

Brief historical overview of the evolution of “obligatio” and “contractus” in the Roman law: their influence on the Albanian legislation¹

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Abstract

Roman law has influenced many legal systems throughout the world, including the Albanian legislations, this also as a result of the centuries-long conquests of these countries by the Roman Empire, which have left traces both in the culture of these countries and even in the legislations. The law of obligations and contracts is one of the broadest and most important areas of civil law. The best understanding of the contemporary notions related to these institutes requires a deeper knowledge of the Roman notions of “obligatio” and “contractus” throughout the entire period of the development of the history of the Roman law.

In the course of history, these institutes have influenced the customary collections and the Albanian legislations up to the present day, configuring Albania in different periods in the category of the civil law countries with Romanist origins. Currently, even though the institution of obligations and contracts has strong Romanist bases, so much so that even in modern codifications we find definitions of the notions of “obligatio” and “contractus” of the Roman law, new forms of contracts have arisen as a result of the development of the market economy.

Keywords: “obligatio” “contractus”, source of obligation, roman law, Albanian legislation

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Introduction

If in the Albanian literature we are often used to treat Roman law in the most general terms, this paper has as its main purpose the more specific analysis of some aspects related to the evolution of the notion of *obligatio* and of its sources and the treatment of the notion of *contractus* in different stages of the development of the Roman law, as well as the influence these institutes have had on the Customary Codes and on the Albanian legislation. The treatment cannot be exhaustive for the breadth of the topic, so it is limited to the above-mentioned aspects. This paper provides to make a review of the best quality literature related to the Roman and Albanian law of obligations and contracts. The methodology used in this paper is historical, descriptive and comparative.

The law of Roman obligations and contracts has influenced the Albanian legislation since ancient times. Canons and other Albanian Customary Collections are based in most cases on the ancient Roman codes. In the “Kanun” the influence of the law and the Roman tradition are equally considerable for two reasons: in the South due to the influence of the Byzantine tradition, known above all through the work of Harménopoulos, in the North due to the connection with a tradition of the Roman origin also preserved jealously in local customs, as an indication of one’s identity (Boccia, A. & Vito P. 2014).

The same applies to the modern codes, starting from the Code of Ahmet Zogu, which is also influenced in the part of obligations and contracts by the Italian and French Civil Codes based on the Roman law. Although Albanian law during the period of the People’s Socialist Republic of Albania is mainly based on the Soviet law, there is no lack of Romanist elements. Contemporary Albanian law is also influenced by modern codes which have Romanist origins.

The law of obligations at various stages of the development of human history takes on different aspects and reflects new relationships between people. It has a dynamic character and is mobile in comparison with other branches of law. This is due to the very nature of the legal relationships that it regulates. Once the economic basis and the economic relations of a given society have changed, this has inevitably been accompanied, sooner or later, also by changes in the legislation that regulates these relations. On the other hand, each law, new legislative act causes changes in the way of regulating a specific legal relationship. This phenomenon is clearly expressed currently in Albania, where the economic and legislative changes have paved the way for each other in the new development of the market economy into which all civil circulation has entered.



Also, with the changes of recent years, the ratio between state and private property has changed in favor of the latter. As a consequence, the legal relationships of the obligation have also changed and will change due to the same fact that the legal nature of one of the elements of these relationships, which is their object, has changed.

The obligations

The notion and history of the Roman obligation

The problem of the origin of the *obligatio* is one of the most discussed topics of the Roman doctrine, first of all in relation to the question of which was the most ancient source of obligation, the *obligatio ex contractu* or the *obligatio ex delicto*. It is not a matter of knowing whether the *delictum* or the *contractus* existed before, but to which of the two types of figures the origin of the *obligatio* should be connected (Talamanca, 2003; Grosso, 1963; Arangio Ruiz, 1984; Sanfilippo, 2002).

Against the opinion of the precedence of the *obligatio ex delicto*, there is another opposite thesis, which connects the *obligatio* to figures that fall within the *contractus*, conferring to a subsequent period the assumption of the *delictum* as a source of obligation (Grosso, 1963; Talamanca, 2003).

The first attestations of the use in the juridical sense of *obligare* and *obligatio* are found only between the 2nd and 1st centuries B.C. In the previous era, the relations of obligations were structured differently regarding some essential aspects (Talamanca, 2003). In the Institutions of Gaius there is no definition of obligation. The related study begins (III 88) with a simple “*nunc transeamus ad obligationes*”.

In Justinian’s Institutions (3, 13) we find a definition by a postclassical glossator of Gaius “*obligation est iuris vinculum, quo necessitate adstringimur alicuius solvendae rei, secundum nostra e civitatis iura*”. This definition unfortunately is incomplete in the part that should be its essence, the words “*alicuius solvendae rei*”. Therefore, if in our definition we take the obligation to “pay something” literally, we leave aside the innumerable obligations which have an object other than the giving of one or more things. In the ancient law the *obligatio* does not consist in the pure and simple duty, freely assumed, to observe this or that behavior in relation to someone, but in the submission to the domestic power of one’s own or another’s creditor, a submission which is so salient in the social conscience of the time as to push back into second line the duty of conduct to which it relates (Arangio Ruiz, 1984).

In the contractual evolution, which ended at the end of the republican age, the idea of *obligatio* extends from the contractual obligations to the criminal ones.

Originally, the private crime, i.e. the one whose sanction depends on the initiative of the injured party, was subject to revenge on the person, and only later the revenge was avoided with the payment of a sum of money by way of composition. Firstly, the composition was conventional, left to the free agreement between the offender and the injured, but in a second time it became legal, imposed by the State, whether the amount was determined a priori or whether the determination rested with an arbitrator. An example is that of the personal injuries falling within the category of *membrum ruptum*, regarding which the XII Tables have “*si membrum rupsit, ni cu meo pacit, talio esto*”. The law of retaliation (an eye for an eye, a tooth for a tooth) already represents a progress compared to the limitlessness of the primitive revenge, but a new and more important advance is marked by the “*ni cum meo pacit*” clause, which officially recognizes the faculty of conventional composition. Having legalized the settlement system, and at the same time reduced the ancient *obligatio - pledge* to the juridical duty to observe the behavior voluntarily assumed towards another person, the position of the offender coincided with that of someone who had contracted a debt so to the *obligationex contractu* was juxtaposed the *obligatio ex delicto* (Arangio Ruiz, 1984).

In the two series of obligations, from agreements and from illicit acts, which present themselves as responding to common principles, there are some that the classics called *obligationes*, and others to which that name was given, only in the Justinian’s compilation. Thus, of the numerous illicit acts described in the sources of the Roman law, only four (*theft, robbery, iniuria, damnum iniuria datum*) are considered by the classic sources of *obligatio*, while this did not arise, for example, in the case of the actions *de effusis et deictis* and *de positis et suspensis* (Arangio Ruiz, 1984).

In the Canon of Labëria, the obligation is a juridical relationship, through which a person (debtor) is obliged to give something, or to perform or not a certain action for the benefit of another person (the creditor) (the one who gave the loan) and this has the right to ask for something, whether or not the specific action is performed (Elezi, 2006). While there is no definition of the obligations in the Kanun of Lekë Dukagjini and in the Statutes of Scutari.

2.2. The classification of the sources of the obligations in the classical jurisprudence in general, in the Gaian works, in the Justinian compilation, in the Byzantine law, in the Italian and Albanian Civil Codes

The legal facts that are the presupposition of their creation are called sources of obligations. In general, they are facts of human will, but there are licit and illicit ones too. The former has the name of *contractus*. There are two categories of licit acts. The first, which is the most numerous, includes bilateral declarations of will

be issued for the purpose that one or both of the parties are bound to maintain a certain demeanor (e.g. mortgage, stipulation, sale). The second category includes non-bilateral licit acts, or acts not performed for the purpose of creating an obligation, and other situations from which the legal system gives rise to an obligation: thus, the *legacy per damnationem*, the *payment of undue payments*, the *management other people's business*, the *guardianship*.

A characteristic of the illicit act is that the obligation arises against the will of the agent, and as a sanction for the non-compliance with a logically prior rule (the thief does not steal to be obliged to pay the penalty, but the obligation to pay it, derives from not having fulfilled the primary precept not to steal).

The question of the sources of the obligations concerns first of all the classifications made in this regard by the Roman jurists. The classifications mentioned in the sources date back to Gaius. In the *Institutiones*, the treatment of the *obligationes* begins with a *summa divisio* (Gai 3. 88): *quarum summa divisio in duas species diducitur: omnis enim obligatio vel ex contractu nascitur vel ex delicto* (“of which - i.e., of the obligations - the first classification provides for two species. Every obligation arises, in fact, from a contract or from a crime”).

This bipartition becomes a tripartition in the *Res cottidianae*, where in lb. II states (D. 44. 7. 1 pr.): *obligations aut ex contractu nascuntur aut ex maleficio aut proprio quoddam iure ex variis causarum figuris* (obligations arise either from a contract or from a crime, or separately from a series of individual cases”), in essence the classification of art. 1173 of the Italian Civil Code. In Justinian's *Institutiones* the general approach changes: the *summa divisio* of *obligationes* becomes that between *obligations civilis* and *praetoriae* (I.3.13.1). Therefore, the tripartition in the *Res cottidianae* is transformed, in the *Institutiones* of Justinian, into a quadripartition, where the obligations arise *ex contractu aut quasi ex contractu aut ex maleficio aut quasi ex maleficio* (“from contract or quasi-contract or from crime or quasi-crime”: I.3.13.2).

According to the art. 1097 of the Italian Civil Code of 1865, the sources of the obligations were, as is known, five, the contract, the quasi-contract, the crime, the quasi-crime, and the law. That classification had been criticized, as lacking a solid basis starting from Roman law, even if article 1097, in compliance with the desire to return to pure Roman principles, was considered the almost literal translation of the famous text of Gaius (Inst 3, 13, § 2), which states that the obligations “*aut ex contractu sunt, aut quasi ex contractu, aut ex quasi maleficio*”. This is the second and, it seems, the last alteration elaborated by the Byzantine schools of the two Gaian classifications: one, contained in the *Institutiones*, which enunciated only two sources of obligations (*contractus, delictum*) the other, contained in the *Res cottidianae*, which considered three (*obligations aut ex contractu nascuntur, aut ex maleficio, aut proprio quoddam iure ex variis causarum figuris*).

The opposition of the quasi-contract to the contract and of the quasi-delict to the delict was not only reproduced by the legislation that preceded the Italian Code of 1865 but was also justified. In reality, however, the fivefold distinction was found to be incomplete and lacking any real foundation, especially with regard to the figures of quasi-contract and quasi-delict.

In compiling the project for the new book of obligations, while it was initially decided not to maintain Justinian's fivefold distinction of art. 1097, it was discussed whether, wanting to indicate the sources of the obligations, it was more correct to restrict both only (fact of man and law) or to add others. But article 5 of the 1936 project had already stated as sources of obligations "the contract, the illicit act and any other fact capable of producing them by virtue of the law", and article 1173 substantially repeated the content, substituting, in the last part, the words "by virtue of the law" with the others "in accordance with the legal system": a purely formal modification which does not affect the content of the provision.

According to article 1173 of the current Italian Civil Code "The obligations derive from a contract, from an illicit act or from any other act or fact capable of producing them in accordance with the legal system". So, the sources are reduced to three. The last part of the article establishes an innovative principle for the Civil Code of 1942: the principle of the atypical nature of the sources of obligation. Reference to the legal system implies reference not only to the law, which already contemplates typical acts or facts producing obligations, but also to acts or facts not provided for in specific and, therefore, atypical rules. These, therefore, can produce obligations in the cases in which such suitability is recognized by the legal system.

In the Canon of Lekë Dukagjini there is no division of the sources of obligations as in the Institutions of Gaius, but by reading the Canon it is possible to arrive at the conclusion that the obligations here too arise from a contract and from a delict. Furthermore, the obligation can be contracted, in fact, either through a thing or by means of words, or consent. Customary law recognized as sources of the creation of the obligations the sale, the loan without interest, the pledge, the gift, and the infliction of damage (At Shtjefën Gjeçovi, 2010). The obligation is contracted through something, for example in the case of a loan, the Canon recognizes the simple loan: "you will give me back what I gave you". While the obligation by means of words is put into place through question and answer, as for example in the case of the guarantee, in which whoever guarantees for another, says to the debtor in the presence of serious people: "I guarantee for you, but think about it, that if you don't intend to pay, tell me right now because I'm preparing to pay for you. Persuade yourself well: I can't bear to be ashamed".

While the Canon of Labëria is codified according to the requests of the juridical techniques in the form of a Customary Code, faithfully preserving the content of the inherited norms, arranged according to the object of the juridical relationships

which are arranged. In the Canon of Labëria the sources of the creation of the obligations are the contracts (verbal or written), the infliction of damage, and the unjust enrichment (Elezi, 2006).

The Statutes of Scutari is another collection of customary rules and is composed of 268 chapters. In it, is regulated the city life, paced on the cadences of a religious calendar, structured by thematic blocks: the public law and relations with the king; the construction and maintenance of houses; the activity of the mill and taverns; the agricultural labor law; the working and wage conditions; the city constitution; the rules of judicial procedure; the legal status of the clergy; the civil right; the criminal law. Given the structure of the Statutes, obligations do not form a separate chapter, but in various sections the obligations arising from contracts and delicts and the related pecuniary penalties are mentioned (Nadin, 2010).

In 1929, came into force the Civil Code of Ahmet Zog with 932 articles for the obligations, while customary law was applied in the Mountains. In Ahmet Zog's Civil Code the sources of obligations are the contracts, the unilateral promises, the unjust enrichment, the management of other people's affairs and the tort. The main contracts were the sale, the rental, the company, the order, the deposit, the mortgage, the pledge, etc. (Kodi Civil 1929, 2010).

In the Civil Code of the People's Socialist Republic of Albania, the obligation is a legal relationship, through which a person (the debtor) is obliged to give something or to perform or not perform a certain action for the benefit of another person (the creditor) and the latter has the right to demand something to be given to him, or an action be carried out or not (Kodi Civil i R.P.S. të Shqipërisë, 1981). According to this code, the state organizes, directs, and develops all the economic and the social life with a single and general plan. The main source of the creation of the obligations in the People's Socialist Republic of Albania are the acts of planning of the socialist economy different from the competent bodies. Obligations also arise from legal actions established by law and especially by contract, by the infliction of damage and by the unjust enrichment. Obligations can also arise from juridical actions which are not foreseen by the law, but which are not in contradiction with the law, with the economic plan of the state, with the rules of the socialist morality and which have no purpose of damaging the state.

The planning acts create the obligation of enterprises, of the agricultural cooperative institutions and of the social organizations for the stipulation of the contracts. The contract stipulated in these conditions regarding the content must respond to this act. When the conditions of the contract do not comply with the planning act, those are invalid and have to be changed in accordance with the planning act. The conditions of the contract, which are in accordance with the planning act, can be changed only with the change of this act. Even in the Civil Code of the People's Socialist Republic of Albania, obligations arise from

a licit and an illicit act. As regards the obligations arising from an illicit act, the person who negligently and unlawfully causes pecuniary damage to the other is obliged to compensate for the damage caused. The person who caused the damage is not liable when he proves that the damage was not his fault. The person who has caused the damage, being in the condition of the necessary protection, is not obliged to compensate for it. The person who caused the damage, being in conditions of extreme need, is obliged to compensate it. But the court, considering the circumstances in which this damage was caused, may assign the obligation for its compensation to the third person in whose interest the person who caused the damage acted or to fully or partially absolve the obligation to compensate both the third party and the person who caused the damage. Furthermore, according to this code, obligations also arise from unjust enrichment. The person who has received or saved an asset to the detriment of another person without a legitimate cause or for a cause that has not occurred or has expired, is subsequently obliged to return what he has benefited or saved to the detriment of the other.

In the current system, science, legal doctrine, and the Albanian legislation treat the law of obligations and contracts as the special part of civil law. The Albanian Civil Code defines the obligation as a legal relationship by which a person (the debtor) is obliged to give something or to perform or not perform a certain action in favor of another person (the creditor), who has the same right, to ask to be given something or to have an action carried out or not (Kodi Civil i Republikës së Shqipërisë, 1994). According to the Albanian Civil Code, obligations arise from contracts or from the law. Most of the laws of the advanced countries foresee the contract as the main source, with full civil legal nature, which causes the arising of the rights and obligations of the parties. But are also sources of the arising of the obligations: an illicit act in the form of the infliction of damage, an illicit act in the form of unjust enrichment, the case of unilateral promises.

Contract obligations

The evolution of the notion of contract

In the most ancient Roman law, the terms *contrahere* and *contractus* did not indicate one of the sources from which the contract arose, but the obligatory bond, the obligation itself, and more precisely, in opposition to the bond deriving from a delict, that deriving from a licit act, from the deal, also referred to as *contractus*. Their meaning did not depend on the will of the subjects in the arising of the obligation (Grosso, 1963; Sanfilippo, 2002). Both the noun *contractus* and the verb *contrahere* appear in the sources during the second half of the 1st century B.C.



But in the classical jurisprudence, especially in the transactions of the *ius gentium*, in which the obligation arises from the mutual consent of the parties, the concept was formed according to which, in every bilateral transaction of commerce, the productive force is in the “agreement” between the parties, which in some cases is sufficient on its own for the obligation to arise, in others, however (in the matters of the civil law) it must be covered in solemn forms or accompanied by the performance of certain acts. At the end of the classical age *contrahere* and *contractus* take on the new subjective meaning of “to agree, convention” and refer only to those obligations that arise by convention between the parties (however manifested), while they no longer apply to those other obligations that arise by a licit act yes, but not conventional, (e.g. “undue payment”) (Riccobono).

According to the prevalent terminology in the classical jurisprudence (in the classical Roman law and in the Justinian law), contracts are called those bilateral juridical transactions of the *ius civile* (in antithesis to the *praetorium*) which are intended to produce obligations: whether in the specific case the idea of the agreement of will, or consent (which occurs, in the thought of the ancients, only for *consensu contracts*), whether the intention to bind oneself or to oblige others to use of certain forms (*verbis and litteris contracts*) or in the delivery of certain corporal things (*re contracts*). Moreover, the failure to differentiate from contracts another category of licit facts producing obligations forced jurists to bring the former closer, using analogy, to sources of obligation that were not bilateral agreements.

In the Justinian Compilation and in the modern doctrine, the term contract has been accepted in the meaning of “agreement as a source of obligation”. In the Justinian law, the category of contracts, while widening to include analogous relationships that were protected only by praetorian law, conversely rejects definitively the sources of obligation that cannot be traced back to an agreement of will (*conventio, consensus*). This agreement, which for the classics was very often pushed into the background by the real or formal element, is now an essential requirement of all contracts: whether the consent is sufficient, however expressed, to produce the bond (*contratti consensu*), whether that it must be given a certain form (*contratti verbis and litteris*) or accompanied by the delivery of things (*contratti re*).

The consent, which represents the subjective element of every contract in the Justinian’s conception, is opposed by the cause as an objective element. By cause of a juridical transaction, we mean the fundamental intention of the parties: in terms of contracts, and according to the opinion that we deem most correct, we can call “cause” that behavior or that commitment of the counterparty on the basis of which each of the parties agrees to the contract. Thus, the cause of the sale is for the buyer in the seller’s obligation to pass on the enjoyment of the thing to him, for the seller in the buyer’s obligation to pay him the price. However, it must be

remembered that, as in general for legal transactions, contracts can be causal and formal, and that only for the former the existence of the cause is essential: in formal contracts the spoken or written word dominates, and the absence of each justifying cause can only give rise to an exception, by means of which the defendant debtor cannot deny the obligation, but assert the iniquity of demanding its execution in the circumstances of the case.

In Roman legal law the definition of the contract as an agreement between the parties for the result of an evolution that began during the classical age and was definitively completed only in the Justinian age.

In fact, a general and abstract category of the contract was not known, but individual figures of *obligationes ex contractu*: with the term *contrahere* the Romans referred to the bilateral obligatory bond, arising from a juridical relationship and weighing on one subject against another, without there was also a reference to the deed of establishment of the obligatory bond².

The bilateral compulsory bond, according to this configuration, could also be implemented with an act of a single subject.

In the Postclassical-Justinian age, the use of the term *contractus* began to generally indicate bilateral agreements. In this way, it was admitted that the category could also include agreements of will, which were previously protected by the praetorian law.

The most recent doctrine has had the opportunity to point out that the often repeated affirmation according to which Roman law did not have a complete conception of the contract as a general instrument, knowing only individual contracts, proves to be insufficient, having instead to establish when it reached to conceive the binding effectiveness of the pact, regardless of belonging to the individual known typical categories: this is an awareness undoubtedly achieved in Justinian law. It has also been said that “the new orientation of the classical thought, in opposition to the rule of the *ius Civile*, had already found the foundation of commercial contracts in the agreement, i.e. in the will of the parties”, it is believed, however, certain “that the *contractus*, whatever its meaning, comes to constitute an autonomous point of reference when it is juxtaposed to the illicit act among the sources of the obligation”; the negotiating meaning of the term *contractus* would be accentuated, according to the same doctrine, in the Gaian tripartition which distinguishes, in addition to the contract and the crime, other facts productive of obligations (*D. 44.7.1 pr.- Gaius II Aureorum: obligationes aut ex contractu nascuntur aut ex maleficio aut proprio quodam iure ex variis causarum figuris*).

For us today contract undoubtedly means agreement, convention, aimed at the establishment, extinction, modification of legal relationships. But, as has been well observed, contracting in common language retains a different meaning, analogous to the Latin *contrahere* (though perhaps even more restricted in certain contexts);

and it is precisely from this meaning that we must start to evaluate the *contractus* of the Romans. The rules on contracts arise from a variety of sources of law, which today make up a more complex and articulated picture than the one we were used to until towards the end of the last century.

First of all, nowadays is accentuated the role of the contract as a producer of juridical rules, therefore as a source of law. The “normative” dimension of the contract has already manifested itself variously in the past, in relation to the phenomena that have been mentioned when speaking of the relationship between contract and norm (normative contract, collective agreements, associative agreements, general contract conditions). But the phenomenon is experiencing a stronger impulse today, and new manifestations. The role of the contract as a source of law is enhanced by the processes of economic globalization, in which the large multinational companies are the protagonists that assisted by the large international law firms create the standard contractual models to be applied to the countless transactions carried out every day on the world markets. The living law that regulates economic operations is identified less and less with state law, and more and more with that produced by these contractual sources (Gambaro&Sacco, 1996).

The Albanian science, the legal doctrine and legislation treat the law of obligations and contracts as the special part of the civil law. The law of obligations has been considered by scholars in general and civil law scholars as one of the most important parts of civil law. Rightly, it is emphasized that “it is the most voluminous and universal branch of law” (Alishani,1989). “The matter of the law of obligations is the obligation itself - quid obligation”(Dauti, 1998).

In the Albanian Canons (The Canon of Lekë Dukagjini, the Canon of Labëria, The Statutes of Scutari) we do not find a definition of the contract, even if these codes regulate various types of contracts.

Contracts in the Albanian Civil Code of 1929

The publication in 1929 of the first Civil Code of Albania, called Zogu Code (from the name of the sovereign) constituted a new element for the comparison with the Roman law: in fact, similar to many other civil codes of the time, it followed a precise scheme and regulated institutions that also had their roots in the Romanist traditions (in particular it can be noted that the Albanian Civil Code of '29 refers to the sources of the Italian Civil code of 1865).

Foreign laws, and in particular the French, the Italian and up to a certain point the German and the Swiss laws, would have inspired the Albanian legislator to recognize and set important and fundamental principles in its provisions, such as: the equality of all the citizens, the emancipation of the land ownership and

the freedom to engage in the economic activities. The entry into force of the Civil Code of Zog also entailed the pertinence of the Albanian civil law in the (Roman-Germanic) civil law family, definitively separating it from the Ottoman law. This code is represented with a more progressive content than the whole juridical-civil regulation, which was applied in our country until that time.

The originality of the 1929 Civil Code lies in the fact that in its fourth book, the Italian French project of 1928, “On Obligations”, came to life. The fourth book of this Code was entitled “The ways of acquiring and transmitting property and other rights over things”. This book, which also demonstrates the authenticity of the Civil Code of 1929 from the reference models, presents the joint work of an Italian French commission under the presidency of two outstanding jurists of the time, Edouard Lambert and Vittorio Scialoja, and which had the aim to unify the law of obligations in Italy and France. Almost all the articles in this book from 1067-2047, refer to the joint French-Italian project “For the Obligations”. In the fourth book of the Code was presented a separation between the law of property from the law of obligations, like the French Civil Code. The institution of the contract was regulated by about 800 articles. This code regulated in detail all types of contracts including the contract of work or of reconciliation. The Civil Code of King Zog I for the first time provided for “the marriage contract, which had to be made with a public deed before the notary before the celebration of the marriage”. The marriage contract was regulated on the basis of the provisions of the Italian Civil Code of 1865 and of the French Civil Code of 1804. In Lekë Dukagjini’s Kanun, “the woman had no right, neither on the children nor on the house”. Furthermore, the woman had no inheritance rights over the inheritance left by her husband or her children. She had the right to remain in her dead husband’s house, or to leave her house. So seen in the historical context, the matrimonial regimes have the beginning of their development with the approval of the Civil Code of 1929, which for the first time established a single system for the whole country.

In the other titles of this section, starting from the 4th to the 24th, the Civil Code of Ahmet Zogu deals with the different types of contracts, both the traditional ones as well as the new ones that emerged following the development of the capitalist relations of the time. The contracts are regulated according to the Italian Civil Code of 1865 and that of the Napoleon Code of 1803.

Contracts during the People’s Socialist Republic of Albania

The economic system of the countries with a communist regime (USSR, China, Albania, etc.) is characterized by the prohibition of the private ownership of the means of production, considered a source of exploitation, while the concept of the consumer goods, whose ownership is instead permitted, has been different in



various periods and in various countries, according to the ideological rigidity of the regimes. The means of production of collective ownership (state or cooperative) include land (at most leased to peasants) and the main industrial plant. The state is also recognized as having a monopoly on international trade. Acting under a monopoly regime, the state can set prices, which, however, plays a reduced role in the socialist economies. The allocation of resources is not based on the market, but on planning. Overall, the system proved capable of achieving an increase in the quantities produced, albeit at very high human costs and with a great waste of resources, but it failed to guarantee sufficient technological progress and to supply goods of acceptable quality. In the Civil Code of the Socialist Republic of Albania, obligations and contracts are governed in Chapter V by art. 139 to art. 181 and in Chapter VI of the art. 182 to art. 314.

The V Chapter deals with the meaning of the obligations, the sources of the obligations, the meaning of the contract, the stipulation of the contract, the obligations with several subjects, the change of the subjects of the obligations, the fulfillment of the obligations and the consequences of the non-performance, the end of the obligation, the contestation of the debtor's legal actions. The characteristics of the socialist law were visible in the articles that made up the Civil Code. This feature came because of the fact that the jurists who drafted it had been educated in the Soviet schools, however we cannot say that, even indirectly these jurists had not also tried to introduce elements of the Germanic law.

The contract was a legal action, in which were completed the duties of the state plan, as well as the material and cultural needs of the citizens. When, for the implementation of the state plan, companies, institutions, and agricultural cooperatives had to supply or sell products and goods to one another and carry out works or services they used to make a contract between themselves.

Citizens entered contracts to satisfy their material and cultural needs, as well as for the enjoyment and the disposition of their personal property.

The content of the contract had to be in accordance with the law, with the duties of the state plan, with the principles of the state's economic policy and with the rules of socialist morality.

In the 19th century, the intensified contacts with the West and the spread of university culture allowed Romanist models to break into Eastern Europe.

Contracts in the current Albanian Civil Code of 1994

Having abandoned the socialist path, the countries of Eastern Europe have made their own liberal solutions victorious in the West. Everywhere written constitutions are drawn up that cannot be modified by the ordinary legislator and are guaranteed by a constitutional court, and also the constitution of the socialist

period is restructured for this purpose. Everywhere the principle of legality and the independence of the judge are proclaimed. Wherever the rule of law is wanted (Gambaro & Sacco, 1996).

The abolition of the political monopoly of the Communist Party paves the way for the development of the democratic institutions: for the rivalry between parties, for the free elections, for the creation of a parliament with real power, for a government based on a parliamentary majority, and so on. For the stability of democratic institutions, there must be guarantees of individual freedom and autonomy. Among the most important are the law of private property and the defense of private contracts (Kornai, 1995).

We are currently faced with the phenomenon of globalization which from a legal point of view is nothing more than the sum of two “events” that occurred simultaneously at the end of the 20th century, that of the delocalization of manufacturing activities and of the qualitative leap in the development of information technologies. The sum of the two phenomena has led to an increase in international trade acts. This historical fact has relaunched the discourses that evoke the concept of the *lex mercatoria* (Ponzanelli & Amato, 2006). In the context of the *lex mercatoria*, the parties through the contract can not only regulate the object of the same, but also designate the applicable law and the state or arbitral jurisdiction to which they want to submit the resolution of any disputes and which therefore the contract is, the legal instrument of globalization (Zoppini, 2006).

The regulation of the Institute of contracts in the Albanian Civil Code is a cross between the Italian and German law.

The Albanian Civil Code, for the first time accepted and enshrined in its provisions the theory of freedom of the contractual will, together with its three directions and the institution of the interpretation of the contract (artt. 681-689).

In the Civil Code the general part is organized in the seven titles of the IV Part and in the I Title of the V Part. The general part deals with the fundamental principles on which the law of obligations is based, the meaning of the juridical relationships of the obligation, the elements and their types, the meaning of the contract, the manner of its stipulation, the types of the main contracts, their conditions, the means ensuring the fulfillment of the obligations deriving from the contractual and the non-contractual field, the cases of the exchange of persons in a legal relationship of obligation, the manner and order of the fulfillment of the obligations between the parties, the meaning, the cases of non-performance of the obligations, and the consequences deriving from it, the manner of the conclusion of the obligations, etc. This part also deals with the obligations that arise for the parties in the field of non-contractual relations.

The special part deals with the special and most important contracts that are encountered in the civil circulation with the characteristics, particularities, and



obligations of each party in these contracts, with the manner of their conclusion, the resolution of disputes between the parties, with their essential and general conditions etc.

In the Civil Code the special part is included in Title II of Part V. This Title has in its content XXIII chapters, each representing a specific type of contract. The Albanian Civil Code in this part follows the line of the Italian Civil Code.

Conclusions

In this paper was carried out an investigation of the origin of the *obligatio* in the Roman and the Albanian law in order to better understand the origin of *obligatio* in the contemporary law. The notion of *obligatio* and its sources have Romanist origins. However, in this paper, it has been established that this notion, together with its sources, has evolved with Roman law from the Institutions of Gaius to the Code of Justinian. The same applies to the notion of contracts, which like many notions was perfected in the Justinian era.

In conclusion, the history of the law of obligations and contracts in Albania has undergone to frequent changes according to the various systems in which Albania has passed. An important role in the Albanian legislation over the years has also been played by the invasions of Albania by different countries, which have left important traces of their culture and legislation in our country.

From the Customary Collections to the modern codifications, the field of obligations and contracts is mostly based on Roman law.

In Ahmet Zog's Civil Code the obligatory relationships were regulated by following the Italian French project which was based on the Roman law too. While from the comparison of the rules of obligations in the Albanian Civil Code of 1994 it emerges that it was mostly based in the Italian Civil Code.

Finally, although in the current codes, the notions of *obligatio* and *contractus* have their origin in Roman law, this field is experiencing a continuous development with the arising of new contracts because of the development of the market economy.

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