

UDC 371.1:379.851 = 111

ON THE PRINCIPLE OF GOOD FAITH IN CIVIL LAW IN RELATION TO OBLIGATIONS ASSOCIATED WITH PROVIDING THE SERVICES ON HEALTH IMPROVING TOURISM

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Normative and doctrinal implementation of the principle of good faith in the civil law of the Federal Republic of Germany, the Russian Federation, the Republic of Belarus is examined. The peculiarities of performance of this principle in relation to obligations associated with the rendering of services in health tourism in Belarus are studied. Some conclusions about the need to fix the principle of good faith in the Law of the Republic of Belarus "On Tourism" are made and substantiated.

Civil law relations in various degrees are based on the common law and branch principles. With the adoption of the Civil Code of the Republic of Belarus in 1998 the legal principles found their concrete embodiment in the civil legislative regulations. Although scientists of civil law have not reached consensus on what principles should be attributed to the branch ones, and which of them should not be, there is no doubt *the principle of good faith belongs to the field of civil law*. After all, good faith is currently playing an important role in contractual relations.

Good Faith is a concept that attracts a lot of interest in modern law, not only because it performs certain functions, but also because it entails legal uncertainty that surrounds it.

According to Russian scientists V. Vorontsov and V. Mkrtchyan, good faith is one of the most contentious issues discussed, for example, in modern English contract law. This dispute has now attracted a lot of attention, especially in connection with an active discussion on the topic of fixing of good faith as a general principle of action at the conclusion, execution and abrogation of the contract. Further the authors state that the practice of dispute settlement only complicates the problem exponentially [1, p. 64].

In the German Civil Code it is established the prohibition on the exercise of the right against "good morals", or the liability to fulfill obligations considering the "good morals": "A debtor is to comply his obligations in the way as credibility and trust require considering the customs of the legal turnover" (§ 242 of the Civil Law Code of Germany) [2].

According to the professor of the Free University of Berlin Burkhard Brayg, there is no good faith" itself in German law: the principle is formulated as "Treu und Glauben", and translates as "faithfulness to the word" and trust between people. It is in this sense "Treu und Glauben" is used in the pre-contractual and contractual relations. And, for example, in order to refer to a bona fide purchaser some other terms are used in German law. The German scientist believes that good faith is not the norm, but the principle; the content of such a principle is not disclosed by paragraph 242 of the Civil Code of Germany – it exists "not dependent" on the norm, developing in the doctrine and judicial practice [3].

Close attention is paid to this principle by the Russian legislation. Y. Deyneko cites the following information: "In the explanatory memorandum to the Federal draft law "On Amendments to the first, second, third and fourth parts of the Civil Code of the Russian Federation ..." it indicates that the rules of good faith is a natural counterbalance to the rules that approve the freedom of contract and party autonomy, as well as the normative implementation of the principle of good faith will permit not only to establish the most important guidelines in the behavior of subjects of law, but also to apply wider measures of civil and legal defence in cases of unfair actions of turnover participants" [4].

Accordingly, paragraphs 3 and 4 of Art. 1 of the Civil Code of the Russian Federation as amended by the Federal Law of December 30, 2012, № 302-FL, first, set the duties of subjects of civil and law relations to act in good faith, and secondly, these subjects the right to benefit from their illegal (unfair) behavior were denied [5]. It should be noted that the Civil Code of the Russian Federation, was adopted in 1994, and the norms of good faith were included in 2012.

In furtherance of these provisions, a deployed version of Art. 10 of the Civil Code of the Russian Federation was adopted illustrating the system of the state attitude to the legal, but unfair behavior. Thus, paragraph 5 of Art. 10 of the Civil Code of the Russian Federation states that "Good Fair of members of civil legal relations and the reasonableness of their actions are assumed".

Commenting on these norms, I. Raskotikov notes that the exercise of civil rights, directed exclusively to cause harm to another person (*chicane*) acting in circumvention of the law with illicit purpose, and any other deliberately unfair exercise of civil rights, is classified as "abuse of a right" and is prohibited. The earlier law and order only refused to protect the acts constituting the formal components of the "*chicane*" and other obviously unfair behavior of civil right subjects. It is followed by the statement that the number of issues to be resolved by the court in the application of this norm, has doubled [6, p. 603]. Note that the term "*chicane*" is used in German law, Russian legislation does not contemplate it, but it is used in the Russian jural literature.

A. Ulyanov does not share the view that the good faith is the norm or principle, he believes that the good faith is not a legal concept and it is to be considered as one of supposed properties of social relations governed by civil law [7, p. 133].

In contrast to the Russian Civil Code, good faith as a principle was included in the originally adopted edition of the Civil Code of the Republic of Belarus of December 7, 1998. Article 2 of the Civil Code of the Republic of Belarus contains the following: "good faith and reasonableness of participants of civil legal relations are presumed, since otherwise stated (the principle of good faith and reasonableness of participants of civil legal relations)" [8].

Belarusian legislation does not give legal definition of the principle of good faith, although it is reflected in many articles of the Civil Code of the Republic of Belarus. As noted by V. Chyhir, the concept of "good faith" is evaluative. The meaning of good faith is revealed by the characteristic of bona fide acquisition of property from a person who had no right to alienate it. If the "acquirer did not know and could not know about it," he is a bona fide purchaser (paragraph 1, Art. 283 of the Civil Code of the Republic of Belarus). The concept of bad faith is revealed in the first part of Art. 284, conformably to the illegal owner of another's property. A person "who knew or should have known that his possession is illegal" is an unfair owner. Anyone who has acted unfair carries deleterious consequences under the corresponding article of the Civil Code [9, p. 34].

According to Art. 53 of the Constitution of the Republic of Belarus, everyone is obliged to respect the dignity, rights, freedoms and legitimate interests of others [10]. N. Bondarenko believes that the principle of good faith of participants of civil legal relations based on this constitutional clause permeates the whole civil law, as well as criminal, labor, family, housing, tax and other branches what does not permit to talk about the exceptional branch attribute of the principle. However, she admits that it is in the norms of civil law that the fundamental principle is revealed and claimed most complete [11]. According to the author the good faith in the Civil Code of the Republic of Belarus is fixed not as a principle, but as the presumption (as soon as good faith is presumed, *author's note – V.M.*). Further there is the statement of the need to develop these doctrinal concepts conformably to each type of civil legal relations.

It should be noted that the principle in question often goes together with the second component – the reasonableness of civil turnover participants. At least, it is set in the Civil Code of the Russian Federation and of the Republic of Belarus.

In this situation it seems possible to consider the principle of good faith in a separate context. This is due to the fact that many independent studies are devoted to the elucidation of the nature of good faith, and because both components (good faith and reasonableness) have no regulatory definition the clarification of their meaning requires further separate purposeful work.

Summing up the first part of this study, it is possible to draw the following conclusions.

Good Faith in one capacity or another is fixed in the legislation of many countries. At the same time among scientists there is some disagreement on the nature of the concept of "good faith": this is the norm, principle, presumption or property of social relations.

The legislation of the Republic of Belarus does not contain the legal definition of good faith.

In our opinion, based on direct interpretation of Art 2 of the Civil Code of the Republic of Belarus good faith should be considered as the principle of civil law, which requires its own legal and doctrinal fix to certain social relations.

Today tourist sector occupies a significant place in the world economy, while remaining one of the most popular and profitable activities.

Among the types of tourism they signify health improving tourism, which represents a "tourist trip of citizens of the Republic of Belarus, as well as foreign citizens and stateless persons to the establishments of health improving tourism with the aims of disease prevention, resort treatment, recovery, recreation and medical rehabilitation" [12 p. 155]. Among establishments of health improving tourism there are traditional resorts, dispensaries, health camps, recreation centers.

According to Gennady Bolbatovsky, the director of the National Center for Health Improvement and sanatorium treatment of the population at the Council of Ministers of the Republic of Belarus, during the first eight months of this year 159.5 thousand foreigners visited Belarusian health resorts for rest and treatment, it is

2,000 more than in January-August 2013. People from all over Europe, as well as from Israel and other countries, go to the resorts of Belarus for the spa treatment [13].

The relations in the field of health tourism to a greater extent are governed by civil legislation, the legislation on tourism and healthcare.

According to paragraph 2, Art 288 of the Civil Code of the Republic of Belarus "Liabilities arise from the contract, tort, unjust enrichment and of the other grounds specified in this Code and other legislative acts." In this situation, the bases of the rise of liabilities concerned with the rendering of services in the field of health improving tourism are: 1. Contract of Health Tourism service, concluded between the tourist (customer) and Tourism Organization (performer). The approximate form of the contract is approved by the Council of Ministers of the Republic of Belarus on December 11, 2014, № 1064 [14]. This contract is a type of agreement on paid services, established by Art 733 of the Civil Code of the Republic of Belarus. 2. The contract between the tourist organization and the organization of health improvement tourism, concluded on the reception of tourists for health improvement. The essence of this agreement is not clearly defined by the legislation: it may be a contract of agency, commission or other contract, determined by the Civil Code. Obviously, the definition and characteristics of civil law contracts concluded between the tour operator and the establishment of health tourism, is the subject of a separate study.

According to paragraph 1, Art 294 of the Civil Code of the Republic of Belarus: "The performance of the obligation can be entrusted by the debtor to a third part, unless the law or the terms of the obligation or his being does not imply the obligation of the debtor to perform the obligation personally. In this case, the promisee must accept the performance offered by the third person for the debtor". In the case of the rendering of health improving services the performance of the obligation is *always* carried out by a third part, that is, by the establishment of health improvement tourism. This fact not only complicates the relationship between the customer and the given establishment, but as further imposes on an organization the need to carefully and punctually perform its obligations. But this is a direct reflection of the civil-law principle of good faith.

Another important fact to be considered is the potential risk to life and health, present in the area of health tourism. On the one hand, the harm may be caused during the journey to a place of healing, the fault of the tourist organization. On the other hand, the customer may suffer during the rendering of health services, it means by the fault of the healthcare establishment. After all, health services are closely related to medical ones, in certain cases, during recovery medical services are performed. For example, by Art 1 of the Law of the Republic of Belarus "On health care" it is determined that "medical rehabilitation is a complex of medical services aimed at restoring of normal life of the patient and the compensation of its functionality, disturbed as a result of the disease" [15]. Although the legislation has developed certain civil law "mechanisms" of compensation for damage caused to the tourist, it is more important to prevent such harm. In this regard, the compliance with the principle of good faith by subjects is a very important condition for the activity in question.

Based on the above, it is proposed to make changes and additions to the Law of the Republic of Belarus "On Tourism", having included the following norm: "During the exercise of one's rights and fulfillment of obligations the parties of legal relations in the tourism sector must act in good faith, must not violate the rights and legally protected interests of other persons, to prevent harm to others".

The inclusion of this norm in the Law of the Republic of Belarus "On Tourism" will strengthen the guarantees of the rights of participants of tourist relations, including in the area of health improving tourism.

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UDC 371.015

THE IMAGE OF A MODERN PSYCHOLOGIST

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A psychologist evaluates, diagnoses, treats and studies behaviour and mental processes. Psychologists are generally described as being either “applied” or “research-oriented”. Psychologists face a number of complex challenges creating a positive professional image. A professional image of a psychologist is the set of qualities and characteristics that represent perceptions of a psychologist.

In our country an applied psychologist is a relatively new profession and many people, due to the lack of information about it, think that seeking out help can lead to getting a stigma of a "sick man". The words psychiatrist, psychologist and psychotherapist may be confused. A psychiatrist and a psychotherapist have graduated from medical school. A psychologist is a practitioner of psychology, the systematic investigator of the mind, including behaviour, cognition and affect [2]. The subject of his work is the state of mind of man, the inner experiences of person. Psychologists help people to find harmony, both inner harmony and with people around them. Psychologists help to ensure the health and well-being of all people: individuals, families, groups, and society as a whole. Psychologists apply their knowledge to a wide range of endeavors, including health and human services, management, education, law, and sports. They usually specialize in one of a number of different areas [5].

Applied psychologists help children adapt more quickly to new and changing conditions in schools and kindergartens. Psychologists diagnose levels of child's mental development, cognitive skills. They help children to increase their ability to learn about themselves and their environment [1]. They work with children who have problems in learning. School psychologists help children to cope with stress, improve classroom behaviour and academic performance. They collaborate with parents, teachers and school children to promote a healthy learning environment that focuses on the needs of children [4].

Psychologists work in business and industry, where they help young professionals to join the team, build relationships at work place. They conduct consultations and studies concerning the impact of psychological factors on human psyche. Psychologists can work with recruitment agencies to provide professional training.