

References

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THE CIVIL CODE OF UKRAINE AS A CIVIL LAW SOURCE

A term “sources of law” came into modern jurisprudence from the Roman law. Sources of law are classically understood as the form of expression of legal norms that have a universally binding meaning. In our opinion, in modern law, a source of law should be understood as a legal act or other external form of the recognized law, which is mandatory for certain subjects of a certain law enforcement activity.

In Soviet times, the normative acts were considered as the only source of civil law, so this concept was exhausted by the category of civil legislation. Civil law is a system of legal norms regulating the proprietary and some personal non-proprietary relations. Civil legislation is a set of normative acts that contain these norms. Therefore, “civil law” and “civil legislation” are the different concepts [1].

A system of civil law sources is determined by the construction of Article 4 of the Civil Code of Ukraine, which states that the basis of civil legislation of Ukraine is the Constitution of Ukraine, and the main act of civil legislation of Ukraine is the Civil Code of Ukraine. This reflects the general system and hierarchy of the Ukrainian legislation, including civil legislation. Therefore, acts of civil legislation are also other laws of Ukraine adopted in accordance with the Constitution of Ukraine and the Civil Code of Ukraine [2].

A system of civil legislation includes:

1. The Constitution of Ukraine dated June 28, 1996, the rules of which lay down the principles of regulation of property relations, personal non-proprietary rights, intellectual property relations, entrepreneurial activity, etc;

2. The main act of civil legislation is the Civil Code of Ukraine, adopted on

January 16, 2003 (entered into force on January 1, 2004). It is a codified (consolidated) law of the field and the basis of the entire system of acts of civil legislation of Ukraine. According to the structure, this code consists of 1 308 articles, 90 chapters, collected in 6 books: Book 1 – General provisions; Book 2 – Personal non-proprietary rights of natural persons; Book 3 – The right of ownership and other proprietary rights; Book 4 – Intellectual property right; Book 5 – Obligatory law; Book 6 – Inheritance law;

3. In addition to the Civil Code of Ukraine, the system of civil legislation includes some other codes that contain civil law norms: the Family Code of Ukraine, which defines the legal regime of the property of spouses and the procedure for concluding the marriage contract; the Housing Code of Ukraine which defines the rules regulating the use of residential premises and its ownership; the Land Code of Ukraine – which determines the rules regarding the lease of land plots, the emergence and realization of ownership rights to them;

4. The next civil law source is the laws of Ukraine, the norms of which are aimed at regulating the relevant civil legal relations (“On Business Associations”, “On State Registration of Legal Entities and Individual Entrepreneurs”) and many others;

5. A separate category of acts of civil legislation consists of subordinate legal acts of the President and the Cabinet of Ministers of Ukraine [3].

Thus, the term “civil law sources” covers both regulatory and legal acts in the entire spectrum of their existence, as well as custom, contract and decision of the European Court of Human Rights. It is necessary to distinguish between the concepts of “civil law” and “civil legislation”, which do not coincide in their content.

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