

УДК 159:347.9

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CONFLICT AS A CONSTITUENT OF CIVIL PROCEDURE

The psychological concept of conflict, its kinds and varieties are researched in this article. Parties of the conflict are also considered, as its subjects, and objects that have general lines and are displayed in the civil procedure. The basic signs of conflict and dynamics are marked in the civil procedure. The general theoretic methods of resolving of conflict and variation of decision of the conflict are described in the civil procedure.

Keywords: conflict; subjects (parties) and objects of conflict; interpersonal conflict; personality conflict; civil procedure.

Досліджено психологічне поняття конфлікту, його особливості та види. Визначено загальнотеоретичні методи подолання конфліктів у сфері цивільного процесу.

Ключові слова: конфлікт; суб'єкти й об'єкти конфлікту; міжособистісний конфлікт; конфлікт у цивільному процесі.

Исследованы психологическое понятие конфликта, его особенности и виды. Определены общетеоретические методы преодоления конфликтов в сфере гражданского процесса.

Ключевые слова: конфликт; субъекты и объекты конфликта; межличностный конфликт; конфликт в гражданском процессе.

Actuality. In the Art. 1 of the Civil procedure code (further – CPC) is marked that the «task of the civil rule-making are fare, unprejudiced and timely consideration and dispatch of the civil matter with the aim of protection of the unrecognized or contested rights,

freedoms or interests of a physical persons, rights and interests of legal entities, interests of the state» [1].

Having analysed the task of the civil procedure it is actually possible to admit that in basis of the most civil cases that are being proceeded in courts, such social-psychological phenomenon as conflict lies.

Raising of problem. The range of problems of conflict is investigated by the different areas of science, first of all: by sociology – as displays of social conflict, by psychology – as the psychological states of man and interpersonal relations, by jurisprudence – as international conflicts. Conflicts were examined and investigated in the scientific searches of scientists, namely: philosophers (Heraclitis, Plato, Democritus, Aristotle, Confucius, I. Edging, G. Hegel, L. Feuerbach), sociologists (G. Zimmel, P. Sorokin, K. Klauzevytsya), psychologists (Z. Freud, O. Ya. Antsupov, O. O. Malyshev, S. M. Emelyanov, G. V. Lozhkina, N. Povyakel, S. Syomina and others).

Thus, in particular, more investigational are the conflicts in the field of law-enforcement and law-applied activity, that was represented in scientific works of V.G. Androsyuk, D.O. Alexandrov, B.I. Baranenko, L.I. Kazmirenko, M.V. Kostytskyi, Ya.Yu. Kondratiev, G.O. Yuchnovyts and others. At the same time, without regard to the ramified subjects of the scientific researches, the problem of conflict in the civil procedure, going out of its tasks however remains scantily explored. It carries juridical-psychological character that violates the necessity of realization of further scientific searches in this plane. On this basis, let's pay attention to the fundamentalness of these questions at determination of features of display of the conflict phenomena in the civil procedure. It is herein possible to see the primary purpose of this article.

Exposition of basic maintenance of the article. The necessity of the use of the conflictological knowledge consists for the civil procedure, first of all, in the dispatch of the issue (overcoming of contradictions and collisions of parties) with the aim of protection of rights, freedoms and interests of physical and legal persons, and also interests of the state. Taking it into account there is a sense to speak about the possibility of the use of general theoretic principles of conflictology with their further extrapolation within the limits of the decision of tasks of the civil procedure.

In the word for word translation from Latin a «conflict» means a «collision». But it can be a collision of parties, forces, ideas, thoughts. However, investigating the opinions of different scientists, it is possible to come to the conclusion, that there is no a sole opinion in this question. So we should agree with the opinion of F. Vasylyuk, that «if to aim to find the definition that would not conflict with none of the existent views to the conflict, it would sound absolutely empty: a conflict is a collision of something with something» [5, p. 20].

Any conflict, including the one in the civil procedure, envisages the presence of its subjects (participants) and has the object. Parties of the conflict are the subjects of social cooperation, that are in the state of conflict, or those, who openly or hidden support the direct participants. One should mark that the side of the conflict can be any person, a group of persons or organization on the whole, thus they can operate both consciously, and unconsciously or to the presence of the conflict situation, aims and tasks of the opposition.

We should mention that the party of the conflict may occur an extraneous by chance appeared in the zone of conflict and does not have any interest in it.

In the civil procedure, as well as in other socionomy areas of knowledge, direct and side participants of the conflict are distinguished. The first ones pursue their personal interests in the real or forecast conflict, others don't have such, but can provoke a conflict and assist to its development; to assist the reduction of the intensity of the conflict to its complete freezing; to support one of the parties of the conflict or both simultaneously.

As reasons out of that the object of the conflict are considered to be the reasons, which provoke a conflict situation and caused its outgrow in obvious opposition of the parties, most civil trials have a conflict situation or conflict to be the basis of the issue where the parties cannot find the decision and that's why apply to the third party for help.

From here it deemed to be wiser to define the basic signs of the conflict, which may include:

the presence of contradictions, both real and imaginary, or, even, invented;

the character of communication in the direction of confrontation;

the activity of parties;

the emotional state, even «to intensifying of the negative emotions or complete uncontrolledness».

The suggested features are brightly represented within the limits of display of the conflict phenomena of the civil procedure. Thus, in particular, lawsuit realization a presence of contradictions is the basis of the first sign of the conflict. These contradictions are present in the issues about the origin and termination of the right of ownership, in the issues related to the inheritance because none of the parties wants to lose the part of property.

The second sign of the conflict, character of communication in the direction of confrontation, has its display in the above-mentioned matters, and also in the issues about divorce, labour disputes and conflicts that arise up in the labour collective circuit. Each of the parties of the process feels mutual hostility and unwillingness to communicate.

The third sign of the conflict appears in all civil cases of the lawsuit realization. Each of the participants of the process aspires to victory for anything, using conviction, intimidation, blackmail, threats and, even, physical influence. But, the most expressive display of this sign is inherent to the cases, related to the distribution of property at the divorce and at the inheritance.

The fourth sign appears exactly in the issues, related to the right of ownership (distribution of property at the divorce of the married couples).

Thus, determinant of origin of the conflict phenomena is presence of irresponsible reasons and internal experiencing as psychoanalytic basis and social-psychological ones, when a conflict is differentiated due to the motivational direction. In the civil disputes all signs of the conflict phenomena have motivational direction.

Continuing our theoretical analysis, we shall consider the necessity in future to consider kinds and varieties of conflict and their displays in the civil procedure.

The following types of conflicts are distinguished:

Upon the displays: social-public and social and domestic;

Upon the method of decision: violent, non-violent;

Upon the duration and tension: stormy fleeting, of sharp and long duration, poorly expressed and languidly aleak, poorly expressed and fleeting;

Upon the social consequences: structural (productive) and destructive (destructive);

Upon the article of conflict: realistic and unrealistic;

Upon the form of the display: hidden and unconcealed;
Upon the nature of origin: situational and provoked;
Upon the sphere of origin: official and non-official;
Upon the position status of the participants: «horizontal» and «vertical».

Mostly there are such types of conflicts as: interpersonal, intrapersonal, intergroup, intragroup.

Intrapersonal conflicts are the collision inside the personality of equal in force, but oppositely controversial reasons, necessities, interests. Their characteristic feature is a choice between a desire and possibilities, between a necessity to execute the observance of necessary norms.

Interpersonal conflicts are the contradictions, misunderstanding between a few people; as a situation of opposition of the participants, that is perceived and experienced by them as a psychological problem, that needs a decision and causes the activity of the parties, sent to overcoming of contradiction in the interests of both or one of the parties.

Interpersonal conflicts have such displays:

a conflict of interests (motivational interpretation) – the situations, that touch aims, plans, aspirations of the participants and are incompatible;

the valued conflicts (cognitive interpretation) – the situations in that the divergences between the participants are related to the incompatible presentations;

role-play conflicts (activity interpretation) – arise up through the violation of norms and rules of cooperation and can have possible character [4].

Intergroup conflicts are the contradictions, that arise up at cooperation both between the groups of people and between the separate representatives of these groups.

Intragroup conflicts are the conflicts of interests, aims, values, necessities, reasons between the group and individual interests.

The given classification of types of the conflicts is shown in all spheres of their display. But it is deemed wiser to research the types of the conflicts. Intergroup conflicts have their display in labour collectives, organizations. Intragroup – in organizations and can have international character. Therefore intrapersonal and interpersonal types of conflicts are the most interesting (to our opinion) for consideration.

In the civil lawsuit we shall investigate such types of social and domestic conflicts, that is confirmed by the variety of conflicts with

stopped up in them causally-motivational connections. In the lawsuit realizations of the civil procedure, in which the questions in relation to the inheritance or the right of ownership are decided it is possible to define such displays of the interpersonal conflict, as a conflict of interests. Exactly in the context of motivational interpretation, the incompatibility of aims, plans, aspirations of participants is researched.

Intrapersonal conflict is clearly traced in these lawsuits, as:

between «want» and «want»;

between «can» and «can't»;

between «want» and «can't»;

between «necessary» and «necessary»;

between «want» and «necessary»;

between «necessary» and «can't» [6, p. 93].

In civil lawsuits considered the questions in relation to the divorce of the married couples, mostly the valued conflicts arise up. Divergences between the participants, related to the incompatible presentations, are researched in the context of cognitive interpretation. The conflict of values arises up, when the differences «take» into account to the personality exposure of the other side.

Having analysed the above-mentioned we shall determine that the civil procedure inherent the social and domestic type of conflict, where the basis of the contradictions are the following types of the conflict, as interpersonal and intrapersonal conflicts.

Considering the signs of the conflict and its kinds, it is necessary to pay attention on the dynamics of the conflict and ways of its decision in the psychological context and possibility of their decision in the civil lawsuit.

There are many points of view in relation to the stages of motion of the conflict. Summarizing the opinions of the scientists [A. Belkin, A. Ishmuratov, T. Sulimov, N. Fedenko, S. Frolov], it is necessary to mention such stages of passing of the conflict in the civil procedure:

the origin of the conflict situation;

the apogee of the conflict;

the decision of the conflict.

Such stages are preceded by the origin of the conflict situation:

an incident is a situation at that one of the parties starts acting, harming to other side;

a realization of such situation to be a conflict one (real, imaginary or invented).

An apogee of the conflict is opposing of the parties in form of demonstrative expressions or, even, physical actions. It has severe emotional character and differs in the high degree of tension of the participants.

Decision of the conflict is a removal or minimization of problems and achievement of the consent between the participants.

Let's describe the methods of decision of the conflicts :

- 1 – prevailing – victory of one party over the other;
- 2 – surrender – absolute concession of the other side;
- 3 – outlet – one of the parties refuses to participate in the conflict;
- 4 – integration – the decision, that satisfies both parties is made;
- 5 – compromise – the concession of both parties, when none achieves the aim [5, p. 40–41].

Except the abovementioned methods of decision of the conflicts, there are certain technologies of their realization:

force methods – application of physical or psychical appliances of violence;

negotiations;

participation of the third party, neutral and passionless intervention from the person, provided with the authority, power or special competence.

The third party has a few forms of interference with a conflict:

I – mediation, when the position of the mediator is neutral and not necessarily undertakes to the attention;

II – reconciliation – attention is accented on the process by means of which the conflict is decided;

III – arbitration – recommendations of the third party are obligatory.

Psychologically the most effective are the following directions of decision of the conflicts:

- 1) precaution of the development and accumulation of the differences in the estimations, views, aims;

- 2) achievement of the mutual understanding – envisages the influence on the opinion of the participants of the conflict, when opposing is obvious, and every party aims to suggest the arguments to its defence, preferentially interpreting the facts;

3) transition of the conflict from the emotional level on the intellectual level – the prohibition of tactless verbal attacks, offenses, threats with the aim of overcoming of surexcitation of the parties and adjusting of their mutual relations;

4) transformation of the reasons of confrontation into the reasons of search of consent.

A lawsuit is the apogee of conflict of the parties. For this reason it is necessary to find its decision by the party that will not be interested in the article (object) of the conflict. Participation of the third party as one of factors of technology of application of decision of the conflict is used in such case. Judge is the third party of the decision of the conflict in the civil lawsuit. He comes forward as a person, provided with the authority, power and special competence.

Taking into account the brought general theoretic conflictological positions we shall consider the variations of the decision of the conflicts in the civil procedure.

One of the methods of decision of the conflict, as it was marked, is prevailing. In the trial such method of decision of the conflict is absolute, as a party of the conflict gave the exhaustive and implicit proofs of prevailing above the other side. For example, at the divorce of the married couples children remain to live with the mother. It is legislatively prescribed in the Domestic code of Ukraine [2]. It means, the prevailing of one of the parties is absolute, but this conflict thus is not decided, it is delayed in time. The father, in the abovementioned example, has the right to apply to the Appeal court with a lawsuit in relation to the overruling of the court decision. On the other hand, there is a probability of complete surrender of father and confession after the woman of all rights.

Given example provides us the possibility to show two methods of the decision of the conflict situations at once: prevailing and surrender.

Also, in the trial there is authenticity of the exit of the party from the conflict. Such method of decision of the conflict is used according to the Part 1 of the Article 33 pf the Civil Code: «Replacement of improper defendant, bringing in of co-respondents): Court upon the solicitor of the plaintiff, not terminating the trial, replaces the first defendant by the proper defendant, if a wrong person was sued, or brings over to participation in the issue the other person as co-respondent» [1].

The method of decision of the conflict as integration is used by the judge when the parties conclude an accord and satisfaction (Art. 175 of CC). An «accord and satisfaction constitutes by the parties with the aim of settlement of the dispute on the basis of mutual concessions and can relate to the rights and duties of the parties and subject of the lawsuit only» [1].

Also there is a probability of acceptance of the compromise in such cases, when the third person that enters into the already commenced process by filing of the suit for the defence of the independent rights for the purpose of the dispute and the decision on the issue can influence on their rights [3, p. 62].

Thus, in the civil procedure the basic methods of decision of the conflict situations (first of all prevailing, surrender, exit, integration, compromise) find their displays. Also, one civil lawsuit can have two methods of decision of the conflict, see the given example.

Summarizing above said we shall mention that the most conflict situations and conflicts in the civil procedure are constrained, first of all, with the individually-psychological features of its participants. They are conditioned by the specific of the processes that take place in the psyche of the person during his/her co-operating with other people and environment.

Personality contradictions come forward as the principal reasons of the conflicts, such as a subjective estimation of behavior of other party as impermissible; subzero conflict steadiness; bad empathy development; inadequate level of solicitations; character accentuation. To the interpersonal conflicts inherent such displays as conflicts of interests, valued conflicts and role-play conflicts.

The methods of decision of the conflicts as a psychological problem found the branch in the civil procedure at the decision of different civil disputes.

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