

СЕКЦІЯ 8.
ПРОБЛЕМНІ ПИТАННЯ ЦИВІЛЬНОГО
ПРОЦЕСУАЛЬНОГО ПРАВА

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PROCESS OF JUDICIAL DEBATE

Judicial debate is one of the components of the trial, in which the persons participating in the case make speeches in order to convince the court of the correctness of their position on the case that is being considered. In these speeches one can refer only to the circumstances and evidence examined at the court hearing. During the speech, the persons participating in the case assess the evidence, point out the advantages of some evidence over others, and convince the court that their position is correct.

According to Article 242 of the Code of Civil Procedure of Ukraine, the procedure for appearing in the judicial debate is defined, which cannot be changed on the initiative of the court or persons participating in the case [1]. The participants in the case give speeches (concluding remarks) in the judicial debate. In these speeches one can refer only to the circumstances and evidence examined at the court hearing. Each participant in the case is given the same time to speak in court debates. The first is the floor to the plaintiff and his representative, but if there are bodies or persons who are legally entitled to go to court in the interests of other persons, they are the first to act, and those who are in the interests of whom the proceedings are opened are behind them. At the request of the parties and third person, only their representatives can appear in court debates. The court may oblige the party to determine whether only such a party or his representative will speak. Third person, without independent claims, act after a person on whose behalf they are taking part. The third person, who has declared independent claims on the subject of the dispute, and his representative, act after the parties.

The length of the court debate is not regulated by law, the court can restrict the speeches within a certain time frame. However, in order to avoid certain abuses, the presiding judge may stop the speaker in the event that he goes beyond the court case or is repeated or substantially goes beyond the time-limit specified by the court for speaking speeches. With the consent of the court speakers can exchange replicas. The right of the last replica always belongs to the defendant and his representative.

Legally established certain restrictions on initiating certain procedural actions during the judicial debate. Thus, it is impossible to submit new evidence, a statement on the abandonment of the claim without consideration, increase or decrease the size of the claims. But despite this, the GIC of Ukraine provides that if during the court debate it becomes necessary to find out new circumstances of importance for the case or the investigation of new evidence, the court decides to return to the circumstances of the case. After the clarification of the circumstances in the case and verification of their evidence, litigation is conducted in a general manner. A statement of claim from a third party claiming independent claims regarding the subject matter filed after the commencement of the litigation, the court returns the decision to the applicant [2, p. 403].

The court's decision must be passed immediately after the trial. In the course of a court decision, no one has the right to be present in a counseling room, except the composition of the court hearing the case. In this case, the exchange of judges opinions with anyone regarding a court decision is not allowed. Judges do not have the right to disclose the process of discussion and decision-making in a counseling room (Article 245 of the Civil Code of Ukraine) [1]. There is a list of issues that the court must decide when deciding in any civil case, for example:

1) whether the circumstances were substantiated and the claims and objections were substantiated and the evidence to be proved;

2) is there any other factual data (omission of the limitation period, etc.), which are relevant for the decision of the case, and evidence for their confirmation;

3) which legal norm is applicable to these relations;

4) what legal relations of the parties arise from the established circumstances;

5) whether the claim should be satisfied or in the lawsuit to refuse;

6) how to allocate costs between the parties;

- 7) is there reason to allow immediate execution of a court decision;
- 8) whether there are grounds for canceling actions to secure a claim.

The decision of the court is approved, signed in writing and signed by the judge in the courtroom, and in the case of a joint review, by the judges who considered the case.

If during the decision-making process there will be a need to find out, again or in addition, any circumstances relevant to the case, to investigate the evidence, which, for one reason or another, was not investigated in the court, to take other procedural steps, the court may renew the trial (Article 244 of the Civil Procedure Code of Ukraine) [1].

An indispensable and final procedural action of the court at the trial stage is the proclamation of a court decision. The decision of the court (or its introductory and operative part) shall be announced immediately after the trial and publicly, except for cases of closed court trial of a civil case. In this case, the chairman must definitely explain the content of this decision, the procedure and terms of his appeal. If only the introductory and resolution parts of the decision are proclaimed, then additional notice must be given when the persons involved in the case will have the opportunity to read the full text.

References

1. Цивільний процесуальний кодекс України: Закон України від 18.03.2004 року № 1618-IV // Відомості Верховної Ради України. – 2004. – № 40-41, 42. – Ст. 492.
2. Цивільний процес України: Підручник; [за загальною ред. д.ю.н., доцента М.М. Ясинка]. – К.: Алерта, 2014. – 744 с.
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