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The concept and attributes of justice in civil cases under the procedural law of Ukraine

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Civil justice has an ontological link to the exercise of the judiciary through the administration of justice, the scientific and legal analysis of which is based on the research outlined in this paper. Functional and substantive aspects of understanding of justice were elaborated proceeding form the developments of scientists and the current legislation of Ukraine. It proves that justice is a single, holistic concept, regardless of the type of judicial procedure, the specifics of sectoral judicial procedures, the substantive content of court cases or the procedural features of their consideration. The paper investigates the legislative and scientific approaches to the concept of justice in civil cases. The correlation between the concepts of justice in civil cases and civil proceedings is also developed. It is emphasized that justice encompasses all the procedural activities of a court to consider and resolve a court case in its dynamics and all its manifestations, regardless of its procedural and substantive legal consequences. The research allowed to determine, through the lens of the current legislation of Ukraine and scientific achievements of the procedural science, the features and formulate the original author's definition of the concept of justice in civil cases.

Keywords: forms of dispute settlement, justice, administration of justice, justice in civil cases, civil proceedings, judicial nature of court activity.

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INTRODUCTION

The legal nature of civil justice is closely linked to the notion of the judiciary and its implementation through the administration of justice. Their ontological connection is currently recognized not only by scientists but also by the legislator. Thus, part 2 of Article 1 of the Law of Ukraine "On Judiciary and Status of Judges" states that judicial power is exercised by judges and, in cases determined by law, by jury through the administration of justice in the relevant judicial procedures. According to part 1 of Article 5 of the same Law, justice in Ukraine is administered exclusively by the courts and in accordance with the legally established trial procedure. The purpose of this study is to analyse the concept of justice in civil cases and identify its features through the lens of current legislation and the scientific advances of procedural science.

The term "justice" is widely used in the philosophy of law, theory of law, branch procedural sciences, including in legal and, primarily, judicial practice. However, the current legislation of Ukraine does not provide it with a legal definition, and there is no unity in the legal literature regarding its understanding. With that, even linguists put different meanings into it. By definition of V.I. Dal, "justice" is a fair trial, a decision by law, by conscience... truth" (Dal 1998). S.I. Ozhegov defined justice more restrictively as the activities of the judiciary (Ozhegov 1984). In the dictionary of D.N. Ushakov (1940) justice is understood as the activity of the judiciary, based on the law and the judicial activity of the state (justice) in general.

In the legal literature, there have been various opinions on the nature and content of justice, which boil down to being a form of implementation (manifestation) of the judiciary, a way of resolving civil cases, litigation and settlement of legal cases or only disputes (conflicts), the function of the judiciary or courts, justice, public service, etc. Thus, V.V. Komarov stresses the unity of the judiciary and justice and concludes that justice is a form of exercise of the judiciary. The judiciary, in his opinion, as a state power, cannot and should not be embodied anywhere except in justice. This is why exclusivity, as a characteristic of the judiciary, is a key to understanding the rule of law and the fact that judicial protection is the highest guarantee of the rights and freedoms of citizens (Komarov et al. 2011). Also, the opinion on justice as a form of implementation of the judiciary is also shared by V. A. Lazareva (1999), M.V. Pentsov (2014), T.O. Savelieva (1996), V.V. Vandyshev and D.V. Dernova (2004), and other scientists.

I.E. Marockin understands justice as the most civilized and reliable way of resolving legal cases arising in society, protecting the rights and freedoms of man and citizen, the interests of civil society and the state (Marochkin 2003). V.V. Lazarev (2010) treats justice as one of the types of services provided by the state, and states that courts should resolve specific

cases by factoring in the interests of the parties to the dispute, considering their interests, specifying framework rules, etc., requiring a shift of emphasis from substantive law to procedural law.

Functional take on justice as a judicial review and resolution of cases in accordance with the formal requirements of the law (Bryntsev 2004) or in appropriate procedural forms (Skomorokha 2000) is rather widespread among scholars. In the "Legal Encyclopedia", V.T. Malyarenko defines justice as the law enforcement activity of a court to review and resolve, in accordance with the legally established procedure, the cases related to the protection of human and citizen's rights and freedoms, rights and legitimate interests of legal entities and interests of the state" (Maliarenko 2003). Some scholars equate the concepts of justice and proceedings (Pastukhova 2008).

B.V. Malyshev (2011, 2008) in the most general terms considers justice as a fair judicial resolution of disputes. In an expanded form, this author defines justice as the law enforcement activity of a court to review and resolve, in accordance with the law, the procedural order of cases within its competence for the purpose of protection of human and citizen's rights and freedoms, rights and legal interests of legal entities and interests of the state. Similar opinions were expressed by other authors, including Yu.V. Skorchenko (2003), S.F. Demchenko (2010).

Also, procedural literature expresses opinions that justice includes not only legal proceedings, but also judicial systems or extra-judicial (alternative) forms of dispute settlement. In this regard, the scientific literature sometimes uses such terms as: economic justice, family justice, restorative justice, restitutional justice, preventive justice, alternative justice, public justice, arbitration justice, informal justice, etc. Such a broad understanding of justice, although continuing to be spread among scholars, is deservedly criticized by the majority of proceduralists (Komarov et al. 2011, Nosyreva 2004, Degtyarev 2007, Zagainova 2007, Sakhnova 2014, Zhilin 2000), proceeding from the fact that justice is administered exclusively by the courts and is a holistic and unified concept irrespectively of which cases it concerns.

UNDERSTANDING OF THE CONCEPT OF "JUSTICE" AS ANALYSED IN PROCEDURALIST LITERATURE

Without going into a detailed analysis of the philosophical-theoretical debate around the concept of justice, since it goes beyond the scope of this paper and is the subject of a separate new direction of the philosophy of law – the philosophy of justice (Bihun 2009), we shall note that its modern understanding implies at least two aspects: functional and meaningful. As V.S. Bihun points out, in the functional aspect, justice is equated with proceedings, the trial of cases, that is, its essence is revealed through the functions and subjective composition of the respective activity; a meaningful aspect emphasizes the intrinsic characteristics of judicial activity, that is, the

content of the judicial procedure and its purpose, including justice. Therefore, it is natural to understand justice as fairness in the meaning of the purpose of proceedings as judicial activity (teleological aspect of justice) (Berniukov et al. 2009).

The meaningful aspect of justice, in contrast to proceedings, fills this notion with value-oriented content. Proceedings, as noted by R.O. Kuybida, are the procedural activity of the court, regardless of the case consideration outcome, while justice is not all activities of the court, but only those which affirm the rule of law. Not any proceedings can be referred to as justice, but only those, regardless of any negative influences, devoid of bias and aimed at protecting human rights and freedoms, at solving a case in accordance with the ideals of good and fairness (Kuibida 2004). However, it is erroneous to equate the category of "justice" and "fairness" as some authors do (Fokina 2006), since the categories of "justice" and "fairness" are correlated as activity and its property.

Scholars distinguish between the concept of justice and proceedings by subjective criteria. Thus, S.L. Degtyarev (2006) believes that the proceedings characterize the very activities regarding administration of justice. He emphasizes that the categories of "judiciary" and "justice" are generic categories with respect to the category "proceedings", since the judiciary and justice are implemented through the types of proceedings: civil, administrative, criminal, and constitutional. O.N. Gromoshina (2010) notes that the legal procedure (proceedings) is a complex system of legal relations, where the obligatory subject is the court, which has legal relations with participants in the procedure (parties, third parties, representatives, witnesses, etc.). Not only the court but also the parties to the case are acting within these legal relationships, and all this aggregate activity, governed by the rules of civil procedural law, is included in civil proceedings. However, justice is administered only by the court. Therefore, without violating the laws of logic, it is impossible to equate proceedings and justice.

The constitution of Ukraine uses both the term "proceedings" and the term "justice". However, their use in the text of the Fundamental Law indicates that the legislator does not prioritize their delineation. It should also be noted that Section VIII of the Constitution of Ukraine on the judiciary is called "Justice" and the legal literature has repeatedly emphasized the inconsistency of the title and content of this section. Thus, B. Futei (2005) emphasized the need to use the term "judiciary" as the proper title of Section VIII, as against themere description of the function of the courts.

The judiciary, as an independent form of state power, cannot be limited to the system of general and specialized courts, and therefore it functions in two forms of organization: judicial system and court organization. The latter means justice in its own understanding of its mechanism. The judiciary may include other entities that do not directly exercise the functions of justice. In

such circumstances, the proposal to rename Section VIII of the Constitution of Ukraine to "Judiciary" remains relevant, since only in such a case would it be logical to include the foundations of organization of the judiciary, that is, the totality of subjects as bearers of the judiciary and their principles. It is noteworthy that in the constitutions of some post-Soviet countries (Azerbaijan, Kazakhstan, Kyrgyzstan, Uzbekistan, Moldova), as well as some European countries (Spain, France, Czech Republic, Slovakia, etc.), the relevant chapter (section) on organization of the judiciary and administration of justice is named "The Judiciary" or "On the Judiciary" (Bobryk 2011). In view of the above, the above proposal to rename Section VIII of the Constitution of Ukraine has retained its relevance.

From the analysis of the constitutional articles, which use the term "justice", it appears that the legislator, without elaborating on the essence of this concept, puts it across as a special kind of activity carried out by the courts, judges and in certain cases stipulated by the law – by the people, represented by the jury. The constitutional essence of justice is derived from the interpretation of the relevant provisions of the Fundamental Law by the Constitutional Court of Ukraine (CCU). In a number of its decisions, the CCU considers justice as a branch of state activity, thereby delineating only its functional content. Thus, in the decree No. 44-з of October 14, 1997 and the decision No. 1-rp/2008 of January 10, 2008, the Constitutional Court stated that “pursuant to Article 124 of the Constitution of Ukraine, justice is an independent branch of state activity, which the courts carry out through consideration and adjudication in court hearings in a special statutory procedural form of civil, criminal, and other cases” (Decision of the Constitutional Court… 1997, 45. Decision of the Constitutional Court… 2008). However, in some other decisions, the CCU has already elaborated another, meaningful aspect of justice, linking it to the demands of justice and the restoration of rights.

For example, decision No. 3-rp/2003 of 30 January 2003 states that "justice is inherently recognized as such only on condition that it meets the requirements of justice and ensures effective restoration of rights" (Decision of the Constitutional Court… 2003). The same legal position was reiterated in decision No. 15-rp/2004 of 2 November 2004 (Decision of the Constitutional Court… 2004). In this ruling, the CCU also stated that "the court, by administering justice on the basis of the rule of law, ensures the protection of the rights and freedoms of persons and citizens, rights and legitimate interests of legal entities, interests of society and the state guaranteed by the Constitution and laws of Ukraine". Furthermore, in the same decision, as well as in decision No. 8-rp/2002 of 7 May 2002, the CCU provided an in-depth interpretation of justice, stating that “upon considering a case ... everyone has the right to justice that meets the requirements of fairness" and "the right to judicial protection also implies specific guarantees

of effective restoration of rights through the administration of justice" (Decision of the Constitutional Court… 2002).

The concept of justice in particular branches of law acquires a special understanding. Thus, criminal law professionals view justice in a narrow and broad meanings. The narrow meaning of justice is based on the literal interpretation of this term as the sole activity of a court to hear and resolve cases within its jurisdiction. The broad meaning of justice is that objective, legal, and fair justice is the activity of not only the judiciary, but also of other state institutions that prepare cases for trial and participate in the implementation of justice outcomes and without the interaction with which the judiciary cannot act. A broad understanding of justice implies that this concept covers not only the activities of the court in the consideration and resolution of cases, but also the activities of the pre-trial investigation, inquiry and enforcement bodies.

Such branch feature of understanding justice is explained by the fact that in Section XVIII of the Criminal Code of Ukraine, which is called "Crimes Against Justice", articles on responsibility for crimes are related not only to judicial activity, but also to the associated institutions – pre-trial investigation, prosecutor's office, intelligence operations, legal aid, penitentiary, executing court decisions, etc. The criminal understanding of justice as a type of concept is broader than the generic concept of justice in the philosophical (common law) sense, which was analysed above. And this is a violation of the rules of formal logic. In addition, as already stated, it is a well-recognized premise that justice is administered exclusively by a court. However, it should be borne in mind that in criminal law, justice is only the object of some crimes and protection of criminal justice. The substantive meaning of the concept of justice is acquired only in the branches of procedural law.

In each procedural field of justice, it acquires special characteristics, conditioned upon the substantive nature of the cases of the respective jurisdiction and the particularities of the relevant proceedings. Therefore, in the science of civil procedural law, the subject of research is justice in civil cases. However, we should agree with N.A. Gromoshina's opinion (2010) that justice, like the judiciary, is one. There is no criminal, civil, or constitutional justice as an independent legal phenomenon, but there is the administration of justice in different types of proceedings.

In this context, it should be noted that Russian proceduralists include not only the activity of courts of general jurisdiction in the concept of justice in civil cases, but also arbitration courts. Thus, according to G.A. Zhilin (2000), justice in civil cases is the activity of courts of general and arbitration jurisdiction on the consideration and resolution of civil cases referred to them, carried out in accordance with the procedure established by the rules of civil and arbitral procedural law, and provides protection of rights, freedoms and

legal interests of participants of civil circulation. Justice in civil cases is similarly defined by S.K. Zagainova (2007) – it is regulated by the rules of civil procedural and arbitration law, is the activity of courts of general jurisdiction and arbitration courts on the consideration and settlement of civil cases, aimed at ensuring the rights, freedoms and interests of participants of civil circulation. The fact that these, as well as many other Russian proceduralists, extend justice in civil cases to the consideration and resolution of not only civil cases, but also cases that are referred to the jurisdiction of the Russian arbitration courts, is explained by the theory of unity of civil proceedings (civilistic proceedings) and in arbitration courts, which is dominant in the current doctrine of the Russian civil procedure. However, in Ukrainian procedural science, the question of the correlation between civil and economic procedures is not resolved so unambiguously. The issues of the relationship between civil and economic procedures will be discussed in detail further.

The analysis of the procedural literature shows that the concept of justice in civil cases is debatable, and such a discussion concerns, primarily, its correlation to civil proceedings. Above we have touched on the question of the relation between the general concepts of justice and proceedings, but we shall take a closer look at their branch specifics. In Soviet times, scientists usually equated civil and commercial proceedings. Thus, according to M.T. Arapov (1984), justice in civil cases is the activity of a state court and of persons involved in the consideration and resolution of civil law disputes. The civil procedure, said V.M. Semenov, along with criminal proceedings is a type of justice, a kind of judicial activity (Komissarova & Semenov 1978). Similar opinions are expressed by some modern scholars.

However, similar positions have been criticized by modern scholars (Komarov et al. 2011, Malyshev 2011). Thus, the Russian proceduralist A.V. Tsikhotskiy (1997) distinguishes between these concepts by subjective criteria. The said author emphasizes that justice in civil cases and civil proceedings are not the same thing. If the subject of justice is a court, then the subject of civil proceedings, apart from the court, is its other participants. Justice, being the cornerstone, the carcass of civil proceedings, can only be carried out in the presence of actions of participants in civil proceedings, but does not cover these actions.

CORRELATION BETWEEN THE CONCEPT OF JUSTICE IN CIVIL CASES AND CIVIL PROCEEDINGS

The interpretation of justice in civil cases by modern proceduralists indicates that they recognize not only the functional but the meaningful aspects of its essence, and therefore differentiate it from civil proceedings. Thus, according to V.V. Komarov, justice and the civil procedure are non-identical concepts. The content of justice is to determine the nature and scope

of the subjective rights and legal obligations of the person, in the resolution of a particular civil case by a court by a legally binding decision. Justice is also characterized by the fact that it must be founded on the principles that enable the person concerned to exercise the right to judicial protection, i.e. the opportunity to personally defend their rights in court, to participate in the resolution of their case. It is this circumstance that determines the need to establish a specific form of administration of justice, which provides for a strictly established procedure for the consideration and resolution of a civil case. The order of consideration and resolution of civil cases is a form of administration of justice in civil cases and is, in the opinion of the said author, a civil process (legal proceedings). If justice is a judicial activity in the exercise of the judiciary, then the civil procedure is a form of administration of justice that provides both guarantees of the administration of justice and guarantees of the right of citizens to judicial protection. Such a link between justice and civil proceedings explains their fundamental unity as content and form (essence and phenomenon). Justice is impossible outside the civil proceedings, which provides guarantees for its implementation, as well as the consideration of the case is not a civil process, if it is not carried out by the court (Komarov et al. 2011).

Upon elaborating on the correlation between the concepts of justice in civil cases and civil proceedings, one cannot ignore the question of what the activity of the courts in the civil procedure should be considered as justice. Representatives of the theory of law, which equate proceedings and justice, consider justice to be all the activities of the court, which is administered in accordance with the legally established procedure (Pastukhova 2008). Some proceduralists share this opinion. Thus, S.K. Zagainova (2007) believes that committing any procedural action in a particular case is covered by the procedure of administering justice, and attributing some of the court's procedural actions to the mechanism of justice administration and others – only to the ordinary procedural activity of the court undermines the very essence of the judiciary. In her opinion, all the procedural steps taken by the court in the context of proceedings in a particular case are aimed at achieving the main objective of justice – the restoration of law. This purpose permeates all stages, all types of court proceedings.

The opinion that justice in civil cases is administered in all proceedings is shared by some other scholars (V.I. Tertyshnikov (2006), S.V. Vasyliev (2007), K.V. Husarov (2011) and others). Thus, K.V. Husarov (2010) with reference to Article 124 of the Constitution of Ukraine states that all the activities of the judicial authorities are covered by justice. While defending the opinion of the branch "connotation" of civil justice, the author considers it as an activity of the judiciary authorities, which is connected not only with the resolution and consideration of disputes on the law of civil and legal conflicts. As an example, the author indicates that in cases of special

proceedings in civil procedure, the judicial nature of the activity of the court is determined by the subject of judicial review (Husarov 2011). However, some other scholars do not share the general position of extending justice to all judicial proceedings within the framework of civil proceedings. Thus, N.A. Gromoshina (2010) points to the internal contradiction of S.K. Zagainova, as the activities of the court may prove to be unjust.

Some proceduralists consider the issue of administration/non-administration of justice separately for each type of litigation or type of civil proceedings. Thus, O.S. Tkachuk (2016) believes that justice is only the activity of the court in resolving cases of action proceedings, which must necessarily take place in accordance with fair (due) court procedures. This is due to the fact that justice can only be an activity related to the dispute settlement on civil rights and obligations. The procedural activity of the court in the consideration of cases in the order of criminal and special proceedings, the appeal of the decisions of arbitral tribunals and on the issuance of writ of execution for the enforcement of decisions of arbitration courts, etc., in the opinion of the author, does not constitute justice, but is carried out in accordance with the civil procedure.

Literature has substantiated that justice is not administered upon resolution of cases of writ proceedings (Pastukhova 2008, Sakhnova 2014, Gromoshina 2010), special proceedings, appeals against a decision of an arbitral court and the issuance of a writ of execution for enforcement of a decision of arbitration courts or cases concerning the granting of permission to enforce a decision of a foreign court and the recognition of a decision of a foreign court not subject to enforcement (Nosyreva 2004).

O.I. Nosyreva takes beyond the framework of justice those proceedings that are not related to the examination of the merits of the case, to which she attributes proceedings for appealing against decisions of arbitration courts, for issuing writ of execution for the enforcement of decisions of arbitration courts, proceedings for recognition and enforcement of decisions of foreign courts and foreign arbitral awards, since she believes that justice takes place only upon solving cases on the merits. Such position is justified by the fact that in such cases, which the author calls "new categories of cases", there is no consideration of the merits, the court does not apply the rules of substantive law to specific legal relations, and performs another function – assistance and control regarding the decisions of national and foreign bodies of private and public jurisdiction specified in the law (Nosyreva 2004). H.V. Churpita (2016) proves that justice is administered in both special and criminal proceedings.

Also, in the procedural literature, debate is ongoing as to the stages of the civil procedure at which justice is administered. The overwhelming majority of scholars agree that justice is exercised upon the consideration and resolution of civil cases by a court of first instance, including in their review

(appellate, cassation and in connection with newly discovered circumstances) (Zagainova 2007, Gromoshina 2010, Husarov 2011, Tkachuk 2016). However, Ukrainian procedural science discusses the matter of whether justice is exercised upon the review of court decisions by the Supreme Court of Ukraine, which is conditioned upon the status and features of the proceedings for reviewing court decisions in civil cases by this higher judicial body. On this matter, O.S. Tkachuk (2016) notes that “since proceeding from the requirements of Articles 353–360-7 of the Civil Procedural Code of Ukraine, the review of court decisions by the Supreme Court of Ukraine does not provide for reconsideration, and procedural issues related to the execution of decisions in civil cases and decisions of other bodies do not require procedural actions aimed at resolution of a dispute on subjective rights and obligations, such activity should not be regarded as justice".

With that, K.V. Husarov (2011, 2010) supports the existence of judicial functions in the activities of the said judicial body, since justice does not constitute the activity of only the courts of first instance in resolving civil cases, because its content should also include the activities of the courts of controlling instances regarding verification of the legality and validity of court decisions, as well as upon the formation of unity of judicial practice and Ukraine's compliance with international legal obligations. Upon exploring the problems of application of civil law provisions in civil proceedings, Ya.M. Romaniuk (2017) proves that the Supreme Court of Ukraine (hereinafter also the Supreme Court) administers justice when rendering a legal opinion, which constitutes the result of interpretation of legal provisions using different methods and factoring in the circumstances of a particular case, and represents the result of activity of the court in the field of law enforcement, which takes place in the relevant case.

The issue of procedural actions in which the courts administer justice is especially controversial in procedural science. O.S. Tkachuk (2016) considers that "the procedural actions of a court (judge) related to providing evidence, securing a claim are not covered by this concept, since they are of a purely procedural "securing" nature and their commission in no way affects the resolution of the case on the merits". Soviet proceduralist N.I. Avdeenko (1969) expressed the opinion that only procedural actions aimed at resolving a case can be regarded as justice, and therefore the actions of a judge to prepare a case for trial, which are not a solution to the dispute in the case, do not constitute justice. The procedural literature has repeatedly emphasized that justice constitutes only the court's adoption of decisions that resolve the case on the merits, and other procedural activity of the court does not constitute justice.

Thus, V.V. Komarov notes that “not all actions of a judge in a civil process belong to justice and are actions for the administration of justice. Justice, judicial activity boils down to the mere adoption of judicial acts,

which decide the civil case on the merits" (Komarov et al. 2011). Some scholars take this matter even further. Thus, N.A. Gromoshina (2010) notes that all the features of justice are combined in only one act – in the one that decides the case on the merits, that is, in the decision of the court, and the rulings of the court of first instance – these are acts adopted in the course of administering justice, but do not constitute acts of justice. Some scholars, for similar reasons, evaluate some of the decisions.

Justice is quite common in the literature (S.K. Zagainova (2007), A.V. Tsikhotskyi (1997), N.A. Gromoshina (2010), T.O. Savelieva (1996) and others) are recognized as a function of the judiciary, including in civil proceedings. In recent years, an in-depth study of the concept and content of the functions of the judiciary in the context of civil justice has been conducted by S.K. Zagainova (2007) N.A. Gromoshina (2010).

It is only necessary to pay attention to the fact that in general terms the views of scientists on the functions of the judiciary are reduced to one of two understandings: 1) its monofunctionality, that is, the judiciary performs only one function – the protection of the rights, freedoms and legitimate interests of individuals or justice; 2) its multifunctionality, that is, the judiciary has several functions. There is no unity among scholars who believe that the functions of the judiciary (the court) cannot be reduced to the mere administration of justice, because they outline different functions and put different essence into them. The vast majority of researchers identify two functions of the judiciary: the administration of justice and judicial review.

An expanded outlook on the functions of the judiciary was expressed by M.O. Kolokolov, who, without distinguishing the function of justice, divides the functions of the judiciary into internal and external (depending on whether they are performed within the state or in the international arena). According to the author, the list of functions in each group coincides, but has its own content: 1) law-making, 2) law-enforcing, 3) law-protecting, 4) ideological, 5) cultural and educational, 6) political, 7) social, 8) economic, 9) managerial, 10) control, 11) diagnostic, 12) precautionary (preventive, proactive), 13) protective, restorative. According to O.S. Tkachuk (2016), justice, which is only administered in the course of action proceedings and lies in resolving legal disputes, constitutes only one of the five functions of the judiciary in civil proceedings. S.K. Zagainova (2007) divides functions of the judiciary into external – justice, and internal – judicial administration. V.D. Bryntsev distinguishes the functions of the judicial system as areas of judicial activity and distinguishes external (justice and judicial control), internal (judicial administration, judicial self-government) and mixed (law-making, educational, proactive) functions.

FACTORS THAT ENSURE THE ADMINISTRATION OF JUSTICE IN THE CONTEXT OF JUDICIAL ACTIVITY

The diversity of scientific views on the concept of justice, including in civil cases, on the one hand, indicates its versatility, and, on the other, forces researchers to find their own position on this matter. In determining the nature and content of justice, it is necessary not only to rely on its scientific and philosophical understanding, but also to factor in the meaning that is attached to it by the legislator, since the term "justice" is widely used in the legislation, including the Constitution of Ukraine. In our opinion, the basis of justice underlies its characterization as a court's activity in the consideration and resolution of legal cases. Such activity can be both due and valid. As a due activity of justice, it is a requirement for consideration and resolution of legal cases, i.e. the court must administer justice in each case. However, justice should not be equated with the purpose of judicial activity, since in this case its content and purpose would be equated as well. The valid activity of justice is when the consideration and resolution of a particular case meets all its characteristics. Any activity of the court regarding consideration and resolution of legal cases should a priori be deemed justice. However, the judicial activity which rendered the judgment as a result of which it will be cancelled in accordance with the established procedure does not acquire the properties of justice.

The administration of justice is the sole purpose of the judiciary in Ukraine. That is why the administration of justice is the authority of all bodies of the judiciary without exception. Other powers of certain judicial bodies, such as analysis of judicial statistics, study and synthesis of judicial practice, informing on the results of the generalization of judicial practice of other courts, provision of methodological assistance to local courts in the application of legislation, provision of opinions on draft legislative acts concerning the organization of courts, proceedings, status of judges, enforcement of judgments, and other issues associated with the functioning of the judicial system, etc., do not have independent significance, since they play only a supporting role – they contribute to the administration of justice. And in this context, it should be emphasized that courts in Ukraine, unlike in many other countries, do not perform functions that are not inherent in the proceedings, such as marriage ceremonies, management of property of incapacitated persons, confirmation of the acquisition of property by legal entities, maintenance of commercial registers, issuance of licenses for business operations, collecting taxes and customs duties, taking measures on the property of the deceased, drafting documents and civil status acts, etc. However, justice should not be recognized as a function of the judiciary in Ukraine, as this concept covers all the activities of judicial review and resolution of legal cases, and the functions must determine the specific areas of such activity.

There is no denying that the idea of justice is at the heart of justice. This is due to the fact that in the absence of formal law among the ancient peoples, justice as a moral virtue was for a very long time one of the main criteria for resolving disputes. However, even in ancient times, the category of justice started shifting from the moral and ethical dimension into the legal plane, and many moral requirements have now acquired the features of legal provisions. The consequence is that justice has acquired the properties of correctness. In the context of advanced legislation in a democratic state, justice is broadly embodied in written law. At present, the conformity of any law with the requirements of justice is considered, despite the fact that in the history of mankind there are many examples of the adoption of unjust laws. However, the proverbial expression of Cicero "*Dura lex, sed lex*" has retained its significance to this day.

In the context of judicial activity, this means that the court must always correctly apply the valid law, which is subject to application to the relevant relationship, and only in such circumstances shall the judgment be both lawful and fair. However, any written law is characterized by some uncertainty, since its abstract nature does not allow all life circumstances to be covered without exception. Therefore, judicial activity has always been, is, and will be, a place of judicial discretion that allows judges to be guided not only by the law but also by the natural law and moral principles of society, including justice. In addition, the unity (stability) of judicial enforcement is ensured through the courts factoring in the so-called "Established judicial practice", which lies in the equal application of the same substantive or procedural law by the courts in different cases with regard to similar circumstances. Thus, one of the hallmarks of justice is that it embodies correct and fair enforcement as a solution to civil cases. This again proves the above argument that, in a generalized form, any consideration and decision of a civil case by a court of a particular instance shall not be considered as justice should the judgment given in its result be cancelled.

Justice is a unified, holistic concept, regardless of the type of proceedings, the features of branch court procedures, the substantive content of court cases, or the procedural features of their consideration. Therefore, the court administers justice in all cases falling within its jurisdiction. Only such an approach to understanding justice corresponds to the meaning that the legislator puts into this concept in the Constitution of Ukraine, the Law of Ukraine “On the Judicial System and Status of Judges” and other legislative acts, which, in particular, stipulate the following: the administration of justice constitutes the authority of the courts of various instances, upon in the administration of justice, judges/courts are guaranteed independence from any unlawful influence and interference of unauthorized persons; the people are directly involved in the administration of justice through jury; justice is administered on the basis of the laws of Ukraine and

on the principles of the rule of law; everyone is guaranteed access to justice, etc. Proceeding from this, the above opinions of some scholars may not be admissible in that justice is only exercised upon the consideration and/or resolution of particular categories of cases or in certain types of proceedings, since in this case, the consideration and resolution by the courts of those cases that will fall out of the concept of justice will be deprived of the guarantees of its implementation enshrined in the law.

In each jurisdiction, justice has its own specifics, which are determined primarily by the substantive nature of the cases involved. As follows from Part 1 of Article 19 of the Civil Procedural Code of Ukraine, the courts, in accordance with the civil procedure, consider cases arising from civil, land, labour, family, housing, and other legal relations, except cases, the consideration of which is carried out in accordance with another court procedure. Notwithstanding this general nature of civil jurisdiction, only private law cases are currently being considered in accordance with civil court procedure.

Extrapolating the above thesis that justice applies to all legal cases that are decided by the courts on the field of civil proceedings, we shall note that justice in civil cases cannot be interpreted only as a solution to private legal disputes, within the framework of which judicial protection of the rights, freedoms and interests of subjects of private law relations is carried out. In many civil cases, the courts in Ukraine achieve other social goals associated with the exercise of private rights, freedoms and interests or the performance of their respective duties, ensuring them (they enforce indisputable claims for the recovery of funds, establish legal facts and conditions of persons, legitimize decisions of foreign courts, etc.). However, all judicial activity within the framework of civil justice, whatever its purpose, is covered by the concept of "justice". Thus, by administering justice in accordance with civil procedure, courts not only protect the rights, freedoms and interests of subjects of different private law relations (civil, residential, land, family, employment, etc.), but also create the conditions for their full implementation.

Another attribute of justice is that it is not carried out arbitrarily by the courts, but in the manner prescribed by law in accordance with the relevant legal procedure (relevant procedural form). Part 1 of Article 5 of the Law of Ukraine “On Judicial System and Status of Judges” stipulates that justice in Ukraine is carried out in accordance with the court procedures determined by the law. Subordination to the procedure established by law is a common feature of justice and legal proceedings, which determines their ontological relationship. However, the law does not regulate justice, but judicial proceedings. With that, the observance of the legally established judicial procedure by the court is a condition for the administration of justice. The procedure for judicial proceedings in civil cases is determined by the

legislation on civil procedure (Articles 1 and 3 of the Civil Procedural Code of Ukraine), and therefore, the observance of the procedure for legal proceedings by the court lies in the correct application of procedural law by the court. The procedure for judicial proceedings determines the conditions for a comprehensive and complete clarification of the circumstances of the case by the court, research of evidence and, as a result, the proper application of substantive law. Its strict and consistent observance by the court allows to fairly and effectively resolve each court case.

The literature noted that upon the administration of justice, the requirement to comply with procedural rules must be strictly observed – any violation of these rules entails the invalidity of the court decision. However, in civil procedure, court non-compliance with this order is not always the factor that deprives judicial activities of the quality of justice. Minor violations of the procedure of legal proceedings (provisions of procedural law) do not affect the correctness of the court's decision of the case at large and do not lead to the annulment of the court decision (in particular, failure to comply with the time limits for the consideration of the case, non-clarification by the court of the procedural rights and obligations to the participants of the process, refusal to satisfy the application for declaring a break, application/non-application of procedural measures by the court, etc.), do not deprive the relevant judicial activity of the virtue of justice. This follows from Part 2 of Article 376 of Civil Procedural Code of Ukraine, which provides that a violation of procedural law may serve as grounds for cancellation or change of decision only if such violation led to an incorrect resolution of the case.

Justice covers all the procedural activities of the court to consider and resolve a court case in its dynamics and all its manifestations, regardless of its procedural and substantive consequences. Therefore, justice cannot be reduced only to the performance of separate procedural actions or the adoption of separate judicial acts or, on the contrary, to certain procedural actions or judicial acts cannot be excluded from justice. As mentioned above, in the literature, justice is conventionally associated with the decision of a case or the adoption of a court decision as a judicial act in which justice is embodied. However, with this understanding of the court decision in the case, which is only one of the external manifestations of justice, all activities for the consideration and resolution of the case are substituted, that is, justice is presented only as the "tip of the iceberg". Such approach obstructs the search for the true meaning of justice, and therefore its essence. Judicial decisions that have entered into legal force, but have not been annulled, constitute a formal expression of justice, its external embodiment. However, in the event of annulment of the court decision, regardless of the grounds, the embodiment of justice in it is disputed.

The independence and impartiality of the court is a guarantee of justice, since a fair and impartial consideration and resolution of legal cases will only be possible provided that it is carried out by unbiased judges (jurors). The independence of the court is primarily conditioned upon the independence of judges who, as stated in the Montreal Universal Declaration of Independence of Justice, are free and bound to make impartial decisions according to their own evaluation of the facts and knowledge of the law, without any restrictions, influences, impulses, coercion, threat or interference, direct or indirect, from any side and for whatever reason . The independence of the court as an attribute of justice has a constitutional nature, since it is enshrined in Part 1 of Article 124, Article 126, Parts 1 and 2 of Article 127, Part 1 of Article 129 of the Constitution of Ukraine.

The provisions of Article 6, paragraph 1, of the European Convention on Human Rights concerning impartiality of the court have been repeatedly interpreted by the European Court of Human Rights (Bulut v. Austria, judgement of 22 February 1996, Thomann v. Switzerland, judgement of 10 June 1996, Salov v. Ukraine, judgement of 6 September 2005, etc.). The impartiality of the court, as noted by the European Court of Human Rights in its judgment in Salov v. Ukraine should be determined by a subjective evaluation, on the basis of personal beliefs and behaviour of a particular judge in a particular case – that is, no member of the court should express any personal affection or bias, and an objective evaluation – that is, whether the judge had sufficient guarantees to exclude any legitimate doubts in this regard.

CONCLUSIONS

Summarizing the analysis of the concept of justice in civil cases and the above-mentioned features, we shall emphasize that real activity constitutes justice only in the event that its properties correspond to all its features as a due activity. Absence of at least one such attribute in the corresponding judicial activity will not allow to reckon that justice was administered in the consideration and decision of the respective case.

Proceeding from the above considerations, we can formulate the following author's definition of the concept of justice in civil cases. Justice in civil cases is the lawful and fair consideration and resolution of legal cases attributed to civil jurisdiction, in accordance with the legally established civil procedure, by an independent and impartial court established by law, which is further embodied in court decisions.

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