

PRINCIPII DE ASIGURARE A IMPLEMENTĂRII IDEII DE TRANSPARENTĂ A JUSTIȚIEI ÎN CAUZELE CIVILE

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Etapa actuală de dezvoltare a dreptului procesual civil nu ne permite să afirmăm fără echivoc existența principiului transparenței în procesul civil, sau cel puțin este prematur să vorbim despre existența acestuia. Este foarte posibil ca în viitor să fie recunoscut ca un principiu juridic internațional, format în mare parte datorită interpretării evolutive a normelor internaționale efectuate de instanțele internaționale, inclusiv de Curtea Europeană a Drepturilor Omului. Cadrul juridic internațional pentru cerința de transparență a justiției este destul de solid: în deciziile Curții Europene, această cerință are o influență semnificativă. Legislația rusă modernă se îndreaptă, de asemenea, pe calea recunoașterii și consolidării ideii de transparență ca o cerință necesară pentru organizarea și implementarea justiției moderne. Dar, cu toate acestea, încă nu există motive suficiente pentru a recunoaște transparența ca principiu independent. Considerăm că este mai potrivit să luăm în considerare transparența prin manifestările instituțiilor individuale și principiile existente ale dreptului procesual civil.

Cuvinte-cheie: justiție, principii de procedură civilă, principiul probei, sistem judiciar, proceduri judiciare.

PRINCIPLES ENSURING THE IMPLEMENTATION OF THE IDEA OF TRANSPARENCY OF JUSTICE IN CIVIL CASES

The current stage of development of civil procedural law does not allow us to unequivocally state the existence of the principle of transparency in the civil process, or at least it is premature to talk about its existence. It is quite possible that in the future it will be recognized as an international legal principle, formed largely due to the evolutionary interpretation of international norms carried out by international courts, including the European Court of Human Rights. The international legal framework for the requirement of transparency of justice is quite solid; in the decisions of the European Court, this requirement is given significant influence. Modern Russian legislation is also moving along the path of recognizing and consolidating the idea of transparency as a necessary requirement for the organization and implementation of modern justice. But, nevertheless, there are still no sufficient grounds for recognizing transparency as an independent principle. We believe that it is more appropriate to consider transparency through the manifestations of individual institutions and existing principles of civil procedural law.

Keywords: justice, principles of civil procedure, principle of evidence, judicial system, legal proceedings.

PRINCIPES JUDICIAIRES ASSURANT LA MISE EN ŒUVRE DE L'IDÉE DE TRANSPARENCE DE LA JUSTICE DANS LES AFFAIRES CIVILES

Le stade actuel de développement du droit de la procédure civile ne permet pas d'affirmer sans équivoque l'existence

du principe de transparence dans la procédure civile, ou du moins il est prématuré de parler de son existence. Il est fort possible qu'à l'avenir, il soit reconnu comme un principe juridique international, formé en grande partie grâce à l'interprétation évolutive des normes internationales effectuée par les tribunaux internationaux, y compris la Cour européenne des droits de l'homme. Le cadre juridique international de l'exigence de transparence de la justice est assez solide; dans les décisions de la Cour européenne, cette exigence a une influence significative. La législation russe moderne avance également sur la voie de la reconnaissance et de la consolidation de l'idée de transparence en tant qu'exigence nécessaire à l'organisation et à la mise en œuvre de la justice moderne. Néanmoins, il n'existe toujours pas de raisons suffisantes pour reconnaître la transparence comme un principe indépendant. Nous pensons qu'il est plus approprié d'envisager la transparence à travers les manifestations des institutions individuelles et les principes existants du droit procédural civil.

Mots-clés: justice, principes de procédure civile, principe de preuve, système judiciaire, procédure judiciaire.

ПРИНЦИПЫ, ОБЕСПЕЧИВАЮЩИЕ РЕАЛИЗАЦИЮ ИДЕИ ТРАНСПАРЕНТНОСТИ ПРАВОСУДИЯ ПО ГРАЖДАНСКИМ ДЕЛАМ

Современный этап развития гражданского процессуального права не позволяет однозначно утверждать о существовании в гражданском процессе принципа транспарентности или, по меньшей мере, говорить о его существовании пока преждевременно. Вполне возможно, в будущем его признают в качестве международно-правового принципа, сформировавшегося во многом благодаря эволюционному толкованию международных норм, осуществляемое международными судами, в том числе Европейским Судом по правам человека. Международно-правовая база требования транспарентности правосудия достаточно солидна, в решениях Европейского суда данному требованию уделяется существенное значение. Современное российское законодательство также идет по пути признания и закрепления идеи транспарентности в качестве необходимого требования организации и осуществления современного правосудия. Но, тем не менее, пока для признания транспарентности в качестве самостоятельного принципа нет достаточных оснований. Полагаем, транспарентность целесообразней рассматривать сквозь призму проявления отдельных институтов и существующих принципов гражданского процессуального права.

Ключевые слова: правосудие, принципы гражданского процесса, принцип доказывания, судостроительство, судопроизводство.

Introduction

The principles of a specific branch of law is built into a specific system that forms its basis. Based on this, the principles operating in civil procedural law can be classified into two large groups: *judicial principles and judicial principles.*

As has been repeatedly noted in the legal literature, this classification of principles is conditional in nature; there are no principles that are only judicial or judicial. Judicial principles include: the principle of administering justice only by the court, the principle of individual and collegial consideration of civil cases, the principle of independence of judges and

their subordination only to the law, the principle of equality of citizens before the law and the court, the principle of transparency of legal proceedings, the principle of the state language of legal proceedings. *The principles that determine procedural activities or judicial proceedings include: the principle of legality, the principle of discretion, the principle of adversarialism, the principle of procedural equality of the parties, the principle of combining oral and written principles of legal proceedings, the principle of directness of judicial proceedings.*

Each of the above principles, to a greater or lesser extent, ensures the implementation of the idea of

transparency of justice in civil cases. For example, the principle of publicity of legal proceedings, the principle of the state language of legal proceedings and the principle of orality in combination, in coordinated action, most fully ensure the implementation of the idea of transparency of justice in civil cases. The action of other principles of justice, although they do not have such a direct impact on ensuring the idea of transparency, also affect some aspects aimed at its implementation.

Findings and Discussion

Among the judicial principles that ensure the implementation of transparency, one can identify **the principle of administering justice only by the court.**

In accordance with Art. 114 of the Constitution of the Republic of Moldova, justice is carried out in the name of the law only by the courts [8].

This constitutional provision is enshrined in Part (1) of Article 19 of the Code of Civil Procedure of the Republic of Moldova, according to which justice in civil cases is carried out in accordance with the rules established by the legislation on civil proceedings, only by judicial authorities and judges of these authorities appointed in the manner prescribed by law. This principle determines the role and significance of the court in considering and resolving civil cases on the merits. In the process of administering justice, the function of the judiciary is realized.

As emphasized in part (1) of Art. 1 of the Law of the Republic of Moldova “On the Judicial System” No. 514-XIII of 07/06/1995, the judicial power is independent, separated from the legislative and executive powers, has its powers exercised through the courts in accordance with the principles and provisions provided for by the Constitution and other regulations [eleven].

Justice is carried out through the consideration and resolution by courts of cases under their juris-

dition, in the appropriate manner prescribed by law, in order to protect the rights and interests of citizens, legal entities, and the state, with the issuance of legal, reasonable and fair court decisions based on the results of the consideration and resolution of court cases [1, p. 31].

Justice is carried out in a specific procedural form, giving a special degree of protection to the rights and interests of various subjects, which distinguishes judicial activities in the administration of justice from other bodies [15, p. 32], whose activities are not justice.

Within the framework of justice, the protection of violated or challenged rights and legitimate interests is carried out. Justice is also aimed at realizing public interests, including accessibility of justice, fair public trials, ensuring transparency, etc. [9, p. 67]. It is in the administration of justice by the courts that the constitutional right of citizens to an open trial and the constitutional right of citizens to information are guaranteed. This distinguishes justice from the activities of other bodies, which can also resolve legal issues, but under different conditions (for example, confidentiality of proceedings), while justice is carried out only in conditions of publicity, except in cases expressly provided for by law.

The essence of this principle of legal proceedings is as follows. Justice as a special procedural procedure for the consideration of civil and criminal cases by courts is equipped with numerous and specific procedural guarantees of the rights of persons participating in the case. At the same time, they are guarantees of a legal and reasonable resolution of a dispute over law or other legal issue. Such a detailed and democratic order is typical only for the functioning of a court carrying out a special type of state activity. Two practical conclusions follow from this: 1) other state and public bodies should not violate judicial competence and try to resolve cases classified by law as the exclusive jurisdiction of the court;

2) resolution of legal issues by other bodies within their competence (for example, administrative bodies, CCC, arbitration courts, etc.) is not justice [1, p.38].

Only the court, the only one of all government bodies, can consider a civil case and make a decision on it in the name of the law. This is the essence of the principle under consideration.

No other state or other body of the person has the right to carry out this type of activity. The establishment of illegal courts is prohibited. Only the court in its inherent forms, in compliance with all democratic principles of legal proceedings, on the basis of evidence examined in a court hearing, can decide to satisfy or refuse to satisfy a particular claim.

The principle of independence of judges and their subordination only to the law

According to Art. 116 of the Constitution of the Republic of Moldova, judges of judicial instances are independent, impartial and irremovable according to the law. [8]

This constitutional principle is also enshrined in Art. 20 of the Code of Civil Procedure of the Republic of Moldova, according to which, when administering justice in civil cases, judges are independent and subject only to the law. Any interference in judicial activities is not permitted and entails liability provided by law. The principle combines two inter-related provisions, namely: a) independence of judges; b) subjecting them only to the law.

Judges consider and resolve civil cases in conditions that exclude outside influence on them. Any interference in the activities of judges in the administration of justice is prohibited and entails liability established by law. The independence of judges is conditioned by their subordination only to the law, and subordination is real only on the condition that they are truly independent. The indication that judges are subordinate only to the law makes it clear

that neither the legislative branch, nor the President, nor the Government have the right to encroach on the judicial power. They are not allowed to exercise control over the decisions made by the courts. Neither one nor the other government has the right to give instructions to judicial authorities or otherwise interfere in judicial activities, as well as to replace judicial authorities in considering cases within their jurisdiction.

In relation to civil procedural law, we can talk about several aspects of the manifestation of the independence of judges. Each judge is independent when considering and resolving a case from the opinions of other judges taking part in the trial of the case. This provision is manifested in the fact that the decision (in a collegial hearing) on a case is made by a majority vote, each judge, including the presiding judge, has one vote; when voting, the judge does not have the right to abstain from voting, but has the right to express a dissenting opinion, which is attached to a court decision, the presiding judge votes last when making a decision.

When considering and deciding a case, judges are independent of the opinions given by various persons in the process. Thus, the prosecutor's conclusion on a case or on a separate issue does not have mandatory significance for the court considering the case. The conclusions of state bodies and local public administration bodies participating in the case are subject to evaluation by the court and do not have predetermined force.

Judges are independent from higher courts. Despite the fact that the appellate and cassation instances have control powers regarding judicial acts, these powers do not violate the principle of independence of judges. Judges are also independent from government bodies, public organizations, officials and individual citizens. [16, p. 33-34]

Guarantees of the independence of judges are the current procedure for suspension and termination of

the powers of a judge, as well as the institution of resignation.

The immunity of a judge means that the judge, members of his family and their property are under special protection of the state. The relevant state bodies are obliged to take measures to ensure the safety of judges, members of their families, and the safety of their property, if a corresponding application is received from judges. In addition, the law clearly stipulates: any interference in the activities of a judge in the administration of justice is prosecuted by law, and the judge is not obliged to give any explanations on the merits of the cases being considered or in his proceedings, nor to present them to anyone for familiarization otherwise than in the cases and procedures provided for by civil procedural legislation.

Speaking about the independence of judges, it is necessary to always remember that it is inadmissible to identify it with permissiveness. "A judge must serve as an example of impeccable behavior, integrity and self-discipline in all respects. Only this will ensure real and not imaginary judicial authority. Independence is not a personal privilege of a judge, but his responsibility to society and citizens." [18, p. 56-57]

The significance of the principle under consideration lies in the fact that the law establishes a position for judges in the Republic of Moldova in which they are independent from anyone, are not subordinate to other state bodies, and are not accountable to them. This creates the opportunity for judges to make objective, unbiased decisions in civil cases, without any outside interference. Judges obey only the law and act on the basis of their internal convictions, formed on the basis of the requirements of the law.

Consequently, guarantees of the independence of judges are based on legislative provisions of an organizational, judicial nature and on procedural norms and international acts. At the same time, the principle

of the independence of judges and their subordination only to the law presupposes the obligation of judges to strictly observe the procedure established by the procedural law during the trial of a case, and when making a decision, be guided only by the law and the facts and circumstances established in court hearings (case materials).

An additional guarantee of the independence of justice is the development of the institution of electronic justice, the posting of adopted judicial acts in the public domain, and the transparency of the entire judicial procedure, which also contributes to the development of the social responsibility of judges.

In relation to the transparency of justice, the issue of interest is the dissenting opinion of the judge. A dissenting opinion of a judge occurs in the case of a collegial consideration of the case and if the judge disagrees with the opinion of the majority of judges. In this case, the judge may express his dissenting opinion in writing.

We believe that the dissenting opinion of a judge in civil cases should have the same legal regime of transparency as the court decision itself. The dissenting opinion of a judge is proof of the real manifestation of the principle of judicial independence, and its transparency ensures the implementation of the principle of openness of judicial proceedings, increases confidence in justice and the possibility of control by society over the quality of a judicial decision and justice itself.

Judges, as bearers of the judiciary, exercising its main function - justice, must have a special status that protects them from any interference and outside pressure in order to ensure independent and impartial consideration and resolution of legal cases. The independence of judges and the perception of this independence by society is an integral part of the legitimacy of the judiciary, and an indispensable condition for the independence and impartiality of judges is the transparency of judicial activities.

One of the essential guarantees of the independence of judges is the transparency of legal proceedings.

The principle of publicity of legal proceedings is the principle of legal proceedings that is maximally aimed at realizing the idea of transparency of justice. It reflects the very spirit of the idea of transparency in civil matters, notes I.N. Spitsin.

This constitutional principle is enshrined in Art. 23 of the Code of Civil Procedure of the Republic of Moldova and means that court hearings in all instances are open.

The principle of publicity, along with other principles of civil procedural law, is a system-forming principle that permeates all procedural institutions and determines the specificity and independence of the corresponding branch of procedural law.

It should be noted that the position of the European Court on issues related to the requirement of publicity when reviewing judicial acts is less strict, especially in relation to civil proceedings. In the opinion of the European Court, when considering complaints about violation of Article 6 of the Convention, attention should be focused not on any one stage of the process, but on the entire judicial process as a whole, and if, in lower instances, the requirement of publicity of the process and decision were observed, and in higher the legal aspect of the case is being considered, then public hearings are not required. In many European countries, the procedure for reviewing judicial acts is usually written and does not involve the presence of the public. [7, p. 60-61]

Thus, publicity of court hearings is a constitutional principle of legal proceedings. Publicity is an important legal guarantee of the implementation of the principles of the legality of civil proceedings and the real respect for the rights of participants in the process. In light of the principle of publicity of court hearings, it is possible to cover the materials of the case under consideration in the press, orga-

nize broadcasts on radio and television, and publish decisions on the official website of the court on the Internet. Publicity is inextricably linked with other provisions of legal proceedings. It is primarily related to the oral nature of the trial.

Publicity is one of the fundamental guarantees of the principle of independence of judges and their subordination only to the law. It creates the prerequisites for an unbiased, complete and comprehensive examination of the circumstances of the case and contributes to the adoption of a legal and informed judicial decision.

Publicity of court proceedings helps to improve the culture of judicial proceedings and is a good preventive measure, has a huge educational impact on all participants in the process, as well as on citizens present in the courtroom.

The principle of the state language of legal proceedings enshrined in procedural legislation, is the development and implementation of the constitutional norm on the right of everyone to use their native language, the freedom to choose the language of communication, education, training and creativity. In order for a participant in legal proceedings to exercise his rights provided for by procedural legislation, to understand the meaning of everything that happens in court, he must be given the opportunity to freely communicate, communicate with the court and other participants in legal proceedings in the language he speaks.

The principles of justice, such as transparency, competition, and oral proceedings become useless and lose all meaning if there is no possibility of unhindered communication (without a language barrier) between the participants in the process. Therefore, the principle of the state language of legal proceedings is a principle that, in its action, is aimed at implementing the idea of transparency in justice and is one of the necessary conditions for its real provision.

Thus, in civil proceedings, the right to speak in court proceedings, get acquainted with the materials of civil cases, submit petitions in the language you speak, and, if necessary, use the services of an interpreter, is guaranteed and ensured. In order to ensure transparency of justice, accessibility and understandability of information for the public, legal proceedings in all courts of general jurisdiction must be conducted in the state language of the Republic of Moldova with the mandatory provision of the right to use the services of an interpreter.

So, the judicial principles that ensure the implementation of the idea of transparency of justice include: the principle of administering justice only by the court, the principle of the independence of judges and their subordination only to the law, the principle of publicity of legal proceedings, the principle of the state language of legal proceedings.

Among the judicial principles that ensure the implementation of transparency, the following principles can be distinguished: the principle of legality, the principle of discretion, the principles of adversarialism and equality of the parties, the principle of combining oral and written principles of legal proceedings and the immediacy of judicial proceedings.

One of the most important principles for constructing civil proceedings, a condition for the implementation of procedural principles and goals of justice, permeating the entire course of legal proceedings and exerting a guiding influence on all subjects of procedural relations, is **the principle of legality**.

The tasks of civil proceedings enshrined in the civil procedural code are closely related to ensuring the rule of law - this is the correct and timely consideration of the case, strengthening the rule of law and order, and the formation of a respectful attitude towards the law and the court.

Almost all provisions of the Code of Civil Procedure of the Republic of Moldova guarantee the prin-

ciple of legality in the process. Among them, we can identify those that are aimed at ensuring the idea of transparency of justice in civil cases: the implementation of legal proceedings in conditions of openness, the motivation of court decisions and other judicial acts and resolutions; correct and accurate recording of court proceedings and much more.

The principle of legality applies to the activities of the court and other subjects of civil procedural relations, as well as to all persons present in the courtroom and showing interest in the course of legal proceedings.

The principle of legality requires the correct implementation of legal norms, the violation of which leads to the illegality of legal proceedings and the cancellation of judicial decisions. The principle of legality covers the entire course of legal proceedings. All manifestations of transparency of justice in civil cases, as one of the basic requirements of a fair trial, are covered by the principle of legality. Violation of the requirements of transparency of justice leads to an automatic violation of the principle of legality. The court has trust and authority when it is carried out openly, everyone should see that during the consideration and resolution of the case, the problems of legal proceedings were actually resolved.

Achieving the goals of transparency of justice is possible only in conditions of strict adherence to the principle of legality.

A significant role in ensuring the idea of transparency of justice in civil cases is played by **the principle of combining oral and written principles of legal proceedings**. The principle of orality is one of the important guarantees, a faithful companion of publicity in civil proceedings.

Any process combines oral and written principles. The principle of oral proceedings establishes the rule according to which legal proceedings in court can take place both orally and in writing. In the first case, the procedural material is presented to

the court orally, in the second - in the form of written procedural documents. The main thing in oral proceedings is the oral competition of the parties before the court [2, p. 89-90] in writing - the exchange of pleadings [21, p. 55].

Orality of legal proceedings allows you to fulfill the tasks facing legal proceedings: to correctly consider and resolve cases, since thanks to orality it is easier to assess the reliability of evidence, ask the necessary questions and get answers to them. The oral process has an educational and preventive effect on citizens present at the trial.

The principle of oral proceedings does not exclude the need for its documentation and recording, which is done to facilitate verification of the appealed decision.

Initially, the process in the courts was oral, since among some peoples the court sometimes arose earlier than writing was created and developed. Only when literacy became mandatory for government officials did protocolists and scribes appear, obliged to record everything that happens in court. However, the penetration of written literacy into the courts does not mean that the process becomes written. Writing, as a procedural principle, develops only in the Middle Ages in the canonical (church) process (especially the inquisition), and then penetrates into secular courts. During legal proceedings, protocols are kept. What is not reflected in them is considered not to have happened, not to have taken place.

Hearings are held orally in courts of first instance and in appellate instances, but there the principle of orality operates with exceptions, since the determination is based not only on what was expressed at the board meeting, but also on written case materials [13, p. 51-52].

Oral hearings are an integral part of the publicity of legal proceedings, as pointed out by the European Court of Human Rights. Oral speech is one of the types of public speech [5, p. 70].

At the stage of judicial proceedings, orality is most clearly manifested, especially in civil proceedings, since the court bases its final law enforcement act only on the evidence that was announced at the court hearing.

Taking into account the above, the principle of combining oral and written principles of legal proceedings is implemented at all stages of legal proceedings, which helps to ensure the idea of transparency of justice in civil cases. Depending on the type of proceedings, oral hearings may be excluded. This applies to writ proceedings (simplified proceedings) and in proceedings with a small claim in civil proceedings.

The principle of immediacy is also aimed at ensuring the idea of transparency of justice. This principle obliges the judge to personally familiarize himself with the evidence collected in the case and directly examine it: listen to the explanations of the parties and third parties, testimonies of witnesses, expert opinions, listen to audio recordings and watch video recordings.

This principle is that judges must personally perceive the evidence collected in the case, and the resolution of the case must be based on the evidence examined and verified in court. The principle of immediacy does not prohibit the court from using derivative evidence (in the absence of initial evidence), but it does not have the right to resort to derivative evidence in the presence of initial evidence [22, p. 55-56].

The resolution of the case and the court decision must be based only on the evidence examined by the court, which was announced at the court hearing, or on the evidence that the participants in the process had the opportunity to familiarize themselves with. Deviation from orality and immediacy leads to a limitation of publicity, even if the case was formally considered in open court. Immediacy and orality are guarantees of the correctness and validity of a judi-

cial decision, including guarantees of the transparency of justice.

Full implementation of the principle of immediacy is not always possible. The law also contains a number of deviations from this principle.

- The court cannot perceive some evidence personally and directly because it is located far from the location of the court. In this case, the court hearing the case instructs the local court to directly examine the evidence (interrogate witnesses, conduct an on-site inspection, etc.), and itself uses protocols and other materials collected during the execution of the assignment.

- Before the case is considered, there may be a risk that evidence will disappear in the future (for example, the witness will go on a business trip and cannot be questioned). In this case, the judge takes measures to secure evidence, and then at the court hearing the materials collected in order to secure evidence are used - protocols of interrogation of witnesses, examination of material evidence [19, p. 113].

As for **the principle of discretion** in civil and arbitration processes, it can also be identified among the principles that ensure the implementation of the idea of transparency of justice in civil cases.

Dispositivity – from the Latin “I dispose” – means the ability of persons participating in a case to dispose of the rights granted by law and the means of protecting them at their own discretion.

The dispositivity of the civil process is predetermined by the dispositivity of civil law and indicates a certain autonomy of the subjects of a controversial material legal relationship.

The principle of dispositivity is the main driving force of the process. The driving force is the initiative of the persons involved in the case and those interested in the outcome of the case. The court only controls and assists in the implementation of their substantive and procedural rights, ensuring compli-

ance with the law, preventing violation of anyone’s rights and legitimate interests.

The principle of discretion is the ability of persons participating in the case to dispose of their substantive and procedural rights, as well as the means of protecting them [14, p. 19].

The first component of this principle is the existence of rights and the equality of these rights for the corresponding categories of subjects of civil procedural legal relations. Without rights, one cannot talk about the ability to dispose of them.

The second component is the possibility of exercising these rights, having a choice in the means of protection. Thus, the plaintiff has the right to bring a claim or refrain from doing so, can change the subject or basis of the claim, abandon the claim, or agree to conclude a settlement agreement. The defendant may admit the claim in whole or in part, file a counterclaim, express objections (of a material, procedural nature) to the claim, and agree to the terms of the settlement agreement.

Moreover, throughout the entire trial, interested parties can actively influence it. To achieve this goal, they have the right:

- apply to court for protection of violated or disputed rights, freedoms and legitimate interests;
- involve procedural accomplices or bring claims against several at once;
- carry out singular (private) or universal (general) succession;
- determine the procedural opponent - the defendant, as well as the scope and subject of judicial protection;
- appeal a court decision or ruling in an appellate or cassation manner;
- ask the court to reconsider the decision, in a revision procedure, and others [3, p. 51].

These powers of the persons participating in the case are always combined with the powers of the court, since the freedom to dispose of substan-

tive and procedural rights is not absolute. In legal proceedings, where the court exercises state power in the administration of justice, there cannot be an indifferent attitude towards the will of interested parties. Otherwise, the court will lose its leadership position in the process and will not be able to resolve civil cases. [21, p. 52]

Dispositivity, as a principle that allows the parties to dispose of their rights, has a close connection with **the principle of adversarial** proceedings, since in adversarial proceedings, in order to achieve their goals, the parties determine the course of the process. The principle of adversarial law is one of the leading principles of civil procedure enshrined in the Constitution of the Republic of Moldova.

The principle of competition occupies a central place in the system of ensuring fair justice. The constitutional consolidation of this principle largely predetermined its special role in the judicial process and its influence on the rules of legal proceedings. The main idea of the principle under consideration is the parity of the burden of proof on the persons involved in the case. It instructs participants in the process to defend their case by presenting evidence, participating in their research, and also expressing their thoughts on any issues raised at the court hearing. The principle of competition is proclaimed by Art. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms of November 4, 1950. and is a fundamental element of the right to a fair trial. [10]

Article 26 of the Code of Civil Procedure of the Republic of Moldova stipulates that adversarialism presupposes the organization of the process in such a way that the parties and other participants in the process have the opportunity to formulate, argue and prove their position in the process, choose methods and means of defending it independently and independently of the court, other bodies and persons, express their position on factual and legal issues rel-

evant to the case under consideration, and express their point of view on initiatives of the court.

The content of adversarialism is that in civil proceedings the parties are opposed to each other in accordance with their interests and the trial of the case takes place in the form of a dispute between them [4, p. 32].

Such a structure of civil proceedings, by the way, perfectly corresponds to the controversial nature of civil cases and the very logic of the administration of justice. The adversarial process, built on the legal activity of the persons participating in the case, is democratic in nature and its results are convincing.

Thus, the elements of adversarialism are: the rights of the parties and other persons participating in the case; ensuring their procedural activity in justifying their position in the dispute; procedural assistance of the court to legally interested subjects of legal proceedings [21, p. 53].

We can identify the following components of the adversarial principle, aimed at ensuring the idea of transparency of justice when considering civil disputes. First of all, these are issues of proper notification of the parties about the commencement of the process, about the time and place of the court hearing, about the performance of certain procedural actions. Inadequate notification of the party about the time and place of the court hearing is one of the absolute grounds for reversing the court decision.

If the case was considered in violation of the rules of proper notification of the time and place of the court hearing, the court decision is subject to cancellation. This imperative rule is provided for in civil procedural legislation.

The personal presence of persons participating in the case is also ensured during the review of judicial acts in higher courts. Their presence is also ensured through the use of videoconferencing. According to the position of the European Court of Human Rights,

the personal participation of a party during the review of a case at a higher authority depends on the following circumstances: questions of fact or only law is resolved, as well as the extent to which the nature of the hearings requires presence [12, p. 355-356]. In cases where the review involves only issues of law, the personal presence of the party is required when the higher court can overturn the decision or make significant additions to it.

Finally, **the principle of procedural equality**, closely related to the principle of adversarial law and complementing it by providing equal procedural opportunities to the parties, including being present during the proceedings, speaking before the court, the right to be heard by the court and heard by the court, is the basis of a fair trial and a guarantee of transparent justice.

Legal proceedings are carried out on the basis of equality of rights of the parties. Equality of the parties, on the one hand, balances competition, on the other, creates the prerequisites for the development of competition.

The principle of equality of parties in civil proceedings is a manifestation of the more general principle of equality of citizens before the law and the court. [6, p. 87-88]

Its essence is expressed in the equal opportunities of the parties established by law and ensured by the court to actually use procedural means of judicial protection of their rights and interests. At a court hearing, the parties have equal rights to challenge, petition, give explanations, and participate in the examination of evidence. During the debate, the parties speak an equal number of times, and the right of the last word always belongs to the defendant and other procedural actions provided for by the Civil Procedure Code. [16, p. 110]

The following provisions follow from this principle: each party must be given equal procedural opportunities [20, p. 112]; the court cannot make a de-

cision without hearing the defendant's explanations [17, p. 361].

The equality of the parties is determined by the reality of the use of the granted rights. In addition to equal rights, the parties bear equal responsibilities.

So, among the judicial principles that ensure the implementation of the idea of transparency, we note: the principle of legality, the principle of discretion, the principle of adversarial and procedural equality of the parties, the principle of combining oral and written principles of legal proceedings, the principle of immediacy of judicial proceedings.

Conclusion and recommendations

There is no basis to assert the existence of the principle of transparency in civil procedural law and the existence of its own unique content. It can be derived by "logical", "lexical" and other interpretation, but it is difficult to clearly define its content, distinguish it from other legal principles, and find its place in the system of the corresponding branch of law.

Transparency, as a property of the civil procedural form, finds its manifestation through the system of existing civil procedural legal principles, which, in turn, serve as the basis and determine the further content of the norms of the relevant branch of procedural law, are a kind of "landmarks that organize and direct the activities of the participants in the process".

The principles of civil procedural law ensure the implementation of transparency by enshrining in the law at a basic level the possibility of participation of citizens in the administration of justice, the right of anyone wishing to attend an open court hearing, directly perceive information in the courtroom, the opportunity to obtain information about the trial and its results by contacting procedural documents, requirements for openness of the trial and publicity of the judicial act adopted in the case, the opportunity for persons interested in the outcome of the case to

personally and effectively participate in the trial of the case by the court through the exercise of their procedural rights.

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