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SCIENTIFIC-THEORETICAL ANALYSIS OF THE UPDATES ON "CIVIL LAW" IN THE DRAFT NEW VERSION OF THE CIVIL CODE OF THE REPUBLIC OF UZBEKISTAN

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ABSTRACT

This article gives a scientific-theoretical description of Chapter 1 of the Draft of new edition of the Civil Code of the Republic of Uzbekistan (hereinafter - CC) "Civil legislation". The proposed amendment to the Civil Code with the draft was scientifically grounded in the author's interpretation. In particular, the necessity and importance of inclusion in the Civil Code of two important principles as the basic foundation of civil law: "freedom of expression of participants of civil proceedings" and "property independence of participants of civil proceedings" is based on the doctrine and practice of civil law. At the same time, the article analyses the scientific and methodological aspects of including corporate relations and other types of business relations in the subject matter of civil law. In addition, it was proposed that an important rule regulating relations with state participation should be established in the system of relations regulated by law. The author has also tried to substantiate the correlation between the general and special part of civil law, the need to determine the retroactive effect of it, the necessity to draft the rules of application of space and the need to strengthen the rules of interpretation of law. In addition, the article analyses the legislation of several foreign countries, the views of domestic and foreign scholars, the sources of the relations regulated by the participants, as well as the essence of the proposed changes and additions in the relationship between civil law and international treaties which are signed by the Republic of Uzbekistan.

Key words: civil law, legislation, civil code, principles, interpretation of civil law, citizen, legal entity, state, legal relations, legal regulation, corporate relations.

Civil legislation is one of the areas that has a special place in the legislative system of Uzbekistan, has its own subject and methods of regulation. In terms of the diversity of the composition of civil law and the breadth of its types, it also creates a slightly broader and more complex view than the legislation of other branches of national jurisprudence. Civil law also differs from other areas of law in terms of the "flexibility" of the norms, the wide range of legal autonomy of the participants, and the minimal amount of state intervention. The principles of civil law are also aimed at "convenience, flexibility and autonomy" for the direct participants from the point of view of the general psyche, which are reflected in the norms of civil law, and these factors are the main criteria for determining the current state and prospects of civil law. In other words, the rules of civil law governing social relations (property, personal non-property and organizational-legal (corporate) relations) between "legally equal", "property independent" and persons with free will (individuals and legal entities, the state) (system of normative-legal documents, analogies (similarities), customs, agreements).

The need to improve civil legislation is part of a series of ongoing, consistent and sustainable reforms in the new Uzbekistan. Therefore, the Concept of Improvement of Civil Legislation of the Republic of Uzbekistan by the Decree of the President of the Republic of Uzbekistan No. F-5464 dated April 5, 2019 [1] (hereinafter referred to as the Concept), which states that one of the main tasks is to "inventory civil law and improve it on the basis of developed foreign legal procedures." Therefore, one of the most important issues in the improvement of civil law is the inventory and improvement of the principles of civil law, in scientific and theoretical "language" of "basic principles of civil law" . This is because the principles are the basic rules reflected in the norms of legislation, on the basis of which the main tasks of the legislation are : determination of law, regulation of social relations, legal protection and legal protection, etc. [2]. A.Muhammadiev, who studied the principles of civil law, concludes that the principles "determine the level of civil law and especially the civilized doctrine, as well as the level of culture of law enforcement as an indicator of the maturity of the legal system" [3]. A.N Klimova explains her position on this issue as follows: "Principles of civil law - a description of the essence of this area of law, without such a description of civil law as a branch of law can not function normally" [4]. Academician H. Rahmonkulov emphasizes the high role of the principles of civil law in the legal regulation, noting that it is the main tool used in the regulation of relations not defined by the norms of civil law [5]. According to N. Reich [6], principles play an important role in private law and as a tool of soft law form a set of specific rules. Jeremy Bentham [7] understands the principles of civil law as the expression of the purpose of the law, i.e., the basic rules that can serve as a guideline by the legislator in determining the rights or obligations of the subjects.

In our opinion, the basic principles of civil law are not only the main criterion that determines the scope, boundaries and direction of the content and essence of legal norms, but also have the function of legal regulation of certain social relations. For example, the principle of freedom of contract does not allow the parties to enter into a contract, and the inviolability of property is a principle that applies directly and has the burden of legal regulation.

Article 1 of the Civil Code, which provides for the basic principles of civil law, requires the improvement of social relations based on the current level of development and the current state of development of legal thinking. Because the basic principles serve as the main criterion for the whole system of civil law, "beacon", "destination", border, direction and circle. These aspects are in line with the development of the times and need to develop in line with it. In addition, the primary basis for defining the doctrine of civil law, in other words, the preamble, falls on the basic principles of civil law. Therefore, there is a need to clarify the scope of the basic principles of civil law, strengthen them at the legislative level and clearly define them. The Concept also envisages the improvement of the principles of civil law in accordance with international standards and rules of ethics and moral norms. One of the important issues in this regard is the basic principles established by law in relation to the exercise of civil rights. Indeed, one of the main methods of civil law regulation is the impediment to the exercise of civil rights. However, the exercise or scope of any right may be limited on certain grounds and requirements. Such restrictions may be limited to the extent necessary to ensure the constitutional order, ethics, health care, protection of the rights and legitimate interests of others, national defense and national security in force in the country. However, the Civil Code does not establish rules that do not restrict existing civil rights in practice. In practice, this gap remains in the Code due to the existence of various forms of problems in practice (e.g., restriction of property rights). Therefore, it should establish clear rules on the grounds and scope of restriction of civil rights. In our opinion, the introduction of the rule of clear definition of legislation in the field of restriction of civil rights in the CC serves to prevent various arbitrariness in the restriction of civil rights and unjustified decisions of government agencies in this regard by determining the purpose and extent of restriction of rights of participants in civil relations.

Another important issue regarding the basic principles of civil law is the " freedom of expression " and "property independence" of the participants. The principle of free autonomy means that subjects make decisions and act on their own will. These two principles are enshrined in Article 6 of the Civil Code of Azerbaijan. In the legal literature, the principle of "freedom of expression of will" is generally referred to as freedom in civil law, and the need to express this principle in civil law is also expressed.

In particular, M.A. Grigoreva writes that “the application of the principle of freedom of participants in civil law relations is reflected in the following stages: 1) the emergence of civil rights and duties; exercise of civil rights; 3) protection of violated rights ”[8]. R.B Bryukhov tries to interpret dispositiveness in civil law in a broad and narrow sense. According to him, “dispositiveness in the broadest sense means the freedom to acquire subjective civil rights and duties, to determine the structure of these rights, to deviate from the rules set out in the dispositive norms in the conclusion of a contract, and in the narrow sense to exercise the rights and responsibilities freedom of choice ” [9] . As P.A. Gordeev points out, “ unlike freedom in the broadest sense , dispositiveness cannot be outside the law. Dispositiveness is a legal freedom that exists only in a limited form ... in other words, dispositiveness exists only where freedom is limited ” [10] .

In our view, dispositiveness is the freedom that a participant in a legal relationship is allowed at the level of the legislature in his or her actions and conduct. This freedom is manifested in many types of civil law relations and is the main criterion for the existence of subjective civil rights. Indeed, as one of the founders of Uzbek civilization, Professor I.B Zakirov, noted, "the parties enter into civil relations freely, without the influence and coercion of others, independently exercising their will" [11] .

In our opinion, the introduction of "freedom of expression of the will of the participants in civil proceedings" as the main basis of civil law in the Civil Code enriches the doctrine of civil law and serves to improve the mechanisms of stable and consistent regulation of civil law. First, this principle strengthens at the legislative level the rule of freedom of expression of the subject of civil law in the legal relationship and guarantees its application to all civil law relations. Second, the will, the freedom to express the will, serves as a protective barrier set for the subject to act out of his own will and interest and to refrain from the negative influence and oppression of others. Third, the freedom of the subject applies at all stages of the civil-legal relationship and implies that the subjective civil rights of the individual are guaranteed, e.g. Fourth, the introduction of this principle means that the real expression of the principle of “dispositive orientation”, which is important for civil law, is recognized. In general, the new version of the Civil Code "Freedom of expression of the will of the participants in civil proceedings" will fill certain gaps in the civil law regulation and create an important legal rule for the regulation of new social relations.

The fact that one of the main principles of civil law is reflected in the draft of the new edition of the Code "Property independence of participants in civil transactions" is due to the specificity of the field of civil law and the fact that civil law is always based on property. H.Rahmonkulov [12] and O.Okyulov [13] also emphasize the importance of "property independence" of the participants of civil transactions . In the

current Civil Code, civil treatment also means the free transfer of objects of civil rights from one person to another . This, in turn, requires that the parties to the transaction have rights and obligations, that these rights and obligations are based on property, and that the participant has property independence.

It should be noted that in today's civilizational thinking, especially in the post-Soviet civilization, the principle or criterion of "property independence" is often used to describe the concept and environment of a legal entity and is interpreted only as a characteristic of a legal entity. This situation is largely due to the misinterpretation of the definition of a legal entity in civil law. In particular, “possession of separate property” (in Russian, “имеет обособленное имущество”) (Article 39, Part 1 of the Civil Code) defined in civil law is interpreted in the legal literature and textbooks [11] as “property independence” and such an idea has emerged. . In our opinion, it is necessary to distinguish between the concepts of "possession of separate property" and "property independence". Because "property independence" is an inherent feature of all subjects of civil law, it is assumed that each participant in the civil transaction is in such a situation. The inclusion of this principle in the draft of the new edition of the Code means the strengthening of an important doctrinal rule that serves to understand that the participants in civil transactions act on the basis of property independence, acquire rights and fulfill their obligations on this basis.

Another of the proposed changes to Chapter 1 of the new draft , entitled "Civil Law", is to further clarify the scope of the subject of civil law and "include corporate relations and other business-related relations in the scope of the Civil Code" based on the tasks set out in the Concept [1] plays an important role. Indeed, the concept of "corporate relations" and certain aspects of the regulation of these relations are used in law enforcement practice, as well as in legislation. For example, Article 30 of the Code of Economic Procedure deals directly with corporate disputes. In addition, in the legal literature [14] , the idea of the need to include organizational and legal relations, in particular, corporate relations in the subject of civil law, has long been emphasized. Therefore, the inclusion of other relations related to corporate and entrepreneurial activities in the structure regulated by civil law serves to ensure consistency between the theory, legislation and practice of civil law.

The legal regulation of the state's participation in civil law relations is also relevant in terms of the existence of elements of private law and public law. The doctrine of civil law provides that the state also participates in civil law relations on an equal basis with other entities (individuals and legal entities). This doctrine is relevant and comprehensively consistent with the essence and subject matter of the field of civil law. However, the state has the powers of the government as a subject of public law, and these aspects in some sense also affect its participation in civil law relations.

Therefore, the new edition of the Civil Code (hereinafter referred to as the project) is published in Chapter 5 of the current Code, with changes and additions to the rules, and transferred to Article 2 of the draft. It should be noted that Chapter 5 of the current edition of the Code contains only 2 articles on the participation of the state in civil law relations, and the norms in these articles are dichlorative. In other words, these norms provide for the participation of its organs on behalf of the state, the state's equal participation with other entities, the state's responsibility for its obligations with its own funds, the difference between the state and the legal entity created by it and the state-guaranteed legal entity's obligations. In our opinion, the current version of the CC does not take into account the views contained in the doctrine of civil law. Indeed, in the civilizational doctrine, the state is interpreted as a corporation. Typically, domestic civil law relations involve the appropriate authorities on behalf of the state (e.g., contracting, procurement of goods for public use, etc.). Such participation distinguishes certain characteristics and status (for example, the non-application of measures to the state, such as restriction or deprivation of sovereignty, rights and legal capacity, liquidation of a legal entity). There are monistic and pluralistic forms in relation to civil law relations. However, in most cases, the mixed form is preferred [15] . The application of the rules of participation of legal entities in relation to the participation of the state in civil legal relations as a separate structure is a generally accepted doctrine. Therefore, in order to further clarify the participation of the state in civil law relations, Article 2 of the draft introduces the rule that "unless otherwise provided by law, the rules governing the participation of legal entities in relations governed by civil law apply to the state."

It is known that one of the tasks of civil law is to define civil rights, including personal non-property rights and to regulate the relations related to it, and this is defined in the second part of Article 2 of the Civil Code. However, the rapid development and improvement of the civil law doctrine in recent years has shown that in civil law, personal non-property rights and related relations are not only defined and regulated, but also protected. This situation has become especially relevant with the development of the Internet, the emergence of the virtual world and the formation of online relationships. Therefore, the project introduces changes not only to the regulation of personal non-property relations, but also to the protection of rights arising from personal non-property relations.

We have already mentioned above that the types of civil legislation documents are many and varied. Therefore, there are a number of problems with their application. For example, the incompatibility of law and by-laws, the relationship between norms of equal legal force, which one should be given priority in the application of general and special norms in the regulation of social relations, and so on. Of course, some of

these issues are defined in the Law of the Republic of Uzbekistan dated April 20, 2021 "On regulatory legal acts" [16] No. ARU-682 in the form of general and universal rules for the legislation of all areas of law. However, this law does not fully cover the specifics of civil law relations and the scope of its sources. After all, in civil law, along with legal sources, there are also non-legal sources, which creates peculiarities in the regulation of civil law relations. Therefore, Article 3 of the draft provides an additional proposal to fill the gaps in the current version of the FC and to clarify the relationship between the legislation. In particular, the current version clearly defines the cases in which ministries and departments issue civil legislation, while the issue of the President and the Government remained open. It is known that in accordance with the current legislation, the President and the Government of the Republic of Uzbekistan are separate institutions and issue documents regulating civil relations within their powers. Therefore, in order to prevent various misunderstandings in the practice of law enforcement, the documents of the President and the Government of the Republic of Uzbekistan are also included in this article. After all, by-laws (legislative acts) should not give ministries and agencies the power to adopt civil law.

It is clear from Article 4 of the current edition of the FC that civil legislation is not retroactive. There is only one exception to this rule, which is that the adopted legislation itself sets out a rule on its retroactive force. According to the proposed update on the retroactive effect of civil legislation, "If a civil law document harms or worsens the status of civil law subjects, it has no retroactive effect" and this existing exception does not apply if it occurs. Such a rule is contained in Part 3 of Article 7 of the Civil Code of Azerbaijan and Article 6 of the Civil Code of Georgia, which serves to protect the interests of civil law entities and ensure the stability of civil legislation. In addition, the introduction of such a norm will increase the confidence of citizens and legal entities in the legislative system of the state.

Article 4 of the current Civil Code "On the application of civil law in time" does not provide for the "application in space" of these documents. In order to fill this gap, the draft includes a new article "Spatial application of civil law." Such a norm is expressed in Article 8 of the Civil Code of Azerbaijan in the following sense: “Civil legislation is valid throughout the country without any exceptions. The rights provided for in civil law can be exercised without hindrance and are compulsorily protected throughout the country. ” In contrast, the draft provides for a more developed norm of spatial application of civil law. Indeed, the rule that the legislation applies to space in the territory of the country is reflected in the relevant law (Article 42 of the Law No. ARU-682). Therefore, and taking into account the emergence of the concepts of real space and virtual space, the project included the following rule proposed by Professor I.R.Rustambekov [17] : depending on the origin, Civil law acts also apply to relations

in the virtual space, unless otherwise provided and it is not understood that they can occur only in real space. In our opinion, this rule provides a complete legal basis for the application of the norms of civil legislation to the relations arising in the virtual space, that is, such a rule serves to apply the civil legislation for real relations to the virtual space.

One of the main issues in defining and regulating civil relations and protecting the rights and legitimate interests of citizens is the interpretation of civil legislation. Indeed, the clear and uniform application of legislation depends on the correctness of the interpretation and the uniformity of the approach. An important aspect is the correct understanding of the purpose of the legislature provided for in the relevant norm and, consequently, its interpretation, ie its application to the regulation of the relevant legal relationship. Current legislation does not provide for specific rules and guidelines for the interpretation (or interpretation of civil law). This, in turn, leads to different approaches among law enforcers and commentators. The legislation of foreign countries contains clear instructions on the interpretation of legislation. In particular, Chapter 2 of the Civil Code of the United States of Louisiana (adopted September 10, 2011) is called "Interpretation of laws" and sets out the rules for the interpretation and application of the text of legislation, its words. Article 12 of the Civil Code of Italy and Article 6 of the Civil Code of the Republic of Kazakhstan are also devoted to the interpretation of the Civil Code (law). It is also known as Article 1 (Application of the law) of the Swiss Civil Code, which also sets out the rules for the application of civil law legislation. The rules in this regard are also understood in Article 213 of the Civil Code of Ukraine.

The legal literature [18] suggests that the need to include rules for the interpretation of civil law in the legislation is due to the following factors: vague orientation of civil law regulation, abstraction of norms, different naming and unsystematization of terms (and often no definition of terms)), legal norms and concepts and the high level of complexity of their content, confusion of legal constructions and unclear boundaries and ratios between them (for example, in the protection of property rights vindication to the obligation-legal relationship, the general rules of obligation to the delicacy and unjust enrichment) application, lack of systematization of the rules of the right of claim). Indeed, “the need to understand the true meaning expressed by the legislator in the legal norm and to apply the understood meaning to the social relations that have arisen in practice” [19] is the main formula for the interpretation of civil law. According to Jorge Silva Sampaio , "interpretation is an operation that embodies the content of language rules and legal norms and is aimed at substantiating the norms" [20] . According to B. Berisha and F. Berisha, "interpretation has a single purpose, that is, to define the purpose and content of the

norm in order to interpret it as it is formed from the point of view of the legislator" [21]
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In our opinion, in any case, the norms of civil law should be interpreted in the light of the purpose for which the legislator envisions it. This should not be influenced by the fact that words in the Uzbek language have different meanings or different uses of terms, and should take into account the purpose of the norm. In addition, unlike other areas of law, civil law legislation can be interpreted by all participants involved in its application, and in the event of a dispute, the final interpretation will have to be made by the court. This, in turn, is understood from Article 363 of the current edition of the Civil Code. In case of inaccuracies in the legislation of civil legislation, and in case of its incorrect or contradictory application in practice, the interpretation is carried out by the competent state body. In the process of interpretation, they are not allowed to make corrections, changes, additions aimed at defining the norms. However, in the interpretation of civil law, if the norm is clear and unambiguous and its application does not lead to contradictions, it should be interpreted as it is written. However , if the language of a civil law document leads to different interpretations of it, then the document is required to be interpreted in the manner most suited to its purpose. In this case, it is necessary to give the words in the civil law document their generally accepted meanings. Another aspect to consider when interpreting a civil law document is related to technical issues. In our opinion, if the norm provides for a technical issue, the technical concepts in the interpretation should be given their technical meanings.

Another change that is proposed to be included in the draft civil law section is related to habits, in other words, illegal sources. This is because in civil law, along with legislation, analogies, customs, and contracts are the source. If it is understood from Articles 5 and 6 of the Civil Code that analogies and customs are the source of civil law, then the source of the contract is the fact that citizens (individuals) and legal entities are free to determine ”. These resources are of particular importance today for the social relations regulated by the participants themselves. The point is that certain areas of social relations have now emerged that are regulated not by the state or by legislation, but by documents developed and agreed upon by the participants themselves. For example, the conduct of sports competitions, the activities of various sports federations are not regulated by law, and disputes in this area are not considered by state courts. Public authorities are also not entitled to review complaints in the field of sports. Therefore, in order to take into account this aspect, the draft introduces the rule that "if the law provides for the regulation of certain social relations by the participants themselves, it is not allowed to regulate these relations by legal acts."

It is also important to clearly define the relationship between civil law and international treaties and agreements with the participation of the Republic of

Uzbekistan. This is because, as Uzbekistan assumes certain obligations through the conclusion of international agreements, its provisions are required to comply with the norms established by national legislation. The current edition of the CC reflects the general norm in this regard. There is no provision that an international treaty or the law of a foreign state may be applied to the regulation of legal relations by agreement of the parties to the legal relationship or the parties to a civil law contract. Today, the constructions of new treaties are widely used by residents and non-residents of the Republic of Uzbekistan in international conventions or in the laws of foreign countries. This gives freedom and independence to the subjects of civil law, allowing the rational use of foreign experience. Therefore, it would be expedient to include in the draft a provision that allows participants to apply international agreements and foreign law to the regulation of legal relations between them.

In conclusion, Chapter 1 of the project on new civil law provides for filling gaps in legal regulation, eliminating inconsistencies between existing norms and providing clear rules in the interpretation of legislation and expanding the scope of the subject of civil law regulation. In addition, the draft includes important principles that are important in the structure of the principles of civil law and serve to enrich the current civil law doctrine, which serves to ensure the freedom and property independence of citizens and legal entities.

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