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THE STATE OF SCIENTIFIC DEVELOPMENT OF THE PROBLEM OF ABUSE OF CIVIL PROCEDURAL RIGHTS

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Abstract. The article is devoted to the investigation of the stages of formation of domestic civil procedural opinion in view of the problem of unfair procedural behavior and law abuse. The list of scientific problems developed at that time can include, albeit with certain reservations, the problem of abuse of procedural rights, which also received some elucidation in numerous legislative sources and materials of recent judicial practice. The Soviet period of the development of the science of civil procedural law is characterized by an almost complete rejection of already accumulated legislative experience and systemic knowledge, attempts to justify and prove the advantages of the new system and socialist justice, which found its specific reflection in the civil procedural form of realization rights and obligations. This thesis is quite applicable to the problem of abuse of civil procedural rights. For modern Ukraine, the problem of abuse of civil procedural rights has not only not lost its significance, but also sounds even more acute than in the previous stages of the development of judicial power and the lawsuit. A major update of the civil procedural legislation and expansion of the dispositive and competetive powers of the litigant actualizes the issue of the limits of active and lawful behavior of the litigants, responsibility for violation of the order of civil procedural actions, possible types of abuse of procedural rights and countermeasures against them. This is especially relevant in the conditions of essentially unlimited possibilities of the litigants, the origins of which should be sought in the nature of the principles of competition and dispositiveness. As a result, there is a potential possibility of unfair procedural behavior. In this regard, we have open questions, which related to characteristic signs of abuse of procedural rights, the possibility of their division into groups, and legislative regulation remain open.

Keywords: abuse of procedural rights, civil procedural responsibility, civil procedural obligations, lawful behavior, the principle of civil justice.

INTRODUCTION

In the structure of the author's study of the problem of abuse of procedural rights, it is important to refer to the traditions of civil procedural thought, which determine, including, the current state of scientific development of the issues under consideration. M. P. Kuryl's thoughts that the modern processes of searching for an effective model of the realization of judicial power encourage us to review the heritage of domestic procedural thought and legislation — seem fair. And not so much for the analysis of the past and the reproduction of the strict sequence of formation of the procedures for consideration of legal disputes, which have a centuries-old history, but for the understanding of

the essence of modern concepts of the development of the judicial system as a reflection of the fundamental importance of the rights, freedoms and interests of a person and the conviction of their essential protection through the improvement of court procedures (Kurylo, 2015).

MATERIALS AND METHODS

To the study of the problem of abuse of law in civil proceedings within their own subjects of scientific analysis were addressed V. V. Komarov, O. O. Kot, V. A. Kroytor, M. P. Kurylo, Yu. D. Prytyka, O. S. Tkachuk, A. O. Tkachuk, T. Polyanskyi, O. Ya. Rogach, M. M Yasynok and others.

The methodological basis of this work is common law methods and techniques. They include the formal-legal method, the use of which promoted to clarifying the meaning of the conceptual apparatus used in the study; historical and legal analysis was needed to understand the stages of the formation of civil justice and the presence unscrupulous procedural behavior in it, the feature of legal opinion and legislation of different epochs in this regard; the comparative legal method promoted to the analysis of foreign legislation in part of identifying the main principles of normative regulation of civil procedural actions.

RESULTS

The science of civil procedure in its continuous development has gone through a difficult path of self-determination and crystallization of the main objects and subjects of research. As you know, the appearance of the first domestic fundamental works on civil justice coincided with the judicial reform, which caused the necessity of creation a separate, special system of knowledge about courts and justice.

According to the researchers, jurists have begun the development of the following topics: the concept and essence of civil proceedings, the legal nature, structure and functional role of civil procedural legal relations, their correlation; the doctrine of the lawsuit; right to legal protection, types of lawsuits, grounds of lawsuit, counterclaim; the concept of evidence and, in this connection, the concept and content of material truth; the problem of the court decision — either from the standpoint of practical significance and enforceability, or from the theoretical standpoint — the content and essence of court rulings (Komarov et all, 2002; Kurylo, 2015).

The list of scientific problems developed at that time can include, with certain reservations, the problem of abuse of procedural rights. It also received some elucidation in numerous legislative sources and materials of modern judicial practice.

Thus, E. V. Vaskovsky, in his book, describing the problem of abuse of rights, believed that thanks to the unlimited possibility of initiating and conducting civil cases, a wide space for abuse of procedural rights has been opened.

The scientist used examples to show that unscrupulous persons can bring deliberately baseless lawsuits if they know that the defendant does not have evidence capable of refuting their claims. It is also possible to appeal court decisions in full awareness of their correctness and to initiate pointless motions just to drag out the process, to file deliberately incorrect objections.

Likewise, the sides of the case may report false factual information to the court and provide false evidence, distort the circumstances of the case, mislead the court with legal and logical sophisms (Chechina, 2004).

E. V. Vaskovsky found the origins of dishonest behavior of the litigants already in Roman law and process. Analyzing the attitude of contemporary procedural legislation to the abuse of procedural rights by plaintiffs, the author noted their difference. Based on the provisions of the Civil Code of 1864, he believed that in all cases when the litigants suffer profitless consequences in the form of payment of court costs, compensation for damages, loss of cassation collateral, these consequences are due to the baselessness of their claims and statements, whether obvious or notю That is means they come despite the fact that the parties acted in good faith.

E. V. Vaskovskyi was convinced that a theoretical study of the problem of abuse of procedural rights is necessary. In his opinion, in order to find out the true meaning of the phrase «abuse of law», it is worth taking the essence and tasks of the civil process as a starting point.

The state creates civil courts in order to specify the norms of law, applying them to individual cases of life. This specification is carried out in the form of checking and establishing the legality of legal claims made by citizens to each other. Courts are obliged to conduct the verification correctly, in accordance with the rules of law (postulate of legality) and actual circumstances of the case (postulate of material truth). The state could take the implementation of all actions related to the verification of legal demands to one judge, building the proceedings on the basis of an investigation and an official court order. But modern legislation considers it quite expedient to provide a wide scope for self-activity in order to better ensure the disclosure of the material truth and, therefore, the correctness of court decisions. It shows that procedural rights are given by law to the parties to promote the court in considering cases, to facilitate their correct resolution. Every time when the parties perform any procedural action not for this purpose, but to achieve any extraneous goals (to mislead judges, to drag out the case, to cause difficulties to the opponent), they go beyond the valid content of their right, in other words, they abuse it.

Thus, E. V. Vaskovsky wrote, the abuse of procedural rights should be understood as their realization by the parties to achieve goals, dissonant with the purpose of the process — the correct and quick resolution of a civil case (Vaskovsky, 1917).

The Soviet period of the development of the science of civil procedural law is characterized by almost complete rejection of already accumulated legislative experience and systemic knowledge, attempts to justify and prove the advantages of the new order and socialist justice. This found its specific reflection in the civil procedural form of realization rights and obligations. This thesis is quite applicable to the problem of abuse of civil procedural rights.

Forgetting past theoretical developments, Soviet procedural scientists sharply and mercilessly criticized legislation of foreign states, which provided for certain measures to struggle with procedural offenses and dishonest procedural behavior. At the same time, even in Soviet times it was impossible to completely refuse to recognize the existence of such a phenomenon as abuse of law in a civil process.

Let us repeat that the few statements of scientists regarding the problem of abuse of civil procedural rights was characteristic of the period under analysis.

However, through the prism of discussions about civil procedural responsibility, the question of measures to counter dishonesty in civil proceedings could not be ignored.

N. O. Chechyna was one of the first to attempt a comprehensive study of the category of liability in civil procedural law. Turning to the study of the concept of civil procedural responsibility as an independent legal category, as a legal phenomenon and procedural institution, the scientist believed that it can perform several tasks, namely:

1. Liability, considered as an essential legal institution of procedural law, should serve as the argument, which together with the subject and method of civil procedural law, proves the independence and separation of the latter as a branch of law, It includes only legal norms that regulate judicial activity regarding consideration and decision civil legal disputes.

2. The definition of liability as a necessary legal category in civil procedural law helps to reveal the need to provide all norms of civil procedural law with sanctions that give effectiveness and completeness to other properties of these norms. At the same time, the securement of civil procedural norms with sanctions is a necessary condition for updating the general and compulsory nature of the norm, a condition for the functioning of procedural norms as a legally weighty rule of conduct for participants in civil proceedings.

3. Determining the content of responsibility, identifying the forms of its expression and establishing it by the rules of civil procedural law should ensure the correct formation of procedural normative acts as acts that fix procedural rules. These rules regulate the relations formed during the period of judicial activity during the consideration of civil cases by the court (not by all jurisdictional authority).

And then the cited author noted that the specifics of civil procedural liability depend on the specifics of the subject of civil procedural law, fixed in the procedural rules and which distinguish them from any other complex of legal norms. Among them we can identify: a) norms of civil procedural law are implemented through procedural relations, which are the only form of their expression and consolidation; b) most norms of civil procedural law establish permits, not prohibitions; c) the obligation to bear procedural liability emerges in the participants in the process when they not follow the requirements of the procedural norm — from an offense; d) using liability, the establishment of the obligation to be responsible, the procedure, form, terms of its realization are established by the court as the only subject of the application of the rules of civil procedural law (Chechyna, 2006).

The theoretical development of the problem of civil procedural liability, initiated by N. O. Chechyna, was continued in the works of other procedural scientists of the analyzed period.

V. V. Butnev emphasized that the concept of civil procedural liability has an important theoretical significance. It is intended to clarify the specific features of the method of civil procedural law, sanctions of civil procedural norms, the legal position of the subjects of civil proceedings and other important problems of civil procedural law.

As a result of author's study of the essence and procedure of implementation of civil procedural liability, the author reached the following conclusions.

Each branch of law has specific liability measures. Civil procedural

liability is a type of legal liability. That is why the concept of civil procedural responsibility should be based on the general concept of legal responsibility, as special and general.

Procedural liability can be positive or negative. Positive civil procedural liability is the obligation, imposed on the subjects of the legal relations, to fulfill the given procedural duties and use procedural rights in accordance with their goals and purpose. This is civil procedural liability of a general nature. Positive civil procedural liability is expressed thanks to norms-tasks and norms-principles. As a rule, it finds its manifestation in rights and obligations of the subjects of civil procedural legal relations.

Negative civil procedural liability is the obligation of the offender to suffer legally negative consequences from the committing the offense in the form of deprivation of personal or property benefits.

Developing his own vision of the concept of civil procedural responsibility in civil proceedings, V.V. Butnev believed that a civil procedural offense is a socially dangerous (publicly harmful) criminal act (action or inaction) that violates the norms of civil procedural law, for which civil procedural measures responsibility are predicted. The structure of a civil procedural offense consists of an object and an objective side, a subject and a subjective side (Butnev, 1989).

The object of a civil procedural offense is regulatory civil procedural legal relations, as well as the procedure of justice in civil cases established by law.

Obligatory components of any offense from an objective side are: illegal act or inaction; social harm; causal relationship between them. It should be noted that the vast majority of civil procedural offenses are committed in the form of inaction.

The subject of a civil procedural offense can be any subject of civil procedural legal relations. The court is an instance of civil procedural responsibility, which presents requirements and to which other subjects of civil procedural legal relations are accountable.

The subjective side of the structure of a civil procedural offense is formed by the guilt of the offender. It manifests in the form of a person's conscious not to fulfill his procedural obligations.

According to V. V. Butnev, negative civil procedural liability arises at the moment of committing a procedural offense and is implemented within the framework of protective procedural legal relations. Prerequisites of procedural legal relations of liability are: protective civil procedural norms; the competence of the court and the delictual capacity of the subjects of liability; a specific legal fact is a civil procedural offense.

Based on such theoretical theses, the scientist proved that civil procedural liability is a dynamically developing phenomenon. In its development, it goes through the stages of emergence (initial development), concretization and implementation. Concretization of procedural liability is carried out only by the court (Butnev, 1989).

M. Y. Shtefan also addressed to topical issues of civil procedural liability. In 1988 within the framework of a collective monograph, devoted to the role of civil liability in protecting the interests and rights of citizens and organizations, he formulated its concept, justified its types and functions. The author also addressed the problem of civil procedural fines and compensation for property damage (Sobchak & Shevchenko, 1988).

By civil procedural responsibility, M. Y. Stefan understood the measures established by the norms of civil procedural law and measures provided by state coercion. They rely on the participants in the process in the form of an additional obligation or deprivation of rights for illegal civil procedural actions or inaction (Stefan, 1997).

The formulation of the problem of civil procedural liability proposed by scientists and the results of research aimed at substantiating its independence and characteristic features, deserves attention. Conclusions about the grounds for applying civil procedural liability, measures of possible state coercion are important for our research.

Modern civil procedural science, in contrast to the doctrine of civil procedure of the previous period, approaches the problem of abuse of procedural rights from broader positions. To illustrate clear examples of formed points of view on this subject, we will turn to special legal literature. At the same time, we will make a small caveat that citing all sources on this issue is not part of our task. We will only refer to those of them that, in our opinion, can be used in this study.

In particular, S. S. Bychkova and G. V. Churpita, on the basis of an analysis of scientific doctrine, civil procedural legislation of Ukraine, and available judicial opinions and practice, give a precise definition of the abuse of civil procedural rights. It manifests itself in the direct use by the participant of the civil process of his subjective civil procedural rights with a goal that contradicts the goals and tasks of civil proceedings.

The authors consider it advisable to enshrine in the procedural legislation of Ukraine the mechanism of bringing to legal liability the participants in the civil process for the violation of the obligation to exercise their civil procedural rights in good faith. They propose to supplement the Civil Code of Ukraine with a legal norm that would clearly regulate the following:

— actions that should be qualified as abuse of civil procedural rights;

— measures that should be applied to persons who are guilty of violating the norms of civil procedural legislation;

— expenses that are subject to compensation in connection with the detection of relevant violations (Bychkova & Churpita, 2015).

M. M. Chabanenko analyzed changes in the legal regulation of procedural relations related to the abuse of procedural rights in civil proceedings. In essence, these changes, the author claims, consist in the emergence of the institution of abuse of rights in the procedural branches of law, in which a system of procedural norms aimed at determining the abuse of procedural rights, appropriate countermeasures and legal consequences appeared. At the same time, there is no clear definition of the concept of «abuse of procedural rights» in the legislation. From this it can be concluded that the meaning of the above-mentioned concept is not completely revealed due to the signs of the corresponding phenomenon. The legislator, enshrining the concept of abuse of procedural rights, used both the construction of the «general delict» and the construction of the «special delict.» The legislative list of types of abuse of procedural rights is publicly available.

In his works, the researcher provides specific conclusions regarding the correlation of such legal regulation with the principles of the rule of law, the rule of law, competitiveness and dispositiveness.

The construction of the abuse of procedural rights in the context of «general delict» is untenable and has limitations of the principles of dispositiveness and competitiveness. It is based on the opposition between the abuse of procedural rights and the defined tasks of the judiciary. The concept of «abuse of procedural rights» at the legislative level includes two different groups of actions that differ in their nature: those that are a violation of procedural norms; those that are not a violation of procedural norms.

The definition in the procedural codes based on the «special delict» model of acts that are an abuse of procedural rights contains a significant number of concepts, that do not have a specific legal definition, evaluative features, or indications of the purpose of the act. The norms of the institute of abuse of procedural rights do not provide a single consistent modality of the court's powers to react to the abuse of procedural rights (Chabanenko, 2020).

The above allowed M. M. Chabanenko to come to the conclusion that the institution of abuse of procedural rights in the civil process is not obvious, but essential limitation of the principles of dispositiveness and competitiveness. It does not comply the requirements of legal certainty, which is an organic element of the rule of law principle. Having the declared goal of preventing the abuse of procedural rights by the participants in the process, it creates favorable conditions for abuse and arbitrariness on the part of the court (Chabanenko, 2020).

Analyzing the term «abuse of procedural rights», I. Zhurba analyzes the conditional perception of the contradiction of actions with the goal that a person wants to achieve. In addition, it should be taken into account that when receiving what is desired, a person may exceed the rights and obligations granted to him by law. The author believes that the basis of the abuse of procedural rights is, first of all, the violation of them by a person consciously, in particular, to appeal to the court with a lawsuit.

It should be noted that legally ignorant persons are not capable of abusing the law, as their actions may be characterized by incompetence. This phenomenon must be taken into account when understanding and interpreting the concept of the «law abuse» phenomenon. After all, when such a person appeals to an inappropriate court or with an unfounded lawsuit, it should be defined as a mistake, not law abuse. At the same time, the fact of proving such a variant of a person's behavior when applying to court as abuse is impractical. Even professional lawyers can make a mistake in choosing the type of legal proceedings because of a significant number of specialized courts and the lack of clear regulation of the criteria of their jurisdiction.

Therefore, each procedural obligation of the subject that participates in the proceedings must be ensured by certain sanctions, which must be applied by the court on its own initiative or at the request of interested parties (Zhurba, 2013).

O. O. Kot believes that classifying the abuse of procedural rights as a separate independent category confirms the presence of peculiarities, the study of which has significant theoretical and practical value. This phenomenon has a certain defined procedural form and exists within the framework of the judicial process. In view of its legal status, the court has certain limitations regarding the means of responding to the abuse of procedural rights provided for by the norms of procedural legislation. Even a conscientious person will use all possible means to win a lawsuit.

Under such circumstances, the question of whether the actions of the litigant in each specific case are in bad faith, are carried out «to harm», or whether they are carried out with a valid intention to protect their rights, becomes extremely important and at the same time quite difficult. This conclusion is confirmed by numerous court decisions. The conscientiousness using by a person of his civil law involves the realization of the powers of the corresponding law, taking into account the interests of other participants in the relationship, the public interests of the state, etc. (Kot, 2017).

In view of the above, it can be noted that the unconscientious behavior of the litigants in the form of not to fulfill their procedural obligations, taking actions aimed at deliberately delaying the proceedings, which, although formally, do not fall under the criteria of abuse of procedural law, but they have to be considered In this regard, from the point of view of the development of procedural legislation and its focus on ensuring the right of each person to consider his case within a reasonable period of time, the court must be provided with effective tools aimed at preventing or stopping the specified actions of unconscientious litigants.

It is also appropriate to note that the concept of «abuse of procedural law» should be considered as a component of a much broader concept — «procedural offense», the consideration of which goes beyond the subject of our research.

In practice, it is quite important to correctly qualify the actions of the litigants as an abuse of procedural law or as another procedural offense. This is necessary, first of all, for the correct application of appropriate sanctions, i.e., the consequences established by legal norms for their non-compliance and violation (Kot, 2017).

O. M. Kuznets defined the complex concept of «abuse of rights in civil and executive proceedings.» This concept should be understood as one of the ways of realization by subjects of civil procedural and executive procedural relations of their material and (or) procedural rights contrary to the rights and interests of other subjects of these relations and the principles of justice, rationality, conscientiousness in order to obtain additional moral and (or) material benefit or causing harm to another person (persons) (Kuznets, 2016).

In his writings, the author notes that abuse by the litigants (creditor and debtor) of their rights or deliberate non-fulfillment of obligations by the debtor in material relations has the consequence of further abuse of procedural rights by these subjects in civil proceedings and executive proceedings. This, in turn, will be a systematic law abuse. Systemic law abuse is a long-term offense, which is reduced to the use by a person of his material and procedural rights to cause material and moral damage to another subject of material legal relations for the purpose of getting a benefit.

O. M. Kuznets proves that such a systematic law abuse is caused by the fact that a person can file several lawsuits at the same time, using the imperfection of the norms of both material and procedural law, in particular civil and executive law. Also, such a person can rely on the active «help» of authorized persons or their inaction in specific cases or people who should in every possible way facilitate to the solution of the case in order to prevent person fom negatve consequences. In the worst case, with the aim of harming another person.

In his opinion, the presence of a minimal complex of procedural rights and obligations, in particular for persons who do not participate in a particular case, gives a «green light» for abusing their rights in the interests of other persons in order to obtain a specific benefits. As for the persons who participate in the case and who are accordingly endowed with a certain range of procedural rights and obligations, if they have a corresponding interest in the court's decision, it makes it possible for them to systematically abuse their rights in order to achieve material and procedural benefits by delaying the consideration of the case, as an example. It is also important to add when there is some interest in the final decision of the court, it cause to arise concerted actions to abuse the rights of several persons involved in the civil process. They also have the name «group abuse». Competent abuse of procedural rights is possible only to a limited circle of persons who, accordingly, have high legal qualifications, namely judges, state officials, lawyers.

The scientist substantiates that the presence of a certain systematicity of the plaintiff's mistakes when involving the wrong defendant in the case, filing a claim for damages for an amount much higher than the plaintiff can prove, as well as changing the subject of the claim, etc., indicates the plaintiff's real intentions. Such intentions do not match with civil procedural norms and are aimed at violating the rights and interests of the defendant. It, in turn, can easily be considered as abuse of procedural rights.

There are also situations when a certain litigant colludes with other persons to give false conclusions or with a witness to give knowingly false testimony. In this case, it will not be about the abuse of the rights of witnesses, etc., but about the improper making of obligations and the direct commission of a crime by a group of persons.

A fairly common abuse of law is the participation of a lawyer in a civil case who cannot be considered competent in this field and, accordingly, is not a specialist. Accordingly, his legal qualifications are much lower than those of his procedural opponent. Under such circumstances, certain abuse of rights and the commission of an offense by a lawyer in order to compensate for a lack of qualifications are possible. It is also possible to commit crimes, such as falsification of evidence, bribing a judge or something else (Kuznets, 2016).

D. D. Luspenyk notes that the abuse of procedural rights is not a direct violation of court acts, but the corresponding one-sided actions of the litigants in bad faith, for example, such as the submission of unsubstantiated petitions and statements.

It should be added that statements and petitions of the litigants can affect on the trial only if they are authorized by the court. At the same time, and this is important, if a certain behavior is permitted by the procedural law, then there is no reason to regard it as an abuse of the right. The dynamics of the civil process is determined not only by the one-sided actions of the litigants, but also by the legal acts of the court, which authorize the corresponding actions. If a litigant's action (for example, filing a petition) does not comply with the law and is unreasonable, then it should not be allowed by the court. In such a case, it is not possible to apply measures of legal responsibility to the person who made the statement, which during the review turned out to be unfounded or illegal (Luspenyk, 2015).

The main duty of the court during the consideration of the case is to establish the legality and reasonableness of the procedural actions of the

parties and to make decisions on the permission of the corresponding action. Unfortunately, due to some imperfection of legal norms, courts are limited in their legal ability and ways to resist the abuse of procedural rights.

In the author's opinion, the norms of the Civil Procedure Code could not fully protect the court from abuse of law by unscrupulous parties. The court often cannot influence the unscrupulous behavior of the litigants who make known illegal demands, significantly delay the proceedings, prevent from making a decision that is not favorable to them, and commit other illegal actions. Without a doubt, the logical solution to this problem is to improve civil procedural norms and formulate them in such a way as to exclude their ambiguity and, accordingly, the possibility of abusing the law.

For the proper realization of rights, the procedural law establishes the order, methods and limits of their implementation, thereby reducing them to the rank of procedural duties. Each procedural right corresponds to the obligation to observe the order and limits of its realization in the civil process — this is a recognized property of the civil procedural right. Civil procedural law attaches great importance to the form of realization of procedural law. What is decisive when evaluating a person's actions is not what right he exercises, but how he exercises it. The origins of this approach originate from the strict regulation of procedural activities (Luspenyk, 2015).

It is a well-known fact that in civil proceedings there is a presumption of conscientiousness of persons who allegedly act lawfully and realize procedural rights. That is, all the actions of persons must correspond to the purpose and tasks of justice, both in form and in content. However, if such behavior is illegal, then it remains unclear how and who should prove the opposite and establish the same unconscionable actions. In accordance with the norms of the Code of Civil Procedure and the leading principle of dispositiveness in this area, the duty of such proof rests with the litigant who declared the actions to be in unconscientiously. It should be added that such a question can be brought up for discussion by the court. However, the final conclusion on the qualification of the subject's behavior as an abuse of procedural law and the applying of responsibility belongs exclusively to the court.

Unfortunately, civil procedural responsibility has quite limited resources and measures, which allows subjects to abuse procedural rights for a long time and with impunity and thereby harm other participants. To combat this, it is necessary to create such a mechanism that would be used by the court to neutralize and eliminate from the process possible abuses, which are nothing more than a criminal offense.

Therefore, combating the abuse of procedural rights is a task of a public nature, that is, a task of the court, although the litigants can initiate the question of the responsibility of persons who abuse their rights. In connection with the above, civil procedural legislation urgently needs a clear regulation of the general concept of «abuse of procedural rights», separate components of abuse, measures of responsibility for unconscientiousness, conditions of their realization (Luspenyk, 2015).

As part of our research, it is appropriate to refer to the work of H. Marunych, in which she highlights the general features of the abuse of civil procedural rights. First of all, they include the unfair realization of rights by the litigants. The researcher also points out that such realization of rights should contradict the main tasks of civil justice. At the same time, the author agrees with the

conclusions of the above-mentioned researchers, where it is noted that the abuse of procedural rights is aimed at violating both public and private interests. Such a violation can be carried out in the form of actions or inactions, both intentionally and through negligence.

At the same time, the author notes that the prolongation of the civil process has a number of features, which are as follows. First of all, if the abuse of procedural rights is carried out exclusively by the litigants, then the circle of subjects of delaying the civil process is quite wide and can also include the court and other participants in the civil process (except the bailiff and the person who provides legal assistance) (Marunich, 2016).

In her opinion, delaying the civil process corresponds to the concept of «abuse of civil procedural rights». However, these concepts have certain differences in the purpose of realization, the form of guilt and the circle of subjects. Therefore, it can be concluded that the abuse of procedural rights is one of the ways of delaying the civil process. The author emphasizes that the delay of the civil process can take place due to circumstances beyond the will of the subjects of the civil process and be carried out as a result of non-fulfillment of the duties assigned to the subjects of the civil process. At the same time, delaying the civil process can be carried out by subjects who are not subjects of abuse of procedural rights, including by the court.

B. Kolesnikov understands the abuse of civil procedural rights as certain actions of one of the litigants to the dispute, which are aimed at prolonging the terms of consideration of the case, at causing additional non-obligatory, based on the materials of the case, costs of the party, at the commission of extrajudicial actions by the litigant, which in fact testify to the recognition claims, and/or other actions provided for by law and/or are such that, at the discretion of the court, are aimed at creating obstacles to the realization of proper judicial proceedings in a specific dispute, thereby hindering a litigant's access to justice and the realization of the right to a fair trial (Kolesnikov, 2018).

It is worth emphasizing that the litigants during the proceedings can file a petition asking the court to recognize the specific actions of their opponent as an abuse of civil procedural rights. For such a person, the consequence will be a fine provided by law.

All the new developments and proposals are certainly relevant and necessary, but they are not perfect and contain some disadvantages. After all, there are also more complex ways of abuse of rights, i.e. implicit abuse. A clear example of such abuse is the abuse of a judge's disqualification or the filing of several lawsuits with different subject matter regarding the same legal relationship. A significant drawback is also that the judges do not sufficiently apply the aforementioned measures to prevent such a phenomenon.

— T. Polyansky attributes the following to the characteristic signs of all types of abuse:

— procedural abuses occur only through the formal realization by subjects of their legal rights or obligations. This concept refers to the use of abstractly formulated legal prescriptions that guarantee the right to legal protection or oblige to certain actions within the framework of the judicial process. At the same time, other normative prescriptions are being implemented, which also abstractly and ambiguously formulate the prohibition of abuse of the law;

— intentional behavior, i.e. abuse of rights cannot be careless. This statement is extremely important for the correct qualification of conduct as

abuse of law and for the correct doctrinal understanding of the content of the subjective side of abuse;

– causing damage to social relations or a real threat of its occurrence. Damage is the legal fact that enables the court to recognize the abuser's behavior as a violation of specific legal norms or principles of law. Therefore, the legitimate, at first glance, realization of the right — taking into account the true purpose of the relevant behavior of the abuser and its real consequences — will be recognized by the court as an offense.

The above gives reasons for the author to assert that if a certain behavior of the subjects of procedural relations: a) directly contradicts clearly formulated legislative norms, b) is not intentional, c) does not result in harm to the opposite litigant or authorities, it is not abuse by right. This includes, in particular, all those types and methods of procedural «tricks» that enable experienced legal representatives to protect the rights or represent the interests of clients as quickly and efficiently as possible (Polyanskyi, 2013).

According to T. Polyanskyi, the biggest reason for the spread of abuse of procedural rights and obligations is precisely the imperfection of the current legislation and the polysemy of legal norms. In procedural legal relations, the prohibition of abuse of law is most often carried out through the prohibition of «unconscientious» behavior. Violation of the principle of «conscientiousness» is considered an abuse of law. Emphasis must be placed on the obvious uncertainty of the legislator regarding the content of the concepts «law abuse» and «unscrupulous behavior». This is the reason why the normative prohibition of the specified acts is either too abstract or selective and casuistic.

Taking into account the above, T. Polyansky suggests a number of steps to improve the normative regulation of combating procedural abuse of law. First of all, it is necessary to enshrine in each procedural code the requirement for the conscientious rralization of procedural rights and obligations. Secondly, it is necessary to fix the characteristic signs of abuse of rights for each of the procedural branches and a non-exclusive list of possible ways of committing them. Thirdly, it is necessary to establish specific legal responsibility for such actions at any stage of the relevant process (Polyanskyi, 2013).

A. O. Tkachuk expresses the position according to which the abuse of procedural rights in modern law enforcement should be considered in organic unity with the right to a fair trial, which is provided for in Article 1. 6 of the Convention on the Protection of Human Rights and Fundamental Freedoms. In this context, the abuse of procedural rights by individual litigants consists in creating obstacles to the achievement of the goal of civil proceedings and the realization the right to a fair trial by litigants.

The author proves that the analysis of the practice of the European Court of Human Rights allows us to make a conclusion: the issue of abuse of procedural rights by the European Court is not directly considered through the prism of Article 1. 6 of the Convention on the Protection of Human Rights and Fundamental Freedoms. However, certain procedural actions of the litigants can still be assessed as procedural abuses in the context of the right to a fair trial.

Procedural means of protection against the abuse of procedural rights make a system of the rights of the litigants provided for by the civil procedural law and the powers of the court, which can be used by them, in order to prevent the abuse of procedural rights or to stop them. Among them, A. O. Tkachuk proposes to single out: a) means of protection of a personal nature (restrictive

or previous orders and a separate resolution) and b) proper procedural means (general means of procedural form and specific means).

The researcher reveals the content of the characterizing features of the abuse of procedural rights. At the same time, he analyzes comprehensively: a) the presence of a person a procedural right, which should be interpreted broadly in the context of the presence of legal personality of litigants; b) the fictitiousness of procedural actions, which is manifested in the formal compliance of the realization of procedural rights with the requirements of the law, but contrary to the purpose for which they are provided to the litigants, as well as their implementation contrary to the general tasks and goals of civil proceedings; c) illegality of conduct, which consists in causing damage by the specified actions to both the interests of justice and the rights and interests of other participants in the case.

A. O. Tkachuk offers additional criteria for the classification of abuse of procedural rights: 1) frequency (periodicity); 2) the civil proceedings, where the abuse takes place; 3) the nature of the procedural right that the person abuses.

The author understands the principle of conscientiousness in civil proceedings in two meanings. In a narrow sense — as a ban on the abuse of civil procedural rights. In a broad sense, according to which, in addition to the prohibition of abuse of procedural rights, its content also includes such components as the prohibition of contradictory procedural behavior (procedural estopel); requirement of conscientiousness doing procedural duties; prohibition of other illegal obstacles in the administration of justice (for example, prohibition of misleading the court; prohibition of using lost procedural powers, etc.).

The cited author considers it expedient to introduce a special procedure — compensatory proceedings, the purpose of which is to provide fair compensation for violation of the reasonableness of the trial period in accordance with international standards of civil proceedings, enshrined in clause 1 of Art. 6 and Art. 13 of the Convention on the Protection of Human Rights and Fundamental Freedoms and the practices of the European Court of Human Rights on the interpretation and application of the specified article. It is proposed to impose on the plaintiff the obligation to prove a real interest in the protection of his violated, disputed or unrecognized right, freedom or interest, and not to file a lawsuit with a purpose that contradicts the tasks of civil justice (Tkachuk, 2020).

CONCLUSION

Even such a short review of the state of scientific development of the problem of abuse of civil procedural rights, which we have conducted, shows the importance of continuing to study the issues raised and improving court procedures in this area. This is especially relevant in the conditions of essentially unlimited possibilities of the litigants, the origins of which should be sought in the nature of the principles of competition and dispositiveness. As a result, there is a potential possibility of unfair procedural behavior. In this regard, questions related to characteristic signs of abuse of procedural rights, the possibility of their division into groups, and legislative regulation remain, stay open.

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