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THE SYSTEMATICS OF THE GENERAL PROPERTY CODE FOR THE PRINCIPALITY OF MONTENEGRO AND THE (UN)KNOWN BOGIŠIĆ'S RECORDS ON ITS IMPACT ON THE SYSTEM OF THE JAPANESE CIVIL CODE FROM 1890

1. INTRODUCTORY REMARKS

Each codification is a difficult and painstaking job, but the 19th century codification of Montenegrin law was particularly difficult because of the special circumstances in which it was carried out. Bogišić knew that this would place a huge responsibility on him and demand tremendous efforts. He believed that following laws of other nations was not "evil in itself, but evil when done blindly not following the rule: qui bene distinguit bene docet".[1]

There is a rather unsubstantiated claim that has been perpetuated uncritically in the literature, according to which the General Property Code for the Principality of Montenegro from 1888 was a codification of the customary law of Montenegro. This statement is only partially true. This unsubstantiated claim was contested by Bogišić himself in his unpublished notes. Here is what he said about it: "However, if someone tried to codify custom, they would be no less a fool than the one who just copied the laws of others indiscriminately. When they say that I have had customs codified, there is some substance to it. From this we can see how absurd and tiresome has

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[1] The Baltazar Bogišić Collection of the Croatian Academy of Sciences and Arts (hereinafter: BBC HAZU), XXII/15.

the imitation of the laws and forms of others become. Although this has become common knowledge now, the other extreme has proved to be absurd as well, being based solely on the codification of custom. The truth is, however, as it always is, somewhere in the between the two: custom should be taken seriously, but again, neither law nor what has already been done and established in scholarship should be neglected".[2]

The principle that property law (proprietary law, law of obligations, etc.) is given priority over family law (family law and inheritance law) was implemented to a great extent in the General Property Code for the Principality of Montenegro. That is why the Montenegrin Code was called The "General Property" Code. Truth be told, in Part five, which is concerned with proprietors, a considerable number of family relationships is mentioned. Bogišić tried to justify this with two original facts, which are as follows: 1. the Montenegrin family was recognized in the Code itself as a corporate entity, i. e. a proprietor, in the part dedicated to proprietors; 2. the Code only provided for the so-called external family relationships that the outside world should know about when it entered into any property relationship with any of the members of a household. The idea of the independence of family relationships was dear to Bogišić's heart. That is why he recorded in his notes that he had recommended it to the "representatives of the Japanese codification committee and (that) his advice had been accepted".[3]

The Montenegrin Code was the first to rely so heavily on unwritten custom. This is why we encounter so many unfamiliar issues in it which do not exist in other laws. These original issues are juridically regulated in detail and completely harmonised with the other content of the Code, lending to it, at first glance already, original features.[4]

Naturally, a large number of rules drawing from custom law remained outside the Code. In this Code, Bogišić managed to strike a masterful balance between legislative rules and those of customary law, which he thought should be better left outside the Code. The provision of Art. 2 of the Code stipulates that if the Code does not provide for a particular relationship, customary law rules shall apply, whereas in the provision of Art. 3, Bogišić "establishes a balance between law and custom" with regard to the application of analogy. Other codes "leave analogy to be drawn from the Code itself".[5]

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[2] BBC HAZU, XXII/15.
[3] BBC HAZU, XIV/2.
[4] BBC HAZU, XIV/2.
[5] BBC HAZU, XIV/22.

The case when law and custom are in conflict is not explicitly mentioned in the Code, which is very wise because in determining the interpretation, this issue was regarded as "already resolved in surrounding issues".[6]

Bogišić wanted even the judges who never went to law schools as well as the common folk to be able to understand the Code although it was written in high literary style. That is precisely why he used the vibrant vernacular language of the local clans. In this regard, we would particularly emphasize the extensive Part VI of the Code devoted to explanations and definitions. Bogišić provided explanations and definitions in new ways, but with an eye towards an easier understanding of these didactic elements.

Bogišić sought to introduce in the Code the rules that would be the starting point for a harmonious development of law in Montenegro. Full well did he know that he could achieve this only if he succeeded in keeping all smaller or larger constituent parts of the Code as balanced as possible with one another or with a number of legal institutes existing outside the Code. In addition, there was a need to strike a balance between written and unwritten law, between new and old elements, excluding some of the relations that might hinder it and including others which supported it. In doing so, he made sure not to go beyond a certain "legislative measure", stopping at a certain point and thus enabling conditions for the development of business relations. It is no wonder then that Bogišić assured a friend of his that "it was often more difficult to determine what to exclude from the codification than what to codify".[7] General consensus has it that he was successful in that endeavour. Hence the worldwide interest in his Code. His great accomplishment did not go unnoticed even in the Land of the Rising Sun — Japan, which at the time was codifying its Civil Law.

In his work on the Code, Bogišić did not have an assistant, unlike the Berlin Commission members who had quite a number of them. Bogišić also established connections with other codification committees, the Swiss Commission among them. He had a meeting in Paris with the Japanese Minister of Finance, Mr Matsukata Masayoshi, who consulted Bogišić regarding the drafting of the Japanese Civil Code. He regretted that the Serbian commission had ceased their work because he was of the opinion that "joint efforts would prove useful".[8]

Much has been written about the impact of the Montenegrin Code on the systematics of the Japanese Building Code from 1890 — most often quite superficially. For the sake of truth, it may be best to convey the opinions of

[6] BBC HAZU, XIV/22.
[7] BBC HAZU, XIV/22.
[8] Journal, Vichy, 28 July, 1889 — BBC HAZU, XIV/12.

one of those scholars most competent to do so, and Valtazar Bogišić himself is certainly one such person. Many of his records have not seen the light of day so far, and I feel that now, an occasion has presented itself for these facts to be reported.

Great scholarly prestige was ascribed to the Montenegrin codification, which earned an enormous and equally immense prestige in the legislative field to Montenegro and its ruler — Prince Nikola I.

Bogišić was proud of the system implemented in the Code. On May 17, 1888, he wrote to Kosta Vojinović from Paris: "Do not forget to emphasize what is said in the last indent of Ardent's article that the new ideas and new systems have not been a result of a cabinet scientist's fantasy but actually incorporated into legislation, not only Montenegrin, but also Japanese; — my system has therefore been accepted into legislative practice. And this is a great success, one that should be particularly emphasized, and, especially so, if we remember Savigny's claims that 'it can be only considered scholarship where practice is in agreement with theory, which happened in my case: my series have been accepted into law practice — all claims to the contrary from our colleagues, our fellow professors, aren't worth a bucket of spit. As you will have seen in Antiche Slave et roumine, a Compte rendu on the Code was read at the Institute on the 12th of this month. It was read by one of the most distinguished members of the academy: Mr. Dareste. This is the first time that a foreign Code has been read at the Institute; and it is a great honour."

2. THE SYSTEMATICS OF THE GENERAL PROPERTY CODE FOR THE PRINCIPALITY OF MONTENEGRO

The contents of the GPC is divided into three main types of units: articles, sections and parts. Here is how Bogišić explains it: "As far as the smallest unit is concerned, some legislators called it a paragraph and labelled it a paragraph. We could not adopt this name for a simple reason — it is completely incomprehensible to the common folk. That is why we adopted the name article that is clear to everyone. Instead of section, we first thought of the term chapter. But, although found in clerical books and derived from χεφαλσς = caput, again for the common people this word has the meaning of something that is major and principal, while as a divisive term it contains in itself the meaning of equality. In the very Code of Justinian, titulus was used and caput avoided, which was a solution followed by some newer laws (the French, for example). Instead of part we initially opted for the term book. But since book is understood by the people to be a whole in its own right, as a whole (civil) code, and since the first part of the code

is too short to be called so, we had to look for another name and we chose part. The word part, although too general, still proved to be more convenient for us, and, thus, we opted for it."[9]

The General Property Code contains six parts: "Preliminary rules and instructions"; "Ownership and other kinds of inherent property rights"; "Purchase and other principal kinds of contracts"; "Contracts in general and other affairs, actions and circumstances resulting in debt"; "Personal and other proprietors, capacity and handling property affairs in general", "Explanations, definitions, amendments". The *Code*, according to the general consensus, represents the best legislation on the territory of the former Yugoslavia. It was translated into six foreign languages. Many professional papers have been written about it both in our and foreign languages. It does credit both to Montenegro and to the Code's creator. Prof. Mihailo Konstantinović, a well-known civil law scholar, as early as 1933 said of the *Code*: "There is one code in our country that is very little talked about, and is, nevertheless, one of the best in the world: it is Bogišić's General Property Code for Montenegro."[10]

The main parts of the Code are defined in the provision of Art. 770 of the GPC[11]: "The Code is divided into six parts: The first part contains general and introductory rules, the second part contains rules regarding ownership and other kinds of inherent rights (actual rights); the third part refers to purchase and other principal kinds of contracts; the fourth part refers to contracts in general and other actions and circumstances resulting in debts. Since the first four parts deal mostly with property i. e. property affairs and circumstances, the fifth part stipulates rules on individuals and other proprietors, as well as on legal capacity and generally on the right of disposition in property affairs. Finally, the sixth part contains rules which, if necessary, explain and define or even amend the stipulations of the Code."

The basic institutes in the *Code* are: property (ownership) and contract. The provision of Article 16 of the GPC guarantees the sanctity and inviolability of property and sets out the conditions for expropriation: "The property of each individual is sacred and indisputable. Such an individual

[9] Valtazar Bogišić, *Metod*..., p. 216.

[10] See more in: Mihailo Konstantinović, "Jugoslovenski građanski zakonik" [Yugoslav Civil Code], *Pravni zbornik*, br. 1–3, Beograd, 1933.

[11] In translating articles of the GPC as well as some of the legal terms and concepts used in the Code the translator of this text relied on the 2011 edition in English. Bogišić, Valtazar. *General property code for the principality of Montenegro*, new official edition, 1898, Ed. Radoslav Raspopović. Transl. Charles Owen Robertson. Podgorica: Sanus, 2011 (translator's remark).

shall not be obliged to cede against his will any portion of his property to another regardless of the price offered. The only exception to this fundamental rule can be allowed in case of a significant (public) purpose; only in such case can the State authorities purchase a property or right from a person. However, the value of the purchased property or right and the ensuing damages (923, 924) which the owner might suffer shall then be completely recompensated no later than the day of the delivery of the purchased property. The rules regarding purchase for public purposes shall be stipulated in a separate law."

The subject matter of ownership right is stipulated in the provision of Art. 93 of GPC: "If a person owns a property, movable or immovable, he is entitled to possess, use and enjoy it, to collect all gains and profits from it, and to prevent another person wishing to use it against his will from taking the possession of the property or from disputing his right of possession in any other way. The owner can dispose of property at will: transfer any actual or obligation rights onto another person, or completely cede the property to another person, he can manage it at will, provided that no other's rights are offended thereby and that no law is violated."

Freedom of ownership is stipulated in Art. 94 of the GPC: "Apart from the limitations stipulated by law, ownership rights are deemed to be complete and unrestrained. Whoever would claim he has a right limiting another's property rights, he must prove this, if it is in any doubt."

The distinction between ownership and property is explained in the provision of Art. 831 of the GPC: "Ownership is, by its content, the right of most extensive command the law recognizes over a property (93). A person vested with such a right (which many refer to as proprietorship) is an owner. Property of a person, such as the right over another's property, the right to a product or action, money or other debts, etc. It is property but it is not in his ownership. Consequently, all ownership is thereby property, but not all property is ownership."

The sanctity of property rights is stipulated in the provision of Art. 997 of the GPC: "Your property is sacred as well as mine; guard your property but do not touch mine." The comprehensiveness (completeness) of the ownership right is determined in the provision of Art. 1015 of the GPC: "To say of a property that it is your own, is the most you can say of it." The ownership conception of property is laid down in Art. 1016 of the GPC. The ownership conception of property is laid down in Art. 1016: "Every property wants to return to its master." The principle *superficies solo cedit* is set out in the provision of Art. 1017 of the GPC: "A master of land is the master of the buildings on it; on owner of a field is the owner of its crops."

When a contract is deemed closed is regulated in the provision of Art. 494 of the GPC: "Only after the contracting parties agree and settle on important aspects of the business they are to undertake shall a contract be deemed closed. It shall be clarified that the will of the contracting parties is unanimous and united, and a contract closed accordingly; nevertheless, this can be demonstrated not only in word but in action or by another suitable means."

The obligation to execute a contract is set out in Art. 524 of the GPC: "A person bound to an action by a contract shall execute it, i. e. he shall settle his debt conscientiously and honestly according to what is agreed and what the nature of business demands, (906)."

The impossible subject of a contract is specified in Art. 914 of the GPC: "That which is impossible to do is not required to be done. Consequently, if a person should commit to perform an action which cannot be performed, such commitment shall not have legal power or value".

Provisions which are clear, i. e. is equally understood by all, are not interpreted. "That which is equally understood by all does not need to be interpreted" (Art. 994 of the GPC). An illegal action cannot be made legal: "What is born crooked even time cannot straighten; — that which is illegal from the beginning does nor become legal with time. " (Art. 1006 of the GPC). A non-obligatory nature of negotiations and the obligatory nature of a contract is succinctly explained in Art. 1020 of the GPC: "Talk is talk and contract is law unto its parties."

The possibility of terminating a contract by mutual consent is stipulated in the provision of Art. 1024 of the GPC: "An agreement between two people can be cancelled only by those two people." The *inter partes* effect of a contract is explained in the provision of Art. 1025 of the GPC: "An agreement made between two people is not binding to a third party". How a contract is interpreted is determined by the provision of Art. 1026 of the GPC: "When interpreting a contract bear in mind the words but always take the will and intention into account."

The essentials and the differences between real and obligation (debtor's) rights are ingeniously explained in the provisions of Articles 870–871 of the GPC: "If a person has his own land, his own horse, or another property in his ownership, the right of ownership shall be recognized by everyone and leave the former to enjoy it in peace and utter liberty, within legal boundaries. Also, if a person is granted a right over another's property, such as to cross another's land, or to keep another's property as a pledge, everyone shall respect that right, including the owner (and his precursors and successors), and leave the person to execute it completely and in peace. Such rights tied

to a property are protected by law from all infringements with utter severity. Due to such a tight and intense relationship between the property and the proprietor of such rights, in which there is no room for a third party, and due to the natural reality of theirs, the law denominates them actual rights (Part two of the Code)" (Art. 870 of the GPC).

"The right of a person to be given property, for an action to be executed on his behalf, or for an action to be omitted or permitted for purposes of his convenience are all, naturally, his property just like actual rights. Nevertheless, even if the property owed by a debtor is real, a person shall only have actual ownership over it once the debt is settled and the property comes into his hands and under his command. Until the debt is settled, the debtor and his will to settle his debt or not stand between the creditor and the property indebted. A creditor can indeed use legal means to force the debtor to settle his debt, but that requires litigation; if the debtor is reluctant to settle his debt, or if he questions the debt or its legitimacy on any grounds, the court shall compare his reasons to the reasons and evidence of the creditor, and thus resolve the litigation. Even if litigation is resolved to the benefit of the creditor, it is still not certain whether he shall achieve his aim, because it is still uncertain whether the litigated property will actually reach the creditor's hands or whether that shall be prevented by an impediment (e. g. if the debtor dies in the meantime, or flees to a foreign land, etc.). For that reason, for the difference between actual rights (870) and those referred to in this article to be noticed immediately, the law denominates the latter debt-collecting rights. Rights of this sort are mainly based on contracts such as purchase, exchange, loan, etc. but can also be derived from damage caused by an illicit action, such as damage from negligence or crime etc., and other affairs, circumstances and occasions such as un-requested execution of another's affairs, unjustified use of another's property, etc. (Parts two and three of the Code)" (Art. 871 of the GPC).

An actual right is stronger than an obligation right: "The weakest actual right is safer than the strongest right in debt" (Art. 1018 of the GPC). The essence of the derivative acquisition of property rights is explained in the provision of Art. 1009 of the GPC: "You can only give to another that which you own; therefore, you cannot give more rights than you have."

What is not unlawful can be immoral: "That which is not forbidden can also be dishonest" (Art. 999 of the GPC). "Violence is the worst enemy of justice." (Art. 1011 of the GPC). Vicious possession can exist even of one's own property. "Even taking your own property without legal means is violence" (Art. 1012 of the GPC).

The prohibition on the abuse of rights is explained by common folk wisdom: "Do not be too pedantic even with your own rights" (Art. 1014 of the GPC). Bogišić "promotes" the Roman proverb *Nemo auditur...* in the Art. 1028 of the GPC: "The injustice is the greatest when a person benefits from his own evil action." The provision of Art. 1029 of the GPC sets out the obligation of an acquirer of unfounded enrichment: "He who receives that which does not belong to him shall restore it."

Bogišić favours good custom: "If a particular issue or case should not be covered by any rules or supplements to this Law, one should rely on the rules of good custom (779, 780)" (Art. 3 of the GPC).

One of the core provisions of the *Code* sets out the obligation, that is, provides the instruction to judges to act on the basis of justice and fairness: "The foundation for both laws and customs is, naturally, justice and fairness; therefore when a judge judges according to the rules of a law or those of a legitimate custom, he is certainly acting on the basis of justice and fairness. After all, the rules on which he bases his judgement are deduced from it by a legislator or social life. Only if adequate rules for an affair cannot be found in either law or custom, or if it cannot be deduced from an analogy (3), shall justice and fairness become the immediate source for a judge, out of which he shall directly derive his ruling, according to the particular nature of the matter in question. Such activity is referred to as judging by justice and fairness. In making such a judgment, a judge shall, having estimated the circumstances of an affair from all aspects, pay particular attention to that which is deemed just by honourable people and to that which is in accordance with public belief and honesty, without which there can be no proper communication between people. And if a judge should do all this in peril of his soul and conscience, he shall, if possible, take into consideration the reasoning and opinions of people or the class of people to whom such affairs are common. Different meanings of the word justice (e. g. judgement, judging) are clear by themselves according to their function in a sentence." (Art. 782 of the GPC).

In the final provision of the GPC, Bogišić reprimands neglectful right holders: "He who neglects his right shall have himself to blame if he loses it" (Art. 1031 of the GPC).

Bogišić has been wronged for decades by those claiming that the Code contains only provisions on property and contract law. This is not the whole truth, though. Namely, it is true that the GPC predominantly provides for real law and law on obligations, but it also provides for other property relations, in fewer provisions, though. However, this is not why we should be so unfair as to claim that only two types of relationships are stipulated in

the *Code*. We would like to emphasize that the GPC also provided for some of the following legal relations:

1) constitutional law (e. g. provisions on the entry into force of laws in general and their promulgation, provisions on the prohibition of legislative retroactivity (the so-called ex post facto law) — these relations are now regulated in the Constitution of Montenegro;

2) international law (e. g. provisions on the reciprocal application of domestic and foreign laws) — in Montenegrin law, this is now regulated by *Private International Law Act*;

3) provisions which, in modern civil laws, constitute the general part of civil law (e. g. provisions on numerous proprietors and holders of rights, provisions on property in general, etc.);

4) family law (e. g. provisions on minors and guardianship, on registers of births, marriages and deaths, provisions on house community — household) — some of these relationships are now regulated by the *Family Law of Montenegro*;

5) commercial law (e. g. provisions on partnership and associations as proprietors) — a good part of these relations is today regulated by the Montenegrin Law on Business Organisations;

6) relations arising from state-owned property (these relations are now regulated by the Law on State Property of Montenegro);

7) provisions of a procedural — adjectival character (e-g. provisions on declaring a missing person dead) — these relations are now regulated by the *Law on Non-Contentious Proceedings of Montenegro*.

To conclude: the norms governing real-law relations (property, gage and easements) and contractual relations (contracts, torts, public promise of a reward, unauthorized performance of other people's affairs, unjustified use of other's property, etc.) are the prevailing norms in the GPC. Other property relationships are regulated to a much lesser extent, but they are, nevertheless, very significant.

Bogišić divided civil law into property and family law (which includes inheritance law). "By excluding some parts (e. g. family law), since certain changes, of some urgency and importance, had to be made to that law, I took the advantage of the fact that in Montenegro, family is a legal person (persona juridica) and I systematically included it among other proprietors in Part V, where, speaking of the property relations of a house with the world outside it, I could outline the responsibilities of family members and make changes to them; doing it all in the spirit of the institution itself.

In this way, you can 'sell the cow and sup the milk': the system was not weakened, my exclusion principle was implemented and some practical

changes made to it. The internal relations in the family and inheritance which is intimately connected with it and which can very rarely be connected to the cooperative family (only in the case of extreme desolation and famine) are left to be regulated by special laws, whereas, in the meantime, customary law shall prevail."[12]

As regards the question why individual sections differ in volume, Bogišić provides the following explanation: "Sections V and X are more extensive since one cannot hope that Montenegrin practice could have offered solutions for the issues in them outlined, and it was necessary to follow the practices of other nations, but both in language and composition, it is adapted to the vernacular to such an extent that it is reasonable to believe that these sections will blend in with the rest of the rules deriving from customary law and that there will be no dualism against which I protest in pamphlet no. 5, p. 3. Matters regarding guardianship are not provided for in this law, and it is legal theory and practice to regulate them, for I have found elements in customary law that might be relevant for this regulation; in addition, all articles on guardianship deal with it only regarding the external side of this public affair as does the article on house community, while all matters regarding its internal side shall be the subject of a separate law (Art. 652). Only frameworks are given in the sections on clans, churches and the State to leave room for custom and administrative orders that were highly variable in these matters. You will also have noticed Art. 3 which speaks of the dualism of an analogy with rules in general and not with law, as is stipulated in all other codes. And as for what you say about the first article on laws and rules in general (771) that relies on the theory of three effects while establishing a law comparing it to the Austrian Code that has no more than two such effects. Are you familiar with the basis of the German Civil Code? While in Berlin, I was able to obtain it, that is, I received it as a gift. In Berlin, everyone finds fault with it saying that a work developed by 30 people for 15 years which cost 5 million marks, is ist rexfeslt (?) von A bis Z. Randa speaks ill of it too. And what do you yourself think of it?"

Bogišić argued that all institutions in the *Code* had more or less stemmed from custom and everyday life of common people. He wrote about it to his friend Kosta Vojinović from Petersburg, on September 9, 1888: "There is no institution in the Code that has not been rooted in people's custom or life. Mortgage itself, which seems to be a complete novelty, in its primitive form originated from folk heritage, if we take into account that among mortgage

[12] From a letter from Valtazar Bogišić to Kosta Vojinović from Petersburg dated June 24, 1888, BBC HAZU, XIa.

and antichresis there is a specific and important difference in that that a good pledged by a mortgage remains with the debtor, while antichresis is given to the creditor. In this sense, mortgage was also part of custom law, although rarely so before *the Code*) — which means that mandate, loan, and deposit are even more likely to be rooted in the life of common folk. However, I should already express some reservation as regards the terms custom and reception. Custom is a chaotic term, since as everything concerning the so-called sources of law; it has not been scientifically examined or determined to the great shame of our science (?). Of course, this cannot be discussed here, but when I find time I might write an extensive study on this fundamental issue, based on the positive concepts recorded in legal theory and practice. However, what I understand by this is almost *all non scriptum* in the Roman sense, therefore in a broader sense than set out in Art. 779 of the Code. As far as the word reception is concerned, it cannot be understood here in the sense that is given to it in general when it comes to the reception of Roman law in Germany ... In the third chapter of my French brochure some institutions are listed *qui ne se trouvent pas dans la coutume*; private international law could be added to them. Again, most of these institutions cannot be said to have been absolutely absent from custom, albeit in a rather primitive form. I have already given you one such example above — that of mortgage."

Bogišić mentions the major institutes of national importance regulated in the GPC: the right of priority to purchase among relatives (art. 47–64); irrigation (art. 122–132); streams and ponds (art. 133–135); leasing livestock for feeding for an interest (articles 313–328 — "this is *cheptel* in France, *viehverstellung* in Germany (?) and *società* in Italy— *Codice civile libro III titolo IX*, with many local specificites); landing labour and assistance (art. 341–347); joining livestock for grazing (articles 442–445); joining livestock for labour (articles 446–456); the house community (art. 686–708).[13] He notes that the provisions on the liability of members of a house community are different from custom law, according to which a whole house community was completely liable for everything. Of such character are the provisions on the right of priority to purchase. The *Code* contains many more such "dispersed customs that have entered certain rules — but neither am I able to write about it nor is it necessary; those that I have already mentioned

[13] From a letter from Valtazar Bogišić to Kosta Vojinović from Petersburg dated September 9, 1888, BBC HAZU, XIa.

and that are most important among them are enough, or rather, more than enough for what you need them for "[14].

He was proud of the wording in the provisions of Articles 776 and 777 concerning the rules of interpretation: "Well, indeed! As we are talking about interpretation, you have certainly noticed a few principles in the Code that are very important (776, 777 in conjunction with Articles 2 and 3) and cannot be found in other laws. In the compte rendu you are planning to write, you should recognize and point out their merit, whereas the controversial issues of casuistic nature should be avoided as much as possible in such a review. This is my opinion, but you should do as you see fit."[15]

According to the GPC, objects of property rights are corporeal, not noncorporeal things: "At least this is what I think and here I am in agreement with the best law theorists, although it is not up to me, nor is up to any codifier, to address controversial issues of theory. What other kind of property can there be in Montenegro in the first place? It is probably too early to think about and lay down rules for propriete litteraire for Montenegro at the moment. Moreover, propriete litteraire is in the same relation to the first propriete, in strictly juridical terms, as is iuris quasi possessio to proper possessio, or Publiciana to true rei vindicatio, etc. In addition, propriete in French is not always equivalent to German Eigenthum, because propriete often has a much broader meaning."[16]

Bogišić also explains the difference in the extent to which certain issues are addressed in the GPC: "Take notice of how extensively and in detail some sections are set out: e. g. section V 'The Duration of ownership; death certificates in particular', or Section X 'Associations as proprietors', whereas others are short: 'Clans and fraternities...', 'Churches, monasteries...", "the State". VII, VIII and IX. Whence the difference? — It derives simply from the fact that neither death certificates nor associations as proprietors have been part of Montenegrin custom, and these have, thus, been transferred from foreign theory and legislative practice although adapted to specific Montenegrin needs; a need arose, therefore, to extensively develop all issues, for custom and practice cannot be invoked for help, but every issue should be provided for separately in written rules. On the other hand, rules on clans: 1) are known to everyone, because they were developed by

[14] From a letter from Valtazar Bogišić to Kosta Vojinović from Petersburg dated September 9, 1888, BBC HAZU, XIa.

[15] From a letter from Valtazar Bogišić to Kosta Vojinović from Petersburg dated September 9, 1888, BBC HAZU, XIa.

[16] From a letter from Valtazar Bogišić to Kosta Vojinović from Petersburg dated September 9, 1888, BBC HAZU, XIa.

the Montenegrin social life itself; 2) such cases rarely reach court; 3) in some respects, clans are in a state of transition, and it might be overly speculative to try to predict their future status. The rules on the state and churches belong more to the administrative field, and it was also necessary to refrain from treating certain issues *per largum et latum*, so as not to prejudice future administrative orders. In this same Part V, Section VI (on house community) sets out more or less detailed rules depending on issues in question. This was done based on the following principle: where I left intact, that is, completely unchanged, a rule of custom, it was done concisely (according to Pascal's principle for definitions; it is not necessary to define what is well known to everyone); and wherever modifications were necessary, such institutes were thoroughly elaborated. Notice, for example, Articles 696 -705, as they provide for one issue exclusively, i. e. the liability of individual household members regarding property, but since it is a completely new subject, which goes against the present custom (general responsibility of a household without exception), it was necessary to devote a full ten articles to that apparently trivial but rather important issue. At several places in my brochure I speak de l'harmonie entre la coutume et le code (p. 18. II edit.). The one who says harmonie also says equilibre, for without that there can be neither harmony nor what is spoken of on p. 7 (items 3, 4, 5 and 7) of the brochure. I would have uttered the word itself had I not deemed it to be trop pretentieux, because there are already many bold novelties both in the brochure and in the Code. Eh bien, it is precisely this equilibre entre les elements ecrits et non ecrits that you will find most in Part V of the Code, due to the very application of the principles some of which I have just outlined. As you can see, there is a reason for everything that has been done as regards the Code, that is, there is a reason for some things to be introduced into the Code and for others to be omitted. Likewise, there is a reason why some things are dealt with in short whereas others are expounded on extensively: everything has been according to a pre-established principle or rule. But this rule, although I acted on it whenever I found it necessary, was never too strictly followed because too strict an application might have led to stiffness and often to ambiguity which I sought to avoid with all my might. As I mentioned above, Pascal adhered to the principle of not defining or explaining things that are known to everyone. At first glance, Article 872 goes against this principle, by defining emtionem — venditionem. This institute, I admit, is known to a little child, and I did place purchase at the beginning of the entire "part" and start with it as a well-known concept. You may observe that purchase should have been defined already due to the fact that purchase is different now than it used to be in the Roman

times — it is understood today that the seller should transfer the ownership over the thing sold to the purchaser — whereas in the Roman law it was often ut emtori rem habere liceat. But, the Code is meant for real life situations and not for school children and every Montenegrin is aware of his obligation to transfer the ownership over the thing sold to the purchaser, whereas he is not aware of the Roman rule in the least; and, therefore, again, this article was unnecessary for this reason, too. But, if the definition of that article is not needed for that reason, it is needed for another, and here is why: Art. 873 defines priority purchase (*ius protimiseos*) as there was no equivalent term in the vernacular. And as it would be inappropriate to begin a section "On purchase" (if for nothing else, then for the sake of the importance of the institute itself) by defining the right to priority purchase, it was necessary to define purchase itself first".[17]

It is interesting to note how Bogišić explains the origins of rei vindicatio legal action in Montenegro: In both German and Slavic laws there was a special institution in place of rei vindicatio, which was also found in Montenegro, but it was established that rei vindicatio was better suited for present circumstances and needs, which I am convinced of. I have, therefore, endeavoured to preserve in this article at least something of the old custom. Anyway, the new and better law-makers accepted similar solutions too not following in the footsteps of the Austrian legislator who adhered in this matter to much to the Roman law."[18]

Kosta Vojinović was interested in whether the provisions of Articles 122–132 and Articles 133–135, relating to irrigation, streams and ponds, were influenced by French law. Bogišić answered the question like this: "There is not even a trace of French law in this; everything is entirely customary. What is more, Article 124 contains two highly original principles: the order of irrigation and the way in which the vicinity of the water is determined. It is so much customary that I didn't even discover these rules in my enquete, but only noticed them at first reading. There is nothing about irrigation in the Napoleonic Code, whereas Code rural, which has been in the making for a few decades now, a small portion of which went out of print some 2–3 years ago, will contain le regine des eaux; however there is no le regine des eaux in the part of the Code that was published".[19]

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[17] From a letter from Valtazar Bogišić to Kosta Vojinović from Petersburg dated January 17, 1889, BBC HAZU, XIa.

[18] From a letter from Valtazar Bogišić to Kosta Vojinović from Petersburg dated September 9, 1888, BBC HAZU, XIa.

[19] From a letter from Valtazar Bogišić to Kosta Vojinović from Petersburg dated September 9, 1888, BBC HAZU, XIa.

Also interesting is the answer about collateral as a debt-securing real property: "Collateral is an old customary law institution. The consequences which you fear might cause harm, have been weighed down and found to be of no harm, or at least, not to be relevant in terms of prevention of any possible abuse. Do you really think that the French and the Prussians are so naïve as to leave this terrible institution in their codes — and only the Austrians are wise enough to leave it out? The reasons against antichresis are more speculative than realistic."[20]

Kosta Vojinović was interested in why Article 242 of the GPC retained specific regulations regarding liability for deficiencies in purchased animals. Bogišić's answer to this question was as follows: "There is a comprehensive background behind this issue and this routine. This was redacted from the beginning, but I am not satisfied with the deadlines after which in some cases and for certain animal species the seller is either responsible or not. So, I made an inquiry with a friend, member of the Berlin Codification Commission and the answer was along the line of this: 'We had been convening committees of veterinary doctors for two years and asking chambers of commerce for opinion, but all to no avail, because there were so many discrepancies among both groups that it was next to impossible to harmonize them. Some important chambers of commerce were against any regulation of this issue in the code, for which they gave us their reasons. As the differences in the opinions of the veterinary commissions were irreconcilable, there was no other option left but to exclude the matter and leave it regulated by the agreement of individual governments with Kaneller. However, the imperial treasury spent 150,000 marks on these veterinarian commissions.' As Montenegro was unwilling to spend so much money on this — and as it was found that adjudication based on custom met with no obstacles, you will understand that the best thing to do was to act as we did. That, my Kosta, might give you only a faint notion of how hard work and how really ecrosant it is to regulate a single issue wisely and conscientiously. How great was the number of articles already drafted that I had to destroy per elimination! Therefore, no one who has not dealt with codification can ever imagine in the faintest degree the enormity of difficulties and obstacles that a codifier encounters at every step, nor can anyone who has not dealt with such affairs perceive how wise a man was the one who said that the most difficult task

[20] From a letter from Valtazar Bogišić to Kosta Vojinović from Petersburg dated September 9, 1888, BBC HAZU, XIa.

for an intelligent and conscientious codifier is to know what should not be codified at any cost."[21]

Bogišić's answer to the question of why he took the franc as a "measure of money" comes off as very interesting: "Since Montenegro does not have its own money, it was necessary to take the kind of money that is most widespread in the transactions in the neighbouring countries, and possibly throughout Europe. To realise that in the neighbouring Balkan countries the franc began to prevail, you need nothing more than to think about the Greek drachma, the Serbian dinar, the Bulgarian lev, and the Romanian franc, which are all nothing else but the franc. To conclude that in the rest of Europe this currency has the upper hand too, it is enough to think of the francs in France, Belgium and the Netherlands, the peseta in Spain, the lira in Italy and in Switzerland, and the mark in Finland. As for the shillings of England and the mark in Germany, one needs only to deduct twenty-five from a hundred, and there you've got a franc. Moreover, gold is also based on francs in Austria-Hungary (20 fr = 8 gold forints) and even in Russia itself (gold ruble = 4 francs). Have I given you enough reasons? "[22]

When asked by Kosta Vojinović whether the interest rate set in the GPC of 8% and 10% might be too high, Bogišić replies: "In Montenegro, the profit was 20%, because of the rarity of money, and it was met with great joy when in 1885, at the 2nd and 3rd reading it was revealed that it would decrease to 8%. I remember from my childhood at Konavle, that an interest of a cvancik (a 20 krajczár silver coin) used to be paid for each thaler, that is, 17%. Croatia has mortgages and banks and savings banks. When a mortgage or a savings bank is established in Montenegro it will be possible to reduce the amount of interest by a simple decree, however, people will be prepared to its reduction by the reductions made so far."[23]

When asked by Kosta Vojinović whether the provisions of Section X of Part V of the GPC relating to associations as proprietors fall also within the scope of administrative and commercial law, Bogišić replies: "There is almost no legal institution that does not one way or another touch upon another administrative area. The question is, then, whether there is a reason for an institution to be included in a legal field, regardless of the fact whether or not it should be included in it in part or as a whole. I do not

[21] From a letter from Valtazar Bogišić to Kosta Vojinović from Petersburg dated September 9, 1888, BBC HAZU, XIa.

[22] From a letter from Valtazar Bogišić to Kosta Vojinović from Petersburg dated September 9, 1888, BBC HAZU, XIa.

[23] From a letter from Valtazar Bogišić to Kosta Vojinović from Petersburg dated September 9, 1888, BBC HAZU, XIa.

think that there should be any doubt as regards whether associations as proprietors should be included in the section outlining the most important legal entities. Moreover, this Section is of great practical benefit to Montenegro, where there is no commercial code and no template for such regulations, which have recently started to enter the traffic life of the country. Anyway, you of all people should be aware that some civil codes, especially in Switzerland, have taken in the whole of commercial and bills-of-exchange laws (this was also done in the first draft code of obligations drafted for the North German Bund). Commercial law is also property law. Transport (transportation) is also subject to commercial law — but since practical needs required it to be included in the property code where it was also in place, it was done so."[24]

Kosta Vojinović was interested in the examples of the application of item 3 of Article 976 of the GPC (when a judgment of a foreign court shall not be recognized in Montenegro). Bogišić answers this question readily: "It seems to me that the case is plain as day, and why, then, should I be providing you with examples. Truth be told, it is not that you have to rack your brains, all you have to do is think about it and, as the Herzegovinians say figure it out for yourself. For example, a Montenegrin libelled or slandered a person abroad and a foreign court sentenced him not only to pay damages but also to ask for forgiveness from the offended party in person. Unless the latter is required by Montenegrin law, Montenegrin courts may refuse to recognize it. Or, a Montenegrin abroad gave his word that he would give a gift and did not fulfil the promise — it is stipulated in Article 485 of the Montenegrin Code for gifts exceeding certain values to be confirmed in writing and validated in court; otherwise the claim is without legal standing — therefore, if a foreign court orders him according to the foreign country's laws to give the promised gift, the Montenegrin court may not recognize such a judgment, etc."[25]

Bogišić especially took care to keep the GPC in "harmony" with other sources of law in the country: "Since I did not find this dualism in Montenegro, my highest concern and my highest principle was the following: under no circumstances shall I introduce this dualism with my Code. On the contrary, even after the Code enters into force, all the previous harmony between it and other sources of law in the country shall remain intact. Everything is subordinated to this one general principle: both the external

[24] From a letter from Valtazar Bogišić to Kosta Vojinović from Petersburg dated September 9, 1888, BBC HAZU, XIa.

[25] From a letter from Valtazar Bogišić to Kosta Vojinović from Petersburg dated September 9, 1888, BBC HAZU, XIa.

restriction of the Code, the inclusion in it of subjects which are not found in other codes as well as the exclusion of some which are, but which seem to me to be heterogeneous with the main content of the Code, balancing written elements with those unwritten, the order of subjects, the inclusion of extensively didactic elements, the language and style, technical terms, etc. Therefore, I believe there seems to be a slight contradiction in your article, i. e., at the point where you say: 'that only time will prove whether the Code will come to life and merge with it, or if it will remain as separate from life and lettre morte as the Austrian Code in Dalmatia', etc. And I end this article with great praise of my language and style in the Code, saying that even if the language is strictly academic it is also the language of the common folk and completely understandable to them. It seems to me that what is understandable to the common folk, that is written in the language of their common law (because, as I said, I did my best not only to keep the content in the spirit of common law but also in the spirit of the language of the common folk), it should also be easy to apply for judges, who are usually familiar with custom but who also completely understood the draft Code when it was read to them. That is why comparing it to the Austrian code in that respect even if only potentialiter seems a contradiction to me. What do you reckon? However, whatever you might think of it, I ask you to read this question and write the comprehensive review you have undertaken to complete based on the results of your study."[26]

Bogišić asked Kosta Vojinović to pay particular attention to solutions outlined in Articles 176 and 177 concerning the weapons in gage: „Today, I am going to send to you by registered mail a good review of my Code written by Prof. Zigelj from Warsaw and published in the Moscow Law Journal. He especially appreciated the elements of Montenegrin customary law, and I think that this review can be very useful to you in this respect. Yet, he failed to notice some very curious remnants of the former customary law, e. g. in Articles 176 and 177, where, when a weapon is in gage, the debtor carries the risk of casus. It used to be the rule for all property in gage including immovables, and I went through a great deal of trouble until I proved that the rule that is to be found everywhere in Europe should be adhered to — and I envisaged a concession period for weapons, because it is the most common gage item where it is difficult to prove whether damage to it was suffered due to the lack of good faith or not."[27]

[26] From a letter from Valtazar Bogišić to Kosta Vojinović from Petersburg dated 6/18 October, 1888, BBC HAZU, XIa.

[27] From a letter from Valtazar Bogišić to Kosta Vojinović from Petersburg dated 6/18 October, 1888, BBC HAZU, XIa.

Although the Institute of usucapion in the GPC is new, Bogišić still found its origins in ancestral heritage: "Usucapion is a new institution — but it originated from ancestral heritage found even in the most primitive of peoples: that something was passed on to a person from their ancestors, that they came in possession of something through generations of ancestors can be often heard, but this is what is called tems immemorial, which is based on the same principle as usucapion, but again, it is not usucapion. You know that both the Napoleonic Code and the Austrian Code merged usucapionem et praescriptionem — and you also know that Savigny and all his followers contested it and proved that usucapio is one thing, and praescriptio quite another. I don't think this could be debated."[28]

A similar conclusion can be drawn for rei vindicatio (one of the symbols of ownership): "In German and Slavic law, there was a particular institution for rei vindicatio; this institution was also found in Montenegrin custom, but it was also found that rei vindicatio was better suited for present circumstances and needs, of which I am convinced. I have therefore endeavoured to preserve in this article at least something of the old custom. Anyway, the new and better law-makers accepted similar solutions too not following in the footsteps of the Austrian legislator who adhered in this matter to much to the Roman law."[29]

Generally speaking, it can be said that there are two types of explanations in the text of the GPC: 1) brief explanations of "phrases and words" in the first five sections of the *Code*; 2) explanations in the sixth part of the *Code*.

Typical examples for the first type of explanation are found in the provisions of the following articles: 8 (recognition of foreign acts), 9 (reciprocity), 14 (legal proprietors 48 (the right of priority to purchase among relatives), 50 (priority in exercising the right of priority to purchase), 74 (rules regarding killing or capturing wild animals), 77 (taking possession of an escaped swarm of bees), 79 (found treasure (sokrovište)), 101 (purchasing property from a non-possessor), 118 (setting drainage channels over the adjoining land), 124 (the order of irrigation of the land), 134 (the right to dig ditches and make other contrivances to protect one's land from damage), 136 (placing frameworks or scaffolding on the adjoining land), 144 (easements concerning adjacent land), 145 (evidences on the legal means by which the easement was obtained), 146 (court validation of easements), 150 (bearing all the related costs by the person granted an easement), 155 (renewal of a

[28] From a letter from Valtazar Bogišić to Kosta Vojinović from Petersburg dated September 9, 1888, BBC HAZU, XIa.

[29] From a letter from Valtazar Bogišić to Kosta Vojinović from Petersburg dated September 9, 1888, BBC HAZU, XIa.

right of easement), 156 (enjoying another's property), 158 (the entitlement of a person authorized to enjoy another's property to receive all gains and profits from it), 159 (*quasi usufructus*), 160 (non-responsibility of a person authorized to enjoy another's property to compensate for the natural deterioration of the enjoyed property), 161 (the requirement from a person granted the right of enjoyment to preserve the goods which he received to enjoy from any loss, damage or deterioration in good faith), 173 (the arrangement for another to hold the mortgaged property instead of the creditor), 180 (a public sale of the property in gage), 201 (establishing the highest amount of money for which the property shall be mortgaged), etc.[30]

This group of explanations also includes those that explain general terms by illustrating them with examples. For example, this is how it was done in the provisions of the following articles: 158 (receiving the profits the property yields by trade/renting a house by the person exercising the right of enjoyment), 159 (acquisition of ownership rights over replaceable property by the person having the right of enjoyment), 160 (declining of value of property over time due its natural deterioration), etc. This type of explanation also includes those which explain unfamiliar words with familiar ones, such as the provision of Article 101 of the GPC, in which the term "square" is explained (in parentheses) by the term "market". Also, the terms used in the provisions of Articles 146 ("easement of constraint") and 154 ("expiry of the right of easement") are explained in Part VI of the Code, in the provisions of Articles 855 and 860. The other type of explanation involves those which explicitly define a particular thing or institute, etc. This was done in the provisions of Articles 9 (definition of reciprocity) and 10 (definition of proprietor).

The second type of explanation and definition encompasses the whole Part VI of the Code (265 articles). Bogišić wrote about it to Kosta Vojinović from Petersburg on June 28, 1888: "I do not want to ponder much over whether or not a legislator should instruct or if it is competition that professors actually fear, when claiming it (interpretation is also instruction, as is any formulating of the existing law into articles, and no one has ever doubted a legislator can do it) — but the thing is that there are no law professors in Montenegro (Blessed is a place without them!), and, therefore, explanation proves to be indispensible. But that even where luck has it that there is no shortage of law professors explanations are still needed is witnessed by the definitions present in the most recent laws: the Swiss law and the

[30] The examples of these articles are given in a letter from Valtazar Bogišić to Kosta Vojinović from Petersburg dated June 28, 1888, BBC HAZU, XIa.

new German Entwurf itself which try to evade them, or rather hide them, cannot do without them, e. g. Art. 778–786, 789, 793, etc. — the definitions of all the articles would not be presented in every different way even by you or me (who are professors) in a lecture hall — And not to mention the Allgemeiner Theil of the Saxons and even the new German Entwurf? Isn't that a genuine Lehrbuch, unworthy of legislators. Bluntchli and Planta (Zurich and Grison lawmakers) got rid of the general part altogether and if I were a clergyman, I would canonize them for that."[31]

Bogišić believed that explanations, determinations and definitions are a necessary part of a civil code. To him it seemed better to bring them together in one place "as an addition to the Code than have them appear throughout the Code: there are no definitions in the first five parts of my Code, except for a few incidental ones"[32].

When structuring Part VI, Bogišić adhered to the method whereby the rules that explain, define and supplement "appear in parallel sections to those of the main 5 parts of the Code, so that its first 5 sections correspond exactly to each of the 5 parts of the Code. The last three sections appear as an appendix. The content is systematically elaborated in the sections as well: there are, of course, gaps in the structure, but this is so due to the very nature of the part, which is not a systematic Lehrbuch, but merely explains that what might need an explanation — and where a need for explanation does not arise, provides no explanation, just as it should be."[33] In doing so, he confines himself to the most necessary explanations, definitions and technical terms "considering the knowledge of the people, because without this kind of economy in language, as is the case with other subjects, diversity would be lost and this entire doctrine would bring more harm than help."[34]

Bogišić made sure that Part VI of the *Code* did not contain unnecessary explanations: "In a word, it seemed to me that without these explanations, the legal doctrines could not come to life or blend with original sources, and it would, inescapably, lead to dualism in the law of the country — but

[31] From a letter from Valtazar Bogišić to Kosta Vojinović from Petersburg dated June 28, 1888, BBC HAZU, XIa.

[32] From a letter from Valtazar Bogišić to Kosta Vojinović from Petersburg dated June 28, 1888, BBC HAZU, XIa.

[33] From a letter from Valtazar Bogišić to Kosta Vojinović from Petersburg dated June 28, 1888, BBC

[34] From a letter from Valtazar Bogišić to Kosta Vojinović from Petersburg dated June 28, 1888, BBC HAZU, XIa.

on the other hand, too many definitions would lead to an equally unfavourable result."[35]

Part VI contains "several categories of material", and they are as follows:

1. explanations of necessary theoretical considerations (*bona* and *male fides*, *dolus*, *culpa lata*, *et levis*, *casus*, *eror*, *vis*, *metus*, etc.);

2. determinations (e. g. regarding movable and immovable items);

3. definitions of institutes and words, "i. e. neologisms, because, as I have already stated elsewhere, it was my principle to leave no word in the Code that might be unknown to the common folk or unexplained to them in the Code in one way or another, thus becoming known to them."[36]

4. some (more extensive) theories that were not included in the previous five sections (certain kinds of evidence in Section VI and measuring and calculating time in property affairs in Section VII);

5. *regulae iuris (brocardica)* from Part eight. ("I have already told you about how much trouble it gave me to refine them so as to be completely understandable, to lend them brevity, rhythm and decorum."[37])

The peculiarity of Part VI is that the legislator often acts as an instructor. In this sense, he opted for the so-called conversational form, where the legislator addresses the reader: "thou hold a property, the right of possession is thine", etc. A typical example[38] of this is the provision of Art. 811 of The GPC: "The right of possession or holding, in the legal sense, is when thou actually hold a property in thine possession, at thy command and disposition, and when he is willing to keep it for himself. Thou are the possessor of a property even if thou do not personally hold it, but it is held by another person willing to hold in on behalf of the former, and if such will of the latter is not contrary to the will of the former. In both cases, thou are the possessor in the legal sense of the word, while the person holding the property is only its holder". The same is true of the provisions of Article 836 of

[35] From a letter from Valtazar Bogišić to Kosta Vojinović from Petersburg dated June 28, 1888, BBC HAZU, XIa.

[36] From a letter from Valtazar Bogišić to Kosta Vojinović from Petersburg dated June 28, 1888, BBC HAZU, XIa.

[37] From a letter from Valtazar Bogišić to Kosta Vojinović from Petersburg dated June 28, 1888, BBC HAZU, XIa.

[38] For the sake of consistency and clarity, when translating the articles of the Code itself, we relied on the official commemorative edition (2nd, amended edition) translated by Charles Owen Robertson and published in Podgorica, 2011. Unfortunately, the translator did not retain the original address in the second person singular, but used "a person" instead. However, in the above articles we made changes to the translation so as to be more true to the original — we used the archaic pronoun form *thou, thee, thy, thine* so as to illustrate what the author of the paper wanted to point out (translator's remark).

the GPC. "If thou acquire ownership of a property by means of a contract, thou shall not thereby become the owner of the property yet; thou can, indeed, like all creditors, request from the debtor to transfer the ownership onto thee, but until that is not executed thou not as tightly bound to the property as all owners are to theirs. Thou shall become the owner only when the formalities stipulated by law are executed i. e. for immovable property; when the contract is validated in court for movable property when it is delivered to thee." This can also be said of the provision of Art. 866 of the GPC: "If thou are bound by contract or otherwise to give a movable property as gage and fail to do so, thou can be forced by the court to execute the agreement, but until the pledge reaches the hands of a creditor (or another designated person), the debt shall not be deemed guaranteed."

Most of the definitions in the GPC are given in Part VI, while in the first five parts this is done less frequently (and less elaborately): "For this reason, whenever an opportunity presented itself to explain something in the text of the first five parts it was done succinctly, in a word or two; — otherwise, definitions and explanations proper were always given in Part VI".[39]

In the initial provisions of some articles, Bogišić uses/resorts to proverbial forms. This applies, for example, to the provision of Art. 457: "The rule: 'warrantor is payer' is defined by law to mean that the warrantor, when no other agreement is made, will discharge the debt only if the debtor fails to do so, or that part of the debt which he fails to pay after the creditor resorts to legal means to recover the debt (894." The same applies to Article 458, provision 1: "Where there is no debt there is no warrantor, therefore if a debt is not legitimate, guarantee can have no legal value." It also applies to the provision of Art. 733 (first sentence): "If a statute should fail to specifically define the boundaries of the administration responsibility, it shall be deemed that it is authorized to perform all affairs falling within the scope of the business enterprise of the association which are in accordance with its nature." The same conclusion applies to the provision of Article 774 (first sentence): "Newer laws amend the older ones."

Part VI (final) of *the General Property Code of the Principality of Montenegro* consists of eight sections, as follows: SECTION I ("Introductory rules and regulations in specific" (Part one) (Articles 767–830)); SECTION II ("Ownership and other kinds of inherent property rights in specific" (Part Two) (Articles 831–871); SECTION III ("Purchase and other principal kinds of contracts in specific" (Part Three) (Articles 872 to 899)); SECTION

[39] From a letter from Valtazar Bogišić to Kosta Vojinović from Petersburg dated June 28, 1888, BBC HAZU, XIa.

IV ("Contracts in general and other deeds, affairs and circumstances resulting in debt" (Part four) (Articles 900–952)); SECTION V ("Rules regarding individual and other proprietors, and regarding legal capacity and disposition of property in general" (Part VI) (Articles 953–970)); SECTION VI ("Certain kinds of evidence in property affairs" (Articles 971–977)); SECTION VII ("Measuring and calculating time in property affairs" (Articles 978–986)); SECTION VIII ("Certain legal (judicial) statements and postulations which, even though they cannot alter or replace a law, can nevertheless explain its reason and sense" (987–1031)).

This section, which Bogišić liked to refer to as "Book six", is divided into 264 articles, out of a total of 1,031. Bogišić wanted to "free" the main, normative parts of the Code from definitions, determinations, and explanations, which he believed should contain "pure orders"[40]. Part VI contains also amendments — "some statutoryal rules of minor importance", which as Bogišić believed would "interfere with the otherwise clear presentation of rules on a subject"[41] in the main parts of the Code. In the opinion of Prof. Jelena Danilović, "Although this part is usually called didactic, we believe it resembles a lot a commentary of the Code."[42]

Bogišić found inspiration for Part VI of the GPC in several legal sources: first, in the compilations of The Institutes of Justinian, which, though proclaimed to be law, "are nothing but didactic actions based upon the Institutes of the jurist Gaius?": second, and even to a greater extent, in the two chapters (at the end) of the fiftieth (last) book of *Pandect*[43]; third, in the *Corpus Iuris Friderician* of 1781[44], issued in Prussia (containing a special part dedicated to the explanation of several laws preceding it): fourth, in the *Einleitun*g "and the famous Landrecht of that same State, issued first in 1794"[45]; fifth, in English legislative practice, "when neologisms that have

[40] Valtazar Bogišić, *Metod i sistem kodifikacije imovinskog prava u Crnoj Gori*, za štampu priredio Tomica Nikčević, Beograd, 1967 [*Method and System of Codifying Property Law in Montenegro* edited and published by T. Nikčević in Belgrade, in 1967], p. 81

[41] Valtazar Bogišić, *Metod...*, p. 82.

[42] Jelena Danilović, *Sto godina Opšteg imovinskog zakonika za Crnu Goru*, Arhiv za pravne i društvene nauke, 1906–2006 [*One Hundred Years of the General Property Code for Montenegro*, Archives of Legal and Social Sciences, 1906–2006], p. 225.

[43] (Dig. Lib. L, tit. XVI, "De verborum significatione" and tit. XVII "De diversis regulis juris antiqui".)

[44] (Corpus juris Fridericani.) IV Teile, p. 285.

[45] Valtazar Bogišić, Method..., p. 82. Bogišić held the systematics and solutions of the Prussian Landrecht in great esteem. He was surprised that Andra Đorđević did not emphasize this in his comments on the GPC: Today I received an extension of the review article by Andra Đorđević, a Belgrade professor of civil law. The article is to be

not yet entered the ordinary language enter a law, the legislator himself explains their meaning in a special part in the Code itself";[46] sixth, in the civil laws of the American states, especially in California, in which "newly coined words" are explained multiple times — at the end of that code there is a separate section with 35 articles which outline "several maxims of jurisprudence — general rules of civil law that are mentioned en abrégé [in short] in the aforementioned last article of the Pandect De diversis regulis iuris antiqui"[47]; seventh, in the *Serbian Civil Code*, which contains a set of general rules at its very beginning (in 35 paragraphs).[48] The sixth part of the Code is composed for a "scientific and didactic reason". Bogišić believed that this section does not interfere with "the simplicity and clear presentation of the rest of the content"[49]. He was aware of the fact that one code was good not only because of quality solutions, but also because of the appropriate language and style: "Indeed, all the efforts to define and determine the contents are in vain, the special explanatory part is also drafted in vain, if the language and outline, the very tool by which the legislator communicates his thoughts, his orders and definitions, is not fitting to the cause. That is why, since the ways to better regulate laws started to be sought, particular attention has always been paid to the subject, it is always recommended that laws should be simple, clear and succinct. We have often been reminded of assioma that le legislateur pour etre entendu de tous doive adopter la langue de tous. And, it is true that great importance is placed by all on keeping the language and style of law simple and understandable. For example, it has been a little less than three centuries since Bacon, not in his native tongue though, but in the contemporary language of science, told us about it: "In legibus tamen atque edictis ordinariis [...] omnia fusius explicari debent, et ad captum vulgi tanquam digito, monstrari". In the same manner, having said that the style of law should be concise and simple Montesquieu, added

published in Branič. Have you read it?... Today's extension surprised me with a reproduction of the sections of the Institutes of Justinian, then of the French and Austrian civil codes. I wonder why there are no sections of the Prussian Landrecht. Why is this? Doesn't he realise that his division is known to each and every student who prepares for the first state exam — or could it be that he wanted me to draft the Montenegrin code that way?... We will know by what is found in the issues to come. Three pretty good but quite short articles were published some time ago in the Novi Sad journal Branik. Have you had a chance to read them" (From a letter from Valtazar Bogišić to Kosta Vojinović from Petersburg dated November 18, 1888, BBC HAZU, XIa.).

[46] Valtazar Bogišić, *Metod*..., p. 82.

[47] Valtazar Bogišić, *Metod*..., p. 83.

[48] Valtazar Bogišić, *Metod*..., p. 83.

[49] Valtazar Bogišić, Metod..., p. 115.

the following: "Les lois ne doivent point etre subtiles; elles sont faites pour des gens de mediocre entendement; elles ne sont point un art de logique, mais la raison simple d'un pere de famille". Bentham recommends clarity and brevity, and Portalis emphasizes clarity and continues: "il ne suffit pas qu'un peuple sache qu'une loi existe, il faut qu'il connaisse et comprenne son contenu, c'est-a-dire quelle soit redigee d'une maniere claire et conforme à la double nature du legislateur et du peuple". Savigny also recommends brevity of rules and a style understandable to the common folk."[50]

On the occasion of his meeting with Prince Nikola in Vienna in August 1879, Bogišić had the honour of presenting to him the "Grand Book" of the text of the Code "divided into five books", as well as a completely new part called "Book six", entitled "Explanations, definitions and amendments to the Code", which contained about 360 articles. This part is actually the forerunner of the Part VI of the GPC, which was promulgated in 1888. The difference is in that that the original text of Part VI had about 360 articles, while the final text had 265 articles. Bogišić remembers the encounter with Prince Nikola in Vienna: "Your Highness was so kind as to accept to examine my work in Vienna, and on that occasion, you certainly noticed one large book, in which the text of the law was divided into five books. Not only has this text been expanded and supplemented over the course of time, but a new book has also emerged in which explanations and definitions and supplements to the Code have been laid down. That particular kind of book, present in no code so far, which I have called 'Book VI', contains about 360 articles, i. e. accounts for one third of the entire Code. Although this important part of my work was conceived long ago, and its outline set out, I have still had to dedicate my leisure time over the past two years to finishing it".[51]

In the annual report (submitted) to the Minister of Enlightment of Russia dated 15/27 May, 1882, Bogišić observed that Prince Nikola had wanted 'Book VI' to be "merged with the Code" as its most important part: "the third most important addition that Prince Nikola would like to see merged with the Code — is a book or a separate part containing explanations. From that book, which is far from complete, I read, as already stated, several dozen paragraphs at Commission meetings, for the easiness of understanding of the text, and these paragraphs were a complete success. That is why Prince Nikola, in full agreement with the members of the Commission, thinks that, although the text of the code is generally clear, it is, nevertheless, necessary

[50] Valtazar Bogišić, *Metod*..., p. 119 i 120.

[51] Letter from Valtazar Bogišić to Prince Nikola dated 9/21 July 1881, published in *General Property Code for the Principality of Montenegro*, Podgorica, p. 278.

to add to the Code an annex with explanations, which should come out of print at the same time as the Code. In his opinion, this is all the more necessary because the explanatory book contains theoretical interpretation of legal concepts laid out in a popular way, which, as it is impossible to dwell on them more in the text of the Code, he deems as particularly necessary in a country where judges have no professional legal education. In addition, the prince thinks that this part will lend the Code such originality and practicality that the Montenegrin "Code" will become a template for similar legislative solutions in other Slavic states. Not wanting to deny this opinion of Prince Nikola which is so flattering to my work, I will still venture to give my own view of the matter. a) There is not a word about drawing up any explanation in the order from the highest place, by which I was required to draft a code of laws, which is why neither am I entitled to nor am I obliged to do any such thing. b) Accordingly, I think that I will have the right to view this commentary or explanation, when completed, and that will be after my business trip, as a wholly private business, especially so taking into account the fact — as already noted in my earlier reports — that what has been completed so far was worked on in my free time. c) If it were necessary to prepare a part covering explanations to be issued together with the Code, it would keep me in a very inconvenient position for a while, and I want, and must want, to get out of that position as soon as possible. At the beginning of February of this year, after having completed consultations with the Montenegrin prince and members of the Supreme Court, I returned to Paris as a place of my permanent residence, which I chose to be abroad from the very beginning. There I began to work on changes in the text of the Code, in accordance with written and oral remarks and observations made at the sessions of the Montenegrin Commission, and so far I have completed more than five parts. On the way to Petersburg I stopped in Berlin to discuss some issues again with the Secretary of their Codification Commission".[52]

Bogišić constantly kept in mind that, in addition to drafting the *Code*, he should also draft "notes on the principles of codification: 'In my opinion, as well as in the opinion of my Berlin consultants, such notes are necessary. Even more than that: they should be published at the same time as the Code. In the extreme, the notes may be replaced by some other appropriate procedure, if that proves possible. But, due to the lack of associates, in this case, as in many others, such an obligation presents too many difficulties

[52] Valtazar Bogišić's Annual Report to the Minister of National Education of Russia dated 15/27 May 1882, published in the book: *General Property Code for the Principality of Montenegro*, Podgorica, pp. 288–289.

which is why I have decided as follows: in the introduction of the Code, it is necessary to provide notes on the principles and methods of work. This part would tell about the different types of families that exist among Southern Slavs, and especially in Montenegro. The notes themselves, which will be issued in due course, will be of particular importance for the entire codification system as they will outline the prior study of these forms. In addition, an introductory study will make it possible to shorten the notes by several chapters and allow me to elaborate further the issues as well as provide, for the sake of illustration, characteristic examples of fundamental mistakes made in the laws of the surrounding countries and their consequences — it will show all the benefits of preserving what has been created and consolidated for centuries of Montenegrin history."[53]

The drafting of explanatory notes was also hailed by Bogišić's Berlin consultants: "As for the explanatory note, my last report stated that, in the opinion of the Berlin consultants, it was desirable that it be printed simultaneously with the publication of the Code. That is why in the last months of my stay in Paris I primarily dealt with this issue. However, as according the plan, the notes were to be sufficiently extensive, I was able to collect only as much material in the libraries as to write up the first rough draft of the text, and especially so, because I had to travel to Montenegro soon after, where, in accordance with my oral promise to the Asian Department I had to arrive before July. Because of this, I limited myself to making just one excerpt of the explanatory notes, which I have already completed. As for the notes themselves, their compilation is possible, truth be told — and at the expense of the work, to be postponed to later times, after all my tasks as regards this work have already been completed".[54]

Part VI of the GPC defines the meanings of the words (institutes) unknown in the vernacular, which have not already been explained in the first five parts. One of the peculiarities of the GPC is that it does not contain an extensive general part, as was the practice in the textbooks and laws of the time, which all followed the system founded by Heinz-Savigny. Therefore, Part VI also contains provisions which, normally, belong to the general part of civil codes. These are, for example, the following provisions: on

[53] Valtazar Bogišić's Report to the Russian Minister of Enlightment on his stay in Paris, Vienna and Berlin, his reading of the draft of the *Code* and follow-up discussions with experts there on 12/24 July 1884, published in the book: *General Property Code for the Principality of Montenegro*, Podgorica, p. 293.

[54] Valtazar Bogišić's Report to Ivan Davidovich Deljanov on the work on the Code 1884–1885. 20 August/1 September 1885, published in the book: *General Property Code for the Principality of Montenegro*, Podgorica, pp. 300–301.

the name and content of the Code (Articles 767–770), on proprietors (Article 801), on owned property (Articles 802–810), on proprietorship (Articles 953 and 954), on private proprietors and proprietors in general (955–959), on measuring and calculating time in property affairs (Articles 978–986). The GPC was written for non-professional judges: "In Montenegro, we have judges coming from common folk, among whom history has not set any barriers, which would, as it happens in other countries where barriers exist among classes, led to unequal way of thinking and unequal learning economy, who are very familiar with custom and of whom it can truly be said that jura novit curia".[55] The explanations, definitions and amendments to these institutes could not be left to legal doctrine, given the actual state of affairs in Montenegro at that time. Bogišić was convinced that Part VI together with custom "and the common sense of judges" would lead at least to "judicial jurisprudence".[56]

Part VI also contains "quite a longish" chapter on the general rules of property law. This set of rules is somewhat reminiscent of the well-known title *Pandect De (diversis) regulis iuris antiqui*. Bogišić knew of the circumstances in the countries where "customary law" judges were just beginning to apply written laws. He wanted to establish a fine balance in what he did: "As far as the amount of these didactic rules is concerned, we will in many respects give fewer definitions than is generally the case with newer laws. In doing so, we will adhere to the rule established a few centuries back by one French thinker who deemed that even in education itself it was not necessary to resort to definitions unless concepts were unknown to the listener or reader; he thought there was no need to explain what was completely familiar to everyone who spoke the language, as every definition or explanation of a thing or concept already familiar to the listener rather obscures than explains things. We should stick to that rule all the more so as the lawmaker speaks not to learners but to the entire community, therefore, not to young people coming of age who have not yet entered the everyday business life and affairs".[57]

Part VI is a supplement to the parts that precede it. Bogišić considered that to be its natural place. It comprises most of the provisions on the right of possession (Articles 811 to 830), general rules on the protection of the right of possession, rules on the legal position of a non-malevolent and malevolent possessor (in the proceedings of restitution of property), and on his rights to certain expenses. As is well known, the short section on the right

[55] Valtazar Bogišić, *Metod*..., p. 105.
[56] Valtazar Bogišić, *Metod*..., p. 93.
[57] Valtazar Bogišić, *Metod*..., p. 93.

of possession (Articles 18 to 25) concludes Part I of the Code. Bogišić provides a reasoned explanation for why he included only a minor part of the right of possession in Part I, and why he saved the greater part of the provisions for Part VI: "Heize, the founder of the system of civil law which is predominant nowadays, placed the right of possession in the general part. Such practice of his had no future supporters. And there is a reason behind it. His system included family rules to which the rules of the right of possession in its true sense can hardly be applied. No one can deny that the right of possession has no parts that go beyond the narrow limits of property law. Furthermore, since not only common people but educated people as well confused the right of possession with ownership, we wanted to put it at a distance from it, especially since from the point of interdicta rules of possession fit so well as an extension of the previous rules on the protection of everyone's property rights. In no matter has Part VI been as useful to me as in the matters of Part I of this code."[58]

The rules on international property law are included in two parts as well: Part I (Articles 5–9) and Part VI (Articles 786–800).

The rules of Part VI are, as those from the first five parts, denoted by the "entry number" because, although they act as a "supplement", they are an integral part of the Code. Part VI explains the provisions of the first five parts.

Part VI contains numerous provisions on laws and rules in general. Most of these provisions pertain to constitutional matter(s), but due to nonexistence of constitution, Bogišić felt that they should be included in this part. This part makes a whole with the provisions of Articles 1 to 4 of Part I.

Section II of Part VI (Art. 831–871) is a supplement to Part II of the GPC. It contains explanations, definitions and amendments to the provisions on the proprietary right (ownership) and other property rights (other kinds of inherent right in specific). This section succinctly explains the distinction between proprietorship and ownership: "Ownership is, by its content, the right of most extensive command the law recognizes over a property (93). A person vested with such right (which many refer to as proprietorship) is an owner. Property of a person, such as the right over another's property, the right to a product or action, money or other debts, etc. is his property but it is not in his ownership. Consequently, all ownership is thereby property, but not all property is ownership". This part also includes explanations of the notion of co-proprietorship (co-ownership — Article 832) and revindication action (ownership repossession — Article 833). The same section contains amendments to the rules on ways of acquiring

[58] Valtazar Bogišić, *Metod...*, p. 111 i 112.

proprietorship (ownership — Articles 834 to 848), on neighbouring rights (covenant — Articles 849 to 850) and on easements (Articles 851 to 858 and Art. 860 to 861). The provision on the right of enjoyment from Part II is amended by provisions of Articles 859. The rules on the actual kinds of the guarantee — pledge (gage, collateral and mortgage) are amended by provisions of Articles 862 to 869.

Section III ends with the widely renowned provisions of Articles 870 and 871, which pertain to differences between the nature of actual and debt-collecting rights. These are also the two most extensive articles in the entire Code. Bogišić states in detail the reason for their extensiveness: "As a rule, we steered clear of exemplification, as much as possible, as it takes up vast space. But where it was necessary for the sake of reason and clarity, we dared to be more thorough and broad — omnia fusia explicari — as Bacon teaches, and add explanatory examples which we included to the best of our knowledge, trying not to go beyond what was necessary. Thus, the longest two articles in the entire Code and the ones full of examples are surely Articles 871 and 872. But they look at the difference between actual and debt-collecting rights, the difference the whole system of property law is based on, the difference people have not been familiar with until now, and they must grasp its importance and meaning if they are to comprehend the plethora of rules stipulated by the Code. Therefore, to better understand this highly abstract concept, a specific element was required, car l'homme du peuple comprend facilement meme les theories quant elles sont expliquees par un cas concret. These examples, when properly used, can often replace definitions. Distinctive are the types of examples, or more precisely the concretisations, by which indefinite pronouns become definite, or when a certain proper name is used, for example: si ego emi, si servus meus [...]; si tibi fundi usus fructus [...]; si Titio fructus, Marcio proprietas legata sit, etc., which are very common not only in the Decalogue but also in the sources of Roman law."[59]

Such a comprehensive and successful explanation of the differences between these rights is almost unheard off in the legislation. A succinct and plausible explanation of the nature of property and obligation rights is an example of exquisite norm stipulation. The provisions of these two articles are arranged in a way which points out the similarities and differences between them. "Higher power and clarity" was the underlying reason behind linking these two provisions and the goal was to avoid forms that might be

[59] Valtazar Bogišić, *Metod...* p. 123 and p. 124.

"unnatural and boring for the reader"[60]. Each of the two aforementioned articles has five paragraphs (some of which contain two sentences each) and they are arranged in such a way that they move from more specific to abstract, from what is known to people to what is less known.

"If a person has his own land, his own horse, or another property in his ownership, that right of ownership shall be recognized by everyone and leave the former to enjoy it in peace and utter liberty, within legal boundaries. Also, if a person is granted a right over another's property, such as to cross another land, or to keep another's property as a pledge, everyone shall respect that right, including the owner (and his precursors and successors) and leave the person to execute it completely and in peace. Such rights tied to a property are protected by law from all infringements with utter severity. Due to such a tight and intense relationship between the property and the proprietor of such rights, in which there is no room for a third party, and due to the natural reality of theirs, the law denominates their actual rights. This Code particularly stipulates the following actual rights: ownership (proprietorship) of movable and immovable property, covenants concerning adjacent land, easements concerning adjacent land, enjoyment, gage, collateral and mortgage (Part II of the Code)."[61]

"The right of a person to be given property, for an action to be executed on his behalf, or for an action to be omitted or permitted for purposes of his convenience are all, naturally, his property just like actual rights. Nevertheless, even if property owed by a debtor is real, a person shall have actual ownership over it once the debt is settled and the property comes into his hands and under his command. Until the debt is settled, the debtor and his will to settle his debt or not stand between the creditor and the property indebted. A creditor can indeed use legal means to force the debtor to settle his debt, but that requires litigation; if the debtor is reluctant to settle his debt; or if he questions the debt or its legitimacy on any grounds, the court shall compare his reasons to the reasons and evidence of the creditor and thus resolve the litigation. Even if litigation is resolved to the benefit of the creditor, it is still not certain whether he shall achieve his aim, because it is still uncertain whether the litigated property will actually reach the creditor's hands or whether that shall be prevented by an impediment (e. g. if the debtor dies in the meantime, or flees to a foreign land, etc.) For that reason, for the difference between actual rights (870) and those referred to in this article to be noticed immediately, the law denominates the latter

[60] Valtazar Bogišić, *Metod*... p. 125.

[61] Art. 870 of the *General Property Code for the Principality of Montenegro*.

debt-collecting rights. Rights of this sort are mainly based on contracts such as purchase, exchange, loan, etc. but can also be derived from damage caused by an illicit action, such as damage from negligence or crime, etc., and other affairs, circumstances and occasions such as un-requested execution of another's affairs, unjustified use of another's property, etc. (Parts two and three of the Code)."[62]

Section III provides explanations, definitions and amendments to a contract of purchase and other "principal kinds of contracts in specific". These are the provisions on: purchase (Articles 872–874), lending and loan (Articles 875 and 876), different kinds of lease (Articles 877–880), safekeeping (Articles 881–882), authorization (Articles 883–884), general association (Art. 885–891), joining livestock for grazing and labour (Articles 892–893), guarantee (894–895), gift (Articles 890–899). These provisions are a necessary amendment to Part III of the GPC, entitled: "Purchase and other principal kinds of contracts" (Articles 222–493). In arranging certain kinds of contracts, Bogišić adhered to the general rules of relatedness, scope and what is "most common in the business life of people's knowledge."[63]

He therefore opted to give advantage to a contract of purchase as "the most common and ordinary kind". What is interesting about this contract is the definition of its concept. Bogišić rightly emphasizes that under this contract the purchaser promises to surrender (not transfer) the ownership: "A contract of purchase (i. e. purchase and vending) is a contract in which one party promises to surrender the ownership over the property purchased to another party, for which the other party is to pay a stipulated price"[64]. In addition, a contract of gift may relate to a promise of the gift, not only to its giving. This clearly separates the stage of entering into contract from the stage of execution of the contract: "A contract of gift is concluded when a person gives his property or a portion of it to another person, or commits by legal means to give something he is not required to give, without receiving anything in return, and when he does so in order to increase the estate of the other and make it convenient and beneficial."[65]

Section IV of Part VI (Articles 900–952) contains provisions on contracts in general, as well as on "other deeds, affairs and circumstances resulting in debts". Those are provisions on: debts in general (Articles 900–904), contracts and deficiencies in concluding contracts (Articles 905–915), executing contracts and consequences of non-execution (Articles 920–933),

[62] Art. 871 of the *General Property Code for the Principality of Montenegro*
[63] Valtazar Bogišić, *Metod*... p. 112.
[64] Art. 872 of the *General Property Code for the Principality of Montenegro*
[65] Art. 896 of the *General Property Code for the Principality of Montenegro*

particular clauses and provisions of a contract (Articles 934 –942), debts resulting from illicit deeds and various affairs and opportunities. The provisions of this section explain, define and amend the provisions of Part IV of the GPC (Articles 494–523).

A contract is defined as any agreement according to which a debtor commits to give, perform or fails to perform: "This Code defines a contract as any agreement, written or oral, arranged between proprietors regarding a property affair, according to which one contracting party (debtor, 901, 902) commits to give or perform or permit something to another party (creditor, 901, 902).[66] "The foundation of any contract is legally relevant will of all contracting parties: "The unanimous, free and true will of all contracting parties is the real and principal foundation of any contract. In the absence of the aforementioned, there cannot be a legitimate contract."[67] The subject of the contract must be possible: "That which is impossible to do is not required to be done. Consequently, if a person should commit to perform an action which cannot be performed, such commitment shall not have legal power or value".[68]

Any pretence of entering into contract is prohibited. "Since the truth is the truth and pretence is a lie, it is deemed that when contracting parties act quite differently than they present (e. g. present a contract of gift as that of purchase), such a contract shall be judged according to its actual results and not according to that presumed to be done."[69] An invalid contract has no legal effect while the fate of a voidable contract is uncertain. "A contract invalid due to whichever cause is deemed never to have been concluded. Conversely, if a contract is merely voidable it retains its force, unless contested by a person authorised to do so."[70]

Failure to execute a debt in due time results in a debtors' delay or belatedness. "Delay or belatedness is when a debtor fails to execute i. e. reimburse his debt in due time".[71] "Delay or belatedness begins after a creditor forewarns the debtor to settle his debt and the latter fails to do so."[72]

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[66] Art. 905 of the *General Property Code for the Principality of Montenegro*

[67] Art. 907 of the *General Property Code for the Principality of Montenegro*

[68] Art. 914of the *General Property Code for the Principality of Montenegro*

[69] Art. 913 of the *General Property Code for the Principality of Montenegro*

[70] Art. 917 of the *General Property Code for the Principality of Montenegro*

[71] Art. 922 paragraph 1 (sentence one) of the *General Property Code for the Principality of Montenegro*

[72] Art. 922 paragraph 1 (sentence one) of the *General Property Code for the Principality of Montenegro*

In the broad sense of the word, damage entails plain damage and profit or loss: "Damage is, in the broad sense of the word, when a property is diminished by any means, regardless of whether the already acquired property is impaired, or prevented from increasing by certain means without which it would indeed be increased. If the two kinds of damage need to be differentiated, the first kind is defined by law as plain damage, while the other is defined as profit or loss."[73]

A condition may be suspensive and redemptive: "A condition is suspensive when the effect of a contract is deferred until the condition is fulfilled. Conversely, a condition is redemptive when its fulfilment entails the termination of the heretofore solid contract."[74]

Under certain circumstances, the GPC allows self-defence. "The law of God and man allows everyone who is unjustly assailed to defend himself by all means, if it is impossible for him to summon the authorities to his help. Since an assailant is guilty of harm or damage he suffers thereby, he shall not be entitled to seek compensation. Nevertheless, such legitimate self-defence has its boundaries, and the person attacked cannot exceed them or otherwise he shall be liable for the consequences of his act. The legal boundaries of self-defence can differ substantially, depending on circumstances of individual cases. If it is investigated whether a person exceeded the legal boundaries of self-defence, the following needs to be looked into: who the assailant is, and who the assailed, whether they were male or female, old or young, weak or strong, the time, place and manner in which the attack occurred and the actual danger for the person assailed and how it presented itself to him at the time of the attack. "[75]

The definition on un-requested execution of another's affairs is particularly praiseworthy: "Un-requested execution of another's affairs is when a person interferes with another's affairs for purposes of executing them instead of the owner and at his expense, and without being requested to do so by the latter, and if the former is not obliged to do it. A person interfering in such a way with another's affairs is called the executor of another's affairs, while the owner of the affair is called the master of the affair."[76]

Section V of Part VI of the GPC corresponds in its content to Part V of the GPC (Articles 636 to 766). This section contains rules on proprietors as well as rules "regarding legal capacity and disposition of property in

[73] Art. 923 paragraph 1 and 2 of the *General Property Code for the Principality of Montenegro*

[74] Art. 940 of the *General Property Code for the Principality of Montenegro*

[75] Art. 944 of the *General Property Code for the Principality of Montenegro*

[76] Art. 947 of the *General Property Code for the Principality of Montenegro*

general". Those are rules on: "proprietorship (Articles 953 and 954), private proprietors and proprietors in general (Articles 955 to 959), guardianship (Articles 960–963), the house or house community and other legal proprietors (Article 964 to 970)". Bogišić draws a distinction between terms "an owner" and "a proprietor" in Section I of Part VI. "An owner, in popular language, is each person who owns property. A proprietor is, in this Code not only a person who actually owns property but also each person, and even institution (e. g. state, church, etc.), whose right and suitability to own property are recognized."[77] The terms "proprietorship", "proprietorial right" and "proprietary legal capacity" are defined in Part VI: "According to what is said of proprietors (10, 801), proprietorship in itself is the general right of a proprietor; the same word denotes the extent of such rights. The phrase proprietorial rights have the same meaning as proprietorship. Proprietary legal capacity, the recognized suitability to be a proprietor to dispose of his property (957) is entirely different from proprietorship."[78]

A private proprietor "as defined by law, is every person, to whom the right to ownership is consequently recognized without exception. Conversely, a legal proprietor is an institution (such as the state, proprietary association, etc.) which is defined by law as the proprietor of an estate i. e. to whom the law recognizes the proprietary right."[79]

Bogišić is genuinely mindful of a gender-sensitive language: "When the words: partner, minor, proprietor, etc. are used in this Code, such words refer not only to male individuals but to female individuals as well, unless the law explicitly stipulates in certain places that the person in question is only male, or if the exception can be unambiguously deduced from the meaning of the law."[80]

This section also contains the nasciturus rules: "It is rule that a child in the womb which it can be assumed will be born alive, be treated equally to a child already born, in matters related to a right the child would have if it was already born."[81]

House is the term "decided" to be used for family, as well as for private proprietor: "A House, i. e. a House community, entirely acts on behalf of

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[77] Art. 801 paragraphs 1 and 2 of the *General Property Code for the Principality of Montenegro*

[78] Art. 953 paragraphs 1 and 3 of the *General Property Code for the Principality of Montenegro*

[79] Art. 954 paragraphs 1 and 2 of the *General Property Code for the Principality of Montenegro*

[80] Art. 955 of the *General Property Code for the Principality of Montenegro*

[81] Art. 956 of the *General Property Code for the Principality of Montenegro*

the members of the House. Therefore, a House is like a defined entity to a family which is believed to be the bearer of the entire house work and property. However, it does not imply a building or buildings; for, regardless of whether household members live in one building or in several, as long as their estate, livelihood, activities and acquired property remain within the House community; the community is undivided and is considered a proprietor by itself (686)."[82] By deeming "a House" a proprietor the rights of the household members are not curtailed: "The fact that a House is deemed a proprietor neither makes unclear nor violates the rights that individual household members, male or female, have with respect to the House community, such as the rights to a defined share of the common house estate in times of division, right to food, clothes, footwear, lodging, the right to dowry, etc. This avoids the confusion regarding the rights of individual household members to personal property, if they should have any or be entitled to have it (668–689)."[83]

The specific property of a member of the House is named "personal property": "Personal property is the property to which an individual household member, male or female, is personally entitled, from the House property, and it can be separate from the right to the common estate which he has as a member. Consequently, if the right to a member of the common House property is increased due to the death of another member of the same House, it is clear that the increase shall not become his personal property even though it concerns his proprietary rights in general."[84]

Bogišić makes a distinction between two kinds of property owned by the state: "A distinction can be made between two principal kinds of property owned by the state. One kind is genuinely public property which is exempt from common use, due to the fact that the state itself directly uses it for its personal purposes (fortresses, powder storages, etc.), or due to the fact that they are designated for general service and use (public roads, bridges, squares, piers, etc.). The other kind of property is the personal property of the state. The state derives personal benefit from such property, just as any other proprietor; such property is the land or houses it leases, and money it uses to meet its various needs, etc. A property which falls into the category of genuinely public property can become the subject of common trade, but only after it ceases to serve the state or the citizens, e. g. if a fortress is abolished, if a road becomes dispensable due to a new one being constructed, etc."[85]

[82] Art. 964 of the *General Property Code for the Principality of Montenegro*
[83] Art. 966 of the *General Property Code for the Principality of Montenegro*
[84] Art. 967 of the *General Property Code for the Principality of Montenegro*
[85] Art. 969 of the *General Property Code for the Principality of Montenegro*

Bogišić considered these five sections indispensable. They are followed by sections he calls incidental.[86]

Section VI of Part VI (971–977) contains the rules on certain kinds of evidence in property affairs. The terms "to prove" and "proof" are defined in this part: "To prove means to present valid testimony and reasons regarding the existence of an item or event, in order for all doubt to be eliminated regarding that which is claimed. The consequence of proving is proof."[87]

A document which is a written declaration and a document which is original are defined in this section as well: "A document is a written declaration i. e. statement or testimony that an affair has indeed been concluded (e. g. lease contract), an order executed (e. g. warning a debtor, cancelling further lease), or that an event occurred (e. g. death of a person), and precisely at a time, place and in a manner stipulated in the document. A document is original when it is personally written, or at the very least signed or marked by the person or persons who declare or testify to something by means of a document."[88] This section also discusses "notarized" and "validated" document: "A notarized or validated document is one on which the court or another person of unconditional trust properly records their testimony to the veracity of the concluded affair, or at least that the signatures and of other validating marks on the document, and even of the exactness of the copy."[89]

As a proof of the existence or payment of a debt "a certificate of debt" or "a certificate of reimbursement or payment" is drawn up: "A certificate of debt is also a document but of a particular sort, i. e. it is a written testimony of the existence of a debt."[90] "A certificate of reimbursement or payment is a letter by which a creditor acknowledges that a debt is entirely reimbursed, or that he has received a portion of the reimbursement."[91]

This section also discusses rebuttable (*praesumptiones iuris tantum*) and conclusive (irrebutable) presumptions (*praesumptiones iuris et de iure*). The expressions: "it is deemed" or "the law deems" or "it is presumed that" are used in the *Code* for rebuttable presumptions. "If the law, in circumstances in which nothing definite is known regarding a matter but is judged on the grounds of the common course of things, uses expressions such as "it is deemed", or "the law deems" or "it is presumed that", the court shall also accept as true that which the law deems or presumes to be so. Nevertheless,

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[86] Valtazar Bogišić, *Metod*..., p. 115.

[87] Art. 971 of the *General Property Code for the Principality of Montenegro*

[88] Art. 972 of the *General Property Code for the Principality of Montenegro*

[89] Art. 973 of the *General Property Code for the Principality of Montenegro*

[90] . Art. 974 of the *General Property Code for the Principality of Montenegro*

[91] Art. 975 of the *General Property Code for the Principality of Montenegro*

a party that is not satisfied with a presumption is at liberty to prove otherwise to the court. If the party should succeed in proving it, the proof shall be recognized by the court regardless of the extent to which it differs from the presumption made by the law. (Such presumption can be found in articles 94, 169, 816, etc.)."[92]

The court is obliged to take conclusive presumptions and fictions as the truth: "If a law clearly stipulates that the legislator does not allow for a presumption to be disputed, then all intent to prove the contrary is ended and prohibited, and the court is obliged to take such undisputable presumption as the truth, regardless of the state of affairs (articles 440 and 772 are instances of such undisputable presumption)."[93] The provisions on association (partnership) also discuss conclusive presumptions: "Even if a contract should stipulate that a common association is established permanently, or during the lifetime of one or more partners, or if a partner announced that he shall not leave the association, it shall be deemed without dispute (977) that such contract is sealed for an indefinite period."[94] Fiction is discussed in the provision of Article 722, which actually exemplifies the following of Roman maxim *ignorantia iuris nocet:* "The means by which a state acquires property, in the name of the state, for the purposes of state needs and expanses — by collecting public taxes from its citizens (land and livestock tolls, custom tolls, etc.) and by charging the services of certain institutions (post, telegraph, etc.) — who is to handle such assets and in what manner, what personal service shall be done to the state by citizens (such as guards, soldiers), the organization and rewarding the service of agents of certain professions (judges, teachers, etc.) — all this, and all the affairs where the state does not appear as an ordinary proprietor but as the state in different areas of state affairs, and where citizens appear not as ordinary proprietors but as citizens or public servants, shall be regulated by separate laws and customs."[95]

Section VII of Part VI (Articles 978 to 986) comprises the rules on terms and their measuring in property affairs. This section is not a supplement, but a separate part which did not fit "conveniently" in the previous five parts.[96] The GPC discusses civil time calculating: "The time in prop-

[92] Art. 976 of the *General Property Code for the Principality of Montenegro*
[93] Art. 977 of the *General Property Code for the Principality of Montenegro*
[94] Art. 440 of the *General Property Code for the Principality of Montenegro*
[95] Art. 972 of the *General Property Code for the Principality of Montenegro*
[96] Valtazar Bogišić, *Metod...*, p. 115.

erty affairs is generally measured according to the calendar, but in the way stipulated in the following articles (979–986)."[97]

In the GPC, Bogišić adheres to an old legal saying which states that law does not take into account parts of the day: "Terms, as well as beginnings and endings of certain periods of time, are counted from day to day, and not from moment to moment. Thus, for instance, a Montenegrin born on 2nd January 1860 at 8 pm, according to law reaches majority the moment midnight of 1st January 1881 passes, without waiting for 8 o'clock in the afternoon on 2nd January."[98] In addition to this, days are counted from midnight to midnight: "Days are counted from midnight to midnight. Thus, for instance, Monday lasts after it gets dark and the night comes, precisely until midnight; Monday ends and Tuesday begins at the moment it strikes midnight. Since midnight marks the end of a day, weeks, months and years end and begin in the same way."[99] The terms set in months or years end on the day which corresponds in the name and number to the day of the beginning from which the term began: "The terms which require the lapse of several months or years, end on the day of the last month on which the term began. The fact that certain months have more days than others is not taken into account in the slightest. If the last month should not have a day which corresponds to the day of the beginning, the term expires on the last day of the month."[100]

What is considered the beginning, the middle or the end of a month is stipulated as well: "If it is stipulated that something needs to be done at the beginning of a month, it is deemed to be on the first day of the month; just as the last day of the month is deemed to be the day on which something which needs to be done at the end of the month is to be done, regardless of the number of days in the month."[101]

The rule on terms is prescribed for instances when it is determined that something is to be executed within a certain period of time: "If it is stipulated that something is to be executed within a certain period of time, it should be executed before the period of time expires, even if only several minutes prior to that. If it should be executed only minutes after the period expires, it shall be deemed that it has not been executed on time.[102] All days within such a period of time are counted entirely, without deduction

[97] Art. 978 of the *General Property Code for the Principality of Montenegro*
[98] Art. 980 of the *General Property Code for the Principality of Montenegro*
[99] Art. 979 of the *General Property Code for the Principality of Montenegro*
[100] Art. 981 of the *General Property Code for the Principality of Montenegro*
[101] Art. 982 of the *General Property Code for the Principality of Montenegro*
[102] Art. 982 of the *General Property Code for the Principality of Montenegro*

(e. g. holidays, days of absence from home, etc.), regardless of whether the period results in a person acquiring, refraining from or losing something."[103]

When it comes to execution of a contract, a distinction is made between an instance when the term of a contract falls on a non-working day and an instance when a contract is to be executed within a certain period of time.

"If the term for execution of a contract should fall on a Sunday or another holiday, it can be executed on time the following day. However, when a contract is to be executed within a period of time, and the last day of that period falls on a Sunday or another holiday, then the contract should be executed no further that the last working day before the holiday."[104]

All the rules concerning measuring and calculating time apply only unless the law, court or proprietors themselves should stipulate otherwise for individual cases.[105]

3. BOGIŠIĆ'S NOTES ON THE IMPACT OF THE GENERAL PROPERTY CODE FOR THE PRINCIPALITY OF MONTENEGRO ON THE SYSTEMATICS OF THE JAPANESE CIVIL CODE FROM 1890

Valtazar Bogišić and Mr. Matsukata Masayoshi, the then Vice-Minister of Finance in the Government of Japan, could never have foretold that their meeting, held on July 5th, 1878, would arouse such interest from the professional public, which lasts to this day. On that date, the Japanese Vice-Minister of Finance was in Paris in the capacity of the President of the Japanese delegation at the World Exposition. At the time, Bogišić was preparing the first version of the acclaimed General Property Code for the Principality of Montenegro. At that time, Montenegro had a population of 120–130.000 and it spread over about 4400 km^2.

Bogišić would always underline that the projects of the Japanese and Montenegrin property (civil) codes deviate from the established Hugo-Heize system. In one of his records he wrote: "All codifiers of the first three quarters of our century, whether they adhered to the Hugo-Heize systems or those of the Institutes of Justinian, or anything else, always acted against the thoughts formulated in our structure. The only exceptions are the two youngest codes, in terms of age, Montenegrin and Japanese. They belong

[103] Art. 983 of the *General Property Code for the Principality of Montenegro*
[104] Art. 985 of the *General Property Code for the Principality of Montenegro*
[105] Art. 984 of the *General Property Code for the Principality of Montenegro*

to the last quarter of the nineteenth century, and we will discuss them further in a separate section below."[106]

In this regard, in the same paper, he emphasizes: "However, we will make sure to outline, as briefly as possible, the systems of the Japanese Code in order to acknowledge the extent to which this codification undertaking, carried out in the Far East and under the auspices of a French scientist, followed the principle of autonomy of family and inheritance in comparison to the general property law."[107]

We found a note in Bogišić's archive in Cavtat, recorded by Bogišić himself, about a meeting between Valtazar Bogišić and Japanese Vice minister — Mr. Matsukata Masayoshi. To our knowledge, the contents of this record have not been published up to now. That is why I consider this material exceptionally valuable for further research:

"The finance minister of the Empire of Japan, Matsukata Masayoshi, was at the Paris World Exposition, as the president of the Japanese department of the exposition, which testified to the Japanese supremacy in craftsmanship. One day, as "Pravo" asserts, the Secretary of the Ministry paid a visit to our fellow countryman Professor Bogišić, who was also staying in Paris, and informed him of the wish of the Minister to meet with him and discuss some issues concerning the Codification of Law in Japan. At the designated place and time, Bogišić turned up for a meeting. We do not know what questions were brought up and on whose behalf. The counselling lasted for about three hours, after which the Minister ordered that Mr. Bogišić's explanation be translated from French into Japanese and be sent immediately to the State Council in Jeddo, which was carried out (as instructed)".[108]

In his unpublished notes, Bogišić wrote down the memory of a meeting with a Japanese diplomat in Paris. This record is somewhat more complete than the previous one, so we provide it here in its entirety: "It is remarkable that since that year, the only Code that has been issued followed the system of the Montenegrin Property Code. It is precisely the Code for the Empire of Japan which was promulgated in 1890. Even more significant is the way it all took place. Along with Montenegro, four states were drawing up their civil codes, namely: Germany in Berlin, Russia in Petersburg,

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[106] Valtazar Bogišić, *O položaju porodice i nasljedstva u pravnoj sistemi*, *Izabrana djela, studije i članci*, [On the Position of Family and Inheritance in legal System, Selected Works, Studies and Articles] Podgorica, 2004 p. 25; Ljiljana Marković — Radomir Đurović, *Pravni sistem Japana*, [The Legal System of Japan] Beograd, 2011, p. 389–399.

[107] *Ibid.,* p. 43.

[108] BBC, Cavtat

Hungary in Budapest and Japan in Tokyo. Apart from the last country of the Far East, not one of the codes had been declared a law yet.

But as far as we know, they follow the old system. On the contrary, the Japanese code, which was promulgated as law in 1890, followed the system of the Montenegrin Code, as in its main part it was nothing but a property Code. This is a particularly remarkable fact for our topic. It is already known that the system was devised at the beginning of May of that year in a salon of the Japanese legation in Paris. Baron von Siebold, was also involved; if I'm not mistaken, he was the secretary of the Japanese mission at the World Exposition in Paris at the time. We discussed a few fundamental issues, but we mostly focused on what to do with family and inheritance law. We were of the opinion that it should be excluded, although the codifier, Japanese professor Boissonade from Paris was opposed (to it).

We were able to substantiate our opinion not only with general arguments but with arguments pertaining specifically to the Japanese, as we happened to know the main features of the Japanese citizens' organization. We had been provided the material for this study beforehand by kindness of a very learned Japanese Mr. Yamanouchi, the secretary of Japanese Legation in Vienna and Petersburg. We managed to persuade a statesman who was listening to me and he promptly ordered that my consultation be translated into Japanese and be reported to the Government in Tokyo.

In addition to that, due to several reasons, I harboured no hope that the State Council in Tokyo would heed my opinion. It wasn't until a few years later when Parts I and II of the Project du Code Civil were published ... the Japanese codifier could not but incorporate parts of these two subjects into the Code. I incorporated so-called external families in the Montenegrin Code, and he included nothing regarding family, but there were some provisions about the testamentary legacy. So, these are the two significant examples in the legislative field. And what about a literary field? It is worth mentioning that as early as the sixteenth century, a systematic processing of civil law began in Europe, and at the beginning of our century two famous codes, the French and the Austrian, could do no better than adapt, as much as possible, to the system of Institutes of Justinian.

Such is the power of tradition and routine, even in the very fields where mental strength prevails. However, we will here provide an opinion that, given the shortness of time since these codes came out, we may ascertain some movement and in a purely legal field a shift to our novel way. Nevertheless, here at south, Professor K. Vojinović and Dr. Vesnić fully endorse the exclusion of family and inheritance law from the Montenegrin Code. In Russia as well: here we have reviews of Guba, Spasovich and Digel. In

Germany, Dickel receives and praises the system, but, I dare say, does not accept it as general. In France, where we least hoped, we found admirers. The most important among them are Ardent, Borscand and Dareste. It is particularly interesting to compare the two opinions of this first-class legal scholars, to see how the one grew more favourable to our side over time".[109]

In his unpublished notes, Bogišić also wrote this: "There is one Code, Japanese, which is purely proprietary, and yet it is called Code civil, furthermore, the official French translation of the Montenegrin Property Code even though it is called the Code général des biens pour la principauté de Monténégro de 1888 and yet again, does not forget the short name Code Civil."[110]

In his unpublished notes from Paris on January 23rd, 1899, Bogišić wrote, inter alia:

— "One cannot be an author of a Code but an editor or compiler. But the latter can only be one person.

The question, thus, arises, who was the compiler or editor?

— Some seem not to be overly impressed by Stubengelchr. terei! In Germany, I was in Berlin when they excluded Windside from the Commission for Codification of Civil Law. He annoyed me with his erudition more than helped me. And where did the volumes of the edited Property law disappear in Japan, and their compilations made by one faculty member? After 20 years of work the Parliament appoints a new commission to draw up a new Code, and the work of a learned professor ends up in paper trash?

— Codification is effain ad'operation. No author needed there. One should simply ascertain facts, select the good and reasonable among the observed facts, and act accordingly. The observations include the laws of other countries — and the work of the codification commissions, as well as the opinions of some professors, but to take them as a collaborator- who in the sane mind would do that? Their job is to criticize the Code when it is done as much as they want, or to give comments, but no more.

— Let us look at the results. Let us find one article in the Code that would match the Napoleonic Code on the one hand, and the German Code on the other.

— The time of telescopes in social sciences is long gone! Now a microscope is required, and it can't be done and not be on the spot.

— chosen est codferer la jurisprudence et l 'autre: cofferer la droit.

— I asked and I had to ask the information from Tom, Dick and Harry to University professors".[111]

[109] BBC HAZU XIV/4.
[110] BBC HAZU XIV/4.
[111] BBC HAZU, XIV/8

In a note from the same box, Bogišić brings up the remarks made to him because he uncovered a link between the Montenegrin Code and Japanese Civil Code. Here's the part of the record:

"In defence of the Code:

— Regarding the claim that the Japanese Code followed in the footsteps of the Montenegrin Code:

I insisted here (i. e. in the debate) during the codification process that family and inheritance were excluded.

I acknowledged this on p. 36–37 explicitly.

I added that apparently both family and inheritance were legalized but separately. I explained it more elaborately in the note on page 37. Moreover, I added that I did not know whether it would remain separate in the future or whether it would be included in the Code or added to it.

And since I received the texts of those laws (families and inheritance in particular), but in such a form that they can be included in the Code, I cannot deny that:

1. These laws were excluded whilst the main Code des biens was codified.

2. These laws were promulgated later than the property law.

3. The first was drafted by Boissonade and the second one by some English people since the translation is English, not French, as is the case with a property code.

If the inheritance is included in the third book at a later date, which may well be true, judging by the number of articles, then inheritance is separated from family and gives rise to old misconceptions. But it seems to me that it is not what Boissonade strives to do (he should be asked about this).

It can't have been drafted by Boissonade."[112]

Bogišić is keen to refer to the Paris meeting with the Japanese vice-consul in his autobiography. This meeting is particularly emphasized in the second concept of his autobiography: "Bringing up a curious episode of my Paris residency might serve a useful purpose, as it also concerns my scientific profession in a broad sense. The year is 1878, the time of the Paris Exposition, a certain baron Siebold, the Secretary of the Ministry of Finance in Japan, pays a visit to me on a few successive days, urging me to make an appointment with his chief — Vice-minister, Mr Matsukata Masayoshi, who would like to pose some cardinal legal questions to me.

[112] BBC HAZU, XIV/8.

When I came to the arranged rendez-vous, Mr. Vice-Minister asked me a few vital questions regarding the codification of law in Japan. A special commission had been dealing with this codification for 6–7 years, headed by a Paris professor *Boissonade*; — but so far no reports of its work had been released. The Vice-Minister seemed very pleased with reasoned answers I offered him, and ordered that they be translated from French into Japanese and he immediately requested that they be sent to the State Council, which was done. Will this opinion of mine have any bearing on the course and impact of the codification, the time will show. Instead of a remuneration for offering my opinion, I wanted to be provided a description of some legal terms in Japan, before the new administrative shift; — and it was done (there are notes on that Japanese consultation in one issue of "Pravo" at the end of 1878 or at the beginning of 1879)."[113]

The Japanese Civil Code is known to have been promulgated in 1890. It was expected to enter into force in 1893. The solutions of this code were fiercely criticized, and a new commission was appointed which relied on the German Civil Code as a basis. The Code was passed on June 14th, 1896, and it came into force on January 1st, 1900. It contained 2, 385 paragraphs. Later, a new text of the Japanese Civil Code (with 1, 044 paragraphs) was drafted, and it came into effect on July 16th, 1898. Japanese scholars find it indisputable that numerous provisions of several versions of the Japanese Civil Code were drafted, inter alia, under the influence of solutions offered in the General Property Code for the Principality of Montenegro. But that is a subject for another study.

As is well known, the codification of civil law in a small country, such as Montenegro, is no less difficult than that of a big country. It can even be said that Bogišić's endeavour in Montenegro was more difficult than a similar endeavour by some commissions in developed countries. Because, as Bogišić notes, "the difficulties that had to be overcome were even greater since, in addition to the circumstances which might have been unique in the history of codification, in putting up the edifice, not only was I supposed to be an architect and a mason at the same time, but I also had to: look for, fetch and prepare stone, lime and sand for its construction."[114] Fur-

[113] Valtazar Bogišić, *Drugi koncept autobiografije (Materijali za biografski nacrt),* Izabrana djela, studije i članci, [An Autobiography — the second concept (materials for biography), Selected Works, studies and articles,] Podgorica, 2004, p. 412–413.

[114] Valtazar Bogišić, "Memoar o slabostima i teškoćama mog položaja u toku misije u Crnoj Gori, St. Petersburg, 30. oktobar 1879. godine", [A Memoir on Vulnerabilities and Hardships of My Position during the mission in Montenegro St. Petersburg, October 30, 1879.] published in the book: *Crnogorski zakonici...*, p. 404. [Montenegrin Laws...]

thermore, Bogišić played the role of the president and the entire codification commission in Montenegro. Truth be told, Montenegro had high confidence in his loyalty, integrity and expertise. Those who knew Bogišić and followed his work had never doubted this loyalty, honesty and expertise.

His difficult, complex and great endeavour did not go unnoticed in the Land of the Rising Sun, which was always ready to acknowledge a good result and to inquire with curiosity about the methodology that led to it. Thus, in 1878, Mr Matsukata Masayoshi wanted to hear Bogišić's opinion on certain fundamental issues of the codification of civil law. The direct work on drafting the Montenegrin Code did not take place until 1876. The difference was that the work in Japan was carried out by a multi-member commission under the chairmanship of Parisian Professor Boissonade, and in Montenegro Bogišić worked all alone. True, during the drafting of the Code, Bogišić consulted many a man. He ran a poll of legal customs with about 2, 000 questions, organized a reading of the text of the Code with members of the Committee and Prince Nikola, and took into account the suggestions of linguistic experts. But, for the most part, he formulated the provisions of the articles of the GPC all by himself.

The meeting in Paris was also attended by the Secretary of the Japanese Ministry — baron Siebold. Although the meeting lasted quite long (about three hours), only general issues were discussed. Of course, Bogišić would not be a great scholar (in common law and family) and codifier had he not dealt with the study of the structure of the Japanese family before that (accidental meeting). The contents of the future Japanese Civil Code were also discussed at the meeting. In this regard, Bogišić was very interested in the question of whether family and inheritance law would constitute the content of future Japanese codification. He received an answer from which it could be inferred that the Japanese Commission intended to include all those parts that made up the content of the French Civil Code (the Napoleonic Code). Nonetheless, Bogišić maintained the stance that family and inheritance law should not be constituents of a future code "so that when the time is right, when their codification takes place, they could be dealt with in a particular manner befitting to their nature".[115]

Bogišić is open about the fact that his reasons and arguments for such a stance left a profound impression on the Japanese vice minister. Immediately after the meeting, Bogišić learned that the vice minister had "instructed his secretary to translate all of our conversation held in French into Japanese

[115] Valtazar Bogišić, *O položaju porodice i nasljedstva u pravnoj sistemi, Izabrana djela, studije i članci* [On the Position of Family and Inheritance in a Legal System, Selected Works, Studies and Articles], Podgorica, 2004, p. 45.

and to send it to the State Council in Tokyo."[116] On this occasion, Bogišić did not harbour any hope that his opinion, expressed at the meeting, "could have any impact whatsoever". This is due to the fact that the opinion was "not only expressed once and only orally, but it was uttered very far from the place where the codification work was undertaken".[117] Moreover, in the five years since that meeting, Bogišić knew nothing about "the course and direction of Japanese codification."[118] The hope of the impact of his opinion was not particularly entertained because he also knew "what a significant position Mr Boissonade occupied in both the codification Commission and the Ministry of Justice in Tokyo."[119]

However, in 1883, Bogišić held in his hands the first volume of the Japanese Civil Code, which was published in 1882. At the time, his astonishment was "not insignificant" when, in a letter written by Boissonade, and sent to the Minister of Justice, which was published at the "front of the volume and in its introduction", he saw "unmistakable signs" that his opinion expressed at a meeting in Paris "had still resonated with the Japanese codification committee". Bogišić then presents the contents of a letter from Mr Boissonade sent to the Japanese Minister of Justice. It should be noted that, although he did not cherish any hope of the impact of his opinion, he would often highlight how honoured he was for having had a chance to meet with Japanese vice minister in the annual reports to Russian authorities and the Montenegrin prince. It is from the available sources that we have learned the facts stated below.

Bogišić shared his first impressions of his meeting with Japanese Vice-minister in a report for 1878, submitted to the Russian Minister of National Enlightenment, count Andreyevich Tolstoy. Unfortunately, this report is not available to us, but we learn about it from another source. Namely, in "A Memoir on the Weaknesses and Difficulties of My Position during the Mission in Montenegro since October 30, 1879", Bogišić does mention the aforesaid report[120]. In the Memoir, Bogišić complains about the inadequate compensation he receives for his work, unlike multi-member commissions in other countries, which are "very expensive". These commissions

[116] *Ibid.,* p. 45.
[117] *Ibid.,* p 46.
[118] *Ibid.,* p 46.
[119] *Ibid.,* p. 46.
[120] Valtazar Bogišić, "Memoar o slabostima i teškoćama mog položaja u toku misije u Crnoj Gori, St. Petersburg, 30. oktobar 1879. godine", [A Memoir on Vulnerabilities and Hardships of My Position during the mission in Montenegro, St. Petersburg, October 30, 1879.] published in the book: *Crnogorski zakonici...*" [Montenegrin laws] p. 407.

work constantly, "even nowadays" says Bogišić. That is why he recalled the codifications of civil law that had lasted for many years, such as those "in the capitals of Germany and Japan".

Comparing his position to that of the chairman of the commission on the drafting of the Japanese Civil Code (Mr. Boissonade– an associate professor at the Faculty of Paris), Bogišić, among other things, says: " (...) receives 35, 000 francs in annual fees, in addition to travel expenses, accommodation, service, etc.., plus his entitlements from Paris"; it is thus easy to imagine how much the whole commission costs.[121] Nevertheless, Bogišić notes, work on the drafting of the Japan Civil Code "does not appear to have progressed much."[122] This conclusion is reinforced by the fact that the Japanese Vice-Minister of Finance asked Bogišić "for advice on the guiding principles of the codification of civil law (see my report for 1878)".[123] Bogišić also states that codification committees have high fees, "those from Berlin (consisting of seven members and advisers), from Pest (consisting of five members), and from St. Petersburg (composed of 20 members — it worked on drafting the Code on Mortgage), from Bulgaria (composed of 5–6 members to organize the judiciary). He concludes: his position is "neither regular nor favourable, nor befitting to the hardship and importance of the endeavour."[124]

In an annual report to the Minister of Enlightment of Russia dated 12/24 July 1884, Bogišić proudly recalls a meeting with the Japanese Vice-Minister of Finance: "In my Report for 1878, I informed that a high-ranking Japanese figure who was in Paris at the time sought my advice on the issue of codification of civil law in Japan".[125] On this occasion, he emphasized the benefits of that meeting: "Recently published documents attest that these consultations had a profound impact on the system of the appointed commission."[126] He hints at closer information about that in some of the following reports: "Since that fact has lead to success, the importance of which is significant to everyone, I expect more in-depth information about

[121] *Ibid.,* p. 407.
[122] *Ibid.,* p. 407.
[123] *Ibid.,* p. 407.
[124] *Ibid.,* p. 407.
[125] A report of Valtazar Bogišić to The Minister of Enlightenment of Russia, Berlin, 1884, July 12/24. *General Property Code for the Prinicipality of Montenegro*, Podgorica 2004, p. 294.
[126] *Ibid.,* p. 294.

it. I hope that I will be able to submit a more extensive report and information in my future reports to your Excellency".[127]

In the report to I. D. Delyanov on the work on the Code during 1884–1885, which was sent from Cetinje on August 20th/September 1st 1885, Bogišić again reminds a Russian official of his meeting with a Japanese vice minister: "In conclusion, I allow myself once again to bring my work on the future Japanese Civil Code to your Excellency's kind attention. I spoke about this work in my Report of 1888, and I had the honour of informing you of this, your Excellency, in my report of July 12/24, 1884."[128] In the same report, Bogišić informed that the second part of the project of *Japanese Civil Code* had been recently published.

This made him even more convinced that the consultations with Mr Matsukata Masayoshi in Paris "had a decisive impact on the whole system of that work"[129]. On this occasion, he expressed his satisfaction with the fact that the system of the new *Japanese Civil Code* would be similar to the Montenegrin (code): "That way, the new Japanese Civil Code will have, for the most part, the same system as the Montenegrin, regardless of the previous opinion of the President of the Codification Commission in Tokyo, a Parisian professor Boissonade."[130]

In the text below, we recall Bogišić's study "On the Position of the Family and Inheritance in the Legal System" of 1893 and we present Bogišić's observation on the first volume of the project of *Japanese Civil Code*, published in 1882. We also present what Mr. Boissonade stated in the letter, "at the beginning of the aforementioned volume". In the letter sent to the Japanese Minister of Justice, Mr. Boissonade, stated that his code project was called " (Code) des biens, ou des droits composant le patrimoine des particuliers".

In the introduction to the aforesaid volume, he wrote that the first book on persons, associations and family would be codified in such a manner that it would take into account custom as well, but that work would be carried out "only after all other books of the Code had been completed." In the same letter, Mr. Boissonade informed the Japanese Minister of Justice that the first volume of the project, regardless of the fact that it began with the second book, was still called "Volume One (tome premier) and that the

[127] *Ibid.,* p. 294.

[128] A report to I. D. Delyanov on the work on the Code in 1884/1885, Cetinje, August 20/September 1 1885, published in the book: *General Property Code for the Prinicipality of Montenegro*, Podgorica, 2004, p. 301.

[129] *Ibid,* p. 301.

[130] *Ibid.,* p. 301.

numbering of articles begins with number 1. As stated, the first book, dealing with individuals and the family, has been postponed for later."

Bogišić is keen to notice that, not only in the first volume of the Japanese Civil Code project, but also in the subsequent volumes, did he detect signs "that the later work has trodden a path of a pure property code". He states a few facts to substantiate such claim:

1) The Napoleonic Code (Book three), says Bogišić, contains extensive rules on marriage contracts and on spousal property relationships. In contrast to that approach, Book three of the Japanese Civil Code "which corresponds to the recently completed Napoleonic Code, contains no trace of this set of rules which by their very nature are inherent to family law... Since, as we have seen, more books on individuals are excluded, it may be concluded, that no family law is found in the Japanese Code."

2) *The French Civil Code* regulates testamentary and legal inheritance in the book: "Des manieres d 'acquerir la propriete". On the other hand, when it comes to the Civil Code of Japan, "there is a separate book on the ways of acquiring property in the third volume, printed first in 1888. There are no hereditary rights, as in the Napoleonic Code, herein, except for 15 articles on legacies (Articles 639–664) at the end of that book."

Article 640 envisaged that the rules on wills be set out in the fifth section of the second part of Book Three, but, as Bogišić writes, "surprisingly neither the fifth chapter nor the second part of this book is here, nor anywhere else for that matter in the whole Code. Not only do they not exist in the first edition of the third volume from 1888, but they do not exist in the most recent edition from 1889 to 1891, nor in the text free without commentary, published in 1891".[131] The same applies to the rules on intestate heir law: "There is no trace of them in all the aforementioned editions of the Code."[132]

Bogišić finds these arguments sound enough to draw the following conclusion: "Based on all the above-stated, it is clear that what we have in front of us is something resembling Montenegrin, purely property code." The Japanese project does contain 15 articles on legacies but this fact does not affect its qualification of a property code, in the same way the so-called "external family rights" (e. g. rules on guardianship). To the best of Bogišić's knowledge, some parts in question were later "separately legislated".

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[131] Valtazar Bogišić, *O položaju porodice i nasljedstva u pravnoj sistemi*, *Izabrana djela, studije i članci*, [On the Position of Family and Inheritance in Legal System, Selected Works, Studies and Articles] Podgorica, 2004 p. 47 Bogišić, *O položaju porodice i nasljedstva u pravnoj sistemi*, Valtazar Bogišić, Izabrana djela, Podgorica, 2004, p. 47.

[132] *Ibid.,* p. 47.

Bogišić was an ardent advocate of the stance that family relations and inheritance law should not be included in the property code: "Due to peculiar nature of our family and what is related to it, and scientific, and especially the practical whole, which we especially revere in this kind of affairs, we arrive at the conclusion — no family relations, or matters of inheritance related to them, should be included into the Property Code, but a separate, special, distinctive, gradual legislative operation should be devoted to them. After all, even though eclecticism will do so, we still need to make one exception for practical purposes. Since the Property Code also takes into account the communication or relations with foreigners who are not familiar with the structure of the family, we shall include all the basic rules of property relations of the family in the code, insofar as they may concern the property relations and contact of the family and its members with the rest of the world. These are, so to speak, external family property rights that we have incorporated into the Code. Everything else is excluded from it."[133]

He does not stop there, but goes on to explain why external rules of family law are included in the GPC: "The list of groups has already mentioned earlier that although we excluded the internal rules on family, we still included external rules of this matter in the Code. These external rules are limited to those rules applicable to the external property world which the house and the members of the household come into touch with. We have touched upon its structure and internal relations insofar as it was absolutely necessary to doings of that external world. Moreover, incorporating these rules seemed necessary to us because the predominant form of the family in Montenegro or its nature is not well known, especially to foreigners, who nevertheless come into property contact with Montenegrins. We reckon that we have already proven elsewhere that not even our folk are that familiar with such form or nature."[134] In this sense, these arguments apply: "When it comes to members of the House, this is only insofar as their contacts with the outside world are concerned in one way or the other the houses as a proprietor. Then come special sections on other types of proprietors, such as clans, fraternities, municipality, church, association as proprietors and bequests.[135]

The General Property Code for the Principality of Montenegro contains rules on personal and other proprietors' capacity, and handling property affairs in general. "As for all kinds of proprietors, we followed the rule, to consider them externally i. e. as much as they concerned the external property

[133] Valtazar Bogišić, *Metod ...* p. 196.
[134] Valtazar Bogišić, *Metod ...,* p. 206–207.
[135] *Ibid.,* p. 210.

world. Still, exceptions had to be made. The general rules on proprietorships, not on natural proprietors (people), had to be elaborated more comprehensively. Since, e. g. a death certificate is a completely new regulation in the country, such elaboration is necessary.

On the contrary, guardianship, all the main types (tutelae et curae) which have been included, is only defined externally (guardianship cases, appointment, commencement and termination, restrictions of a minor in administering his affairs, his representation by the guardian in affairs with the rest of the world). The relationship between guardian and a minor, accountability, etc., since it concerns internal properties, were left out to be discussed in a separate part. So far in the written law of the country, there were only a few rules regarding guardianship of minors, while when it comes to everything else, such as a cura furiosi, prodigi, absentis there were none, and that fact should have prompted us to set rules for internal relations, to consider them to a limited extent as is usually the case in civil codes, and since it would not be possible to complete it, it would lead to the need to exclude all articles on the subject, and to compile a three times longer specific law, as we have exemplified already. This way, at least, a specific law on this subject will not replace the rules of the code on guardianship, but merely supplement them.[136]

Bogišić also has an answer to the question why the GPC contains rules on association: "As for association, company, corporation, which is being established and for which there have been no written or unwritten rules in Montenegro so far, it was not possible to differentiate between external or internal when it comes to them, and it was necessary to draft them from scratch."[137]

Regarding the question of whether the rules on rights of an individual belong in the property code, Bogišić concludes: "We could not but speak of jura personarum, at least to the extent that we have spoken, with respect to Montenegrin circumstances, because there are neither general laws nor "civil" laws on the right of an individual in Montenegro."[138]

Bogišić was aware of Mr Boissonade polemic with opponents of his work over these issues. Namely, in the *Les nouveaux codes japonais-Réponse au manifeste des légistes et aux objections de la Diéte I Revue francaise du Japon, livraison d'aout 1892 Tokyo* Boissonade also mentioned certain articles from the "book on individuals"[139]. Bogišić regretfully stated that he had

[136] *Ibid.,* p. 207.
[137] *Ibid.,* p. 207.
[138] *Ibid.,* p. 210.
[139] *Ibid*, p. 47.

not known until then whether these parts would be separately regulated, or whether they would later constitute part of a single code, "or be added to it as a supplement". In view of this, Bogišić wrote: "(...) that after 1878 Mr. Boissonade, the editor-in-chief, had put aside the original system of all civil code and, with help of his commission, carried out his work without taking in consideration family and inheritance."[140] However, he did distance himself, in the light of the texts he was familiar with until 1891. He regrets not having been provided with the views, criticisms, reviews and comments of the *Japanese Code* and not having been acquainted with what was said these texts about the system and the limitations of the Code.[141]

As is well known, Bogišić himself wrote "a collection of criticisms, reviews and similar works" about the Montenegrin Code. The main of these were published in the bibliography of the French translation of the GPC.[142] But that was not even half of what had been said on the GPC by then.

In the paper "Method and System of Codification of Property Law in Montenegro",[143] Bogišić discussed the codification of civil law in Japan as an example similar to that of Montenegro: "Away from Europe, for the last couple of years, a commission has been sitting in Japan, whose task is to draft a civil Code. And though Montesquieu said that a great many laws make this country miserable[144], today, when we know Japan much better than it could have been the case at the time of the renowned president, everyone knows that civil law in that empire of islands is governed solely by the unwritten rules of custom.

This extraordinary and distant oceanic country finds itself, in this regard, at the time of its codification, in similar circumstances as Montenegro[145]. In the same paper Bogišić mentioned Boissonade with respect to *droit de propriéte,* in broader sense. Namely, he calls those rights *Les Biens*.[146]

At the time of drafting the Montenegrin GPC, a civil code was being drafted in four other countries, namely in: Germany, Russia, Hungary and

[140] *Ibid,* p. 47.

[141] *Ibid.,* p. 48.

[142] Code general des biens pour la principaute du Montenegro du 1888, traduit par mm Dareste et Riviere (Paris, 1892) p. LVII–LX.

[143] Edited by: Tomica Nikčević, 1967, edition CANU — Special Editions, book. CDIX, Belgrade 1967.

[144] Montesquieu Ch, De l' esprit des lois. Edition stéréotype, Paris, 1816, t. I–V, t-I, livre VI, sh XIII, "Impuissance des lois japonaises", p. 203–206.

[145] Valtazar Bogišić, *Metod...*, p. 157.

[146] Boissonade (G) Projet du Code civil pour l' Empire du Japon (accompagné d'un commentaire par Mr. G-ve Boissonade. Tom I–V. Tokio, 1882–1889, T. I. p. 2:) "les Biens sont les droits composant le patrimoine".

Japan. The first three codes, as Bogišić points out, are drafted according to the old tradition, as far as the scope is concerned.[147] The code in Japan differs from these examples, which Bogišić is keen to assert: "In Japan, judging by the first two parts, which have recently emerged as a basis,[148] the Code, as far as the subject is concerned, is substantially different from the previous ones."[149] He is also keen out to emphasize his own merits: "We are particularly interested in this basis, because in the particular turn of events, it seems to us that we ourselves had certain influence/effect on the adopted system."[150] Although the name itself is typical of a law — *Code Civil*, the Japanese project "is nothing but a property Code".[151] In Bogišić's opinion, such a conclusion is not called into question by the fact that the so-called laws of persons (ius personarum) "along with family ties, are meant to be included in a book that has not yet been published."

However, the second book, which came out, marks the beginning of the basis of property law, and judging by the scheme outlined in the preface, the rest of the books (III, IV and V) will add to this basis.[152] Bogišić reinforces this conclusion by offering the following arguments: "Neither the scheme, nor the text, nor the commentary on the published basis, mention a word of inheritance."[153] This is probably due to the fact that it was "left for a special law to define".[154] Another sound argument is that the second book, which contains property law, begins "its article numbering with 1".[155] Even the statement of the framer, Mr Boissonade, in the preface, substantiates this: "this basis lays a foundation for 'civil' legislation, i. e., la théorie des Biens ou des droits composants le patrimoine des particuliers".[156]

In Bogišić's opinion, the examples of the Japanese and Montenegrin codes confirm a departure from legislative practice, which is rooted in the old tradition of the scope of civil law. On the other hand, Bogišić continues, some legislation tend to "insert everything that is not property right in the civil code, moreover, they offer us examples of a code that contains only (part)

[147] *Valtazar Bogišić, Metod ...,* p. 189.

[148] Boissonade (G) Projet du Code civil pour l' Empire du Japon (accompagné d'un commentaire par Mr. G-ve Boissonade. Tom I–V. Tokio, 1882–1889, T. I. p. 2) "les Biens sont les droits composant le patrimoine".

[149] *Valtazar Bogišić, Metod i...* p. 189.

[150] *Ibid.,* p. 189.

[151] *Ibid.,* p. 189.

[152] *Ibid.,* p. 189.

[153] *Ibid.,* p. 189.

[154] *Ibid.,* p. 189.

[155] *Ibid.,* p. 189.

[156] *Ibid.,* p. 189.

of that property law"[157]. Internal family relations are "familiar to everyone, since they are rooted in custom and they have little meaning for the outside world and it is thus enough that the nature of body coming into indirect contact with that world is familiar with them."[158] The acknowledgment of this Bogišić finds in one remark by "another framer of the 'civil' Code, Mr. Boissonade (see: Projet du Code civil pour l 'Empire du Japon, pp. 7–8)".[159]

In numerous meetings with Prince Nikola arranged for the purpose of reporting on the drafting of the code for Montenegro, Bogišić would never fail to report to the ruler on the drafting of the Japanese Civil Code and emphasize the influence of the GPC on the Japanese codification system. Thus, for example, at a meeting in Vichy in June 1887, Bogišić delivered a detailed report to Prince Nikola on the printing of the text of the Montenegrin Code, on printing paper, printing costs, on the ensuing ceremony of proclaiming the Code, on the course for implementing the Code, on the impact of the Code on the Codification Commissions in Japan and Russia.

Kosta Vojinović paints a picture of a large project in the field of civil law in the mid-19th century at the beginning of a prominent book, *The General Property Code for Montenegro with Respect to Other Montenegrin Legislation*[160]. In this regard, he looks back at major legal projects: Saxon, Zurich, Italian, Hungarian, Spanish, Portuguese, Russian, New York. In particular, he looks back on the codification of civil law in Japan: " (...) and Japan, the most advanced Asian state, since it is the most accessible to European education, studies the private legal regulations of Europe, and seeks advice from that Slav, a member of this Academy, who drafted the General Property Code for the Principality of Montenegro, and even acts on his advice on the system, based on which it will draft its own civil code.[161]

The publication of the aforesaid book by Kosta Vojinović was preceeded by frequent correspondence between him and Bogišić. In some of these letters, Bogišić proudly wrote about the impact of the GPC systematics on that of the *Japanese Civil Code*. Bogišić's letter sent from Paris on May 1st 1888 is in line with this: "The questions are difficult too, but let me tell you the truth, having studied the systems of all civil codes of Europe and America; and having had many readings with practitioners on my code; having been

[157] *Ibid.,* p. 190.
[158] *Ibid.,* p. 191.
[159] *Ibid.,* p. 191 (footnote 179).
[160] Kosta Vojinović, *Opšti imovinski zakonik za Crnu Goru obzirom na ostalo crnogorsko zakonodavstvo*, [General property Code for Montenegro with respect to other Montenegrin Legislation] Zagreb, 1889.
[161] *Ibid.,* p. 2.

locked in so many struggles with it for so many years (with frequent pauses, of course) correcting it and modifying it — yet, at least when it comes to Montenegro and every Slavic country — no more befitting system have I found. Of course, you will say, every pedlar praises his own needles. I admit it, but I must also add, that the members of the Berlin Commission who read my revision in 1883. (resting upon/based on that very same system outlined in 1870), wholeheartedly approved it, especially with regard to Montenegrin circumstances. And on page 8 of the brochures you will see (and you already know it) that it is the system which, on my advice, was applied in case of Japan."[162]

His letter sent from Petersburg on June 3rd, 1888 was written in a similar vein: "No wonder, then, that he strived to have and review each and every (civil code issued until then, many of which indeed showed what codification should not be like, but it may prove to be useful eventually to serious experts in such matters; — but he also wanted to familiarize himself with work and commissions that simultaneously dealt with the codification of same subjects in other countries. There were four such commissions: in Pest for Hungary, in Petersburg for Russia, in Tokyo for Japan, in Berlin for Germany. As the last one was the closest to me, and I had a few acquaintances in it, I knew its work best; — as for the Japanese commission, never have I seen or met its president due to the geographical distance between us, and you know that, they consulted me on their actions and mostly accepted the system I recommended.

The work on codification in Petersburg started only 5 years ago, and since I had already completed my work for the most part, I was not particularly interested in it; as for Pest, where the work on codification had commenced a few years before I started my own work, I dropped in twice; members of the commission kindly put everything they knew at my disposal, but my knowledge of their work was never really extensive due to the fact that I could stay in Pest only for a fairly short time, and due to the fact I was not familiar with the language in which the work was carried out. As you know, I conducted my work in Paris, except for collecting materials and group readings of the prepared basis. There were no official assistants, consultants, secretaries, as is typically the case in the commissions, and I did all the work myself.

When it came to complex questions, I consulted my fellow jurists especially in Paris and Berlin; — just as I consulted some of my linguist friends on matters regarding language. It goes without saying that I was eager to

[162] A letter of Valtazar Bogišić sent from Paris dated May 1st 1888; BBC, XIa.

listen to other people's opinions in both of these matters, but I still based my decisions on what I myself deemed right. You know that this is how I usually act in all my scientific work; I first study what other scientists did or thought about it — and yet I tread my own path and I have the courage of my conviction when it comes to my work."[163]

In the end, in the third concept of his autobiography, Bogišić ponders his fate, comparing it with the fate of professor Boissonade: "But creating such a momentous monument, such as a Code, requires a length of time that cannot be foreseen in advance: hence, Mr Bogišić in Montenegro shared the same fate as the French codifier, professor Boissonade in Japan. 'I promised', writes Mr Boissonade, 'that I would have completed the enormous work of drafting the Civil Code in by the deadline, which I dare not even mention today, and during that term I barely had time to complete only the first part of the undertaken work... The magnitude of the task made me overestimate my own powers.

I was like a mountain climber: the higher and brighter the peak one wants to conquer, the smaller the distance looks to him; yet he does not foresee/ the many valleys and peaks in between that he needs to cross" (Projet de Code civ, Tokyo 1882, p. V.). And just as Mr Boissonade (who stayed in Japan for more than 20 years as the Chairman of the Codification Commission) could not return to his department in Paris, neither was Mr Bogišić able to take over his department in Odessa or any other department he was offered, despite the repeated invitations".[164] Numerous Japanese scholars have emphasized the impact of certain provisions of the GPC on the relevant provisions of the Japanese Civil Code, especially on the text that came into force on July 16, 1898. In this view, we state the provisions of the following GPC members: 615 (conditions of compensation of debt), 949 (compensation), 612 (the order of reimbursement of debt), 561 (issuing a receipt of reimbursement and conveyance of rights), 479 (inability to collect debts resulting from gambling or wagers), 497 (liability of the offering party if arrangements for a contract are made in writing or by means of a message), 619 (when a loan which reaches prescription can be compensated), 467 (conveyance of the rights to the warrantor), 613 (reimbursement certificate), 975 (a certificate of reimbursement or payment), 14 (proprietors). Unfortunately, the nature and scope of this paper do not allow us to address these issues in more detail.[165]

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[163] A letter of Valtazar Bogišić to Kosta Vojinović from Paris on June 3rd 1888; BBC HAZU, XIa.

[164] Valtazar Bogišić, *Autobiografija, Izabrana djela, studije i članci*, [Autobiography, Selected Works, Studies and Articles], Podgorica 2004, p. 439–440.

[165] See: Ljiljana Marković — Radomir Đurović, Op. cit., p. 396 i 397.