SECTION 1

CONTEMPORARY ISSUES OF DEMOCRATIC SOCIETY DEVELOPMENT. DEMOCRACY THROUGH LAW

ADVERSARIAL AS A GUARANTEE OF PROCEDURAL FAIRNESS FOR TRIAL OF MINOR CASES

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The requirement of adversarial process is one of the fundamental guarantees of procedural fairness of court hearings in minor cases. More specifically, through the prism of the practice of applying the European Convention on Human Rights and its relationship with the rules of current procedural law, in minor cases, the adversarial nature of the parties is realized only if there are conditions of the certain content.

Firstly, the court manages the process which involves the exercise of a wide range of powers related to: 1) recording the course of the hearing by technical means; 2) clarification of the essence and specific circumstances of the case; 3) regulation of the temporal boundaries of the trial; 4) evidentiary activity of the parties; 5) promoting the peaceful settlement of disputes, etc. Strengthening the procedural role of the court is one of the current and relatively well-established trends in the development of civil proceedings. Its objectification resulted in the evolution of the concept of "judicial management of the case", which originated in the bosom of the continental legal tradition, which is genetically inherent in the Inquisition form of the process with the relevant model of the adversarial [1, p. 19]. The antithesis of the latter is the Anglo-Saxon version of pure competition, where the trial is a free confrontation of the parties, and the court, deprived of the right to initiate any procedural actions, performs the function of "night watchman" [2, p. 254]. For many scientific schools and academic traditions, it is the basic guideline and a high standard for assessing the fairness of judicial proceedings. In this way, any infiltration of inquisitorial adversarial proceedings, such as judicial management of the case or anything else, is equated with aberration.

If we consider and study the adversarial nature of the parties through the prism of the conventional dimension of fair justice, we do not have to talk about the rationality and expediency of such approaches, as mediation in the dispute between the parties is not the main function of the court. It is designed to provide general guidance on the course of the process, determine the directions of its development and guide the establishment of the objective truth and fair

settlement of the dispute, control the parties or other participants in the proceedings for the legality of their procedural actions, and prevent possible abuses, rather than create the effect of the presence of an outside observer.

The civil procedural laws of the current member states of the Council of Europe do not contain exact prototypes of pure or inquisitorial competition because the latter are a generalized reflection of the laws of historical development of the relevant forms of civil proceedings, and therefore have purely theoretical significance. The phenomenon of convergence has decisively influenced the processes of formation of national versions of competition. The scope of procedural rights and obligations of the parties in relation to the degree of activity of the court has become the main criterion for their diversification. Modern legal systems of both Anglo-Saxon and continental types demonstrate a variety of models of adversarial, which in their content are not purely inquisitorial or purely adversarial. Ukraine is on the cutting edge of the latest trends, as the national version of competition has the combinatorial nature of origin. In such circumstances, it is the existence of the institution of judicial management of the case, its individual elements or individual manifestations in procedural law that allows us to understand to what extent the domestic model of the adversarial is more inquisitorial or less adversarial than others.

The concept of judicial management of the case is not incorporated in the current CPC as an independent procedural institution, but we can recognize and trace its individual elements and manifestations in the law, reflecting the diversification of court powers, in particular: 1) the court is responsible for fully recording the court session technical means (Part 1 of Article 247 of the CPC); 2) taking into account the specifics of the content of the disputed legal relationship, the circumstances of the case and the evidence collected, the court has the right to change the procedure for their clarification and investigation (Part 2 of Article 228 of the CPC); 3) the court regulates the temporal boundaries of the trial by postponing the hearing in order to provide additional time to respond to the response and / or objection (Part 4 of Article 279 of the CPC); 4) if one of the parties alleges that his opponent did not take certain actions or the absence of a certain event, the court is entitled to adjust the nature and direction of the evidence of the opposing party by obliging it to provide relevant evidence (Part 4 of Article 81 CPC); 5) in a divorce case, the court may suspend the proceedings and set a time limit for reconciliation for the spouses, which should not exceed six months (Part 7 of Article 240 of the CPC).

Secondly, the parties are free to choose the means of proof and independently form the evidence base necessary to confirm in court the facts and circumstances to which they refer as the basis of their claims or objections. The national adversarial paradigm does not restrict the parties in their legal right to present evidence (paragraph 2 of Part 1 of Article 43 of the CPC; Part 5 of Article 81 of the CPC). However, their freedom to choose the means of proof is not absolute, as there is a rule that the circumstances of the case, which by law

must be confirmed by certain means of proof, cannot be confirmed by other means of proof (Part 2 of Article 78 CPC).

Thirdly, the court is not authorized to collect evidence on its own initiative, except in cases related to the need to protect the public interest as well as the rights of minors or incapacitated persons. Procedural law explicitly prohibits the court from collecting evidence related to the subject matter of the dispute on its own and separately from the parties, except if it has doubts as for the good faith exercise of the parties' procedural rights or performance of evidence, or to protect the rights of minors, minors, persons with limited legal capacity and incapacitated persons (Part 2 of Article 13 of the CPC; Part 7 of Article 81 of the CPC).

Fourthly, the parties have real access to the evidence available in the case and are duly informed of its scope and content. The current CPC stipulates that written evidence, as well as the expert's opinion at the request of a party to the case, be announced in court or presented to him for review (Part 1 of Article 235 of the CPC; Part 1 of Article 239 of the CPC). The content of personal papers, letters, recordings of telephone conversations, telegrams and other types of correspondence of individuals may be announced at the request of one of the parties or examined in open court with the consent of persons specified by the Civil Code of Ukraine (Part 1 of Article 236 CPC). Physical and electronic evidence is presented to the persons involved in the case (Part 1 of Article 237 of the CPC).

Fifth, the circumstances and facts relevant to the case are not the subject to judicial review unless they are unequivocally acknowledged or disputed by the parties. As a general rule, the circumstances recognized by the parties to the case are not the subject to proof, except in cases where the court has reasonable doubts as to the veracity of these circumstances or the voluntary recognition of them (Part 1 of Article 82 of the CPC).

Sixth, the parties form a strategy of conduct in court at their own discretion and decide to take or refrain from taking certain actions aimed at achieving the procedural goal they need. Within the national model of competition, each party bears the risk of consequences related to the commission or non-commission of procedural actions (Part 4 of Article 12 of the CPC).

Seventh, the court makes a decision on the basis of evidence provided by the parties or demanded on their initiative. The procedural law requires that the court decision to be substantiated, made on the basis of fully and comprehensively clarified circumstances, to which the parties refer as the basis of their claims or objections, supported by the evidence examined at the hearing (Part 5 of Art. 263 CPC).

Thus, in the system of coordinates of the procedural justice, the requirement of adversarial nature becomes decisive, as its strict observance and implementation ensures: 1) delimitation and diversification of procedural functions of the court and the parties to the case on the subject; 2) objectification of the sphere of procedural autonomy of the parties; 3) the completeness of the

establishment and investigation by the court of the factual circumstances of the case. In conclusion, it should be emphasized that in the conventional paradigm of fair justice, the requirements of procedural equality of arms and adversarial proceedings are considered related. In order for a minor case to be heard under the rules of summary proceedings, the plaintiff must not arbitrarily change the subject matter of the claim, and the increase in the amount of claims is allowed only within clearly defined limits, while the defendant must refrain from exercising his right to file a counterclaim. Action may be a court decision on the case under the rules of general claim proceedings (Part 4 of Article 193 CPC; Part 5 of Article 274 CPC). This indicates that the scope of implementation of guarantees of adversarial proceedings and procedural equality of the parties are significantly limited during the trial of minor cases.

References:

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THE CONCEPT OF IMPEACHMENT PROCEDURE IN UKRAINE: GENESIS AND CURRENT STATE

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The concept of impeachment procedure in Ukraine: genesis and current state.

The article explores the issue of impeachment in Ukraine. It was analyzed the modern legal regulation of the impeachment procedure and was given an assessment in terms of relevant legislation and political realities during the years of independence of Ukraine. Also cases of attempts to remove the head of state from his post using impeachment have been researched. The article suggests some ways of improving of legislation and elimination of mistakes.

Keywords: impeachment, President of Ukraine, Constitution of Ukraine, The Verkhovna Rada of Ukraine, bill, special temporary investigatory committee.