

**The Council of Europe celebrates the bicentenary of the French Civil Code – 21 and 22 October 2004**

**Speech by Brigitte Zypries, Minister of Justice of Germany at the opening of the Conference on “The Civil Code and Europe : influence and modernity”**

**Strasbourg, 21.10.2004**

Madam Secretary de Boer-Buquicchio,

Minister Perben,

Ladies and Gentlemen,

It is always nice to be invited to a birthday party. It is even nicer when it is the bicentennial of a law that is counted among Europe's greatest achievements. It is therefore a great pleasure for me, together with you, Ms. de Boer-Buquicchio, and with you dear colleague, Mr. Perben, to be able to open this conference today entitled “The Code Civil, its influences and its modernism”.

During the enlightenment period, the Code Civil was established on the basis of the notion of rational law. It was recognized at that time that this law formed the essential foundations for a rational order of life in society. This gave rise to the desire to replace the handed-down, and in many details, cumbersome and antiquated, fragmented and complicated law with a carefully planned, comprehensive legislative work, the responsibility for which was to be borne by the state. This step led to three significant codifications in Europe.

In Prussia, it brought about the General Land Law of 1794. Although influenced by the spirit of the enlightenment, this law remained essentially linked to Frederick II of Prussia's corporate state structure. That structure was characterized by an authoritarian state's care for its subjects. Its rigid casuistry was not beneficial to the creative development of the law through the courts and academia.

In Austria, the completed General Civil Code of 1811 was created. This Code revealed the idealistic and rational spirit of the enlightenment in a much stronger way than the Prussian Land Law. Furthermore, it was impressive on account of its condensed brevity and its lucid and coherent redaction. The fact that the restoration, which was connected with the name Metternich, did not provide fertile ground for the law's libertarian notions is another story.

In France, the Code Civil was created in 1804, our birthday star. In historic assessment, it is indisputable that, on account of its intellectual significance and its historic allure, this codification takes first prize. The very first lecture of the conference, to be held by Ms. Muir Watt, will deal with this in an historical and critical context.

There are two things that I would like to highlight:

Firstly: On the one hand the Code Civil was a child of the revolution. It not only unified the law that was passed on, thereby simultaneously consolidating the recently established nation. But, mainly, it also brought the demands of the revolution in terms of legal policy to fruition. In spite of this, the Code Civil did not lead to a break with tradition. It preserved legal

institutions that had been part of jurisprudence for centuries, but which had won new significance under evolving societal circumstances.

Examples of this are the provisions on the right of ownership and freedom of contract. Moreover, the Code had to deal with questions which needed to be resolved for all of Europe. I would only like to mention two of those questions: Does not an overvaluing of private autonomy leave those who are more vulnerable at the mercy of the economic powers that be? Does not an overvaluing of individual freedoms suppress societal ties to property? These questions triggered a countermovement which led to a greater institutionalisation and socialisation of civil law. But these examples also clearly demonstrate the continuity and the modernism of the Code Civil. By building on the achievements of the past, it met the challenges of the present.

Secondly: The Code Civil is a classic example of the fact that continental legislation – and in my view, rightly so – pursues a systemisation of the law. It was through this, in particular, that the Code Civil was able to become paradigmatic to the codification of private law in the roman sphere of law, and beyond. To this very day, much about it is praised: the solid diction imbued with the ideal of civil equality and freedom; the elegance, precision and succinctness; the epigrammatic brevity and the sustained passion of its phrasing. This gave birth to a system, which, working from the premise of basic notions and principles, frames the entirety of an area of the law into an architecture, in which every detail is given the position it deserves. In this way, not only rationality is guaranteed, but also the equal treatment of similar cases. This equal treatment is a fundamental component of the notion of justice. The structure that forms the basis of the Code Civil is therefore one of the most important means of promoting justice.

Ladies and Gentlemen,

In France, the Code Civil is still in force today, in Germany it was in effect in the Rheinland and in Baden for nearly 100 years. During the reign of Napoleon up to the wars of liberation, it was also in effect in the kingdom of Westphalia, in Frankfurt am Main, in Danzig and even in Hamburg and Bremen. Prominent German jurists therefore dedicated themselves to working with the Code Civil and implemented it according to the methods of German civil law science. This, in turn, had reverberating effects on France. For instance, the two Straßburg Professors Aubry [Obrí] and Rau translated the “Handbuch des französischen Zivilrechts”, by the Heidelberg academician from Lingenthal, into French and even expanded on it further themselves in later editions.

With the German Civil Code, which entered into force on the first of January 1900, the Code Civil's influence in Germany naturally began to recede. But the Code Civil played a significant role in its preliminary consultations. For instance, it needed to be clarified regarding the liability in respect of agents as to whether the provision should be formulated on the basis of the Code Civil's example. The Code Civil provided for unrestricted liability in cases of unlawful acts on the part of an agent. Ultimately, the German Civil Code decided on a limited liability. All the same, this example demonstrates how involved the Code Civil was in the development of the German Civil Code, even in places where German law took another route.

In the current case law of the German courts, the Code Civil once again plays a greater role. Due to the greater ease of crossing borders and mobility, cases arise again and again, in which French law is applicable in accordance with Private International Law. This applies to all areas of the law, to the law of contracts and of compensation, and equally so to family law.

The increasing significance of European integration is also reflected in the development of the law. The fact that we are Members of the European Union has led to the German and French courts working from the same basis of the law more and more. This also applies to areas of civil law. Since it is our aim to promote the ease of cross-border commerce, we must also counteract the fragmentation of contractual law. To this end, the European Commission presented a plan of action in 2003, which is aimed at achieving coherent European contractual law. As a standard for current and future law, a mutual catalogue of principles is to be developed, which is being referred to as the Common Frame of Reference.

Presently, research projects on this are being allocated. In order to promote the involvement interest groups, the setting up of a network is planned. The Council and the European Parliament are to be regularly updated on developments. In addition to this, annual political conferences are to be held. I consider it very important that all Member States of the EU take part early on and consistently in all the efforts toward developing the Common Frame of Reference. I primarily envisage the following objectives for a common guideline: formal requirements, the formation of a contract, obligations to provide information. I do not want to go into the further details of the Commission's plan of action at this point. In any event, we can eagerly look forward to the new developments over the coming years.

Ladies and Gentlemen,

When I consider how laborious and lengthy the creation of legislation at the national level or in the EU can be nowadays, the significance of the fact that the editing committee which was implemented by Napoleon for the Code Civil had presented a draft within the incredibly short period of four months becomes even greater. The swiftness of its creation, however, does not lessen the significance of this law. On the contrary, its magnetism endures. The Code Civil is, and remains an exemplary model for the formulation of laws. This fact will be dealt with in detail in the course of this conference. I wish you all, ladies and gentlemen, a productive exchange of ideas and wish the conference every success.