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Some Thoughts on the Development of the Discipline of Civil Procedural Law and Civil Procedural Legislation of the Republic of Uzbekistan

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Abstract: This article discusses the current issues facing the discipline of civil procedural law and civil procedural legislation. In particular, proposals and recommendations are put forward to eliminate problems in civil procedural legislation related to the development of the theory of civil procedural law, accelerating the process of digitizing the activities of courts, introducing a new principle of legality into civil procedural legislation, ensuring the principle of adversarial proceedings in practice, improving court orders, and ensuring the independence and impartiality of judges in appellate and cassation instances.

Key words: civil court, civil process, civil procedural law, legality, independence of judges, adversarial, digitization, court order, principle of legal certainty.

As a result of the judicial and legal reforms being implemented in our country, the guarantees of the impartiality and independence of the courts in the administration of justice have been legally strengthened. In this regard, the adoption of the Decree of the President of the Republic of Uzbekistan No. UF-5482 dated July 13, 2018 “On measures to further improve the judicial system and increase confidence in judicial authorities”, the Decrees of the President of the Republic of Uzbekistan dated July 24, 2020 “On additional measures to further improve the activities of courts and increase the efficiency of justice”, and the Resolution “On measures to digitize the activities of judicial authorities” dated September 3, 2020 have played an important role in further democratizing and liberalizing the judicial system in our country and ensuring the true independence of judges in practice. Also, in our country, the Decree of the President of the Republic of Uzbekistan No. PF-60 dated January 28, 2022, developed based on the principle of "From a Strategy of Actions to a Strategy of Development"Approved by decreeThe adoption of the “Development Strategy of New Uzbekistan for 2022–2026” has raised the improvement of legal science and education to a new level [1].

The judicial and legal reforms currently underway in our country require a systematic, in-depth theoretical and practical study of the problems arising in the processes of regulating activities related to the conduct of civil judicial proceedings, and the development of scientific and research work in this regard in relevant areas of solving modern problems facing legal disciplines. Therefore, let us dwell on this issue only from the point of view of the science of civil procedural law and civil procedural legislation.

It is necessary to understand what urgent problems the science of civil procedural law and civil procedural legislation currently face, how these problems should be solved, and to develop scientifically and theoretically based concepts for the future development of the theory and legislation of civil procedural law. In this regard, it is appropriate to implement the following priority tasks:

Firstly,Currently, the number of scientifically capable personnel in the fields of civil procedural law; economic procedural law; arbitration process and mediation is low, but these are scientific fields that need development in practice; the scope of work that needs to be done and the scope of scientific research that needs to be studied in the field of judicial practice to improve the practice of considering civil and economic cases, arbitration courts and mediation; in the future, it is urgent to establish

Volume: 4 Issue: 5 | May–2025 ISSN: 2720-6882
http://journals.academiczone.net/index.php/jiphr

modern scientific schools and a number of new scientific directions in the field of civil procedural law, economic procedural law, arbitration process and mediation. Therefore, it is necessary to improve scientific research in this field and develop scientific schools.

Secondly,One of the factors hindering the development of the theory of civil procedural law is the lack of a separate master's degree program that includes the areas of this field or disciplines taught within this field, which is a negative situation in the field of science and science within jurisprudence. For this reason, it is advisable to open a separate master's degree program at Tashkent State University of Law in the future to develop civil procedural law, economic procedural law, mediation, and arbitration. This will serve as an impetus for the systematic implementation of the system of training scientific and pedagogical personnel in the future and the further revitalization of research work in this area.

Thirdly,the prospects of digitization of civil court proceedings are of great importance in the implementation of electronic justice. The introduction of modern information and communication technologies into the activity of courts, the creation of information systems and resources that ensure the improvement of the efficiency of conducting civil cases in courts, the introduction of electronic document exchange, and the study and analysis of the best practices of developed foreign countries in this regard are among the urgent tasks of today.

Indeed, the use of modern information and communication technologies in the activities of civil courts accelerates the circulation of electronic documents, ensures the collection, processing, systematization and storage of relevant information. At the same time, it creates the opportunity to inform participants in the trial electronically through the information system and send them court documents and other correspondence. All this ultimately serves to increase the efficiency of justice, ensure its speed and convenience.

A number of regulatory legal acts have been adopted in Uzbekistan in this regard. Also, the Decrees of the President of the Republic of Uzbekistan No. PF-4947 dated February 7, 2017 “On the Strategy of Actions for the Further Development of the Republic of Uzbekistan”, No. PF-4966 dated February 21, 2017 “On measures to radically improve the structure of the judicial system of the Republic of Uzbekistan and increase the efficiency of its activities”, No. PF-5482 dated July 13, 2018 “On measures to further improve the judicial system and increase confidence in judicial authorities”, No. PF-6079 dated October 5, 2020 “On measures to approve the Digital Uzbekistan - 2030 Strategy and its effective implementation”, No. PF-6034 dated July 24, 2020 “On additional measures to further improve the activities of courts and increase the efficiency of justice” and No. PF-6034 dated July 24, 2017 As a result of the adoption of the Resolution No. PP-3250 of August 30 “On measures for the wider introduction of modern information and communication technologies into the activities of courts” and the Resolution “On measures for the digitalization of the activities of judicial authorities” of September 3, 2020, a number of modern information and communication technologies programs have been introduced into the activities of courts. In particular, remote access to courts, participation in court sessions using a videoconferencing system, automatic distribution of cases among judges, publication of court decisions on the Internet, electronic submission of enforcement documents for compulsory execution, and the “E-XSUD” information systems have been introduced.

However, today, there are many ways to implement new modern technologies in the activities of courts, digitize court activities, introduce artificial intelligence, optimize judicial processes, ensure their transparency, further improve the exchange of electronic documents and information between courts and other bodies, reduce the human factor in the field, organize online courts, and expand the range of interactive services provided by courts to citizens and entrepreneurs.speeding up work on expansion is one of the urgent issues.

That is why in our countryDecree of the President of the Republic of Uzbekistan No. PF-60 dated January 28, 2022, developed based on the principle of "From a Strategy of Actions to a Strategy of

Volume: 4 Issue: 5 | May–2025 ISSN: 2720-6882
http://journals.academiczone.net/index.php/jiphr

Development"Approved by decree The State Program for the Implementation of the “Development Strategy of New Uzbekistan for 2022–2026” in the “Year of Human Dignity and Active Mahalla”"The courtgradual digitization of the system, bureaucraticto the justice of citizens and business entities by eliminating obstacles and obstaclesimportant goals such as "fundamentally increasing the level of achievement" were set[2]. This is in the futureensuring electronic interaction between citizens and business entities with judicial authorities through digitalization of their activities, establishing electronic exchange of information with state bodies and organizations that require information necessary for the implementation of justice, and facilitating the implementation of judicial decisions by courtsrequires the implementation of important priority tasks, such as complete digitization of this process by sending leaflets in electronic form without a human factor.

Fourthly, one of the main tasks is to apply the principles of civil court proceedings in court practice and improve the procedural mechanisms in this regard.The principle of legality is a widely debated and discussed topic today. This is because today there is great competition among judges, and this situation is such that judges select and interpret legal norms at their discretion. Legality has become a process that is referred to by judges in relation to legal norms selected by them. In general law and historically, this is the opposite, and judges have performed the task of correctly applying the legal norm adopted by the legislator to the real situation and explaining it to the public. However, today we can witness that the application and interpretation of legal norms by some judges is also a reason to limit the principles of common law.

The principle of legality ensures strict and unconditional compliance and execution of laws by participants in civil proceedings, timely preparation and consideration of civil cases, application of procedural coercive measures against violators of the rules of procedure in court sessions, return, rejection of unfounded applications, suspension or termination of proceedings, leaving the application without consideration, strict compliance with the norms of substantive and procedural law by all participants in the judicial process, and legal resolution of civil cases. The importance of the principle of legality is also clearly manifested in the review of court decisions in the appellate and cassation procedures. Because in some cases, shortcomings and violations of the law committed by lower courts lead to the change or cancellation of these decisions by higher courts. This indicates the introduction of an effective system for protecting the rights and interests of citizens protected by law. Article 8 of the newly adopted Law of the Republic of Uzbekistan "On Courts" is called the principle of "Legality", according to which fair trials in the Republic of Uzbekistan shall be carried out in strict accordance with the law.[3].This principle is enshrined in Article 15 of the Constitution of the Republic of Uzbekistan, Article 4 of the Criminal Code, Article 11 of the Criminal Procedure Code and as an independent principle of other areas of law. In addition, the principle of legality is an international legal principle. No matter what legal democratic state we take, the principle of legality certainly applies there. However, in Chapter 2 of the Civil Procedure Code of the Republic of Uzbekistan, entitled “Principles of Civil Judicial Proceedings”, “Legality” is not expressed as a separate principle. If we pay attention to the civil procedural legislation of foreign countries in this regard, for example, Article 6 of the Civil Procedure Code of the Republic of Kazakhstan is called the principle of “Legality”[4].

In our opinion, given the role and importance of the principle of legality in the conduct of judicial proceedings, we consider it appropriate to officially introduce it as a separate article in civil procedural legislation. As our President Sh.M. Mirziyoyev rightly noted, “The rule of law means that documents issued by state authorities and administrative bodies, actions of officials must be in accordance only with the Constitution and laws."[5].

The rule of law also provides an individual with the right to protect their rights and freedoms through the courts, to appeal to the court against illegal actions of state bodies, officials, and public

Volume: 4 Issue: 5 | May–2025 ISSN: 2720-6882
http://journals.academiczone.net/index.php/jiphr

associations. Therefore, special attention is paid to the rule of law in ratings compiled by various international organizations and research centers. In particular, the international non-governmental organization The World Justice Project annually maintains a special “Rule of Law Index” worldwide. The “Transformation Index”, the “Bertelsmann International Foundation”, and the World Bank’s Quality of Public Administration indices list the rule of law as one of the indicators ensuring well-being.[6].

Indeed, the formal consolidation of the principle of legality as a separate article in civil procedural legislation ensures the rule of law in judicial proceedings, the equal subordination of subjects of civil proceedings to the law, and the principle of independence of judges. Therefore, it is proposed to introduce a new primary article on the principle of "Legality" in Chapter 2 of the Civil Procedure Code of the Republic of Uzbekistan, entitled "Principles of Civil Judicial Proceedings", with the following content::

Article 71. Principle of legality

The judge, persons participating in the case and persons assisting in the administration of justice, as well as all persons participating in the conduct of civil judicial proceedings, are obliged to strictly observe the Constitution of the Republic of Uzbekistan, this Code and other laws of the Republic of Uzbekistan and fulfill their requirements when administering justice.

The consolidation of this principle as a separate norm in civil procedural law serves to ensure the rule of law in the implementation of justice, and to ensure that court decisions are legal, justified, and fair.

The role of the country's Constitution in ensuring the true independence of judges is invaluable, because no matter which state body we consider, they conduct their activities in accordance with the Constitution and laws.

The strengthening of the principle of independence of judges in the constitution serves as a guarantee of the fairness and impartiality of the court in the performance of its duties to determine the true circumstances of the case, to create the necessary conditions for issuing a legal and justified decision in the conduct of civil court proceedings.

The civil procedural legislation of the Commonwealth states also recognizes that judges are subject only to the Constitution and the law. In addition, in order to reflect the norms of Article 136 of the newly adopted Constitution of the Republic of Uzbekistan in the Civil Procedural Code of the Republic of Uzbekistan, it would be appropriate to rename Article 9 of the Civil Procedural Code as “Independence of judges, their subjection only to the Constitution and the law” and to rephrase the first paragraph of the first part of this article as follows: “In the implementation of fair trial in civil cases, judges are independent and subject only to the Constitution and the laws.” Because the principle of independence of judges is guaranteed primarily by the Constitution. The Constitution is the main source of all laws. Also, Article 9 of the Civil Procedural Code does not contain any provisions on the guarantees of the independence of judges. In this regard, if we look at the procedural legislation of the Commonwealth states, in particular, Article 8 of the Civil Procedural Code of the Russian Federation, judges in Article 11 of the Criminal Code of Belarus, Article 9 of the Criminal Code of the Kyrgyz Republic, Article 4 of the Criminal Code of the Republic of Armenia, Article 12 of the Criminal Code of the Republic of Kazakhstanthe rule on guarantees of independence has been strengthened[7]. In our opinion, in order to eliminate these problems, the independence of judges dealing with civil cases should be additionally guaranteedIn order to ensure this, Article 9 of the Criminal Procedure Code, as part three, states: “Guarantees of the independence of judges shall be determined by the Constitution of the Republic of Uzbekistan and legislative acts.”It would be appropriate if the rule was introduced.

Fifthly,Decree of the President of the Republic of Uzbekistan No. PF-60 dated January 28, 2022 “On the Development Strategy of New Uzbekistan for 2022–2026”Approved by decreeThe State Program

Volume: 4 Issue: 5 | May–2025 ISSN: 2720-6882
http://journals.academiczone.net/index.php/jiphr

for the Implementation of the "Year of Human Dignity and Active Mahalla" sets out the following goals and objectives: "Implementing the principles of true equality and adversarial relations between the parties in the judicial process, that is, expanding the powers of the lawyer in procedural legislation, including the powers to collect and present evidence, radically increasing the potential of the bar association in protecting human rights, freedoms and legitimate interests, as well as fully satisfying the demand of the population and business entities for qualified legal services, introducing a system of providing free legal assistance to citizens in need of social protection at the expense of the state, in civil and administrative cases, along with criminal cases, systematizing legislative documents on the activities of the bar association and developing a directly applicable law, and strengthening the procedural status of the lawyer." This marked the beginning of a new stage of reforms in the field of advocacy.

The development of the adversarial principle in civil proceedings strengthens the process of evidence and proof. According to it, the parties defend their rights and interests by presenting evidence to the court and justifying their demands based on this evidence. But in order to fully implement the principle of controversy, it is necessary to involve qualified experts in the court process, that is, lawyers. In this regard, the civil procedural legislation of some countries has established the specific categories of cases in which a lawyer must be present, as well as the circumstances in which the court may appoint a lawyer to the parties. For example, in Article 50 of the Civil Procedural Code of the Russian Federation, in Article 67 of the Civil Procedural Code of the Republic of Azerbaijan, civil cases in which the participation of a lawyer must be strengthened[8].

In this regard, Section 4, Section 78 of the Code of Civil Procedure of the Federal Republic of Germany stipulates that a lawyer must be present as a representative of the party in the proceedings. According to this, in the Landgerichtshof and other higher courts, the parties shall be represented by a lawyer, and the authority to act in court, conduct the case and introduce the parties shall be exercised by the lawyer. In family cases, the parties and persons involved in the case shall be introduced by lawyers who may participate in the case in court.[9]..

In order to increase the effectiveness of the lawyer's participation in civil cases, in order to ensure the principle of adversary in practice, to guarantee the provision of qualified legal assistance to the persons involved in the case, it is desirable to strengthen the list of cases in which the lawyer must participate as a contractual representative in civil cases in the civil procedural legislation.

Sixth,In order to further simplify the work on issuing a court order, it is necessary to introduce information and communication technologies more widely. For example, as the German scientist and judge Heinrich Schnitger noted, in Germany, court orders are issued six times more often than in cases considered in the lawsuit procedure. A court order is an executive document issued for undisputed students. In Germany, a judge does not participate in this procedure. These works are performed by court employees (who are not judges). This process is also carried out systematically on the basis of electronic technology. The application can be submitted via the Internet[10].

Based on the above positive experience, taking into account the reduction of judges' workloads and the issuance of court orders on uncontested claims, it is advisable to introduce a provision in Chapter 18 of the Civil Procedure Code of the Republic of Uzbekistan entitled "Court Orders" on the issuance of court orders by an assistant judge.

Seventh,Filling gaps in civil procedural legislation and eliminating contradictions is one of the urgent issues. In turn, a number of institutions of civil procedural law play a special role in strengthening the authority of the judiciary and ensuring the true independence of the courts. One of these is the rejection of judges and other participants in the process in civil proceedings. The rule of inadmissibility of repeated participation of a judge in the consideration of a case is an important guarantee of an impartial and objective resolution of a civil case. Part three of Article 20 of the Civil Procedural Code

Volume: 4 Issue: 5 | May–2025 ISSN: 2720-6882
http://journals.academiczone.net/index.php/jiphr

of the Republic of Uzbekistan states that “A judge who participated in the consideration of a case in a court of appeal may not participate in the consideration of this case in a court of first instance or cassation instance.” If we analyze this norm, it is established that a judge who participated in the consideration of a case in a court of appeal may not participate in the consideration of this case only in a court of first instance or cassation instance. However, if the court's decision is overturned by the cassation instance and sent to the appellate instance for reconsideration, the judge who participated in the appeal may reconsider the case. Because the law does not provide for such a prohibition. Also, although Article 20 of the Civil Procedure Code of the Republic of Uzbekistan is called "Impossibility of repeated participation of a judge in the consideration of a case", the provisions of the third part of this article contradict the name of the article. This undermines the impartiality, independence of a fair trial, the objectivity of judicial proceedings, and the fair resolution of cases.

The experience of foreign countries in this regard shows that in paragraph 47 of Chapter 21, Part 1, Title 28 of the United States Code, entitled “Removal of Judge or Magistrate,” there is a provision prohibiting judges of the appellate court from participating in the appellate court again.[11]Article 18 of the Latvian Code of Civil Procedure provides that a judge who has participated in an appeal or cassation instance shall not be entitled to hear the case in the first instance or appellate instance.it is determined that he cannot participate in the hearing[12].

Based on the above experience of foreign countries, taking into account that Article 20 of the Civil Procedure Code of the Republic of Uzbekistan is entitled "Impossibility of repeated participation of a judge in the consideration of a case" and in order to ensure the impartiality of judges, in the future, in order to implement the norm existing in the legislative experience of foreign countries into our national legislation, it is advisable to introduce a norm stating that a judge who participated in the consideration of a case in the court of appeal may not participate in the consideration of the same case in the court of appeal.

In conclusion, the introduction of new ideas and concepts into the theory of civil procedural law leads to the development of the discipline, while the introduction of new civil procedural institutions, in turn, leads to the development of civil procedural legislation andfurther improvement of the procedural mechanism of conducting civil court cases,will lead to strengthening the guarantees of reliable judicial protection for citizens, ensuring the true, genuine independence of judges, increasing the level of fair trial, and bringing civil procedural legislation into line with generally recognized international norms and rules.

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Volume: 4 Issue: 5 | May–2025 ISSN: 2720-6882
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