



Christian Takoff

Doctor iuris, University of Sofia

The Present State of Harmonisation of Bulgarian Private Law, and Future Perspectives: Historical Development and Scope of the Private Law — Compliance with European Private Law

1. Historical development

There are three main eras in the development of the Bulgarian law of contract. The first one was influenced mainly by the French legal tradition and doctrine; the second was predetermined by the same Roman approach to legislation, on the one hand, but also by German scholarship, on the other; and the third is subject to the influence of the market economy and the domination of European law.

In the period 1892–1950 (between the liberation of Bulgaria from the Ottomans and a short time after the socialist period), the resolutions of the French Code Civil were followed primarily, adopted through the old Italian Codice Civile. This led logically to adoption of the French and Italian doctrinal underpinnings.

The reception of the French tradition was not absolute or complete, however. Just as an example, commercial and bankruptcy law followed the German model, received through Hungarian and Rumanian patterns. The procedural law was under strong Russian influence.

In 1950–1989 (from a few years after the seizure of power through the Communists until the political changes of 1989), a full ‘clearing away’ of the ‘old’ law took place. As an interesting example one could mention the law on the repeal of all laws adopted prior to 9 September 1944.¹ This ‘clearing away’ was not, however, a radical one. Most of the ideas of the civilian tradition were kept, although garnished with several ideological patterns. Here should be mentioned the following important legal acts:

¹ Published in *Darzhaven Vestnik* (D.V.) No. 93/1951 (in Bulgarian).

- The structure of the new Law on Obligations and Contracts (LOC) of the year 1950² was changed in comparison to that of the old one (this structure was more or less influenced by the structure of the general part and the contract law portion of the German BGB). Many of the shortcomings of the old LOC were avoided here; new institutes were introduced (such as representation and unilateral transactions); and material on matters regulated in other laws was included and transposed from other *sedes materiae* and abrogated laws: (1) donation matters (from the Inheritance Law), (2) bill of exchange effects (from the Commercial Law), (3) prescription (from the Law on Prescription), and (4) privileges and mortgages (from the Law on Privileges and Mortgages);
- The Ownership Law (1951)³ was written to be much shorter than the preceding Law on Property, Ownership, and Easements;
- The Inheritance Law (1949)⁴ established the abolition of unequal treatment of the sexes and limited the scope of the institution of legal heirs;
- The Civil Procedure Code (1950)⁵ was made much shorter than the previous Law on Civil Legal Procedure, and *ex officio* principles of the civil procedure were introduced;
- Family law saw a rapid and dynamic development through the years — here are to be mentioned only three main acts: the Law on Persons and Family (1949)⁶, the Family Code (1968)⁷, and the Family Code from 1985⁸ (which is still in force); and
- The private international law had for a long time no central legal regulation; separate provisions are set forth in numerous statutory instruments and bilateral legal assistance contracts.

In spite of the power of the Communist regime in Bulgaria, private law has remained unaffected overall by tendencies to imbue works overly with ideology. However, its development has been delayed to the point of discontinuance because of the underdeveloped civil circulation. And that, along with the ideological prohibitions on the invocation of Western European literature and the inaccessibility thereof, has had its unfavourable isolating effect upon the doctrine.

Some of the Bulgarian scholars undertook an interesting approach in that era. As they could not cite or refer to a piece of Western literature (because of the ideological prohibitions, the latter could only be condemned), they found Soviet authors who supported the relevant opinion and cited the latter instead of the Western original transcripts.⁹

Since 1989, the majority of the existing effective law has been preserved and cleared of its purely ideological traces. New laws are being enacted because of the transition from a centralised to a market economy. Intensive harmonisation of the Bulgarian civil law with the EC and EEC directives took place, in a process that remains in progress. The most important developments here are:

- The adoption of the Trade Law (TL)¹⁰ (1991–1996) and a number of specific laws regulating the new business realities;
- The introduction of numerous restrictive regimes regarding (1) exchange transactions, (2) securities, (3) state-owned and municipal property, (4) public procurements, (5) privatisation, and a number of other fields;
- The harmonisation of Bulgarian private law with European law — a number of directives the transposition of which has not been of particularly high quality (with the exception of the directives in the field of company law), with a ‘flood’ of legislative instruments, not infrequently resulting in destruction of the systematics and coherence of private law being observed in the last 15 years — and
- The adoption of the first Bulgarian Code of Private International Law (CPIL)¹¹ (2005).

Today’s Bulgarian contract (and private) law cannot be unambiguously referred to as within any of the three traditional families of law — the Roman, the German, or the Anglo-Saxon tradition.

² D.V. 275/1950 (in Bulgarian).

³ D.V. 92/1951 (in Bulgarian).

⁴ D.V. 22/1949 (in Bulgarian).

⁵ Izvestija (Izw.) 12/1952 (in Bulgarian).

⁶ D.V. 182/1949 (in Bulgarian).

⁷ D.V. 23/1968 (in Bulgarian).

⁸ D.V. 41/1985 (in Bulgarian).

⁹ See, e.g., the books of L. Vassilev. *General Part of the Civil Law*. Sofia: Nauka i izkustvo 1956 (in Bulgarian); Al. Kozuharov. *Law of Obligations, General Part*. 3rd ed. Sofia: Nauka i izkustvo 1958 (in Bulgarian); V. Tadjer. *General Part of the Civil Law*. Vol. 1 (1971) and Vol. 2 (1973). Sofia: Nauka i izkustvo (in Bulgarian).

¹⁰ D.V. 48/1991, last amended D.V. 105/2006 (in Bulgarian).

¹¹ D.V. 42/2005 (in Bulgarian).

Legal regulation is under strong French influence and possesses numerous German elements as well. In certain laws (e.g., the Law on Public Offer of Securities^{*12}, the Law on Registered Pledges^{*13}, and the Law on Companies with a Special Investment Objective^{*14}), the Anglo-Saxon influence can be observed as well.

At the same time, the doctrine is unambiguously under German influence, though with clearly obvious traces of Roman law.

There were two attempts at creating a civil code — in the 1970s and the mid-1990s. The first of these drafts is already forgotten; the second one had very dubious qualities, and, fortunately, there is no real chance for its adoption. The contemporaneous state of extremely dynamic legislation and the division of the private law into three parts (business-to-business, business-to-consumer, and consumer-to-consumer law) makes codification an extremely difficult project and perhaps impossible to plan or realise.

As has been mentioned already, the Bulgarian private law is not a codified one. This circumstance, once evaluated as a shortcoming, is nowadays sooner a blessing, as transposition of the EU legislation can be done without reordering of the corpus of the classic civil law.

Because of this particularity of the Bulgarian legal system, harmonisation with the EU law remained separate in several areas of *leges speciales* and was not incorporated into the classic civil legislation.

2. The three domains of Bulgarian law of contract

Currently, Bulgarian law of contract is not a homogenous phenomenon. Thus, it bears a resemblance to mediaeval legal systems with their guild-type organisation. There exist three parallel regimes: those covering business-to-business, business-to-consumer, and consumer-to-consumer relations. It is only for the latter circle of relationships that the classical law of contract remains valid. For business-to-business relationships, it is the commercial law that is valid, and consumer law applies for business-to-consumer relationships.

It is a consolation that such developments are observed also in a number of other European states. Such influences can be seen in the Principles of European Contract Law (PECL) and in the Common Frame of Reference (CFR) as well.

Fortunately, the differences among these three domains do not amount to a gap. It can be said that commercial law is *jus privatum* regarding *jus commune* of civil law, while consumer law is *lex specialis* regarding *lex generalis* of general private law.

3. The influence of the PECL/CFR and other systems on Bulgarian private law

Unfortunately, there is no influence of the PECL on the Bulgarian legal system. The Vienna Convention on International Sale of Goods (CISG) is part of the internal Bulgarian law; the international usages, practices, and uniform rules of the ICC have a broad acceptance in Bulgaria. However, the PECL, the Principles of International Commercial Contracts, and — because of its novelty — the CFR are not popular.

I remain slightly pessimistic about the rapid acceptance of the CFR in Bulgaria, for the following reasons:

- The consideration of the CFR or PECL is an occupation that constitutes a luxury.
- Luxury occupations are preserved for people whose primary needs are satisfied.
- The latter condition is not yet met in Bulgaria, especially with the Bulgarian legal community.
- The flood of legislation in the last 15 years or so leads most practitioners of jurisprudence to show interest only in the legislation that is in force and not in future developments.
- The gaps and dangers connected with an unknown legal act are frightening for most lawyers.
- The uncertainty of possible (and impossible) interpretations from the courts is not very conducive to further developments either.
- Conservatism plays its disastrous role as well.

¹² D.V. 114/1999, last amended D.V. 52/2007 (in Bulgarian).

¹³ D.V. 100/1996, last amended D.V. 34/2006 (in Bulgarian).

¹⁴ D.V. 46/2003, last amended D.V. 52/2007 (in Bulgarian).

- Fear stemming from ignorance of languages different from Bulgarian has an effect.
- Lack of commentary and related literature does not contribute to the popularity of these rules.
- The possibility for choice of the applicable law is endangered by the uncertainty with regard to the future Brussels II regulation.

Despite the above facts, which seem to amount to huge desperation, there are several circumstances inspiring hope:

- My students are very enthusiastic about the PECL and the rumours concerning the CFR.
- Some of my colleagues are interested as well.
- A new generation is growing up, one that is much more open-minded and cosmopolitan.
- This new generation is gradually occupying the courts of first instance.

The politicians are, from my point of view, in total ignorance of this development.

Some time ago, I met the Minister of Justice because of rumours related to repeated amendments of the Bulgarian Law on Obligations and Contracts. I informed her of the existence of the PECL and the future development of the CFR. On the one hand, the minister's being very surprised was a little sad; on the other hand, however, she was really very interested in the PECL and in the CFR as well, which is promising. I was asked to prepare brief informational material of the memorandum type for submission. By the end of the year, I will have completed this task.

From my point of view, the following measures are possible and indeed necessary in Bulgaria:

- Translation of the CFR into Bulgarian — the high quality of this translation is a prerequisite for further success.
- Further teaching in private law that addresses the context of international soft law frameworks.
- *Exempla docent* — broader acceptance of the rules abroad will become an impulse for Bulgarian doctrine and legislation.
- The European Commission's communication in some way again, after the publishing of the CFR, which should provide a huge push forward.
- A short — I stress, very short — commentary on the CFR, which should prove very helpful.