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THE REFORM OF FRENCH CONTRACT LAW: WHAT IS NEW?[1]

The year 2016 in French may be called as a year of historic reform to the oldest Civil Code in Europe, which has been used as a model for countless countries – the French Civil Code or the Napoleonic Code. In the French legal doctrine is expressed the expectation that this reform contribute to making French law as attractive as it should always have been [1, p. 11]. The reform concerned to the French contract law, law of obligation and proof of obligations, and was conducted 10 February 2016 by the Ordinance no. 2016-131 on the reform of contract law, the general regime and the proof of obligations [2], published in the *Journal officiel* dated 11 February 2016, provides, in its article 9, that its provisions will enter into force on 1st October 2016. These provisions will then apply only to those contracts entered into on or after this date. Prior contracts will therefore continue to the governed by old law, both with respect to the conditions surrounding their formation and to their past and future effects. Political leaders had opted for a more expeditious process – the ordinance technique rather than resorting to statute – which has itself sparked institutional debate [3, p. 62].

France has made substantive progress in modernizing essential parts of its *Code civil*, despite the necessary more than 200 years before it recodified its general law of obligations. In comparison, Louisiana enacted a new law of obligations in 1984, the Netherlands in 1992, Quebec in 1994, Germany in 2002, and Romania in 2011[4, p. 1156].

The sources of inspiration for this reform are actually controversial. For instance the rules governing *l'imprévision* have been completely changed, however it can be argued that the inspiration for that change is European contract law, French administrative contract law or even the practice of contract law as contract-makers have been circling *imprévision* rules for decades. Thus inspiration is coming from above (European contract law), from below (contract practices) and from the "sides" (administrative contract law) [5, p. 44].

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The reform of French contract law did however take the powerful support from case law, from legal academics and from the creative practice if legal professionals, to make up for the obsolescence and the rising shortcomings of the provisions of *Code civil* given the evolution of the world, cultures and technologies [1, p. 9]. And this necessary reform has one merit that cannot be denied: it exists.

The reform to the French Civil Code is focused on the following key areas: types of contracts, negotiating the contract (including pre-contractual freedom and public policy, good faith, pre-contractual duty to inform, pre-contractual duty of confidentiality, pre-emption agreement, unilateral promise to contract), the conclusion of the contract (including formation of the contract as the meeting of offer and acceptances, defects of consent like mistake, fraud and duress, capacity of legal person, general rules applicable to representation, lawful and certain content, determination of the price in certain types of contract, consideration and contractual imbalance, conditions precedent or subsequent or obligations with a term, cumulative, alternative or optional obligations, joint and several obligations or indivisible obligations, promise to stand surety, duration of contract, contract related to proof), performance of the contract (including binding effect, transfer of ownership, payment of sums of money, assignment of claims, debts and contracts, hardship, non-performance of a contract - a variety of remedies).

The French reform is too large extent means as a reaffirmation of the French legal tradition on the European and international legal stage. From this defensive stance, it is mainly a codification *à droit constant.* It is, however, doubtful whether it will really contribute to restoring the prestige and influence of the Civil Code worldwide, as it is precisely so strong embedded in the French legal tradition [6, p. 26].

Thus attractiveness of French contractual law must be viewed within the context of international contracts where the parties have a freedom of choice of the law applicable to their contract. Moreover attractiveness can also be aimed at legal States who are undergoing legal reforms and hesitating on a model to inspire them. Finally the attractiveness of a legal system could be viewed within a European context. Indeed with the desire to promote and institute a European law of contracts, the question of which features of each particular system to promote begs to be asked [5, p. 49]. One could answer that the attractiveness of a particular system would aid it to become a fundamental part of this new European law of contracts.

French contract law, as and Ukrainian contract law, contrarily to some legal systems or traditions such as common law, is included in law of obligation, i.e. contract law is seen as a sub-branch of the law of obligations. The Ukraine's intention to join the EU makes it necessary to bringing Ukrainian's legislation to the EU legislation. The corresponding commitment is determined by EU-Ukraine Association Agreement. The new French contract law is a part of

European contract law and the most significant innovation can be the source of inspiration for Ukrainian legislator too.

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ЯК ВПЛИНУЛИ ЗМІНИ ДО КОНСТИТУЦІЇ УКРАЇНИ НА ВИРІШЕННЯ СПРАВ ПРО УСИНОВЛЕННЯ ДІТЕЙ

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