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## The problems of defining the legal nature of the court judgement

### Проблеми визначення правової природи судової ухвали

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Written by:

**Senyk Svitlana**<sup>15</sup><https://orcid.org/0000-0003-3492-5282>**Churpita Hanna**<sup>16</sup><https://orcid.org/0000-0003-3915-347X>**Borovska Iryna**<sup>17</sup><https://orcid.org/0000-0002-4961-9707>**Kucher Tetiana**<sup>18</sup><https://orcid.org/0000-0002-0750-7782>**Petrovskiy Andrii**<sup>19</sup><https://orcid.org/0000-0001-8607-282X>

#### Abstract

Description: The purpose of the article is to consider the procedural legislation on the functioning of court decisions as one of the types of court decisions. The subject of the study is court rulings in the Civil Procedure of Ukraine. The scientific study of judgments in civil proceedings was conducted on the basis of the complex use of general scientific and special methods of scientific knowledge, namely: dialectical, formal and dogmatic, system analysis, system and structural, hermeneutic, legal and comparative, legal and modeling, method of theoretical generalization. Results of the research. The formation and development of the doctrine of court decisions is analyzed. The notion of a court decision, a court decision is defined, and also the provisions of normative legal acts on this issue are considered. The features inherent in a court decision and a court decision in particular, as well as the rules for issuing court decisions are considered. Practical meaning. The clear system of requirements for a court decision as a procedural document and law enforcement act is established. Value / originality. Emphasis is placed on the need for

#### Анотація

Опис: Метою статті є розгляд процесуального законодавства щодо функціонування судових ухвал як одного із видів судового рішення. Предметом дослідження є судові ухвали в Цивільному процесі України. Наукове дослідження судових рішень у цивільному процесі проводилось на основі комплексного використання загальнонаукових та спеціальних методів наукового пізнання, а саме: діалектичного, формально-догматичного, системного аналізу, системно-структурного, герменевтичного, порівняльно-правового, правового моделювання, теоретичного узагальнення. Результати дослідження. Проаналізовано становлення та розвиток вчення про судові рішення. Визначено поняття судового рішення, судової ухвали, а також розглянуто положення нормативно-правових актів з даного питання. Розглянуто ознаки, які притаманні судовому рішенню та судовій ухвалі зокрема, а також правила оформлення судових ухвал. Практичне значення. Встановлено чітку систему вимог, які висуваються до ухвали суду як процесуального документу та правозастосовного акту.

<sup>15</sup> PhD in Law, Associate Professor of Civil Law and Legal Proceedings Department Ivan Franko National University of Lviv, Ukraine.

<sup>16</sup> Doctor of Law, Professor, Professor of the Department of Civil Law Disciplines of the National Academy of Internal Affairs, Ukraine.

<sup>17</sup> PhD in Law, Associate Professor, Associate Professor of the Department of the Department Civil Law Disciplines of the National Academy of Internal Affairs, Ukraine.

<sup>18</sup> Doctor of Law, Associate Professor of the Department of Theoretical and Private Law Disciplines of the Private Institution of Higher Education "Kyiv International University", Ukraine.

<sup>19</sup> PhD in Law, Associate Professor, Associate Professor of the Department of Civil Law Disciplines of the National Academy of Internal Affairs, Ukraine.



further research to reveal the essence of the court decision as one of the elements of the mechanism for regulating legal relations.

**Key words:** civil proceedings, court decision, judicial act, rule of law, judicial practice, legality, establishment of circumstances.

## Introduction

An individual, his (her) rights and liberties are the pinnacle of all virtues in the legal sector. Consequently, the State is responsible for ensuring and approving them. Proper implementation of the State's obligations is due to the effective operation of the entire law enforcement system. Justice plays a special role in ensuring the interests of the people.

The purpose of the court is to ensure the right to due process, which is guaranteed by the Main Law and the relevant legal instruments of Ukraine (Law of Ukraine No. 1402-VIII, 2016). The trial ends with a court decision, which has a procedural form enshrined by law. The authority of each legal decision affects the public consciousness, implements an educational function, and helps to solve the problem of legal nihilism. Therefore, the court decision, regulating certain legal relations between the interested parties, is designed to guarantee the defense of violated rights and freedoms, safeguarded by the law.

In particular, by issuing a decision, the court establishes liability for failure of the parties to the proceedings to perform their duties, adjusts their powers and obligations, ensures access to justice, the rule of law, etc. Thus, a comprehensive description of the legal nature of a judgment will allow us to investigate certain features inherent in it, given: the absence of the concept of "court decision" in national legislation; different approaches to the essence of legal relations that arise at the stage of its execution; study of the judgment in terms of its proper implementation; legal consequences after its enforcement; the need to improve the current civil procedural legislation, etc.

On the grounds of the research conducted, the Authors propose their own definition of judgment, what will contribute to increasing its theoretical and practical value as an element of the mechanism of legal regulation of civil legal relations.

Цінність/оригінальність. Акцентовано увагу на необхідності проведення подальшого дослідження для розкриття сутності ухвали суду як одного із елементів механізму регулювання правових відносин.

**Ключові слова:** цивільне судочинство, рішення суду, судовий акт, норма права, судова практика, законність, встановлення обставин.

## Methodology

The scientific study of court decisions in civil proceedings was conducted on the basis of the complex use of general scientific and special methods of scientific knowledge in their mutual connection and complementation of each other.

The application of the dialectical method made it possible to establish the relationship between the form and content of the judgment, the combination of the characteristics of its essence and manifestation as a law enforcement act and a procedural document.

The formal and dogmatic method was used in the analysis of the rules of the current civil procedure legislation of Ukraine and the practice of its application.

System analysis method made it possible to consider the place of a judgment as a separate element in the system of civil procedure relations and an independent system of interconnected structural elements.

System and structural method was helpful in the study of the form and content of the judgment and the allocation of its structural elements.

The interpretation of the texts of legal instruments and materials of court practice was carried out using the hermeneutic method.

Legal and comparative method enabled to equate various types of court decisions (rulings) within the current legislation in accordance with the European standards.

Legal and modeling method enables to draft the authors' determination of the term "judgment".

The method of theoretical generalization made it possible to substantiate the findings, which represent the results of the research.

## Literature Review

Formation and development of court decisions in civil proceedings has been the subject matter of the research by many foreign and domestic scholars.

Thus, Andronov indicates in his work “Judgment in the civil proceedings of Ukraine” (2018) that judgment is a procedural document that resolves procedural issues related to the progress of the case in court. The author considers such a concept traditional. The dissertation analyzes the development and formation of judgments, the features that distinguish them from court decisions.

Mayka (2019), having investigated the issue of execution of judgments in civil proceedings notes that by issuing a judgment the court responds to violations of legal norms by the party, provides access of any person to justice and has the right to influence the enforcement of the enacted judgment. The classification of judgments in civil proceedings is given and the proposal to supplement the Civil Procedure Code with the article entitled “Execution of court rulings” is made.

Pidchenko examines in his dissertation “Court decisions in cases of special proceedings” (2019) judgments that can be adopted in cases of incidental proceedings. The author believes that judgments are court decisions that address issues related to the initiation of civil proceedings. The paper describes the types of judgments that can be issued in cases of incidental proceedings. In particular, attention is paid to special cases of issuing a separate judgment in incidental proceeding.

Sivakumar (2016) drew the line between the judgment and judicial opinion and stated that a court decision should be clear, explicit, articulate and understandable even to the average person.

Qureshi (2020) distinguished between court judgement, decree and order, examined their features and peculiarities of the presentation.

The article also uses the corresponded judgments of the European Court of Human Rights, legal instruments regulating the issue under consideration as well as court practice.

## Results and Discussion

### Court decision as the most important act of justice

As it has been already mentioned, justice, which, in accordance with Article 124 of the Constitution of Ukraine (Law of Ukraine No. 254k/96-VR, 1996), is administered exclusively by courts, is among the main means of effective promotion and protection of human rights.

The court should ensure fair trial in order to establish the violation of the disputed laws and freedoms of an individual, legal entity and the interests of the State in compliance with the provision of substantive and procedural law. The outcome of such an argument is court decision made in conformity with the demands of the applicable law (Andronov, 2012, p. 287).

According to the decision of the Plenum of the Supreme Court of Ukraine No. 14 (2009), court decision is the most important act of justice, which aims to protect human rights and freedoms in accordance with the rule of law. In this regard, courts should strictly adhere to the requirements of legality and legitimacy when making a court decision (Law of Ukraine No. 1618-IV, 2004). Thus, court decision, which concludes the case, testifies to its value not only for the participants in the process, but also for society as a whole.

Andronov indicates that at the beginning of the 20<sup>th</sup> century, the attention of researchers was paid to the lower court’s decision (Andronov, 2018, p. 228). It was believed that the role of a court decision is a response to an appeal to the court, to a lawsuit. And the decision of the court proclaimed the right of the parties. Accordingly, the detailed examination of the form of action for the protection of rights began, which was reflected in numerous scientific works. It is believed that this approach is the result of the classification of court decisions that exists nowadays.

### Types of court decisions

Currently, there are the following types of judgments in line with Article 258 of the Civil Procedure Code of Ukraine (Law of Ukraine No. 1618-IV, 2004) (hereinafter – the CPC of Ukraine): 1) judgments; 2) decisions; 3) resolutions; 4) court orders. Each of these procedural acts can be considered a decision, as it expresses the mental activity of the court and the result of resolving disputes. But with regard

to the decision of the courts on different procedural issues, there should be a difference in procedural forms, i.e. the procedural document adopted by the court – the decision, judgment, resolution or court order – by its very nature must also correspond to the legal content.

We propose to consider in more detail this type of court decision as a court decision.

According to the Legal Dictionary-manual (2021), judgment in civil proceedings is a document, to which individual questions put to the court are addressed. In other sources, the following definition can be found: it is an oral or written court decision that resolves issues related to the proceedings (OnlineCorrector, 2021). Zahainova (2007, p. 313) states that judgment is a judicial act issued in the manner prescribed by law and in the appropriate procedural form, which resolves issues related to the administration of justice in civil proceedings". Frolova (2014, p. 76) notes that "it is not only the results of interim issues of civil proceedings that are processed through judgments, but also the completion of the process without resolving the case on the merits".

### **The concept of judgment**

Unfortunately, the domestic civil procedural legislation does not enshrine the concept of "judgment" or "court judgment", just sets requirements for its resolution. Among them: the content of the judgment (Article 260 of the CPC), the procedure for entry into force of the judgment (Article 261 of the CPC), the procedure for issuing a separate judgment (Article 262 of the CPC), etc.

Most scholars consider judgment to be a procedural document that addresses the problems of the progress of a case. However, in some cases, judgment can be issued by a court before and after the trial, so this approach has lost its relevance.

Zeider (1959) indicates that judgments and decisions are the types of court rulings, but they are different in their procedural nature, as judgments address certain issues that arise in the case.

Abdullina (1964) notes that judgments are the acts of justice that are issued in conformity with the law and resolve a number of issues that arise in the process, but do not resolve the case on the merits. That is, one can see that the views of scientists in this regard are similar. But is such a

definition relevant nowadays? To answer this question, it is necessary to consider the properties of court judgments and the requirements imposed on them.

### **Requirements that are put forward to a court judgment**

Let's start with the requirements that are inherent in both court judgments in particular and court decisions in general, namely: legality; validity; completeness; clarity; precision; motivation; compliance with the procedural form in conformity with the law. The listed requirements are also supplemented by comprehensiveness, fairness, clarity, etc. But there are two main ones among them – validity and legality.

According to Art. 263 of the Civil Procedure Code of Ukraine (Law of Ukraine No. 1618-IV, 2004), a decision made by a court pursuant to the rules of substantive law under the norms of procedural law is legal one. Reasonable is the decision made on the grounds of completely and thoroughly investigated facts, to which the litigants appeal as the cause of action, supported by the evidence that was studied at the trial. At the same time, such term as the «motivation» of a judgment arises in the civil procedural legal field. Opinion № 11 on the quality of judicial decisions (Council of Europe, 2008) states that clear reasons and justifications are the key demands for judgments and a core element of the right to a just process. The Code of Civil Procedure does not provide for such a requirement, but the Code of Criminal Procedure does. According to Art. 370 of the Criminal Procedure Code of Ukraine (Law of Ukraine No. 4651-VI, 2012), the motivated decision shall contain an appropriate and sufficient reasons and grounds for its adoption.

According to the case law of the European Court of Human Rights, the criteria for the motivation of a court decision are: the decision is a statement that the parties have been heard by the trial; verdict is the result of the judge's examination of the evidence, which was carried out impartially and reasonably; the decision describes the reasonable actions by the court; the decision clearly indicates the reasons for the trial, which gives grounds to properly analyze its position, etc. (Morozov, 2019).

Moreover, adequate reasoning requires that judges have sufficient time to prepare decisions. Thus, the court decision must contain answers to the arguments of the parties; examination of the circumstances of the case and issues of law; if

necessary, interpretation of the law, etc. In this regard, the judgment of the European Court of Human Rights in the case of *Hadjiyannakou v. Greece* (2019) states that “the court must clearly indicate the grounds, on which its decision is based” (Judgment of the ECHR, 2019). That is, we can state that the concepts of “motivation” and “reasonableness” are identical in civil proceedings, so there is no need to apply them in combination.

Similar legal view is enshrined in the judgment by the ECHR in the proceedings “*Seryavin and others v. Ukraine*” (2011). Thus, the Court stated that “judgments and other dispute settlement agencies should properly justify the reasons, upon which they are based. The extent, to which the court should fulfill the duty to justify the decision may vary depending on the nature of the decision [...] Another purpose of a substantiated judgment is to show the litigators that they have been heard. In addition, a well-founded decision allows a party to challenge it and to have it reviewed by a higher authority. Only with a reasoned decision can public control over administration of justice be ensured.

Besides, clarity is one of the important components of court decisions; it means that court decision must be made clear and understandable, contain logically structured decisions, and therefore be clear to the parties and the public. All of the above applies to judgments as a type of court decisions.

An interesting criterion for a good judgment is an accessible style. The in Consultative Council of European Judges in its Opinion № 11 (Council of Europe, 2008) emphasizes that “decisions must be clear [...], but each judge is allowed to select his (her) own fashion or use standards-based patterns”. That is, the decision should be clear and simple, but with an individual approach. Each judge can determine his own style, which will help him to better present the material, which will be clear to the parties. Consequently, the European Court of Human Rights is the flagship in new approaches to judgment writing, in each decision of which there is a balanced emotional pattern, selection of logically consistent headings, numbering of each paragraph, etc.

### **Content of a judgment**

Civil procedural legislation clearly defines the content of judgments, which are executed in the form of a procedural document. Accordingly, judgment consists of: 1) the introductory part indicating the date and place of its resolution;

name of the courthouse, surname and initials of the judge; names (titles) of the litigants; 2) descriptive part indicating the essence of the petition and the name (title) of the person who filed it, or another issue to be resolved by the resolution; 3) motivating part, indicating the grounds, on which the judge reached the findings, and the law that he (she) applied when issuing the decision; 4) operative part, indicating the conclusions of the court, the time limit and the procedure for making the judgment enforceable and for appealing against it (Art. 260 of the Civil Procedure Code of Ukraine). However, the content of the judgment is not always the same, it depends on the procedural order of its decision. For example, the name and initials of the court clerk may be missing from the introductory part, or only participants identified in the statement of claim are specified. That is, it all depends on the case.

ECtHR practice, documents of international organizations – the Committee of Ministers of the Council of Europe, the OSCE, the Advisory Council of European Judges; principles and standards of the Council of Europe, OSCE, EU, the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms should be considered when making judicial decisions in national proceedings. It follows that the court decision must meet the requirements of international standards, by which the Ukrainian parliament has agreed to be bound.

### **Separate judgment**

The CPC of Ukraine (Law of Ukraine No. 1618-IV, 2004) also enshrines the content of separate judgment. Thus, the court may issue a separate decision in the following cases: 1) finding violations of the law in the resolution of the dispute or deficiencies in the activities of legal entities, government agencies or other bodies; 2) in cases of abuse of procedural rights, violation of procedural duties, improper performance of professional duties; 3) in relation to a state executor, a private executor, if the court concludes that there are signs of a criminal offense in the actions of such persons; 4) in the case of false testimony by witness, expert or translator, false expert opinion or incorrect translation, falsification of evidence (Article 262 of Civil Procedural Code of Ukraine).

Let’s consider some examples. Thus, on September 08, 2020, the Shyshaky District Court of Poltava Region (2020) in the case № 551/506/20 in relation to the discovery of false

testimony provided by witness PERSON\_1 by a court, issued a separate judgment on immediate sending copies of case materials to Shyshaky police department to make a decision on the merits.

Donetsk Court of Appeal in Civil Cases (2019) issued a separate judgment in the case 237/3829/19 for fail to meet the requirements of procedural law on just, unbiased and prompt handling and addressing civil cases by the presiding judge. That is, we can state that a separate judgment in civil proceedings in these cases is a court decision, by which the court responds to the violations of the law found in civil proceedings by any party, as well as establishing the causes and conditions of such violations. The main thing is that such separate judgments meet the demands laid down by law.

The separate judgment of Ivano-Frankivsk Court of Appeal (2021) in the case No. 344/5006/16-ts, decided to notify Ivano-Frankivsk City Council of violations discovered during the consideration of a civil case in order to eliminate them, what must be reported to the Court of Appeal within three months of receipt of a separate judgment.

Kropyvnytskyi Court of Appeal (2012) in its separate judgment in case No. 398/3650/17, decided to send a copy of the specified separate judgment to JSC "Ukrposhta" in order to take measures to prevent a repetition of the shortcomings in the work of postal branches identified by the Court of Appeals in the future.

The CPC of Ukraine (Law of Ukraine No. 1618-IV, 2004) stipulates that the judgment comes into force immediately after its promulgation. Decisions rendered by a court outside the court or in court, in case of absence of all participants in the case, examination of the case without notice (summons) of participants in the case, come into force after signing by the judge (judges) (Article 261 of the CPC of Ukraine).

Basing on the ideas of the scientists on this issue, we can observe that there are controversial issues related to various ways to comprehension of the essence of the law itself. Enforceability is inherent only in a court decision, and not in individual judgments, as that is the decision that resolves the dispute.

We do not agree with this opinion, since judgment is the type of court decision, so why can't it come into force? Hurvich (1955) is of the same opinion; he emphasized that court decisions

are endowed with legal force, as courts resolve a number of issues that are necessary for justice.

However, the judgment of the European Court of Human Rights in the case of *Sovtransavto Holding v. Ukraine* (2002) states that "one of the main elements of the primacy of law is the principle of legal safety, which provides that court decision in any dispute, which has entered into force, cannot be questioned. That is, the legality of the court decision lies in the strict observance of the applicable rules of law provided for in this decision, its content and purpose, and cannot be questioned.

## Conclusion

Summing up, we can conclude that judgment is a type of court decision. The requirements for judgments are: legality, reasonableness, motivation, accuracy, compliance with a certain procedural form, accessible style. Judgment is an independent document, which consists of introductory, descriptive, narrative and operative parts. International standards must be taken into account when adjudication. Judgment comes into force immediately after its promulgation and may be appealed within the period specified by law.

The understanding of the judgment by the participants of legal relations as a legal act will contribute to increasing its theoretical and practical value as an element of the mechanism of legal regulation of civil legal relations. This will also ensure the fastest and most effective enforcement of the litigant's rights. To achieve this, it is necessary to understand what is court decision is and which are its features.

Based on the analyzed material, we propose our own definition of the judgment: judgment in civil proceedings is a lawful and reasonable court decision, which considers a civil case on the merits and resolves a dispute to defend rights, freedoms and legitimate interests of the person. At the same time, judgment is not only a legal way to protect them, but also a legal means for the court to fulfill its main social purpose – the administration of justice.

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