

UNIVERSITY OF COIMBRA
FACULTY OF ECONOMICS

MULTIDISCIPLINARY INTERNATIONAL SCIENTIFIC-
PRACTICAL CONFERENCE

DIGITAL TRANSFORMATIONS OF MODERNITY

January 24, 2022

Proceedings of the Conference

Coimbra, Portugal

2022

UDK 33(082)

Organising Committee

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Digital Transformations of Modernity: Proceedings of the Multidisciplinary
International Scientific-Practical Conference (January 24, 2022. Coimbra,
Portugal). Chernigiv: REICST, 2022. 154 p.

ISBN 978-617-95224-0-6

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DECISIONAL SEQUENCING AS A PREREQUISITE OF PREDICTIVE JUSTICE AND INTEGRATING ARTIFICIAL INTELLIGENCE IN THE JUDICIAL DECISION-MAKING PROCESS

It is widely recognized among practitioners and scholars that while resolving any legal claim the judge focuses on answering two types of questions: questions of law and questions of fact [6, p. 148]. According to R. Thornton, the judge resolves questions of law, which focus primarily on three areas. First, what are the elements of the plaintiff's claim that must be proved in order to merit recovery? Second, did the defendant have a duty to act under the circumstances? Third, is the evidence presented sufficient, from a legal standpoint, to allow the case to be submitted to the jury [3, p. 94]?

Despite the importance of decisional sequences to the parties' behavior, legal development, and outcomes, they have received remarkably little attention in the legal literature. With rare exception, most literature in this field merely has offered normative arguments for or against particular doctrinal rules (such as in the fields of federal civil rights claims, constitutional doubt, or civil rights claims). Almost no scholarship has considered decisional sequencing in law more systematically (or the unique issues presented in the context of international dispute resolution) [2].

In Ukraine, among many other countries, where civil and commercial disputes are resolved mostly by professional judges, i.e. without jurors, the 'law-fact' distinction was not in the focus of scholarly debates, at least not until recently. This led to a situation when the decisional sequence, the order in which the judge answers questions that matter in a particular case became almost completely the area of the judge's discretion. Obviously, this did not add to predictability of justice.

Up until recently, Ukrainian jurisprudence showed reliance on this discretionary approach, court judgments often rested on inconsistent if not conflicting legal and factual blocks of reasoning.

As P. Rutledge notes, while all possible opinions of making a decision may achieve the same outcome, the decisional sequence is critical in several respects. For one thing, it involves different investment of resources by the court – the first opinion involves a far lower investment than the second. For another thing, the decisional sequence has a different impact on the parties. One opinion may amount to a clear victory for the defendant, while the other might be a terrible defeat. Finally, the decisional sequence has an impact on

development of the law [2].

Only in recent years, Ukrainian courts and scholars have paid increased attention to issues of decisional sequencing, particularly in civil and commercial court proceedings. They have developed a series of rules – “sequencing rules” – that, to a degree, guide the order in which judges should decide issues.

The court proceedings in civil, commercial, and in many aspects also in administrative and criminal cases, need to be viewed as a sequential process, where the sequence of making decisions of particular questions is strictly regulated by the logic of the proceeding moving in the following direction: party’s statement – assessment whether the claim is worthy to be considered on the merits – deciding on the applicable rules and the scope of relevant facts (question of law) – establishing relevant facts (question of fact) – application the law to the established facts – final decision, rather than the judge’s discretion [6, p. 188].

The sequencing rules are also applicable to evidentiary matters. The criteria of relevance, materiality, admissibility, credibility, probative value and sufficiency need to be applied not chaotically, but as a logical sequence which was primarily elaborated in international arbitration [1, p. 154; 4] and later adopted in domestic court proceedings. Relevance and admissibility should be categorized as properties of evidence and simultaneously criteria of their admission by courts, whereas reliability (credibility, authenticity) and weight of evidence (probative value) ought to be considered as their evaluation criteria, together with sufficiency being a criterion for evaluating the whole system of evidence presented as proof of a particular circumstance. The weight (probative value) and reliability of evidence, as well as sufficiency of the evidence submitted as proof of a particular circumstance to be the criteria of evaluation of evidence, the application of which is a question of fact. The the process of obtaining the evidence associated with deciding on relevance and admissibility, and further evaluation of the evidence based on criteria of reliability, weight and sufficiency needs to be viewed as a stepwise, consistent process [5, p. 97].

Finally, when deciding upon the merits of the case the following sequence may be applied normally: 1) determination of the rights the plaintiff aims to defend and whether they actually exist; 2) court’s opinion on whether the violation of those rights occurred; 3) opinion on whether the violated rights can be defended (reinstated or compensated) in a way prayed by the plaintiff (opinions on the effectiveness of a prayed remedy, its proportionality, on whether the rights deserve to be defended, questions of limitation of action).

Although sequencing rules accord courts great discretion in determining the order in which they decide matters, we might see that in court proceedings where the predictability and efficiency is valued, the decisional sequencing is subordinated to some rules. Recent jurisprudence shows that courts gradually demonstrate adherence to those rules. They influence law development by allowing the creation of the Supreme Court opinions on the appealable issues. They also affect the integration of artificial intelligence into decision-making process, as it requires and greatly benefits from the establishment of logical algorithms of

decision-making process, rather than collection of data and making decisions driven by inductive logic.

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