

National Reports on the Transfer of Movables in Europe

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This series presents national reports on basic issues concerning the acquisition and loss of ownership of movable assets. The series covers **28 European legal systems**.

Starting with general property law issues like the concepts of ownership and possession employed in the respective legal systems, and the related means of protection, the reports primarily deal with the 'derivative' transfer of ownership, but extend to good faith acquisition from a non-owner, acquisitive prescription, processing and commingling, and further related issues. The reports provide the reader with detailed information about the respective rules, case law and legal literature, prepared by national property law experts. These reports are a starting point for further comparative research in property law and also a tool for practitioners searching for information on foreign legal systems.


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Introduction*

A. Historical contextualization

Portugal became independent in the 12th century making it one of the oldest nations in Europe. Moreover, the national borders today are basically the same as those certified by the Tratado de Alcanizes in 1297, apart from the time of the Unification of the Iberic Crowns (1580-1640). This long period of political unity and Portugal's peculiar geographical situation on the western-most coast of the continent, together influenced the foundations of its legal system.¹

Thus considering the efforts of consolidating a national law, the internal normative system in Portugal can be understood in at least three historical periods, a division which applies for property law.² A first period comprises the *ius commune* and the compilation of the Kingdom's Ordinances, known after the kings' names as *Ordenações Afonsinas* (1446), *Ordenações Manuelinas* (1521) and *Ordenações Filipinas* (1595), followed by the jus-rationalist environment of *Marquês de Pombal* and his *Lei* of 18 August 1769, the, later on, so-called *Lei da Boa Razão* / Good Reason Act; a second period was established with the first modern civil codification, known after its draftsman as the *Código de Seabra* of 1867; and a third one emerged out of the *Código Civil* of 1966, in force since 1 June 1967.³

* This Introduction was written by José Carlos de Medeiros Nóbrega, based on his experience as a comparative lawyer and as one of the researchers of the Study Group on a European Civil Code with responsibility for Portuguese law. The report as such was written in co-authorship by José Caramelo-Gomes and José Carlos Nóbrega, who are deeply in debt with Susan-Gale Wintermuth for an enthusiastic, careful and detailed revision of this report, largely surpassing the first quality editing any author may wish. Susan's commitment makes the authors anticipate with joy the possibility of further work.

¹ For an overview in English, see *Nogueira da Silva*, Portuguese legal history: a brief account (working paper FDUNL 02/02), available under <http://www.fd.unl.pt/Anexos/Downloads/231.pdf>.

² See *Vieira*, *Direitos Reais* (Coimbra 2008), p. 35 ff. For further details see *Almeida Costa*, *História do Direito Português*³ (Coimbra 2000), p. 273-293, 364-372, 432-440, 486-491.

³ Civil Code (*Código Civil*) of 25 November 1966 (DL no. 47344, DG 274/1966 I-A), as amended by among others DL no. 496/77 of 25 November 1977 (DR 273/1977 I-A) and DL no. 116/2008 of 4 July 2008 (DR 128/2008 I).

As a consequence of the Revolution of 25 April 1974, which ended the dictatorship that had prevailed for almost 50 years, the new Constitution of 1976⁴ resulted in profound changes, especially in family and succession laws.⁵ The same cannot be said of property law, except for the repeal of emphyteusis (long lease)⁶ and for some occasional modifications.⁷ In what concerns the normative system of *direitos reais* (rights *in rem*), the present *Código Civil* is marked by stability and thus little permeability to change.⁸

After having applied in 1977, Portugal joined the European Union (then European Economic Community) on 1 January 1986, together with Spain. At that time the work of one of the most important academic initiatives for harmonising private law in Europe was already on course, like the Commission of European Contract Law, which had began its work in 1982 and which work was continued and revised by the Study Group on a European Civil Code (Study Group) and the Research Group on EC Private law (Acquis Group).⁹

On the occasion of the Portuguese Presidency of the European Council in the first semester of 2000, the official conference called "A Civil Code

⁴ Constitution (*Constituição da República Portuguesa*) in force since 25 April 1976 (*Decreto de Aprovação da Constituição* of 10 April 1976, DR 86/1976 I-A), as revised by *Lei Constitucional* no. 1/2005 of 12 August 2005 (DR 155/2005 I-A).

⁵ Through DL no. 496/77 of 25 November 1977.

⁶ Arts. 1491 till 1523 CC were repealed by DL no. 195-A/76 of 16 March 1976 and DL no. 233/76 of 2 April 1976. Some references to *enfiteuse* are nevertheless kept in this report.

⁷ See *Vieira*, *Direitos Reais*, p. 38, about the few changes that occurred in Book 3 (*Direito das coisas*) of the Civil Code. The right to private property is nevertheless a constitutional right, in the sense that "everyone is secured, in accordance with the Constitution, the right to private property and to its transfer during lifetime or by death", art. 62 (1), Constitution of the Portuguese Republic of 25 April 1976.

⁸ So *Vieira*, *Direitos Reais*, p. 41.

⁹ The direct contribution of Portuguese scholars in the academic efforts for Europeanisation of Private Law began at the latest in 1986 itself, as Prof. *Isabel de Magalhães Collaço* (*Universidade de Lisboa*) joined the so-called Lando-Commission. She was followed by Prof. *Carlos Ferreira de Almeida* (*Universidade de Lisboa/Universidade Nova de Lisboa*). Concerning the Study Group, Prof. *Júlio Gomes* (*Universidade Católica Portuguesa/Porto*) and Prof. *Jorge Sinde Monteiro* (*Universidade de Coimbra*) were members of the Co-ordinating Group, while in several Working Teams legal researchers were responsible for Portuguese law, among others Dr. *Rui Cascão*, *Teresa Pereira*, *Inês Couto Guedes*, *Manuel Braga*, *Marta Lúvia dos Santos Silva* and *José Carlos de Medeiros Nóbrega*. Prof. *Carlos Ferreira de Almeida* and Prof. *Assunção Cristas* (*Universidade Nova de Lisboa*) contributed recently with additional notes under Books I-III of the DCFR. Members of the Acquis Group were Prof. *António Pinto Monteiro*

for Europe” took place in the *Universidade de Coimbra*,¹⁰ which, like the previous conference “Towards a European Civil Code”¹¹ under the Dutch Presidency in 1997, was a response to the Resolutions of the European Parliament in 1989 and 1994 on efforts to harmonise the private law of the Member-States and on the possibility of drawing up a Common European Code of Private Law;¹² it was a response as well to the Presidency Conclusions of Tampere European Council in 1999 about the request for an overall study of the need to approximate Member States’ legislation in civil matters.¹³

B. Rethinking the Portuguese private law in the light of the Europeanisation of law

Can we then say that since 1986 a new period of time for the internal normative system in Portugal was just beginning? In a certain way, the answer

and Prof. *Paulo Mota Pinto* (both *Universidade de Coimbra*). See detailed information under www.sgecc.net and www.acquis-group.com. About all academic contributors to the DCFR, see *von Bar/Clive/Schulte-Nölke* et al. (eds.), *Principles, Definitions and Model Rules of European Private Law. Draft Common Frame of Reference (DCFR) Outline Edition* (München 2009), p. 41 ff; see now *von Bar/Clive* (eds.) *Principles, Definitions and Model Rules of European Private Law. Draft Common Frame of Reference (DCFR) Full Edition* (München 2009/Oxford 2010), vol. I, p. 25-31.

¹⁰ Cfr. foreword (also in French and in English) of Prof. *Sinde Monteiro* to the conference transcript, in: *Um Código Civil para a Europa, A Civil Code For Europe, Un Code Civil pour l’Europe*, BFD *Studia Iuridica* 64 (Coimbra 2002), p. 17 ff.

¹¹ See the conference transcript now in its 3rd fully revised and expanded edition: *Hartkamp/Hesselink/Hondius* et al. (eds.), *Towards a European Civil Code* (Nijmegen 2004). Concerning property law, see for example in both conferences: *Drobnig*, *Property Law in a future European Civil Code*, in: *Um Código Civil para a Europa*, p. 103-115 and *Drobnig*, *Transfer of property*, in: *Hartkamp/Hesselink/Hondius* et al. (eds.), *Towards a European Civil Code*, p. 725-740.

¹² Official Journal of the European Communities (OJ) C 158/400 (1989) and OJ C 205/518 (1994), respectively. For an overview for later Resolutions of the European Parliament concerning a Common Frame of Reference, see *von Bar/Clive/Schulte-Nölke* et al. (eds.), *Draft Common Frame of Reference (DCFR) Outline Edition*, p. 41, fn. 50.

¹³ Presidency Conclusions, Tampere European Council 15 and 16 October 1999, SI (1999) 800.

must be positive, as the transposition of communitarian directives into the Portuguese legal system is a reality.¹⁴

In this sense, the main arguments named by the Portuguese Ministry of Justice,¹⁵ in order to initiate a debate about the reform of the civil law, were: (i) the harmonisation between Portuguese and Community law, (ii) the new legislative acts (*diplomas legislativos*) that resulted in the amendment of the Civil Code as well as in the promulgation of statutory law concerning civil law, but systematically outside the Civil Code, (iii) examples of other national systems that modernised their civil codes, like Germany and Italy, (iv) the initiatives of the European Parliament and the European Commission for a more coherent and more harmonised European Contract Law, and (v) the profound economical and social changes in Portugal in the last decades.

To this matter, some of the most representative Law Faculties were charged with the task of delivering a study with a profound and general character that would raise the elements to be considered for forthcoming statutory law and for an eventual revision of the Portuguese Civil Code. The protocol agreement between the Ministry of Justice and the Universities of 27 May 2003 was published in 2005,¹⁶ together with the preliminary reports of their Law Faculties.¹⁷

¹⁴ See for all *Poiães Maduro* and *Pereira Coutinho*, *EU Law and Portuguese Law*, in: *Ferreira de Almeida/Cristas/Piçarra* (eds.), *Portuguese law: an overview* (Coimbra 2007), p. 51-71, distinguishing between “law in the books” and “law in action”, with the conclusion that “EU law is increasingly embraced in Portuguese doctrinal and legislative discourse but appears to be held at a distance by the courts”.

¹⁵ Through its *Gabinete de Política Legislativa e Planeamento* (GPLP – Bureau of Legislative Politic and Planning), now *Direcção-Geral da Política de Justiça* (General Direction of Justice Politic), see www.dgpj.mj.pt.

¹⁶ See *Ministério da Justiça*, *Reforma do Direito Civil. Relatórios preliminares elaborados ao abrigo do protocolo celebrado entre o Gabinete de Política Legislativa e Planeamento do Ministério da Justiça e as Faculdades de Direito da Universidade de Coimbra, da Universidade de Lisboa, da Universidade Católica Portuguesa e da Universidade Nova de Lisboa* (Coimbra 2005).

¹⁷ The reports counted on the participation of an extensive number of scholars, who were represented by the Coordinators of their respective Law Faculties: Prof. *Leite de Campos* (*Universidade de Coimbra*), Prof. *Menezes Cordeiro* (*Universidade de Lisboa*), Prof. *J. Gomes* and Prof. *Carvalho Fernandes* (*Universidade Católica Portuguesa/Porto*), with contributions also from *Universidade do Minho/Braga* and Prof. *Ferreira de Almeida* (*Universidade Nova de Lisboa*). There were only a few questions directly about property law, and note that the answers were very diverse, as for example while one Law Faculty sees no need for a reform of Book 3 (Law of Things) of the Civil Code, another Law Faculty points out that the “Book on Things and on Rights in

In this context of evaluating the process of Europeanisation of private law and its relations to the national private law, one question concerns all Europe and refers to the process of harmonisation and unification of private law itself.¹⁸

The Portuguese national law has two other concerns as a point of departure. The first one is the need to clarify if it is necessary or even convenient to have a debate on the reform of the Portuguese private law. The initiatives of the Ministry of Justice in 2003¹⁹ and the so-called preliminary reports by the Faculties of Law concerning the reform of the Civil Code are still to be understood as just the first seeds thrown in this large field of a not certain, but eventually, reform of the civil law.²⁰ Furthermore the unity of the whole private law system is open to discussion due to possibilities and challenges of modernising the Commercial Code of 28 June 1888, of creating an au-

rem” is the one that least survived the passage of time, showing solutions that can be considered, in the face of the experience of almost 50 years of application of the Civil Code, not satisfactory and not corresponding any longer to the Portuguese reality. The references to the reports to property law will be cited in the appropriate sections throughout this paper.

¹⁸ But focusing on a Portuguese perspective of the process of Europeanisation of private law, see among others *Sinde Monteiro*, Conclusions, in: *Um Código Civil para a Europa*, p. 291-306; *Patrício*, Do Euro ao Código Civil Europeu? Aspectos da convergência legislativa (Coimbra 2001), p. 91 ff; *Calvão da Silva*, Bicentenário do Code Civil (o Código Civil e a Europa: influências e modernidade), in: *RLJ 134* (2001-02), p. 271 ff; *Moura Vicente*, Um Código Civil para a Europa? Algumas reflexões, in: *Direito internacional privado – Ensaio vol. I* (Coimbra 2002); *Pereira*, Proposta de reflexão sobre um Código Civil Europeu, in: *ROA 2004*, p. 497-608, also available online; *Pinto Duarte*, Direito comunitário e direitos reais, in: *FS Galvão Telles IV*, p. 451-466; *Menezes Cordeiro*, Da modernização do direito civil I (Coimbra 2004), p. 119-120, p. 137 ff; *Moura Vicente*, Direito comparado I (Coimbra 2008), p. 575 ff. See also in Portuguese, but edited in Brazil: *Nóbrega*, Princípios do Direito Europeu: contribuição jurídico-científica para a integração europeia, in: *Revista Científica Integração* (2006-1), p. 87-93.

¹⁹ These first impulses came along during the *XV Governo Constitucional* (2002-2004), which had *Maria Celeste Cardona* as Minister of Justice. For the time being, it is unclear how politics will manage this question, but the academic discussion seems to be moving on. See for example the transcript of the conference “*Código Civil Português – 40 anos de vigência*” held in May 2007 at the *Universidade Nova de Lisboa* in: *Themis 2008*, Edição especial, Código Civil Português – evolução e perspectivas actuais.

²⁰ See foreword of Prof. *Assunção Cristas* (at the time Director of the GPLP – Bureau of Legislative Policy and Planning), in: *Ministério da Justiça*, Reforma do Direito Civil, p. 5-8.

tonomous Consumer Code or (instead) of implementing consumer and commercial statutory law into the Civil Code.²¹

The second concern is that Portuguese scholars argue (correctly) that it is now time to enhance the power and the standing (*potenciar*) of the Portuguese civil law system and to develop its potential (*potencialidades*), in the sense that after 40 years existence of the Civil Code, there is still much to do in terms of doctrine and case law²² and, at the same time, there is still much to do to make the Portuguese civil law more accessible abroad.²³

²¹ See *Oliveira Ascensão*, Direito Civil e Direito do Consumidor, in: *Themis 2008*, p. 165-182 and *Pinto Monteiro*, Harmonização legislativa e protecção do consumidor (a propósito do anteprojecto do Código do Consumidor português), in: *op. cit.*, p. 183-206. Forthcoming *Cristas*, O Código Civil no contexto do direito privado (lecture held at Jahrestagung 2007 der Deutsch-Lusitanischen Juristenvereinigung, in Lisbon). Cfr. also *Cristas*, Portuguese Contract Law: the search for regimes unification?, in: *ERCL 5* (2009) 3, p. 357-367.

²² See on this point a critical view in *Menezes Cordeiro*, Da modernização do direito civil I (2004), p. 200-201, in the sense that even if the reform of the Portuguese Civil Code has no urgent character and that discussions about the reform should mature in the universities with studies on comparative and case laws, if such a reform does not take place (as fast, broad and profound as possible), the *Código Civil* “would be open for all kinds of bastardising under the pretext of ‘European’ actualizations” (sic). The author adds that with its modernization of the law of obligations, the German Civil Code became as untouchable as ever and that the Portuguese law should act immediately in order to survive. He argues finally that an upcoming reform of the Portuguese law, in order to become effective and practicable, just needs the leadership of the national Ministry of Justice, as the Universities as such are already very much equipped to carry out the legal scientific basis work (*op. cit.*, p. 201). Five years after the eminent opinion of Prof. *Menezes Cordeiro* (Universidade de Lisboa) has been published, it is then worth remembering that some of the declared purposes of the Draft Common Frame of Reference are to serve as a contribution for legal science and research, as well as to serve as a possible source of inspiration for reform projects at both national and Community law levels, so that “(i)f the content of the DCFR is convincing, it might contribute to a harmonious and informal Europeanisation of private law”, cfr. *DCFR Outline edition* (2009), *Intr.* 8-10, p. 7 ff. Furthermore see debate about the role of European contract law in the private law reforms in Germany and in other European countries in the transcript of the Würzburg Conference in: *Remien* (ed.), *Schuldrechtsmodernisierung und Europäisches Vertragsrecht: Zwischenbilanz und Perspektiven* (Tübingen 2008); see also *Müller-Graf*, Kodifikationsgewinn durch Inkorporation des Inhalts von Schuldrechtsrichtlinien der EG in das BGB?, in: *GPR 3/2009*, p. 106-120.

²³ See for this *Mota Pinto*, O Código Civil Português: “de uma possível tendência para o esvaziamento a uma também possível necessidade de reforma”? Algumas reflexões, in: *Themis 2008*, p. 25-46. The author makes clear that an entire translation of

C. Disseminating Portuguese private law and its sources

It is exactly because of the growing demand for approximation of laws within the European Union that codes, like the Portuguese *Código Civil*, which represent a bridge of compromise between different national laws, are meriting greater attention than they currently received.²⁴ This national report on the transfer of movables in Portugal, just to cite one example, results from the activities of the Study Group²⁵ and belongs thus to the recent efforts to make the Portuguese (but of course not only Portuguese) law more known in an accessible language like English.²⁶

Therefore, especially for those who are used to reading legal sources in Romanic languages or for those who have Portuguese as their official language,²⁷ it is worth indicating an overview of the original sources avail-

the *Código Civil* just does not exist and that a translation into German, French or English is important not only because of the dissemination of the civil code, but also for economic purposes (p. 28, fn. 8). He also points out that there is only one entire commented edition of the *Código Civil* (p. 46, fn. 40), citing *Pires de Lima* and *Antunes Varela* (with the contribution of *Mesquita*), *Código Civil Anotado*: vol. I: arts. 1-761 (4th ed., Coimbra 1987), vol. II: arts. 762-1250 (3rd ed., Coimbra 1986), vol. III: arts. 1251-1575 (2nd ed., Coimbra 1987), vol. IV: arts. 1576-1795 (2nd ed., Coimbra 1992), vol. V: arts. 1796-2023 (1st ed., Coimbra 1995), vol. VI: arts. 2024-2334 (1st ed., Coimbra 1998).

²⁴ Similarly formulated by Prof. *Christian von Bar* (Universität Osnabrück) with reference to tort law, but applicable for all private law system, in: *v. Bar*, *The Common European Law of Torts I* (Oxford 1998), p. 384.

²⁵ Cfr. Preface in *Faber/Lurger* (eds.), *National Reports on the Transfer of Movables in Europe I* (Munich 2008), p. v-vi.

²⁶ For this purpose, see also *Ferreira de Almeida/Cristas/Piçarra* (eds.), *Portuguese law: an overview* (Coimbra 2007), considered as a pioneer work. Specifically on property law see also *Dias Pereira*, *Introduction to Portuguese private law/Transfer of title in Portuguese law*, in: *Rainer/Filip-Fröschl* (eds.), *Transfer of title concerning movables – Part I* (Frankfurt am Main 2006), p. 129ff. See furthermore with focus on real property law (*i.e.* immovables): *Passinhas*, *Portuguese property law*, in: BFD 81 (2005) 865 ff.

²⁷ Estimated at about 220 million speakers among the Community of Portuguese Speaking Countries (www.cplp.org) constituted by Portugal, Brazil, five countries in Africa namely Angola, Cape Verde, Guinea-Bissau, Mozambique, São Tomé and Príncipe, and Timor-Leste in Asia. See about the influence of Portuguese law in these countries and in other former territories of Portugal like Goa, Daman and Diu (India) and Macao (China), in: *Dias Pereira*, *op. cit.*, p. 129ff. See also *Jayme*, *Das Recht der lusophonen Länder* (Baden-Baden 2000) and *Jayme/Schindler* (eds.), *Portugiesisch – Weltsprache des Rechts: Studien, Referate, Gutachten zu den Rechtssystemen von Angola, Brasilien, Osttimor und Portugal* (Aachen 2004). For Africa

able in Portuguese, as well. For this purpose, the material used for this report is presented in this introduction in a more extensive way, even if the details are to be found only in the tables of abbreviations and literature.²⁸

see the new collection *Estudos de Direito Africano*, especially its first title dedicated to property law: *Pinto*, *Direitos Reais de Moçambique* (Coimbra 2006). For Brazil and Portugal, see among others *Santos Justo*, *A base romanista do direito luso-brasileiro das coisas*, in: ROA 2009, vol. I/II; and joint editions like *Leite de Campos/Martins* (eds.), *O Direito Contemporâneo em Portugal e no Brasil* (Coimbra/São Paulo 2004). Of special interest is the Macau Civil Code of 1999, which can be considered an updated version of the Portuguese Civil Code of 1966, adapted to this Special Administrative Region of the People's Republic of China, cfr. *Godinho*, *The Macau Civil Code – An English partial translation*, in: <http://ssrn.com/abstract=1280595>.

²⁸ Cfr. also the registers in volume VI of the Draft Common Frame of Reference (Full Edition), with references to Portuguese abbreviations, Portuguese statutory law (more than 60 codes and statutes) and Portuguese literature (around 20 pages in the editorial version that I assisted in preparing).

²⁹ For *Diário da República Electrónico* see www.dre.pt. For non-official sources requiring subscription see for example <http://bdjur.almedina.net/dr.php>, www.jusnet.pt or www.lexis.pt. Translation of the most important legal dispositions concerning rights *in rem* are available in this report in English; for the same in German see report with translations in: *v. Bar/Seabra/Xavier*, *Sachenrecht in Europa* (Portugal), p. 402ff.; see also partial translations of the Portuguese Civil Code into German in: *Nóbrega*, *Der rechtsgeschäftliche Eigentumserwerb an beweglichen Sachen in Deutschland und Portugal*, p. 79ff.

³⁰ Recent case law as the judgments of the Portuguese Supreme Court of Justice (STJ – *Supremo Tribunal de Justiça*), but also Courts of Appeal (for example, CA Lisbon standing for *Tribunal da Relação de Lisboa* or as usual *Relação de Lisboa*), among others, are now available under www.dgsi.pt, which corresponds to the juridical-documentary basis of the Institute of Technologies of Information in Justice, belonging to the Ministry of Justice. The form of citation varies, therefore as it is easier to find a judgment in this database by using the number of the proceeding. Most of the judgments are no longer published in paper publications as the publication of the official periodical BolMinJus (for example) came to an end with the publication of no. 499, even if there was an attempt to keep the periodical in an electronic version, see the actually last number (no. 501) in <http://www.gddc.pt/atividade-editorial/versao-online-ultimo-num-bmj.html> Case law, often with comments, is to be found in almost every academic periodical (see references below). For a very extensive and praise-worthy “*lista de jurisprudência*” on rights *in rem* see *Pinto Duarte*, *Direitos reais*², p. 336-350.

The material mostly used for this Report comprises statutory law,²⁹ case law,³⁰ case books,³¹ commentaries or annotations,³² monographs,³³ legal

³¹ See Part II – The Case Studies, in: Kieninger (ed.), *Security rights in movable property in European Private Law/The Common Core of European Private Law* (Cambridge 2004), with Portuguese report by Prof. *Menezes de Leitão* (Universidade de Lisboa). Even if there is not actually a tradition of case books in Portugal, the collection “*Casos Práticos Resolvidos*” counts already more than ten volumes in different areas of law. For property law, see *Duarte Manso* and *Teodósio Oliveira*, *Direitos reais & registo e notariado. Casos práticos resolvidos* (3rd. ed. Lisbon 2008). See also *Peralta*, *Direitos reais – casos práticos*, in: *Colectânea de casos práticos 3* (Lisbon 2001), p. 199 ff and *Gouveia Andrade*, *Prática de direitos reais* (Lisbon 2009), p. 117 ff.

³² Besides the established Civil Code commentary of *Pires de Lima* and *Antunes Varela* (see footnote 23). More than just a curiosity, it is important to note that Prof. *Pires de Lima* was one of the drafters of the Civil Code in property law (see e.g. *Pires de Lima*, *Das coisas*, *BolMinJus* 91 (1959) 207-222 and *Direito de propriedade*, *BolMinJus* 123 (1963) 225-281 – consisting his drafts only of “black letter rules” and some notes, but no comments or justifications) and that Prof. *Antunes Varela* was the Minister of Justice and thus responsible for the revision of the preparatory works and of the drafts of the *Código Civil*, so that their commentary is subject to criticism, as it can be understood as an “official” ratification of the black letters and thus not very innovative (cfr. *Vieira*, *Direitos reais*, p. 42). There are still editions of the *Código Civil* with notes, see specially *Neto*, *Código Civil anotado* (15th ed. Lisbon 2006), but also *Capelo de Sousa* and *França Pitão*, *Código Civil e legislação complementar* (2 vols., Coimbra 1979). Considering property law, see also *Rodrigues Bastos*, *Direito das coisas segundo o Código Civil de 1966* (4 vols., Viseu 1975).

³³ Manuals, doctoral theses and other monographs are to be consulted in the table of literature and footnotes. It is nevertheless important to notice that the traditional mainstream legal literature by Portuguese authors usually makes well-founded and extensive references to foreign law systems. There are also comparative studies in the law of property that have been published recently, see for example about Spain, England, Brazil and Germany: *Cristas* and *Gouveia*, *Transmissão de propriedade de coisas móveis e contrato de compra e venda – Estudo de direito comparado dos direitos português, espanhol e inglês*; *Neves*, *A proteção do proprietário desapossado de dinheiro*, in: *Cristas/Gouveia/Neves*, *Transmissão da propriedade e contrato* (Coimbra 2001); *Perissinotto*, *Compra e venda com reserva de domínio/propriedade – comparação dos direitos brasileiro e português*, in: *Themis VI* (2005) 65 and *Nóbrega*, *Der rechtsgeschäftliche Eigentumserwerb an beweglichen Sachen in Deutschland und Portugal* (2009).

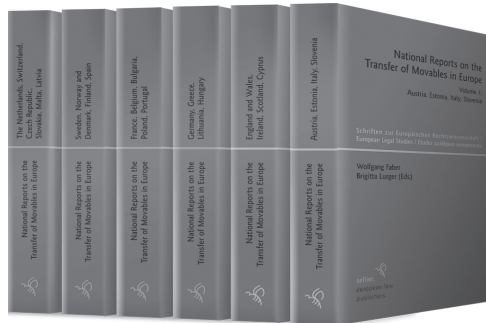
periodicals³⁴ and other collective works.³⁵ Electronic sources are cited in form of footnotes, when they are linked to a virtual database.³⁶ Especially because of the non-existence of an official or non-official translation of the *Código Civil* into English, legal dispositions are presented here in full, sometimes with modifications.

³⁴ Among others, see: *O Direito*, *Revista de Legislação e Jurisprudência* (RLJ), *Boletim do Ministério de Justiça* (BolMinJus), *Colectânea de Jurisprudência* (CJ), *Boletim da Faculdade de Direito da Universidade de Coimbra* (BFD), *Revista da Faculdade de Direito da Universidade Nova de Lisboa* (Themis), *Cadernos de Direito Privado* (CDP), *Revista da Ordem dos Advogados* (ROA). The last one is also available (since the first edition of 1941) under <http://www.oa.pt/Publicacoes/revista/default.aspx?idc=30777&idsc=2691>. For detailed information, please see table of abbreviations.

³⁵ Like the transcripts of conferences, the overview of the Portuguese Law in English described above (see footnote 26), and publications in form of *Festschrift* (FS are usually called “*Estudos em homenagem*”).

³⁶ As for example for the original legal sources from the 19th century till the first half of the 20th century and their electronic version at the Biblioteca digital Ardies (Universidade Nova de Lisboa/Fundação para a Ciência e a Tecnologia): <http://www.fd.unl.pt/ConteudosAreas.asp?Area=BibliotecaDigital>.

Necessary Reforms of existing national rules in the area of the transfer of movables

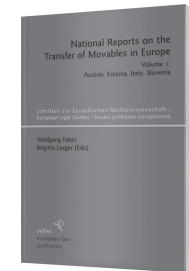


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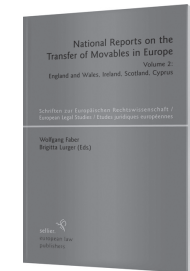
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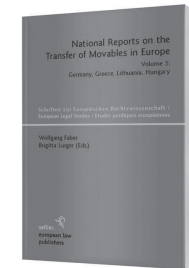
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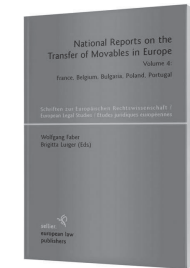
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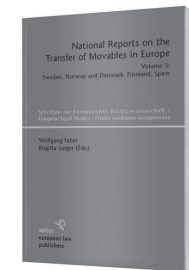
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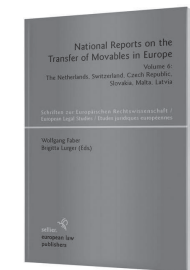
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