

Annexes:

Summary of checks performed by relevant authorities on the steps for which funding is requested, including weaknesses identified and any corrective actions taken.

N/A

1) Fiche to be used for each step:

The step under review	Adopt the Civil Code
Baseline	No Civil Code in place
Deadline of the step	December 2025
Actual results	<i>The drafting Process of the Civil Code</i> The Civil Code was part of the Government Legislative Program 2018. Based on this, the drafting process began in March 2018, with the establishment of the working group. The working group was led by the Ministry of Justice, that worked closely with representative from the Courts, Chambers of Notaries and Chamber of Advocates. From June to July 2018, with EU support, regular meetings were held almost every Wednesday, where experts presented each book of the Code. Awareness campaigns were simultaneously organized in Prishtina, Peja, Mitrovica, Gjakova, and Gracanica to inform the public of the Code's importance. The finalization phase began in September 2018, with weekly meetings involving representatives from courts, the Chamber of Notaries, the Chamber of Advocates, the Ministry of Labor and Social Welfare, and international partners at that time such as USAID. These meetings addressed open issues across all books of the Code. In November 2018, special consultations were held with the Ministry of Labor and Social Welfare, focusing on family law issues such as housing and adaptation. Throughout 2018, 27 working group meetings and 7 public information campaigns were organized, underscoring the transparency and inclusiveness of the process. In early 2019, the draft entered preliminary consultations with institutions and stakeholders, followed by public consultations in line with government regulations. The consultation process began on February 2019, and it ended on March 2019. Comments were reviewed in a two-day meeting, with decisions made on which to incorporate, accompanied by justifications. <i>Finalization and Approval of the draft Code</i> The final draft was prepared in compliance with standards for drafting normative acts. Legal opinions on EU compatibility were issued by the Office of the Prime Minister, while financial impact assessments were provided by the Ministry of Finance. The Government of Kosovo approved the draft on 29 December 2021. The development of the draft Civil Code of Kosovo was one of the most ambitious legislative undertakings in the country's post-independence era. Supported by two phased EU-funded projects, Support to Civil Code – Phase 1 (2014-2016) and Phase 2 (2017-2021), the Government of Kosovo embarked on drafting a

comprehensive Civil Code that would harmonize domestic legislation with the best practices from EU countries and respective international instruments.

It resulted in a comprehensive draft Code that is structured into five books: 1. General Part; 2. Obligations Law; 3. Ownership and other real rights Law; 4. Family Law, and 5. Inheritance Law. Each book addressed crucial issues that have long required clarification and modernization in Kosovo's legal framework.

Book 1 – General Part

The General Part established the principle of equality of all citizens before the law and prohibited discrimination. For the first time in Kosovo, the sources of civil law were clearly defined, including the Constitution, the Civil Code, laws, and international agreements. This book also emphasized harmonization with EU *acquis* and other international standards, ensuring Kosovo's legal system aligns with European practices.

Book 2 – Obligations Law

The section on Obligations focused on harmonizing current provisions from the Law no. 04/L-077 on Obligational Relationships, to avoid conflicts of law and ambiguities. It clarified contract law, thereby facilitating business transactions and enhancing legal certainty for citizens. Importantly, it specified deadlines for the prescription of claims, such as debts, contract fulfillment, and compensation for damages, ensuring predictability and fairness in civil relations.

Book 3 – Property and Other Real Rights Law

This book clarified property rights and introduced new provisions on acquiring ownership. It brought specific innovations that fill gaps in Kosovo's legal system and provide citizens with clearer rules on property relations.

Book 4 – Family Law

The Family Law Book aimed to strengthen equality in family relationships, particularly by ensuring equal property rights for spouses (50%-50%), regardless of the type of contribution. It also aimed to enhance protection for children and spouses during divorce and regulated children's rights in line with international standards. Notably, it granted even a six-year-old child the right to be heard in proceedings affecting their interests, reflecting a strong commitment to the best interests of the child. This book also foresaw that except of marriage, other forms of civil unions are to be regulated with a specific law.

Book 5 – Inheritance Law

Inheritance provisions in this Book aimed to guarantee effective equality, particularly for women, by ensuring transparent procedures before notaries and courts. The Code regulated waivers of inheritance rights, requiring strict safeguards with regards to a process that provides the necessary information to the parties and transparency. It also recognized inheritance rights for cohabiting partners, provided the relationship has lasted five years (or three years if children are involved), modernizing family law to reflect social realities.

	However, during deliberations in the Assembly, the draft failed to pass the first reading on 16 March 2022. The primary reason was opposition from several MPs and interest groups concerning provisions on same-sex civil unions. Consequently, the draft was returned to the Government. Despite efforts to build political consensus for resubmission, the Civil Code has not yet been adopted. Regardless of this, the Civil Code remains a landmark project, symbolizing Kosovo's commitment to harmonizing its legal system with European standards and protecting the rights of all citizens. Following the December 2025 elections, the newly to be constituted Kosovo Government will, during 2026, initiate a targeted public outreach campaign on the Civil Code. The purpose of this campaign will be to articulate the tangible benefits of the Code for citizens and businesses, thereby fostering public understanding and building momentum for its timely adoption and effective implementation. This outreach will be complemented by structured consultations with relevant CSOs, the mandate of which intersect with specific provisions of the Code. Upon conclusion of this inclusive process, the Government will proceed with approval of the Civil Code. It will then actively pursue the creation of broad political consensus to secure the Code's adoption by the Assembly, thereby reinforcing both democratic legitimacy and institutional stability in the implementation phase.
Evidence provided	Decision on establishment of the working group for the Civil Code (document attached) The draft Civil Code, which has been approved by the Government and discussed at the Assembly level - https://kuvendikosoves.org/Uploads/Data/Documents/ProjektkodiciviliRepubliesseKosove_khgaYWYf9.pdf The report on public consultation process on the draft Civil Code, prepared by the Ministry of Justice. (document attached) Explanatory memorandum accompanying the draft Civil Code, prepared by the Ministry of Justice. (document attached) Table on concordance of the EU acquis with the draft civil code (document attached) Legal Opinion on Compliance with EU legislation issued by the Office of the Prime Minister (document attached)
Checks performed in the verification of the step and related findings	During verification of the step, all available and possible evidence has been collected and reviewed. The evidence has been listed down in the checklist on the conducted verification, and all documents supporting the verification have been properly stored (in order to ensure audit trail). The following checks were conducted: 1. All available documentation in line with the level of the achievement (as attached to this report) has been reviewed to verify the current stage of the reform step;

	2. Compliance with the descriptive part of the reform step from the Commission Implementing Decision has been verified to the maximum possible extent and scope (as evidenced by the documentation available); 3. The attached documentation can confirm non-fulfilment of the reform step, as presented in this report; The results of the checks indicate that the reform step has not been fulfilled by the end of the reporting period (31 December 2025). As soon as the information is received by the Implementing units on the complete achievement and fulfilment of the reform step, the checks will be re-performed and repeated to verify the underlying completion / fulfilment.
Compliance with general principles and DNSH principle	The implementation of the steps does not contravene the general principles outlined in Article 4 and 11(4) of Regulation (EU) 2024/1449 and Article 3 of the Facility Agreement. The implementation of the steps does not contravene the ‘Do No Significant Harm’ principle (DNSH).
Double funding	Contributions from third parties were not reported in support of the achievement of this step.
Clear conclusion on the achievement of the step	This reform step has not been fulfilled by December 2025 deadline. It is moved to the grace period.



Republika e Kosovës
Republika Kosova-Republic of Kosovo
Qeveria-Vlada-Government

Ministria e Drejtësisë - Ministarstvo Pravde - Ministry of Justice

MEMORANDUM SHPJEGUES PËR PROJEKT KODIN CIVIL TË REPUBLIKËS SË KOSOVËS

EXPLANATORY MEMORANDUM ON DRAFT CIVIL CODE OF THE REPUBLIC OF KOSOVO

MEMORANDUM OBJAŠNJENJA O GRAĐANSKOM ZAKONIKU REPUBLIKE KOSOVO

1.Çështja kryesore e trajtuar	1. Key issues addressed	1. Glavno tretirano pitanje
Projekt Kodi Civil është duke u bërë për herë të parë në Republikën e Kosovës, qëllimi i të cilit është rregullimi dhe harmonizimi i dispozitave ligjore të së drejtës civile materiale.	Draft Civil Code is being done for the first time in the Republic of Kosovo, whose purpose is regulation and harmonization of the legal provisions of substantive civil law.	Nacrt Građanskog zakonika se po prvi put izrađuje u Republici Kosovo, čija je svrha regulacija i usklađivanje zakonskih odredbi materijalnog građanskog prava.
Miratimi i tij është i domosdoshëm për rregullimin parimor dhe material të së drejtës civile si dhe në thjeshtësimin e zbatimit të së drejtës civile nga autoritetet gjegjëse. Po ashtu, miratimi i tij mundëson qasje më të lehtë dhe të përshtatshme në drejtësinë civile për qytetarët dhe subjektet tjera.	Its approval is necessary principled regulation and civil law in material and simplification of civil law enforcement by the relevant authorities. Also, its adoption enables easier access and appropriate civil justice for citizens and other subjects.	Njegovo usvajanje je neophodno za načelno i materijalu uređenje i građanskog prava i pojednostavljenje sprovođenje građanskog prava od strane nadležnih organa. Takođe, njegovo usvajanje omogućava lakši pristup i odgovarajuću civilnu pravdu za građane i druge subjekte.
Projekt Kodi Civil i Republikës së Kosovës, bazohet në parimet kushtetuese të shtetit të së drejtës, të barazisë përpara ligjit si dhe është hartuar në përputhje me standardet evropiane dhe me praktikën më të mira të shteteve evropiane që e rregullojnë lëmin civilo - juridike dhe shënon një hap përpara në reformimin e drejtësisë në Republikën e Kosovës.	Draft Civil Code of the Republic of Kosovo, based on the constitutional principles of the rule of law, equality before the law and is designed in accordance with European standards and best practices of European countries that regulate civil - legal field and marks step forward in reforming the justice in the Republic of Kosovo.	Nacrt Građanskog zakonika Republike Kosovo, na osnovu ustavnih načela vladavine prava, jednakost pred zakonom i dizajniran je u skladu sa evropskim standardima i najboljim praksama evropskih zemalja koje regulišu civilno - pravne oblasti i oznaka korak napred u reformi pravosuđa u Republici Kosovo.
Gjatë fazës së hartimit të Projekt Kodit Civil, janë marrë parasysh dhe janë konsultuar modelet e shumë kodeve civile të	During the drafting phase of the draft Civil Code, are considered and consulted patterns of many civil codes of continental Europe,	Tokom faze izrade nacrt Građanskog zakonika, uzeti su u obzir i konsultovani modeli mnogih građanskih zakonika

vendeve të Evropës kontinentale e kryesisht të Kodit Civil gjerman, Kodit Civil Austriak, Kodit Civil Italian, Kodit Civil Francez, Kodit Civil Estonez dhe Kodit Civil të Shqipërisë. Po ashtu, janë marrur për bazë vendime të ndryshme gjyqësore në kuadër të gjykatave në BE. Përkundër që në disa raste, sikurse që parashihet në draft Kodin Civil, lejohet rregullimi me ligje të veçanta, ato rregullime nuk mund të jenë në kundërshtim me parimet e projekt Kodit Civil. Projekt Kodi Civil është kodi/ligji i parë që është i ndarë në libra të veçantë tematik, të cilat janë të radhitura si në vijim: 1. Libri i parë – Pjesa e Përgjithshme 2. Libri i dytë – Detyrimet; 3. Libri i tretë – Pronësia dhe të Drejtat tjera Sendore 4. Libri i katërt – Familja dhe 5. Libri i pestë – Trashëgimia Nga 5 librat e projekt Kodit, vihen këto ndryshime qenësore, të ndarë sipas librave:	mainly to the German Civil Code, Austrian Civil Code, Italian Civil Code, French Civil Code, Estonian Civil Code and Albanian Civil Code. Furthermore, are taken for base different court decision within the EU. Despite the fact that in some cases, as foreseen in the draft Civil Code, regulation by separate laws is allowed, these regulations cannot be in contrary to the draft Civil Code principles. Draft Civil Code is code / first law is divided into separate thematic books, which are listed as follows: 1. Book one - General Part 2. Book two - Obligations; 3. Book three - Ownership and Other Real Rights 4. Book four - Family and 5. Book five - Heritage From five books of the draft Code, made these significant changes, divided by book:	zemalja kontinentalne Evrope, uglavnom Nemačkog građanskog zakonika, Austrijskog građanskog zakonika, Italijanskog građanskog zakonika, Francuskog građanskog zakonika, Estonskog građanskog zakonika i Albanskog građanskog zakonika. Takođe, uzete su u obzir i različite sudske odluke u okviru sudova u EU. Uprkos činjenici da je u nekim slučajevima, kao što je predviđeno u nacrtu Građanskog zakonik, dozvoljeno uređenje po posebnim zakonima, ta uređenja ne mogu biti u suprotnosti sa nacrtima principima građanskog zakonika. Nacrt građanski zakonik je kod / prva zakon je podeljen u odvojene tematskim knjige, koje su navedene kao što sledi: 1. Prva knjiga - Opšti deo 2. Druga knjiga - Obligacije; 3. Treća knjiga - Svojina i druga stvarna prava 4. Četvrta knjiga – Porodica, i 5. Peta knjiga - Nasledstvo Od 5 knjiga nacrta zakona, uspostavlja se ove značajne promene, podeljene po knjigama:
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1. Pjesa e Përgjithshme (Libri 1) – Pjesa e Përgjithshme bëhet për herë të parë në Republikën e Kosovës. Pjesa e përgjithshme përmban rregulla të përgjithshme dhe parimore të cilat i referohen pjesës së përgjithshme, pjesëve tjera të Kodit Civil por edhe për tërë legjislacionit e të drejtës civile. Pjesa e përgjithshme është libri bazë, në të cilën reflektohen parimet e përgjithshme, të cilat kanë munguar, ka qenë kontradiktore apo edhe kanë qenë të rregulluara përmes ligjeve të veçanta, gjë që me rregullimin sipas Librit 1, thjeshtësohet dhe mundësohet zbatim më i lehtë i së drejtës civile materiale. Pjesa e përgjithshme reflekton edhe rrethanat që e karakterizojnë mjedisin rregullator civil dhe atë social në Kosovë. Po ashtu, pjesa e përgjithshme përmban dispozita të përgjithshme dhe parimore, të cilat përpos pjesëve të Kodit Civil, i referohen të gjithë legjislacionit civil të aplikueshëm në Kosovë. Pjesa e përgjithshme, ndër tjerash, përcakton/rregullon: <i>subjektet e së drejtës, sendet dhe kafshët, burimet e së drejtës, analogjinë, ushtrimin e të drejtave dhe përmbushjen e detyrimeve me kujdes, prezumimin e mirëbesimit, ndalimin e shkaktimit të dëmit, punët juridike, intepretimin e ligjit, aftësinë juridike dhe aftësinë e veprimit dhe heqjen e saj, të drejtën në emër, shpalljen e personit të zhdukur dhe vdekur, pavlefshmërinë e</i>	1. General Part (Book 1) - the General Part is being drafted for the first time in the Republic of Kosovo. The general part contains general rules and principles which refer to the general part, other parts of the Civil Code but also for the whole legislation of civil law. Part of the overall is based on the book, in which reflected the general principles, which have been missing, has been contradictory or have been regulated by special laws, which the regulation under Book 1, simplify and facilitate the smooth implementation of substantive civil law. The general part reflects circumstances that characterize civil regulatory environment and social Kosovo. In addition, general part contains general provisions and principles, which in addition to parts of the Civil Code, refer to all applicable civil law in Kosovo. The general part, inter alia, defines/ regulates: <i>subjects of law, objects and animals, sources of law, analogy, exercising their rights and meeting with care obligations, the presumption of good faith, the prohibition on causing harm, legal affairs, intepretimin law, legal ability and action ability and its removal, the right to name the announcement of the missing and the dead person, the invalidity of legal affairs (absolute and relative), representation and prescription.</i>	1. Opšti Deo (Knjiga 1) - Opšti deo se po prvi put izrađuje u Republici Kosovo. Opšti deo sadrži opšta pravila i principe koji se odnose na opšti deo, i druge delove Građanskog zakonika, već i za ceo propisima građanskog prava. Dio ukupne se zasniva na knjizi, u kojoj odražava opšti principi, koji su nestali, bio je u suprotnosti ili su regulisana posebnim zakonima, koji propis pod Book 1, pojednostaviti i olakšati nesmetano sprovođenje materijalno građansko pravo. Opšti dio odražava okolnosti koje karakterišu građanski regulatorno okruženje i društvenu Kosovo. Pored toga, opšti deo sadrži opšte odredbe i principe, koji pored delovima Građanskog zakonika, odnose se na sve važećim građanskog zakona na Kosovu. Opšti deo, između ostalog, uređuje/ propisuje: <i>subjekte prava, predmeta i životinja, izvora prava, analogije, ostvarivanju njihovih prava i sastanak sa obavezama zaštite, pretpostavke dobre volje, zabrane nanose štetu, pravne poslove, intepretimin prava, pravne sposobnosti i akcionog sposobnosti i njegovog uklanjanja, pravo da imenuje proglašenjem nestalog i mrtvacu, valjanost pravnih poslova (apsolutnim i</i>
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<i>punëve juridike (absolute dhe relative), përfaqësimin dhe parashkrimin.</i> 2. Detyrimet (Libri 2) – hyrja e në fuqi e Kodit Civil, i shfuqizon dispozitat e Ligjit për Marrëdhëniet e Detyrimeve, të cilat i rregullojnë çështjet tash më të rregulluara me Kod, ndërkohë që kontratat komerciale do të vazhdojnë të rregullohen me Ligjin për Marrëdhëniet e Detyrimeve deri në momentin kur të hartohet dhe miratohet Kodi Tregtar në të ardhmen e afërt apo ligje tjera të veçanta. Ndër tjerash, në Librin për Detyrimet, i cili i përmban 2 pjesë të ndara, Pjesa e I-rë (Dispozita e Përgjithshme), i përmban 24 kapituj, ku rregullohen çështjet vijuese sipas kapitujve: <i>parimet e themelore; burimet e detyrimeve; parakontrata; objekti; baza; forma e kontratës; elementet aksidentale; përfaqësimi; interpretimi kontratës; pavarshmëria e kontratës; kontratat e dyanshme; kontrata në dobi të një personi tjetër; shkaktimi i dëmit; shpërblimi i dëmit; pasurimi pa bazë; gjerimi i punëve të huaja; shprehja e njëanshme e vullnetit; premtimi publik; pranimi i borxhit; letrat me vlerë, efektet e detyrimeve; shuarja e detyrimeve; mënyrat tjera të shuarjes së detyrimeve; parashkrimi; llojet e ndryshme të detyrimeve; ndryshimi i debitorit apo kreditorit</i>, ndërsa në Pjesën e II-të (Kontratat e Veçanta), i përmban 18 kapituj përmes të cilave rregullohen kontratat si në	2. Obligations (Book 2) - entry into force of the Civil Code, repeals provisions of the Law of Obligational Relations, which regulate the affairs that are now regulated in the Code, while commercial contracts will continue to be regulated by the Law on Obligations until drafted and approved the Commercial Code in the near future or other special laws. Among other things, the Book on Obligations, which contains two separate parts, Part I (General Provisions), contains 24 chapters, which are regulated by following items by chapter: <i>basic principles; sources of obligations; precontracts; object; basis; form of contract; accidental elements; representation; contract interpretation; invalidity of the contract; bilateral contracts; contracts for the benefit of another person; causing damage; compensation of damage; unjust enrichment; nlarging of foreign affairs; unilateral expression of will; public promise; admission of debt; securities, obligations effects; remission; Other ways of extinguishing obligations; prescription; different types of obligations; The debtor or creditor change</i>, while the Part II (Special Contracts), contains 18 chapters which regulates contracts as follows: <i>contracts for</i>	<i>relativnim), predstavljanje i zastarevanje.</i> 2. Obligacije (Knjiga 2) - stupanje na snagu Građanskog zakonika, ukida odredbe Zakona o obligacionim odnosima, koji regulišu pitanja koja su sad već uređena u Zakoniku, dok će komercijalni ugovori i dalje biti regulisan Zakonom o obligacionim odnosima do izrade i usvajanja Komercijalnog zakonika u bliskoj budućnosti ili drugim posebnim zakonima. Između ostalog, Knjiga o obligacionim odnosima, koji sadrži dva odvojena dela, Part I (Opšte odredbe), sadrži 24 poglavlja, koja su regulisana je glavom sledeće stavke: <i>osnovne principe; izvori obaveza; precontracts; object; osnova; forma ugovora; accidental elements; predstavljanje; Ugovor interpretacija; ništavost ugovora; bilateralni ugovori; ugovori u korist drugog lica; nanošenje štete; naknada štete; unjust enrichment; nlarging spoljnih poslova; jednostrano izraz volje; javno obećanje; Priznanje duga; hartije od vrednosti, obaveze efekti; remisija; Drugi načini za gašenje obaveze; recept; različite vrste obaveza; Dužnik ili poverilac promene</i>), a u II Delu (Posebni ugovori), sadrži 18 poglavlja kroz koje ugovori se propisuju kako sledi: <i>ugovore o prodaji; ugovora zamene; ugovori za poklon; ugovori za</i>
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vijim: kontrata për shitjen; kontrata për këmbimin; kontrata për dhuratën; kontrata për mbajtjen e përrjetshme; kontrata për ndarjen dhe dorëzimin e pasurisë; kontrata për huanë; kontrata për huapërdorjen; kontrata për qiranë; kontrata për veprën; kontrata për ndërtimin; kontrata për transportin; kontrata për depozitën; kontrata për magazinimin; kontrata për dekretin; kontrata për ortakërinë; kontrata e bashkësisë; kontrata për dorëzanin dhe ujdia). Libri 2, mes tjerash rregullon shkaktimin e dëmit si burim të dytë të marrëdhënive të detyrimeve. Rregullimi në Kod, qartëson në mënyrë detale dispozitat lidhur me dëmin, bazat e përgjegjësisë, dëmin e ardhshëm, dëmin e padrejtë, kërkesën për mënjanimin e rrezikut të dëmit, kërkesën që të pushohet me shkeljen e të drejtave të personalitetit. Megjithatë, risi në këtë kapitull janë se tashmë janë rregulluar dëmi i ardhshëm, dëmi i padrejtë, përgjegjësia e personave me aftësi të përkohshme për gjykim, përgjegjësia e shkollave dhe organeve/intirucioneve tjera. Tek shprehja e njëanshme e vullnetit (premtimi publik), Libri 2 e bën në mënyrë të qartë se premtimi i njëanshëm për të kryer një obligim është detyrues për personin që e bën premtimin në rastet e parashikuara me ligj. Po ashtu, kodi e sqaron kuptimin dhe	the sale; exchange contracts; contracts for the gift; contracts for lifelong maintenance; sharing contracts and delivery of property; contracts for the loan; lending of contracts; rent contract; contracts for work; contracts for construction; contracts for the transportation; contracts for the deposit; contracts for storage; contracts decree; partnership contracts; contract community; contracts for escrow and settlement). Among others, Book 2, regulates the damage caused as a second source of relations obligations. Regulation in the Code, specifies in detail the provisions relating to damage the foundations of responsibility, future damage, unfair damage, request to remove the risk of damage, the request to be dismissed with personality rights violations. However, novelties in this chapter that are already regulated future damage, unjust damage, and liability of persons with temporary capability judgment, the responsibility of schools and institutions / Other institutions. In the unilateral expression of will (public promise), Book 2 makes clearly that the unilateral promise to perform an obligation is binding on the person who makes the promise in the cases provided by law. Also, the code clarifies the meaning and legal effect of public promise and that is binding on the promisor.	doživotno održavanje; deljenje ugovora i isporuku imovine; ugovori za kredit; kreditiranje ugovora; rent ugovor; ugovori za rad; ugovori za izgradnju; ugovori za prevoz; ugovori za depozit; ugovori za skladištenje; ugovori uredba; partnerstva ugovori; Ugovor zajednica; ugovori za depozit i pomirenje). Knjiga 2, između ostalog reguliše štetu nastalu kao drugi izvor obaveza odnosa. Podešavanje kod, navodi detaljno odredbe koje se odnose na oštećenja temelje odgovornosti, budućeg oštećenja, nelojalna oštećenja, zahtev za uklanjanje rizik od oštećenja, zahtev će biti otpušten sa povredama prava ličnosti. Međutim, inovacije u ovom poglavlju koji su već regulisana budući štetu, nepravedno oštećenje, odgovornost lica sa privremenim sposobnosti sud, odgovornost škola i institucija/ostalnih institucija. Kod jednostranog izražavanja volje (javno obećanje), knjiga 2 čini jasno da je jednostrano obećanje da izvrši obaveza je obavezujuća za osobu koja čini obećanje u slučajevima predviđenim zakonom. Isto tako, kod pojašnjava značenje i
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efektin juridik të premtimit publik dhe se është detyrues për premtuesin. Tek shuarja vullnetare dhe kundërvullnetare e detyrimeve, Libri 2, i rregullon disa forma të shuarjes së detyrimeve. Kodi parasheh që detyrimet shuhen me përmbushje të detyrimeve. Kodi rregullon forma tjera të shuarjes së detyrimit si kompensimi; falja e borxhit; përtrirja; konfondimi; pamundësia e përmbushjes; mohimi i ndërsjellë; skadimi dhe njoftimi i shuarjes si dhe vdekja. Po ashtu, në kuadër të Librit 2, transpozohet në mënyrë të plotë Direktiva e Këshillit 85/374/EEC e 25 korrikut 1985 për përafrimin e ligjeve, rregulloreve dhe dispozitave administrative të shteteve anëtare për përgjegjësinë për produktet me të meta. 3. Pronësia dhe të drejtat Tjera Sendore (Libri 3) – libri për pronësinë dhe të drejtat tjera sendore i përmban 8 pjesë, të cilat janë të ndara në kapituj dhe nënkapituj që i rregullojnë çështjet përkatëse për pronësinë dhe të drejtat tjera sendore. Pjesët e Librit 3 janë si në vijim: <i>Dispozitat e përgjithshme; Pronësia; Posedimi; Dispozitat Materiale për Regjistrimin e të Drejtave në Paluajtshmëri; të Drejtat e Sigurimit Sendor; Servitutet, Barra Sendore dhe e Drejta e Ndërtimit.</i>	To voluntary termination and involuntary obligations, Book 2, regulates some forms of extinguishing obligations. Code provides that obligations are extinguished with the fulfillment of obligations. Code regulates other forms of coercion finished as compensation; debt forgiveness; renewal; Confounding; impossibility of performance; The mutual negation; expiration and notification of termination and death. Also, within Book 2, transposed in full Council Directive 85/374 / EEC of 25 July 1985 on the approximation of laws, regulations and administrative provisions of the Member States of responsibility for faulty products. 3. Ownership and Other Real Rights (Book 3)- book on ownership and other real rights contains eight parts, which are divided into chapters and subchapters that regulate relevant issues related to ownership and other real rights. Book three parts are as follows: <i>General Provisions; ownership; possession; Material Provisions for registration of immovable property rights; Security rights over immovable; Easements, Charges and Notice of Construction.</i>	pravno dejstvo javne obećanja i da je obavezujuća za obećavaoca. Kod dobrovoljnog i protivoljnog prekida obaveza, Knjiga 2, reguliše neke oblike gašenje obaveza. Propisuje da su obaveze gasi sa ispunjavanjem obaveza. Zakonik reguliše druge oblike prinude završila kao kompenzaciju; dug oprostaj; obnavljanje; zbunjujući; nemogućnost izvođenja; Međusobna negacija; isteka i obaveštenje o raskidu i smrti. Takođe, u knjizi 2, je u potpunosti preneti Direktiva saveta 85/374 / EEC od 25. jula 1985 o Približavanju zakona, propisa i administrativnih odredbi država članica odgovornosti za neispravne proizvode. 3. Svojina i druga stvarna prava (Knjiga 3)- knjiga o svojini i drugim stvarnim pravima sadrži osam delova, koji su podeljeni u poglavlja i potpoglavlja koji regulišu relevantna pitanja koja se odnose na svojinu i drugim stvarnim pravima. Delovi knjige tri su kao u nastavku: <i>Opšte odredbe; vlasništvo; državina; Materijalne odredbe za upis prava na nepokretnu imovinu; Securiti prava nad nepokretnu;</i>
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Mes tjerash, në kuadër të këtij libri, përcaktohen: <i>të drejtat sendore; kufizimet në pronësia dhe të drejtat tjera pronësore; titullarët e të drejtave pronësore; përparësia e të drejtave sendore; mirëbesimi dhe prezumimi mirëbesimit; ndalimi i keqpërdorimit; mosparashkrimi të drejtave sendore përpoq kur parashihet me ligj; pronësia dhe llojet e saj; të drejtat fqinjësore; fitimi dhe humbja e pronësisë (përfshirë sendet luajtshme; e drejta e parablerjes; bashkëpronësia; mbrojtja e pronësisë; posedimi; regjistrimi i të drejtave të paluajtshme; pengu (përfshirë të drejtat dhe detyrimet e pengdhënësit dhe pengmarrësit si dhe të drejtat e palës së tretë); hipoteke; servitutet dhe llojet e tyre; barrat sendore dhe e drejta e ndërtimit.</i> Po ashtu, në kuptim të Kodit Civil dhe ligjeve të veçanta, theksohen llojet e pronësisë në Republikën e Kosovës, <i>ajo publike dhe private.</i> E drejta e pronësisë sipas rregullimit të paraparë në këtë libër të Kodit, <i>mund të fitohet në bazë të punës juridike, trashëgimisë, vendimit gjyqësor, vendimit të organit administrative dhe në bazë të ligjit. Pra, ky libër për herë të parë, i rregullon titujt për fitimin e pronësisë, gjë e bën më të lehtë zbatimin, pasi që të gjithë titujt ligjor</i>	In the context of this book Inter alia, are defined: <i>property rights; restrictions on ownership and other property rights; holders of property rights; advantage of proprietary rights; confidence and trust assumption; prohibition of abuse; Mosparashkrimi përpoq proprietary rights provided by law; property and its types; to neighboring rights; profit and loss of property (including movable property, the right of first refusal, condominiums, property protection, possession, registration of rights to immovable; mortgages (including the rights and obligations of the mortgagor and mortgagee and third party rights) , mortgages, easements and their types, real loads and the rights of construction.</i> Also, within the meaning of the Civil Code and special laws, highlighting the types of property in the Republic of Kosovo, <i>the public and private one.</i> The right of ownership by regulation prescribed in this book of the Code <i>can be acquired on the basis of legal work, inheritance, court decision, and the decision of the administrative body and under the law. So this book for the first time, regulates securities for acquisition of property, which makes it easier to enforce, since all legal titles for acquisition of ownership (The original and derivative) clearly regulated.</i>	<i>Olakšice, Optužbe i obaveštenje izgradnje.</i> U kontekstu ove knjige su između ostalog, definisana: <i>imovinska prava; ograničenja svojine i drugih imovinskih prava; nosioci imovinskih prava; Prednost vlasničkih prava; samopouzdanje i poverenje pretpostavka; zabrana zloupotrebe; Mosparashkrimi perpoq vlasnička prava koja su predviđena zakonom; imovina i njegove vrste; na srodnim pravima; dobit i gubitak imovine (uključujući i pokretnu imovinu, pravo prvog odbijanja, građevine, zaštitu imovine, posedovanje, registraciju prava na nepokretnu; hipoteke (uključujući prava i obaveza hipotekarnog dužnika i hipotekarnog povjerioca i prava trećih lica) , hipoteke, olakšice i njihove vrste, pravi opterećenja i prava gradnje.</i> Isto tako, u smislu Građanskog zakonika i posebnim zakonima, ističući vrste imovine u Republici Kosovo, <i>javne i privatne.</i> Pravo svojine prema uređenju koje je propisano u knjizi ovog Zakonika <i>može se steći na osnovu pravnog posla, nasledstvo, sudske odluke, odluke upravnog organa i u skladu sa zakonom. Dakle, ova knjiga prvi put, reguliše hartije od vrednosti za sticanje imovine,</i>
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<i>për fitimin e pronësisë (derivative dhe origjinere) rregullohen në mënyrë të qartë.</i> Në kuadër të Librit 3 të Kodit Civil përcaktohet edhe <i>rregullimi i fitimit të pronësisë mbi kafshët e egra.</i> Sa i përket <i>kufizimit të të drejtave pronësore përmes të drejtave fqinjësore</i>, në mase të madhe ato mbesin të njëjta sikurse ekzistueset të rregulluara me Ligjin për Pronësinë dhe të Drejtat Tjera Sendore. Ndryshimet kryesore në Kod mbi të drejtat fqinjësore përfshijnë rregullimin për kalimin e domosdoshëm. Sipas këtij rregullimi, është theksuar shprehimisht që kalimi i domosdoshëm është “i përkohshëm”. Kjo për faktin se dispozitat mbi kalimin e domosdoshëm siç kanë qenë, lënë shumë hapësirë për interpretim, dhe në përmbajtje nuk kanë pasur shumë dallime me servitutën sendor, përveç faktit që kalimi i domosdoshëm nuk regjistrohet. Prandaj, me përfshirjen e fjalës “i përkohshëm” do të nënkuptohet se kalimi i domosdoshëm do të aplikohet vetëm kur përkohësisht subjektet nuk kanë qasje në rrugë si rezultat i bllokimit apo të ngjashme. Mes tjerash, Libri 3 i Kodit Civil, <i>e mundëson që personat e huaj mund të fitojnë të drejta sendore, përveç kur parashikohet ndryshe me ligj të veçantë.</i> Kjo lejohet edhe me Kushtetutë, ndërkohë që rregullimi në Kod e mundëson këtë, përpos	Within 3 of the Civil Code Book determines the arrangement of the acquisition of ownership over wildlife. Regarding <i>the restriction of property rights through neighboring rights</i>, to a large extent they remain the same as the existing regulated by the Law on Property and Other Real Rights. The main changes to the Code on neighboring rights include arranging for the necessary transition. According to this regulation, it is expressly stated that the necessary transition is "temporary". This is because the provisions on the necessary passage as they have been, leaving much room for interpretation, and contents have not had many differences with the personal servitude, except that the necessary shift is not registered. Therefore, the inclusion of the word "temporary" shall mean that the necessary transition will only apply when the parties have temporarily no access to the street as a result of blocking or similar. Book 3 of the Civil Code, Inter alia, provides <i>that foreign persons can acquire real rights, unless otherwise provided by special law.</i> This is also allowed by the Constitution, while regulation the code to make this possible, except as otherwise provided by law. This is expected to affect the encouragement of foreign investment in	<i>što olakšava da sprovede, jer sva pravna naslova za sticanje vlasništva (original i derivata) jasno prilagođene.</i> U okviru 3. knjige Građanskog zakonika određuju se aranžmani sticanja svojine nad divljačima. Što se <i>tiče ograničenja prava svojine kroz srodnih prava</i>, u velikoj meri ostaju iste kao postojeći regulisano Zakonom o vlasništvu i drugim stvarnim pravima. Glavne izmene Zakonika o srodnih prava uključuju organizovanje neophodnu tranziciju. Prema ovom propisu, je izričito navedeno da je neophodno tranzicija "privremeno". To je zbog toga što se odredbe o potrebnom prolaz kao što su, ostavljajući mnogo prostora za tumačenje, a sadržaj nije imao puno razlike u odnosu na lične službenosti, osim da je neophodno smena nije registrovan. Stoga, uključivanje reči "privremeno" treba da znači da će neophodan prelaz primeniti samo kada stranke imaju privremeno nema pristup na ulicu kao rezultat blokiranja ili slično. Između ostalog, Knjiga 3 Građanskog zakonika, <i>predviđa da strana lica mogu sticati stvarna prava, ukoliko nije drugačije određeno posebnim zakonom.</i> Takođe dopušta Ustav, dok je
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rasteve kur parashihet ndryshe me ligj. Kjo pritet të ndikojë edhe në inkurajimin e investimeve të huaja në Kosovë dhe do të ndikojë Kosova të integrohet edhe më shumë në ekonominë globale. Rregullimi i ri, <i>pos tjerash e bën thjeshtësimin dhe rregullimin e dispozitave që mbulojnë parashkrimin fitues, përfshirë rregullimin e pezullimit dhe ndërprerjes së parashkrimit</i>. Dispozitat e Librit për Pronësinë dhe të Drejtat Tjera Sendore të Kodit Civil që mbulojnë pjesën e fitimit të pronësisë me parashkrim fitues janë më të qarta, më të organizuara dhe janë zgjeruara. Mes tjerash, me këtë libër përcaktohet se në mënyrë që të lejohet parashkrimi fitues, një person duhet ta ketë sendin në posedim të vazhdueshëm dhe të pandërprerë, të qetë, publikisht dhe të qartë. Fitimin i pronësisë me parashkrim fitues në paluajtshmëri është modifikuar në atë mënyrë që është përfshirë edhe afati prej 10 vitesh i fitimit të pronësisë me parashkrim fitues kur personi krahas posedimit të pandërprerë dhe me mirëbesim ka edhe një titull të vlefshëm juridik mbi të cilin e bazon posedimin pronësor. Po ashtu, edhe rregullimi i fitimit të pronësisë me parashkrim fitues përmes regjistrimit në regjistrin e të drejtave në paluajtshmëri është ndryshuar. Tani afati i parashkrimit është zgjatur në 30 vite krahasuar me 20 vite sa ishte më herët.	Kosovo and will affect Kosovo in even more integration in the global economy. The new regulation, <i>inter alia makes simplification and regulation of the provisions covering prescription, including regulating the suspension and interruption of statute of limitation</i>. The provisions of the Book on Property Rights and Other Real Rights Civil Code to cover the acquisition of ownership by prescription are clearer, better organized and are enhanced. Among other things, this book determined that in order to allow prescription, a person must have item in constant possession and uninterrupted, peaceful, public and clear. Acquisition of property by prescription in real estate has been modified in a way that is including the period of 10 years the acquisition of ownership by prescription when the person besides uninterrupted possession and faith has a valid legal title on which bases possession property. Also, the regulation of property acquisition by prescription through registration in the immovable property rights has changed. Now the limitation period is extended to 30 years compared with 20 years as it was earlier. Regarding the regulation of the suspension and interruption of limitation, these	prilagođavanje kod da bi to bilo moguće, osim ako zakonom nije drukčije određeno. Očekuje se da će uticati na podsticanje stranih investicija na Kosovu i da će uticati na tome da se Kosovo još više integriše u globalnoj ekonomiji. Novi propis, <i>između ostalog čini pojednostavljenje i regulacioni odredbe pokrivajući recept, uključujući podešavanje suspenziju i prekid ograničenja</i>. Odredbe knjige o imovinskim pravima i drugim stvarnim pravima Građanskog zakonika da pokrije sticanje vlasništva na recept su jasnije, bolje organizovane i poboljšani. Između ostalog, ova knjiga je utvrdio da u cilju omogućavanja recept, osoba mora imati stavku u stalnom posedu i nesmetano, mirno, javnosti i jasno. Sticanje imovine na recept u nekretnine je modifikovan tako da se, uključujući period od 10 godina sticanja vlasništva preko zastarevanja kada je osoba pored neprekidnog držanja i vere ima važeću zakonsku titulu na kojima bazira svojinski posed. Isto tako, uređenje sticanja svojine zastarevanjem kroz upis u prava na nepokretnu imovinu promenio. Sada je period ograničenje je produžen do 30 godina u poređenju sa 20 godina kako je bilo ranije.
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Sa i përket rregullimit të pezullimit dhe ndërprerjes së parashkrimit, këto janë risi të futura në kuadër të draftit të Kodit Civil. Në mungesë të dispozitave të tilla në të kaluarën, Gjykatat kanë zbatuar me analogji dispozitat e Ligjit për Marrëdhëniet e Detyrimeve përkitazi me pezullimin dhe ndërprerjen e afatit të parashkrimit të kërkesave nga marrëdhëniet e detyrimeve. Risi në projekt Kodin Civil, në kuadër të Librit 3, janë edhe dispozitat që parashohin situatat kur dikush ka <i>fituar të drejtën e pronësisë sipas një vendimi të organit shtetëror</i>. Kur janë në pyetje paluajtshmëritë, dispozitat parashohin qartë që edhe në rastin e vendimit gjyqësor, apo vendimit të organit tjetër shtetëror, <i>regjistrimi në regjistrin e paluajtshmërive është i detyrueshëm</i>. Sa i përket të drejtës së ndërtimit, edhe përmbajtja e të drejtës së ndërtimit, e përfshirë në kuadër të dispozitave të Librit 3, nuk ka ndryshuar në masë të madhe nga ajo e Ligjit për Pronësinë dhe të Drejtat Tjera Sendore, me përjashtim të shuarja e të drejtës së ndërtimit ku ka disa ndryshime. Një pjesë e çështjeve në kuadër të këtij libri, do të vazhdojnë të rregullohen me ligje të veçanta sikurse që parashihet specifikisht me dispozitat e këtij libri.	innovations are introduced within the Civil Code draft. In the absence of such provisions in the past, courts have applied by analogy the provisions of the Law on Obligations regarding the suspension and termination of the period of limitation of claims by the obligation relations. Innovation in the draft Civil Code, under Book 3, there are provisions that envisage situations <i>where someone has acquired the right of ownership by a state body decision</i>. When the immovables are the subject, provisions clearly stipulate that even in the case of a court decision or decision of another state body, <i>registration in the real estate registry is mandatory</i>. Regarding the construction right, the content of the right to construction, including within the book provisions 3, has not changed greatly from that of the Law on Ownership and Other Real Rights, with the exception of extinction the right of the building where there are some differences. A part of issues within this book will continue to be regulated by special laws as specifically provided that the provisions of this book. 4. Family (Book 4) - book on the family contains eight parts, which are divided into	Što se tiče podešavanja suspenzije i prekida ograničenja, ove inovacije uvode u nacrt Građanskog zakonika. U odsustvu takvih odredbi u prošlosti, sudovi primenjuju analogno odredbe Zakona o obligacionim odnosima u pogledu suspenziju i prestanak zastarelosti potraživanja po obligacionim odnosima. Novina u nacrtu Građanskog zakonika, pod Knjigom 3, postoje odredbe koje predviđaju situacije <i>u kojima je neko stekao pravo svojine na osnovu odluke državnog organa</i>. Kada su pitanja nepokretne, dispozitat jasno propisano je da čak iu slučaju odluci suda ili drugog državnog organa, <i>upis u katastar nepokretnosti je obavezna</i> Što se tiče pravo na gradnju, sadržaj prava na gradnju, uključujući u skladu sa odredbama Knjige 3, nije u velikoj meri promenio od onog u Zakonu o svojini i drugim stvarnim pravima, sa izuzetkom istrebljenja pravo zgrade u kojoj postoje neke razlike. Jedan deo pitanja u okviru ove knjige će nastaviti da bude regulisan posebnim zakonima kao što je izričito pod uslovom da odredbama ove knjige.
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4. Familja (Libri 4) – libri për familjen i përmban 8 pjesë, të cilat janë të ndara në kapituj dhe nënkapituj që i rregullojnë çështjet përkatëse të së drejtës familjare. Mes tjerash, çështjet që rregullohen në kuadër të këtij libri përfshin: <i>dispozita e përgjithshme; fejesen; martesën; marrëdhëniet mes prindërve dhe fëmijëve; atësinë dhe amësinë; mbrojtjen e fëmijëve dhe përgjegjësinë prindërore; mbikqyrja ndaj kujdesit prindëror; privimi nga e drejta prindërore; zgjatja e kujdesit prindëror; fëmijët pa kujdes prindëror; adoptimi; vendosja në strehim familjar; kujdestaria (përfshirë kujdestarinë ndaj të miturve); kujdestarët për raste të veçanta; marrëdhëniet pasurore të anëtarëve të bashkësisë familjare; mbajtja financiare; mbajtja financiare dhe ushqimi; mbajtja martesore; mbrojtja e fëmijëve të prindërve të pamartuar; procedurat dhe kompetencat.</i> Me hyrjen në fuqi të Kodit Civil shfuqizohet Ligjin për Familjen dhe Ligjin për Ndryshimin dhe Plotësimin e Ligjit për Familjen. Prandaj, me hyrjen në fuqi të Kodit Civil, ky libër do të jetë i vetmi që rregullon çështjet nga e drejta familjare, përjashtim të rregullimeve tjera që parashihen të rregullohen me ligje të veçanta sikurse për çështjen e martesave me sekse të njëjta dhe formave tjera të bashkësive civile, të cilat do të rregullohen në të ardhmen me ligj të veçantë në pajtim	chapters and subchapters that regulate issues related to family law. Among other things, issues that are regulated within this book includes: general provisions; <i>engagement; marriage; relations between parents and children; paternity and maternity; child protection and parental responsibility; supervision over parental care; deprivation of parental rights; extension of parental care; children without parental care; adoption; placement in foster care; guardianship (including custody of minors); guardians for special occasions; property relations of family members; Financial holding; keeping financial and food; marital holding; protection of children of unmarried parents; procedures and powers.</i> With the entry into force of the Civil Code Family Law and the Law on Amendments and Supplements to the Law on Family are going to be repealed. Therefore, the entry into force of the Civil Code, this book will be the only regulating matters of family law, except other arrangements foreseen to be regulated by special laws such as the case of same sex marriage and other forms of civil unions which will be regulated by a special law in the future in accordance with the Constitution of the Republic of Kosovo and the <i>acquis communautaire</i> as is the case of the Court of Justice of the European Union	4. Porodica (Knjiga 4) - knjiga o porodicu sadrži osam delova, koji su podeljeni u poglavlja i potpoglavlja koji regulišu pitanja u vezi porodičnog prava. Između ostalog, pitanja koja su regulisana u okviru ova knjiga sadrži: opšte odredbe; <i>veridbu; brak; Odnosi između roditelja i dece; očinstva i materinstva; zaštita dece i roditeljska odgovornost; nadzor nad roditeljskog staranja; lišavanje roditeljskog prava; Produženje roditeljskog staranja; deca bez roditeljskog staranja; usvajanje; smještaj u hraniteljsku porodicu; starateljstva (uključujući pritvor maloletnika); staratelji za posebne prilike; imovinski odnosi članova porodice; Finansijski holding; vođenje finansijske i hrane; bračnog držanje; zaštita dece koji nisu u braku; procedure i ovlašćenja.</i> Stupanjem na snagu Građanskog zakonika ukida se Zakon o Porodici i Zakon o izmenama i dopunama Zakona o porodici. Zbog toga, stupanje na snagu Građanskog zakonika, ova knjiga će biti jedina koja regulišu pitanja porodičnog prava, osim drugih aranžmana predviđene da budu regulisana posebnim zakonima, kao što je slučaj sa drugim istopolni brakovi i oblicima državnih zajednica koji će biti regulisano
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me Kushtetuten e Republikës së Kosovës si dhe me <i>acquis communautaire</i> sikurse që është rasti i Gjykatës e Drejtësisë së Bashkimit Evropian, në rastin C-673/16 <i>Coman dhe të tjerët</i>, me ç’rast Gjykata thekson se refuzimi i një shteti anëtar për të njohur me qëllim të dhënies së të drejtave për bashkim familjar martesat e gjinisë së njëjtë mes një qytetari të BE-së dhe të një vendi të tretë që është lidhur në një vend anëtar të BE-së gjatë periudhës së rezidencës së qytetarit të BE-së në atë vend, mund të pengoj ushtrimin e së drejtës së lëvizjes së lirë të qytetarit të BE-së. Po ashtu, në këtë rast të gjykatës, Gjykata thekson se termi “bashkëshort” është në gjinin asnjansë, andaj kjo mund të i përfshijë bashkëshortë e gjinisë së njëjtë. Termi bashkëshort, në gjinin asnjansë është reflektuar në Nenin 37, paragrafin 2 të Kushtetutës së Republikës së Kosovës. Në funksion të kësaj, në nenin 1138 (2) është specifikuar se martesat ndërmjet personave me sekse të njëjta dhe bashkësitë e regjistruara civile janë të lejuara, kurse kushtet dhe procedura rregullohen me ligj të veçantë. Ky libër, <i>avancon të drejtat e fëmijëve dhe mbrojtjen e tyre</i>, në pajtim me konventat ndërkombëtare për mbrojtjen e të drejtave të fëmijëve. Rregullimi tillë është mbështetur në të drejtën ndërkombëtare që mbrojnë të drejtat e fëmijëve dhe janë marrë për bazë	in case C-673/16 <i>Coman and others</i>, where the Court notes that the refusal of a member state to recognize for the purpose of granting rights to family reunification marriages of the same sex between an EU citizen and a third country that is connected to a member country of the EU during the EU citizen's residence in the country, could hinder the exercise of the right of free movement of EU citizens. Also, in this case to court, the Court notes that the term "spouse" is gender-neutral, so it can include the same-sex spouses. The term spouse, gender pronoun is reflected in Article 37, paragraph 2 of the Constitution of the Republic of Kosovo. In function of this, in Article 1138 (2) is specified that same sex marriages and other civilregistered partnership are admitted, while conditions and procedure will e regulated by special law. This book advances <i>children's rights and their protection</i> in accordance with international conventions for the protection of children's rights. Such regulation is based on international law to protect the rights of children and are taking into account the decisions of the Strasbourg Court to protect the rights of children.	posebnim zakonom u budućnosti, u skladu sa Ustavom Republike Kosovo i <i>acquis communautaire</i> kao što je slučaj suda pravde Evropske unije u slučaju, C-673/16 <i>Coman i drugi</i>, gde sud primećuje da je odbijanje države članice da prepoznaju u cilju davanja prava na spajanje porodice brakova istog pola između državljana EU i treće zemlje koji je povezan sa zemlje članice EU tokom boravka građanina EU u zemlji, može da ometa ostvarivanje prava na slobodno kretanje građana EU. Takođe, u ovom slučaju na sudu, Sud primećuje da je izraz "supružnik" rodno neutralno, tako da se može uključiti istopolne supružnike. Izraz supružnik, je rodna zamenica koja se ogleda u članu 37. stav 2. Ustava Republike Kosovo. U ovoj funkciji, u članu 1138. (2) je specificirano da su istopolni brakovi i registrovane građanske zajednice dozvoljeni, dok se uslovi i postupak regulišu posebnim zakonom. Ova knjiga promoviše <i>prava deteta i njihovu zaštitu</i> u skladu sa međunarodnim konvencijama za zaštitu dečjih prava. Takav propis je zasnovan na međunarodnom pravu da štite prava
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edhe vendimet e Gjykatës së Strasburgut për mbrojtjen e të drejtave të fëmijëve. Duhet theksuar se ky rregullim sjell risi për shkak se përcakton se mendimi i fëmijës, i cili ka mbushur moshën 6 vjeçare duhet të merret parasysh nga gjykata në çdo rast kur vendoset për interesin e fëmijës. Për fëmijën nën moshën 6 vjeçare gjykata e merr mendimin e tij me metoda të përshtatshme në seancë ose jashtë seance sa herë që e konsideron të nevojshme. Mendimi i fëmijëve mbi 6 vjet është i detyrueshëm për gjykatat, ndërsa mendimi i fëmijëve nën 6 vjet vetëm në rastet kur gjykatat e konsiderojnë të nevojshme. Për dallim nga dhënia e mendimit të fëmijut, me dispozitat e këtij libri janë paraparë edhe rastet kur kërkohet pëlqimi i fëmijut për çështje të caktuara. Në këto raste, është zvogëluar mosha për dhënien e pëlqimit nga 14 vjet në 10 vjet, si për shembull te rasti i adoptimit. Për lejimin e adoptimit të fëmijut të moshës 10 vjeçare apo më shumë kërkohet edhe pëlqimi i atij fëmiju. Libri 4 rregullon mes tjerash edhe kthimin e fëmijëve në banim të përbashkët me prindërit në rastet kur fëmija nuk jeton me ata ose mbahet nga persona të tjerë. Fëmijët ndodh të mbahen pa të drejtë nga persona të tjerë sidomos në rastin e rrëmbimit të tyre dhe për këtë pjesë të rregullimit është marrë parasysh edhe Konventa e Hagës për	It should be noted that this arrangement brings innovation because it determines the child's opinion, who has reached the age of 6 must be taken into account by the court in each case when deciding on the child's interest. For children under 6 years of court gets his opinion by appropriate methods in session or out of session whenever it deems necessary. The thought of children over 6 years is binding on the courts, and the thought of children under 6 years only if the courts deem necessary. Unlike giving the child's opinion, the provisions of this book have been foreseen when the child's consent is required for certain issues. In these cases, it reduces the age for consent from 14 years to 10 years, such as the case of adoption. The consent of that child to allow the adoption of the child aged 10 years or more is required. Book 4 regulates inter alia the return of children in shared housing with the parents when the child does not live with them or held by other persons. Children going to be held unjustly by others, especially in the case of kidnap them and this part of the regulation is taken into account The Hague Convention on the Civil Aspects of International Child Abduction.	dece i uzimaju u obzir odluke suda u Strazburu radi zaštite prava dece. Treba napomenuti da je ovaj aranžman donosi novine jer određuje mišljenje deteta, koje je navršilo 6 mora se uzeti u obzir od strane suda u svakom slučaju kada se odlučuje o interesu deteta. Za decu do 6 godina suda dobije svoje mišljenje odgovarajućim metodama u sesiji ili van sednice kad god to smatra potrebnim. Pomisao dece starije od 6 godina je obavezujući za sudove, i misao dece mlađe od 6 godina samo ukoliko smatra neophodnim sudovi. Za razliku od davanja mišljenja deteta, su predviđene odredbe ove knjige kada je potreban pristanak deteta za određena pitanja. U ovim slučajevima, smanjuje se starosna granica za pristanak od 14 godina do 10 godina, kao što je slučaj usvajanja. pristanak tog deteta da bi se traži usvajanje deteta uzrasta 10 godina ili više. Knjiga 4 između ostalog uređuje i povratak dece u zajedničkom domu sa roditeljima kada dete ne živi sa njima ili drže drugih lica. Deca će se održati nepravedno drugi, naročito u slučaju kidnapuju ih i ovaj deo prilagođavanja se uzme u obzir Haške konvencije o
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aspektet civile të rrëmbimit ndërkombëtar të fëmijëve. Në kuadër të Librit për Familjen, <i>përkufizohet bashkësia familjare</i>, ku shprehimisht përcaktohet se cilët persona përfshihen në Bashkësinë familjare, respektivisht konsiderohen anëtarë të Bashkësisë familjare. Po ashtu, në këtë kontekst, përcaktohet se si do të fitohet pronësia në paluajtshmëri dhe në sendet e luajtshme. Sipas këtij rregullimi, kërkohet që prona e paluajtshme e fituar gjatë kohëzgjatjes së bashkësisë familjare duhet të regjistrohet me dokument noterial në bazë të të cilit do të bëhet edhe regjistrimit në Regjistrin për regjistrimin e të drejtave në paluajtshmëri. Me aktin noterial do të përcaktohet se cila paluajtshmëri është e përbashkët dhe në bazë të kësaj marrëveshjeje do të përcaktohen edhe titullarët e pronësisë së përbashkët. Ndërsa, prona e luajtshme e fituar gjatë bashkësisë familjare nga cilido anëtar i bashkësisë familjare do të jetë në pronësi dhe përdorim të atij anëtar i bashkësisë familjare i cili e ka fituar pronën e luajtshme. Mirëpo, parashihet se ndarja e pronësisë së përbashkët e pronës së luajtshme dhe të paluajtshme familjare duhet të bazohet në marrëveshjen e bashkësisë familjare. Kjo nënkupton se bashkësia familjare do të ketë një marrëveshje që do të mundësojë	The book on Family, <i>defines household</i>, which expressly specifies the persons included in the household, respectively, they are considered members of the household. Also, in this context, it determines how you will gain ownership in real estate and movables. Under this arrangement, it is required that the real property acquired during household duration shall be recorded by a notarial document based on which will be made in the Register for registration of immovable property rights. Notarial act will determine which immovable property is common and under this agreement will be determined holders of common ownership. While the movable property acquired during the family unit by any household member will be owned and use of that family member who has acquired movable property. However, it provided that the division of joint ownership of movable and immovable family should be based on household agreement. This means that household will have an agreement that will enable the mode of division of joint property. The purpose of this regulation is to advance anything that	građanskim aspektima međunarodne otmice dece. U okviru porodice knjiga, <i>definiše domaćinstvo</i>, koji izričito određuje osobe uključene u domaćinstvu, odnosno, oni se smatraju članovima porodice zajednice. Isto tako, u tom kontekstu, ona određuje kako će steći vlasništvo u nekretninama i pokretnim stvarima. Prema ovom sporazumu, potrebno je da se nepokretnost stečena tokom trajanja domaćinstva se evidentira beležnika dokumenta na osnovu kojih će se vršiti u Registar za upis prava na nepokretnu imovinu. Beležnikom aktom će odrediti koja je nepokretna imovina zajedničko i pod ovim sporazumom će se odrediti nosioce zajedničkom vlasništvu. Dok je pokretna imovina stečena tokom porodične zajednice od strane bilo kog člana domaćinstva će biti u vlasništvu i korišćenju tog člana porodice koji je stekao pokretnu imovinu. Međutim, pod uslovom da je podela zajedničke svojine pokretne i nepokretne porodice treba da se zasniva na sporazumu domaćinstva.
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edhe mënyrën e ndarjes së pronësisë së përbashkët. Qëllimi i këtij rregullimi është që paraprakisht për çdo gjë që ka të bëjë me çështjet pronësore të ketë marrëveshje me shkrim. 5. Trashëgimi (Libri 5) – libri për trashëgimin është i ndarë në 16 kapituj, të cilat janë të ndarë në nënkapituj që i rregullojnë çështjet përkatëse të së drejtës trashëgimore. Mes tjerash, çështjet që rregullohen në kuadër të këtij libri përfshin: dispozitat e përgjithshme; trashëgimin ligjore; radhët e trashëgimisë; dispozita të veçanta për disa trashëgimtarë; të drejtat mbi sendet e shtëpisë dhe të drejtat e bashkëshortit; personat që përfitojnë nga detyrimi për ushqim dhe mbajtje; trashëgimtarët e domosdoshëm; llogaritjen e dhurimeve dhe të legëve në pjesën trashëgimore; trashëgimin sipas testamentit; legun; ekzekutuesin e testamentit; revokimin e testamentit; padenjësën dhe përjashtimin e trashëgimtarëve të domodoshëm; kreditoërt e pasurisë dhe kalimin e pasurisë trashëgimore tek trashëgimtarët. Në frymën e ligjeve si ai për noterinë dhe trashëgiminë, në kuadër të Librit 5 parashihet edhe <i>testamenti noterial</i> krahas atij gjyqësor. Sipas këtij rregullimi, në rast se testatori nuk është në gjendje të lexojë	has to do with property issues have a written agreement. 5. Inheritance (Book 5) - book on inheritance is divided into 16 chapters, which are divided into subheadings of governing the affairs of the inheritance law. Among other things, issues that are regulated within this book includes: general provisions; legal inheritance; among heritage; specific provisions for certain heirs; rights on the items of the house and the husband's rights; Persons who benefit from having food and retention; compulsory heirs; calculation donations and legacies hereditary share; inheritance in the will; legacy; the executor; will revocation; unworthy and exclusion of compulsory heirs generations, wealth creditors and inheritance transfer of property to the heirs. In the spirit of the law as the one on the notaries and heritage, Book 5 foresees the notarial will alongside the judiciary. Under this arrangement, if the testator is unable to read the will has compiled a judge or notary, he reads the testator in the presence of two witnesses. Then the testator in the	To znači da će porodica zajednica imati sporazum koji će omogućiti način podele zajedničke imovine. Cilj ovog propisa je da unapredi sve što ima veze sa imovinska pitanja ima pisani ugovor. 5. Nasleđivanje (Knjiga 5) - knjiga o nasleđivanju je podeljena u 16 poglavlja, koji su podeljeni u podbrojevima upravljanja poslovima Zakona o nasleđivanju. Između ostalog, pitanja koja su regulisana u okviru ova knjiga sadrži: opšte odredbe; pravni nasledstvo; među nasleđa; posebne odredbe za određene nasljednika; prava na predmetima u kući i prava muža; Osobe koje imaju koristi od hrane i zadržavanje; obavezni naslednici; računske donacije i legati naslednog dela; nasleđivanje u volji; nasleđe; izvođač; će opoziva; nedostojan i isključenje domodoshem generacija kreditoert bogatstva i nasledstva prenos imovine naslednicima. U duhu zakona kao da notar i nasleđa, u roku od 5 knjiga dale Notarial testament uz pravosuđa. Prema ovom sporazumu,
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testamentin që ia ka përpiluar gjyqtari ose noteri, ai ia lexon testatorit testatorit në praninë e dy dëshmitarëve. Testatori pastaj në praninë e po këtyre dëshmitarëve e nënshkruan testamentin ose e vë në të shenjën e gishtit të vet, pasi të deklarojë se ky është testamenti i tij. Libri 5 i mundëson testatorit që të t'ia besojë për ruajtje gjykatës apo noterit testamentin e bërë me dorën e vet, testamentin me shkrim në prani të dëshmitarëve ose testamentin gjyqësor apo noterial në zarf të hapur ose të mbyllur. Kur testamenti bëhet në gjykatë apo te noteri, gjykata apo noteri mbanë regjistër të veçantë për testamente. Risi në kuadër të këtij libri është edhe <i>mbrojtja e pasardhësve në raste kur trashëgimtari heq dorë nga trashëgimi</i>. Sa i përket heqjes dorë nga trashëgimia, e të cilën zakonisht në praktikë e shfrytëzojnë gjinia femërore në favor të asaj mashkullore, më shumë si pasojë e vetëdijes së pamjaftueshme dhe si pasojë e të drejtës zakonore dhe marrëdhënieve tradicionale brenda familjes dhe shoqërisë, e më pak nga mos zbatimi i ligjit, bazuar në rregullimin e ri sipas Librit 5, tani heqja dorë nga trashëgimia vlen vetëm për trashëgimtarin që heq dorë dhe jo edhe për pasardhësit e tij, e që dallon nga ligjit aktual, sipas të cilit heqja dorë vlen edhe për pasardhësit e atij që ka hequr dorë.	presence of the same witnesses signed the will or put into its own fingerprint, after having declared that it is his will. Book 5 allows the testator to entrust the custody court or notary testament made by his own hand, a written will before the witnesses or judicial or notarial testament to the open or closed envelope. If a will made in court or notary, court or notary maintain separate register for will. Novelty within this book is also <i>protection of descendants in cases when the heir renounces the inheritance</i>. As regards the to the renouncement from the heritage, which usually practice the use noun in favor of masculine, more as a result of insufficient awareness and as a result of customary law and traditional relationships within the family and society, the less by not applying the law, based on the new regulation by Book 5, now renunciation of inheritance applies only to the heir to give up and not to his offspring, which differs from current law, according to which the waiver applies to descendants of one who has renounced.	ako zaveštalac nije u stanju da pročita testament je sastavio sudija, odnosno notar, čita zaveštalac ostavioca u prisustvu dva svedoka. Onda zaveštalac u prisustvu istih svedoka potpisali testament ili da stavi u svoj vlastiti otisak prsta, nakon što je izjavio da je njegova volja. Knjiga 5 omogućava ostavioca da poveriti na čuvanje sudu ili notarski testament napravljen od svoje ruke, pisani testament pred svedocima ili sudske ili beležnika testamenta do otvorenom ili zatvorenom omotu. Ako je volja u sudu ili notar, sud ili notar vodi poseban registar za zaveta. Novina u okviru ove knjige, je zaštita <i>potomstva u slučajevima kad se naslednik odriče nasledstva</i>. Što se tiče odricanje od nasleđa, koji obično praktikuje upotrebnu imenicu u korist muškog, više kao posledica nedovoljne svesti i kao rezultat običajnog prava i tradicionalnih odnosa u porodici i društvu, manje što ne primenom zakona, na osnovu novog propisa od strane Book 5, sada odricanje od nasleđa odnosi samo na nasledniku da odustanu i da se ne njegovom potomstvu, koja se razlikuje od važećeg zakona, prema kojem je
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Po ashtu, sipas këtij libri, pasardhësit e trashëgimtarit që heq dorë vetëm për vete, të cilët do të trashëgojnë në vend të tij, mund të heqin dorë nga trashëgimia sipas të njëjtave rregulla si çdo trashëgimtar i menjëhershëm. Ky Libër zbatohet për trashëgiminë e personave që vdesin pas datës së hyrjes së tij në fuqi. Ky libër zbatohet për çdo disponim me pasurinë pas vdekjes i bërë para ose pas datës së hyrjes së tij në fuqi. Të drejtat e fituara sipas ligjeve të vjetra, atë trashëgimisë dhe familjes, do të respektohen sipas dispozitave të reja. 2. Objektivat dhe ndërlidhja e tyre me prioritetet e Qeverisë. Krijimi i një sistemi të drejtësisë, të paanshëm, transparent, llogaridhënës dhe para se gjithash të përgjegjshëm mbetet prioritet i lartë i Ministrisë së Drejtësisë. Në këtë aspekt, identifikimi i veprimeve prioritare në raport me hartimin, plotësimin dhe ndryshimin e politikave, rrjedhimisht akteve ligjore dhe nënligjore brenda mandatit kushtetues dhe ligjor të Ministrisë së Drejtësisë, është në harmoni të plotë edhe me nevojën për adresimin e gjetjeve të Raportit për Kosovës të vitit 2018 të Komisionit Evropian, obligimet	Also, according to this book, the only descendants of the heir who renounces for himself, who will inherit in his place, may waive the inheritance under the same rules as any immediate heir. This book applies to the inheritance of persons who die after the date of its entry into force. This book applies to any disposal of property after death made prior to or after the date of its entry into force. The rights acquired under the old laws, the inheritance and the family will be respected by the new provisions. 2. Objectives and their relation to Government priorities Creation of an impartial, transparent, accountable and above all responsible a justice system, remains a top priority of the Ministry of Justice. In this regard, the identification of priority actions in relation to drafting, supplementing and amending, of the policy consequently laws and regulations within the constitutional and legal mandate of the Ministry of Justice, is in full harmony with the need to address the report's findings to Kosovo 2018 of the European Commission, the institutional responsibilities for implementation of the National Plan for	odricanje odnosi na potomci onog ko se odrekao. Takođe, prema ovoj knjizi, jedini potomci naslednika koji se odriče za sebe, koji će naslediti na njegovom mestu, može da se odrekne nasledstva pod istim pravilima kao i hitnu naslednika. Ova knjiga se odnosi na nasleđe lica koji su umrli nakon datuma njegovog stupanja na snagu. Ova knjiga se odnosi na bilo koji raspolaganje imovinom posle smrti napravljen pre ili posle datuma njegovog stupanja na snagu. Prava stečena po starim zakonima, nasledstvo i porodica će poštovati novim odredbama 2. Ciljevi i njihovo povezivanje sa prioritetima Vlade Stvaranje, nepristrasnog, transparentnog, odgovornog i iznad svega odgovornog sistema pravde ostaje glavni prioritet Ministarstva pravde. U tom smislu, identifikacija prioriternih akcija u odnosu na dizajniranje, politike dopune i izmene i dopune, posledično zakonima i propisima u okviru ustavnog i zakonskog mandata Ministarstva pravde, u potpunom skladu sa potrebom da se
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institucionale për zbatimin e Planit Kombëtar për zbatimin e MSA-së, si dhe në pajtim me objektivat strategjike të Qeverisë së Republikës së Kosovës dhe Ministrisë së Drejtësisë. Në pajtim me mandatin që ka Ministria e Drejtësisë, si dhe synimin e saj, është propozuar hartimi i projekt Kodit Civil. Kjo çështje ndërlidhet me “<i>sundimin e ligjit dhe shtetin e së drejtës</i>”, si njërin ndër prioritetet strategjike të Qeverisë së Republikës së Kosovës. 3. Opsioni i rekomanduar Nga opsionet e analizuara, opsioni i rekomanduar është hartimi i projekt Kodi Civil. Opsioni i rekomanduar është konsideruar se është më i miri i mundshëm, me efektiv dhe më funksional dhe që do t'i përmbushë në masë të duhur pritjet e autoriteteve të cilat kanë për ta zbatuar. Për më tepër, ky draft i Kodit Civil do të shërbej si ligji kryesor për materien e marrëdhënieve civilo-juridike dhe paraqet reformen dhe rregullimin bazë më të rëndësishme në fushën e lëmisë civile.	SAA implementation of, and in accordance with the strategic objectives of the Government of the Republic of Kosovo and the Ministry of Justice. In accordance with its mandate Ministry of Justice, as well as its intention, the drafting of the Civil Code was proposed. This issue is related to “<i>the rule of law and the rule of law state</i>”, as one of the strategic priorities Government of the Republic of Kosovo. 3. Option recommended From all analyzed options, recommended option is to draft Civil Code. The recommended option is considered to be the best possible, more effective and more functional and will meet in due measure expectations of the authorities that have to implement. Moreover, the draft Civil Code will serve as the main law on the matter of civil-law and represents the most important basic reform and regulation in the field of Civil court relations.	bave nalazima izveštaja za Kosovo 2018 Evropske komisije, institucionalne odgovornosti za sprovođenje Nacionalnog plana za implementaciju SSP u, i u skladu sa strateškim ciljevima Vlade Republike KosovO i Ministarstva pravde. U skladu sa svojim mandatom Ministarstvo pravde, kao i njegova namera, predloženo je da se izradi nacrt Građanskog zakonika. Ovo pitanje se odnosi na “<i>vladavini prava i pravne države</i>”, kao jedan od strateških prioriteta Vlada Republike Kosova. 3. Preporučena opcija U analiziranim opcijama, preporučena opcija je da se izradi Nacrt građanskog zakonika. Preporučena opcija se smatra da je najbolje moguće, efikasniji i funkcionalniji i sastaće se u zbog mera očekivanja vlasti koji treba da sprovede. Osim toga, nacrt Građanski zakonik će služiti kao glavni zakon o tom pitanju građanskog praksi i predstavlja najvažniji osnovnu reformu i regulaciju u oblasti odnosa Građanskog suda.
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4. Arsyetimi i propozimit, duke përfshirë një shpjegim të nivelit të përfrimit, me legjislacionin e BE-së Fushat e rregulluara nga Kodi Civil kryesisht janë kompetencë e shteteve anëtare dhe kështu kemi rregullim divergjent të lëmisë civile nga legjislacionet shteteve anëtare. Megjithatë, ekziston një numër i akteve të BE-së përmes së cilave rregullohen një numër i çështjeve civilo-juridike, mirëpo vetëm për një numër të caktuar shtetesh, përmes mekanizmit të <i>bashkëpunimit të përforcuar</i> (bashkëpunimi i përforcuar sipas Traktatit të BE-së nenkupton procedurën sipas secilës minimum 9 shteteve anëtare ju lejohet të thellojnë integrimin apo bashkëpunimin për një fushë brenda strukturave të BE-së pa qenë të përfshira shtetet tjera anëtare në të). Një pjesë e <i>acquis</i> të BE-së tashmë janë transpozuar në ligje të veçanta, posaçërisht Ligjin për Mbrojtjen e Konsumatorit, i cili ndërlidhet me Librin 2 të Kodit Civil. Kështu mund të thuhet se rendi ligjor po harmonizohet gjithnjë e më shumë me <i>acquis</i> të BE-së, por edhe me praktikën më të mira evropiane dhe ndërkombëtare. 5. Elementet kryesore të legjislacionit ose politikës së propozuar (përmbajtja,	4. Justification of the proposal, including an explanation of the level of alignment with EU legislation Areas regulated by the Civil Code are mainly competence of the Member States and hence have divergent regulation of Civil court by member states legislation. However, there are a number of EU acts by which regulates a number of civil-legal issues, but only to a certain number of states, through the mechanism of <i>enhanced cooperation</i> (reinforced cooperation under the EU Treaty means the procedure under each minimum nine member states are allowed to deepen the integration or cooperation to a field within the EU structures without being involved in other member states). A part of the <i>acquis</i> of the EU are already transposed into specific laws, especially the Law on Consumer Protection, which is associated with Book 2 of the Civil Code. It can be said that the legal system is more and more harmonized with the EU <i>acquis</i>, but also with the best European and international practices. 5. The main elements of the proposed legislation or policy (content, policy	4. Obrazloženje predloga, uključujući objašnjenje visokog nivoa peibližavanja sa zakonodavstvom EU-a Oblasti regulisane Građanskim zakonikom su uglavnom nadležnosti država članica i stoga imaju divergentna regulisanje civilnog suda od strane država članica zakonima. Međutim, postoji veliki broj akata EU kojima reguliše niz građanskih-pravnih pitanja, ali samo do određenog broja država, kroz mehanizam pojačane saradnje (ojačana saradnja u okviru Ugovora o EU podrazumeva postupak ispod svakog minimum devet članice imaju pravo da produbi integracije ili saradnju na polju unutar struktura EU bez umešanost u drugim državama članicama). Deo pravnim <i>acquisa</i> EU već preneti u posebnim zakonima, a posebno Zakon o zaštiti potrošača, koji je povezan sa Book 2 Građanskog zakonika. Može se reći da je pravni sistem je sve više i više usklađen sa pravnim tekovinama EU, ali i sa najboljim evropskim i međunarodnim praksama.
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instrumentet e politikave, kosto, procedurat administrative). Projekt Kodi Civil ka për qëllim që të unifikoj të drejtën civile materiale sa më shumë që është e mundur, si në vijim: • rregullimin sipas pjesës së Përgjithshme në Kod si Libri 1 i Kodit për herë të parë; • krijimin e kornizës bazë të legjislacionit material civil në mënyrë që edhe ligjet e veçanta përkatëse të jenë në pajtim me parimet e Kodit Civil; • eliminimin e kontraditave mes ligjeve të veçanta të fushave që do t'i përfshijë Kodi Civil; • lehtësimin e zbatimit të legjislacionit civil; • krijimin e një Kodi Civil modern që u mundëson qytetarëve dhe subjekteve tjera qasje më të lehtë në drejtësinë civile pa asnjë lloj diskriminimi; 6. Listën e plotë të akteve ligjore të BE që duhet të përfshihen në projekt aktin ligjor si burime informuese (direktivat) Kapitulli 23 Gjyqësori dhe të drejtat themelore	instruments, cost, administrative procedures). Draft Civil Code aims to unify the civil substantive law as much as possible, as follows: • regulation under the General section in the Code as Book 1 of the Code for the first time; • establishing the basic framework of civil law material so that separate relevant laws to comply with the principles of the Civil Code; • elimination of contradictions between different laws in the areas which will include the Civil Code; • facilitating the implementation of civil law; • the creation of a modern Civil Code that allows the citizens and other subjects easier access to civil justice without any discrimination; 6. The full list of EU legal acts to be included in the draft legal act as information sources (directives) Chapter 23 Judiciary and fundamental rights	5. Glavni elementi predloženog zakonodavstva ili politike (sadržaj, instrumenti politika, trakovi, administrativne procedure). Nacrt Građanskog zakonika ima za cilj da ujedini civilno materijalno pravo što je više moguće, kao što sledi: • uređenje pred Opštim delom u Zakoniku, kao Knjiga 1 Zakonika za prvi put; • uspostavljanje osnovnog okvira materijalnog građanskog prava, tako da i posebni relevantni zakoni budu u skladu sa načelima građanskog zakonika; • eliminacija protivrečnosti između različitih zakona u oblastima koje će obuhvatiti Građanskog zakonika; • olakšavanje sprovođenja građanskog prava; • stvaranje modernog građanskog zakonika koji omogućuje građanima i drugim subjektima lakši pristup građanskom pravosuđu bez ikakve diskriminacije 6. Kompletan spisak zakonskih akata EU-a koje treba uključiti u nacrt zakonskog akta kao informativnih izvora (direktive)
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Ndërlidhja e <i>acquis</i> me legjislacionin civil përfshin këto akte të BE-së: 1. Direktiva e Këshillit 85/374/EEC e 25 korrikut 1985 për përafrimin e ligjeve, rregulloreve dhe dispozitave administrative të shteteve anëtare për përgjegjësinë për produktet me të meta; 2. Rasti i Gjykatës së Drejtësisë së Bashkimit Evropian C-673/16 <i>Coman dhe të tjerët</i>	Connection of the <i>acquis</i> with civil legislation includes EU acts: 1. Council Directive 85/374 / EEC of 25 July 1985 on the approximation of laws, regulations and administrative provisions of the Member States of responsibility for defective products; 2. The case of the Court of Justice of the European Union C-673/16 <i>Coman and others</i>	Poglavlje 23 Zakonodavstvo i osnovna prava Povezanost <i>acquis</i> sa građanskim zakonodavstvom uključuje akte EU: 1. Direktiva 85/374 / EEC od 25. jula 1985. O zbližavanju zakona, propisa i administrativnih odredbi država članica odgovornosti za neispravne proizvode; 2. Slučaj Suda pravde Evropske unije, C-673/16 <i>Coman i ostali</i>
7. Vlerësimi i ndikimit financiar të opsionit të propozuar Implikimet financiare për zbatimin e këtij Kodi do të pasqyrohen në deklaratën financiare të Ministrisë së Financave. 8. Një tabelë ku listohen komentet e marra nga institucionet tjera, ku përshkruhen edhe arsyet nëse janë marrë apo nuk janë marrë parasysh rekomandimet (Tabela me komente është shtojcë e Memorandumit Shpjegues) Gjatë hartimit të draftit të Kodit Civil janë shqyrtuar komentet dhe janë inkorporuar propozimet e arsyeshme të pranuar nga ana e akterëve relevant të konsultuar gjatë hartimit të draftit. Shumica e komenteve nga	7. Financial Impact Assessment of the proposed option Financial implications for the implementation of this Code will be reflected in the financial statement of the Ministry of Finance. 8. A table listing the comments received from other institutions, outlining the reasons if the recommendations are taken or not taken into account (Table with comments annexed to the Explanatory Memorandum) During the drafting of the draft Civil Code are reviewed and comments are incorporated reasonable proposals accepted by the relevant stakeholders consulted during the drafting of the draft. Most of the	7. Procena finansijskog uticaja predložene opcije. Finansijske implikacije za sprovođenje ovog Zakonika će se odraziti u finansijskim izveštajima Ministarstva finansija. 8. Tabela gde se navode komentari dobijeni od drugih institucija i gde se opisuju i razlozi o tome da li su uzete u obzir preporuke ili nisu (Tabela gde se navode komentari je prilog memoranduma sa objašnjenjima) Tokom izrade nacрта Građanskog zakonika pregledani su i komentari i

akterët relevant janë paraqitur në grup punues ku pas shqyrtimit të tyre janë përfshirë në këtë draft të Kodit Civil për aq sa është konsideruar e nevojshme. 9. Mënyra e komunikimit të politikës së re për publikun Gjatë hartimit të projekt Kodit Civil janë konsultuar aktorët relevant të sferës së drejtësisë civile në mbarë vendin, e me theks të veçantë institucionet përgjegjëse në këtë fushë, gjyqtarë, noterë dhe avokatë, me ç'rast, komentet dhe sugjerimet e tyre janë inkorporuar në draft Kod aq sa është konsideruar e nevojshme. 10. Të dhënat të tjera analitike të nevojshme për të lejuar ministrave që të marrin një vendim të informuar. Duke marrë parasysh synimin e Ministrisë së Drejtësisë dhe të Qeverisë së Republikës së Kosovës për ngritjen dhe avancimin e infrastrukturës ligjore, me qëllim që kjo të jetë në funksion të përmbushjes së nevojave të organeve të drejtësisë, Ministria e Drejtësisë ka ndërmarr të gjitha veprimet e nevojshme për hartimin dhe finalizimin e draftit të ri të Kodit Civil.	comments from relevant stakeholders are presented in the working group that after their review are included in the draft Civil Code to the extent considered necessary. 9. The communication method of the new policy to the public During the drafting of the Civil Code draft relevant actors of civil justice sphere have been consulted throughout the country, with special emphasis on responsible institutions in this field, judges, notaries and lawyers, thus, their comments and suggestions were incorporated in the draft Code as far as is considered necessary. 10. Other analytical data necessary to allow ministers to take an informed decision. Given the intention of the Ministry of Justice and the Government of the Republic of Kosovo for advancement and promotion Legal infrastructure, in order for this to be in function of fulfilling the needs of the judiciary, the Ministry of Justice has taken all necessary actions for drafting and finalizing the new draft Civil Code.	uključeni su razumni predlozi primljeni od strane relevantnih aktera konsultovani prilikom izrade nacrt. Većina komentara od relevantnih aktera su predstavljene u radnoj grupi da nakon njihovog razmatranja su uključeni u nacrt Građanskog zakonika u meri u kojoj se smatra potrebnim 9. Način komuniciranja nove politike za javnost. Tokom izrade Građanskog zakonika izradi konsultovani su relevantni akteri oblasti građanskog prava u celoj zemlji, sa posebnim osvrtom na odgovorne institucije u ovoj oblasti, sudije, notari i advokati, tako, njihovi komentari i sugestije su uključeni u nacrt Zakonika koliko se to smatralo potrebnim. 10. Ostali analitički podaci potrebni da bi se dozvolilo ministrima donošenje merodavne odluke. S obzirom na nameru Ministarstva pravde i Vlade Republike Kosovo za unapređenje i promovisanje pravne infrastrukture, kako bi to bilo u funkciji ispunjavanja potreba pravosudih organa, Ministarstvo pravde je preduzelo sve potrebne radnje za izradu i finalizaciju novog nacrt Građanskog zakonika.
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Republika e Kosovës
Republika Kosova - Republic of Kosovo
Qeveria - Vlada - Government

Ministria e Drejtësisë
Ministarstvo Pravde – Ministry of Justice

Option/possible alternative:

1. Title of the normative act: Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products
2. Proposing body: European Commission
3. Table: 22/05/2019
4. List of relevant national legislation: Draft Civil Code Law No.03/L-016 on Food Law No.03/L-098 on Agriculture and Rural Development Law No.05/L-085 on Electricity Law No.05/L-081 on Energy

5. The level of compliance: Fully compliant

European Union – Republic of Kosovo

a)	b)	c)	d)
Article 1 The producer shall be liable for damage caused by a defect in his product.	Draft Civil Code Article 229 Scope of application When a defective product causes a person's death, bodily injury or health, or damage to his property, the producer of the product shall be obliged to compensate the damage caused.	Fully Compliant	
Article 2 For the purpose of this Directive 'product' means all movables, with the exception of primary agricultural products and game, even though incorporated into another movable or into an immovable.	Draft Civil Code Article 230 Product For the purpose of this Sub-chapter, a product is any movable property, even though incorporated into	Fully Compliant	

	another movable property or into an immovable property.		
'Primary agricultural products' means the products of the soil, of stock-farming and of fisheries, excluding products which have undergone initial processing.	Law No.03/L-016 on Food Article 4 Definitions “Primary production” is a production, growing of primary agricultural products including harvesting and picking of fruits, milking and farmed animal production prior to be slaughtered. It also includes hunting, fishing and harvesting of the wild products, as well as collection of self growing fruits and plants. Law No.03/L-098 on Agriculture and Rural Development	Fully compliant	

	Article 3 “Agriculture product” means vegetal and animal products that are produced in the farm and those coming from the first phase of processing of these products		
'Product' includes electricity.	Law No.05/L-085 on Electricity Article 3 Definitions Organized electricity market – an institutionally organized market of day-ahead or within the day of physical delivery. Market participants present their supply and demands for preset and standardized electricity products for all time intervals, one day ahead or within the day of its physical delivery. Article 32 Electricity trading 1. Electricity trading is an activity independent from activities of	Fully compliant	

	electricity transmission and distribution. It covers electricity purchase and sale, including resale, to wholesale customers, including those under public service obligations. 2. Electricity trading may be performed by electricity enterprises, on the basis of licenses issued by the Regulatory, in compliance with the Law on Energy Regulator and in accordance with Market Rules. 3. Licenses issued for electricity trading in other Parties to the Energy Community Treaty shall be recognized in Kosovo. Such licensed suppliers shall be entitled to electricity trading without requiring an additional license. Trader and supplier registered in another Energy Community Party are entitled to participate in the electricity market, following the principle of reciprocity and in accordance with applicable trading, balancing and fiscal rules.		
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	Law No.05/L-081 on Energy Article 3 Definitions 1.1. Energy activities – performance of one or more activities of energy generation, transmission, distribution, supply or storage; 1.13. Electricity – form of potential energy of charges in the electric field, which through metallic conductors shall be transmitted to customers;		
Article 3 1. 'Producer' means the manufacturer of a finished product, the producer of any raw material or the manufacturer of a component part and any person who, by putting his name, trade mark or other distinguishing feature on the product presents himself as its producer.	Draft Civil Code Article 232 Producer 1. For the purpose of this Sub-chapter, a producer is a person who has produced the final product, a raw material or a component part. A producer is also anyone who by putting his name, trademark or other	Fully Compliant	

	distinguishing feature on the product presents himself as its producer.		
2. Without prejudice to the liability of the producer, any person who imports into the Community a product for sale, hire, leasing or any form of distribution in the course of his business shall be deemed to be a producer within the meaning of this Directive and shall be responsible as a producer.	2. A producer is also anyone who imports a product for sale, hire, leasing or any form of distribution with an economic purpose in the course of his business.	Fully compliant	
3. Where the producer of the product cannot be identified, each supplier of the product shall be treated as its producer unless he informs the injured person, within a reasonable time, of the identity of the producer or of the person who supplied him with the product. The same shall apply, in the case of an imported product, if this product does not indicate the identity of the importer referred to	3. Where the producer of the product cannot be identified, each supplier of the product shall be deemed to be its producer unless he informs the injured person within one (1) month of his request of the identity of the producer or of the person who supplied him with the product. The same rule shall apply, in the case of an imported product, if this product does not indicate the identity of the	Fully compliant	

in paragraph 2, even if the name of the producer is indicated.	person referred to in paragraph 2, even if the name of the producer is known.		
Article 4 The injured person shall be required to prove the damage, the defect and the causal relationship between defect and damage.	Draft Civil Code Article 237 Burden of proof of the injured person The injured person bears the burden of proving the defect, the damage and the causal relationship between defect and damage.	Fully Compliant	

Article 5 Where, as a result of the provisions of this Directive, two or more persons are liable for the same damage, they shall be liable jointly and severally, without prejudice to the provisions of national law concerning the rights of contribution or recourse.	Draft Civil Code Article 234 Two or more parties liable to pay monetary compensation If two or more producers are liable to pay monetary compensation for the same damage, they shall be liable jointly and severally.	Fully Compliant	
Article 6 1. A product is defective when it does not provide the safety which a person is entitled to expect, taking all circumstances into account, including: (a) the presentation of the product; (b) the use to which it could reasonably be expected that the product would be put; (c) the time when the product was put into circulation.	Draft Civil Code Article 231 Defect 1. A product has a defect when it does not provide the safety which a person is entitled to expect, taking all circumstances into account, including its presentation, the use to which it could reasonably be expected to serve, and the time when it was put into circulation.	Fully Compliant	

2. A product shall not be considered defective for the sole reason that a better product is subsequently put into circulation.	2. A product is not defective for the sole reason that a better product is subsequently put into circulation.	Fully Compliant	
Article 7 The producer shall not be liable as a result of this Directive if he proves: (a) that he did not put the product into circulation; or (b) that, having regard to the circumstances, it is probable that the defect which caused the damage did not exist at the time when the product was put into circulation by him or that this defect came into being afterwards; or (c) that the product was neither manufactured by him for sale or any form of distribution for economic purpose nor	Draft Civil Code Article 236 When the producer is not liable to pay monetary compensation 1. The producer's liability is excluded if: 1.1. he did not put the product into circulation; 1.2. under the circumstances it is probable that the defect which caused the damage did not exist at the time when the producer put the product into circulation;	Fully Compliant	

manufactured or distributed by him in the course of his business; or (d) that the defect is due to compliance of the product with mandatory regulations issued by the public authorities; or (e) that the state of scientific and technical knowledge at the time when he put the product into circulation was not such as to enable the existence of the defect to be discovered; or (f) in the case of a manufacturer of a component, that the defect is attributable to the design of the product in which the component has been fitted or to the instructions given by the manufacturer of the product.	1.3. the product was neither manufactured by him for sale or any other form of distribution for economic purpose nor manufactured or distributed by him in the course of his business; 1.4. the defect is due to compliance of the product with laws and regulations; or 1.5. the state of scientific and technical knowledge at the time when the producer put the product into circulation was not such as to enable the defect to be discovered. 2. The obligation to pay monetary compensation of the producer of a component part is also excluded if the defect is attributable to the design of the product in which the component has been fitted or to the		
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	instructions given by the manufacturer of the product.		
Article 8 1. Without prejudice to the provisions of national law concerning the right of contribution or recourse, the liability of the producer shall not be reduced when the damage is caused both by a defect in product and by the act or omission of a third party.	Draft Civil Code Article 235 Reduced liability 1. The liability of the producer shall be reduced when the damage is caused both by a defect in product and by the act or omission of a third party.	Fully Compliant	
2. The liability of the producer may be reduced or disallowed when, having regard to all the circumstances, the damage is caused both by a defect in the product and by the fault of the injured person or any person for whom the injured person is responsible.	2. The liability of the producer may also be reduced when, having regard all the circumstances, the damage is caused both by a defect in product and by the fault of the damaged person or any person for whom the damaged person is responsible.	Fully compliant	

Article 9 For the purpose of Article 1, 'damage' means: (a) damage caused by death or by personal injuries; (b) damage to, or destruction of, any item of property other than the defective product itself, with a lower threshold of 500 ECU, provided that the item of property: (i) is of a type ordinarily intended for private use or consumption, and (ii) was used by the injured person mainly for his own private use or consumption.	Draft Civil Code Article 233 Damage due to faulty products 1. For the purpose of this Sub-chapter, damage means: 1.1. damage caused by death or by personal injuries; and 1.2. damage or destruction of any property other than the defective product itself, provided that this other property is of a type ordinarily intended for private use or consumption, and was used by the damaged person mainly for his own private use or consumption.	Fully Compliant	
This Article shall be without prejudice to national provisions relating to non-material damage.		Not applicable	
Article 10	Draft Civil Code	Fully Compliant	

1. Member States shall provide in their legislation that a limitation period of three years shall apply to proceedings for the recovery of damages as provided for in this Directive. The limitation period shall begin to run from the day on which the plaintiff became aware, or should reasonably have become aware, of the damage, the defect and the identity of the producer.	Article 239 Prescription 1. The compensation claim shall prescribe after three (3) years from the day on which the party entitled to compensation became aware, or should have become aware, of the damage, the defect and the identity of the party liable to pay monetary compensation.		
2. The laws of Member States regulating suspension or interruption of the limitation period shall not be affected by this Directive.		Not applicable	
Article 11 Member States shall provide in their legislation that the rights conferred upon the injured person pursuant to this Directive shall be extinguished upon the expiry of a period of 10 years from the date on	Draft Civil Code Article 239 Prescription 2. In any event, the claim shall expire 10 (ten) years from the day when the	Fully Compliant	

which the producer put into circulation the actual product which caused the damage, unless the injured person has in the meantime instituted proceedings against the producer.	producer put into circulation the product that caused the damage, unless the injured person has in the meantime instituted legal proceedings against the producer.		
Article 12 The liability of the producer arising from this Directive may not, in relation to the injured person, be limited or excluded by a provision limiting his liability or exempting him from liability.	Draft Civil Code Article 240 Mandatory nature The liability of the producers may not be excluded or limited in advance. Any agreements to the contrary shall be null.	Fully Compliant	
Article 13 This Directive shall not affect any rights which an injured person may have according to the rules of the law of contractual or non-contractual liability or a special liability system existing at the moment when this Directive is notified.		Not applicable	

Article 14 This Directive shall not apply to injury or damage arising from nuclear accidents and covered by international conventions ratified by the Member States.		Not applicable	
Article 15 1. Each Member State may: (a) by way of derogation from Article 2, provide in its legislation that within the meaning of Article 1 of this Directive 'product' also means primary agricultural products and game;	Draft Civil Code Article 230 Product For the purpose of this Sub-chapter, a product is any movable property, even though incorporated into another movable property or into an immovable property. Law No.03/L-016 on Food Article 4 Definitions “Primary production” is a production, growing of primary agricultural products including harvesting and picking of fruits, milking and farmed animal	Fully compliant	

	production prior to be slaughtered. It also includes hunting, fishing and harvesting of the wild products, as well as collection of self growing fruits and plants. Law No.03/L-098 on Agriculture and Rural Development Article 3 “Agriculture product” means vegetal and animal products that are produced in the farm and those coming from the first phase of processing of these products		
(b) by way of derogation from Article 7 (e), maintain or, subject to the procedure set out in paragraph 2 of this Article, provide in this legislation that the producer shall be liable even if he proves that the state of scientific and technical knowledge at the time when he put the product into circulation was not such as to enable the existence of a defect to be discovered.		Not applicable	

2. A Member State wishing to introduce the measure specified in paragraph 1 (b) shall communicate the text of the proposed measure to the Commission. The Commission shall inform the other Member States thereof. The Member State concerned shall hold the proposed measure in abeyance for nine months after the Commission is informed and provided that in the meantime the Commission has not submitted to the Council a proposal amending this Directive on the relevant matter. However, if within three months of receiving the said information, the Commission does not advise the Member State concerned that it intends submitting such a proposal to the Council, the Member State may take the proposed measure immediately. If the Commission does submit to the Council such a proposal amending this Directive within the aforementioned nine months, the Member State concerned shall		Not applicable	
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hold the proposed measure in abeyance for a further period of 18 months from the date on which the proposal is submitted.			
3. Ten years after the date of notification of this Directive, the Commission shall submit to the Council a report on the effect that rulings by the courts as to the application of Article 7 (e) and of paragraph 1 (b) of this Article have on consumer protection and the functioning of the common market. In the light of this report the Council, acting on a proposal from the Commission and pursuant to the terms of Article 100 of the Treaty, shall decide whether to repeal Article 7 (e).		Not applicable	
Article 16 1. Any Member State may provide that a producer's total liability for damage resulting from a death or personal injury and caused by identical items with the same defect shall be limited to an amount which may not be less than 70 million ECU.		Not applicable	

2. Ten years after the date of notification of this Directive, the Commission shall submit to the Council a report on the effect on consumer protection and the functioning of the common market of the implementation of the financial limit on liability by those Member States which have used the option provided for in paragraph 1. In the light of this report the Council, acting on a proposal from the Commission and pursuant to the terms of Article 100 of the Treaty, shall decide whether to repeal paragraph 1.			
Article 17 This Directive shall not apply to products put into circulation before the date on which the provisions referred to in Article 19 enter into force.		Not applicable	
Article 18 1. For the purposes of this Directive, the ECU shall be that defined by Regulation (EEC) No 3180/78 (1), as amended by Regulation (EEC) No 2626/84 (2).		Not applicable	

The equivalent in national currency shall initially be calculated at the rate obtaining on the date of adoption of this Directive. 2. Every five years the Council, acting on a proposal from the Commission, shall examine and, if need be, revise the amounts in this Directive, in the light of economic and monetary trends in the Community.			
Article 19 1. Member States shall bring into force, not later than three years from the date of notification of this Directive, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith inform the Commission thereof (1). 2. The procedure set out in Article 15 (2) shall apply from the date of notification of this Directive.		Not applicable	

Article 20 Member States shall communicate to the Commission the texts of the main provisions of national law which they subsequently adopt in the field governed by this Directive.		Not applicable	
Article 21 Every five years the Commission shall present a report to the Council on the application of this Directive and, if necessary, shall submit appropriate proposals to it.		Not applicable	
Article 22 This Directive is addressed to the Member States.		Not applicable	



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Zyra e Kryeministrit
Kancelarija Premijera - Office of the Prime Minister

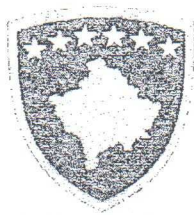
Zyra Ligjore - Pravna Kancelarija - Legal Office

REFERENCE:	___-2021-2-2918
DATE:	20.12.2021
PËR/ZA/TO:	Floriana Rugova, Deputy Director of the Legal Department/Ministry of Justice
CC:	Ardian Bajraktari, Deputy Secretary General/Ministry of Justice
PËRMES/PREKO/THROUGH:	Arben Krasniqi, Deputy Secretary General/Office of the Prime Minister Mentor Borovci, Director of the Legal Office/Office of the Prime Minister
NGA/OD/FROM:	Labinote Kashtanjeva, Senior Legal Officer on EU Legislation/ Division of EU Law/Legal Office/ Office of the Prime Minister
TEMA/SUBJEKAT/SUBJECT:	Accompanying letter for the <i>Draft Civil Code</i>

Dear Mrs Rugova,

Based on the Administrative Instruction No. 03/2013 on Standards for Drafting of Normative Acts, Regulation No. 13/2013 on Government Legal Service and Article 8, paragraph 2.16 as well as Article 12, paragraph 1.1 of Regulation (OPM) No. 01/2020 on Internal Organization and Systematization of Jobs in the Office of the Prime Minister, we forward to you the Legal Opinion on Compliance with the EU acquis for the *Draft Civil Code*.

Respectfully!



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Republika Kosova - Republic of Kosovo
Qeveria - Vlada – Government

Zyra e Kryeministrit- Kancelarija Premijera-Office of the Prime Minister

Zyra Ligjore-Pravna Kancelarija-Legal Office

LEGAL OPINION ON COMPLIANCE WITH EU LEGISLATION

20.12.2021

Legal Department of the Ministry of Justice, on 15 December 2021, based on Article 7, paragraph 1, sub-paragraph 1.2 of Regulation No. 09/2011 of Rules and Procedure of the Government of the Republic of Kosovo and Article 13, paragraph 5 of Regulation No. 13/2013 on Government Legal Service as well as in accordance with Article 12, paragraph 3 and paragraph 4, sub-paragraph 4.19 of Regulation No. 02/2021 on areas of administrative responsibility of the Office of the Prime Minister and Ministries, has submitted for review to the Division of EU Law within the Office of the Prime Minister the *Draft Civil Code*.¹

1. SUBJECT

Legal opinion on compliance of the *Draft Civil Code* with the EU *acquis*.

2. ATTACHED DOCUMENTS

The request of the Legal Department of the Ministry of Justice for a Legal Opinion on Compliance with the EU *acquis* was sent electronically, on 15.12.2021, with reference number 2918-1-2021. Attached to the request for a legal opinion on compliance with the EU *acquis* are the following documents: *the draft Civil Code, the explanatory memorandum, the statement of compliance with the EU acquis, and the tables of concordance with the EU acquis*.

¹ The name of the *Draft Code* is transcribed exactly as it appears in the source text in electronic and hard copies received by the Legal Department of the Ministry of Justice on 15.12.2021. The opinion is issued within the legal deadline, at the request of the proposing institution for urgent proceeding of the opinion. Preliminary opinions on the draft civil code were issued on 04.07.2019 with protocol number 1228, and on 20.07.2020 with protocol number 1207.

3. PREAMBLE

In accordance with Article 7, paragraph 3 of Regulation No. 09/2011 of Rules and Procedure of the Government of the Republic of Kosovo, pursuant to Article 3, subparagraph 1.3, Article 13, paragraph 6, Article 21, paragraph 4 of Regulation No. 13/2013 on Government Legal Service and Article 30, paragraph 4 of the Administrative Instruction No. 03/2013 on the Standards for Drafting of Normative Acts, the Division of EU Law within the Office of the Prime Minister, based on the scope of its competencies, on 20 December 2021, issues this:

4. LEGAL OPINION ON COMPLIANCE WITH EU LEGISLATION

This legal opinion analyzes the *Draft Civil Code*. The assessment of the compliance with the EU acquis in Point IX of this legal opinion is based on the summary of EU legal acts that regulate this field within Point VI and on the description and assessment of documents related to the scope of this draft law within Point VII of this legal opinion.

5. INTRODUCTION

This *Draft Civil Code* regulates and harmonizes the legal provisions of civil law in the legal order of the Republic of Kosovo.² The scope of the *Draft Civil Code* includes the regulation of the general civil part, the part of obligations, ownership and real rights, family law, and inheritance law. The *Draft Civil Code* codifies and systematizes the regulation of these areas into a single code.³ The *draft Civil Code* consists of five (5) books, fourteen chapters (14) and one thousand six hundred and thirty (1630) articles.

6. SUMMARY OF EU ACTS REGULATING THE FIELD OF THE DRAFT ACT

EU law contains general and specific legislation setting out provisions on the scope of civil law. Regulation of the field of civil law falls within the joint competence of the European Union with the Member States and is regulated by primary and secondary legislation. The provisions of the primary legislation of EU law are set out in Article 4 of the TFEU, which sets out:

Article 4

1. The Union shall share competence with the Member States where the Treaties confer on it a competence which does not relate to the areas referred to in Articles 3 and 6.

² Article 1 of the Draft Civil Code.

³ Ibid Article 2.

2. Shared competence between the Union and the Member States applies in the following principal areas:

(a) **internal market;**

(b) **social policy, for the aspects set out in this Treaty;**

(c) economic, social and territorial cohesion;

(d) agriculture and fisheries (except conservation of marine biological resources;

(e) environment;

(f) **consumer protection;**

(g) transport;

(h) trans-European networks;

(i) energy;

(j) **area of freedom, security and justice;**

(k) shared safety concerns in public health matters, limited to the aspects defined in this treaty.

3. In the areas of research, technological development and space, the Union shall have competence to carry out activities, in particular to define and implement programmes; however, the exercise of that competence shall not result in Member States being prevented from exercising theirs.

4. In the areas of development cooperation and humanitarian aid, the Union shall have competence to carry out activities and conduct a common policy; however, the exercise of that competence shall not result in Member States being prevented from exercising theirs.⁴

Consequently, the scope of civil law includes the area of freedom, security and justice and consumer protection. The legal basis regarding the regulation of the scope of civil matters derives from Article 81 of Chapter 3 of Title V of the TFEU.⁵ The provisions of Article 81 in the field of judicial cooperation in civil matters, determine:

Chapter 3

Judicial cooperation in civil matters

Article 81

(ex Article 65 TEC)

1. **The Union shall develop judicial cooperation in civil matters having cross-border implications, based on the principle of mutual recognition of judgments and of decisions in extrajudicial cases.** Such cooperation may include the adoption of measures for the approximation of the laws and regulations of the Member States.
2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures, particularly when necessary for the proper functioning of the internal market, aimed at ensuring:

⁴ See Article 4 of the Albanian Language Version of the TFEU via: https://www.mei-ks.net/repository/docs/Traktati_i_Lisbones_-_Verzioni_i_Konsoliduar.pdf also see the English language version of the TFEU via: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT>

⁵ Ibid, Article 81 Chapter Title V.

- a. the mutual recognition and enforcement between Member States of judgments and of decisions in extrajudicial cases;
 - b. the cross-border service of judicial and extrajudicial documents;
 - c. the compatibility of the rules applicable in the Member States concerning conflict of laws and of jurisdiction;
 - d. cooperation in the taking of evidence;
 - e. effective access to justice;
 - f. the elimination of obstacles to the proper functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil procedure applicable in the Member States;
 - g. the development of alternative methods of dispute settlement;
 - h. support for the training of the judiciary and judicial staff.
3. Notwithstanding paragraph 2, measures concerning family law with cross-border implications shall be established by the Council, acting in accordance with a special legislative procedure. The Council shall act unanimously after consulting the European Parliament.

The Council, on a proposal from the Commission, may adopt a decision determining those aspects of family law with cross-border implications which may be the subject of acts adopted by the ordinary legislative procedure. The Council shall act unanimously after consulting the European Parliament.

The proposal referred to in the second subparagraph shall be notified to the national Parliaments. If a national Parliament makes known its opposition within six months of the date of such notification, the decision shall not be adopted. In the absence of opposition, the Council may adopt the decision.⁶

Regulation of civil matters at EU level includes related sub-areas such as family law, commercial law, law of obligations, access to justice for citizens and companies, and consumer protection.⁷ Provisions of secondary EU legislation which require the approximation of laws, regulations and administrative provisions relating to related sub-areas such as family law, commercial law, law of obligations, access to justice for citizens and companies, and protection of consummators, are laid down in *Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products*.⁸

⁶ See Article 81 of the Albanian Language version of the TFEU via: https://www.mci-ks.net/repository/docs/Traktati_i_Lisbones_-_Verzioni_i_Konsoliduar.pdf also see the English language version of the TFEU via: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT>

⁷ See more The scope of Civil Law at EU level via: https://ec.europa.eu/info/policies/justice-and-fundamental-rights/civil-justice_en see also Judicial Cooperation in Civil Matters via: <http://www.europarl.europa.eu/factsheets/en/sheet/154/judicial-cooperation-in-civil-matters>

⁸ Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products *OG L 210, 7.8.1985, p. 29-33*.

Also, the provisions of Article 83 of the SAA define the obligation to regulate the field of civil law of Kosovo in accordance with EU law.⁹ Consequently, although there are different modalities for the regulation of civil law within the legal systems of the Member States, EU law (the EU *acquis*) contains legal provisions (mainly through secondary legislation directives) which refer to the field of civil law.¹⁰

7. DESCRIPTION AND ASSESSMENT OF DOCUMENTS SUBMITTED WITH THE LEGISLATION PROPOSED BY THE LINE MINISTRY

During the analysis of the request of the Legal Department of the Ministry of Justice for the Legal Opinion on the Compliance with the EU *acquis*, it was noticed that the Draft Civil Code was drafted based on the Administrative Instruction (GRK) No. 03/2013 on the Standards for Drafting of Normative Acts. Also, the Statement of Compliance (SoC) with the EU *acquis* and the Tables of Concordance (ToC) which represent the level of compliance of the provisions of the Draft Civil Code with the EU *acquis* have been drafted based on the Practical Guidelines for the Approximation of Legislation of the Republic of Kosovo with the Legislation of the European Union (2014) and the Manual on Compiling the Tables and the Statement of Compliance (2016). *The draft Civil Code largely includes the provisions of the EU acquis in the field of civil law (see Point 6 of this opinion).* Tables of Concordance (ToC) with the EU *acquis* systematically present every provision of the EU *acquis* that has been transposed into the *Draft Civil Code*. The provisions of the *Draft Civil Code* specifically correspond to the provisions of the EU *acquis* (secondary legislation, directives).¹¹

⁹ See Article 83 of the SAA, in Law No. 05/L-069 on Ratification of the Stabilization and Association Agreement between the Republic of Kosovo, on the one hand, and the European Union and the European Atomic Energy Community, on the other, Official Gazette: 34/2015, Publication Date: 01.12.2015.

¹⁰ See also EU law level consultative documents in the field of civil law, Summary of European Union Legislation on Judicial Cooperation in Civil and Commercial Matters (Version 2017) [Compendium of European Union Legislation on Judicial Cooperation in Civil and Commercial Matters (Version 2017)] via: http://www.ejtn.eu/Documents/Compendium_EN.pdf ose <https://publications.europa.eu/en/publication-detail/-/publication/55f75af3-9ce4-11e7-b92d-01aa75ed71a1/language-en>

¹¹ Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), *OG L 204*, 26.7.2006, p. 23-36.; Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, *OG L 82*, 22.3.2001, p. 16-20.; Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council Text with EEA relevance, *OG L 304*, 22.11.2011, p. 64-88.; Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC, *OG L 133*, 22.5.2008, p. 66-92.; Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC, *OG L 326*, 11.12.2015, p. 1-33.; Directive 2008/122/EC of the European Parliament and of the Council of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts, *OG L 33*, 3.2.2009, p. 10-30.; Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation

The latest version of the current draft code accepted from the proposing institution (MoJ) defines the following: the prenuptial agreement has been terminated, the age of marriage of 16 years has been removed by a Court decision, it is now only 18 years old, the division of property between the spouses in the case of divorce is clearly defined, 50% belong to the husband and 50% to the wife, the equivalence of the contribution and the work for the duration of the marital life is defined.¹²

8. OPINION ON COMPLIANCE

The responsibility of the Division of EU Law is noted in its opinion, while the proposing institution (Legal Department of the Ministry of Justice) is responsible for completing the Statement of Compliance (SoC) and the Tables of Concordance (ToC) and assumes responsibility for the level of compliance/harmonization according to the Practical Guidelines for the Approximation of the Legislation of the Republic of Kosovo with the Legislation of the European Union and the Manual on Compiling the Tables and the Statement of Compliance.¹³

9. ASSESSMENT OF COMPLIANCE

The form of civil law regulation at the level of EU Member States has a variety of regulation. EU Member States contain various laws, regulations and administrative provisions governing the scope of the law of obligations, property and property rights, family law, and the regulation of inheritance. In some EU Member States the scope of civil law is summarized in the code (as a whole of some acts), while in some other Member States it is regulated by specific acts (law or other act). The competence to regulate civil law at EU level is classified as a *joint competence*. EU legislation (*acquis*) contains legal acts that aim to harmonize certain legal principles governing the scope of civil law, such as contracts, transactions or consumer protection. Harmonization of these legal principles at EU level ensures better facilitation of the movement of goods, services and capital. Consequently, the provisions of

(EU) No 1093/2010, and repealing Directive 2007/64/EC, *OG L 337*, 23.12.2015, p. 35-127.; Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems, *OG L 166*, 11.6.1998, p. 45-50.; Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees, *OG L 171*, 7.7.1999, p. 12-16.; Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market, *OG L 178*, 17.7.2000, p. 1-16.; Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions, *OG L 48*, 23.2.2011, p. 1-10.

¹² Based on the explanations of the proposing institution (MoJ) dated 20.12.2021.

¹³ *Practical Guidelines for Approximation of the Legislation of the Republic of Kosovo with the Legislation of the European Union (2014)* and the *Manual on Compiling the Tables and the Statement of Compliance (2016)* are documents that include references and methodologies and contain three types of guidelines: (1) detailed guidelines for identifying whether or not a draft law is subject to regulation by the EU acquis; (2) contain the methodology for determining the level of approximation of Kosovo legislation with the EU acquis; and (3) contain practical guidelines for compiling the tables and the statement of compliance.

the *Draft Civil Code* of Kosovo are drafted in the spirit of the secondary acts of the EU *acquis*. The institutes of law defined by the provisions of the *Draft Civil Code* are in line with EU legislation (*acquis*).

Respectfully,

Labinote Kashtanjeva

Senior Legal Officer on EU Legislation



Republika e Kosovës
Republika Kosova - Republic of Kosovo
Qeveria - Vlada - Government

MINISTRIA E DREJTËSISË
MINISTARSTVO PRAVDE
MINISTRY OF JUSTICE

**REPORT FROM THE CONSULTATION PROCESS ON THE DRAFT CIVIL
CODE OF THE REPUBLIC OF KOSOVO**

September 2019

Introduction

The work in drafting the Civil code of the Republic of Kosovo commenced with the decision of the Government of the Republic of Kosovo in 2014 based on which the state commission for the Civil code was established. The drafting process was also supported by the EU Project on Civil code - first phase. The Ministry of Justice conducted the work on drafting the Civil code of the Republic of Kosovo and for this purpose it established the working groups: The coordination working group and 3 thematic sub-groups, 1) working sub-group for the general section and the Law on obligations, 2) working sub-group for the Law on property and other real rights, 3) working sub-group for the Law on family and inheritance, and 4) the working sub-group for the international private law and the EU law.

For a better organization of work, and for the coordination of activities for all the books of the Civil code, the Ministry of Justice reorganized the working groups and established only one working group by the decision with Protocol no. 01/248, dated 30.01.2018.

The purpose of the draft Civil code is to govern and harmonize the legal provisions of the civil law, through its 5 special books. The Civil code is drafted for the first time in the Republic of Kosovo and its adoption shall contribute to the modernization of the civil law and it is expected to have a slight impact on improving the access to just for all, without distinction.

In addition, the Civil code of the Republic of Kosovo is based on the constitutional principles of the state of law, equality before the law and it was drafted in line with the European standards and the best practices of European countries that govern the civil law and it marks a step forward in the reformation of justice in the Republic of Kosovo.

The Civil code, through its special books, aims to fill the gaps that existed in practice, to avoid contradictions and ensure a uniform application of the civil law throughout the territory of the Republic of Kosovo.

From all discussion since the beginning of drafting the Civil code in 2014, and based on the evaluation reports of the first phase of the Civil code projekt, the discussion in the second phase of the project, it results that the Civil code will also cover the general section, which is similar to the concept of the German Civil code. The general section is also incorporated in the modern Civil codes adopted recently, such as in Estonia and Albania. Since the Ministry of Justice has based the drafting of the Civil code of Kosovo

on the concept of the German Civil code with required modifications, the structure of the division of the Civil code of the Republic of Kosovo shall be similarly structured in the Book 1, General section, Book 2, Obligations, Book 3, Property and other real rights, Book 4, Family, and Book 5, Inheritance.

Despite the practical division into Books, which govern the above relevant issues, the Code presents a unique entirety since it is adopted as a sole act of the Assembly of the Republic of Kosovo. In addition, even though for certain matters, the Code permits the regulation by separate laws, they cannot be in violation of its principles, which makes the role of the Civil code as the main act for governing the civil matters.

General Section of Book 1 of the Code, is drafted for the first time in the Republic of Kosovo and as such it provides for the general and principle rules which refer to the general section, other sections of the Civil code but also the entire legislation of the civil law. This basic book reflects the general principles, which were absent, contradictory or were governed by separate laws, and therefore the Book 1 simplifies their governing and enables an easier application of the civil substantive law. The general section also reflects the circumstances that characterize the regulatory civil and social environment in Kosovo.

These principles have never been regulated by the civil legislation in Kosovo. Some of them were known from the theory of law, but for the implementation of the law it was difficult to find a provision with the content that these principles have. These principles facilitate the implementation of the law on the manner how to understand these terms, what is considered a source of civil law in Kosovo, how to interpret the law and what is meant by analogy and how it should be implemented. In addition, these articles govern the way how the civil rights and obligations are created, presumption of bona fide behavior of parties in civil matters, prohibition of damage to others, as well as the rule that the impersonal civil rights can be transferred from one subject to another.

Second book on Obligations which have a long legislative tradition in Kosovo. The first modern act for governing these legal relations is the Law on Obligations of year 1978 which was applicable until 2012 when the Law on Obligations was adopted (hereinafter: LO). In fact, these two acts are almost identical in content and do not have a conceptual difference regarding the institutes of obligations. Furthermore, the same path was followed by other countries in the region whereby the legal basis was changed as a consequence of the disintegration of former Yugoslavia, but the legal tradition of these obligations was not changed.

This book is divided into two parts. The first section is known as the general section of obligations and it contains general rules about all obligations. The second section contains rules on individual contracts. Such division is tradition for continental countries of the civil law and it should not be confused with the central sections of the entirety of the Civil Code.

With entry into law of the Civil Code, the Law on obligations shall be abolished because the vast majority of the contracts of commercial nature were left outside the Civil code. Nevertheless, the transitional provisions of the Code provide that the provisions of the Law on obligations shall continue to apply until the adoption of separate laws or Commercial code regarding securities, statutory norm of usury, delay and other interests; license contract; contract on commission; contract on commercial representation; contract on mediation; contract on transport; assignation; contract on insurance; contract on travel arrangement (touristic arrangements) and mediation travel contract. The possibility of regulating these matters by Commercial code or separate laws was disregarded because their nature may require legislative amendments, despite the fact that the Civil code aims to be stable and immune to frequent changes.

Compared to the current law which has 1059 articles, this book has only 715 articles. Therefore, it should be explained how legal provisions were cut out. First, it should be mentioned that the current law was drafted and adopted in other circumstances when civil legislation followed another path. Therefore, now is the time for Kosovo to have a commercial code - therefore, the vast majority of the commercial contracts were left out of the Civil code. Nevertheless, it should be noted that legal norms of the applicable law regarding these contracts will continue to apply until the Commercial code in Kosovo is adopted. Hence, the legal security and continuity is ensured. Secondly, some legal norms were shrunk because it was considered that they were redundant and only limit the autonomy of contracting parties to freely govern their obligations. In this regard, other civil codes followed this methodology.

Final draft of Book 3 on Property other real rights, though as starting point it had the Book on property and other real rights prepared during the first phase of the project, it includes some structural and content-related changes, compared to the first draft. Some of these changes derive from the drafting of Book I - General section of Civil code, which reflected the transfer of some provisions from the Book on property and other real rights to the General section. In addition, during the first phase of the draft Civil code the English version was the main version, therefore, the Albanian version had a considerable number of errors in translation and legal terminology. In this phase, the

basic version is the Albanian language, therefore, maximum efforts were made to avoid mistakes and differences.

In addition to the Book on property and other real rights, in the draft Civil code, in Book I - general section, were included some conceptual and principle issues, which in general define the property, items and their types, etc., which are also applicable in the Book on property but also in other books of the Civil code.

Under Book 3, Property and other real rights, are governed relevant matters related to property and other real rights. Among others, this book provides for: real rights, limitations in property and other property rights; holders of property rights, priority of real rights; good faith and presumption of good faith; prohibition of misuse; lack of statutory limitation for real rights unless otherwise provided by law; property and its types; neighborhood rights; gain and loss of property (including movable property; preemptive right; co-ownership; protection of property; possession; registration of immovable rights; pledge (including the rights and obligations of pledger and debtor and the rights of third party); mortgage; servitudes and their types; real encumbrances and the construction right.

In addition this Book of the Civil code enables the foreign persons to acquire real rights, unless otherwise provided by a separate law. This is allowed by Constitution, while the regulation in the Code enables this, unless otherwise provided by law. This is expected to have an impact on encouraging the foreign investments in Kosovo and on Kosovo being even more integrated in the global economy.

Book 4 on Family of the Civil code of Kosovo, prepared by the Group of project experts for drafting the Civil code of Kosovo, is based on the applicable legislation – Law No.32/2004 on Family in Kosovo, which entered into force in 2006, and other laws that had a direct impact on the matter of family relations, e.g. Law on property, Law on gender equality, Law on obligations, Law on domestic violence, and other laws specified in the report on the impact of existing legislation on family law, but also the initial draft proposed during the first phase of the project, and international conventions and European directives on family matters, the family law of the EU member states and countries in the region, and court decisions. Therefore, Book 4 on the Family of the Civil code of Kosovo shall contain more advanced and contemporary provisions compared to the existing legislation on family.

When drafting the Book 4 on Family of the Civil code of Kosovo the cases of European court of justice were taken into account, having been analyzed by other project experts, for example: C-565/16 (Alessandro Saponaro, Kalliopi-Chloi Xylina); Case C-335/17 Neli Valçeva v Georgios Babanarakis; C-376/14 C v M; C 256/09 Purrrucker; and other similar cases, and some cases of European court for human rights, which were discussed in the working group.

Book 4 on Family, of the Civil code of Kosovo reduced numerous procedural resolutions related to family relations. In Book 4 a central part takes the marriage and cohabitation as forms for creating a family, the rights of children as permanent duties of parents and it addresses other standard issues under the family law.

This book also aims to create a normative mechanism that would prevent cases of violation of gender equality in daily life.

Book 4 - Family, of the Civil code of Kosovo also brought novelties in structure, compared to the applicable law, Law on Family in Kosovo of year 2006.

Book 4 of the Civil code contains provisions on family law. Among others, the issues regulated in this book include: the general provisions; engagement; marriage; relationship between parents and children; paternity and maternity; protection of children and parental responsibility; supervision of parental care; deprivation of parental right; extension of parental care; children without parental care; adoption; placement in family shelter; custody (including custody of minors); guardians in special cases; property relations of the members of household; financial support; financial support and food; marital support; protection of children of unmarried parents; procedures and competencies.

With entry into force of the Civil code the Law on family and the Law on amending the Family law shall be abolished. Therefore, with entry into force of the Civil Code, this book will be the only book governing the issues of family law, with the exception of other regulations that will be governed by separate laws, such as the other forms of civil unions, which are governed in the future in line with the Constitution of the Republic of Kosovo and EU acqui, such as the case of the Court of justice of the European union, in case C-673/16 *Coman and others*, whereby the Court *underlines that the rejection of a member state to recognize, upon granting the rights to family union, the marriages of the same sex between a EU citizen and a citizen of a third country which were concluded in a EU member state during the period of residence of the EU citizen in that country, may hamper the exercise the right of free movement of the EU citizen. In addition, in this case the Court underlines that the term "spouse" is of neutral gender, and therefore this could include spouses of the same sex.* The

terms “spouse” in neutral gender was reflected in article 37, paragraph 2 of the Constitution of the Republic of Kosovo.

The book 5 - Inheritance, as the last book of the Civil Code, governs the inheritance. In the spirit of the laws such as the law on notary and inheritance, this Code provides for the notarial will in addition to the judicial one.

If the testator is not able to read the will that was drafted by the judge or notary, the will be read out to the testator in the presence of two witnesses. Then, the testator in the presence of these witnesses shall sign the will or place his fingerprint after declaring that this is his will.

Book 4 enables the testator to entrust the will that he devised with his own hand to the court or notary, the will devised in the presence of the witnesses or the court or notary will in an open or sealed envelope. When the will is made in court or before notary, the court or notary shall keep a special register for wills.

Regarding the waiver from the will, which in practice usually is done by the female gender to the benefit of the male gender, mostly as a consequence of insufficient awareness and as a consequence of custom law and traditional relations within the family and society, and less as a result of the non-implementation of the law, based on the new regulation according to Book 5, waiver from the will applies only to the inheritor who waives such right but not also to his/her successors, and this is different from the current law, based on which, the waiver also applies to the successors of the one who waived such right .

In addition, according to this book, the successors of the inheritor who waived the right only for himself/herself, who shall be inheritors instead of him/her, may waive the right from inheritance based on the same rules that are applied for the immediate inheritor.

This book is divided into chapters, such as: legal inheritance, orders of inheritance, inheritance based on will, legacy, executors, revocation of will, etc.

Among others, the issues governed until this book include: the general provisions, legal inheritance, orders of inheritance, special provisions for some inheritors, the rights over the household items and the rights of spouse; persons who benefit from the obligation for food and care; mandatory inheritors; calculation of gifts and legacies for inheritance part; inheritance according to will; legacy, executors of the will; revocation of the will;

unworthiness and exclusion of mandatory inheritors; creditors of property and transfer of inherited property to inheritors.

Transitional and final provisions of the Civil Code are at the end of book five. In fact, regarding book 2, there is a special sub-chapter on transitional provisions. Specifically, it is important to clarify that these contracts, even though they are not included in the Civil Code, will remain in force through the transitional provisions. At the very end, article 1630 provides that Civil code shall enter into force 1 year after the publication in the official gazette.

The draft civil code was drafted by the working group headed by the general secretary and the legal department of the Ministry of justice. The drafting of the code throughout the time was supported by the experts of EU project “Civil code - Phase 2”, as the main donor, experts of USAID project on property rights, judges, notaries, lawyers, and throughout the process were consulted experts of the area and representatives of the civil society in the Republic of Kosovo.

The working group for drafting the draft civil code of Kosovo was comprehensive. University professors from civil area, representative from civil society, representatives from the Ministry of labor and social welfare, representatives from EU office in Kosovo, representatives of OSCE, UNDP, UNICEF, USAID and other international organizations.

Finalizing of the draft Civil code of Kosovo was followed by a consultation process which was very transparent was done electronically. The opportunity to give comments was given to all the citizens of the Republic of Kosovo and various experts through the electronic platform published in the webpage of the government of the Republic of Kosovo and the Ministry of Justice.

The consultation of draft Civil code was done in full compliance with Regulation Nr.05/2016 on minimum standards for the process of public consultation.

The draft Civil code, in accordance with the relevant applicable regulation, was also sent for preliminary consultations with institutions and other relevant stakeholders.

Course of consultation process

The first meeting of the working group for drafting the draft Civil code was held in March 2018, in the premises of the Ministry of Justice. Through this meeting the members of the working group were informed by the general secretary of the Ministry of Justice, as the chairperson of the working group, about the importance and next steps that will be taken upon drafting the draft Civil code.

Considering the importance and priorities of the Minister of justice that the initial draft Civil code should be drafted with increased intensity, the Ministry of Justice, supported by the EU Project "*Support for Civil Code of Kosovo- Phase 2*" from June until the end of July 2018 organized regular meetings of the working group for drafting the Civil code, and meetings were held on Wednesday in "*Hotel Sirius*" in Prishtina, where all the members of the working group were invited. Throughout these meetings the draft books of the Civil code were revised one by one, and they were mainly presented by the experts of the draft Civil code. During this period, awareness-raising campaigns were organized in Prishtina, Peja, Mitrovica, Gjakova, Graçanica etc.

The initial draft Civil code was sent to the Ministry of Justice at the end of July 2018.

The phase of finalizing the draft Civil code started in September 2018, by organizing meetings of working group that were held until the end of 2018.

The meetings were held every Friday in "*Hotel Sirius*", in Prishtina, where the representatives of courts, chamber of notaries, bar association and Ministry of labor and social welfare, USAID program for property rights, etc., presented their opinions.

In the meetings of the working group were reviewed the open issues of all books of the draft Civil code.

The Ministry of Justice in cooperation with EU project "*Support to drafting the Civil code and regulating Property issues*", in November 2018 organized a meeting with the representatives of the Ministry of labor and social welfare on aspects related to the Civil code, that relate to their area of expertise, with special emphasis on the Family book, specifically cases of sheltering and adaptation.

In general, during 2018, 27 meetings of the working groups and 7 informative campaigns (in various cities of Kosovo) were held, regarding the importance of the Civil code and its impact on the society. On this occasion, we find that the process of drafting the draft Civil code was a very transparent and comprehensive process.

From 05.02.2019 until 19.02.2019, the draft Code was in the phase of preliminary consultations with relevant institutions and other stakeholders, as specified in article 7 of the Rules of procedure of the government of the Republic of Kosovo N0. 09/2011. We received comments from some institutions and other relevant stakeholders. The draft code was forwarded for public consultation from: 22.02.2018 until 14.03.2018 , in accordance with article 32 of the above Rules of procedure and the provisions of the Regulation no. 05/2016 on minimum standards for the public consultation. After these two phases, a special two-day meeting of the working group was held where all comments from institutions, organizations and public were reviewed and the decision was made which comments will be incorporated in the draft and which will not. In both variants, the rationale was provided.

After these processes, the final draft of the draft civil code was prepared in accordance with the Administrative instruction on the standards for drafting normative acts, the requests for legal opinion on the assessment of compatibility of the draft Civil code with the EU legislation, which was sent to the Ministry of European Integration and the request for the assessment of financial impact, which was sent to the Ministry of finance, and from both institutions we received the opinions, explanatory memorandum, table of concordance and other accompanying documents.

It is considered that the consultation in writing and through electronic platform has been a suitable means for receiving contributions from the stakeholders.

Methods of consultation	Dates/Duration	Number of participants/contributors
• Preliminary consultations	05.02.2019- 19.02.2019 15 working days	20
• Preliminary consultations	22.02.2019- 14/03/2019 15 working days	3 writing, other public.
• WORKING GROUPS		
• Meetings of working groups regarding the rules of procedure,	07.04.2017 – 21.07.2017	33

preparation of materials, review of various topics for the establishment of sub-working groups for the 5 books of the Civil code and the conclusion of conceptual issues that relate to the Civil code.		
Meeting of working group regarding the decisive issues of Civil code	08.02.2018 – 30.03.2018	23
Meetings of working group for discussion on Book 1, General section of the Civil code	13.04.2018 – 13.06.2018	21
Meetings of working group on Book 2, Obligations.	13.06.2018 – 20.06.2018	19
Meetings of working group on Book of Property	20.06.2018 – 04.07.2018	27
Meetings of working group on Book of obligations	04.07.2018 – 11.07.2018	24
Meetings of working group on Family book	11.07.2018 – 25.07.2018	22
Meetings of working group on Book of property	25.07.2018 – 31.07.2018	26
Meeting of working group of Civil code related to the framework of the Civil code	31.07.2018	25

Meeting of working group for the general framework of Civil code and planning of further work	21.09.2018	15
Meetings of working group regarding open issues in Book 1 of General section	12.10.2018	23
Meeting of working group regarding open issues in Book 2, Obligations	19.10.2018	26
Meeting of working group regarding open issues in Book 3, Property	24.10.2018	27
Meeting of working group regarding open issues in Book 4, Family and Book 5, Inheritance	26.10.2018	26
Meetings of group for summary of open issues for all books of Civil Code, linguistic aspects, list of definitions, references, etc.	02.11.2018 – 23.11.2018	25
Meeting of working group for the Civil code and its impact on judiciary	05.12.2018	24
Meeting of working group: Interaction of books, language and impact on Civil code on other legislation	07.12.2018	19
Meeting of working group for the Book on family and inheritance	14.12.2018	21

Meeting of working group for Book 1, General section	21.12.2018	14
Meeting of working group for reviewing all books	28.12.2018	12
Meetings of working group for summarizing the drafting of Civil code	11.01.2019 – 18.01.2019	49
Round table on the consultation process and update of Civil code	20.02.2019	36
Meeting of working group about the gathered comments during the process of public consultation	19.03.2019 – 20.13.2019	28
Meeting of working group to finalize the rational and to incorporate the received comments for draft Civil code.	05.04.2019 – 10.04.2019	12
Public consultation for the gathered comments	17.04.2019	31
Events		
Path toward a modern civil code	12.10.2017, Prishtinë	63
What does Civil Code mean for you	16.03.2018, Prishtinë	40

• Gender equality in Civil code	30.03.2018, Prishtinë	65
• Civil code and its impact on economy: Contracts and other property rights	03.05.2018, Prishtinë	49
• Family law and inheritance law through a modern Civil code	30.05.2018, Pejë	72
• Will a modern Civil Code bring new challenges to legal professionals	01.06.2018, Prishtinë	41
• A modern civil code stands for diversity and opportunity	26.06.2018, Mitrovicë	75
• Impact of a modern Civil code on the legal order in Kosovo	19.09.2018, University of Prishtina, Prishtinë	70
• Civil Code has an impact on the legal status of citizens	17.10.2018, Gjakovë	38
• Case law of lawyers in civil law	31.10.2018, Prishtinë	78
• Legal and judicial cooperation in civil matters	29.11.2018, Hoteli Sirius, Prishtinë	44
• Civil code stands for equal citizens of the Republic of Kosovo	12.12.2018, Graçanicë	38
• Path toward a modern Civil Code	24.01.2019, Prishtinë	118

Public debate: Impact of new Civil Code on daily lives of people	26.02.2019, Prizren	52
Public debate: modern Civil Code will make Kosovo more accessible, credible and equal for all citizens	14.03.2019, North Mitrovica	19
Public debate: modern Civil Code and its impact on the daily lives of citizens	14.03.2019, south Mitrovica	42
Public debate: modern Civil Code stands for equality and inclusion	21.03.2019, Graçanicë	22
Study visit on Civil Code in Holland	26.05.2019 – 30.05.2019	21

Summary of comments received during the consultation process

The comments for draft Civil Code were provided in writing by the stakeholders through direct communication by the stakeholders. Through email were given relevant proposals by EU office, UNHCR, OSCE, MLSW, lawyers, Institution of Ombudsperson, UNDP, USAID, BIRN, CSGD and CEL KOSOVO etc.

Other issues

All received contributions were reviewed one by one by the legal department of the MoJ, Cabinet of the Minister and experts of EU project. All received contributions were reviewed individually, whereas the detailed report on the received comments, contributors and status of contributions were presented in their entirety in annex no. 1 of this report, in tabular form of comments.

Next steps

The draft Civil Code was finalized and forwarded to the government on 08.07.2019.

DRAFT CIVIL CODE OF THE REPUBLIC OF KOSOVO AND REVIEW OF COMMENTS				
Topics of consultation	Comments	Who has commented	Status of Comments - Accepted; Partly accepted; - Not accepted	Comments (Comments on acceptance, partial acceptance and non-acceptance of the comments is mandatory)
Name of the Law	DRAFT CIVIL CODE OF KOSOVO			
General Comment	To review Article 845, paragraph 3 because it is unclear. Article 887, Subchapter VI - "Acquisition by decision of the Court or another Authority, harmonization of terminology, because in the following article the term body is used. Article 925 Illegal possession/occupation of immovable property, is qualified as a criminal offence by with the Criminal Code, therefore here should not be specified only the offense. Article 942, paragraph 3 Registration of data.... restrictions or charges (the proposal)	USAID, PRP Program	Accepted Accepted Accepted Accepted	To harmonize with 888 and 889. In the title of Article 888, the term authority will be replaced by the term state body. <u>Article 925 is reformulated as follows:</u> <i>"The holder may refuse to return the property until the payment of the costs owed to him. He has no right of retention if it has acquired the object by intentional illegal action"</i> <u>Paragraph 3 of Article 942 is reformulated as follows></u> "3. Registration of data, restrictions, charges and remarks in the register of rights on

	Article 943 The office for registration o Immovable Property Rights does not create, alter or abolish the rights. It only registers the rights created in paragraph 1 of the previous article. In addition, the English version of this paragraph does not correspond to the Albanian version. There is no ... of APRP. Article 1488 This article can be joined - combined with Article 1498 since they have the same content. Article 1491 Should there be called just the infants or even his/her spouses. Ex. Case Shyhrete (same issue is the comment of BIRN also). Article 1540, paragraph 3 The remove the part that says one		Partially accepted. Partially accepted Not accepted Accepted Accepted	immovable property is subject to the criteria in the applicable laws for registration of rights on immovable property." It is true that the Office of the registry of rights does not create, modify or extinguish rights, but the right on immovables, is acquired at the time of registration in the immovables register. The provisions of Article 943 have been reformulated to be better understood. "If a holder of a right on immovable property filed an application to acquire, change or termination of a right in immovables register, his application remains valid even if his right is limited after the filing of the application at the office of the register rights on immovable property " Article 1488 Article 1488 sets out the principles, who may be heir, where the municipality, or the state is an heir. Whereas in the Article 1498 we have the explanation that shows the order of inheritance, where after the third order comes the municipality. A difference between these two articles is in the content. Article 1491 This article is regulated below,
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	of the names. Article 1578 Incompetence must be established by the court and not by the notary. Article 1592 To add a word at the same time – accepted. Article 1604, paragraph 1. What is the inappropriate time? Article 1615, paragraph 1. Carefully analyze whether a property right can be presumed to be immovable through the title deed when it is known that the title deed system has been replaced by cadastral documents (possession lists) many decades ago		Not Accepted Accepted Accepted Accepted	because there are comments from other organizations as well.. Article 1578 The unworthiness will be ascertained by the notary in the moment of the opening of the will if the unworthiness is emphasized in the Will by the Heir. Therefore, this is also the competence of the notary while it is a non-contested procedure. If the procedure takes a contested character, so when the heirs do not admit that they are unworthy of inheritance, in this case the Notary refers the case to the contested procedure to the court. Article 1578 remains unchanged The word " inappropriate" deleted Article 1615 is deleted .
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General comment	Article 1164, The Cohabitation of a man and a woman 1. The cohabitation of a man and a woman is a factual relationship between an unmarried adult man and an unmarried adult woman who openly live together, characterized by the common life and work that constitutes a character of stability and continuity. This provision in the Family Law, which is now applicable, is better written, therefore I propose that the provision be amended as follows: 1. The factual (extra marital) relationship is considered the actual relationship between man and woman living in couples, characterized by a common life that constitutes a character of stability and continuity. Article 1167 Married spouses I propose that paragraph 2 of Article 1167 be deleted. Article 1167, (2) Marriage is related to a permanent purpose. This legal provision is unnecessary when the purpose of marriage is understood, even	UNDP,	Not accepted Not accepted	Article 1164 This article was given special care in drafting because there were several terminologies that were used for the same legal institute as "actual community", "extramarital community" and "cohabitation". Provision of the article 1164 is clear enough and understandable for implementation. Working group has discussed it several times and have agreed with this content. For this provision of cohabitation (11 and the marriage, there are separate opinions of international experts Alfons Lentze and Kerstin Niethammer-Jurgens. With this opinion it is requested that the Article 1138 - marriage and Article 1164 - cohabitation, to use the neutral term in terms of gender only: 'Spouses'. The comment is attached to this table. Article 1167 When bearing in mind that there is no temporary marriage then it should be specified that the marriage is getting into with permanent purpose. The word purpose deliberately let the possibility that the marriage can be dissolved. In the article 1167

	though marriage is a continuous life communion between man and woman. Article 1169 Settlement, household, occupation 1. Married spouses, by agreement, decide on their place of residence. 2. Married spouses, by agreement, decide on the management of the common household. 3. If one of the married spouses who are in agreement with each other is responsible for maintaining the home, he or she shall manage the house on his/her own responsibility. Paragraph 3 of this paragraph is unnecessary, since item 2 covers it, so I propose it to be deleted. Chapter IV - Property Relations of Spouses Article 1170 Property regime in marriage and cohabitation The provisions of this chapter refer only to the property regime in marriage but not in cohabitation. Article 1186 Dissolution of marriage		Not accepted Accepted Accepted	the expression marriage is "continuous life union" that means that it is not permanent nor temporary, because it can end under the conditions specified by the law. i.e. divorce, death of the spouse. Refused because their content is different, Paragraph 2 is wider because it includes entire household, while paragraph 3 talks only about the maintenance of the house.
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1.2. Spouses in marriage which may be separated, should be encouraged to take all applicable steps through marriage counseling, reconciliation procedures provided in this code, mediation, or other ways to preserve marriage;

The term **mediation** should be replaced by mediation because Article 2 paragraph 1. The provisions of this law apply to the mediation procedure in the disputed relationships of the subjects of the law in legal, property, commercial, **family**, labor relations.....

**Review of the legal provision,
Article 1215 of the Code.**

The manner of calculating common property during marriage is to be revised.

I think it is a wrong decision to divide the common property into equal shares.

The contribution of spouses during marriage should be valued in a meritorious way, by calculating the contribution of each spouse to the creation of common property, since the manner provided in this Code is in contradiction with SECOND BOOK - OBLIGATIONS.

In this specific case, one of the spouses will prosper without grounds, Article 268 and 269 of the present Code, which is in contravention of the applicable

Not
Accepted

Not
accepted

Article 1215

There have been two proposals ongoing simultaneously for a long time in the process of drafting the Book of Family. One, the existing proposal in the draft code, that the joint property of spouses may be regulated by a pre-marital or marital contract, in which case if there is no contract, their joint property is considered equal regardless of their contribution. Two, the proposal required by the commentator, which was also in the previous family law. However, during discussions and debates with representatives of institutions, courts, lawyers and citizens, it was found that all were for the first proposal. However, there are also those who require the termination of the contract as a way of regulating the property relations between the

legislation.

Ungrounded acquisition of property is one of the sources of the right to obligations.

Ungrounded acquisition of property is the property generated at someone else's expense and it can be expressed by transferring a part of the property to another's property by paying a sum of money, delivering an item, or committing an action.

It results that the elements that characterize the unfounded property are the increase in property on one hand and reduction of property on the other.

This means that a person's property has been increased to the detriment of another's property.

If the common property after the divorce is divided into equal shares, while not considering the work of each of the spouses separately, their own contribution during the marriage, I consider that all elements of ungrounded acquisition of property.

The obligation to return or reward also arises when a person accepts something on a legal basis that, at the time a legal relationship arose such legal basis existed but later on it disappeared.

Thus, even if there is a valid legal basis at first, but later it is canceled, it follows that even in this case we are dealing with ungrounded acquisition of property.

spouses and for remaining of the proposal that the joint property of the spouses acquired during the marriage is just equal regardless of their contribution.

	Careful consideration should be given to articles on human rights that should be in line with the Constitution of the Republic of Kosovo, specifically with Chapter II of the Constitution of the Republic of Kosovo, Fundamental Rights and Freedoms; To reformulate Article 5 of the Draft Code to be more comprehensible and have legal clarity; Throughout the text of the draft code where the phrase " persons with limited abilities " is mentioned should be replaced with the expression "persons with disabilities" in accordance with Chapter II of the Constitution of the Republic of Kosovo, Fundamental Rights and Freedoms, namely Article 24 (paragraph 2) ; . The expression "diagnosed diseases" should be defined for the purpose of this code; In Article 3 (paragraph 1.3) in Foster care, the expression "special" should be replaced by expression "alternative" because foster care is an alternative form of protection;	PMO	Accepted Not Accepted Accepted Not Accepted Not Accepted	During the work of the working group, attention has always been paid to the protection of human rights in accordance with the Constitution of the Republic of Kosovo and other international acts. The draft code is harmonized with these legal acts. Article 5 is clear enough for the purpose of the Civil Code The draft code will regulate the expression and other similar expressions, so that the expression "Incapacity to act ", will be used unless specifically asked to for something else. There is also a proposal by the EUSR, to use the expression 'mental impairment' ' This expression is self-understood and is being used depending on the case that is required. Nobody can be considered as suffering from any disease, unless this is proven by diagnosis from the relevant doctor/specialist. So in the context of the Code, diseases that are not diagnose by doctor are not accepted. Definition is taken form the law and definition is the Code is also Foster care.

	The principle of non-discrimination, respect for the child's perspective, gradual development of skills, the best interest of the child, the right to survival and development must be taken into account in the principles of child protection; In Article 1423, the expression "food" is replaced with the word "alimentation" consistently throughout this chapter where the word "food" was used; Abrogating provisions should be listed in a common article (see article 1611, 1623).		Accepted Accepted	Principles of child protection are reflected. See Article 1252 of the Draft Code, the public consultations version. Abrogation provisions of the entire Code will be regulated at the end of the process.
General comments	General comments To take note of the extension of the deadline for publishing the Draft Code for Public Consultation due to the length and importance of the document. Review the entire document to ensure consistency in three language versions of Project Code. Add a chapter to cover the provisions of Private International Law. Add articles to clarify which law or legal act prevails.	OSCE	Not accepted Accepted Not	The deadline of the public consultation it set by MoJ. Throughout the drafting phase of the Civil Code by the working group, public consultations were simultaneously held. Is being worked to harmonize the versions in three languages

	Article 6 shall be reformulated as follows: □ If a law or bylaw of Kosovo is in violation of the Civil Code and / or international agreements and instruments, then the norms set forth in this Civil Code and / or international agreements and instruments will prevail. □ If a bylaw of a lower level is in violation of a bylaw of a higher level, the higher level bylaw will prevail. □ If a bylaw a general nature and a bylaw of a special nature of the same level regulate the same matter differently, the norms of the bylaw of a special nature will prevail. □ If a bylaw is in conflict with another bylaw of the same level and both bylaws are of a general nature or of a special nature, the recently issued bylaw will prevail. Article 22 - Announcement of the Missing Person • A provision should be included regarding the abolition of the status of missing person with this statement "at the request of any person who has a legitimate interest, the court may abolish the status of the missing person". • To explain whether they will remain the same as the provisions of Law no. 03 / L-007 on non-contentious procedure.		accepted Accepted	This issue is to be regulated by other legal acts. In the Kosovo Assembly is an ongoing legislative initiative about the hierarchy of legal acts. Article 22 Another paragraph with this proposal is going to be added. The article 22, after the paragraph 1, the paragraph 2 will be added, as following 2. Upon request of any person that has any legal interest, Court can abolish the status of the missing person. Paragraph 2 becomes paragraph 3. Regarding procedural provisions in the Law No.03 / L-007 on non-contested procedure paragraph 2 of
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Article 22 provides for the process of announcing a missing person. However, the Civil Code does not include any provision regarding the abolition of the status of the missing person since Law no. 03 / L-007 on non-contentious procedure includes this in Article 583.

Therefore, we propose to amend and supplement the Civil Code to include the following provision "at the request of any person who has a legitimate interest, the court may annul the status of the missing person".

In addition, to clarify whether the provisions regarding the announcement of missing persons and the announcement of the deceased person regulated by Law no.03 / L-007 on non-contentious procedure will remain in force after adoption of the Civil Code.

Article 57 Time limited Legal affairs

- To add a new paragraph to specify how the length of time will be calculated.

7."For the sake of legal clarity, we suggest amending and supplementing Article 57 by adding a new paragraph which will specify the way the extension of time limit is calculated.

The proposed paragraph may stipulate that "if the time limit is extended, it begins after the last

this Article has explained that the procedural aspects shall continue to apply. While it is self-understood that by the adoption of the Code, articles that are of the material nature that are regulated in this Code shall apply.

We will look for a complement to the transitional provisions so that the material provisions that are transferred from the Law on non-contested procedure shall apply under this Code.

Partially
accepted

It is understood that the extension of the deadline is new beginning of time / period that begins after the expiry of the last day of the preliminary period. However, such a new paragraph can be added so to create the supplementation of any misunderstanding.

Article 57

The wording in the paragraph 4 "if the deadline is extended, it begins after the last day of the expiry of the first deadline".

Not
Accepted

day of the expiration of the first time limit".

Chapter V – Representation

- To add two new articles to provide a provision that covers the cases when action is taken by the representative after termination of the representation.

8. For the sake of legal clarity and to protect transactions, we suggest adding two new articles to specify the legal effects of action taken by the representative after the representation has ceased.

The proposed paragraphs may point out that.

"3.The transaction that was attempted after the termination of the representation by a representative who was unaware of the termination is valid both to the representative and his successors, unless the third party knew or should have been aware of the termination of representation " and "

4. If the representative, at the time of the transaction with the third party, knew that the representation was interrupted, the party represented before the third party had been interrupted may in some circumstances be obliged to pay reasonable compensation if it was reasonable to disclose the termination to the

Accepted

Book 2 – Obligations, regulate work beyond the authorization, and the works of others without order.

A new paragraph will be added to the Article 73
Article 73, paragraph 7

2. Statutory Limitation also applies to the persons with limited capacity to act when they have a legal

	third party. Chapter VI – Statutory limitation • To add an article to include statutory limitation for persons who do not have or have limited legal competence. 9. For the sake of legal clarity and protection of transactions, we suggest adding paragraphs to protect the statutory limitation period for persons who do not have or have limited legal competence. Since these people can only act under certain conditions, a special provision will allow them to enjoy their rights and fulfill their obligations better. Therefore, we suggest adding a section that may state that "the statutory limitation also applies to persons who do not have or have limited legal competence. If these persons have no guardian or legal representative, the statutory limitation does not expire at least six months from the moment when they acquire the legal competence or when they have received a legal representative or a guardian. " Article 79 - Suspension and termination of statutory limitation • To reformulate Article 79 (2) in			representative. In case they don't have legal representatives, the limitation period expires not earlier than six (6) months when they gain full capacity to act, or when they have received a legal representative or guardian.
			Accepted	
			Not Accepted	Legal reasons also include force majeure. However this expression can also be added in order to get more clarity. Article 79, after the word, due to some other legal reason, the word "force majeure".

English to be made clearer.

- Add "force majeure" in Article 79 (2).

10. For the sake of legal clarity we suggest the reformulation of paragraph 2 of Article 79 in the English version to emphasize "If the period of statutory limitation could not start for any legal reason, it will begin to count from the moment when this legal reason ceases to exist".

11. Moreover, we suggest adding "force majeure" in this paragraph along with some other legal reason in order to give it a wider effect.

BOOK TWO - OBLIGATIONS

Article 122 - Sanction for lack of necessary form

- To change the title of article 122 as follows: "Invalidity of contract due to lack of required form".

12. Article 122 in both paragraphs clearly states that if the contract is not drafted in the form required by law, then it will be considered invalid.

However, the title of Article 122 does not reflect this.

Therefore, for the sake of legal clarity, we propose changing the title of article 122 as follows:

"Invalidity of contract due to lack of required form".

Article 124 - Drafting of the document

Accepted

The relevant Article and title are reflection of the article 55 of the LOR, so the title reasonably clarifies the matter regulated by the following provisions.

The comment shall be reflected in the Paragraph 2 of this article as per the proposal.

• Amend Article 124 (2) as follows:

"The contractor who is illiterate shall put his fingerprint on a document certified by two witnesses or by a court or other institution that has the authority only after the document in question has been read to him.

13. Article 124 (2) states that "the contractor is illiterate shall put his fingerprint in a document certified by two witnesses or by a court or other institution".

There are two issues related to this provision that we would like to bring to the attention of the draftsman.

First, the word "reading" is missing, and in our opinion it should be added.

Secondly, and most importantly, this provision does not provide the possibility for the party or parties to hear what is written in the agreed document and what they are signing.

Therefore, for the sake of legal clarity and to ensure the rights of contracting parties, we propose to amend Article 124 (2) as follows:

"The contractor who does is illiterate shall put his fingerprint on a document certified by two witnesses or by a court or other institution that has the authority only after the document in question has been read to him.

Accepted

Not
accepted

Article 141 - Conclusion of the contract by an unauthorized person

- To delete the word "directly" in Article 141 (1).

14. Article 141 (1) states that "a contract concluded by a person as a representative of another person without authorization shall not be directly binding on the person represented without authorization unless the latter subsequently ratifies it.

The ratification must be in the same form as is required for the conclusion of the contract. "

The word "directly" used in this paragraph is unclear and leaves room for misinterpretation, if the contract is concluded without the authorization of a person as a representative of another person, it may be mandatory indirectly and this creates legal uncertainty for the parties.

Therefore, for the sake of legal certainty, we suggest that the word "directly" be deleted in Article 141 (1).

Article 390 - Compensation of Claims for Corruption

- Modify Article 390 to extend the statutory limitation period from fifteen (15) to twenty (20) years.

15. Article 390 states that the statutory limitation on the initiation of a claim by an injured party if the damage is caused by

Not
accepted

This article reflects article 359 of applicable LOR and the Working Group has not considered change of the statutory limitation for initiation of claims

an act of corruption (acceptance or request of bribes or any other benefit) is limited to fifteen (15) years after the commission of the offense.

We consider that the statutory limitation period of legal restriction in this article is not in accordance with the legal restrictions provided by the Criminal Code of Kosovo on corruption cases.

For example, Article 421 (Acceptance of bribes) of the Criminal Code of Kosovo provides that the punishment for these cases shall be up to twelve (12) years imprisonment 4., while Article 99 (1.2) of the Criminal Code of Kosovo states that the statute of limitations is twenty (20) years from the commission of a criminal offense punishable by more than ten (10) years of imprisonment 5. Therefore, in order to comply with the Kosovo Criminal Code, we suggest amending and supplementing Article 390 to extend the statutory limitation period from fifteen (15) to twenty (20) years.

Article 681 – What does it consist of:

- To change the title of Article 681 as follows:

"Responsibilities of the constructor and designer for the solidity of the building"

16. Article 681 emphasizes the obligations of the contractor and

Not
accepted

This article and title reflect article 658 of applicable LOR. If you see title related to the Su-chapter IV then it is clearly noticeable the relation of title with the provision.

Not
accepted

Article 878 contains provisions designed to create legal certainty. Article with similar content is also provided in the Law on Property Rights and Other Real Rights. A similar provision is found in other civil codes in Europe, including the German Civil Code. These provisions do not contradict those of the Law on the Establishment of the Immovable Property Rights Register, and do not constitute any additional grounds for

designer for the solidity of the structure and the deficiencies of the land where the construction is planned.

However, the title of this article does not reflect this.

Therefore, we suggest changing the title of Article 681 to read "Responsibilities of the constructor and designer for the solidity of the building".

BOOK THREE - OWNERSHIP AND OTHER REAL RIGHTS

Article 878 - Pre-emptive gain through registration in the register of immovable property rights

- Review Article 878 to include the protection of property rights of persons residing outside of Kosovo.

17. We recommend reviewing Article 878 as this provision may risk the property rights of persons residing outside of Kosovo and has the potential to affect everyone living in Kosovo.

Applicable law no.04 / L-009 on the Establishment of the Register of Immovable Property Rights,

such registration. Drafters have extended the term of 20 years as it has been in the applicable law onto 30 years to prevent any situation that the commenter refers to the implementation.

The provision does not contradict Article 877, as the same speaks of acquisition of ownership through winning prescription by means of retention. Whereas, in Article 877 we have registration as an additional request, in addition to the time limit and unlimited access.

Not
accepted

amending and supplementing Law no. 2002/05 & Law 2003/13, Article 4, paragraph 3.7. the immovable property shall be registered on the basis of:

"The final court decision; decision of the state administrative body; contract for the transfer of the right of immovable property certified by the competent body; decision or privatization contract issued by the Privatization Agency of Kosovo; the decision of the Commission for the Reconstruction of the Cadaster; the Commission's decision on land arrangement; and other document that through separate laws provides for the registration of property rights".

Therefore, it is legally impossible for a person to be registered as an owner of an immovable property without first acquiring ownership.

Therefore, we recommend reviewing the abovementioned provision of Article 878 as it may adversely affect the property rights of persons residing outside Kosovo, including the diaspora and displaced persons in particular, and leave room for more complications in the already complicated regime of property rights in Kosovo.

In addition, this article is not harmonized with the aforementioned Laws and contradicts Article 877 of the Civil Code.

Given the practice and experience

Not
accepted

Article 1287

Adoption creates parental relationship between adoptive parents and adoptees. This issue is regulated in the article 1290

Protection of the child's interest is regulated and protected by many provisions of the Draft Code. Specifically, the child's interest in the child's upbringing is set out in Article 1290, which states that "adoption of a child is permitted if it serves the well-being of the child and if a parent-child relationship is to be established between the adoptive parent and the child".

It should be added that the concept of adopting and protecting the child's adopted interests are regulated as follows:

so far, it is highly likely that property titles will be changed in the Register of Immovable Property Rights through illegal actions by individuals or groups, creating legal opportunities for those who seek to benefit from criminal activities for affected individual property rights			✓ Definition of adoption is in Article 1287 paragraph 1 ✓ The authority that decides on adoption is in Article 1288 ✓ Child's participation is dealt with in Article 1295 ✓ The best interest of the child is dealt with in Article 1290
BOOK FOUR - FAMILY			
Article 1287 Mediation in adoption		Not accepted	
• Modify Article 1287 to be gender neutral and to include a specific reference to the very important principle of the best interest of the child.			
18. The best interest of the child is a central element of international law on the rights of the child 6 and of the international law on adoption 7.			Article 1288
To further strengthen the previous provision in Article 1126, which states that the best interest of the child will be taken into account, we recommend once again the best interest of the child. In particular, we recommend replacing "The purpose of mediation of adoption is to reach the placement of a child without parental care, under the parental care of a person who wants to take the child under his care and responsibility" with "Mediation of adoption is the placement of the child without parental care under		Accepted	Article 1288 clearly states that the establishment of adoption is in the competence of the court. However, there is a competent central authority in the Ministry of Labor and Social Welfare that deals with international adoption procedures and prepares the opinion for the court. Thus, this competent authority for adoption communicates in cases of international adoption, but the decision for adoption is always taken by the court, in a procedure provided by law, and in accordance with the international conventions on adoption.

the care of a person who wants to take the child under his or her care and responsibility, ensuring that adoption is in the best interest of the child. "

Please bear in mind, the suggested language here includes both the female and male pronoun, emphasizing "under his or her custody".

Article 1288 - Competent Authority for Adoption

- Amend article 1288 to specify that adoption is exclusive jurisdiction of the courts, and specifically to determine which Kosovo institution serves as the Central Adoption Authority.

19. The issue of arbitrary enforcement of the two different adoption procedures in Kosovo is also noted, which constitutes discrimination without justification 8.

While paragraph 1 states that "the adoption procedure is within the jurisdiction of the court," this leaves open the possibility for interpretation that other authorities may exercise jurisdiction over adoption procedures. 9 Therefore, we recommend strengthening this provision by replacing it with "adoption is the exclusive competence and exclusive authority of the courts".

The central authority is the mechanism that in these cases has the power to ensure the child's interest and thus does not give consent that is not in accordance with The Hague Convention.

Accepted

20. Article 11.25 of the Law on Social and Family Services in Kosovo¹⁰ expresses Kosovo's intention to act in accordance with the Hague Convention on the Protection of Children and Co-operation Concerning Inter-State Adoption (Hague Convention on Adoption) 11.

All States Parties to the Hague Convention should designate the Central Authority to ensure that the adoption process is preserved in order to protect the best interests of the child, biological parents, and adoptive parents involved in inter-state adoptions.

Each Central Authority is responsible for solving issues arising from inter-state adoptions, and publicly posted on the Hague Conference website¹².

It is therefore essential to determine specifically which Kosovo institution serves as the Central Authority, as it has significant legal implications for that determination.

Article 1306 - Citizenship of the Adopter

- Amend article 1306 to protect the child if adoption is not allowed in the country of the foreign citizen / resident.

21. Paragraphs 2 and 3 of Article 1306 lay down the conditions for adopting a child by a foreign national.

However, in addition to the prior

Article 1314

It is added in the text of the Code so that in addition to the minutes, the Court's decision on allowing or refusing adoption should be expressly expressed.

consent of the administrative body regulated in paragraph 3, there is no other provision that protects the child's interest. In other words, if adoption is not legally permitted in the country of a foreign citizen, or even when allowed, but this is insufficient to guarantee the rights of the child, there are no other measures to secure the rights and best interest of the child. Therefore, we suggest adding a provision requiring adoptive parents to be from a State party to the Hague Convention on Adoption, and in which the Convention has entered into force as set forth by the Hague Conference¹³.

This addition is consistent with Kosovo's intention to comply with the Hague Convention on Adoption¹⁴.

The Central Authority, mentioned above in its comment on Article 1288, can ensure that adoption by a foreign citizen / resident is in accordance with the Hague Convention on Adoption, and then the court can approve the adoption.

Article 1314 - Minutes Article 1315 - Registration

- Amend article 1314 by deleting the phrase "minutes establishing adoption" with the words "establishing adoption".
- Amend article 1315 by replacing the word "minutes" with the

	words "court decision". 22. Article 1314 foresees the elements that should be included in the minutes held by the court during the adoption process. However, the court decision is the one that will establish the adoption rather than the minutes. Therefore, in order to avoid any confusion or misinterpretation of the provisions of articles 1314 and 1315, we suggest replacing the phrase "the minutes on establishing adoption" with the "establishing adoption". 23. Article 1315 states that "The competent court shall immediately send the minutes on establishing the adoption to the competent body for registration in the post-birth register, the party and the Custodian Body. The adopting party is registered as the parent of the adopted". We suggest to change this article by replacing the word "minutes" with the words "court decision", which should be the document from which the rights and obligations derive. In addition, confidential and personal data are better protected in a court decision. A table with identified language errors was presented in Albanian and Serbian			
General comments	The Book Four of the Civil Protocols regulates family relationships. Three of the family relationships regulated in this book are <i>marriage</i>	Ombuds person	Accepted	There is harmonization of the terminology for "sex" and "gender" differences, using the term "sex" because the meaning of gender in the family book has another context.

(Book Four, Part Two, Chapter II), *Engagement* (Book Four, Part Two, Chapter I), and *Cohabitation* (Book Four, Part Two, Chapter II Subchapter V). Of these three relationships, the relationship of marriage is paramount, in the sense that engagement and cohabitation are defined at its basis.

All three relations are defined in Civil Code as a *mutual relationship between persons of different sexes or gender*. See, respectively, Article 1138, par.

1 ("Marriage is a legally registered community between two spouses of different sexes through which they freely decide to live together as a husband and wife"), Article 1133 ("The engagement is a joint promise of two persons with opposite gender to marry in the future ") and Article 1164, par.

1 ("The cohabitation of a man and a woman is a factual relationship between an unmarried adult man and an unmarried adult woman, who openly live together, characterized by life and work that constitutes a character of stability and continuity").

In the following comments, the Ombudsperson presents some concerns about the definition of these relationships on the basis of sex or gender. The Ombudsperson's concerns are mainly based on human rights as defined by the Constitution,

Regarding the minimum age for marriage, there are thought that the minimum age to be 18 and not to allow the opportunity of entering into marriage with emancipation, although this solution has existed in the previous legislation Clarifications are given above in this regard because they have been done by other organizations as well.

	applicable laws and international instruments.. 1. Is there a potential conflict between the definitions of engagement and marriage Article 1138, par. 1 of the Draft Civil Code defines the <i>marriage</i> relation based on <i>sex</i>: “Marriage is a legally registered union between two spouses of <i>opposite sex</i>, whereby they freely choose to live as husband and wife” (emphasis added). Whereas article 1133 of the Draft Civil Code defines <i>engagement</i> based on <i>sex</i>: “Engagement is a mutual promise of two persons of <i>opposite gender</i> to enter into marriage in the future” (emphasis added). However, Law No. 05/L-020 on Gender Equality makes it clear that sex and gender are two separate concepts. Under this law, the concept of sex refers to “biological and physiological characteristics that define men and women”, whereas the concept of gender refers to “socially constructed roles assigned to women and men, which is an acquired identity that is learned, changed over time, and varies widely within and across cultures” (<i>ibid</i>, article 3, par. 1, subparagraph 7 and 8). Based on these definitions, it is completely possible for a person		Accepted	There is harmonization of the terminology for "sex" and "gender" differences, using the term "sex" because the meaning of gender in the family book has another context.
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to have opposite sex and gender. In addition, it should be noted that this is not only an abstract or theoretical possibility: Ombudsperson had such complainants in the past and most certainly will have them in the future, as well.

Due to the difference between the concepts of "sex" and "gender" under the law, the discrepancy between the definitions of engagement and marriage in the Draft Civil Code may result in a couple having the right to *engagement*, without having the right to *marriage* at a later date. And, while the legal purpose of engagement of two persons is "to enter into marriage in the future" (*ibid*, article 1133), the Ombudsperson considers that such discrepancy should be amended in the latest version of the Code, *if the definition of marriage and engagement based on sex and gender is maintained*.

2. The definition of marriage, engagement and cohabitation relations based on sex or gender represents a violation of the right not to be discriminated against on grounds of sexual orientation

Nevertheless, the Ombudsperson considers that irrespective of the discrepancy highlighted above in point A, the Draft Civil Code should define the three relations in discussion without referring *neither to the concept of sex nor the concept of gender*. In other

Not
accepted

The comments made by the Ombudsman are the same as the requests of some other organizations to allow the possibility of marriage between persons of the same sex. The answer to these comments is provided below in this document, in comments made by other organizations. The issue of marriages of persons of the same sex is foreseen to be regulated by a special law, as did other countries of the region.

The draft of the Civil Code is in accordance with the Constitution of the Republic of Kosovo as far as the marriage is concerned. With Draft Code it is also paramount that marriages and other unions, meaning those between persons with same sex are regulated by a special law.

Reasoning is as follows:

Article 22 of the Constitution of the Republic of Kosovo, which

words, even two persons of the same sex or gender should have the right for their marriage, engagement or cohabitation be legally recognized in the same manner as the persons of opposite sex or gender. By defining the three relations in discussion on grounds of sex or gender, *the Draft Civil Code constitutes a violation of the right not to be discriminated against on grounds of sexual orientation.*

The right not to be discriminated against on grounds of sexual orientation is clearly defined in the Constitution and the law. Article 24, par. 2 of the Constitution of the Republic of Kosovo provides that: "No one shall be discriminated on grounds of. . . sexual orientation"

In addition, article 3, paragraph 2 of the Law No. 05/L-021 on Protection from Discrimination provides that: "Discrimination is any distinction, exclusion, restriction or preference on any ground specified in article one (1) of this law, which has the purpose of or impact on depreciating or violating the *recognition, enjoyment or exercise, in the same manner as others, of human rights and fundamental freedoms*, guaranteed by the Constitution and other applicable laws in the Republic of Kosovo" (emphasis added), whereas one of the grounds provided in article 1 of this law is also the "sexual orientation"

regulates the direct implementation of international agreements and instruments, stipulates that "*Human rights and freedoms guaranteed by the following international agreements and instruments shall be guaranteed by this Constitution, shall apply directly to the Republic of Kosovo and have priority, in case of conflict, to the provisions of laws and other acts of public institutions*". Among these international instruments in paragraph 2 of Article 22 of the Constitution of the Republic of Kosovo is also included the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols. Whereas Article 53 regulating the Interpretation of Human Rights Provisions states that "*Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted in accordance with the decisions of the European Court of Human Rights.*"

1. Article 37, par. 1 of the Constitution of the Republic of Kosovo, which entered into force in 2008, stipulates that: "*On the basis of free consent, everyone has the right to marry and the right to establish a family in accordance with the law*" paragraph 2, of the same article, states "*Marriage and its resolution are regulated by law and are based on the equality of spouses*". Such constitutional provisions

Depriving homosexual couples of the legal recognition of marriage, engagement and cohabitation clearly constitutes the *legal* definition of discrimination.

It is undeniable that such exclusion "depreciates or violates the recognition, enjoyment [and] exercise, *in the same manner as others*, of human rights and fundamental freedoms guaranteed by... other applicable laws in the Republic of Kosovo" (emphasis added). Indeed, under the current Draft Code, the right of two persons of homosexual orientation to marry, engage or cohabit explicitly does not provide for the recognition, enjoyment or exercise, *in the same manner as persons of heterosexual orientation*.

Therefore, under the requirement provided by the Law on Protection from Discrimination, the definition of the three relations in discussion represents a violation of the *legal* right not to be discriminated against on grounds of sexual orientation. The issue is less complicated at *constitutional* level because the European Court of Human Rights (hereinafter: "ECtHR") has yet to recognize the right of homosexual couples to enter into marriage, under the European Convention on Human Rights (hereinafter "ECHR"). In this respect, *see, for example, Schalk and Kopf against Austria*, Application No. 30141/04

do not even regulate marriage specifically, yet leave room for the same to be regulated by law. Kosovo has issued the Family Law in 2006, Law no. 2004/32, which in Article 14 stipulates that "*Marriage is a legally registered community between two persons of different sexes through which they freely decide to live together for the purpose of creating a family.*" Bearing in mind that the Family Law was in force at the time of adoption of the Constitution and it defined marriage as a "*union between husband and wife*", drafters of the Constitution of the Republic of Kosovo could give emphasis to allowing marriages in among the persons of the same sex, however, the provisions of Article 37 do not make such an emphasis, but use the term "spouse".

2. Although the Constitution of the Republic of Kosovo has entered into force in 2008, so far we have no case of the Constitutional Court of the Republic of Kosovo that disputes the constitutionality of this law, respectively of its articles relating to marriage.

(2010), § 108; *Chapin and Charpentier against France*, Application No. 40183/07 (2016), § 39; and *Orlandi et al against Italy*, Applications No. 26431/12, 26742/12, 44057/12 and 60088/12 (2017), § 192.

The Ombudsperson is aware that under article 53 of the Constitution of the Republic of Kosovo, "human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights".

However, the Ombudsperson considers that the decisions of the ECtHR regarding the issue of homosexual marriages do not provide sufficient ground to ascertain that the relevant provisions of the Draft Code are not discriminating on grounds of sexual orientation. This is because the two specific grounds for the assessment of ECtHR on this matter are not applicable in the Republic of Kosovo.

First, ECtHR ruled not to recognize the right to homosexual marriage because article 12 of ECHR provides that: "*Men and women* of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of

3. If we are referring to the provisions of Article 22 of the Constitution of the Republic of Kosovo, the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols *are provisions of the constitutional level* and should therefore be interpreted in accordance with the judicial decisions of The European Court of Human Rights. Furthermore, according to Article 22 of the Constitution of the Republic of Kosovo they have priority, in case of conflict, to provisions of laws and other acts.

4. Article 12 of the ECHR provides that: "*A husband and wife who have reached the age of marriage have the right to marry and to make a family according to national laws regulating the exercise of this right.*" Therefore, in *Schalk and Kopf v. Austria* (Application No. 30141/04) (2010) The Court did not feel free to find that the non-recognition of homosexual marriages was discriminatory while the Convention only protects the right of marriage between husband and wife. Similarly, the ECtHR also

this right” (emphasis added). While the Convention protects only the right to marriage between man and woman, the Court did not feel free to ascertain that non-recognition of homosexual marriages was discriminatory (see *Schalk and Kopf, op. cit.*, § 55).

However, the Constitution of the Republic of Kosovo differs from ECHR in this respect. Under article 37 of the Constitution: “Based on free will, everyone enjoys the right to marry and the right to have a family as provided by law”. Therefore, unlike ECHR, the Constitution of the Republic of Kosovo, by not explicitly providing that the right to marriage is the right of “man and woman”, does not present any obstacle to ascertaining that depriving homosexual couples of their right to marriage presents a violation of the right not to be discriminated against on grounds of sexual orientation.

The second reason why ECtHR has yet to recognize the right of homosexual couples to enter into marriage is that there isn’t any European consensus to recognize such right. In such circumstances, according to the Court, the Member States enjoy a wider “margin of appreciation” to decide for or against the

found in Chapin and Charpentier v. France, Application no. 40183/07 (2016); Orlandi and Others v. Italy, Applications no. 26431/12, 26742/12, 44057/12 and 60088/12 (2017). As a consequence of these provisions of the European Convention on Human Rights, the European Court of Human Rights in its decisions did not recognize the right of homosexual couples to marry under the European Convention on Human Rights.

From the above, Articles 22, 37 and 53 of the Constitution of the Republic of Kosovo and the provisions of Article 12 of the ECHR should be interpreted in conjunction with one another and in line with the ECHR practice. Therefore, it is difficult to conclude that the fact that the Civil Code draft contradicts the provisions of the Constitution and is discriminatory when defining legal marriage as “a union between husband and wife”, while the provisions of the Constitution are not explicit and while the ECHR disputes and the case law of the ECHR could not have considered it discriminatory in the cases discussed above

As noted above about marriage and cohabitation there is a shared opinion

recognition of the right to homosexual marriage.

Same as the first reason, this reason is not applicable in the Republic of Kosovo. ECtHR has the responsibility to interpret the Convention for all 47 member states of the Council of Europe. For this reason, according to the doctrine of "margin of appreciation" the recognition of new rights, *at regional level of the Council of Europe*, is inevitably limited to cases where there is no wider consensus among member states of the Council of Europe to recognize such new rights. However, this does not present any obstacle for an individual country, such as the Republic of Kosovo, to recognizing a right *at national level*, in accordance with its Constitution and its laws, even though ECtHR established that there is no wider margin of appreciation to recognize such right *at regional level*.

For these reasons, the abovementioned decisions of ECtHR in this field are not decisive in the constitutional consideration of the Draft Code. Instead, in order to ascertain whether the Draft Code, by not permitting homosexual marriages, constitutes a violation of the constitutional right not to be discriminated against on grounds of sexual orientation, the criteria of non-discrimination

of international experts. With this opinion, it is required that in Article 1138 - Motherhood and 1165 - cohabitation be used only the term "spouses", to be gender neutral in terms of gender. The separate statement attaches to this comment table.

defined by the ECtHR should be reviewed at *national level of Kosovo*, and not at the regional level of the Council of Europe.

According to the criteria of ECtHR, “the right . . . not to be discriminated against . . . is violated when States do not equally treat persons in similar situations without providing an objective and reasoned justification” (*Thlimmenos v. Greece*, Application No. 34369/97 (2000), § 44). In addition, in order for such justification to be “objective and reasoned” two other steps must be followed: Firstly, there should be a “legitimate purpose” for such inequality and secondly, there should be a “reasonable link of proportionality between the means used and purpose to be achieved” (“*Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium against Belgium*”, Applications No. 1474/62, 1677/62, 1691/62, 1769/63, 1994/63, 2126/64 (1968), § 10; see also *X et al against Austria*, Application No. 19010/07 (2013), § 98).

In the first step we should ask ourselves whether, by depriving the homosexual couples of legal recognition of marriage, the Draft Code treats “unequally persons in similar situations”. According to ECtHR, there is a positive answer to this question: “couples of the

same sex are as capable as the couples of opposite sex of creating sustainable and committed relationships". Therefore, they are in the similar situation as the couples of opposite sex as far as their need for legal recognition and protection of their relationship is concerned" (*Schalk and Kopf, op. cit.*, § 99).

While in the first step there exists an unequal treatment of persons in similar situations, we should move to the first step and ask ourselves whether legal non-recognition of homosexual marriages has a "legitimate purpose" and if there is "a reasonable link of *proportionality* between the means used (namely, the non-recognition of homosexual marriages] and purpose to be achieved" (emphasis added).

According to the Constitutional Court of the Republic of Kosovo "the proportionality test is provided in article 55 of the Constitution" (Case No. KO131/12, Dr. Shaip Muja and 11 members of the Assembly of the Republic of Kosovo, Judgment, 15 April 2013, par. 127). Indeed, article 55, par. 4 of the Constitution specifies five criteria for the assessment of the

proportionality of the limitation of a human right:

In cases of limitations of human rights or the interpretation of those limitations, all public authorities . . . shall pay special attention to (1) the essence of the right limited, (2) the importance of the purpose of limitation, (3) the nature and extent of the limitation, (4) the relation between the limitation and the purpose to be achieved, and (5) the review of the possibility of achieving the purpose with a lesser limitation.

The Ombudsperson observed that it is nowhere clear in the Draft Code as to which legitimate purpose the non-recognition of homosexual marriages would serve. In addition, it is not clear if the drafters of the Draft Code took into consideration these five criteria when they decided to deprive homosexual couples of the legal recognition of their right to enter into marriage.

The Ombudsperson observed that in absence of such a legitimate purpose for excluding the homosexual couples and in absence of explicit review of the five abovementioned criteria, the Draft Code constitutes a violation of the constitutional right not to be discriminated against on grounds of sexual orientation.

Therefore, the Ombudsperson recommends the Ministry of Justice to review the non-recognition of homosexual marriage during the phase of the Draft Code review.

3. By not giving the homosexual couples any other possibility for legal recognition of their relationships, even if in non-marital form, the Draft Code constitutes a violation of the right to respect for family life.

The right to respect for family life respected is guaranteed by the Constitution: "Everyone enjoys the right to have her/his ... family life respected" (*ibid*, article 36, par. 1). In the same manner, ECHR provides that: "Everyone has the right to respect for his ... family life. . ." (*ibid*, article 8, par. 1).

ECtHR made it clear that failure of a state to give the homosexual couples the opportunity of legal recognition of their relationships, even if in non-marital form, constitutes a violation of such right. For example, in the case of *Oliari et al against Italy*, Applications No. 18766/11 and 36030/11 (2015), the Court established that the Government of Italy "failed to fulfill its obligation to ensure that applicants have at their disposal a specific legal framework that ensures the protection of their

relations of same sex” (*ibid*, § 185; *see also Orlandi, op. cit.*, § 210).

Likewise, the Draft Code “fails to fulfill the obligation of [Republic of Kosovo] to ensure that [homosexual couples] have at their disposal a specific legal framework that ensures the protection of their relations of same sex”.

This failure of the Draft Code cannot be justified by article 1138, par. 2, which provides that: “Other forms of civil union are governed by a separate law”, for these three reasons:

Firstly, as long as Book Four of the Draft Code aspires to govern the *family* relations in general, then in principle it should provide place for the recognition of the relations of homosexual couples, particularly taking into consideration that ECtHR required such recognition precisely as a part of the right to respect for *family* life.

Secondly, non-inclusion of “other forms of civil unions” in the Draft Code seems even strangers considering that the Draft Code, *even in its current version*, provides for the legal recognition of another form of non-marital cohabitation of a man and a woman: “Cohabitation of a man and a woman is a factual relation

between an unmarried adult man and an unmarried adult woman, who openly live together, characterized by their common life and work that constitutes a character of stability and continuity” (*ibid*, article 1164, par. 1); “Cohabitation of a man and a woman is equal with the status of marital spouses in terms of rights and obligations for care, mutual financial support, and property rights, as specified in this Code” (*ibid*, article 1164, par. 2). As long as such a provision exists in the Draft Code, the Ombudsperson considers unjustifiable the non-inclusion of similar provisions that recognize homosexual relationships, even if in non-marital form.

Thirdly, the non-recognition of homosexual couples in the Draft Code guarantees that homosexual couples have to wait longer until their constitutional right to respect for family life is fully acknowledged. And, certainly, the longer it takes, the bigger are the chances that “the separate law” promised in article 1138 will not be drafted or adopted at all, thus leaving the Republic of Kosovo in contravention with the requirements of article 36 of the Constitution and article 8 of ECHR.

In light of the above reasons, the Ombudsperson recommends that the Draft Code, in line with the

	requirements of the constitutional right to respect for family life, explicitly includes legal provisions for the recognition and protection of homosexual relations, even if in non-marital form			
General comments	Protection of children without parental care Regarding the amendment of the recommendations for the harmonization of the legislation in question with the provisions of the Convention on the Rights of the Child (Articles 3, 5 and 12) and the discussions from the workshops held, we propose that in the first part of the general provisions, namely Article 3 of the Law on the Family should also be enhanced with some new principles on the regulation of family relations that have to do with: - Primary protection of the child's well-being and rights that each is obliged to be guided by the best interest of the child in all activities pertaining to the child; - that in the work of the courts and state administration bodies that develop procedures in which directly or indirectly it is ruled on the rights of the primary child is the protection of the child's rights and well-being; - the child has the right to perform personal relations with both parents, unless this is in contravention of the child's well-	UNICEF, KOMF, SOS, OFAP, ASTRA, TERRE DESS HOMMES, SAVE THE CHILDREN,		Remarks by UNICEF have to do with the existing text of the Family Law. But we can say that new draft Civil Code mentions all objections that are said and all of them are involved in the proposed draft. This is stated in the working group of experts. As for illustration related to the protection of the best interest of children see Draft Civil Code art. 1252, and other subsequent articles. As an illustration see: Article 1252 Principles of child protection 1. Every child enjoys the undeniable right for life. 2. Children have the right to grow up in a family with parents. Children not living together with both parents, have the right to regularly meet the parent they are not living together with. 3. Children with diagnosed incapacity to judge and physical disability are eligible to special care, suitable conditions of life which guarantee their dignity and facilitate active participation in social life. 4. Children are eligible to free of charge primary education and access to information regarding different professions and existing schools.

being; the principle of expedience in deciding on family law matters relating to children - courts and administrative bodies in all family law proceedings relating to children, in all family relations regarding children must act with expedience and provide immediate protection of the child's well-being;

In addition, Article 3 of the Family Law should be supplemented by some general rules that are in the best interests of the child and his / her well-being;

- the right of a child who is capable of forming his own opinion and has the right to free expression of that opinion;

- that a child born out of wedlock has the same rights as a child born in a marriage and that an adopted child has the same rights to adopters as a child to a parent;

- the parents above all have the right, the duty and the responsibility to live with their child and to care for the child, while the assistance is provided and intervention made only if necessary;

- the parental right belongs to the mother and the father and they realize it together, in the best interest of the child.

Regarding the recommendation

5. Children enjoy the right for protection from economic utilization, child exploitation trafficking and sexual exploitation and from conduction of any activity which could be harmful or hazardous to their education or health.

6. Children shall be protected from maltreatment and sexual violations.

7. Children shall be protected from illegal usage of narcotic drugs and psychotropic substances and it shall not be permitted to use children for illegal production and trafficking of such substances.

8. The opinion of the child who has reached the age of six (6) should be taken into account by the court in any case when deciding on child's interest. For the child under the age of six (6), the court takes child's opinion with appropriate methods in the session or outside the session, whenever it deems it necessary.

that the legal institute of domestic violence should find a place in the general part of the Family in the Civil Code, we propose that after article 3 be added a new article which would decisively foresee that the violent behavior of spouses in the family or any member of the family is forbidden, giving everyone the right to protection from violent domestic conduct.

We consider that it would be good to give the definition of violent behavior or to regulate the connection with the separate Law on Protection from Violence, and thus this Basic Code, namely the Family Part, will establish the legal basis for the Law on Protection from Violence. Above we have proposed the content of this new article, with the name Article 3a "Domestic Violence".

Rationale for adoption part

In this regard, we quote new proposals that:

- Regulate the notion of adoption and purpose of establishing adoption;
- Define the conditions of adoption correctly and decisively;
- Notify the authority that will decide on adoption;
- Place at the center of each child's action and procedure and the best interest of the child;
- Recommend the procedures and guarantee urgent action when

Accepted

All these suggestions are reflected in the draft of the Civil Code, among others please see just for illustration terms and procedures for adoption, articles 1287 -1311. There are also given justifications above in this table by the comments of other organizations and institutions.

deciding on adoption;
-Procedure which are most child-friendly are established;
-The obligations of other responsible institutions are clearly defined;
-Regulates and guarantees the child's right to be heard and to express his / her opinion;
-The right to provide the necessary assistance to the child and family, etc.;

- Create a logical and uniform order of new provisions that will facilitate their implementation in practice etc.

Rationale for the part of foster care

Defining the main issue / problem

Placement in the family (Foster care) in the current Family Law is very briefly stressed as an alternative form of shelter for children without parental care and does not address all the realities, such as:

- It does not correctly define types of family shelter;
- It does not regulate and foresee anything about the rights and needs of children who are without parental care and who need further state care after reaching the age of 18;
- there is no definition of the criteria, rights and obligations for foster parents that are necessary for the protection of the child and their best interest in the case of

placement in family accommodation;

- There is no definition of criteria for licensing family members and their right to pay for the services provided and recognition as work experience and profession;
- It does not clearly define the legal powers of the Custodian Body in the placement of children in family shelter but also the recruitment and approval of family members.

Recommendations / Proposals

Given the shortcomings that exist within the applicable law, and also based on the role and importance of family shelter for sheltering children without parental care, mistreated, neglected, and children whose parents for whatever reason are hampered in the exercise of parental right, we think that the inclusion of proposals in amending the law is more than necessary.

All this concerns the improvement of the situation of children without parental care, for whom as an alternative and more appropriate form for their growth and development is considered to be family shelter until reunification with their biological family, adoption or independence.

Each of the proposed family-related recommendations will, above all, contribute to legal

clarity, its implementation, and its practical implementation, but above all will be of benefit to the children without parental care.

All recommendations present the immediate need for practical implementation, because legal gaps in many cases for many children have caused them to stagnate in their overall development.

As a case to point out, when a child without parental care reaches the age of 18, according to the current law, he/she must leave the family.

The proposal is based on laws and regional practices so that the child continues to stay in family shelter even after reaching the age of 18, when the child is attending regular schooling and when the child has obstacles to psycho-physical development and is unable to take care of himself/herself he/she can stay in family shelter up to the age of 26 years.

Because according to the practices in Kosovo, as a result of child's inability to stay in the same sheltering family after the age of 18, the Custodian Body was obliged to place the child at the Institute in Shtime, which has adversely affected the general well-being of the child.

The UN Alternative Care Guidelines (2009) pay much attention to the needs and rights of children and young people who, due to age, leave the care system.

Thus, some states are prolonging the age for children even after the age of 18 receiving support and services up to the age of 25-26 until completing their full education and independence.

Through the proposals, efforts have been made to establish at each stage the key basis for the best functionalization of family housing practices, based on the UN Guidelines adopted in 2009.

In this regard, new proposals start with the basic principles of family housing; the criteria to be met by a sheltering family as well as the role and responsibilities it has and should have in caring for the child; the placement and the number of children established and the rights and obligations of the sheltering families clearly defines who cannot be considered worthy of the sheltering family; the right to visit from the biological family and the termination of family shelter.

All proposals and recommendations relate to the protection and improvement of the situation of children who are deprived of parental care and placed in family shelter or can be part of family shelter but also the improvement of the situation of the sheltering families to provide qualitative protection, supportive and sustainable services that promote the development and full potential of the child.

Rationale for the part of residential placement			
Regarding the approved recommendations for regulating the issue of residential shelter and Community Based Housing, as well as sheltering Families, there is a need for new proposals. Since the current Family Law is not elaborated, or there are almost zero norms that regulate this issue, new standards have been proposed that even residential shelter be regulated in more detail as family shelter. Therefore, new norms are proposed that should be a basic part of the family section in the Civil Code. Thus, we have proposed the content of new articles named above "Articles 214a to 214h", ie 10 new articles. Regarding the recommendations for governing the issue of Independent supervised Living; we have proposed it as one of the new forms of special protection for children and young people. The main purpose of alternative care is that children/young people who are entrusted with alternative care institutions can be able to live independently. The work toward performing this task and achieving this goal starts from the moment the child is admitted to alternative care and continues until his / her departure day, and this is done with the efforts of all alternative			

care associates.

The goal is that young people in alternative care begin to look after themselves, start managing their daily lives and providing a job with sufficient income.

The ultimate stage for achieving this goal is the period of Subsequent Care or Independent Supervised Living as the primary form of care after the cessation of the first formal care.

The Alternative Childcare Guide sets the Independent Supervised Living as an important part of meeting the national criteria for children's rights.

Articles 130, 132 and 135 of the UN Alternative Care Guidelines emphasize that:

- State agencies and various organizations that work in this area should have clear policies and continue the procedures foreseen with planned and unplanned conclusions on their work with young people to devise appropriate follow-up care and / or case follow up.

Throughout the care period, they should systematically aim at preparing each child to create self-sustainability and integrate fully into the community, normally through social and life skills acquisition, which is also helped by their participation in life in their community;

- A special effort should be made to find a specialized person for

each child who should facilitate the independence of the teenager when leaving the care;
-The access to social, legal and health services along with financial support should be provided to young people who come out of care and during subsequent care.

International Child-Friendly Standards also touch upon this area in the 5 standards below:

Standard 14: The child / teenager must constantly prepare for independent living.

Standard 15: The outgoing care process should be carefully planned and implemented.

Standard 16: Communication during the exit process should be carried out appropriately.

Standard 17: The child / young man is empowered to be an active participant in the process of leaving the care.

Standard 18: Further upkeep, ongoing support and contact opportunities are provided.

Therefore, regarding the approved recommendations for regulating the issue of Independent Supervision, we have proposed, as above, new articles that should be part of the Civil Code "Articles 214i to 214l", which govern the basis on this form for the protection of children and clarify the rights and obligations of all parties, with a focus on the Custodian Body as Guardian of these young people.

Therefore, the legal

Refused

The comments relate to the Family Law in force. However, the draft Civil Code has another regulation so that children's rights are secured to

custodian/person responsible for the young person should develop a special program for young people before leaving alternative care.

This program is developed in cooperation with the youth.

This program offers the way of support, as well as the frequency and the way of contact.

The duration of the monitoring and support of the program for such cases is for the young person who has been removed from alternative care.

It is of extraordinary importance that the teenager has a job with sufficient income so that he can afford life.

Therefore, it is very important that we have this new form of protection for children and young people, since until now no form of support for children / young people who are 18 years old has been provided.

Rationale for custody

The Family Law in Article 218 provides that "a minor who has reached the age of 14 has the right to file an appeal against the decision of the Custodian, the Custodian Body and other bodies that deny the necessary permission for rendering final any legal action of his/hers".

Given the rights of the child proclaimed by the Convention on the Rights of the Child, to right of expression, right to be heard,

protect their best interests. As already explained above, a child of sixteen years of age will be called upon for any procedure to express his opinion whenever he decides for his interests.

The comment relates to the current Article 1345 of the draft Civil Code

Article 1345 Right for appeal

Minor child who has reached fourteen 14 years of age has right to submit appeal against the decision of Custodian, Custodian Body or against other bodies which deny approval required for validity of any of his legal actions.

This article is well-regulated because a child of 14 years of age can file a complaint because it is about the legal actions that a minor who is under guardianship is entitled to undertake and no other right of action of daily life.

right to express his / her views and the right to appeal, the recommendation is that this right should not be defined at the age of 14, but to be a guaranteed right for all children regardless of age.

It is therefore recommended that this provision be replaced by the following provision:

"Children have the right to complain about the actions or non-actions of the Custodian, the Custodian Body and other bodies that violate his or her interests".

The Family Law in Article 219 defines the competencies of the guardian only with the prior approval of the Custodian Body.

The custodial competences provided for in Article 2019, in conjunction with points 1 and 3, do not correspond with time and are contrary to the best interests of the child.

The first point defines the authority of the guardian to "entrust the minor to the orphan's home or any other child and any other organization for children and minors for their custody and education in order to entrust the minor to any person for education, proper growth and care or to put the minor for a long time for medical treatment at the health institution".

Fortunately, since 2000, Kosovo has closed all orphanage homes and has developed new forms of protection conforming to EU legislation, family housing and

community-based housing.

It is therefore recommended that paragraph 1 of article 219 be reformulated in accordance with current practice and best interest of the child, as follows:

"To entrust / decide / give consent for the placement of the child in a sheltering family, residential accommodation, adoption or health institution for the purpose of providing care, services, education or treatment".

Also as a new point within this article is proposed to add the competency of the custodian for the administration of the property.

The Family Law in Article 220, Information from the Custodian Body, in paragraph 1 provides that "(1) The social center to which a minor is entrusted or the institution to which he/she is sent, as well as the person whom was entrusted the custody and education of the minor or health institution in which the medication has been established, have the duty to inform the guardian and the Custodian Body of all matters important to life, health, education of the cared person, as well as the possible release from the institutions and his/her new place of residence. "

This provision does not correspond to current time and practice, as children are not trusted in the social center, but are entrusted with service

providers who may be retirement homes, custodians, and so on.

In this case, service providers should provide information about the Social Center.

Therefore, in paragraph 1 of this article, the words "Social Center" are replaced by the words "Service Provider".

Specifically, paragraph 1 is proposed as follows:

"The provider of the service to whom the child is entrusted for care and education or the health institution where the child was placed for treatment are obliged to inform the guardian and the Custodian Body of all matters relevant to life, health, education and care, as well as possible release from his institution and his new place of residence. "

In Article 220, new paragraph 3 is proposed as follows:

"The guardian is obliged to visit the child at least once a month, no matter what form of protection or institution the child is placed under."

This provision is proposed to guarantee the well-being of the child and to fulfill the legal responsibility of the guardian to act as a good parent for the child.

Article 221 of the Family Law proposes new paragraph no. 2 as follows:

"For the termination of guardianship, the guardianship authority issues a special decision."

This provision is proposed to be

Not
accepted

The comment is about the family law in power. Domestic violence is prohibited by the Draft Civil Code. For this there is a special provision and reference that protection from domestic violence is regulated by a special law. (See Article 1127, paragraph 5).

unified as a practice, with the rationale that the Custodian Body should also issue a decision on the termination of custody.

For now, some Social Centers make decisions for the termination of guardianship, while some do not have this practice.

Along the articles of guardianship section and other articles, the term juvenile is constantly used.

It is recommended to replace the term "juvenile" with the term "child" as the provisions of the Family Law provide for the protection of all children.

Indeed, in Articles 80 paragraph 1 and 4, 100 paragraph 3, 128 paragraph 3, 140 paragraph 1, 174, 215 paragraph 1, 216 paragraph 2, 239 paragraph 5, 290, 332 paragraph 1 and 4, 340 paragraph 1, 342 paragraph 1, 348 paragraph 1, the words "minor" in Albanian are deleted.

2. Article 216 paragraph 2, 217 paragraphs 1 and 2, 218, 219 paragraphs 1, 3 and 4, 220 paragraph 1, 221 paragraph 1, 226 paragraphs 1 and 2, 227 paragraph 2, 269, 273 paragraph 2, 326 paragraph 1 and 3.... the words "minor" or "juvenile" in Albanian are replaced with the word "child".

Proposals for Amendments to the Current Family Law with the relevant provisions.

In the Law after Article 3 is added new Article 3a as follows:

Article 3a

Domestic violence

1. In a family, violent behavior of spouses and any family members is prohibited;
2. Everyone, in accordance with the law, has the right to protection from violent behavior in the family;
3. Violent behavior means any form of violation of physical and psychological integrity in accordance with the separate law on protection from violence;

Article 125 of the Law is amended as follows:

Article 125
Principles for child protection

- (1) Every child has an undeniable right to live. The protection of the child's life is the main obligation for any person, institution or other authority;
- (2) All child-related acts and decisions taken by parents or guardians and institutions should have the best interest of the child as the highest and most important consideration;
- (3) Children have the right to grow in family with parents. Children who do not live with both parents have the right to

regularly meet the parents they do not live with;

(4) Children with disabilities are entitled to special care, for a decent life, in terms of life that guarantee their dignity and facilitate their active participation in social life;

(5) In all actions and decisions relating to the child, the child who is capable of having his or her views shall be guaranteed the right to express such views freely on any matter related to it, evaluating them in accordance with the age and degree of maturity, either directly or through a representative or an appropriate authority, in accordance with the applicable law;

(6) Children enjoy the right of protection from any form of physical or mental violence, insult, mistreatment, sexual abuse, economic exploitation, exploitation of children, trafficking and sexual exploitation, neglect, abandonment, disregard, abuse, exploitation including abuse as long as he is under the care of the parents, the representative or his/her legal representatives or any other person to whom he has been entrusted, and the performance of any work which poses a risk or which impedes education or harms their health

and well-being;

(7) Every child has the right to the same rights recognized in the applicable legislation and Convention to guarantee them without any distinction, regardless of race, color, gender, language, religion, political opinion or any other opinion, national, ethnic or social origin, property, disability, family background or any other condition of the child or his parents or legal representatives;

In the Law, after the Article 128 is added the new Article "128a" as follows:

Article 128a
Child's opinion

1. Child's opinion should be given due consideration in all matters pertaining to all the procedures in which it is decided on its rights, in accordance with the age and maturity of the child;

2. The child may freely and directly express his or her opinion in all the proceedings in which it is decided on his or her rights, as well may either, directly or through another person or institution, address the court or the administrative authority and request assistance in the performance of his/her right to free expression of thought;

3. The court and the

administration authority shall take the opinion of the child in the presence of the psychologist or the relevant professional of the guardianship authority or other specialized institution without the presence of the parent;

Article 149, paragraph 1 of the Law to be amended as follows:

"(1) Parents who abuse parental rights or seriously neglect parental rights are deprived of parental care."

In the law in Article 156, the following changes are made:

1.1 In paragraph 1 after the word "missing" the following words are added:

"And the abandoned child."

1.2 Paragraph 2 is amended as follows:

(2) A child without parental care is also the child whose parent or parents for whatever reason, temporarily or permanently, do not exercise their parental rights and obligations or parental care.

1.3 After paragraph 2 a new paragraph (3) is added as follows:

"(3) An abandoned child shall be considered a child whose abandonment is decided by the competent court."

Article 157 of the Law shall be amended as follows:

Forms of protection

The basic forms of legal and family protection of children without parental care in the meaning of this law are: Guardianship, Alternative Care and Adoption.

Article 161 of the Law shall be amended as follows:

Competent Authority for Adoption

1. The adoption procedure is in the competence of the court;
2. The court may seek advice from the guardianship authority when deciding on adoption;
3. Custodian authority will assign only special training personnel who are suitable for the task, due to the personal characteristics, and who have professional experience with work with children;
4. Adoption is established before the court based on the last joint residence of applicants and before the court based on the residence of the adopted person;

To add Article 182 (4) to replace the word “relevant authority” with the word “relevant central authority” and align with Article 179 (3).

Article 27

Adoption cannot be established after the death of the child

Not
accepted

Adoption cannot be established after the death of the child.

Termination of Adoption

The adoption relationship can only be terminated on the basis of the rules of the following Articles (Articles 34 and 35 of the Law)

Article 38
There can be no maternity and paternity affirmation after adoption

After adoption, it is not permitted to certify the paternity or maternity of adopted child.

Article 203 of the Law is amended as follows:

Principles of alternative care

Every child and young person must live in a protective, supportive, and caring environment that promotes and develops his / her full potential. Children without parental care or without proper care are at particular risk of being denied by such an environment;

When the child's family is unable, even after providing the appropriate support, to provide adequate child care, or to abandon or give up the child, the institutions are responsible for the protection of the child's rights and the provision of appropriate

The Draft Civil Code sets out special forms of childcare, including foster care and residential placement. With a special law such as the Law on Social Services will be more specific,

alternative care, with or through competent local authorities or authorized entities such as civil society organizations. Institutions are responsible for providing a safe environment, well-being and development of each child placed in alternative care and regular monitoring / review of this placement;

The best interest should be the overriding consideration throughout the procedure and actions taken for children deprived of parental care;

The child should be consulted and heard as well as his / her views will be taken into account in accordance with his / her age and maturity;

Institutions take appropriate measures to prevent the separation of children from their parents, in particular:

a) supporting the family, whose capacities are limited by factors such as poverty, inability, drug abuse, narcotics abuse, psychotropic and analogous substances and alcohol, ethnic discrimination;

(b) Ensure adequate care and protection for vulnerable children, such as children under abuse and exploitation, abandoned children, street

children, unaccompanied and separated children, displaced children and refugee children, children of asylum seekers, or children who are living with or are affected by HIV / AIDS and serious illness and any other condition that harms the child's well-being;

Suitability of a family with a child that has in common ethnic, language, cultural and religious origin is desirable;

In the Law, after Article 203 to add new Article "203a" as follows:

Article 203a

Types of Alternative Care

Types of alternative care are: family housing with relatives, foster care in the other family, residential housing and independent supervised living.

In the Law, after article 203a to add new Article "203b" as follows:

Article 203b

Principles of Foster care

1. The placing of a child in a family is an organized social form of caring for children in another family;

2. Children without parents or parental care and children whose development is hampered by circumstances in their family are placed in another family to

provide the necessary conditions for their development, education and training for life and independent work;

3. In other families can be placed children with deprived education, as well as children with developmental disabilities;

4. Parents' material situation cannot be grounds for placement in another family. The family will initially be supported with all means of social assistance;

5. The rights and duties of the parents and guardian of the child in accordance with the provisions of this section of the law shall be limited to the duration of the placement in the family;

In the Law, after the article 203a to added new Article "203b" as follows:

Article 203b
Foster care

"(1) Foster care is an alternative form of social protection for children without parental care, ill-treated, neglected, and children whose parents for whatever reason are prevented from exercising parental rights;

(2) Foster care is a form of child protection that implies the temporary placement of a child in another household when the

child's stay in the biological family is impossible;

(3) Foster care families are alternative families that are selected, evaluated, trained by municipal CSWs and approved by the central administrative authority operating in (MLSW), which are available for care of children without parental care for a specified period time;

(4) Foster care family means sheltering parents selected, trained, approved, regularly monitored and supported as well specifically trained for children without parental care: newborns and infants; with disabilities; victims of domestic violence; abused; ill-treated; neglected; unaccompanied; victim of trafficking of human beings (without risk); whose parents are prevented from exercising parental rights;

(5) Foster care includes family shelter by relatives, family shelter in another family.

In the Law 204 is amended as follows:

Article 204.
Placement

1. Children without parental care, up to the age of 18, are guaranteed to be accommodated in family shelter until a different solution or other form of long-

term protection is made;
2. Placement in foster care, exceptionally from provision of paragraph 1 of this Article, may continue even after reaching the age of 18, in cases where the child is attending regular education and when the child has obstacles to mental-physical development and is not able to take care of himself/ herself and is unable to protect his/her rights. Articles 290 and 291 should be based on these two articles;

3. Children in foster care are guaranteed, care, protection, education, and support for the development of skills for independent life;

4. Child placement is possible in the family of two or one parent.

5. Following the placement of the child in the other family, the Custodian Authority shall immediately take all necessary measures to address and in the future to avoid all the circumstances which have made it necessary to have foster care;

6. The transfer of the child to the foster family shall take place when the sheltering parent meets all the conditions provided by this law. Article 205.

7. With the placement of the child in the foster family, the sheltered child becomes an equal member

with the other members of the foster family;

Article 45

The following new Article shall be added to the Law:

Number of children placed in foster family

1. Maximum of 3 children may be placed in a foster family, so that the total number of children, including their own children, is not greater than five;

2. Exceptionally from the provision of paragraph 1 of this Article, more than three children may be placed in the family of residence only when the children are sisters and brothers with each other;

3. The sheltering family who cares for three fostered children can only take care of a child with a disability;

4. Only one-parent family can take maximum care of two children and one of them may be a child with disabilities;

5. Exceptionally from the provision of paragraph 4 of this Article, the family of one-parent relatives can take care of a larger number of children if it is in the best interests of the child and if it meets the conditions defined in Article 205.

Article 205 of the Law is amended as follows:

Article 205.

Rights and Obligations of Foster Parents

1. Foster parents should be licensed to provide foster care services; exceptionally, hosting license is not required for foster family at relatives;
2. Based on the completed training, the relevant Authority will issue the license to candidates who can provide foster family services, in which case an exact registration takes place in registers of the relevant Authority's as a licensed foster family;
3. Foster parents must successfully fulfill the contractual obligations, especially in terms of health care, social welfare, education and the right qualification of the child for independent living;
4. Foster parents should provide full care for the period of family shelter for children, either in the short term or long-term placement;
5. Foster parents should cooperate at any time in partnership with the Welfare Centers, with the

biological parents of the child, if possible, with NGOs and other necessary services that work for advancing and reintegrating the child into his biological family;

6. Foster parents should receive instructions from the competent authority for childcare, seek help when needed and be able to act quickly in emergencies;

7. Foster parents are obliged to notify the competent oversight authority on matters relating to health, education, schooling and all the circumstances relevant to the development of the child;

8. Foster parents have the right to continuous professional support for childcare;

9. Foster families to whom the child is placed are entitled to payment for the services provided in childcare;

10. Foster parents should be reimbursed for the expenses and health services of children in foster family;

11. Foster families for the provision of family care services should be accounted as working experience as a known profession within the tax and pension scheme;

Article 47

The following new Article shall be added to the Law:

Foster parent cannot be:

1. Person whose parental right has been removed by a court decision;
2. Person whose legal competence is taken temporarily or wholly;
3. A person who does not guarantee that he will fulfill the obligations for the upbringing, education and schooling of the fostered child;
4. A person suffering from a diagnosed or psychological illness or a person suffering from an illness that could endanger the health and life of the child;
5. Person who is convicted of a criminal offense pertaining to the chapter of criminal offenses against family and marriage and sexual integrity;
6. The person should not be a user of alcohol or narcotic substances;

Article 206 is to be deleted.

Article 207 of the law to be amended as follows:

Article 207

Legal Competence

1. The Custodian Authority is responsible for the protection of

children without parental care and their placement in foster care;

2. The custodian body office of the municipality in the territory of which the child has his or her place of dwelling or residence, makes a decision about the placement of the child in the sheltering family to the relatives or another foster family;

3. The CSW conducts recruitment, assessment and training of potential families for foster care;

1. The Custodian Authority before deciding to place a child in a family outside the biological family provides full documentation on all the important data for the child and foster family;

2. Following the decision on placement of the child in the foster family, the Custodian Authority is obliged to use up all the possibilities to place the child in a foster family within the municipality where he/she is active;

3. In cases when there is no suitable family in the respective municipality at that time then the Custodian Authority cooperates with the Custodian Authorities of other municipalities to look at the possibility of placing the child in a foster family of the other

municipality.

The Law 208 is to be amended as follows:

Article 208.

Written contract

(1) On the basis of the decision to place the child in the sheltering family, the Custodian Authority shall enter into a written contract with the sole foster-parent or two foster parents on which the child will be placed;

In the Law, after Article 208, to add new Article 208a is added as follows:

Article 208a

Right to Visit

Foster parents to whom the child is placed, in agreement with the Custodian Authority, are obliged to enable the visits of the parents of the child and other members of the biological family or the broad family, unless the Custodian Authority decides otherwise for interest and well-being of the child.

Article 209 of the Law to be amended as follows:

Article 209.

Termination of placement

(1) Placement in foster care ends:

1. With the agreement of the contracting parties;

2. With waiver of the contract;
3. Upon the adulthood of the child, except for cases determined under Article 204;
4. By enabling him to live independently, reunite with the biological family, or when the child is emancipated;
5. With adoption of the child;
6. With the death of the child or with the death of the member of the sheltering family who is part of the contract for placement in the foster family;

(2) In the case of the death of one of the parents of the foster family referred to in paragraph 1 of this Article, the contract for the placement in a foster family shall remain in force if the other parent, within one month, notifies the competent Custodian Authority for the continuation of the placement of the child in a foster family and if the family has the guarantee that the future foster family will meet the conditions set forth in this law.

Article 210 of the Law to be amended as follows:

Article 210.

Termination of the Contract

(1) The foster family in which the child is placed may terminate the contract within the time period provided in the contract;

(2) The Custodian Body may

terminate the contract for placement in a family when the child returns to the biological family and when the circumstances in the foster family have changed and do not respond to the child's highest interest;

Article 211 of the Law to be amended as follows:

Article 211.

Waiver of contract

(1) If the family in which the child is placed ceases to fulfill any of the conditions set forth in Article 205 of this law, respectively if the purpose of the placement is not realized, the Custodian Body may decide to terminate the contract for placement in the family;

(2) The decision from paragraph 1 of this Article shall determine the day the placement of child is terminated;

3) The Custodian Body, which has taken the decision to terminate the contract for placement in the foster family, provides the child's protection, care and further education up to another alternative solution;

Article 212 of the Law, to be amended as follows:

Article 212.

Supervision

(1) The Custodian Body supervises the development of the child, ensures that the child's protection, care, education and schooling is conducted in accordance with the provisions of this law and the provisions of the child's placement contract;

(2) The Custodian Body has an obligation to provide essential and necessary information to the foster family in which the child is placed for the reasons that caused the child's placement;

Article 213 of the Law, to be deleted and to merge with the Article 205:

Article 214 of the law to be amended as follows:

Article 214.

Mutual information of competent authorities

(1) If the placement in foster family has been assigned by an authority while the supervision is exercised by another authority, the authority exercising the supervision shall have the duty to inform the establishment authorities for the development of the child;

(2) If the supervisory authority referred to in paragraph 1 of this Article concludes that any of the conditions set out in Articles 209-211 for the termination of the contract has been caused, it shall

without delay notify the authority which has appointed the placement in the family;

After the Article 214 in the Law to add a new Article 214a as follows:

Article 214a

Residential care

1. Residential care is a form of care for children without parental care that includes specialized services provided in any type of environment / group environment.

Residential care is considered as a form of formal care regardless of whether it is provided by public, public-private or civil society organizations;

2. Residential care provides a safe environment for children and young people who cannot live in family environment or other alternative care facilities;

3. The premises that provide residential care should be small and organized around the rights and needs of the child in environments that resemble as many as possible family premises.

Their general purpose should be provision of temporary care and that contributes to reunification with the family, and when that is not possible, until the guardianship authority decides on another form of alternative

care;

3. Residential care includes: safe emergency care facilities, emergency transit centers and all short-term and long-term residential care facilities, including community-based homes;

4. The forms and the environment that provide residential services and the procedures for their establishment are regulated by sub-legal act by the relevant Ministry of Social Welfare;

After the article 214a in the Law to add new Article 214b as follows:

**Article 214b
Community-based housing**

1. Community-based housing is an organized open type care that includes integrated and systematic psychosocial care services;

2. Community-based housing is provided by public, public-private or civil society organizations licensed for providing social services and family care for children undergoing mistreated, neglected parental care, and children whose parents are for whatever reasons impeded in the exercise of parental right;

3. Community-based housing

aims to create conditions for children and young people to fully integrate into community life; to enable the development and promotion of their skills, their interests and their further preparation for independent life by gaining skills in education, profession and social life; (Text for the by-Law).

After the Article 214b in a Law to add new Article 214c as follows:

Article 214c
Placement

1. Placement of a child in residential care is based on the needs assessment, the personal opinion of the child, the needs for primary care and the child's behavior;

2. The child is placed in cases where such an environment is particularly appropriate, necessary, constructive and in the best interests of the child;

3. Placement and provision of services that include specialized service, care, protection, education, schooling and support to the development of independent life skills are guaranteed to the child and young people (WITH INTERCONNECTION WITH CATEGORIES AS MENTIONED ABOVE --- UP TO THE AGE OF 26 YEARS)

4. Child placement in Residential

care is done up to 6 months.
After evaluation by the
Competent Authority, this
deadline may be extended as
necessary.

**After the Article 214c in the Law,
to add a new Article 214 as
follows:**

**Article 214c
Legal Competence**

(1) The custodian body of the
municipality in the territory of
which the child has his or her
dwelling place or place of
residence, decides to place the
child in residential care;

(2) The Custodian body prior to
taking the decision on placement
in residential care shall provide
full documentation on all the
important data for the child;

**After the article 214 in the Law,
to add new article 214d as
follows:**

**Article 214d
Rights and Obligations**

1. The residential services
provider should be licensed for
the provision of services and must
have licensed personnel on
professional services;

2. The residential services
provider must successfully fulfill
the contractual obligations,
especially in terms of health care,

social welfare, education and training for independent life;

3. The residential services provider shall be obliged to notify the competent supervisory authority on matters relating to the health, welfare, education and training of beneficiaries of services;

4. The residential service provider is obliged to conduct a continuous assessment of the beneficiary's situation in order to reintegrate into the family or to make a determination for another alternative form of care;

5. Licensing for residential service providers and staff on professional services shall be regulated by a sub-legal act by the relevant Ministry of Social Welfare.

After the article 214d in the Law to add new article 214 is added as follows:

Article 214a

Written contract

1. For the provision of services from the residential service provider a contract must be concluded between the non-governmental / governmental sector and the competent authority;

2. The contract must include all parties that are related to the

provision of these services.

After the article 214th in the Law,
to add new article 214e as follows:

Article 214e

Right to Visit

The Residential Service Provider to whom the child is placed has the duty to make possible family visits, unless the Custodian Authority assigns otherwise.

After the article 214e in the Law,
to add new article 214f as follows:

Article 214f

Termination of placement

1. The competent authority terminates the placement of the child in residential care when the reasons for placement cease;
2. The competent authority shall complete the placement by decision;
- (3). The placement ends:
 1. By placing the child in alternative care;
 2. By reuniting the child with the biological family;
 3. With adoption of the child;
 4. Ascertaining the condition that the child's stay in residential care is not in the best interests of the child,
 5. By reaching adulthood,

exceptionally (connecting with children up to the age of 26 years);

6. On the occasion of the death of the child.

After the Article 214f of the Law to add new article 214g as follows:

**Article 214g
Renounce from placement**

(1) The Competent Authority may decide to waive the placement in residential care if the residential service provider in which the child is placed ceases to fulfill any of the conditions of Article 214d of this Law, respectively if the purpose of the placement has not been achieved;

2) The custodian body authority which has taken the decision to terminate the placement in a residential shelter ensures the child's protection, care and further education;

After the Article 214g in the Law, to add new Article 214h as follows:

**Article 214h
Mutual Information and Supervision**

1. Custodian body supervises the provision of child services and development and ensures providing of specialized services and child protection, care,

education and training is conducted in accordance with the provisions of this law and with the purpose of child placement;

2. The custodian body authority is obliged to provide the essential and indispensable information of the Residential care Provider in which the child is placed for the reasons that caused the placement;

**After the article 214h in the Law,
to add new article 214i as
follows:**

Article 214i
Independent supervised living

1. The independent supervised living is a form of alternative care as a continuation of support for children who have been part of some of the alternative forms of care to empower their skills for an independent life in a safe and supportive environment.

2. Children who have been part of Alternative Care Forms for whom no solution has been found after long-term care, with reaching the age of majority will continue institutional and social support for at least the next three years.

3. Support after the three-year period may be extended for a specific period, for specific cases after a re-evaluation of the individual's needs by the competent authority and no later

than up to the age of 26.

4. This support will continue until the age of 26 if the same is attending school.

5. If the adult child is unable to work due to illness, physical and mental disability and who does not have sufficient financial resources for his financial expenses, the institutional and social support will be provided as long as such a situation finishes.

6. The competent authority should determine the relevant categories for children and young people who will benefit from this form of support.

After the article 214i in the Law, to add a new article 214j as follows:

Article 214j

Rights and Obligations of the Competent Authority

1. The competent body has a duty to appoint a social worker in the capacity of personal counselor for each child or young person;

2. The competent body signs a contract with the young;

3. The competent body has the duty to advise, to assist and to support the raising of the well-being of all children and young people;

4. The competent body has for

duty to maintain contacts and to draw up an orientation plan with the young person under their supervision;

5. The competent body should provide protection and well-being to the child and the youth if they are not fulfilled;

6. The competent body should provide adequate accommodation;

7. The competent body should provide monthly financial support;

8. The competent body has the right to contract services to meet the needs of young people.

After the article 214j in the Law to add new article 214k as follows:

Article 214k

The Rights and Obligations of the young person

1. Young person obliged to cooperate closely with the personal counselor and to respect the orientation plan;
2. Young person is obliged to continue their education depending on the identification of needs and potentials;
3. Young person has the right to continuous training for professional development;
4. Young person is tasked with managing money and savings in

order to meet their personal needs;

5. The young person is obliged to respect the rights and obligations arising after signing the contract with the competent body;

After the article 214k in the Law, to add new article 214l as follows:

Article 214l

Termination of the contract

1. The contract terminates by agreement between the contracting parties;

2. The contract may be terminated by the competent authority in case that young person fails to respect the duties and responsibilities;

3. The contract may be terminated upon the request of the young person;

Articles 215 to 270, in the Law are amended and new articles are added as follows:

PART SIX

CUSTODY

I. AIM AND PLACEMENT IN CUSTODY

PROPOSALS FOR CUSTODY

Article 218 of the Family Law makes the following changes:

Paragraph 1 of this Article shall

be reworded with the following paragraph:

"Children have the right to complain about the actions or no actions of the Custodian, the Custodian Body and other authorities that violate his/her interests."

Article 219 The powers of the custodian are reformulated as follows:

1. The custodian may undertake the following actions, but not limited to them, with the prior permission of the Custodian Body:

- 1.1. Entrusts/decides/gives consent to the placement of the child in a sheltering family, residential accommodation, adoption or health institution for the purpose of providing care, services, education, schooling or medical treatment.
- 1.2 initiate the change of school;
- 1.3 selection of profession or exercise of profession;
- 1.4 management of assets;
- 1.5 take other important measures, relating to the child's personality and interests;

Article 220 to be amended as follows:

In paragraph 1 of this Article, the words "Welfare Center" are replaced by the words "Service Provider".

Concretely, paragraph 1 is

proposed as follows:

"The provider of the service to whom the child is entrusted to preserve and educate or the health institution in which the treatment is decided is obliged to inform the guardian and the Custodian Authority of all matters relevant to life, health, education and care, as well as possible release from his institution and his new place of residence".

In Article 220, new paragraph 3 is proposed as follows:

"The custodian is obliged to visit the child at least once a month, no matter what form of protection or institution the child is placed."

Article 221 makes the following changes:

For the Article 221 we propose new paragraph 2 as follows:

"For the termination of custody, the custodian body issues a special decision."

1. In articles 80 paragraph 1 and 4, 100 paragraph 3, 128 paragraph 3, 140 paragraph 1, 174, 215 paragraph 1, 216 paragraph 2, 239 paragraph 5, 290, 332 paragraph 1 and 4, 340 paragraph 1, 342 paragraph 1, 348 paragraph 1, the words "minor" in Albanian are deleted.

2. Article 216 paragraph 2, 217

	paragraphs 1 and 2, 218, 219 paragraphs 1, 3 and 4, 220 paragraph 1, 221 paragraph 1, 226 paragraphs 1 and 2, 227 paragraph 2, 269, 273 paragraph 2, 326 paragraph 1 and 3.... the words "minor" or "juvenile" in Albanian are replaced with the word "child".			
General comments	Recommendation 1 Article 13 of the present Law on Inheritance does not allow the spouse to be the heir of the deceased husband. Such situations have been identified in the case of Shyhrete Berisha, who has failed to inherit the property of her deceased husband from her father-in-law. This issue in the new Civil Code is governed by Article 1491. Right to representation on inheritance <i>1. In cases where one of the children of the testator has died before him and if the latter have died, the grandsons of this child and their successors are called on inheritance as long as there are persons in this line.</i> BIRN proposes that this article gets amended in a form that recognizes the right of representation the right of the surviving spouse. BIRN's proposal is as follows:	BIRN,	Accepted	The spouse is called as a necessary heir only for the part of the property of the deceased spouse, but not for the part of the property belonging to the husband's predecessor. This property inherits under the right of representation only bloodline heirs, grandchildren, grandchildren, grandchildren, etc., while there are persons in this line of blood. Article 1491, paragraph 1, is supplemented by the following text: "The spouse is called heirs necessary only for the part of the property of the deceased spouse, but not for the part of the property belonging to the deceased's ancestor".

	1. <i>In cases where one of the children of the testator has died before him, instead of this child, his descendants and spouse are called upon, and if the latter are dead, the grandsons of this child and their descendants are called for inheritance as long as there are persons in this line.</i>			
General comments	Article 205 The Basis of responsibility ~~1. A person who causes unfair damage to another is obliged to reward him unless it is established that the damage was caused without his fault.~~ ALTERNATIVE: 1. Whoever causes damage to another is obliged to compensate for damages unless it proves that the damage was caused without his fault. Comment: Intervention in this provision is made assuming it results more clearly (compared with the text of the Draft) that this provision installs two regimes of liability of causing damage; the first regime - one relied on the basis of guilt and second one on causality. Further, this reformulation clearly defines that we are dealing with a regime of presumed guilt, and therefore the answer to the question of to whom belongs the burden of proving the guilt. ~~2. Persons are responsible for activities that result in~~	Kosovo Bar Association	Partially accepted	Proposal of the barrister has to do with the basis of the civil delict liability. This issue is regulated by article 136 of LOR that is in force.

~~environmental damage, regardless of guilt.~~

ALTERNATIVE;

2. For damages from the objects or from the activity from which comes the increased danger to the surroundings, they respond regardless of guilt.

Comment: Next intervention in the provision of this Article, is being made with the intention that in Paragraph 2 to better define other basis of liability for causing damage (objective/causal) which refers to the case of any damage from the objects or dangerous activity. Moreover, now these two paragraphs of this article correspond well with naming of this provision itself and its function to determine two principles / basis of liability for causing damage; the subjective (guilt) and objective (causal).

3. Persons are also liable, regardless of guilt, in any other case specified by law.

4. Civil liability for defamation and insult is regulated by a separate law.

Article 206
Damage

~~1. Damage is the reduction of person's wealth as ordinary damage and prevention of its growth as a lost profit, as well as to cause physical pain, mental~~

Not
Accepted

The notion of damage under this article is decided by the Working Group of the Civil Code and is a reflection of Article 137 of the LOR in force.

Paragraph 2 of this Article further enriches the legal provision regarding the notion of material damage.

suffering, or fear of another as an immaterial damage.

ALTERNATIVE 01:

1. *Damage is reduction of someone else's property (common damage), the deterrence of its growth (lost profit) and the violation of personal rights such as; the right to life, health, bodily integrity, dignity, freedom, honor, reputation etc., causing both physical and spiritual pain and fear (immaterial damage).*

ALTERNATIVE 02

2. *Damage is reduction of someone else's property (common damage), the deterrence of its growth (lost profit) and the violation of personal rights and inflicting physical and spiritual pain and fear (immaterial damage).*

Comment: The provision of the draft, in addition to the lack of an inadequate definition of the notion of material damage, is more than obvious that it lacks a fair definition of the non-material damage, thus further presenting only the subsystem concept of this type of damage.

This approach does not correspond to the actual trend of definition of the material damage treatment, which for a long time has incorporated the objective concept in this type of damage – with reference and focus of

Article 206 para. 3 of the CC comprehensively defines moral damage. This definition was missing, it is not in the applicable LOR.

violation of personal rights.

~~3. The material damage includes expenses incurred, loss of income or earnings, property damage or loss of its value, injuries to life, body or health.~~

Comment:

Paragraph 2 of this Article is considered unnecessary.

Otherwise, it turns out to be a flawed provision - with an attempt to list (*numerus causus*) the types of material damages, but, as such, it is incomplete, meaningless, and without any concrete function as a provision.

~~4. Moral damage includes pain and suffering, as well as damaging the quality of life.~~

Comment:

The moral damage, initially as an immaterial damage is not addressed in the Draft of this Civil Code, respectively it is not defined at all. Otherwise, at least there may be allegations that this term is used to define the institute of immaterial damage. This especially when we have in mind that the contemporary claims of the objective legal concept of the immaterial damage - what is supposed to be the goal and purpose of this Draft Civil Code?

Article 207

The subsequent damage

Not
accepted

Not
accepted

This article is proposed by the first phase of the Civil Code project and its base is on the Draft Common Referrals Framework (DCFR). These proposals can be seen in the recommendations set out by the first phase project, namely the document: Recommendations concerning harmonization, simplification, modernization, and alignment with EU standards
Law on Obligations in Kosovo - November 2015
See Recommendation 31

1. The subsequent damage can be rewarded if it is shown that there is a reasonable probability that can occur as a result of the established facts, according to the regular course of events.

2. The amount of compensation for subsequent damage can be determined equally and based on the assumed future circumstances.

Comment with remarks:

This provision requires a review for a clearer definition of the meaning and function of the subsequent damage and on what basis its level is determined.

Article 208

Unfair damage

1. The damage, whether material or moral, is unfair if it arises from a violation of a legal provision or a right acquired by the Constitution or by law.

2. The damage, whether material or moral, is also unfair [legally relevant] if it arises from a breach of a legitimate interest in legal protection, provided it is fair and reasonable to have compensation.

3. When determining whether an interest is legitimate for legal protection, taking into account the source of liability, the nature of the damage, the expectations of

This article is proposed by the first phase of the Civil Code project and its base is on the Draft Common Referrals Framework (DCFR). These proposals can be seen in the recommendations set out by the first phase project, namely the document: Recommendations concerning harmonization, simplification, modernization, and alignment with EU standards
Law on Obligations in Kosovo - November 2015
See Recommendation 31, respectively Article 2043 of Italian Civil Code.

Not
accepted

the person suffering the damage and its relationship with the person causing the damage, as well as the public policy considerations.

4. For the purposes of this article, any deterioration of natural elements that are part of the environment, such as air, water, sand, flora and fauna, is unfair damage caused to the State.

Comment:

The content of the provision of this Article is incomprehensible, respectively what does it cover and what is its function. Otherwise, we did not come across such a provision and handling of the matter in the practice of respective laws/codes in the region and beyond nor as any such tendency in the recent drafts.

Article 209

Request for Removal of Damaging Risk

1. Anyone may require from the other to avoid the source of the risk of significant damage to him or to the undetermined number of persons and to refrain from activities which result in the disturbance or the risk of harm if the onset of the disturbance or damage cannot be prevented by appropriate measures.

2. The court shall order, upon the

Not
accepted

This article reflects article 138 of applicable LOR so in the book on Obligations is proposed as such

This article reflects article 139 of applicable LOR so in the book on

request of the person concerned, that appropriate measures be taken to prevent the occurrence of harm or distress, or to avoid the source of risk at the expense of the risk source holder, if that person does not do this.		Not accepted	Obligations is proposed as such
3. If the damage is caused in the exercise of the activity of general interest for which the permission of the competent body has been obtained, only compensation of damage exceeding the normal limits may be required.			
4. However, in this case, it may be required to take socially reasonable measures to prevent or reduce the damage.			
<i>Article 210</i>		Not Accepted	This article reflects article 140 of applicable LOR so in the book on Obligations is proposed as such. This book here precise the subject very well that has caused damage by intention or lack of care.
Request for termination of an violation of personality rights			
1. Everyone has the right to request from the court or other competent authority to order the termination of the act that violates the integrity of the person's personality of personal and family life and other personality rights of his personality.		Not accepted	
2. The court or other competent authority may order that the action be terminated under the threat of payment of a fixed or total sum or in instalments for the benefit of the damaged party.			This article reflects article 141 of applicable LOR so in the book on Obligations is proposed as such
<i>Sub-chapter II – Liability Based on</i>			

Guilt

**Article 211
Guilt**

~~Guilt exists when the damaged party caused the damage intentionally or due to negligence.~~

ALTERNATIVE:

Guilt exists when damage is caused intentionally or due to negligence.

Comment:

Intervention in the text of this provision, only for the sake of more adequate formulation.

Article 212

Persons that are not liable

A person who, due to mental development disorders or other mental disorders is not capable of trial, will not be held responsible for the damage caused to another person.

Article 213

Liability of persons with temporary judgement capacity

1. Whoever causes damage to others in a state of temporary disability is liable for it, unless it proves that it was brought to such a state without its fault.
2. If this is caused by someone's fault, the one who caused that

Not
accepted

This article reflects article 141 of applicable LOR so in the book on Obligations is proposed as such

Not
accepted

This article reflects article 142 of applicable LOR so in the book on Obligations is proposed as such

Not
accepted

This article reflects article 143 of applicable LOR so in the book on Obligations is proposed as such

state of mind/disability will be the one responsible for the damage.

Article 214

Responsibility of Minors

1. The minor until the age of seven (7) years shall not be liable for the damage it causes another.

2. A minor between the ages of seven (7) years, until the age of fourteen (14) years shall not be liable for damages, except if it is proved that during causing harm has been able to judge.

3. The minor after having reached fourteen (14) years Is liable according to the general rules of liability for damage.

Article 215

Necessary protection

Person who, in the necessary protection, causes damage to the attacker, is not obliged to compensate the damage except in the case of exceeding the necessary protection.

Article 216

Condition of need, avoidance of damage from the other

Not
accepted

This article reflects article 143 of applicable LOR so in the book on Obligations is proposed as such

Not
accepted

This article reflects article 145 of applicable LOR so in the book on Obligations is proposed as such

1. If a person causes damage to a person in a state of extreme need to save himself from a risk to life, bodily harm or damage to health or property, or any other fundamental right, and the risk could not be eliminated without causing damage, it is obliged to pay the indemnity in the amount determined by the court.

2. The provision of paragraph 1 shall also apply if the damage is caused to preserve a third person from the inevitable danger of life, body or health damage, property, or any other fundamental right of such third person.

Article 217

Consent of the injured

1. Whoever at his own damage, allows another to undertake any action, cannot claim from him the compensation of the damage caused by such action.

2. The statement of the damaged party with which has given consent to cause the damage with the act prohibited by law shall be invalid.

3. The provisions of paragraph 1 shall also apply if the person who suffers damage has voluntarily take that risk knowing the risk of damage suffered.

Not
accepted

This article is proposed by the first phase of the Civil Code project and its base is on the Draft Common Referrals Framework (DCFR). These proposals can be seen in the recommendations set out by the first phase of the project, namely the document: Recommendations concerning harmonization, simplification, modernization, and alignment with EU standards Law on Obligations in Kosovo - November 2015

Article 218

Contribution to guilt by a damaged party

~~When the damaged party contributes to the occurrence of the damage, the compensation is reduced according to the degree of guilt.~~

ALTERNATIVE:

Article 218

The contribution of a damaged party in the damage

The damaged party, who has contributed to created damage, or made the damage greater than it would right to compensation of the damage proportionally to the contribution.

Comment:

Neither the naming nor the content of the text of the provision are proper with regards to the institute of “co-liability” or the contribution of the damaged party to rely on guilt. It may be an issue to apply this provision in practice when we take into account the different regimes / basis of liability for causing damage and the competition between them.

Therefore, it would suffice that the definition of this provision in its naming and text not to rely on guilt – but simply on the term of contribution.

Not
accepted

This article reflects article 146 of applicable LOR so in the book on Obligations is proposed as such.

Not
accepted

This article reflects article 149 of applicable LOR so in the book on Obligations is proposed as such.

Sub-chapter III - Liability for Others

Article 219

Liability for damages caused by persons with mental disorders or other mental health problems

If the damage is caused by a person who has no capacity to be sued due to mental development or other mental disorders, the persons obliged to supervise such person are liable for compensation, unless it is shown that the supervision was performed with due care or the damage could not have been avoided.

Article 220

Parental responsibility

1. Parents or other persons legally required to provide parental care to a minor under seven (7) years are liable for any damage caused by him to another person.

2. If the minor is over seven (7), but under fourteen (14) years, the persons referred to in paragraph 1 are exempted from liability, if the minor child was able to judge when the damage was caused.

3. If the person who has suffered the damage cannot obtain compensation from the minor, the court may, subject to the financial conditions of the parties and all other circumstances, order the persons referred to in paragraph 1

In relation to these provisions, the first phase of the Civil Code project has proposed following recommendation no. 42 (page 29).

"Article 161 The LOR is closely related to the responsibility of the state. Most of the Civil Code in Europe does not include principles on state responsibility, which is usually governed by jurisprudence or specific legislation (e.g. civil liability of judges, civil liability of public bodies and agents, compensation of damages suffered by armed because of the use of depleted uranium weapons, massive environmental damage, etc.). We recommend the abolition of Article 161 of the Civil Code".

So the Working Group has decided according to the proposal of the International expert of the first Phase of the Civil Code

Not
accepted

to pay equal compensation.

Article 221

Responsibility of schools, bodies and other institutions

If, at the time when the damage was caused, the minor was entrusted to a school, body or institution, that school, body or institution shall be liable for any damage caused by the minor while he was under their supervision, except if it is shown that supervision was carried out with due care or that the damage could not have been avoided.

*A new provision 221.a.
is proposed:*

Liability of the state

1. *State liability for damage to third parties caused by state authorities and bearers of public authority, regulated by a special law.*

2. *Rules of state responsibility apply the same rules from the Local Government Units.*

3. *Matters which are not regulated by the special law applicable in accordance with the rules set out in this Code.*

Comment:

This matter was not handled by this Draft – when dealing with cases of

Not
accepted

This article reflects article 152 of applicable LOR so in the book on Obligations is proposed as such.

responsibility for the damage caused by the state bodies and holders of public authorizations – and it results that this was practiced in the Civil Codes in the region and beyond.

Therefore, it is simply a suggestion to incorporate this provision in this Draft, in order to avoid relevant legal gaps.

Sub-chapter IV – Liability of the employers for employees

**Article 222
Liability of employers**

1. legal or natural person with whom the employee worked at the time of causing harm is liable for damage caused to a third person by the employee at work or in connection with the work, unless it is proved that the employee has acted as it has been necessary specific circumstances.
2. The damaged party is entitled to seek compensation directly from the employee if the damage was caused deliberately.
3. Any person that compensates an injured party for damage inflicted by an employee intentionally or out of gross negligence shall have the right to request the reimbursement of the sum paid out from the employee.
4. This right shall expire six

Not
accepted

This article reflects article 153 of applicable LOR so in the book on Obligations is proposed as such.

months after the day the compensation was paid.

5. The provision of the first paragraph of this article shall not encroach upon the rules on liability for damage originating from dangerous objects or dangerous activities.

Article 223

Legal person's liability for damage inflicted by body thereof

A legal person shall be liable for damage inflicted on a third person by a body of the legal person during the performance of its functions or in connection therewith.

2. Unless stipulated otherwise by law for the individual case, the legal person shall have the right to request compensation of the sum paid out from a person that inflicted the damage intentionally or out of gross negligence.

1. 3. This right shall expire six (6) months upon payment of compensation.

Sub-Chapter V - Liability for Damages Caused by Dangerous Objects or Activities

It is proposed to add two provisions)

Article 224.a.

Not
accepted

These issues are regulated by articles 229, 230 and 231 of the Book of Obligations and are in accordance with the EU Directive on Responsibility of the Product Lack.

Definition of responsibility for the dangerous object and activity

1. Owner of, movable or immovable the property - whose position or use, respectively properties or its own existence, represent a permanent threat and increasing damage to the environment (dangerous thing), responsible for the damage which flows from this item regardless of fault.

2. Holder of activity which is a permanent risk and increasing damage to the environment (dangerous activities) responsible for the damage which flows from this activity, regardless of fault.

Article 224.b.

The presumption of causality

Damage caused by dangerous items respectively dangerous activity, is considered to be derived from the vessel or that activity unless it is proved that they did not cause damage.

Comment:

The provisions of these two new additional Articles (224 a and b) in this draft Civil Code are more than necessary, for the purpose of clear

Partially
accepted

Not
accepted

Regarding the comment on the dangerous activity, this issue is defined by Article 227 par. 2 of the Book of Obligations. Paragraph 3 of this Article foresees civil misconduct arising from such damages.

definition of the notion of dangerous object and activity, having the effect of facilitating proper implementation of this Code.

Further, with this, we avoid disputes and different judicial practices during the handling of the same or similar cases. So, there is added legal certainty – due to the fact that these additional provisions enable proper understanding of on which basis and the circumstances of the present case apply the relevant regime of objective responsibility/ causal to the infliction of damage.

Article 224

Liable persons

1. The owner or possessor of a dangerous object shall be liable for any damage resulting from such object.

2. A person entrusted with the use of a dangerous object, or a person responsible for overseeing it who is not employed by the owner or possessor, shall be liable for any damage resulting from such object, unless it is shown that the damage was the result of concealed defects or hidden attributes of the object.

Article 225

Exemption from liability

1. The persons shall be exempted

Partially accepted and reflected on the Draft

This article reflects article 158 of applicable LOR so in the book on Obligations is proposed as such

Partially accepted and reflected on the Draft

Not
accepted

from liability if proves that the damage was exclusively caused by an act that could not have been foreseen or avoided.

2. The possessor of the object is relieved of liability even when proves that the damage was caused exclusively by the action of the damaged party or the third person which he could not foresee and whose consequences could not have been avoided.

3. The possessor is partially released from liability if the damaged party has partially contributed to causing the damage.

4. If the third party contributed partially to the damage caused, he/she responds to the damaged party in solidarity with the possessor of the object.

5. A person assisting the owner or possessor in the use of the object shall not be deemed as a third person.

ALTERNATIVE:

Besides interventions on the above provisions of paragraphs the Article 225 (in view of the consistent implementation of the presumed objective responsibility by which the burden of proof of release from

Not
accepted

This article is in accordance to the EU directive related to the lacks of the products.

liability clearly lies on the owner), it suggested to also new paragraph no. 6, as follows:

6. Based on the same conditions the person who handles dangerous activity. are also exempted from liability

Article 226

Unlawful removal of a dangerous object from holder

~~If a dangerous object was removed unlawfully, the person who removed the dangerous object shall be liable for any damage resulting from it.~~

ALTERNATIVE: with the following formulation;

The person, respectively the possessor shall not be liable for the damage resulting from the dangerous object which was taken unlawfully, but the person who has taken the object shall be liable for the damage.

Article 227

Dangerous activities

1. The person who carries on a dangerous activity shall be liable for any damage originating from such activity.

2. An activity is dangerous if it

Partially
accepted

This article is proposed by the first phase of the Civil Code project and its base is on the Draft Common Referrals Framework (DCFR). These proposals can be seen in the recommendations set out by the first phase of the project, namely the document: Recommendations concerning harmonization, simplification, modernization, and alignment with EU standards Law on Obligations in Kosovo - November 2015. See recommendation 34 page 26

creates a significant risk of damage even when conducted with due care and it is not a matter of common usage. A risk of damage may be significant having regard to the seriousness or the likelihood of the damage.

3. Civil liability for damage resulting from activities dangerous to the environment shall be regulated by special law

ALTERNATIVE:

The provision of Article 227 shall now be removed as a surplus, with the reasoning that the matter covered by this provision – has already been regulated by Article 224.a, above.

Sub-Chapter VI – Liability for Damages Caused by Motor Vehicles

Article 228

Damage caused by motor vehicles

~~1. The rules of liability on the basis of fault shall apply in the case of accident caused by a moving motor vehicle which was caused only due to the fault of an owner.~~

~~2. Shall there be dual fault, each owner of the motor vehicle shall be liable for the entire damage suffered by them, proportionally to their degree of their fault.~~

Proposals for two new articles are not accepted because Article 228 of the Civil Code comprehensively regulates the issue of damage caused by motor vehicles.

~~3. Shall there be no fault on either side, the owners of motor vehicles shall be liable on equal parts, if the rules of fairness do not require otherwise.~~

~~4. The owners of motor vehicles shall be solidary liable for damages suffered by third persons.~~

~~5. The owner of the vehicle or its possessor is liable for damages arising from defects in the maintenance or the manufacture of the vehicle, without prejudice to the right of redress against the manufacturer.~~

ALTERNATIVE:

The proposal is to handle Sub-Chapter VI in more detail and provisions shall be included in two new articles of the Draft, as follows:

***Article 228.A.
Motor Vehicle***

1. A motor vehicle is considered every vehicle put in motion using the engine and which, according to the technical specifications, is intended to move on land, on rails or is used in their absence as a work tool or means of transportation of people and goods.

2. A trailer connected to the motor vehicle is also considered an

Accepted

Accepted

integral part of the motor vehicle.

3. A motor vehicle is considered to be active when used for its purpose, regardless whether its engine is functional or not, when its position or use, its features or its existence, constitute an increased danger to the surrounding.

Article 228.B

Liability for damages caused by motor vehicles in motion

1. If the damage is caused by two or more vehicles in motion, the entire damage shall be borne by the owner, respectively the possessor who is exclusively culpable for the accident.

2. If there is dual fault, each owner of the motor vehicle shall respond to the other owner for the damage incurred, proportionally to each other's degree of fault.

3. If there is no fault of any participant, the owners of motor vehicles shall be liable in equal parts, if the rules of fairness do not require otherwise.

4. The owners of motor vehicles shall be solidary liable for damages suffered by third persons, regardless of the fault.

Chapter XIV – Compensation of Damage

This article reflects article 170 of applicable LOR so in the book on Obligations is proposed as such

**Sub-chapter I – General Provisions
for Material Damage**

**Article 247
Restoration of original situation
and monetary compensation**

1. The liable person shall be obliged to restore the situation existing prior to the occurrence of the damage.
2. If restoration of the original situation is totally or partially impossible, the liable person is obliged to pay monetary compensation.
3. If the damaged person so requests, the liable person is obliged to pay monetary compensation, unless the circumstances of the case justify the restoration of the original situation.

Comment: Only suggestion for adequate reformulation the content in the provision.

**Article 248
When the obligation to compensate
arises**

The obligation to compensate arises at the moment when the damage occurred.

***Sub-chapter II - Rules for
Determining the Amount of
Compensation***

**Article 249
Actual loss and lost profit**

1. The damaged party shall have

Not
accepted

This article reflects article 173 of applicable LOR so in the book on Obligations is proposed as such

the right to compensation of the actual loss and lost profit.

~~2. The amount of compensation provided shall be calculated according to the market values and prices at the time when the court decision is issued, unless stipulated otherwise by law.~~

ALTERNATIVE:

There is a proposal for the Paragraph 2 of the Article 249 with slightly different formulation and content, as below:

2. The amount of compensation of the damage is set at the amount of the restoration costs.

If restoration is not possible or monetary compensation is allowed, the amount of compensation is set according to the market value at the time when the court decision is issued.

Comment:

The purpose of this reformulation is to avoid problems in the application of this provision in practice, with a clear definition that; if the damaged party restores the damaged material to the previous state, shall be given/granted compensation of the damage in the amount of actual loss for the costs of restoration, whereas on the second case, when monetary compensation is granted (when in fact there is no restoration) the

Not
accepted

This articles genesis is in the articles 173 until 176 of LOR but it is upgraded by the proposal of the first phase of Civil Code project.

compensation of the damage shall be set according to the market prices at the time when the court decision is issued.

3. When estimating the amount of profit lost, consideration is given to the profit that could have been expected based on the regular flow of objects or under special circumstances and whose performance has been hampered by the act of the doer or by the omission to take action.

4. When the object is destroyed or damaged by a criminal offense committed intentionally, the court may determine the amount of remuneration according to the value of the property for the damaged party.

Article 250

Damage arising from non-performance or delay in performance of an obligation

1. In the case of non-performance or delay in performance of an obligation, compensation shall put the creditor as nearly as possible into the position in which he would have been if the obligation had been duly performed.

2. The debtor is liable only for the damage that he foresaw or should have foreseen at the time when the obligation was incurred, unless the non-performance or delay in performance was intentional or grossly negligent.

Not
Accepted

Not
accepted

This article reflects article 175 of applicable LOR so in the book on Obligations is proposed as such

3. The debtor is not liable for damage suffered by the creditor to the extent that the creditor contributed to the non-performance or delay in performance of the obligation.

4. The debtor is not liable for damage suffered by the creditor to the extent that the creditor could have reduced the loss by taking reasonable steps. The creditor is entitled to recover any expenses reasonably incurred in attempting to reduce the damage.

COMMENT:

This provision of Article 250 of the Draft results as incomprehensible in its content, respectively it is not clear what it consists of?!

Furthermore, as such, it does not correspond with the topic covered in this chapter – thus, as such, it is hereby suggested to be removed.

**Article 251
Reduction of compensation**

1. The court may, taking care of the financial situation of the injured party, order the person responsible to pay less compensation from the amount of damage, if the damage is not caused either willfully or negligently serious, and responsible person is able heavy materials, so that payment of the full amount would be too small to poverty.

2. If the pest has caused damage something working for the benefit of the victim, the court may appoint a smaller reward, given that care shows

Not
accepted

This article reflects article 176 of applicable LOR so in the book on Obligations is proposed as such

pest in its own affairs.

3. The court may reduce the award if the victim knowing the risk of damage that can be caused, willingly took that risk and is considered to have accepted it.

Article 252

Shared liability

1. The injured party, who has contributed to the damage created, or made the damage greater than it would be otherwise, has the right only to accordingly lower compensation.

2. For the previous paragraph, the provisions on the liability of the legal representative and his assistant shall apply *mutatis mutandis*.

3. When it is impossible to verify which part of the damage results from the action of the damaged party, the court shall rule on compensation by taking into account the circumstances of the case.

4. Polluters and the injured bear the burden of proving each other's contribution to the cause and causality of this contribution to his detriment and height.

COMMENT:

Paragraphs 2 and 3 are

Not
accepted

Not
accepted

This article reflects article 177 and 178 of applicable LOR so in the book on Obligations is proposed as such.

This article reflects article 177 and

incomprehensible with regards to the content and function, whereas paragraph 4 is contradictory with the principle of presumption of objective / causal liability – when transferring the burden of proof the injured party as well!?

Sub-chapter III – Special Rules for Compensation in the Event of Death, Bodily Injury and Damage to Health

Article 253

Compensation of damage in case of death, bodily injury and damage to health

1. Whoever causes bodily injury to another person or harms his health is obliged to compensate for the costs of treatment and other necessary expenses associated with this as well as lost profit due to inability to work during the time of treatment.

2. If the injured party due to partial or partial inability to work loses profit or needs are added continuously, or opportunities for further development and progress have disappeared or are diminished, the person in charge has a duty to pay the injured person a fixed amount of money in return for this damage.

Article 254

Extent of liability in the case of death

1. In the case of death, compensation shall be made by reimbursing the costs of an attempted cure as well as the losses incurred by the deceased party because of the suspension or

178 of applicable LOR so in the book on Obligations is proposed as such according to the proposal of first phase of the Civil Code, namely the document: Recommendations concerning harmonization, simplification, modernization, and alignment with EU standards Law on Obligations in Kosovo - November 2015.

This article reflects article 177 but it is modified by the proposal of the first phase of the Civil Code project. These proposals can be seen at the recommendations submitted by the first phase of the project, namely the document: Recommendations concerning harmonization, simplification, modernization, and alignment with EU standards Law on Obligations in Kosovo - November 2015.

reduction of his earning capacity or the resulting increase in his needs for the duration of the period of illness preceding his death. 2. If at the time of the injury, the deceased party maintained a relationship with a third party by virtue of which he was under the legal obligation to maintain or support this third party and if the third party was deprived of the right to maintenance or support as a result of the death, the party liable to pay monetary compensation shall compensate the third party in the form of an annuity. Liability for damages shall also be enforced if, at the time of injury, the third party had been conceived but not yet born. 3. Any person that causes the death of another is obliged to compensate the funeral costs of the deceased party. <i>Article 255</i> Extent of liability in the case of bodily injury or damage to health In the case of bodily injury or damage of health, compensation shall be made by reimbursing the costs of the treatment as well as the losses incurred by the injured party as a result of the temporary or permanent suspension or reduction it's earning capacity or the resulting increase in his needs. COMMENT:		Not Accepted	This article reflects article 177 of LOR so in the book on Obligations is proposed as such
		Not accepted Not accepted	

Titles of the Articles 253, 254 and 255 in this Draft are erroneous (Extent of liability? and at the same time their content result to be partially confusing, deficient and incomprehensible).

It is hereby suggested to handle this Sub-Chapter at least in the same manner as provided by the three (3) provisions of the respective Articles of Law 04/L-077 (Articles 177, 178 and 179) as below:

Article 177

Loss of earnings, treatment costs and funeral expenses

1. Any person that causes someone to die must reimburse the latter's funeral expenses.

2. Such person must also reimburse costs of treatment owing to the injuries caused, other necessary expenses in connection with treatment, and the earnings lost because of incapacity to work.

Article 178

Right of person maintained by deceased

1. A person maintained or regularly supported by the deceased and a person that by law had the right to request maintenance therefrom shall have the right to the reimbursement of the damage suffered because of the loss of maintenance or the support.

Not
accepted

Accepted

This article reflects article 177 of LOR so in the book on Obligations is proposed as such

2. Such damage shall be reimbursed thereto by the payment of a monetary annuity; the amount shall be levied with regard to all the circumstances of the case and may not be larger than the sum the injured party would have obtained from the deceased had the deceased lived.

Article 179 Reimbursement of damage in case of physical injury or damage to health

1. Any person that causes another physical injury or damages the health of another must reimburse the latter with the costs in connection with treatment, other necessary expenses there to connect and the earnings lost because of incapacity to work during treatment.

2. If owing to full or partial incapacity to work the injured party loses earnings, the injured party's needs are permanently increased, or the possibilities for the injured party's further development and progress are destroyed or reduced the liable person must pay a specific monetary annuity thereto as reimbursement for the damage.

**Article 256
Compensation in the form of annuity**

1. In case of death, bodily injury or damage to health the compensation shall as a rule have the form of an

Accepted

This article is modified by the proposal of the first phase, namely the document: Recommendations concerning harmonization, simplification, modernization, and alignment with EU standards Law on Obligations in Kosovo - November 2015.

This article reflects article 181 of LOR so in the book on Obligations is proposed as such

annuity, either lifelong or for a specific period.

2. An annuity awarded as compensation shall be paid monthly in advance, unless the court decides otherwise.

3. The creditor shall have the right to request the necessary security for the payment of the annuity, unless such would not be justified given the circumstances of the case.

4. If the debtor fails to provide the security stipulated by the court the creditor shall have the right to request that a one-off sum be paid thereto instead of the annuity; this shall be levied in respect of the size of the annuity and the creditor's probable lifespan, with a rebate for the appropriate interest.

5. On serious grounds the creditor may also request that the debtor immediately or subsequently pay a one-off sum instead of the annuity in other cases.

Article 257

Change in circumstances

The court may increase an annuity at the request of the injured party or may reduce or revoke it at the request of the injurer if there is a substantial change in the circumstances that were taken into consideration at the time when compensation of damage was awarded.

Article 258

Non-transferability of rights

Not
accepted

This article is drafted according to the proposal of the first phase, namely the document: Recommendations concerning harmonization, simplification, modernization, and alignment with EU standards Law on Obligations in Kosovo - November 2015

1. It shall not be possible to transfer a right to compensation in the form of an annuity for the death of a person or for bodily injury or damage to health to another person.

2. Sums of compensation that have fallen due may be transferred to another person if the compensation sum was set by a written agreement between the parties or by a final court decision.

*Sub-chapter IV - Moral damage
Non material damage*

**Article 259
Modalities of reparation**

~~1. Moral damage may be compensated through monetary compensation or other form of reparation equivalent to monetary compensation.~~

~~2. Compensation for moral and material damage caused by defamation and insult shall be regulated by special law.~~

**ALTERNATIVE:
Article 259**

Publication of judgement or correction

1. In case of violation of a personal right, the court may order the publication of the judgement or a correction wherein

the person causing the damage shall pay the costs, or order that the person causing the damage withdraws the statement by which the violation was committed, or do something else by which it is possible to achieve the purpose of the compensation of the damage.

2. The court, at the request of the damaged party, regardless of the compensation of the material damage, may award monetary compensation for non-material damage, when it finds that the circumstances of the case justify it.

Comment:

The naming of Sub-Chapter IV is inadequate, since the notion of non-material damage can in no way define the term moral damage in the scope of the

Draft of this Civil Code and in general, it does not cover the nature of such type of damage.

Furthermore, the content of Article 259 of the Draft does not result to have any applicable understanding or function. Therefore, as such, the suggestion is to remove it or replace it with the provision of Article 182 of the Law on Obligational Relationships – with regards to the matter not covered by this Draft.

Article 260

Monetary compensation

Accepted

This article is modified by the proposal of the first phase, namely the document: Recommendations concerning harmonization, simplification, modernization, and alignment with EU standards Law on Obligations in Kosovo - November 2015

~~1. In the assessment of moral damage, all circumstances of the case, including the intensity, duration and consequences of the damage, have to be taken into account.~~

~~2. The Code may determine how compensation for moral damage is to be quantified.~~

COMMENT:

The provisions of article 260, shall be removed, because they are incomprehensible or deficient – as it does not define non-material damage, as a result of violation of the personal rights.

Furthermore, such provision as the one on the Paragraph 2 of Article 260 is definitively unacceptable and unprecedented, when providing the possibility to calculate moral damage by the Code?!

This matter belongs to the judiciary, eventually to the Supreme Court of Kosovo in order to determine the criteria or something similar with the aim to have uniform case law in relation to non-material damage.

Therefore, in this relation, the suggestion is that this provision, as such, to be reformulated in its entirety, or shall eventually have the following content:

ALTERNATIVE 01

19.03.2019

1. In case event of violation of the right of personality, if the court finds that the nature of injuries and circumstances of the case

Accepted

Not
accepted

justify so, it shall rule on monetary compensation, regardless of the compensation of material damage.

2. In the event of physical pain suffered, spiritual pain suffered, due to the diminishing of life activity, disfigurement, violation of reputation, honor, freedoms or rights of personality, death of a relative, and fear, shall the court determine that the circumstances of the case and in particular the intensity of pain and fear and their duration justify so, it shall rule on monetary compensation, regardless of the compensation of the material damage and the lack of material damage.

3. When deciding on the claim for compensation of non-material damage, and its amount, the court shall take due care for the importance of the violation of a certain right, and the purpose to which this compensation shall serve, but it shall not favor the intentions that are not compatible with the nature and the social purpose thereof.

ALTERNATIVE 02

1. In case of violation of personality rights, if the Court finds that the nature of the injuries and the circumstances that justify, will judge the reward in cash, despite the reward of material damage.

Right in Damages due to violation of

Not
accepted

Not
accepted

the right personality it belongs to both natural persons and legal entities.

2. For sustained physical pain, for suffered spiritual pain due to the death of a close person, reducing the vital activity of disfigurement, infringement of authority, honor, freedoms or personality rights, as well as fear, the court, we conclude that the circumstances of the case and especially the intensity of pain and fear and their duration justify it, will judge pecuniary, despite the reward of material damage.

3. When deciding on the request for the compensation of non-material damage, as well as the amount of his remuneration, the court will take care of the importance of good vulnerability and the purpose served by this award, but also for him, that not the favored targets that are not in accordance with its nature and social purpose.

ALTERNATIVES 03

1. In case of violation of personality rights, if the Court finds that the nature of the injuries and the circumstances that justify, will judge the reward in cash, despite the reward of material damage.

Right in Damages due to violation of the right personality it belongs to both natural persons and legal entities.

2. In case of violation of rights resulting in death personality or bodily injury, physical pain, spiritual

Not
accepted

Not
accepted

pain and fear, the court is to ascertain the circumstances of the case and especially the intensity of pain and fear and their duration justify this will judge pecuniary, despite the reward of material damage.

3. When deciding on the request for the compensation of non-material damage, as well as the amount of his remuneration, the court will take care of the importance of good vulnerability and the purpose served by this award, but also for him, that not the favored targets that are not in accordance with its nature and social purpose.

Article 261

Moral damage suffered by third persons as a result of another's death, bodily injury or damage to health

~~1. If moral damage is inflicted on a third person as a result of another's death, bodily injury or damage to health, the person liable for such damage shall be obliged to provide monetary compensation to the third person if at the time of death, injury or damage that person is in a particularly close personal relationship to the injured person.~~

~~2. The relationship referred to in paragraph 1 shall be presumed to exist, unless the contrary is proved, between the deceased or injured person and his spouse, children, parents and siblings.~~

ALTERNATIVE:

Not
accepted

Not
accepted

This article is modified by the proposal of the first phase, namely the document: Recommendations concerning harmonization, simplification, modernization, and alignment with EU standards Law on Obligations in Kosovo - November 2015

This article reflects article 188 of LOR so in the book on Obligations is proposed as such.

COMMENT:

The naming and the content of the provision of this Article are inconsistent and incomplete. In addition to the requirement for a clear definition in relation to monetary compensation in such cases, at the same time, there is a need for the Civil Code to extend the circle of persons enjoying the right to this compensation, such as the assertions with extensive interpretations in the case law of the respective provisions of the LOR and the latest remedies in this segment in the region and beyond.

Therefore, the suggestion is to reformulate this provision with the following naming and content:

Article 261

Persons that enjoy the right to monetary compensation in case of death or serious disability.

1. In case of extremely severe disability or death of a person entitled to cash bonuses to non-material damage have his immediate family members (spouse, children and parents).

2. This right is well; extramarital spouse, siblings, grandparents and grandchildren, whether among their dead and injured respectively existed permanent coexistence.

3. The right to payment of non-pecuniary damages in cash have

See previous justification

See the Article 248 of the draft Civil Code. This matter is regulated.

Not
accepted

Not
accepted

Not
accepted

parents in case of loss of a child conceived of the unborn - nasciturus.

Article 262

Compensation for the victim of a criminal offence

~~Any suffering of the victim as a result of a criminal offence shall be compensated by the offender.~~

COMMENT:

What is the purpose of this provision – the question is, in the absence of this provision, what remains unregulated in the area of compensation of damage?!

Article 263

Inheritance and assignment of claim for compensation of moral damage

~~1. A claim for the compensation of moral damage shall pass to heirs only if it was established by a final court decision or a written agreement.~~

~~2. Such a claim may be the subject of assignment, compensation and execution under equal conditions.~~

ALTERNATIVE:

The suggestion is to amend the naming and the content of this provision, as follows;

Article 263

Inheritance and assignment of claim for compensation of non-material damage

Not
accepted

This article reflects article 189 of LOR so in the book on Obligations is proposed as such

Not
accepted

This article reflects article 281 of LOR so in the book on Obligations is proposed as such

Accepted

1. The claim for the compensation of non-material damage shall pass to heirs only if a claim for compensation or a lawsuit has been filed.

2. Such a claim may be the subject of assignment, compensation and forced execution under equal conditions.

A new provision shall be added;

Article 263 a)

When the obligation for non-material compensation is due

The obligation of monetary compensation for non-material damage is due at the time when a claim for compensation or a lawsuit has been filed.

A new provision shall be added;

Article 263 b)

Compensation of non-material damage in the future

1. The court, at the request of the damaged party, shall also set the compensation for future non-material damage, if according to the regular course, it is certain that it will continue in the future.

2. The monetary compensation of the damage shall be made to the person having extremely serious bodily injuries, and depending on the circumstances of the case, the court determines also the damage

See comment above

Accepted

This article reflects article 282 of LOR so in the book on Obligations is proposed as such

This article reflects article 284 of LOR so in the book on Obligations is proposed as such

incurred in the future in the form of monthly annuity.

Article 264

Shared liability and reduced compensation

~~The provisions on shared liability and reduced compensation applying to material damage shall also apply to moral damage as far as practicable.~~

ALTERNATIVE:

COMMENT:

The suggestion is to reformulate the naming and content of this provision to make it consistent with the matter of material damage.

Therefore, the following content is proposed;

Article 264

The contribution of the damaged party

Provisions on the contribution of the damaged party that are applied to reduce the compensation of material damage, also apply when determining the non-material damage.

Article 320

Legal Subrogation

If an obligation is performed by a person that has any legal interest therein the creditor's claim with

This article reflects article 285 of LOR so in the book on Obligations is proposed as such

Not
accepted

This article reflects article 353 of LOR so in the book on Obligations is proposed as such

all the accessory rights shall be transferred thereto upon performance by law alone.

ALTERNATIVE:

COMMENT:

It is about an intervention to redact the formulation of the provision, without any remark on the content.

If an obligation is performed by a person that has any legal interest therein, by law, the creditor's claim with all the accessory rights shall be transferred thereto, upon performance.

**Article 321
Subrogation during partial
performance**

1. During partial performance of the creditor's claim the accessory rights by which the performance of the claim is secured shall be transferred to the performer only insofar as they are not required for the performance of the remainder.

2. The creditor and the performer may agree to exploit guarantees in proportion to their claims, and may also agree that the performer will have priority in repayment.

**Article 322
Evidence and means of security**

1. The creditor shall be obliged to deliver to the performer means by

Not
accepted

This article reflects article 354 of LOR so in the book on Obligations is proposed as such

which the claim can be evidenced or secured.

2. Exceptionally the creditor may deliver to the performer an object received as a lien from the debtor or from any other person, but only if the lien consents thereto; otherwise the object shall remain in the creditor's possession to be kept safe for the performer.

Article 323

How much can be requested from debtor

The performer to whom the claim was transferred may not request more from the debtor than was paid to the creditor.

Article 324

Exclusion of creditor's liability for existence and collectability of claim

1. A creditor that accepted performance from a third person shall not be liable for the existence or collectability of the claim upon performance.

2. The application of the rules on unjust enrichment shall not be excluded thereby.

CHAPTER XXIV Statute-barring

Subchapter I - Statute-barring period

Article 384

Periodic claims

1. Claims for periodic charges that

Not
accepted

This article reflects article 356 of LOR so in the book on Obligations is proposed as such

The Group of Experts has even integrated many issues even more broadly than that you have proposed. In addition, compensation in case of bodily injury and damage to health is included in Article 253 of the Civil Code.

fall due annually or at specific shorter time intervals (periodic claims) shall become statute-barred three (3) years after each individual charge falls due, whether they are accessory periodic claims, such as interest claims, or such periodic claims by which a right itself is drawn upon, such as maintenance claims.

2. The same shall apply to annuities by which a principal and interest is repaid in equal periodic amounts stipulated in advance, but shall not apply to instalments and other partial performance.

3. Irrespective of the first paragraph of this article interest on claims whose statute-barring period is less than three (3) years shall become statute-barred after the same period as the principal claim.

Article 385

Statute-barring of actual right

1. The actual right from which periodic claims originate shall become statute-barred five (5) years after the oldest unfulfilled claim following which the debtor failed to fulfil any more charges fell due.

2. If a right from which periodic claims originate becomes statute-barred the creditor loses not only the right to demand future periodic charges, but also the right to claim periodic charges that fell due before the statute-barring.

3. The right to maintenance set by law may will not become statute-barred.

Article 386
Reciprocal claims from commercial contracts

1. Reciprocal claims from commercial contracts and claims for the return of expenditure arising in connection with such contracts are statute-barred after three (3) years.

2. The statute-barring period shall run separately for each supply of goods, performance of work and provision of services.

Article 387
Claims for rent

Claims for rent, whether it is stipulated that it be paid periodically or in a lump sum, shall become statute-barred after three (3) years.

Article 388
Claim for compensation of damage

~~1. The claim for compensation of damage prescribes in three (3) years from the date the damaged party became aware of the damage and the person who caused the damage.~~

COMMENT:

It is suggested to review only the formulation of Paragraph 1 of this Article, whereas it is of interest to consider adding a new Paragraph which refers to the prescription of direct claims (actio directa) filed by third parties related to the insurance of liability.

This article reflects article 358 of LOR so in the book on Obligations is proposed as such

This article reflects article 382 of LOR so in the book on Obligations is proposed as such

This is because these claims refer to non-contractual legal relations on the basis of civil offence and are not covered by the insurance contract – which is not covered now by this Civil Code, but will be covered by a special law.

This is relevant also to claims of subrogation by law on insurance, taking into account their legal nature based on the liability for the compensation of the damage.

The new Paragraph is suggested to have the following content; respectively to have the same content like the provision of Article 362 .5 of the Law 04-L/077;

2. A direct claim (actio directa) by a third injured party and subrogation by law against an insurance agency shall become statute-barred at the same time as the claim against the insured person liable for the damage becomes statute-barred.

3. In each case, the claim shall become statute-barred five (5) years after the damage occurred.

4. Compensation claims for damage that occurred through the breach of a contractual obligation shall become statute-barred after the period stipulated for the statute-barring of the obligation.

5. The compensation claims for

See comment above, respectively articles 353,354,356 of LOR that where taken based on the new provisions.

damage inflicted through an act of sexual abuse of a minor shall become statute-barred fifteen (15) years after the minor reaches the age of maturity.

Article 389

Claim for compensation of damage caused by a criminal offence

1. When damage is caused by a criminal offence and a longer term of prescription is provided for the prosecution of the criminal offence, the claim for compensation of damage filed against the person, respectively the liable insurer shall prescribe when the time limit for the prescription of the criminal prosecution expires.

2. The discontinuance of statute-barring of criminal prosecution shall have as a consequence the discontinuance of statute-barring of the compensation claim.

3. This shall also apply to the suspension of statute-barring

Article 412

Interest delay

1. The debtor who is late in fulfilling the monetary obligation debits the principal debt and the interest.

2. The interest rate delay is eight

per cent (8%) per annum, ~~unless otherwise provided by a special law.~~

COMMENT:*****

To ensure consequent application of the specified norm of the interest delay in this Paragraph, respectively to avoid the possibility to provide a lesser norm of interest delay by a special law which in a way will harm the function of this provision, it would be of interest to have a reformulation as below:

We believe that this should have been the goal of legislators when provided the option of height adjustment of interest with the special law, as an example in practice;

- case with Law 04 / L-018 - Article 26), which provides annual delay interest of 12% in function of the disciplined insurers in fulfillment of the obligations and mandatory insurance

- case with Law 05 / L-110 - Article 4.5 of default interest in commercial transactions, which foresees that the annual interest rate of 8% is added to the reference interest rate by publication of CBK.

ALTERNATIVE;

The interest rate delay is eight per cent (8%) per annum, **unless a special law provides a higher norm of interest delay.**

Chapter XVI -Transitional and Final Provisions

Sub-chapter I - Transitional Provisions for Book II

Article 1611

Abrogation of other laws

1. Upon entry into force of this Civil Code, law No. 04/L-077 On Obligational Relationships shall be abrogated, unless the following provisions provide otherwise.

2. Article 1058 of Law No. 04/L-077 On Obligational Relationships shall continue to be applicable.

3. Sub-Chapter 2 of Chapter 5 of Part II of Book 1 (Articles 217 to 244) shall continue to be applicable until abrogated or replaced by a new law covering the subject matter of securities.

4. Article 381, Article 382 and Article 385 shall continue to be applicable until the statutory rate of usury, delay and other interest are regulated by special law.

5. Articles 700 to 725, Articles 785 to 789, Articles 804 to 833, Articles

834 to 847, Articles 848 to 867, Articles 1032 to 1046 shall continue to be applicable until the matter of license agreements, commission agency contracts, commercial agency contracts, brokered contracts, shipping contracts and transfer orders are regulated by a commercial code.

6. Articles 918 to 986 shall continue to be applicable until the matter of insurance contracts is regulated by special law.

COMMENT on paragraph 6:

The provision of paragraph 6 of this Article very well justifies the necessity for a proposed alternative solution in the provision of Article 388 of the draft Civil Code, related to the need for this Code to regulate the prescription of direct claims “actio directa” and claims of subrogation.

Otherwise, another option is/remains that in transitional provisions, Article 1611, shall contain a new Paragraph which would remain in force simultaneously with the provisions of Article 362 of the Law 04/L-077 (Statute-barring period for insurance contracts.

However, we consider that this solution is not the preferred one because by regulating the insurance contracts with a special

	law, it is likely that the prescription of direct claims and subrogation claims will not be covered, respectively even if they are handled on the legal aspect, they do not fall under the insurance contracts. 7. Articles 880 to 900 and Articles 901 to 905 remain applicable until the contract for organizing the trip (travel arrangements) and mediated contracts for the journey to be regulated by a special law. Article 1631 The provisions of international private law remaining in force All the rules of private international law, which are not included in this book, remain in force.			
	Article 1131- Social Welfare and Special Protection To add new paragraph: The forms of protection, rights on benefits and services for the categories included in sub paragraph 1.2. and 3 of this Article shall be regulated by specific laws and regulations by the respective institutions. Article 1238 - The ex officio action New paragraph to be added after paragraph 2: The Court may exceptionally ex officio or by initiation of Custodian Body commence, procedure for verification of paternity and	Ministry of Labor and Social Welfare, Fitore Rexhaj	Accepted with remarks Not Accepted	Article 1131 New proposed paragraph at its end shall contain wording "If not otherwise regulated by this Code". Article 1238 The court can tak care only ex officio but not even initiate the procedure for establishing paternity and maternity, without initiating the procedure by any other entity because in civil court proceedings begin at the request of a party with a legal interest. But if there is a case that the court should act ex

maternity, in cases of attempt or change of the child's family, defined as criminal act by the Criminal Code. Article 1285 - Enforcement of Protection At the end of the paragraph after the word "for the interest" To add the word "best" (a technical mistake). Article 1305 – Legal liability of adopter The naming of this Article "Legal liability of adopter" does not correspond with the content of the following paragraph.. We propose to be named: "Legal barriers to adoption." Article 1306 - The citizenship of the adopter Parag.3 the words "administrative body, i.e. central competent authority for social affairs policy", to be replaced by the words "Central Authority for adoption", "to be harmonized in accordance with the Article 1288 and Section 1295 and to the naming under the Hague Convention on Interstate Adoption (1993), so that it becomes clear that this authority will during the adoption process operate only on protection of the child interest, as the administrative body for labor and social policy is a broader concept. Article 1309 - Procedure for initiating the request for adoption Regarding the procedure for initiating a request for adoption WE PROPOSE following			officio in connection with motherhood or fatherhood, then it should be said that the court will issue a decision for establishing paternity and maternity ex officio.
		Accepted	
		Accepted	
			But during the writing of this article drafter of this change is the one that proposed this content of the text.
		Accepted	
		Partially Accepted	Article 1309 The order of articles and paragraphs is not necessary to be changed because paragraph 2 is intended to

regulation with the reformulation of article:

1. A person who wishes to adopt, applies for adoption to the Court.
2. The child determined as without parental care by the competent authority may be adopted by persons who seek to adopt and who are registered with the appropriate body which is authorized to initiate the procedure.
3. The application shall be accompanied by the written consent of the child's natural parents, birth certificate of the child and other relevant documents to present proof of the child's future well upbringing, namely information's about the adopter and the adoptee as well as for the conditions of adoption.
4. The Court obtains the consent of the biological parents separately during the procedure, **when possible.**

Justification: It is only necessary to reformulate this Article in content in order, according to the process that takes place, from the submission of the application by the persons interested for adoption until the initiation of adoption procedure of a child without parental care, because during the process of investigation and evaluation (**Article 1311.** Investigation and preparation) there should be developed separate processes and to create special (file): 1). file regarding the assessment of eligibility of (potential) parents for adoption and 2). Assessment of the circumstances and needs of the child without parental care (potential) for adoption at the end of the evaluation the conclusion is drawn (according to Article 1285: After detailed review of each individual case, the competent body shall conclude about the form of protection about the child to meets requirements for the best interests of the child).

designate the court is what it takes to get parental consent and not any other body. But it recognizes that paragraph 2 to the end the words "whenever possible".

Paragraph 2 should become paragraph. 4. "The Court takes parental consent separately during the procedure, as well as added the words "**when possible**", as it shall be kept in mind not to become compulsory the declaration at the court, because you cannot always ensure the provision of parental consent at the Court, because the child's parents can be abroad (in another country) or at unknown address and their statements in those cases is taken by the Custodian body, through the Ministry (MLSW), which corresponds and cooperates with the competent local authorities or diplomatic channels, or by the competent authorities for social services of the country concerned, so we consider that when the statement is taken by the competent authorities is effective when submitted in Court, based on **Article 1299, parag.1**. Consent must be declared to the court **and shall become effective at the time of delivery**.

Article 1318
Termination of Child's Relationships to Relatives and Claims

In para. 1 .: to delete the word "**upon termination**" is replaced by the word "**establishment**"

Parag.2. is unclear and we think it shall be reformulated or deleted, as we consider it unnecessary.

Article 1332 -Rights of Foster Parents

In the content of this Article are set **Responsibilities/conditions** to be met by foster parents, not their rights.

Partially
accepted

Accepted

Not
Accepted

Accepted

Article 1318

The amendment in paragraph 1, is accepted but objection to paragraph 2 is not accepted because this paragraph provides that various property requirements, which can periodically be, belong to the child even after the establishment of adoption, while not entitled retention because this obligation far exceeding the adopter. For example in case of an injury sustained in traffic, such as eye damage, the insurance company or the person responsible may have an obligation to the child to pay periodically compensation every month until the recovering child or until the end of of his life. A child adopted these requirements can realize and after the establishment of adoption.

Article 1334

The reason for the rejection of changing the place of paragraphs is that the change in order could distort the contents of the text, because we

	Article 1334 - Legal competence and documentation Parag. 3 and 4 of this Article shall be transferred to Article 1331 - Placement (after para. 3), as it defines ways of placement in foster families. Article 1337 - Termination of Contract We propose this Article to be named, "Termination of contract" Parag. 1. After the word "in the contract" to add the words "with prior warning." Parag. 2. The word "renounce" be replaced with the word "terminate" and at the end of the paragraph after the word "placement", to add the words "or the child is placed in another alternative form of protection more appropriate to the child needs". Article 1339 - Supervision <u>REFORMULATION</u> of parag.3. and to delete signs () 3. The Custodian body is obliged to provide foster family essential and necessary information's for about the causes that led to the placement		Partially Accepted Partially Accepted Accepted	have articles that come later and may refer to those paragraphs. The proposed change of the order is not necessary. Article 1339 The proposed text is accepted, with the exception that the last word of the article instead of "law" to be "code." Article 1341 The words "circumstances" and "condition" do not have the same meaning, and therefore "defined conditions" should remain and not be
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	of child in foster care. The Custodian body must plan and give suggestions for avoiding future causes, to promptly take adequate measures provided herein. Article 1341 - Mutual information's of competent authorities In para. 2, the words "that any of the set conditions is caused" to be replaced with words "That any of the circumstances have changed". Article 1365 Obligation to Accept Custody and Exceptions Parag.2. subparagraph. 2.1., to delete the word "sixteen years" shall be replaced with the words "eighteen years"; We consider that a minor of sixteen years of age, cannot be assigned to exercise the task of a custodian.			replaced by "circumstances."
	• To remove any reference of "man and woman" and "different sexes" in the Article 1138, paragraph 1. The words "spouses of different sexes" and "man and woman" to be replaced with the wording "two persons." • To remove Paragraph 2 of the Article 1138. The purpose of this Code is the codification of the civil law field, and therefore should be more inclusive. Leaving open the possibility to fix other issues by special law, is in contrary to the purpose of the codification of civil law in the country.	The Center for the Development of Social Groups - CSGD and Center for Equality and Freedom - CEL		The issue in working groups and public debate has been treated extensively and concluded that legal marriage and cohabitation between persons of opposite sexes exist. It is impossible in some cases to avoid mentioning the word father, respectively mother. For example for determination of paternity and maternity it must be said "the husband has the right ..., respectively the wife of the man has the right ..." cannot say "person of person has the right ...". It would be pointless. This Code proposed that a civil partnership, which means the registered vital community of persons of the same sex shall be

• **Paragraph 4 of Article 1138** is in contrary to the **Article 24 of the Constitution of the Republic of Kosovo** since it limits the grounds protected from discrimination under paragraph 2 of Article 24 of the Constitution of the Republic of Kosovo. Basis protected by the Constitution (race, color, sex, language, religion, political or other opinion, national or social origin, relation to any community, property, economic, social, sexual orientation, birth, disability or other personal status) are the minimum of the guaranties that the Civil Code can provide. While the maximum that can be provided is based on the Law on protection against discrimination which provides protection on these grounds: nationality or association with any community, social origin or nationality, race, ethnicity, color, birth, national origin, sex, gender, gender identity, sexual orientation, language, nationality, religion and belief, political affiliation, political or other opinion , personal or social status, age, family or marital status, pregnancy, maternity, property status, health condition, disability, genetic heritage, or any other basis in order to implement the principle of equal treatment.

Consequently, we propose this reformulation of Article 1138:

Article 1138 Marriage

1. Marriage is a legally registered union between the two persons, through which they freely decide

regulated by a special law as applied in almost all states allow this kind of civil partnership.

This issue remains open topic is therefore proposed to be regulated by a special law.

The above is also given legal justifications regarding the Ombudsman's remarks related to the same issue

These articles depend from the formulation of marriage

to live together as spouses. Marriage is continuous legally regulated live union of two persons. Marriage is concluded by given consent of two persons and their signature before the official (registrar) of civil status.

2. Two persons have the right to enter into marriage and create family without any limitation due to race, color, sex, language, religion, political or other opinion, national or social origin, association with any community, property, economic social, sexual orientation, birth, disability or any other personal status, religion and they are equal while entering into marriage and at its dissolution.

4. Married people enjoy mutual rights and obligations under this Code.

- In the Article 1147 is add the wording "father-in-law, mother in law and daughter in law, stepfather and stepson, stepmother and step daughter".

Consequently, we propose this reformulation of Article 1147:

Article 1147 Affinity

Persons in affinity, father in-law and daughter in law, son in-law and mother in law, stepmother and stepson, stepfather and stepdaughter, father in-law and son in-law, daughter in-law and mother in-law, stepfather and stepson, stepmother and stepdaughter, cannot enter into the marriage regardless of the fact

Not
accepted

These articles are linked to the formulation of marriage. So the same issue related to the marriage is also treated above.

whether marriage which bound has brought this relationship is terminated.

To remove any reference to "man and woman" in Article 1164 which regulates cohabitation. Wording "man and a woman" shall be replaced with the wording "two persons:

Consequently, we propose this reformulation of Article 1164:

Section V - Cohabitation
Article 1164
Cohabitation of two persons

1. Cohabitation of two persons is the factual relationship between two unmarried persons who openly live as a couple, characterized by a joint life and work that represents a character of stability and continuation.

Cohabitation of two persons is equal with the status of marital spouses on the aspect of rights and obligations for caretaking, reciprocal financial support, and property rights as specified in this Code.

3. Cohabitation of two persons does not produce effect of paragraph 2 if at the time of its creation the following marital obstacles existed: existing

marriage, consanguinity at the level forbidden by law, the adopting gender, mental illness, and legal incapacity unless any of the obstacles ceased during the existence of cohabitation.

- **To remove any reference to "man and woman"** in Article 1165 which regulates the burden of proof. Wording "a man and a woman" shall be replaced with the wording "two persons":

Consequently, we propose this reformulation of Article 1165:

Article 1165 Burden of proof A person who wants to exercise the rights from cohabitation of two persons must prove its existence and duration.

III. Civil partnership as a form of recognition of partnerships relationships of same gender/sex persons.

Concrete proposals regarding civil partnership

If the Ministry of Justice does not take into account the recommendations on marriage, we alternatively propose to recognize civil partnerships as a form of legal recognition for same sex / gender couples. In this regard, we propose to add following legal provisions:

Not
accepted

The proposed text for the Civil Partnership can be debated after conducting an analysis of the situation in Kosovo, as other countries such as Croatia, which has regulated this issue with particular law or Montenegro, which is phase of law proposal for vital community among persons with gender (sex) the same did so.

Article XXXX
Civil partnership

1. Civil partnership implies a legal relationship between two persons, of the same or opposite sex/gender, established on the basis of this book.
2. Any person who meets the requirements set out in this book, can register and enter into a civil partnership, and will be linked to the obligations and responsibilities and enjoy the protection and benefits provided by this book.
3. Couples in civil partnerships should be recognized and respected

Article XXXX
Conditions for entering into Civil Partnership

1. A person who has not attained the age of eighteen cannot enter into a civil partnership.

Limitations to enter intro civil partnerships shall not exist

Article XXXX
Obstacles to enter into civil partnership

1. Limitations that apply for marriage and cohabitation, apply mutatis mutandis to civil partnerships.

Article XXXX

The rights and obligations of persons in a civil partnership

1. Persons in a civil partnership are equal in all Personal and property relations.

Article XXXX

Property relations of persons in a civil partnership

Provisions concerning property relations that applies between spouses in marriage and cohabitation, apply mutatis mutandis to the partners in civil partnerships.

Article XXXX

Adoption

Persons in civil partnership recognized by this book cannot adopt.

Article XXXX

The registration of civil partnerships

Provisions that applies for the registration of the civil marriage shall apply mutatis mutandis for civil partnerships.

Article XXXX

Dissolution civil partnership

Provisions applicable to the settlement of civil marriage shall apply mutatis mutandis for civil partnerships.

By the text of Legal Resources, paragraph 2, instead of the word custom, to use customary practices (as the customary law) because the term custom, I think it is a foreign word and as such cannot be used as a source of law.		Not accepted	Legal sources are explained in explicit and understandable way
Article 6, specifying the general principles			
Article 9, the presumption of good faith			
Article 19, paragraph 2 of this paragraph be reworded		Not accepted	Article 60 parag.1,2, the KC, contains all the necessary elements to define the threat.
Article 60 should be reformulated as follows:			
Threat can induce announcement of legal action as invalid, if it is serious, that as such personally scares a particular person, his relatives, like her husband or his wife, ancestors and his descendants, that will suffer any physical material, heavy unfair harm.		Not accepted	Public promise explained more in Book 2, obligations. THERE should be no repetition of norms
Article 65, to explain more thoroughly the issue of public promise		Not accepted	The comment is not accepted, because the issue of public promise of reward, in detail is regulated in the

	Article 126, paragraph 3 to clarify Article 143 the attorney explained textually and the division of legal work which are excluded from the proxy and resolved with special authorization		Accepted	Civil Code, Book II, Article 288 para. 1, 2, 3, Article 289 para. 1, 2, 3. Clarification of Article 126 is as follows; "If the contract is concluded under rescinding condition, the contract ceases to be valid if the condition is met." Representation is regulated by Book 1, General Part. While, this article should also be seen in relation to the general part. The Article as such is clear and only defines what the lawyer is and how it should be. In other provisions is defined when authorization is required and when proxy is required.
	Unfounded Enrichment In our daily work it is normal in connection with various disputes in as counsel or judges encounter various uncertainties Referral with regard to various provisions or with institutes foresee the applicable law in Kosovo. One of them was also uncertainty about the institute or unfounded Enrichment, now provided by Article 194 of the Law on obligatory relations (LOR) and with Article 222 of the Project to the Kosovo Civil Code. This institute regarding definitions and conditions is clearly defined and in my opinion is not what be	Lawyer Kastriot Memaj	Not accepted	Regarding unfounded enrichment, the rules of the general statutory limitation period in the relationship of binding nature shall be valid for 5 (five) years, as provided for in Article 77, paragraph 1 and 2 of the draft Civil Code.

added there, apart from the need to define the fact that this institute is subject to statutory provisions or is an institute which has no statutory deadline as this situation is not explained in any of the provisions of the LOR or the provisions of the Civil Code Project. My proposal is that under the Code project, specifically in Chapter statutory provisions to incorporate a specific provision, which provides statutory deadline of unfounded enrichment or whether it is a right that is not prescribed to determine accurately the special provision within the statutory provisions because in practice existed and there are great dilemma regarding the application of law to the unfounded enrichment.

Additionally look at the Albanian Civil Code, in article 115 paragraph " f " is correctly defined by a specific provision of the limitation period to three ungrounded enrichment.

I think that should be avoided necessary uncertainties about this institution that I may not be able dilemma law enforcement in specific cases, related to unjust enrichment.

I remain hopeful that my contribution no matter how small this initiative will assist you in the final phase of this major The

	Project.			
Comment	Article 16 Capacity to act Paragraph 2 - This paragraph should be deleted in order to eliminate early marriages and marriages unwillingly, as a phenomenon still frequent, particularly against girls. Full capacity to act should be obtained only at 18 and not earlier. Article 1128 Equal Treatment Since marriage, engagement, and cohabitation exclude relations and the right of LGBT persons to a family, this article is controversial in itself, and is not applicable. Article 1133 Engagement Reassertion: The current definition is a violation of human rights, violation of constitutional principles and the law against discrimination and gender equality. Article 1138 Marriage Code should be reformulated, eliminating such definitions which discriminate based on gender and sexual orientation in	Kosovo Woman Network	Not accepted Not accepted	The marriage of persons 16-18 years permitted with the consent of the court. This provision is not new, but has existed in laws and an application for long. Irrationality of allowing such marriages, in many cases appear to demand due to childbirth or that these persons doesn't want to live in a community factual situation, but to formalize this relationship by marriage. The competent court is the body that analyzes the situation and assess the action ability of these people to marry. Essential in this observation / evaluation is the ability of these people to understand the importance of marriage and matrimonial rights and duties, including childcare if children are born. This principle is entirely taken from the European Convention on Human Rights and the Constitution of the Republic of Kosovo Articles 1133, 1138, 1164 are dependent on the definition of marriage and recognition or not of the marriage between persons with the same gender (sex). Constitution and international conventions guarantee equality but does not deal explicitly with the bond of marriage between same-sex persons. The international conventions to which called the Kosovo Women's Network in many

defining marriage, engagement and cohabitation.

Being a fundamental right, the right to marriage and family should be allowed to enjoy all without discrimination in accordance with Article 24 of the Constitution. In accordance with Article 55 of the Constitution, this right can be regulated at the legislative level only in accordance with the provisions laid down in the Constitution.

The Constitution provides protection from discrimination, including on grounds of sexual orientation, and bearing in mind that the above can be said that the Constitution, in letter and spirit gives sufficient indications on constitutional allowing anyone It has the right to marriage (under Article 37) and without discrimination on grounds of sexual orientation (under Article 24). The Constitution, nor was above guarantees establishes another level of protection and promotion of constitutional rights. In Article 22 of its Constitution has provided:

Article 22 [Direct Implementation of International Agreements and Instruments]

The rights and freedoms guaranteed by international agreements and instruments following are guaranteed by this Constitution shall be directly

countries cite the phrase marriage between man and woman.

Other justifications related to these comments are also given above on the similar comments given by other organizations.

applicable in Kosovo and have priority in case of conflict, have priority over provisions of laws and other acts of public institutions:

(1) Universal Declaration of Human Rights;

(2) European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols;

(3) International Covenant on Civil and Political Rights and its Protocols;

(4) Framework Convention of the Council of Europe for the Protection of National Minorities;

Therefore, given that the European Convention on Human Rights and its Protocols are directly applicable, laws initiated by the Assembly approved the government must comply with. This is because being a fundamental right, the right to family and marriage should be enjoyed by all without discrimination.

To remove paragraph 2 of Article 1138. The purpose of this code is the codification of the civil law field, and therefore should be more inclusive. Leaving open the possibility to fix other issues of particular law is in violation of

the purpose of the codification of civil law in the country.

This paragraph is contrary to Article 24 of the Constitution of the Republic of Kosovo since it limits the grounds protected from discrimination under paragraph 2 of Article 24 of the Constitution of the Republic of Kosovo. Basics protected by the Constitution (*race, color, sex, language, religion, political or other opinion, national or social origin, relation to any community, property, economic, social, sexual orientation, birth, disability or other personal status*) They are minimum of the guaranties the Civil Code can provide.

While the maximum that can be offered is based on the Law on protection from discrimination which offers protection on these grounds: *nationality or association with community, social origin or nationality, race, ethnicity, color, birth, national origin, sex, gender, gender identity, sexual orientation, language, nationality, religion and belief, political affiliation, political or other opinion, social status or personal, age, family or marital status, pregnancy, maternity, property status, health condition, disability genetic inheritance or otherwise, in order to implement the principle of equal treatment.*

This paragraph could be reformulated as follows:

Two persons have the right to marry and found a family without any limitation due to race, color, sex, language, religion, political or other opinion, national or social origin, association with community, property, economic, social, sexual orientation, birth, disability or other personal status, religion, and are equal to marriage, during marriage and at its dissolution.

Article 1164 Cohabitation

In other articles bridal couple code refers to as "between spouses, between persons." The same process can be followed in the present article, without specifying the gender of the spouses and eliminated any reference to "man, woman"

The same correction applies to the following cases, specified only as relations between men and women;

Article 1170 property regime in marriage and cohabitation

To add a new paragraph, which specifies that in case of disagreement in the administration of the common property division, when one spouse alleges that meets most of the wealth, of witnessing burden on the reasons why belong to part with great wealth, remains the same spouse.

Not
accepted

Article 1170

The remarks made are not standing because in the future none of the spouses cannot invoke the contribution because it is expressly provided that, in the absence of premarital contract or marriage, property acquired during marriage or cohabitation is equal, then $\frac{1}{2}$ property of one and half of another's property. In this case do not allow anyone to call that part of one is larger and smaller other. So the principle of solidarity is accepted, if the parties have not agreed otherwise by contract, rather than the principle of contribution.

The opinion that the application of prenuptial or marital contracts for the legal regime of property acquired during marriage or cohabitation will aggravate fair sharing of wealth being manipulated women is not right. Even in the case of prenuptial or marital contract proposal are taken into account Kosovo's circumstances but

This specification can help eliminate disparities disputes that common property division, in which the husband usually claims that it is for the majority of property rights, on the grounds that his contribution is the only one which is translated into monetary value. With the current amending the Law on Family, this contribution is already equal to the care of children and family the other spouse.

Article 1172, paragraph 4 on Joint property

Applying prenuptial contracts in the administration of the joint property only as worsening equitable sharing of wealth, leaving open the possibility of manipulation and persuasion than by women renouncement of what can be considered joint property during the marriage duration.

Due to the strong influence of traditions and customs in Kosovo, women give up the right to inherit the family property. The same effect and the same situation is presented as the obstacle in the application of premarital contract, due to pressure husband.

Article 1183 Prenuptial or matrimonial agreement

Not
accepted

the code has long-term goal and allows spouses to agree by contract the contract is an expression of their will. This will require those who consider that their contribution will be proportionately more distinct. Also, the legal possibility exists in the European Union and the region.

Article 1183

Article 1183 applies only to the content of prenuptial and marital agreement for the property gained during the marriage. The explanation given above about Article 1172 applies to this comment as well.

Not
accepted

regarding property acquired during marriage Reassertion: Applying prenuptial contracts in administering only the joint property as worsening fair division of property in case of divorce, leaving open the possibility of manipulation and persuasion that women from the renouncement of what can be considered joint property during duration of the marriage.		Not accepted	
Due to the strong influence of traditions and customs in Kosovo, women give up the right to inherit the family property. The same effect and the same situation is presented as the obstacle in the application of prenuptial contract.		Not accepted	Article 1186 This article commented with the reserve that we should be careful when it comes to encouraging the preservation of marriage. Required to specify cases when it can be done to encourage the preservation of marriage, due to the fear that encourage women to return to their marriages even if against their pours violence will be required to. Regardless the fear, it should be noted that all legislations provide for a conciliation procedure, namely the negotiation preserving existing marriage, on the occasion of the divorce proceeding.
In addition, the increase in premarital contract in the civil code, in theory may sound like a contemporary step but we really do not coincide with the current mentality and only complicates the correct implementation of the common property division.			
Article 1186, paragraph 1.2 Dissolution of marriage			
There shall be taken special care on specifying the cases in which should be encouraged preservation of marriage. In most cases, case law shows that judges based on this paragraph, encourage women who return to their marriages even when exercised against them is		Accepted	Article 1217 Article 1217 means that in cases where the physical division of marital property can happen to an item that is physically indivisible then another person receives the equivalent of the portion attributable to the specific case. For example the car cannot be divided into two parts, but when left to the one then court gives the other

systematic violence by their husband.

Article 1217 Pecuniary Compensation

With the application of the spouse part of which it is disproportionately smaller, because this application always comes to the needs of the party, and not from the opposite side;

Article 1219 Determination of joint property in case of non-agreement

To add a paragraph specifying that each party should bear the burden of proof of ownership, because in most cases from the judicial practice proving attributed wife;

Article 1435, paragraph 1 and 2 Rule rotating Alimony

By amending the NR. 06/L-077 for family, husband divorced in this case replaced with ex-husband term.

The new family law has made clarification of the term food and distinguish the latter from Alimony term. The use of these terms interchangeably causes

party the property value as it deserves.

Article 1219

In the future there will be no need to test part of the joint property because it is always equal, i.e. everything that is acquired by joint work during marriage or cohabitation is automatically allocated by the court into two equal parts without the right the demand for more or less property, except in cases of prenuptial or marriage agreement.

	confusion and should be eliminated, following the practice of law NR. 06/L-077 for the family. Article 1491, para. 1 Right of Representation in inheritance In this sequence of added husband or wife, who shall be calculated on the right on inheritance in case one of the children, testator or his descendants have died before him? (In most cases in practice this provision omits spouse, wife)			
Comment	Article 3 The new subparagraph MSHL recommends that MoJ add a definition of a "child" in the Article 3 of the Civil Code Project. This term is used throughout the draft Civil Code and its meaning has important implications in terms of civil rights and obligations. In addition, other Kosovo laws provide a definition of what constitutes a "child" (e.g. code of Juvenile Justice, Criminal Code, etc.). Sub-paragraph 1:13 MSHL respectfully recommends that the definition of "foster care" should be expanded to include not only "biological family", but also "adaptive" family. Article 16 The title should be reformulated by adding the word "legal" before	EU Office	Accepted	Definition of a child is included in the Code

	capacity to act.			
	Article 18 Add "contractual" before the words "capacity to act"		Accepted	Entire Civil code uses the expression "Incapacity to judge".
	Article 19 The term "mental illness" is used throughout the Code should be amended "Mental impairment" following the terminology used in the United Nations Convention on the Rights of Persons with Disabilities		Not accepted	In Article 56, it is about proving the condition. If the party with bad faith has forbidden the certification in this case in order to benefit, it is considered that the condition has been established. So such action is unlawful and the party with bad faith should not benefit by stopping the proving of the condition. Also in paragraph 5, if a party with a bad faith has contributed to the verification of the condition in order to gain unlawfully, the condition (condition) is considered in these circumstances that it has not been verified. So the purpose of the provision is to let the parties benefit from these circumstances when they are in bad faith. The provision as such is clear.
	Article 56 Paragraphs 4 and 5 will require further attention, as they appear to be similar. 4. Where the verification requirement is prohibited by the bad faith of the party who would benefit from not checking it, the situation will be considered to be verified. 5. Where the verification of the condition is caused by the bad faith of the party who benefit from its verification, the situation will be considered as it has not been verified.			

**BOOK TWO - OBLIGATIONS,
PART ONE - GENERAL
PROVISIONS**

Article 101

Recommendation: Consider adding electronic delivery as an option.

**BOOK III - OWNERSHIP AND
OTHER REAL RIGHTS**

**Article 851- Necessary access to
retrieve animals**

This provision does not allow for adequate protection of the right to property of the neighboring property owner's property if he / she suffers from stray animals damage. Civil Code should be clear on this issue, since the both owners interests should be protected equally. I suggest additions such as inserting the article.

MSHL suggests that the following paragraph be added to the 851 (2);
"If stray animals harm the owner

Fully
accepted

Proposed text will be included in the Article 851

We consider the provisions of Article 854 is very clear. The owner can ask. On the contrary, unauthorized access could pose a

of the neighboring immovable property, the owner can keep animals for as long as the damage is not compensated."

Article 854-The temporary use of a neighboring immovable property

The wording of the article is unclear; it is not clear whether the owner may require or need to notify the owner of the neighboring property to its requirements. This may be the translation issue, but it would be desirable to reformulate this article for the sake of clarity.

In addition, paragraph 2 of the article should clearly indicate that the damage caused should be compensated.

Article 856 - Building over boundary lines

This article should be reviewed in light of the Law No.04/L-110 on Construction, which requires that all buildings constructed with building permit which is issued on the basis of, among other things, ownership certificate, Law No.4 / L-188 for the treatment of illegal constructions and the laws governing the protection of cultural heritage. The state is responsible for ensuring the right of property protection to the

Not
accepted

violation of property. Keep in mind that regulates parts of neighboring rights, which apply reciprocally. Paragraph 2 makes it clear that neighboring property must be returned to the previous state. Furthermore, the provisions of paragraph 3 of the same article, to enable the owner to request compensation for use of the property

Damage issues are regulated in the Book 2, duties, and therefore, their inclusion in this section is not necessary.

This provision enables and provides solutions in cases mistakenly crossed the border line between the neighbors. One of the reasons why this can It happens They are also due to erroneous measurements. So this provision does not legitimize, illegal constructions as it claimed to

rightful owners and this provision causes concerns it imposes property owner whose property affected by limited solutions provided here without the possibility of seeking a return to the original/previous state (being as that provision does not provide the possibility of restoring the original condition, it can be a "silent" for legalization and allowing future legalization of illegally constructed buildings.

Article 873 - Acquisition of ownership in real estate

Paragraph 2 of the article which states: "The legal transaction for the transfer of ownership of immovable property shall be concluded in writing in the presence of both parties, i.e. their representatives before a competent authority." Disagrees with Article 55 (4) of the Civil Code, which states, "A legal transaction that deals with real estate is in the form of a notarial deed." MSHL suggests the checks for consistency.

**Chapter XIII - The cause of damage,
Sub-chapter I - General Principles**

It is recommended that at the

Partially
accepted

Not
accepted

comment, but allows addressing a factual situation that could occur. Article 856, offers some solutions, and among them is the return to the previous state. (See Par. 3.2) as well as compensation for rent, sale and creation of joint ownership of the object. Such provision is also in the applicable law, but the provisions of the Draft Civil Code are explained and further specified in order to prevent their misuse.

Basis of this article are the provisions of the Article 136 of applicable LOR including some amendments proposed by the Working Group.

See comment above, respectively articles 353.354.356 of LOR that where taken as basis for proposal of the new provisions

beginning of this chapter included the general principle that unless otherwise provided by law, the damage includes only consequences

"normal"/predictable action or inaction that caused the damage.

Sub-chapter II - Interest - Articles 408-413

This chapter requires significant restructuring to make it clear:

-What is the legal interest rate for the loan?

-What is the statutory interest rate for delay?

-If these interest rates applicable to commercial contracts or special legal interest rates need to be developed for this type of contract.

In addition, policy makers Kosovo was submitted that many EU jurisdictions contain the absolute maximum interest rate on loans to contracts that are not of a commercial nature. Pre-proliferation banks without a strict system provisions that protect their clients carries a high potential for abuse. The risk is only higher in states with the highest percentage of citizens in dire financial condition. This is the case where the interest of business organizations need to be carefully balanced in the interests of ordinary citizens.

Not
accepted

Not
accepted

Such a provision is implied, because the notarial act is written, and also, in this case the competent authority shall mean the Notary, however, these two provisions will harmonize with each other.

The same terms expressed in the Constitution of the Republic of Kosovo are also used in the Civil Code-Book 4. The Civil Code cannot foresee more than the Constitution.

This issue was also discussed in the Working Group.

BOOK FOUR - FAMILY

Article 1128

MSHL is of the opinion that the provisions dealing with "equal treatment" should also include "gender identity" after "sexual orientation".

The Constitution preserves gender equality as a fundamental value for the democratic development of Kosovo society. In addition to Article 24 (2) of the Constitution of Kosovo stipulates that "no one should be discriminated against because of race, color, sex, [...]".

In addition, in an effort to harmonize the Penal Code with the Constitution, the Criminal Code recently adopted, which will come into force in April 2019, now includes "gender identity" as aggravating circumstances of a crime (Article 70 sub 2:12, Article 173 sub 1:10, Article 184, paragraph 3, Article 185, paragraph 3, Article 186, paragraph 4 of the Criminal Code), the crime of inciting strife and intolerance (Article 141 of the Criminal Code), the crime of violation of the equal status of citizens and residents of the Republic of Kosovo and the crime of destruction or damage to property (Article 321, paragraph 4 of the Criminal Code).

The draft Civil Code should also be aligned with the Constitution by adding "gender identity" in the

Not
accepted

Not
accepted

Not
accepted

1186

Commented text of the article is unclear due to incorrect translation in the English language

Article 1169
Commenting on the text of the article is unclear due to incorrect translation in the English language

	Article 1128 of the Draft Civil Code.	Accepted	
	Article 1163 MSHL recommends that "if there is prior legal entry into marriage" should be replaced with "if there is none implementation of prohibition and the prohibition of marriage." This new formulation not only includes the previous entry in the marriage, but also other prohibitions in force in Kosovo (e.g. incest). Article 1169 MSHL does expose a serious discrepancy between the Albanian and English versions of Article 1169, paragraph 5 of the draft Civil Code. The Albanian version should remain, namely that "Each spouse is independent in choosing work and profession" and deleted "but spouses will advance to find mutual consent to this election" in the English text. Serbian version should also be checked for compliance with the English version. Article 1186 MSHL request with respect the Ministry of Justice to redraft subparagraph 1.4 of Article 1186, in order to clarify that spouses and children are protected from violence and to avoid any damage. Article 1202 MSHL recommends that reconciliation efforts should not	Accepted	Civil Code will be harmonized in all three languages This issues belongs to procedural issues The purpose of the provision is to protect the best interests of the child, because the law permits child's emancipation over 16 years

	apply in cases where one of the spouses or their joint children is a victim of domestic violence committed by the other spouse. This will allow to avoid victimization recurring and to prevent any further act of violence against a spouse or family in accordance with the Istanbul Convention on preventing and combating violence against women and domestic violence, reducing the length of time needed to dismantle the effectively marriage. To protect the victims and their families, should be added a new subparagraph 4 which reads as follows: "1.4. If a spouse or their common child is a victim of domestic violence committed by the other spouse as defined in the Law on Protection from Domestic Violence". Article 1206 MSHL Union advises the Ministry of Justice, adding "common children with disabilities" in the provision of Article 1206 of the Civil Code, as they are referred to in section 1210 draft. Article 1211 MSHL recommends that within Article 1211 of the Civil Code Draft paragraph is added to stop the presentation of facts or evidence obtained in illegal way. Article 1229 Article 1229 of the Draft Civil		Accepted	of age if enters into a marriage by court order. Article 1236 Article 1236 is unclear due to the translation.
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Code should be reformulated as his form it seems to mean that a person is able to act after having attained the age of sixteen years, while the General section clearly stipulates that a person is able to act as he person reached eighteen years.

Article 1231

Paragraph 3 of Article 1231 of the Civil Code draft should specify that the registry officer shall require the person to declare his paternity. Therefore "it" should be replaced by "civil status".

Article 1236

Paragraph 3 of Article 1236 of the draft code should be redrafted since it seems that the sentence in the English version, at least, lacks important components such as the clarification of which date may be submitted for cancellation a statement.

Article 1252

Article 1252 of the Civil Code provides principles related to the protection of children. However, MSHL recommends that more protection may be included in this provision, taking into account Article 8 of the European Convention on Human Rights and its applicable jurisprudence issued by the European Court of Human Rights.

For example, paragraph 2 of Article 1252 should increase the basic right of the child to live with

Not
accepted

Article 1236 is unclear due to the translation

Article 1252

The requirement that paragraph 2 of Article 1252 have been added to the words that the child has the right to live with his family and the child cannot be taken from their families except in cases provided by law, is a principle that is also mentioned in other provisions this book.

The versions are going to be regulated by the finalization of the draft

this family in which the child cannot be removed, except for necessary cases as defined by law. This principle would ensure protection of family life, as guaranteed in the Constitution of Kosovo. Paragraph 7 of Article 1252 of the draft Civil Code should be reformulated in that the use of children for illicit production and trafficking of such substances is a criminal offense under the Criminal Code. Therefore, it is recommended to erase "will not be allowed." Paragraph 7 will provide only that children have the right to protection against these crimes. Section II - Parental responsibility, Chapter III - Supervision of parental care, Chapter IV - The removal of parental rights, Chapter V - Extension of time for parental care and Part V of the draft law. MSHL notes that this sub-chapter abusing various concepts such as "parental responsibility", "parental care", "parental custody". Three languages should be reviewed using the appropriate terminology aimed at each provision. In addition, the combination of references to certain provisions are wrong and should be checked regularly (e.g. article 1256, article 1422, and article 1467).		Accepted Not accepted	
		The working group concluded that the uncertainty in Chapter II that has to do with parental responsibilities are a result of inadequate translation into English (Article 1255, 1312 and 1615) Albanian version is ok. Deadline is within 6 months See paragraph 3: A claim for annulment of a statement may be	

Article 1255

MSHL recommends that Article 1255 of the Civil Code draft should be reformulated to be formulated by the child's perspective and not from the parents' perspective.

For example, paragraph 1 of Article 1255 should be reformulated provided that the child has the right to parental care, instead of the parents who have the right to exercise parental care.

Article 1312

MSHL observes that throughout the project of the Civil Code, different standards apply within the right to appeal. Some provisions allow to file an appeal from the date of the decision (e.g. Article 1312) others from the date of notification of the decision. MSHL calls on the MoJ to establish a standard and harmonize all provisions.

Article 1615 - Evidence for the right to take ownership

The request pursuant to paragraph 2 (that presumption can only be rejected by the court) and 3 (to validate work in a competent court) may conflict with specialty Lex governing the settlement of claims related to the conflict, which include certain categories of immovable property,

filed with the court within six months from the date the conviction became known or the error was noted.

	from the regular jurisdiction of the court (Law no. 05/ L-010 on KPCVA and relevant legislation). MSHL strongly recommends the addition of paragraph 4 of article that will explain and cover these situations, it is suggested: <i>"Paragraphs 2 and 3 of this Article shall not apply to the subject of private immovable property of the Law no. 05 / L-010 on Kosovo Agency for Comparison and Verification of Property and relevant legislation."</i>			
Comment	I would request that the Draft Code is harmonized with applicable legislation in general, especially when the norms refer to the "child". As an illustration, applicable legislation defined the "minor" as "child between the ages of fourteen (14) and eighteen (18) years." While the draft code in Article 220, the Responsibility of parents, paragraph 1 states "Parents or other persons legally obliged to provide parental care for a minor under seven (7) years ... ?!". Further, it is discriminatory if the persons with mental disabilities were referred as "disabilities in mental development" (to See illustration section 219 "Responsibility for damage caused by persons with disabilities in mental development or other mental disorders").	OPM Office for Good Governance (comments are submitted by representatives of UNICEF	Accepted	All of these comments are addressed above. They have also been taken into consideration and protecting the best interests of children is strictly regulated in all provisions of the Code of Conduct relating to children's rights.

	General Comment: I think that draft Code should be revised as a whole and make sure that the terminology used is the same and in accordance with international treaties on human rights, particularly the Convention on the Rights of the Child and European standards. (Illustration: in some cases the term "disability" in some cases "special needs" in some instances "flawed" !!! proper terminology is "disability" as defined by the Convention on rights of Persons with Disabilities.			
General comments	Initial comments on the draft Civil Code UN Women and UNFPA <u>General Comments</u> 1. While we appreciate that part of the provisions regulating the use of terminology, the drafter has provided clarification regarding the use of personal pronouns, we believe that there are more effort to be made to ensure more gender neutral approach, in particular for the provisions regulating the procedure about the Family and Inheritance. In regard to the issues regulated by any other law in force, and that are in contrary to the provisions that are described here, drafter may consider to clarify which of the two laws prevails. <u>Special comments:</u>	UNDP, UN Women, UNFPA	Accepted	Attention has been paid to these terminological issues
			Not accepted	Article 1139 The comment has to do with section 1139 insists that the minimum age for

BOOK 4 - FAMILY

Article 1139, paragraph 2 - Capacity for marriage

We propose the amendment of the article to set 18 years as the minimum for reaching capacity for getting into marriage.

In accordance with the United Nations agenda for Sustainable Development, which calls on countries worldwide, that until 2030 bring early marriages to an end, any marriage where one or both spouses are under 18 years of age), as well as a long list of international instruments on human rights, the European Parliament, on 4 July 2018 adopted a Resolution on the EU Strategy against early and violent marriages, calling the countries to impose a total ban for these types of marriages, to strengthen criminal justice in this regard and to ratify the Istanbul Convention (Resolution attached to the EU). Further, it is recommended that the age of 18 to be universally established as the minimum age for marriage and to provide the necessary financial and administrative mechanisms for the implementation of this requirement. This resolution lists a number of factors which adversely affect the physical and psychological health as well as personal and professional development that early marriages cause to minors, including inter alia higher risk of unwanted pregnancies, high mortality of mothers and babies, lack of access to health services, the interruption of girls' education etc. Therefore, taking into account the commitment of Kosovo to harmonize

marriage is 18-year-old age because there is a tendency to increase the minimum age for marriage. Even in this draft Civil Code minimum age for marriage is 18 years, that has been so in the previous laws, but in this Code as an exception there is possibility for the people who have filled 16-year-old to get into marriage by court permission and they also acquire full capacity if they have entered in to marriage. This legal solution existed before, it exists in all legislation of the countries in the region, and aims to not be declared null cases of cohabitation of persons aged 16-18-years, especially when they have the child. But nonetheless it can open a debate on the minimum age for marriage.

It is justified above in the comments of other organizations

its legislation in full compliance with international standards on human rights, we consider that amendment of the article in this regard is necessary.

If the proposal is taken into account, then the paragraphs 2 and 3 of the Article 16 should be entirely removed.

In this case the **Article 1140, subparagraphs 1,2,3** should also be eliminated in compliance with the proposal to amend/change the minimum age for marriage.

Article 1151

Reciprocal information on health and other issues

Article 1151- Reciprocal information on health and other issues

Family Consultant as a profession does not exist in Kosovo! Couples, before the marriage can be consulted to family doctor who can advise them and inter alia provide them counseling and family planning services as well.

The issue of consent about the surname does not belong to the health issues!!!

Article 1170 - Property regime in marriage and cohabitation

We propose total replacement of the article with what is in accordance with Article 47 as amended by Law NR. 06 / L-077 on Amending the Family Law which regulates this issue.

The most recent amendment of the Kosovo Family Law that regulate

Not
accepted

Not
accepted

Article 1151

Health aspect is not wedlock, therefore, left to the level of mutual information between the future spouses and are not required any opinion or doctor's certificate.

Future spouses must be provided opportunities to regulate property issues in the contract. If they do not regulate with the contract then legal provisions which expressly provide that property acquired during marriage is equal regardless of their contribution will apply. This means that the contribution is not recognized but it is divided in two equal and in these cases, so if no contract legal solution conforms entirely to your proposal. If this legal solution is not supported, i.e. if the contract is excluded, then of course there should be harmonization of other articles mentioned in this comment.

property rights of spouses is more favorable in terms of recognition of the husband/wife contribution that takes care for children and home as equivalent to a financial contribution from other husband/wife. As such, the implementation of the amended article would put both spouses in a better financial position in case of eventual divorce.

In addition to this article we also recommend the harmonization of other relevant provisions under the above mentioned Amended Law for the following Articles:

Article 1424 with Article 1

Articles 1422,1428,1429,1430, 1442, 1435 and 1438 with Article 2

Article 1435 with Article 5

Article 1437 with Article 6

Article 1438 with Article 7

Article 1439 with Article 8

Section 1441 with Article 9

Article 1287 - Mediation of Adoption

We propose supplementing the article in such a way as to include specific reference to the supreme principle of the best interests of the child

The best interest of the child is an important principle of international legislation on children's rights and adoption. Referring to the former Article 1127 which states it as the guiding rule in family relations, we propose to be added in this article as well, as to ensure that the main

Accepted

Article 1288

In the comment of the article 1288, which has to do with the competent authority for adoption, there is claimed confusion between the words Central Authority for Adoption, which is an expression required by international

purpose of the adoption procedure is the best interests of the child.

Article 1288 - Competent authority for adoption

We propose to clarify which institution in Kosovo serves as the Central Authority for Adoption

While the article mentions Court as a decision making authority for adoptions in Kosovo, it says that it should "seek professional opinion from the Central Authority for Adoption" leaving room to conclude that there are two authorities that decide on this very sensitive issue. Therefore, we propose to amend the article and to emphasize that the Court is the only decision-making authority, as well as to clarify which institution serves as the central authority (either on the general provisions part, either through the description of this article itself through one of its additional paragraphs).

According to the discussion in workshops on aspects about the age of marriage, please take a drafting committee to pay particular attention to the following data:

- [Sustainable Development objectives of Agenda 2030 of the United Nations](#) urges countries around the world, 2030 will cease to early marriages and any marriage where one or both spouses are under 18 years of age).

Accepted

conventions, and the decision by the court. Legal acts will determine who Central Authority is for Adoption. Central Authority for Adoption will be a professional body, which will give its opinion particularly on international adoptions, but the decision to grant the adoption is to be made only by the court, and other custodial institutions only provide required assistance to the court.

Justification is given above by the similar comments of other organizations and institutions

	The Assembly in plenary session dated January 25, 2018 has unanimously approved Resolution for the adoption of the Objectives for Sustainable Development in Kosovo (06-R-001). On 1 March 2019 the Presidency of Kosovo Assembly has decided to establish a Council for Sustainable Development as an inter-institutional structure which will supervise the implementation of Resolution on Kosovo, including in the field of harmonization of legislation with Agenda 2030. • The European Parliament, on 4 July 2018 approved Resolution on the EU's external strategy against early and violent marriages, by invited states to impose complete ban on these types of marriages, strengthen criminal justice in this regard and to ratify the Istanbul Convention. The resolution recommends that the age of 18 universally established as the minimum age for marriage and to provide the necessary financial and administrative mechanisms for the implementation of this requirement. Transitional provisions In the Transitional Provisions of		Accepted	Project experts, after analyzing the effects of this provision, have come to the conclusion that the same could be deleted, as in any situation, the documents referred to in this article may only serve as evidence in judicial proceedings dealing with proof of ownership.
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Book 3, during meetings with the parties that have addressed there comments it has been asked to clarify the provisions of Article 1615.

Article 1615

Evidence of improvement for the acquisition of ownership

1. It is presumed that the owners of immovable property are persons, who on the entry into force of the Law on Ownership and Other Real Rights No. 03/ L-154, dated 25/06/2009, possess a deed, possession list, certificate of ownership, that names them or their legal successors of as the owner of an immovable property and that deed is issued before 23 March 1989.

2. The presumption according to paragraph 1 can only be rebutted by a final court decision.

Persons who on the entry into force of the Law on Ownership and Other Real Rights No. 03/L-154, dated 25/06/2009, possess a deed/ certificate of ownership rights issued after 23 March 1989 that names them or their legal predecessors as owners of immovable property, must certify this deed in Kosovo competent

The comments made by the Ombudsman are the same as the requests of some other organizations to allow the possibility of marriage

court according to the procedure regulated by law

Not
accepted

between persons of the same sex. The answer to these comments is provided below in this document, in comments made by other organizations. The issue of marriages of persons of the same sex is foreseen to be regulated by a special law, as did other countries of the region.

By this Code, it is proposed that civil partnership, which also means the registered life community of persons of the same sex, will be regulated by a special law as practiced in almost all states that allow this type of civil partnership.

This issue remains an open topic and is therefore proposed to be regulated by a special law.

Chapter II - Marriage

Sub-Chapter I - Understanding the Marriage

Article 1138 Marriage

1. Marriage is a legally registered community between the two spouses, by which they freely decide to live together. Marriage is a constant living community of spouses, legally regulated. Marriage is related to giving consent to spouses and their signature before the registrar of the civil status.

2. Other forms of civil unions are regulated by a special law.

3. Spouses have the right to marry and form a family without any restrictions on grounds of race, nationality or religion, and they are equal when married, married, and settled.

4. Married people enjoy reciprocal rights and duties under this Code

Subchapter V - Cohabitation

Article 1164

The cohabitation of a man and a woman

1. Cohabitation is a factual relationship between unmarried growths, who openly live together, characterized by the common life and work that represents a character of stability and continuity.

2. Cohabitation is equal to the status of married spouses in terms of rights and obligations for care, mutual financial support, and property rights as specified in this Code.

**MINIST
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3. Cohabitation does not give effect to paragraph 2 of this article if at the time of its establishment there were such marital barriers: existing marriage, the sex of blood at the rate prohibited by this book, adoptive gender, psychological illness and legal invalidity, except if any of these obstacles has ceased during the existence of coexistence.

Article 1165
The burden of proof

The person who wishes to realize the rights of cohabitation must prove its existence and duration.

Article 1182
The wealth acquired in cohabitation

1. Property acquired through joint work during the duration of cohabitation is considered as common property of cohabitants.

2. The provisions of this Code, relating to the joint property of married spouses, shall apply mutatis mutandis to the joint property of cohabitation.

Not
accepted

The Civil Code does not determine the authority of an administrative body for this matter, because it is regulated by special laws. Also, given that the Code is expected to be a legal act of long lasting consistency with specific laws, any detailed regulation as proposed would jeopardize the viability of the Civil Code if specific laws in the future would otherwise regulate, then the Code should also be amended and supplemented. Formulation in the Code allows for special regulation flexibility for shifts as proposed by the Ministry of Internal Affairs.

**MINISTRY OF INTERNAL
AFFAIRS**

**Article 1138
Marriage**

1. Marriage is a legally registered community between two spouses of different sexes, by which they freely decide to live together as a husband and wife. Marriage is a constant living community of husband and wife, legally regulated. The marriage is related to the consent of the husband and wife and their signature before the civil status officer.

Article 1141

**Marital status certificate for
foreign nationals (martyrdom
capacity)**

1. Persons with foreign nationality should bring a certificate of marital status, if issued does not issue this document, a similar document must be issued by the authorities of their country proving their right to marriage, based on special legislation of the Republic of Kosovo, that there are no obstacles and prohibitions for marriage.

**Article 1149
Request for marriage bond**

1. Persons wishing to enter into a

marriage must file a claim with the municipal civil status officer.

2. Birth certificate must be attached to the claim and, where necessary, proof of marriage requirements specified in the law, other documents such as a divorce certificate, marriage certificate - foreigners' acceptance or passport.

3. For the date of the marriage bond, the civil status officer agrees with the persons wishing to conclude the marriage.

Article 1150

Information on the spousal property regime

1. The civil status officer must notify the couple that by marriage, they enter into the marital property-legal regime as equal participants in the acquisition of property, unless they have entered into a contract for a special property regime.

2. The civil status officer notifies future spouses that they must conclude a notarial contract if they wish to change the legal regime provided for in paragraph 1 of this Article.

Article 1151

Mutual information on health

	issues and other issues Upon filing a request for marriage, the Civil Registrar shall recommend to persons wishing to enter into a marriage that by the date of the marriage bond to be informed in a mutual manner about their state of health, to visit the consultant familiar to provide professional opinion regarding the development of harmonious marriage and family relationships, to become familiar with the opportunities and priorities of family planning, and to agree on the future name. Article 1152 Place for marriage bond 1. Marriage shall be solemnly made in official premises specially designated for this purpose, in the habitual residence of one of the spouses. 2. Exceptionally, at the request of the future spouses, the marriage bond may, exceptionally, be made in another suitable place and on the weekend days, by a decision of the civil status officer, with a special payment for marriage bonds outside the official premises; and outside the official working hours. Article 1153 The procedure before the registrar			
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1. In order to conclude a marriage, two persons of the opposite sex, in the presence of others, should freely express their will and consent to marriage before the Civil Status Officer.

2. The declaration must be unconditional and immediate.

3. The parties participating during the marriage are the spouses, two witnesses and the civil status officer.

4. Each person with a capacity to act may be a witness during the marriage.

Article 1154
Co-operation of civil status
officer

The Civil Registrar is obliged to allow the procedure for the marriage bond if there are no obstacles and prohibitions. The Civil Registrar is obliged to refuse co-operation in the marriage procedure if there is any deterrent or marital stoppage.

Article 1155
Entering the marriage

The marriage bond begins with the report filed by the civil status officer, showing the presence of future spouses and the absence of barriers and marital prohibitions foreseen in this book. This is

ascertained on the basis of submitted documents and statements of future spouses, as well as statements of witnesses.

Article 1156
Refusal of marriage

If the civil status officer ascertains the existence of any detention or marriage prohibition, he or she orally communicates to the claimants that they cannot conclude a marriage and draft a record in this regard.

Add this new Article
Announcement of marriage

The marriage bond precedes the announcement of the marriage, in order to enable the marriage to be concluded, the marriage proclamation by the civil status officer must first be made after the marriage application has been completed.

Article 1157
Marriage

1. If the civil status officer ascertains that there are no obstacles and prohibitions on marriage, he or she informs future spouses of the provisions of this book regarding their rights and obligations and also reads these provisions.
2. The civil status officer should ask the future spouses separately if they agree to marry each other.

3. After having provided statements on marriage subscription, the civil status officer shall declare the marriage related.

4. Marriage shall be considered after the signature of the marriage act by the spouses, witnesses and the civil status officer.

Article 1158
Administrative procedure

1. If the persons who have submitted the application for marriage do not agree with the verbal communication as defined in Article 1156 of this book, they may request from the civil status officer to issue a ruling on the refusal of the application for the marriage bond.

Article 1160
Marriage Act

1. The civil status officer registers the marriage bond in the marriage act and the same act is signed by the spouses, two witnesses and the civil status officer.

2. Immediately after the marriage is concluded, the spouses are issued certificates from the Register of Civil Status Registers.

Article 1162
Documentation to delete this article

1. An official from the religious community, before whom the marriage is made according to religious rules, sends the registrar the document signed by the spouses, witnesses, and the representative of the religious community, documenting this connection of the religious marriage and this will be noted in the rubric where the legal marriage was registered in advance.

2. The document provided for in paragraph 1 of this Article shall be sent to the registrar within five days from the date of the marriage bond.

Article 1163

Registration to delete this article

1. An employee is obliged to record religiously affiliated marriage within three days of receipt of the document foreseen in this book if there is a prior legal bond.

2. Immediately after the recording of the religious marriage in the matrimonial marriage book, the registrar will issue a legal act by which the parties will be informed that their religious marriage is also evidenced along with the legal marriage.

Subchapter V - Extramarital Community

The term coexist is misplaced as

the term coexist also involves coexistence among communities, while the term extraterrestrial is the adequate term that from the beginning indicates that it is related to spouses.

Article 1164
Extramarital community

1. The extramarital community is a factual relationship between an unmarried adult husband and an unmarried adult woman who is openly living together, characterized by the common life and work that represents a character of stability and continuity.

2. Extramarital affiliation is equal to the status of married spouses in terms of rights and obligations for care, mutual financial support, and property rights as specified in this Code.

3. The extramarital community does not give effect to paragraph 2 of this Article if at the time of its establishment there were such marital barriers: existing marriage, the sex of the blood at the rate forbidden by this book, adoption gender, psychological illness and legal inability, unless any of these obstacles has ceased during the existence of the Extramarital Community.

Article 1165
The burden of proof

A person who wishes to exercise

extramarital community must prove its existence and duration, this is evidenced through the declaration of the family parliament and the data from the Register of Civil Registry and health registers or any other register; witnesses of the witnesses.

Article 1166
Benefits

Marriages in Marriages, until they coexist, have mutual obligation for the same respect, mutual understanding, and assistance as if on the basis of legal marriage and their status should be mentioned in the birth extract, the statement of the family bond and the status certificate bridal and other doctrines like health issues of thirst.

Article 1182

**Wealth gained in Extramarital
community**

1. Property acquired through joint work during the extramarital community's duration is considered as common property of spouses in the external community and this property must be registered in the name of two spouses in the extraterrestrial community.

- An explanation of the property registration on behalf of the two spouses will provide greater assurance for the spouses and for

the Court it would be a matter of deciding on the dispute.

2. The provisions of this Code relating to the joint property of married spouses shall apply mutatis mutandis to the joint property of the husband and wife in the overseas Community.

Article 1184

Agreements between persons in the Extramarital Community

Persons living in an External Community can enter into a written and certified agreement with the notary regarding the property they will acquire during the non-marital community by their joint work. Spouses in the Outermost Community may also conclude such an agreement during the time of the non-marital Community.

Article 1188

Dissolution of Extramarital community

In order to resolve the extramarital community, no formal legal action is required, foreign spouses in the foreign community are declared for the expiration of the matrimonial matrimony and the extramarital affiliate is terminated.