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ЦИВІЛЬНИЙ КОДЕКС РЕСПУБЛІКИ БІЛОРУСЬ: ПРОБЛЕМИ І НАПРЯМКИ РЕФОРМУВАННЯ

Анотація. *Рівень юридично-технічної досконалості цивільного законодавства в тій чи іншій країні в значній мірі визначається конкретно-історичними тенденціями і проблемами його функціонування. Сьогодні головною інноваційною домінантою для Республіки Білорусь є формування адекватної системи реформованого цивільного законодавства. У свою чергу, Цивільний кодекс Республіки Білорусь, безумовно, є суттєвим досягненням вітчизняних цивілістів, як вчених і практиків, так і законодавців. Але, як і будь-який закон, він викликає деякі питання і труднощі в його застосуванні. Тому основна мета роботи полягає в тому, щоб на підставі дослідження теоретико-емпіричного матеріалу розкрити особливості, проблеми та напрямки реформування Цивільного кодексу Республіки Білорусь, із визначенням місця цього кодифікованого нормативно-правового акту в національній системі цивільного законодавства. Для досягнення визначеної мети використано діалектичний, порівняльно-правовий, історико-правовий, формально-догматичний методи дослідження. Встановлено, що в нормах Цивільного кодексу Республіки Білорусь існує заміна дефініції та правової сутності фундаментального принципу верховенства права, яка належить до обов'язкового приведення у відповідність з нормами міжнародно-правових актів. Визначено, що чинний кодекс має послідовну і органічну архітектоніку, проте, незважаючи на прогресивне правове регулювання в порівнянні з країнами-учасницями СНД, вимагає якісної модернізації, перегляду деяких положень і підходів до тлумачення понятійно-категоріального апарату в контексті реалій сьогодення. У роботі автором запропоновано напрями вдосконалення Цивільного кодексу Республіки Білорусь (врахування практики застосування цивільного законодавства з метою уніфікації тлумачення норм; закріплення нових інститутів цивільного права; інтенсифікація транскордонного співробітництва в сфері реформування цивільного законодавства).*

Ключові слова: реформування законодавства, цивільне законодавство, понятійно-категоріальний апарат, принцип верховенства права, глобалізація.

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CIVIL CODE OF THE REPUBLIC OF BELARUS: ISSUES AND DIRECTIONS OF REFORM

Abstract. *The level of legal and technical perfection of civil legislation in a particular country is largely determined by specific historical tendencies and the problems of its functioning. Cur-*

rently the main innovative dominant for the Republic of Belarus is the formation of an adequate system of reformed civil legislation. In turn, the Civil Code of the Republic of Belarus, of course, is a significant achievement of domestic civilists, both scientists and practitioners, and lawmakers. However, like any law, it raises some issues and difficulties in its application. Therefore, the main purpose of the paper is to reveal the features, issues and directions of reforming the Civil Code of the Republic of Belarus proceeding from the research of theoretical and empirical material, to determine the place of this codified statutory instrument in the national system of civil legislation. To achieve this purpose, dialectic, comparative law, historical-law, formal and dogmatic research methods were applied. It is established that in the provisions of the Civil Code of the Republic of Belarus there is a substitution of the definition and legal essence of the fundamental principle of the rule of law, which must be brought in line with the provisions of international law regulations. It is determined that the current code has a very consistent and organic architectonics, however, despite the progressive legal regulation in comparison with the CIS countries, it requires high-quality modernization, a review of some provisions and approaches to the interpretation of the conceptual and categorical framework in the context of today's realities. In the article, the author suggests improvement directions for the Civil Code of the Republic of Belarus (with consideration of the practice of applying civil legislation with the purpose of unifying the interpretation of provisions; consolidation of new civil law institutions; intensification of transborder cooperation in the field of civil law reform).

Keywords: legislative reform, civil legislation, conceptual and categorical framework, rule of law principle, globalization.

INTRODUCTION

The state of civil society and civil legislation is traditionally perceived and evaluated proceeding from the definition of the role and significance of the civil code in a given state. This idea permeates the works of the civilistic scientist N.S. Kuznetsova, who notes that "the civil code of any country reflects the values of a particular society, allows to determine the ideological and property basis on which this society plans to build its development and its future. Moreover, such a codified act is not only the main act of civil law, but also the basis for the entire system of private law, the code of life for the entire civil society" [1].

It is noteworthy that the Civil Code of the Republic of Belarus (hereinafter referred to as "the Civil Code of Belarus") was developed on the basis of the Model Civil Code for the CIS Member States, and, being simultaneously generally adopted in 1998, entered into force by a general rule on July 1, 1999[1]. The Republic of Belarus, of course, correlates itself with the Romano-German legal family through the legalization of "the rights of the countries of the civil code". As a codified act in the field of civil law regulation, the Civil Code of Belarus fixes the main principles of civil legislation, and also reveals their content, which has been repeatedly noted in the works of domestic and foreign law researchers, especially in a positive way [2–5]. With that, it is unam-

[1] Civil Code of the Republic of Belarus. (1998, December). Retrieved from http://pravo.by/document/?guid=3871&p0=hk9800218

biguous to determine whether the Civil Code of Belarus is the main act of civil legislation, as it is, in particular, directly defined in para. 2 of Art. 4 of the Civil Code of Ukraine[1] is impossible [6]. This issue is being actualized in connection with a comprehensive review of the Civil Code of Belarus, which resulted in a Draft Law on amendments to certain codes submitted for public discussion[2].

This context determines the purpose of the article, which, proceeding from the research of theoretical and empirical material, is to reveal the features, issues and directions of reforming the Civil Code of the Republic of Belarus, determining the place of this codified statutory instrument in the national system of civil legislation.

1. MATERIALS AND METHODS

The versatility, variability and diversity of civil law regulation of the relevant legal relations conditioned the use of a set of general scientific and special scientific methods of cognition of state legal phenomena and processes, which, in turn, ensured an objective analysis of the issue under research, as well as the reliability of the results and conclusions. The methodological basis of the article is formed by such methods as: dialectical, comparative law, historical-law, analysis and synthesis, dogmatic, analogy, legal modelling, linguo-legal, structural and functional, induction, deduction, formal and dogmatic, logical, prognostic and other.

The leading method in the research process was the dialectic method of cognition of phenomena and processes, which facilitated the determination of the state, directions and prospects for the development of scientific research and legislative developments in the field of improving the civil legislation of the Republic of Belarus in general, and the Civil Code in particular. Application of special epistemological methods (linguo-legal, structural and functional) assisted in performance of the analysis of the regulatory material connected with the research topic, forming the basis for the development of an original list of the most relevant issues of improving the Civil Code of the Republic of Belarus.

A special place is also occupied by the comparative law method, which was applied in the process of comparative analysis of the scientific and legislative development of the issues of formation, existence and development of a civil law system in the territory of our state and the member States of the Eurasian Economic Union in order to identify positive legislative practices that would be appropriate and eligible for approbation in the Republic of Belarus, with consideration of the specificity of the domestic legal system and realities. In addition, this method provided an opportunity to outline substantial issues and shortcomings in the current Civil Code of the Republic of Belarus.

[1] Civil Code of Ukraine (2003, June). Retrieved from https://zakon.rada.gov.ua/laws/show/435-15

[2] Amending Certain Codes of the Republic of Belarus". Retrieved from http://forumpravo.by/files/nczpi_zakon_proekt_izmenenija_v_kodeksi.pdf.

The historical-law method was applied upon the research of the genesis of the formation of the civil legislation system of the Republic of Belarus and the features of the formation and change of architectonics and provisions of the Civil Code of the state; analysis and synthesis methods were used to establish the substance and content of the Civil Code of the Republic of Belarus, the criteria affecting its current and future transformations. In addition, these methods allowed to determine the variability of legal definitions of concepts stipulated by the Civil Code of the Republic of Belarus, as well as the multivariance of doctrinal approaches to the outlined issue. Using the dogmatic method, conclusions were formulated in accordance with the purpose of the research. The analogy method facilitated, with consideration of foreign practices, the conclusion on the necessity of improvement of the domestic civil legislation system, the development and adoption of the Concept of the civil legislation reform of the Republic of Belarus on the basis of a single set of backbone reform factors.

Upon formulating legislative proposals, a normative-semantic technique, logical methods of cognition, and the method of legal modelling were employed. The methods of induction and deduction provided the definition of the formation of a system of reformed civil legislation – the main innovative dominant for the Republic of Belarus that is adequate to state interests and balanced, factoring in the national factors of the evolution of society. The formal dogmatic method was applied in the interpretation of legal categories, as a result of which the conceptual and categorical framework of civil legislation was improved and refined. The logical method was used as a universal means of argumentation of scientific conclusions in the field of reforming the Civil Code of the Republic of Belarus in the context of the indicated problematics. The prognostic method was used to determine the prospects for the development of civil legislation directed at the establishment of a system of effective legal support for the legal relations of individuals, society, and the state, with consideration of the latest approaches to the methods of legal regulation and testing of foreign positive experience. Such a comprehensive use of methodological procedures has several advantages in terms of the stated problematics and allows a more thorough analysis of the issues and directions of reforming the Civil Code of the Republic of Belarus.

The theoretical and empirical basis of the research is formed by the Constitution of the Republic of Belarus, the Civil Code of the Republic of Belarus, the provisions of civil legislation of the researched republic and other states, international regulations and standards, monographic and periodic literature, the results of the author's personal research.

2. RESULTS AND DISCUSSION

Before moving on to the issues and features of the Civil Code of Belarus, it would be prudent to initially note its architectonics. Thus, this code contains 8 sections, 75 chapters, 1153 articles. Its structure is very consistent and organic. However, despite the very progressive legal regulation – for example, in contrast to the Civil Code of

Ukraine[1], the Civil Code of Belarus[2] legalizes franchising, – lately some provisions have been increasingly regarded as archaic. Thus, not all legalized provisions correspond to the challenges of globalization and the development of a digital economy. It should be noted that representatives of the doctrine, practice and lawmakers have been working on improving the content of the Civil Code of Belarus for several years with the goal of organically correlating it with other acts of civil law, eliminating inaccuracies and modernizing in the context of intensive transformations of civil legal relations. Nevertheless, the concept of reforming the civil code is constantly undergoing changes, as a result of which, many concepts do not receive an adequate coverage in the legislation and their logical consolidation at the national level.

Another concerning point is the multivariance of approaches to modernizing the provisions of the Civil Code of Belarus, which leads to conflicts in legal regulation, as well as a distortion of international standards in the process of their adaptation. In particular, the foundations for the implementation of international principles and features of civil law regulation in the Civil Code of Belarus have not yet been developed and legalized, but are demanded by the realities of today.

In this context, special attention should be paid to the consolidation of the rule of law principle in the code, which, according to civilists, only fragmentarily corresponds to the doctrinal approaches and its modern interpretation developed by the international community.

The principle of the rule of law, in accordance with the provisions of the Report of the European Commission for Democracy through Law "On the Rule of Law" (Strasbourg, 4 April 2011, study 512/2009) [7; 8], is a fundamental value. The concept of the rule of law pervades both the national and international levels, is one of the fundamental values of the Council of Europe, acts as the basis for the adoption of UN documents, is enshrined in the preamble to the Treaty on the European Union and other EU documents. The rule of law in itself forms an integral part of any democratic society, and, in particular, requires that all officials treat everyone with respect for their dignity, respecting the principle of equality, rationally and on the basis of law, and that everyone has the opportunity to appeal against any decisions in independent and impartial courts. In the recent past, as the report draws attention, the essence of the rule of law in some countries was distorted to the point where it became equivalent to such concepts as "rule by law" or "rule by the law". Such forms of interpretation introduce the possibility of justifying the authoritarian actions of governments and do not reflect the true meaning of the term "rule of law". A.S. Dovgert points out, emphasizing that the rule of law acquires semantic meaning only when the rule and the law are not identified, and it means the application of positive law created by people – a natural one, which limits the power of the state and is a measure of positive law [9]. The Venice Commis-

[1] Civil Code of Ukraine (2003, June). Retrieved from https://zakon.rada.gov.ua/laws/show/435-15

[2] Civil Code of the Republic of Belarus. (1998, December). Retrieved from http://pravo.by/document/?guid=3871&p0=hk9800218

sion offers a generalized understanding of the rule of law, highlighting its constituent aspects such as legality, legal certainty, prohibition of arbitrariness, respect for human rights [1].

It is noteworthy that in the Civil Code of Belarus, the specified provisions are expressed through principles of civil legislation, initially established as the fundamental (Art. 2 of the Civil Code of Belarus), based on the natural behaviour of people in society: presumed good faith and reasonableness; inviolability of private property, designed to act as a guarantor of the stability of property relations, which form the basis of property turnover; freedom of contract, which is enshrined not only as a special principle of contract law (Article 391 of the Civil Code of Belarus), but also as a general principle of behaviour for all participants in civil circulation, the inadmissibility of arbitrary interference in private affairs; unimpeded implementation of the protection of civil rights, ensuring their restoration, judicial protection. The new Law of the Republic of Belarus dated July 17, 2018 "On Regulations"[1] summarizes and reflects these aspects as the main principles of rule-making, in particular, such as the principle of legality, protection of the rights, freedoms and legitimate interests of citizens, legal entities, social justice, stability of legal regulation. Proceeding from the legalized interpretation of the contents of the Civil Code of Belarus[2], it can be stated that in fact there is a substitution of the principle of the rule of law with the principle of legality. This circumstance produces its direct impact on law enforcement, which, inter alia, is associated with the assessment of the dispositivity in the civil law of Belarus, which forms an integral and indisputable feature of the method of civil law regulation.

The issue of dispositivity as a principle of regulation and enforcement remains quite debatable to this day, which is caused by many factors, including the methods used to interpret provisions as imperative or dispositive. A very positive example of the settlement of this issue is the Civil Code of Ukraine[3], which contains a provision that allows parties to derogate from other provisions of civil legislation and regulate their relations at their own discretion (p. 1 of para. 3 of Art. 6 of the Civil Code of Ukraine). Furthermore, there is a clear certainty of situations when the application of the above provision is prohibited (p. 2 of para. 3 of Art. 6 of the Civil Code of Ukraine). Thus, the dispositivity of the rule laid down in the provision is being presumed. In turn, in the Republic of Belarus, courts proceed from a literal interpretation. Thus, a provision is recognized as dispositive if it expressly provides for it; accordingly, a provision acquires a dispositive nature only by the will of the legislator, if it contains a direct indication of that. As a rule, in the wording "unless otherwise provided for by the agreement" offers variants (alternatives) of behaviour that can be selected by the subject of law [10]. Without

[1] Law of the Republic of Belarus "On Regulations: Law of the Republic of Belarus". (2018, July). Retrieved from http://pravo.by/document/?guid=3961&p0=H11800130

[2] Civil Code of the Republic of Belarus. (1998, December). Retrieved from http://pravo.by/document/?guid=3871&p0=hk9800218

[3] Civil Code of Ukraine (2003, June). Retrieved from https://zakon.rada.gov.ua/laws/show/435-15

a doubt, such an approach, being the rudiment of the Soviet past, does not contribute to convergence with developed civil law and order, it requires rethinking and change. In the context of this question, we would like to quote N. S. Kuznetsov, who repeatedly drew attention to the fact that the analysis of the mechanism of the influence of civil law on public relations, the application of civil law provisions (dispositive, imperative), interpretation of civil law provisions are of particular importance [11]. It can be stated that this wording of the Civil Code of Belarus requires a qualitative review of the conceptual and categorical framework, in particular, the adaptation of terminology to international standards and fundamental principles of law.

The next shortcoming of the analysed codified regulation should be recognized in the legal regulation of acts of civil legislation in time. One of the fundamental tenets that ensures the stability of civil relations is based on the universally recognized rule according to which acts of civil legislation are not retroactive (do not have a retrospective effect), does not apply in Belarus in the field of contract law. According to para. 2 of Art. 392 of the Civil Code "if, after the conclusion and prior to the termination of the agreement, an act of legislation is adopted that establishes binding rules for the parties, other than those that were in effect upon the conclusion of the agreement, the terms and conditions of the concluded agreement shall be brought in line with the legislation, unless otherwise provided for by law." If the parties fail to introduce the corresponding changes in the agreement, the court, by its decision, approves the necessary changes to the agreement from the moment the act of legislation enters into force, establishing rules binding on the parties, other than those that were in effect upon the conclusion of the agreement. In the absence of appeals to the court and failure to amend the agreement by the parties themselves, the parties should, from the moment it enters into force, apply the corresponding provision of the legislation instead of the terms and conditions of the agreement that contradict the legislation, unless such provision is dispositive, applicable insofar as the agreement of the parties does not establish otherwise. It is noteworthy that the general rules on the operation of civil legislation in time were proposed to be excluded from the Civil Code of Belarus altogether, while the provisions on the agreement and legislation in accordance with the draft Law on amendments to the Civil Code of Belarus are subject to revision proceeding from the general principle that "the legislative act has no retroactive effect".

In the context of the specified substantial shortcomings, one should understand the place of the Civil Code of Belarus in the system of national civil legislation. A comprehensive analysis of the legal regulation of civil relations gives grounds to argue that the Civil Code of Belarus does not possess the highest legal force in regulation of such relations and is only one of the legislative acts of the first level of the civil legislation system[1]. The given approach fully covers the specificity of the national legislation

[1] Resolution of the Plenum of the Supreme Economic Court of the Republic of Belarus "On the application of the provisions of the Civil Code of the Republic of Belarus governing the conclusion, amend-

system, which is significantly more complicated than the conventional approaches generally accepted within the framework of the continental system of law, as it obliges to consider not only the correspondence between the acts of the first and second levels of the system (other acts of civil legislation that must correspond to legislative acts), but also the acts of the first level of the system, represented in accordance with Art. 3 of the Civil Code of Belarus, by the Constitution of the Republic of Belarus, laws, including codified ones, by decrees and orders of the President of the Republic of Belarus.

With reference to the relationship between the laws, the author draws attention to the fact that until recently the Law of the Republic of Belarus "On Regulations" determined that the Civil Code of Belarus possesses a greater legal force in relation to other codes and laws containing civil law provisions (Art. 10 of the previous Law of the Republic of Belarus "On Regulations" dated January 10, 2000)[1]. Since February 1, 2019, this provision has been excluded from the legislation, although de facto it had not been applied before. Administration of law confirms the approach of subsidiary (unless otherwise provided for) application of the Civil Code of Belarus not only to relations directly named in the Civil Code of Belarus (family, labour, land relations, relations on the use of other natural resources and environmental protection). It is worth mentioning that, within the framework of the Working Group on Amendments to the Civil Code of Belarus, the issue of expanding this list by relations in the banking sector was considered. To date, the issues of correlation of provisions contained in the Civil Code of Belarus and the Banking Code of the Republic of Belarus (hereinafter referred to as "the Banking Code of Belarus) are very relevant. A case in point here is the regulation of the issue of increased interest on the use of a loan (credit). In accordance with the Banking Code of Belarus, the increased interest is considered as a payment for a loan, proceeding from the provisions of the Civil Code of Belarus – as a measure of civil law responsibility. Therefore, there are inaccuracies in legal regulation and approaches to the interpretation of legal provisions as such in industry legislation.

Without delving into theoretical considerations about the relationship between the Civil Code of Belarus and the unipersonal acts of the Head of State, we shall only state that in accordance with Belarusian legislation, the Civil Code of Belarus must comply with the temporary decrees and orders adopted by the President of the Republic of Belarus. To date, such a provision of the Civil Code of Belarus in the civil legislation system is no longer challenged by law enforcement practice and is quite unambiguously covered in the resolution of the Plenum of the Supreme Economic Court of the Republic of Belarus No. 16 dated December 16, 1999 "On the application of the provisions of the Civil Code of the Republic of Belarus governing the conclusion, amendment

ment and termination of agreements". (1999, December). Retrieved from http://pravo.levonevsky.org/bazaby/org450/basic/text0104.htm

[1] Law of the Republic of Belarus "On Regulations: Law of the Republic of Belarus". (2018, July). Retrieved from http://pravo.by/document/?guid=3961&p0=H11800130

and termination of agreements"[1], according to which "a decree or an order of the President of the Republic of Belarus, issued not in connection with the authority granted by law to publish them and having discrepancies with the Civil Code of Belarus or other law, should be applied by economic courts as acts of higher legal force in relation to the Civil Code of Belarus or another law, regardless of the date of entry into force of the decree or the order" (para. 1) [12]. Taking the intended purpose for granted, in particular, of such legislative acts as temporary decrees, the question arises regarding the assessment of the situation for compliance with the characteristics highlighted in the special literature, namely, extraordinary (i.e., the presence of special necessity) and the exceptional character of such legal acts predetermined by this (i.e. other methods of settlement cannot provide the proper effect) [13]. It can be stated that only in the aggregate the specified signs can become the basis for the urgency of an emergency change in the foundations of civil law regulation enshrined in the Civil Code of Belarus (this applies not only to decrees, but also to orders as legislative acts competing with the Civil Code of Belarus). In this context, it is very difficult to find reasoning for provisions of the Civil Code of Belarus regarding the restriction in court of the rights of an individual as a result of its participation in gambling, by virtue of which it puts himself and(or) its family in a difficult financial situation, which does not fit into the legal constructions (Decree of the President of the Republic of Belarus dated August 25, 2016 No. 319), the statement of certain period of inconsistency of the regulations of Art. 300 of the Civil Code of Belarus with the Decree of the President of the Republic of Belarus "On the Priority for Repayment of Claims on a Monetary Obligation" (before bringing them in line with the provisions of the decree). In fact, the prevalence of the provisions of acts adopted by the President of the Republic of Belarus over the provisions of the Civil Code of Belarus does not comply with generally recognized civilistic standards of legal regulation, thereby creating a build-up of provisions and difficulties in law enforcement.

In the context of the problematics under consideration, the issue of using the mechanism of raft adoption of amendments to the legislation deserves special attention. Thus, the issue has become especially relevant today, when the raft adoption of amendments to the legislation leads to the fact that the Civil Code of Belarus transforms into a service act that adjusts itself to other legislation and does not set the basis for legal regulation. For instance, an inexplicable, from the standpoint of economic and practical significance, situation of the exercise of the rights to dispose of property by non-owner legal entities occurred in connection with the adoption of the Law dated July 12, 2012, directed at the improvement of the regulation of collateral relations. As a result, special rules on collateral, which were introduced in the Civil Code of Be-

[1] Resolution of the Plenum of the Supreme Economic Court of the Republic of Belarus "On the application of the provisions of the Civil Code of the Republic of Belarus governing the conclusion, amendment and termination of agreements". (1999, December). Retrieved from http://pravo.levonevsky.org/bazaby/org450/basic/text0104.htm

larus, split the general concept of disposing of property by subjects of operational management rights.

In the context of global trends towards alignment and harmonization of legislation, the issue of the relationship between civil legislation and international law provisions remains very problematic for Belarus. Within the framework of the research we shall note that recognition of the priority of universally accepted principles of international law, including the principle of the obligatory performance of international treaties (pacta sunt servanta), is not tantamount to recognition of the priority of the regulations of international treaties [14]. This position fully correlates with the current legislation of the Republic of Belarus, including the Civil Code of Belarus. In accordance with Art. 6 of the Civil Code of Belarus (as amended), "the Republic of Belarus recognizes the priority of generally recognized principles of international law and ensures compliance of the civil legislation with them. The civil law provisions contained in the international treaties of the Republic of Belarus that have entered into force form an integral part of the civil legislation in force on the territory of the Republic of Belarus and are subject to immediate application, unless it follows from the international treaty that the application of such provisions requires the publication of an interstate act, and have the force of that legal act, which expresses the consent of the Republic of Belarus to be bound by the relevant international treaty." Thus, in the field of regulation of civil relations, the legislator does not prioritize the provisions of international treaties; the strength of an international treaty regulating civil relations is determined by that act which implements the international treaty in the domestic legislation (law, presidential decree, government decree) [15–17].

Planned changes to Art. 6 Civil Code of Belarus, submitted for public discussion, once again actualized the issue of the application of international treaties upon regulation of civil relations. It is noteworthy that, factoring in the new version of the Law "On international treaties of the Republic of Belarus" dated May 11, 2018[1], international treaties in the field of civil law regulation are no longer recognized as part of the current national legislation, and, consequentially, are not implemented in national system, but are applied by virtue of expressing consent to their obligatory nature. The draft law on amendments to the Civil Code of Belarus proposes to conceptually change the general approach, setting forth in the Civil Code of Belarus the absolute priority of the rules, which are established in international treaties, over the rules contained in civil legislation. At first glance, such an innovation will be the logical result of natural progressive development. However, we cannot but take into account that the general rule contained in the updated Law on international treaties remains the same: "the provisions contained in international treaties of the Republic of Belarus have the force of the regulation, which expresses the consent of the Republic of Belarus to be bound by a corresponding

[1] Law of the Republic of Belarus "On International Treaties of the Republic of Belarus". (2018, May). Retrieved from http://pravo.by/document/?guid=3871&p0=h10800421

international treaty" (Art. 36), which gives rise to issues of a doctrinal nature, in particular, those related to the issue of relationship between national law and domestic legislation, the formation and contents of the latter, and the practical application of complex regulations [18–21].

Highlighting the features of the Civil Code of Belarus as a codified legislative act in the field of civil law regulation, it is noteworthy that over 60 times it has undergone changes, varying in degrees of depth and coherence. It has already become a tradition to receive amendments to the Civil Code of Belarus twice a year (July, December), moreover, there could be several laws within the framework of one session of the Parliament. At the same time, official recommendations appeared back in 2016, directed at stabilization of the legislative activity. In accordance with the order of the Prime Minister of the Republic of Belarus, the Chairperson of the Council of the Republic of the National Assembly of the Republic of Belarus, the Chairperson of the House of Representatives of the National Assembly of the Republic of Belarus, the Head of the Administration of the President of the Republic of Belarus, the State Secretary of the Security Council of the Republic of Belarus No. 22pa/113p/19/4/53pcб dated March 25, 2016 "On improving the quality of legislative activity" (para. 5.3)[1] it was established that laws should be amended, as a rule, no more than once every two years, amendments to the Code may be introduced, if necessary, no more than once a year. In the new Law "On Regulations", which came into force on February 1, 2019, as a measure to ensure the stability of the legal system, it is stipulated as a general rule that amendments to regulations may be introduced no earlier than a year after their adoption (Art. 35)[2].

The matter of a comprehensive review of the Civil Code of Belarus is connected with the approval by Decree of the President of the Republic of Belarus No. 9 dated January 10, 2018[3] of the Plan for drafting laws for the current year. In accordance with the new legal regulation, conceptual issues of interpretation of legal texts and practice of law enforcement, it is prudent to single out the following areas for improving the Civil Code of Belarus.

1. *Factoring in the enforcement practices,* the actualization of which is justified by the conflicting approaches of the courts to the interpretation of the current legislation, wherein the literal interpretation prevails, sometimes without the consideration of the nature and functional purpose of the legal provision or legal phenomenon. In general, as was indicated above, this is manifested in determining the boundaries of the dispositive behaviour of participants in a civil law relationship, based on the absolutization of the criterion "unless otherwise provided for by consent of the parties." On the other

[1] Decree of the Secretary of State of the Security Council of the Republic of Belarus "On improving the quality of legislative activity". (2016, March). Retrieved from http://mfa.gov.by/upload/12/nekotorie%20punkti.pdf

[2] Law of the Republic of Belarus "On Regulations" (2018, July). Retrieved from http://base.spinform.ru/show_doc.fwx?rgn=108640

[3] Decree of the President of the Republic of Belarus "On approval of the plan for drafting laws for 2018". (2018, January). Retrieved from http://pravo.by/upload/docs/op/P31800009_1515790800.pdf

hand, in some cases, we can observe changes of a cardinal nature in the interpretation of the institution in the absence of any objective legal prerequisites, which, as an example, has occurred with regard to the permissibility of applying such a method of securing performance of obligations as an advance to a preliminary contract (conclusion from practice changing court decisions: the legislation does not contain provisions prohibiting the security of an advance for a preliminary agreement).

2. *The consolidation of new civil law institutions.* This is primarily connected with the entry into force on March 28, 2018 of the Decree of the President of the Republic of Belarus dated December 21, 2017 No. 8 "On the development of the digital economy"[1], which has already been called unprecedented (at least in the post-Soviet and East European territory) [22; 23]. The subject of legal regulation of the Decree are public relations in the field of high technologies, designed for the use with the participation of a special subject composition of such relations – residents of the High Technology Park (HTP). At the same time, new institutions and phenomena for Belarus, such as options, convertible loans, were originally planned to be used as universal, which implies expanding the scope of legal regulation through the Civil Code of Belarus. In addition, certain provisions of the Civil Code, which are established and perceived as traditional, conflict with the provisions of the already existing Decree No. 8 (for example, in terms of permissibility of irrevocable and unlimited power of attorney), which, accordingly, involves the correction of the provisions of the Civil Code.

3. *Unification of civil legislation in the context of combining the legal regulation of the Member States of the Eurasian Economic Union,* which is a general tendency of improvement of Belarusian legislation.

In this context, it is necessary to mention the significant influence of the experience of Russian colleagues in the field of implementation of the Concept for the Development of Civil Legislation of the Russian Federation adopted back in 2008. E.A Sukhanov, upon giving an assessment of the reform of the Civil Code of the Russian Federation, drew attention to the fact that in essence the Concept identified three main aspects of work: 1) improvement of civil law registration of proprietary relations (property law); 2) clarification of the status of legal entities (corporate law); 3) factoring in the accumulated judicial practice (to a large extent concerning the law of obligations) [24].

In turn, as the result of the activity of the Working Group on Amending the Civil Code of Belarus displays, property law was practically not subjected to adjustments; the updating of legislation on legal entities has quite a reserved nature, being based on existing legislation and not providing for major changes [25]. At the same time, the first version of the draft law "On Amending Certain Codes of the Republic of Belarus" [26] proposes a number of fundamentally important, in some cases conceptual changes and amendments to the Civil Code of Belarus, which in general allows us to talk about its

[1] Decree No. 8 "On the Development of the Digital Economy: Decree of the President of the Republic of Belarus". (2017, December). Retrieved from http://president.gov.by/ru/official_documents_ru/view/dekret-8-ot-21-dekabrja-2017-g-17716/

reform. Within the framework of the General Provisions, these are: changing the approach to the matter of correlation of national civil legislation and international treaties; securing the decisions of assemblies as an independent basis for the emergence of civil rights and obligations, as well as introducing a new special chapter on "Decisions of assemblies" in the Civil Code of Belarus; expanding the list of methods of civil rights protection with such as invalidating the decision of the meeting and declaring the contract null and void; changing the concept of invalidity of transactions (transaction, which does not correspond to the requirements of the legislation, may be disputed if the legislative act does not establish that such a transaction is void); refusing to regulate the validity period of the power of attorney and legalizing the irrevocable power of attorney in the Civil Code of Belarus. The general and special rules of law of obligations were seriously revised, in particular, the following was proposed: legalization of the design of an optional obligation, security payment, permissibility of a security of a preliminary agreement with an advance, legalization of a framework agreement, option to conclude an agreement, option agreement, subscription agreement, convertible loan as universal legal categories, expansion of the scope of the factoring agreement (taking it beyond banking transactions), introduction to the Civil Code of Belarus of a legal regulation for the escrow account agreement, a significant change in approach to the partnership agreement, which, in fact, gives grounds to talk about the legalization of investment partnerships, etc. Section V of the Civil Code on "Intellectual Property" was radically redesigned. Many conflict rules of Section VII on "Private international law" were conceptually changed [27]. In general, we can talk about a comprehensive revision of the architectonics and provisions of the Civil Code of Belarus, which, nevertheless, is not devoid of inaccuracies, conflicts and inconsistencies, the elimination of which is possible by referring to law enforcement practice and international standards for the regulation of civil law relations. The above indicates the necessity of a unified, logically consistent, comprehensively justified Concept of reforming the civil legislation of the Republic of Belarus, the search for its possible optimal forms, which will be based on factors of civil law doctrine. It is worth noting that in conditions of modernization of the legal regulation of the republic, legal concepts and categories that are traditional for the Soviet theory of state and law continue to be used, although they require rethinking, clarification, enrichment of their substance and content, factoring in new historical realities and the social conditionality of the reform of civil legislation, which is determined by factors of various significance, the establishment and disclosure of which will provide an opportunity: a) to justify the prudence of its improvement, define clear directions for the further rule-making process; b) to predict further development and formation of new institutions of civil legislation and law; c) to contribute to raising the level of legal awareness, etc.

In turn, the scientific analysis of the concept, goals and objectives of the reform of the Civil Code of the Republic of Belarus is a necessary tool for the practical solution of the main objectives of the legal regulation of public relations, including the creation

of opportunities for improving national policy, which in the process of law-making develop, consolidate, concretize and acquire the objective property of law – consistency. Thus, the modern civil legislation of the republic is a set of legal provisions, a certain part of which meets the requirements of the time, although its other part is outdated and cannot regulate the corresponding legal relations, and does not meet the challenges of our time, indicating the necessity of reforming the entire system of national civil legislation, the development of which takes place in conditions of significant influence of international legal obligations and intensification of international cooperation.

CONCLUSIONS

The level of legal and technical perfection of legislation in a particular country is largely determined by specific historical tendencies and the issues of its functioning, which, in turn, is due to objective laws of the development of society, real conditions and needs of public life. The presence of a large number of disparate, inconsistent, declarative and overlapping provisions of regulatory legal acts regulating public relations complicates the process of their reform. The research of the shortcomings and contradictions of statutory instruments allows us to identify gaps in the very process of reforming civil legislation. The discrepancy between the results obtained and the planned ones testifies to the urgent need for the scientific development of modern approaches to reforming civil legislation in the context of modern tendencies in the development of society, which will facilitate the development of a promising systematic approach to the corresponding legal relations in the future. All this conditions the necessity of establishing a coherent system of legal acts that, in terms of their meaningful content and the effectiveness of implementation mechanisms, will be able to meet international standards.

The declaration of independence of the Republic of Belarus opened up new prospects for the development of domestic civil law science and civil legislation, which over time formed the legal regulation of civil relations in the context of various historical periods of the development of the state. Proceeding from the conceptual provisions of a systematic approach to solving the issues of law enforcement and regulation of legal relations in modern conditions, it can be argued that currently the main innovative dominant for the Republic of Belarus is the formation of a system of reformed civil law that is adequate to state interests and balanced, with consideration of the national factors of society evolution. In turn, the Civil Code of the Republic of Belarus, of course, is a significant achievement of domestic civilists, both scientists and practitioners, and lawmakers. However, like any law, it raises some issues and difficulties in its application. The negative and positive features of the current legal regulation of civil law relations in the republic, which are covered in the paper, in aggregate negatively affect both individuals and the state in general, moreover, the situation is aggravated by the unsystematic implementation of amendments to this statutory instrument,

as well as by levelling its fundamental importance in the system of civil legislation of the Republic of Belarus.

In fact, currently we can observe the chaotic implementation of changes to the Civil Code of the Republic of Belarus, however, the research provides grounds for stating the actualization of the development and adoption of the Concept of reforming the civil legislation of the Republic of Belarus on the basis of a single set of backbone reform factors. The implementation of such a Concept will facilitate the formation of an optimal, efficient, functional and effective system of reformed civil legislation; will ensure the implementation of international legal obligations of the Republic of Belarus; will contribute to the creation and development of qualitatively uniform measures for reforming the system of national civil legislation and its approximation to international standards; will provide an opportunity to gradually, but comprehensively improve the current Civil Code of the Republic of Belarus; will allow to unify the conceptual and categorical apparatus of civil legislation – thereby increasing the efficiency of legal regulation of the relevant legal relations.

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