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Social and Humanistic Nature of Justice in Civil Cases

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Abstract The scientific article is devoted to clarifying the social and humanistic orientation of justice in civil cases. The study of the basis of normative legal acts and the opinion of scientists revealed that the possibility and reality of judicial protection of civil rights and freedoms of citizens is the main characteristic of the social and civil orientation of the state-building processes. It has been established that among the social attributes of civil justice, an important place belongs to its accessibility, that is, the possibility of considering court cases, equal access of subjects to procedural consideration, as well as the presence of a mechanism for appealing and reviewing a court decision. My active position in the court is a guarantee of achieving the tasks of civil justice in the functioning of the welfare state. The civilizational significance of the social and humanistic orientation of justice in civil cases, which occurs in the orientation of the judicial system on the value and spiritual basis, is shown. Attention is drawn to the superiority of humanistic value orientations in the functioning of modern civil justice.

Index Terms social, human, justice, civil

I. Introduction

The functioning and development of the state is carried out in various political and legal forms, one of which is justice. Having a legal and constitutional basis, it ensures the practical implementation and implementation of the principles of a social, legal, democratic state. The role and importance of justice in any society is difficult to overestimate, because it is designed to ensure, guarantee and protect the rights and freedoms of citizens, fight crime and offenses, and also acts as an indicator of the level of development of the legal system, government, and the level of development of society as a whole.

Justice as an independent branch of state activity is carried out in the form of civil, economic, administrative, criminal and constitutional proceedings. At the same time, civil justice is the most popular and effective form of protection of civil rights and interests of citizens. Its purpose is to resolve disputes among citizens arising from civil, family, labor, and residential legal relations, which occupy the main place among all legal relations in the state.

The social activity of the court, as a special social institution, primarily consists in its main purpose, namely the protection of the rights and interests of individuals, as well as the legal regulation of social relations through the strict observance of legality. Taking into account the fact that judicial protection is the highest guarantee of ensuring the rights and freedoms of citizens, civil procedural activity should have

a social character and be focused primarily on the person, his rights and freedoms, which require the protection of the initiative [1].

Such indicators of democracy as individual human rights and freedoms, tolerance, protection from various forms of violence, etc., require the determination of the state with value, meaning, conceptual and normative foundations of civil justice. It is based on the need to provide the individual with clear, specific and understandable tools for the protection of civil rights. Today, the problem of the social orientation of justice takes on special importance when the judicial system of Ukraine functions in the languages of large-scale restructuring. The relevant reformation requires a scientific analysis of the content of the theoretical and conceptual foundations of civil justice, the state-making guidelines of which should be a social, civil, legal and humanistic state.

II. Analysis of Recent Research

The scientific works of many civilian scientists are devoted to the problems of the methodological foundations of civil justice. At the same time, the development of the civil justice system is significantly determined by the speed of changes occurring in modern conditions. One of such countries is Ukraine, the prospects of rethinking the social focus of justice in civil cases are gaining new scientific and practical relevance.

The purpose of the research is to find out the essence of the

right to access to justice, to reveal the specifics of regulatory and legal support and to find out the direction of justice in civil cases in Ukraine.

III. Results and Discussion

A. *The right to access to justice in the system of procedural rights*

Article 1 of the Civil Procedure Code of Ukraine specifies that the tasks of the civil judiciary are the fair, impartial and timely consideration and resolution of civil cases with the aim of protecting the violated, unrecognized or contested rights, freedoms or interests of natural persons, the rights and interests of legal entities, and the interests of the state [2], in our opinion, the legislator tried to reproduce the idea of clause 1 of Art. 6 of the Convention, that is, to establish the basic elements of access to justice [3].

Some scholars attribute the right to access to justice to political rights [4]. However, one cannot agree with this view, since political rights belong to the first generation of human rights. Likewise, the right to access to justice cannot be attributed to personal (civil) rights.

Unlike personal (civil) and political rights, social rights are characterized by the fact that their provision requires the efforts of the state to create conditions for the realization of human rights. As noted in the literature, social rights are a requirement addressed to the state in the form of its legislative bodies, including legislative ones, to take such actions as would ensure the reality of these rights [5]. In our opinion, the right to access to justice cannot be attributed to social rights. Social rights are understood as certain opportunities for a person to own, use and dispose of certain social goods and services provided by society and the state, as well as to acquire them in the order, limits, forms and in the manner provided for in the Constitution and laws of Ukraine. The essence of these rights is the freedom to express will, interests, the possibility of certain behavior, activity, certain actions in the social sphere [6].

However, justice cannot be attributed to certain social goods that a person can freely dispose of, since it is generally accepted that justice is one of the forms of state administration, a means of the state performing the internal function of protecting the property, rights and freedoms of the citizen through a decision by a special body of state power - the court civil and criminal cases according to the rules provided by civil and criminal procedural law [2]. In addition, justice cannot be considered as a service provided to a person by the state or society.

The majority of scientists generally do not find a place for the right to access to justice in the system of human and citizen rights and attribute it to legal guarantees of the implementation and protection of constitutional rights and freedoms of a person and citizen [7]. At the same time, the legal guarantees of the realization of the rights and freedoms of a person and a citizen are understood as the conditions and means, principles and norms that ensure the implementation, protection and protection of these rights, are a guarantee of the

fulfillment by the state and other subjects of legal relations of those obligations that are entrusted to them in order to realize the rights and freedoms of a person and a citizen. However, this position is controversial, since it is unclear why, if the right to access to justice is a guarantee of the realization of other rights, issues of violation of Art. 55 of the Constitution of Ukraine, Clause 1 of Art. 6 of the Convention, that is, the right to access to justice as an independent right.

The specificity of the said right can be defined in the fact that it has a relatively limited effect: it concerns exclusively civil rights, and only with regard to the protection of these rights there are specific requirements for a national body - it should be a judicial body. In other cases, Art. 13 of the Convention, which provides that anyone whose rights and freedoms set forth in the Convention are violated has the right to an effective remedy before the appropriate national authority, even if such violation was committed by persons acting in an official capacity [8]. In addition, such an understanding generally reduces the value of the right to access to justice. One should agree with the point of view of M. Antonovych, who singles out the so-called procedural rights, noting that this is one of the most important groups of rights that provide for an individual's access to the fair justice system [9].

Therefore, the right to access to justice is a positive procedural right. Every person should have the opportunity to initiate legal proceedings regarding his civil rights and freedoms and receive fair and effective judicial protection, the state's duty is to create appropriate conditions for the implementation of this opportunity. The right to access to justice is a specific right, as its implementation protects other rights and freedoms of a person. Access to justice is a certain standard that reflects the requirements of fair and effective judicial protection, which are specified in unlimited judicial jurisdiction, due judicial procedures, reasonable time limits and unimpeded access to court by any interested person.

Justice in civil cases should be aimed at a certain social object, which is the rights and freedoms of the individual. Their protection is the main function of the judiciary. It should be placed in such conditions under which, on the one hand, its receipt would be affordable, and on the other hand, its action would be as effective as possible.

B. *Direction of modern civil justice*

Among the main indicators of access to justice, civilian scientists name the practice of unlimited court jurisdiction, independent court procedures, unhindered access to court, and optimal terms for considering cases. The content of the concept of "access to justice" is enriched by such attributes as "rational" jurisdiction of the court, which is achieved by reducing the number of tasks that do not belong to the administration of justice; availability of alternative dispute resolution procedures; introduction of class actions; observance of the principle of integrity in judicial proceedings, the presence of such elements as notification and hearing; taking into account the "right of poverty", ensuring access to justice for subjects unable to reimburse the relevant costs [10]. It

is important to emphasize that the accessibility of justice as a manifestation of its social orientation means compliance with certain procedural criteria, in particular: the possibility of initiating a case; the subject's access to the court proceedings; the possibility of appeal and revision of the court decision. Today, determining the essence of the introduction and development of methods of protection of human and citizen rights and freedoms can be called a priority area of law-making and law-enforcement activities of state bodies. This is due to the protective function of the law, aimed at reducing as much as possible the number of negative phenomena in the sphere of social relations, primarily between citizens and state bodies and their officials. The realization of one's subjective rights by a person is connected with the need to coordinate one's own behavior with the behavior of other participants in civil relations and, conversely, the need to coordinate the behavior of other subjects in order to eliminate obstacles in the implementation of one's own actions. Civil legislation provides a person with numerical means and provides specific forms of realization of civil rights and their protection [11].

Modern scientists consider the purpose of civil proceedings in the context of the protection of violated, unrecognized or contested rights, freedoms or interests of legal subjects, and consider fair, impartial and timely consideration and resolution of civil cases as its tasks. It is worth agreeing with procedural scientists, who believe that it is the active position of the court, from the point of view of the organization of the process, that acts as a guarantee of achieving the tasks of civil justice, and therefore is of great importance for its optimization [12].

It should be emphasized that the tasks of social policy cannot be solved without putting the person in the center of attention, without providing the conditions for their proper development and self-realization. The experience of European democracy shows that innovative transformations in the state are impossible if they do not have spiritual dimensions focused on mandatory consideration of private interests of man and citizen, their harmonization with public interests [13]. So, in fact, the reality of legal protection is affected by either the mental capacity of the participant in the process (legal awareness) or his property status (ability to receive paid qualified legal assistance), which indicates the problem of social inequality of citizens in society.

Therefore, the problem of the negative impact of the inequality of the parties on the judicial process arises, which can be solved in only a few ways, in particular, to introduce the mandatory participation of lawyers in the judicial process or to impose on the courts the obligation to assist the parties in the process of establishing the factual circumstances of the case. The court can be obliged to take all measures so that the parties give explanations that are necessary to establish the factual circumstances that are the basis of the rights and claims claimed by the parties. There are two limits to the independent activity of the court: according to the principle of dispositiveness, the court cannot demand the submission of documents and call witnesses if both parties declare that they

do not want it; the court must find out about the existence of documents, physical evidence and witnesses from a reference to them by one of the parties, and not through independent searches.

The ontological dimension of the legal process is related to the conflict, which has a social nature. Such a conflict, gaining legal form, nevertheless does not lose its social character, therefore the legal facts considered by the court have a dual nature: social and legal. This dual nature is also characteristic of subjects of legal relations, and represents a complex of procedural and social characteristics. Procedural characteristics reflect the role and legal status of the subject as a participant in legal relations. Social characteristics reflect the subject's place in the social system. The procedural and social nature of the subject are closely intertwined and inseparable from each other, and their interaction can cause both status and psychological contradictions. In order to achieve the most just decision, such contradictions must be taken into account and overcome, which in practice is quite difficult, but necessary for the effective operation of the court [14].

An essential criterion of the social orientation of civil justice is the principle of egalitarianism, which consists in the legal and factual equality of the parties with respect to the same use of all procedural means of protection. It is the court, as evidenced by the civil legislation of Ukraine, that is entrusted with the duty to ensure equal opportunities for participation in the procedural proceedings of all its participants. The key task of the court is to establish, implement and protect law in all its forms (subjective civil law, subjective public law, the right of the state to punish).

As a result, depending on the content and specifics of material law, differences in the organization of the process should be distinguished, but the task of the court in all these cases should be the same. If the court must establish the right, if the establishment of the right and its protection in the fight against injustice constitute the task of justice, according to this task, the goal of any process is to achieve the material truth, that is, the conformity of the decision with the rule of law (lawfulness) and the actual circumstances of the case (material truth in narrow understanding). Therefore, the court should be put in such a position in which it could achieve this goal, that is, the process should be organized in an appropriate way to achieve the material truth, while preserving, of course, the most important achievements of the modern legal state - the rights of the individual.

A necessary condition for achieving the priorities of sustainable development of society and the realization of anthropological values of the development of human potential is the awareness by society and the state of the social orientation of justice as a strategic task. Justice in its essence is recognized as such only if it meets the requirements of justice and ensures effective restoration of rights. Modern lawyers consider justice as the main feature of humanism and a component of the concept of "humanitarian law", which in turn should be understood as norms aimed at protecting human rights and freedoms. Therefore, by restoring the violated rights and

freedoms, the court performs humane functions, which means that the principles of equality and respect for human dignity, care for the well-being of people are laid down in its decisions.

The social orientation of justice is largely determined by its humanistic content. Humanism occupies an exceptional place in the system of judicial protection of the individual. It is about the fact that humanism not only becomes a provider of ideas regarding the human being as the highest value and measure of all things, but also draws attention to the aspect that humanism is immanent in the nature of the social state.

Humanism (from the Latin *humanus* – human) in law is one of the most essential organically inherent qualities of law, due to the interpretation of which law in the philosophical and sociological sense is characterized as a general measure of freedom, equality and justice in society, which should determine the content of every legal norm. It is such social values as freedom, equality, and justice that constitute the essence of humanism of law - a system of behavioral standards by which members of society must act in appropriate situations so that their interests are consistent with the interests and needs of other people, the state, and public interests [15].

The principle of humanism is one of the most important value characteristics of a civilized society, which recognizes the well-being of a person, his right to freedom, happiness, and the discovery of his abilities as a criterion for the progressiveness of social institutions. The law establishes and realistically guarantees the natural and inalienable rights and freedoms of every person: the right to life, health, personal freedom and security, the right to protect one's honor and dignity, protection against any unauthorized interference in the sphere of personal life and other rights [16].

Society expects from the judiciary in Ukraine that it will ensure a person's rights to life and health, honor and dignity, inviolability and security, and in case of their violation, the right to their restoration and compensation, etc. At the same time, it is worth remembering that there is always a party in court who is not satisfied with the decision. In such cases, it is necessary to proceed from the fact that the state should not transfer its responsibility for quality justice to its citizens, who are not required by law to have a legal education, and thus covertly force a person to use legal aid. Proclaiming the right of citizens to judicial protection and a fair trial, the state undertook to ensure these rights to citizens regardless of their education, property status, mental abilities, etc. Therefore, it is the court that should be entrusted with the duty not only of directing the process, but also of establishing the circumstances of the case on its own initiative [10].

One of the aspects of social interaction in civil proceedings is the presumption of knowledge of the law by all participants. In fact, the level of such knowledge is very different, and sometimes even absent, so it is necessary to overcome such inequality by appointing defenders, representatives, experts, etc. Without overcoming this kind of inequality, true justice is not possible at all, therefore, an important prerequisite for the optimal social and procedural interaction of the participants in the judicial process is a set of measures aimed at reducing

inequality associated with knowledge of the law [17].

The court constantly interacts with society, such interaction is a form of communication with the external environment. Court decisions are always influenced by public opinion, traditions, specific moods in society and the real situation of its development, the vector of state policy and the state of state power, etc. The influence of the entire complex of social factors inevitably affects both the person of the judge and the judicial process in general. However, there is an imperative requirement – no external factors should affect the fair and legal decision of the court. Litigation is inevitably a form of social interaction. Therefore, the court decision must not only correspond to the letter and spirit of the law, but also be internally perceived by the participants in the process and correspond to social realities.

IV. Conclusions

The right to access to justice is a socially determined positive procedural right, in the implementation of which other rights and freedoms of the individual are protected. Access to justice is a certain standard that reflects the requirements of fair and effective judicial protection, which are specified in unlimited judicial jurisdiction, due judicial procedures, reasonable time limits and unimpeded access to court by any interested person. Justice in civil cases should be aimed at a certain social object, which is the rights and freedoms of the individual, and their protection is the main function of the judiciary.

The administration of justice is inextricably linked with social factors. The root cause of litigation is the existence of a conflict, which is always of a social nature. Subjects of the legal process are endowed not only with procedural, but also with social characteristics and signs, and their interaction takes place on a certain socio-psychological basis. Judicial-authority relations, which have an objective-subjective nature, form the basis of the interaction of the judicial system.

The process of carrying out civil proceedings combines two principles: legal and social. The legal nature is that the main goal of the court proceedings is to establish the truth in the case and restore justice, as well as to protect the rights and interests of individuals. The social aspect is related to a complex of social factors that influence the judiciary. The interaction of the participants in the legal process always has a social character, it is characterized by a hierarchy and a rather complex structure. The administration of justice is a social interaction of the process participants, as well as society and the judicial system, regulated by the norms of law, with compliance with the requirement regarding the absolute priority of human rights.

The social and humanistic orientation of civil justice has a significant worldview and state-building significance, which primarily consists in the validity and reality of judicial protection of civil rights and freedoms of citizens. Among the attributes of the social direction of civil justice, a key place belongs to its accessibility, i.e., the possibility of hearing court cases, equal access of subjects to procedural proceedings, as well as the presence of a mechanism for appealing and

reviewing a court decision. The guarantee of achieving the tasks of civil justice is the active position of the court, which is of great importance for its optimization.

Social-humanist ideas about a person as the highest and absolute value provide modern civil justice with the necessary conceptual and axiological basis. The civilizational significance of the social and humanistic orientation of justice in civil cases lies primarily in the orientation of the judicial system on value and spiritual foundations. The effective development of civil justice is one of the main indicators of the democratic, humanistic and social directions of development of Ukrainian statehood.

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