**Introduction.**

With development of civil law and private property it is becoming more and more important to have clear and understandable land law. Because of high importance of land law in legal relations, governed by civil law, the objective of my work will be analysis of the institute of land law in two similar to but very different countries: Germany and France.

The purpose of this paper is to find common and distinct features in land law of Germany and France. Actuality of this study can be proved with following statement: as we remember, Germany and France belong to different legal families (German legal system and legal system of Code Napoleon); so while comparing law institutes of these countries, we also carry on analysis of different legal systems. Then, we know that both Germany and France belong to European Union. So during our comparative work we can watch, how different legal systems coexist within one confederation.

For the purpose mentioned above it seems reasonable to cover the following tasks:

1. to compare basic principles of law, which build the very basis of the fundamental construction of civil law;
2. to find similarities and differences in practical implementation of law within one legal institute in countries of different legal systems.

In accordance with these tasks and purpose, this work will include two chapters: in the first one it will be spoken about legal principles and sources of land law, and the second one will be dedicated to legal practice and real work of the institute of land registration in Germany and France.

**Chapter 1. Basic legal principles.**

It seems reasonable to begin analyzing basic principles of real property law from its origins. The very concept of real property law has developed in Europe (this means both in Germany and France) on the mix of tribal law, feudal law and Roman law. This explains many similarities in this legal institute in both countries. But if the concept is uniform for the whole country in France, weak regional divergences can be found in Germany. It can be explained by territorial organization of analyzed countries. Then, both in Germany and France (and actually in Europe as a whole) real property law is seriously influenced by the idea of liberalism, which lies on the principle of individual land and ownership.

France and Germany have also subnational differences, because of which these countries are distinct from other European countries. In Germany there is serious influence of public law context of real property (environmental, for example), but zoning law is partly regional. Whereas in France the land registration system is some regions such as Alsace Moselle have kept some peculiarities, which were derived from German legal system.

Next important for this study thing is the concept of ownership in Germany. Whereas in France there may be estates, being ownership limited in time, in Germany ownership cannot be divided in different ownership rights: this happens because of German “Anwartschaftsrecht” (expectancy right), or “precursor rights”, such as possession.

There is also a general ruse, adopted from Roman Law, which is common for Germany and France – in French legal family it is also called the rule of accession. This means that the ownership of the land extends to the ownership of all buildings, erected on the land or objects, inserted into those buildings. There can also be several exceptions: for example, par. 912 BGB: a small part of building, erected on a foreign land will continue to belong to the owner of the main part of the building.

The last common feature to be marked is the existence of the numerus clausus of real rights. In a rigid version it can be found both in France and Germany, where real rights are exhaustively defined by law and parties are not free to create new norms for themselves by contract.

Besides all those common features mentioned above, serious difference lies in the concept of mortgages. The main difference is between the various forms of mortgages, like the principle of accessorines (the linkage of a mortgage to the existence of the secured debt) which widely applies in France, but is not even known in German legal family.

There if also fundamental difference in forms of security rights in rem: liens imposed by statute as a result of particular factual situations (in France) and rent charges, securing a periodical payment on land (Germany and, what is surprising, in Alsace Moselle in France).

To sum it up, we can make a conclusion: Germany and France have many features in common and it can be explained by the sources of law in French and German legal families. For example, Roman law has played important role in the development of both French and German legal systems. Next, while coexisting within European Union, French and German legal systems influence one another and this brings lots of similarities. But different territorial organization and historical development of these countries have created many distinct features between them.

**Chapter 2. Practical aspects.**

Every state has the authority which governs real property relationships. In Germany it is called «Grundbuchamt» and in France – «conservations des hypotheques» (besides Alsace Moselle, where the name for this authority is “bureau foncier”). Comparing just the names, we encounter identity in both legal families: in German legal family we encounter “Grundbuch” (landbook) and in legal family of Code Napoleon we encounter “conservations des hypotheques” (mortgage register)[[1]](#footnote-1). Actually, France has a different register in the territories which they acquired after World War I from Germany and Austria (kept the system of “landbook”) and in the old territories, where the system of mortgage register still applies.

Then, fundamental difference lies in the organization of land register: while in Germany land register is the part of the court system, in France the land register is a subordinate administrative authority. Different countries set up different requirements for those who do such a registration. The highest standards for the qualification of lawyers who carry on these procedure are set in Code Napoleon legal family countries and, in particular, in France. There registrar must fulfill almost the same requirements as a civil law notary. Different requirements are there in German legal system countries: mainly court clerks, not professional lawyers are employed there to provide such work[[2]](#footnote-2).

The next thing, deserving paying attention is rank of limited rights. The rank of a limited right is determined either by the time of registration or by the time of filingfor registration. Under normal conditions both dates should be the same, because registration has to be made in the order of filing. In Germany, registration is a precondition for the existence of the mortgage. As a consequence, registration also determines the rank (constitutive system). But in a system with declaratory registration (to which France belonges) rank may depend either on the time of registration (article 30, par. 1, decree 22/1955 France) or on the time of application. Nevertheless, both, in the declaratory and in the constitutive system, procedural rules for the land register universally require that the order of registration has to follow the order of filing(e.g. art. 2200 CC France[[3]](#footnote-3)).

Important difference lies also in the procedure of «priority notice». There is serious practical need to give the parties some time to conclude and register the contract after checking the actual state of the land register. Germany and France achieve this by different ways: In France there is a provisional registrationof a contract that does not yet fulfil the required formats. It reserves rank, if the ordinary application is made within a certain timeframe afterwards (within 3 years). The procedure in Germany is a lot similar, but not subject to any temporal limitation (*Vormerkung*, § 883 BGB[[4]](#footnote-4)). It requires a valid contractual obligation[[5]](#footnote-5).

In conclusion I can say that those common and distinct features which we can find in the implimentation of land law to real legal relationships on the topic of land registration are based on those principles and basics which were studied in chapter 1. So motives for distingtion and similarity of real legal procedure are the same as for sources of land law: serious influence of Roman Law, historical development (World War I, for example) and territorial organisation of countries under analysis.

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