

LEGISLATION ON BUSINESS: THE INTERNATIONAL EXPERIENCE AND THE PROSPECTS OF DEVELOPMENT IN RUSSIA

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ABSTRACT

Within the presented research the private law of the European states relating to the Romano-German legal system — Germany, Poland, France, Estonia is analyzed. The authors draw a conclusion that the commercial trade codes of the considered states represent result of convergence public and private law has begun as their norms carry out legal regulation of the relations having the public and private law nature. As a result of a research the authors come to a conclusion that the dualistic system of private law of the considered European states can be characterized as having a number of shortcomings. The main shortcoming is that allocation in the independent codified regulatory legal act of the norms directed to a regulation of enterprise legal relationship hasn't allowed to avoid fully duplication of provisions of this act with provisions acting in each of the considered states of a source of civil law. On the basis of stated by the authors it is summarized that perception of the foreign experience given in article is represented inexpedient. Therefore, dualism of private law in understanding and the form of expression similar to the countries, approaches to which legal regulation of enterprise legal relationship have been lit within the real research, can't be considered accepted for the Russian law and order.

Keywords: *Dualism, private law, convergence, enterprise law, economic law, commercial code, trade code.*

INTRODUCTION

Business activity in modern Russian law is regulated by a large number of the regulations relating to branches of public and private law. Norms of public law regulate the relations constructed by the vertical principles and arising between legal entities and authorities. This category of legal relationship arises concerning management of business from public authorities. Norms of private law regulate the legal relationship submitting to the horizontal principles developing between legally equal subjects and arising concerning implementation of the activity directed to generation of profit. The norms having the different legal nature are among themselves in close interaction, having a common goal - complex regulation of legal relationship with participation of legal entities .

In the scientific sphere, however, the discussion about allocation from the civil economic law cannot be considered complete that doesn't exclude the prospect of acceptance at the legislative level of the independent codified act directed to regulation of enterprise legal relationship - the Enterprise (Economic) or Trade code. This factor has defined the purpose of the real research - the analysis of prospect of improvement of the legislation on business in the light of judgment of expediency of transition to dualism in system of the Russian private law .

Object of research is the illumination of tendencies of development of the Russian legislation on business based on studying of the international experience in this sphere. The theoretical basis of a research was

made by works of the following authors: V. S. Belykh [1], O. S. Ioffe [2], V. V. Laptev [3], L. A. Lunts, E. A. Fleyshtits [4], V. F. Yakovlev, V. S. Yakushev [5] and others. Each of works of the marked out scientists represents an independent link in formation of a theoretical basis of the legislation on business activity. At the same time, discrepancy (and even somewhat polarity) views of representatives of civil science of a problem of allocation of the norms regulating a business procedure in the independent regulatory legal act, creates prerequisites for need of carrying out the additional scientific research reflecting the current state of economy and the legal framework in which she exists.

METHODOLOGICAL BASIS OF A RESEARCH.

When carrying out a research also specific scientific methods have been used generally scientific (logical and historical, system and structural approach, the analysis and synthesis, etc.) (comparative and legal, concrete and sociological, formal and logical, a method of comparative jurisprudence). Use of various methods has allowed to design the main theoretical conclusions and offers on standard regulation of the analyzed legal relationship.

MAIN PART.

Formation of provisions of acts is traditionally preceded by the work which is carried out in the scientific sphere, directed to theoretical justification of content of rules of law. In the Russian jurisprudence during a long period there is a discussion about isolation as independent branch of the law of the enterprise (economic) law .

Scientific polemic about the economic law inevitably follows the general legal ideology characteristic of a certain period. During existence of a socialist system, since 20-30th of last century, she followed from the approach proclaiming refusal of a private property that had to lead to refusal of civil law, characteristic of the law of the bourgeois states. With transition after the termination of existence of the USSR to market conditions of managing scientific polemic about the economic law has received a new basis and a form of expression: a) legalization of the activity directed to generation of profit became a prerequisite for change of the name of the proved branch of the law: the branch is law, regulating the legal relationship arising in the sphere of business began to be called not as the economic, but enterprise law; b) as a result of "falling of the Iron Curtain", opening of borders, including information, has led to a possibility of better and detailed acquaintance with the legislation of foreign countries, practice of its application, having created thereby the wide field for discussion of prospect of his loan with the subsequent implementation in the Russian legislation .

Thus, formation of the legal framework for the Russian market economy is carried out against the background of search of the answer to a question: whether the Russian legislator should apprehend the approaches of the foreign states developed throughout centuries and to pass to the dualism of private law assuming accurate differentiation of the norms governing the enterprise and private-law relations arising in different spheres.

As potentially accepted for Russia experience of the European states relating, as well as the Russian Federation, to the Roman-German legal system can be considered. The dualism of private law in the different states located in the designated region can have different manifestation: in the form of parallel operation of civil and commercial or civil and trade codes .

In Estonia [i] legal regulation of the relations with participation of legal entities is carried out by standards of the Commercial code adopted on February 15, 1995 [ii]. The contents of the document are submitted by the norms having the private-law and public nature and, therefore, directed to a regulation of the private-law and public relations. In provisions of the Commercial code of Estonia the maintenance of the

concept "entrepreneur" reveals, the list of commercial associations is provided, the order of their creation and implementation of activity is defined. Regulations on a trade name (the Art. of Art. 7 - 15), associations (full association — part IV, limited partnership — part V, the limited liability company — part VI), joint-stock companies can be provided as an example of the standards of the Code governing the relations in the private sphere (part VII).

The norms making the maintenance of part II of the Commercial code of Estonia, devoted to an order of maintaining the commercial register can serve as an example of the norms directed to a regulation of the legal relations which traditionally have the public nature. The relations arising concerning entering of records into the register should be carried to number public as they are manifestation of function of the state on control of business .

Along with the Commercial code in Estonia the Law on the general part of the civil code from 3/27/2002 (has come into force 3/23/2014) works [i]. Provisions of noted Law are devoted to definition of legal status of natural, legal entities and things; a legal regulation of transactions, representation, terms, including terms of limitation period. Standards of the Commercial code of Estonia and the Law on the general part of the civil code of Estonia enter interaction among themselves regarding the norms devoted to legal regulation of legal entities: general provisions on legal entities are fixed in the provisions of the law; in the Commercial code these norms are specified in relation to commercial legal entities.

In the modern law of France along with the French Civil code of 1804 [ii, Borghetti J-S. p. 181-182; Josselin J-M., Marciano A. p. 193-203; Loussouarn Y. p. 235-270; Valce C. p. 23-35] (further — FGK) the Commercial code of 2000 [iii] adopted by Ordonans of the government of September 18, 2000 No. 2000 — works 912 [iv]. Provisions of FGK regulate legal relationship with participation of citizens: family, hereditary, relations of property and others. Title III FGK contains general provisions on obligations and contracts. Independent titles are devoted to regulation of contracts, including the contracts signed in the course of implementation of business activity: purchase and sale (Title VI), exchange (Title VII), hiring (Title VIII), contract of association (Title IX) and others .

The contents of the Commercial Code of France are made 2000 by nine books among which the following: "About commerce in general", "About commercial associations and associations of economic cooperation", "About some types of sale and about exclusivity conditions", "About freedom of the prices and the competition", "About commercial securities and about providing", "About commercial courts and about the organization of commercial activity". Apparently from the provided formulations, the Commercial code of France 2000, also, as well as the Commercial code of Estonia, is the codified act which contents are made by the norms governing the relations having both the private-law, and public nature. At the same time the leading role is assigned to standards of public character among provisions of the considered document.

The second form of dualism of private law is shown in simultaneous operation of civil and trade codes. Germany, Poland can be given as an example of the states in which law she takes place .

The private law of Germany consists of the German Civil Code accepted in initial edition on August 18, 1896 (Bürgerliches Gezezbuch [i], further — GGU), and the German Trade Code of May 10, 1897 (Handelsgezezbuch [ii], further — GTU), come into force since January 1, 1900 [iii, Jürgen G. p. 5-6; Peter R. p. 65]. Provisions of GGU are directed to definition of legal status of natural and legal entities, things and animals; legal regulation of transactions and obligations, terms, hereditary relations, delicts. GTU contains regulations on a trade name, sales agents and brokers. Essentially important it is represented to pay attention that among provisions of GTU of norm directed to regulation of activity of partnership, and also the contracts signed in the course of implementation of business activity — purchase and sale, rail transportation of freights and passengers. Inclusion in GTU of regulations on partnership, in

our opinion, leads to a semantic gap in the norms directed to regulation of activity of the commercial organizations: part of them contains in GGU, a part — in GTU. In this aspect of provision of GTU about partnership see as the norms which are "pulled out" from the general set of the rules fixed in GGU and directed to a regulation of creation and functioning of the organizations which activity is directed to generation of profit. The similar situation develops concerning the enterprise contracts regulated by provisions of GGU. In this regard, concerning standard fixing of the contractual designs included in GTU we believe expedient to agree with R. Kniper pointing that their place, "without any doubt, in the Civil code "[6].

The private law of Poland was formed under the influence of the French legislation that is caused taking place during a short period of domination of France in the territory of the Warsaw principality. The specified factor has caused that before introduction of the Polish trade code of 1934 in the territory of the designated state the retsipirovanny French trade code worked without changes. Now the Trade code of 1934 was replaced the provision adopted in January, 2001. The code about commercial firms [7].

CONCLUSIONS.

1. The analysis of experience of application of dualistic approach in private law of the considered states allows to draw the following conclusions:
2. Allocation in the independent codified regulatory legal act of the norms directed to a regulation of enterprise legal relationship hasn't allowed to avoid fully duplication of provisions of this act, with provisions existing in each of the considered states of a source of civil law.
3. Commercial Trade codes of the considered states represent result of convergence public and private law has begun as their norms carry out legal regulation of the relations having the public and private law nature.
4. Inclusion into the Commercial Trade codes of the states which law is considered within the real research of norms on commercial legal entities leads to a logical dissonance in their legal regulation: a part of norms contains in a source of civil law, a part, in defiance of integrity and the sequence of approaches to a legal regulation of the enterprise relations, – in the Commercial or Trade code.

SUMMARY.

Stated within the real research demonstrates that the dualistic system of private law of the considered European states can be characterized as having a number of shortcomings. The main shortcoming, in our opinion, is her inability to accurate differentiation of a coverage of the civil and commercial (trade) code that in some cases leads to duplication of their norms, stay among themselves in a condition of a logical dissonance. Specified allows to come to a conclusion about lack of expediency of perception of this approach by the Russian legislator and transition from monistic to dualistic system of the Russian private law.

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