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THE PROCEDURE IN A CASE FOR THE TRIAL AS A SEPARATE STAGE OF CIVIL JUDICATURE

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SUMMARY

The article deals with the main principles of the procedure in a case for the trial as a separate stage of a civil judicature; the legal rules governing the proceedings in connection with the preparation of a case for the trial are analyzed.

Key words: civil judicature, court, statement of claim, proceedings, trial, procedure in a case for the trial.

АННОТАЦИЯ

В статье рассматриваются основные принципы процедуры в случае, когда судебное разбирательство является отдельным этапом гражданской судебной системы. Анализируются правовые нормы, регулирующие судопроизводство в связи с подготовкой дела к судебному разбирательству.

Ключевые слова: гражданская судебная практика, суд, исковое заявление, производство, суд, процедура по делу.

For protection and defense of violated, unrecognized or disputed rights, freedoms and interests of individuals, the rights and interests of legal entities, state interests the proper preparation of civil cases for the trial is of great importance. Timely, that is in terms set by the law, execution of proceedings anticipated by Civil Procedural Code is the guarantee of effective justice and civil adjudication.

Judging by the fact that in each case after opening the procedure the judge is obliged to provide actions anticipated by Civil Procedural Code to prepare civil cases for consideration on the merits, that will ensure the accuracy and timeliness of dispute resolution, so the result of poor organization and preparatory actions can be delaying of disputes, untimely restoration of the violated rights and legitimate interests of civil legal relations.

The **aim of the article** is to conduct a comprehensive study of issues related to the implementation of the procedure in a case for the trial, determining its goals and objectives, analysis of rules governing proceedings in connection with the preparation of the case for the trial.

The level of the problem's scientific development. Such researchers as M.I. Baliuk, D.D. Luspenyk, S.V. Vasiliev, N.L. Bondarenko-Zelins'ka, O.O. Hrabovska, O.P. Ivanchenko, V.V. Komarova, V.I. Tertyshnikov, V.V. Barankova, H.P. Tymchenko and others devoted their works to the problematic aspects of the procedure for the trial.

The basics presentation. In accordance with the provisions of the Plenum of the Supreme Court of Ukraine of 12th June 2009, № 5 «On the application of the rules of civil procedural law, governing procedures in a case for the trial» a stage of preparation of the case for the trial is a separate and important one that creates the conditions necessary for the proper and timely adjudication, the adoption of legal and grounded court decision [1].

The procedure in a case for the trial is the second stage of a civil process in judicature development. The preparations are carried out by a judge who performs a complex of proceedings. As a rule, the proceedings of the persons involved in a case are carried out at the request of a judge, being a response to his actions, and such dependence is explained by the existence of procedural relationship between them, by a set of mutually corresponding rights and obligations of these entities. But persons, involved in a case, have the right to carry out their own proceedings, aimed at the case preparation for the review (to submit evidence, to file motions, etc.) [2].

Other participants of the process can take part in preparing the case for the review. When the case is brought by or against a person who does not speak the language of judicature, on the stage of preparation of the case and during the trial, one cannot dispense with an interpreter's assistance, if an expertise is needed to engage an expert, in certain cases it is necessary to attract a specialist, that is, depending on the controversial questions, the claims of the plaintiff and the complexity of the case the number of participants varies. According to the CPC of Ukraine it should be documented a list of proceedings for the preparation of a civil case for the trial not only judges, but also the persons involved in the case and other participants.

If we analyze the causes and background of the preparation of civil cases for the trial, it is clear that the emergence of the institute of procedures for the trial (preparation of civil cases) in civil process is stipulated with practical necessity to create an intermediate stage in the process of justice. In civil process a significant percentage of proceedings to be committed in resolving a civil and legal dispute is the actions of ordinary citizens who are not always legally competent to assess the disputed legal relationship participants of which they are, and therefore provide the evidence needed in justifying their claims or objections. The formation of the procedure's stage in a case

for the trial took place within general development of civil judicature in Ukraine. H.P. Tymchenko thinks that the trends of the latter's development are the most notable regarding this stage, namely its evolution from simple forms that were the prototype of the case preparation to the detailed fixing of the procedural laws in separate sections [3, p. 142–146].

Each stage of civil judicature has a separate procedural purpose, which, although, is focused on the ensuring of conditions for proper and timely consideration and adjudication, but has its own characteristics, anticipated with the specifics of the procedure. The purpose of civil case preparation for the trial is intermediate in nature and aimed at creating conditions for achieving the ultimate goal of civil judicature. It is achieved not only by the activities of the court, but also other participants of the process (parties, third persons, etc.). The aim of a stage of the procedure for the trial is reduced to ensure proper and timely adjudication, the adoption of legal and grounded court decision with the least possible expenditure of money and time, that is, it provides the implementation of the principles of legality and the objective truth during consistent implementation of the principle of procedural means economy [4, p. 27–32].

Thus, to achieve the procedural aim the following objectives of the procedure in a case for the trial can be distinguished:

1) creating opportunities to resolve the dispute before the trial, namely conciliation;

2) taking all necessary procedural actions in preparing the case for the trial if it is impossible to reconcile the parties.

The tasks of preparing the case for the trial are performed by a judge through numerous proceedings listed under the article 130 of CPC of Ukraine and can be extended, if necessary, in the view of particular circumstances of the controversial case [5].

Of the selected tasks the notion of the procedure in a case for the trial is defined as a set of procedural actions committed by a judge alone, with the parties and other interested persons, and aimed at clarification the possibility of a dispute settlement before the trial or ensuring proper and rapid adjudication.

According to the article 127 of CPC of Ukraine after opening the procedure the court immediately sends copies of the ruling on the procedure to the persons involved in the case. The CPC of Ukraine does not set a specific deadline for sending a copy of the ruling to the parties since its adoption, indicating only that this procedural action must be done immediately. The court also has to send the copies of a claim along with copies of documents attached with the decision to open the procedure in a civil case to a defendant, and a copy of the claim to the third person [6].

It can be observed a certain discrepancy of the article 127 and the article 120 of the CPC of Ukraine. In the article 120 of the CPC of Ukraine it is provided the duty of the applicant to submit a copy of the claim and the documents attached in an amount according to the number of defendants and third persons. In turn, the article 127 of the CPC of Ukraine provides that third persons are only sent copies of the claim without copies of documents attached. Furthermore, it should also be considered the fact that during the hearing a case on the merits the replacement of a defendant, attraction of a co-defendant may occur [7]. We agree with M.I. Baliuk, as because of not exact defining a number of participants, a plaintiff cannot fulfill his obligation to file copies of claims and copies of the documents attached in an amount according to the number of defendants and third persons. And the fact of a defendant's replacement and attraction of a co-defendant is not provided at all when filing copies of claims and copies of documents attached.

N.L. Bondarenko-Zelins'ka, analyzing in her dissertation the preparation of civil cases for the trial, draws attention to the need for clear defining of the boundaries of this stage, as it allows to determine not only its place in the structure of civil procedure, but the volume of procedural actions that are the content of the preparation and the terms within which they can be committed to reach the nearest procedural purpose, besides contributes to the realization by the participants of the process their procedural rights and legitimate interests at an appropriate stage of solving civil and legal disputes. She made a conclusion that the stage of preparation of a civil case for the trial begins with the adoption of resolution on the procedure and ends at the opening of the first court session [8].

As one of the procedural forms of preparation of the case for the trial is a preliminary hearing, so the article 129 of the CPC of Ukraine sets a ten days period within which the court must appoint and hold a preliminary hearing. This period is calculated from the date of adoption of the decision on the procedure in a case.

The term mentioned in the article 129 of the CPC of Ukraine refers only to a date of preliminary hearing and does not cover other procedural preparatory actions anticipated by civil procedural law.

Taking into consideration that the preliminary hearing is a procedural form of preparation stage of the case for the trial, it cannot have an independent procedural purpose [9].

To achieve the goal mentioned above the court clarifies the following questions: whether the plaintiff rejects the claim; whether the defendant acknowledges the claim; whether the parties reach an amicable agreement; whether the parties want to submit the case to arbitration tribunal [10, p. 311–315].

Despite the fact that holding a previous court session is optional according to the article 130 of the CPC of Ukraine, it does not exclude mandatory preparatory actions to hearing in court by the judge alone with adoption of the relevant procedural documents and performing certain procedural actions, in particular notifications of persons as to the time and place of the judicial sitting [11, p. 27].

In part 6, the article 130 of the CPC of Ukraine the actions, committed by the court in connection with the preparation of a case for the trial, are mentioned. The most important is clarification of claims or objections to the claim. The clarification of the claims' content (a subject of a dispute) and objections to the claim are done by the court during a previous judicial sitting, where all persons are called to. In order to provide the most complete, comprehensive and objective clarification of the circumstances of a case in a judicial sitting, a judge has to explain to the parties and third persons that they must prove the circumstances which are referred to as the basis of their claims and objections and their other rights and obligations under the article 27 of the CPC of Ukraine [12].

Solving the issue on the composition of the persons participating in a case allows a judge to reduce the time of hearing. By this the judge is able to optimize his work and ensure the rapid hearing and adjudication. The composition of the persons participating in a case is determined considering the circumstances of a dispute and the nature of claims.

In the previous judicial sitting the court must clarify a subject of proving in a case, namely, what circumstances must be determined to resolve a dispute. A specific list of these conditions depends primarily on the grounds of a claim and objections to it. At the same time the court sets only a range of evidential facts, but not a list of means of proving.

It should be meant that in accordance with part 1 of the article 61 of the CPC of Ukraine the circumstances recognized by the parties and other persons involved in a case cannot be proved. Taking into account the requirements of this article, the fact recognized by a party in the preliminary hearing is not subject to proof, if it is recognized by other persons involved in the case. Therefore, if a party has recognized a fact, but denies it, for example, a third person, so it is liable to be proved on general grounds. In the part of recognized facts the sides are released from the obligation to submit evidence that prove these facts to the court [12].

In order to clear up the evidence which each side will use to explain their arguments or objections as to the unacknowledged circumstances and to determine the terms of their submission to the preliminary hearing, the court finds out from the parties what evidence will be provided to the court to ground their proofs and objections. The party should name these proofs to the court and the circumstances they are approved with.

Under the article 131 of the CPC of Ukraine the parties are obliged to submit their evidence to the court before or during the previous judicial sitting on a case, and if the preliminary hearing on the case is not held – before the hearing on the merits. Evidence submitted with the requirements breaches are not accepted if the party does not prove that the evidence has not been submitted in time for good reasons [6].

The issue on demanding and obtaining the evidence and calling witnesses, carrying out an examination, involving a specialist, an interpreter to a case, a person , who provides legal assistance, or on court orders as to collecting evidence, if there is a declared petition of persons participating in the case. In fact, it is a decision of a problem on the provision of evidence as measures to preserve information about the circumstances of the case when there are reasons to believe that the further use of this information may be impossible or complicated [2].

The examination of written and physical evidence is made, as a rule, in the court. However, when this evidence cannot be taken to the court, they are examined at their location. It is impossible to take to the court such evidence as real estate or damaged vehicle that are a material evidence, written evidence, which require special storage conditions (e.g., scripts of archival documents, rarities) and others.

Carrying out the examination of evidence at their location on the stage of the procedure for the trial is the court's responsibility, as during the trial only the records of written and physical evidence examination are studied (articles 185, 187 of the CPC of Ukraine) [12].

The problem of taking measures as to ensure the action on the request of the persons involved in the case is made by the judge who hears the case. The court takes measures as to the protection of substantive and legal interests of a plaintiff against the defendant's unfair actions (who may hide assets, sell, destroy or devalue it), guaranteeing real performance of a positive decision.

Also, proceeding from a case, if needed a judge during the procedure opening and preparing a case for the trial has the right to adopt a ruling on unification of several similar claims in one procedure based on the claims of the same plaintiff to the same defendant or different defendants, or the claim of different plaintiffs to the same defendant.

Depending on the circumstances of the case a judge or the court have the right to set a ruling on the separation of several claims combined in one procedure into separate procedures if their joint consideration complicates adjudication (article 126 of the CPC of Ukraine) [6].

After the case preparation to the trial is finished, a judge sets a ruling, in which he notes what preparatory acts have been carried out, and sets the date of the hearing. The case must be intended for consideration no later than seven days after finishing the action of preparation for the trial.

Conclusions. Thus, we can confidently state that any judicial procedure in civil cases to achieve its tasks should be carried out so as to ensure proper and timely consideration, adjudication and the adoption of a legal decision. The requirements of proper and timely examination of a case are concerned to the courts of all instances, but they are particularly important for the procedure at first instance, namely the pre-trial proceedings. Settlement of the dispute in the pre-trial proceedings within the terms set by civil procedural law and adopting lawful and reasonable solution fully meets the ultimate goal and objectives of civil judicature. For all that, the protection of violated or disputed law and legally protected interest must be held with the least financial expenditure for persons, involved in the case, for the court and the state as a whole.

It can be claimed that the procedure for the trial is actually an independent stage of civil judicature, which consists of a set of court proceedings and persons involved in the case, aimed at clarifying opportunities to settle a dispute before the hearing or ensuring correct and rapid adjudication. Like any stage of civil judicature, the procedure for the trial has a purpose and tasks to be solved for their achieving.

In addition, we have analyzed and characterized the proceedings provided by the CPC of Ukraine that the court must commit in connection with the preparation of a case for the trial. Thus, during the study it was found that the proper legal regulation of procedure realization for the trial is a guaranty of effective and appropriate preparation of civil cases for consideration on the merits, the adoption of legal and grounded court decision.

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