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ОНОВЛЕННЯ ЦИВІЛЬНОГО КОДЕКСУ УКРАЇНИ ЯК ЗАПОРУКА ЕФЕКТИВНОЇ ВЗАЄМОДІЇ ДЕРЖАВИ ТА СУСПІЛЬСТВА

Анотація. *У статті здійснено аналіз чинних положень ЦК України та судової практики, вивчено міжнародні акти цивільного законодавства. Ураховуючи потребу в оновленні цивільного законодавства до законодавства країн Європейського Союзу, а також поступового наближення до рекомендацій Європейського Союзу в майновій сфері зроблено висновок про те, що статтю 1 ЦК України слід модернізувати шляхом перенесення словосполучення «цивільні відносини» у кінець цього речення, оскільки цивільними є такі відносини, що відповідають усім критеріям, визначеним у частині першій цієї статті, тобто засновані на юридичній рівності, вільному волевиявленні та майновій самостійності їх учасників. На підставі аналізу положень ЦК України пропонується таку ознаку як «майнова самостійність», що має бути притаманна усім цивільним відносинам, – замінити на більш влучне словосполучення – «майнова відокремленість». Вважається, що ЦК України має бути розрахований як на відносини, у яких їх учасники ставлять за мету отримання прибутку, так і на відносини, учасники яких такої мети не мають. В роботі доведена необхідність відновлення статусу ЦК України як стрижневого акта для усіх суспільних відносин з приватноправовим змістом. З метою втілення ідеї про ЦК України, як стрижневий для приватного права акт, звернено увагу на необхідності переглянути механізм забезпечення статусу ЦК України як основного акта цивільного законодавства України. Адже, механізм, закладений в частині 2 статті 4 ЦК України, виявився недієвим: у текст ЦК України вносилися зміни будь-якими законами без врахування специфіки механізму цивільно-правового регулювання таких відносин. Вважається, що на етапі оновлення цивільного законодавства слід повернутися до закріплення в ЦК України переліку організаційно-правових форм, у яких можуть створюватися юридичні особи і у такий спосіб уніфікувати українське законодавство з європейськими підходами до регулювання інституту юридичної особи, а також низки договорів, які у 2003 році були примусово виключені з ЦК України з метою формування та наповнення тексту ГК України*

Ключові слова: *оновлення цивільного законодавства, взаємодія держави і суспільства, приватне право, захист прав, баланс інтересів*

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UPDATING THE CIVIL CODE OF UKRAINE AS A GUARANTEE OF EFFECTIVE INTERACTION BETWEEN THE STATE AND SOCIETY

Abstract. *The study analyses the current provisions of the Civil Code of Ukraine and judicial practice, examines international acts of civil legislation. Considering the need to update civil legislation to the legislation of the European Union countries, as well as gradually approaching the recommendations of the European Union in the property sphere, it is concluded that Article 1 of the Civil Code of Ukraine should be modernised by moving the phrase "civil relations" to the end of this sentence, since civil relations are such relations that meet all the criteria defined in Part 1 of this article, that is, relations based on legal equality, free expression of will and property independence of their participants. Based on the analysis of the provisions of the Civil Code of Ukraine, it is proposed to replace such a feature as "property autonomy", which should be inherent in all civil relations, with a more accurate phrase – "property insulation". It is considered that the Civil Code of Ukraine should be designed both for relations in which their participants set the goal of making a profit, and for relations in which participants do not pursue such a goal. The study proves the need to restore the status of the Civil Code of Ukraine as a core act for all public relations with private law content. To implement the idea of the Civil Code of Ukraine as a core act for private law, attention is drawn to the need to review the mechanism for ensuring the status of the Civil Code of Ukraine as the main act of civil legislation of Ukraine. After all, the mechanism laid down in Part 2 Article 4 of the Civil Code of Ukraine turned out to be ineffective: the text of the Civil Code of Ukraine was amended by any laws without taking into account the specific features of the mechanism of civil law regulation of such relations. It is considered that at the stage of updating the civil legislation, it is necessary to return to consolidating the list of legal forms for creation of legal entities in the Civil Code of Ukraine and thus harmonise Ukrainian legislation with European approaches to regulating the institution of a legal entity, as well as a number of contracts that were forcibly excluded from the Civil Code of Ukraine in 2003 to develop and fill in the text of the Civil Code of Ukraine*

Keywords: *updating of civil legislation, interaction between the state and society, private law, protection of rights, balance of interests*

INTRODUCTION

The social purpose and social value of law lies in the fact that it is designed to govern relations in society between individuals and certain social groups. Evidently, the role and significance of the adoption and implementation of the Civil Code of Ukraine[1] in 2003 should not be underestimated. This Code replaced the outdated Civil Code of the Ukrainian SSR of 1963[2], designed to be applied to social relations that existed under radically different socio-economic conditions, a different political formation. The Civil Code of Ukraine was originally designed to regulate economic relations in the conditions of economic relations built on a free market as opposed to a planned economy.

The Civil Code of Ukraine, in contrast to the Civil Code of the Ukrainian SSR, became the code of private law, which focused its regulatory influence on a human, a private person, with his or her interests, aspirations, desires. In a functioning civil society, the Civil Code of Ukraine has taken a leading place as the most important legal act that ensures and guarantees the full existence of a private person in the Ukrainian state. For undemocratic political regimes, criminal legislation always remains the core, which defines the limits of permissible freedom (unfreedom), the existence and free use of human rights and freedoms; for such a state, there are no insurmountable boundaries in the sphere of a person's private existence, just as there is nothing private in the life of an individual for which any aspirations are not recognised outside the interests of the state and such a totalitarian society.

As history demonstrates, only in an open society dominated by liberal values can human thought develop freely, with conditions appropriate for fruitful creativity and the birth of innovation. It was open societies that demonstrated their advantages over closed non-free societies, which in the long run have always lost out to

1. Civil Code of Ukraine. (2003, January). Retrieved from https://zakon.rada.gov.ua/laws/show/435-15#Text.
2. Civil Code of the Ukrainian SSR. (1963, July). Retrieved from https://zakon.rada.gov.ua/laws/show/1540-06#Text.

democratic political regimes. Accordingly, the main task of the Civil Code is to create conditions for the development of a private person, his or her creativity, and the flourishing of their abilities and talents.

The Civil Code of Ukraine, adopted on January 16, 2003 (hereinafter referred to as "the CC of Ukraine"), has become a decisive step that determined the line of development of the entire legal system of Ukraine towards civilised development [1]. The CC of Ukraine has radically changed the paradigm of legal regulation of civil relations. If, prior to its entry into force, the main (if not the only) model of legal regulation of such relations was their external regulation by the state with the admission of only dosed so-called "autonomous" regulation carried out by participants in such relations, then with the entry into force of the CC of Ukraine, the emphasis was placed differently. The interpretation of the Part 2 Article 6 of the CC of Ukraine suggests that the rules of this Code contain precisely dispositive provisions, if the opposite does not follow from the content of the act of civil legislation, as well as if the imperative nature of a certain provision follows from its content or from the essence of relations between the parties [2]. Attracting contractual means to regulate civil relations opened up wide opportunities for improving civil law and general boost in the efficiency of the mechanism of legal regulation of civil relations, increased the role of the contract in civil law in the status of a regulator of civil relations, expanded the freedom of contract, included initiative as a driving force for the development of an open society [3].

17 years of functioning and application of the first and main act of codification of Ukrainian civil legislation clearly demonstrated the progressiveness of the CC of Ukraine; on the other hand, the experience of its application allowed identifying certain shortcomings, weaknesses, and gaps in the introduced mechanism of legal regulation of these relations. The global financial crisis that has engulfed Ukraine, the permanent economic crisis in the state, excessive regulation of certain public relations, numerous examples of maintaining in the legislation the possibility of unjustified state interference in private relations set the Ukrainian legislator an urgent task of preparing and conducting another systematic change in civil legislation, the state of which indicates that currently it fails to meet the modern realities and needs [4]. Ukraine also needs to join the processes of unification of private law that have been going on across the European continent for more than 20 years and have already ended with the creation of numerous new model laws in the field of private law that meet the requirements for the development of modern economies.

In Ukrainian legal science, such a process of updating the Civil Code of Ukraine has already received an apt name – recodification of civil legislation, which makes provision for its modernisation, harmonisation with European achievements in the science of private law, so that its condition meets the requirements and needs of today. The updated code should become an engine for the development of Ukraine. It is worth considering that for almost two decades since its adoption, numerous amendments and modifications have been made to the Code, which quite often did not take into account either the content or spirit of this act, or the principles of its construction, which was repeatedly proved both in purely scientific and in research to practice studies [5].

It is precisely the lawmakers' awareness of the need for a comprehensive doctrinal approach to amending the Civil Code of Ukraine that should be welcomed instead of making "patchwork" changes, since a long-awaited discussion has commenced at the official level, resulting in the creation of a draft concept for updating the Civil Code of Ukraine at the first stage [6].

The purpose of this study is to analyse individual changes in civil legislation in the development of the provisions proposed by the authors of this draft Concept.

1. MATERIALS AND METHODS

The methodology of the study is determined by its purpose, which is to analyse the structural parts, namely sections, articles, paragraphs, clauses of the Civil Code of Ukraine for the subject of legal regulation of civil relations, their emergence, change, and termination, ordering, in accordance with the ideal model that the subject of legal regulation consolidates in the contract or in acts of civil legislation. The statutory legal basis for this study included codified regulations governing public relations, namely the CC of Ukraine; the Law of Ukraine "On Mortgage"; the Law of Ukraine "On the Procedure for Compensation of Damage Caused to a Citizen by Illegal Actions of Bodies Engaged in Intelligence Activities, Pre-Trial Investigation Bodies, Prosecutor's Office and Court", etc.

Comparative legal, philosophical, dialectical, general scientific, special scientific, and Aristotelian research methods were used in this study. The Aristotelian method, namely analysis, synthesis, abstraction, generalisation, analogy, induction and deduction, was used to study certain provisions of the CC of Ukraine, as well as provisions of international acts of civil legislation. The leading tool of the Aristotelian method is the analysis of the current civil legislation, which was used to predict the effectiveness of interaction between the state and civil society. In particular, this refers to the fact that the extension of the rules on liability for non-performance of a monetary obligation to any type of delay of the debtor was a reaction of society, the economy and the legal community to the crisis of total non-payments on obligations and the lack of an effective mechanism for executing court decisions. It is noted that the rule of Article 625 of the CC of Ukraine is currently applied as a provision on the astreinte. Similarly, abuse of the right to claim and other procedural rights was investigated.

The dialectical method was used for the purpose of analytical research of doctrinal approaches to the definition of the term "civil relations", as well as to cover the main properties of the above term. With the help of abstraction, the updating of civil legislation as a prerequisite for ensuring effective interaction between the state and civil society was investigated in terms of applicability and legitimisation in a particular regulation. The method of abstraction made it possible to formulate the conclusions of this scientific research, and the method of deduction and

induction – to carry out an appropriate search for initial ideas (proposals for statutory changes and corresponding doctrinal provisions). Induction and deduction were used to find the necessary material for generalising and abstracting the statutory approach to updating (recodifying) the civil legislation.

The legal technical and dogmatic methods were used to study and interpret the provisions of the current CC of Ukraine, as well as to implement its systematisation upon updating its provisions. The comparative law method was used to compare the principles, definitions and standard rules of European private law (DCFR) and the CC of Ukraine. The historical method facilitated the study of the term "civil relations" in retrospect and establish the purpose of civil legislation. Axiological and institutional approaches made it possible to consider such basic categories of civil law as property independence, good faith, abuse of law, etc. in combination and unity, which serve as the basis for building civil legal relations. The use of Aristotelian, system-structural methods allowed concluding that Ukraine should strive to overcome the total legal nihilism that has reigned in all spheres of social existence in Ukraine. The method of system analysis provided a generalisation of accumulated theoretical knowledge on updating civil legislation. To generalise and develop a holistic understanding of updating the civil legislation of Ukraine, the study used a systematic approach, interpretation and construction of a theoretical model of the provisions of the Civil Code of Ukraine. A systematic approach made it possible to outline the problematic aspects of law enforcement and offer the author's vision regarding their solution.

All scientific research methods were used in interrelation and interdependence, which contributed to ensuring the comprehensiveness, objectivity, and completeness of the study. The chosen aspect made it possible to lay the foundation for further lines of scientific development of theoretical ideas on updating (recodification) the civil legislation of Ukraine.

2. RESULTS AND DISCUSSION

Admittedly, since the declaration of its independence, Ukraine has been creating the legislation of an independent country, which has chosen the irreversible path of building a democratic state governed by the rule of law; there is not only a search for effective mechanisms for the legal regulation of certain social relations, but also a search for the ideal model according to which the legislator wants to regulate these relations. General comments on the process of updating the Civil Code of Ukraine. The study identified the general shortcomings of the current state of civil legislation.

2.1. Analysis of general shortcomings and lines for improving the civil legislation of Ukraine

Insufficiently detailed legal regulation of certain public relations may not always indicate a shortcoming of a legislative act. If the mechanism of legal regulation of these relations works effectively, then there is no need for their more detailed regulation. If the content of a legal provision is understood unambiguously by bona fide participants in civil relations, there is also no need to supplement its content. However, if the provision allows for an ambiguous interpretation (with a conscientious attitude towards determining its actual content), to abuse of the rights and opportunities that it provides, which has found manifestation in ambiguous or inconsistent judicial practice, there is an urgent need to eliminate the incompleteness of such a legal provision. The imperfection of the introduced mechanism of legal regulation of certain public relations indicates that the rule of law is incapable of leading public relations to the ideal state that the legislator had in mind during its introduction and to which its repeated and uniform application should have led [7]. The legislator must justify the need to introduce each new provision with arguments on the need to achieve those goals that do not contradict the considerations of the free functioning of civil transactions, for example, considerations of ensuring the interests of the weaker party, or the need to ensure stability in a particular area of economic relations.

Thus, the experience of the financial crisis of 2008-2009 necessitated the introduction of a legislative restriction on the possibility of obtaining loans in foreign currency by individuals-residents of Ukraine; in addition, credit institutions have been additionally obliged to give preliminary clarification of the conditions for providing credit funds, the interests of the weaker party in credit relations – the borrower – were also considered to a certain extent, etc. The above has forced to limit the possibility for credit institutions to introduce unfair, sometimes enslaving conditions for consumers in loan agreements, which indicate a considerable imbalance in the rights and obligations of its parties. The public movement, directed against the imposition of all currency risks in connection with the devaluation of the national currency of Ukraine to foreign currencies exclusively on consumers of banking services – individuals, also forced the legislator to seek ways to change the existing mechanism of legal regulation in order to factor in the interests of this part of society – as a weak party in the described relations [8].

Therewith, one should take note here: the right of the legislator to regulate certain public, private law relations in their content is not arbitrary, but must be conditioned by a certain urgent public need pending to be satisfied. The introduction of legislative regulation of certain private relations is always an intervention of the state in these relations, it is a manifestation of state coercion. In itself, the introduction of regulation of public relations cannot be the purpose of such actions on the part of the state: the task of legislative regulation of private relations is to establish acceptable and understandable boundaries, within which free initiative should have a certain freedom for its implementation.

Only when the model of real social relations that develop in the practice of applying certain legislative prescriptions does not correspond to the ideas of justice and the public good, and there is a certain social or economic tension in society, there is an urgent need for state intervention in such relations in order to change them in accordance with the desired ideal model of the existence

of such relations. For example, the use of cars in Ukraine that are not cleared in accordance with the established procedure, imported into the country in circumvention of the introduced customs rules, leads to many unsolvable problems related to determining the person responsible for the negative consequences of operating such a car, etc.

The law should be designed to be applied repeatedly over a long period of time, and should be sufficiently abstract in its content to be effective even in case of subsequent changes in the sphere of regulated economic relations. The law should be stable and designed for the sustainable development of society and the economy; it should be predictable for the market, making provision for the evolutionary, not revolutionary development of the country. The law should prevent attempts to use it in bad faith, making it impossible to abuse the stipulated rights, as well as prevent actions committed solely for the purpose of inflicting harm on another person. Therefore, the civil law should also perform a certain predictive function: not only to eliminate existing legislative shortcomings, but also to strive to prevent the occurrence of such shortcomings in the introduced mechanism of legal regulation of civil relations in the foreseeable future. This obliges the legislator to identify and take into account trends in the development of the economy, society, and the state, directing them towards a certain desired model of a just state where civil society develops freely.

Therewith, the authors of this study are convinced that not all the provisions of the CC of Ukraine require mandatory changes. Thus, it is proposed to be extremely careful about the changes to Section I "Main Provisions" of Book 1 of the CC of Ukraine. In particular, in Article 1 of the CC of Ukraine, the phrase "civil relations" should be moved to the end of this sentence, since civil relations are those relations that meet all the criteria defined in Part 1 of said article. Such public relations should be based on legal equality, free expression of will and property independence of their participants. Otherwise, there is a deceptive interpretation of the content of this definition, that any personal non-property and property relations are civil. In reality, this is not the case. It is proposed to replace such a feature as "property autonomy", which should be inherent in all civil relations, with a more accurate phrase – "property insulation". Quite often, in business structures, one private legal entity is not property-independent from another person. Thus, according to its statutory documents, a person may bear subsidiary liability for another person, or otherwise be involved in the relationship of liability for its debts. That is, the sign of property independence is not inherent in all participants in civil relations; therefore, the phrase "property independence" as a sign of all civil relations is not sufficiently correct.

However, the sign of each participant in civil relations is exclusively the property insulation of one person from another, since the appurtenance of certain rights and property to a certain person can always be objectively determined with varying accuracy. All participants in civil relations are exercise property insulation from each other, even in the case when one person is the owner of certain property, and the other is merely its user.

Evidently, over all the years of operation of the Civil Code of Ukraine, the Ukrainian legislator has created a considerable array of legislative acts in the field of regulating civil relations. Such rules turned out to be included in numerous legislative acts with their unique structure, logic, and terminology, which sometimes differ quite substantially from the ideas and solutions embodied in the CC of Ukraine. It is necessary to restore the status of the Civil Code of Ukraine as a core act for all public relations with private law content. The CC of Ukraine is the basis for the construction and functioning of private law as a system of legislation. The consistency of provisions and rules determines their interaction and correlation in terms of strength and scope of application. The authors of this study consider it appropriate to supplement the content of the CC of Ukraine with the general provisions of special laws on land lease, consumer rights protection, from the content of the provisions of the Housing Code of the Ukrainian SSR[1] – provisions on the housing rental agreement, from other special laws – rules on consumer lending, acquisition of rights to objects of unfinished construction, including housing constructions, etc.; admittedly, this should apply to rules of a private law nature.

To implement the idea of the Civil Code of Ukraine as a core act for private law, it is necessary to review the mechanism for ensuring the status of the Civil Code of Ukraine as the main act of civil legislation of Ukraine. Evidently, the mechanism laid down in Part 2 Article 4 of the Civil Code of Ukraine turned out to be ineffective: the text of the Civil Code of Ukraine was amended by any laws without taking into account the specific features of the mechanism of civil law regulation of such relations. It may be necessary to implement the idea of dividing laws into ordinary and constitutional ones, in order to refer codes as the main acts of various branches of legislation to constitutional laws. However, without appropriate amendments to the Constitution, such an idea is impossible to implement.

An obvious disadvantage of the current civil legislation is the lack of general provisions prohibiting discrimination. In developed democracies, special attention is paid to the implementation of the prohibition of discrimination in all its manifestations at the legislative level. The practice of the ECHR proves that both Ukrainian legislation and the practice of its application do not meet the criteria for prohibiting discrimination. However, the issue of banning all forms of discrimination remains outside the scope of the CC of Ukraine. Evidently, following the Constitution, the CC of Ukraine, as a code of civil society, should define the general principles of anti-discriminatory legislation. Respect for the individual and his or her personality should be based on the equality of all persons before the law and in rights, in the state, and in society.

The current CC of Ukraine does not take into account the specific features of the status of a consumer and an entrepreneur (merchant, i.e., a professional participant

1. Housing Code of the Ukrainian SSR. (1983, June). Retrieved from https://zakon.rada.gov.ua/laws/show/5464-10#Text.

in relations), etc. The CC of Ukraine should be designed both for relations in which their participants set the goal of making a profit, and for relations in which participants do not pursue such a goal. Given that the current model of building Ukrainian legislation is not described by the idea of dualism of private law, the Civil Code of Ukraine should certainly contain the provisions of trade law, which are placed in the Trade Code in countries where the concept of dualism of private law is realised (Germany, France, etc.). Dualism of private law is not a modern trend in constructing a system of civil legislation; thus, relatively modern codifications of civil legislation – the civil codes of the Netherlands, the province of Quebec, the Czech Republic, the updated civil code of the Republic of Moldova and others have incorporated special provisions of trade law [9]. The modern example of non-state systematisation of civil law – DCFR 0 does not make provision for the implementation of the dualism of private law [10]. Accordingly, the special status of a merchant (entrepreneur) and a consumer should be clearly indicated in the general provisions of the CC of Ukraine.

The basis of modern legal systems of European countries is Roman private law [11], since all of them have undergone its reception to a certain degree. Roman law underlies modern law, it is a part of the current legal doctrine and legal culture, and the education of a future lawyer is impossible without mastering the legal heritage of Ancient Rome. This means that one should not worry about and deny the use of Latin both in the legislation and in the practice of its use, just as Latin is acceptable in medicine. The use of Latin in the text of the law is capable of eliminating ambiguities in wording, as well as double interpretation. A classic example: the title of Chapter 32 "The Right to Use the Property of Another" used in the Civil Code of Ukraine misleads the law enforcement officer, giving the impression that the rules contained in this subsection are subject to application to all cases of the right to use the property of another (for example, on lease rights), which is erroneous. Only a systematic and doctrinal interpretation of the content of the legal provisions of this chapter gives grounds for concluding that they are designed exclusively for application to easement relations. Accordingly, changing the title of this chapter to "Servitudes" (easements) would make it easier to understand its text, eliminate ambiguities, and eliminate double interpretation.

Therefore, to ensure that the text of the law is concise and corresponds to European terminological traditions, a wider use of Latin legal vocabulary is proposed, such as: gestor – principal, servitude (easement) – servitor (easement holder), superficiality – superficiary, emphyteusis – emphyteuta, etc. Unjustified in general for civil law is the application of such a feature as "economic", applied to any civil law definitions and legal categories. This feature does not carry any semantic load in private law and is superfluous. In particular, it is also unjustified to refer to a company, which is usually understood as an organisation created for the commercial purpose of making a profit, and only a simple company, as an exception to the above rule, does not make provision for the creation of a legal entity as a legal form.

2.2. Amendments to the Civil Code of Ukraine caused by the abolition of the Economic Code of Ukraine

As indicated in the draft Concept, a systematic update of the Book One, as well as the CC of Ukraine in general, is possible only if the Economic Code of Ukraine is cancelled. The latter does not correspond to the parameters of acts regulating business relations, which by their nature are primarily private law [5]. Therefore, it is quite reasonable to introduce amendments to the CC of Ukraine, which are conditioned by the abolition of the Economic Code of Ukraine (hereinafter referred to as "the EC of Ukraine"). As for fundamental changes, these are changes in three areas of legal regulation: legal entities, ownership of property by public legal entities and institutions, as well as certain types of contracts. Legal entities are subjects of relations, so the construction "legal entity" meaks provision for the insulation of property, which can occur together with or without the association of persons (Article 81 of the CC of Ukraine).

Initially, at the stage of preparing the draft, the CC of Ukraine did not make provision for the possibility of the existence of other legal forms, with the exception of those established in the CC of Ukraine. However, to achieve the so-called "legislative compromise", the list of legal forms of legal entities in Article 83 of the Civil Code of Ukraine was defined as open. Therefore, at the stage of updating civil legislation, it is quite logical to return to consolidating the list of legal forms of legal entities in the Civil Code of Ukraine and thus harmonise Ukrainian legislation with European approaches to regulating the institution of a legal entity. Given the rather large number of legal entities that currently operate in legal forms not stipulated by the CC of Ukraine – this refers to enterprises as subjects of law (state and municipal enterprises, so-called "collective property enterprises", private enterprises, enterprises with foreign investments, etc.) and their associations (corporations, consortia, concerns, etc.) – it is advisable to establish a certain transition period to bring the legal forms of legal entities into compliance with the requirements of the CC of Ukraine.

Property transferred to public legal entities and institutions. The EC of Ukraine regulates property relations in a form that was inherent in the administrative-command economy, when property was transferred to a legal entity not in ownership, but in titles that were its peculiar analogue, but with appropriate restrictions. The subject of law, to whom the property was granted on the right of economic management or on the right of operational management, was deprived of the right to freely dispose of it or respond to such property under its obligations. In accordance with the international obligations assumed by Ukraine, national legal regulation should comply with the established international approaches not only to the legal forms of legal entities, but also to property relations. Therefore, the authors of this study believe that it is advisable to extend general approaches to the use of other people's property to

the use of property by public legal entities and institutions – first of all, this refers to renting and managing property. The Institute of property management should perform the functions of ensuring the transfer of property by the owner (in particular, the state or the relevant municipality) to legal entities under public law and institutions in order to perform their respective functions [12].

A completely logical solution is to return a number of contracts that were forcibly excluded from the CC of Ukraine in 2003 to the field of civil law regulation in order to form and fill in the text of the EC of Ukraine. This refers, first of all, to supply contracts, barter, leases, certain provisions on mediation, transportation, contract agreements, contracts in the field of banking, etc. [13].

2.3. Proposals for Section I "Main Provisions" of the draft concept for updating civil legislation

Supporting the ideas laid down in the draft Concept of updating the Civil Code of Ukraine, it is advisable to develop individual proposals at the stage of preparing the draft law in a particular way. Thus, for the development of paragraph 1.4. of the draft Concept, it should be noted that the urgent abolition of the EC of Ukraine necessitates the exclusion of provisions on the subsidiary application of the EC of Ukraine to the regulation of any relations in the field of economic management from Article 9 of the CC of Ukraine. Thus, all relations that were previously covered by an unknown "sphere of management" are included in the sphere of regulation of the CC of Ukraine. Such relations should be governed by the CC of Ukraine as provisions of direct action, and not subsidiarily, taking into account some of their features. Certain features of legal regulation should be provided for relations involving merchants (entrepreneurs), that is, individuals whose main purpose of activity is to make a profit, both among themselves and with consumers.

It is also necessary to agree with the idea of improving the provisions on compensation for non-pecuniary damage (to 1.7. of the Concept). In this study, it is proposed to limit the scope of possible application of such a method of protection as compensation for non-pecuniary damage, making this remedy not common to all civil relations, but special. During its functioning in the Ukrainian legal system, this institution has acquired an interbranch character, its legal nature and scope of its application have turned out to be completely unclear and contradictory at the current stage of legal development. According to the Law of Ukraine "On the Procedure for Compensation of Damage Caused to a Citizen by Illegal Actions of Bodies Engaged in Intelligence Activities, Pre-Trial Investigation Bodies, Prosecutor's Office and Court"[1] – moral damage is actually similar to the tax liability of the state, which depends on the period of stay of an individual under investigation and court; to determine its minimum size, it is not actually necessary to find out the nature and degree of moral suffering of a person, etc. In labour relations – causing non-pecuniary damage to an employee in case of violation of his or her labour rights is virtually presumed. In contractual civil relations, the use of such a method of protection as universal is quite common, which is also unjustified. The current version of Part 1 Article 23 of the Civil Code of Ukraine stipulates that a person has the right to compensation for moral damage caused as a result of violation of any of his or her rights.

Supporting the idea of objectifying the general principles of its compensation [14], it is necessary to limit the scope of application of compensation for non-pecuniary damage and when preparing relevant amendments to the CC of Ukraine, it is proposed to stipulate that the right to its compensation would arise only in case of a violation of not any civil rights of a person, but only non-property rights of an individual. Accordingly, in case of violation of any other civil rights, as a general rule, the right to compensation for non-pecuniary damage will not arise. An exception should be made for relations involving consumers, in labour relations for the affected employee, in tort relations – in case of harm to the health of the injured person and in case of his or her death (with the mandatory definition of an exclusive list of persons who have the right to apply for its compensation) [15]. Compensation in cash for non-property damage should not replace the obligation to fully compensate for property damage, supplement it with the hidden purpose of compensation for those losses that are difficult to prove, etc.

Developing the idea of the concept of the need to take into account the changes that have occurred in the procedural legislation regarding the right of the court to determine, at the request of the plaintiff, a method of protection that is effective, but not stipulated either by law or contract, the authors of this study consider it appropriate to introduce a new procedure for protecting the jurisdictional nature of civil rights in the legislation. Thus, foreclosure on the subject of a mortgage based on a mortgage clause does not occur in accordance with a court or a notarised procedure, providing protection of the rights and interests of the mortgagee. Chapter 3 of the Book One of the CC of Ukraine stipulates that civil rights and interests shall be subject to protection in one of the following protection procedures: judicial, notarial, administrative, and in self-defence [16].

The Registrar of Real Rights does not act as a body of state or local self-government (that is, as a subject of power), but as a result of the registration action, a certain right is actually recognised, in particular, for the mortgagee on the subject of mortgage. That is, the method of protection stipulated in Article 16 of the CC of Ukraine is applied in accordance with the procedure established by a mortgage agreement with a mortgage reservation, or an agreement on foreclosure on the mortgage subject in accordance with the Law of Ukraine "On Mortgage"[2].

1. Law of Ukraine 266/94-VR "On the Procedure for Compensation of Damage Caused to a Citizen by Illegal Actions of Bodies Engaged in Intelligence Activities, Pre-Trial Investigation Bodies, Prosecutor's Office and Court". (1994, December). Retrieved from https://zakon.rada.gov.ua/laws/show/266/94-%D0%B2%D1%80#Text.

2. Law of Ukraine "On Mortgages". (2003, June). Retrieved from https://zakon.rada.gov.ua/laws/show/898-15#Text.

The general provisions on the application of such an unnamed procedure for the protection of civil rights and interests should also be reflected in the relevant chapter of the CC of Ukraine [17].

CONCLUSIONS

Determining the urgent directions for improving civil legislation, its updating should provide the most unambiguous answers to existing requests from law enforcement practice, which are absent from the current legislation and which the relevant judicial practice is forced to seek. Thus, the issue of fair regulation of relations in case of a refusal of a contract participant to perform its obligations in the currency stipulated by the parties in the text of the agreement remains quite relevant. The next pressing issue is the following: the extension of the rules on liability for non-performance of a monetary obligation to any type of delay of the debtor was a reaction of society, the economy and the legal community to the crisis of total non-payments on obligations and the lack of an effective mechanism for executing court decisions. In fact, the rule of Article 625 of the CC of Ukraine is currently applied as a provision on the astreinte. Obviously, the court does not have the right to refuse to grant judicial protection when human rights fairly require it. However, with such a spreading interpretation, the court eliminates the existing gap in the current legislation, which the legislator is incapable of filling with legislative regulation in a timely manner.

Evasion from performing credit obligations has become a massive reaction of individuals to the lack of an effective and transparent mechanism for bankruptcy of an individual. As a protection against usury on the part of individual credit institutions, borrowers, for their part, resort to abuse of their rights, including abuse of the right to claim, and other procedural rights. Ukraine should strive to overcome the total legal nihilism that has reigned in all spheres of social life in Ukraine.

Therefore, it should be recognised that it is high time to eliminate these contradictory and often mutually exclusive approaches, to find a new balance of interests of all interested parties to ensure the prosperity of Ukraine and its citizens.

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