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Method of civil procedure

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ABSTRACT

Investigating the civil procedure regulation as a set of interrelated tools and techniques (imperative, dispositive and determinative) providing legal impact on the behaviour of civil procedure participants, this article is to substantiate that the method of civil procedure is a set of techniques (imperative, dispositive and determinative), methods (permissions, regulations, prohibitions, sanctions) and means (the consequences of failure to comply with civil procedural rules) of regulation implemented in the administration of justice in civil cases. However, determinative method of civil procedure regulations is a kind of methodological system of weights and balances, where the dispositive will of the parties and the imperative discretion of the court dialectically transform themselves in a new quality representing a symbiosis of the ways and techniques of civil procedure regulations. Moreover, summarizing the comparative aspect of the conducted research, it is proved that there are more than enough reasonable grounds to state that despite some discrepancy in the scientific approaches of theoretical legal proceedings, the litigation in practice requires the usage of simultaneous methodological techniques for procedural regulation in different countries.

1. Introduction

The relevance of the research topic is due to the fact that the method of civil procedure regulations together with subject of this branch of law is a system-creating factor that determines the form and the content of civil procedural law. That is why all the issues related to research into the essence of the methods utilised in civil procedure regulations traditionally create and increased amount of scientific interest. It also follows from the particular importance of the legal category studied for the system of civil procedure law and the necessity of detailed knowledge of the nature, manner of procedural conduct, and the legal impact on civil procedural relations in various stages of civil proceedings. However, a comprehensive study of the important category “method of civil procedure regulations” in the theory of civil proceedings has been absent until now. Meanwhile, the necessity of the scientific development of this problem is not only dictated by the methodological content of this subject, but also by the changes that took place in civil procedural law, as well as in consideration of the resolution of civil disputes. So, the relevance of this study is determined by the necessity of the development of theoretical questions about the concept and system of the method of civil procedure regulation, including their varieties and the factors that determine their application in specific circumstances. It is particularly important that the researched topic acquires a special significance in the elaboration and development of an international doctrine of civil procedure methodology, which

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increasingly attracts worldwide scientific attention in view of the pervasive integrative cooperation of convergence and harmonisation in legislative theory and lawsuit procedure.

1.1. The degree of the scientific development of this problem

The fundamental basis for the studies generated relied on the results and conclusions of such researchers as B. van Klink, S. Taekema (Germany), H. L. A. Hart, A. Langlinais, B. Leiter, J. Folkard (USA), I. Lakatos (Great Britain), T. Hervey, R. Cryer (EU) and many others. In post-Soviet countries, with regard to the theory of civil procedure, there are no scientific papers on the methods employed in civil procedure regulation. However, the magnitude of the problem in the method of legal regulation caused great interest to it in the general theory of law. It is studied in the issues of such scientists as S. S. Alexeyev, V. M. Gorshenyov, O. S. Ioffe, V. V. Lazareva, O. G. Lukianova, O. V. Mal`ko, V. D. Sorokin, M. D. Shargorodskyy, L. S. Yavich and O. I. Vitchenko,. Moreover, this problem is mostly raised by Russian representatives in other branches of law in their studies of related issues: by V. F.Yakovlev in civil law, by V. V. Vasiliyev, T. Y. Pavlisova and S. D. Shestakova in criminal procedure, by N. Y. Polyanska, O. V. Nikolaychenko and others in civil procedure law.

The aim of this paper is to identify techniques and ways of influencing the standards of this branch of law as to their appropriate relationship, based on comparing the methods of legal regulations to the methods of civil procedure regulations, and thereby reveal the essence and content of the method of civil procedure regulations.

This general objective required the necessity to set and solve the following theoretical and practical tasks: 1) clarification of the interrelation between concepts concerning the 'method of the mechanism of civil procedure regulations', and the 'method of civil procedure regulation', 2) comparison of the definitions of the 'method of legal regulation' and 'method of civil procedure regulation', 3) to distinguish between the 'method of civil procedural law' and 'method of civil procedure regulation', 4) to analyse the method of civil procedure regulations, and 5) to formulate a working definition of the concept 'method of civil procedure regulation'.

2. Presentation of the basic material

One prerequisite in the science of civil procedural law is to study the essence and genesis of the method of civil procedure regulation, which has been refined recently, and can be explained, to our mind, by the following factors. First, this analysis provides a comprehensive study of the development of the method of civil procedural law covering the need to examine the current state of this branch of law, evaluating the efficiency of civil procedure regulations, and identifying the causes that lead to difficulties in the implementation of civil procedural rules in practice when considering and resolving civil cases. Secondly, an evaluation of the legal and technical performance of a particular method actually embodied in the prescriptions of civil procedural law is required. Nowadays, within the science of civil procedural law, the method of legal regulation along with the subject are only perceived as criteria for distinguishing one branch of law from another. But in legal literature, the general theory of law points out fairly that the method of legal regulation should be understood more widely, as it is a link between the social and legal aspects of law (Marchenko & Lejst, 2005, p. 503).

The most productive period, by the number of scientific and theoretical studies on the method of legal regulation (for the majority of Eastern European countries) was the Soviet period, when separate monographs and articles in periodicals were dedicated to the consideration of this issue. Common to these works is the lack of a critical approach to the characteristics analysed in their evaluation of the method of legal regulations, when the question of its shortcomings and possible alternatives was avoided by scientists for obvious reasons. It should be noted that the theses on the concept and characteristics of the method of regulation, which are considered as axiomatic ones now, were established during that period. The priceless conclusions contained in these studies should be a starting point in today's civil justice for all further developments in this area.

However, nowadays the method of legal regulation is mainly under attention by representatives of the general theory of law (Malko, 1998, p. 66–78; Rukavishnikova, 2003, p. 217–223; Sorokin, 2003; Teryaevskij, 2005, p. 17–21; Anisimov & Lazarev, 2005; Dedov, 2008). This issue has also been studied by the representatives of other sciences (Protsevskij, 1972; Vedyakhin & Revina, 2002; Pavlisova, 2005; Vasilev, 2012, p. 61–65; SHestakova, 2004). The defining feature of these papers is that the method of the corresponding branch of law can only be estimated according to its specifics in relation to the methods of other branches of material and procedural law, but not in comparison with the legal methods that are used in different countries.

When speaking about different countries, it is necessary to admit that modern theoretical research obligatorily consists of a chapter on the methodology of law, i.e. a fundamental analysis of law not only concerns the methodology of legal relationships, but of economics and social studies as well. So we believe that a review of the methodology employed in jurisprudence must therefore concentrate on ideas which are shared by the vast majority of legal scientists. Thus, in different unrelated issues, it is stated that most legal branches of law follow the pragmatic, eclectic approach (Klink & Taekema, 2011, p. 85–107). In this case, we should agree with J. Folkard, who remarks that in common law, in cases where a substantive claim is governed by foreign law, questions of procedure are nonetheless governed by the *lex fori*. In the context of damages, although the existence of damage is a question for the *lex causae*, its quantification and assessment is determined according to the law of the forum (Folkard, 2015, p. 37–40).

It is remarkable that H. L. A. Hart asserted that within the procedural field of the USA, we shall conceal the characteristic way in which such rules function if we concentrate on, or make primary, the rules requiring courts to impose sanctions in the event of disobedience; for these latter rules provide provision for the breakdown or failure of the primary purpose of the legal system. They may indeed be indispensable but they are ancillary (Hart, 1994, p. 39). Furthermore, in exploring the Hart's method of Legal Philosophy (as a predominant and fundamental source for every trend in the area of jurisprudence), it is approved by other American authors, in that this process mode is, thus, clearly a form of an immodest conceptual analysis in the usual sense, but (and this is key) it has to be, since the concept, as manifest in our language, constitutes the social construct of law (Langlinais & Leiter, 2013, p. 10). Conversely, Lakatos (1980, p. 103–118) distinguished the difference between the social-economic method (such as inductivism, conventionalism, etc.) and the methodology of abstract scientific research programmes.

Quite an opposite approach to a comprehension of the methodological substance in the European Union and International law is demonstrated by British scientists. They admit that in practical jurisprudence (*to which the legal procedure belongs to us by no means*), there are overlaps between the different approaches, and legal research projects rarely adopt a pure version of just one theoretical or methodological perspective. It has also been noticed that many of the avowedly theoretical approaches have arisen at least in part as a response to earlier theoretical researchers, and to thus draw to some extent from those other approaches. Others have built upon the insights of other theories (whether they admit it or not) (Hervey & Cryer, 2007, p. 162 – 163). The same attitude to the methodological aspects of jurisprudence can be found in the scientific compositions of German academic experts, encompassing the pervasive impacts of European law and of globalisation, the major recent reform of the German Codes, and the greatly increased activity of the German legislature in every area (Reimann & Zekoll, 2007).

In regard to the civil procedural law of Ukraine, the problem of the method of civil procedure regulation was excluded from scientific research for a long time, and only recently have some theses begun to appear. Some parts of these theses focus on issues concerning the method of civil procedure regulation (Polyanskaya, 2005; Nikolajchenko, 2007). Meanwhile, the conceptual rules of the civil procedure regulation method, both as a snapshot of the main features of this branch of law and of the genesis of its legislative consolidation in the science of civil procedural law is still missing, and that fact prompted the author to do this study, aimed at filling this gap.

Along with such an unjustified levelling of the meaning of the method utilised in civil procedure regulation, it should be noted that the situation in scientific literature on civil procedure was diametrically opposite to the method of civil procedural law. Coverage of the category that is related to the topic of the article, by contrast, is mandatory for every textbook on this subject, where it is noted that the method of civil procedural law is a system of legal regulation techniques that establish a specific legal mode in the scope of justice in civil matters (Yasinok, 2014, p. 27). An almost identical definition of the 'method of legal regulation of civil legal proceedings' is contained in a book entitled "The course of civil procedure" (Komarov, 2011, p. 90–91). As these definitions do not cause substantial deficiencies in scientific circles, we should consider them to be the first ones likely for further study. At the same time, these authors have made important theoretical statements regarding the concept and structure of the method of civil procedural law, which will also be used in this article.

Moreover, the direct comparison of such linguistic and morphological practices, which are common in different countries, obviously appears as an organic relationship between the compared definitions. For example, in the US, civil procedure itself is only considered to be the methods and practices that are used in civil cases (The free dictionary by Farlex).

Before turning directly to the comparative analysis of the method of civil procedural law and the civil procedure regulation method, we consider it necessary to clarify how the latter term refers to the concept of the 'mechanism of civil procedure regulations' that is used by several scientists in parallel. For further correct use of the categorical-conceptual apparatus of civil procedural law in order to avoid the artificial multiplication of cognate language structures with similar content, first of all, we believe that one should set the general semantic understanding of the words that form the studied concepts, namely:

1) The word «*method*» comes from the Greek word μέθοδος, and literally means the way of research, the way of achieving any goal or solving a task; set of methods and operations of theoretical or practical knowledge and understanding the reality.
2) The word «*mechanism*» is derived from the Greek word μέχανή – machine, and means a system that determines the order of any activity, the sequence of states and processes; internal structure, system, etc.

As you can see, each word is considered to be polysemantic by its meaning, but through a linguistic understanding, they have a lot in common: they both come from the same language group and are etymologically similar. It is likely that such a remote synonymy led to a close relationship between the legal derivatives of these words. In fact, the terms 'mechanism of legal regulation' and 'method of legal regulation' correlate so strongly with each other, that they are often used by scientists to refer to one definition with the help of another one. Thus, the term 'mechanism of legal regulation' is often defined as a set of methods of legal regulation and legal regimes (Tomilova, 2004, p. 27), as a methodological category (Lazarev, 1998, p. 429), as part of system-structural method (Chernova, 2007, p. 19), and as a set of tools that must meet the methodological requirements (Sorokin, 2003, p. 162). And on the contrary, in many papers, this approach is found when the term 'method' is also understood as a mechanism (Gaponenko, 2004, p. 48 – 49).

Considering the above-mentioned facts, we believe that in some sense, the use of the term 'method of mechanism of civil procedure regulations' is a tautology, where the semantic load of words 'method' and 'mechanism' actually overlap each

other. And as any procedural legal mechanism, according to Lukyanova (2003, p. 162 – 163), is a part of the general mechanism of legal regulation, we could think that it would be grammatically and legally correct to remove the concept of 'method of mechanism of civil procedure regulations' from the legal glossary of civil procedural law. We think that the definition of 'method of civil procedural regulation' would be more appropriate for the expression of legal validity identified by it.

In comparing the concepts of 'method of civil procedural law' and 'method of civil procedure regulations', we believe that the latter one is more encompassing, both in content and in form. Consider the example of an abstract general theoretical structure. So, the statement that a branch of law is a set of legal norms is axiomatic (Zajchuk, 2009, p. 70). Instead, the mechanism of legal regulations is a set of legal means, and only one element of it is a legal norm (Alekseev, 1966, p. 30; Alekseev, 1993, p. 145; Malko, 1996, p. 55; Vitruk, 2008, p. 16; Shundikov, 2006, p. 15; Malko, 2001, p. 726; Khropanyuk, 2000, p. 341 – 342; Skakun, 2000, p. 546; Frantsiforov & Belonosov, 1999, p. 37). Obviously, the second concept, part of which is the essence of the former one, is larger than the latter one both in volume and in meaning. Thus, the term 'mechanism of legal regulation' is larger and more encompassing than the concept 'branch of law'. S. P. Narykova agrees with this conclusion and states that the subject and method of legal science stipulates the necessity of a systematic study of law not only as a set of rules, but in a larger perspective – as a mechanism for legal regulation (Narykova, 2006). And since the mechanism of regulation, according to Anisimov and Lazarev (2005, p. 103), is an expression of the general legal regulation, respectively, 'the mechanism of civil procedure regulations' is larger than the concept of 'civil procedural law'. It is appropriate to conclude that the method used by the more general term (mechanism of regulation) will be larger than the method used by the corresponding branch of law, i.e. the method of civil procedure regulations will be deeper than the method of civil procedural law.

The more extensive nature of the legal regulation method is explained by the fact that, along with the legal categories, it also covers social components. For example, Shestakova (2004, p. 65) emphasises that today the method of procedural regulation cannot be considered in isolation from the issues of social and political development, as the current state of the regulation method is defined by changes in procedural policy, and as a result, the purposes of legal regulation in this area. At the same time, Nikolaychenko (2007, p. 12) noted that the consequences of failure to comply with procedural rules, together with the method of civil and procedural relations, depend on the political processes taking place in the country. It is known that social norms influenced court activity even in Ancient Athens, as it was investigated by Adriaan Lanni, Assistant Professor of Lawin the Harvard Law School (Lanni, 2009, p. 691 – 736). Even the biological characteristics of national identity, according to Kappelhof (2014, p. 79 – 118), predetermine the decisive impact on civil procedure in different countries.

Thus, as the interim conclusion of our study, it should be noted that the level of the ratio of the conceptual categories 'civil procedural regulation' and 'civil procedural law' affects the parity of the methods used. That is, if one legal phenomenon (civil procedural regulation) is larger in volume and content from another one (civil procedure), it is obvious that the methods that they use for their own purposes of legal regulation cannot be the same and will be located in the same proportional compliance as the initial concept.

The same view is shared by Vitruk, who suggests considering the regulation more broadly in terms of the action of legal remedies and social factors. As a result, she brings forth the category of the social mechanism of law, and considers regulation as a complex dynamic system (Vitruk, 2008, p. 16 – 17). Indeed, in contrast to civil procedural law, which is a static legal phenomenon, the mechanism of civil procedure regulation is a dynamic complex, which is in constant motion and development. As a result of considering the mechanism of regulation as a dynamic manifestation of the entire legal system of society, according to Narykova (2006),the studied phenomenon appears as a complex, multi-level structure, which manifests itself in the form of various legal processes, whose elements are an expression of legal statics, but not identical to it.

Other scientists also support that understanding. In particular, Tiunova (1991, p. 29) states that the main semantic and target load of the concept 'mechanism of legal regulation' consists of revealing the dynamic and functional aspects of the legal system on a whole. These considerations are continued by Lukyanova (2003, p. 180), who notes that a holistic view of the procedural and legal mechanism (PLM) shows that all its elements are in constant motion, development and mutual dialectical transitions. Summarizing all that was mentioned above, we believe that the mechanism of civil procedure regulation is not a static set of tools, but a regulatory mechanism organised and consistently implemented as a complex process aimed at the effective implementation of civil procedural rules, using appropriate methods of civil procedure regulation.

Based on an understanding of the method, and widely used in the general theory of law as a combination of ways and means by which the law governs social relations (Lazarev, 1970, p. 38 – 44), we believe that the method of civil procedural regulation is a set of sub-methods containing different ways of influencing the rules of civil procedure law on indirect public relations in civil proceedings for quickly achieving the goals set by the civil proceedings. The concise wording of the definition of the method of civil procedural regulation allows us to look at the structure of this area of law in an enlarged view, and to evaluate the effectiveness and compatibility of its components that contribute to its proper functioning and strict practical compliance with civil procedural law requirements.

What is the method of civil procedural regulation? As previously mentioned, this issue was ignored by scientists for a long time, and we consider it appropriate to use all the available results of scientific research with a mandatory consideration of the characteristics of the studied phenomenon in this article. Let us start with the method of civil procedural law. Thus, in modern academic literature, the method of civil procedural law is defined as the imperative–dispositive that optimally combines the power and regulatory elements (Komarov, 2011, p. 91; Yasinok, 2014, p. 27; Melnikov, 1981,

p. 43 – 47). According to Polyanskaya (2005, p. 14), such a combination is on one hand, explained by the inability to disregard the free will of the subjects, and on the other hand, the need for restrictions to avoid abuse of the law. In passing, we should note that the comparison of such a locution (for the majority of post-Soviet countries) with the conclusions of academic law schools abroad shows an absolute discrepancy within the scientific approaches. For instance, communitarianism, relativism, utilitarianism, legal positivism and critical theory form an incomplete list of scientific methods that can be easily found between the other methodological approaches used in current research (Wacks, 2012, p. 222 – 227). But while theoretical conceptions demonstrate contradictory differences, a comparative analysis of the valid legislation in different countries shows that the practical field methods used in their civil procedural regulation actually have much more in common than the differences between them.

However, recent trends in civil procedure law do not confirm the views expressed in the theory of civil procedural law, according to which the method of civil procedural law became randomly dispositive (Nikolajchenko, 2007, p. 34). The dispositiveness of this method is considered by scientists as a crucial factor, because despite the existence of imperative moments, all of them refer to dispositiveness as one of the principles of civil procedural law (Polyanskaya, 2005, p. 19). We believe that exactly the same understanding of method in civil procedure can be exploited in other countries, as far as the majority of Civil Procedural Codes contain of the similar articles. Thus, according to the Federal Rules of Civil Procedure (as amended on December 1st, 2014), its norms should be construed and administered to secure the just, speedy, and inexpensive determination of every action and proceeding (The United States Federal Rules of Civil Procedure). Simultaneously, the tasks of Ukrainian civil procedure are to conduct a fair hearing and the resolution of civil cases within a reasonable time by an impartial court for the purposes of protecting the interrupted, unadmitted and contradicted rights, freedoms and interests of individuals, legal entities and the state (Art. 5 of the Civil Procedural Code of Ukraine (2004)). An analogous statement is declared in the Civil Procedural Code of the Russian Federation (2002), where the aims of Russian civil procedure (briefly) are defined as the implementation of an equitable hearing within a forecasted time by an independent and impartial court (Art. 2). Nevertheless, a distant similarity in procedural norms can be found in the Civil Procedural Rules and Directions of Great Britain, which prescribe as the overriding objective, to enable a court to deal with cases justly and at proportionate cost (Rule 1.1). Herein, dealing with a case justly and at proportionate cost includes, so far as is practicable, the following means: (a) ensuring that the parties are on an equal footing, (b) saving expense, (c) dealing with a case in ways which are proportionate (to the amount of money involved, the importance of the case, the complexity of the issues and the financial position of each party), (d) ensuring that it is dealt with expeditiously and fairly, (e) allotting an appropriate share of the court's resources to it while taking into account the need to allot resources to other cases, and (f) enforcing compliance with rules, practice directions and orders (Rule 1.2). As is evident from these examples, the civil procedures in different countries have a lot of similar principles and statutory provisions. So it is logical to ascertain the uniformity of the scientific and practical methods involved in the regulation of civil litigation, no matter which legal system's legislation (American Case Law, Britain Common Law or Eastern European Post Soviet Law) is examined.

If the reduction of a methodological framework to the imperative and dispositive methods is suitable for civil procedural law, the situation is much more complicated with the method of civil procedure regulation, as the imperative–dispositive method of legal effect, despite its diversity and comprehensiveness, will not take into account the specific regulation in this branch of law. Some legal proceedings cannot be regulated separately by the imperative or dispositive methods. Therefore, to our point of view, along with the imperative–dispositive method of civil procedural regulations, another approach to the influence of civil procedural law on an established relationship is active and functions in the administration of justice in civil cases. Consider this example. Art. 175 of the Civil Code of Ukraine regulates the procedure and characteristics of signing a settlement agreement, which is clearly a manifestation of the dispositive method of civil procedure regulation. However, the procedural consequences of such a settlement agreement between the parties will only come about if the court finds the settlement agreement as one being in the interests of the participants as it relates to the rights and obligations of the parties, and the subject of the agreement. The decision on each specific settlement agreement in a separate civil case is made by the judge independently and on the basis of his discretion, which in turn, is a manifestation of the imperative method of civil procedure regulation. But in this situation, the imperative and dispositive principles in regard to the method of civil procedural regulation are used in a rather unusual way, namely:

1) In purely imperative civil procedural regulation, the actions of a court that performs the power functions of a state in resolving disputes, are based solely on the rules of civil procedure law and do not require any third-party initiative to exercise their powers. However, in this example, the commitment of significant procedural actions by the court – the resolution on the recognition or non-recognition of a settlement agreement – is encouraged by the parties in the case.
2) In purely dispositive civil procedural regulation, the parties made their own decisions on the rights they have, and they do not need legal assessment or permission from the authorities for that. However, in this example, a settlement agreement without the approval of the court will have no legal effect and cannot lead to the desired procedural consequences.
3) It should be noted that a court in this situation is not completely free (i.e. dispositional) since its discretion (to approve or not approve the settlement agreement) is 'bound' by the requirements of the parties to which it must respond appropriately.

As you can see, the civil procedural legal relationships of the parties and the court in this example are not built vertically (as in the power-imperative communication of a court with the parties) and not horizontally (as in dispositive relations

between the equal parties of civil proceedings), but instead, perpendicular (when the dispositive will of the parties requires the imperative approval of a public authority). This ratio is clearly reflected in the figure below, where the relationship between the parties of the process (A and B) are horizontal and the relationship of the parties (A and B) and of the Court (C) is vertical, and collectively demonstrates the normal course of a civil procedure, so to speak, in the context of the multiple links between the members of civil proceedings (i.e. perpendicularly combined).

Many examples of such sanctioning court activities can be found within the Civil Procedural Codes of many countries. For instance, according to Rule 1.4 of the Civil Procedural Rules and Directions of Great Britain, the court must further the overriding objective by actively managing cases. Active case management includes: (a) encouraging the parties to cooperate with each other in the conduct of the proceedings, (b) identifying the issues at an early stage, (c) deciding promptly about which issues need full investigation and a trial, and accordingly disposing summarily of the others, (d) deciding the order in which issues are to be resolved, (e) encouraging the parties to use an alternative dispute resolution (GL) procedure if the court considers it appropriate and facilitating the use of such a procedure, (f) helping the parties to settle the entire case or part of it, (g) fixing timetables or otherwise controlling the progress of the case, (h) considering whether the likely benefits of taking a particular step justify the cost of taking it, (i) dealing with as many aspects of the case as it can on the same occasion, (j) dealing with the case without the parties needing to attend at court, (k) making use of technology, and (l) giving directions to ensure that the trial of a case proceeds quickly and efficiently.

At the same time, in Eastern European countries (consider the example of Ukraine's Civil Procedure), only at the request of persons involved in the case, the court must decide on the collecting of evidence and call of witnesses, and on examination, the involvement of a specialist, interpreter or/and a person who provides legal assistance, or on letters of request for collecting evidence, on taking measures for the implementation of the claim, etc. (Art. 130 of the Civil Code of Ukraine). The same situation arises in the implementation of the rules of civil procedure law, enshrined in Art. 58–59, 133, 306, 334, 372, and many other articles of the Civil Code of Ukraine.

Thus, the uniqueness of this method of civil procedure regulation in civil proceedings is as much a factor in civil procedural law which is, firstly, a mandatory subject of civil procedural relations in a court with regard to its imperative powers, and secondly, the gradual contrast to the increasing role of dispositive principles in modern civil proceedings, which is one of the main ways to accomplish the optimisation of the civil procedural mechanism and satisfy the need to approve the relevant proceedings by an unprejudiced and independent arbitrator. Obviously, all these examples of civil legal proceedings are objectively interconnected and interdependent with each other, whereby the actions of one party of a civil proceeding determines the need to respond to the other subjects of a civil procedure. Taking all of that into consideration, we suggest the submission of a method of civil procedure regulation (which covers the imperative and dispositive methods, but is not limited by them) with the help of another sub-method, and to call it the determinative one.

The word "***determinism***" (derived from the Latin word 'determinare', in English, 'determinism', and in German, 'determinismus', cause or identify) is used to refer to the teachings of classical philosophy about the regular universal relationships between the phenomena of objective reality that are together in cause-and-effect connections. Thus, the determinative method of civil procedure regulation is a kind of methodological system of control and balance in which the dispositive will of the parties and the imperative discretion of the court dialectically transform themselves in a new quality representing a symbiosis of the methods and techniques of civil procedure regulation. Along with this, the content side of the determinative method of civil procedure regulation fully comprises the most common general theoretical understanding of the sectoral method as a combination of legal techniques and methods of influence on civil legal proceedings for the purpose of organising them, which is determined by the features of the subject of regulation. It is remarkable that such compatible conclusions resonate with comprehension, as suggested by a representative of Anglo-American law school, Ronald Villanova, according to which, the analysis, argument and allocated methods of court proceedings require methodological additions (Villanova, 2005, p. 157 – 185). Today's legal profession, as explained by the world-known scientists Robbennolt and Ulen (2010, p. 143) demands that lawyers, judges and even juries understand and engage in dialogue about basic empirical research methods, which demonstrate how to recognise when empirical studies need to be applied in legal regulation.

We should also note that arguments about the necessity to expand the list of methods for procedural regulation were heard among representative of the other branches of law. For example, Fruehwald (2001, p. 171) offered to use a multilateralism method in American court procedure. On the other hand, Smirnov (2000, p. 20 – 25) suggested the utilisation of an arbitrational method of regulation inherent in the competitive type of criminal proceedings in which a court, in becoming an active participant in the process, will maintain its objectivity and at the same time, will not become 'neither the agent of accusation, nor the adherent of defence.' In comparison to the latest scientific approaches to this theoretical problem in different countries, we have come to the conclusion that this is now a widespread trend in civil procedure. Thus, as Miller insists, it is equally considerable to protect witnesses from being victimized, and courts from being subjected to destructive criticism in the press or disruptive conduct during their proceedings. Similarly, it provides the ultimate sanction to secure the enforcement of court orders. A further major clash of interests, continues the scientist, is between the demands of 'open justice' and the numerous restrictions on reporting which now exist, for example, to confer anonymity on children and on complainants in sexual cases and on other vulnerable witnesses (Miller, 2000, p. 345 – 346).

Naturally, the task of a legislator in this case is to define a specific set of tools and techniques that will be able to contribute to the achievement of the goals of civil proceedings in general, guided by the characteristics of the regulated relations and by the goal. So, the Russian scientist, Polyanskaya, believes that the internal components of a single method of

regulation are the combination of prohibition, permission and instructions that are used in all the branches of law. But since the specific manifestations of these methods in various branches of law are expressed differently, then the proportions between them are different, and usually typical only for this branch of law (Polyanskaya, 2005, p. 15 – 16). A similar view is defended by the German researchers Purnhagen and Rott (2014, p. 244), who state that although the prohibitions are undoubtedly incoherent alongside permissions or requirements, there is no formal incoherence in conjoining permissions with non-encouragements.

Thus, as the formation of a system requires, the method of regulation primarily involves a coordination of its elements, and with their help, the goals of regulations are achieved. According to Shestakova (2004, p. 37), the method of regulation does not accept the coexistence of elements in capable of interacting, and if one erroneously includes the min this method, it can eliminate or reduce its effectiveness. Thus, when identifying the content of the method of civil procedure regulation, from our point of view, we must proceed from the position of most representatives of the general theory of law, and according to them, the method of regulation is not confined to one single factor of influence, but is a combination of certain elements. As noted above, the method of civil procedure regulation covers such sub-methods as: imperative (consisting of obligations and prohibitions), dispositive (consisting of permissions and powers) and determinative (sanctions, in the sense of sanctioning impact on civil procedural relations).

This approach is also shared by the process-scholars of other post-Soviet countries. In particular, Polyanskaya (2005, p. 22) notes that the dispositive method of regulation is implemented through the interaction and interosculation of permissions and prohibitions. In criminal proceedings, according to Pavlisova (2005, p. 31 – 32), the method of criminal procedure regulation includes the following elements (characteristics): the state of the subjects of criminal procedural law, special as compared to other branches of law, methods for the formation of the rights and obligations of the subjects of relations, the defined range of legal facts inherent in this branch of law, and the specific nature and means of coercion. Instead, Shestakova (2004, p. 20 – 21) perceives all three elements (sub-methods) of the method of criminal procedure regulation as having dependence on the subjective composition of the criminal proceedings. Taking into consideration all the objective features of criminal procedural law, the interesting approaches of different authors are only exploratory in their nature and cannot be used in the area of civil procedural law.

At the same time, among the few representatives of civil procedural law science, who paid attention to the method of civil procedure regulations, some pretty unusual approaches to determining the elemental content of the method of civil procedure regulations have been introduced recently. We share Nikolajchenko's (2007, p. 45) point of view, who suggests considering the method of regulation of civil proceedings as a set of techniques (imperative and dispositive), methods (permissions, regulations, prohibitions), and means (consequences of failure to comply with the civil procedural rules) of regulation, used by a legislator in the development and improvement of civil procedural law. We believe that the suggested structure of the method of civil procedure regulation completely corresponds to the approach that prevails in the doctrine of civil procedural law science, as the one determining the components of this method. We'll make just minor adjustments to our new determinative method of civil procedure regulations, which, along with the imperative and dispositive methods, not only uses permissions, orders and prohibitions for legal enforcement, but also provides for the validity of the proceedings of the parties (as previously demonstrated above), providing power penalties in the form of its own procedural act. Indeed, the method of civil procedure regulation needs to ensure the coordinated work of all its elements, and for their promising development, two interrelated goals should be achieved: optimisation of the administration of justice in civil cases, and the deliberate and steady observance of the rules of civil procedural law by all parties to civil legal proceedings.

Thus, the method of civil procedure regulation is a set of techniques (imperative, dispositive and determinative), ways (permissions, regulations, powers, obligations, prohibitions, sanctions) and means (the consequences of failure to comply with civil procedural rules) used for regulation implemented during the administration of justice in civil cases.

3. Conclusions

Civil procedure regulation is a set of interrelated tools and techniques (imperative, dispositive and determinative) providing legal impact on the behaviour of the participants in civil procedures. Thus, the level of the relationship between the conceptual categories of 'civil procedure regulations' and 'civil procedural law' affects the parity of the methods they use. That is, if one legal phenomenon (civil procedure regulation) is larger or more encompassing in volume and content than another one (civil procedural law), it is obvious that the methods they use for their own purposes in legal regulations cannot be the same and will not be found in the same proportion as the initial concepts.

Thus, the method of civil procedure regulations is a set of techniques (imperative, dispositive and determinative), methods (permissions, regulations, prohibitions, sanctions) and means (the consequences of failure to comply with civil procedural rules) of regulation implemented in the administration of justice in civil cases. Thus, *the method of civil procedure regulation* is a set of techniques (elements) and ways for the influence of the rules of civil procedural law on indirect public relations in civil proceedings to quickly achieve the objectives of civil proceedings, and *the determinative method of civil procedure regulations* is a kind of methodological system of weights and balances, where the dispositive will of the parties and the imperative discretion of the court dialectically transform themselves in a new quality representing a symbiosis of the ways and techniques of civil procedure regulations. So, from its content side, the method of civil procedure regulation fully comprises the most common general theoretical understanding of the sectoral method as a combination of legal

techniques and methods of influence on civil legal proceedings for the purpose of organising them, which is determined by the characteristics of the subject of regulation.

Summarizing the comparative aspect of the conducted research, we concluded that there are more than enough reasonable grounds to state that despite some discrepancy in the scientific approaches of theoretical legal proceedings, the litigation in practice requires the usage of simultaneous methodological techniques for procedural regulation in different countries.

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