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**DEVELOPMENT AND CODIFICATION OF PRIVATE (CIVIL  
AND COMMERCIAL) LAW IN PORTUGAL AND ITS  
INFLUENCE OUTSIDE EUROPE**

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The *Ordenações Filipinas* (1603) provide parallel and complying rules. It shall be noted that in this era, Portugal was under the rule of Spain (from 1580 through 1640). The *Ordenações Filipinas* were promulgated by Philip III (1598-1621), who was the king of Spain and of Portugal (as the monarch of Portugal, Philip II) at the same time.

## II. Modern Times

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this regard the highly esteemed and renowned textbook of Manuel António Coelho da Rocha (1793-1850) entitled *Instituições de direito civil portuguez*<sup>2</sup> in which the renowned civilist deals with and presents the traditional Portuguese civil law.

6. In the 19<sup>th</sup> century, the representatives of the “movement of codification” – supported by high ranking politicians, as well – suggested that the legal traditions should be abolished. A. L. Visconde de Seabra (1798–1895), follower i. e. adept of the School of Law (Trend) of Natural Law (*Escola do direito natural*), who was entrusted with the codification in 1850, published his draft in 1858. Similarly to the Swiss jurisconsults and chief architects of codification Walther Munzinger (1830-1873) and Eugen Huber (1849-1923), Seabra was exclusively charged with the work of the codification. The draft (*Projecto*) of Visconde de Seabra was presented to the government in 1858. After several amendments (modifications), the Portuguese *Código civil* came into force finally during the reign of king Louis I (1861-1889) in 1868.

Besides the oeuvre of Visconde de Seabra – who graduated in Coimbra – as legal scholar, translator of literary works and philosopher, his political activities also gained considerable significance. He translated into Portuguese works of classical Latin authors, such as Horatius and Ovidius. Visconde de Seabra also commented their works – his

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<sup>2</sup> Coimbra, 1844.

commentaries are of great value even in the present time. The importance of his work dealing with the philosophy of law entitled “*A Propiedade. Philosophia do Direito para servir de introdução ao comentario sobre a Lei dos foraes*” shall be emphasized. This work – published in 1850 – played an important role in his assignment as the compiler (redactor and drafter) of the Portuguese Civil code. Seabra was appointed the minister of justice and ecclesiastical matters in 1852 and 1868 for a short time. He was the president of the Portuguese Chamber of Deputies (*Câmara dos Deputados*) between 1862 and 1868. Visconde de Seabra was also the Rector of the University of Coimbra (founded in 1290 originally in Lisboa and transferred later to Coimbra) between 1866 and 1868.

7. In the drafting of the *Código civil* the liberal Visconde de Seabra took into account the provisions of the Prussian *Allgemeines Landrecht für die preußischen Staaten* related to civil law, the French *Code civil* and the Austrian *Allgemeines Bürgerliches Gesetzbuch*. Art 16 of the Portuguese *Código civil* regards natural law (*direito natural*) as a subsidiary source of law (*direito subsidiário*).<sup>3</sup> In this respect, natural law is the law incorporated into the *boa razão*, which is related to Roman law in several aspects. In the interpretation of the *Código civil* the highly reputed five-volume commentary of J. Dias Ferreira

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<sup>3</sup> Art 16 of the Portuguese civil code regards the content of the *principios de direito natural, conforme as circunstâncias do caso* as subsidiary source of law (*direito subsidiário*).

(1837-1909) played an important role. Dias Ferreira interpreted the Civil code basically in compliance with the Roman law traditions.

8. The new Portuguese Civil code was adopted following prudent and thorough preparatory work in 1966. It came into force one year later, in 1967.<sup>4</sup> The new civil code was predominantly influenced by the German *Bürgerliches Gesetzbuch* (BGB) and the German civil law jurisprudence, for instance by the German doctrine of legal transactions (*Rechtsgeschäftslehre*). The effect of the German pandectist legal science (*Pandektenwissenschaft*) and the Historical School of Law (*escola histórica*) can be observed in the structure of the *Código civil*.

It shall be noted that the General Part i. e. the First Book (in German: *Allgemeiner Teil* i. e. *Parte geral*) of the *Código civil* is more extensive than the *Allgemeiner Teil* (*Erstes Buch*) of the German *Bürgerliches Gesetzbuch*. Contrarily, the Portuguese civil code does not provide the definition of the legal transactions or in other terms legal acts (in German: *Rechtsgeschäfte*). The first provision dealing with legal transactions (Art. 217) only

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<sup>4</sup> The preparatory works i. e. the decades-long process of drafting of the new Portuguese civil code began in 1940. Its legal basis was the N° 33908 *decreto-ley*, which explicitly pointed out the defects of the Civil code of 1867. The drafting of the new civil code was finished i. e. completed in 1966.

provides that expression of will (in German: *Willenserklärung*) may be explicit or implicit.

The committed follower i. e. adept of the idea of incorporating the General Part into the civil code was Professor Moreira. He inserted the course taught on the general part of the civil law as part of the curriculum at the University of Coimbra in 1900. In this regard, he was influenced by the German pandectist legal science (in German: *Pandektenwissenschaft* or *Pandektistik*).

The above-mentioned tendency concerning the general part originates from the renowned civilist, Manuel António Coelho da Rocha. Coelho da Rocha proposed even before the promulgation of the *Código civil* that the doctrines of the civil law should be incorporated into the code. He referred to the well known textbook of the German legal scholar, Ferdinand Mackeldey (1784-1834) entitled *Lehrbuch des heutigen Römischen Rechts*, which was translated into several languages and was known also in Portugal.<sup>5</sup> The structure i. e. system of the *Código civil* currently in force and the introduction of the General part (*Parte geral*) can be attributed mainly to Moreira's influence. However, it shall also be noted that French civil law, both doctrine and legal practice (in French: *jurisprudence*) also had a significant impact on the new i. e. second Portuguese civil code.

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<sup>5</sup> Ferdinand Mackeldey was professor of Roman law in the University of Bonn, which was founded by Frederick William III of Prussia (1797-1840) on 18 October, 1818.



that were annexed by India in December 1961.<sup>8</sup> The provisions of the Civil code of 1966 shall be applied in the former Portuguese colonies in Africa, even after having gained their independence; in case i. e. provided these provisions are in compliance with the constitutional order.<sup>9</sup>

Consequently, in Angola (*República de Angola*), Mozambique (*República de Moçambique*), Cape Verde (*República Cabo Verde*), São Tomé and Príncipe (*República Democrática de São Tomé e Príncipe*) and Guinea-Bissau (*República da Guiné-Bissau*) the significantly amended versions of the code were adopted as national civil codes.

In Guinea-Bissau the unification of the commercial law and the company law can be observed. This progression is

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<sup>8</sup> Goa became a Portuguese colony in 1510. Goa was conquered by Afonso de Albuquerque. Goa became the capital of the Eastern Portuguese colonial territories. On 18-19 December, 1961, India occupied and subsequently annexed Goa, Damão and Diu. It shall be noted that on 17 August, 1962, the so-called French India (*Inde Française*) – Pondicherry, Kapikal, Yanaon and Mahé – became part of India in terms of international law; inasmuch as these territories were under the administration of the Republic of India since 1954.

<sup>9</sup> Concerning the Portuguese colonial law (*direito colonial*) see: C.R. Gonçalves Pereira: *História da administração da justiça no Estado da Índia. Séc. XVI.I-II*. Lisboa, 1964-1965.; C.E. Boxer: *The Portuguese Seaborne Empire, 1515-1825*. London, 1969. and idem: *Portuguese Society in the Tropics. The Municipal Councils of Goa, Macao, Bahia and Luanda (1510-1800)*. London, 1969.



