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CIVIL PROCEEDINGS OF UKRAINE AND ISRAEL: COMPARATIVE LEGAL CHARACTERISTICS

ЦИВІЛЬНЕ СУДОЧИНСТВО УКРАЇНИ ТА ІЗРАЇЛЮ: ПОРІВНЯЛЬНО-ПРАВОВА ХАРАКТЕРИСТИКА

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The integration aspirations of our country, which is rapidly stepping into the European and world space, necessitate deepening the study of international experience in the implementation of judicial proceedings to introduce best practices in Ukraine.

In particular, the experience of civil justice in Israel is indicative for Ukrainian justice, where, despite the significant workload of judges, the quality of court decisions is not subject to critical assessment. The institutions of civil justice in Ukraine and civil justice in Israel have a number of both similar and distinctive features. At the same time, the legal regulation of civil proceedings under the legislation of Israel is marked by certain progressiveness, which determines its value for Ukraine. Thus, the author emphasizes the expediency of borrowing the experience of Israel in making a decision in absentia by supplementing the list of grounds for civil proceedings in absentia with the absence of not only the defendant but also the plaintiff. The author establishes the need to improve the national civil procedural legislation of Ukraine in terms of regulating the pre-trial settlement of civil disputes following the example of Israeli legislation by establishing an obligation for both parties to a civil dispute to hold at least two meetings without the presence of a judge aimed at reaching certain agreements or at least reducing the scope of disputed issues. At the same time, it is important to define the issues additionally legislatively to be discussed between the parties, in particular: clarification of the scope of the dispute as a whole; discussion of alternative dispute resolution options; study of measures that can be taken to reduce the scope of issues, including the appointment of an expert or obtaining a professional opinion on a particular issue. Also valuable for the national legislator are the legislative innovations of Israel regarding the content and requirements for statements of claim. After all, Ukrainian judges are also faced with statements of claim that are too long and only burden the judicial process, and do not contribute to the effective resolution of a civil dispute. In the updated legislation, the Israeli legislator for the first-time prescribed provisions regarding the configuration of claims and motions, their length, which must be observed, and the information that must be provided. It is also interesting to note the differentiated approach of the Israeli legislator to setting the deadlines for filing a response to the statement of claim. It is expected that the adoption of the relevant experience will contribute to the optimization and simplification of civil proceedings in Ukraine.

Key words: civil proceedings, civil procedure, comparative analysis, legislation of Ukraine, legislation of Israel.

Інтеграційні прагнення нашої держави, яка стрімко крокує в європейський та світовий простір, обумовлюють необхідність поглибленого вивчення міжнародного досвіду здійснення судочинства для запровадження кращих практик в Україні.

Зокрема, показовим для українського правосуддя є досвід цивільного судочинства Ізраїлю, де попри значне навантаження на суддів, якість судових рішень не піддається критичній оцінці. Інститути цивільного судочинства України та цивільного судочинства Ізраїлю мають низку, як схожих, так і відмінних властивостей. Водночас правове регулювання цивільного судочинства за законодавством Ізраїлю відзначається певною прогресивністю, що обумовлює його цінність для України. Так, наголошується на доцільності запозичення досвіду Ізраїлю щодо ухвалення заочного рішення шляхом доповнення переліку підстав для заочного цивільного провадження відсутністю не лише відповідача, але й позивача. Встановлено необхідність удосконалення національного цивільного процесуального законодавства України у частині регулювання досудового врегулювання цивільних спорів за прикладом законодавства Ізраїлю шляхом встановлення для обох сторін цивільного спору зобов'язання провести принаймні дві зустрічі без присутності судді, спрямованих на досягнення певних домовленостей чи хоча б зменшення обсягу спірних питань. При цьому, важливо, додатково законодавчо визначити питання, які мають обговорюватися між сторонами, зокрема: уточнення обсягу спору в цілому; обговорення варіантів альтернативного вирішення спору; вивчення заходів, які можуть бути вжиті з метою зменшення обсягу питань, включаючи призначення експерта або отримання професійного висновку з конкретного питання. Також цінним для вітчизняного законодавця є законодавчі новели Ізраїлю щодо змісту і вимог до позовних заяв. Адже українські судді також стикаються з позовними заявами, які є надто довгими і лише обтяжують судовий процес, а не сприяють ефективному вирішенню цивільного спору. В оновленому законодавстві законодавець Ізраїлю уперше прописав положення, які стосуються конфігурації позовних заяв та клопотань, їх довжини, яка повинна бути дотримана та інформації, яка повинна бути надана. Також цікавим видається диференційований підхід законодавця Ізраїлю до встановлення строків подання відзиву на позовну заяву. Очікується, що запозичення відповідного досвіду сприятиме оптимізації та спрощенню цивільного судочинства в Україні.

Ключові слова: цивільне судочинство, цивільний процес, порівняльний аналіз, законодавство України, законодавство Ізраїлю.

Introduction. The integration aspirations of our country, which is rapidly stepping into the European and world space, necessitate a deeper study of foreign experience in various spheres of public life. One such area is civil proceedings. In particular, in the context of improving the legal regulation of the institute of civil proceedings in Ukraine in today's realities, the experience of Israel deserves attention. After all, almost twice as many civil cases are initiated in Israel compared to Europe. However, despite the significant workload on judges, the low efficiency of court proceedings in many cases, the quality of court decisions is not subject to critical assessment, which is certainly indicative of Ukrainian justice.

The **analysis of scientific research and publications** shows that civil proceedings of Ukraine and Israel, in the context of their comparison, have not been the subject of special scientific research. Only certain aspects of this topic were studied by some Ukrainian scholars in the process of studying the foreign experience of civil proceedings in general. Among them, in particular: S. V. Vasyliev, O. A. Tymoshenko, and other representatives of comparative law.

The **purpose of the scientific article** is to provide a comparative legal characteristic of civil proceedings in Ukraine and Israel.

Presentation of the main material. First of all, it should be noted that similar to the Ukrainian judicial system, the highest in the hierarchy of the Israeli judicial system is the Supreme Court. The relevant conclusions can be drawn by analyzing the provisions of the Constitution of Ukraine [2], the Law of Ukraine "On the Judiciary and the Status of Judges" [4], and the Basic Law on the Procedure of Judicial Proceedings [3] of Israel. At the same time, according to the legislation of Ukraine, the Supreme Court administers justice as a court of cassation, and in cases determined by the procedural law - as a court of first or appellate instance, in the manner prescribed by the procedural law [4]. According to Israeli legislation, the Supreme Court acts both as an appellate

court for district courts and as the High Court of Justice with the power of judicial review [3].

Although in general the structure of the judicial system of Ukraine and Israel still has certain differences. Thus, the judicial system of Ukraine consists of:

1) local courts;

2) courts of appeal;

3) Supreme Court [4].

Local general courts are district courts, which are formed in one or several districts or districts in cities, or in a city, or in the district(s) and city(s). Courts of appeal act as courts of appeal, and in cases determined by the procedural law - as courts of the first instance, for consideration of civil cases. Courts of appeal for consideration of civil cases are courts of appeal, which are formed in appellate districts. Higher specialized courts operate in the judicial system to consider certain categories of cases: The High Court of Intellectual Property and the High Anti-Corruption Court [4]. That is, the Ukrainian judicial system is not characterized by a high branching of specialized courts. In particular, in terms of civil disputes.

The Israeli judicial system also consists of a general court system and specialized tribunals. At the same time, the general judicial system consists of the Supreme Court, 6 district courts (one in each judicial district), and 28 magistrate courts located in different districts. In addition, there are permanent specialized courts [8, p. 102-103]: Family Court, Local Court, Traffic Court, Juvenile Court, Small Claims Court, Labor Court [1, p. 343, 344]. As we can see, the Israeli judicial system has a more extensive system of specialized courts that are authorized to consider disputes in civil proceedings.

However, in our opinion, more interesting in the context of the possibility of implementation in the legislation of Ukraine is the experience of Israel in regulating the procedural aspects of civil proceedings. Thus, in particular, the experience of consideration of the case in absentia deserves attention.

As is known, according to the established practice of many states, national procedural laws most often provide for the possibility of conducting the procedure in absentia at the request of the plaintiff in connection with the defendant's failure to appear [1, p. 194; 5, p. 57]. Ukraine is not an exception to this rule. Thus, in accordance with the Civil Procedure Code of Ukraine, the court may make a decision in absentia based on the evidence available in the case under the simultaneous existence of the following conditions:

1) the defendant was duly notified of the date, time and place of the court hearing;

2) the defendant failed to appear in court without valid reasons or without giving reasons;

3) the defendant has not filed a response;

4) the plaintiff does not object to such a decision of the case [6].

However, there are a small number of countries that have provided in their national legislation for civil proceedings in absentia in the absence of not only the defendant but also the plaintiff [5, p. 57]. Among them, in particular, is Israel. Indeed, under Israeli law, it is allowed to make a decision in absentia also at the request of the defendant in the event of the plaintiff's failure to appear [1, p. 194].

In the context of the issue under study, the experience of reforming civil proceedings under the Civil Procedure Rules 5779 - 2018, which entered into force in January 2021 [10], aimed at optimizing, simplifying, and shortening civil proceedings, is also noteworthy. As you know, in 2021, a comprehensive reform of all issues related to the conduct of the dispute in the procedural aspect was carried out in Israel. Given the heavy workload of the courts, the civil procedure reform that has entered into force is of great importance. As a result of this reform, a new scheme of litigation was established. The scheme, which to some extent ensured optimization, simplification, and reduction of civil proceedings.

In particular, among the noteworthy changes, first of all, it is worth noting the introduction of the so-called "preliminary discussion". After all, in practice, the judge at the pre-trial hearing is faced with a case in which the parties have not even discussed the dispute with each other. Taking into account the numerous advantages of effective dialogue between the parties before the hearing, Sections 34 and 35 of the Rules impose on both parties to the dispute the obligation to hold at least two meetings without the presence of the judge aimed at reaching certain agreements or at least reducing the scope of disputed issues. At the same time, it is important that Section 35 of the Rules additionally defines the issues to be discussed between the parties, in particular: clarification of the scope of the dispute as a whole; discussion of alternative dispute resolution options; study of measures that can be taken to reduce the scope of issues, including the appointment of an expert or obtaining a professional opinion on a particular issue [10].

The legislation of Ukraine states only that the parties take measures for pre-trial settlement of the dispute by agreement between them or in cases where such measures are mandatory by law [6]. In view of this, in our opinion, the experience of Israel regarding preliminary discussions is of great value in terms of improving the civil procedural legislation of Ukraine.

Also valuable for the national legislator are the legislative innovations of Israel regarding the content and requirements for statements of claim. After all, Ukrainian judges are also faced with statements of claim that are too long and only burden the judicial process and do not contribute to the effective resolution of civil disputes. In the updated legislation, the Israeli legislator for the first-time prescribed provisions regarding the configuration of claims and motions, their length, which must be observed, and the information that must be provided. Thus, Sections 9-14 of the Regulation stipulate that the statement of the claim consists of three parts: heading, summary, and information about the claim. Moreover, the number of pages is limited in accordance with the procedure: the claim should not exceed 11 pages if it is filed in the magistrate court, 15 pages if it is filed in the district court, 30 pages if the claim is filed in the district court in financial matters or concerns the issue of personal injury or compensation for victims of road accidents. The number of pages of motions other than statements of claim and, accordingly, responses to them are limited to 5 pages. Exceptions are applications for interim protection, which are limited to 8 pages [10].

The legislation of Ukraine currently does not contain these restrictions. Such conclusions can be made by analyzing Art. 175 and Art. 183 of the Civil Procedure Code of Ukraine. Thus, according to Art. 175 "Statement of claim":

"1. In the statement of claim, the plaintiff sets out his claims regarding the subject matter of the dispute and their justification.

2. The statement of claim shall be submitted to the court in writing and signed by the plaintiff or his representative, or another person who is authorized by law to apply to the court in the interests of another person.

3. The statement of claim shall contain:

1) the name of the court of the first instance to which the application is filed;

2) full name (for legal entities) or first name (surname, name, and patronymic - for individuals) of the parties and other participants of the case, their location (for legal entities) or place of residence or stay (for individuals), postal code, identification code of the legal entity in the Unified State Register of Enterprises and Organizations of Ukraine (for legal entities registered under the legislation of Ukraine), as well as the registration number of the taxpayer's account card (for individuals), if any, or passport number and series for individuals

3) indication of the price of the claim, if the claim is subject to monetary valuation; reasonable calculation of the amounts charged or disputed;

4) content of the claim: method (methods) of protection of rights or interests provided by law or contract, or other method (methods) of protection of rights and interests that do not contradict the law and which the plaintiff asks the court to determine in the decision; if the claim is filed against several defendants - the content of the claim for each of them;

5) statement of circumstances by which the plaintiff substantiates his claims; indication of evidence confirming these circumstances;

6) information on taking measures for pre-trial settlement of the dispute, if any, including if the law provides for mandatory pre-trial settlement of the dispute;

7) information on measures taken to secure evidence or a claim before filing a claim if any;

8) a list of documents and other evidence attached to the statement; an indication of evidence that cannot be submitted with the statement of claim (if any); an indication of the availability of original written or electronic evidence, copies of which are attached to the statement, with the plaintiff or other person;

9) preliminary (approximate) calculation of the amount of court costs that the plaintiff has incurred and expects to incur in connection with the case;

10) confirmation of the plaintiff that he has not filed another claim (claims) against the same defendant (defendants) with the same subject and on the same grounds.

4. If the statement of claim is filed by a person exempted from payment of court fee in accordance with the law, it shall specify the grounds for exemption of the plaintiff from payment of court fee.

5. In case of filing a claim by a person who is authorized by law to apply to the court in the interests of another person, the statement shall specify the grounds for such application.

6. The statement of claim may contain other information necessary for the proper resolution of the dispute" [6].

At the same time, in accordance with the provisions of Article 183 "General requirements for the form and content of a written application, petition, objection":

"1. Any written application, petition, the objection shall contain:

1) full name (for legal entities) or name (surname, first name, and patronymic) (for individuals) of the person submitting the application, petition, or objection thereto, its location (for legal entities), or place of residence or stay (for individuals), identification code of the legal entity in the Unified State Register of Enterprises and Organizations of Ukraine (for legal entities registered under the legislation of Ukraine)

2) name of the court to which it is submitted;

3) the case number, surname, and initials of the judge (judges), if the application (petition, objection) is filed after the decision to open the proceedings in the case;

4) content of the issue to be considered by the court and the applicant's request;

5) grounds for the application (petition, objection);

6) list of documents and other evidence attached to the application (petition, objection);

7) other information required by this Code.

The requirement to indicate in the statement on the merits, complaint, application, petition, or objection the identification code of the legal entity in the Unified State Register of Enterprises and Organizations of Ukraine applies only to legal entities registered under the legislation of Ukraine. A foreign legal entity shall submit a document proving its legal personality under the relevant foreign law (registration certificate, extract from the commercial register, etc.).

2. Written application, petition, or objection shall be signed by the applicant or his representative.

The application, complaint, petition, or objection filed at the stage of execution of a court decision, including in the process of judicial control over the execution of court decisions, shall be accompanied by evidence of their sending (submission) to other participants in the case (proceedings).

3. A party to the case has the right to attach to a written statement and petition a draft ruling, which he asks the court to issue.

4. The court, having established that the written application (petition, objection) was filed without compliance with the requirements of part one or two of this Article, shall return it to the applicant without consideration" [6].

In view of the above, in our opinion, it would be advisable to supplement Articles 175 and 183 of the Civil Procedure Code of Ukraine with appropriate restrictions on the scope of the statement of claim, as well as other written statements, petitions, and objections, borrowing the experience of Israel in this regard.

Also interesting is the differentiated approach of the Israeli legislator to the establishment of the deadlines for filing a response to the statement of claim. Thus, according to the civil procedural legislation of Israel, after the plaintiff has filed his statement of claim with the court and the defendant has been duly served, the response must be filed within 30-120 days depending on the type of claim. After filing all responses in ordinary lawsuits, the plaintiff may (but is not obliged to) file a response to the response within 14 days. After the last pleading (last answer or answer to a pleading) in ordinary actions is filed with the court, the parties have 30 days to exchange requests for discovery and questionnaires. Each party must respond to these requests within 30 additional days. Following such requests and responses, motions may be filed according to a fixed schedule prior to the first preliminary hearing. After that, such motions and other procedural issues may be resolved in the pre-trial order. Usually, the preliminary hearing is scheduled according to the judge's schedule after the last response or response to the response is filed and after the documents between the parties are made public [9].

In Ukraine, the response shall be filed within the period established by the court, which may not be less than fifteen days from the date of delivery of the decision to open proceedings in the case. The court must set such a term for filing a response that will allow the defendant to prepare it and relevant evidence, and other participants in the case to receive a response no later than the first preparatory hearing in the case [6].

Conclusions. Taking into account the above, we consider it possible to conclude that despite certain similarities between the civil proceedings of Ukraine and Israel, the legal regulation of civil proceedings under the laws of Ukraine and Israel has many differences. At the same time, the legislation of Israel is more advanced and deserves attention in terms of the possibility of implementing the relevant experience in the national legislation of Ukraine.

Finally, we note that the issue of comparative legal characteristics of civil proceedings in Ukraine and Israel requires further scientific research.

REFERENCES

1. Vasyliev S. V. Comparative civil procedure. Textbook. K.: Alerta, 2015. 352 p.
2. Constitution of Ukraine: the Law of Ukraine of 28.06.1996. № 254к/96-ВР. URL : https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80 (Application date: 14.09.2022)
3. The Basic Law of Judicial Procedure of 1984. URL: http://www.knesset.gov.il. (Application date: 14.09.2022)
4. On the judicial system and status of judges: Law of Ukraine of 02.06.2016. № 1402-VIII. URL: https://zakon.rada.gov.ua/laws/show/1402-19#Text (Application date: 14.09.2022)

5. Tymoshenko O. A. Case consideration in absentia as a mechanism to ensure effective justice in civil proceedings. Legal bulletin. 2021. № 19. P. 54-61

6. Civil Procedure Code of Ukraine: Law of Ukraine of 18.03.2004. № 1618-IV. URL: https://zakon.rada.gov.ua/laws/card/1618-15 (Application date: 14.09.2022).

7. Civil procedure regulations, 5744-1984 (CONSOLIDATED VERSION). URL: https://wipolex.wipo.int/en/legislation/details/15361/ (Application date: 14.09.2022).

8. Kasher Y. Civil Litigation in Israel in theory and Practice. *The US-Israel Legal Review*. 2020. P. 102- 107.

9. Pomeranc A., Beitz R. Q&A: conducting litigation in Israel. Lexelogy. May 20, 2022. URL: https://www.lexology.com/library/detail.aspx?g=011c4ef1-4ed6-435d-8fe3-d86507a6321c/(дата звернення: 14.09.2022).

10. The New Civil Procedure Regulations – In the Light of the Efficiency of the Hearing. URL: https://ekw.co.il/en/the-new-civil-procedure-regulations-in-the-light-of-the-efficiency-of-the-hearing/(дата звернення: 14.09.2022).