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DIALECTICS OF THE RIGHT TO JUDICIAL PROTECTION

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ДІАЛЕКТИКА ПРАВА НА СУДОВИЙ ЗАХИСТ

АНОТАЦІЇ (ABSTRACTS), КЛЮЧОВІ СЛОВА (KEY WORDS)

Problem statement. Nowadays development of ideas and perceptions of judicial law is a basis for the process of judiciary improvement and the success of judicial reform. It contributes to a systematic approach to solving problems related to the exercise of the right to judicial protection. Moreover, such an approach provides a strategic vision for the development and improvement of the judiciary both as a whole and for its particular institutes. **Its purpose** is proposals for systemic measures, starting from the proper legal regulation of the procedure and ending with the proper provision of the material (institutional) foundations of the judiciary and the justice system in general. Judicial law, as an integrated branch of law, can provide a systematic approach. For this reason, the research **methods** of this paper adopt qualitative analysis, through induction and deduction, analysis and synthesis. The main method of research was systemic. The very characteristic of systematicity means that law is a holistic entity comprising plenty of elements. These elements have a certain hierarchical relationship and interdependence. Thus, systematicity is the most important objective feature of law. **Results.** The meaning of the concept of judicial law both in theoretical and practical aspects is crucial for the acknowledgment of the self-sufficient role of judicial law in the legal system, the understanding and the execution of judicial law for a court to be able to provide judicial protection. Therefore, it should be emphasized judicial protection as a function of judicial power is the key and integral part of all procedural activities. Furthermore, the function of protection is inherent in the activity of all state structures. **Conclusions.** Research and analysis show that in the final analysis, the social relations form the subject of judicial law science. These relations bring procedural branches of law in proximity with one another and the judiciary. It brings to life the idea of the judicial law codification in a separate legal act. Hence, the practical role of judicial law science is in the actuality of such an idea.

Key words: *judicial law; subject matter of judicial law; legal relationships; a subject of judicial law; an object of judicial law; method of judicial law*

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Постановка проблеми. Нині розвиток ідей та сприйняття судового права є основою процесу вдосконалення судової системи та успіху судової реформи. Це сприяє системному підходу до вирішення проблем, пов'язаних із реалізацією права на судовий захист. Більш того, такий підхід забезпечує стратегічне бачення розвитку та вдосконалення судової влади як в цілому, так і окремих її інститутів. Його **мета** – пропозиції щодо системних заходів, починаючи від належного правового регулювання процедури та закінчуючи належним забезпеченням матеріальних (інституційних) основ судової влади та системи правосуддя загалом. Судове право як інтегрована галузь права може забезпечити системний підхід. З цієї причини в **методах** дослідження цієї статті застосовується якісний аналіз за допомогою індукції та дедукції, аналізу та синтезу. Основним методом дослідження був системний. Сама характеристика систематичності означає, що право – це цілісна сутність, що містить безліч елементів. Ці елементи мають певний ієрархічний зв'язок і взаємозалежність. Отже, систематичність є найважливішою об'єктивною ознакою права. **Результати.** Зміст поняття судового права як у теоретичному, так і в практичному аспектах має вирішальне значення для визнання самодостатньої ролі судового права в системі права, розуміння та виконання судового права для того, щоб суд міг забезпечити суд захисту. Тому слід підкреслити, що судовий захист як функція судової влади є ключовою та не-

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від'ємною частиною усієї процесуальної діяльності. Крім того, функція захисту притаманна діяльності всіх державних структур. **Висновки.** Дослідження та аналіз показують, що в кінцевому підсумку суспільні відносини становлять предмет судово-правової науки. Ці відносини зближують процесуальні галузі права між собою та судовою владою. Вона втілює в життя ідею кодифікації судового права в окремому правовому акті. Отже, практична роль судово-правової науки полягає в реальності такої ідеї.

Ключові слова: *судове право; предмет судового права; правовідносини; суб'єкт судового права; об'єкт судового права; метод судового права*

Problem statement

It is commonly accepted that the legal system is an internal structure of law consisting of coordinated rules of law, sub-institutes, institutes, sub-branches and branches of law. The very characteristic of systematicity means that law is a holistic entity comprising plenty of elements. These elements have a certain hierarchical relationship and interdependence. Thus, systematicity is the most important objective feature of law.

The realization of a constitutional right to judicial protection requires nothing but systematic measures ranging from the proper legal regulation of procedure to the proper provision of material (institutional) foundations of the judiciary and the justice system in general. Judicial law, as an integrated branch of law, can secure the systematicity of an approach.

It should be acknowledged that nowadays development of ideas and perceptions of judicial law is a basis for the process of judiciary improvement and the success of judicial reform. It contributes to a systematic approach to solving problems related to the exercise of the right to judicial protection. Moreover, such an approach provides a strategic vision for the development and improvement of the judiciary both as a whole and for its particular institutes.

Theoretical development of the idea

The idea of judicial law is not new for legal studies. Nevertheless, certain historical periods of the development of legal science have always had both supporters and opponents of this idea.

Those advocating for the judicial law to be separated in an independent branch of law (V.D. Bryntsev, M.V. Vitruk, I.Ye. Marochkin, O.O. Melnykov, I.V. Mykhailovskyi, V.O. Riazanovskyi, M.M. Polianskyi, S.V. Prylutskyi, M.M. Rozin, V.M. Savytskyi, M.S. Strohovych et al.) try to justify the existence of a secondary integrated branch of law that combines the judiciary and procedural law and does not deny the independence and specific features of some branches of procedural law. These branches, in their turn, have a direct relationship with the universal branch of state activity – justice. For instance, Professor I.V. Mykhailovskyi, having studied the features of similarities and differences between criminal and civil proceedings, discovered the commonality in the subject-matter and key issues of both sciences, the material homogeneity and the conjunction of many elements along with the insignificant and non-essential differences between them. Thus, he concluded that these two sciences should form a single science – judicial law. As regards the peculiarities of certain justice types, they should be the special issues of it. In his turn, Professor Riazanskyi, having considered the key elements of proceedings, concluded that concur not only tasks and aims of procedural activity but also legal nature (construction) of process, key principles of the judiciary and justice. Professor M.V. Vitruk stepped further and offered to treat judicial law as a legal complex comprising of certain self-sufficient branches, with all types of legal proceedings being parts of the jurisdictional process complex.

Indeed, in any process, the court's task is to establish a right and to protect, to exercise or to renew it (if needed). Albeit this right may refer to different spheres (subjective civil law, subjective public law or a state's right to punish), the legal structure of a process is the same: an impartial arbitrator (a court) observes a competition of two parties that stand their grounds by providing evidence. Principles of the judiciary (territoriality, specialization and existence of instances) influence general principles of the judicial process: ensuring "a proper court", "a court formed on the basis of law", "a competent court".

Along with that, opponents of this point of view (comprising both legal theorists and processualists) claim this concept to be inconsistent with the definition of a branch of law established by science. As R.Ye. Hukasian and P.F. Pashkevych submit, judicial law lacks both a united subject-matter of the legal regulation and a method. It is also noted that the creation of judicial law as an integrated branch of law would lead to the disregard of the significant differences between criminal and civil processes contrasting in subject-matters, tasks and procedural forms. We believe this remark is correct only if taken in conjunction with the time when it was

made. The genesis of procedural law indicates that modern procedural law relies on the common principles (fundamentals of justice) and handles the common institutes of the judicial process. Along with the differences in judicial proceedings existing because of the subject of examination, there are also enough similarities. Moreover, in this regard, V.M. Protasov made an appropriate comment. He stated that "the weakest point" of the first position supporters lies within the focus of the majority of scientists (both past and present). Namely, they focus on a categorical statement about the existence of a complex branch of law in the legal system rather than the provision of enough arguments to the point. Most works are about the theory of judicial law. In its turn, the substantiation of an independent subject of it does not imply the existence of an independent branch of law.

In our opinion, judicial law (as a theory or science) can obviously exist because of its own very specific subject of study. It is common and related to the content of procedural branches of law by nature and structural organization of an important state body – court. The need to perform the functions of justice in different branches of law leads to a certain court universalism. Ultimately, it leads to the reverse effect of the structure on the function. Hence, M.O. Kolokolov is right when offering an urgent generalized presentation of the knowledge about judiciary within a united fundamental science (as currently this knowledge is scattered throughout the human sciences). In the course of this approach, judicial law should study the nature of a court, the best structural organization options, and the impact of such an organization on process and content of procedural law. Thus, the subject-matter of judicial law lies within the organization of the court, the legal process and their interplay.

Therefore, judicial law as a science is a branch of special knowledge about the judicial power functioning regularities, its place in the system of state organs and social role, the organizational basics of proper functioning conditions, judicial process and specificity of the state impact on subjects of law. Its subject-matter is the legal essence of social relations arising out of the process of functioning of the judiciary. By its nature, judicial law is public law. It is because judicial power determines the way of resolution of "a legal anomaly" (of a legal conflict sprout up in society) and provides the community with court services. On the contrary to ordinary legal services, court services are public. As mentioned by E.M. Muradian, court services lack principles of payment and a "client-representative" relationship. Moreover, as a power holder, a judge does not become a participant of an agreement with a process parties, a party or a representative; he or she is impartial. The category "court services" implies their legal and ethical value and reasonable justification. Publicity of court services means that they are provided not to those who are wanted by a judge (unlike, for example, in the case of a lawyer), but to anyone. The basis for this is not a contract but a law. In the absence of grounds for a refusal specified in the procedural law, the judge has no right to deny anyone the right procedures or procedural actions.

Judicial law as an independent branch of law

As regards the issue of separation of judicial law as an independent branch of law, the definition "a branch of law" formed in jurisprudence means a separate, independent, sovereign, relatively closed subdivision of the structure of law. A subdivision is a structure, laws of legal elements connection and their location that ensures the integrity of law. In other words, the commonality of norms forming a branch of law is characterized by legal integrity, i.e. by such a degree of internal organization and the unity of institutes so that it provides for its perception as of the integrated whole. In the theory of law, general features of a branch of law encompass its (a) structural particularities, (b) a specific subject-matter of legal regulation, (c) the legal character of a branch (that refers to a special legal regime). Let us analyze judicial law from the perspective of features of a branch of law.

As a rule, *the structural features* of a branch of law are characterized by its own system of legislation and independent codes. In the last century, Professor V.A. Riazanovskyi noted that at that time it was premature to talk about a single process and unified procedural science. Nevertheless, the development trend of the modern process (in both judiciary and justice) lies within the unification of its various types and the creation of a single procedural or judicial law. The latter requires some preliminary preparatory work, which should be done in both a theory of process and legislative practice.

It should be mentioned that some countries do already have so-called Judicial Codes determining the legal basis for legal proceedings. Hence, there is a certain practice of codification of legal regulation norms for legal relation in the sphere of judiciary functioning. An initiative on a single codified act regulating all legal relationships that arise when judicial power exercises its functions took place in Ukraine. Unfortunately, the legislature has not sup-

ported such an initiative. In our opinion, it is rather logical to bring together some disparate normative material on judiciary into single judicial law regulating organizational and functional social relations in the sphere of judicial power. However, a deeper study of this question reveals two fields of concern. The first one regards the issue of renewal of existing law (if judicial law is considered as a part of a more general issue concerning, overall, the system of domestic law in force). The second one regards the need to try addressing problems of the regulatory terminology (in accordance to which judicial law performs its role of legal science).

In modern legal systems, branches of law are divided into primary (basic), special and complex. Judicial law can be referred to complex branches of law because, as submitted before, its subject-matter is legal regulation of social relations arising from the execution of the functions of judicial power. Therefore, it combines several specific (even unique) legal relationships. The specificity of these relations involves the interplay of both substantive and procedural law norms. The former determine the statutory provisions on the judiciary and the status of judicial power holders. The latter determine general grounds of the judicial process. The interaction of form and content of social relations arising from the implementation of judiciary functions defines the integrity and unity of judicial law as a complex branch of law.

We believe that a codified act could comprehensively regulate the legal relations that arise in the exercise of judicial power. In turn, this could respond to such fundamental questions as the nature of the judiciary, the system of its bodies, the principles of organization, operation and administration in court, the status of judges and guarantees of their professional activity, guiding principles of judicial process, types and legal force of judiciary acts. Consequently, it would strengthen the guarantees of equality and unity in ensuring the exercise of the constitutional right to judicial protection.

We would like to make a minor side note. Of course, the absence of the above-mentioned codified act is not the only obstacle for judicial law to become a separate branch of law. S.S. Aleksieiev was right when submitting that branches of law are not just some zones of legal regulation or artificially composed sets of norms "on the subject". They are really existing and legally peculiar subdivisions in the legal content of law. Thus, E.M. Muradian is right as well when emphasizing that judicial law would get universal recognition when everything will signify its real existence. By "everything" she means a scope of notions which prove its usefulness for full judicial protection and law enforcement ranging from a legislative act on the basics of justice to a system of judicial precedents (cases).

As regards *the specific subject-matter of legal regulation* of judicial law, we consider endeavours to emphasize the specifics of the judiciary (those of courts and peculiarities of judicial power functions) to be the main disadvantage of previous attempts to separate judicial law. This argument provided opponents with an opportunity to skeptically point out as possible further steps the separation of police, prosecutorial, attorney's law etc. The focus on the implementation subject of even specific legal relations would contribute to the unlimited “blurring” of the legal system.

It is a common fact that the main feature of a branch of law is the specificity of the social relations regulated by it. As submitted by well-known Ukrainian processualists O.G. Shylo and L.M. Loboiko, judicial protection is a kind of state protection of human rights and freedoms. Under the requirements of Article 3 of the Constitution of Ukraine, all public authorities should provide such protection. However, a court has a special role in the mechanism of human rights protection and is the only state organ having jurisdiction extended to all legal relations in a state. This is due to the exclusivity of judicial power, its ability to provide judicial protection by means and in a manner ensuring the implementation of the rule of law principle when resolving legal disputes, the fulfilment of a state's obligation to protect human rights and freedoms. Moreover, a court forces all other state bodies to respect these rights and freedoms.

Acting on behalf of the state, the court is authorized to give a legal assessment of actions and decisions of any person (including representatives of the very state power). In the presence of legal grounds, it can hold the state responsible for human rights violations. That is the main difference between judicial protection and other types of state protection. The exclusive competence of a court includes the right to decide on the responsibility of a state for illegal actions and decisions of its representatives.

In our opinion, when determining a subject of judicial law, the emphasis should be on the specifics of legal relationships arising in the process of an exercise of the right to judicial protection. Article 55 (1) of the Constitution of Ukraine contains a provision according to which human rights and freedoms are protected by a court. The state ensures this right through its specific function – the

administration of justice. Therefore, judicial law should be referred to the system of public law.

The Constitutional Reform (2016) put forward additional arguments for the fairness of the separation of judicial law as an independent branch. Namely, the Basic Law defines a system of subjects having different legal nature, functions and tasks, yet performing a common mission – the provision of conditions for the exercise of the constitutional right to judicial protection.

Today we can suggest the interaction of three subjects that enter into legal relations to exercise the right to judicial protection: (1) a state – as a subject that forms the legal basis for the exercise of the right to judicial protection, determines the system of judicial bodies, acts as a guarantor of proper support of their activities, ensures the enforcement of court decisions, and in cases provided by law may act as a party to court proceedings; (2) bodies that ensure the performance of the function of justice – courts, prosecutor's offices and the Bar (despite their different tasks and functions, the total result of their actions is aimed at achieving a common goal – the protection of rights in a special mode – judicial); (3) society – as a subject requesting for the provision of public service – judicial protection.

Such a "triad" determines the diversity of social relations that may arise from their interaction. *Substantive relations* stem from the formation of appropriate organizational conditions for the functioning of the judiciary. They are governed by substantive law, which determines the status of the judiciary, prosecutor's office and the Bar. *Procedural relations* are developed during the implementation of court procedure. *Administrative relations*, in their turn, can be both internal and external. The former come into existence and develop within a system. They are aimed at maintenance of the integrity and stability of a system of bodies ensuring the implementation of the function of justice. The latter set in the process of exercising state authority in connection with the normalization of social relations that either have violated the legal regime or are not regulated by law at all. However, managerial influence on public relations influences not only those in a state of legal conflict and having become the subject of litigation. Acts of court law-making are a source of law, and therefore can be used by all law enforcers regardless of whether the court decision was made in one's case. Thus, the managerial influence of the court is depersonalized, and the influence of the court on public relations becomes more global.

Hence, the content of judicial legal relations may be derived from several specific characteristics. In particular, a mandatory participant of such relations is the judiciary and its bodies (courts and judges). They arise, develop and cease on the grounds provided by law (i.e. legal grounds). Judicial legal relations have a specific purpose – implementation of the functions of the judiciary. The legal nature of these relations is "dual", as their content may constitute the process of realization of both substantive and procedural law. Moreover, by their nature, they are public legal relationships.

Therefore, the content of judicial relations is unique, inherent only in legal relations arising, developing and terminating in the process of implementation of the functions of the judiciary. It is a conclusion reached by M.O. Kolokolov. He stated that the mechanism of the judiciary is not limited to the judicial system (that is only its apparatus making organizational legal relations) and the structure of courts in a state (that is no more than a hierarchically structured set of state institutions administrating justice) but also their activities that are joint, coordinated and based on a special procedural act (procedural legal relations). Further, the scholar states that the legal literature lacks a single term simultaneously including all components of the mechanism of the judiciary. In our opinion, the term judicial law most fully covers the content of organizational, procedural and administrative legal relations arising in the process of functioning of the judiciary.

The object of judicial legal relations organically combines with the subject of legal relations. In the theory of law, the object of legal relations is usually understood as an objective reality, general legal phenomena and processes that exist in the context of specific legal relations. Extrapolating aforesaid to the object of judicial relations, we define it as an existing legal reality and the legal matter that has developed under the provided legal regime of the judiciary. The object of judicial relations is an organic whole and a complex defined by objective laws of a level of social development. It has an impact on an implementation mechanism of the right to judicial protection adopted in a state. The latter has a decisive influence on the content of legal relations that arise when judicial power exercise its functions.

The legal originality of judicial law as a branch of law lies in its special method of legal regulation. This method is determined by ways of a court's legal influence on public relations and legal con-

nection methods legal between subjects of judicial relations.

As noted by M.O. Kolokolov and S.G. Pavlikov, the judiciary appears to be a specific form of government intervention in a conflict situation in a society, in a special power influence of the state on conflict parties and the relationship between them. In a process of such intervention (influence), the state enters in numerous and diverse power relations with the parties to a conflict and third parties. It creates special conditions for a state (including the court) and other participants to a process over their rights and responsibilities. Under such conditions, a state duly represented by a court, independent and autonomous members of society, their associations and legal entities (a state is also a legal entity), seek to achieve their interests in a civilized manner. As a rule, the power relations formed in this case acquire a legal form and their content gets concretized. Thus, they become judicial-power legal relations. In other words, they turn into a legally established interconnected behaviour of a court and parties. The idea of satisfaction through a judicial review of the vital needs of parties, society and a state is the cornerstone of judicial-power relations.

Evidently, the main methods of judicial law are imperative one and dispositive one. These methods are equally inherent in organizational, procedural and administrative legal relations that arise in the process of functioning of the judiciary. In particular, in organizational judicial relations, the imperative method of legal regulation is determined by the authoritarian nature of a court. It is a subject of judicial and, therefore, state power. Hence, its relations with other government agencies in terms of organizational support of a court are prescriptive and subordinate. On the other hand, the parity of branches of government and the nature of judicial self-government requires not only the imperative method of legal regulation but also the dispositive one.

Although the court is the sole "leading" authority, in procedural legal relations the specifics of a judicial process (that is a kind of legal relationships) is in the mutual correspondence of rights and obligations between parties to a process and a court. For instance, as it goes in civil proceedings. A plaintiff has the right to file a lawsuit. A court is obliged to accept it and take the necessary action; it calls a defendant. The defendant has the right to appear and deny the claim. The court is obliged to accept the statements of the parties; the parties have the right to point out the facts and provide evidence. The court must provide these statements with a legal assessment. The parties have the right to file a petition. The court is obliged to consider them, etc. Such a scheme is inherent in any judicial process regardless of the subject matter. The specifics of the legal relationship between a court and parties to a process determines the specifics of the judicial mechanism. Its distinguishing feature is the decision on the merits of the dispute on the basis of law taking into account the positions of the parties.

As for the methods of legal regulation of administrative legal relations of a court, they are also characterized by an organic unity of the imperative and dispositive method. For example, with regard to legal relations that are a subject of judicial proceedings, a court decision contains an express reference of parties' behaviours necessary for the exit from the specific relations that constitute "a legal anomaly". The execution of a court decision is ensured by the mechanism of state coercion. Thus, it is a classic imperative method of legal regulation. With regard to legal relations that are not a subject of specific judicial proceedings, their participants independently choose the sources of law to regulate their legal relations. Among others, they can use the acts of the Supreme Court, the Constitutional Court of Ukraine, the European Court of Human Rights etc. So, the dispositive method can also be used in the implementation of the managerial influence of the judiciary on public relations.

The system of legal institutions of judicial law

Like in any legal system, another important component of the judicial law system is the existence of a system of legal institutes, which are a relatively separate group of legal norms governing qualitatively homogeneous social relations within a particular branch of law or are interdisciplinary. In this aspect, we support A.P. Huskova who defines the right to judicial protection as having a complex intersectoral nature and judicial protection itself as a complex intersectoral institute. Hence, it is a set of interrelated legal norms (institutes) contained in different branches of law governing a homogeneous group of social relations. Despite the diversity of substantive and procedural rules governing the statutory and procedural grounds for the organization and functioning of bodies that ensure the exercise of the right to judicial protection, their interaction and interdependence should be noted. For example, an institute of an appeal of a court decision provides for the interaction of form (existence of instances as an organizational principle a judicial system) and content (a procedure of appellate and cassation review of a court decision). An institute of

the right to a proper trial provides for the form (the organizational principle of territoriality and specialization in the construction of the judicial system) and the content (the territorial and substantive jurisdiction of the case). There are many other alike examples of the intersectoral legal institutes in the system of judicial law.

Thus, the interaction of form and content of social relations that arise in the exercise of the right to judicial protection determines the integrity and the unity of judicial law as a complex branch of law.

Differentiation and unity of justice

The characterization of judicial protection as of an intersectoral institute has become the basis for scientific proposals on the unification of sectoral legislation governing judicial protection. The only purpose of judicial protection, according to V.O. Lazarieva, dictates the unity of legal means and methods of protection of human rights and freedoms regardless of the form of justice. She submits that there is no reasonable justification for the existence of different deadlines for appealing court decisions made in criminal and civil proceedings, differences in the number of procedural opportunities provided to protect an infringed right and the procedure for granting a party a certain status. Furthermore, as D.D. Luspenyk states, "Modern requirements for the development of procedural law apart from the efficiency of justice are also based on the division of justice into types, the unification of definitions and legal institutions in different procedural acts and the convergence of judicial procedures".

Supporting this scientific position, professors O.G. Shylo and L.M. Loboiko singled out the following features of the exercise of the right to judicial protection, which are common for all types of public legal proceedings:

– the exercise of the right to judicial protection is a process consisting of separate stages of a logical sequence;

– the realization of the right to judicial protection requires law enforcement activity of a court that, as a rule, does not complete the law enforcement process (as it is its stage) ending with the execution of the court decision. Such a conclusion stems from the analysis of the case-law of the European Court of Human Rights. It considers the execution of a court decision to be an integral part of a judicial proceeding within the meaning of Art. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

– the right to judicial protection is always exercised under certain procedures regulating both the grounds for applying for protection to the court and the procedure for carrying out the law enforcement process itself;

– the exercise of the right to judicial protection is carried out by various procedural means, as its content includes a number of rights-elements, each having its own peculiarities of legal regulation. However, the same means of exercising of this right may be used in different procedural areas;

– the right to judicial protection is realized in the form of legal relations. The content of such relations is in the actual behaviour of their subjects.

Nevertheless, the universality of the nature of the right to judicial protection, however, does not exclude the specifics of its implementation in a particular type of proceedings.

We share the point of view of D.D. Luspenyk that the judiciary is a complex system of institutes, stages and proceedings, which together determine a certain unified standard of justice. However, the recognition of judicial law as a complex branch of law neither denies nor encroaches the right to the existence of procedural branches of law. The unified standard of justice only requires the reduction of differences in the content of legal norms governing procedural legal relations. It is impossible to demand (or insist on) unification of a procedural form in all cases and it does not correspond to the modern realities of the judiciary. By establishing the differentiation of court proceedings, a legislator provides for the peculiarities of consideration of certain cases that are dependent upon relevant proceedings. Nevertheless, it is reasonable to unify the standards of justice – the principles of justice, stages, their order, the procedure of the execution of court decisions, the procedure for appealing, etc. The basis for this conclusion is the commonality of an object of judicial protection that is realized in different types of proceedings by the protection of rights, freedoms and legitimate interests of natural or legal entities, the interests of the state and society.

Court decisions

Another additional point we would like to make in favour of the separation of judicial law is the nature and legal force of court decisions. Currently, not only decisions of the European Court of Human Rights or the Constitutional Court are recognized as sources of law, but also decisions of the Supreme Court. Its legal conclusions are binding in the law enforcement practice of courts and other law enforcers. Thus, the level of development of

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legal science and practice allows recognizing the powers of courts to interpret the law, to formulate legal grounds for regulating legal relations not regulated by law and to establish the content of legal rules that is more relevant for today. They may also change the content of the rule or include some ideas that were not laid down when adopting regulations. As noted by S.V. Shevchuk, Western literature uses a special term for such powers of courts – judge-made law. It is understood as law established in a court precedent or a court decision. It may also be perceived as law derived from a court decision as opposed to regulations or administrative practice.

Therefore, summarizing the above, we emphasize that legal science and practice do not stand still. The emergence and development of new social and legal relations create preconditions for the emergence of new branches of law and the revision of the system of modern law. In our opinion, today all the prerequisites for the separation of judicial law as a complex branch of law do exist. The subject of judicial law is the legal regulation of social relations arising in the implementation of the right to judicial protection. Hence, judicial law combines several specific (one might even say unique) legal relations. The specificity of the mentioned relations provides for the interaction of substantive law (which determines the statutory provisions on the judiciary and the status of the judiciary, the organization of prosecutorial and advocacy activities) and procedural law (which determines the general principles of judicial process as of a mechanism for the exercise of the right to judicial protection).

Conclusions

The judicial reform carried out in the country should have a complex character. Its task is to embrace and regulate not only a strong relationship of different judicial proceedings types but also matters of the judiciary.

Moreover, it should be kept in mind that the tasks of the judicial reform include not only the linkage within the judicial system but also the provision of an interaction mechanism between a state and society (namely, external links). This mechanism should have a regulatory framework. It creates favourable conditions for the integrated study of the problems of justice in all aspects of the judiciary as the field of state activity. The concept of judicial law is designed specifically for the strengthening of judicial power as it possesses essential characteristics of state power and has to execute on the function of judicial protection. This function is fundamental for a law-governed democratic state.

The meaning of the concept of judicial law both in theoretical and practical aspects is crucial for the acknowledgement of the self-sufficient role of judicial law in the legal system, the understanding and the execution of judicial law for a court to be able to provide judicial protection. Therefore, it should be emphasized that judicial protection as a function of judicial power is the key and integral part of all procedural activities. Furthermore, the function of protection is inherent in the activity of all state structures.

In general, the concept of judicial law prescribes the formation of a complex branch of law that unifies provisions on judicial protection of human rights and fundamental freedoms. It is important to note that procedural branches of law should not be substituted during the formation of judicial law. Yet they should be developed in parallel at the same time. When judicial law becomes formed and acknowledged as an independent branch, procedural law will not lose its independent significance in the legal system. Even more, these are means of judicial law that may ensure the unity of the constitutional principles of justice, the unity of functions, the commonality of judicial methods, evidence, evaluation criteria, requirements to judicial acts and approaches to their legal force and binding nature. This is the main task of judicial law.

Social relations form the subject of the judicial law science. These relations bring procedural branches of law in proximity with one another and judiciary. It brings to life the idea of the judicial law codification in a separate legal act. Hence, the practical role of judicial law science is in the actuality of such an idea.

The diversity of legal relations and the multidimensionality of legal regulation subject shape the difference in methods of judicial law legal regulation. It should be mentioned that relations stemming from the exercise of the right to judicial protection combine different methods. Such methods are imperative, dispositive, adversarial (in court proceedings), coordinative ones (in organizational and managerial relations), etc. Thus, judicial law refers to complex branches of law.

Conflict of interest

None to declare.

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