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REFORMS UNDERTAKEN: SIGNIFICANT RETHINKING OF THE DEFINITION OF CIVIL PROCEDURE LAW

Abstract. The article considers the issue of significant rethinking of the definition of civil procedural law. Signs of failure of judicial reforms are characterized. Problems of administration of justice in civil proceedings of Ukraine are investigated. The concept of justice is defined. A description was made, as well as the current state of the courts of Ukraine, their corruption and noted the international experience on this issue. In addition, we raised the issue of civil law as a science: the concept, subject, legal relations and so on. The study identified the fact that the method of this science is absent. Based on the above, it was concluded that the domestic Ukrainian definition of civil procedural law, its tasks and method needs significant changes and clarifications.

***Keywords**: reforms, civil procedural law, courts and judges, corruption, civil law relations, methods of civil procedural law, justice, judiciary, fairness, subject and science of civil procedure.*

Relevance of the study. The fact of judicial reform in Ukraine is well known. Every day we are reminded of this by the decisions of the "renewed" Ukrainian courts, from the Constitutional Court to local courts. Judicial reform without exaggeration can be called a priority of modern Ukraine, because without it all other reforms one way or another are reduced to profanity. Without restarting the judicial system, all other fundamental reforms will be blocked. Without fair courts, Ukrainians cannot feel safe in their own country and the government cannot win back the trust of investors. Without guarantees of legitimacy, there will be no development of small and medium-sized businesses, no growth in living standards, and no expansion of the middle class.

In addition, at the same time a reform of legal education and science is looming. But will it not be the same as the results of the failed judicial reform? After all, education and science could be improved without reform. Arguments on this fact are obvious and are given in our study.

Recent publications review. The problem of justice in their works raised by such scientists as V. Bihun, A. Berniukov, O. Kolisnyk, O. Vasylenko, Yu. Loboda, B. Malyshev, I. Marochkin, O. Riazantsev, S. Pohrebniak and others. The direct comprehension of justice is reflected in the monograph of V. Bihun, as well as in the collective monograph by V. Bihun, A. Berniukov, S. Pohrebniak and others. Justice and judicial power were considered by I. Marochkin. The issues of civil litigation were covered in the scientific works of scientists O. Kolisnyk and O. Riazantsev. However, to date, there are few relevant studies devoted to the problem of complete rethinking and definition of civil procedural law.

The article's objective is to explore the question of substantially rethinking the issue of the definition of civil procedural law

Discussion. Justice and legal proceedings are far from being the same thing. Therefore,

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first let us explain the direct concept of civil procedural law, which means – "a totality and system of legal norms governing the order of consideration and resolution of civil cases by the court, the subject of regulation of which are social relations arising in the field of civil proceedings, that is, civil procedural legal relations" [1]. Despite the fact that this approach to the definition of this concept in Ukraine is generally defined, it still causes a number of significant issues:

– first, when we consider "civil procedural law" as a branch of law, and as an academic discipline, and as a relevant system of knowledge, and as a subjective right, and as a "totality and system of legal norms" a logical question arises, how in this case we should interpret the concept of "civil procedural legislation", whose content is the relevant legal norms, which, in turn, regulate certain aspects of social relations, which are the subject of their regulation? The consequence of this lack of clarification and further study of these issues on the basis of traditional purely positivistic legal understanding will be a banal identification of the concepts of "civil procedural law" and "civil procedural legislation";

– secondly, the subject of regulation of civil procedure law is the relevant social relations, and the subject of civil procedure law as a system of knowledge is civil procedural law? It is obvious that there is a "dogma of law", i.e., this statement should be regarded as a provision of a legal nature, accepted without evidence?

– third, in addition, it would not be superfluous to clarify the content of the civil procedure law itself. What does it involve? A "system" or still a "totality" of legal norms? But we should not identify these concepts, because the system is not a totality, and the totality is not a system;

– fourthly, it may also criticize the assertion that it is "public relations in the administration of justice" that constitute the subject matter of civil procedural law. To this end, it is first necessary to clarify the concept of justice, which, in turn, means the purpose and desired result of the activities of the judiciary. It follows that these relations are regulated not only by civil procedural legislation, but also by other normative legal acts. And the regulation of relations in the field of legal proceedings in civil cases, the proper implementation of which constitutes one of the main means of ensuring justice, is the responsibility of the civil procedural legislation.

The confirmation that justice and legal proceedings are not identical concepts is evidenced by a number of general scientific sources and relevant rules of logic, which interprets legal proceedings as the proceedings in the order established by law, and justice – as a form of state activity [2].

It should be noted that the word "justice" is derived from the words "right", "truth", "true", "trial according to truth, according to conscience, according to law", "justice". However, after examining a number of practical court decisions, it is safe to say that truth, justice, and fairness do not always occur in the conduct of legal proceedings. Although, strange as it may seem, it is justice and fairness that should have been the goal of the judiciary. That is, the latter statement is the basis for concluding that one of the directions of the state is justice. Thus, the function that is conducted by the system of relevant bodies, and which is not simply assumed, but also monopolized by the state and constitutes the content of justice. In addition to this, their activity is indeed conducted in the form of legal proceedings. But often the courts also make non-legal decisions. But in this case, the state provides for other institutions directly aimed at resolving contradictions arising from legal relations in the sphere of providing justice. According to the Art. 55 of the Constitution of Ukraine these institutions constitute a system of national means, and when such means are exhausted. and justice has not taken place, the person concerned is entitled to apply to international organizations for the protection of their rights.

That is why the court in conducting judicial proceedings only contributes to the administration of justice, and the duty to ensure it was taken by the state and, above all, through the system of relevant authorities. Therefore, we can define that the subject of procedural law is the civil proceedings, the process, in other words – the activities of courts, persons directly involved in the case (experts, witnesses, interpreters) and other participants in the process, as well as the bodies of judicial execution, regulated by the civil procedural law.

Regarding the courts themselves, I would like to add some results of a study on the state of corruption in Ukraine's judicial system. The study was supported by the governments of Ukraine and the United States through the Millennium Challenge Corporation as part of a two-year threshold program for Ukraine aimed at reducing corruption in the public sector.

The official presentation was attended by the U.S. Ambassador to Ukraine William Taylor. Commenting on the results of the study, he noted, in particular, that "fair competition can only be established under the rule of law, guaranteed by an impartial system of justice – the judicial system. Corruption compromises this system and undermines the rules of fair competition, which complicates economic growth".

The study aimed to determine the attitudes towards corruption and the real experience of encountering corruption in the judicial system by four target groups: citizens and companies that have gone to court, and a professional group of lawyers and prosecutors. A total of 2004 citizens and 527 companies/businesses in all regions of Ukraine were interviewed. A total of 184 attorneys participated in the survey of attorneys, which was conducted in all oblast centers of Ukraine. The study also included a survey of 111 prosecutors, deputy prosecutors, and prosecutorial staff (criminal-judicial department, public prosecution support department, and investigative department) in all oblast centers of Ukraine.

All groups of respondents perceive the prevalence of corruption in the judicial system almost the same. However, the opinion of the professional group of prosecutors and lawyers, who observe the system from the inside, is particularly interesting. About one-third of lawyers and prosecutors perceive corruption as a common occurrence at all stages of court proceedings. Another third of respondents (36-39 %) indicate that it is the pre-trial stage that is the most corrupt. In addition, 64 % of attorneys and prosecutors surveyed believe that the level of corruption in the judicial system has increased over the past year. Traditionally, the level of perception of corruption is much higher than the actual experience of corruption. 19 % of citizens and 37 % of companies that went to court said that they had actually experienced corruption in the judicial system. It is interesting to note that companies were twice as likely to have encountered actual corruption as citizens, which, according to experts, reflects the monetary value of court cases.

From 45 % (attorneys and prosecutors) to 67 % (citizens) of respondents believe that the introduction of the Unified Public Register of all court decisions on the Internet will reduce the level of corruption in the judicial system. At the same time, the majority of citizens and companies generally give the same negative evaluation to the current anti-corruption actions of the government: 70 % of companies, 90 % of attorneys and prosecutors, and 74 % of citizens are convinced of their ineffectiveness.

While presenting the results of the study in Kharkiv, the co-chairman of the Kharkiv Human Rights Group Yevhen Zakharov noted that one of the ways to overcome corruption is the openness of state authorities, in particular, when making public the adopted normative legal acts. In addition, Zakharov stressed that the majority of appeals to the European Court of Human Rights against Ukraine concern violations of the right to a fair trial [9].

Thus, if we consider thousands of claims of Ukrainian citizens against Ukraine in the European Court of Human Rights, most of which the court satisfies in favor of these citizens, the fact of "fairness" of justice of Ukrainian courts becomes evident. So, if we refer to the Art. 2 of the Law of Ukraine "On Judicial System and Status of Judges" we can see the following terms, which tell us that "the court, by administering justice based on the rule of law, ensures everyone the right to a fair trial", then it turns out that in fact everything is not so [3].

In addition, it would be useful to note that the world experience of judicial activity long ago led everyone to the conclusion that the court is primarily a body of the state, which in the interests of the ruling class conducts in the established procedural order of consideration of civil and criminal cases. It is the class essence of the state which created it that determines the forms of its organization and activity. Often the court acts as a means of protecting the interests of the exploiters in exploitative states. Therefore, the class selection of judges is characteristic of the courts of all exploitative states. And this, together with class legislation, enables the ruling classes to use it to suppress the workers. At the same time, famous political classics, during the characterization of the bourgeois court, noted that this court only portrayed itself as a defense of order, but in reality, was a blind, subtle instrument of miserable suppression of the exploited, which defended the interests of the moneybag. Also, Valentyna Danishevska, president of the Supreme Court, noted that the judiciary and the public share a key goal: to provide independent, impartial, fair justice that people trust. "We see successes, but we also see that. That if the conditions for independent justice are not in place, nothing will lead to the proper outcome. That is, in parallel with the way we're reviewing the philosophy of judicial selection, we need to talk more about whether there are conditions for the virtuous professional we want to see in the judicial system to remain that way for as long as they will work", the

speaker explained [4].

Given that Ukraine has become not only a bourgeois, but also a clan-oligarchic power, the following question is quite relevant: won't Ukrainian courts consequently become the same "blind, thin instruments of miserable suppression of the exploited, who simply defend the interests of the moneybag" and are there appropriate mechanisms to prevent this problem in this state?

It is unimportant to note about the courts - they are the very basis of corruption throughout the country. After all, without defeating corruption among judges, it makes no sense to fight it in other spheres of life as well. After all, it is the courts that ultimately decide who is corrupt and who is not. And in recent years, officials, police, prosecutors and the SBU have talked a lot about the fight against corruption. But the "effectiveness" of this "struggle" is eloquently proved by the official data of the State Department of Ukraine on the execution of punishments: there is not a single corrupt judge in places not so distant. The last judge who went to prison went free more than a year ago, it was an officer of justice from Ivano-Frankivsk, who got burned on a bribe.

What to say, when the Ukrainian courts are worse than corruption. These are the results of the survey conducted at the end of October by the European Business Association (EBA), Dragon Capital investment company and the Center for Economic Strategy. Corruption, which topped the list during the polls, has moved to the second place [5].

However, there is a question that has been bothering many concerned Ukrainians of late: can a court cleanse itself? The Explanatory Dictionary explains self-cleansing as "the action of freeing oneself from something superfluous, interfering with someone else's" [6]. However, this is indeed the case, there are superfluous people in the judicial system, who hinder it, pulling it down with all their efforts.

Reformers and politicians of all ranks are unanimously crying out about the fact that the judicial system does not want to cleanse itself of bribe-taking judges, corrupt judges, judges who render unjust decisions, that corporatism is quite common among judges, the judicial system protects "its own" in any case. Thus, the judicial system does not exempt scoundrels in robes, but even on the contrary, supports and protects them in every possible way. Ideas arise about establishing criminal liability for judges if they fail to notify law enforcement agencies about the commission of corruption offenses by their colleagues, etc.

At the same time, the Parliamentary Assembly of the Council of Europe notes in its Resolution 1703 that corruption is deeply entrenched in many Councils of Europe member states. The Assembly is concerned that some states have a "fashion" to flatly deny that they have the problem of corruption in courts. This cannot be said about Ukraine. We don't have any problems with it, only lazy people don't shout about corruption in courts.

Therefore, the Parliamentary Assembly of the Council of Europe calls upon member states to establish a mechanism for inspection of the activities of lower-level courts by higher-level courts or representatives of the body of judicial self-government - the Judicial Council of Ukraine or the Supreme Council of Justice [7].

The Council of Judges of Ukraine has conducted numerous inspections of some courts in Ukraine, but such powers of the Council of Judges are nowhere enshrined in law. Therefore, in our opinion, court audits are necessary, especially at the present time when Ukrainian society demands that the judicial system cleanse itself. However, this requires an appropriate legal regulation. That is, first of all, it is necessary to clearly define the body that will be able to conduct these inspections, clearly define the cases when these inspections should be conducted, as well as to characterize the powers of inspectors.

Thus, given the above, we can conclude that the Ukrainian state should be at the legislative level immediately to implement the resolution of the Parliamentary Assembly of the Council of Europe № 1703 on corruption in the judicial system, to introduce an effective mechanism of inspection of the courts of Ukraine to reduce the risks of corruption activities.

As for the definition of the concept of method, in the special literature it is interpreted only in general terms. In particular, it is interpreted that it is "a totality of means and ways of impact on the behavior of subjects of civil procedural legal relations, enshrined in the norms of civil procedural law. It is conditioned by the specific properties of the subject of regulation of the civil procedural law, those social functions that this branch of law performs, and its organic connection with the branches of substantive law" [8].

In other words, this definition interprets not the method of legal regulation, but the "method of law". At the same time, given that the concept of "law" both in the objective

understanding as a system of norms, and in the subjective understanding as a subjective right, and as a leading system of knowledge itself is a means that simultaneously performs the function of method. Thus, from the above it follows that the method has its own method, which from the logical point of view is unquestionable.

Quite big doubts are also caused by the fact that it would seem that all the problems of civil-law legislation can be solved relying on only one method. On this basis, the following question arises: wouldn't it be more logical to first define not "method of law", but "methods of legal regulation", and then proceed from the fact that these methods form a corresponding system, the characteristic of which remains undisclosed, and therefore requires appropriate scientific efforts?

The convincing assertion that "in content the method of civil procedural law is imperative-dispositive and characterized by normative definition: the grounds for emergence, development and termination of civil procedural legal relations, the nature of legal relations between its subjects; procedural legal position of court, body of judicial execution, participants of civil proceedings; civil procedural actions - their content, form, procedure of execution; civil procedural sanctions" does not stand. After all, it is quite obvious that each of these features is also typical for each of the other branches, at least for the procedural law.

And speaking about the imperative and dispositive method, their essence is determined not by their content, but primarily by the nature of influence on the subjects of certain legal relations, which is why they are also used to a greater or lesser extent in each of the varieties of legal regulation. However, it is widely known that the imperative method provides for a mandatory for implementation state command, non-compliance with which entails negative legal consequences, that is, sanctions. Exactly this method is characteristic of public-law relations. And as for the dispositive method - this method is an opportunity for the subjects of legal relations to choose one of the ways of action proposed by these norms, provided for by the relevant rules of law. Therefore, it is characteristic precisely for private legal relations. At the same time, both imperative and dispositive method, to a greater or lesser extent, is used in the process of solving problematic issues in the sphere of each type of legal regulation.

Conclusions. Consequently, the reasoning outlined above in this article leads to the conclusion that the Ukrainian definition of civil procedural law, its objectives and method requires significant changes and clarifications. And if we talk about the direct definition of the method of civil procedural law, it is absent in our country. Then a logical question arises: who, in such a case, will work on this problem? - Probably no one. But, once upon a time, before the loud reforms, such an initiative was encouraged. At the same time each such publication provided for a certain fee. And after all these reforms, a Ukrainian scientist, to write and publish in a foreign language (so that not Ukrainian, but, for example, foreigners, to use it even a small, even large discoveries) he needs for this and pay your own three.

Conflict of Interest and other Ethics Statements

The authors declare no conflict of interest.

References

1. Wikipedia. The concept of civil procedure law. URL: https://uk.wikipedia.org/wiki/%D0%A6%D0%B8%D0%B2%D1%96%D0%BB%D1%8C%D0%BD%D0%B5_%D0%BF%D1%80%D0%BE%D1%86%D0%B5%D1%81%D1%83%D0%B0%D0%BB%D1%8C%D0%BD%D0%B5_%D0%BF%D1%80%D0%B0%D0%B2%D0%BE

2. Modern Problems of Justice in Civil Proceedings of Ukraine. URL: https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjI0LP_vqHzAhUGLOwKHWO6BHMQFnoECAQQAQ&url=http%3A%2F%2Fwww.jurnaluljuridic.in.ua%2Farchive%2F2016%2F2%2Fpart_2%2F23.pdf&usg=AOvVaw0zY5V5zatgT6b21MttFcjV

3. Law of Ukraine “On Judicial System and Status of Judges”. URL: https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwiH9ISLwKHzAhWatKQKHSO7CQMQFnoECAIQAQ&url=https%3A%2F%2Fminjust.gov.ua%2Fm%2Fstr_30953&usg=AOvVaw0f7Sxt4DMj6fZTp91J-auC

4. “Vicious circle” of law enforcement reform, flaws in the judiciary, undercut wings of anti-corruption policy - opinions of politicians and experts. URL: https://rpr.org.ua/news/zacharovane-kolo-reformy-pravookhoronnoi-systemy-vady-sudovoi-pidrizani-kryla-antykoruptsiynoi-polityky-dumky-politykiv-i-ekspertiv/

5. Ukrainian courts are worse than corruption, say investors. URL: https://www.bbc.com/ukrainian/news-54891061

6. Explanatory Dictionary of the Ukrainian Language. URL: http://sum.in.ua/s/samoochyshhennja

7. Parliamentary Assembly of the Council of Europe Resolution No. 1703 on judicial corruption URL: http://w1.c1.rada.gov.ua/pls/mpz2/docs/1044_rez_1703.htm

8. The concept of civil procedure law and its significance. URL: https://lh.pl.court.gov.ua/sud1617/pres-centr/news/239291/

9. Corruption in the court is not surprise. URL: https://pravo.ua/articles/korrupcija-v-sude-ne-udivljaet/

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ВПРОВАДЖЕНІ РЕФОРМИ: СУТТЄВЕ ПЕРЕОСМИСЛЕННЯ ВИЗНАЧЕННЯ ПРОЦЕДУР ЦИВІЛЬНОГО ПРОЦЕСУАЛЬНОГО ЗАКОНОДАВСТВА

Анотація. Стаття присвячена питанню, яке пов'язано з еволюцією цивільного процесуального законодавства, а саме істотного переосмислення питання визначення цивільного процесуального права. У статті нами, насамперед, було здійснено аналіз та подальше співвідношення понять «правосуддя» та «судочинство», де ми зробили висновок про те, що дані поняття тлумачаться по-різному та у своєму змісті містять далеко й не одне й те ж саме значення. Підтвердженням того, що правосуддя та судочинство зовсім не є тотожними поняттями свідчить й низка загальнонаукових джерел та відповідних правил логіки, які судочинство тлумачиться як провадження у встановленому законом порядку відповідних справ, а правосуддя – як одна із форм діяльності держави Після цього ми звернулися до тлумачного словника для визначення поняття цивільного процесуального правила та одразу виокремили, що даний підхід щодо визначення цього поняття в Україні є загально визначеним, все ж таки він зумовлює виникнення низки суттєвих питань, які надалі розкрили у змісті нашого наукового дослідження. Охарактеризовано ознаки провальності судових реформ, адже без перезапуску судової системи всі інші фундаментальні реформи будуть просто заблоковані. Без чесних судів українці не зможуть відчувати себе в безпеці у власній країні, а влада не зможе повернути довіру інвесторів. Без гарантій законності неможливий розвиток малого і середнього бізнесу, не буде зростання рівня життя і розширення середнього класу. Окрім цього у науковому дослідженні досліджено проблеми здійснення правосуддя в цивільному судочинстві України. Визначається поняття правосуддя, де нами було зауважено, що суд, при здійсненні судочинства тільки сприяє здійсненню правосуддя, а обов'язок його забезпечення взяла на себе держава і, насамперед, за допомогою системи органів відповідної влади. А тому ми зробили висновок по те, що предметом процесуального права є цивільне судочинство, процес, іншими словами – врегульована цивільним процесуальним правом діяльність судів, осіб, що безпосередньо приймають участь у справі (експертів, свідків, перекладачів) та інших учасників процесу, а також органів судового виконання.

Було проведено характеристику, а також сучасний стан судів України, їх корумпованість та зазначено міжнародний досвід з-приводу даної проблеми. Беручи до уваги те, що Україна стала не тільки буржуазною, а й кланово-олігархічною державою, досить актуальним виступає наступне питання: а чи не стануть внаслідок цього й українські суди такими ж «сліпим, тонким знаряддям нещасного придушення експлуатованих, які просто обстоюють інтереси грошового мішка» та чи існують у цій державі відповідні механізми запобігання даній проблемі?

Окрім цього нами було порушено питання щодо визначення цивільного права як науки: поняття, предмет, правові відносини тощо. У дослідженні визначили той факт, що метод даної науки взагалі відсутній. Адже досить великі сумніви й викликає і те, що, начебто, усі проблеми цивільно-правового законодавства можна розв'язали спираючись тільки на один метод. Виходячи з цього, виникає наступне питання: а чи не логічніше було б спочатку визначити не «метод права», а «методи правового регулювання», а потім виходити із того, що дані методи утворюють відповідну систему, характеристика якої залишається ще не розкритою, а тому й потребує відповідних наукових зусиль?

На основі вищевикладеного зробили висновок про те, що вітчизняне українське визначення цивільного процесуального права, його завдань та методу потребує суттєвих змін та уточнень.

***Ключові слова**: реформи, цивільне процесуальне право, суди та судді, корупція, цивільно-правові відносини, методи цивільного процесуального права, правосуддя, судочинство, справедливість, предмет та наука цивільного процесу.*