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THE RIGHT TO A FAIR TRIAL AND A MODERN CIVIL PROCEDURE MODEL

In the article the author tries to depart from the previous conventional approach according to which the model of civil procedure is characterized only as adversarial one. The author's approach to the definition of model of civil procedure is based on the requirements of art. 6 (1) ECHR and the judgments of the Court, where the content and the scope of the right to a fair trial are determined. Abovementioned has allowed to conduct a complex study and to analyze the institutional, structural-functional, substantive, and procedural features of such model.

From the institutional point of view civil procedure should involve the judicial activity of courts directly integrated into the Judicial System of Ukraine, other jurisdictional bodies as well as enforcement bodies. This order is internally structured and covers both disputable and "conditionally" disputable proceedings and law-enforcement procedures, as well as stages of logical and functional character. In this regard, despite the existence of three procedural codes in Ukraine civil, economic and administrative proceedings should be included to a single civil procedure and, accordingly, be carried out in compliance with the fundamental principles of fair trial. The latter provide, firstly, that the access to jurisdictional and enforcement bodies should not be burdened by excessive legal or economic obstacles. Secondly, the case hearing should occur in compliance with the due (fair) procedure. Thirdly, the hearing should be public. Fourthly, there should be reasonable time of a trial and execution. Fifthly, the jurisdictional body should be independent, unbiased and established by law. Sixthly, enforcement of decisions of jurisdictional bodies should be carried out without undue delay.

Civil procedure is considered to be the order for resolving civil cases according to the fundamental principles of fair trial, which is taken by courts in civil, economic and in certain occasions, administrative proceedings as well as, jurisdictional bodies and execution of court decisions by bailiffs and other authorities which make an execution of court judgments and decision of other authorities.

Keywords: model of civil procedure; «court» and «the right to a court» in the practice of the European Court of Human Rights, civil proceedings and law-enforcement procedures, civil rights and obligations, fundamental principles of fair trial.

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Право на справедливое судебное рассмотрение и современная модель гражданского процесса

В статье автор пытается отойти от общепринятого подхода, в соответствии с которым в основу характеристики модели гражданского процесса закладываются лишь состязательные начала, и предлагает новый, в соответствии с которым необходимо исходить из требований п. 1 ст. 6 ЕКПЧ и решений ЕСПЧ относительно содержания и сферы применения права на справедливое судебное рассмотрение. Это позволило провести комплексное исследование и проанализировать институциональные, структурно-функциональные, предметные и процедурные особенности такой модели.

Институционально, по мнению автора, гражданский процесс должен включать как деятельность судов, непосредственно интегрированных в судебную систему Украины, так и других юрисдикционных органов, а также органов принудительного исполнения. Такой порядок внутренне структурирован и охватывает как спорные, так и «условно» спорные производства и правоприменительные процедуры, а также стадии логического и функционального характера. При этом, несмотря на наличие в Украине трех процессуальных кодексов, гражданское, хозяйственное и административное судопроизводства должны включаться в состав единого гражданского процесса и, соответственно, осуществляться с соблюдением основополагающих основ справедливого рассмотрения. Это предполагает, во-первых, что доступ к юрисдикционным органам и органам принудительного исполнения не должен отягощаться чрезмерными юридическими и экономическими препятствиями. Во-вторых, рассмотрение должно осуществляться с соблюдением надлежащей (справедливой) процедуры. В-третьих, оно должно быть публичным. В-четвертых, должны соблюдаться разумные сроки рассмотрения и исполнения. В-пятых, юрисдикционный орган должен отвечать требованиям независимости, беспристрастности и быть созданным в соответствии с требованиями закона. В-шестых, исполнение решений юрисдикционных органов должно осуществляться без чрезмерных задержек.

В результате под гражданским процессом предложено понимать порядок рассмотрения и разрешения гражданских дел с соблюдением основополагающих начал справедливого судебного рассмотрения, осуществляемых судами в порядке гражданского, хозяйственного и, в некоторых случаях, административного судопроизводства, юрисдикционными органами, а также исполнение судебных решений органами и лицами, осуществляющими принудительное исполнение судебных решений и решений иных органов.

Ключевые слова: модель гражданского процесса; «суд» и «право на суд» в практике ЕСПЧ; производства гражданского процесса и правоприменительные процедуры; гражданские права и обязанности; основополагающие основы справедливого рассмотрения.

Problem setting. Ratificating the European Convention (later – ECHR) Ukraine was committed to provide the vested rights including the right to a fair trial. This right is not absolute but impose the government positive obligations for creating the proper conditions for their realization that suggest the determination of its implementation sphere and enhancement the procedure for its correspondence to ECHR requirements and taken from the practice of European Court of Human Rights (later – Court) as well as reconsideration the sense of separate legal phenomenon that are connected with it in some way. According to this, it is necessary to support of the view of V.V. Komarov, who notes that it is understood that the institutions of justice and proceedings should be modernized in accordance with the challenges of modern societies proceeding from such an obvious civilizational fact as the fundamentalization of human rights not only within the national, but also international law and order. Therefore on the whole obviously the modernization

of civil proceeding it is necessary to develop the proper concepts about continuity, traditions and innovations in the civil procedure sphere that could reflect the most up-to-date theoretical and practical problems of civil law science [1, 155]. In this context should be the redefinition of the model of civil procedure which is genetically connected with the right to a fair trial and should correspond the requirements coming from the last one mentioned.

Recent research and publications analysis. The problem of civil procedure models is not new for the civil law science though for a long time it remains in discussion. Traditionally it is examined by comparison the adversarial and inquisitorial models [2] or in the context of civil procedure principles [3]. But this approach is a bit methodologically outdated in the context of fair trial right assurance as coming out of the established practice of the Court the non-compliance the adversarial principle is a priori the violence of art. 6 (1) ECHR. At the same time, as we have mentioned, the competitiveness itself does not mean the fair procedure as the judicial fairness always suggests some form of the competitiveness. Therefore the determination just the adversarial principles in the proceeding is not enough for characterization the fair trial model as it limits the possibilities in realization the sense of procedure in general [4, 54]. We should mark that in some cases Court made the analysis the implementation of art. 6 (1) ECHR from the perspective of effectiveness the used method and consequences the national authorities actions, considering if they could lead to aims succeeding that complainant pursued requesting for protection. To our mind, the above mentioned showed, that nowadays we should discuss certain civil procedure model that should be effective, only the last one is able to provide the proper restoring of violated, unrecognized or disputable rights.

Paper objective. The aim of this work is the institutional, structural-functional, subject and procedural characterization of a modern civil procedure model.

Paper main body. *Subjects of civil procedure and their integration into judicial system.* Traditionally the system of authorities that institutionally form the civil procedure is determined during the subject of civil procedural law resolution. In general rules by the last one we are proposed to understand only social relations that appear in process of justice and are connected with parties realization of their rights for the court protection, i.e. civil procedural legal relations, where one of the parties should be obligatory the court as the government authority.

Despite the fact that the mentioned approach is the most widespread there exist some different opinions in the literature. Thus in 60-s of previous century M. B. Zeider proceeding the fact that work of courts, arbitration bodies, labour organizations, comrade courts etc. in certain sphere aims the one subject – to resolve the dispute about rights and protection of violated or disputed right, offered to unite all the authorities activity in one definition of civil procedure [5, 81]. This opinion had followers as well as opponents, whose main argument was the fact that the order of court procedure in civil trials stands the form of administration of justice, not the procedure in other authorities [6, 12–13]. According to V.V. Komarov such approach is underappreciated. Precisely in the broad understanding of civil process as the civil

procedure system based on the institutes of litigation as well as on alternative forms of civil rights protection which provide the civil justice availability itself in civil cases and the certain harmonization of legal regulation sphere is seen that allows optimizing the procedural law [7, 106–107].

In foreign literature practically no attention is paid to problems of definition the civil procedure subject and the meaningfulness of "civil procedure" category. On the contrary, analyzing the basic civil procedure institutes the alternative procedure of dispute resolving are researched (mediation, arbitration etc.) and according to the author of "Access to Justice" movement they should be the alternative and ordinary ones for courts and usual court procedures in cases where the ordinary competitive court procedure fails to be effective for rights restoring and thus they should provide the wide groups of people access to justice [8, 287]. Moreover F. Sanders offered the idea "multi-door courthouse" where anyone can get help in the most effective way of his dispute resolving as there exist several different processes which provide more "effective" dispute resolving by themselves or due to their combination [9, 67–84]. Therefore we can conclude, according to the foreign scientists, that out of court procedures, should not be separated from court ones only on the basis of the civil procedure form criteria which is inherent to justice activity. In certain cases we can even notice accents displacements about one or another order "primacy" and the court proceeding is defined as "alternative dispute resolving", as it "should stand the last way and the claim can not be made until there is a possibility of dispute settlement" [10, 193]. Moreover we can notice the harmonious integration some separate alternative ways of dispute settlements in ordinary court [11].

According to the different definitions of procedures which are directly or indirectly included in the civil procedure definition by national and foreign scientists we consider necessary during the institutional characterization of separate model to repel the fair trial requirements. Thus, in art. 6 (1) ECHR it is seen that the civil rights and obligations court proceedings should be done in court as established by law. Axiomatically in this case, as the literature properly says, the right to a trial definition in law context should be understood as classical type court, integrated to the government standard court system. It should be examined in this word substance content according to its court functions. The last ones have reflection in: its function is to determine matters within its competence on the basis of rules of law, following proceedings conducted in a prescribed manner, and to have full jurisdiction to examine all questions of fact and law relevant to the dispute before it; the power to give a binding decision which may not be altered by a non-judicial authority to the detriment of an individual party; prohibition to call the court some authority that only gives recommendations even in case of such recommendations [12, 122–123]. As an example, Court considered a "court": Local Real Property Transactions Authority, Criminal Damage Compensation Board, Arbitration Tribunal, International Commercial Arbitration Court at the Chamber of Commerce and Industry of Ukraine, High Council of Justice, the Parliamentary Committee and the plenary meeting of Parliament etc.

Noteworthy is the fact when the cases of rights on national level are proceeded by the authority that is not included in the standard Judicial System, the Court, by general rules, checks: either the jurisdictional organs themselves comply with the requirements of art. 6 (1) ECHR, or they do not so comply but are subject to subsequent control by a judicial body that has full jurisdiction and does provide the guarantees of art. 6 (1) ECHR [13]. However, in this case, the term for resolving a dispute by such a body must be invested in the period of time, which is considered as a «trial» in assessing its reasonableness [14, 98]. To our mind, the above mentioned is rather convincing argument for the authorities whose jurisdiction provides the administrative protection form though function as quasi-judicial should be included in the institutional component of a civil procedure model. This conclusion is actual in context of statements of art 124 (3) Constitution of Ukraine where the ability to provide the obligatory pre-trial dispute settlement is mentioned and it should be considered during the proper procedures formulation.

At the same time the Court practice about fair trial right provision in arbitration activity is different. The Court divides the obligatory arbitration that should correspond the requirements stated in art. 6 (1) ECHR and voluntary which should correspond both parties stated demands. As a rule no problems appear with Court if arbitration is made up voluntarily and both parties have equal possibilities to influence the arbitration court composition [15]. In this case the parties chosen that arbitration type reject separate rules that are directly or indirectly stated in art. 6 (1) ECHR. Mainly this rejection should be voluntary [16], legal and definite. At the same time the rights rejection does not mean the absence of national courts control of the arbitration hearings where the decisions to fulfillment are taken, as well as does not mean their responsibility for such control. With it the governments are quite prudent regulating the question of causes for the arbitral decisions cancelation [17].

There is an opinion in literature considering the fair proceeding guarantees for constitutional order of European countries the last one should be in full measure used for cases settled in arbitration and according to social interests. Referring to this there ate two moments. Firstly, the government regulates the arbitration and thus is responsible for protection guarantees implementation of social interests. Secondly, the *drittwirkung* conception or the horizontal effect of Court implementation should have the binding effect for private sides [18, 47]. From our point of view taking into account that volunteer arbitration is the variety of ADR, its "formalization" will result the distortion of essence and decreasing the quantitative and qualitative effectiveness. Nevertheless the Government in person of State Courts should have the possibility to control such authorities activity on one party request, though such kind of control should be measured precisely by volunteer arbitration agreement checking which can result the person rejection of his right to court access and all the basic both parties agreements observance about the dispute settlement order. Taking into account the fact that courts while hearing the cases should follow the art. 6 (1) ECHR this way are given the possibility to influence the arbitration decisions

"feasibility", the last ones activity should be included in the civil procedure definition though their activity is not always obliged to fair trial imperative requirements.

In the context of investigated question we should mark in process of art.6 (1) ECHR implementation, the concept of the "right to court" was formed, of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect. However, that right would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. It would be inconceivable that art. 6 (1) ECHR should describe in detail procedural guarantees afforded to litigants – proceedings that are fair, public and expeditious – without protecting the implementation of judicial decisions; to construe art. 6 (1) ECHR as being concerned exclusively with access to a court and the conduct of proceedings would be likely to lead to situations incompatible with the principle of the rule of law which the Contracting States undertook to respect when they ratified the ECHR. Execution of a judgment given by any court must therefore be regarded as an integral part of the "trial" for the purposes of art. 6 (1) [19]. To our mind, this creates all the grounds for the activities of bodies involved in the execution of judicial decisions, also referred to the civil process. It is a logical continuation of the judicial review, leads to the achievement of the purpose for which the person applied to a court or other jurisdictional body, and therefore must be carried out in an equitable manner. According to art.1 of the Law of Ukraine "On the bodies and persons who execute the enforcement of court decisions and decisions of other bodies" from 02.06.2016 № 1403-VIII compulsory enforcement of judgments and decisions of other bodies (officials) is vested in state executive bodies and private executors.

In our opinion from the institutional point of view civil procedure should involve the judicial activity of courts directly integrated into the Judicial System of Ukraine, other jurisdictional bodies as well as enforcement bodies.

Structural-functional characteristics of civil procedure from the perspective of the right to a fair trial. According to general rules in the science of civil procedural law the civil procedure equated in most cases to civil justice is differentiated to proceedings and stages. The most common is the point of view that in national legal system of Ukraine there exist three court proceedings (ordinary proceeding, writ (order) proceeding and special proceeding). As to quantity of stages the scientists' opinions are different depending on whether all the actions that are carried out in the court of first instance are included in one stage and whether the execution of judgment is included in the civil procedure. Despite the national legislation norms, as the civil proceeding law science has different interpretation of some clauses, to our mind the structural-functional characteristics of civil procedure should be done from the perspective of the right to a fair trial.

The Court in definition whether the fair trial guarantees should be followed during this or that procedure repels on the presence or absence the dispute about right. Thus the given category should not be understood too technically, i.e. it should be understood in essence, not in formal meaning. The use of the French word

"contestation" implies the existence of disagreements between two counteracting parties [20] which can be as two private individuals, as well as one private individual and State [21]. They can not be settled in measures non-confrontational one side procedure available in case of dispute over right absence [22].The existence of the last mentioned confirm different points of view and are presented by sides on the same question [23]. Figuring out its reality we should "look out the measures of visibility and language" that is used in norm of rights formation and to focus on the real situation depending on the concrete case circumstances [24]. Therefore, all the procedures in art.6 (1) of ECHR and Court practice are divided to disputable and undisputable. The first ones are those opened in court for the primary dispute settlement as well as those being the consequence of tryout to settle them out of court, i.e. when court is plays the "control court role" checking the legacy other juridical authorities activity, as arbitrations. Conversely undisputable ones, in general rules, are not in the sphere of art.6 (1) ECHR regulation. Though you can find cases when Court checked the following separate components of the to a fair trial as well checked in order [25] and special proceedings [26]. In contrast with disputable proceedings these guarantees following in these cases was done for the procedures after the primary question was settled that took place in measures of one side non-conflict order, i.e. disagreements between parties involved were the results of court decision or appeared after certain period of time expired, though were directly connected with it, in other words, Court recognizes the procedure conversion and variability of some range of requirements implementation art.6 (1) ECHR.

Above mentioned (disputable and undisputable) procedures, in measures of which the case proceeding is made, are defined as basic and other "preparative" procedures are opposed to them [27, 197]. The last mentioned, in general rules, are not investigated as "decisive" the civil rights and obligations disputes and consequently they are not obliged to follow the rules of art. 6 (1) ECHR [28], though this rule derogation only if these ensuring ways are considered to be effectively defining the civil right or obligation that are investigated in basic process, regardless of their duration for example the preliminary decision [29]. Therefore Court differentiate procedures according to their final direction to solve substantive or procedural questions depending on which, as it was mentioned, definition the volume of rights guarantees for fair trial proceeding that should be implemented to them.

Despite that art.6 (1) ECHR does not guarantee a right of appeal, nevertheless, the Court comes out that a Contracting State which sets up an appeal system is required to ensure that persons within its jurisdiction enjoy before appellate the fundamental guarantees in art. 6 (1). However, the manner of application of art. 6 (1) to proceedings before such courts depends on the special features of the proceedings involved; account must be taken of the entirety of the proceedings in the domestic legal order and of the role of the appellate court therein [30]. In other words, Court recognizes the necessity of following the right to a fair trial not only in first instance courts as well as in courts of appeal and cassation. However, he

allows for the establishment of restrictions both in the exercise of the right of access to the court, and in the future during the consideration of cases, i.e. gives a certain degree of restrictive interpretation of certain provisions of art. 6 (1) ECHR. The mentioned practice takes place during extraordinary appeals [31] and re-considered on the basis of newly-discovered circumstances [32].

Separately should be noticed that Court uses above mentioned norm to the procedures that take place after court judgment taking hence dividing jurisdictional activity and decisions enforcement activity. As we mentioned, the last one is considered an integrated part of "trial". Meanwhile regardless of art.6.(1) ECHR implementation the executive document of primary review about civil rights and obligations determination should be given in dispute measures that are stated in norms of mentioned article [33].

Based on the above mentioned, to our mind, all the procedures that in this or that measures relate to civil procedure can be divided in two groups. First, we can say about so called disputable orders assigned for settlement of civil rights and obligations disputes. They should correspond fair trial right guarantees, though their essential and quantitative part can differ depending on functions made by this or that authority (essential case proceeding, court decision review, jurisdictional body decision execution). Secondly, "conditionally" disputable, i.e. those, in general rules, targeted for undisputable questions proceeding though the possibility of their transformation into disputable is presumed that can result the necessity to art.6 (1) ECHR requirements following but they can have latent nature during later phase where there appear their disputableness checking necessity or disagreements between two interested parties. Thirdly, undisputable, which are aimed to resolve precisely procedural questions order of which should not follow ECHR regulations and Court control. The last ones, in general rules, always belong to disputable or "conditionally" disputable orders, though they have autonomous character, i.e. in most of cases if parties have initiative and consider it necessary. Their integration can be different, i.e. they either precede judicial review, or occur simultaneously with it, pursuing as own goals as well as being aimed to common judicial review goals.

The above mentioned statements' interpretation in the context of national traditions, i.e. provisions of the current procedural legislation and civil procedural law doctrine, gives the opportunity to say that the procedures differentiation by Court divides civil process to proceedings, i.e. specific constructions, morphological models of civil proceeding that reflect subject features of civil procedure from the point of view for substantive nature of proceeded cases, and special character of facts proving as juridical and factual base of cases and the cases proceeding results that take place in procedural documents and certificates [34, 83]. It should be made either by subject criteria or by functional criteria. According to the first one and depending on the activity objects, all the proceedings should be divided in disputable in measures of which the dispute of right is settled, and "conditionally" disputable. Disputable ones should be considered ordinary proceedings and proceedings of arbitral courts challenge, executive papers issuing for arbitral courts decisions enforcement, inter-

national commercial arbitration decisions challenging as well as recognition and authorization to implementation of international commercial arbitration, foreign court. Despite the last one, in general rules, is not recognized as separate proceeding on national level, though its extraction should be done considering the ECHR regulations where the "dispute of the right" exists in cases where court is the control body about arbitrations preliminary activity. "Conditionally" disputable as it is in art.19 CPL of Ukraine there exists special and writ (order) proceedings where the court activity subject is either the confirmed existence of some property right by complainant that should be renewed by debtor, or establishment of existence or absence of certain legal facts and states, undisputable rights aiming to further implementation of subjective rights by interested applicants. Thus, to our mind, undisputable orders should not be classified as proceedings as they do not reflect the substantive character of rights, that is why they can be specified as procedural actions combination aimed to solve precisely procedural questions, i.e. law-enforcement procedures. In its turn the proceedings can be divided by functional criteria to: proceedings about examination of a case on its merits, appeal proceedings, cassation proceeding, proceedings about re-considered on the basis of newly-discovered or exceptional circumstances, and enforcement proceedings.

As we mentioned above, in the science of civil procedural law the civil proceedings are divided in stages that reflect its time measures and are determined as procedural actions combination aimed to immediate goal achievement. However Court practice analysis confirms that the last one doesn't separate any peculiarities of implementation of art.6 (1) ECHR according to time of this or that procedural action review, i.e. the case proceeding is not divided in some "conditionally autonomous" stages. The following to fair trial right guarantees is checked before the whole proceeding and resolving of civil cases from the moment of action started and to its ending. At the same time, the review of the case by the appeals court or the court of cassation, the execution of court decisions, which are often characterized as stages, are considered as independent procedures, and not as proceedings in the court of first instance. Regarding this, to our mind, we could join the thought that phasing should be seen from the position of general logical characteristic of procedural actions and from the position of functional expression of the whole procedural activity. In the structure of the civil process it is advisable to see both the logical and functional stages. The stages of logical character makes the organic unity of factual circumstances setting of civil case, choice and analysis of norms of rights that can be used and making court acts about norms of procedural and substantive rights. They have place in any human rights activity regardless whether it is aimed to procedural question settlement or substantive right by essence. In its turn, the stages of functional character can be in the measures of concrete proceedings and characterize the algorithm of procedural activity not as one-act behavior of procedure subjects but as generalized combination their procedural actions in complex, aimed to make the civil case, its preparation for court proceeding, court proceeding and decision making [34, 86–87].

Besides the above mentioned, to our mind during the civil procedure structural-functional characterization we should consider that on the level of national legislature the court activity is defined as "proceeding" (part 4 art. 29 Constitution of Ukraine, part.1.art. 5. Law of Ukraine "On the Judicial System and Status of Judges" from 02.06.2016 . № 1402-VII), though this category is not applied to other subjects which can be estimated as "tribunal, established by law" according to the Court. Hence under civil procedure we should understand the system of proceedings, human rights procedures and stages of logical and functional character that in their combination provide civil rights and freedoms protection. Procedures are aimed to examination of a case on its merits and depending on the body are differentiated to court ones which are ordinary, writ (order) and special and proceedings about arbitration decisions challenging on executive papers issuing about enforced implementation of these decisions, international commercial arbitration decisions challenging, foreign court; and non-judicial where other authorities case proceeding belongs and enforcement proceedings. Wherein they occur following the stages of logical and functional orders, while law-enforcement procedures –only logically.

Substantial characteristic of the "civil rights and obligations" and civil procedure. As it is mentioned in art.6 (1) ECHR and Court practice the right to a fair trial should be provided during the disputes settlement about civil rights and obligations. Wherein their legal qualification depends not only on their categorization in the domestic legislation, but on their substantive content and consequences connected with it [14, 89]. With this, its application to private individuals that are defined in domestic legislation is undisputable for Court [35]. At the same time it covers the other cases solving the questions about rights sphere of regulation of which is public law, though consequences of which are decisive for private individuals' rights and obligations [36].

Without going to detail analysis of cases that can or can not be regulated by art. 6 (1) ECHR, as it was repeated in literature, we should state that as in civil proceeding order of Ukraine are proceeded cases arising from civil, land, labor, family, housing and other legal relationships (part 1 art. 19 CPC) and in the economy order – disputes arising in connection with the implementation of economic activities, and other cases in cases authorized by law (art.20 EPC), which at the level of national legislation are interpreted as private law, it is indisputable that both proceedings are included in the civil procedure. At the same time we can not make such a certain conclusion about cases that are solved in the administrative procedure order. It is seen that the problem of guarantee following of the right to a fair trial can be raised during dispute hearing of person or corporate entity with subject of power authority about his decision challenge, actions or inaction, except tax ones; disputes about taking citizens to public service, its servicing itself, public service firing; person and corporate entity disputes with public information officer about his decisions challenge, actions and inactions in part of access to public information; disputes about property taking away or enforced alienation of property for social needs or by motives of social necessity; disputes of person or corporate

entity about decisions challenge, action or inaction of client in legal relations that appeared on the base of law of Ukraine "About peculiarities of purchasing of goods, works and services for providing the defense needs" (point 1, 2, 7, 8, 11, part. 1 art. 19 KAP) as the proceeding consequences can directly influence the private rights and obligations of person and corporate entity.

As a result, despite the existence of three procedural codes in Ukraine which, despite the effort of procedural regimes unification differently regulate separate aspects of cases proceeding and solving which are related to jurisdiction of general, economic and administrative courts, civil, economic and administrative proceedings should be included to a single civil procedure and, accordingly, be carried out in compliance with the right of fair trial

Fair trial basic regulations. It is well known that Court using the autonomous clarification of art.6 (1) ECHR, gradually formulated the complex of guarantees that provide the right of fair trial that can be defined as the fundamental principles of fair trial. With this despite the fact that their list is quite established their substantive content is constantly "enriched" because in the Court proceedings and hearings there appear new aspects of already formed requirements and consequently new additional requirements are formed. In this connection in measures of this work we consider it necessary to mark only in general features the basic components that should be followed by all subjects of civil procedure as without them the model characterization would not be complete [34, 107–110].

Firstly, the access to jurisdictional and enforcement bodies should not be burdened by excessive legal or economic obstacles. It is applicable in case where legal restrictions of the right of court protection (certain categories of cases excluding from judicial jurisdiction, certain circle of people restriction to appeal to court directly, etc) are made with strict following proportionality principle. The person should have not only the right to start the court proceeding and the right of taking court dispute "settlement". The size of court costs that are paid by appealing to court should be reasonable, i.e. more or less correlating the right that is protected, or there should exist and effectively apply the procedural mechanisms of gravity of payment "relief". Besides, the government should provide the legal aid to person, who needs it, including free aid if the representative participation in case is obligatory, or foresee the claimant the other ways of real ensuring the right of his dispute solving in court order.

Secondly, the case hearing should occur in compliance with due (fair) judicial process. It provides, first of all, that person can be properly informed about time and place of case hearing and the person can be given the opportunity to take part in court hearing. With this court can take into consideration only the evidences received legally and due to civil case hearing should take motivated court decision. The case hearing should occur with following such principles as adversarial and parties' procedural equity. Legislator and other bodies of State power should not interfere in hearing process, even in the way of releasing one party from its obligations fulfillment or civil liability without other party agreement. Besides,

the principle of legal certainty should be followed according to which the court decisions, that gained legal strength are out of question and should be done in order stated current national legislation.

Thirdly, the hearing should be public that means the court hearings should be conducted in open regime where not only parties and their representatives but all willing are allowed. It will be the following if it occurs orally then parties change oral judgments, remarks, give oral explanations about reasons of their appealing for protection of their violated, unrecognized or disputable rights, freedoms or interests. Court decision should always be pronounced publicly. With it the same validity has the variant of whole written court decision handing to court registry where everybody can review it or its placement in Internet.

Fourthly, there should be reasonable time of trial that starts from the moment of appealing to court though as it was mentioned it can be counted earlier and ends with court judgment enforcement. Such term evaluation is made considering: complexity of the matter, complainant behavior, government authorities behavior, complainant importance of question that is in court proceeding and special state of person.

Fifthly, the jurisdictional body should be independent, unbiased and established by law. The last one demands to be consolidated within the national legislation the basis for such subject existence which can not go out of his competence measures during the case hearing and decision taking, i.e. should act in measures of subject-matter, subjective, instance and territorial jurisdiction. Besides, this body membership should be assigned in accordance to the established order.

Sixthly, enforcement of decisions of jurisdictional bodies should be carried out without undue delays.

Conclusions. Civil procedure is considered to be the order for resolving civil cases according to the fundamental principles of fair trial, which is taken by courts in civil, economic and in certain occasions, administrative proceedings as well as, jurisdictional bodies and execution of court decisions by bailiffs and other authorities which make an execution of court judgments and decision of other authorities. This order is internally structured and cover both disputable and "conditionally" disputable proceedings, law-enforcement procedures, as well as stages of logical and functional character.

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Право на справедливий судовий розгляд та сучасна модель цивільного процесу

Зроблено спробу відступити від усталеного підходу щодо характеристики сучасної моделі цивільного процесу суто з точки зору змагальних засад та запровадити новий, в основу якого покладені вимоги п. 1 ст. 6 Конвенції про захист прав людини та основоположних свобод і рішення Європейського суду з прав людини щодо змісту та сфери поширення права на справедливий судовий розгляд. Наведене дозволило провести комплексне дослідження та проаналізувати інституційні, структурно-функціональні, предметні та процедурні особливості такої моделі.

Інституційно цивільний процес має включати як діяльність судів, безпосередньо інтегрованих у судову систему України, так і інших юрисдикційних органів, а також органів примусового виконання. Даний порядок внутрішньо структурований та охоплює як спірні, так і «умовно» спірні провадження та правозастосовні процедури, а також стадії логічного та функціонального характеру. При цьому, незважаючи на наявність в Україні трьох процесуальних кодексів, цивільне, господарське та адміністративне судочинство мають включатися до складу єдиного цивільного процесу й, відповідно, здійснюватися з дотриманням основоположних засад справедливого розгляду. Останні передбачають, по-перше, що доступ до юрисдикційних органів та органів примусового виконання не повинен обтяжуватися надмірними юридичними та економічними перешкодами. По-друге, розгляд справ має відбуватися з дотриманням належної (справедливої) судової процедури. По-третє, він повинен бути публічним. По-четверте, мають дотримуватися розумні строки розгляду та виконання. По-п'яте, юрисдикційний орган повинен бути незалежним, неупередженим і встановленим законом. По-шосте, виконання рішень юрисдикційних органів має здійснюватися без надмірних зволікань.

Як наслідок, під цивільним процесом запропоновано розуміти порядок розгляду та вирішення цивільних справ з дотриманням основоположних засад справедливого судового розгляду, що здійснюється судами в порядку цивільного, господарського та, за певними винятками, адміністративного судочинства, юрисдикційними органами, а також виконання судових рішень органами та особами, що здійснюють примусове виконання судових рішень та рішень інших органів.

Ключові слова: модель цивільного процесу; «суд» та «право на суд» в практиці ЄСПЛ; провадження цивільного процесу та правозастосовні процедури; цивільні права та обов'язки; основоположні засади справедливого судового розгляду.

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