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The Current State of Recodification Works of Slovak Private Law and Its Perspectives (A New Civil Code *per partes* or *en block*?)

- **ABSTRACT:** *The article discusses the current state of the ongoing process of private law recodification in the Slovak Republic. Despite the efforts promised by every new government, to this day, none of them have achieved a recodification of civil law that would ultimately result in unambiguous treatment of, in particular, the so-called questions of values, nor have any of them seen through the creation of a codex, which has long been required. The need for recodification first became apparent even before the November 1989 Revolution. The focus of the expert public post-revolution was on filling the legal vacuum that came about through the abolition of the Economic Code and the Code of International Trade and on substituting them with a new and equivalent legal regulation. Due to time constraints and the urgent need for a solution to the given situation, the country failed to adopt a single universal regulation for private law; instead, the so-called major amendment of the previous Civil Code was adopted. This state has since prevailed; thus, Slovakia's legal system is still subject to a Civil Code from 1964, amended on several occasions, as well as the Commercial Code from 1991. This is despite the numerous attempts to recodify private law, the last attempt having been introduced to the public at the end of 2018. The form of this reform was, however, surprising. Slovakia saw a change in governments in 2020, and the new government has, to date, declared other priorities in the domain of justice. It is, therefore, difficult to say whether the new government will adopt the ambition to recodify private law and, if so, to what extent it will succeed in completing this goal.*
- **KEYWORDS:** recodification of private law, Civil Code, Commercial Code, the Legislative Intent of Codification of Private Law.

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1. Introduction

Since March 2020, Slovakia has had a new government, which, like all previous governments, in its declared program for 2020–2024, cites the need to recodify Slovak private law and simultaneously recommends that the authors of the new Slovak Civil Code should be inspired by the experiences of their foreign colleagues, namely those from the Czech Republic² (‘why create something that has already been created’). The current declared program explicitly states, *‘The Government of the Slovak Republic is committing to creating a new Civil Code and law on commercial entities, following a rigorous participative discussion about its basic legal institutions, on the basis of a common agreement; while taking into consideration the practical experience related to introducing the new Czech Civil Code into practice.’*³

The need to recodify private law, however, extends, in terms of timeframe, beyond the existence of the Slovak Republic, since the first efforts to create a new modern civil code date back to the common Czechoslovak state and even to the pre-November 1989 era when Czechoslovakia witnessed a momentous change in societal and political affairs.⁴

Despite many attempts and specific activities within the Slovak Republic, and in contrast with the Czech Republic as well as with Hungary, Romania, Estonia, and Russia, this recodification process has not yet been completed. The Slovak Republic thus remains one of the last countries to adopt recodification of private law out of all the previously socialist states of Eastern Europe.⁵

2. The current state of the Civil Code

Since 1964, private law in the Slovak Republic has been governed by the basic and general regulation of the Civil Code of 1964, that is, Art. No. 40/1964 Cc and its later regulations (henceforth referred to as the ‘Civil Code’).

Throughout its existence, it has been amended more than 60 times, while it is worth noting that out of the total amount, only four amendments were adopted prior to 1989 (before the so-called Velvet Revolution). The Amendment of the Civil Code, Art. No 509/1991 Cc, is considered to be of specific importance, as it essentially changed, or

2 The Czech Republic shared the contents of its Civil Code from 1964 with the Slovak Republic up until 2012, while after the separation of Czechoslovakia (i.e. since 1.1.1993), each country made its own edits of their respective Civil Codes. Unlike Slovakia, though, the Czech Republic managed to add a new private legal codex in 2012 (art. No. 89/2012 Cc), which came into force in 2014.

3 Declared program of the Slovak Republic’s government for the period 2020–2024, available at: <http://www.culture.gov.sk/programove-vyhlasenie-vlady-180.html>.

4 Eliáš, 2008, pp. 1–7.

5 Another of these countries that have yet to recodify their civil law is Poland.

amended, approximately 80% of the original text of the Civil Code.⁶ Despite its essential nature, the amendment did not manage to effectively address the ambiguity caused by the previous forty years of development of the so-called socialist private law.⁷ Latter amendments may have, in part, resolved these shortcomings; however, the amended changes lacked a set of unifying concept criteria. This was reflected in the applications of novelties and modern elements, which were introduced due to a current need to react to the external conditions rather than a need to make the law an organic unit (this was especially apparent at the time of transposition of directives dedicated to customer protection.)⁸

3. The progression of previous recodification work

Discussions about the conceptual questions, functionality, and effectiveness of the Civil Code and its relation to separate legal regulations began prior to the socio-political changes brought about by 1989, that is, when the Civil Code was restricted to a very narrow material scope, defined by the conditions and requirements of the current material and cultural needs of the citizens. Further aspects of material and personal relations were regulated by individual regulations, in particular the Economic Code (Art. No 109/1964 Cc), International Trade Code (Art. No 65/1965 Cc), Labour Code (Art. No 65/1965 Cc) and Family Code (Art. No 94/1963 Cc). The aforementioned laws, with the exception of the Family Code,⁹ were not explicitly linked to the Civil Code, and as a result, a significant separation between the individual material and personal relationships as well as an atomisation of the whole private law system ensued.

It was, therefore, logical that among the primary considerations of the recodification of private law, which were inevitable after 1989, the main aim of all involved experts was filling the legal void created by the abolition of the Economic Code and the Labour Code, rather than on removing the conceptual shortcomings of private law as a whole, or on the adoption of a brand new Civil Code (this particular solution was not popular because of the time strain the experts experienced in their work). As a result, the aforementioned major amendment of the Civil Code (Art. No 509/1991 Cc) and a new Commercial Code (Art. No 513/1991 Cc) were adopted, which, on one hand, signified a positive and necessary step in transforming private law based on the needs

6 Lazar et al., 2010, p. 96, as well as the approved Legislative Intent of the Civil Code; see at: <https://www.justice.gov.sk/Stranky/Nase-sluzby/Nase-projekty/Obciansky-zakonnik/Obciansky-zakonnik.aspx>.

7 Jurčová, 2007, p. 498.

8 Consumer contract, which was incorporated into the Civil Code via amendment no. 150/2004 Cc, found its place in the first (general) part of the Civil Code, in § 52f Cc, rather than in the general part on contractual law; for more information, see: Dulaková Jakúbeková, 2004, pp. 907–913; Dulaková Jakúbeková, 2008, p. 936–946.

9 Which explicitly contained a reference to the Civil Code; see § 104: *'The provisions of the Civil Code are to be used in instances when the law does not explicitly state differently.'*

of the new market economy, yet, from a long-term perspective, was not viewed as a conceptual solution.

In the subsequent years, academic discussions were held among legal theorists and practitioners alike. These discussions had the advantages—in contrast with the years immediately following 1989—of incorporating experience that resulted from the creation, implementation, and application of law within the framework of a market economy, which, in turn, resulted in a more developed degree of critical thinking.

The ‘real recodification’ of the Civil Code in the Slovak Republic began in 1996, when a commission, led by Professor Karol Plank (1927–1997), was established to prepare the new Civil Code. This commission worked under extraordinary time pressure caused by the Ministry of Justice of the Slovak Republic itself, which expected a new draft of the Civil Code to be delivered by the commission *in paragraph form in the same calendar year*; the expected deadline was set for October. *It was an unrealistic expectation that put the head of the commission in an unenviable position. There was no time for a discussion or deeper analyses. After delivering the first draft in 1997, the members of the recodification committee never gathered again.*¹⁰ After his death, Prof. Plank was replaced as head of the committee by Prof. Ján Lazar.¹¹ Under his leadership, the committee created a second draft of the Civil Code in 1998, but this version only amended or completed the previous draft. Despite the fact that this draft had also not been subjected to a wider expert discussion,¹² it was approved by the Government of the Slovak Republic that same year. The expert public raised serious objections against the draft,¹³ which, combined with political and personal changes at the corresponding ministries,¹⁴ resulted in the draft not being picked up again, and it was withdrawn from the legislative process.

This effort as well as those that followed can be well captured by the following quote: *‘Unfortunately [...] the recodification of private law is influenced by politics to the extent that they not only affect the start and speed of work on the codex, but its evaluation as well.’*¹⁵

10 Vojčík, P., in: <http://wwwold.justice.sk/kop/inf-rek.htm>.

11 Prof. Lazar is a personal friend of the influential Hungarian civil lawyer, Prof. Lajos Vékás. Prof. Lazar and Prof. Vékás regularly attended academic conferences dedicated to private law (especially to recodification of private law) together. As a sign of their friendship, Prof. Vékás contributed to Prof. Lazar’s collection of articles *Liber amicorum Ján Lazar, Pocta profesorovi Jánovi Lazarovi k 80. narodeninám* with an article on this topic titled *Der Schutz der menschlichen Persönlichkeit in dem neuen ungarischen Zivilgesetzbuch / Ochrana ľudskej osobnosti v novom maďarskom Občianskom zákonníku*, 2014, p. 715.

12 However, to say that the draft had not been discussed at all would be false; the V. Luby’s Laeyer Days, which took place in September 1998 at the law faculty of Comenius University in Bratislava, were dedicated to it, for example—‘On the draft of the new Slovak Civil Code’; see: <http://iuridica.truni.sk/lubyho-pravnicke-dni-0>. However, the conference took place only after the draft had been approved by the government of the Slovak Republic.

13 See the conference report: *Dies Luby Jurisprudentiae*, Nr. 5, 1999.

14 Parliamentary elections took place on 25 and 26 September, 1998.

15 Dulak, 2009, p. 5.

Legislative work began again in 1999 under the expert guidance of Professor Peter Vojčík,¹⁶ yet the recodification efforts had to begin from scratch. Although this committee completed its role and in 2002, the government of the Slovak Republic approved¹⁷ the legislative intent of the Civil Code that the committee developed, the political will to continue further works on a paragraph version of the codex had not been found again.

After the next election, legislative works ceased for an entire electoral period¹⁸ (no minister of justice at the time considered the recodification of private law to be a priority).

In November 2006 (again, shortly after a new parliamentary election),¹⁹ the Minister of Justice of the Slovak Republic at the time, Štefan Harabin, named the previous head of the recodification committee, Prof. Lazar, to lead the body again. Subsequently, in January 2007, a new recodification committee was established and was tasked—as expressed in the coalition plan of the government at the time for the period 2006–2010—with developing a draft of the law on material private law (Civil Code) by the first quarter of 2010, with the ultimate goal being recodification of private law in the Slovak Republic. The commission worked within work groups focused on particular sections of private law. Only a year and a half later, this commission delivered a document titled ‘The Legislative Intent of Codification of Private Law, which was then approved by the government in its amended form in January 2009. Despite the relatively intense efforts, the commission did not manage to develop a first discussion version in paragraph form in the originally defined framework, that is, before the end of calendar year 2009.

Another general election was held in 2010,²⁰ after which Lucia Žitňanská became the new Minister of Justice, and the matter of recodification of private law unfortunately entered a latent state.

This only changed after the next (early) election,²¹ after which Tomáš Borec, an attorney, became the Minister of Justice. Recodification work again found political support, and a new recodification committee was established. In 2013, Prof. Lazar was replaced by the committee’s previous member, Anton Dulak,²² who was suggested for the position by Prof. Lazar himself.²³ After a deal with the Minister of Justice and the General Director of the Civil Law Section at the time, Marek Števíček, the committee was tasked with delivering the first working draft in paragraph form by September 2015.

16 See: <https://www.osobnosti.sk/osobnost/peter-vojcik-1754>.

17 Resolution of the Government of the Slovak Republic No 827 of 7 August 2002.

18 Parliamentary election took place in the Slovak Republic on 20 and 21 September.

19 Parliamentary election took place in the Slovak Republic on 17 June 2006.

20 Parliamentary election took part on 10 June 2010.

21 Early parliamentary election took place on 10 March 2012.

22 Prof. JUDr. Anton Dulak, PhD., currently in function as the Head of the Private Law Department at Pan-European University, Faculty of Law.

23 Prof. Lazar lost his position as head of the recodification committee but remained its ‘expert sponsor’ within the Ministry of Justice.

Under the leadership of Prof. Dulak, the committee completed its duty and delivered *the first unified working version of the new Civil Code under preparation* on 16 September, 2015²⁴. This was achieved particularly because of the dedicated determination of the committee's members and other enthusiastic colleagues. The work the committee delivered consisted of 1756 paragraphs,²⁵ while the members of the committee supported their work with numerous commentary materials, both expert and scientific articles, suggestions received from applied practice, and reports from both domestic and international conferences—all meant to serve as an argumentative contribution to the expected expert discussions.

To their surprise,²⁶ and in violation of the previous agreements with the representatives of the Ministry of Justice, the members of the committee discovered, via 'unofficial sources,' that the ministry intended to establish an entirely new recodification committee²⁷ (tasked with the 'dynamisation' of the efforts to prepare the new Civil Code').²⁸ This happened in November 2015, with the new head of the appointed committee being the General Director of the Civil Law Section, Marek Števček.

4. A brief comment on the overall concept of the Draft Law of 2018 amending the Civil Code

In October 2018, the Minister of Justice of the Slovak Republic introduced their vision of reform of Slovak private law. Despite the fact that changes in the field of civil law have been eagerly anticipated for a long period of time, the appearance of the ministry's representatives greatly surprised the expert public.²⁹ Instead of rebuilding private law, a step meant, with its significance and essential character, to signify its recodification, the ministry (without a broader expert discussion and without changing the legislative purpose of a new Civil Code) announced a proposal for an *amendment* to the existing Civil Code,³⁰ primarily focused on 'reforming' the law of obligation. This was labelled

24 Dulak, 2016. See: <https://www.digitalmag.sk/k-novej-kodifikacii-sukromneho-prava-cast/> as well as: Dulak, A. (2016) In: <https://www.digitalmag.sk/k-novej-kodifikacii-sukromneho-prava-cast-ii-hladanie-inspiracii/>

25 The delivered draft consisted of the following six parts: 1. General, 2. Family Law, 3. Rights in rem, 4. Inheritance law, 5. Contractual law, 6. Concurrent, close and repeal provisions – the first five in paragraph form. The final (sixth) part was to be edited into a paragraph version in sequence and with regard to the results of the interinstitutional reflection and the approved version of the draft. See the delivered draft IN: <https://www.najpravo.sk/clanky/paragrafove-znenie-prvej-pracovnej-verzie-navrhu-noveho-obcianskeho-zakonnika.html>.

26 Dulaková, 2015. See: <http://www.lexforum.sk/565>.

27 See <https://www.justice.gov.sk/Stranky/Nase-sluzby/Nase-projekty/Obciansky-zakonnik/Zoznam-clenov.aspx>.

28 See <https://www.najpravo.sk/clanky/minister-spravodlivosti-menoval-novych-clenov-komisie-pre-pripravu-obcianskeho-zakonnika.html>.

29 Ovečková, 2018, p. 607.

30 <https://www.justice.gov.sk/.../OZ/Legislativny%20zamer%20OZ.pdf>.

by its authors as the *first stage of recodification of the Civil Code* and was published, along with a justificatory announcement, on their official websites.³¹

As stated above, the conceptual change in the approach to civil law reform surprised the expert public, which accepted the new objective with hesitation. Without the need to look up the term in a specialised dictionary, recodification is generally understood as a '*new codification*' of the corresponding legal sector. In the case of private law in a post-socialist country, this legal sector should not merely be revised, modified, or subjected to so-called horizontal reform. '*At times, the difference between revision and recodification is emphasized. While a revision is based on the old legal regulation and its derivatives, a recodification is an implementation of a modern legal regulation with the aim to capture a current reality. Recodification means a reconstruction of a systematic, synthetic and syncretic approach to law; it is a reformation of the initial principles of codification (currently abolished or undervalued) for the purposes of a new order. A recodification, similarly to a codification, is expected to have its own central motive.*'³²

The vision of the latest Recodification Committee thus seems to have lost the path set forth by the government in the Legislative Objective of the new Civil Code in 2009 (which, naturally, expected the whole of private law to be recodified *en block*) and instead presented a novel intention: to recodify private law *per partes*, beginning with the law of obligation, since, according to the Minister of Justice, who is a proponent of this concept, 'the area of private legal obligations is least socially sensitive area; hence, we expect a consensus of the whole society in this matter.'

In April 2019, information was published that suggested the Ministry of Justice concluded the informal reflection process for the recodification of the law of obligation.³³ This was, however, shortly before the election, which meant that the political parties involved shifted their focus to their electoral campaign rather than the issue of reforming the Civil Code.

5. Conclusion

As stated in the beginning, since March 2020, Slovakia has had a new government, which, at least according to its declared program, plans to devote some focus to the reforming of private law. Using the text from this document (declared program), '*The Government of the Slovak Republic is committing to creating a new Civil Code and law on commercial entities*', it seems that the Ministry of Justice will likely focus on a complex reform of private law, that is, to creating a code *en block* rather than separate changes for specific areas. However, as is the case in politics, major legislative changes need to be carried out within the first two years of governing as the next two are dedicated to preparing for the new election, which is reflected in the political decisions made

31 <http://www.justice.gov.sk/Stranky/Ministerstvo/Aktuality-obcianskeho-zakonnika.aspx>.

32 McAuley, 2003, p. 274; Dulak, 2019, pp. 76–95.

33 <http://www.justice.gov.sk/Stranky/aktualitadetail.aspx?announcementID=2522>.

throughout that latter period. Hopefully, the claim cited above from a previous Recodification Committee chair, Anton Dulak,³⁴ on politics and political influence exerted on private law can be applied during this political period (2020–2024) in a positive light.³⁵

34 'Unfortunately, [...] the recodification of private law is under the influence of politics to the extent that not only does politics affect the beginning and speed of the project, but also its evaluation.' See Dulak, 2009, p. 5.

35 Lazar, 2020, p. 355.

Bibliography

- Blaho, P. and Švidroň, J. (2005) *Kodifikácia, europeizácia a harmonizácia súkromného práva* (Codification, Europeanisation and harmonization of private law), Bratislava: Iura Edition.
- Bydlinski, F., Mayer-Maly, T. and Pichler, J. (eds.) (1992) *Renaissance der Idee der Kodifikation*. Wien-Köln-Weimar: Böhlau.
- Dulak, A. (2009) *Dôvody a zámery rekodifikácie súkromného práva v podmienkach SR* (Reasons and intentions of recodification of private law in the conditions of the Slovak Republic), *Rekodifikácia súkromného práva v SR – ako ďalej?*, Zborník z medzinárodnej vedeckej konferencie, publisher: Vysoká škola Visegrádu s.r.o.
- Dulak, A. (2016) 'K novej kodifikácii súkromného práva – časť I. (On the new codification of private law – Part I.)', *Digital Science Magazine* [online]. Available at: <https://www.digitalmag.sk/k-novej-kodifikacii-sukromneho-prava-cast/>.
- Dulak, A. (2016) 'K novej kodifikácii súkromného práva – časť II. (Hľadanie inšpirácií) (On the new codification of private law – Part II. (Finding inspiration))', *Digital Science Magazine* [online]. Available at: <https://www.digitalmag.sk/k-novej-kodifikacii-sukromneho-prava-cast-ii-hladanie-inspiracii/>.
- Dulak, A. (2019), *Kodifikácia, dekodifikácia, rekodifikácia a ďalšie cesty súkromného práva* (Codification, decodification, recodification and other ways of private law), IN: Dies Luby Jurisprudentiae, Nr. 14; zborník z medzinárodnej konferencie XIV. Lubyho právnické dni; Smolenice, 19. – 20. September 2019 Dulaková Jakúbeková, D. (2004), *K novele Občianskeho zákonníka o spotrebiteľských zmluvách* (On the amendment to the Civil Code on consumer contracts), IN: *Justičná revue*. – Roč. 56, No. 8-9.
- Dulaková Jakúbeková, D. (2008) 'Spotrebiteľská zmluva nanovo a inak (Consumer contract over and over again)', *Justičná revue*, 60(6–7).
- Dulaková, D. (2015) 'Všetko o rekodifikácii Občianskeho zákonníka (naozaj?)' (All about the recodification of the Civil Code (really?)). Available at: <http://www.lexforum.sk/565>.
- Dulaková, D. (2018) 'K celkovému konceptu návrhu novely občianskeho zákonníka a k vybraným otázkam právnej úpravy nájmu (On the overall concept of the draft amendment to the Civil Code and on selected issues of the legal regulation of rent)', *Súkromné právo*, 2018/6.
- Eliáš, K. (2008) 'Rekodifikace občanského práva v postmoderní době (Recodification of civil law in postmodern times)', *Právní rozhledy*, 2008/1.
- Eliáš, K. (2010) 'Návrh českého občanského zákonníku, Obrat paradigmat (Draft Czech Civil Code, Reversal of Paradigms)', *Právní rádce* [online]. Available at: <https://pravniciradce.ihned.cz/c1-40207140-navrh-ceskeho-obcanskeho-zakoniku-obrat-paradigmat-sup-1-sup>.
- Jurčová, M. (2007) 'Vybrané problémy zmluvného system de lege lata a de lege ferenda (Selected problems of the contractual system de lege lata and de lege ferenda)', *Právny obzor: teoretický časopis pre otázky štátu a práva*, 90(6), pp. 498–519.
- Kanda, A. (1994) 'Úvaha nad koncepcií legislatívnych prací v oblasti soukromého práva (Reflection on the concept of legislative work in the field of private law)', *Právní praxe*, 1994/6.

- Kant, I. (1988) *Rechtslehre-Schriften zur Rechtsphilosophie*. Berlin: Akademie Verlag.
- Lazar, J. (2005) Aktuálna úvaha o optimálnej koncepcii súkromnoprávneho kódexu (Current reflection on the optimal concept of a private law code), *Pocta Antonínu Kandovi*, Plzeň.
- Lazar, J. (2006) *Otázky kodifikácie súkromného práva* (Issues of codification of private law), Bratislava: Iura Edition.
- Lazar, J. (2008) *Návrh legislatívneho zámeru kodifikácie súkromného práva* (Proposal for a legislative intention to codify private law), Materiály z odbornej konferencie, inšterstvo spravodlivosti Slovenskej republiky, Bratislava: Eurokodex, Poradca podnikateľa, spol. s r.o.
- Lazar, J. et al. (2010) *Občianske právo hmotné* (Substantive civil law). 1st edn. Bratislava: Iura Edition.
- Lazar, J. (2020) 'Zamyslenie nad rekodifikáciou súkromného práva (Reflections on the recodification of private law)', *Justičná revue*, 2020/3.
- Malaspina, E. F. (2018) *Introduction to Swiss Civil Law – The History of the Swiss Civil Code* [Online]. Available at: <https://tinyurl.com/y6dp5gj4>.
- McAuley, M. (2003) 'Proposal for Theory and a Method of Recodification', *Loyola Law Review*, Volume 49.
- Ovečková, O. (2018) 'Zložité cesty rekodifikácie súkromného práva...', (Complicated ways of recodification of private law...), *Právny obzor*, 2018/6.
- Pauknerová, M. (2002) *Private International Law in the Czech Republic*. In: International Encyclopaedia of Laws, Vol. 1. Private International Law, Kluwer Law International, Suppl. 2.
- Vékás, L. (2014) *Der Schutz der menschlichen Persönlichkeit in dem neuen ungarischen Zivilgesetzbuch / Ochrana ľudskej osobnosti v novom maďarsom Občianskom zákonníku*, in: Liber amicorum Ján Lazar, Pocta profesorovi Jánovi Lazarovi k 80. narodeninám, p. 715f, Veda, vydavateľstvo Slovenskej akadémie vied.
- Vojčík, P., *Informácia o priebehu a stave rekodifikačných práv na novom občianskom zákonníku* (Information on the course and status of recodification rights on the new Civil Code), available at: <http://www.wold.justice.sk/kop/inf-rek.htm>.
- *Legislatívny zámer Občianskeho zákonníka* (The Legislative Intent of Codification of Private Law). Available at: <https://www.justice.gov.sk/Stranky/Nase-sluzby/Nase-projekty/Obciansky-zakonnik/Obciansky-zakonnik.aspx>.
- *Programové vyhlásenie vlády Slovenskej republiky na roky 2020 – 2024* (Government Program Statement for 2020 – 2024). Available at: <http://www.culture.gov.sk/programove-vyhlasenie-vlady-180.html>.
- *Prvá ucelená pracovná verzia nového Občianskeho zákonníka* (The first comprehensive working version of the new Civil Code). Available at: <https://www.najpravo.sk/clanky/paragrafove-znenie-prvej-pracovnej-verzie-navrhu-noveho-obcianskeho-zakonnika.html>.