

ASPECTS OF GREEK CIVIL LAW

Introduction

George Georgiades

Assistant Professor of Law at National and Kapodistrian University of Athens School of Law

Introduction

Civil Law is a sector of private law; the other two sectors being Commercial Law and Labor Law. Civil Law comprises a series of rules that regulate personal and property relations of citizens. On the other hand, Public Law applies to relations in which one of the parties is a public authority acting in its capacity as such.

Historical Background

Greek Civil Law has its sources in Byzantine-Roman Law and on customary law. The term "civil law" came from the Latin term "jus civile" (used in ancient Rome to distinguish the law found exclusively in the city of Rome from the "jus gentium", the law of all nations, found throughout the empire). By order of the emperor Justinian in the 6th century the Pandects (a Greek word for "πανδέκτης" meaning "comprising all") were compiled to comprise and codify all Roman laws up to the time. Early in the 19th century the term "Pandectists" referred to the historical school of Roman-law scholars in Germany who resumed the scientific study of the Pandects. Thus began the linkage of modern Greek Civil Law with the German one.

Sources of Greek Civil Law

- The sources of Civil Law are (as per art. 1 of Greek Civil Code) legislation (statutes adopted through the legislation process) and custom; the latter, nowadays, if not totally eliminated, enjoys extremely limited use. The Greek Constitution (art. 28 par. 1) recognizes, as another source of Law, "the generally accepted rules of international law" and the, ratified by law, international treaties. European Union Law (primary and secondary) is, of course, another source of Law.

- Contrary to countries having a "common law system" and therefore considering judicial decisions as another branch of law (having an equal effect with statutes which are adopted through the legislative process and regulations which are promulgated by the executive branch), in Greece case law (or precedent) is not regarded as a "source of law". In the Greek legal system case law (especially from superior courts) may of course influ-

ence other courts (or judges) judging similar disputes but does not bind them whatsoever in their decisions.

- Though they cannot typically be considered as another source of law, legal opinions (whether published in law reviews or not) and in general the work of law scholars (bibliography, articles, monographs etc.), especially in relation to subject matters where there is no case law (or existing case law is limited and/or not very recent), judges resort to legal opinions and the work of scholars to formulate their reasoning, in which case they specifically denote to the “source” of their reasoning.

Greek Civil Code

The basic (and more general) provisions of Greek Civil Law are found in the Civil Code. First attempts to draft a Civil Code in Greece were made in 1835; mainly on the model of the German Civil Code. The Greek Civil Code came into force in February 23rd, 1946 and remains in force up to this day having been revised quite a few times, and occasionally reformed (e.g. the significant reform of Family Law in the years 1982-1983), over the years. The Greek Civil Code is classified into five “books” (sections): General Principles, Contract Law, Property Law, Family Law (Articles 1346-1709) and Inheritance Law.

General Principles

- The first “book” of the Civil Code, titled “General Principles” (Articles 1-286), comprises of a series of provisions in relation to persons (natural and legal) and their capacity to hold rights and to enter into legal acts (i.e. provisions for persons lacking or having limited legal capacity, minors, absentia, domicile, protection of one’s personality, the invalidity and annulment of transactions etc.); terms and conditions; representation and power of attorney; consent and approval of transactions; time periods; statute limitations and time-limits; and exercise (and abuse) of rights, self-redress, defense and state of necessity.

- The first book of the Civil Code includes also provisions of Private International Law such as the legal capacity of foreigners in Greece.

- It should be noted that the General Principles of Civil Law apply, not only on the Civil Code, but also on all other fields of Private Law.

Contract Law

- The second “book” of the Civil Code, titled “Contract Law” (Articles 287-946), deals with “obligations”: general and specific.

- The general part comprises of general rules which apply in all contractual relationships, such as the principles of: (i) autonomy of private will, which, in fact, signifies the very foundation of Private Law, (ii) good faith (*bona fides*), which requires a fair and honest dealing in all legal transactions, (iii) protecting the weaker party in a transaction (whether such party acts as a debtor and/or as a creditor), (iv) liability, mainly the fact that everyone is liable for the consequences of its acts (and omissions) and at times for

the acts of others; the obligation to compensate and to pay interest; joint and/or several and/or indivisible obligations; transfer of obligations (assignment, debt assumption); set off; penalties; unjust enrichment etc.

- The specific part contains provisions for the main contracts that are regulated by the Civil Code i.e. donation, sale, exchange, employment contract, brokerage, mandate, loan, deposit, guarantee etc.

Property Law

- The third “book” of the Civil Code, titled “Property Law” (Articles 947-1345), encompasses provisions with which property rights are regulated. Article 973 names, restrictively, said rights: ownership (the broadest of property rights since it is the only one that includes all powers over the “thing”), servitudes (personal and property), pledge and mortgage.

- Possession, as an actual condition and not a real “right”, is part of Property Law as well.

Family Law

- The fourth “book” of the Civil Code, titled “Family Law” (Articles 1346-1709), includes provisions regulating family (natural and adoptive) relationships i.e. marriage (religious or civil), its consequences for the spouses (personal and property) and divorce, assisted reproductive technology (ART) following relevant Law 3089/2002, kinship (by blood and by marriage), relationship between parents and children, guardianship, adoption and foster care.

- Family Law also contains provisions for the placement of a person of legal age under judicial assistance and for the judicial administration of someone’s affairs.

- It should be noted that Family Law in Greece was highly influenced by tradition and the role of the Orthodox Church (up until 1982 one could only get married in church). Nevertheless, Family Law has been greatly reformed in the years 1982-1983 (granting equal rights for the spouses, establishing civil marriage etc.) to be consistent with contemporary needs. Last major reforms: (i) in 2008 Law 3719/2008 was passed governing civil partnership (a contract executed before a notary public between a man and a woman committing to live together without getting married) and recognizing family relationships for partners; and (ii) on December 24th, 2015 Law 4356/2015 was passed according to which a civil partnership agreement may be executed by any two adults irrespective of their gender.

Inheritance Law

- The fifth “book” of the Civil Code, titled “Inheritance Law” or “Succession Law” (Articles 1710-2035), regulates the fate of a person’s assets (property) after his death. Succession, as the transfer of the deceased’s property to its heir(s), is based on the deceased’s will or on the provisions of the Law. Therefore, succession may be either testamentary or intestate.

- Under Greek Inheritance Law contracts concerning the succession of a living person are prohibited. Also prohibited are joint or mutual wills (e.g. wills executed by a married

couple to ensure that their property shall be disposed of identically) which are usual in Common Law jurisdictions.

Civil Law provisions in other (apart from the Civil Code) Laws

Apart from the Civil Code, Civil Law provisions are found in other laws, as amended and in force; such as Law 2251/1994 regarding Consumer Protection Regulations, Law 1652/1986 on Time-Sharing, Law 1665/1986 on Leasing, Law 1905/1990 on Factoring and Forfeiting, Presidential Decree 34/1995 on Commercial Lease (as recently amended by Article 13 of Law 4242/2014), Law 2121/1993 for Intellectual Property etc.