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The Development of the Greek Civil Law: From its Roman – Byzantine Origins to its Contemporary European Orientation

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Abstract: In this article, the author sketches a picture of the development of Greek Civil Law, ranging from its historical roots to the challenges of the 21st century. Along this journey, she gives an overview of the structure and ideas of the Greek Civil Code; in particular, the law of obligations, tort law, property law, family law and inheritance law are addressed. After describing a host of amendments, the author discusses two characteristics of modern Greek Civil Law: the interpretation of the Greek Civil Code in the light of constitutional law, and the impact of Community measures.

Résumé: Dans cet article, l'auteur dresse un portrait de l'évolution du Droit Civil grec, depuis ses racines historiques jusqu'aux défis du 21ième siècle. Tout au long de ce voyage, elle résume les structures et les idées du Code Civil grec ; le Droit des Obligations, le Droit de la Responsabilité, le Droit de la Famille et les Droit des Successions sont en particulier discutés. Après avoir décrit toute une série d'amendements, l'auteur discute deux caractéristiques du Droit Civil grec moderne : l'interprétation du Code Civil grec à la lumière du Droit Constitutionnel et l'impact des mesures communautaires.

Zusammenfassung: Dieser Beitrag zeichnet die Entwicklung des griechischen Zivilrechtes beginnend mit den historischen Wurzeln bis hinein in das 21.Jahrhundert nach. Die Autorin gibt dabei einen Überblick vom Aufbau und Prinzipien des griechischen Zivilgesetzbuches; im besonderen werden das Schuldrecht, das Schadensersatzrecht, das Familienrecht und das Erbrecht behandelt. Nach einer Erörterung der Novellen werden zwei Charakteristika des modernen griechischen Zivilrechts behandelt: die Auslegung des Zivilgesetzbuches im Lichte der Verfassung und der Einfluß von europäischen Rechtsinstrumenten.

1 Brief presentation of the Greek Civil Law before the introduction of the Greek Civil Code (GCC) (in force since 23.2.1946)

The Greek Revolution of 1821 against the Turks, after which the modern Greek State[1] was founded,[2] marks the beginning of a new era in the history of Greek law. On 1 January 1822, in Epidaurus (Peloponnese) the first revolutionary assembly adopted a liberal and democratic constitution modelled on the French Declaration of Human

1 For a summary general background of the Country see M. STATHOPOULOS, *Contract Law in Hellas*, Kluwer/Sakkoulas, The Hague 1995, pp 19, 20. For the history of Greek (Private) Law in a Nutshell, from Antiquity to the Civil Code of 1946 see G. ARNOKOUROS, 'The transposition of the Consumer Sales Directive into the Greek legal system', *ERPL* 2&3: 2001, pp 261-263.

2 Before this Revolution, the Greek people had lived under Ottoman occupation for almost four centuries.

Rights.[3] This constitution as well as the second revolutionary constitution, adopted in Astros (Peloponnese) in 1823, designated "the law of our ever-memorable Byzantine Emperors" as the main source of Greek civil law. In the third constitution, however, adopted in Troizena (Peloponnese) in 1827, a wish was expressed that all future codes should be based on French models. The influence of French doctrine and legislation in Greece may actually be traced to the years preceding the revolution, at a time when parts of the French commercial code of 1804 had been translated into Greek and were in use among Greek merchants, and to a Greek criminal code of 1823 based on that of France. In spite of the constitutional wish, the adoption of French models was confined to these two codes, and the *Code Napoléon*, though seriously considered, did not become a Greek civil code. Governor Capodistrias, the first Governor of the newly established Greek State, clearly disregarding the constitutional directive, designated the Byzantine laws[4] as the source of Greek civil law and in 1830 announced his plan for collecting and classifying them in an orderly fashion. This work was never accomplished.[5]

After Capodistrias' assassination in 1831, a period of anarchy and chaos followed and order was not re-established till the arrival of young King Otho in 1833.[6] Under King Otho four major codes (on civil procedure, on the organization of justice, a penal code and a code of criminal procedure), based on French and Bavarian models, were drafted by the Bavarian lawyer G. L. Maurer, a member of the regency council. Maurer did not draft a civil code. An adherent of the historical school of jurisprudence, he believed that native institutions and ideas of law should prevail at least with regard to civil law, and, accordingly, started collecting local customs and current interpretations of Byzantine laws that were regarded as manifesting the spirit of the people. This project was interrupted by his dismissal from the regency council in 1835. Subsequently, a royal decree of 1835 declared that "the civil laws of the Byzantine emperors contained in the *Hexabiblos* of Harmenopoulos[7] shall remain in force till the promulgation of the civil code whose drafting we have already ordered" and that "customs, sanctioned by long and uninterrupted use or by judicial decisions, shall have the force of law wherever they prevail." This decree became the corner-

3 A.YIANNOPOULOS, in K. D. Kerameus and p J. Kozyris (eds), *Introduction to Greek Law*, 2nd ed, Kluwer/Sakkoulas, Deventer 1993, ch1, IVA, p 7.

4 Byzantine law, representing a fusion of Roman tradition, Christian ethics and Greek legal thought, exercised a deep influence on the legal system of most eastern European and Balkan countries (A. YIANNOPOULOS, in *Introduction to Greek Law.*, ch.1, IIIB, p 6, among others). For a bibliography on Byzantine and Post-Byzantine law see A. YIANNOPOULOS, *Introduction to Greek Law*, p 11.

5 A. YIANNOPOULOS, *Introduction to Greek Law*, ch1, IVB, p 9.

6 A. YIANNOPOULOS, *Introduction to Greek Law*, ch1, IVA, p 8.

7 The *Hexabiblos* of Harmenopoulos, compiled by a local judge in Thessaloniki in 1345, was one of the last Byzantine collections.

stone in the edifice of civil law in Greece and profoundly influenced the path of the law during the next hundred years.[8] Perhaps because of inadequacies in Harmenopoulos' compilation, the scarcity of copies of the *Hexabiblos*, and the increasing elaboration of Roman law by the Pandectists in Germany, the Greek courts adopted a broad interpretation of the decree. Thus the entire Byzantine legislation from Justinian's time up to the dissolution of the empire, contained not only in the *Hexabiblos* but in any collection, was reintroduced in modern Greece. For this purpose, the work of the German Pandectists was not only useful but almost necessary. And Greek legal thought, which had been oriented almost exclusively towards France, became increasingly oriented towards Germany. Indeed, by the end of the 19th century the redaction of the German Civil Code (hereinafter BGB) seemed to set a pattern for future codification. But at the same time the Greek jurists developed a more critical attitude and proceeded to new legislative efforts by evaluating achievements in western continental countries.[9]

Pursuant to the decree of 1835, a committee was appointed to draft a new civil code. Although the final objective of the committee was not realized, its preparatory work resulted in important legislation in the field of civil law, including a comprehensive statute entitled "Civil Law" in 1856. A draft civil code of 1874, based on French, Italian and Saxon models, was not adopted. In the meanwhile, Greek legislation had been introduced in 1866 into the Ionian Islands; later, in 1882, into the newly liberated provinces of Thessaly and Epirus; and in 1914, into the islands of the Aegean, Crete and Macedonia. However, special provision was made regarding the Ionian civil code of 1841, the civil code of Samos of 1899, the civil code of Crete of 1904 and the code of civil procedure of Crete of 1880, which were allowed to remain in force. This situation gave rise to a conflict of local laws and increased the urge for a new civil code that would apply throughout the state.[10]

After another attempt for codification failed in 1922, a new five-member committee was appointed to the task in 1930. This committee published a series of drafts up to 1937, and in the following year professor G. Balis of Athens University was appointed to co-ordinate these. His project was successful and resulted in the passage of the Civil Code of 1940.[11] The backbone of this code was Byzantine law, the national Greek tradition dressed in modern clothes. Far from being a revolutionary codification, it reproduced to a large extent law that was already in force, developed by judicial decisions and scholarly elaboration. The comparative method was also

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8 For a bibliography (in Greek) on the history of the law of the modern Greek State see A. YIANNOPOULOS, *Introduction to Greek Law*, pp 11, 12.

9 A. YIANNOPOULOS, *Introduction to Greek Law*, ch1, IVB, p 9.

10 A. YIANNOPOULOS, *Introduction to Greek Law*, ch1, IVB, pp 9, 10.

11 For a detailed report on the drafting of the GCC, its contribution and its application see A.GASIS, 'I syntaxi tou Astikou Kodika' (= The drafting of the Civil Code), *KritE* [*Kritiki Epitheorissi* = Critical Review (legal periodical)], 1996/1, pp 111-121.

widely used, and an attempt was made to modernise and systematise the law by employing legislative techniques tested in other modern continental codes.[12] The 1940 code was scheduled to become effective 1 July 1941. At that time, however, Greece had been overrun by the Axis forces. After the liberation of the country a new committee was appointed to make a final revision of the code, and a revised version was put into effect in 1945. Subsequently, this revision was repealed and the original 1940 code given the force of law retroactively from February 23, 1946. By the introductory law of the code, all local pre-existing codes and customs were abrogated. The Civil Code of 1940 (hereinafter GCC), along with other legislation, was introduced in the Dodekanese Islands after their liberation in 1948.[13]

2 The Greek Civil Code, its inspiration from the other Civil Codes of Western Europe, its main differences from the German Civil Code of 1901 and the innovations it brought.

2.1 General

The GCC is divided into 5 books (General Principles, Law of Obligations, Property Law, Family Law and Law of Succession) and comprises 2035 articles. In its first article, the GCC defines the sources of law; these are *legislation* and *customs*. The latter are today of extremely limited extent. As a third source of law, recognition is accorded by the Article 28§1 of the Greek Constitution of 1975 to "the generally accepted rules of international law" and, of course, to those rules of Community law, which have force directly in Member States. By way of contrast, international treaties do not constitute a separate source, since these have force in the interior of the country by virtue of their ratification by a law. Nor does jurisprudence qualify as a source of law, according to the Greek legal system.[14] Nevertheless, judicial decisions

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12 Relatively see A. LITZEROPOULOS, 'Ta deka prota eti tou Astikou Kodikos' (= The ten first years of the Civil Code), *NoV* [*Nomiko Vima* = Legal Tribune (legal periodical)], 4, pp 238, 239; G. DASKAROLIS, 'Ta deka prota chronia efarmogis tou Astikou Kodika' (= The ten first years of application of the Civil Code), *KritE* 1996/1, p 206.

13 A. YIANNOPOULOS, *Introduction to Greek Law*, ch 1, IVB, p 10. For the Civil Law in Greece before the introduction of the GCC, the works that lead to the GCC and its main features see, among the rich relative bibliography (in Greek), PH. DORIS, in the manual *Eisagogi sto Astiko Dikaio* (= Introduction to the Civil Law), A', Ant. N. Sakkoulas, Athens-Komotini 1991, § 4 III, pp 202-219; PH. DORIS, in M.Stathopoulos/M. Avgoustianakis (eds), *Eisagogi sto Astiko Dikaio* (= Introduction to the Civil Law), Ant. N. Sakkoulas, Athens 1992, § 2 III, pp 109-125; A. GASIS, *Genikai Archai tou Astikou Dikaiou* (= General Principles of the Civil Law), A' Introduction, Athens 1970, §§ 2-5, pp 9-45; AP. GEORGIADES, *Genikes Arches Astikou Dikaiou*.(= General Principles of Civil Law), 3rd ed., Ant. N. Sakkoulas, Athens-Komotini 2002, § 7, pp 82-95; N. PAPANTONIOU, *Genikes Arches Astikou Dikaiou* (= General Principles of the Civil Law), 3rd ed, Sakkoulas, Athens 1983, §§ 14-16, pp 67-77; K. SIMANTIRAS, *Genikes Arches Astikou Dikaiou* (= General Principles of Civil Law), 4th ed., Athens-Komotini 1988, § 2.

14 See, among others, M. STATHOPOULOS, *Contract Law in Hellas*, p 23.

together with legal writing (doctrine) are largely taken into consideration when "interpreting" legislation or deciding a case.[15]

2.2 Law of Obligations

In the part of the GCC which deals with pecuniary relations, the model was primarily the BGB,[16] though the national (chiefly Byzantine, as previously mentioned) legal tradition was not ignored. The critique of the provisions of the BGB was also taken into account to some extent. A typical example of the national legal tradition in this part of civil law is the introduction on a wide scale of general clauses into the GCC, such as good faith, good morals etc., which are based on the principle of equity, they give the judge broader authorities when specifying their content using objective criteria,[17] and permit its modernisation.[18] Such general rules had long been a feature of Greek customs and they characterise the spirit of the GCC, as being basically *ius aequum* and not *ius strictum.*[19] Thus, in the GCC there exist explicit provisions on the civil protection of the personality (Article 57 of the GCC), on the prohibition of the abuse of a right (Article 281 of the GCC), on the possibility of dissolution or adjustment of a contract by reason of an unforeseen change in circumstances (Article 388 of the GCC), etc., provisions[20] which are not encountered in the BGB and which have been recognised in Germany subsequently only through court rulings.

A brief presentation of the said articles has as follows:

2.2.1 Protection of the Personality (Articles 57-60 of the GCC).

After the Swiss Civil Code, the GCC was the first continental civil code to recognise an all-inclusive, comprehensive right of personality of natural persons, and to accord it the protection of the civil law. This protection overlaps with, but also goes beyond, the protection of the Criminal Law, since it encompasses compensation for the

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15 See in English A. GRAMMATIKAKI-ALEXIOU, *Introduction to Greek Law*, ch 2, pp 13-15 and, in Greek, among others, M. STATHOPOULOS, 'I'efarmogi tou AK kata ta prota peninta chronia ischios tou' (= The application of the Civil Code during the first fifty years of its entering into force), *KritE* 1996/1, pp 135-145.

16 For the influence of the BGB on the GCC see AP. GEORGIADES, 'Der Einfluss des deutschen BGB auf das griechische Zivilrecht', *AcP (=Archiv für die civilstische Praxis*) 2002, pp 493-502.

17 AP. GEORGIADES, 'I symvoli tou astikou kodika stin ananeosi tou dikaiou' (= The contribution of the civil code in the renewal of the law), *KritE* 1996/1, p 131.

18 P. ZEPOS, 'Eikosi eti Astikou Kodikos-Epitevgmata kai epidioxeis' (= Twenty years of Civil Code-Achievements and tendencies), *EEN [Efimeris Ellinon Nomikon* = Journal of Greek Jurists] 33, p 319; R.PANTELIDOU, 'Asimes kai diasimes diataxeis ston Astiko mas Kodika' (= Trivial and notorious provisions in our Civil Code), *KritE* 1996/1, p 222.

19 M. STATHOPOULOS, *KritE* 1996/1, p 135, AST. GEORGIADIS, 'To iovilaion tou Astikou Kodika (= The Civil Code jubilee)', *KritE* 1996/1, p 161.

20 A detailed analysis of these provisions can be found in the rich relative bibliography (in Greek); a presentation of this bibliography, however, is not within the scope of the present article.

victim. It also goes beyond the protection of Constitutional Law, which, strictly speaking, protects the person from state rather than from private intrusion. On purpose, the GCC does not define the exact perimeters of the concept of personality, thus allowing expansion of the concept as the fabric and mores of society change. It is generally said that personality encompasses all the tangible and intangible elements, which constitute one's physical, emotional, intellectual, moral, and social existence.

The GCC grants a general action for the protection of one's personality against any "unlawful" intrusion, invasion, or infringement. The action is available even against a defendant who is not, or is incapable of being, at fault, and may result in a prohibitory or mandatory injunction. If at fault, the defendant may be forced to pay monetary compensation or make other reparation for moral damage (Article 59 of the GCC) and may be sued under general tort law for patrimonial damage. A similar action is available for the protection of the memory of a deceased person. Special protection is provided for a person's name by Article 58 of the GCC, which is interpreted to extend to juridical persons as well. Article 60 of the GCC grants a general action for the protection of the products of one's intellect. This action has the same conditions and contents with the action for the protection of one's name. It is to be mentioned here, however, that, in addition to the GCC, rights of intellectual and industrial property are protected in Greece by a dense network of special statutes and international conventions signed and ratified by Greece.[21]

2.2.2 Prohibition of the Abuse of a Right (Article 281 of the GCC)

Unlike the French, and like the German, Austrian, and Swiss civil codes, the GCC has codified expressly the doctrine of abuse of rights, originally developed by the French courts in the middle of the nineteenth century. Article 281 of the GCC provides that "the exercise of a right is prohibited when it manifestly exceeds the limits dictated by good faith, or good morals, or the social or economic purpose of the right". This formulation of the doctrine is broader than that of § 226 of the BGB (already expanded by German jurisprudence), which considers unlawful the exercise of a right when "its purpose can only be to cause damage to another", and is more concrete and categorical than that of Article 2 of the Swiss Civil Code, which merely "does not sanction the manifest abuse of rights". A provision parallel to Article 281 of the GCC is now found in Article 25§ 3 of the Greek Constitution of 1975, applicable apparently to matters of public law.

In order to be abusive, and thus prohibited under Article 281, the exercise of the right must "manifestly" exceed the limits dictated by the deliberately vague concepts of good faith, good morals, or the social or economic purpose for which the right was granted in the first place. These limits are determined judicially on the

21 S. SYMEONIDES, *Introduction to Greek Law*, Ch 4, II E, pp 56, 57.

basis of objective considerations. The personal motives of the obligee, although material, are not determinative. According to established jurisprudence, all private rights, patrimonial, extra-patrimonial, or facultative, are subject to the limitations of Article 281, including rights derived from juridical acts or from rules of public order, and extending into areas outside the civil law. Article 281 is itself a rule of public order that cannot be derogated from by contrary agreement. It is disputed whether the abusive exercise of a right may be taken into account *ex officio* by the court, but it may be raised by the affected party at any stage of the proceedings, provided the supporting facts were pleaded timely. The abusive exercise of a right is not merely "not sanctioned", but is "prohibited". This means that if the abusive exercise of the right took the form of a juridical act, the act will be void. Otherwise, it may give rise to an action for injunction and potentially to a claim for compensation.[22]

2.2.3 Unforeseen change of circumstances (Article 388 of the GCC)

A contract, from the moment that it is concluded, is binding upon the contracting parties. The binding nature of contracts (*pacta sunt servanda*) is a basic principle of the GCC. Nevertheless, in certain cases this commitment may prove onerous and harsh for one of the parties, particularly if the circumstances which existed at the time of the conclusion of the contract have changed in such a way as to destroy the balance of the contract to the detriment of one of the parties. The GCC deals with this problem by an express provision – that of Article 388, which is one of the most basic and most forward-looking of those contained in the GCC. Starting out from the principle of the inviolability of contracts, the provision provides, on strict conditions, for the concession of this principle in recognising the possibility of a judicial dissolution or of revision of a reciprocal contract in the event of an unforeseen change in circumstances and of upsetting of the balance between performance and counter-performance. The provision of Article 388 of the GCC is none other than a special expression of the principle of good faith which is formulated generally as to the law of obligations in Article 288, which lays down that: "The debtor is obliged to effect the performance as good faith requires, after consideration also of common usage". Without the introduction of Article 388, Article 288 of the GCC could lead basically to similar solutions. Thus in Germany, where in absence of a provision corresponding to that of Article 388 of the GCC, paragraph 242 of the BGB (corresponding to Article 288 of the GCC) is invoked. Nevertheless, in practical terms, the adoption in the GCC of the special provision is useful, because it gives clearer and more particular expression to the will of the legislator in this connection. However, it has been accepted that when the conditions of Article 388 of the GCC are not met, the possibility of resort to Article 288 remains as an "*ultimum refugium*".[23]

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22 S. SYMEONIDES, *Introduction to Greek Law*, p 60.

23 M. STATHOPOULOS, *Contract Law in Hellas*, p 192.

2.3 Tort law

In Article 388 of the GCC we have a combination of views and criteria drawn both from classic theories on the need for an equilibrium between performance and counter-performance (here of course in order to deal with the *ex post facto* upsetting of any initial balance) or on the *clausula rebus sic stantibus* (but on strict terms today), and more modern doctrines which have been developed internationally in the 20th century, particularly the German doctrine of the collapse of the underlying basis of the transaction *(Wegfall der Geschäftsgrundlage)* and the French theory of the unforeseen circumstances *(théorie de l'imprévision)*. The basic idea, however, which permeates the institution is that of *bona fides.*[24]

In the field of torts or unlawful acts we find a successful combination of the German model with its detailed enumeration of torts and of the French and Swiss model having only a general clause. The GCC, in the relevant chapter (Articles 914 and following), has introduced two general clauses (Article 914: "Whoever unlawfully and culpably provokes damages to somebody else is obliged to pay damages" and Article 919: "Whoever intentionally in a manner that violates the commands of good morals provokes damages to somebody else is obliged to pay damages") as well as an enumeration of unlawful acts. This system was familiar to the Greek Jurists, as similar general clauses existed in the three above mentioned regional codes (the Ionian Code, the Code of Samos and the Code of Crete), and because the existing before the introduction of the GCC jurisprudence was so vast, that could have the function of a general clause.[25]

2.4 Property law

As already mentioned, the GCC was also influenced by the Swiss Code of Obligations and (to a somewhat lesser extent) by the French Civil Code.[26] The substance of the Articles 947-1345 of the GCC, consisting the Book III of the Civil Code dealing with Property Law, has been derived from the Romanist tradition, indigenous Greek variations developed in the 19th century, and from the modern, at the time, civil codes; the influence of the French, German and Swiss civil codes is here particularly noticeable.[27]

2.5 Family law and inheritance law

In the part devoted to Family Law the decisive role was played by Greek traditions and the attitude of the Orthodox church.[28] Until recently, the law prescribed different

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24 M. STATHOPOULOS, *Contract Law in Hellas*, p 193.

25 AP. GEORGIADES, *KritE*, pp 126,127.

26 M. STATHOPOULOS, *Contract Law in Hellas*, p 22.

27 See P. ZEPOS, 'The new Greek Civil Code of 1946', in *Greek Law*, Athens 1949, p 104; A. YIANNOPOULOS, *Introduction to Greek Law*, ch 6, I, p 121, where also (in note 1) a list of the standard works (in Greek) on the Law of Property.

roles for each spouse and considered the husband as the head and main supporter of the family. But gradually traditional ideas changed and the role of the wife became important as well.[29] The Greek Law of Succession has its roots in ancient times and several of its basic concepts, such as testate and intestate succession, legacy or the office of the executor of a will are found in the Attic law of inheritance. Later developments followed mainly the destiny of Roman-Byzantine law in Greece. The GCC, with its Articles 1710-2035 of Book V, improved the Law of Succession and modernised it considerably, introducing new institutions and concepts. Undoubtedly, it is the product of a comparative study of the then existing Greek law and other Continental laws of Inheritance. L. 1329/1983, which has widely amended the Family Law, has brought to the Law of Succession a number of changes, which became necessary for the preservation of the systematic unity of the codified civil law. The task of the legislator in formulating the rules on succession is not easy. The continuation of the economic life must not be upset by someone's death and the family must be protected. This calls for the reconciliation of various and frequently opposed interest: those of the deceased, his family and other relatives, the state and the creditors. These factors, combined with the pandectist influence, made the Greek Law of Succession highly technical, formal and detailed.[30]

3 Amendments of the Greek Civil Code

1 The provisions on Family Law, contained in the Book IV of the GCC, have been largely amended and modernised with the laws 1250/1982, which introduced the civil marriage, and 1329/1983,[31] which amended or repealed most of the articles of Family Law in the light of our Constitution of 1975. The latter explicitly declares (Article 4§2) that "Greek men and women have equal rights and obligations". In order to abide by this provision of the Constitution our entire legislation had to be amended accordingly. To what concerns the Family Law a major reform took place and equal rights for the two sexes were introduced; the dowry was abolished; the husband ceased to be the head of the family and decide on every matter arising in the everyday common life; the wife ceased changing her family name after the marriage and keeps now her maiden's name; the spouses, before the marriage, can opt for their children's family name, which can be either the father's family name or the mother's family name or both, the paternal authority has been replaced by parental care,[32] etc.

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28 M. STATHOPOULOS, *Contract Law in Hellas*, p 22.

29 A. GRAMMATIKAKI-ALEXIOU, *Introduction to Greek Law*, ch 8, I, p 143.

30 A. GRAMMATIKAKI-ALEXIOU, *Introduction to Greek Law*, ch 9, I, p 161.

31 For a general bibliography, in Greek, on the Greek Family Law: a) after and b) before its reform see A.C. PAPACHRISTOS, *Egcheiridio Oikogeneiakou Dikaiou*(= A Manual of Family Law), Ant. N. Sakkoulas, Athens-Komotini 1998, ppXIII, XIV.

The revision of the Family Law has been extensive. The transformation reflects the impact of the changed social context on the law. Of the 364 articles in the Book, 264 have been amended or repealed. After these changes, Greek Family Law presents certain basic characteristics which clearly show its constant progress, balanced between tradition and change. The mandatory character of most rules is an indication of the interest of society, represented by the State, in marriage and family. At the same time family law is liberal, marked by a considerable individualism. Consistent with the contemporary social trends is a tendency of radical renewal. This tendency is hard to reconcile with another characteristic, which has always dominated Greek Family Law, that is the strong influence of the Greek Orthodox Church, dating back to Byzantine times. Marriage impediments, the, up to the 1982 reform, compulsory religious form of marriage and certain grounds for divorce are some of the most striking examples of the influence of the Church on the law. Today this influence has subsided considerably but it still exists. It produced the main opposition against the establishment of civil marriage as the only form of contracting marriage.[33]

The reform of the Greek Family Law was completed with the law 2447/1996[34] on adoption *of minors*, as after the said law, adoption of adults is an exception and applies only when the adopted adult is a child of the spouse of the person that proceeds to the adoption, on guardianship of minors, when the parental authority does not exist or is inert, on foster family, that is the undertaking of the actual care of the minor by third persons (foster parents) and on judicial assistance of persons of full age (not minors), when they are incapable to take care of their personal or pecuniary affairs due to their corporal disablement, to their mental or psychical disorders, or because they expose themselves or their close relatives to the danger of living in privation due to spendthriftness, habitual drunkenness or chemical dependency. With the subsequent law 2521/1997 (Article 19) two important amendments of the Greek Family Law took place. The first refers to the introduction of the possibility of contesting paternity *by a third person*, the man with whom the mother, separated from her husband, had a permanent relationship with sexual intercourse at the time of the child's conception, whilst the second to the adoption *by spouses*, where the presuppositions for the adoption suffice to exist in the person of one of the spouses.

2 The latest amendment of the GCC has taken place just recently with the l. 3043/2002 on the responsibility of the seller for actual defects and lack of agreed qualities and

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32 For a brief illustration of the Greek Family Law (in English) before and after the 1982 and 1983 amendments see E. DACORONIA, 'The Greek Family Law and the principle of the equality of the two sexes', in M. Rotondi: *Inchieste di Diritto Comparato, Vol. 11, The Marriage,* Giuffrè Milano 1998, pp 231-239.

33 A. GRAMMATIKAKI-ALEXIOU, *Introduction to Greek Law*, ch. 8, pp 143, 144.

34 For an analysis of the provisions of the Greek Family Law after the law 2447/1996 see E. KOUNOUGERI-MANOLEDAKI, *Oikogeneiako Dikaio* (= Family Law), 2nd ed., Sakkoulas, Thessaloniki 1998 and A.C. PAPACHRISTOS, *Egcheiridio Oikogeneiakou Dikaiou*.

other relative provisions (in force since August 2002), which has incorporated the Directive 1999/44/EC of the European Parliament and Council on some aspects of the sale and of consumer products guarantees.[35] With this law, and in conformity to the above directive, Articles 534-537 and 540-561 in the chapter of sale have been replaced and 518 and 538 abolished. Also art 332 of the GCC regulating the consequences of an agreement for non responsibility in case of fault has been replaced and art 582 regulating the consequences of an agreement that reduces the responsibility of the lessor in a contract of lease has been abolished.

4 The Greek Civil Law at the beginning of the 21st century

At the beginning of the 21st century, the Greek Civil Law presents the following characteristics:

1. There is an increasing tendency of interpreting the provisions of the GCC, the "applied constitutional law in the field of regulation of private relations",[36] according to:
   a) the Greek Constitution of 1975, and
   b) the provisions of the Community Law.
2. In parallel to the GCC a body of laws has been enacted:
   a) introducing new forms of modern contracts such as franchising, leasing, forfaiting, factoring etc.,[37] and
   b) incorporating European Union Directives, such as the Directives for the consumer's protection, for the protection of the human being from the processing of personal data, for the protection of the environment, mass media[38] Directives[39] etc.

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35 For this reform see P. FILIOS, *Enochiko Dikaio, Eidiko Meros* (= Law of Obligations, Special Part), vol I/1, 5th ed, Ant. N. Sakkoulas, Athens-Komotini 2002, § 5 B, p 36

36 As characteristically mentions P. KARGADOS, 'Peninta chronia Astikos Kodikas' (= Fifty Years of Civil Code), *KritE*, 1996/1, p 179.

37 See relatively AP. GEORGIADES, *Nees Morfes Symvaseon tis Sygchronis Oiconomias* (= New contractual forms of modern economy), 4th ed, Ant. N. Sakkoulas, Athens-Komotini 1998.

38 For the mass media law in Greece see I. KARAKOSTAS, *To dikaio ton MME* (= Mass Media Law) Ant. N. Sakkoulas, Athens-Komotini 1998. For the protection of the personality from radio and television commercials see AR. CHIOTELLIS, in M. Stathopoulos/Ar. Chiotellis/M. Avgoustianakis (eds), *Koinotiko Astiko Dikaio* (= Community civil law) I, Ant. N. Sakkoulas, Athens-Komotini 1995, § 6, pp 202-238.

39 For the Greek civil laws that incorporate Community Directives and the influence of the European law on the Greek civil law see M. STATHOPOULOS/AR. CHIOTELLIS/M. AVGOUSTIANAKIS (eds), *Koinotiko Astiko Dikaio* I; K. CHRISTAKAKOU-FOTIADI, 'Einfluss des europäischen Rechts auf das griechische Zivilrecht', *RHDI* (= *Revue Hellénique de Droit International*) 53 1/2000, pp 277-291;I. KARAKOSTAS, *Koinotikoi kanones kai Ethniko Astiko Dikaio* (= Community rules and national civil law), Nomiki Vivliothiki, Athens 1997.

4.1 Interpretation of the provisions of the GCC, according to: a) the Greek Constitution of 1975 and b) the provisions of the Community Law

a) The respect and protection of the values that form the existence of the human being consist the primary obligation of the Greek State (Article 2§ 1 of the 1975 Constitution) and the right for a general and personal freedom is considered as the "main general fundamental right" (Article 5§ 1 of the 1975 Constitution).[40] Another obligation of the Greek State is the protection of the natural and cultural environment (Article 24 of the 1975 Constitution). Personality and environment form a unity, which means that every offense to the environment entails an offense to the value and the personality of the human being, the latter having the right to a healthy and viable environment. To the above three articles of the Constitution corresponds the right on the personality established by Articles 57 and following of the GCC.[41] These provisions of the GCC, as well as others thereof (such as Articles 281 on the abuse of rights, 914 and 919 on torts, 1003-1005, 1027, 1108 on ownership etc.) are interpreted in the light of the above articles of the Constitution,[42] that is they are interpreted in such a way that the personality of the human being as well as the environment are respected as primary values.

This is an example of how the provisions of the Constitution have an indirect effect on the private law and they apply to it through general clauses and provisions of the civil legislation.[43] This so called "interpretation of the law in conformity to or

40 I. KARAKOSTAS, *Perivallon kai Dikaio* (= Environmental Law), Ant. N. Sakkoulas, Athens-Komotini 2000, Ch 3 IV, pp 169, 170, where also (notes 80, 81) more references regarding the right on personality.

41 I. KARAKOSTAS, *Perivallon kai Astiko Dikaio* (= Environment and Civil Law), Ant. N. Sakkoulas, Athens-Komotini 1986, p 42.

42 I. KARAKOSTAS, *Perivallon kai Astiko Dikaio*, p 39.

43 PH. DORIS, 'Ermineia ton nomon me anagogi se syntagmatikes diataxeis sti nomologia ton politikon dikastirion' (=Interpretation of the laws with recourse to constitutional provisions in the jurisprudence of the civil courts), *EllDni* [*Elliniki Dikaiosini* = Greek Justice (legal periodical)] 1991, p 193; I. KARAKOSTAS, *Perivallon kai Dikaio*, Ch2 V, pp 135-139.

in harmony with the Constitution"[44] is a method of interpretation first developed in the German law with a series of decisions of the Federal Constitutional Court, adopted by the French *Conseil Constitutionnel*, and applied at a continuously increasing rate in Greece.[45]

b) As previously mentioned, the existence of a wide scale of general clauses into the GCC, which are based on the principle of equity, is considered as one of its main features. For the interpretation of these general clauses it is necessary to take into consideration the social, moral and economic notions and values of the society. After the adhesion to the European Communities, the social, moral and economic notions and values of the Greek society are influenced, at a constantly growing rate, by the notions and values of the European Community, as they are expressed in the Community Law, also when the latter does not have an immediate force in the internal law. For example, the notions of good faith, of public order, of good morals, of conventional mores, of the social or economic purpose of rights cannot be specified today without the principles of the Community Law,[46] as these are specified mainly by the European Court. Article 86 of the European Convention and other analogous provisions and principles of the Community Law give crucial criteria for

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44 *According to the term used by* PR. DAGTOGLOU, *Geniko Dioikitiko Dikaio* (=General Administrative Law), Ant. N. Sakkoulas, 4th ed, Athens-Komotini 1997, nos 291-298, pp 135-139, translating the German term "verfassungskonforme Gesetzesauslegung". For this kind of systematic interpretation of the law see, among others, in the German literature K. LARENZ, *Methodenlehre der Rechtswissenchaft*, 6th ed., Springer Verlag, Berlin 1991, pp 339-343 and FR. MÜLLER, *Juristische Methodik*, 7th ed, Duncker & Humblot, Berlin 1997, nos 100-104, pp 90-93, and in the Greek literature, apart from the treaty of *Pr. Dagtoglou*, already mentioned hereinabove, GR. KASSIMATIS, 'Syntagma kai koino dikaio' (= Constitution and ordinary law), in the vol no 9 of the Publications of the Greek Institute of International and Foreign Law titled *I epidrasis tou Syntagmatos tou 1975 epi tou idiotikou kai epi tou dimosiou dikaiou* (= The influence of the 1975 Constitution on the private and public law), Athens 1976, pp 130, 131; AP.GERONTAS, 'I symfoni me to Syntagma ermineia kai o elegchos tis syntagmatikotitas ton nomon sti Dytiki Germania' (=The interpretation of the law in conformity to the Constitution and the control of the constitutionality of the laws in Western Germany), in the legal periodical *To Syntagma* (= The Constitution) 8/1982, pp 1-14; PH. DORIS, note under the decision of the Athens Court of Appeal (=EfAth) no 6761/1984, *NoV* 32, pp 1557-1559; A.C. PAPACHRISTOU, 'I prostasia tis prosopikotitas kai to arthro 299 tou Astikou Kodika' (=The protection of the personality and the Art. 299 of the Civil Code), *To Syntagma 7*/1981, p 57; M. STATHOPOULOS, *Geniko Enochiko Dikaio* (= Law of Obligations, General Part), 3rd ed, Ant. N. Sakkoulas, Athens-Komotini 1998, § 1 IIIb, pp 9, 10.

45 AP. GEORGIADES, *Genikes Arches Astikou Dikaiou*, § 6 V, p 69, with reference to the Greek jurisprudence that applies the above method.

46 See, relatively, from the recent bibliography, AP GEORGIADES, *Genikes Arches Astikou Dikaiou*, § 6VI, pp 74-77 and § 8 III 2, pp 108,109; AP GEORGIADES, *Enochiko Dikaio*, *Geniko Meros* (= Law of Obligations, General Part), P.N. Sakkoulas, Athens 1999, § 1 III 4, p 8.

the interpretation of Articles 178,[47] 281, 288 etc. of the GCC. That means that the Community Law has an indirect effect on the Greek internal law.[48]

4.2 Enactment of laws incorporating European Union Directives on civil law matters

The Directives for harmonisation issued up till now by the European Community do not seem to have a direct impact on the General Principles of the civil laws of the Members States, despite the fact that many Directives regulate matters belonging to the law of obligations (contract law), such as for example the responsibility of the producer of defective products, the door-to-door sales, or the contracts on organised travels. In general, it is to be noted, that the European Community did not opt for the entire harmonisation of the civil laws of the Member States, not even for the entire harmonisation of their contract laws, but it was contented by a case by case handling of certain types of contracts belonging mainly to the area of specific contracts (special part of the law of obligations),[49] avoiding the harmonisation of rules of the general part of the law of obligations.[50] Also the interest of the Community for the harmonisation of the Real Property Law – with the exception, perhaps, of law of the real securities of claims-, of the Family Law, and of the Law of Succession, is, justifiably, very limited to non-existing, as the corresponding provisions are not directly linked to the function of the European common market and of the free competition.[51]

To what concerns Greece, most of the Directives regulating matters of civil law have become internal law.[52] Among the Greek laws that regulate civil matters and have a European origin can be specially mentioned – because of their importance – the l. 2251/1994 (regulating the responsibility for defective products,[53] the protection against abusive clauses[54] and the protection of the consumers in the case of door-

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47 Stating that "Juridical acts that are contrary to good morals (*boni mores*) are void".

48 M. STATHOPOULOS, *Koinotiko Astiko Dikaio* I, § 1, III, pp 11, 12; *I. Karakostas*, *Koinotikoi kanones kai ethniko astiko dikaio* (= Community rules and national civil law) I, Nomiki Vivliothiki, Athens 1997, p 48.

49 Compare O. REMIEN, 'Illusion und Realität eines europäischen Privatrechts', *JZ* 1992, p 278 et seq.

50 AP GEORGIADES, 'I enarmonisi tou Idiotikou Dikaiou stin Evropi' (= The harmonisation of private law in Europe), *NoV* 42, p 336.

51 AP GEORGIADES, *NoV* 42, p 335.

52 For a detailed list of these Community Rules and the relative Greek acts, by which they have been incorporated in the national law, see I. KARAKOSTAS, *Koinotikoi kanones kai ethniko astiko*, pp 26-34.

53 For which see I. KARAKOSTAS, *I efthini tou paragogou gia elattomatika proionta* (= The responsibility of the producer for defective products), Ant. N. Sakkoulas, Athens-Komotini 1995; I. KARAKOSTAS, *Prostasia tou katanaloti* (= Consumer Protection), Ant. N. Sakkoulas, Athens-Komotini 1997.

54 For which see M. AVGOUSTIANAKIS, *Koinotiko Astiko Dikaio* I, § 3, pp 79-123.

to-door sales)[55] and the l. 2472/1997 (on the protection of the human being from the processing of data having a personal character). This European origin of the regulations of the national law obliges the judge, when interpreting those regulations, to take into consideration the principles of the European law, according to which national laws of European origin are interpreted in such a way, so that the aim of the community regulations can be accomplished.[56]

5 Conclusion

It is known, that different tendencies have developed regarding the need and the extent of the harmonisation of private laws of the Member States of the Community, ranging from the proposal for the creation of a codified common European private law[57] to the acceptance of the attempts of harmonisation of certain provisions of the national private laws and only to the extent that the harmonisation is obviously necessary for the operation of the Common Market.[58] We are of the opinion that even after the much-desired unification of Europe, the existence of regional laws, that have been long known by the lawyers and the courts of the region where they are in force, is useful and contributes to the security of the law. Even more, if the said laws are interpreted under the scope of the Community Law, the need of unification will appear less urgent. Specially in some fields, such as in the field of Real Property Law, Family Law and the Law of Inheritance, the different historical and legal tradition of each country belonging to the European Union has dictated a diversified legal status, which is not necessary to disappear in the sake of uniformity. After all, unification of Europe does not mean changing of the identity of the nations that form it.

In any case, as Apostolos Georgiades, Professor of Civil Law and member of the Greek Academy, states:[59] "unification of the private laws of the European countries, even if it seems attractive as a vision, is not easily attainable. It presupposes a long and titanic attempt of compromise of national concepts on different problems of

55 For which see X. SKORINI-PAPARRIGOPOULOU, *I Prostasia tou katanaloti sti symvasi ektos emporikou katastimatos* (= The consumer's protection in the door-to-door contract), P.N. Sakkoulas, Athens 1999.

56 PR. DAGTOGLOU, *Evropaiko Koinotiko Dikaio* (=European community law) I, 1985, pp 94 et seq; I. KARAKOSTAS, *Koinotikoi kanones kai Ethniko Astiko Dikaio*, p 37 and the note 23 therein for a relative German literature.

57 See *Official Journal of the European Commmunities* 1989, noC 158, p 400.

58 For a list of the abundant relative bibliography see E. HONDIUS 'Finding the law in a new millennium. Prospects for the development of civil law in the European Union', *Mélanges en l' honneur de Denis Tallon*, Société de législation comparée, Paris 1999, pp 93-117 and E. DACORONIA, 'Pros enan Evropaiko Astiko Kodika?' (= Towards a European Civil Code?"), *KritE* 2001/2, pp 150-164, where also Greek authors are included.

59 AP. GEORGIADES, *NoV* 42, pp 343-345. AP. GEORGIADES, *Genikes Arches Astikou Dikaiou*, § 8 IV 2, p 110.

private law, as well as a surpassing of the guidelines of the jurisprudence of each Member State, a product of processing legal notions and provisions of private law during decades. What is plausible, however, and also inevitable, is the gradual and continuous convergence of the private laws of Europe towards each other".[60] To this direction we share the opinion of Michael Stathopoulos, Professor of Civil Law at the Athens University and ex-Minister of Justice, according to which a European Code of the Law of Contracts, which would unify basic rules of this branch of law, is worth to be promoted and seems easy to materialise.[61]

60 On the importance and the feasibility of the unification of the law see also M. STATHOPOULOS, *Koinotiko Astiko Dikaio* I, § 1, VI, p 26.

61 M. STATHOPOULOS, 'Eniaio Evropaiko Dikaio ton Symvaseon-Armodiotites kai prooptikes' (=Unified European Contract Law-Competences and perspective), *KritE* 2001/2, pp 95-110.