

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

### **Address by Dominique Perben, French Minister of Justice**

*(Strasbourg, 21-22 October 2004)*

Ladies and gentlemen,

We are gathered here today to celebrate the 200th anniversary of the French Civil Code, but above all to assess its relevance to Europe and its modernity. Why have we chosen this forum for the bicentenary of the Civil Code?

The Council of Europe is now the home of law and democracy for 46 countries on our continent, so it is quite natural for the Council to host the discussion we want to share with all our European partners.

I should like to thank the Deputy Secretary General, and the Council of Europe's Directorate of Legal Affairs, represented by Mr Guy de Vel, for organising this colloquy in co-operation with the Court of Cassation and my ministry.

I also wish to thank the European Commission for supporting this event as part of the "European Day of Civil Justice".

The celebration of the bicentenary of our Civil Code is an event for French legal experts, but also for many such experts across Europe and worldwide. Our Code profoundly influenced the legal systems known to comparative law specialists as "Roman law", "civil law" or "written law" systems.

This influence is based firstly on historical factors. Napoleon used the Civil Code as a tool of foreign policy, imposing it on such countries as Germany, the Netherlands and Italy. In doing so, he also intended to develop the ideals of the French Revolution: freedom, civil equality and private property. At the time, applying the Civil Code meant abolishing feudal rights, secularising marriage and legitimising divorce.

Over and above these historical factors, the Civil Code's influence is due to its profoundly modern nature. Insofar as it makes all citizens equal before the law, it marks a fundamental stage in legal history in the wake of the Enlightenment and the Revolution. Under the terms of the Code, relations between individuals no longer reflect privileges inherited by birth or religion. They henceforth express the values of freedom and equality, regulated by the rule of law. The importance conferred on a very broad degree of contractual freedom amounted to sidelining the intermediaries – the guilds and churches. The definition of private property as the most absolute right also testified to the definitive rejection of the feudal system.

The modernity of the Civil Code stems partly from these values which form the basis of modern society, but also from the Code's capacity to adapt to new challenges. When bioethics legislation was introduced in 1994, the human body became a component of the Civil Code. The experience of a century of medical law has now been integrated and the Civil Code enshrines respect for the human body.

The impact of the new technologies – particularly electronics and information technology – has also altered the general theory of contracts. Four years ago a series of new articles introduced the concept of electronic signature into the Civil Code.

During the 20th century, tremendous changes took place in the area of the environment. We have all witnessed the irreversible onslaughts on our planet wrought by major ecological disasters, and we have become aware of the serious dangers that unreasonable economic and technical development may entail.

Implementing environmental law is a complex task owing to the large number of judicial bodies involved. Moreover, international instruments provide for restrictions on the establishment of liability. The President of the Republic has secured the adoption of the Environmental Charter, which recognises everyone's right to live in a healthy and balanced environment. Likewise, I hope there will be a discussion of how effective machinery for prevention, investigation and compensation relating to transnational ecological disasters can be implemented at regional level.

By offering a legal framework that is both rational and flexible, the Civil Code has shown itself to be a universal instrument. Its spirit and principles have inspired many parliaments in Europe but also in Latin America, the Middle East and Asia.

In Latin America, legal experts have shown that they are deeply attached to the spirit of the Civil Code and to the revolutionary values it embodied.

In Louisiana and Quebec, the French Civil Code and method of codification have served as a model for the process of organising legal rules.

Although many countries have now distanced themselves from the content of the French Civil Code, they nonetheless abide by the idea of codification. Brazilian legal experts, for example, consider that their new Civil Code, which came into force in 2003, remains the mainstay of their private law. Yet the review of constitutionality to which the Code's provisions will undoubtedly be subject has altered the balance of their legal system. Similarly, Quebec's new Civil Code endeavours to establish a common law while also referring to the Charter of Rights and Freedoms. This new Civil Code, inspired by a French legal culture that evolved over several centuries, and also by other European legal systems and by English common law, testifies to the vigour of the civil law tradition today.

Codification has come into its own again on other continents too. Adopting a civil code can be seen as a way of asserting that a country has a modern legal system and is open to the market economy, as in Vietnam and China.

In sub-Saharan Africa the establishment of OHADA law (OHADA being the Organisation for the Harmonisation of Business Law in Africa) was the outcome of a still more ambitious approach. Business law has been codified at regional level in order to promote economic development.

Thanks to its flexibility, the Civil Code has succeeded in incorporating outside influences over the centuries. It started as the code of an imperial régime and has

become that of a democracy. It was initially a tool used by the Napoleonic régime to unify French society, and has become the bond holding that society together. Ten constitutions have followed one another and the Code has adjusted to monarchy, the empire and the republics.

It is the code of a sovereign nation, but is now imbued with European law. For example, the European directive on liability arising from defective goods is now part of our Civil Code, as are the provisions governing nationality.

So does the Civil Code's future now lie with Europe?

I believe so. The Civil Code's European future is many-sided. As you know, France has embarked on the discussion initiated by the European Commission with a view to defining a common reference framework: the idea is to give the standard concepts of contract law a common content.

We asked that the member states and business leaders should be involved in this discussion, and our request was granted. Practical, accessible proposals must be identified in order to bring national legal systems closer together, without of course standardising them in a simplistic manner.

Civil law is of fundamental importance: through the individual, the family and obligations, it organises relations between people and helps to shape the identity of a society. Over the centuries each European country has developed its own civil law, reflecting its own culture.

However, similarities appear in the patchwork of European legal systems. The human rights and fundamental freedoms stemming from the instruments adopted by the Council of Europe and safeguarded by the European Court of Human Rights form the basis of a public policy common to the 46 member states. They now guide European legal experts' thinking, legal framework and practice.

The Council of Europe and the European Court of Human Rights show respect for each country's legal culture and do not seek to unify law.

They set basic standards, but leave it to the governments to decide on the arrangements for transposing them into domestic law. It must be emphasised that these standards evolve, since the European Convention on Human Rights is a living instrument.

The Council of Europe, the Court and their members also have much to do with the process of building the Union's legal area. That we can advance towards greater harmonisation and mutual recognition is partly due to their valuable work over the past few decades. They help on a day-to-day basis to create an atmosphere of mutual trust between the States Parties to the convention. In fact I should like to take advantage of the opportunity given to me here to pay tribute to the men and women who work in these organisations. They are part of the tireless quest for true democracy and better justice for Europe's citizens. In this respect, the discussion of the quality of justice undertaken by the European Commission for the Efficiency of Justice will certainly be of decisive importance.

In the European Union our work is guided by a constant concern to make daily life easier for our fellow-citizens, foster economic development and secure the means to fight the most serious forms of crime. This sometimes makes harmonisation necessary, especially in procedural law.

For example, separation cases involving transfrontier couples posed such painful problems that in order to remedy them we decided to introduce appropriate legal instruments. Brussels II bis Regulation now lays down the rules governing jurisdiction, recognition and execution of decisions, irrespective of the children's type of descent and their parent's marital status. Essentially, it aims to protect children from illicit parental acts.

We consider the principle of mutual recognition more effective in other areas. It entails a member state recognising the effects of, or executing, the decisions of a court in another member state, as if those decisions were those of its own courts. The introduction of the European arrest warrant is the most striking example of this.

We are also working on common approaches in matters of still greater detail. My German colleague Ms Zypries and I are working on setting up a European criminal record, and our Spanish colleagues have joined us. In the area of civil law, our legislative departments are jointly discussing the reform of guardianship law. As a result of this co-operation, we shall draw up texts which are not identical but at any rate contain compatible provisions.

Our law, including our civil law, now evolves according to cross-influences. The case-law of the European Court of Human Rights has a profound impact on our judicial system and civil law.

This is because French judges have gradually appropriated the Court's methods of interpretation and are more familiar with its case-law. The member states' supreme courts have played a decisive part in this process, which also reflects a more international view of law. We now consider it natural for the Strasbourg Court to hold such a prominent position among the sources of law.

Thanks to the influence of the European Convention on Human Rights, legal provisions which have been found to violate the convention and have caused the Court to rule against France are brought into line with the convention. This is more often a matter of procedure than of substantive issues.

However, several provisions of the Civil Code have had to be amended to ensure equality of rights irrespective of descent. That is an example of the gradual convergence that the Court is engendering with regard to basic principles. Since the 1979 Marckx judgment, attitudes have changed and the amendments made to the Civil Code regarding the status of adulterine children have not sparked controversy.

In fact the stimulus given by the Court has helped us reform our law of inheritance in favour of the surviving spouse.

Other changes have been made to our civil law to take account of the higher standards of protection in the Court's case-law. Examples include the legislation on

surnames and the law on access to one's origins. The legal system developed by the Strasbourg Court influences parliaments as well as judges.

The Council of Europe and the European Convention on Human Rights exert a profound influence over our Civil Code, and they in turn are receptive to the modernity of our Code.

The principle of codification, which our Code symbolised at the time, is one of the tools offered by the Council of Europe when countries request its legal expertise.

After the collapse of the Berlin wall, the Council assisted the East European countries that wished to adopt legislation compatible with European democratic standards. In performing this task, it did not express a preference for either common law or written law. Yet the fact is that those countries opted for codification. This choice is no doubt due to the principles of the organisation and hierarchical structure of legal rules, which inform the codification strategy. And I am pleased to see that eminent representatives of those countries are here today to share their experience with us.

On several occasions the Court's case-law has also confirmed the principles of the clarity and accessibility of law which the Civil Code has brilliantly illustrated over the past two centuries.

In a world where legal rules are proliferating and national and supranational legal systems are becoming increasingly intertwined, it is important that such principles should guide parliaments and ensure the security of legal transactions.

Thank you. I wish you every success in your work.