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DISPUTED ISSUES OF LEGISLATIVE REGULATION OF LEGAL CONSEQUENCES OF THE PLAINTIFF LEAVING THE COURTROOM IN CIVIL PROCEEDINGS IN UKRAINE

Abstract. This article is dedicated to studying the disputed issues of legislative regulation of the legal consequences of the plaintiff or their representative leaving the courtroom in civil proceedings in Ukraine.

A systematic and consistent analysis of the provisions of the Civil Procedure Code of Ukraine has been conducted, concluding that item 2 of part 3 of Article 223 of the Civil Procedure Code of Ukraine may pertain only to the non-appearance at the court session of such a participant in a civil case as a third party who does not assert independent claims regarding the subject matter of the dispute, and only their absence does not constitute an obstacle for the court to continue considering the case without their participation. In the case of the non-appearance of such participants in the case as the plaintiff or the defendant, special legal consequences provided for by specific legal norms of civil procedural legislation must be applied: in the case of the defendant, a default judgment is conducted (part 4 of Article 223 of the Civil Procedure Code of Ukraine and part 1 of Article 280 of the Civil Procedure Code of Ukraine), and in the case of the plaintiff, the claim is left without consideration (part 5 of Article 223 of the Civil Procedure Code of Ukraine and item 3 of part 1 of Article 257 of Ukraine).

It has been concluded that leaving the courtroom is an independent ground for leaving the claim without consideration, which does not require the presence of features inherent in parts 3-5 of Article 223 of the Civil Procedure Code of Ukraine, and the provisions of Article 223 of the Civil Procedure Code of Ukraine, such as considering the case in the absence of the plaintiff or their repeated non-appearance, do not apply to the disputed legal relationships. Leaving the courtroom is an independent ground for leaving the claim without consideration.

It is proposed to amend part 6 of Article 223 of the Civil Procedure Code of Ukraine as follows: "if the plaintiff (or their representative) left the court session before the end of the case consideration without valid reasons and did not submit a request to the court for the case to be considered in their absence," and to supplement part 1 of Article 257 of the Civil Procedure Code with item 13, which reads: "if the

plaintiff (or their representative) left the court session before the end of the case consideration without valid reasons and did not submit a request to the court for the case to be considered in their absence".

Keywords: plaintiff, representative, grounds, leaving the statement without consideration, court session, ruling, civil procedure.

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ДИСКУСІЙНІ ПИТАННЯ ЗАКОНОДАВЧОГО РЕГУЛЮВАННЯ ПРАВОВИХ НАСЛІДКІВ ЗАЛИШЕННЯ ПОЗИВАЧЕМ ЗАЛИ СУДОВОГО ЗАСІДАННЯ В ЦИВІЛЬНОМУ СУДОЧИНСТВІ УКРАЇНИ

Анотація. Стаття присвячена вивченню дискусійних питань законодавчого регулювання правових наслідків залишення позивачем чи його представником зали судового засідання в цивільному судочинстві України.

Здійснено системний та послідовний аналіз положень Цивільного процесуального кодексу України (далі – ЦПК України) та констатовано, що п. 2 ч. 3 ст. 223 ЦПК України, може стосуватись неявки в судове засідання лише такого учасника цивільної справи як третя особа, яка не заявляє самостійні вимоги щодо предмету спору, і лише її відсутність не становить для суду перешкоди для продовження розгляду справи без її участі. У випадку ж неявки таких учасників справи як позивач чи відповідач, мають застосовуватись особливі правові наслідки, що передбачені спеціальними правовими нормами цивільного процесуального законодавства: у випадку відповідача проводиться заочний розгляд справи (ч. 4 ст. 223 ЦПК України та ч. 1 ст. 280 ЦПК України), у разі позивача – залишення заяви без розгляду (ч. 5 ст. 223 ЦПК України та п. 3 ч. 1 ст. 257 України).

Зроблено висновок про те, що залишення зали судового засідання є самостійною підставою для залишення позовної заяви без розгляду, яка не вимагає наявності ознак притаманних ч. 3-5 ст. 223 ЦПК України, а положення ст. 223 ЦПК України, такі як: розгляд справи за відсутності позивача, повторна його неявка, на спірні правовідносини не розповсюджуються, а залишення залу судового засідання є самостійною підставою для залишення позовної заяви без розгляду.

Запропоновано ч. 6 ст. 223 ЦПК України викласти в такій редакції: «якщо позивач (його представник) до закінчення розгляду справи без поважних причин покинув судове засідання і не подав до суду заяви про

розгляд справи за його відсутності», а ч. 1 ст. 257 ЦПК доповнити п. 13 такого змісту: «якщо позивач (його представник) до закінчення розгляду справи без поважних причин покинув судове засідання і не подав до суду заяви про розгляд справи за його відсутності».

Ключові слова: позивач, представник, підстави, залишення заяви без розгляду, судове засідання, ухвала, цивільне судочинство.

Formulation of the problem. According to Part 1 of Article 2 of the Civil Procedure Code of Ukraine, the task of civil proceedings is the fair, impartial, and timely consideration and resolution of civil cases to effectively protect the violated, unrecognized, or disputed rights, freedoms, or interests of individuals, the rights and interests of legal entities, and the interests of the state [1]. However, there are instances when the consideration of a case cannot conclude with its resolution because, for various reasons, the legislator excludes the very possibility of considering the content of the stated claim and, accordingly, making a decision on it. In such cases, the proceedings in the case end without a court decision in one of two forms provided by the legislator: closing the proceedings or leaving the statement without consideration.

Leaving the statement without consideration is the termination of proceedings in a civil case without a court decision, due to clearly established legal grounds, the list of which is exhaustive and not subject to broad interpretation. These grounds indicate the presence of circumstances in the case that prevent its consideration but can be remedied in the future. As a result, it does not preclude the possibility of reapplying to the court with an identical claim, i.e., a claim about the same subject matter, on the same grounds, and between the same parties [2, p. 52; 3, p. 450].

The grounds for leaving the statement without consideration, based on the functional orientation of the circumstances that constitute the basis for applying this institution, are divided into:

1. grounds indicating the illegitimacy of initiating proceedings in the case due to the plaintiff's (applicant's) violation of the conditions for exercising the right to apply to the court (subparagraphs 1, 2, 4, 8, 11 of Part 1 of Article 257 of the Civil Procedure Code of Ukraine);

2. grounds indicating the impracticality of continuing the consideration of the case due to the expression of will by one of the participants in the case to terminate the proceedings (subparagraphs 3, 5, 7 of Part 1 of Article 257 of the Civil Procedure Code of Ukraine);

3. grounds indicating the impossibility of continuing the consideration of the case due to the parties or one of them expressing a desire to replace the authority authorized to consider and resolve the case (subparagraphs 6, 12 of Part 1 of Article 257 of the Civil Procedure Code of Ukraine);

4. grounds indicating the failure of one of the participants in the case to fulfill the civil procedural obligation imposed on them (subparagraphs 9, 10 of Part 1 of Article 257 of the Civil Procedure Code of Ukraine) [2, p. 54].

Although the grounds for applying the institution of leaving the claim without consideration are exhaustive and not subject to broad interpretation, they are not limited exclusively to Article 257 of the Civil Procedure Code of Ukraine, as they can also be found in other provisions of this legislative act. One such ground is leaving the claim without consideration due to the plaintiff or their representative leaving the courtroom.

Analysis of recent research and publications. The study of the features and problematic aspects of applying this norm of the institution of leaving the claim without consideration has received very little attention from scholars. Such research has been conducted by scientists such as V. M. Kravchuk, O. I. Uhrynivska, H. V. Churpita, S. Ya. Fursa, and M. Yo. Shtefan, but only at the level of commentaries on the Civil Procedure Code of Ukraine or scientific manuals on civil procedural law. In addition, the fundamental revision of civil procedural legislation, which took place with the adoption of the Law of Ukraine "On Amendments to the Commercial Procedure Code of Ukraine, the Civil Procedure Code of Ukraine, the Code of Administrative Procedure of Ukraine, and Other Legislative Acts" dated October 3, 2017, No. 2147-VIII [4], caused significant changes in the legal regulation of existing civil procedural institutions and the emergence of a significant number of new norms aimed at improving mechanisms for the effective protection of violated, unrecognized, or disputed rights, freedoms, or interests of individuals, the rights and interests of legal entities, and the interests of the state.

Changes have also affected such an institution of civil procedural law as leaving the claim without consideration. In particular, the legislative definition of the legal consequences of the plaintiff or their representative leaving the courtroom in civil proceedings remains unclear and quite contentious.

The purpose of the article is to investigate the controversial issues of legal regulation regarding the ground for applying the institution of leaving the statement without consideration, specifically the plaintiff (or their representative) leaving the courtroom, and to develop appropriate proposals based on this to improve domestic regulatory legislation.

Presentation of the main research material. One of the grounds for leaving the statement without consideration, which, according to its functional orientation, is classified in the scientific literature as a measure to counteract the plaintiff's abuse of procedural rights during the civil case trial [5, p. 581; 6, p. 150; 7, p. 454], is the plaintiff or their representative leaving the courtroom [8, p. 141]. This ground for leaving the statement without consideration was first introduced into civil procedural legislation in 2004 with the adoption of the Civil Procedure Code of Ukraine and was regulated by subparagraph 9 of Part 1 of Article 207 of the Civil Procedure Code

of Ukraine, which remained in force until 2017. The constitutional judicial reform, accompanied by the adoption of new procedural codes, including the Civil Procedure Code of Ukraine, the updated version of which came into force on December 15, 2017, excluded such a circumstance as the plaintiff leaving the courtroom before the case was concluded and failing to submit a statement for the case to be considered in their absence from the general list of grounds for applying the institution of leaving the statement without consideration, as provided in Article 257 of the Civil Procedure Code of Ukraine. However, the legislator did not entirely abandon this ground for leaving the statement without consideration but retained it in Article 223 of the Civil Procedure Code of Ukraine, which regulates the consequences of the parties' failure to appear at the court hearing. Thus, according to Part 6 of Article 223 of the Civil Procedure Code of Ukraine, the consequences defined in Parts 3-5 of Article 223 of the Civil Procedure Code of Ukraine also apply if the party (or their representative) leaves the courtroom [1].

Currently, in cases where the plaintiff or their representative leaves the courtroom, courts, interpreting such actions as an abuse of procedural rights, leave the plaintiff's statement without consideration, referring to Part 6 of Article 223 of the Civil Procedure Code of Ukraine [9]. Therefore, it is difficult to agree with the assertion in the scientific literature that the legislator has completely abandoned such a ground for leaving the statement without consideration as the plaintiff leaving the courtroom [10, p. 445]. Although, we do not fully understand this legislative trend of regulating this ground for leaving the statement without consideration: removing it from the general list of grounds for leaving the statement without consideration, as established in Article 257 of the Civil Procedure Code of Ukraine, yet retaining it in Article 223 of the Civil Procedure Code of Ukraine, the provisions of which are dedicated to the general consequences of the participants in the civil case failing to appear at the court hearing. In our opinion, the previous legislative version that included the legal consequences of such a circumstance as the plaintiff (or their representative) leaving the courtroom in the general list of grounds for applying the institution of leaving the statement without consideration was more logical and appropriate. Therefore, we propose to return this ground to Part 1 of Article 257 of the Civil Procedure Code of Ukraine.

The update of civil procedural legislation was accompanied not only by the renewal of the general list of circumstances that constitute grounds for applying such a civil procedural institution as leaving the statement without consideration, but also by significant changes in the legal regulation of the consequences of the participants in the civil case failing to appear at the court hearing. This directly influenced the interpretation of the provisions of Part 6 of Article 223 of the Civil Procedure Code of Ukraine by the subjects of law enforcement activities.

In October 2021, citizen Ya. filed a lawsuit against the Structural Unit "Zhmyrnyka Electric Networks" of JSC "Vinnytsiaoblenergo" regarding the

violation of consumer rights to electricity and the recognition of the terms of the concluded public contract as null and void. By the ruling of the Zhmerynka City District Court of Vinnytsia Region dated February 23, 2022, the statement of claim of citizen Ya. was left without consideration based on Part 6 of Article 223 of the Civil Procedure Code of Ukraine due to the plaintiff leaving the courtroom. Disagreeing with this ruling, on March 23, 2022, citizen Ya. filed an appeal, citing the court's violation of procedural law norms, specifically noting that he had requested the first-instance court to consider the case without his participation.

After hearing the report of the judge-rapporteur, and verifying the legality and validity of the appealed decision within the arguments of the appeal and the claims made in the first instance court, the Vinnytsia Court of Appeal reached the following conclusions. According to the content of Parts 3-5 of Article 223 of the Civil Procedure Code of Ukraine, in the event of a participant in the case, including the plaintiff, leaving the courtroom, the court does not have an imperative duty to leave the statement of claim without consideration. Moreover, such procedural behavior of the participant in the case is not an unconditional obstacle to the further consideration of the case in the absence of this participant. The ruling of the first instance court does not contain justified reasons as to why it was deprived of the opportunity to continue considering the case in the absence of the plaintiff based on the available case materials within the scope of the claims made. Leaving the statement without consideration is only possible if the court deems it necessary for the party who filed the request for the case to be considered in their absence to provide personal explanations (Part 3 of Article 211, subparagraph 5 of Part 2, Part 6 of Article 223 of the Civil Procedure Code of Ukraine) [11].

The position of the Supreme Court in interpreting the provisions of part 6 of article 223 of the Civil Procedure Code of Ukraine is ambiguous.

For example, in denying the opening of cassation proceedings in the case of citizen P against citizen H regarding the division of marital property, the Supreme Court was guided by the fact that, in satisfying citizen P's appeal against the district court's ruling, the appellate court correctly proceeded from the fact that the court of first instance, leaving the statement of claim without consideration based on part 6 of article 223 of the Civil Procedure Code of Ukraine, did not take into account the requirements provided for in parts 3-5 of article 223 of the Civil Procedure Code of Ukraine, since in the case of the plaintiff's representative leaving the courtroom, the court has the right to either consider the case in the absence of such a representative or leave the claim without consideration [12].

In other cases, the Supreme Court emphasizes the need to enshrine in civil procedural legislation provisions regarding such legal consequences as leaving the claim without consideration due to the plaintiff (or their representative) leaving the courtroom, on the grounds that, according to the requirements of the Civil Procedure Code of Ukraine, the court does not have the right to consider the case in the absence

of the plaintiff (or their representative), who has not submitted an application for the case to be heard without them and did not appear at the court session or left it before the end of the case consideration [13, 14, 15, 16].

Such ambiguity in the Supreme Court's interpretation of these provisions is associated with a change in the paradigm of legislative regulation of the consequences of participants' failure to appear at a court session, as the legislator links the court's authority with the plaintiff's departure from the courtroom. Prior to the reform of civil procedural legislation, Article 169 of the Civil Procedure Code of Ukraine, as amended before December 15, 2017, provided only two possible responses by the court to the plaintiff's failure to appear at a court session, depending on the accompanying conditions: postponement of the case consideration or leaving the claim without consideration. Currently, Article 223 of the Civil Procedure Code of Ukraine provides a somewhat different approach. In the case of a participant's failure to appear, the legislator grants the court the ability to: postpone the case consideration (part 2 of Article 223 of the Civil Procedure Code of Ukraine), consider the case in the absence of such a participant (part 3 of Article 223 of the Civil Procedure Code of Ukraine), make a default judgment in the case of repeated non-appearance of the defendant (part 4 of Article 223 of the Civil Procedure Code of Ukraine), or leave the claim without consideration in the case of repeated non-appearance of the plaintiff (part 5 of Article 223 of the Civil Procedure Code of Ukraine) [1].

According to part 6 of Article 223 of the Civil Procedure Code of Ukraine, if a participant in the case (or their representative) leaves the courtroom, the consequences provided for in parts 3-5 of Article 223 of the Civil Procedure Code of Ukraine apply. Thus, if part 6 of Article 223 of the Civil Procedure Code of Ukraine is interpreted literally, it may indeed seem that if the plaintiff leaves the courtroom, the court is endowed with such alternative powers: to continue considering the case on the merits (part 3 of Article 223 of the Civil Procedure Code of Ukraine) or to leave the plaintiff's claim without consideration (part 5 of Article 223 of the Civil Procedure Code of Ukraine). However, it seems to us that in constructing Article 223 of the Civil Procedure Code of Ukraine, the legislator allowed certain inaccuracies, which ultimately led to the rather unsuccessful formulation of the provisions of part 6 of Article 223 of the Civil Procedure Code of Ukraine. As we have already mentioned, the legislator was not very consistent in formulating this article, not taking into account the provisions of its other parts, and did not coordinate them with each other. Thus, it was not taken into account that in the case of the plaintiff's repeated failure to appear at the court session, part 5 of Article 223 of the Civil Procedure Code of Ukraine and item 3 of part 1 of Article 257 of Ukraine provide for a special legal consequence – leaving such a plaintiff's claim without consideration, and these norms, by their legal nature, are special in relation to the general norms enshrined in parts 1-3 of Article 223 of the Civil

Procedure Code of Ukraine. It seems to us that in constructing the provisions of item 2 of part 3 of Article 223 of the Civil Procedure Code of Ukraine, the legislator allowed a number of technical and legal shortcomings, in particular, did not clearly prescribe the subjects of civil procedural legal relations whose absence prevents the court from continuing to consider the case on the merits. Such shortcomings in legislative technique have actually provoked both the ineffectiveness of certain provisions and the article as a whole.

Analyzing the norms of Article 223 of the Civil Procedure Code of Ukraine systematically and consistently, considering its interrelation and coherence with the provisions of other norms of the Civil Procedure Code of Ukraine, we can confidently state that item 2 of part 3 of Article 223 of the Civil Procedure Code of Ukraine may pertain only to the non-appearance at the court session of such participants in the case as third parties who do not assert independent claims regarding the subject matter of the dispute, and exclusively their absence does not prevent the court from continuing to consider the case without their participation. In the case of the non-appearance of such participants in the case as the plaintiff and the defendant, special legal consequences provided for by specific legal norms of civil procedural legislation must be applied: in the case of the defendant, a default judgment is conducted (part 4 of Article 223 of the Civil Procedure Code of Ukraine and part 1 of Article 280 of the Civil Procedure Code of Ukraine), and in the case of the plaintiff, the claim is left without consideration (part 5 of Article 223 of the Civil Procedure Code of Ukraine and item 3 of part 1 of Article 257 of the Civil Procedure Code of Ukraine).

In this regard, we propose to amend item 2 of part 3 of Article 223 of the Civil Procedure Code of Ukraine as follows: "the repeated failure of a participant in the case (or their representative) to appear at a court session, regardless of the reasons for the absence, except in cases established by this Code." In our opinion, such wording of this norm will harmoniously combine the provisions of Article 223 of the Civil Procedure Code of Ukraine with each other and with other norms of civil procedural legislation and will allow eliminating conflicts in the interpretation of legal consequences in the event of the plaintiff's failure to appear at a court session, as well as the plaintiff (or their representative) leaving the courtroom.

Currently, the position of those courts that link the fact of the plaintiff leaving the courtroom with the legal consequence of leaving their claim without consideration appears more reasonable. These courts clearly differentiate between the application of special and general rules for regulating the consequences of participants in a civil case failing to appear at a court session. This approach has also been subsequently directed by the legislator towards defining the legal consequences of such plaintiff behavior as leaving the courtroom.

The Supreme Court, interpreting part 6 of Article 223 of the Civil Procedure Code of Ukraine as grounds for leaving the claim without consideration in the event

of the plaintiff leaving the courtroom, has repeatedly emphasized that this norm connects the court's right to leave the claim without consideration with the following conditions: 1) the plaintiff was present at the court session, in particular, their identity was established during the preparatory part of the court session; 2) the plaintiff left the courtroom on their own initiative, not wishing to participate in the session; 3) the case consideration was not completed; 4) the plaintiff did not submit a request (either oral or written) for the case to be considered in their absence [13, 14, 15, 16, 17].

In addition, in legal practice, it has been stated that leaving the courtroom is an independent ground for leaving the claim without consideration, which does not require the presence of features inherent in parts 3-5 of Article 223 of the Civil Procedure Code of Ukraine. Thus, the provisions of Article 223 of the Civil Procedure Code of Ukraine, such as considering the case in the absence of the plaintiff or their repeated non-appearance, do not apply to the disputed legal relationships. Leaving the courtroom is an independent ground for leaving the claim without consideration, which does not require the presence of features inherent in parts 3-5 of Article 223 of the Civil Procedure Code of Ukraine [18].

Therefore, we consider it appropriate to amend part 6 of Article 223 of the Civil Procedure Code of Ukraine as follows: "if the plaintiff (or their representative) left the court session before the end of the case consideration without valid reasons and did not submit a request to the court for the case to be considered in their absence". Additionally, it is necessary to return this ground to part 1 of Article 257 of the Civil Procedure Code of Ukraine by supplementing it with item 13, which reads: "if the plaintiff (or their representative) left the court session before the end of the case consideration without valid reasons and did not submit a request to the court for the case to be considered in their absence".

Conclusions. Considering a systematic and consistent analysis of the provisions of the Civil Procedure Code of Ukraine, it can be stated that item 2 of part 3 of Article 223 of the Civil Procedure Code of Ukraine may pertain only to the non-appearance at the court session of such a participant in the case as a third party who does not assert independent claims regarding the subject matter of the dispute, and only their absence does not constitute an obstacle for the court to continue considering the case without their participation. In the case of the non-appearance of such participants in the case as the plaintiff or the defendant, special legal consequences provided for by specific legal norms of civil procedural legislation must be applied: in the case of the defendant, a default judgment is conducted (part 4 of Article 223 of the Civil Procedure Code of Ukraine and part 1 of Article 280 of the Civil Procedure Code of Ukraine), and in the case of the plaintiff, the claim is left without consideration (part 5 of Article 223 of the Civil Procedure Code of Ukraine and item 3 of part 1 of Article 257 of Ukraine).

Thus, leaving the courtroom is an independent ground for leaving the claim without consideration, which does not require the presence of features inherent in

parts 3-5 of Article 223 of the Civil Procedure Code of Ukraine, and the provisions of Article 223 of the Civil Procedure Code of Ukraine, such as considering the case in the absence of the plaintiff or their repeated non-appearance, do not apply to the disputed legal relationships. Leaving the courtroom is an independent ground for leaving the claim without consideration.

In this regard, we propose to amend part 6 of Article 223 of the Civil Procedure Code of Ukraine as follows: "if the plaintiff (or their representative) left the court session before the end of the case consideration without valid reasons and did not submit a request to the court for the case to be considered in their absence," and to supplement part 1 of Article 257 of the Civil Procedure Code with item 13, which reads: "if the plaintiff (or their representative) left the court session before the end of the case consideration without valid reasons and did not submit a request to the court for the case to be considered in their absence".

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