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REVIEW ARTICLE

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SERBIAN CIVIL CODE IN THE HISTORY OF SERBIAN LAW

Abstract: *The Serbian Civil Code (SCC) of 1844, modelled after the Austrian General Civil Code (ABGB), was a reception of Austrian civil law in Serbia. While the SCC was in force the Serbian law was exposed to various foreign influences and subject to spontaneous reception of French legal doctrine. In Yugoslavia, the SCC was an element of cohesion. Since the ABGB was in force in the greatest part of the country, the similarities between the two codes facilitated trade. The socialist revolution abrogated the old law. However, the courts continued applying the provisions of the SCC that did not conflict with the revolutionary acquis. The case law based on the SCC never played an important role in legal developments. The SCC left its mark to legal history by adopting the Roman foundations of Austrian law, which made Serbia a country that belongs to the family of European continental law. The SCC is at the origin of many Serbian legal terms, while some of its provisions defy the passage of time.*

Key words: Civil Code, Legal Transplant, Serbia, Austria, Hadžić, Abrogation, Codification, Legal Terms.

1. Introduction: Modern Legal Developments in Serbia

Serbian legal developments in modern times were similar to those of other Balkan nations. The legislation was considered to be of the greatest importance in view of transforming the society and complying with modern European standards. Thus in the late 1820s, the upper class of Serbian society was practically unanimous regarding the necessity of drafting new Serbian laws. There were nevertheless some doubts as to the volume of such an enterprise and the time it would take to carry out. At the same time there was no doubt whatsoever about the pattern that the drafting of the Serbian legislation should follow. Contemporary foreign laws were to

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serve as models. There were hesitations about the understanding of foreign laws that would be transplanted to Serbia, because the judges in those times were laymen, not trained in law. However, problems that the new Serbian legislation might bring were mostly neglected.[1] Optimism prevailed in the atmosphere in which the foundations of the Serbian nation state were laid down, as the vassal principality, still subject to Ottoman sovereign rule. Serbia was to catch up to Europe and the new envisioned legislation was to replace the old customs that had been in use since time immemorial.

In the light of such attitudes, a suggestion to follow a different path in legal developments stood little chance of success. This was nevertheless put forward by a British diplomat, David Urquhart, in May 1837. During a short stay in Serbia, Urquhart spoke with Dimitrije Davidović, who was involved in drafting legislation and had drafted the first Serbian constitution in 1835. Davidović notified the prince of Serbia, Miloš Obrenović, in writing, about the conversation he had had with the British diplomat, and with whom he disagreed.[2] In brief, Urquhart claimed that in Serbia it would be better to "govern by the old customs, and without written laws" ("*pravlenie naroda... najbolje /je/ ostaviti pri starim običajima, a bez zakona*"). He also suggested a model to be adopted for the administration of justice, soliciting that the judiciary power should be conferred to the village elders (*kmetovi*). They should be competent to render justice based on their own conscience, and the government should not intervene with their judgments ("*da se sudejska vlast kmetovima preda i na sovest njinu osloni, pak što oni narede niko od praviteljstva da ne poremećuje*"). The British diplomat was clearly inspired by the legal developments in his country, advocating the maintenance of customs in force and so it seems, introducing a sort of law based on precedents. He made a remark during the conversation with Davidović that the reason for Napoelon's fall from power was the code he had adopted. To this Urquhart added that "written laws tie people's hands and destroy national identity" ("*zakoni vezuju narodu ruke i ubijaju narodnost*").

If we leave aside the diplomatic instructions that Urquhart must have had, and which were obviously aimed at suppressing the French influence

1 Popović, D., Dva oprečna shvatanja o vladavini prava u obnovljenoj Srbiji, in: Vasilijević, V., (ed.), 1991, *Pravna država*, Belgrade, Institut za kriminološka i sociološka istraživanja, p. 30.

2 The letter containing Davidović's report to the prince on the conversation with the British diplomat, dated 22 May 1837, is kept in the State Archives of Serbia, in the Fund of the Prince's Chancery, VI-929. All citations in the text are from that source, translated by author.

in the Balkans, the idea of legal development advanced by the British diplomat still remains worth of reflection. He was by no means in favour of developing the law through legislation but his suggestions did not find sympathetic ears in Serbia because the members of the Serbian upper class were completely opposed to such ideas. They considered written laws to be the highest expression of justice and equality. The latter was to be carried out through the implementation of the laws.

The drafting of the new legislation in Serbia took place in the second half of the 1830s, despite the fact that the country lacked trained lawyers. Those involved in the drafting were aware of this obstacle, but they did not consider it unsurmountable. On the other hand, educated Serbs from Austria, who were trained in law, warned for their part that lay judges would not be able to understand written law.[3] Although the decision makers took account of such hurdles at the time, the opinion in favour of passing Serbian legislation prevailed. As early as in 1830 Prince Miloš declared before the National Assembly that he had conferred to his aides the task of drafting the legislation. To this he added: "I chose from all laws what is good and useful, which could be applied in our country" ("*Probrao sam iz sviju zakona što je dobro i polezno i što se kod nas upotrebiti može...*").[4]

2. Reception of Austrian Private Law

The wording of the prince's statement in 1830 reveal the method that was applied in the drafting of legislation. Speaking in modern terms, our ancestors embraced a comparative law approach to the issue. This coincides with the fact that Dimitrije Davidović applied the same method when drafting the 1835 Constitution of Serbia. Moreover, his method was eclectic, as he combined various sources stemming from foreign law.[5]

As far as private law is concerned, the eclectic approach to drafting legislation was not applied. The Serbian Civil Code of 1844 (SCC) was in fact the translation of the Austrian General Civil Code of 1811 (ABGB).[6]

3 Jovanović, A., 1909, *Rad na toržestvenim zakonima*, Belgrade, Arhiv za pravne i društvene nauke, p. 259.

4 cf. Jovanović, A., 1911, *Rad na toržestvenim zakonima II, Doterivanje prevoda*, Belgrade, Arhiv za pravne i društvene nauke, pp. 11–12, translated by author.

5 On the method Davidović used cf. Popović, D., Sretenjski ustav – oruđe vladavine i vesnik slobode, in: Mitrović, V., (ed.), 2004, *Ustav Knjažestva Srbije 1835,* Belgrade, Arhiv Srbije, p. 77.

6 Mirković, Z., 2017, *Srpska pravna istorija,* Belgrade, Pravni fakultet Univerziteta u Beogradu, p. 141. Mirković claims that provisions from the French Civil Code (CC) also found place in the SCC, which is slightly at odds with the mainstream opinion.

The SCC was drafted by Jovan Hadžić, a Serb from Austria, born in Sombor, who had been trained in Austrian law. Hadžić was a city senator in Novi Sad, as well as a writer and as such an opponent of Vuk Karadžić's language reform. The drafting of the SCC was an endeavor that took years. Hadžić translated the ABGB into Serbian, but also shortened it, trying to adapt its provisions to the social circumstances in Serbia, which is why the SCC is often referred to as a shortened version of the ABGB.[7] Such an opinion is founded on the texts of the two codes, but also on the order in which their provisions are presented and last but not least, on the identical approach to many legal institutes.

The method that Hadžić applied in drafting the SCC was nevertheless somewhat specific: in some cases he fused two or more Austrian paragraphs into one, while in other places he created two Serbian paragraphs out of one original paragraph. At the same time, he did not remain faithful to some of the definitions that existed in the ABGB.[8] It is nevertheless undoubtable that the ABGB was the source from which the SCC originated. The comparison of the two codes has led Miodrag Orlić to conclude that the SCC is "a copy weaker than the original" ("*neoriginalno delo, a slabiji od svog izvornika*"). Such a conclusion was based on what Orlić labeled as significant deficiencies of the SCC, as regards the entirety of its system, as well as the coherent meaning and clarity of certain provisions.[9]

In the light of this opinion and taking into account the fact that the text of the SCC is basically a translation of the ABGB, it should be pointed out that the SCC is not a codification of law, in the proper sense of the term. It was adopted in a country that previously did not have statutes in force, as a means of assembling them in a code. The SCC was a legal transplant of foreign law, namely the Austrian private law, as it had been codified in the early 19th century. Owing to the reception of Austrian law, Serbia became affiliated with the German legal family, or *Rechtskreis*.[10] The SCC marked the beginning of the process that followed. Serbia remained faithful to the German *Rechtskreis* by adopting several other codes

7 Thus, Avramović, S., The Serbian Civil Code of 1844: A Battleground of Legal Traditions, in: Simon, Th., (ed.), 2017, *Konflikt und Koexistenz. Die Rechtsordnungen Südosteuropas im 19. und 20. Jahrhundert, Band II*, Vittorio Klostermann, Frankfurt am Main, p. 381, with reference to Brauneder.

8 On the method Hadžić used cf. Popović, D., 2005, *Uvod u uporedno pravo,* Belgrade, Fakultet za poslovno pravo, pp. 124–127.

9 Orlić, M., Pravna vrednost Srpskog građanskog zakonika, in: Jovičić, M., (ed.), 1996, *Sto pedeset godina od donošenja Srpskog građanskog zakonika (1844–1994),* Belgrade, Srpska akademija nauka i umetnosti, p. 386, translated by author.

10 Zweigert, H., Kötz, H., 1998, *Introduction to Comparative Law*, Oxford, OUP, p. 166.

with German inspiration. This was the case of the Criminal Code and the two codes on procedure.[11]

3. Foreign Cultural Influences in the Implementation of the SCC

The reception of Austrian private law and the affiliation to the German legal family created a need for young Serbs to seek legal training abroad. Legal training had existed in Serbia since the early 1840s, but the desire to achieve more refined knowledge led Serbian students to European universities. Notably, it was not Austria that predominantly attracted Serbian scholars, despite the fact that its private law had been transplanted in Serbia. The leading idea, so it seems, was to avoid the exaggerated cultural and political influence of the great empire bordering Serbia. The fact that the young Serbian nation state sought its own path, in an attempt to balance various political and cultural influences of foreign countries, made an impact on Serbian legal developments.

Among the Serbian lawyers born prior to 1821, Filip Hristić (born 1819), Dimitrije Crnobarac (1818) and Konstantin Nikolajević (1821) studied law in France; however Hristić had previously also studied in Vienna. Dimitrije Matić (born 1821) studied in Germany, where he also received a doctorate. Among those born between 1825 and 1829, Đorđe Cenić and Kosta Cukić studied law in Germany. Rajko Lešjanin received legal training both in Germany and France, as was the case with the youngest in this group, Jevrem Grujić. Cenić specialized in criminal law, whereas Lešjanin lectured Roman law at the university. Matić had taught before them for a short period. His course, labeled Fatherland Law, included private and constitutional law.

In the mid-19th century the German lands still had not achieved political unity, while Austria and Prussia were the greatest rivals for domination. Although the Prussia was more distant of the two, its criminal law was adopted in Serbia. Serbian students often went to Berlin to receive legal training. Other German lands also attracted young Serbs, who attended their old and acclaimed universities. At the same time, there was a trend to obtain legal training in France, which makes it difficult today to distinguish the role that political reasons played when young people decided at which foreign universities to pursue the study of law.

The Serbian government's political relations with France may have been decisive in some cases, with students from Serbia going to that coun-

11 Popović, D., 2005, pp. 127–128.

try for training in law. This produced long-term effects, leading to the spontaneous reception of the French legal thought in Serbia. In the area of private law, the forerunner of French influence was Đorđe Pavlović (born 1838), who graduated in law from the University of Paris in 1862. On his return to Serbia, he was a university professor of law from 1864 to1871. In 1868 Pavlović published a book on the Serbian law of mortgage, which he interpreted in view of the French legal doctrine. It was a clear example of spontaneous reception of the French legal thought in Serbian law.[12]

The French cultural influence gained ground in Serbia in the second half of the 19th century, bearing fruits in the legal doctrine. On the one hand many renowned Serbian professors of law had received training in France, while on the other Serbia continued its affiliation with the German legal family, predominantly owing to legislative transplants. The SCC stood out among them. However, legal thought was also important. For instance, Professor Živojin Perić, who taught private law, and Professor Toma Živanović, who taught criminal law, had both received their training in law in Paris. Despite that, they were greatly influenced by German legal doctrine.[13] The foreign influences on Serbian law were multifarious. Serbia was predominantly affiliated with the German legal family even if we consider the contribution to the developments of Serbian legal thought made by the professors who studied law in France. This can be illustrated by an example.

Serbian Professor Andra Đorđević, trained in law in France, taught his students on the prerequisites of liability in tort, taking the stand of the German law and doctrine on the subject. Đorđević enumerated three general conditions of tort liability. They were the causation of damage (1) by an illegal act by the tortfeasor (2), and the attributability of the illegal act to the tortfeasor (3).[14] Notably, Đorđević transgressed the framework of the SCC, which provided for tort liability founded on fault (paras 800 and 801). Paragraph 1295 of the ABGB did the same. Neither of these provisions required the illegality of the tortfeasor's act. The same applies to Article 1382 of the French Civil Code (CC), *i.e.*, the code of the country in which Đorđević graduated from law school. Article 1382 CC mentioned only the notion of *faute*, as the foundation of civil liability.

Despite all that, the Serbian professor, a holder of a French law degree, made a distinction between two notions. One was the illegality of the tortfeasor's act and the other its attributability to the tortfeasor, *i.e.*,

12 *Ibid.*, p. 103.

13 *Ibid.,* p. 128.

14 Đorđević, A., 1896, *Sistem privatnog (građanskog) prava Kraljevine Srbije u vezi s međunarodnim privatnim pravom, Opšti deo*, Belgrade, pp. 177–178.

the tortfeasor's fault. This was at odds with the SCC, the ABGB, and the French CC. Taking into account the year in which Đorđević published his book, it cannot be excluded that the Serbian professor found inspiration for his stance in the draft of the German Civil Code (BGB) or in the German legal doctrine on the subject. German law required both the illegality of the tortfeasor's act and his fault (*Rechtswidrigkeit/Verschulden*) to construe civil liability for damages. Serbian professors of law sought inspiration in the contemporary legal doctrine of various countries, thus creating an amalgamation of foreign legal influences on Serbian law and its developments.

4. The SCC in Yugoslavia

The SCC was of peculiar importance after World War I, following the formation of Yugoslavia, as it served as an element of cohesion in the newly-formed country. The reason for this was simple. The ABGB was in force in the western parts of Yugoslavia, which were part of Austria-Hungary prior to World War I. Since the SCC had been modelled after the ABGB, the similarities between the two codes facilitated trade between the parts of the country in which the SCC and the ABGB were in force.

The efforts to draft a Yugoslav Civil Code (YCC) almost coincided with the creation of that country. The ABGB was chosen as the starting point for the drafting of the YCC. Serbian jurists accepted such an idea, because of similarity of the SCC and the ABGB, which was in force in the western parts of the country. The only part of Yugoslavia that had not experienced the influence of the Austrian private law was the relatively small territory of the prewar Kingdom of Montenegro, where its own code applied. In the areas of family law and the law of succession, Islamic law was in force in Yugoslavia between the two world wars. This was due to the obligations of Yugoslav state under international law, *i.e.*, the peace treaties that ended World War I. Islamic law applied as a personal statute of the Yugoslav citizens who were Muslim.[15]

The drafting of the YCC began as early as 1919, when the Permanent Legislative Council was formed within the Ministry of Justice. Its Private Law Division was charged with the drafting the YCC. This body pursued its activity for many years. In 1934 it published a Pre-draft (*Predosnova*) of the YCC. It contained more than 1,400 paragraphs and served as a basis for discussion among jurists and the general public. However, the political

15 Mirković, Z., 2017, p. 238.

circumstances and eventually the collapse of the Yugoslav Kingdom put an end to the efforts aimed at codifying the Yugoslav private law.[16]

5. Abrogation and Survival

Longevity was not one of the traits of the SCC, it having remained in force for a century. The socialist revolution proceeded to abrogate the entire body of prewar law in Yugoslavia in early 1945, when the provisional parliament adopted a decision on the issue. This was subsequently transformed into law by the regular parliament in March 1946.[17] These acts put an end *inter alia* to the application of the SCC. The leaders of the socialist revolution in Yugoslavia wanted to abolish the entire bourgeois law, but such a task was not easy by any means. The statute on abrogation permitted the implementation of prewar law, as so-called "legal rules", provided they did not conflict with the revolutionary *acquis*; this also applied to the provisions of the SCC.[18]

Soon after the end of World War II, new legislation was adopted in socialist Yugoslavia, especially in the areas of family law and the law of succession. Those were the areas in which the provisions of the SCC were mostly backward and could not fit the needs and challenges of modern times. For example, it prescribed compulsory religious marriage and priority of male persons in succession *ab intestato*. The situation was different as far as the law of obligations, *i.e.*, the law of contracts and torts, was concerned. In that area of law the discrepancy with the attitudes of the socialist revolution was smaller than in the two areas previously mentioned. That is why the courts continued to implement the provisions of the SCC (as so-called "legal rules") for years.

The most important innovation in Yugoslav private law was introduced in the late 1970s, with the adoption of the Law of Contract and Torts (Zakon o obligacionim odnosima), which was a milestone. Only modestly amended, the Yugoslav Law of Contract and Torts (LCT) of 1978 is still in force in all the successor states, *i.e.*, former Yugoslav republics. The author

16 For more details cf. Mirković, Z., Kodifikovanje građanskog zakonika nove države i njegovo mesto u istoriji međuratnih evropskih kodifikacija, in: Begović, B., Mirković, Z., (eds.), 2020, *Sto godina od ujedinjenja – formiranje države i prava,* Belgrade, Pravni fakultet Univerziteta u Beogradu, pp. 270–280.

17 Mirković, Z. S., Nulta tačka socijalističkog prava: poništavanje zatečenog pravnog poretka, in: Popović, D., Begović, B., Mirković, Z. S., (eds.), 2024, *Socijalističko pravo u Jugoslaviji 1945–1990, I,* Belgrade, Pravni fakultet Univerziteta u Beogradu, p. 184.

18 On the Law on Abrogation and implementation of "legal rules" cf. Mirković, Z. S., *Ibid.*, pp. 189–194.

of the LCT draft was Professor Mihailo Konstantinović, from the University of Belgrade Faculty of Law. The LCT repealed the relevant provisions of the SCC to a greater extent than the general formal abrogation of the prewar law, which contained a permissive retainment formula. Contemporary legal authors extensively discussed the relation of the LCT to the socialist principles.[19] The LCT was nevertheless drafted in view of contemporary foreign law and modern legal institutions. With the adoption of new law of contract and torts, the language of the SCC with its old-fashioned expressions also became obsolete. The SCC for the most part lost its previous, although slight, connection with positive law.[20]

6. The SCC, Legal Doctrine and Case-Law

While the SCC was still in force, Serbian academics expanded the doctrinal approach to the private law in the sense that they followed different foreign role models, and not exclusively that of Austrian law, which had inspired the Serbian legislation. The ABGB and the jurisprudence based on it were not decisive for the developments of Serbian legal thought. This leads to the question of the relations between the SCC and the case law based on it, as well as of the connection between the legal doctrine and both the SCC text and its case law.

The case law in Serbia, and later on in Yugoslavia, has basically been faithful to the rules on the interpretation of law posed by the provisions of the SCC. The courts thoroughly performed exegesis, following the German rather than the French role model in this respect. What the French call *la jurisprudence prétorienne* has never taken root in Serbia. Case law has only modestly contributed to the evolution of Serbian law. On the one hand Serbian judges have always considered the legal text to be more important than its interpretation given by the courts; on the other, learned lawyers and professors of law have never focused on the case law. The situation existing in Serbia remained the same in Yugoslavia: the case law could not achieve the rank enjoyed by the legislation and doctrine. That is why the case law founded on the provisions of the SCC has never attracted too much attention among academics.

19 cf. Cvetković, M., Arsenijević, B., Socijalističko obligaciono pravo, in: Popović, D., Begović, B., Mirković, Z. S., (eds.), 2024, *Socijalističko pravo u Jugoslaviji 1945–1990, III,* Belgrade, Pravni fakultet Univerziteta u Beogradu, pp. 1146–1152.

20 cf. Vodinelić, V., Sto pedeset godina kasnije: Šta je još živo u Srpskom građanskom zakoniku?, in: Jovičić, M., (ed.), 1996, *Sto pedeset godina od donošenja Srpskog građanskog zakonika (1844–1994*), Belgrade, Srpska akademija nauka i umetnosti, pp. 389–394.

The case law both in Serbia and Yugoslavia reminded of the canker-blossom from Shakespear's Sonnet 54: "they live unwoo'd, and unrespected fade; Die to themselves". Court judgments were rarely commented and poorly discussed. They were kept outside of the university curricula and did not play an important role in legal developments. A fairly illustrative example is put forward by Marija Karanikić-Mirić, referencing a group of cases adjudicated by Yugoslav courts in the mid-1950s, commented by Branko Bazala. Although the courts in those judgments had decided on the strict liability for damages, the judgments did not provide a basis for doctrine and academics to create a coherent theory of strict liability.[21] Academics instead sought inspiration in comparative law and foreign legal thought, leading to the pattern of strict liability being received from abroad decades later.

7. Conclusion

Taking account of what has been highlighted above, what is the role of the SCC in the legal developments, where does it now stand and what is its meaning, a hundred and eighty years after its adoption and eighty years after the formal abrogation? The SCC is most certainly one of the outstanding vestiges of Serbian legal history, however, its significance is by no means easy to determine and several facts should be considered in an effort to do so.

The first is the fact that the SCC connected modern Serbia with Roman law, which is one of civilization's most important assets. The SCC was modelled after the ABGB, which for its part relied on Roman law, *i.e.*, both on *ius commune*, as it had been in force in Austrian crown lands prior to the codification of private law, and Justinian's codification.[22] Serbian legal developments were interrupted by the Ottoman conquest. The Roman law, which had been in force in medieval Serbia, relying on Byzantine sources, was no longer in use at the dawn of the modern period. It was owing to the provisions of the SCC that modern Serbia established links with Roman law. It is not fundamentally important whether and to

21 Karanikić-Mirić, M., Odgovornost za štetu po Srpskom građanskom zakoniku: Jedan osnov ili njihova množina? (Grounds of Tort Liability under Serbian Civil Code of 1844: One or a Plurality of Criterions of Imputation?), in: Polojac, M., Mirković, Z., Đurđević, Z., (eds.), 2014, *Srpski građanski zakonik – 170 godina,* Belgrade, Pravni fakultet Univerziteta u Beogradu, p. 330.

22 Danilović, J., Srpski građanski zakon i rimsko pravo, in: Jovičić, M., (ed.), 1996, *Sto pedeset godina od donošenja Srpskog građanskog zakonika (1844–1994),* Belgrade, Srpska akademija nauka i umetnosti, p. 49.

what extent Roman law was received directly, *i.e.*, without mediation of the ABGB. Hadžić may have taken some of the norms directly from Roman sources, regardless of the provisions of the ABGB, the definition of will (testament) being one example. The general impression is that Hadžić took it from the Digest of Justinian, for it better fits the text of Modestinus, contained in D 28.1.1, than the relevant provision of the ABGB.[23] However, irrespective of how Roman law penetrated the SCC, it is due to the legal transplant that Serbian law became based on Romanistic tradition, enabling Serbia to find its place among the countries of European continental law.

Since Roman law had not been in use in Serbia immediately after the liberation from the Ottoman rule, there was a lack of modern legal terms in Serbian language. In other words, there was no modern legal vocabulary. Jelena Danilović rightly pointed out, on the one hundred and fiftieth anniversary of the SCC, that its drafter, Jovan Hadžić, was indeed a pioneer in "creating legal terms, most of which were generally accepted in the Serbian legal vocabulary" ("*stvaranje pravnih termina od kojih je većina postala opšte prihvaćena u srpskom pravnom rečniku*").[24] The drafter of the SCC, Jovan Hadžić, introduced modern legal terms into Serbian private law.

It is of interest at this point to confront the abovementioned Vodinelić's remark regarding the obsolete language of the SCC, to another remark he made, notably that some of the expressions stemming from the SCC are still in use to date. To illustrate the old fashined language manner of the SCC one could quote, as an example, its paragraf 40, which reads: "The laws provide protection to those who are deprived of sound reason or free will, either in full or in part, such as those who are dumbfound, amuck, crazy, possessed" ("*Zakoni uzimaju u zaštitu i one koji su razuma i slobodne volje ili sasvim ili od česti lišeni, kao što su zgranuti, besomučni, ludi, sumanuti*").[25]

The quoted provision features contemporaneous forms of expression and the use of the vulgar common colloquial words; the form in which it was drafted does not fit modern legal vocabulary. Nevertheless, there are expressions originating in the SCC that continue to exist to this day, despite the developments that occurred in the meantime. For instance, Professor

23 Knežić-Popović, D., Udeo izvornog rimskog prava u Srpskom građanskom zakoniku, in: Jovičić, M., (ed.), 1996, *Sto pedeset godina od donošenja Srpskog građanskog zakonika (1844–1994),* p. 76, where the author points out the definition in D 28.1.1, stemming from Modestinus.

24 Danilović, J., 1996, p. 64, translated by author.

25 Translated by author.

Konstantinović, the drafter of the LCT, introduced in its very first paragraph a new expression for the notion of unjust enrichment (*sticanje bez osnova*). The new expression, introduced in 1978, remains one of positive law, however, the older term designating the same concept (*pravno neosnovano obogaćenje*), used by Hadžić in the text of the SCC, remains in use. It likely owes its survival to professors and curricula, but it is noteworthy that the older term is also still present in court judgments. An example is the judgment of the Supreme Court of Cassation of Serbia of 19 April 2018, in the case Rev. 1134/2017; in the text of the reasoning, the first passage, consisting of seven lines only, mentions unjust enrichment twice. In both cases the older term was used; the positive law expression has been fairly neglected. In brief, the judges of the highest court of the country, at least occasionally, still borrow the expression from the SCC, despite the fact that the new term was introduced almost half a century ago.

Notwithstanding all the deficiencies – the slow process of decline of the SCC text, its obsolete form and outdated institutions – there are provisions in the SCC that still defy the passage of time and the changes that come with it, making them still applicable. Vladimir Vodinelić pointed out some of them a quarter of century ago, but his observations still stand. Above all he mentioned the rules of the SCC on the interpretation of law.[26]

The SCC is an old code, containing archaic expressions and institutes that do not correspond to modern society and its significant transformations, but it has by no means been left to oblivion. The old code does not exclusively belong to the realm of history.

Bibliography

1. Avramović, S., The Serbian Civil Code of 1844: A Battleground of Legal Traditions, in: Simon, Th. (Hg.), (ed.), 2017, *Konflikt und Koexistenz. Die Rechtsordnungen Südosteuropas im 19. und 20. Jahrhundert, Band II*, Frankfurt am Main, Vittorio Klostermann, pp. 379–482.
2. Cvetković, M., Arsenijević, B., Socijalističko obligaciono pravo, in: Popović, D., Begović, B., Mirković, Z. S., (eds.), 2024, *Socijalističko pravo u Jugoslaviji 1945–1990, III*, Belgrade, Pravni fakultet Univerziteta u Beogradu, pp. 1127–1176.
3. Danilović, A., Srpski građanski zakon i rimsko pravo, in: Jovičić, M., (ed.), 1996, *Sto pedeset godina od donošenja Srpskog građanskog zakonika (1844–1994),* Belgrade, Srpska akademija nauka i umetnosti, pp. 49–65.
4. Đorđević, A., 1896, *Sistem privatnog (građanskog) prava Kraljevine Srbije u vezi s međunarodnim privatnim pravom, Opšti deo*, Belgrade, Kraljevska srpska državna štamparija.

26 Vodinelić, V., 1996, p. 404.

5. Jovanović, A., 1909, *Rad na toržestvenim zakonima*, Belgrade, Arhiv za pravne i društvene nauke.
6. Jovanović, A., 1911, *Rad na toržestvenim zakonima II, Doterivanje prevoda*, Belgrade, Arhiv za pravne i društvene nauke.
7. Karanikić-Mirić, M., Odgovornost za štetu po Srpskom građanskom zakoniku: Jedan osnov ili njihova množina? (Grounds of Tort Liability under Serbian Civil Code of 1844: One or a Plurality of Criterions of Imputation?), in: Polojac, M., Mirković, Z., Đurđević, M., (eds.), 2014, *Srpski građanski zakonik – 170 godina*, Belgrade, Pravni fakultet Univerziteta u Beogradu, pp. 319–341.
8. Knežić-Popović, D., Udeo izvornog rimskog prava u Srpskom građanskom zakoniku, in: Jovičić, M., (ed.), 1996, *Sto pedeset godina od donošenja Srpskog građanskog zakonika (1844–1994),* Belgrade, Srpska akademija nauka i umetnosti, pp. 67–78.
9. Mirković, Z., 2017, *Srpska pravna istorija*, Belgrade, Pravni fakultet Univerziteta u Beogradu.
10. Mirković, Z., Kodifikovanje građanskog zakonika nove države i njegovo mesto u istoriji međuratnih evropskih kodifikacija, in: Begović, B., Mirković, Z., (eds.), 2020, *Sto godina od ujedinjenja – formiranje države i prava*, Belgrade, Pravni fakultet Univerziteta u Beogradu, pp. 267-300.
11. Mirković, Z., Nulta tačka socijalističkog prava: poništavanje zatečenog pravnog poretka, in: Popović, D., Begović, B., Mirković, Z. S., (eds.), 2024, *Socijalističko pravo u Jugoslaviji 1945–1990, I,* Belgrade, Pravni fakultet Univerziteta u Beogradu, pp. 169–214.
12. Orlić, M., Pravna vrednost Srpskog građanskog zakonika, in: Jovičić, M., (ed.), 1996, *Sto pedeset godina od donošenja Srpskog građanskog zakonika (1844–1994),* Belgrade, Srpska akademija nauka i umetnosti, pp. 373–387.
13. Popović, D., Dva oprečna shvatanja o vladavini prava u obnovljenoj Srbiji, in: Vasilijević, V., (ed.), 1991, *Pravna država*, Belgrade, Institut za kriminološka i sociološka istraživanja, pp. 29–37.
14. Popović, D., Sretenjski ustav – oruđe vladavine i vesnik slobode, in: Mitrović, V., (ed.), 2004, *Ustav Knjažestva Srbije 1835,* Belgrade, Arhiv Srbije, pp. 73–78.
15. Popović, D., 2005, *Uvod u uporedno pravo*, Belgrade, Fakultet za poslovno pravo.
16. The State Archives of Serbia, Fund of the Prince's Chancery, VI–929.
17. Vodinelić, V., Sto pedeset godina kasnije: Šta je još živo u Srpskom građanskom zakoniku?, in: Jovičić, M., (ed.), 1996, *Sto pedeset godina od donošenja Srpskog građanskog zakonika (1844–1994)*, Belgrade, Srpska akademija nauka i umetnosti, pp. 389–407.
18. Zweigert, K., Kötz, H., 1998, *Introduction to Comparative Law*, Oxford, OUP.

SRPSKI GRAĐANSKI ZAKONIK TOKOM ISTORIJE

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APSTRAKT

Srpski građanski zakonik (SGZ) iz 1844, sačinjen po ugledu na austrijski Opšti građanski zakonik (ABGB), predstavljao je recepciju austrijskog privatnog prava. Tokom primene SGZ došlo je do prihvatanja različitih kulturnih uticaja i spontane recepcije francuske pravne doktrine u Srbiji. U zajedničkoj jugoslovenskoj državi SGZ je bio kohezioni činilac, zato što je u najvećem delu zemlje u primeni bio ABGB, koji je bio izvornik SGZ. Socijalistička revolucija je abrogirala čitav korpus starog prava. Sudovi su ipak primenjivali odredbe SGZ, ako nisu bile u suprotnosti s tekovinama revolucije. Sudska praksa na osnovu SGZ nije zauzela mnogo mesta ni u pravnoj nauci, ni u univerzitetskoj nastavi. SGZ je u istoriji našeg prava igrao važnu ulogu zato što je, usvojivši romanističku osnovu austrijskog prava, učinio Srbiju zemljom evropskog kontinentalnog prava. Bio je značajan i za stvaranje terminologije srpskog privatnog prava, a neke odredbe SGZ, uprkos proteku vremena, još uvek su aktuelne.

Ključne reči: Građanski zakonik, recepcija, Srbija, Austrija, Hadžić, abrogacija, kodifikacija, pravna terminologija.

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