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## THE ROLE AND IMPORTANCE OF THE FUNCTIONS OF ECONOMIC PROCEDURAL LAW

**Formulation of the problem.** The nature of the field of economic procedural law is manifested as a social and regulatory regulator. Based on this, its functions are of great importance in the effectiveness of the protection of the rights and legitimate interests of enterprises, institutions, organizations, other legal entities, citizens who carry out business activities without a legal entity and duly acquired the status of a business entity, government and other bodies, individuals who are not business entities. However, the problem now is that the results of intellectual work, expressed in intellectual property, although they should bring tangible income, but not always in practice. A necessary prerequisite for profit is the use of property, its introduction into economic circulation.

To carry out a systematic analysis of the functions of commercial procedural law as determinants of tasks in this area, it is important to be able to identify all existing or future functions, organize them by different qualitative characteristics and reflect the peculiarities of their origin, identify theoretical and practical links between them.

**Research analysis.** Directly or indirectly procedural law, the theory of legal process, procedural norms have become the subject of scientific interest of domestic and foreign researchers. The works of the following Ukrainian scientists deserve great attention: I.V. Atamanchuk, I.A. Balyuk, V.D. Babkin, O.V. Babkina, S.V. Bobrovnik, I.Y. Boyko, K.G. Volynka, R.A. Kalyuzhny, V.V. Kopeychikov, O.V. Kuzmenko, M.S. Kelman, O.G. Murashin, P.M. Rabinovich, V.V. Sukhonos, O.V. Fathutdinova, V.D. Cherdachuk, Yu.S. Shemshuchenko and others.

Despite the large number of scientific papers devoted to the study of legal process, which were prepared both in Ukraine and in other CIS countries, we cannot state the fact that the problem of procedural law as a general theoretical category is fully studied. In addition, today it remains many problematic, debatable or virtually unexplored issues. Special attention should be paid to identifying the principles of origin and development of procedural law in Ukraine, the concept and features of procedural law, determining its place in the system of national law. Today, the problem of determining the place and importance of the functions of the economic process, which have not been carefully studied by scientists, needs special attention.

Therefore, **the purpose of our article** is to outline the multi-vector system of functions of economic procedural law taking into account current trends in the protection of rights and legitimate interests based on the analysis of legal theory and features of economic procedural law using typological and classification approaches.

**Presenting main material.** It should be noted that it is important to understand the essence of the functions of the economic process is the periodization of the stages of formation of procedural law in the Ukrainian lands:

1. The first period is the times of Kievan Rus (Old Russian), when the court was subordinated to the administration, ie it was an integral part of it. During this period, the resolution of legal disputes was governed by customary law. Particularly important role was played by customary law in the organization and operation of the judiciary, they were a significant part of substantive and procedural law. The norms of customary law were manifested in pre-trial and trial proceedings in the form of various rites, symbols, actions, and verbal sayings. The role of the judiciary was minimized and «assisted» the parties in resolving the dispute. The court decision was made orally. Regulatory purpose of the first procedural norms, their application in pre-trial and judicial proceedings had an impact on the formation of further theories of «narrow» interpretation of procedural law as synonymous with the procedural order of law enforcement.

2. II period – XIV–XIX centuries. (pre-revolutionary). Establishment of state institutions for resolving cases, consolidation of Ukrainian customary law in regulations and administrative and judicial practice (second half of the XVII century), the formation of the so-called written law. During this period there was the formation of procedural justice, the establishment of new principles of the judiciary and justice: the independence of the court from the administration, the immutability of judges, publicity and publicity of court hearings, adversarial proceedings throughout Ukraine. Determining the significance of the concept of a court decision, elaboration of requirements for it, its implementation and the procedure for appeal. Thus, a characteristic feature of Ukrainian procedural law has always been openness, publicity, transparency) of the proceedings. Even in the Middle Ages, the institution of public justice was not as limited as in Western European countries.

3. III period – 1917–1991 (Soviet). The introduction of new methods of economic organization and centralized planning has led to the creation of a system of state courts, which are characterized by their use as a means of indirect influence on public relations by public authorities.

4. IV period – from 1991 to the present (post-Soviet), associated with Ukraine's independence and the creation, in particular, its own judicial system, the adaptation of national procedural law to European Union law. Modern development of procedural law is influenced by integration processes, which contributes to the expansion of cooperation in human rights, law enforcement, judicial, executive, borrowing from legislative practice experience of foreign legal doctrines and legislation. Today, national procedural law is influenced by the processes of convergence with the law of European countries, a certain unification of procedural law, which simplifies international relations, in particular in law enforcement, allows to harmonize national branches of law. On September 16, 2014, the Verkhovna Rada adopted the Law «On Ratification of the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand,» which entails Ukraine's commitment to bring domestic legislation in line with European standards, this is directly related to procedural law, in particular, the Law states the obligations of Ukraine arising from Article 8 of the Agreement on ratification of the Rome Statute of the International Criminal Court in 1998 [1, p. 7–37].

Based on the analysis of the evolution of procedural law on the territory of Ukraine, the continuity of influence on the formation of the legal field, historical, economic and political events, social and national currents in society has been determined. The establishment of courts for the purpose of resolving disputes has been a matter of time and has a long history. With the development of the judicial system, the legislation that established the principles of the organization of the judicial system and the procedure for the administration of justice needed to be changed. Along with the development of procedural law, its functions changed, as at different stages of their development, they acquired a new meaning.

To provide a classification of the functions of the economic process, it is necessary to take into account that the special legal approach to the functions of law was formed only at the beginning of the XX century. Initially, the functions of law were considered from the standpoint of their sociality, which influenced a certain uncertainty of criteria for defining their species. In particular, economic, production, distribution, consumer and other functions of law were distinguished (I. Karner, K. Renner).

Later, with the modernization of the theory of the functions of law, different opinions arose about the number, content and nature of certain functions in the branches of law. T.N. Radko divided all functions of law into general social and special legal. Additionally, he classified functions into five main groups (subsystems): common law, intersectoral, sectoral, functions of legal institutions and functions of law [2, p. 272].

The above scientific positions are marked within the theory of law, but with some specifics should be the basis of research in certain fields. I.V. Antoshyna divides the functions of Ukrainian law into traditional and non-traditional [3, p. 21–27]. Non-traditional functions are proposed to include informational, integrative, demographic, expressive. It should be emphasized that the current realities of informativeness of the judiciary in general and the informatization of the judiciary make it possible to include the information function of commercial procedural law in the traditional and permanent. Within the framework of commercial procedural law, non-traditional ones include the integration function and the monitoring function. After all, integration processes are not mandatory, their intensity or availability depends on the political vector of state development. The monitoring function, in addition to its «non-traditional», has signs of temporality.

As noted by O.B. Sladkova, monitoring technology is used only to study systems that are under development, so monitoring should be carried out in the following situations: the condition of the object of monitoring is not optimal; the condition of the object of monitoring has optimal indicators, but the object is in development and in this regard there are fears of changing the state of this object for the worse [4, p. 150–160].

V.D. Chernadchuk notes that the science of economic procedural law performs both general scientific functions inherent in any science (cognitive, interpretive, predictive, heuristic, communicative, applied, ideological, educational) and special legal functions [5, p. 43].

There are basic and non-basic functions of law [6, p. 155]. Yes, I.A. Kuznetsov proposed to distinguish as general and basic functions of law-making, law-binding and law-enforcement functions. He called the constituent, compensatory, restorative,

restrictive and punitive functions of law [7, p. 136]. In general, such a division is quite conditional. After all, functions as elements of the legal regime of law are generally interconnected, and in matters of implementation – interdependent.

For example, the effective implementation of the regulatory function of the GPP is impossible without the informational and educational functions of law. In particular, the observance of procedural rules by participants or potential participants in commercial litigation is associated with the implementation of the information function, which provides an idea of proper procedural behavior and the consequences of unfair procedural activities in commercial litigation; satisfies the information needs of the subjects on various organizational and functional aspects of the economic and procedural sphere.

A.S. Palazyan distinguishes system-forming functions that express the main purpose of law, regardless of its form, regardless of historical situation or cultural identity, and concretizing (derivatives), which are considered through the purpose of concretization of system-forming functions [8, p. 51–54]. This division seems to be quite conditional in the system of functions of law, which is characterized by the presence of constant relationships between all elements as a prerequisite for the effectiveness and efficiency of commercial procedural law in general. The theory of the functions of law is closely related to the theory of the functions of the state through their functional connection.

The functions of economic procedural law and the state have certain common features:

1) are realized in the dynamics and only in the process of influencing public relations;  
2) the basis is social needs and interests. Of course, in the economic process, the needs and interests are presented in a more restrictive format, due to the specific subject composition of economic and procedural relations. Thus, the reference point of the functions of economic procedural law (as well as other legal elements of this branch) are economic interests of private and public nature, which need to be protected and restored in the appropriate economic and procedural form;

3) semantic variability under the influence of various factors: new globalization vectors of state development, political and economic conditions, changes in the concepts of protection of rights; changes in the rules of economic law, social change, etc. The most general criteria for distinguishing the functions of the state are the features of the object of state influence, as well as due to recent changes in the specifics of the content of each function.

The functions of the state are classified according to their social significance, duration of action, sphere of activity, form of consolidation, etc. Preferably, all these criteria can be applied to the classification of functions of the economic process, taking into account its features. For example, according to the criterion of duration of the function of the economic process can be divided into permanent and temporary. The permanent ones include regulatory, security, economic, political, informational functions, and the temporary ones include the monitoring function and the integration function. Based on the criterion of the limits of law, functions are divided into external and internal. The external functions of the economic process include economic, political, and internal – regulatory, security, compensation and recovery.

Educational and informational functions of commercial procedural law have mixed features and can not be included in any of these groups. This is due to the nature of these

functions, which are implemented both within the current economic and procedural relations (ie within the active action of the economic process itself) and outside these relations (as a general social regulator).

**Conclusions.** Based on the study we can summarize the following:

1. Classification is defined as one of the logical and formal forms of typology, and typology – as a primary, semantic and universal method of understanding the functions of commercial procedural law.

2. It is proposed to include the power-legal and social functions of economic procedural law in the main typological groups of functions of the economic process.

3. The main qualitative features of the typology of functions of the economic process are formulated.

4. The common features of the functions of economic procedural law and the functions of the state are determined.

5. The types of functions of economic procedural law have been further developed according to the following characteristics: 1) spheres of influence: a) general social, b) exclusively legal; 2) traditionalism: a) traditional, b) non-traditional; 3) duration of action: a) permanent, b) temporary; 4) limits of action: a) external; b) internal; 5) appointment of the right: a) system-forming, b) concretizing (derivatives); 6) the importance of the purpose of commercial procedural law: a) basic; b) non-essential.

6. The importance of applying typological and classification approaches in research on the functions of commercial procedural law is argued.

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### **Анотація**

**Матвеева А. В., Єрофєєнко Л. В.** Роль та значення функцій господарського процесуального права. – Стаття.

Стаття присвячена основним проблемам правового визначення місця та ролі функцій в системі господарського процесуального права. Авторами проаналізовано історико-правові підвалини розвитку процесуального права, а також розуміння сутності функцій господарського процесу та їх видів. Надано пропозиції щодо тлумачення та класифікації функцій господарського процесуального права.

Сьогодні надзвичайно актуальним є визначення та класифікація функцій господарського процесуального права з метою визначення їх місця та ролі в розрізі аналізу сучасного процесуального права.

Природа галузі господарського процесуального права виявляється як соціально-нормативного регулятора. Виходячи з цього, його функції мають велике значення для ефективності захисту прав і законних інтересів підприємств, установ, організацій, інших юридичних осіб, громадян, які здійснюють підприємницьку діяльність без створення юридичної особи та набули в установленому порядку статусу суб'єкта господарювання, суб'єкт господарювання, державні та інші органи, фізичні особи, які не є суб'єктами господарювання. Проте зараз проблема полягає в тому, що результати інтелектуальної праці, виражені в інтелектуальній власності, хоч і повинні приносити відчутний дохід, але не завжди на практиці. Необхідною передумовою отримання прибутку є використання майна, введення його в господарський обіг.

Важливим для розуміння сутності функцій господарського процесу є періодизація етапів становлення процесуального права на українських землях: 1) перший період – це часи Київської Русі (давньоруського), коли суд був підпорядковувався адміністрації, тобто був її невід'ємною частиною; 2) II період – XIV–XIX ст. (дореволюційний). Створення державних інституцій для вирішення справ, закріплення українського звичаєвого права в нормативно-правових актах та адміністративно-судовій практиці (друга половина XVII ст.), формування т.зв. писаного права; 3) III період – 1917–1991 рр. (радянський). Запровадження нових методів організації економіки та централізованого планування призвело до створення системи державних судів, для яких характерне використання їх як засобу непрямого впливу на суспільні відносини з боку органів державної влади; 4) IV період – з 1991 р. по теперішній час (пострадянський), пов'язаний із здобуттям незалежності України та створенням.

Функції держави класифікують за їх соціальною значущістю, тривалістю дії, сферою діяльності, формою консолідації тощо. Переважно всі ці критерії можна застосувати до класифікації функцій економічного процесу з урахуванням його особливостей. Наприклад, за критерієм тривалості функції господарський процес можна поділити на постійні та тимчасові. До постійних належать регуляторна, охоронна, економічна, політична, інформаційна функції, а до тимчасових – моніторингова та інтеграційна. За критерієм меж права функції поділяються на зовнішні та внутрішні. До зовнішніх функцій економічного процесу відносять економічну, політичну, а внутрішню – регулятивну, охоронну, компенсаційну та оздоровчу.

*Ключові слова:* господарське процесуальне право, функції господарського процесу, класифікація функцій господарського процесу.

## Summary

*Matvieieva A. V., Yerofyeyenko L. V. The role and importance of the functions of economic procedural law. – Article.*

The article is devoted to the main problems of legal definition of the place and role of the function in the system of commercial procedural law. The authors analyze the historical and legal foundations of the development of procedural law, as well as understanding the essence of the functions of the economic process and their types. Proposals for the interpretation and classification of the functions of commercial procedural law are given.

Today it is extremely important to define and classify the functions of commercial procedural law in order to determine their place and role in terms of analysis of modern procedural law.

The nature of the field of commercial procedural law is manifested as a socio-regulatory regulator. Based on this, its functions are of great importance for the effective protection of the rights and legitimate interests of enterprises, institutions, organizations, other legal entities, citizens who carry out business activities without creating a legal entity and have acquired the status of business entity, entity management, state and other bodies, individuals who are not business entities. However, the problem now is that the results of intellectual work, expressed in intellectual property, although they should bring tangible income, but not always in practice. A necessary prerequisite for profit is the use of property, its introduction into economic circulation.

It is important to understand the essence of the functions of the economic process is the periodization of the stages of procedural law in the Ukrainian lands: 1) the first period is the times of Kievan Rus (Old Russian), when the court was subordinate to the administration, it was an integral part of it; 2) II period – XIV–XIX centuries. (pre-revolutionary). Creation of state institutions for resolving cases, consolidation of Ukrainian customary law in normative legal acts and administrative-judicial practice (second half of the XVII century), formation of the so-called written law; 3) III period – 1917–1991 (Soviet). The introduction of new methods of economic organization and centralized planning has led to the creation of a system of state courts, which are characterized by their use as a means of indirect influence on public relations by public authorities; 4) IV period – from 1991 to the present (post-Soviet), associated with the independence of Ukraine and the creation.

The functions of the state are classified according to their social significance, duration of action, sphere of activity, form of consolidation, etc. Preferably, all these criteria can be applied to the classification of functions of the economic process, taking into account its features. For example, according to the criterion of the duration of the function, the economic process can be divided into permanent and temporary. The permanent ones include regulatory, security, economic, political, informational functions, and the temporary ones include monitoring and integration functions. According to the criterion of the limits of law, functions are divided into external and internal. The external functions of the economic process include economic, political, and internal – regulatory, security, compensation and health.

*Key words:* economic procedural law, functions of economic process, classification of functions of economic process.