CODIFICATION OF CIVIL LAW IN AUSTRIA

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ABSTRACT

The codification of Austrian civil law is counted among the first such endeavours in European history. Therefore, the lessons of that codification, as well as its characteristics, are significant. This chapter presents not only the history of the ABGB from its adoption, through various reforms, but also the possible future direction of development of this code. Austrian civil law specifically sets forth general rules and principles instead of particularly detailed norms, granting the ABGB the ability to regulate a wide swathe of civil law relationships, including those between professionals and non-professionals in the economic sphere. The chapter documents the erosion of codified Austrian civil law through fragmentation (when various civil laws and related domains become regulated in separate acts of statutory law) and the need for reform of the ABGB.

Keywords: *Austria, ABGB, civil code, civil law, codification.*

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1. INTRODUCTION: CHARACTERISTIC FEATURES OF THE ABGB

1.1. ABGB AS PART OF THE FIRST GENERATION OF CODIFICATIONS IN EUROPE

The codification of civil law in Austria is called *Allgemeines Bürgerliches Gesetzbuch* (General code on civil law). In general, the abbreviation ABGB is used. Together with the Prussian *Allgemeines Landrecht* (ALR; General Land Law) of 1794[1] and the French Code Civil of 1804,[2] it belongs to the first generation of codifications in Europe. Just like the Civil Code, it is still essentially in force today. In Hungary it was applicable only for a limited period of time, from 1852 to 1861.[3]

Its defining characteristics include the influence of natural law,[4] especially based on the ideas of Immanuel Kant. An example of this is § 16 ABGB:[5]

> *Every individual has inherent rights, already evident by common sense and has thus to be considered as a person.*

Franz von Zeiller, the most influential author of the ABGB held that man exists for his own sake, as an end in himself.[6]

1 For the influence of the Allgemeines Landrecht on the Austrian Civil Code, see Brauneder, 2011, pp. 3 *et seq.*
2 For the influence of the Code Civil on the Austrian Civil Code, see Rainer, 2011, pp. 17 *et seq.*
3 See Vékás, 2011, 307 et seq.
4 For additions see also Schmidlin, 2011, pp. 59, 65 et seq.
5 See Fenyves, Kerschner, Vonkilch, 2014, § 16 n. 2.
6 Zeiller, 1811, p. 102.

1.2. PRINCIPLES VERSUS RULES

The ABGB is a relatively short codification. Making a comparison, the Prussian ALR has 19,000 articles. The ABGB in its original version consisted of just 1502[7] articles. It is much less casuistic, and to a certain degree its provisions can be seen more as principles than rules. Judges are encouraged to further develop the law as laid down in § 7:

> *If a case can be determined neither by the wording, nor by the natural meaning of a law, similar cases which have been regulated by law and other related laws have to be considered. If the case still remains ambiguous, it has to be decided based on the diligently gathered and thoroughly considered facts in line with the natural principles of law.*

1.3. ABGB AS A GENERAL CIVIL CODE

The ABGB is – as expressed in its name – a general civil code. At the time of its creation, this was not a matter of course. However, the ABGB did not have any special rules providing privileges for nobility or other social classes. In addition to § 16 ABGB, in § 18 ABGB, it is laid down that

> *everyone is capable of acquiring rights subject to the conditions provided by law.*

'Everyone' in fact means everyone and rejects the idea of a distinction between social classes. The provision can be considered as a private law based on freedom of acquisition.[8]

7 In 2013 § 1503 was added to the ABGB. The provision regulates the entry into force and the transitional framework of subsequent amendments to the ABGB.

8 Schauer, 2017, § 18 n. 1.

1.4. DUALISTIC VERSUS MONISTIC SYSTEM

Since the ABGB is a general civil code, it applies to everyone in the same way. However, it contains a small number of provisions that refer to businesses or are specifically addressed to them. One example is § 367:

> *The claim of ownership against a lawful possessor of a movable asset must be dismissed, if he provides evidence that he has acquired the asset* (…) *from an entrepreneur in the ordinary course of his business* (…).

Another example is § 1030:

> *If the owner of a shop or a trade allows his employee or trainee to sell goods in or outside of such shop, it is assumed that they have been granted the power of attorney to receive payment and issue receipts.*

Furthermore, the ABGB has a chapter on partnership (§ 1175–§ 1216e). When the ABGB came into force, this chapter was the legal basis for most business companies.[9] Presently too, when most types of companies and corporations are regulated by special law, §§ 1175 et seq. serve as a gap-filling instrument for those other legal forms.[10]

However, right from the beginning, it was clear that a commercial code should be added to the general civil code. Efforts to adopt such a code failed in the early 19th century.[11] In 1862, Austria adopted the *Allgemeines Deutsches Handelsgesetzbuch* (AHGB, General German Commercial Code). In 1938, after the annexation of Austria to Germany, the German Commercial Code (*Handelsgesetzbuch*, HGB) from 1900 was introduced, and it replaced the AHGB immediately. Since the HGB remained in force even after the restoration of Austria's independence in 1945, the dualistic system continues into the present.

9 Fenyves, Kerschner, Vonkilch, 2017, § 1175 Rz 2.

10 See § 1175 para. 4: 'The provisions of this section shall also apply to other companies insofar as no special provisions exist for these companies, and the application of these provisions is also appropriate considering the principles applicable to the respective company'.

11 See Weigand, 1997, pp. 246 et seq.; Schauer, 2011, pp. 617, 620.

1.5. THE SYSTEM OF ABGB

The system of ABGB is related to the *Institutiones Gaii*. Its major feature is the distinction between persons (legal subjects) and objects. A closer look reveals that the code starts with a short introduction (§ 1–§ 14). Then it continues with the first part on persons (§ 15–§ 284). In this part, the code deals with 'rights relating to personal qualities and relationships', marriage, and the legal relation between parents and children and with curators. The second part (§ 285–§ 1341) deals with objects. In the original language, it is called 'Sachenrecht', which must not be understood in the same way as in the pandectistic system. The second part has two subdivisions. The first is about *rights in rem* (*dingliche Sachenrechte*). There is an enumeration of rights in rem in § 308. In its original version, this provision reads as follows:

> *Rights in rem are the rights of possession, ownership, pledge, servitude (easement) and the right to inheritance.*

From the perspective of modern legal doctrine, this list is discussed in a controversial way.[12] No doubt ownership, pledge, and servitude are seen as rights in rem. Whether possession is a right in rem is unclear.[13] The right to inheritance is an absolute right to acquire the estate, which can be enforced against anybody, but is not a right in rem. This is why, in 2015, as part of the major reform of succession law, the right to inheritance was deleted from the wording in § 308.[14]

The second subdivision in the second part of the ABGB is about personal rights (*persönliche Sachenrechte*). This is what in the pandetictistic system would be called law of obligations. There is a section on contracts and legal acts in general. Next, there are specific provisions on a number of contracts, such as purchase, rent, employment, and service and also

12 See Fenyves, Kerschner, Vonkilch, 2011, § 308 n. 6 et seq.; Kletečka, Schauer, 2024, 1.06 § 308 n. 3 et seq.

13 Fenyves, Kerschner, Vonkilch, 2011, § 309 n. 9 et seq.

14 Kindschafts- und Namensrechts-Änderungsgesetz 2013, BGBl I 20 13/15.

on joint property of spouses (marital property). A section on the right to damages and compensation is also found.

The third and final part of the ABGB provides for the 'Common provisions for personal rights and rights in rem' (§ 1342–§ 1503), which contain provisions on guarantee (*Bürgschaft*), modification of rights and obligations (assignment of claims, exchange of debtor), cancellation of rights and obligations, and prescription and acquisitive prescription.

It could be shown that the ABGB, contrary to many newer codifications, is not based on the pandectistic system. This does not come as a surprise because the pandectistic system was first based on textbooks by Georg Arnold Heise, which, despite being published in 1807[15] for the first time, came too late to have any influence on the system of the ABGB. However, the pandectist movement of the 19th century had a strong influence on academic discussions and legal doctrine.[16] This is why in legal education, civil law is taught based on the pandectistic system, and all textbooks used for students are based on this system as well.[17] As a result of this, legal thinking in the field of civil law follows a different system than the one on which the ABGB is based.

1.6. ADDITIONAL REMARKS

1.6.1. Liability for damages

As mentioned above, the provisions about liability for damages can be found in a subdivision of the second part about personal rights. Contrary to the system laid down in most of the more modern codifications, no distinction is seen between liability for breach of contract and non-contractual liability. The entire liability for fault is based on a general clause, which is regulated in § 1295 par. 1:

15 Heise, 1819.
16 See Wendehorst, 2011, p. 75, p. 79 et seq.
17 For example, see Bydlinski et al., 2023.

Everyone is entitled to claim compensation from the damaging party who caused the damage to him at his fault; the damage may have been caused by breach of a contractual obligation or without reference to a contract.

1.6.2. Unjust enrichment

There is no specific chapter on unjust enrichment in the ABGB, merely some provisions, which, if summarised, can be regarded as law of unjust enrichment. Claims for unjust enrichment can be based on a failed performance or can exist non-related to a performance. Special provisions for both groups of claims can be found in the ABGB, as illustrated by a few examples. First, let us examine two examples of claims for unjust enrichment based on a failed performance:

§ 877. Whoever demands the avoidance of a contract due to the lack of consent [error etc.] has to return everything he has received to his benefit from the contract.

§ 1431. If someone has received a good (asset) or a service by mistake, even by a legal mistake, to which he has not right against the transferor, in the first case the good can be re-claimed, in the second however, a reasonable remuneration with respect to the benefit granted can be claimed.

The most important provision dealing with unjust enrichment non-related to a performance is § 1041:[18]

If a good (asset) has been used for benefit of someone else without agency, the owner can demand the good (asset) in kind or, if this is no longer possible, the value which it had at the time of the use even though the benefit had been frustrated subsequently.

18 For example, see Kletečka, Schauer, 2024, 1.09 § 1041 n. 1; contrary to the prevailing opinion, Fenyves, Kerschner, Vonkilch, 2019, §§ 1041–1044 Rz 8 et seq.

2. THE DEVELOPMENT OF CIVIL LAW IN AUSTRIA OVER THE CENTURIES

2.1. 19TH CENTURY

Looking at the development of civil law in Austria, it can be said that the 19th century was characterised by an almost Biedermeier-like calm and tranquillity. There were almost no changes to the ABGB. However, numerous so-called 'imperial decrees' (*Hofdekrete*) were passed. The purpose of these decrees, which were adopted by the emperor, was not to change the law, but to interpret it in a binding manner and thus ensure legal clarity. The imperial decree of 1844/781, for example, particularly important because it clarified that the compulsory portion was not to be understood as a substantive right of inheritance but merely constituted a monetary claim.

One provision in the ABGB even refers to this practice. § 8 deals with what is called 'authentic interpretation':

> *Only the legislator has the power to interpret a law in a generally binding way. Such interpretations must be applied to all pending matters, provided that the legislator has not stated that its interpretation shall not be applied to any matters relating to actions undertaken and rights alleged prior to such interpretation.*

It is remarkable that the industrial revolution left the ABGB largely unaffected. There were first attempts for a strict liability for railways, but these were not provided for in the ABGB.[19]

However, the lack of legislation does not reflect the enormous developments in the field of academic research. As has been mentioned before, the pandectist movement had a huge impact on the legal doctrine in Austria. This strong influence became effective on legislation at the beginning of the 20th century.

19 Eisenbahnhaftungsgesetz, RGBl 1869/27; see Bernat, 2022, p. 45, 49 et seq.

2.2. 20th CENTURY

In contrast to the 19th century, the 20th century can be characterised as the era of change in Austrian civil law. This period can best be characterised by two lines of development. On the one hand, there were substantive reforms. On the other hand, there was a permanent erosion of the ABGB, which considerably weakened its function as a codification of Austrian civil law.

2.2.1. REFORM

The entry into force of the German Civil Code (BGB) in 1900 was a decisive event, and by this time at the latest it was clear that the ABGB – even if it had set standards at the time of its creation – could by no means be regarded as cutting edge. It is remarkable that the monarchy found the strength for a comprehensive reform programme in the years of World War I and thus shortly before its end. The reforms took place through the three partial amendments ('Teilnovellen') of the years 1914–1916,[20] which affected almost all areas of civil law. Particularly in the law of obligations, they were in part strongly influenced by the corresponding provisions of the German Civil Code. Examples of this are the introduction of the contract in favour of third parties and the assignation (Anweisung).

In the years after 1938 when Austria had been annexed to Germany, the ABGB remained in force. The reason was not that the regime appreciated the ABGB. Quite the opposite: the plan was to replace both the BGB and the ABGB with a new *'Code of the People'* (Volksgesetzbuch). This project was initiated under the auspices of the Academy of German Law, but was never completed due to the collapse of the Third Reich.[21] This is why the ABGB survived the Nazi regime essentially untouched.

20 Kaiserliche Verordnungen RGBl 1914/276, RGBl 1915/208, RGBl 1916/69.

21 See Meissel, Bukor, 2011, pp. 17, 22 et seq.

2.2.2. Erosion

However, the 20th century can also be described as the period when the ABGB, as the codification of the Austrian Civil Law, lost its power significantly due to erosion. Today, many parts of civil law are regulated outside the ABGB in special legal acts; even those which mostly affect people's everyday life. This can be illustrated by some examples.

Marriage

The law of marriage was regulated in the ABGB. In 1938, a large part of the provisions in the ABGB was replaced by the German marriage act (*Ehegesetz*). One of the reasons for this development was the introduction of compulsory civil marriage and divorce irrespective of religious affiliation, which was intended to overcome the previously denominational marriage law.[22] Among the many laws introduced by the Nazi regime between 1938 and 1945, the marriage act remained in force even after the restitution of Austria's independence in 1945. However, the Marriage Act only regulates the conclusion of marriage and divorce. It does not regulate egal relations between spouses, such as maintenance and other obligations arising from the personal relationship, which are still regulated in the ABGB. As a result, the law of marriage is fragmented between the Marriage Act and the ABGB.

It should also be mentioned that in Germany the Marriage Act had been replaced by a more modern legal framework in 1977, especially in the field of divorce,[23] which now is based on the principle of disintegration (*Zerrüttungsprinzip*). In Austria, the old system of divorce, although having been amended in parts, still applies. It is based on a combination of the principle of fault (*Verschuldensprinzip*) and the principle of disintegration. In court practice, the principle of fault predominates. This means that courts have to investigate whether one of the spouses or both of have committed a grave marital misconduct (*schwere Eheverfehlung*)

22 Verschraegen, 2011, pp. 667, 674 et seq.

23 Erstes Gesetz zur Reform des Ehe- und Familienrechts (1. EheRG), BGBl I 1976, 1421.

at any point in the past. Despite heavy criticism,[24] legislation has so far seen no reason to change this unsatisfactory legal situation.

Labour law

There is a chapter on service contracts (*Dienstvertrag*) in the ABGB (§ 1151 et seq.). Most of them are restricted to freelance contracts (*freier Dienstvertrag*). Very few of the provisions found there are applicable to labour contracts (*Arbeitsvertrag*). The vast majority of labour law is laid down in a great number of special acts that do not leave too much application for provisions in ABGB.

Housing law

General provisions on lease can be found in the ABGB (§ 1090 et seq.). In practice, the scope of their application is restricted to movable goods and real estate without buildings. For most of what may be called housing law, there are special laws. Two of them are the most important ones:

- The Lease Act (*Mietrechtsgesetz*)[25] provides for the protection of the tenant. With a few exceptions, the scope of application covers both the lease of apartments and the lease of business premises. As a result, not only is the tenant of an apartment protected by the law, but also protected is a chain of supermarkets that rents an object on the ground floor of a building to operate an outlet there, or a law firm that rents office space.
- The Condominium Act (*Wohnungseigentumsgesetz*)[26] provides for internal organisation of owners of condominiums and their protection against the property developer.

Consumer law

There is no specific consumer law in the ABGB. However, two important provisions on the control of general terms and conditions are laid down in the ABGB. The first one is § 864a:

24 See Hofmair, 2016, p. 340; Wucherer, 2022, p. 1173.

25 BGBl 1981/520; latest amendment in BGBl I 2021/59.

26 Wohnungseigentumsgesetz 2002, BGBl I 2002/70; latest amendment in BGBl I 2021/222.

> *Unusual provisions used by a contractual party in general terms and conditions or standard forms do not become part of the contract if they are detrimental for the other party and he would not have to expect these provisions due to the circumstances, in particular due to the formal appearance of the contract; unless one contractual party has expressly made the other aware of it.*

The second provision is § 879 par. 3, which is based on the Directive on unfair terms in consumer contracts[27] and reads as follows:

> *A contractual provision contained in general terms and conditions or contractual forms, which does not determine either of the mutual obligations, is void in any event if it is materially detrimental to one party when considering all circumstances of the case.*

Although these provisions, being general clauses, have a strong impact on the control of general terms and conditions, they are not restricted to consumer contracts. They can be applied in B2B-relations as well, even though their practical application is primarily in the area of consumer protection.

Apart from this, there are no provisions with specific relevance for consumers in the ABGB. The consumer is regulated in a growing number of special legal acts. The oldest one, the original version that dates to 1979, is the Consumer Protection Act (Konsumentenschutzgesetz),[28] which has been amended more than 30 times. In the last two decades, a number of special laws in the field of consumer law have been added. As a result, consumer law now is fragmented to a high degree and has increasingly become an area for specialists. Many of these special laws are based on European directives and serve to transpose them into national law. To name a few, among the most important ones are

27 Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, OJ L 05, 21/04/1993, p. 29; see Fenyves, Kerschner, Vonkilch, 2022, § 879 n. 253.

28 Konsumentenschutzgesetz, BGBl 1979/140; latest amendment in BGBl I 2022/109.

- law on distance contracts and off-premises contracts (*Fern – und Auswärtsgeschäfte-Gesetz*),[29]
- law on guarantee (warranty) for consumers (*Verbrauchergewährleistungsgesetz*),[30]
- law on distance marketing of financial services (*Fern-Finanzdienstleistungs-Gesetz)*,[31]
- law on consumer credits *(Verbraucherkreditgesetz)*.[32]

When the European directive on consumer rights[33] had to be transposed into national law, the idea of consumer code (*Verbrauchergesetzbuch*) was discussed briefly. Such a law was intended to summarise consumer law, which had already been highly fragmented at that time, in a consolidated version.[34] Unfortunately, this plan has never been realised.

Strict liability

When the ABGB was adopted more than 200 years ago, strict liability was largely unknown. The development of strict liability can be seen as a by-product of the technological revolution of the 19th century, which brought forth devices whose operation is associated with certain dangers even when due care is taken. It does not come as a surprise that the development of strict liability started with the railways; motor vehicles and other dangerous equipment soon followed.[35]

Again, the legal framework of strict liability is highly fragmented. There is neither a general law nor something that could be understood as a general part. Both the conditions for exemption from liability and

29 BGBl I 2014/33; latest amendment in BGBl I 2022/109.

30 BGBl I 2021/175.

31 BGBl I 2004/62, latest amendment in BGBl I 2018/17.

32 BGBl I 2010/28, latest amendment in BGBl I 2021/1.

33 Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council, OJ L 304, 22.11.2011, pp. 64–88.

34 See Stabentheiner, Cap, 2017, p. 53, p. 59 et seq.

35 See Bernat (n. 19), p. 45 et seq.

the maximum liability amounts vary considerably. Among the most important laws on strict liability are the following:

- law on liability for railroads and cars (*Eisenbahn- und Kraftfarzeughaftpflichtgesetz*)[36]
- law on product liability (*Produkthaftungsgesetz*).[37]

It is highly disputed whether the application of strict liability based on analogy is possible.[38] The Austrian Supreme Court accepts the analogous application of rules on strict liability in general; however, it is very cautious when it comes to an analogy in individual cases.[39]

2.3. THE 21ST CENTURY AND THE ROAD AHEAD

As has been shown, Austrian civil law is highly fragmented and divided between the ABGB and numerous special laws. The ABGB as such has become a torso. It is still a general code in the sense that it applies to everyone. However, it is no longer a general code that provides solutions to many conflicts that one would expect from such a law.

Around 1300 to 1400 articles of the ABGB are in force. This is far less than one would expect from the apparently 1503 articles of the law. The reason is that many articles are missing. This applies, for example, to arts. 47–88, which used to contain some parts of the marriage law, which are now regulated in the Marriage Act. Furthermore, arts. 618–645, which contained the law of entailment (*fideicommissum*), is missing. Although some provisions are still in force, they no longer have any practical application. There may be two reasons for this:

First, there may be provisions whose subject matter is now regulated in special laws: they are still formally in force, although they have been materially derogated. This applies, for instance, to insurance contracts

36 BGBl 1959/48; latest amendment in BGBl I 2021/245.
37 BGBl 1988/99; latest amendment in BGBl I 2001(98).
38 See Schwimann, Kodek, *2022, § 2 n. p. 16 et seq.*
39 E.g., Supreme Court (*Oberster Gerichtshof) 8 Ob 84/12d.*

(arts. 1288–1292),[40] which are now regulated in the insurance act (*Versicherungsvertragsgesetz*).[41] § 943 of the ABGB stipulates that a gift agreement must be concluded in writing if there is no actual transfer of the gifted object. However, according to § 1 of the Notarial Deeds Act, the original version of which dates to 1871, a notarial deed is required for the validity of such a contract. As a result, art. 943 seems to provide a formal requirement for gift contracts, which has not been effective for more than 150 years (!), without having been abolished formally.

Second, some provisions reflect the social and economic circumstances of the early 19th century, which have changed dramatically. As a result, some provisions no longer have any practical application and their content is outdated. This can be illustrated by a few examples:

> *Art. 297 (dealing with accessories to a thing): 'In the same way, immovable objects include those which are erected on land with the intention that they should always remain on it, such as: Houses and other buildings with the air space above them in a vertical line; furthermore: not only everything that is earth-wall, rivet and nail-proof, such as: brewing pans, brandy kettles and built-in cupboards, but also those things that are intended for the permanent use of a whole: e.g. well buckets, ropes, chains, fire-fighting equipment and the like.'*
>
> *Art. 402: 'The right to spoils and property taken back from the enemy is regulated in the law of war.'*
>
> *Art. 488: 'The servitude (easement) of a window only entitles to light and air; the view must be specially authorised. Anyone who has no right to a view may be required to bar the window. (…)'*

Approximately 30–40% of the provisions in the ABGB are based on the original version from 1811, for example, the chapters on purchase, donation, and agency, and the law on liability for damages. Sometimes, when

40 See Fenyves, Kerschner, Vonkilch, 2012, §§ 1287–1292 n. 3 et seq.; Kletečka, Schauer, 2024, § 1288 n. 1.

41 BGBl 1959/2; latest amendment in BGBl I 2022/70.

talking to foreign colleagues, they might tell you that their impression of the Austrian codification is that it is a kind of *'legal museum'*.[42]

3. MOOD OF REFORM?

Austria is not a country in which willingness to undertake fundamental reforms in the field of Civil law is particularly pronounced. Some efforts for a reform failed. The reform of tort law is an example of that.

3.1. REFORM OF TORT LAW

Most of the provisions of tort law date to 1811. Courts have developed a wide range of case laws, which are not reflected by the provisions in the ABGB. It is impossible to understand Austrian tort law without having the extensive case law in mind. In 2001, the Ministry of Justice started a project on a complete reform of tort law. A commission was appointed, the members of which were mostly academics and judges. However, a second working group was formed, which consisted mainly of professors who advocated ideas that were contrary to those of the ministry's commission.[43] After fierce disputes between the members of the two rival groups about almost everything – the methodology, scope and the content of such a reform – the Ministry of Justice lost interest, and the reform ended several years later.

42 Similarly, Oberhammer, 2011, pp. 219, 231 et seq., describes the reaction of German and Swiss lawyers when they deal with the Austrian codification: 'Stets ist es ungläubiges Staunen, dass derlei heutzutage mitten in Europa noch in Kraft steht'. [It is always a matter of incredulous amazement that something like that is still in force in the centre of Europe today.]

43 See Schwimann, Kodek, 2016, §§ 1293 n. 6 et seq.

3.2. THE BICENTENNIAL OF THE ABGB IN 2011

2011 was a symbolic year, the Code's bicentennial. Just in years around the 100-year celebrations, discussions about the future development of the ABGB started again.[44] The Ministry of Justice promoted a project *'ABGB 200plus'*. The title was intended to express the fact that a reform process was being initiated, which was to be implemented in the years following the 200th anniversary. However, the outcome was modest. In 2010, the legal framework of credit contracts was restructured.[45] While legislation claimed that this should be the first step of a larger project to modernise the ABGB,[46] the immediate reason was the need to transpose the Consumer Credit Directive into national law.[47] The next step was a complete renewal of the provisions on partnerships since most of them dated to 1811.[48] In 2014, the partnership law was remodelled along the lines of the commercial partnerships.[49]

3.3. REFORM OF SUCCESSION LAW

Although no explicit reference was made to the reform of the ABGB on the occasion of its 200th anniversary, the reform of the law of succession[50] must also be placed in the series of laws that were intended to bring the law in line with the social and economic conditions of modern times. The aim of the reform was bold: almost all the 300 provisions on inheritance law, most of which dated to the original version of the law, were renewed. However, a closer look reveals that the legislator used a remarkable regulatory technique that makes his reform intention appear less bold. The vast majority of the provisions in succession have

44 See Fischer-Czermak, Hopf, Schauer, 2003; Fischer-Czermak, 2008; Bundesministerium für Justiz, 2012.
45 Darlehens- und Kreditrechts-Änderungsgesetz, BGBl I 2010/28.
46 ErlRV 650 BlgNR XXIV. GP 1.
47 See also ErlRV 650 BlgNR XXIV. GP 1.
48 See ErlRV 270NR XXV. GP 1.
49 GesbR-Reformgesetz, BGBl I 2014/83.
50 Erbrechts-Änderungsgesetz, BGBl I 2015/87; see e.g., Schauer, 2023, p. 67.

just been rewritten: There were translated from the antiquated language of the early 19th century into contemporary language. Of course, there were some substantial changes, especially in the field of compulsory shares. The forced heirship of parents and other ancestors was abolished. Although the right to a compulsory portion is basically a monetary claim, the testator has been given more freedom to organise the coverage of the compulsory portion (arts. 761 et seq.). In certain cases, the maturity of the compulsory portion can be postponed for up to five years, in exceptional cases even up to 10 years (arts. 765 et seq.). In this way, the heir should be given the opportunity to obtain the liquidity required to fulfil the compulsory portion.

Two more changes brought by the new succession law should be mentioned: First, a non-married partner of the deceased for at least three years is entitled to intestate succession, but only if there are no other intestate heirs, such as children or a spouse (art. 748). The life partner's right of inheritance merely supersedes the state and legatees, who would also be entitled as extraordinary heirs in certain cases. However, the life partner has no right to a compulsory portion. Second, certain persons who cared for the deceased prior to their death have legal right to a legacy (*Pflegevermächtnis*), which can only be withdrawn if there are grounds for disinheritance (art. 677 et seq.).

3.4. REFORM OF PRESCRIPTION

Another result of the *ABGB 200plus* project could have been the reform of the prescription, the relevant legal basis of which is the original version from 1811. Working groups at the Federal Ministry of Justice produced a number of text proposals[51]; several articles on this topic were published.[52] Nothing more has been heard of the project in recent times. It is unclear whether it will be pursued further.

51 Reform des Verjährungsrechts, no date.

52 For example, see Madl, 2020, p. 149; Weber, 2021, p. 162.

4. CONCLUSIONS

There is no real spirit of reform in the area of civil law in Austria. Elections are not won with the promise of a new civil code. The situation in Austria is regrettable, considering the deplorable state of the codification. In this respect, Austria is different from many other countries in Europe, such as Germany and Switzerland, where reforms of a larger area of law are always tackled and at the same time system-related thinking, which is essential for codification, prevails. If an amendment does occur, it is usually for one of the following reasons:

- transposition of EU directives, especially in the field of consumer law,
- initiative by stakeholders (e.g. consumer organisations), which lead to casuistic provisions
- (in rare cases) replacement of provisions that are repealed by Constitutional Court or overruled by the European Court of Justice

As of now, the idea of a fundamental reform of the Civil Code, which was quite vivid at the time of its bicentennial, has ended before it really started. As far as one can tell, there are no plans for a major reform of the Civil Code in the near future. Will the ABGB – or what will be left from it – reach its 250th anniversary in 2061? Of course, it is difficult to predict the development for a period of several decades. However, if I had to place a bet today, my answer would be, yes!

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