

Prof. Vladimir Bogonenko, LL.D.*

Associate Professor,

Faculty of Law, Polotsk State University, Novopolotsk (Republic of Belarus)

ENSURING ECONOMIC RIGHTS OF CITIZENS OF BELARUS AND FRANCE: COMPARATIVE ANALYSIS

Abstract: *In this paper, we consider the rules of the Civil Code of the Republic of Belarus and the French Civil Code on property, property rights, mortgage, contracts on sale, and others. The focal point of research and analysis are citizens' property rights. In that context, we first explore the French Civil Code and its effects on the legislation of other countries, and analyze the Civil Code provisions which were amended after its promulgation. Then, we examine important international agreements in the field of human rights in this area, and compare the rules on property and property rights as envisaged in the French Civil Code and the Belarus Civil Code, respectively. The observed differences are presented in the provided table. In particular, we draw attention to the shortcomings of the Belarus Civil Code. In the conclusion, we propose solutions that may improve the effectiveness of legislation on property relations.*

Keywords: *Civil Code, France, Belarus, property, property rights, mortgage, sale contracts, human rights, economic rights, the law, the state.*

1. Introduction

The modern status of subjects of human rights in different spheres of activity is the result of long-time experience in law-making, most of which belongs to foreign law. A considerable role is given to the experience of the French legislator, as historically it has demonstrated outstanding examples of French rule-making in the field of human rights and civil law to ensure the rights of the owner and private interests, in general.

* redictor@yandex.ru

The history of France in the second half of the XVIII was distinguished by the presence and dissemination of reformist ideas on different spheres of society. Montesquieu, Voltaire and Rousseau are among the most famous thinkers in France. The significance of their work is illustrated in many of their well-known works, such as Rousseau's "The Social Contract or Principles of Political Rights" published in Amsterdam in the last quarter of the XVIII century (Rousseau, 1762: 170). Montesquieu gained popularity not only in France but also far beyond (Гласникъ, 1851: 3). Montesquieu's work was repeatedly cited in the discussion on the project of the French Civil Code of 1804, and among the enlightened monarchs of Europe it was considered a sign of good manners to refer to his correspondence with Voltaire (Кони, 1844: 159). The most famous act was the French Civil Code, which was a product of the Revolution of 1789. This period was mostly characterized by the fact that it was the first time to provide real protection of the rights and interests of the owner; the property institutions which had already been recognized in French law were improved, thus providing guarantees not only for the protection of rights of the citizens of France but also the rights of entrepreneurs.

2. Novelties in the French Civil Code

At the beginning of the XIX century, there were several laws that gave effect to the provisions contained in the French Civil Code. Interestingly, these laws were developed alongside with the Civil Code, which fully ensured harmonization of the legislative process and eventually contributed to the creation of the new French legal system and its uniform application. The Law Schools Act was adopted on 13th March 1804, specifically in order to ensure the study of the Civil Code as well as the new French substantive and procedural law. This Act marked the beginning of organized study and dissemination not only of the provisions of the Civil Code but also of new ideas which served as the cornerstone for creating the new French law. The law was the result of a sensible policy, aimed at promoting common French civil law.

One of the key guarantors of the implementation of the Civil Code norms, their consolidation and improvement was the notary system in France. The revolutionary events did not result, as might be expected, in the elimination of notaries who were in the minds of the French associated with the old regime. The **Notaries Act** was drafted but the discussion was not exactly too easy. The main discussion on the Draft Act took place on 2nd December 1802, and was accompanied by a significant number of comments and suggestions. Introduction to the protocol of the meeting shows that only one handwritten amendments to the articles of the Notaries Act turned 22 pages (Code civile, De L'imprimerie

de la République, 1804). In the end, the **Notaries Act** was promulgated on 16th March 1803 by Napoleon Bonaparte. Interestingly, the Act was promulgated a year earlier than the Civil Code. Thus, the hard work of the Code did not affect the discussion process and promulgation of the **Notaries Act**. In fact, the virtually simultaneous consideration of the two laws allowed legislators to do the job more efficiently.

2.1. Civil Rights

The French Civil Code was significantly updated over the last decades of the 20th century. The institutional basis of the Code and the desire of the legislator to preserve the tradition of rule making made it possible to amend the Code without changing its shape and structure. The Code was supplemented with new civil and legal institutions, and their implementation in the Code structure was provided by using the well-known structural elements: titles, chapters and individual articles. The structure of the Civil Code shows that the Civil Code contains the majority of the traditional of civil law institutions. This concept was observed in the Napoleon's Code for a long time. This code was intended solely for the regulation of civil relations, with a few exceptions. In the XX century, and especially since the second half of the XX century, the modern French legislator departed from the original plan of the founders of the Civil Code. This is primarily manifested in the fact that the Civil Code was increasingly filled with public law principles. It may be illustrated by Book I "Of persons", which was placed in front of Title I "Of civil rights". In contrast to the Preliminary Title, Title I "Of Civil Rights" was subject to significant changes, particularly in terms of its structure and content of the articles (for example, Articles 7 and 8 are the only ones provided in the original wording of the Act of 26th June 1889.

Of particular importance is Article 8 of Title I, which says that every French person enjoys civic rights. Expressed constitutively, this provision assumes its implementation by means of norms of other legislative acts of the Republic of France and the international human rights conventions. The French legislative acts are: a) № 46-940 Act of 7 May 1946 relating to natives of the French overseas territories, including Algeria; and b) № 70-589 Act of 9 July 1970 relating to the content of the civil rights of the commune in the overseas territories.

Among the international acts, whose provisions were to be implemented into the French law, are: a) the European Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4.XI.1950 «*Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales*» (Decree № 74-360 dated May 3, 1974) (Recueil Dalloz et BLD 1974. 181); and b) the International Covenant on Civil and Political Rights, adopted by the General Assembly of the

United Nations on 19 December 1966. «*Pacte international de New York relatif aux droits civils et politiques*» (Decree N° 81-76 dated 29 January 1981) (Recueil Dalloz et BLD 1981. 79).

Article 9 of Title I of Book I acts as amended by Act N° 70-643 of 17 July 1970. Article 9 para. 1 contains the important rule that everyone has the right to respect for his private life. Act N° 83-520 of 27 June 1983 extended the application of Article 9 of the Civil Code in the French overseas territories (Recueil Dalloz et BLD 1983. 315).

Act N° 78-17 of 6 January 1978 found that information shall not be injurious to a person's identity, nor privacy, nor personal or political freedom (Recueil Dalloz et BLD 1978. 77).

Article 10 of the Civil Code contains provisions relating to legal action and collaboration with the court, assessed as the promotion of justice with a view to establishing the truth. This article acts as amended by Act N° 72-626 dated 5 July 1972.

To a large extent constitutively expressed, Article 11 of the Civil Code establishes that an alien (foreigner) in France enjoys the same civil rights as those that are granted or will be granted to French nationals by the international agreements (treaties) of the State to which the foreigner belongs. Ordinance N°45-2658 dated 2 November 1945 (Recueil Dalloz 1946. L.24) established the general conditions of entry and residence of foreigners in France. Subsequently, these provisions were developed in various legislative acts, including: Act N° 93-1027 dated 24 August 1993; Act N° 84-622 of 17 July 1984; Act N° 52-893 of 25 July 1952; Decree N° 54 -1055 of 14 October 1954; Decree N° 60-1066 of 4 October 1960; Act N° 69-3 of 3 January 1969; Decree N° 94-211 of 11 March 1994. Articles 12 and 13 of the Civil Code (containing provisions from the **Nationality Act of 10 August 1927**) were repealed.

2.2. The principles of public law

The most significant changes in Title I (on Civil Rights) of Book I of the Civil Code were introduced in Chapters II and III. Chapter I (on the Enjoyment of Civil Rights) essentially repeated the wording provided in Title I (on Civil Rights). The current structure of this chapter includes Articles 7, 8, 9, 9-1, 10, 11, 14 and 15. Notably, Article 9-1 (enacted by Act N° 93-2 of 4 January 1993) refers to the presumption of innocence.

Chapters II and III contain rules on the new Civil Code institutions, which may be atypical in terms of the meaning and the basic principles of the Civil Code. The content of these chapters is largely burdened by public law principles. Chapter II

(on Respect of Human Body) contains provisions on the rights and safeguards concerning the respect for the human life, body and integrity. This chapter contains eleven articles (Articles 16 to 16-9). Article 16-1 states that human body is inviolable, that everyone has the right to be respected in relation to his body, its elements and its products, which may not be subject to property rights. According to Article 16-1-1 respect for the human body does not cease with death. These rules take into account the version of the Act № 94-653 of 29 July 1994 as a separate legislative act. The provisions of this Act could be used without the Code, but their further development would be confined to Act № 94-653 of 29 July 1994. These rules could be placed in another code which was adopted earlier; it is the Code of Public Health (*Code de la santé publique*), which was adopted in 1953 and then significantly revised in 2000. But the French legislator has found it essential to include provisions on the rights to personal integrity and dignity and respect for the human body in the Civil Code (Богоненко, 2014: 175).

3. Comparison of the French Civil Code and the Civil Code of Belarus

The French Civil Code of France is an example of the simultaneous use of traditional codified forms (Code), the traditional name (civil) and non-traditional content (significant increase in the number of public law rules). The French Civil Code demonstrates a bright example of how human rights' norms migrate from the scope of public law into the private law. In this sense, it is the code name of default value, suggesting a broad interpretation of the entire range of relations, which are governed by this codified act.

The French Civil Code was borrowed by many countries. It is a good example of consolidation of ownership rights (Book II on Property and Various Modifications of Ownership, Articles 517 to 639). The Civil Code is often called "the economic constitution". The provisions on the sale of goods are envisaged in Book II Title VI (Of Sales), covering the nature and forms of sale, the parties and object of sale, parties' obligations, delivery, warranty, avoidance and recession of sales, redemption, auction, and assignment of claims and other incorporeal rights (Articles 1582 to 1701).

The Civil Code of the Republic of Belarus (1998) is a relatively new code. Table 1 provides a comparative overview of the legal rules envisaged in the French Civil Code and the Belarus Civil Code, which illustrates the observed differences between the two codes.

Table 1. Comparison of the French Civil Code and the Civil Code of Belarus

Civil Code (France)	Civil Code (Belarus)
Transformation of economic human rights in the private-law-based forms: freedom of industry and commerce - legal entities (foundation, legal capacity, chartered capital, etc.).	
Book I Title I on Civil Rights Book II Chapter II on Movables	Chapter III Citizens (Natural Persons) Chapter IV Juridical persons
Citizens as Civil Law Subjects. Capacity. Right to engage in entrepreneurial activities. Social and legal aspects of the legal personality. The rights of foreigners and stateless persons, etc.	
Book I Title I on Civil Rights	Chapter III Citizens (Natural Persons)
Commercial rights of the citizen. Freedom to acquire property and real property	
Book III Title VI on Sales Art. 1582-1701	Chapter 30 Purchase and sale Art. 424-537

As the focal point of research and analysis in this paper are citizens' property rights, we will focus on property-related issues. In accordance with Article 13 of the Constitution of the Republic of Belarus, property can be public or private. The State guarantees to everyone equal opportunities of unlimited use of property for entrepreneurial purposes. The State regulates economic activities on behalf of man and society. It provides direction and coordination of public and private economic activity for social purposes.

The subsoil, waters and forests are the exclusive property of the state. Agricultural land is owned by the state. The law may specify facilities that are only owned by the state, or specify the special terms for their transition to private ownership.

At this point, we draw attention to the shortcomings of the Civil Code of the Republic of Belarus considering the rules on property, property rights, mortgage, contracts on sale, and others. It is necessary to supplement the Belarus Civil Code with the rules of movable and immovable property, registration of real estate and disputes on real estate. The Belarus Civil Code can also be supplemented

by the rules on partnerships. These additions may improve the position of the owners. On the whole, the Belarus Civil Code lacks the following rules:

- property formation in general
- real property unit and its boundaries;
- legal relations between neighbours;
- special provisions on compulsory purchase;
- right to electrical power;
- priority on grounds of title registration;
- partition and amalgamation;
- transfer of receivables and other rights;
- lawful excuse;
- junior lien;
- fraudulent sale;
- ability to repurchase;
- effect of a party being dispossessed of real property following protest, etc.

As compared to the French Civil Code, it may be noted that the Civil Code of Belarus contains a significantly smaller number of provisions on sale of goods. In contrast to France, in Belarus the rules on mortgage are not contained in the Belarus Civil Code; they are mainly located in the special Mortgage Act. The Civil Code of the Republic of Belarus includes only a few rules on servitudes.

4. Conclusion

As compared to the French Civil Code, the Belarus Civil Code is a relatively new code. However, the provided analysis of the legal rules envisaged in the two codes indicates considerable differences, particularly considering the rules on property, property rights, mortgage, contracts on sale, and others. In Belarus, the rules on mortgage are mainly located in the separate Mortgage Act, and the Belarus Civil Code includes only a few rules on servitudes. Considering the observed shortcomings of the Belarus Civil Code on property-related issues, the inclusion of these provisions into the Belarus Civil Code may significantly improve the effectiveness of legislation on property relations. It is particularly important in light of the new rules relating to property envisaged in the French Civil Code, which belong to the sphere of personal rights. Such a new institute

is the institution of civil agreement of the community, envisaged in Book I of the Civil Code.

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Dr Vladimir Bogonenko,

Ванредни професор Правног факултета,

Државни универзитет у Полотску, Новополотск (Република Белорусија)

ОБЕЗБЕЂИВАЊЕ ЕКОНОМСКИХ ПРАВА ГРАЂАНА БЕЛОРУСИЈЕ И ФРАНЦУСКЕ: КОМПАРАТИВНА АНАЛИЗА

Резиме

У ово раду се анализирају одредбе Грађанског законика Републике Белорусије и француског Грађанског законика које се односе на имовину, имовинска права, хипотеку, купопродајне уговоре, и друга слична права. Нарочита пажња посвећена је имовинским субјективним правима грађана. У том контексту, најпре истражујемо француски Грађански законик и његов утицај на законе других земаља, уз анализу измена и допуна овог законика наког његовог проглашења. Затим разматрамо одредбе важних међународних споразумима у области људских права, и дајемо компаративну анализу прописа који се односе на имовину и имовинска права грађана садржана у француском Грађанском законнику и Грађанском законнику Републике Белорусије. Уочене разлике су представљене у посебној табели, при чему се нарочито скреће пажња на недостатке Грађанског законика Републике Белорусије. У закључном делу рада, предлажемо решења за унапређење ефикасности законодавства у области регулисања имовинских односа.

Кључне речи: *Грађански законик, Француска, Белорусија, имовина, имовинска права, хипотека, купопродајни уговори, људска права, економска права, право и држава.*