

CIVIL COURT DECISIONS IN THE REPUBLIC OF MOLDOVA: ESSENCE, DISTINCTIVE FEATURES AND SEPARATE TYPES

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In this article, the authors conduct a scientific study of the distinctive features and highlight certain types of judgment in civil cases. In particular, the authors draw a distinction between other decisions issued in the framework of civil proceedings, and also highlight certain types of court decisions inherent exclusively in civil proceedings. The authors give specific features of the court decision that distinguish it from other acts of the court, namely, the court decision is a procedural document that resolves the case and restores violated rights, issued by the court in the procedural form established by law on the basis of consideration of the case on the merits. Separately, a characteristic is given to each type of court order and the requirements that each court order must comply with are characterized.

Keywords: court decision, act of justice, civil procedure, court order, Republic of Moldova.

HOTĂRÂRI PRIVIND CAUZELE CIVILE ÎN REPUBLICA MOLDOVA: ESENȚĂ, CARACTERISTICI DISTINCTIVE ȘI TIPURI SEPARATE

În prezentul articol autorii efectuează un studiu științific al trăsăturilor distinctive și evidențiază anumite tipuri de judecată în cauzele civile. În special, autorii fac o distincție între alte hotărâri pronunțate în cadrul procedurilor civile și, de asemenea, evidențiază anumite tipuri de hotărâri judecătorești inerente exclusiv procesului civil. Autorii dau trăsături specifice ale hotărârii judecătorești care o deosebesc de alte acte ale instanței și anume, hotărârea judecătorească este un act de procedură care soluționează cauza și restabilește drepturile încălcate, emisă de instanță în forma procesuală stabilită de legea privind baza de examinare a cauzei pe fond. Separat, fiecărui tip de hotărâre judecătorească i se acordă o caracteristică și sunt caracterizate cerințele pe care trebuie să le respecte fiecare hotărâre judecătorească.

Cuvinte-cheie: hotărâre judecătorească, act de justiție, procedură civilă, ordin judecătoresc, Republica Moldova.

DÉCISIONS DES TRIBUNAUX CIVILS EN RÉPUBLIQUE DE MOLDOVA: ESSENCE, PARTICULARITÉS ET TYPES SÉPARÉS

Dans cet article, les auteurs mènent une étude scientifique des particularités et mettent en lumière certains types de jugements en matière civile. En particulier, les auteurs établissent une distinction entre les autres décisions rendues dans le cadre de procédures civiles et mettent également en évidence certains types de décisions de justice inhérentes exclusivement aux procédures civiles. Les auteurs donnent des

caractéristiques spécifiques de la décision de justice qui la distinguent des autres actes de justice, à savoir que la décision de justice est un document de procédure qui résout l'affaire et rétablit les droits violés, délivré par le tribunal sous la forme procédurale établie par la loi sur la base de l'examen de l'affaire au fond. Séparément, une caractéristique est donnée à chaque type d'ordonnance du tribunal et les exigences auxquelles chaque ordonnance du tribunal doit se conformer sont caractérisées.

Mots-clés: décision de justice, acte de justice, procédure civile, ordonnance de justice, République de Moldova.

РЕШЕНИЯ СУДА ПО ГРАЖДАНСКИМ ДЕЛАМ В РЕСПУБЛИКЕ МОЛДОВА: СУЩНОСТЬ, ОТЛИЧИТЕЛЬНЫЕ ЧЕРТЫ И ОТДЕЛЬНЫЕ ВИДЫ

В данной статье авторы проводят научное исследование отличительных черт, и выделяют отдельные категории судебного решения по гражданским делам. В частности, авторы проводят разграничения между другими постановлениями, выносимыми в рамках гражданского судопроизводства, а также определяют отдельные виды решений суда, присущих исключительно гражданскому процессу. Авторами приведены конкретные особенности судебного решения, которые отличают его от других актов суда, а именно судебное решение - это процессуальный документ, разрешающий дело и восстанавливающий нарушенные права, вынесенный судом в установленной законом процессуальной форме на основе рассмотрения дела по существу. Отдельно дается характеристика каждому виду постановления суда и характеризуются требования, которым должно соответствовать каждое постановление суда.

Ключевые слова: решение суда, акт правосудия, гражданский процесс, постановление суда, Республика Молдова.

Introduction

Judgment, as A. F. Kleinman, is, first of all, an act of protecting the law [18, p. 83]. Therefore, the adoption by the court of a decision - an act of protecting the right - implements not only the purely sectoral targets of civil proceedings, but is also aimed at the implementation of constitutional provisions, primarily the prescription for the absoluteness of judicial protection of rights and freedoms. The parties apply to the court for the resolution of the dispute and, as a result, for the issuance of a lawful and reasonable court decision. Of course, in the process of considering the case, the parties, exercising the administrative rights granted to them by law, can conclude an amicable agreement, the plaintiff can refuse the claim, and the defendant can recognize the claim. However, the issuance of an appropriate ruling only indicates the elimination of the controversial principle from the process and the performance by the judiciary of one of its functions - to mediate in disputes between subjects of law. the right of the party is disputed by the other party, the issuance of a

court decision actually remains the only legal way to resolve the dispute on the merits .

Gradually, this discussion came to naught, since most authors agreed that “the presence in the court decision of two points - declarative and imperative - is a necessary consequence of the peculiarities of the court decision as an act of justice” [3, p. 16-17]. In one form or another, most scientists now agree with this thesis. Some authors link the presence of both declarative and imperative moments in a court decision with the fact that the latter is an act of protecting the right. In their opinion, the very concept of “protection of rights” consists of two points - the establishment (recognition) of the existence of those rights, for the protection of which the plaintiff applied to the court, and the promotion of the implementation of the established rights [16, p. 20]. The stated positions are, in fact, identical, because justice and the protection of rights are largely intersecting concepts. N. T. Arapov correctly noted that the term “protection” can also be used to refer to the procedural activities of the court. In such a procedural understanding,

the term “protection” is on the same plane as justice [5, p. 31].

With these points of view, one can agree with some reservations. Indeed, any court decision contains an imperative statement of certain circumstances, legal facts, and legal relations. The imperativeness of this statement is the basis for the application of state coercion, expressed in an order to the persons participating in the case to perform certain actions or refrain from certain actions. However, the presence of declarative and imperative moments, in our opinion, follows from the peculiarities of a court decision not just as an act of justice, but as a special law enforcement act, since justice is a special case of law enforcement. Law enforcement activity is always the solution of legal cases and issues, i.e., in whatever form it is carried out, it is always characterized by the establishment of certain circumstances and the creation of individual prescriptions [4, p. 182]. Justice, being a special kind of law enforcement, brings these imperative and declarative moments to a qualitatively new level, allowing justice itself to become a regulator of civil circulation through the resolution of individual cases.

Thus, extrapolating the characteristics of law enforcement activities to law enforcement acts, which are court decisions, is certainly justified. However, the essence of a judicial decision cannot, in our opinion, be reduced only to the presence of declarative and imperative moments in it. This is due to the special position of the court decision in a number of other law enforcement acts.

Presentation of the main material

Judgment - the final judicial act by which the case is resolved on the merits. However, the protection of rights, freedoms and legitimate interests, being the purpose of a court decision, still cannot be considered as the essence of a court decision without regard to some of its other characteristics. When analyzing the

essence of a court decision, of course, it is necessary to take into account the objectives of civil proceedings, but one should also not forget about the nature of the activities carried out by the courts, within which a court decision is made, i.e. proper justice.

Any human activity, and justice in this regard is no exception, is dynamic. This means that any activity has a beginning and an end, and is also characterized by a certain length in time. Achieving the goals of justice is the end point of the activity of the court, however, in order to achieve it, this activity must be initiated and carried out through a series of successive stages. Therefore, in our opinion, the essence of a court decision should include not only the protection of rights, freedoms and legitimate interests, but also the moments preceding it that characterize the activities of the court.

As for the initiation of the judicial activities of the court, here it is necessary to note the “passivity” of the court, which consists in the impossibility of initiating civil cases and cases from administrative and other public legal relations on its own initiative. Without applying in the appropriate manner to the court of the plaintiff or the applicant, it is impossible not only to consider a civil case, but even to initiate it: the court should not act out of duty (*ne procedat iudex ex officio*). This circumstance reflects the principle of optionality in civil and arbitration proceedings [2, p. 83-84; 25, p. 236; 27, p. 244].

The next point that characterizes the essence of a judicial decision is that justice is carried out according to certain rules in a certain sequence. In this case, we are talking about the procedural form. Quite a lot has been said in the literature about the need to take into account the fact that a court decision is a procedural act rendered in strict accordance with the procedural form. The point of view is generally accepted, according to which the observance of the procedural form is a

necessary condition for the issuance of a lawful and justified court decision [26, p. 7-14].

However, not only the application of the rules of procedural law characterizes the activities of the court. The court, considering and resolving legal cases, also applies the norms of substantive law, which is a consequence of the law enforcement nature of its activities.

So, the essence of the court decision lies in the fact that this procedural act is issued as a result of consideration and resolution by the court of a specific legal case initiated by the parties, who thereby seek to protect their disputed or violated rights, freedoms or legally protected interests. At the same time, the activity of the court, which is inherently law enforcement, should be clothed in a procedural form.

All these points are typical for a court decision, but even in the aggregate they do not fully reflect its essence.

The parties do not apply to the court in order to get their hands on a document reflecting the opinion of the court on the existence or absence of certain legal relations, legal facts. The parties need real protection of their rights, freedoms and legally protected interests. And from this point of view, even the imperative moment contained in this document is unrealizable without the presence of certain circumstances. Such a legally significant circumstance is the legal force of the judgment.

Thus, the essence of a judgment in civil proceedings lies in the fact that it is a volitional act of a judicial body to which the relevant powers are delegated by the state. Resolving a civil case on the merits on behalf of the state, the court confirms a certain legal relationship (or its absence), the existence of subjective material rights and obligations, or certain legal facts.

However, in some cases, just confirmation of the legal relationship of a right or fact is not enough for the decision to provide real judicial protection, therefore, the imperious nature of

the court decision is necessary, manifested in the order to perform certain actions (or refrain from actions) in accordance with the law.

A court decision in a civil process is a law enforcement act, since the resolution of a civil case is based on the application by the court to the established circumstances of the norms of substantive law. Consequently, each court decision is a certain rule of law, which, being specified by the court, becomes undoubted in its content and in the final decision receives the utmost certainty.

In civil procedural legislation, these features of a court decision are expressed and reflected in the following definition: a court decision is an act of expression of the will of a public authority, which is expressed in the qualification and in the authoritative resolution of a disputed legal relationship between the persons participating in the case.

Therefore, the decision of the court has the following features of acts of application of law:

- 1) in general, it has a one-time value.
- 2) it is an official act - a document expressing the will of the state and adopted by the competent authority.
- 3) it causes certain legal consequences of an individual nature, being the final link in a certain legal structure.
- 4) is an order of the court, on the basis of general norms, to individually determine the measure of possible and proper behavior for specific persons.
- 5) is an external formal confirmation of the result of law enforcement in each civil case.
- 6) it is a way of real implementation of state coercion.
- 7) it must meet the requirements enshrined in civil procedural legislation.

Since the court decision completes the consideration of the case and eliminates the existing dispute between the parties, the significance of the court decision is related to the tasks that the law sets before the court.

The most important task of legal proceedings is jurisdictional, i.e. correct and timely consideration and resolution of civil cases.

Therefore, the significance of the court decision, first of all, is that it resolves the considered civil case. The court decision in this regard restores the violated rights, specifies the rights and obligations of the parties. At the same time, a court decision is a legal fact, which is associated with the emergence, change, termination of legal relations. After the entry into force of the decision, it can be executed, including forcibly.

The next task of legal proceedings is to strengthen law and order, prevent offenses and form a respectful attitude towards law and court. A judicial decision, restoring violated rights, restores and, therefore, strengthens the rule of law in the state, contributes to the prevention of offenses, and educates citizens in the spirit of respect for the law.

In order for the decision to really contribute to the fulfillment of the tasks set by the state for justice, it must meet all the requirements that apply to it.

As for the significance of a court decision, in the theory of civil procedure, a distinction is made between the socio-political and legal significance of this decision.

The socio-political significance of the decision is manifested in the fact that it ensures the protection of personal, public and state interests, is a means of educating individuals and legal entities, and has a preventive effect on real and potential offenders.

The legal significance of the court decision lies in the fact that this act resolves the disputed legal relationship, and the decision that has entered into legal force is mandatory for execution by all institutions, organizations, officials and citizens throughout the territory of the Republic of Moldova [9, p. 87].

Summarizing the above, we can conclude that the essence of the decision lies in the fact that it is a volitional act of the state body,

resolving a civil case on the merits on behalf of the state, the court confirms a certain legal relationship or its absence, subjective material rights and obligations or certain facts.

Thus, through the issuance of a decision, the correct and timely consideration and resolution of civil cases is carried out in order to protect the violated or disputed rights, freedoms and legitimate interests of individuals and legal entities, as well as the rights and interests of the state, administrative-territorial units, other persons who are subjects of civil, labor or other legal relations, and moreover, the tasks of strengthening law and order, preventing offenses, forming a respectful attitude towards law and court are resolved.

In order to protect the subjective rights, freedoms and legitimate interests of citizens and organizations, the court, in the process of administering justice, resolves a particular issue through written acts called court rulings [11, p. 415].

Depending on the content of the issue being resolved, the court of first instance adopts decisions in the form court orders, court decisions, definitions.

Thus, the decision of the court of first instance, by which the case is resolved on the merits, is issued in the form solutions. Along with decisions, the court of first instance also makes other decisions, referred to as definitions.

Under Chapter XXXV The Code of Civil Procedure of the Republic of Moldova provides for a special type of judicial act - a court order, which is issued by a judge under certain conditions before the initiation of civil proceedings [1, p. 91].

A court order is similar to a court decision. Both of these acts are issued by the court, they liquidate the dispute and are subject to execution (including forced) [6, p. 7].

But along with similarities, a court order also contains a number of fundamental differences from a court decision. These differences in the

scientific literature drew the attention of V.I. Reshetnyak:

- the decision can be made by the court in any civil case, it can set out the authoritative judgment of the court on any claim made by the plaintiff or defendant. In the order of writ proceedings, the court allows a strictly defined range of requirements [7, p. 28].

- the decision is decided by the court as a result of the competition of the parties in the framework of a public hearing of the case, during which the parties give arguments designed to confirm their correctness, to refute the arguments of the opposing party. A court order is issued without a trial, without summoning the debtor and the recovered to a court session, without hearing their explanations.

- the decision is based on the explanations of the parties, the evidence presented by the parties, examined during the trial. The court order is based on the documents submitted by the applicant, on the arguments communicated by him, designed to convince the court that the grounds of the claim cannot be refuted by the defendant and the claims of the defendant cannot be challenged, as well as on the fact of the absence of objections from the defendant, which is of procedural significance, or his failure to appear in court on a summons.

- the decision of the court is motivated. The court is obliged to indicate in its decision the circumstances that it established and which influenced its decision, to explain for what reasons it did not take into account other circumstances (if the claim is recognized by the defendant, the reasoning part can only indicate the recognition of the claim and the acceptance his court). The court order is not motivated in any way, in addition to the order of the court to the obligated person to perform certain actions, it does not contain any explanations.

- the procedure for making decisions and is regulated in detail by law. The decision is

decided by the court in the deliberation room, secretly, with regard to the issuance of a court order, the law is not so categorical.

– these institutions have different subject composition. It is not the plaintiff and the defendant who participate in writ proceedings, but the creditor (collector) - the person who applied to the court, and the debtor - the person from whom the creditor asks to collect. At the same time, the order is always based on the requirements presented to the court only by a financially interested person.

- with a judicial decision and a court order differ in the order of their appeal. The decision may be appealed on the grounds in the manner prescribed by law. The order can only be challenged, after which it is subject to mandatory cancellation. That does not prevent the further movement of the case, so the legislator did not provide for the possibility of appealing it. The dispute that has arisen is considered according to the general rules of action proceedings [14, p. 15].

- a court decision and a court order differ in the execution procedure. The decision is subject to execution only after its entry into legal force, with the exception of cases when it is applied for immediate execution. The basis for execution is a writ of execution issued on the basis of the decision. The court order itself is an executive document, no other documents are required for its execution [23, p. 51].

In accordance with Art. 269 of the Code of Civil Procedure of the Republic of Moldova, decisions of the first instance or judges that do not resolve the case on the merits are issued in the form of rulings in the deliberation room in accordance with the rules provided for in Article 48 of the Code of Civil Procedure of the Republic of Moldova [10].

Judicial solution different from judicial definitions by the fact that the decision carries out an act of justice, i.e. the violated or disputed subjective rights or legitimate interests are

protected. Therefore, satisfying the claim or refusing to satisfy it, the judge (court) protects the rights and legitimate interests of the plaintiff or the defendant, and with the adoption of a court decision, the disputed right (interest) becomes indisputable.

The definition as a judicial act does not resolve the merits of the case (the subject of the dispute). A court decision always ends the proceedings. However, civil procedural legislation provides for two exceptions to this general rule. For example, the proceedings in the court of first instance end with a decision to terminate the proceedings and a decision to leave the application without consideration [13, p. 73].

Determinations can be made not only by a full court, but also by a judge, for example, in the process of preparing a case for a hearing.

The court may issue rulings both in the deliberation room and during the court session, having consulted on the spot. It depends on the degree of complexity of the issue and the need for a detailed or brief argument.

By analogy with a court decision, it distinguishes between introductory, descriptive, motivational and resolute parts.

Court rulings are announced immediately after they are issued.

The ruling does not end the trial, except for the issuance of a ruling to terminate the proceedings and a ruling to leave the application without consideration. These two cases of issuing a ruling take place at the end of the trial, but without a court decision, since in these cases the process ends without resolving the case on the merits, therefore, there are no grounds for issuing a court decision. Thus, the definition as a decision of the court of first instance does not affect the essence of the case under consideration [12, p. 205].

The decision of the court gives the conclusion of the court in the case an authoritative,

indisputable and binding character not only for the persons participating in the case, but also for all subjects of law. Violation of a court order may entail certain legal consequences - enforcement, administrative or criminal punishment. The authoritative and binding nature of a judicial decision is a very essential feature of it, but it is not it that ultimately determines the essence of this act. The main, basic, determining factor is that the decision is the most important act of justice.

Certain types of court decisions in civil cases

According to the legal consequences, there are three categories of judgments recognized by the legislator: 1) non-final judgments; 2) final judicial; 3) court decisions that have entered into legal force [17, p. 46-50].

Inconclusive judgments have the following consequences:

- release the court, which has considered and resolved the civil case, from re-examination of the case, thus, the judges who have ruled on the dispute cannot return to this decision:

- open to the participants of the process the statutory way of appeal;
- indicate the moment of commencement of the execution of the decision, if the law or the court has established immediate execution.

Final judgments have the following consequences:

- obligatory property, which applies, first of all, to the participants in the process, and secondly, to all public authorities, public associations, officials, organizations and individuals;
- feasibility - performed strictly throughout the territory of the Republic of Moldova.

Judicial decisions that have entered into force have the following consequences:

- prejudice, that is, the obligation for all courts considering the case to accept, without verification and evidence, the facts previously

established by a court decision that has entered into legal force in accordance with part (2) of article 123 and part (3) of article 254 of the Code of Civil Procedure of the Republic of Moldova case;

- exclusivity determines the impossibility of re-applying to the court of the same parties on the same subject and on the same grounds in accordance with paragraph b) of paragraph (1) of Article 169 and n. b) Article 265 of the Code of Civil Procedure of the Republic of Moldova;

- indisputability, that is, the impossibility of appealing them in cassation [22, p. 28].

In the science of civil procedural law, six types of decisions are usually distinguished: 1) ordinary (main); 2) absentee; 3) intermediate; 4) additional; 5) partial; 6) conditional.

An ordinary (basic) decision is a judicial act by which the case is resolved on the merits in the court of first instance and which fully meets the requirements for such kind of judicial decisions [19, p. 201-208].

An absentee decision is an act adopted in the absence of at least one of the parties. In addition, a decision in absentia is understood as a decision rendered by the court in the absence of the defendant, duly notified of the time and place of the trial of the case, but who did not appear and did not submit a written request for the consideration of the case in his absence (absentee decision in the narrow sense). An absentee decision is an act taken in the absence of at least one of the parties. The court makes a decision in absentia on the basis of the evidence examined by the court, which were presented by the parties before the start of the trial (the plaintiff, under the current civil procedural legislation, is deprived of the opportunity to present new evidence if a decision is made to consider the case in absentia, and also cannot change the basis or the subject of the claim, increase the amount of claims). This decision is made subject to the following conditions:

1) the plaintiff agreed to consider the case in absentia;

2) failure to appear at the court session only of the defendant;

The decision in absentia comes into force after the expiration of the period for cancellation and cassation or appeal [15, p. 35].

An intermediate decision is one that resolves the claim in principle (i.e., resolves the issue of law), but the issue of the amount of the amount awarded, the property to be transferred, and so on. left open and installed by a separate (additional) solution [20, p. 46-47].

An additional decision is a decision made by the court to fill in the gaps in the main decision. The incompleteness of a judicial act means the presence in its content of a gap about such information, which, due to the requirements of the procedural law, is subject to mandatory inclusion in the judicial act. An additional decision is aimed exclusively at resolving those issues that for some reason were not resolved at the meeting, with the obligatory leaving unchanged those provisions of the judicial act on which the decision was made and announced. The issue of making an additional decision can be raised before the entry into force of the main decision [24, p. 34].

A partial decision is made on the part of the claims, which are considered to be sufficiently fully and comprehensively investigated. The issue of other requirements is postponed until the necessary circumstances are clarified, the presentation, examination and evaluation of the relevant evidence in the case. For example, such decisions could be made in relation to that part of the plaintiff's claims, which is recognized by the defendant. According to the contested requirements, the process continued [21, p. 112].

A conditional decision is called when it is made regarding the right of the plaintiff, which depends (does not depend) on the occurrence

(non-occurrence) of a certain circumstance or on the commission (non-commission) of one of the parties of any actions. The procedural law, as a general rule, does not allow for the possibility of a conditional decision by the court. The question of the place of such a decision is not resolved. It has the features of both a conditional decision and a court order - in terms of form, but differs from it in the presence of a dispute about the law [8, p. 103-108].

It should also be noted that the current Code of Civil Procedure of the Republic of Moldova also provides for other types of court decisions, such as: 1) Decision on the recovery of a sum of money; 2) The decision to invalidate the executive document; 3) The decision to conclude or amend the contract; 4) Decision on the award of property or its value; 5) A decision obliging the defendant to take certain actions; 6) Decision in favor of several plaintiffs or against several defendants.

Conclusions

The study of the essence and content of the decision of the court in civil cases made it possible to formulate the following conclusions:

Firstly, a judicial decision is a special act of the body administering justice. This provision is typical for all decisions of the court of first instance, but in relation to the court decision, it should be especially noted that the court decision is not just an act of the court, it is a procedural act that ends the consideration of the case on the merits.

Secondly, the court decision as a law enforcement act completes the trial, restoring the violated rights. Like any law enforcement act, a court decision is made on the basis of legislation and does not create new rules of law. It is important that the court decision ends the process of the trial, in connection with this, the court decision contains a specification of the rights and obligations of specific persons

(persons participating in the case). The court decision eliminates the existing dispute between the parties, restores violated rights and legality.

Thirdly, the court decision is made as a result of consideration of the case on the merits and in the procedural form. The court itself, directly establishes the circumstances of the case in court proceedings, and ultimately resolves the dispute. Civil procedural legislation determines the procedure for issuing a judgment and its content. The law determines the content of the judgment, establishes the procedure for amending the judgment, determines the time period for the issuance of the judgment and its entry into force, etc.

Fourthly, a court decision is a procedural document that resolves a case and restores violated rights, issued by a court in the procedural form established by law on the basis of consideration of the case on the merits.

Fifthly, the decision is made by the court at the end of the trial for all three types of legal proceedings: claim, special proceedings and proceedings arising from public legal relations. When making decisions in any type of legal proceedings, the court is guided by the general rules established by the Code of Civil Procedure for making a decision. At the same time, the legislation governing the production of certain types of legal proceedings may establish some exceptions or additional provisions.

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