# THE NEW CODES ANCHORED IN THE REALITIES OF THE EUROPEAN UNION

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*Abstract: The Romanian legislation has known an effervescence after the EU integration particularly towards implementing the European legislative acquis.*

*This kneading of the Romanian legislator was also reflected in the work of coding. The new Civil Code has been adopted which, together with the New Code of Civil Procedure, has come into force, as well as the new Penal Code and the new Code of Criminal Procedure that have not yet come into force.*

*Keywords: Romanian legislation, EU integration, transitional rules of law, updating the Penal Code and the Civil Code, European Union legislation.*

## 1. Preliminaries on coding in Romania

It is known that the first comprehensive codification activity in the modern history of the Romanian people living in the area is due to Prince Alexandru Ioan Cuza, who in his short reign managed to give the first codes to the Romanian Principalities: Civil Codex, Codex of Civil Procedure and the Penal Code and made preparations for a new Constitution, which was promulgated in 1866, when Charles I was already ruler.

In Transylvania, a province of the Habsburg Empire, Leopold Diploma of 1781, was considered to be the first constitution of Transylvania. Here the situation is slightly different, the Austrian Empire being more concerned with and more rigorous in regulating social relations through laws and other regulations. Here, as for the whole empire, Austrian Civil Code of 1811 was appliable. The decrees adopted by the Imperial Court of Vienna and the Decisions of Legislative Assemblies of Transylvania (in feudalism called Diets) as a significant indication that it stood out as an independent feudal state, which is found in a selective collection compiled from late medieval times with the tendency of assertion of owning of judicial political regime, prepared and compiled after the enthronement of George Rákóczi, known as Approved Constitutions of Transylvania of 1653. Administrative reforms of Emperor Rudol followed.

In this context, we may consider the XIX$^{th}$ century as being the century of the first and major codification in Europe, Napoleonic Civil Code- 1804, Belgian Constitution- 1839, Austrian Civil Code- 1811, Italian Commercial Code- 1871, German Code of 1900, and to the honor of the Romanian ruler of the Union and his advisor Mihail Kogalniceanu, the Romanian Principalities were not outdone due to the set of encodings made under the supervision of the ruler, as times required.

Inspired from French legislation, the Civil Code of 1864 has its odyssey, the Romanian legislator's sources claim and Napoleonic Civil Code of 1804 being more modern than the existing ordinances of the young Romanian state with aspirations towards a developing capitalist society, but the country was economically underdeveloped, devided into



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old feudal statutes with no industry, trade and banking and credit system, which opposed strong resistance to the reforms initiated by the ruler.

The Civil Code of that time and then the 1866 Constitution were important legislations, but "too advanced" for the social and economic situation in the country. Legal institutions and regulatory relations of the Code were about 50 years ahead of what was then the United Principalities and later the United Romanian Reign. It may be stated that the legislations changed the statutes and dragged after them the ordinances heavily inked in feudal traditions.

The Civil Code and later the Commercial Code of 1887 formed a strong forerunner for the United Romanian as far as the legal institutions concentrated on Romania's issues of the time are concerned: the trade has developed, including on the Danube and the sea (eg wheat Exchange at Brăila, 1903 ), a new aspect has given to property, family property as a result of marriage, equality between spouses, in the matter of inheritance, of the contracts by French law marks, in some chapters these even being imitated. The criticism regarding the dificulty in enforcing the Civil Code in Romanian society of the time , as the code's provisions are too ahead , is true, but unlike other cases , it was an important element of progress, being a forerunner visionary.

It is interesting to curiosity why Cuza's legislators directed their attention mainly towards the French Civil Code of 1804 and for the Constitution of 1866 to the Belgian Constitution of 1839, of French origin as well, coming from cultural and political French space. The precedents did not incline towards such guidance and also so radical.

In all previous ages, right until the Union of the Principalities, Byzantine canons circulated in the Romanian provinces, as perceived by the times rulers and religious scholars.

Two important points in regulation occur in the XIX$^{th}$ century: the Civil Code (Codex) 1817 in Ţara Românească of Prince Caragea and of 1818 in Moldavia of Calimachi, unjustly forgotten for they were true legislative moments. In particular Caragea Code was considered extremely well made, modern and a model for those times. Interpreters were divided into two camps: those who claimed that is has been inspired and somehow a copy of the Austrian Civil Code, because one of its editors was an Austrian, and those who claimed it to be an original.

There are striking similarities between Caragea and the Austrian Code of 1811, but one thing remains certain: it was modern, scrupulously made, and to those who claimed the originality of the code were brought reproach that they were influenced by national bias.

Their response was that the resemblance between the legal institutions existed in deed, but that their legislators have used different sources coming from Roman Law which forever settled all legal institutions of private law. It was only that the sources of the Roman Law went on different ways: Austrian lawmakers have used the Roman- German Empire Law, whose followers considered themselves Habsburg kings and in the Romanian Byzantine provinces The Laws of Roman origin, which is known that they had a general circulation in the geographical space of the Romanian people.

It remains a mystery that Cuza's legislators have neglected or willfully ignored the two codes of Caragea and Calimachi, which would have been more handy. A brief explanation which comes from our intuition is expressd below.

The political event of the first Union of the Romanian Principalities in 1859, acted upon strong actions in legislative reform at the time. The outside supporters of the Union



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could not be forgotten, nor could those who stood against the Union. They were supporters of the French Union, the political and cultural world around France, the Union having also its opponents, the Court of Vienna and the Tsarist Empire. The latter could under no circumstance have been taken into account, as it was outdated, decadent even for the Western Europe's pragmatic requirements, cut out from feudal tasks.

The Unionist movement, whose goals were fulfilled, carried on with the same enthusiasm these goals achieved through coding as well. They chose to be guided by the Francophone law, more romantic and the first to be freed from the previous institutions constrained by the feudal privileges and tasks such as: embaticul, bezmenul, the perpetual usufruct, suffocating full ownership. Trade practice, the development of credit, technical progress of mechanization, the ideas of freedom and equality have made possible to drop along the way the narrow and secluded precepts of an autarkic economy based on exchange and local fairs.

This is not to be understood that the Austrian Civil Legislation was not modern for those times, in its systematic elaborations especially, since in its evolution has held a rigorous system of organization and evidence of ownership in land books (Landtafel - Patent - 1855), regulation of acquisitive prescription (art. 1460 - 1464 Austrian Civil Code), of legal documents (contracts) whose effects, once transcribed, could not be canceled, and so on, but even being experts in the Austrian law and Calimachi and Caragea Codes, the balance inclined towards choosing a French law. It was strong and enticing the freedom of contract and freedom of action that as principle governed the French Civil Code, charming through its metaphorical texts.

The intellectual background of most of those who conducted the country's affairs came from their education in France and its sphere of interference of the time. Cuza's coders were undoubtedly "filo- French" and it came as a response to the opposition of Austria and German political area in general to the unionist aspirations of the Romanians, very differently perceived, according to imperial interests .

In our opinion, the decision of the legislature shared by ruler and his advisers to regulate and organize the systematic application of civil law in the Civil Code by assimilating French legal institutions was of utmost importance. The effects are long lasting, we even dare say that the influence has been overwhelming until today. The terminology used is also French inspired (heredity, heresy, usurpation, tenure, right, lease, crime, etc...) which actually led to a richer fund of Romanian vocabulary expressions, and it was for a century the language of quotations from the cases through the courts halls .

From here a preliminary conclusion can be drawn, that it was not simply a regulator as those óf today which are always changing, its influence was far deeper in our national culture, once implemented in the Romanian legal system that had already been built for two centuries and then integrated into the French legal system, different from the Anglo - Saxon and Germanic system .

It is eventually the fruit riped from the preoccupation "looking towards Big Europe (Mihail Kogalniceanu)" by scholars trained in the schools of the west, as were the politicians of the time, youth who returned trained and who understood better the path of no return. Messages and actions have been radical, for instance: the removal of Prince Mihail Sturdza exactly by those encouraged and sent by him to the schools and French culture through the



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velvet movement of 48 in Moldova, to which the consistency in coding by the French legal system is added. The Union of the Principalities also need a unified legislative framework, the only way to create a true legislative based state.

Faced with these choices: whether to devote the existing social and economic situation in 1859, with a confusing administration and justice system, unprofesionalized, marked by outdated and corrupt mentality (the bias, abuse, privileges), on the one hand as it was after the two codes which were not really applied or to devote the German system, representative through the Austrian legislation near the borders of the Romanian Principalities, as a rigorous and technical system on the other hand. The French system was finally elected, because of more well received judicila culture.

At this point it is clear that the European vocation of the Romanian nation is firmly anchored in its political and cultural traditions, of course here we consider legislation that comes as a gratitude for supporting the ideal of national unity. France's institutional legal culture is then present in the Romanian society and no one could say that in this respect we were not prepared and stayed behind others. The opportunity to constitute a modern state regarding legal institutionalization as well was not missed as long as the legislative development in the state during that time was aside the legal systems of France and Italy.

The XIX$^{th}$ century was therefore considered the century of great codification in Europe, where Romania was also present.

For this changing world, in which the law needs to keep up, the legislation has the primarily role to contribute to the system. This can be done if it keeps the pace with everything it reprezents as development of a social-economic framework, both at the time and as a perspective.

The XIX$^{th}$ century also brought with it the idea of a new legal settlement has been present so new encodings have been found in increasingly globalized world even since the post-war period.

**2. About encoding issues in today's Romania.**

Coding in contemporary Romania resulted from the opportunity of updating the legislation in relation with the development of the Romanian society after 1990, the democratic route of contemporary Romania, member of the European Union since 2007.

There are two main considerations of legislative projects that this goal must cover. Organizing the legislative institutions in line with the socio- economic developing premises in which moments that require recourse to reglementation and the legislative harmonization in the European and global context constantly be captured, to cope with the impact caused by internal and cross-border values flow.

The existing regulations can no longer cope with the impact of other legal systems and the values circuits incident with main legislative institutions from various fields, primarily in the European Union.

At the core of the Basic Law- the Constitution of Romania was adopted by referendum on December 8, 1991, revised in 2003, as currently in force.

Since 1990, the legislative activity has always been on the public agenda and also much debated in public opinion, even with passion and controversy.



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It is necessary to theoretically operate with concepts generated by a laborious documentation for practical reasons to enable economic exploitation of the human potential that Romania has, but primarily for its interest and that of the governed ones. The regulation is not an end in itself but a major determination expressed through valences and principles with direct applications in all public and private sectors of each citizen.

In 2009 the main codes of Romania were adopted: the New Civil Code, the New Code of Civil Procedure, the new Criminal Code and the New Code of Criminal Procedure. The first two came into force through implementing laws so, on 1 October 2011 the Civil Code and on 15 February 2013 the Code of Civil Procedure. The other two codes (Penal and Criminal Procedure) are due to come into force in 2014. A new revision of the Romanian Constitution and the administrative organization of the country on political development regions are in an advanced public debate and also on the agenda of policy makers, where disputes of public actors and civil society are particularly animated.

The aim of this study is to make some considerations on the recent encodings, particularly in the civil law.

The two codes already in force refer to the area of private law, or, as stated in the world of specialists, these laws govern the reports of material law (Civil Code) and the reports of procedural law, the reports of procedural law, of methodological procedure with the scope of valorizing subjective rights in the area of substantial institutions (Code of Civil Procedure).

The Civil Code of a country reaches the very fiber of the society, guards the institutional health of patrimonial property rights, each individual taken as an individual or an established legal entity recognized by the balanced and economic distribution at the conventional level, of the economic goods available in society, as the classical doctrine said: "it mastered life from birth to the end of it, through its important moments and there is no man to whom it does not apply, who does not need it, which makes it by the Constitution, the most important law of the nation"[1].

There is already a strong perception of the presence of the New Civil Code in the world of specialists and in Romanian society, as far as we are concerned, we hope for a long time before significant improvements are required for its ideological and symmetric conception to be maintained in the provisions that are included in the structure of the six books, in turn arranged in titles and chapters, with a total of 2664 articles. The changes may contain inaccuracies that could affect the interpretation of institutional harmony, which have been reported and corrected in the final steps of implementing the Law of the Civil Code.

A new Civil Code was expected, the society having changed much since the promulgation of the prior Code of 1864, the goal of becoming the mirror of a social -political system had to be achieved, which is expected from both the Civil Code and other codes that were mentioned above.

The emergence of the new Civil Code and the reform of the entire legislation is also part of Romania's commitments agreed in the Treaty of Accession with the European Commission under the Cooperation Mechanism (in this respect Commission Decision 2006/928/EC of December 2006).

[1] Quote by Andrei Radulescu, professor, academician of interwar Romanian.



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In the Commission Report on accompanying measures following Romania's Accession (Brussels, 27.06.2007) is stated that within the judicial reform it is aimed specifically to the completion of two codes (Civil and Civil Procedure).

The intention of modern a construction, contemporary, resides in all the Code provisions in its entirety. For example in Book I "*On people*", Title II *"Person*", contains new regulations on *"The respect to the human and their inherent rights"* in which they are regulated, we state marginal texts referred to by name: personality rights (art. 58 ), which are absolute acoording to the text, inalienable, imprescriptible, strictly personal, deriving from the right to life, to physical and mental integrity, the right to dispose of oneself *(Article 60 in connection with Art. 26 of the Constitution*). Similarly: *"The right to life, health and physical integrity of the person"* exemplified by marginal names of the texts, prohibition of eugenic practices *(art. 62)*, one can not affect the human species selection or organization of the human species; interventions of genetic nature *(art. 63)* through medical or other methods, the inviolability of the human body (*art. 64*), removal and transplantation provided to living people is regulated (*art. 68).* The code also contains provisions enshrining a section : respect to a person after their death (*art.78-81*) on remembering the deceased, respect to their wishes after death.

New Civil Code is remarkable in its consistency in terms of preserving the civil law principles contained in the European Convention on Human Rights ratified by Romania, bringing regulations in the texts on "*privacy and dignity of the human being*" (art. 70-77), giving the same level of protection of the individual patrimonial and non patrimonial rights .

In Book VII for the first time are included *"provisions of private international law"* regarding the realism of contemporary life, sharing values, free movement of people and information in today's world, changing the previously existing law 105/1992 on the rules of private international law which were not up to date in a radically changed context.

In the very "subject to regulation" (art. 2557) the law appliable to a private legal report with foreign elements, in convergence with international conventions to which Romania is a party, European Union Law or other provisions of special laws. It contains provisions on reciprocity when the interpretation and application of foreign law in Romania becomes (or not) appliable, the terms of recognition of the acquired rights (art. 2567), national law referring to persons (art. 2568 ), the conventional and probatory system.

In the general context of the New Civil Code, compared to the previous one, recent doctrine has been expressed as being a combination of a pluralist assembly with an ideology that comes from many sources; a maintained direct control on the constitutionality of legislation is provided by the Constitution, placed within the European law with the evolution of human rights, finally, the interpretation of texts as "rules, methods or means of interpretation" for an authentic interpretation of the opinion that the civil law "has a strong ideological footprint".[2]

To give safety to civil legal circuit through its general mandatory provisions, intended to govern only the future, it becomes appliable to acts and future acts produced after its entry into force.

[2] V. Constantine: *Ideology of the New Civil Code*, published in the New Codes of Romania, Ed. U.J. 2011, p 10-11;



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It resolves judicially and extrajudicially through neutral positioning of the transit law relations laws that it makes from the old code.

The modern principle of non-retroactivity of the New Civil Code is given by the need of the special transitional provisions set out in law enforcement which, alas, can not cover all the situations that occur in practice, placed in direct relation with the legal effects "that can not be others than those provided by the law in force on the closing date or, where appropriate, commission or their event" (art. 3). In time, The New Civil Code succesively produces a break in relation to the previous regulation,having a construction required by the contemporary standards, but at the same time a continuity because there are matters which should be preserved or changed in the already existing relations, which is the intended theoretical - normative law enforcement.[3]

Transitional rules of law. As always, when a new law is produced, it is the task of the interpreter to do it properly and in support of the principle, of the legal doctrine and jurisprudence especially, in order to fulfill the new encodings reasons . The reason for new encodings ais not an end in itself,the encoding is abstract but the application becomes concrete by its intrusion in all segments of society.

[3] M. Nicolae: *The principle of non-retroactivity and the New Civil Code: The new Codes of Romania*, Ed. U.J. 2011, p.82 - 105.



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