LEGAL SCIENCE

Experience of Foreign Countries Regarding Legal Regulation of the Foreign Economic Activities of Economic Entities

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Paper received 22.12.18; Accepted for publication 05.01.19.

https://doi.org/10.31174/SEND-HS2019-192VII32-09

Abstract. The article is devoted to contrastive characterization of the legislation systems of the European Union and the United States of America. The analysis carried out in the article shows the necessity and expediency of modernization and improvement of economic and legal regulation of foreign economic activity of economic entities at the present stage of development of Ukraine. It is stressed that the practical experience of Germany in adapting German economic legislation to the EU legislation is important for Ukraine, because in practice in the EU the processes of adaptation of the national laws of the member states of the Community are carried out on a permanent basis.

Keywords: *legal regulation, legislation, economic activity, Anglo-Saxon system, federal laws, trade law.*

Introduction. Each country independently forms the system and structure of economic-legal regulation of foreign economic activity (FEA) on its territory; the purpose of this regulation is:

• to protect its own economic interests and legitimate interests of entities engaged in foreign economic activities;

• to create equal opportunities for entities engaged in foreign economic activities;

• to promote the development of all types of entrepreneurial activity regardless of forms of ownership and of all avenues for using incomings and making investments; promotion of competition and elimination of monopoly in the field of foreign economic activity.

The state and its bodies have no right to directly interfere with the foreign economic activities of entities engaged in these activities except in cases when such interference is carried out in accordance with the current legislation.

Modern economic legislation in foreign countries is represented by laws and economic-legal by-laws. They can be codified and uncodified. Forms of systematization of economic-legal acts were formed under the influence of the same historical conditions and national traditions which led to the emergence of national systems of law [1, p. 67-73].

The aim of the article is to analyse and substantinate the reasons and need for activating the processes of adaptation of the national laws of the member states of Eropean Union and applying the experience in the economic legislation of Ukraine.

Methodology. In the Western jurisprudence, two legal systems have spread: civil law (the Romance and Germanic system) and the Anglo-Saxon system. The first system is also called continental law, and in terms of civics - a system with dualism of private law (that is, with parallel existence of the civil and commercial codes). The second system is called common low, which is based on custom, or the Anglo-Saxon law. Historically, civil law is associated with the Roman private law and the Justinian Code (VI century BC). England is thought to be the homeland of common law. The fundamental difference between the two systems of law is in abstract formulation of legal norms. In the countries of civil law, influence on social relations is carried out, as a rule, through the issuance of laws containing abstractly formulated rules of conduct. Accordingly, the courts in these countries have mainly the role of enforcement bodies. A civil law judge does not create any legal norms.

Despite this, the trend toward the publication of codes is gaining popularity in countries of common law, too. An example of this is the Uniform Commercial Code (the UCC) of the United States of America. The UCC is very different from traditional commercial codes of the countries of continental Europe. It covers only certain institutions of commercial law limiting itself to the regulation of only some commercial transactions, first of all, of those banks deal with. It is no coincidence that in the literature, it was named "the code of bankers" (8 of its sections are directly related to the activities of banks). A number of important institutions of law (corporations, insolvency, bargaining, representation, insurance, etc) stay off the radar of the code.

Discussion. The main objectives and tasks of the UCC are: a) simplification, clarification and modification of the law governing commercial transactions; b) ensuring the development of commercial practice based on customs and parties' agreements; c) the unification of commercial law of all states (Article 1-102) [1].

Generally, the United States legislation consists of federal and state laws. This also applies to foreign economic activity. Federal laws are published in three official journals: "Civil Laws", "United States Statutes at Large", and "United States Code." "Civil Laws" publishes in chronological order new laws of the United States of America that have come into force. At the end of the year, all laws adopted by the Congress that came into force are also collected in chronological order and published in "United States Statutes at Large." Both periodicals are official; legislative acts issued during the last year are grouped according to their issuance in the same form as they were approved by the Congress. In "United States Code", legislative acts are systematized according to the area of their action. Legislative economic norms are mainly concentrated in the following titles: 5) state authorities and civil services; 6) officially recognized and unrecognized secu-

rities; 7) agriculture; 11) bankruptcy; 12) banks and banking; 15) commercial relations and trade; 21) food and medicine; 26) the tax code; 27) alcoholic beverages; 29) labor; 30) land, minerals, and mining; 31) money circulation and finance; 40) public buildings, property, and public works; 41) government contracts; 42) health and welfare; 43) state land; 45) the railway; 46) navigation; 47) telegraph, telephone, and radiotelegraph; 49) transport. The level of the systematization of federal economic legislation adopted in the United States is lower than that of the systematization achieved in the issuance of codes. But it is convenient because "United States Code" is reissued every six years.

In addition to federal law, the United States has a wide range of economic laws of states in the field of foreign economic activity. Legislation of a certain state often differs from those of other states, which is inconvenient. Therefore, measures are taken to unify the state legislatures by issuing model and identical legislative acts, the task of which is to eliminate contradictions between individual laws of different states [2, p. 67-73]. The peculiarity of legal regulation of the US foreign economic activities is manifested in the state system of the country, according to which the United States is a federal republic. This means that the regulation of the foreign economic activities of the USA is carried out at the state and federal levels simultaneously. The system of key institutions for regulating the US foreign economic activities has the following structure:

1) the supreme legislative body: the US Congress;

2) the supreme executive body: the US President, the US Vice President, and the US President's Office;

3) departments that deal directly with economic relations with foreign countries and issues of the implementation of the state foreign economic policy: the US Department of State, the US Department of Commerce, and its organizational unit - the US International Trade Administration;

4) other departments and government agencies of the United States;

5) the offices of the White House;

6) judicial authorities.

Among the 14 departments of the President's Cabinet, the departments which deal directly with economic relations with foreign countries and issues of the implementation of the state foreign economic policy have the greatest influence on the regulation and development of foreign economic activities. These are the US Department of State, the US Department of Commerce as well as its organizational unit - the US International Trade Administration [3, p. 15-17].

The US Department of State, the US Department of Commerce and its organizational unit - the International Trade Administration - carry out the functions of management, regulation, and control in the field of foreign trade. The content of the functions of the ITA Organization division is that the Department develops and implements general measures aimed at developing the country's trade relations with foreign countries, as well as draft trade contracts, agreements, and conventions regarding foreign trade issues. Among other functions of the US Department of Commerce, the following can be singled out:

• creation of draft export-import and other foreign trade plans (*International Trade Administration Strategic Plan, FY 2007 - FY 2012*);

• regulation and control of the implementation of plans for foreign trade;

• providing for measures to improve the quality of export and import goods;

• regulation and control of activities of export-import associations, trade missions abroad and trade advisers at embassies and missions of the country.

Business unions operating in various forms (industry and national associations, chambers of commerce, etc.) which have great influence on the US policy, especially the economic one, act as auxiliary institutions of the regulation of the foreign economic activities of the USA. In the regulation of foreign economic activities, the United States is guided by the principles of economic feasibility, applying a set of tariff and non-tariff tools. The United States creates new markets for goods, services, technologies, and capital in the countries to which support and assistance are provided;

• holding firm positions of the leading country in world markets, the United States opens its borders to other countries only within state-controlled limits.

Let us move on to Germany. Special legislation on the regulation of economic relations was formed in Germany as early as in the nineteenth century. In Germany, in addition to the Civil Code (*Zivilgesetzbuch*) of 1896 (which came into force January 1, 1900), the Commercial Code (*Handelsgesetzbuch*) of 1897 is in force. This act has repeatedly undergone changes in terms of both content and structure. However, a global modernization of the Commercial Code occurred in 1998-2001. In accordance with the Law on the German Trade Law Reform (1998), a supplement to the regulations regarding the definition of the conceptual framework was added to the Commercial Code; also, amendments were made to the articles concerning the legal regulation of its main institutions. Wide international unification of the norms of trade legislation, the adoption of a number of EU Directives, and signing international conventions which ultimately led to a radical revision of the norms of national law are thought to be one of the reasons for the modernization of this codified act [4].

If we take as an example the economic-legal regulation of foreign economic activity in Germany, it should be noted that the commercial law of Germany is based on the norms of other branches of law and avoids a clear definition of the subject of regulation, using abstract wording to regulate many important issues, which significantly differs from the branches of law of Ukraine. Ukrainian scholars and practitioners are accustomed to the fact that each branch of law has its own clearly defined subject, according to which the principles, methods, and system of its legal regulation should be developed. Abstraction, universality of norms is also considered a factor harmful for creating effective legal regulation [4]. On the basis of this, we believe it is questionable to use the German experience to predict the problems that may arise in applying commercial law in Ukraine and to find ways to overcome them. However, in reality, the content, structure, and rules of the commercial law of Germany have their own internal logic, due to the fact that all its components are sub-

ject to the sole purpose of simplifying and speeding up the process of conducting foreign economic activities by economic entities and ensuring the stability and protection of the interests of trading partners. The key rule for the application of the German commercial law is that it does not cover the whole complex of trade relations entered into by an entrepreneur for carrying out activities (business or commercial ones), since this carrying out involves the entrepreneur's engaging in a wide range of diverse economic ties: financial, banking, insurance, labor ones as well as ones concerning the use of intellectual property, consumer rights protection, etc [5]. Therefore, the commercial law is directed only at specific relations characteristic only for trade turnover which require special methods of legal regulation different from ones enshrined in other branches of law [4].

In Germany, civil law is codified; the system of private law is dualistic. The main source is the German Civil Code (hereinafter referred to as the GCC). As noted above, the GCC was adopted in 1896; it entered into force January 1, 1900. The initial number of paragraphs (that is how the articles of the GCC are called) was 2385 [6, p. 46]. The Code consists of 5 books and an introductory law which contains indications on the relationship of GCC with other norms of law, its duration, the rules of international private law. The first book called "General Part" deals with the legal status of persons, the legal regime of things and animals, agreements, terms, limitation of action, the exercise of rights, self-defense and self-help, the promotion of interests. The second book, "Obligatory Law", regulates the content of obligations, contractual obligations, termination of obligations, assignment of claim, debt transfer, multiplicity of persons in obligation, certain types of obligations (in particular, contractual and non-contractual ones). 20 types of contracts are considered: purchase, sale, exchange, donation, hiring, lease, free use (lend), loan, employment contract, tender, brokerage contract, order, storage, leaving things at a hotel, contract of a simple partnership, games and bets, life annuity, guarantee, amicable transaction, agreement on acceptance of obligations, on recognition of existing debt; as well as unilateral commitments, actions for the sake of other people's interests without commission, unfounded enrichment and unlawful actions (delict) [6, p. 46]. The third book, "Property Law," contains provisions on possession, general provisions on rights to land, on property, inherited right for building, easements, privileged purchase right, real estate encumbrances, mortgages, land debt, rent, pledge of movables and rights. The fourth book, "Family Law," is devoted to the regulation of family relationships, civil marriage and guardianship. And the fifth book, "Heritage Law", regulates in detail the order of succession, the legal status of an heir, the rules concerning wills, contract of inheritance, legitimate portion, the grounds for deprivation of the right to inheritance, waiver of inheritance, the procedure for issuing a certificate of the right to inheritance, buying inheritance.

The GCC consolidates the principles of formal equality before the law, the freedom of private property, the inviolability of private property, the freedom of contract and contains a number of restrictions regarding small and medium land ownership in the interests of large industrial and transport enterprises.

As an act of legislation, the GCC is characterized by instructions general in nature (it regulates only the main issues and does not contain casuistic details). A specific feature of the GCC is the presence of a large number of undefined criteria: "good conscience", "trust", "on faith", etc. Because of this, some paragraphs are called "rubber" ones - their content is so elastic that judges can interpret and apply them completely differently, sometimes in the opposite sense. The code is notable for a scientifically logical, substantiated, strict, precise system. At the same time, the paragraphs are very cumbersome, and the actual formulation of the norms are extremely complex, their content can only be understood by specialists in the field of civil law and is practically unclear to ordinary citizens [5, p. 47].

The GCC has become widespread in the world, like the Code of Napoleon (see below), but it also had a significant impact on the legislation of several countries: Japan, Thailand (reception of the German law); Austria, Switzerland, the Nordic countries; Brazil, Peru, Argentina, etc [6, p. 47]. Another important legislative act is the German Commercial Code (hereinafter the GCmC). The GCmC was adopted in 1897 and came into force January 1, 1900, at the same time as the GCC. Initially, the GCmC contained 905 paragraphs. The GCmC consists of 5 books. The first book, "Tradespeople," regulates rules regarding traders, trade registers, trading firms, procuratory and power of attorney to manage business interests, trade clerks and participants in trade affairs (entrepreneurship), trade representatives and brokers. The second book, "Trade Partnerships and Secret Partnership," contains rules regarding full, limited, and secret partnerships. The third book, "Trade Books," is dedicated to instructions for all merchants, additional regulations regarding partnerships that are capital associations (stock companies, limited liability stock companies, limited liability companies), regarding registered cooperatives and credit institutions. The fourth book, "Trading Agreements," regulates general requirements for agreements and specific types of trade agreements (purchase and sale, commission, freight forwarding, warehouse, transportation - in particular railway - ones). The last, fifth book, is called "Overseas Trade" [6, p. 48]. In addition to the GCmC, the Joint Stock Act (1965) as well as such laws as: on limited liability companies (the latest edition - 1980), on production and economic cooperatives (1889), on exchanges (1908), on banks (1961), on securities (1937), on insurance contracts (1908), on amicable transactions (1935), on unfair competition (1909), on the prohibition of restricting competition (1957), on transportation by road (1952), the charter of railways (1938), and others like that were adopted.

The GCC influenced our jurisprudence; for example, the Civil Code of the Ukrainian Socialist Soviet Republic of 1922 was a complete copy of the Civil Code of the Russian Socialist Soviet Republic. It is evident that the latter was influenced by the GCC. The Civil Code of the Ukrainian Soviet Socialist Republic of July 18, 1963 also has German methodological roots. The latter can also be seen in the current Civil Code of Ukraine of January 16, 2003.

Germany's practical experience in adapting the German economic legislation to the EU legislation is also im-

portant for Ukraine, because, in practice, in the EU, the processes of adaptation of the national laws of the member states of the Community are carried out on a permanent basis. Examples are the Directives of the Council of the European Union, which directly regulate individual issues of the adaptation of the legislations of the EU member states [7, p. 234-237].

It seems to be expedient, as the initial step, to hold a roundtable on the Pandectist Civil Code of Ukraine. Participants in the round-table must at least know about the above-mentioned regulations of the United States, Germany, and France.

Then, let us look at France. France has a codified private law with a dualistic system. There are the Civil Code and the Commercial one. The main source is the French Civil Code (1804) also called the Napoleonic Code (hereinafter the FCC). It was developed by widely known at that time French lawyers (Portalis, Tronchet, Malleville, etc) who relied on the Roman law and the pre-revolutionary jurisprudence and remade them in accordance with the needs of the new society. The Napoleonic Code had a revolutionary significance for its era. It played an extremely important role in the elaboration and adoption of many principles of the new civil law, served as a model for ownership reform in many countries; significantly influenced civil laws of the whole world. This code is still valid in many countries and is considered to be a perfect expression of the legal relations of commodity production [6, p. 49]. An important source was the French Commercial Code (hereinafter FCmC) - the main codified act in the field of commercial law in France adopted in 1807. It supplemented the FCC with the provisions on the legal actions of merchants. This code enshrined in the French law the dualism of private law, that is, its division into civil and commercial laws. It contained 648 articles and consisted of 4 books [6, p. 47-48].

The first book, "General Provisions on Trade," contains nine sections: on merchants, on the accounts of merchants, on partnerships (now not in force), on trade registers (now not in force), on commodity exchanges and brokers, on pledge and commissioners, on the conclusion of trade agreements, on transfer and promissory notes, on limitation of action (extinctive limitation) [6, p. 48]. The second book, "On Maritime Trade," initially contained 13 chapters, of which only one is preserved till nowadays - "On the Terms of Limitation". The third book, "On Insolvency and Judicial Regulation, Rehabilitation, Bankruptcy, and Other Insolvency Offenses," has now completely disappeared. The fourth book, "On Commodity Jurisdiction," initially contained 4 chapters: on organization of commercial courts, on the jurisdiction of commercial courts, on the form of legal proceedings in commercial courts, on the form of legal proceedings in the royal (appellate) courts. Of these, as of today, all except for the second one have ceased to exist.

FCmC was issued as an addition to the FCC, the general provisions of which apply to trade agreements as well. It has contained special rules, in the absence of which the rules of the FCC apply. The FCmC has not had such a spread as the Code of Napoleon; however, it has influenced the legislation of individual countries: Belgium, the Netherlands, Greece, Spain, Portugal.

At present, the archaic nature of some rules of the codes causes their obsolescence, although it should be noted that significant changes and additions were made to both codes. Regarding FCC, its content was most intensively revised after the World War II. In its current edition, the number of changes made over the past 40 years is 8 times higher than their number over the first 140 years of the existence of the FCC. The content of the FCmC has been continuously refined and improved since its very inception, since it contained many drawbacks and gaps. Currently, it numbers no more than 180 articles, that is, about 20% of its original composition.

It is worth recalling the fact that the Napoleonic Code was a star of the world jurisprudence during 1804-1896. Next, the baton in the development of civil law was picked up by the GCC. This code holds leadership for over a century; its noteworthy feature is its branch orientation and, in particular, the presence of the fourth book "Intellectual Property Law" in it. In any way, it is worth paying attention to the Germans who hold the palm in this issue because they have a code built on the Pandectist system, without branch themes.

Unlike the Civil Code, which nevertheless remains the most important act of the private law of France and continues to affect the latest codification of the civil law of other countries, the FCmC has gradually lost its value and no longer plays a leading role among other legal acts of commercial law since most legal institutions were moved outside it and are governed by special laws. Consequently, the French commercial law is in fact uncoded [6, p. 50].

In the field of civil and commercial legal relations in France, there also are special laws: on trade customs (1866), on fixed exchange agreements (1885), on the purchase and sale and mortgage of property complexes of a commercial enterprise (1909), on trading partnerships (1966 - containing 500 articles), on judicial improvement and judicial liquidation of enterprises (1985), on associations (1901), on the restoration of enterprises and the liquidation of their property in an enforcement procedure (1985), on the status of ships and other sea-craft (1967), on literary and artistic property (1957, 1985), on intellectual property (1992), etc as well as decrees: on trade representatives (1958), on trade associations (1967); on registers of trade and partnerships (1984), on judicial settlement, liquidation of property, personal insolvency and bankruptcy (1967), etc. [5, p. 52].

Finally, about the European Union (EU).

Conclusions. The European Union seeks to systematize the economic legislation. To this end, the Economic Code of the EU was issued, which systematizes the most important legal acts, which, in particular, also relate to foreign economic activities. By the way, during the last decade, the Commercial Code of Germany has been substantially supplemented due to the development of the economic law of the EU. These amendments are mainly related to the Law on Entrepreneurship Control, the EU Directive on Business Associations, the Law on Public Proceedings, etc.

The above analysis shows the necessity and expediency of modernizing and improving the economic-legal regulation of foreign economic activities of economic entities at the present stage of the development of Ukraine.

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