and apartments as individual parts of buildings in commonholds. The technique of the Act parallels general consumer protection laws. Individual mechanisms are set as minimum standards of customer protection, and any divergence from these provisions is not permissible. A cornerstone of buyer protection is the prohibition of demanding payment of the purchase price before the occurrence of the comprehensive possibility of fulfilment without special insurance. If a seller seeks a portion of the purchase

32 Official Gazette of the Republic of Slovenia, no. 49/11.

33 See in detail, Juhart, 2015.

34 Official Gazette of the Republic of Slovenia, no. 18/04.

price (barring earnest money payment) before the property handover is feasible, he must provide the buyer with special protection against systemic risks, such as financial inability to complete the construction, non-performance of the contract, and latent material defects. The Act meticulously delineates the obligation surrounding property handovers. An essential element of any sales contract, as per this Act, is the determination of the time limit by which the seller is to hand over the property to the buyer. It is impermissible to circumscribe the handover obligation within a particular span using justifications related to construction, especially when such factors ought to be under the investor's control. Due to the delay in delivery, the buyer is granted an *ex lege* right to liquidated damages. This is an important departure from the general regulation where a contractual penalty is enforceable only the terms have been agreed upon expressly and unequivocally. The provisions regarding liability for defects are also distinctive, blending the rules of sales agreements with those of service contracts.[35]

4.2. PROPERTY LAW

The main legal source of property law is the Law of Property Code (*Stvarnopravni zakonik* – SPZ), which comprehensively regulates the realm of property law, characteristic of civil law codifications. As articulated in art. 1 of SPZ, this Act lays down the fundamental principles of property law, possession and rights *in rem,* as well as the acquisition, transfer, protection, and extinguishment of such rights. Before the SPZ's enactment, property law relationships were primarily governed by ZTLR. Furthermore, for relationships that lacked explicit regulation, the legal rules of the ODZ were observed until the SPZ came into force. In addition, the SPZ also contains fundamental principles and definitions of concepts that, at least in some codifications, typically reside within the general part of civil law.

Structurally, the SPZ is divided into 12 parts, arranged in a logical and systematic sequence. The first two parts, which determine the

35 See in detail, Plavšak, 2004; Juhart, 2023.

fundamental principles and definitions, are followed by the legal regulation of property as a kind of factual relationship with legal consequences, followed by the regulation of individual rights *in rem*. Among the regulation of rights, we also find substantive parts that regulate certain special institutes, such as commonhold and fiduciary assets. In addition to the classic provisions of property law, the SPZ also incorporates some provisions that, in terms of content, pertain to general property and obligations law.[36]

The SPZ was amended twice. The first amendment was adopted in 2013.[37] With it, the land debt as a special type of right *in rem* was abolished. The reason for abolishing the land debt as a special form of non-accessory security *in rem* was primarily political. There were no compelling professional grounds for abolishing the land debt. Even the anomalies cited as a reason for the abuse of the land debt could have been addressed differently within the legal system, rather than by abolishing the institute that allowed the establishment of security *in rem* in some special cases where it was not possible to apply the general rules on the lien on real estate (mortgage) or where these rules offer only limited security options.

The second amendment was adopted in 2020. While its content is more complex, it does not disrupt the fundamental principles and solutions of the Act. Among the noteworthy additions is the regulation of connected real estate (Arts. 127a–127č), which refers to the connection of two standalone properties into a singular legal entity for the time duration of their connection. In the legal relationship of connected real estates, it is the connection of the main and ancillary real estate. Various forms of real estate can serve as either the main or the ancillary real estate. The connected real estate can be a plot of land, an individual part of a building in a commonhold, or a building built based on the right of superficies. The relationship between the main and ancillary real estate is significant, the ancillary real estate is essential for the regular use of the main real estate. The actual connection between the two properties is based on two essential elements: durability and regular

36 See, in more detail, Juhart, 2002, p. 1367.

37 Official Gazette of the Republic of Slovenia, no. 91/13.

use. Both elements must be assessed on a case-by-case basis. The legal relationship of connection is created by the legal transaction of the owner or owners of the main and connected real estate, which only becomes effective upon their entry into the land register. Due to the legal consequences of the connection, the establishment is permissible only if the legal status or encumbrances of both properties allow it. Upon connection, the two properties form a collective entity. Yet, the ancillary real estate retains the legal status of an independent thing and remains the subject of property rights and other rights *in rem*. With the establishment of a connection, only the independent right to dispose of the ancillary real estate ceases, converging with the right to dispose of the main thing. Therefore, together with the property right to the main thing, the property right passes to the ancillary thing. In essence, this means that the owner of the ancillary thing is always the owner of the main thing. The termination of the connection is contingent on the owner's volition, executed through an appropriate legal transaction. The termination can also be requested by creditors. In adjudicating such a motion, the court primarily considers the necessity of the existence of a connection and the legal interest of the creditor and, particularly, the creditor's better repayment possibilities, should the separation of the main and ancillary real estate be re-established.

In addition to the SPZ, another fundamental legal source of property law is the regulation surrounding real estate registration. One of the essential characteristics of property rights is the provision of its publicity. In the case of movable property, this is provided by ownership, whereas for immovable property, real estate records serve this purpose. The basic land record that practically determines real estate is the land cadastre, governed by the Real Estate Cadastre Act (*Zakon o katastru nepremičnin* – ZKN).[38] The land register that serves as the legal record of real estate is based on the cadastre as an actual real estate record. The legal regulation of the land register stems from the Land Register Act,[39] which was adopted after the enforcement of the SPZ and is harmonised with it. The legal regulation of the land register in Slovenia is also

38 Official Gazette of the Republic of Slovenia, no. 54/21.

39 Official Gazette of the Republic of Slovenia, no. 58/03.

based on the Austrian regulation since the land register was introduced at a time when the territory of Slovenia was part of the Austrian state. Presently, the land register is entirely digitised and available online. This modern approach ensures a swift and efficient registration process for real estate transactions in the land register, significantly bolstering the security of such transactions. Consequently, in recent times, legal disputes over issues like multiple real estate sales or legal defects in a sale have become exceedingly rare.

Beyond the general legal sources of property law, specific regulations pertain to particular types of things. While the SPZ addresses the commonhold principle as a general institute, the Housing Act (*Stanovanjski zakon* – SZ-1) provides a specialised regulation for commonholds within multi-apartment buildings.[40] The regulation of commonhold in SPZ is based on the general principles of property freedom. It often leaves the regulation of relations between commonhold owners to their discretion. However, for multi-apartment buildings – where most commonholds are apartments – it becomes essential to occasionally curtail this freedom. This is done to uphold general societal interests. Therefore, a more extensive set of dispositive rules is provided, coming into play when autonomous decision-making falters or when the intent of the commonhold owners is not adequately articulated. Generally, the relationship between the SPZ and SZ-1 can be seen as one between general and special law. It is noteworthy that SZ-1's framework is deeply rooted in the SPZ, with multiple direct references to it. SZ-1 respects the core tenets of the SPZ's approach to commonholds. Any deviations are tailored to address the unique challenges present in multi-apartment contexts. Therefore, SPZ and SZ-1 are not in conflict with each other, but together, they provide a basis for a coordinated and comprehensive regulation of all real-law relationships in housing.

A distinct legal framework is applied to vessels, including ships and aircraft, within many legal systems. These vessels are typically recorded in dedicated registers and are unique, finite entities. Despite their inherent mobility, the rights associated with them closely resemble those tied to real estate. The specifics of legal relationships *in rem*

40 Official Gazette of the Republic of Slovenia, no. 69/03.

on ships are governed by the Maritime Code (*Pomorski zakonik* – PZ),[41] and on airplanes, the Obligations and Real Rights in Air Navigation Act (*Zakon o obligacijskih in stvarnopravnih razmerjih v letalstvu* – ZOSRL).[42]

4.3. INHERITANCE LAW

Inheritance law has seen minimal changes over time. The ZD continues to be the primary general legal source. From its inception, the Act has been influenced by the legal structures of the ABGB, underpinned by three fundamental principles: freedom of testamentary disposition, equality, and universal succession.[43] Above all, the principle of equality in inheritance for all citizens (Art. 4) and, under the condition of reciprocity, also for foreigners (Art. 6) is highlighted. The Act distinctly states that children have equal rights in inheritance, whether born in or outside of wedlock (Art. 4(2)). The Act treats spouses and those in partnerships governed by family law equivalently. As regulations around partnerships in family law have modernised, subsequent impacts have been noted on inheritance matters.

The ZD regulates the system for both intestate and testate succession. Intestate succession follows prescribed orders of succession. Conversely, testate succession allows for free disposal of one's property in the manner and within the limits specified by the Act (Art. 8). The freedom of testamentary disposition is limited by the institute of statutory portion. This provision benefits the deceased's descendants, parents, spouse and, under special conditions, some extended relatives (Art. 25). Forced heirship has the legal status of intestacy. A unique aspect of intestacy is that everything an intestate heir has received in any way as a gift from the decedent shall be included in his or her hereditary portion of the inheritance (Art. 46). Inheritance is initiated by death or a declaration thereof. By law, a deceased person's estate shall be transferred *ex lege* to his or her heirs at the moment of his or her death (Art. 132).

41 Official Gazette of the Republic of Slovenia, no. 62/16.
42 Official Gazette of the Republic of Slovenia, no. 27/11.
43 Zupančič, Žnidaršič Skubic, 2009, p. 39.

The ZD not only regulates substantive legal rules but also regulates the powers of administrative bodies and courts, as well as the decision-making procedures in inheritance law matters. Perhaps one of the advantages of regulating civil law in individual areas is that substantive and procedural rules can be covered in a single statute. In this way, inheritance law emerges as a holistic and comprehensively regulated field of law.

The ZD has been amended thrice: once before Slovenia gained independence[44] and twice post-1991.[45] None of these amendments affected the fundamental principles of the 1976 regulation. The amendments have predominantly modernised the rules in alignment with other civil law codifications, reflecting evolving societal norms. The procedural segment of the law has seen more extensive modernisation than the substantive legal provisions. For instance, certain responsibilities have been delegated to notaries to expedite processes. With the latest amendment, the conditions and method of application of Regulation 650/2012/EU were also ensured.[46]

The same applies to the inheritance of farms. Slovenia has maintained a distinct regulation for the inheritance of agricultural holdings. The previous Act has been superseded by the Inheritance of Agricultural Holdings Act.[47] The new Act mirrors societal evolutions and is more in line with the general legal principles of property law and private property. The purpose of the special arrangement is to sustain the farm as a cohesive economic unit, thereby allowing its proprietor to make a living from agriculture. The intestacy system has been tailored accordingly so that the entirety of the farm is inherited. The farm as a whole shall be taken over by one sole heir, who is selected from among the legal heirs (Art. 7). Meanwhile, other heirs are entitled to a monetary value equivalent to their respective shares (Art. 14).

44 Official Gazette of the Socialist Republic of Slovenia, no. 23/78.

45 Official Gazette of the Republic of Slovenia, nos. 67/01 and 63/16.

46 Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition, and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession.

47 Official Gazette of the Republic of Slovenia, no. 70/95.

4.4. FAMILY LAW

We do not expect any significant changes in inheritance law in the near future. The modernisation of rules will likely continue without interfering with the established fundamental principles and conceptual solutions. It is the most stable part of the civil law system.

The Republic of Slovenia adopted its own legislation in the field of family law as early as 1976. While the inheritance law system was influenced by the ABGB, making it analogous to other civil law codifications, the regulation of familial relations was profoundly shaped by socialist political and ideological tenets. Therefore, the ZZZDR paid much attention to gender equality and fully equated marriage and extramarital partnerships between men and women (Art. 12). Therefore, the law did not allow spouses to determine their matrimonial property regime. The legally determined matrimonial property regime, however, determined the community property regime and the assumption that both spouses' shares in the community property are equal. Likewise, the law made no distinction between children born within marriage and those born outside of it, treating them as completely equal (Art. 5). The ZZZDR provided a comprehensive regulation of family law and in addition to marriage and the parent-child relationship, it also regulated adoption, foster care, and guardianship.

The ZZZDR underwent multiple amendments before 1991 and several more post-independence, reflecting the gradual distancing from socialist ideology. These revisions also addressed broader societal and developmental challenges. The first attempt to fundamentally change the family law legislation dates to 2011. Although Parliament approved a new Family Code, it did not enter into force due to opposition from some civil society organisations, which gathered enough signatures to prompt a legislative referendum. The ensuing debate surrounding the Code's adoption was intense, primarily focusing on the contentious issue of equating rights for same-sex couples with those of heterosexual pairs. Proponents and opponents of the Code also differed on what constitutes the best interests of the child and the definition of family. A referendum on the Code was held on 25 March 2012. A referendum on the Code took place on 25 March 2012, with 45% of voters in favour and 55% opposing it.[48]

In 2015, an amendment to the ZZZDR was adopted, allowing same-sex couples the right to marry. Marriage was defined as a life union between two individuals, as per the law. Opponents of this reform, however, again rallied and gathered signatures to initiate another referendum, which took place on 20 December 2015. The electorate once again rejected the changes to family law: only 36% of voters supported the amendment, while a significant 64% opposed it.

After a failed attempt at a more comprehensive reform and later modernisation of family law, the Civil Union Act was adopted.[49] This Act defined a civil union as a domestic community between two women or two men, with the formalisation, legal ramifications, and dissolution outlined therein. Such union shall have the same legal consequences as marriage in all legal spheres unless otherwise provided by this Act (Art. 2). However, these exceptions notably included prohibitions on joint child adoption and the utilisation of certain biomedical fertility treatments.

The legislator cut through the partial regulation of partnerships with the adoption of the new Family Code.[50] The process of adopting the Code was protracted, incorporating various compromise solutions to address contentious issues that resulted in the rejection of the 2012 Code. Despite initial signals, no legislative referendum was initiated. DZ entirely replaced ZZZDR, but the introduction was gradual. Some changes took effect immediately, and some only after a relatively long adjustment period of two years (Art. 305). The DZ also encompasses the comprehensive regulation of family law and includes the areas of marriage, parent-child relationships, adoption, foster care, and guardianship. Above all, an important novelty was introduced in the field of regulating matrimonial property regime. DZ allows an agreement on the use of the contractual property regime and determines the terms

48 Available at: https://en.wikipedia.org/wiki/2012_Slovenian_Family_Code_referendum (Accessed: 15 September 2024).

49 Official Gazette of the Republic of Slovenia, no. 33/16.

50 Official Gazette of the Republic of Slovenia, no. 15/17.

and content of the contract on the regulation of property relations, which is concluded in the form of a notarial record. Additionally, the DZ infuses family law regulations with softer elements, such as the regulation of mediation, counselling, and involvement of non-governmental organisations in the field of family policy.

In 2022, the Constitutional Court intervened in the ongoing saga concerning the rights of same-sex individuals. It deliberated on a constitutional complaint against a decision by an administrative body that had denied a same-sex couple's application to adopt a child.[51] The Constitutional Court took a broad view of the constitutional complaint and also ruled on the definition of marriage in the DZ (Art. 3). According to the Court, art. 3(1) of DZ was inconsistent with the Constitution in the part where it stated that a marriage is the lifelong union of a husband and wife. In response to the Constitutional Court's decision, the definition in the legal provision was subsequently amended.[52] Now, the DZ defines marriage as a lifelong union of two persons, the conclusion, legal consequences, and dissolution of which shall be governed by this Code. The Constitutional Court did not allow a legislative referendum on this amendment to DZ.[53] With this change, however, the need for a special regulation of same-sex partnership communities disappeared, and therefore, the Civil Union Act was rendered obsolete and ceased to be in effect.

5. CONCLUSION

The question is whether to have a uniform codification of civil law or regulation in separate acts. Undoubtedly, a single codification has its advantages, especially if it follows the established systematics. Such a structure fosters cohesive integration of different fields, allowing for a clearer delineation of shared rules. However, it is also important to acknowledge that this approach is deeply rooted in tradition. Several

51 Decision of the Constitutional Court U-I-91/21-19 of 16 June 2022.

52 Official Gazette of the Republic of Slovenia, no. 5/23.

53 Decision of the Constitutional Court U-I-398/22 of 14 December 2022.

separate acts may mean that some legal relationships would remain unregulated or lead to redundant regulations. More problematic are instances where contradictory provisions arise across different acts, resulting in potential conflicts. In the Republic of Slovenia, such inconsistencies often require judicial interpretation to reconcile them. Yet, separate acts bring their own benefits. They can be tailored with specific rules that would not typically feature in a standardised civil law codification, providing a more holistic treatment of individual fields. This is evident in Slovenia's approach to inheritance law. In essence, asserting one legislative approach as superior to the other in the context of civil law is subjective. It seems unlikely that the Republic of Slovenia will shift towards a singular, unified codification anytime soon. Historical trends suggest that practitioners generally resist alterations that are not confined in scope and disrupt established norms. Even with the partitioned legislative structure, there has been a surge of unique rules in recent years governing civil law relations embedded within other statutes. These sector-specific acts are becoming more foundational, while supplementary provisions are getting increasingly intricate, often deviating from the traditional civil law lexicon.

REFERENCES

Bežek, B., Regally, F. (1928) *ODZ z dne 1. junija 1811, št. 946, v besedilu treh delnih novel*. Ljubljana: no publisher.

Brus, M. (2013) 'Veljava ODZ in druge avstrijske zakonodaje od prve svetovne vojne do danes' in Polajnar-Pavčnik, A. (ed.) *Izročilo Občnega državljanskega zakonika*. Ljubljana: GV založba.

Toplišek, I., Ilešič, M. (1995) *Zakon o obligacijskih razmerjih s stvarnim kazalom*. Ljubljana: Uradni list Republike Slovenije.

Ilešič, M. (2003) *Obligacijski zakonik (OZ): z uvodnimi pojasnili*. Ljubljana: Uradni list Republike Slovenije.

Juhart, M. (2002) 'Vpliv Stvarnopravnega zakonika na druga področja civilnega prava', *Podjetje in delo*, 2002/6, pp. 1367–1374.

Juhart, M., Plavšak, N. (eds.) (2003) *Obligacijski zakonik s komentarjem*. Ljubljana: GV založba.

Juhart, M. (2013) 'Pomen avstrijskega Občnega državljanskega zakonika (ODZ) za razvoj slovenskega civilnega prava' in Polajnar-Pavčnik, A. (ed.) *Izročilo Občnega državljanskega zakonika*. Ljubljana: GV založba, pp. 55–71.

Juhart, M. (2015) 'Varstvo potrošnikov pri prodaji (nakupu) bivalnih nepremičnin' in Vlahek, A., Damjan, M. (eds.) *Pravo in politika sodobnega varstva potrošnikov.* Ljubljana: GV založba, pp. 365–382.

Juhart, M., Tratnik, M., Vrenčur, R. (2023) *Stvarno pravo*. Ljubljana: GV založba.

Juhart, M. (2023) *Obligacijski zakonik z uvodnimi pojasnili*. Ljubljana: GV založba.

Keresteš, T. (2011) 'Uporabljivost pravnih pravil ODZ v sodobnem civilnem pravu Republike Slovenije', *Zbornik PF UM*, 2011/7, pp. 1–14.

Novak, B. (ed.) (2004) *Kodifikacija civilnega prava*. Ljubljana: Pravna fakulteta.

Novak, B. (2016) 'Vprašanje civilnega zakonika v Sloveniji' in Štajnpihler, T., Igličar, A., Pavčnik, M. (eds.) *Odprta vprašanja zakonodajne dejavnosti*. Ljubljana: Slovenska akademija znanosti in umetnosti, pp. 44–56.

Novak, B. (2022) *Družinsko pravo*. Ljubljana: Uradni list RS.

Perić, Ž. M. (1939) *Obrazloženje §§ 1–319 predosnove građanskog zakonika za Kraljevinu Jugoslaviju*. Beograd: Ministarstvo pravde.

Plavšak, N. (2004) *Zakon o varstvu kupcev stanovanj in enostanovanjskih stavb z uvodnimi pojasnili*. Ljubljana: GV založba.

Plavšak, N. (ed.) (2020) *Obligacije, splošni del: komentar splošnega dela Obligacijskega zakonika: (1. do 434. člen in 1012. do 1049. člen)*. Ljubljana: Tax-Fin-Lex.

Zupančič, K., Žnidaršič Skubic, V. (2009) *Dedno pravo*. Ljubljana: Uradni list RS.