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COMPARATIVE LEGAL ANALYSIS OF CIVIL LEGISLATION AND JUDICIAL PRACTICE OF THE RUSSIAN FEDERATION AND THE REPUBLIC OF BELARUS ON FORCE MAJOR

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ANNOTATION
The article provides a comparative legal analysis of civil legislation and judicial practice of the Russian Federation and the Republic of Belarus on force majeure. Scientific conclusions are given about similar and distinctive aspects of civil law regulation of force majeure circumstances in these countries

Keywords: Civil law, force majeure, civil law rules on force majeure, signs of a force majeure circumstance.

The effective development of economic reforms carried out in our country today directly depends on the stability of Civil Law relations associated with entrepreneurial activity, ensuring such stability, in turn, necessitates the improvement of civil legislation. In particular, as a result of various natural disasters, socio-political, military-economic situations and the consequences of the pandemic, which took place all over the world in subsequent periods, there are frequent cases of failure or improper fulfillment of contractual obligations by the subjects of entrepreneurial activity. In such conditions, the correct qualification and fair application of the force majeure situation, which hindered the fulfillment of the obligation, in determining the responsibility of the subjects of entrepreneurial activity for violation of the obligation, plays an important role in the future activities of business entities. After all, the force majeure situation is one of the most important grounds for exemption from liability for violation of obligations. Based on this, there is a need to conduct a comparative-legal analysis of civil legislation of foreign countries, including the Russian Federation and the Republic of Belarus on force majeure, and use it to develop proposals for improving national legislation.

It should be noted that in civil law and judicial practice of the Russian Federation and the Republic of Belarus, the concept of force majeure (English “force-major”, French “force-majeure”) was perceived as a state that causes damage as a result of the influence of insurmountable force. In particular, in the civil legislation of the Russian Federation, the concept of insurmountable power, that is, force majeure, is enshrined

as a general rule, not all signs or characteristics of such cases are indicated. Part 3 of Article 401 of the Civil Code of the Russian Federation states that “if a different procedure is not provided for by law or contract, a person who does not fulfill or does not fulfill an obligation in the implementation of entrepreneurial activity will be liable if he cannot prove that the obligation cannot be overcome due to improper performance, that is, Violation of obligations by the debtor's contracting partners, the absence of the necessary goods in the market to fulfill the obligation, the absence of the necessary funds in the debtor are not included in the sentence of such situations”. This legal norm means that the person who violates the obligation is found guilty and, at the same time, is released from responsibility if he is able to prove that he is not guilty. Also, the law or contract may provide for the liability of the debtor in case of non-fulfillment of the obligation or its improper performance. That is, as a general rule, in the process of entrepreneurial activity, a person who violates an obligation is responsible, regardless of whether he is guilty or innocent. But in civil law, it is established that a person who violates an obligation is exempt from liability in cases where he proves that he has failed or has not been able to fulfill the obligation due to emergency and insurmountable conditions caused by an insurmountable force. As can be seen, civil law on force majeure shows its signs such as “emergency” and “non-prevention under certain circumstances” as important signs of force majeure that prevent the performance of the obligation. So, in order for the situation that has arisen to be considered a force majeure state, it is required at one time to have signs of both extreme and inevitability, that is, that cannot be prevented under certain conditions. This indicates that the occurrence of a force majeure is not related to the activities of the person responsible, that he does not obey the will of the parties and does not even have the opportunity to foresee it. In particular, if the “emergency”of the force majeure state means its sudden appearance, while the “non-prevention under certain conditions” means that it is inevitable, that is, that under certain conditions there is no possibility with the help of technical and other means to eliminate the consequences associated with it.

At this point, it is worth noting that until now there is no single opinion in the scientific and legal doctrine of the Russian Federation about the “emergency” and “non-prevention” signs of a force majeure state. For example, in the dictionary of the Russian language *“while the word "emergency" means "separate, very large, superior to all", in the scientific legal literature this word means “unpredictable state or unexpected state”* is interpreted as. Well-known lawyer scientist O.S.Ioffe, on the other hand, “aims that the state of emergency does not allow any life fact to be classified as a force majeure, in accordance with its objective nature”, it states that.

This opinion of the scientist is noteworthy, it helps to fully understand the essence of the word “emergency” and visualize it. In our opinion, O.S.It is possible to agree with Ioffe, but it is impossible to fully agree with the meanings of the word “emergency”, indicated in the dictionary of the Russian language, “separate, very large, superior to all.” Because, in order for the situation that has arisen to be “emergency”, it is important that it does not have to be “separate, very large, superior to everyone”, but to appear suddenly and have an absolute character, as well as occur in an unusual (unusual) situation that cannot be eliminated. Reviews of our opinion given to Part 3 of Article 401 of the Civil Code of the Russian Federation also confirms. After all, in these reviews, an explanation is given that “emergency and non-preventive signs of a force majeure state under certain conditions mean that it is an unusual and suddenly occurring situation.” Among them, some cases that do not apply to force majeure in the civil legislation of the Russian Federation are also indicated, which include violations of the obligation by the debtor's counterparties, the absence of goods necessary to fulfill the obligation on the market, the absence of the necessary funds in the debtor. The fact that these circumstances are distinguished by the legislator means that they can occur mainly as a result of entrepreneurial activity or the risk of any process of economic and financial activity. Therefore, according to the civil legislation of the Russian Federation, participants in civil legal relations can agree on the inclusion of all conditions related to force majeure circumstances in the contract, including what situations arising in the process of fulfilling the obligation can be recognized as force majeure, and what conditions should be satisfied in this.

Legal scholars point out that, In the Russian Federation, the task of qualifying force majeure circumstances by the legislator and giving them a legal assessment from the point of view of the basis for the release of the debtor from liability is mainly assigned to the courts, in which the courts resolve disputes related to force majeure situations, relying mainly on the norms and terms of the contract of civil For example, the Supreme Arbitration Court of the Russian Federation rejected a counterclaim of the defendant, including the requirement that “the material damage caused to the plaintiff was lost on the basis of the contract as a result of an emergency and sudden fire of the goods and material assets stored in the warehouse, and that there was no fault of him in this,

This decision of the court states that the terms of the storage agreement are not fulfilled by the defendant, that is, “not all measures have been taken to ensure fire safety in the process of preserving their commodity and material wealth” and “professional keeper " on the grounds of the responsibility of the keeper specified in Article 901 (paragraph 2 of Article 1), a lack or injury is liable if one does not know

and cannot know about the circumstances of the insurmountable force or the characteristics of the item accepted for storage, or if one cannot prove that it happened due to the intentional or gross carelessness of the loader", it is justified based on the legal norm of the law of the Russian Federation.

It should also be noted that in judicial practice of the Russian Federation, the interested party is required to submit documents issued by the competent authorities on the approval of the force majeure state, including a certificate from the Chamber of Commerce, the Hydrometeorological (seismology) service, certificates from the Ministries of emergency situations and internal affairs and other bodies. The interested party is also required to provide a letter informing the second party about the occurrence of a force majeure situation. The courts focus on finding the situation that has arisen as a force majeure situation, mainly on the fact that it has an emergency and sudden occurrence, is unusual under certain circumstances, such a situation that may occur when the contract is concluded is not foreseen by the parties, and the situation that has arisen does not depend on their will, the consequences of For example, according to the explanations given by the plenum of the Supreme Court of the Russian Federation, it is indicated that the courts will study whether the creditor has been notified or not within the period established by the debtor in the agreement on the occurrence of force majeure, whether the debtor has taken all measures within the framework of all possibilities to reduce the damage caused, if such conditions are not met, the debtor should not be released from liability and This indicates that the courts, when fully satisfied with the norms of the law and all the conditions agreed in the contract, make a decision, giving a legal assessment to the reliable evidence presented regarding the confirmation that the situation that has arisen is a force majeure situation as a legal fact. Also, when giving a legal assessment of the situation that has arisen as a force majeure, the courts pay the main attention to whether it has signs of "emergency"and "non-elimination". That is, the fact that these signs do not exist at one time becomes the basis for refusing to perceive the situation that has arisen as a force majeure. For example, by the decision of the Federal Arbitration Court of the Volga-Vyatka District of the Russian Federation, the decision of the appellate instance "on finding low-level weather caused by the winter season as a force majeure state"was canceled, and the court's decision " cannot be judged as a force majeure situation due to the fact that the situation as a", that is justified.

It should also be noted that the UN Convention on Contracts for the International Sale of Goods applies to the resolution of disputes related to force majeure involving foreign persons as parties by the courts of the Russian Federation. (Vienna, 1980) article 79 applies. According to him, in cases where the contract does not provide for

the terms of force majeure by the parties, the seller is not exempt from the obligation of the party to fulfill the contract in kind (supply of goods), but he can be released from liability for failure to fulfill his obligation due to force majeure. In this case, an emergency event caused by “out-of-control barriers”, that is, if, as a result of force majeure, the debtor has not fulfilled or has not fulfilled the obligation of the contract, his liability is decided by the court on the basis of general norms of the right of obligation. If the parties enter into the agreement all the conditions on force majeure circumstances, in order for the situation that has arisen to be recognized as force majeure, a legal assessment is given by the court to what extent (sufficient or insufficient) the terms of the contract are satisfied. Because, according to the civil legislation of the Russian Federation, the contract may specify in detail what phenomena or situations are perceived as force majeure, or not, and, as an exception, a different order may also be established by law or contract. For example, when a person carrying out entrepreneurial activity is only guilty of violation of an obligation, that is, his guilt finds confirmation in the form of revenge or gross negligence, responsibility can be established.(Vienna, 1980) article 79 applies. According to him, in cases where the contract does not provide for the terms of force majeure by the parties, the seller is not exempt from the obligation of the party to fulfill the contract in kind (supply of goods), but he can be released from liability for failure to fulfill his obligation due to force majeure. In this case, an emergency event caused by “out-of-control barriers”, that is, if, as a result of force majeure, the debtor has not fulfilled or has not fulfilled the obligation of the contract, his liability is decided by the court on the basis of general norms of the right of obligation. If the parties enter into the agreement all the conditions on force majeure circumstances, in order for the situation that has arisen to be recognized as force majeure, a legal assessment is given by the court to what extent (sufficient or insufficient) the terms of the contract are satisfied. Because, according to the civil legislation of the Russian Federation, the contract may specify in detail what phenomena or situations are perceived as force majeure, or not, and, as an exception, a different order may also be established by law or contract. For example, when a person carrying out entrepreneurial activity is only guilty of violation of an obligation, that is, his guilt finds confirmation in the form of revenge or gross negligence, responsibility can be established.

According to the civil legislation of the Russian Federation, if there is no possibility of fulfilling the obligation as a result of the occurrence of a force majeure situation or any situation that participants in civil legal relations cannot respond to (Clause 1 of Article 416 of the FK) or a situation in which there is no possibility of fulfilling the obligation as a For example, to the decree of the mayor of the city of Moscow No. 21 “on the

introduction of a high preparatory regime", adopted on March 16, 2020 in order to strengthen measures against the spread of coronavirus infection According to this, cultural, physical education and sports, exhibitions, entertainment and educational events with the participation of citizens with the participation of more than 50 people in the territory of the city of Moscow were suspended for a temporary (unknown) period, as a result of the inability to fulfill the contracts concluded on the preparation and holding of these events. .

In the Civil Law of the Republic of **Belarus** on force majeure, the term "force majeure" is not used, but the term "force that cannot be overcome", which is synonymous with it. As important signs of an insurmountable state of power, "emergency" and "inevitability" are indicated, and according to law enforcement and judicial practice, it has been expressed that situations such as natural phenomena – earthquakes, landslides, storms, floods-or socio – economic situations-such as pandenia, war situation, mass demonstrations, international sanctions, import and export bans in the interests of the state-have such signs. For example, Article 372 of the Civil Code of the Republic of Belarus, which defines the grounds for liability for violation of obligations, states that "a person who has not fulfilled or has not fulfilled the obligation to the proper extent is liable in the presence of his fault (extortion or negligence) if the law or contract does not provide for other grounds for liability. A person is recognized as innocent if he has taken all measures to properly fulfill the obligation at the level of care and caution required by the nature of the obligation and the conditions of civil circulation. The absence of guilt is proved by the person who violated the obligation. If, in the law or contract, a different order is not provided, a person who has not fulfilled an obligation in the process of entrepreneurial activity or has not fulfilled it to the proper extent will be liable if he cannot prove that the fulfillment of the obligation is impossible due to insurmountable force, that is, emergency and unavoidable circumstances".

It can be seen that this civil law document does not specify a list of insurmountable power cases or some of their types, but distinguishes such signs as "emergency" and "inevitability", which in a situation as a result of an insurmountable force requires that its two important signs, such as "emergency" and "inevitability", be manifested at the same time. Because, in the civil legislation of the Republic of Belarus, the state of insurmountable power is defined as an emergency occurrence and inevitable, that is, an insurmountable state of force, in which the legislator states that the state of insurmountable power has an extraordinary occurrence, while the participants in legal relations say that there are no opportunities to foresee it, not subject to, he envisaged that it would not be possible to eliminate the situation that has arisen under

certain conditions and the consequences associated with it using technical and other means.

When proceeding from the requirements that one of the most important grounds for the emergence of civil rights and duties among the participants in civil circulation in the civil legislation of the Republic of Belarus is a contract, and when concluding it, the parties must fully express their will (article 391 of the CC) and the conscientious fulfillment of the obligation, the parties In particular, it can be implied which situations arising in the process of fulfilling the obligation can be recognized as force majeure and what conditions must be satisfied in this. In the event that the conditions specified in the contract are satisfied, the documents collected on their basis to confirm that the situation that has arisen is a force majeure situation can be studied by the parties and the force majeure situation recognized. When a dispute arises between the parties regarding the adoption of a force majeure situation on the terms of the contract, a legal assessment of the situation is given by the court and a decision is made.

Judicial practice of the Republic of Belarus shows that courts, when resolving disputes related to force majeure circumstances, mainly rely on the norms of civil law and the terms of the contract governing civil legal relations that have arisen between the parties. For example, in paragraph 7 of the resolution of the plenum of the Supreme economic Court of the Republic of Belarus dated 21.01.2004 No. 1 “on certain issues of applying the norms of the Civil Code on liability for the use of funds by strangers”it is noted that " when establishing responsibility under Article 366 of the Civil Code for non-fulfillment, when carrying out entrepreneurial activities, the debtor who does not fulfill or does not fulfill the obligation must take into account such situations as the insurmountable force to fulfill the obligation appropriately, that is, the violation of obligations by counterparties, the absence of the necessary goods in the market to fulfill the obligation, the absence of the necessary monetary funds in the debtor. These specified facts are not considered as the basis for the collection of interest from the debtor specified in Article 366, unless otherwise provided by law or contract. In particular, economic courts, in cases where the relevant expenses of budgetary institutions are not financed or insufficiently funded, provide for the non-payment of interest provided for in Article 366. The economic courts should only charge the interest specified in Article 366 when the funds of other persons at the disposal of the debtor–budgetary institution are used contrary to the law”.

It should be noted that in the legal assessment and qualification of situations arising as a result of an insurmountable force, the courts, along with the signs of “emergency” and “inevitability” established by the legislator of an insurmountable force, also focus

on its “external character”, which is an important sign. It discusses the situation caused by the courts as to whether or not there was an external factor in relation to the activities of the debtor, whether there is a causal link between the emergence of this phenomenon and the activities of the debtor, as well as to what extent the force majeure situation affected the activities of the debtor and what measures After all, a well-known legal Scientist E.E.As noted by pirvis, the “external character “of the” state of insurmountable power”indicates that there is no causal link between its occurrence and the activities of the debtor, that is, the force majeure state is the result of reasons other than the activities of the person responsible".

According to the civil legislation of the Republic of Belarus, if the law or contract does not provide for different conditions, it will be invalid if not one of the parties has the opportunity to fulfill the obligation due to an unresponsive situation (article 386 FC). Also if, as a result of the adoption of a document of a state authority, a situation arises in which there is no possibility of fulfilling an obligation by the parties to the contract, that is, as a result of the output of a document of a state body, the fulfillment of an obligation becomes completely or partially impossible, the obligation is It is worth noting that these legal norms also apply directly to force majeure cases. When considering disputes related to situations in which there is no possibility of fulfilling the obligation by the courts, it is required that the interested party provide a certificate issued by the competent authority to confirm that it is a force majeure state if it considers this condition to be a force majeure state. This certificate according to Article 20 of the law of the Republic of Belarus “on the Chamber of Commerce and industry, it is issued to the interested party on the basis of relevant documents by the Chamber of Commerce and industry of the Republic or its territorial bodies, and it can be accepted by the court as one of the main evidence confirming the claims of the claim. Also, if the court did not have the opportunity due to the fact that the lawsuit was filed and its consideration was caused by circumstances of insurmountable force, in such cases, according to Article 203 of the Civil Code of the Republic of Belarus, the passage of the term of the claim is suspended until the end of the force majeure. At the same time, in cases where the force majeure situation is used by the courts, it is applied only to the period for which such a situation exists in practice, and the debtor is required to prove that failure to fulfill his obligation is an external obstacle that does not depend on his will and cannot foresee the occurrence of such a situation When force majeure is applied by a court decision, the debtor is exempted from liability for violation of the obligation, but he cannot be exempted from fulfilling the main obligation. At this point, some legal scholars believe that “if the force majeure situation has caused difficulty (hardship) to fulfill the obligation, and in such a case

the debtor is released from liability, then it will also be the basis for termination of the contract" and " difficulties cannot be found force majeure", taking into account the conflicting opinions, it should be noted that the courts should independently resolve the issue of force majeure based on the norms of civil law and the terms of the contract. Based on the above, the following conclusions can be drawn from the comparative legal analysis of civil legislation and judicial practice of the Russian Federation and the Republic of Belarus regarding force majeure:

1. Civil legislation and court practice regarding force majeure include:

A) to approach the qualification of the situation that has arisen as a force majeure, mainly based on the terms of the contract and the norms of civil law;

B) each force majeure situation is assessed from the point of view of the presence of signs of emergency and inevitability, focusing mainly on the fact that the situation that has arisen is not subject to the will of the participants in the civil circulation and there are no opportunities to foresee it, as well as the inability to eliminate its consequences under certain;

C) legal assessment of the existence of a causal link between the debtor's action (inaction) and the resulting consequence, as well as the fact that in the case of force majeure, all measures are taken by the debtor to fulfill the obligation or reduce the damage caused to the creditor;

G) to request documents issued by the competent authorities to confirm the existence of the force majeure state, assessing whether the terms of the contract were violated or not by the debtor during the period in which the force majeure state lasted;

D) in resolving disputes related to force majeure circumstances, taking as a basis the instructions given by the courts of higher instance (appeal, cassation) on these cases or the explanations given by the Supreme Court regarding the application of legislative norms in this category of cases;

2. Although there are some different aspects in judicial practice, including the signs of "emergency" and "inevitability" as the main criteria for Force Majeure in the civil legislation of these countries, but due to the non-existence of legal norms regarding the characteristics of the signs, there are different approaches to the interpretation, evaluation and application of the signs of "emergency" and "inevitability" by the courts.

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