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# The Influence of Harmonisation on Civil Law in the Slovak Republic

## 1. Introduction

“We can agree with the idea that new member countries can learn a lot from the Western countries. However, the opposite is true, as well. The West can also learn from the new member countries about their law of the socialist era, how they succeeded in accepting *acquis communautaire*, how they solved the problem of consumer regulations: to integrate them into the civil law or into separate consumer protection laws [...]”<sup>1</sup>

These were the words that Ewoud Hondius used to welcome the newly joined Central European members to the EU in 2004. However, in my opinion, the optimistic invitation will not lead to the expected results if we consider the reality. We should express disappointment with the current state of harmonisation. The pace of harmonisation commitment we have to carry as a new EU member and the burden of the past specific to Central Europe may be among the reasons for this. According to Vékás, “it is possible to establish that the recently joined Central European members tend to follow the examples set by the old continental countries, rather than Central European states offering an example for the old ones” and that “the relationship between a common European law and national laws shows the same kind of problems in the new member states as in the old ones”.<sup>2</sup>

At the same time it can be stated that Slovakia, which was established as an independent country in 1993, has not had an opportunity to deal with perfection of harmonisation at the highest level, since resolving everyday demanding issues is beyond the economic and personnel capabilities of this country, as I and others would argue.

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<sup>1</sup> E. Hondius. Vítej do Evropské unie, Česká republika! (Welcome to the European Union, Czech Republic!). Praha: EMP, časopis o českém, slovenském a evropském právu 2004 (3), p. 3 (in Czech).

<sup>2</sup> L. Vékás. Models in Central-Eastern European Codes. – S. Grundmann, M. Schauer (eds.). The Architecture of European Codes and Contract Law. Kluwer Law International. Private Law in European Context Series 2006 (8), pp. 117–128.

## 2. Historical overview

To explain our position in the field of civil law, it is necessary to provide a brief outline of the recent history of Slovakia. Slovakia has witnessed constant, substantial changes over the last 50 years. Their chronology is as follows.

Case customary law of Hungarian origin more or less prevailed in Slovakia up to 1950, although from 1918, after its separation from the Austro-Hungarian Empire and integration into Czechoslovakia, in its application by Slovak courts the law was greatly influenced by the *Allgemeines Gesetzbuch der Republik Österreich* (ABGB), which was in force on Czech territory before Czechoslovakia was established. In the first Czechoslovak Republic, a codification draft based on the ABGB was drawn up. The Slovak side was critical of it, and with the disintegration of Czechoslovakia just before World War II its adoption was blocked.

The year 1948 signified a radical turn from capitalism to socialism. Elimination of private property and transformation to a socialist societal structure with stress on a socialist approach to property (private property was to be eliminated) became its economic foundation.

In 1950, the first common Czechoslovak Civil Code was adopted. It was designated as for the transitional period from capitalism to socialism, and its legal and political intention was expressed as being to destroy the base of bourgeois civil law.

In 1964, the Civil Code, based on the socialist conception of property, was adopted. It was far removed from the traditional institutions of the law of obligations and considerably distant from the European private law tradition.<sup>\*3</sup> At the time of its adoption it signified the final result of the transition to socialism.<sup>\*4</sup>

Then, 1989 brought a radical turn in the opposite direction when compared with that of 1948: one aimed at wide re-privatisation. The society was not prepared for this act after 40 years of socialism.

As a result of these revolutionary changes, in 1991 sweeping amendment of the Civil Code and the adoption of the new Commercial Code (which substituted for the cancelled State Business Code) were enacted. The 1991 amendment was, once again, a move qualified as transitional, and since then Slovakia and the Czech Republic have been heading for re-codification of the Civil Code, which has now been 18 years in coming...

The splitting of Czechoslovakia on 1 January 1993 meant the beginning of independent development of the civil law in both successor states and other re-codification efforts.<sup>\*5</sup>

The EU Association Treaty's conclusion in 1993 and the subsequent EU accession of Slovakia on 1 May 2004 meant subordination of the civil law to EU law.

In the historical context, it is obvious that the Slovakia of the 21<sup>st</sup> century has difficulties on account of prior disruptions of its development. European legislation was developed in Western Europe in continuity with the integration process from the end of World War II and was always economically based on private property.<sup>\*6</sup>

## 3. The present state of civil law harmonisation

Given the prior discontinuity and instability of societal development and civil law, it is not realistic to consider systematic harmonisation.<sup>\*7</sup>

The dual model of the law of obligations in civil and commercial relations established in 1991 itself causes problems in practice; consumer contracts included in the Civil Code in 2004 deepened the state of disintegration of the contract system. There are now 20 specific contract types regulated in the Civil Code and 26 in the Commercial Code. Some of them are identical, and the scope of their application is dependent on the nature of their subjects. On the other hand, several contract types in these codes are applicable generally, irrespective

<sup>3</sup> Civil Code from 1964 in its "purported progressivism" has exceeded also Soviet Civil Code, see J. Dvořák. *Kodifikace občanského práva v České republice (včera, dnes, zítra)* (Codification of Civil Law in the Czech Republic (Yesterday, Today, Tomorrow)). – P. Blaho, J. Švidroň (eds.). *Kodifikácia, europeizácia a harmonizácia súkromného práva – Kodifikation, Europäisierung und Harmonisierung des Privatrechts*. Dies Luby *Iurisprudentiae* No. 8. Bratislava: Iura Edition 2005, p. 242.

<sup>4</sup> J. Švidroň. *Hodnotové zakotvenie slovenského občianskeho práva* (The Fundamental Moral Principles of Slovak Civil Law). – N. Štefanková (ed.). *Vzťahy a interakcia vnútroštátneho práva, medzinárodného práva a európskeho práva z hľadiska krajín Vyšehradskej štvorky po ich vstupe do Európskej únie* (Relationship and Interaction of Domestic, International and European Law in the View of "Visegrad Four Countries" after Their Accession in the EU). Žilina: PP Poradca podnikateľa, spol. s r.o. 2007, p. 71 (in Slovak).

<sup>5</sup> Updated summary in J. Hurdík. *Institucionální pilíře soukromého práva v dynamice vývoje společnosti* (The institutional poles of private law in the dynamics of the historical development). Praha: C.H.Beck 2007, pp. 1–7 (in Czech).

<sup>6</sup> J. Dvořák (Note 3), p. 242.

<sup>7</sup> In the field of civil law, harmonisation of family law and intellectual property law is not taken into consideration here. Civil law, commercial law, labour law and international private law are traditionally included in private law in the Slovak republic.

of the nature of subjects. Specific contracts regulated in both codes may fall under the category of consumer protection and may be qualified as consumer contracts, provided that they satisfy legal requirements.<sup>8</sup> Although the civil law has been codified in the Civil Code, many other separate acts are included in its sources at the same time. The structure of the Civil Code itself has been broken by the amendment in 1991.

Lack of a systematic approach to implementation of EU directives has become evident in the manner of their integration into various acts:

- a) The package travel directive<sup>9</sup>, unfair contract terms directive<sup>10</sup>, consumer guarantees directive<sup>11</sup>, and timeshare directive<sup>12</sup>, as well as relevant parts of the financial collateral directive<sup>13</sup>, direct life assurance directive<sup>14</sup>, and legal expenses insurance directive<sup>15</sup>, were implemented in the Civil Code. How directives are integrated into the Civil Code is in itself problematic. Their transposition was not systematic or consistent.<sup>16</sup> Given the incoherent structure of the Civil Code, whether it was possible to do it much better is a matter for heated debate.<sup>17</sup>
- b) The unfair commercial practices directive, the injunctions directive, the general product safety directive, and the dangerous products directive were implemented in the Consumer Protection Act.<sup>18</sup>
- c) Transposition of some directives has been realised through specific acts: the doorstep selling directive<sup>19</sup> and distance selling directive<sup>20</sup> were implemented by a special act of the identical name (Act 108/2000 Coll. on consumer protection on the doorstep and distance selling). In connection with this example, it can be stated that the purpose of the implementation has not been actualised. According to my experience, in this case, rights conferred by the directive are not effective enough, on account of exclusion of the sales contract from the Civil Code.

<sup>8</sup> Subsection 3 (3) of Consumers Protection Act (Act No. 250/2007 Collection of Laws of the Slovak Republic (hereinafter Coll.)): "Every consumer has a right to be protected against unfair terms in consumer contracts. Consumer contracts are contracts governed by Civil Code or by Commercial Code and all other contracts provided that they are concluded in multiple cases, and it is usual that the consumer does not have a substantial influence on the terms of contract. Provisions of Civil Code regarding consumer contracts shall be applied as appropriate to consumer contracts not governed by Civil Code." Subsection 52 (1) of Civil Code (Act No. 40/1964 Coll. as amended): "Consumer contract is every contract regardless of its form concluded between supplier and consumer."

<sup>9</sup> Council directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours. – OJ L 158, 23.06.1990, p. 59. This directive has been implemented partly in Civil Code and partly in the Act No. 281/2001 Coll. on package tours, terms of running travel offices and agencies.

<sup>10</sup> Council directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts. – OJ L 95, 21.04.1993, p. 29.

<sup>11</sup> Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees. – OJ L 171, 7.07.1999, p. 12.

<sup>12</sup> Directive 94/47/EC of the European Parliament and of the Council of 26 October 1994 on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a timeshare basis. – OJ L 280, 29.10.1994, p. 83.

<sup>13</sup> Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements. – OJ L 168, 27.06.2002, pp. 43–50.

<sup>14</sup> Council directive 92/96/EEC of 10 November 1992 on the coordination of laws, regulations and administrative provisions relating to direct life assurance and amending directives 79/267/EEC and 90/619/EEC (Third life assurance directive). – OJ L 360, 9.12.1992, pp. 1–27.

<sup>15</sup> Council directive 87/344/EEC of 22 June 1987 on the coordination of laws, regulations and administrative provisions relating to legal expenses insurance. – OJ L 185, 4.07.1987, pp. 77–80.

<sup>16</sup> See J. Drgonec. Spotrebitel'ské zmluvy v právnom poriadku Slovenskej republiky (Consumer Contracts in the Legal Order of the Slovak Republic). – *Justičná revue* 2007 (3), pp. 295–317 (in Slovak); D. Dulaková-Jakúbeková. K novele Občianskeho zákonníka o spotrebitel'ských zmluvách (On the Amendment of the Civil Code about the Consumer Contracts). – *Justičná revue* 2004 (8–9), p. 907 (in Slovak).

<sup>17</sup> The present-day structure of Slovak Civil Code: Part One. General Part, Part Two Rights in Rem, Parts Three-Five repelled, Part Six Liability for Damages and Unjustified Enrichment, Part Seven Law of Succession, Part Eight Law of Obligations, Part Nine Final and Temporary Provisions.

<sup>18</sup> Directive 98/27/EC of 19 May 1998 on injunctions for the protection of consumers' interests (OJ L 166, 11.06.1998, p. 51), amended by directive 1999/44/EC of 25 May 1999 (OJ L 171, 7.07.1999, pp. 12–16), directive 2000/31/EC 8 June 2000 (OJ L 178, 17.07.2000, pp. 1–16), directive 2002/65/EC of 23 September 2002 (OJ L 271, 9.10.2002, pp. 16–24), directive 2005/29/EC of 11 May 2005 (OJ L 149, 11.06.2005, p. 22–39). Directive 87/357/EEC of 25 June 1987 on the approximation of the laws of the Member States concerning products which, appearing to be other than they are, endanger the health or safety of consumers. – OJ L 192, 11.07.1987, pp. 49–50; Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety. – OJ L 11, 15.01.2002, pp. 4–17; Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council directive 84/450/EEC, directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No. 2006/2004 of the European Parliament and of the Council.

<sup>19</sup> Council directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises. – OJ L 372, 31.12.1985, p. 31.

<sup>20</sup> Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts (OJ L 144, 4.06.1997, p. 19), as last amended by directive 2005/29/EC (OJ L 149, 11.06.2005, p. 22).

The distance selling directive for financial services<sup>\*21</sup>, consumer credit directive<sup>\*22</sup>, and product liability directive<sup>\*23</sup>, as well as the directive on electronic commerce<sup>\*24</sup>, have been implemented via the enactment of specific acts.

Realisation of the purpose of **harmonisation is greatly affected by the legislative process of transposition itself**. Transposition carried out via drafts by various ministries (the Ministry of Justice, the Ministry of Economy, etc.) are subject to criticism stemming from lack of clear conception.<sup>\*25</sup> The reasons for this situation are also pointed out: ignorance of this issue by politicians and that public authorities align themselves with the stronger side.<sup>\*26</sup>

The Consumer Protection Act of 2007 itself shows signs of instability and misconception. The earlier Consumer Protection Act of 1992 was replaced this year by a new act to guarantee 'greater stability' than the previous one, which was modified several times in the course of its life.<sup>\*27</sup> The opposite is indicated by a new source available at the Ministry of Economy's Web site as the responsible authority, where another extensive modification of the act is suggested.<sup>\*28</sup> If the intention of the legislators was to reach a certain degree of stability, it would have been appropriate to wait for several years, until EU action achieves unity of *acquis communautaire* at the acceptable level. There are two other problematic elements in the Slovak Consumer Protection Act. Firstly, the name of the act itself is misleading, as it covers only a certain proportion of the target issue, which is evident in this outline. Second is the fact that this act combines rules of different character (civil, administrative, and procedural character, etc.).<sup>\*29</sup>

To sum up, all the defects of consumer *acquis* having been mentioned and criticised in the Green Paper on the Review of the Consumer *Acquis*<sup>\*30</sup> go directly to the heart of fractured Slovak civil law and are often even redundant. It is important to apply these experiences in the process of civil law re-codification.

It will be essential in the area of consumer protection to embody directly in the Civil Code material addressing information disclosure, the right to cancel a contract (withdrawal right), unfair terms, and in particular cases a requirement of written form. Today, the protection measures for the benefit of the weaker party — i.e., the consumer — are scattered throughout the code and specific acts in a way that suppresses their effectiveness. It has also to be considered whether the actual notion of consumer should be restricted. Nowadays, 'consumer' is repeatedly defined<sup>\*31</sup> in the Civil Code and the Consumer Protection Act, with this definition including not only natural persons but also legal persons if they meet other legal conditions.<sup>\*32</sup> Consumer contracts are also double-defined in private law.<sup>\*33</sup>

<sup>21</sup> Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council directive 90/619/EEC and Directives 97/7/EC and 98/27/EC (OJ L 271, 9.10.2002, p. 16), as amended by directive 2005/29/EC (OJ L 149, 11.06.2005, p. 22) has been transposed by Act No. 266/2005 Coll. on consumer protection on distance financial services.

<sup>22</sup> Council directive 87/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit (OJ L 42, 12.02.1987, p. 48), as last amended by directive 98/7/EC of the European Parliament and of the Council (OJ L 101, 1.04.1998, p. 17) has been transposed by Act No. 258/2001 Coll. on consumer credits.

<sup>23</sup> Council directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products (OJ L 210, 7.08.1985, pp. 29–33) transposed by Act No. 294/1999 Coll. on liability for damage caused by defective products.

<sup>24</sup> Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects on information society services, in particular electronic commerce, in the internal market. – OJ L 178, 17.07.2000, p. 1.

<sup>25</sup> I. Fekete. Komentár k zmenám v úprave spotrebiteľského práva a k ďalším zmenám Občianskeho zákonníka od roku 2002 (The Comments on the Changes of Consumer Law and on the Other Changes of the Civil Code). Bratislava: Obchodné právo 2005 (6–7), p. 55 (in Slovak).

<sup>26</sup> J. Drgonec (Note 16), p. 306.

<sup>27</sup> The extract from the explanatory report to the newly enacted act: "(Former) Consumer Protection Act was enacted in 1992 and it has been 10 times amended until now. His application has been too complicated for the broad variety of consumers as well as for the responsible public authorities. Another reason for enacting of the new act is the new policy of this act. The proposed act is general and the particularities are regulated by the governmental orders. These approximation governmental orders will transpose EU Directives into the structure of Slovak law order in the compliance with the Slovak Constitution. This policy has been more advantageous given the fact that the EU Directives have been frequently changed in order to secure more protection of the consumer and to provide better safety of products and services. In the future only these approximate governmental orders will be changed without the changes of the acts more times in the year." Available at <http://www.economy.gov.sk/pk/2052-2006-1000/ds.htm> (11.11.2007).

<sup>28</sup> Available at <http://www.economy.gov.sk/pk/1939-2007-1000/ds.htm> (12.12.2007).

<sup>29</sup> L. Vékás (Note 2), p. 126.

<sup>30</sup> Green paper on the Review of the Consumer *Acquis*. – OJ C 61, 15.03.2007, pp. 1–23.

<sup>31</sup> Subsection 52 (4) of Civil Code, § 2 a) of Consumer Protection Act.

<sup>32</sup> For similar solution enacted, e.g., in Austria see B. Lurger. Consumer Law – Forerunner for or Part of a European Contract Law Code? The Case of Austrian Consumer protection. – S. Grundmann, M. Schauer (eds.). The Architecture of European Codes and Contract Law. – Private Law in European Context Series 2006 (8), p. 207.

<sup>33</sup> See Note 8.

## 4. The civil law re-codification

The contemporary situation of civil law demands that one concentrate on the key issues of re-codification. In its background it is possible to harmonise all those often mechanically realised responsibilities resulting from our membership in the EU and start harmonisation as the important positive factor in the development of the civil law, and not only in the field of consumer protection.

In January 2007, the Minister of Justice appointed the Codification Commission, whose objective is to prepare the new Civil Code by the end of 2010. Considering the fact that this is not the first effort (in 1998, the Civil Code Draft already containing wording of articles<sup>34</sup> was issued, with the Legislative Objectives of the Civil Code following in 2002)<sup>35</sup>, one may also draw something from the discussion of previous attempts. By following the professional and academic discussions, one can divide the key re-codification issues into two groups:

- a) issues repeatedly arising in discussions: the significance of national codification against the background of harmonisation processes in the EU, use of a monistic or dualistic model, degree of continuity, and the question of following suitable models<sup>36</sup> and
- b) other important issues that have not been paid appropriate attention, ones that have been arising recently: moral and political values of re-codification<sup>37</sup>, protection of the weaker side, and the manner of integration of consumer protection into the Civil Code.

**The primary question is whether it is appropriate to make all efforts to perform the national codification in the contemporary integration process in Europe.** Analogous to the situation in Hungary<sup>38</sup>, the Czech Republic<sup>39</sup>, and Poland<sup>40</sup>, which are close to our country geographically and are similarly situated in other terms, the solution is clear. Processes of developing unification propositions in Europe are highly promising; academic proposals and EU activities<sup>41</sup> have greatly affected work on re-codification and will continue to do so. However, their time frame is, unfortunately, uncertain. Slovakia needs to consolidate the civil law; therefore, the country is trying to enter the second wave of re-codification.<sup>42</sup>

**Values of re-codification:** The principles of a socially and ecologically oriented market economy are guaranteed by article 55 of the Slovak Constitution. An important basis for property law codification is given in article 20, particularly subsection 3: "Ownership is binding. It must not be misused to the detriment of others or at variance with general interests protected by law." Moral and political values in Slovak civil law have been almost completely neglected since significant social changes have occurred.<sup>43</sup> The direction of Slovak society after the rejection of socialism is to move toward broad liberalism; newly acquired freedom of contract is practically in a position of inviolability. I would incline toward the conclusion that traditional Continental countries are more willing to seriously debate ideas of social justice than is Slovakia.<sup>44</sup>

**Monistic versus dualistic model:** The nineteenth century is generally considered to have been a time of dualistic codification. In Slovakia, a dualistic model has been applied again since 1 January 1992. The present

<sup>34</sup> As a special addition of a journal *Mzdy a financie (MaF Extra)* (1, 2). Bratislava: EPOS 1998 (in Slovak).

<sup>35</sup> Legislatívny zámer Občianskeho zákonníka (Legislative Objectives of the Civil Code). – In addition to *Justičná revue* 2002 (8–9) (in Slovak).

<sup>36</sup> See the composite book P. Blaho, J. Švidroň (eds.) (Note 3); J. Lazar. *Otázky kodifikácie súkromného práva* (The Questions about the Civil Law Codification). Bratislava: IURA Edition 2006 (in Slovak); L. Fogaš, J. Mazák. *Rekodifikácia súkromného práva* (Stav, perspektívy, východiská) (Re-codification of Private Law (Position, Perspectives, Resources)). – *Právny obzor* 1999 (3), p. 193 (in Slovak); J. Lazar (ed.). *K návrhu slovenského Občianskeho zákonníka* (On the Slovak Civil Code Draft). – *Dies Luby Iurisprudentiae* 1999 (5) 1999 (in Slovak); P. Kubiček. *Aktuálne otázky reformy súkromného práva v SR* (The Current Questions of Private Law Reform in the Slovak Republic). – K. Eliáš (ed.). *Súkromné právo v pohybu*. Plzeň: Vydavatelství a nakladatelství Aleš Čeněk, s.r.o. 2005, p. 114 (in Slovak).

<sup>37</sup> J. Švidroň (Note 4), pp. 70–81.

<sup>38</sup> L. Vékás. *O návrhu nového maďarského občianskeho zákonníka* (About the New Hungarian Civil Code Draft). – J. Švestka, J. Dvořák, L. Tichý (eds.). *Sborník statí z diskusních fór o rekodifikaci občianskeho práva*. Praha: ASPI 2006, p. 104.

<sup>39</sup> L. Tichý. *Kodifikace českého soukromého práva v evropských souvislostech* (The Codification of the Czech Private Law in the European Context). – J. Švestka, J. Dvořák, L. Tichý (eds.). *Sborník statí z diskusních fór o rekodifikaci občianskeho práva*. Praha: ASPI 2006, p. 47; K. Eliáš. *Charakteristika návrhu nového občianskeho zákonníka* (The Characteristics of New Civil Code Draft). *Ibidem*, p. 28.

<sup>40</sup> Z. Radwanski. *Kodifikationsprobleme des Zivilrechts in Polen*. – P. Blaho, J. Švidroň (eds.). *Kodifikácia, europeizácia a harmonizácia súkromného práva – Kodifikation, Europäisierung und Harmonisierung des Privatrechts*. *Dies Luby Iurisprudentiae* No. 8. Bratislava: Iura Edition 2005, p. 173.

<sup>41</sup> Available at <http://www.copec1.org> (16.02.2008).

<sup>42</sup> C. von Bar. *O celoevropské odpovědnosti národní kodifikační politiky* (On All-European Responsibility of National Codification Policy). – J. Švestka, J. Dvořák, L. Tichý (eds.). *Sborník statí z diskusních fór o rekodifikaci občianskeho práva*. Praha: ASPI 2006, p. 11.

<sup>43</sup> For an exemption refer to Note 4.

<sup>44</sup> B. Lurger. *The Future of European Contract Law between Freedom of Contract, Social Justice and Market Rationality*. – *European Review of Contract Law* 2005 (4), pp. 442–468.

re-codification commission prefers a monistic model, although it is criticised by commercial lawyers.<sup>\*45</sup> The Commercial Code of 1991 was undeniably positive, enabling the development of market relations. The practice revealed opacity and functional inadequacy. It is more or less clear now that the future will be directed toward the monistic model, but details of this integration often have been overlooked or underestimated. Difficulties will occur not only in the integration of the general part of the law of obligations but in specific types of contracts as well. Breach of contractual obligations in civil law disintegrates into matters of defective performance, creditor's delay, and debtor's delay. In commercial law, this model of breach has been changed, becoming more unified, or is shifting toward the system of the uniform model of breach in the regulation of sales contracts based on the Vienna Convention (CISG). The unification of liability for damages is also problematic because in the Civil Code it is based on the principle of subjectivity, whereas in the Commercial Code it is addressed in the framework of the principle of objectivity. In the view of the European harmonisation scheme and the function of the liability system, the Slovak scheme of liability for damages, which unifies contractual and non-contractual liability, sometimes seems to be incompatible with the European solutions.

**Consumer protection and the question of the enshrining of consumer contracts in the Civil Code:** The purpose of consumer protection requires including consumer contracts under the Civil Code, so the commission has a serious task ahead of it in creating a unified contract system. This issue has not been very stable thus far, but now the EU is on its way toward consolidation via the Green Paper on the Review of the Consumer Acquis. It is hoped that Slovakia will be able to consider several results of this review and the Common Frame of Reference with regard to consumer protection in the future process of civil law re-codification.<sup>\*46</sup> In any case, unification of the present 'triple' system (civil, commercial, and consumer contracts) requires detailed analyses. A minimum of special provisions is preferable; protection provisions probably should differ from others only in their mandatory nature. The manner of incorporation of the results of the Acquis Group's work on the Draft Common Frame of Reference may serve as a model for dealing with this task.

**The degree of influence of and inspiration by foreign patterns and academic models:** The issue of influence is connected with the previous items and with the idea of continuity of the legal order, which would be pushed into the background if re-codification were widely inspired by patterns found in foreign legislation. There are several foreign patterns, among them traditional codification (as seen in the ABGB; the *Code Civil*; and the *Bürgerliches Gesetzbuch*, or BGB) and modern codification (as manifested in the Netherlands, Quebec, and reform of the law of obligations in the BGB). It is definitely unwise, and would prove impossible in the long term, to fall into mechanical copying. The history of Slovakia has shown attempts to 'artificially' implant the ABGB in the time of the Austro-Hungarian Empire and the pre-war Czechoslovakia. Both attempts were unsuccessful. The correct extraction of positive features of the individual national codifications requires demanding continual work in comparative law. Unfortunately, the fact remains that there is a lack of competent experts in Slovakia even after 18 years of transformation. I would rather turn to the results of academic efforts<sup>\*47</sup> that compare national legal systems on a scientific basis. It is important to involve experts who together bring a wide breadth of knowledge in the preparatory work, mainly the academic community in the initial stage. At the Faculty of Law of Trnava University, we have been working on the grant project European Civil Code (ECC) — Participation of Basic Legal Research in the Slovak Republic by Its Creation and Utilization of Its Solutions by Further Europeanization of Slovak Private Law.<sup>\*48</sup> The outcome of this research may contribute to the achievement of the task.

**Degree of abstraction in law:** The abstraction issue has come to attention through the spread of European legislation. Directives, implemented in the national law, are often inconsistent with other parts of our acts from the standpoint of degree of generalisation. It is true that socialist pieces of legislation often were short, sometimes even excessively so, but with the EU we are going in the opposite direction. This is another reason it will be difficult to find boundaries for the level of integration of *acquis communautaire* within a future code.

<sup>45</sup> Previous re-codification attempts came out of monistic conception.

<sup>46</sup> See also Principles of the Existing EC Contract Law (Acquis Principles). Contract I: Pre-contractual Obligations. Conclusion of Contract. Unfair Terms. Prepared by Research Group on the Existing EC Private Law (Acquis Group). Sellier 2007.

<sup>47</sup> See O. Lando, H. Beale (eds.). Principles of European Contract Law. Parts I and II. The Hague 2000; O. Lando, E. Clive, A. Prüm, R. Zimmermann (eds.). Principles of European Contract Law. Part III. The Hague 2003; Principles of European Law prepared by Study Group on a European Civil Code, see [http://www.sellier.de/pages/de/buecher\\_s\\_elp/europarecht/454.htm](http://www.sellier.de/pages/de/buecher_s_elp/europarecht/454.htm) (16.02.2008); Common Frame of Reference see <http://www.copecl.org/> (16.02.2008); UNIDROIT Principles of International Commercial Contracts see <http://www.unilex.info/dynasite.cfm?dssid=2375&dsmid=14276> (16.02.2008).

UNIDROIT Principles have been translated into the Slovak language. See J. Švidron. UNIDROIT – Zásady medzinárodných obchodných zmlúv. Bratislava: Iura Edition 1996. Revised translation J. Švidroň. Zásady UNIDROIT pre medzinárodné obchodné zmluvy 1994. In Vzorová zmluva MOK o medzinárodnom obchodnom zastúpení -príloha, Bratislava: SOPK 2003, pp. 45–66.

<sup>48</sup> As the first stage, researchers of this grant project assisted in the creation and compilation of the National Notes for the Draft Common Frame of Reference on a European Contract Law and related matters being produced by the Study Group on a European Civil Code and the Acquis Group within the context of the Joint network on European Private Law.

## 5. Conclusions

Despite the complicated history outlined here, or perhaps because of it, it is not possible to reform Slovak private law and create a new Civil Code without considering the approved legislation and judicial decisions of the last 50 years, on account of the adaptation of progressive reforms. According to Švidroň, “our history between 1948 and 1989 cannot be simply ‘thrown over a precipice’ [...] in the development of our civil law of this period, certain positive features can also be academically recognised”<sup>49</sup>; thus, re-codification based on discontinuity would help neither experts nor the general public.

The economic aspect of integration into and within the European Union probably benefits Slovakia. Following from the ideas expressed in the work of Jerzy Rajski, intra-European harmonisation and progressive unification is of great importance for the future of European integration.<sup>50</sup> Perhaps ambiguous Slovak civil law has a more complicated task in its consolidation via re-codification. On the other hand, without being burdened with the traditional code as part of the country’s cultural heritage; Slovakia might succeed in forming high-quality legislative work.

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<sup>49</sup> J. Švidroň. *Mravné dimenzie občianskeho práva (Moral Dimensions of Civil Law)*. The lecture was addressed at the international conference “Tradition and Innovation in the Civil Law” organised by the Department of Civil Law of Masaryk University Brno on 25 September 2007 in Brno, available in Slovak, also with English summary at <http://www.jsn.sk> (16.02.2008).

<sup>50</sup> J. Rajski. *On the Need for a Progressive Harmonisation of Private Law in the European Union: The Role of Legal Science and Education*. – *Juridica International* 2006 (XI), pp. 20–24.