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ON MODERNIZATION OF THE CIVIL CODE OF THE REPUBLIC OF KAZAKHSTAN AND EXPERIENCE OF FOREIGN COUNTRIES

The current Civil Code of the Republic of Kazakhstan (CC RK) was formed in the circumstances of the recently acquired state independence of Kazakhstan after the collapse of the USSR. It was originally adopted as a code of transition: although aimed at forming a legal basis for a market economy, it retained some of the former forms and methods of economic activity and interaction between subjects of civil relations. Among those issues that “to the greatest extent bear the features of the transitional period in the Civil Code” the issues of ownership and property rights, formation and activities of state (unitary) enterprises were indicated, but there were much more of such issues [1, p. 683 - 691].

At the same time, for some reason, the adoption of both the Model Civil Code for the CIS countries and the civil codes of the CIS was not seen as fulfilling the task of reforming the economy or the social system. It was assumed that "the code will be designed for a society with a certain economic system and a certain attitude to human rights and freedoms" [2, p. 662].

Such a specific definition of a task of the Civil Code seems debatable. And not all former Soviet republics have taken this approach. Of course, there is no point in talking about the Baltic countries at all: they were initially and certainly oriented to be part of Western Europe and the common European economic space, therefore their civil codes were completely based on legal standards, political and socio-economic tasks of the European Community / Union. A special path was chosen for the Civil Code of Georgia in 1997: it was developed on the basis of intensive consultations with German colleagues and in cooperation with them, it is also based on many concepts that are fundamentally different from the Model Civil Code for the CIS countries in its content and structure. Moldova and Ukraine chose their own path as well, but also with a fairly clearly stated orientation towards harmonization with Western European law.

Most of the CIS states, however, have adopted their civil codes on the basis of the CIS Model Civil Code or perceived its structure and many of its provisions. But, having initially adopted the Model Civil Code, the national civil codes still differed in their features. Moreover, over the years, some national civil codes began to noticeably move away from the content of the Model Civil Code, although retaining the conceptual aspects inherent to the transition period. The presence of such aspects has been due to the significant role that the state played in the economy in the 1990s, determining the content of entire sections of the Civil Code, including those related to persons of civil relations and property law structures of the state enterprise and the right of economic management, which were invented specifically for planned command economy of the USSR.

However, the creation of the CIS Model Civil Code served the purpose of facilitating the transition of the former Soviet republics to a market economy, and this Model became a consensus decision for them on what national civil codes could be during the transition from the Soviet system of economic management to the normal market relations of the free world.

But precisely the fact that the Model Civil Code and the national Civil Codes created based on the Model are the acts of a transitional period means that with the formation of a more or less visible system of market relations, civil law will need to be recodified in order to ensure the sustainability of development of each independent state and its full integration into the system of international humanitarian and economic relations in the context of achieving the goals of global development.

This transitional period has dragged on. The need for recodification, modernization, and other updating of the Civil Codes was already obvious in the early 2000s.

The first country among the CIS countries, where the civil code was adopted on the basis of the CIS Model Civil Code, and where it was publicly announced about the "serious improvement of the Civil Code", was Russia [3, p. 4]. However, today we can see that the updated Civil Code of the Russian Federation has remained a code of the transition period, causing even more active participation of the state in the economy,

subordination of the individual to the interests of the state apparatus, insufficient respect for human rights and their protection for the current stage of human development, while maintaining the underdeveloped property law and corporate law, an arrogant attitude towards international law and international economic cooperation. For some reason, the Civil Code of the Russian Federation (and the civil codes of other republics of the former USSR, as noted above) have been initially denied in principle to fulfill its objective role as a kind of program document which content would determine implementation of full-fledged socio-economic reforms (or at least allow them to be carried out) aimed at creating a truly democratic, social, legal, human-centric state, participating on an equal basis in the system of international relations and contributing to sustainable development. In any case, the experience of the modernization of the Russian Civil code seems to be of little use for Kazakhstan.

Despite the fact that so many amendments have been made to the Civil Code of the Republic of Kazakhstan all these years, many of them do not contribute to the qualitative improvement of either the Code itself or the social relations regulated by it. Our country remains a state where a comprehensive and properly substantiated recodification of civil legislation (whatever the results of the relevant work in other post-Soviet republics) has not even begun. At the same time, in addition to the Russian experience of what has been done or is happening in this matter in other republics of the former USSR is very interesting and useful (and in some places even inspiring).

So, for example, in Moldova the Civil Code adopted after the country gained the state independence (which was developed mainly taking into account the German Civil Code, and not the CIS Model Civil Code) has already been successfully modernized. The relevant amendments and additions to the Civil Code are an important step forward and represent the result of a large-scale work towards modernizing the national legal infrastructure, bringing it in line with the most modern standards used at the international level, as well as taking into account the problems of interpretation and application of the previous version of the Civil Code.

In 2019, Uzbekistan also began the work on development of a new version of the Civil Code. In 2020, a draft of the renewed Civil Code was placed for public discussion. It is not yet known what the final version of the updated Civil Code of Uzbekistan will be. However, the draft which was discussed in the second half of 2020 was prepared by authoritative civil-law scholars following traditions of continental law; it reflects all the significant institutions of private law inherent in the legislation of a modern democratic state which ensures the responsible exercise of civil rights and free entrepreneurship, the state which participates in economic turnover on an equal basis with other participants of the turnover.

Recodification of civil legislation is in full swing in Ukraine. A working group on recodification (updating) of the civil legislation of Ukraine was formed, which developed the Concept for updating the Civil Code of Ukraine [4, p. 6 – 8]. This Concept was actively and widely discussed by the legal community with an invitation of foreign lawyers to participate in the discussion. And in April 2023, we already had the opportunity to discuss the draft of the First Book of the updated Civil Code of Ukraine [5; 6].

In December 2022, a new Civil Code was approved in Tajikistan. The main novelties are the renewal of property law, allocation of provisions on personal non-property rights to a separate chapter, inclusion of separate chapters on the shared construction agreement for a residential building and the escrow agreement. However, at the same time, the new Civil Code of Tajikistan retains the regulation of state unitary enterprises, the right of economic management, and also does not propose a special reform of the norms on persons of civil relations, corporate law, the system of objects of civil rights and a number of other institutions of private law.

Despite the fact that the modernization of the civil code, adopted almost 30 years ago, is an urgent task today (which has been discussed in Kazakhstan for several previous years), there no systematic work to update civil legislation has been organized in our country. At the same time, the development of civil law and bringing civil legislation in line with both the realities of today and the main directions of socio-economic development in the long term is necessary.

However, approaches to the implementation of such updating of the law must be well-grounded and reasonable, and the methods of modernizing the legislative system should be used in such a way that they would serve the goals of sustainable development and ideological consolidation in society and the state. The conceptual and comprehensive modernization of the civil legislation of Kazakhstan shall not be delayed any more, and the updated Civil Code should become the main source for reforming all civil legislation.

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