PREREQUISITS FOR ADOPTION, STRUCTURE AND CONTENT OF THE CIVIL CODE OF FRANCE OF 1804

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SUMMARY

This article is dedicated to research the legal nature, structure and content of the Civil Code of France 1804. The question of the idea of the Code Napoleon Bonaparte, especially his creation. The basic provisions of the Civil Code of France in 1804, made the interpretation of regulations. It analizes the instituts of rights, obligations, family relations and inheritance of the Code Napoleon. Considerable attention is paid to the design of articles of the Code that reveals the level of contemporary projection. Proved that the structure of the Civil Code of France in 1804 was the result of institutional influence of Roman private law. Clarify the meaning of the Code Napoleon as a great success of French civil law.

Key words: French Civil Code, the Code Napoleon of 1804, Codification of law.

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Статья посвящена исследованию правовой природы, структуры и содержания Гражданского кодекса Франции 1804 г. Рассмотрены вопросы развития идеи Кодекса Наполеона Бонапарта, особенности его создания. Проанализированы основные положения Гражданского кодекса Франции 1804 г., проведено толкование их предписаний. Анализируются институты прав, обязательств, семейных отношений и наследования по Кодексу Наполеона. Значительное внимание обращено на конструкцию статей Кодекса, позволяет выявить уровень тогдашнего нормопроектирования. Обосновано, что структура Гражданского кодекса Франции 1804 г. была институциональной вследствие влияния римского права. Раскрыто значение Кодекса Наполеона как выдающегося достижения французской цивилистики.

Ключевые слова: Французский гражданский кодекс, Кодекс Наполеона 1804г., кодификация права.

Relevance of the subject is that the improvement of mechanisms of civil control of property and personal non-property relations in Ukraine makes it necessary to recourse to international legal experience, one of the most prominent examples of which is the Code Napoleon Bonaparte of 1804. Moreover, a significant number of principles, norms, institutions and pandect structure are relevant to that of the current version of the Civil Code of Ukraine. The study of these aspects of the history of French private law, to which Ukraine is often compared in the form of government and territory, undoubtedly, should have an objective reflection in the development of Ukrainian civil law today.

Guided by these considerations and attempts to recreate the historical and legal reality in the codification of the civil law of France during the reign of Napoleon Bonaparte, **the purpose of this article** is the study of legal nature, structure and content of the Civil Code of France 1804.

As a result of the French Revolution of 1789, there began a new phase of social development of France, which started to build relationships not on feudal principles, but on the principles of freedom and equality. This required new legislation that would reflect the spirit of the era, but the real results of codification of the basic branches of law had not been made until the reign of Napoleon Bonaparte. After a lengthy discussion in the State Council, taking into account the comments and suggestions of Cassation and Appellate courts, and after passing of the codification project the specific procedures for its approval in the legislature, the Act of 30 vantoza XII, (in March 21, 1804) the set of civil rights laws of France was enacted under the name of the French Civil Code. After three years, taking into account the achievements of Napoleon, as well as the fact that the Code began to operate in other countries, this legal instrument was called the Code Napoleon [2, p. 848].

In jurisprudence a code is considered to be a systematic legislation that contains the norms for the specific branches of law and has the following properties: a high level of normative array arrangement; the adoption by the representative body of the state in the manner of prescribed procedures; is the result of legislative activities of the state; has a normative character; regulates important issues of the relevant areas of public relations; differs by its inherent object (type of social relations) and method of legal regulation; may regulate relations both within the sector and the sub-sector of legislation; produces legal effects and occupies a leading position in the hierarchy of legal acts in a particular branch of law; has the determined shape and structure, which provides for the presentation of rules by parts, chapters, and articles; contains norms that reinforce the principles of the relevant branch of law and reflect its characteristics [11, p. 59].

Articles in the codes are placed in strict logical sequence. Each article has independent meaning and yet is part of the code. A fixed code reinforces the general principles of relevant branch of law and excludes repetitions and contradictions between its articles. A significant part of code necessitates the use of various forms of categorization in its construction: parts, sections, subsections, chapters, articles, paragraphs. Using these techniques a legislative codification act obtains necessary harmony, clarity, accessibility, easiness for use and application [6, pp. 115-116].

The Civil Code of France of 1804 consists of a general introduction, three books, and 2281 articles. The Books of Code were structurally divided into titles, chapters, divisions, and these, subsequently, into articles. The Books were formed by objective criteria, thus they gained the following names: *Law of Persons, Law of Property and Various Types of Property, Law of Acquiring Property.* This structure corresponded to

the system of Roman private law: persons, things, obligations, inheritance [10, p. 392]. Given these factors the structure of the Civil Code of France of 1804 can be regarded as a classic example of institutional building of the code.

The institutional system of codification takes origin from ancient Rome and its author was the then attorney Guy. He wrote the famous Legal work «Institutions», which consisted of three treatises: about persons, about things, about civil complaints [7, p. 131]. Thus, the institutional system provides for the division of code by parts according to objective criteria without separating out the general part. Alternative institutional system is a pandect codification system, which provides for general and special parts of code [6, pp. 115-116]. Its name comes from the *Digesta or Pandectae* of the Emperor Justinian. The *Digesta* were central for Justinian's legislature, and consisted of 50 books, which in turn were divided into titles and fragments [5, p. 63].

The level of legal technique, reflected in the Civil Code of France of 1804, was quite high for the time. Structure of code, the construction of its rules became the best examples of European rule-making projection of the nineteenth century. Although, at that time there was not yet so usually used today distribution of parts of the Civil Code into the institutions, but the first steps in this direction have already been made. Articles of the Code Napoleon were built concise, informative, and mostly contained only the disposition of legal rules that is also characteristic of the modern civil code. Sanctions usually were not installed by code with the exception of the rules on civil death and some others. Also, quite rare articles contained the hypotheses of legal rules. As an exception, we can cite art. 1361, which states: «if a party refused to take the oath that should be made accordingly to the law,... then that party loses the right to claim in court» [8, p. 468]. The emergence of a blanket disposition articles – those that refer to other regulations – in the Code Napoleon, can be placed among the successful methods of legal technology. For example, art. 717 provided that the legal regime of ownership of movable things in the sea, thrown into the sea shore objects, plants, and herbs that grow on the beach, was determined by special rules [4, p. 49].

Introduction (introductory title «About announcement, effects, and application of rules in space») to the Civil Code of 1804 consisted of 6 articles. They discussed the general conditions of discharge of regulations set out in the Code, its guarantees, and judicial protection of civil rights. Thus, art. 4 of this Code stated that a judge who refused to consider the civil case on the grounds that the legislation does not contain appropriate provisions should be brought to legal liability as one that precludes from the administration of justice [8, p. 259]. Apparently, the legislator in this way allowed judges the use of other sources of law, especially legal practices.

Book One, which was called «Of Persons» determined the legal status of subjects of civil legal relations and consisted of ten titles. At the heart of the legal status were situated principles generated by democratic revolution – freedom and equality. Rights, set out by the Civil Code, were distributed according to its provisions to «all French», thus, were not applicable to foreigners. The loss of all civil rights (including loss of property) could occur as a result of the so-called «Civil death», which was a special punishment for the criminal law used in that time. It should be noted that the Civil Code of 1804, despite its democratic nature, did not made equal the rights of men and women. Thus, women were not allowed to be witnesses at the conclusion of civil status actions, wills, and more. The disadvantage of the Book One of the Civil Code of 1804 was also the fact that it did not contain the concept of a legal person, thus the subjects of civil legal relations were individuals only [10, p. 392].

A separate unit of legal rules in the Book One were articles governing marriage and family relations, because they were devoted 5-10 titles. Art. 144 of the Civil Code set the marriage age for women at 15 years and at 18 for men [8, p. 316]. For marriage there was required the presence of free consent of both parties. Man upon reaching the age of 25, and a woman – until she is 21-year-old, could not marry without parental consent [9, p. 143]. Art. 212 placed on participants of the marriage the duty of mutual loyalty, care, and support [8, p. 323].

Husband was required to support a wife, to take care of her, and protect her interests. Wife had to obey her husband and his decision about their place of residing and move. A married woman, without the consent of her husband, did not have the right to take part in court, except the cases when she was engaged in legal liability. A man had the right to divorce unilaterally in case of faithlessness of his wife. Instead, a wife could divorce when her husband kept a mistress in their common home. Both parties had the right to require divorce in case of property abuse, ill treatment or grave abuse of another spouse. Although the property of a married couple was considered to be a joint property of the spouses, only the husband could take charge of it. Illegitimate children had no rights by the Code Napoleon; in case of their adoption, they acquired certain rights but unequal to the rights of children born in the wedlock [10, p. 393]. The Code had also regulated the relations of guardianship.

The Book One of the Napoleonic Code ended with the articles on court adviser. He was appointed by the court for wasteful people to limit their expenses. Without the permission of the court adviser a spendthrift had no right to perform any transactions of material nature [8, p. 361].

The Book Two of the Civil Code of 1804 under the title "Of Property and Various Types of Property" defined legal regime of managing property rights – the rights of ownership, possession, use, servitudes, etc.. It consisted of four titles. Unlike the pre-civil rights French Civil Code of 1804 divided the property into movable and immovable. Since one of the objectives of the French Revolution was to strengthen the legal protection of private property, the legal institution of property in the Code Napoleon was in the forefront of all property rights. Art. 544 of this document defined property as the right to use and manage things in the most absolute manner. In this Code regulation legislators legally reinforce the immunity and inviolability of property rights. An exception to this principle was seizure of property for reasons of public necessity with adequate and prior compensation. Existing of right to own things generated the ownership of its fruits and belongings.

Art. 522 provided that «Ownership of land includes ownership of what is above, and what is below» [3, p. 551]. Consequently, this meant that the land

owner becomes full and absolute owner of all natural resources found on his site. The Code Napoleon distinguished three types of property depending on the subjects of law: 1) individual, 2) the state or the public, and 3) communal. Totally four groups of things were distinguished: 1) property itself (land, house); 2) things that belong to the property for its purposes (furniture, livestock, etc.); 3) other moving things; 4) especially valuable moving things (money, jewelry, private documents, collections) [1, p. 499].

The third title of the Book Two of the Civil Code of 1804 defined and distinguished such property rights as ownership, use and accommodation. According to art. 578 an ownership meant the right to use the thing that was owned by another person, in a way its owner does it, but with preservation of its integrity [4, p. 27].

Many articles of the Book Two of the Napoleonic Code of 1804 was dedicated to servitudes. This document in art. 637 defined servitude as the owner property's burden imposed on it to give other subjects the opportunity to use it. According to the Civil Code the servitudes were divided into servitudes of things and personal servitudes, set by law and under contract [10, p. 395].

The Book Three of the Code Napoleon was the largest by dimention (XIX titles and 1571 articles) and was entitled «Modes of Acquiring Property». It reinforced the inheritance and contract as the main conditions of acquiring property rights. Thus, first of all, it had regulated relations of inheritance and contract law. In addition to these two main modes of acquiring property rights the Code also provided: joining or entering your property by another thing, as a result of prescription ownership, etc. [9, p. 145].

The Book Three began with the general provisions. They identified a variety of general rules concerning property, including such that had no owner. Art. 713 of the Civil Code of 1804 established that the things that did not have owner belonged to the property of French people. Among interesting provisions there were those of acquiring property rights over the treasure, which were obtained by a person who found it on its land. When the treasure was found by another man, it was divided in half between that person and the owner of the land [8, p. 387].

The Civil Code of 1804 contains many rules of inheritance. Thus, Art. 718 stated that heritage opens in case of biological or civil death of the testator [4, p. 49]. It established two types of inheritance: by the law and by the testament. Inheritance by the law meant the property of the testator being inherited by his children and wife (husband), and in their absence — the property was inherited by relatives of a descending or ascending line. Interestingly, the Napoleonic Code under inheritance by the law prescribed hereditary queue up to the twelfth degree relatives [12, p. 333].

Upon inheriting of property by relatives of further queue, the property was divided into two equal parts: one part for the relatives of father line, the other – for the relatives of mother. Among those who had no right to inherit the property were the persons convicted of causing death of the testator or those who made an attempt on his life; those who slandered about committing crimes by the testator; adult heir who had information about testator's murder and did not report it to the authorities. Extramarital children upon inheriting under the law, had the right to inherit only half of that part of the property that was inherited by the children born in wedlock. However, this could happen only in case of their adoption by the parents, and if this was not done, they had no rights to inherit the property [10, p. 395].

According to the Napoleonic Code testaments were divided into three types: private (written by the testator's own hand and containing his signature), public (drawn up by notary in designated form), and covert [8, p. 111]. Although the French Civil Code of 1804 significantly expanded freedom of the will, it still did not allow to bequeath all property as it was in England. If the heir was one child born in wedlock, he had the right to bequeath half of his property, if two children – one third of the property, and if three or more – only a quarter of the property. The property that remained in the legitimate share of the estate, was equally distributed among the children of the testator [10, p. 395].

Most of the rules of the Book Three of the Napoleonic Code were devoted to binding relationship. These rules were noticeably influenced by Roman law. Art. 1104 formulated the following definition of the contract: «an agreement where one party or more persons undertake to another or several others obligation to give something, to do something or not to do something» [8, p. 436]. The basic principles of contract law were freedom of contract, equality of parties of the contract, making it voluntarily, and compulsory execution. When the contract was compiled under the influence of abuse or fraud, as a result of a mistake or misunderstanding, it was considered invalid.

The subject of the contract could consist only of the things that were not removed from the circulation and were defined by generic or specific signs. Civil Code regulated various types of contracts: of sales, barter, loans, rent, deposit and sequestration, and others. It also regulated a marriage agreement, which had to be drawn up before marriage, and after it could not be changed. Code Napoleon reinforced such methods of obligations as mortgage, pledge, etc.. Agreement could establish civil liability for non-performance or improper performance of the obligation. In case of violation of the obligation counterparty has the right to demand not only compensation but also the payment of lost benefits.

Important role in the Book Three of the Code was dedicated to rules of prescription. The general limitation period was set quite high, to 30 years. In the legal relations relating to real estate the limitation period was 10 years, and if the owner resided in a different county than his/her real estate – 20 years. The architect and contractor were responsible for the objects they built during 10 years [10, pp. 396-397].

Thus, the historical and legal analysis of the structure and content of the Civil Code of France of 1804 proves embodiet in it high level of contemporary legal thought based on Roman law and supplemented by democratic achievements of French Revolution. By the type of its construction, the Code belonged to the institutional model of codification, had a complex structure that corresponded to the multifaceted social relationships that governed it. It should also be noted that the content of legal regulations, reinforced in the Code Napoleon, was a clear expression of ideas and interests of the contemporary era, where freedom of contract and the

inviolability of property became the basis of civil society and economic progress.

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ВЛИЯНИЕ ПОЛИТИКИ ПЕРЕСТРОЙКИ НА РАСПАД СССР

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SUMMARY

The article describes the actual problems of state forming history in the USSR at the final stage of the Union existence. Chronological borders of the research include 1985-1991 – the period of political and economical reforms known as “Restructuring”. Particular attention is paid to the national question, and ignoring it at the turn of the 1980-1990 it became a significant cause of the failure of perestroika. Detailed analysis of the sources and scientific literature prove that the politics itself caused the aggravation of political crisis in all spheres of social life which finally resulted in the USSR disintegration.

Key words: Soviet Union, Restructuring, Publicity, democratization, CPSU, party governance, transformation processes, national movements.

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Статья посвящена актуальным проблемам истории государственности СССР на завершающем этапе существования союзной державы. Хронологические рамки исследования охватывают 1985-1991 гг. – период осуществления политических и экономических реформ, известных под названием «перестройка». Проанализированы основные задачи и цели политики перестройки; раскрыта роль М. Горбачева в определении курса и специфики реформ; дана характеристика причинам, которые привели к распаду СССР. Особое внимание уделяется национальному вопросу, игнорирование которого на рубеже 80-90-х годов XX столетия стало существенной причиной провала перестройки. Доказывается, что именно политика перестройки привела к обострению кризиса во всех сферах жизни общества, что повлекло, в конечном итоге, распад СССР.

Ключевые слова: Советский Союз, перестройка, гласность, демократизация, КПСС, партийное руководство, трансформационные процессы, национальные движения.

Постановка проблемы. Приступая к политике перестройки, советское руководство планировало одновременно решить проблемы прошлого и спорные вопросы современности. В частности, целью реформы было изменение системы управления и реформирования тоталитарного комплекса по направлению от идеи социализма к идеалам демократии. Для этого планировалось, чтобы демократические принципы легли в основу трансформационных процессов на территории СССР. Вместе с тем, курс на демократизацию, развитие гласности создали условия для легализации противоречий, а именно, в отношениях союзного центра и республик. Это способствовало нарастанию центробежных тенденций в стране, что, в конечном итоге, привело к ее распаду.

Актуальность темы исследования заключается в том, что с 1985 г. руководство советской страны ввело масштабные преобразования, которые охватили все сферы жизни советского общества и получили название «перестройка». Последствиями реформ стал распад единого государства, что существенно повлияло на жизнь людей во всех бывших советских республиках: он разделил государственными границами территорию некогда единого государства и тем самым разделил много народов, проживавших на этой территории, он открыл путь к радикальному изменению политического и социально-экономического порядка на всем пространстве бывшего союзного государства.

По этой проблематике основательными исследованиями отмечаются К. Брутенц, Е. Волгин, М. Геллер, А. Данилов, Д. Драгунский, В. Ивкин, Т. Кауль, С. Кульчицкий, Б. Леванов, И. Овчар, В. Шейнис и другие. Однако на сегодняшний день практически от-