

REVIEWS AND ANNOTATIONS

Lavický, Petr – Hurdík, Jan and collective. Private Law Reform. 1. st. ed. Brno: Masaryk University, Faculty of Law, 2014, 329 p. Faculty of Law Files Masaryk University, series theoretical, Edition Scientia; vol. n. 501.

'Plus ça change, plus c'est la même chose.' This rather pessimistic statement may be applied to any change, including attempts at reforming legislation. When it comes to reforming private law, all sorts of aspects come to one's mind. Does private law constitute cultural heritage of every single country, so inextricably intertwined with its identity that certain elements of private law must be preserved at all costs, or is the civil code a piece of legislation like any other that may be modified or even reformed by the legislator, so to speak, at his leisure? And last but not least, does reform imply that the law changes its form, but not so much the substance?

The authors of the book *Private Law Reform* decided to deal with the question of private law reform on a comparative basis, which is, by definition, not an easy endeavour. For the purposes of this book, the term 'reform' designates crucial legislative changes. However, the scope of the book goes even further, encompassing interpretation and application of law, including both obvious and latent factors affecting the functioning of private law.

Partly based on the results of an international conference held in Brno in 2014, the book takes stock of private law reform attempts, process and results in various European countries. In the introduction, the scope of the book is broadly defined by questions put to the conference participants. These questions concerned preparation of the private law reform and its materialization, foreign and European models, the subject matter aspects of the reform, experience with applying new rules in the practice and the goals of the reform, i.e. whether a new civil code was passed.

The issues in question are dealt with at two different levels. The general part contains a cross-cutting analysis. Special aspects addressed in this respect include continuity and discontinuity of legal regulation, original and unprecedented concepts, as well as the relationship between autonomy of will and consumer protection, which is one of the aspects of private law considerably affected by EU law. Apart from the questions mentioned above, the general part also deals with issues concerning new civil codes, ranging from fundamental issues (such as the structure of civil codes and their role in the legal system) to more specific issues (such as definition of principles of private law and the role of case law). As for the role of principles, many civil codes refer to, or even enumerate relevant legal principles. On the whole, the authors argue that this era is favourable towards legal principles. Court decisions are, in civil law jurisdictions, traditionally not regarded as a source of law (which is explicitly stated in certain national reports), but may be used as a source of learning the law, or even as a 'secondary source of law' for the sake of preserving the stability of existing practice, unless there are compelling reasons to apply a different solution.

The general analysis is followed by national reports, which deal with the questions mentioned above from a country-specific standpoint. This structure is of great help, when it comes to finding specific information. As for the countries under consideration, old EU Member States are represented by Austria and Germany, whereas the gist of the reports is devoted to private law reform in new EU Member States (Croatia, Czech Republic, Hungary, Poland, Romania, Slovakia and Slovenia).

Using a rather bizarre, but surprisingly suitable comparison, a civil code in our context resembles a bride. As it seems, it needs something old, something new, something borrowed and even something blue (blue being the colour of the European Union). The tension between the old and the new is one of the quintessential issues of reform in any branch of law. Civil law, viewed by some as particularly associated with legal culture, is, *a fortiori*, an area where this tension is very visible. The Bible says: *'No man also having drunk old wine straightway desireth new: for he saith, The old is better'* (Luke 5:39, KJV). Indeed, old habits die hard and it can be truly difficult to strike the right balance between the old

and the new rules. However, as the authors of the book note, most post-communist legal orders lack the feeling of ‘civilizational steadiness’, which is, presumably, an advantage when it comes to adopting new rules. It is even argued that, in these countries, paradigm changes of private law were not only accepted, but often actively supported. In this respect, recodification of private law is a unique opportunity to replace the old rules (with rather negative connotations, as they were, to a greater or lesser degree, deformed by the imperative principles of socialism and planned economy) with new ones, which are often welcomed. It must be observed that this quite peculiar enthusiasm for private law reforms in our post-communist, EU-oriented setting is perhaps more prevalent among legal academics than legal practitioners, some of which regard any major changes of legislation as an unnecessary burden. As for the legal orders under consideration, the degree of continuity and discontinuity varies significantly. Although the goal of the reforms was, to a great extent, to observe the highest level of continuity, certain reforms show a great degree of discontinuity (e.g. Czech, Hungarian and German law).

Speaking of new rules, there is the question of ‘something borrowed’, ranging from abstract inspiration by one or several foreign civil codes to the so-called ‘legal transplants’. In this respect, the authors observe that the legal orders researched in their book, as a rule, accepted plurality of models of legislation, which were mostly contemporary Western European civil codes, but soft law in this field, as well as a certain influence of historical models were also of significance.

Last but not least, a civil code needs ‘something blue’, which can be, in this context, understood as the need to adjust the new civil codes to EU law. The ‘European’ effect on national private law legislation is twofold. On the one hand, EU law directly affects national law in specific areas, which are harmonized at EU level, the most known and most significant being consumer protection. On the other hand, there are European soft law projects, which concern broad areas of private law and are, by definition, not binding on national legislators, which may or may not take them into consideration.

Private law reform is a topic that, once a draft is adopted, affects not only legal academics, but, whether they like it or not, also legal practitioners. In this respect, the range of readers that might be interested in this book is quite wide and both categories of lawyers may certainly find useful information corresponding with their needs.

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