I. Middle Ages

1. After the collapse of the Western Gothic Empire in 714, the majority of the Iberian Peninsula came under the rule of Arabs; therefore, temporarily the Roman law could not be applied. Consequently, when dealing with the effect and survival of the *ius Romanum* we refer to those territories of the Iberian Peninsula where Christian monarchies were established.

An evidence of the significant influence of Roman law are the *Ordenações Afonsinas* (also called as *Ordenações do Rey Afonso V*). They were approved in 1446-1447, during the reign of Afonso V (1432-1481) – who was under the tutelage of his mother, later his uncle until 1448. This five-volume work consists of several sources of law (*fontes iuris Lusitani*). On one hand, it consists of the laws (*leges*) adopted since the reign of Afonso II (1211-1223), which were influenced by the practice of the *Cortes*. On the other hand, it includes the customary law (*ius consuetudinarium, consuetudines*). The courts were obliged to apply the provisions of the *Ordenações Afonsinas*.

In Portugal the customs (*costumes*) and certain municipal statutes (*statuta*) included several elements (i.e. institutions, concepts and terminology) of Roman law.

The *Codex Euricianus* and the Portugal translation of the *Siete Partidas*, adopted during the reign of Alphonse the Wise (*Alfonso el Sabio*) were in force. The formal reception (*receptio in globo* or *receptio in complexu*) did not take place in Portugal; contrary to Spain or Germany (i.e. the Holy Roman Empire; *Sacrum Romanum Imperium*).

3. In Portugal the so-called common law (*direito comum*) – similarly to Spain and Andorra – is based on the Roman law (*ius Romanum*) and the Canon law (*ius canonicum*).

It did not weaken the authority of the *Glossa ordinaria* of Bartolus' and Baldus' commentaries that the courts could apply these compilations only in case they were in conformity with the *communis opinio doctorum*. A reason for this was the fact that in many cases the establishment of the rules of the *communis opinion doctorum* required long examination. The *Ordenações Manuelinas*, which were promulgated in 1521, the last year of the reign of Manuel I (1495-1521), includes similar rules.

The *Ordenaç?es Filipinas* (1603) provide parallel rules. It shall be noted that in this era, Portugal was under the rule of Spain. 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) in the same time.

II. Modern Times

4. The *Lei da Boa Razão* (*para os direitos das nações polidas e civilizadas*) – adopted during the reform governance of Marquis de Pombal[1] (under the reign of Joseph I [1750-1777]) – regarded Roman law (*direito romano*) as a subsidiary source of law, that may be applied in case it was in conformity with the *boa razão* (which practically indicates the natural law [*direito natural*]). The law adopted on 9 September, 1769 (*Lei de 9 de setembre 1769*), which comprehensively modified the rules governing the law of successions (*direito sucessório*) is worth mentioning. In this reform, the ideas of the Enlightenment played an important role ("*reforma iluminista*").

5. José Homem Correia Teles (1780-1849) in his work entitled "*Theoria da interpretação das leis*" (1815) followed the dogmas of Jean Domat (1625-1696). His work published in 1824 interpreting the *Lei da Boa Razão* had significant importance. Correia Teles also played an important role in the compilation of the Portuguese Civil code. He was a member of the committee entrusted with drafting the code. Correia Teles in his influential work of three volumes ("*Digesto portuguez, ou tractado dos direitos ou obrigações civis, accommodado as*

leis e costumes de nação portugueza para servir de subsidio ao Novo Codigo Civil"), which was published in 1835, regarded the Prussian *Allgemeines Landrecht* and the French *Code Civil* as having guiding value for the Portuguese Civil code.

However, according to views of Correia Teles, the long-established Portuguese civil jurisprudence based on the Roman law traditions should have been the basis of codification. We shall mention in this regard the textbook of Manuel António Coelho da Rocha (1793-1850) entitled *Instituições de direito civil portuguez*[2] in which the renowned civilist deals with and presents the traditional Portuguese civil law.

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

Besides the oeuvre of Visconde de Seabra – graduated in Coimbra – as legal scholar, translator of literary works and philosopher, his political activities also gained significance. He translated into Portuguese works of classical Latin authors, such as Horatius and Ovidius. Seabra also commented their works – his 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 introducção 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 of the 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. Seabra was also the Rector of the University of Coimbra (founded in 1290) between 1866 and 1868.

7. In the drafting of the *Código civil* the liberal 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 C*ódigo civil* regards natural law (*direito natural*) as a subsidiary source of law (*direito subsidiário*).[3] In this respect, natural law is the law incorporated into the *boa razâo*, which is related to Roman law in several aspects. In the interpretation of the *Código civil* the five-volume commentary of J. Dias Ferreira (1837-1909) played an important role. Dias Ferreira interpreted the Civil code in compliance with the Roman law tradition.

8. The new Portuguese Civil code was adopted following prudent and thorough preparatory work in 1966. It came into force one year later.[4] The new civil code was influenced by the German 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 (*Parte geral*) of the *Código civil* is more extensive than the *Allgemeiner Teil* of the German BGB. Contrarily, the Portugal code does not provide the definition of the legal transactions. The first provision dealing with legal transactions (Art 217) only provides that expression of will may be explicit or implicit.

The committed follower of the idea of incorporating the General Part into the civil code was Professor Moreira. He established the discipline of the general part of the civil law in the University of Coimbra in 1900. In this regard, he was influenced by the German pandectist legal science.

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 textbook of Ferdinand Mackeldey (1784-1834) entitled *Lehrbuch des heutigen Römischen Rechts*, which was translated into several languages and was known also in Portugal.[5] The structure of the *Código civil* currently in force and the

introduction of the general part can be attributed to Moreira's influence. However, it shall also be noted that French civil law also had a significant impact on the new civil code.

9. The commercial law in Portugal was codified in Portugal for the first time in 1833; four years later than the first Spanish commercial code had been adopted. It was the French *Code de commerce* that played a guiding role in the compilation of the code[6]. The work of the codification was carried out by José Ferreira Borges. With respect to the fact that in Portugal – similarly to Spain – the civil code was not put into force simultaneously with the commercial code, the Portuguese *Código de comercio* includes provisions of the law of obligations (*direito das obrigações*). Contrary to the commercial code adopted in 1888, this code of 1833 follows the *concept moniste*.

The second Portuguese commercial code (come into force on 1 January, 1889) was drafted by Francisco António da Veiga Beirão[7]. It shall be noted that the code of commercial corporations (*Código das Sociedades Comerciais*) of 1986 substantially amended the company law.

10. The Portugal civil code (which came into force in 1868) with minor amendments is still effective in the former Portuguese colonies (Goa, Damão and Diu) that were annexed by India in December 1961.[8] The provisions of the civil code of 1966 shall be applied in the former Portuguese colonies in Africa, even after their independence; in case these provisions are consistent with the constitutional order.[9] 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 attained within the framework of the Organization for the Harmonization of Business Law in Africa (*Organisation pour l'Harmonisation en Afrique du*

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[1] Sebastião José de Carvalho e Malho (duke of Oeyras, Marquis de Pombal [1699-1782]) was appointed to Prime minister in 1756 by Joseph I. Marquis de Pombal abolished slavery in Portugal, and provided to the Brazilian original inhabitants the same rights as to the Portuguese people. He resigned in 1777, the first year of the reign of Mary I. The reforms of Marquis de Pombal, who was committed to the centralist state power and enlightened absolutism, were completely preserved.

[2] Coimbra, 1844.

[3] 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)*.

[4] The preparatory works of the new Portuguese civil code began in 1940. Its legal basis was the N^{o} 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.

[5] 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.

[6] The first Portugal commercial code (adopted in 1833) is often referred to as "*Código de Ferreira Borges*".

[7] The commercial code (adopted in 1888) is often referred to in the literature as the "*Código de Veiga Beirão*".

[8] Goa became a Portuguese colony in 1510. Goa was conquered by Afonso de Alburquerque. 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 India since 1954.

[9] Concerning the Portuguese colonial law (*direito colonial*) see: C.R. Gonçalves Pereira: História da administraçãon da justiça no Estado da India. 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.