

POLISH CIVIL LAW

edited by
DOMINIK LASOK

No.18 (I)

LAW IN EASTERN EUROPE

*A series of publications issued by the
Documentation Office for East European Law
University of Leyden*

General editor: Z. Szirmai

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D. LASOK

Volume I

Contributions
by

DOMINIK LASOK, LUDWIK FRENDEL, ALEKSANDER W. RUDZINSKI
AND LEOPOLD B. KOZIEBRODZKI

A.W. SIJTHOFF — LEIDEN
1973

ISBN 90 286 0302 6

Library of Congress Catalog Card Number: 72-89167

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Printed in the Netherlands

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PRINCIPAL ABBREVIATIONS

B.G.B.	Bürgerliches Gesetzbuch
C.C.	Kodeks Cywilny (Polish Code of Civil Law, 1964)
C.C.P.	Kodeks Postępowania Cywilnego (Polish Code of Civil Procedure, 1964)
C.N.C.	Gromadzka Rada Narodowa (Communal National Council)
D.N.C.	Powiatowa Rada Narodowa (District National Council)
D.U.	Dziennik Ustaw (Polish Journal of Laws)
G.i.A.T.	Gospodarka i Administracja Terenowa (Area Economy and Administration – a monthly Publication)
INP-PAN	Institut Nauk Prawnych Polskiej Akademii Nauk (Institute of Legal Science, Polish Academy of Science).
N.P.	Nowe Prawo (New Law – a Polish Monthly Law Review)
O.S.N.	Zbiór Orzeczeń Sądu Najwyższego (Collection of Judgments of the Polish Supreme Court)
P.i P.	Państwo i Prawo (State and Law – a Polish Monthly Law Review)
P.N.C.	Wojewódzka Rada Narodowa (Provincial National Council)
P.R.L.	Polska Rzeczpospolita Ludowa (The Polish People's Republic)
P.U.G.	Przegląd Ustawodawstwa Gospodarczego (Review of Economic Legislation)
P.W.N.	Państwowe Wydawnictwo Naukowe (State Scientific Publications)
P.W.R.i.L.	Państwowe Wydawnictwo Rolnicze i Leśne (State Agricultural and Forestry Publication)
Pal.	Palestra (Polish Bar Association Gazette)
R.S.F.S.R.	The Russian Soviet Republic
St. cyw.	Studia Cywilistyczne (Civil Law Studies of the Jagiellonian University, Cracov)
St. pr.	Studia Prawnicze (Legal Studies of the Institute of Legal Sciences)
U.S.S.R.	The Soviet Union
W.P.	Wydawnictwo Prawnicze (Legal Publication)

GENERAL EDITOR'S FOREWORD

The imposition of the Soviet legal system on the other States in the Eastern Block is not the first instance of the "exporting" of law. It happened on a large scale in Napoleonic times to other countries in the French sphere of influence. This movement was ideologically tinted just as the export of the Soviet legal system is. There is, however, one important difference: the system of the *Code Civil* was a system of largely dispositive (permissive) rules. Of course, the provisions of the Code were "exported" so as to produce legal systems similar to the French; the result *in casibus* was not necessarily the application of French law, as people retained considerable latitude of freedom to shape the law according to their wish and according to traditional law when providing for their own interests. With the "export" of Soviet law this is different. The system of State ownership, of the planned economy, of planned contracts, *et cetera*, are embodied in mandatory laws; one could even say, they are put under the shield of public order and public policy.

Yet, the domination of Soviet legal principles has not obliterated all the individual features of the laws of the other countries of the Eastern Block, many of them heirs of a strong and refined legal tradition, *e.g.* Poland.

The present work will show the reader a legal pattern governed in the most important aspects of the economy by Soviet legal principles, but still keeping its individuality, not only in agrarian law but in many details and formulations in all the fields of civil law.

Z.Sz.

PREFACE

The Civil Code of the Polish People's Republic came into being on the wave of the codification of Polish Law. In a sense it is the central piece of the Polish legal system and as such the focal point of interest. The passing of the Code terminates the period of preparatory work extending back to resurrection of Poland after the first world war but the Code is not a child of evolution. Although generations of lawyers have contributed to the idea of the Civil Code and, although the work of the codification committee frustrated by the second world war had a certain impact upon the post-war legislation, the Code reflects the present political reality. It is a Marxist Code in the sense that it reflects the socio-economic system now prevailing in the Polish People's Democracy. It also reflects the influence of Soviet Law.

The object of this book is to discuss the historical and ideological background of the Code and those parts of the Code which are concerned with the Law of Persons, Property and Succession.

This is a collective work but each author assumes a personal responsibility for his contribution. However, it is not a mere exegetic exposition of the law, for each author endeavours to discuss the principal doctrines affecting his subject side by side with the letter and the spirit of the law. Within the general context of the law of property Agrarian Law is depicted as having a special position portraying a complex system and, one might add, a conflict between "socialist" ideology and the economic reality of a predominantly peasant society where traditions die hard and the "official" law does not always correspond to the "living" law.

The editor of this volume wishes to place on record his appreciation of the co-operation of the contributors to this book. Due to their patience and forbearance, difficulties in moulding the material into a coherent whole have been largely overcome. A certain amount of overlapping has been left in order to preserve the integrity of the individual contributions and to accentuate specific emphasis. The reader will occasionally find discrepancies in the legal vocabulary. These too have been preserved to remind the reader that the translation of legal concepts is not merely a matter of language. The most striking example is the rendering of the "zasady współzycia społecznego" as the rules of "social co-operation" (or "social intercourse").

Special thanks are due to Professor Z. Szirmai, without whose encouragement this book would not have been published, the staff of the Documentation Office for East European Law of the University of Leiden for their assistance in the final stage of the publication and the publishers, Messrs. A.W. Sijthoff of Leiden who, with their customary skill and efficiency, handled a rather difficult manuscript.

December 1972
Department of Law
University of Exeter

D.L.

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I. THE CODE OF CIVIL LAW

by

*Dominik Lasok**

1. HISTORY OF THE CODE

The Code of Civil Law of 1964 emerged on the wave of great codification in Poland¹ and coincided roughly with the codification of Civil Law in Soviet Russia² and Czechoslovakia³. As a monumental work, which codification always is, it marks an eminent stage in the development of Polish Law. Qualitatively it is said to be "socialist" law and so a landmark on the predestined road towards communism but being a child of its time it forms no part of the national evolution beyond that which began in the dark days of the Second World War.

When Poland, as a result of the third partition in 1794, disappeared from the maps of Europe her legal system was replaced by that of her conquerors. Made independent in 1918 she inherited a patchwork of five systems which, in the course of time have been impressed upon her territory. Central Poland, usually described as the Congress Kingdom⁴ had at first Prussian and Austrian law but following the Napoleonic adventure it was endowed in 1808 with the French Code Civil. The eastern provinces were subject to Russian Law compiled in the so called *Zvod Prav*. Western provinces were governed first by the Prussian Code of 1794 and, since 1900, by the German *Bürgerliches Gesetz-*

* Lic. en droit (Fribourg); LL.M. (Durham); Ph.D. (London); of the Middle Temple Barrister-at-Law; Professor of Law in the University of Exeter.

1. Code of Shipping Law (1961), Code of Family Law (1964), Code of Civil Law (1964), Code of Civil Procedure (1964), Code of Private International Law (1964), Code of Administrative Procedure (1960), Code of Criminal Law (1969), Code of Criminal Procedure (1969).

2. Fundamental Principles of Civil Legislation of the U.S.S.R. and the Union Republics (1961); Civil Code of the RSFSR (1964), translated by A.K.R. Kiralfy, Law in Eastern Europe, ed. by Z. Szirmai, 1966, No. XI.

3. Replacing the Civil Code of 1950; cf. Rudzinski, A.W., "New Communist Civil Codes of Czechoslovakia and Poland: A General Appraisal", (1965), 41 Indiana Law Journal, No. 1, pp. 33 ff.

4. This area was known as the Duchy of Warsaw (created by Napoleon in 1806), later the Congress Kingdom (created by the Congress of Vienna in 1815).

buch enacted in 1896. Southern Poland was used by the Austrians as a testing ground for their Draft Code of 1797 which was replaced in 1812 by *Das Allgemeine Bürgerliche Gesetzbuch* of 1811. A tiny strip in the South, forming part of Northern Hungary, was until 1922 subject to Hungarian Law.

This legal Tower of Babel, quite apart from its disadvantages, offered a challenge to the sense of national unity brought about by independence in 1918. In 1919 a Codification Commission, consisting of eminent jurists and practitioners, was appointed for the purpose of elaborating a unified system of law. A considerable progress was made in the field of the Administration of Justice, Criminal Law, Criminal Procedure and Civil Procedure but the unification of Civil Law was wrought with difficulties. Little was achieved in this field though certain branches of the law, especially those of cardinal importance to the economic⁵ life, were written anew. Practically no progress was made in the field of property, succession and family law,⁶ which remained territorial and devisive. In response to practical necessity Codes of Interprovincial Conflict of Laws and Private International Law were enacted in 1926,⁷ the former to cope with internal problems, the latter to solve the problems of external conflicts of law. The Codification Commission continued its work throughout the inter-war period but no code of Civil Law materialised.

In the circumstances the teaching of the law assumed an extremely important role. Not only had the lawyers to be equipped with a broad general knowledge of the law but they also had to be able to function within the plural system. They had to be both "national" and "provincial" lawyers as well as comperative lawyers. The French *Code Civil* was, of course, the main source of instruction not only because it applied in a substantial part of the country and was regarded as a masterpiece of codification but also because it was a gift of a nation with which Poland had longstanding cultural and sentimental ties. The influence of the *Code Civil* cannot be denied even in the present philosophical formation in spite of the rejection of the Code as a "bourgeois" relic.

The transformation of Poland into a People's Democracy brought about a new impetus in the task of the unification and reform of the law. For the time being the pre-war law was to remain in force but already in 1945 the Provisional Government enjoined the Ministry of Justice to prepare a vast pro-

5. 1924: Law of Cheques and Bills of Exchange, amended in 1936,
1926: Copyright Law, Law against Unfair Competition, Private Interprovincial Law and Private International Law,
1928: Patent Law, Company Law,
1933: Code of Obligations, Company Law,
1934: Commercial Code.

6. Lasok, D., Polish Family Law, Law in Eastern Europe, ed. Z. Szirmai, 1968, No. XVI.

7. Lasok, D., "Polish Private International Law", Law in Eastern Europe, ed. Z. Szirmai, 1962, No. VII, pp. 121ff.

gram of legislation. In theory there could be no evolution of the law for the pre-war system was incompatible with the doctrine of socialist revolution. Being, in parts, of a foreign origin and "bourgeois" in character it was an odious liability. In practice, whilst retaining its old form, the law through interpretation and adaptation, received a new spirit⁸ and so was made to contribute to the transition of the society from capitalism to socialism. Retrospectively, in accordance with art. 1 of the Constitution of 1952 the laws of the Polish People's Republic were the "expression of the interests and will of the working people".

Two factors dominated this period of transition: the doctrine of the socialist state and law borrowed of political necessity from the East,⁹ and the drive towards a unified system of law in response to national aspiration. Soviet tutelage saw to the former, the territorial changes resulting in a substantial loss in the East and gain in the West contributed to the latter. Indeed already in 1945¹⁰ Polish law was extended to the former German territories.

In extremely difficult post-war conditions a small band of lawyers prepared, within a relatively short time, a number of statutes¹¹ which during 1945 and 1946 became an instrument of the unification of the law. The technique was simple. In eight separate enactments the basic branches of Civil Law (including Family Law) were revised and the corresponding pre-war law was repealed. What was left was harmonised with the new legislation. By a separate decree¹² a set of General Principles of Civil Law was enacted to reinforce the fabric of the specific laws and enable the courts to interpret the law in the spirit of the socialist doctrine. Undoubtedly this was a piece-meal operation but nevertheless by January 1947 the process of unification was complete albeit without codification.

8. The Supreme Court held in several cases that the pre-war law remained in force "unless incompatible with the principles and aims of the People's State".

9. Preamble to the Constitution of the Polish People's Republic (1952). Szer, S., "Wpływ Prawa Radzieckiego na Ukształtowanie Niektórych Instytucji Części Ogólnej Polskiego Kodeksu Cywilnego" (The Influence of Soviet Law on the Formation of Certain Institutions of the General Part of the Polish Civil Code), N.P., 1967, No. 10, pp. 1239 ff.

10. E.g. Supreme Court, decision of 26.3.1946, O.S.N., 1945-46, No. 51 and decision of 2.4.1946, *ibid.* No. 52.

11. Law of Persons, decree of 29.8.1945 (D.U., 1945, No. 40, Ch. 223), Marriage Law, decree of 25.9.1945 (D.U., 1945, No. 48, Ch. 270), Family Law, decree of 22.1.1946 (D.U., 1946, No. 6, Ch. 52), Guardianship Law, decree of 14.5.1946 (D.U., 1946, No. 20, Ch. 135), Matrimonial Property Law, decree of 29.5.1946 (D.U., 1946, No. 31, Ch. 196), Inheritance Law, decree of 8.10.1946 (D.U., 1946, No. 60, Ch. 328), Law of Property, decree of 11.10.1946 (D.U., 1946, No. 57, Ch. 319), Land Registration Law, decree of 11.10.1946, (D.U., 1946, No. 57, Ch. 320).

12. General Principles of Civil Law, decree of 12.11.1946, (D.U., 1946, No. 67, Ch. 369).