International Journal Of Law And Criminology
(ISSN – 2771-2214)
VOLUME 04 ISSUE 12 PAGES: 23-28
OCLC – 1121105677
Crossref doi Google Scholar WorldCat MENDELEY

Publisher: Oscar Publishing Services

Journal Website: https://theusajournals.com/index.php/ijlc

Research Article

THE PRINCIPLE OF ACTIVE CASE MANAGEMENT IN CIVIL PROCEEDINGS

Submission Date: December 02, 2024, Accepted Date: December 07, 2024,
Published Date: December 12, 2024
Crossref doi: https://doi.org/10.37547/ijlc/Volume04Issue12-04

Khusainova Umida Abdikhalikovna
Doctoral Student, Higher School of Judges under the Supreme Judicial Council of the Republic of Uzbekistan

ABSTRACT

The article describes the principle of judicial leadership in the conduct of court cases, the brief history of its formation and scientific views on its essence. The role of the court in the civil procedure changes depending on time and space, therefore, the need to conduct scientific research on what the role of the court is for today is revealed.

KEYWORDS

Role of judge in civil proceedings, procedural activity of the court, the principle of active case management, the principles of the civil process.

INTRODUCTION

During the last 100 years or so, a central theme in civil procedural theory has been to find a balance between on the one hand the parties' liberty to freely dispose of their private rights and obligations, also within the litigation process, and, on the other hand, the powers of the judge or, to use more modern terminology, judicial case management (1).

Currently, the attitude to the principle of judicial leadership in civil procedural law is different. Some authors distinguish it as an independent principle, some as a function of the civil process, and the third group of scholars study it within the framework of other principles.

The main rules, principles of civil procedural law in Uzbekistan and some aspects of their application in judicial practice have been studied in the scientific research works of Sh.Sh.Shorakhmetov, E.Egamberdiev, M.K.Azimov, S.Toshnazarov, M.M.Mamasiddikov, Z.N.Esanova, S.A.Yakubov, M.A.Doniyorov and S.A.Maripova.

D.Yu. Khabibullaev has been engaged in the principles of civil procedural law and issues related to their

International Journal Of Law And Criminology
(ISSN – 2771-2214)
VOLUME 04 ISSUE 12 PAGES: 23-28
OCLC – 1121105677
Crossref doi Google Scholar WorldCat MENDELEY

Publisher: Oscar Publishing Services

application in judicial practice as a separate object of research. In his opinion, it is time to establish in the legislation the rules on the procedural activity of the court as a separate independent principle in order to ensure the full determination by the court of the circumstances relevant to the case and the observance of the norms of substantive and procedural law (2).

However, the principles that determine the role of the parties and the court in civil court proceedings, namely the principle of adversarial proceedings and the principle of procedural leadership of the court or the principles of judicial activity, have not yet been analyzed as a separate, comprehensive object of research.

This context serves as a catalyst for further investigation into the subject. This study will explore the concept, historical development, and underlying principles of judicial leadership within the context of civil litigation.

A brief examination of the history of the Civil Procedural Codes in Uzbekistan reveals that four distinct procedural codes have been enacted and enforced in the country.

The first Civil Procedure Code (CPC) of the Uzbek SSR was adopted on October 22, 1927 and entered into force on January 1, 1928. This Code was published in Russian language, and prior to this Code, the norms of civil judicial proceedings were implemented based on the rules of Sharia (3).

This Code establishes the unlimited activity of the court in the process. In particular, the court must make every effort to explain the real rights and mutual relations of the parties, not limited to the explanations and materials provided; the court must, through questions asked to the parties, help them to establish the circumstances necessary for resolving the case and to confirm them with evidence; it must actively assist the person who has applied to the court in protecting his rights and legitimate interests, and must not use legal ignorance, illiteracy, and similar circumstances to their detriment; at the same time, the court must explain to the party who has applied their rights and necessary formalities, and warn them about the consequences of procedural actions and inaction (Article 5).

Such unlimited powers of the court in court proceedings were also reflected in the subsequent Civil Procedure Code. This code, adopted on March 23, 1963 and put into effect on January 1, 1964, contained the following norms related to the role of the court in the process. The court is obliged to take all measures specified in the law to comprehensively, fully and objectively determine the true state of the case, the rights and obligations of the parties, not limited to the submitted materials and statements. The court must explain to the persons participating in the case their rights and obligations, warn them of the consequences of taking or failing to take procedural actions, and assist the persons participating in the exercise of their rights (Article 15). Each party must also prove the circumstances that it bases its claims and objections on. Evidence is presented by the parties and other persons participating in the case. If the submitted evidence is insufficient, the court shall invite the parties and other persons participating in the case to submit additional evidence or collect it on its own initiative (Article 53) (4).

To investigate the reasons behind the court's extensive powers in civil proceedings, this study will examine the scholarly literature from the Soviet era.

In the period before the revolution of 1917, most of the proceduralist scientists, in describing the court's activity, show the combination of passivity and activity of the courts based on two main principles, the

International Journal Of Law And Criminology
(ISSN – 2771-2214)
VOLUME 04 ISSUE 12 PAGES: 23-28
OCLC – 1121105677
Crossref doi Google Scholar WorldCat MENDELEY

Publisher: Oscar Publishing Services

adversarial and inquisitorial (based on judicial investigation) principles.

E.V.Vaskovsky was one of the first to conclude that the principle of judicial leadership should be distinguished as a separate independent principle. He shows two sides of the leadership of the court in the process: 1) formal (leadership of the court); 2) material (instructive) principle (5).

The necessity of the inquisitorial principle in describing the legal aspect of the process is justified to a certain extent by the court's obligation to establish the truth (material truth) in the case. In order for the court to be able to establish the material truth, it must exercise unlimited freedom in studying the factual materials of the case. Its "tying its hands with the principle of the adversarial process" is, in fact, a recognition that the goal of the process is not to achieve the material truth, but only the formal truth.

Thus, the works of procedural scholars of the pre-revolutionary period recognized the need to combine the activity and passivity of the court in resolving the case. The court should exercise (be active) in the official (formal) side of the process (official leadership), and thus also exercise substantive leadership. While formal leadership ensures legality, consistency, and procedural speed, substantive leadership ensures the determination of the substantive truth.

As is known, in the Soviet period after the revolution, due to the intervention of the state (government) in personal affairs, large-scale changes also occurred in the field of procedural principles. The first Soviet Code of Civil Procedure of the RSFSR of 1923 resolved the issue of the role of the court in the process in favor of the full activity and independence of judges in civil proceedings. The court had the right to collect evidence on its own initiative and demand it from the party in need of assistance and deserving it. Such activity of the court was reflected in a number of articles of the Code of Civil Procedure of the RSFSR of 1964 (in particular, Articles 14, 34, 50, 195, 294, 305). In describing the court of this period, the roles of the court were noted - leadership, directing and organizing.

During this period, V.M.Semenov distinguished the procedural activity of the court as an independent principle. According to it, the active leadership exercised by the court in the consideration of civil cases is aimed at: determining the truth in the case; to ensure the opportunity for persons participating in the case to use and dispose of their material and procedural rights; to eliminate the causes of violations in order to protect the rights and interests of citizens, organizations and the state; will be directed to strengthen the legitimacy and communist education (6).

The court ensures control over the exercise of material and procedural rights by the parties and other persons participating in the case; actively intervenes in the material and legal relations of the parties; goes beyond the limits not only of the amount of the claim, but also of the basis of the claim; the court of cassation (supervision) instance - checks the appealed (protested) decision in full and with respect to all persons participating in the case; in some cases, on its own initiative, has the authority to ensure the execution of the court decision and its timely execution.

It can be said that such powers of the court are based on a unique understanding of free legality and parties' disputes in the Soviet civil procedural law.

International Journal Of Law And Criminology
(ISSN – 2771-2214)
VOLUME 04 ISSUE 12 PAGES: 23-28
OCLC – 1121105677
Crossref doi Google Scholar WorldCat MENDELEY

Publisher: Oscar Publishing Services

The specificity of the Soviet civil procedural law is defined on the basis of the ideological and political principles based on the Soviet social and state system, as well as the existing socio-economic conditions in the country. The main content of the principle of procedural activity of the court is based on the need to determine the objective truth directly defined in Article 14 of the 1964 RSFSR GPK.

According to S.V.Lazarev, the principle of judicial procedural activity was not weakened by the separation of the principles of free legality and adversarial proceedings, since they were already limited in nature. VM Semenov, however, combined the violated parts of these principles into the principle of judicial procedural activity, in fact, showing the fact (7).

Thus, in the Soviet period of the development of civil procedural law, the court was as active in the formal side of the process as it was in the legal side. In contrast to the level of judicial activity in the pre-revolutionary period, the activity in the legal side of the process increased somewhat. Balanced judicial activity turned into practically unlimited procedural activity of the court. After the collapse of the USSR, a conceptual change in the civil process took place in Russia. The principle of procedural activity of the court, developed by V.M. Semenov, could not have arisen and existed without the appropriate political conditions. With the change in political conditions, the basis of this principle was also called into question. Its place was taken by the temporarily forgotten principle of judicial leadership.

At this point, M.Sh.Patsatsiya differentiates between the principle of court leadership in the process and the principles of procedural activity of the court as follows. The concept of court leadership in the process is based on the following ideas: a) dispute resolution as the goal of court proceedings; b) priority of the principle of dispute between the parties in the process; c) formal (official, procedural) reality. The concept of the court's procedural activity is based on the following ideas: a) protection of rights as the goal of court proceedings; b) priority of inquisitorial public principles in court proceedings; c) objective (material reality) (8).

O.P.Chistyakova, who conducted a separate study on the principle of judicial activity in civil proceedings, came to the conclusion about the dual legal nature of judicial obligations: Some obligations of the court must correspond to the procedural rights of interested persons. Their existence is associated with the need to protect personal interests. The court fulfills its obligations only in response to certain actions of persons participating in the case. The court does not act on its own initiative. The court is “passive”. Other obligations are not related to the rights of persons participating in the case (ex officio obligations). They are established before the state and society (in the public interest). In this case, the court acts independently of the initiative, desire and will of interested persons. The court acts publicly, openly, officially (ex officio). The court is “active”. The fulfillment of ex officio obligations is ensured by special procedural sanctions, and the possibility of annulment of illegal court decisions by a higher court (9).

According to K.L.Branovitsky, civil proceedings cannot and should not exist only as formal (official) observance of procedural norms and rules. Material truth is of great importance. In addition, the court should not be the only subject that knows and applies the law, but should involve the parties and their representatives in understanding the law. One of the tasks of the court is to find ways to resolve the issues raised together with the parties (10).

According to the rule on proof, each party is obliged to prove the circumstances that are the basis for its claims

International Journal Of Law And Criminology
(ISSN – 2771-2214)
VOLUME 04 ISSUE 12 PAGES: 23-28
OCLC – 1121105677
Crossref doi Google Scholar WorldCat MENDELEY

Publisher: Oscar Publishing Services

and objections. The court determines which circumstances are relevant to the case, which of the parties must prove them, and puts them for discussion, even if the parties did not present these circumstances as evidence. Evidence is presented by the parties and other persons participating in the case. The court may invite them to submit additional evidence. If the presentation of additional evidence creates difficulties for the parties and other persons participating in the case, the court shall assist them in collecting evidence upon their request. (Article 57). That is, the court's authority to collect evidence on its own initiative has been abolished.

Of course, this happened in connection with the changes in the political, economic and social conditions prevailing in the state, as discussed above.

In the new Civil Procedure Code of the Republic of Uzbekistan, adopted on January 22, 2018 and entered into force on April 1, 2018, the above norms were left unchanged in content, only the court's task of "providing assistance" was replaced with the phrase "assistance". Although the court's authority to collect evidence on its own initiative was abolished, the content requiring the court to play an active managerial role during the process was preserved. However, one of the main tasks of judicial and legal reforms today is to strengthen the adversarial principle in court proceedings, increase the activity of the parties in the court process, and create broad opportunities for them to collect evidence on the case and present it to the court. Because the second direction of the Action Strategy, called "Priority directions for ensuring the rule of law and further reforming the judicial system," also envisages the comprehensive implementation of the principles of independence and impartiality of the court, adversarial proceedings, and equality of rights of the parties in the judicial process. As a logical continuation of these reforms, the second direction of the new Development Strategy of Uzbekistan for 2022-2026 also specifically emphasizes the need to implement the principles of true equality and adversarial proceedings in order to achieve justice and the rule of law.

In the process of updating the civil procedural legislation of the Republic of Kazakhstan, which is considered a neighboring country, special attention was paid to this problem, and in 2020 legislative reforms were carried out aimed at fundamentally revising the role of the court in the civil process of the Republic of Kazakhstan. When developing the draft law, the international experience of such countries as Germany, Great Britain, the USA, Singapore, Canada, Georgia, and Ukraine was taken into account. It is noted that many changes in determining the role of the court in the process were based on the German procedural model, in which the court's obligation to provide guidance explanations (Hinweispflicht) was one of the important elements (11).

In particular, the role of the court in the process of collecting and examining evidence in civil proceedings has been updated. The court is given the opportunity to collect evidence on its own initiative, to carry out individual actions to clarify the true will and protected interests of the parties by clarifying their positions. This is aimed at an impartial and complete resolution of the dispute. However, the relationship of these rules with the principle of adversarial proceedings needs to be studied in more depth.

Thus, as we have seen above, the role of the court in the civil process changes depending on the time and place, depending on the conditions of each country, the purpose of the process and the purpose of the judicial authorities.

International Journal Of Law And Criminology
(ISSN – 2771-2214)
VOLUME 04 ISSUE 12 PAGES: 23-28
OCLC – 1121105677
Crossref doi Google Scholar WorldCat MENDELEY

Publisher: Oscar Publishing Services

In this regard, it is necessary to comprehensively analyze the role, tasks, obligations and powers of the court established in the Civil Procedure Code of the Republic of Uzbekistan from the point of view of current requirements and to determine the content of the "principle of judicial leadership" suitable for Uzbekistan by developing a model that clearly defines the tasks of the court during the process. Of course, it is necessary to take into account such factors as the current workload of the judge, the type and content of the case being considered, the demands of the parties, and the participation of lawyers in the consideration of the case. It is necessary to study the relationship of this principle with the principle of adversarial proceedings separately. Because, unlike other types of processes, the basis of civil proceedings is adversarial principle.

REFERENCE

1. Rhee, C.H. van (ed.), Judicial Case Management and Efficiency in Civil Litigation, Antwerpen, 2008. – p. 2.
2. Khabibullaev D.Yu. Principles of civil procedural law and problems of their application in judicial practice. Monograph. // Ph.D., prof. Under the editorship of Sh.Sh.Shorakhmetov. -T.: TDYI, 2008. -104-105 p.
3. Civil Procedure Code of the Uzbek SSR // Izdanie-1. Samarkand, 1927.
4. Civil Code of the Uzbek SSR. Civil Procedure Code of the Uzbek SSR (with amendments and additions until January 1, 1986). - T.: Uzbekistan, 1986. - 456 p.
5. Vas'kovsky E. V. Course of civil procedure. Volume I. Subjects and objects of the process, procedural relations and actions. - M.: Bashmakov Brothers, 1913. - P. 375.
6. Semenov V. M. Constitutional principles of civil proceedings. – M.: Legal literature, 1982. – P. 127.
7. Lazarev S.V. The principle of judicial leadership: history and modernity. Principles of civil, arbitration and administrative proceedings: problems of theory and practice: collection of scientific articles / Comp. and editor L.V. Voitovich. - St. Petersburg: Asterion, 2021 - P. 39
8. Patsatsiya M.Sh. The principle of procedural activity of the court or the principle of judicial guidance of the process? // Law. – 2016. – No. 1. – P. 63–75.
9. Chistyakova O.P. The problem of court activity in civil proceedings in the Russian Federation: abstract of diss. ... Cand. of Law: 12.00.03. -M., 1997. – P. 7, 26-27.
10. Branovitsky K. L. Concept and management of legal guidance in the consideration of case on the metrics in civil procedures in Germany // Lav. 2014. No. 4.
11. Law of the Republic of Kazakhstan dated June 10, 2020 No. 342-VI ZRK "On Amendments and Additions to the Civil Procedure Code of the Republic of Kazakhstan on the Implementation of Modern Formats of Court Work, Reduction of Excessive Court Procedures and Costs" // Bulletin of the Parliament of the Republic of Kazakhstan. 2020. No. 11. Art. 55.