

Leo KOJČINOVIĆ: General Civil Code in Croatia and Slavonia from 1853 to 1918

University of Zagreb, Faculty of Law

DOI 10.21862/siaa.6.2

1. Introduction

Along with the French *Code Civil* and the Prussian *General Landlaw*, the General Civil Code is considered one of the first European codifications of private law. Systematized on the model of Gaius' *Institutiones*, the General Civil Code is characterized by a simple style and language, short and concise formulations of legal terms and institutions, and abstractly conceived rules.¹ The General Civil Code was called "general" because it was valid for all citizens regardless of their class affiliation. The introduction of the General Civil Code in Croatia opened the way to the affirmation of the civil class and the establishment of a civil society, but also the incorporation of the Croatian legal order into the modern Central European legal system, which is exactly what this paper deals with.

2. From Maria Theresa's initiative to the "first" European codification of private law

With the absolutist rise of the state in the second half of the 18th century, the systematic development of law began in Austria, which was especially reflected in the adoption of the General Civil Code, on which work began as early as 1753 on Maria Theresa's own initiative. Thirteen years later, i.e. in 1766, a draft of the civil code called *Codex Theresianus iuris civilis* was prepared, but Maria Theresa rejected it due to its

¹ Opći građanski zakonik [General Civil Code]. Hrvatska enciklopedija, mrežno izdanje [Croatian encyclopedia, online edition]. Leksikografski zavod Miroslav Krleža, 2021, <http://www.enciklopedija.hr/Natuknica.aspx?ID=45220> [Access on November 1 2022].

excessiveness and numerous ambiguities and sent it for further refinement. The jurist and court adviser Benjamin Horten reworked the first part of the Codex, but further modifications were requested with certain instructions. Part of Horten's revised *Codex* was sanctioned in 1786, and in 1787 it entered into force as the *Josephine Codex* in all Austrian successor states.²

After the 1766 revision of the *Codex*, which included its first part that was in force as the Josephine Codex, in 1797 the fourth draft of the Codex came into force in the Austrian province of Galicia. After verifying its institutes through practical application, the *Galician Code* was revised under the leadership of the distinguished Viennese university professor and judge Franz von Zeiller and was proclaimed by imperial patent on June 1, 1811, and on January 1, 1812, it entered into force in the Austrian successor states and Military Border.³

The General Civil Code came into force after the Prussian General Land Code of 1794 and the French Code Civil of 1804. Although younger, unlike the Prussian General Land Code, the General Civil Code was the first true codification of private law, while the Prussian General Land Code regulated almost the entire legal order.⁴

3. Basic features of the General Civil Code

The General Civil Code is an extensive codification made up of 1502 articles divided into three parts based on the example of Gaius' *Institutiones*. The first part consists of provisions on the law of persons (personal and family law). The second part deals with institutions of real, mandatory and hereditary law (e.g. ownership, pledge, servitude,

² KREŠIĆ, Mirela: Nasljednopravna načela Općega građanskog zakonika u praksi hrvatsko-slavonskih ostavinskih sudova [General Civil Code Inheritance Principles in the Practice of Croatian-Slavonian Probate Courts], *Zbornik Pravnog fakulteta u Zagrebu*, Vol. 63 No. 5–6, 2013, p. 1097.

³ ČEPULO, Dalibor: *Hrvatska pravna povijest u europskom kontekstu od srednjeg vijeka do suvremenog doba* [Croatian legal history in the European context from the Middle Ages to modern times], Pravni fakultet Sveučilišta u Zagrebu, Zagreb, 2021., p. 27.

⁴ BRAUNEDER, Wilhelm: The "First" European Codification of Private Law: The ABGB, *Zbornik Pravnog fakulteta u Zagrebu*, Vol. 63 No. 5-6, 2013., pp. 1019–1020.

certain types of contracts), while the third part contains provisions common to the law of persons and real law (emergence and termination of rights and obligations, statute of limitations and succession).

The General Civil Code represents a successful combination of the German legal tradition in the form of received (pandect) Roman law and the ideas of the school of natural law characteristic of the enlightened 18th century in which it was mainly created.⁵ Precisely because of this, but also because of its simplicity and comprehensibility, it has been used for a long time. In addition, it significantly influenced other legal systems as a model in creating their own civil codes, such as the Swiss cantons of Bern, Lucerne, Solothurn and Aargau, as well as Moldova, Serbia and Montenegro.⁶

Private property, despite the prevailing type of shared property at the time, represented the backbone of the General Civil Code and suffered almost no restrictions. Such a relationship with private property caused a double effect. On the one hand it encouraged the development of capitalist entrepreneurship and individualization, while on the other hand it encouraged the process of disintegration of household cooperatives that were based on collective ownership and which were the basis of existence for the poor peasantry anyway.

4. “The other side of the coin”

In addition to the previously highlighted natural law and individualistic features, the General Civil Code also contained visible influences of feudal law and conservative and patriarchal provisions aligned with the general social understandings of that era. Thus, according to the General Civil Code, there was no possibility of marriage between members of Christian and non-Christian religions, while illegitimate children were excluded “from the rights of family and relatives”, even in the case of subsequent

⁵ ČEPULO, *op. cit.*, p. 156.

⁶ BRAUNEDER, *op. cit.*, p. 1023.

adoption.⁷ In addition, despite the principle of inviolability of private property and freedom of bequests, the General Civil Code nevertheless recognized family fideicommissum, as an inalienable hereditary asset, and status class rights, such as the noble right to a coat of arms.

5. Introduction of the General Civil Code in Croatia and Slavonia

The General Civil Code in Croatia and Slavonia entered into force on May 1, 1853, based on the imperial decree of November 29, 1852. Its introduction into the legal order of Croatia and Slavonia represented a necessary break with the earlier feudal legal and social order.⁸

The entry into force of the General Civil Code meant the establishment of a legal and social order based on the postulates of individualism and liberalism, which paved the way for the affirmation of the civil class and the establishment of civil society, as well as the incorporation of the Croatian legal order into the modern Central European legal system.

Nevertheless, the introduction of the General Civil Code initially had few positive repercussions. Those whose interests based on the feudal system were threatened by new individualistic and liberal norms. In addition threatened were also those who were guided by conservative views and those who were fundamentally opposed to all Austrian laws because of the way they were introduced in Croatia and Slavonia.⁹

⁷ ČEPULO, *op. cit.*, p. 157.

⁸ GAVELLA, Nikola: *Teorijske osnove građanskog prava. Građansko pravo i pripadnost hrvatskog pravnog poretka u kontinentalno- europskom pravnom krugu* [Theoretical foundations of civil law. Civil law and belonging to the Croatian legal order in the continental-European legal circle]. Pravni fakultet Sveučilišta u Zagrebu, Zagreb, 2005., p. 32

⁹ *Ibid.*, p. 33.

6. The fate of the General Civil Code after the fall of absolutism

The October diploma of 1860 introduced a provisional constitutional arrangement. Because of this, a fierce agitation began against all laws that were introduced as common during the time of absolutism for the entire Habsburg Monarchy. This process was particularly prevalent in Hungary, so after the Hungarian Table of Seven was organized, the so-called the Judexcurial Conference, which after the deliberations were completed, proposed the re-establishment of the earlier Hungarian homeland law, i.e. the repeal of the General Civil Code, which the Hungarian Parliament accepted. This re-established the earlier Hungarian law in Hungary, but with certain inevitable changes caused by new social circumstances, which mainly related to inheritance law and maintenance and to civil law institutes in connection with the 1855 land order.¹⁰

Despite different views, in Croatia the General Civil Code remains in force as part of the Croatian legal system. Such a conclusion is derived from the Instructions for the temporary arrangement of Croatian counties drawn up in early January 1861 by the Ban conference under the chairmanship of ban Josip Šokčević, which stated that the previous laws would remain in force until further notice.¹¹ The Croatian Parliament in 1861 confirmed the position of the Conference on maintaining the Austrian laws, introduced through patents during the period of absolutism, until they are explicitly repealed or modified. In addition, a strong reason for keeping the General Civil Code in force in Croatia and Slavonia was the intense economic connection with neighbouring countries under the Austrian crown, but also the high opinion of the lawyers of the new generation, especially those who were educated at Austrian universities, about the quality of the General Civil Code.¹²

¹⁰ DERENČIN, Marijan: *Tumač k obćemu austrijskomu građanskomu zakoniku [Interpreter to the Austrian General Civil Code]*. Zagreb, 1880–1883., p. 17.

¹¹ KREŠIĆ, *op. cit.*, pp. 1098–1099.

¹² MAUROVIĆ, Ivan: *Das österreichische allgemeine bürgerliche Gesetzbuch in Kroatien [The Austrian General Civil Code in Croatia]*. Vienna, 1912, p. 699.

7. Croatian-Hungarian settlement of 1868 and the amendments to the General Civil Code

With the conclusion of the Croatian-Hungarian settlement of 1868, Croatia was granted complete autonomy with regard to legislation and administration in all internal affairs, worship, education and the judiciary. Accordingly, since it was not repealed, the General Civil Code continued to be valid, but as the Croatian Civil Code, and no longer as the Austrian Civil Code, which is why its content was not affected by later Austrian amendments from 1914, 1915 and 1916 nor Austrian case law.

Novels from 1914, 1915 and 1916 represent a series of adaptations of the General Civil Code to the changed social environment. Since they were implemented in the Austrian legislation, they were introduced only in the countries under the Austrian crown, and thus also in Istria and Dalmatia. The main changes introduced restrictions on property rights with the aim of reducing the abuse of that right, expanded the reasons for annulment of legal transactions, improved the position of women as legal heirs, and recognized illegitimate children as having the necessary right of inheritance towards their mother's relatives.¹³

8. Attempt to amend the "Croatian General Civil Code"

Attempts to amend the "Croatian General Civil Code" in the period up to 1918 came in three waves.¹⁴ The first wave of these attempts was in the period between 1860 and 1870 and was characterized by the fact that the retention of the General Civil Code in force in Croatia was seriously questioned. In that period, the Parliament established a judicial committee, which created the Basics of the Croatian General Civil Code, as a version of the General Civil Code, made up for the most part from the literal adoption of the rules of the General Civil Code. Since the parliamentary plenum did not discuss

¹³ ČEPULO, *op. cit.*, p. 157.

¹⁴ MAUROVIĆ, Ivan, *Nastojanja i pokušaji da se reformira Opći građanski zakonik [Efforts and attempts to reform the General Civil Code]*. Zagreb, 1940, pp. 86–91.

the Basics of the Croatian General Civil Code on two occasions, the first in a series of attempts to amend the "Croatian General Civil Code" ended unsuccessfully.

The idea of reforming the "Croatian General Civil Code" began to be discussed again at the initiative of Franjo Spevac, who proposed revising the General Civil Code with the adoption of provisions that correspond to Croatian conditions and the addition of provisions for the independent regulation of relations different from Austrian ones. Like the previous attempt to create a new code, this attempt to reform the General Civil Code was unfortunately not successful.

In the third wave, in 1917, the Croatian Land Government entrusted Slavoljub Popović with revising the "Croatian General Civil Code" according to the Austrian amendments from 1914, 1915 and 1916, with instructions to completely adopt Austrian norms wherever possible and add only necessary changes. However, with the collapse of the state in 1918, Popović's successfully completed task did not become law.

9. Conclusion

The effect of the General Civil Code in Croatia and Slavonia was twofold. On the one hand, its introduction paved the way for the incorporation of the Croatian legal order into the modern Central European legal and social order based on the postulates of individualism and liberalism, which encouraged the development of capitalist entrepreneurship and individualization. On the other hand, with the introduction of the General Civil Code, the process of dissolution of household cooperatives, which were based on collective ownership and which were the basis of existence for the poor peasantry anyway, was strengthened. Nevertheless, in the end it is important to emphasize that the General Civil Code, by successfully combining the German legal tradition in the form of received (pandect) Roman law and the ideas of the school of natural law characteristic of the enlightened 18th century, had a deep and lasting impact in the Central European and Croatian environment.