



# CIVIL LAW CODIFICATION PROCESS IN THE REPUBLIC OF NORTH MACEDONIA AND THE REPUBLIC OF ALBANIA

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## ABSTRACT

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Civil Law as a branch of the private law is very important because of the regulation of the relations between two natural or legal persons in the field of property law, family law or law on obligations. The Republic of North Macedonia had a different story on its codification of civil law since it was part of the Former Yugoslavia, and its initiative started in 2009 with the process of drafting the civil code. This process continues due to the change of the Macedonian Government in 2016, which prolonged the work on the civil law codification for a couple of years. Now more than ever, the Republic of North Macedonia is ready to adopt the new Civil Code, and the last chapter is expected to be completed by the end of 2023 or the beginning of 2024. On the other side, the codification process of civil law in the Republic of Albania was long, and it emanated since its pre-state formation with the customary law and establishment of institutes, continuing with the declaration of independence and formation of the Albanian state in November 28, 1912 and the first Civil Code of 1929, the second Civil Code in the period of socialism in 1981, and the third Civil Code in the period of transition in 1994 until today. All this legal process of codification has brought development in the fields of private law, one of them being family law.

## INTRODUCTION

Civil Law is the most significant branch in the part of the private law, known in Latin verb as *Ius Civile*. The first known codes include the Code of Hammurabi (1780 BC) and the Law of the Twelve Tables, known in the Latin verb as *Lex Duodecim Tabularum* or simply *Duodecim Tabulae* (The Twelve Tables). According to Ampovska and Ilioski (2013), the Law of the Twelve Tables forms the foundation of Roman law's whole fabric. In continuation, the most significant codification of Roman law was *Corpus Juris Civilis*, a collection of fundamental works in jurisprudence, issued from 529 to 534 by order of *Justinian I*, the Eastern Roman emperor.

During the entire codification process, the Republic of North Macedonia and the Republic of Albania had undergone different paths. The Republic of North Macedonia was part of the Former Yugoslavia, and the process of the civil law codification of Yugoslavia was a partial codification of the property law, law on obligations and law on inheritance, which resulted in the enforcement of several federal laws important for the civil law. On the other side, Albania's civil legislation history encapsulates two stages: the stage before the formation of the Albanian state with the customary law and the stage after the formation of the Albanian state promulgated with the declaration of independence on November 28, 1912.

The methodology used in this paper consisted of secondary data analysis using different legislations, studies and books conducted by legal scholars. The paper will thoroughly analyze the countries' development in civil law in general and family law in particular. Regarding the Republic of North Macedonia, this paper will explain the entire process of civil law codification starting from the Yugoslavia period, the first step in drafting the civil code marked in 2009, until the preparations for the adoption of a new civil code. For the Republic of Albania, this paper will majorly focus on the most important stages, starting with the pre-state formation correlated with the customary law and its impact on the process of civil codification, the adoption of the first civil code in 1929 and its treatment of family law, the adoption of several laws on family law, the first family code and the adoption of the second civil code on the period of socialism

in 1981 and in the end the period of transition, the third civil code of 1994 and the division with the family code. What is important to note is the legal tradition that both countries had and the foundations that this tradition had brought for a brighter future.

## 1. CIVIL LAW CODIFICATION PROCESS IN THE REPUBLIC OF NORTH MACEDONIA

The first codification in North Macedonia was made in 1992, and it involved only one area of civil law – family law. The Family Law was codified in three acts: Law of marriage, Law on the parent-children relationship and Law on custody.<sup>1</sup> In 1996, a new Law on Inheritance was adopted.<sup>2</sup> The provisions of this law were based on the Law on Inheritance in Yugoslavia. Macedonian Law on Obligations was adopted in 2001 and was based on the Federal Law on Obligations from 1978, but with changes and adjustments that correspondent to the new social and legal relations.<sup>3</sup> The property law was partially codified with the adoption of the Law on Property and other Real Rights.<sup>4</sup> This is a general and systematic law that leaves the opportunity for some relations to be regulated with *lex specialis*.

In comparison with other Western Balkan countries regarding civil law codification, Serbia adopted the first civil law code in 1844, and in the present moment, there is a new process of codification of civil law that is officially started; in Montenegro – the first civil law codification was in 1888 and there is partial codification today; in Bosnia and Herzegovina there is no uniformity or a general tendency towards harmonization; and in Albania two different Civil Codes were adopted in 1928 and 1981, and the existing civil code entered into force on 1 November 1994 and consists of five parts, following the German tradition: general part, own-

1 Family Law, Official Gazette of the Republic of Macedonia 80/92.

2 Law on Inheritance, Official Gazette of the Republic of Macedonia 47/96.

3 Law on Obligations, Official Gazette of the Republic of Macedonia 18/2001.

4 Law on Property and other Real Rights, Official Gazette of the Republic of Macedonia 18/2001.

ership and property, inheritance, obligations and contracts.<sup>5</sup>

The idea for drafting a Civil Code of the Republic of North Macedonia was initially presented in 2009 in the Project for Drafting the Civil Code prepared by the Ministry of Justice. In 2011, a Commission for drafting the Civil Code was promulgated with the Decision of the Government of the Republic of North Macedonia. The Commission decided that the Code would be drafted according to the pandect system rather than the institutional system. The Commission also agreed that the content of the Macedonian Civil Code will consist of 4 parts: General part; Property law; Obligations and; Successions. It was decided that Family Law wouldn't be a part of the Civil Code, although many national legal systems include family and domestic relations within this category, though the central focus of private law always concerns the economic and productive relations between ordinary people.

In 2014, the Commission prepared draft versions of Book 3 – Obligations and Book 4 – Successions within the Civil Code of the Republic of North Macedonia. Public debates and scientific conferences were organized with experts in civil law – professors, judges, attorneys and others to discuss the draft texts, the novelties and the whole process of civil law codification in general.

In general, the Commission decided that in the process of creation of the Macedonian Civil Code, the principles of equality of the parties and the autonomy of will should be especially taken into account, and the protection of those principles must be developed on a higher level than what is the case in the existing laws. Also, it was decided that the Civil Code must provide better legal and economic security for the parties that will eventually advance the stability of civil-law relations.

The novelties in Book 3 – Obligations can be considered as small in scope, however, the new systematics, incorporation of new contracts and the introduction of different legal arrangements for some agreements would satisfy the need of the parties for better regulation of the obligatory relations, acquisition of new rights and increase the

protection of the rights in practice. The third book of the Civil Code, which refers to obligations, is divided into six parts. Part one: occurrence of obligations; part two: effects of obligations; part three: termination of obligations; part four: various types of obligations; part five: change of the creditor or the debtor; part six: separate contracts.<sup>6</sup>

As far as Book 4 – Successions is concerned, the Commission has prepared significant reforms in the inheritance legislation that refer to the introduction and detailed regulation of the inheritance contract, regulation of the legal right on inheritance of the posthumously conceived child, introduction of the possibility for the extramarital partners to appear as legal heirs, change of the legal nature of the right to a necessary part of the inheritance that will have an obligatory legal nature, introduction of the notary will, establishment of the register of wills, provision of the exclusive competence of the notaries in the field of inheritance agreements, etc.<sup>7</sup>

But, after the change of the Macedonian Government in 2016, for a couple of years, there was no information about the work of the Commission. In 2022, the Minister of Justice announced that the preparation of the Code continues. Of course, we must consider that the process of adopting a civil code in one country lasts for a longer period, sometimes more than a few decades. Since independence, North Macedonia has been very close to adopting a new Civil Code. Interestingly, it was decided that another part would be regulated in the Civil Code – the Family Law, which has significant meaning for the country, considering the outdated law. Four out of five chapters of the Civil Code are ready, the last chapter is expected to be completed by the end of 2023 or the beginning of 2024. The Code will ensure greater legal certainty and more straightforward exercise of citizens' rights. We can conclude that The Civil Code will be composed of five parts: The general part of the Civil Law, the part on property relations, the part on obligatory relations, the fourth part will be dedicated to inheritance law relations and the fifth part on family law relations. With the drafting of the Civ-

5 See Civil Code of the Republic of Albania, (1994), No. 7850, Available at: <http://www.cclaw.al/wp-content/uploads/law/The-Albanian-Civil-Code.pdf> [Last Access: 23.12.2023].

6 Draft version of the Civil Code of Republic of Macedonia Book 3 – Obligations, 2014.

7 Draft version of the Civil Code of the Republic of Macedonia Book 4 – Successions, 2014.

il Code, the Republic of North Macedonia will join the large number of European countries that have civil codes, such as Germany, France, Italy, Spain, the countries of Eastern Europe – Poland, the Czech Republic, Hungary, Romania, as well as the countries in our region – Greece and Albania for example. Within the framework of the Civil Code drafting project, the members of the Commission will take into account all modern civil codes, as well as the jurisprudence of the European Court of Human Rights, the most important international documents. After preparing the draft version of the Civil Code, a comprehensive public debate will be organized in which the scientific, professional and general public will participate who should give proposals for the adopted Civil Code to be of the highest quality.<sup>8</sup>

## 2. REGULATION OF FAMILY LAW IN THE REPUBLIC OF NORTH MACEDONIA

Family legislation in the Republic of North Macedonia has not followed the development of relations between society and the family in the last few decades. Macedonia is one of the few countries in the world where you can be legally married and in an extramarital union simultaneously. The legal solutions do not offer an adequate framework for solving the problems that arise in practice, especially with the increasing number of divorces and extramarital unions in the last few decades. While in all European countries, the regulation of marital and family relations has been an absolute priority, in Macedonia, since 1992, apart from some cosmetic changes, there has been no reform of the family legislation. Family law has many legal gaps and ambiguities, which can be seen from the court processes and problems in the division of property in the marital and extramarital union, parental rights after divorce, child support, etc. The main question for many years was why the legislator forgot the reforms in the family law area. The dynamics of the development of relations in society and the family in the past three decades have not been followed by appropriate legal changes, and

the reform in this area has completely failed. Many family law institutes do not respond to the challenges of the times in which we live. Legal solutions have become a narrow framework for solving problems. The institution of marriage, extramarital union, property-legal relations for property acquired in marriage or extramarital union, parental rights and the right of a child are just a few issues that inevitably need to undergo changes and be reformed. In recent years, there has been a dramatically increased number of divorces. The increasing number of extramarital unions and illegitimate children, as well as the appearance of more single-parent families and families in which at least one partner already has children from a previous marriage. The question is how the law is reformed and adapted to this. There are several global tendencies. Now, we have the liberalization of divorce, and the extramarital union is also being liberalized, which is largely approaching marriage in terms of its legal consequences. The position of illegitimate children is also improving. The basis of all reforms is that there is greater protection of the first and the interests of children. Today, the main part of family law is not marriage law but parental law. The focus is not on the couple but, above all, on the child's interest. In all European legislation, most of the reforms in this sphere aim to better protect children's rights and interests. In all other European countries, the regulation of marital and family relations has an absolute priority, but in Macedonia, unfortunately, since 1992, except for some amendments to the family law that are not essential changes, there is no reform in the family legislation. There is still a dominant concept of joint property, which is acquired during the marriage, but it is not well defined what constitutes separate and what is joint property. The marriage contract is also not legally regulated. Macedonia's social and political system has changed, but the solutions in the sphere of property relations have remained the same as those in the previous system. The biggest and most serious shortcoming of Macedonian family law is the regulation of the rights and protection of the interests of children. The family legislation does not align with the UN Convention on the Rights of the Child. The family legislation is outdated and does not correspond at all with the Convention in several key segments.

8 Ministry of Justice and Government of Republic of North Macedonia.

The family legislation is against the European Court of Human Rights jurisprudence.

If we do a brief analysis of the family law in Macedonia, we can notice that there are a large number of provisions with public powers of the institutions and there is nothing essential for the well-being of families. Namely, public powers should be covered by other laws, and the privacy of families should receive primacy in this law. There are no moral values for marriage and the family as an institution. Some articles were annulled by the Constitutional Court of North Macedonia and some were deleted or annulled by other laws. There are separate articles on domestic violence, around 70 articles on disputes and courts, and 50 articles about adoption, but no articles on the upbringing of children. There are also many articles on guardianship, material support, and property relations, but no single article about spiritual pleasures, psychological support and protection of children, post-divorce parenting, etc. There are no penal provisions except one article (94), and there are no bylaws on post-divorce parenting.<sup>9</sup> Same things are repeated several times with the same or slightly different wording, which can lead to confusion, and there is an overlap of powers where both court and the social center have the right to assign the child to custody.<sup>10</sup>

The fifth book of the Civil Code of North Macedonia related to family law must consider and appropriately regulate all of the abovementioned deficiencies in the existing family law legislation.

### 3. REASONS FOR CIVIL LAW CODIFICATION IN THE REPUBLIC OF NORTH MACEDONIA

The significance of the civil law codification is indisputable and comprehensive. The legal rules integrated into the civil codes construct a framework that ensures respect for personal dignity. At the same time, these rules articulate principles and values regarding fairness and justice in social and economic relations with others. Combining

9 Family Law on the Republic of Macedonia, Official Gazette of the Republic of Macedonia 80/92.

10 Articles 78 and 80 of the Family Law on the Republic of Macedonia, Official Gazette of the Republic of Macedonia 80/92.

these elements, a Civil Code describes a web of standards comprising an economic and social constitution for society. This framework enables individuals to interact, create reciprocal bonds, form associations, mix, and be inclusive. A Civil Code also initiates a process that leads to popular acceptance of this economic and social model. Every assertion of rights and obligations arising under the private law rules of the code implies an acceptance of its standards of justice and fairness.<sup>11</sup>

There will be many benefits for Macedonian society if a Civil Code is adopted.

An essential benefit is the imperative to harmonize Macedonian regulations and legal practice with European *acquis communautaire*, on the one hand, and the case law of the European Court of Human Rights, on the other hand, which, by its legal force, dominantly directs the Macedonian legal order. The Civil Code would help a lot in reforming the legal system of North Macedonia after its accession to the European Union.

Thus, the ultimate and essential goal of the Civil Code is to reinforce the concept of the rule of law, which is a constant shortcoming and constant remark by the European Commission on the Republic of North Macedonia<sup>12</sup> and the Western Balkan countries in general. Another element that needs to be taken into account is the effort within the European Union itself for a greater degree of harmonization of civil law, especially contract law and tort law. Despite numerous discussions and disagreements over whether the future of European civil law should be the foundation of European continental law, especially French or German law or Anglo-Saxon law, there are certain areas in which there are established common solutions in European secondary law, especially through European Union directives. About one hundred legal instruments of the European Union refer to civil law. When it comes to international civil law, it achieves its whole meaning through the direct legislative activity of international organizations, which is the richest activity of the European Union. The adopt-

11 Chalmers, D., (2003), *The Reconstitution of European Public Spheres*, European Law Journal.

12 See European Commission Working Document, North Macedonia 2019 Report, Chapter 23, Available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-north-macedonia-report.pdf> [Last Access: 27.12.2023].

ed standards apply directly to all Member States.

The existence of civil law codification does not deny the possibility that certain social relations and legal institutes are regulated by special laws, which, however, cannot conflict with the code, which is the *lex generalis*. On the other hand, a large number of regulations in one legal system opens not only the problem of their transparency but also applicability because the rules that are enacted rapidly, especially in transitional societies, are often in a collision, and when there is a conflict within the national legal system, there is regularly a problem with the legal standards of the European Court.

According to eminent lawyers, the advantages of civil law codification significantly overcome possible shortcomings, and advantages are concentrated elaboration of constitutional principles of civil law, greater accessibility and easier visibility of solutions when they are in one place than when they are scattered in different laws; removal of existing ambiguities, gaps and contradictions and preventing their occurrence, and the need for compliance; formation of general legal norms valid for all or a number of parts, sparing from repeating the same norms wherever they are relevant; better visibility of the principle which permeate a number of parts, as well as a better overview of where and in which parts there are deviations from the principles required; creating a general framework and points of reference for the specific legislation.

Also, in this important area, for a better quality of citizens' lives and more successful functioning of their associations, it is necessary to harmonize legal solutions with ratified international conventions and international standards for the legislation in force not to be partial, incomplete and inconsistent. Therefore, the Civil code would provide all legal subjects, both citizens and legal entities, in one complete, mutually harmonized legal act, to have a corpus of all civil subjective rights, which will facilitate their application and significantly expand preventive action of civil law institutes, which are of special importance for the everyday life of citizens and legal entities.

## 4. HISTORY OF CIVIL CODE IN THE REPUBLIC OF ALBANIA

### 4.1. Customary Law as the Foundation for the Establishment of the Civil Code

The legal culture of the Republic of Albania in Civil Law has extended way back its 111 years as a founding state. This process touched both phases of the country, which were the phase before the creation of the state and the phase of the establishment of the Albanian state with the Declaration of Independence on November 28, 1912 as the first constitutional act of the country. The roots of today's civil code extend to the time of the customary law, which, according to Luarasi (2007), is an unwritten law transmitted from generation to generation through oral tradition and has served to regulate legal relations over the centuries in the country. The significance of this important source is that Customary Law, as Luarasi (2007) was mentioning, was not created by any single person nor by any legislative body, but in the contrary, just like songs, dances, legendary epics, myths, and material culture, it has been created by the people itself over the centuries and it reflects their philosophy, mindset and wisdom. What makes the Albanian customary law distinguishable from others is that it is very ancient and constitutes one of the oldest legal systems in Europe, and an English traveller and researcher strongly emphasized this, Miss Edith Durham, mentioned by Luarasi (2007), according to her the laws and canons mostly attributed to Lek Dukagjini's Canon that was the largest and distinguishable canon for the time, seems to be much earlier than the 15<sup>th</sup> century, the time of its creation.

Another significance of the Albanian customary law was the reflection of a complete legal system, meaning that the regulation of human life from birth until his/her death was dated in this period. The branches of law, founded today in Albanian legislation, were regulated within this harmonious system, including statutory norms that administered how the society shall be organized, norms of family, criminal, procedural and, most importantly, civil law. Because of that, according to Luarasi (2007), many legal scholars have called it a real "Constitution" of the Albanians. The Albanian

customary law had its sources, and the main ones were the canons. The most important canons were the following:

- Lek Dukagjini's Canon operated in the Northern Highlands and was codified at the end of the 19<sup>th</sup> century and the beginning of the 20<sup>th</sup> century. This canon is considered the main source of Albanian customary law because it constituted the most complete and best preserved corpus, divided into twelve books;
- The Canon of Skanderbeg operated in northern Albania, particularly in the city of Kruja, Drrac and the district of Mat, which were the lands of the Principality of Kastriot.
- The Canon of Skanderbeg deals with the limits of its action in space, the way of creating and changing the canonical norms, seven parts where the legal norms are grouped, but also moral norms. Another element is that it included some norms from *Sharia* regarding the daily life, which occurred after the Islamization of a part of the population;
- The Canon of Luma operated in the Luma province in Kukes, and it was considered more tolerant and resilient in the societal aspect;
- The Canon of Laberia operated in southern Albania, with significant elements.

All those canons contained the basic institutes involved today in the main branches of law. One of the sub-branches of Civil Law that we will pay attention to is Family Law and its institutes. The institutes of Family Law date back to this period, including Betrothal, Marriage, Divorce and Ownership of Family Property. Betrothal or Engagement was a major institute of Albanian Customary Law, and it was an agreement between the families of the couple about their future marriage, entailing obligations on both parties. Betrothal could be realized in several ways, but the main one was betrothal to the goer, the negotiator of both families of the couple, for conducting the agreement for marriage. For the betrothal to occur, both the boy and the girl must have a certain age. As a rule, the boy was betrothed when he could carry the rifle in his arm (around 15 years of age), whereas for the girl, the age of betrothal was seven until

fourteen. There are also cases when betrothal was done for babies in the cradle or even before birth to strengthen the ties between the families.

In Albanian Customary Law, the institute of marriage was considered an implementation of the agreement between the couple's families in the betrothal phase. In the Canon of Lek Dukagjini, there are four ways to perform the marriage. The most widespread one was the crown marriage, a monogamous marriage performed through the goer, which later was reinforced with the placing of the crown in the church. In the Muslim population, the rite of crowning did not exist, so the marriage would be declared legal if it was conducted according to the rules of *Sharia*.

In the areas where the canons operated, the basis of society was the patriarchal family. This family was monogamous and headed by the male, the oldest or the first man of the house. In the characteristics of this form of family, the first and foremost was that the master of the house could only be the man and not the woman. This meant that the head of the family could administer the shared economy, consisting of wealth and income, but also, he was the owner of the family property as a whole, meaning that women were considered not to have any share in the property nor her father's wealth. An interesting fact was the division of work, internal organization and the high level of solidarity in the patriarchal family. Divorce was the last institute, which, despite the fact it was rare, would be done for several reasons, and this right mainly belonged to the man and not the woman. The reasons for divorce were a breach of marital fidelity, lack of a woman's virginity, theft as a bad quality for a woman, etc.<sup>13</sup>

## 4.2. The Establishment and Consolidation of the Albanian State and the Adoption of the First Civil Code

On November 28, 1912, Albania gained its independence, a turning point for the country in the 20<sup>th</sup> century. During this period, the first steps were taken towards the modernization of the legisla-

<sup>13</sup> Luarasi, (2007), "Albanian Customary Law" Luarasi University Press, Tirana, Albania.

tion. The most important act, which was approved by the government and was formed after the Declaration of Independence, was the Canon of Jury promulgated on May 10, 1913. In this legal act, the rules for a criminal trial were provided, and its way of organizing gave them the power to grant criminal justice. For the civil trial and its rules and principles, the Civil Procedure Code adopted during the Ottoman period was still in force, and later on, during the time of Monarchy, it was amended in accordance with Western legislation. During this time, before the drafting of the first Civil Code, civil law in general and family law in particular were fractionated. That means that different legislative systems with religious nature regulated the organization of the family and its relations. Thus, in the country's north, the Catholic Church exercised its power through the Canon Law, codified in the 20<sup>th</sup> century. Customary law also had an important influence during this time, but not in the entire northern territory. The major legal act was the Turkish Civil Code (*Mexheleja*), which applied to both the Muslim and Christian communities. This Code was contained by the legal norms of Roman law, the application of which depended on the communities. For the Christian community, the heads of the Church were responsible for its application by resolving all disputes of a civil nature and dealing with authenticated acts such as wills and so on.

After the end of the First World War, the consolidation of the Albanian state was more prominent. The development of the Peace Conference in Paris, which finally approved the defined borders of the Albanian state determined at the Conference of Ambassadors in London and which recognized its legal personality as a nation-state in the international arena, as well as the decisions made at the Congress of Lushnja for the establishment of a new government and a temporary parliament, were the first real steps on the creation of democratic institutions as well as on a new modern legislation. After the establishment of the monarchy, drafting new legislation oriented toward the Western side took a significant boost. The change of the form of the government from republic to monarchy would precede the adoption of the Basic Statute of the Albanian Kingdom, an important act that sanctioned the principles and institutions that would govern the Albanian state in the coming years. Another

important element that needed to be regulated was an immediate need to review the entire legislation of the country, especially the civil one, by considering two things: the country's development stage and its orientation. The purpose of this new legislation was not just to respond to the country's social and economic needs but also to be an impetus for filling the gap of its legal backwardness. Therefore, on April 1<sup>st</sup>, 1929, the first Civil Code was adopted, which contained one of the most important acts in establishing the foundations of the modern Albanian state.

The Civil Code of the Kingdom of Albania was drafted by a special commission consisting of five members, and it was drafted based on the Civil Code of Napoleon, which greatly influenced many other countries. A novelty that the Civil Code brought was the establishment of family relations on a legal basis that would be unique for the entire country. The advantage of this code was that it marked the first attempt at the complete secularism of the legislation in the field of private relations, and as we emphasized above, this process was much more sensitive in the field of Family Law. In this regard, all Albanian citizens would enjoy equal rights and obligations in their legal and civil relationships, especially the family ones. One big step that was taken was that all the disputes would now be adjudicated by the state courts and all the religious institutions that exercised their power until this time ceased in their functions. This was ordered under Article 57 of the Law on the Application of the Civil Code together with the Article 61 of the this Law, which abrogated the civil legislation of a non-state character mainly in the field of Family Law.

The institute of marriage was one of the most important institutes, and the form of marriage had changed under the Civil Code. Under its legal norms, in addition to formalities on how the marriage shall proceed, this Code categorically prohibited any religious marriage performed before the civil marriage. This was sanctioned under Article 152 of the Code, which provided criminal punishment for the clerics who attempted to conduct a religious marriage before commemorating the civil marriage. In addition, under Article 186 of the Civil Code, criminal sanctions were foreseen for the future spouses in case of non-respect of



the marriage formalities. However, the Civil Code, although oriented toward Western legislations, preserved the national tradition in those institutes, which had deep roots and did not violate either its secular character or the orientation that the Albanian legislation took in general. Therefore, the Civil Code recognized and regulated the institution of betrothal, the source of which it belonged from the Albanian customary law. Thus we can conclude that despite the revolution of the basic institutes, still the connection with the customary law existed.

Just like in the world, also in the Civil Code of the Kingdom of Albania it had a strict regulation regarding the family and conjugal relations. During this period, the legal notion of gender equality didn't exist and as a result, the discrimination between men and women was a well-known and an acceptable behavior in other legislations. On the other hand, despite the position of the woman, certain rights were attributed to them, such as guaranteeing an acceptable financial position during marriage and after divorce. Another guarantee that Civil Code granted to women was the right of ownership in two types of property: dowry and paraphernal property. Dowry was sanctioned under Article 1331 of the Civil Code, and it was considered as an asset that the wife or her relatives brought to the husband in order for the latter to cover the expenses arising from the marriage. The husband had the right of administration over this property. On the other hand, paraphernal property, referred in Article 1368 of the Civil Code, was any other type of property of the woman that did not constitute dowry. On this type of property, the woman had all the rights of ownership and the man could act only as a representative authorized by her. In terms of divorce, under the Civil Code, the wife enjoyed an equal position with the husband so it did not make any differentiation between husband and wife, both regarding the right to request a divorce and its causes.<sup>14</sup>

### 4.3. Family Law and the adoption of the Second Civil Code during the Socialist Period in Albania

After World War II, the national liberation front that liberated the country and stood aside the allies took power in 1946. At this moment, Albania shifted the entire compass toward the east and became a country with a socialist ideology. In terms of civil legislation, before the adoption of the new Civil Code in 1948, a series of laws in family law were adopted, and those were the law on marriage, the law on adoption and guardianship and the law on parent-child relations. In this period, the legislation, for the first time, completely prohibited the backward customs closely related to betrothal and marriage. Under the law "On the Prohibition of Certain Backward Customs Regarding Betrothal and Marriage", women were not treated anymore as slaves, and there were heavy punishments for those who offered to buy a bride, including guardians and relatives who pushed the children to marry against their will. The emancipation of the women started in this phase, where under the law "On Marriage", adopted on 21 July 1948, it regulated the property relations between spouses, and by doing so, the women had an equal position with the husband in terms of ownership. The law also regulated specific aspects of property relations, such as the way of dividing the marital property, the manner of administration of the property, and the freedom of the spouses to maintain the family economy.

Under the law "On Marriage", as mentioned above, women obtained equal rights with their husbands for the first time during their joint life. The equality of rights and duties sanctioned under the law was included in personal and property relations between spouses and in terms of their relations with their children and family as a whole. For the first time in Albanian legislation, the legal notion of special property was introduced, meaning that a property that a spouse had at the time before marriage remained his/her personal property, and he/she had the right to manage it freely.

An agreement between the spouses determined the administration of the family economy, and for the maintenance of the family, both spouses had an obligation to contribute by considering their economic situation. Under the law

14 Pellumbi, (N.D.), "Innovations of the Civil Code of 1929 in the Institutes of Family Law", Academia.Edu, Tirana, Albania.

“On Marriage”, it was sanctioned that not only the property acquired during the marriage became the property of both spouses, but also, in the event of divorce, the division of marital property would be made in accordance with the financial contribution and also based on the help that they had given to each other, the performance of household chores and any other co-operation in the administration and increase of the common property. In cases of requesting the division of marital property, the spouses could turn to the court that in return would assign the parts based on the contribution given by each spouse.<sup>15</sup>

All the laws above were gathered into a single Code on 23 June 1965 under the decision of the People’s Assembly. The Family Code of the People’s Republic of Albania was the first family code in Albanian legislation. It encompassed general principles such as marriage being based on free will between spouses. In certain exceptions, a court decision allowed marriage between those with close family ties, adopted or guardianship relationships.

The second Civil Code of Albania was adopted in 1981, and the Marxist-Leninist doctrine inspired it. After World War II and before 1981, Albanian civil legislation, in general, was enacted in the form of separate statutes. The second Civil Code changed its model from the French to a German model (*pan-dectist*) reflected also in the Soviet Civil Code. According to Olldashi (2018), the Civil Code was lacking in certain important aspects, and it was inferior in comparison to other socialist codes because it lacked several fundamental rules, such as the permission to incorporate new market-oriented solutions. Under those circumstances, jurists who prepared the second Civil Code and were working at the Codification Committee of the Ministry of Justice shared the opinion that the revision of the Code was not sufficient because such revision would eliminate the prerogatives and privileges granted to the state and its organizations. The problem, as Olldashi (2018) emphasized, was not just what had to be repealed in the 1981 Civil Code but also what had to be added to the current legal structure without damaging the socialist ideology. In Albania, the period of Communism changed

significantly the entire legal system by interfering with the private rights of the citizens such as the right to property and freedom of movement that included the right to leave one’s country.<sup>16</sup>

Under the Second Civil Code of 1981, two main forms of ownership were sanctioned: state property and personal property, where the latter was mainly limited only to personal items of daily use.<sup>17</sup>As for the part of the Family Law, the Civil Code brought crucial changes related to the co-ownership of the spouses in two directions:

- For spouses, co-ownership in parts, meaning one or more objects and other real rights belonged jointly, and the presumption of equality of parts was accepted;
- The circle of objects or items in joint ownership was expanded, including the deposits in saving banks and everything else acquired by the spouses during marriage.<sup>18</sup>

#### 4.4. Family Law and the Adoption of the Third Civil Code after the 90s

After the fall of communism, the transition from a command economy to a market economy was possible. The 90s marked the most important phase in the country’s history and can rightly be called the period that brought revolution to all areas of life. The first change occurred in politics, where pluralism and the first steps of democracy brought fundamental changes in the entire legislation. The second change came in property law, where private property and all the regulations that followed it were sanctioned. With the fundamental changes, other areas of law were also affected, including civil law in general and family law in particular, emphasising its matrimonial property regimes.<sup>19</sup>

In 1994, the third Civil Code and the first one in the pluralism chapter was adopted. The structure

15 Xhafaj, (2010), “*Matrimonial Property Regimes in Albanian Law*”, Research Gate, Tirana, Albania.

16 Olldashi, (2018), “*Codification and Legal Sources in the Albanian Legal System: Comparative Approach to Legal Systems*”, Tirana, Albania.

17 Semini, (N.D), “*A Historical Overview of the Real Estate Registration Process in Albania*” Tirana, Albania.

18 Xhafaj, (2010), “*Matrimonial Property Regimes in Albanian Law*” Research Gate, Tirana, Albania.

19 Xhafaj, (2010), “*Matrimonial Property Regimes in Albanian Law*” Research Gate, Tirana, Albania.

of the Albanian Civil Code was divided into five books containing 1168 articles. The second book referred to the notion of property and the right to ownership. Article 153 of the Code sanctioned that no one can be expropriated or restricted from his/her right to property, except when public interest requires it and always when there is a just reward. There are several ways sanctioned by the Civil Code of 1994 regarding the manner of acquiring ownership, but two are the most important, and those are through the contract and inheritance. Acquiring ownership through contract was anticipated in Article 164, which stated that ownership is acquired using a contract without the need to deliver the item. Through inheritance, acquiring ownership is conducted under Article 193, point d of the Code, which states that the property shall be registered in the real estate register through a court decision with which the quality of the heir is recognized and the inherited property is acquired.<sup>20</sup>

The Constitution of the Republic of Albania, adopted in 1998, sanctioned not only the right of everyone to marry and have a family but also the right of everyone to enjoy their private property acquired in the aforementioned ways provided under the Civil Code for the transfer of the ownership rights. Under the Family Code, marriage as an important and noble institution is not just only based on affection and the desire to stay close to the partner and children but also on the contribution that each spouse shall provide on their common property.<sup>21</sup>

## CONCLUSIONS

The Republic of North Macedonia and the Republic of Albania had undergone different paths during the entire codification process. The Republic of North Macedonia was part of the Former Yugoslavia, and the process of the civil law codification of Yugoslavia was a partial codification of the property law, law on obligations and law on inheritance, which resulted in the enforcement of several federal laws important for the civil law.

The idea for drafting a Civil Code of the Republic of North Macedonia was initially presented in 2009 in the Project for Drafting the Civil Code prepared by the Ministry of Justice. In 2011, a Commission for drafting the Civil Code was promulgated based on the Decision of the Government of the Republic of North Macedonia, which decided that the content of the Macedonian Civil Code would consist of five parts: General part, Property law, Law of Obligations, Family Law and Law on Inheritance. After the change of the Macedonian government in 2016, for a couple of years, there was no information about the work of the Commission, but in 2022, the Minister of Justice announced that the preparation of the Code is in continuation. According to the latter findings, four out of five chapters of the Civil Code are ready, and the last chapter is expected to be completed by the end of 2023 or the beginning of 2024.

The codification process of civil law in the Republic of Albania was long, and it emanated since its pre-state formation with the customary law and establishment of institutes, continuing with the declaration of independence and formation of the Albanian state in November 28, 1912 and the first Civil Code of 1929, the second Civil Code in the period of socialism in 1981, and the third Civil Code in the period of transition in 1994 until today.

In the end, it is important to mention that a codified civil law framework in the Republic of Albania and the Republic of North Macedonia will contribute to the increase of legal and social security of all legal subjects and will also contribute to the harmonization of the civil law with the European Union legislative. Another important benefit is that it will speed up the necessary integration processes, which include constructing a modern legal system in harmony with *the acquis communautaire* that presupposes a Civil Code, which, in its comprehensiveness, integrates the norms that regulate civil-legal relations in a unified system without contradictions. That is an important condition for the further prosperous development of North Macedonia and Albania, as well as its citizens and legal entities.

20 Civil Code of the Republic of Albania. (1994). No. 7850. Available at: <http://www.cclaw.al/wpcontent/uploads/law/The-Albanian-Civil-Code.pdf> [Last Access: 12.01.2024].

21 Law nr.9062, date 08.05.2003 "The Family Code".

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