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CONCEPTUAL RESEARCH MILESTONES

The Topic Timeliness and Importance. The writ proceedings is an institution of the civil procedure law which, during different periods of the development of society, existed and had a different content, but which, certainly, proved to be necessary, as an alternative procedure to the general litigation procedure, as the writ proceedings, compared to the general litigation procedure, offers to the parties the possibility to obtain an effective and faster defence of their subjective civil rights. The writ proceedings is a simplified judicial procedure designed to provide a real, effective and fast protection of the rights of the parties in the categories of civil cases where the application of all the formalities of a classic civil process is superfluous, given the fact that the debtor of the obligation does not contest the creditor's claim, the basis and legality of which is proven by authentic, certain and truthful documents attached by the creditor to the request to release the court order. In such situations, the civil procedural legislation can and must offer the possibility to consider the merits of the case at a faster, more dynamic pace, but at the same time, ensuring due observance of the general civil procedural guarantees both for the creditor and, first of all, for the debtor, against whom the creditor filed the claim.

In the specialized literature, there is a certain number of works published on the subject of the writ proceedings, the authors of which address certain aspects of it, but, until now, there is no comprehensive study of the writ proceedings in the national doctrine, and most of the problems related to the application of the provisions of the writ proceedings, its essence and content, as an institution of the civil procedural law, continue to be either not analysed or insufficiently researched.

The Important Scientific Problem consists in the reconceptualization of the institution of the writ proceedings, the substantiation of its legal nature and essence, the establishment of the specifics of the claims on the basis of which the court order can be released and the identification of ways to optimize the normative framework that regulates the writ proceedings.

The Goal of the Thesis is focused on the realization of a complex and in-depth scientific research of the institution of the writ proceedings, the determination of the legal nature and essence of the writ proceedings, the specifics of the claims on the basis of which the court order can be released and the elaboration of theoretical and practical recommendations for the review and improvement of the normative framework that regulates the writ proceedings.

The Goal of the Thesis outlined the following ***research objectives***: (1) determine the legal nature and essence of the writ proceedings; (2) perform the analysis of the scientific reasoning and the efficiency of the institution of the writ proceedings in the civil process; (3) develop a complex

research of the grounds for issuing the court order to ascertain the concrete requirements for admitting the creditor's claims based on each ground; (4) study the particularities of the procedure for examining the request for release of the court order and identify the shortcomings and the gaps of the acting civil procedural norms regulating the writ proceedings; (5) elaborate legislative proposals designated to improve the writ proceedings.

The Research Hypotheses targets a series of aspects that cannot be observed and deduced from the simple reading of the provisions that regulate the writ proceedings but can be inferred from practical situations and case law, the last one, in some instances being in contradiction with the regulations and quint essence of the writ proceedings institution. The interpretations of the legal framework and the proposed solutions are based on confirmatory arguments and imply the construction of a hypothesis based on the existing doctrine, with the application of the methodology of investigation and scientific research, which, as a result of the research carried out, allows for the confirmation of the hypothesis.

Synthesis of the Research Methodology and the Justification of Chosen Research Methods. The methodology of this scientific research is based on the dialectical-materialist method, from which other particular methods are derived and applied in this PhD thesis: historical, logical-legal, logical-formal, comparative, grammatical, as well as observation, description, deduction, modelling, comparison, etc. During the elaboration of this research, national and international acts of the Republic of Moldova were applied, with an emphasis on the provisions of the Constitution of the Republic of Moldova, the Civil Procedure Code (CPC) of the Republic of Moldova, the civil procedural doctrine of the Republic of Moldova and of other states, the recommendations of the Committee of Ministers of the Council of Europe and the regulations adopted by the European Parliament on simplified judicial procedures, the provisions of the Decisions of the Constitutional Court of the Republic of Moldova, as well as the domain-related case law, and both the judicial practice resulting from the practical activity of the author, and the court orders analysed from public electronic portals of the courts of the Republic of Moldova.

The Thesis Structure: from the structural point of view, the thesis contains: the Annotations (in three languages), the List of Abbreviations, the Introduction, 4 Chapters, the General Conclusions and Recommendations, the Bibliography which includes 275 titles, 5 Annexes, 216 pages of main text (ante Bibliography).

Scientific Novelty and Originality of the thesis is justified by scant research of the targeted topic in the civil procedural doctrine. The research is based on the selected research methods that ensure the assessment, through a thorough and impartial approach, of the justification, correctness and appropriateness of the current civil procedural norms that regulate the writ proceedings.

Following the research carried out and the analytical-interpretive approach to the regulations of the writ proceedings normative framework, was developed a complex assessment of the writ proceedings; the elaboration of proposals and recommendations regarding the correct application of the rules of the writ proceedings in the practical activity; evaluation and designing from new standpoints of the mode of regulation of the writ proceedings in the content of the Civil Procedure Code of the Republic of Moldova.

The Important Scientific Problem Which Was Solved Through the Realized Research consisted in the elaboration of the reconceptualization of the institution of the writ proceedings, a fact that led to the clarification of its legal nature and essence, establishing the specifics of the claims on the basis of which the court order can be released, creating the theoretical basis for the optimization of the normative framework of the writ proceedings designated to ensure the defence, in a more efficient, simplified and accelerated way, of individuals' subjective civil rights in the process of judging civil cases in the Republic of Moldova in the writ proceedings.

The Theoretical Significance of the Doctoral Thesis – for the first time in the national civil procedural doctrine, a complex research was carried out regarding the writ proceedings, with deep implications on the essence, content and conditions for issuing by the court of the court order and the importance of the existence of the writ proceedings in the national civil procedural legislation, as a simplified procedure for judicial defence of individuals' subjective civil rights.

The Applied Value. The practical importance of this research is justified by the possibility of using the elaborated proposals and recommendations for the improvement of the regulation of the institution of the writ proceedings in the civil process, whilst also being useful for further scientific researches targeted to optimize the writ proceedings. Also the elaborated proposals and recommendations may serve the courts as writ proceedings case law guidance.

The Scientific Outputs Obtained Following the Realized Scientific Research consisted in determining the place and importance of the writ proceedings as a component part of the civil procedural legislation; determining the essence, content and particularities of the judgment of cases under the rules of the writ proceedings; establishing the concrete conditions for issuing the court order based on the grounds stated at Art. 345 of the CPC of the Republic of Moldova; identifying the gaps in legal regulation of writ proceedings; and elaboration of comprehensive proposals regarding the efficiency of the courts' judicial activity in writ proceedings.

Implementation and Approval of the Research Outputs. The lex ferenda proposals developed to improve and streamline the writ proceedings, and to fill the identified gaps, were submitted for examination to the responsible authorities – Republic of Moldova Parliamentary Commission Legal Committee for Appointments and Immunities, the Superior Council of

Magistracy; as well as were implemented during the educational process of the Faculty of Law of the Moldova State University; and the main theses and research outputs were presented and discussed in a series of national and international scientific-practical conferences.

THESIS CONTENT

Chapter 1 – Analysis of Scientific Researches on Writ Proceedings Institution is dedicated to the analysis of scientific materials published on the writ proceedings topic, highlights of various doctrinal opinions, including the contradictory ones, presented by different authors regarding the place and essence of the writ proceedings. The scientific materials selected, researched and analysed in the thesis, allowed the review of a wide spectrum of particularities specific to the institution of the writ proceedings, outlining the scientific and practical issues addressed by the authors of the analysed publications.

Thus, to mention the topic-related studies of the writ proceedings carried out by authors from the Republic of Moldova: Cretu, V., Josanu, I. [4], [5], [6], [8], [22], [25], Coban, I., Filincova S. [9], Andronov, I. [14], [15], Arseni, I. [17]; from Ukraine – Verbitica, M.V. [10], Dica, A.O. [11], Erosenco, E.B. [12], Covtun, A. A., Izarova, I.O. [13], Sabalin, A.V.; from Belorussia – Sîsoev, D. V, [27]; from Russian Federation – Argunov, V.N. [16], Voronov, A.F. [18], [19], Gromosina, N.A. [20], [21], Camzina, E, Camzin, N. [23], Resetneac, V.I., Cernih, I.I. [26], Tumanov, D.A. [28], [29], Cereomin, M.A. [30], etc.

In these studies, the authors elaborate on different aspects of the writ proceedings, to start from its historical roots, the place and role of the writ proceedings in the civil procedural legislation, the particularities of the defence of subjective civil rights through the writ proceedings and up to the opportunity of the preservation of the writ proceedings as part of the judicial activity.

Most of the authors are aligned that the following features are inherent to the writ proceedings: accessibility, quickness, simplicity of document completion and the guarantee of a swift issuance of judicial act endowed with enforceable force. We support the doctrinal opinion that the court order is a deed of disposition issued by the court which contains, first of all, the order of the court addressed to the executive bodies, as the debtor refuses to voluntary execute or avoids the execution of his/her obligation assumed towards the creditor, and, following the creditor's claim lodged at the court, the court smoothly ensures judicial defence of the creditor's civil rights.

Cereomin, M.A. considers that the writ proceedings can be defined as a simplified and reduced judicial procedure, compared to the procedure in civil action, being an alternative to it, based on reliable written evidence, aimed at protecting the rights and legitimate interests of the parties by ensuring the possibility of executing a series of obligations and conditioned by the legal nature of the claims specified in the law, based on which a court order can be issued [30, p. 78]. The author states that the object of the court order is the material-legal relations whose certainty and lack of litigation is established following the analysis of the documents submitted by the creditor [30, p. 85].

At the same time, due to the fact that in the writ proceedings, the fundamental principles of the civil procedural law are carried out in a specific way, being practically excluded the orality, and having an absolutely predominant role of the principle of developing the judicial procedure in writing, some authors – e.g., Gromosina, N.A., denies the existence of the court's procedural activity whilst issuing the court order. This author states that the writ proceedings lack a series of classic principles of the civil procedure, and this procedure itself includes a series of elements randomly taken from the procedural form of court activity; hence, relying on formal logic, when some characteristics features of a phenomenon are lacking, we inevitably conclude on the lack of that phenomenon [20, p. 236].

Being on opposite side of the statements delivered by Gromosina, N.A., we claim that in the writ proceedings, as in the case of other types of judicial proceedings, justice is duly carried out, as well as procedural activity of the court is developed, as during the writ proceedings, the court, in the name of the law, rules on the rights and obligations of the parties, applies sanctions, being guided by the norms of the acting legislation, which, in fact, represents the activity of the administration of justice. Nowadays, the form of procedural activity cannot be the same for all categories of causes and types (types) of procedures, given the different nature of the material relations between the parties, the nature of the claims submitted, the evidence available to the parties, the lack or litigant character of the claims, which determine the complexity of the court's procedural activity with reference to the resolution of different categories of civil cases.

The writ proceedings are simplified proceedings, essentially documentary proceedings, within which the functional principles of civil procedural law are manifested in a specific, more restricted way, compared to the procedure in civil action, and where the principle of procedural activities in written form dominates. The examination of the case under writ proceedings, compared to the general litigation procedure, is characterized by a series of simplified procedural actions, and some procedural-civil activities are generally missing, and the efficiency of the writ proceedings largely depends on the speed of judicial proceedings and the correct determination by the judge of the non-litigant character of the claims submitted by the creditor.

Tumanov, D.A. states that the writ proceedings are characterized by the lack of litigation between the parties, and this lack of litigation must be approached specifically from the perspective of the absence from the part of the debtor of the active negation of his/her obligation towards the creditor's claim, and, at the same time, the existence of the debtor's passive behaviour manifested by non-execution of the obligation – otherwise, even taking into account this approach, we must recognize that, in the writ proceedings, there is, however, a potential dispute between the parties [28, p. 71-72].

We specify that, in the writ proceedings, the legal dispute can only arise if the debtor submits his/her reasoned, truthful objections, and duly attaches the evidence that confirms them, based on which the judge will be able to conclude on the merits of these objections, respectively, the existence of a potential legal dispute between the parties, therefore ruling on the admissibility of the debtor's objections (Art. 352 of the CPC of the RM) and, respectively, the cancellation of the court order (Art. 353 of the CPC of the RM). We emphasize that the lack of litigation between the parties in the writ proceedings must be addressed specifically in light of the nature of the claim submitted by the creditor and the content of the attached documents, which, in order to satisfy the conditions for issuing the court order, must demonstrate that the debtor, reasonably, would not had real and effective defence possibilities – until the contrary evidence materializes by submitting his/her motivated and truthful objections, and providing attachment of confirmatory evidence.

In this chapter, attention was also paid to the doctrinal debates regarding the similarity of the act of disposition with which the examination of the case is completed in the writ proceedings - the court order with the notarial enforceable formula, some authors even assimilating them, as such. We specify that the court order cannot be confused with the enforceable notarial formula, these being two distinct legal instruments, meant to ensure a quick defence of the creditor's civil rights. It is true that the executive order, like the court order, confers enforceability to the act, but this is where the similarities end: the court order differs from the notary's executive formula in that it is one of the independent types (types) of judicial acts of disposition, an act that completes the process of judicial activity; when issuing the court order, the procedural rules established by the civil procedural law must be respected, with the guarantee of the debtor's rights, based on the equality of the parties as per law and in the court. Whilst the actions of the notary regarding the vesting with an executory formula, are targeted to confer executive power, specifically to legal documents authenticated by a notary and in the situations expressly provided for by the law; the vesting with an enforceable formula can only be carried out in respect of documents authenticated by a notary, presented in the original, and the issuance of the judicial order can be carried out by the courts in respect of all non-litigious claims, based on indisputable evidence.

The legislator, when introducing the simplified procedure in the procedural-civil legislation, considered it to be a type (kind) of judicial activity, which is carried out within the judicial form of defence of legitimate rights, interests and freedoms, according to the relevant procedural norms, on the basis of the general principles enshrined in civil procedural legislation. The writ proceedings are an independent and stand-alone civil court procedure, a viable alternative to general litigation proceedings. The writ proceedings in no way can be considered as a preliminary procedure for the general litigation procedure – the right to choose the civil procedural order under which the case

will be examined – civil action procedure or writ proceedings, belongs solely to the creditor, and the court cannot condition the examination of the case under civil action proceedings following the prior submission of the claims under writ proceedings.

We believe that the future of the writ proceedings has its place in the enforcement proceedings, as an enforcement procedure for undisputed claims, which would allow the creditor to address directly the bailiff regarding the undisputed claims by the debtor. Through this transformation of the institution of the writ proceedings with its exclusion from the field of civil judicial proceedings and with the inclusion of the circle of claims on the basis of which the release of the court order can be requested under enforcement proceeding regarding the indisputable claims of the creditor, the burden on the courts will be reduced, and the legal guarantees offered to the creditor and the debtor by law will be maintained. However, we believe that this transformation, at the current stage of society's development, is too early yet, since the vesting with jurisdictional powers of other bodies or natural persons authorized by the state to carry out public interest activities, requires thorough preparation and training, as well as institutional reorganization, but, first of all, it can be done efficiently only in a society with a high legal culture, which would allow to avoid possible challenges of the acts issued by the bailiffs in the respective procedure.

In finals to Chapter 1 of the thesis, after conducting the analysis of the scientific approaches of the institution of the writ proceedings carried out in the Republic of Moldova and abroad, we found that most of the problems related to judging cases in the writ proceedings, the practical application of the norms of the writ proceedings, the essence and content of the writ proceedings, until now, have not been researched, or have been researched only partially, and the synthesis of the procedural-civil legislation indicates that the legislator has not always paid due attention to the regulation of the institution of the writ proceedings, which determines the need for further improvement of this type of civil judicial procedure.

In Chapter 2 – The Legal Nature of the Writ Proceedings and Its Place in the System of the Types of Civil Procedures in the Republic of Moldova was carried out the analysis and concretization of the essence and legal nature of the writ proceedings and the act of disposition adopted by the court as a result of the trial of the case in this procedure – the court order. The court order is a judicial act of disposition (Art. 14 of the CPC of the RM) – an act, by which the court resolves the merits of the case; an enforceable act (Art. 344 para. (2) of the CPC of the Republic of Moldova) and an enforceable document (Art. 11 letter b) of the Enforcement Code of the Republic of Moldova), which is executed according to the rules established by the Enforcement Code of the Republic of Moldova.

Following the scientific research carried out, we state that the writ proceedings is an independent civil judicial procedure, set out by the rules of Chapter XXXV of the Civil Procedure Code of the Republic of Moldova. The writ proceedings, compared to the procedure in a civil action, is a less formalistic and simplified civil judicial procedure, in which the court assures defence for the subjective civil rights of individuals and legal entities, regardless of their organizational and legal form. A specific characteristic of the nature of the writ proceedings is the existence of an express and limited type of claims that can be examined under this judicial procedure (Art. 345 of the CPC of the RM), as well as a short deadline for the release of the act of disposition the court – the court order, which shall be issued within 5 days from the date of filing in the court of the request for the release of the court order (Art. 350 para. (2) of the CPC of the RM).

The procedural-civil legislation provides special rules when developing the writ proceedings. These rules essentially derogate from the general procedural-civil order for the examination of civil cases, in the absence of the mandatory stages of the civil process: preparation of the case for judicial debates and without judicial debates, without minutes and without the summons and presence of the parties. Only exception is the situation expressly provided for by Art. 352 para. (5) of the CPC of the Republic of Moldova, when the court has the right to summon the debtor and the creditor in the court session to present themselves regarding the submitted objections.

The purpose of the writ proceedings is to confer, in a fast and efficient way, enforceability of the debtor's obligations confirmed by the creditor through authentic, truthful, certain and complete documents, by which fact the defence of the creditor's rights and legitimate interests can be achieved. When in writ proceedings, this defence is carried out in a short time, with quick court's procedural actions, with minimal time and effort involvement from the part of the creditor and the debtor, and with the diminished court's procedural burden.

In the writ proceedings, the legislator provided for procedural-civil guarantees for both the creditor and the debtor, however, in the case of the debtor, these guarantees begin to produce legal effects much later, compared to those offered to the creditor, namely – only after receiving the copy of the court order.

The peculiarity of the administration of justice in the writ proceedings in written form, determines the specific way of realizing the principle of contradiction in the writ proceedings – through the exchange of written documents between the creditor and the debtor. In the writ proceedings – a documentary procedure by its essence, only the written materials and documents of the creditor are admitted, respectively, the written evidence that confirms the debtor's objections

to the creditor's claims admitted by the court, bears the mark of contradiction through the content of the written evidence presented by the creditor and the debtor – the parties having conflicting material-legal interests. In this sense, we believe it is necessary to recognize, define and include in the content of the Civil Procedure Code of the RM the principle of administration of justice in written form in the writ proceedings.

We believe that the writ proceedings are non-contentious: the creditor applies to the court for the issuance of the court order in certain circumstances, namely – either when the debtor refuses to perform his/her obligations, or when the debtor avoids to execute his/her obligations, but the debtor does not deny, as such, the existence of the creditor's claim and the creditor's right to demand its execution.

A particular attention, within this chapter, was dedicated to the analysis of the recent issue raised by practitioners and debated at the doctrinal level – the appropriateness of maintaining and continue the existence of the writ proceedings, after the contents of the CPC of the Republic of Moldova were modified by including provisions on the low-value claims procedure. In order to provide an answer, there's need for a comparative analysis of the both civil procedures, with the identification of common features and the differences between them, but also highlighting the advantages and disadvantages of each of them, as tools to ensure protection for subjective civil rights guaranteed by law. Following the analysis performed, we state that the low-value claims procedure, regulated by the provisions of Art. 276^2 – 276^4 of the CPC of the RM, even if, at the first glance, would seem to have certain similarities with the writ proceedings, in essence, it is a completely different civil judicial procedure by its legal nature and content. From the start, we spot the fact that, if the writ proceedings are a special type of civil judicial procedure, then the low-value claims procedure, by its nature, is only a variety of the civil action procedure, which is distinguished precisely by the value of the submitted claim, and this value determines some special rules established by the law for examining the case. We specify that the low-value claims procedure does not apply in a series of cases (in fiscal, customs matters or in the case of liability for damage caused by a public authority or by a person holding a responsible position, state liability for damage caused by the illegal actions of the criminal investigation bodies, the prosecutor's office or the courts, as well as in the case of disputes regarding non-patrimonial rights), while in the writ proceedings, on the contrary, these claims can be submitted on the condition that the creditor (natural person, private legal entity, public authority, public institution, etc.) has the documents that confirm the indisputability of its claims. We also specify that, in the case of the low-value claims procedure, the plaintiff submits its lawsuit according to the general rules provided by Art. 166 and Art. 167 of the CPC of the RM, while the submission of the request for release of the court order

in the writ proceedings involves particularities – observance of special rules provided by Art. 346 and Art. 347 of the CPC of the RM (submission and content of the request), the refusal to receive the request, also involving specific particularities (Art. 348 of the CPC of the RM).

An advantage of the writ proceedings consists in the simplified order of examination of the case and the quickness of this procedure, an advantage that is preserved not only in relation to the general procedure, but also compared to the low-value claims procedure, in which the court can order from the start the summoning of the participants in the trial, and the defendant is granted a deadline, which we consider to be in full, of 30 days from the communication of the request for summons and the attached documents, to present to the court and to the plaintiff a reference and copies of necessary documents. We also point out the much longer term for examination of the case under low-value claims procedure – up to 6 months from the date of submission of the lawsuit, versus the deadlines set by law for the examination of the case under the writ proceedings – 5 days for issuing the court order, 10 days from the receipt of the copy on it granted to the debtor for filing objections against it, another 5 days from the date of filing the objections or examination of the objections, for their admission and cancelling of the court order or rejection of the objections, deadlines to which we would also add the deadline to remove lawsuit shortcomings, plus the duration for mailing to the debtor, which can total, on average, 30 days. At the same time, the court decision issued in the low-value claims procedure can be appealed, the appeal court examining the appeal request in written procedure or with the summons of the participants in the trial, according to the rules for examining these cases in the first court, while in the writ proceedings, the court order, once issued to the creditor, becomes irrevocable, not subject to any appeal; only the debtor can appeal, within 10 days, the conclusion about the refusal to cancel the court order. Thus, the court order, by itself, (except for the only case provided for in Art. 354 para. (3) of the CPC of RM, represents an enforceable act, with immediate effect (Art. 354 para. (1) of the CPC of the RM), while the court decision issued in the low-value claims procedure can be challenged with appeal, which is examined in the order provided by the CPC of the RM (Art. 276^4 para. (4) of the CPC of the RM).

Following this analyses, we conclude that these types of procedures are different, target different situations and are applicable to different categories of claims, and thus both types of procedures can co-exist in parallel, each performing the tasks of the law in the part in which they are assigned.

The possibility of the coexistence of these two types of procedures is also proven at the level of the European Union, where both types of procedures are recommended to be applied – reference to the Recommendation of the Committee of Ministers of the Council of Europe no. R

(84) 5 of 28.02.1984 to Member States on the Principles of Civil Procedure Designed to Improve the Functioning of Justice; Green Paper on European Payment Order Procedure and Measures to Simplify and Speed Up Small Claims Litigation COM (2002) 746; and Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European Order for Payment Procedure, where the order for payment corresponds to the meaning and essence of the writ proceedings provided by the civil procedural legislation of the Republic of Moldova.

In Chapter 3 – Grounds for Issuance of the Court Order, initially, the general (common) characteristic of the claims on the basis of which the court order can be issued is provided, and a classification of the categories of claims, set out at Art. 345 of the CPC of the RM, depending on the subjects with the right to submit claims in the writ proceedings, as follows:

1. claims that can be submitted in the writ proceedings exclusively by public authorities and institutions, including persons exponents of state power: Art. 345 of the CPC of the RM, letter f), letter i), letter h), letter j), letter l), letter m), letter p);
2. claims that can be submitted in the writ proceedings exclusively by natural persons: Art. 345 of the CPC of the RM, letter d), letter e);
3. claims that can be submitted in the writ proceedings by legal and natural persons: Art. 345 of the CPC of the RM, letter a), letter b), letter c), letter g), letter k), letter n), letter o), letter r).

Further on, is presented a thorough analysis of all 17 categories of claims listed at Art. 345 of the CPC of the RM, under which the court order can be issued, noting that the specifics of the regulations of the writ proceedings determine the need for the court to clarify the claims through the prism of the substantive law provisions, in order to fairly assess the admission of the claims or the refusal to issue a court order. We affirm that precisely on the correct qualification of each category of the creditor's claims according to the provisions of material law, on the determination of the non-litigious character of the claims and the recognition of the claims by the debtor, it depends whether the court will have the right or not to issue the court order.

We demonstrated that the writ proceedings are conditioned by the specific nature of the material-legal claims submitted by the creditor. The choice of the creditor to defend the particular rights in the writ proceedings, but not in the civil action procedure – which is always an alternative procedure, is determined by the creditor's conviction that he has indisputable written documents, which certainly confirm his/her claim, the binding relationship between the creditor and the debtor being certain and enforceable, and the debtor does not dispute his/her obligation, but, for the reason not having sufficient financial funds, or because not wishing (not considering it as priority or being important) to execute the obligation towards the creditor, does not perform it. The output of

admitting the creditor's claims depends on whether or not he/she has written documents which correspond to the law requirements, the content of which should firmly convince the judge regarding the creditor's indisputable, legitimate and well-founded right to submit those claims under the writ proceedings and to order collection of money or claim the goods; as well as the rational assessment that the debtor, as such, regarding the claims made against him, cannot have any well-founded objections, proven by written evidence that would confirm their veracity.

By admitting the creditor's claims and issuing the court order to the creditor, the court gives enforceability to the claim submitted by the creditor – thus removing the creditor's impediment that prevented him/her from demanding the enforcement of his/her obligation.

Following an in-depth analysis of each category of claims on the basis of which the court can issue a court order, the current gaps in the legislation were discovered, respectively, we made proposals to modify and update some of the grounds for issuing the court order, as follows:

(i) Art. 345 lit. d) of the CPC of the RM: disputing paternity (maternity) represents a right, and by no means an obligation of the persons indicated at Art. 49 of the Family Code of the Republic of Moldova. Respectively, the current wording of the provision of Art. 345 letter d) of the CPC of the RM needs to be revised, and have the following wording: "the claim relates to the collection of the pension for an underage child which does not require the establishment of paternity or the involvement of other interested persons in the process, and the court has not been filed with any request on contesting the paternity (maternity) of this child".

(ii) completion of Art. 345 of the CPC of the RM with a new ground, to be set forth at letter e^1): in order to guarantee the exercise of the defence of the rights of both subjects from the mandatory social insurance relationship, we consider it appropriate to complete the list of claims from Art. 345 of the CPC of the Republic of Moldova with the following category of claim: "e^1) seeks the collection of social benefits calculated but not paid to the beneficiary."

(iii) Art. 345 letter h) of the CPC of the RM: to exclude possible restrictive interpretations of the rule from Art. 345 letter h) of the CPC of the RM and guaranteeing the creditor the indisputable possibility to request, in the writ proceedings, any types of library documents (not only books), it is necessary to adjust the rule set out at Art. 345 letter h) of the CPC of the RM and have the following wording: "h) results from the non-return of library documents borrowed from the library".

(iv) Art. 345 of the CPC of the RM, letter i) and letter j): formulating the basis indicated at Art. 345 letter i) of the CPC of the RM needs to be adjusted in order to correspond to the current provisions of Law no. 489 from 08.07.1999 on the Public Social Insurance System, as well as in order to extend the applicability of this ground not only to debtor companies, but to all categories of payers

of contributions to the state social insurance budget, indicated at Art. 17 of Law no. 489 from 08.07.1999 on the Public Social Insurance System, as well as the insured persons. Accordingly, we consider it appropriate to merge the two grounds for submitting claims regarding social insurance – the one from Art. 345 letter i) of the CPC of the RM and the ground from Art. 345 letter j) of the CPC of the Republic of Moldova; accordingly, we propose the following wording of Art. 345 letter i) of the CPC of the Republic of Moldova: "i) results from failure to honour the obligations stipulated by the legislation regarding state social insurance"; and, therefore, the norm from Art. 345 letter j) of the CPC of the RM to be set out in the following wording: "j) results from tax arrears, excise duties and/or fees".

(v) Art. 345 letter n) of the CPC of the RM: the current reading of the law provision from Art. 345 letter n) of the CPC of the RM is counter to the provisions of Art. 346 para. (1) of the CPC of the Republic of Moldova – the request for release of the court order is submitted to the court, after following the preliminary procedure. Given that compliance with the prior procedure is a mandatory precondition for the creditor to address the court with the request for the release of the court order, the respective invoices cannot be due on the date of their submission, they must have been due already on the date of transmission to the debtor of the claim with the request for their payment. However, until the expiration of the due date of the invoice, the debtor is not in arrears, respectively, the creditor's claim is not enforceable. Therefore, we consider it necessary to adjust the wording of Art. 345 letter n) of the CPC of the RM to read as follows: "n) results from due invoices".

(vi) Art. 345 letter r) of the CPC of the Republic of Moldova: the specifics of the evacuation of persons, as enforcement method, involves not only the evacuation of persons from immovable property, but also of property, and a large part of the eviction expenses specifically relates to the evacuation of property – however, according to the current wording of Art. 345 lit. r) of the CPC of the RM, this category of expenses cannot be requested under the writ proceedings, but only under general civil action. In order to offer the creditor, in the writ proceedings, a more effective tool for defending his rights, we propose to adjust the current provision of Art. 345 letter r) of the CPC of the RM, to read as follows: "r) is submitted by the person who received or bought a good, if it refers to the evacuation of persons inclusive of the goods, from the immovable property transferred or sold by the bailiff, with the confirmation of this fact by the court."

Chapter 4 – Examination of the Request in the Writ Proceedings and the Conditions for Issuing the Court Order. The research within this chapter was focused on the thorough analysis of the procedure for examining cases under writ proceedings, with details on the specifics of the writ proceedings rules, the stages (phases) of the writ proceedings, the specific procedural

peculiarities of the writ proceedings and the conditions for the release of the court order by the judge.

The writ proceedings are performed, just like other types of civil judicial proceedings, in a certain procedural order, the civil process thus moving through certain consecutive stages (phases). The stages (phases) of the writ proceedings have a different content from that of the phases of the general judicial procedure, involve fewer procedural actions, compared to the civil action procedure, which are carried out within a shorter time period and with minimal involvement of the parties.

Although in the content of the CPC of the Republic of Moldova we will not find a classification of the stages (phases) of the writ proceedings, we can deduce them from the analysis of the structure of Chapter XXXV of the CPC of the Republic of Moldova, and also referring to the procedural-civil doctrine. Thus we consider that the writ proceedings have the following stages (phases): (i) the initiation of the writ proceedings; (ii) examining the merits of the request and issuing the court order; (iii) notifying the debtor of the court order; (iv) cancellation of the court order or release of the court order to the creditor; (v) enforcement of the court order.

In Chapter 4, we performed the analysis of the procedural peculiarities of the examination of the request in writ proceedings, which was done not only by going through all the procedural stages and establishing the specifics of each activity of the court, but also highlighting the current theoretical and practical issues and analysing the correct application of the rules of procedure.

Thus, one of the aspects targeted in the research is the application, in the writ proceedings, of the exemption from state tax and stamp duty. We affirm that in the writ proceedings the provisions of Art. 85 of the CPC of the RM (exemptions from the state tax and stamp duty), as well as of Art. 86 of the CPC of the RM (postponement and staggering of the state tax) or, the legislator did not specify that these provisions apply only to general proceedings and these rules refer, in general, to incidents regarding the payment of the state tax, and, as the case may be, also the stamp duty in the civil process, according to the provisions of the State Tax Law no. 213 of 31.07.2023.

The importance of compliance by the creditor with the prior procedure (Art. 346 para. (1) of the CPC of the RM). Since the writ proceedings is a non-litigant procedure, and the creditor's claim must be indisputable, non-litigious, we emphasize the importance of observance by the creditor of the prior procedure before submitting the request for release of the court order, and attaching the evidence that confirms it. We consider that the prior addressing of the creditor to the debtor claiming the execution of his/her obligation, is mandatory and it shall be done in practically all cases, including in cases where contracts or agreements have been signed between the creditor and the debtor, the due date of payment according to which is known to the debtor. Exceptions are

only the creditor's claims submitted pursuant to Art. 345 letter k) of the CPC of the RM – tracking the exercise of the right of pledge, provided that the creditor attaches to the request for the release of the court order the notification to the debtor of the pledge enforcement notice (made in accordance with the provisions of the Civil Code of the RM) and the claim pursuant to Art. 345 letter o) of the CPC of the RM – return on execution according to Art. 158 para. (2) of the Enforcement Code of the Republic of Moldova.

Admissibility of the request for release of the court order. We specify that the admissibility of the request is resolved by the judge at the time of receiving the request for release of the court order. Thus, Art. 348 of the CPC of the Republic of Moldova lays down the grounds for refusing to receive the request for issuing the court order, and not for refusing to issue the court order. Accordingly, we stipulate that the current wording of Art. 348 para. (2) of the CPC of the RM, creates confusion – as the judge will actually examine the merits of the specific case at the stage of receiving the request for release of the court order.

The clear, concrete and free will of the debtor in relation to the assumed obligation. The content of the documents presented by the creditor must reflect the clear and free will of the debtor in relation to the assumed obligation. And there shall be increased attention to the documents filed under writ proceedings, which shall be authentic, certain, truthful and complete, and their content must fully, definitely and completely confirm the claim of the creditor. At the same time, in the writ proceedings, based on the certainty of the claim condition, we consider that the creditor's claim cannot be admitted, even if it is well and correctly documented, if it refers to a debtor's obligation vested with conditions that will arise or will have to be fulfilled by third parties.

Assessment of the existence or lack of legal litigation in the writ proceedings (Art. 348 par. (2) letter d) of the CPC of the RM). We believe that the writ proceedings bear the imprint of a possible legal dispute, and that its determination, within the writ proceedings, can be made in different situations: the judge's finding that the creditor has not presented the court with indisputable evidence to justify the validity and legality of his/her claims towards the debtor (for example, evidence that confirms only part of the claim; the document is not drawn up in the authentic form required by law, etc.); the judge's finding that the legal situation of the parties is in contradiction with the claim submitted by the petitioner (e.g., the creditor, according to the law, cannot claim the execution of the respective claim; the obligation does pertain to the debtor indicated by the creditor, etc.); or when the debtor submits his/her reasoned and truthful objections, with the attachment of evidence that confirms them; or when the judge finds that the material legal relationship does not only concern the creditor and the debtor, but also imposes the need to involve third parties in the proceedings.

The possibility for the debtor to request the release of the court order against a joint debtor. We think that in the writ proceedings the creditor will be able to submit a claim against a joint debtor, but not against several joint debtors; an additional condition is that the joint obligation shall not be affected by the modalities (Art. 796, Art. 797, Art. 798, Art. 799 of the Civil Code of the Republic of Moldova).

The debtor outside the jurisdiction of the courts of the Republic of Moldova (Art. 348 para. (2) letter b) of the CPC of the Republic of Moldova). In the writ proceedings, the legislator prohibited the possibility of examining the creditor's claims, if the debtor is outside the jurisdiction of the courts of the Republic of Moldova. This rule aims to ensure effective access to justice for debtors, both citizens of the Republic of Moldova and foreigners, to notify them properly and to give them the practical opportunity to present the necessary evidence to support their position, including, as the case may be, to state their opinion on the applicable legislation regarding the claimed relationships between the parties.

The law, however, does not provide us with the definition of the jurisdiction of the courts of the Republic of Moldova. As a rule, the term jurisdiction is understood as the competence of the court, according to the acting laws, to judge cases and to issue judicial acts of disposition regarding these cases. According to Art. 346 para. (1) of the CPC of the Republic of Moldova, the request for release of the court order is filed with the court according to the rules of jurisdiction set up at Chapter IV of the CPC of the Republic of Moldova. In compliance with Art. 33 para. (2) of the CPC of the Republic of Moldova, the courts judge the cases with the participation of organizations and citizens from the Republic of Moldova, foreign citizens, stateless persons, foreign organizations, organizations with foreign capital, international organizations, if by law or international treaties to which the Republic of Moldova is a party is not provided for the jurisdiction of foreign courts or other bodies is established.

Thus, we note that the jurisdiction of the courts of the Republic of Moldova cannot be viewed and considered only in terms of the geographical location of the territory where a court is competent to act by law – the territorial jurisdiction established by Art. 38, Art. 39, Art. 40, Art. 411, Art. 42 of the CPC of the Republic of Moldova, but also shall be perceived as the power of a court to resolve a certain category of cases, including cases with a cross-border dimension.

In the light of the essence of the writ proceedings, we consider that the phrase "the debtor is outside the jurisdiction of the courts of the Republic of Moldova" does not, by definition, exempt foreign debtors from being a party in the writ proceedings, but the court will have to thoroughly examine its jurisdiction to judge the case when it appears to have a case with a cross-border dimension.

At the same time, we emphasize that the examination in the writ proceedings in a cross-border dimension case can be done only if foreign debtor can effectively be notified of the issuance of the court order against him, as well as if the court order can be enforced against the debtor's patrimony. In most of the cases, the criteria for delimiting the jurisdictional competence of the courts of the Republic of Moldova will be: (i) the headquarters or domicile of the debtor is on the territory of the Republic of Moldova and (ii) the possession by the debtor of assets on the territory of the Republic of Moldova. We believe if these two criteria are met cumulatively, then the court shall have no grounds to refuse the receival of the request – Art. 348 para. (2) letter b) of the CPC of the Republic of Moldova.

The possibility of applying interim measures in the writ proceedings. The analysis of the possibility of applying interim measures to secure the lawsuit, in the writ proceedings, deserves special attention, namely due to the specificity of the writ proceedings. In this sense, in theory and in practice, there's a debate whether the court can, or not, apply interim measures to secure the lawsuit in the writ proceedings?

From the start, we observe that the rules of Chapter XXXV of the CPC of the RM do not contain any regulations regarding this situation. Chapter XIII of the CPC of the Republic of Moldova reads that interim measures are applied at the request of the trial participants, and thus the judge or the court shall rule on the same day the application or non-application of the interim measures to secure the lawsuit. Application of interim measures can be done at any process stage, until the court decision becomes final, if the non-application of interim measures would lead to the impossibility to enforce the court decision (Art. 174 of the CPC of the RM). Although the law states for both interim measures to secure the lawsuit and the evidence, we believe that in the writ proceedings, the interim measures to secure evidence may not be applied, because the creditor, once the request for release of the court order has been submitted, must already present to the court all the evidence (documents) that confirm his/her claim in an indisputable way; the non-presentation of these evidences serve as grounds for refusal to receive the request for release of court order (Art. 348 para. (2) letter c) of the CPC of the RM.

The objective of applying interim measures to secure the lawsuit in the writ proceedings is to counteract the debtor's abuse of rights and to guarantee real and effective enforcement of the court order. In practical terms, regardless of the type (kind) of civil procedure in which the case is examined, in many situations, there is a danger of impossibility to enforce the court ruling, as the debtor's assets have been alienated or disappeared in some other way. The objective of the existence of interim measures to secure the lawsuit in the civil process is to guarantee the possibility to enforce court decisions. We believe that the objective of interim measures is applicable not only

under civil action procedure, but also under the writ proceedings, which is a simplified version of the general litigation procedure, and the final goal of the creditor is the same as that of the plaintiff – to obtain a de facto enforcement of his/her claim. From the practical point of view, same in the writ proceedings, the debtor may behave maliciously in relation to the goods that constitute the lawsuit object, which, in the end, may lead to the impossibility to enforce the court order. We think that also in the writ proceedings, the debtors can abuse their rights, which can considerably reduce, or even completely void the possibility to enforce the court order. For instance, once the debtor has received the copy of the court order, or once he/she has learned about filing a claim by the creditor against him under writ proceedings, the debtor can take actions, e.g. sell goods during the 10-day period granted by law for submitting objections, thus succeeding in carrying out actions that will irreversibly impact the possibility to enforce the court order. Given this standpoint, we consider it timely advisable to apply interim measures to secure the lawsuit also in the writ proceedings, at any stage thereof. At the same time, we believe that filing by the creditor of request to apply interim measures in the writ proceedings in no case shall mean that the creditor's claim is of litigious nature, but solely the specific aim to secure enforcement of the court order.

On the other hand, we cannot exclude the creditor's abuse of rights as well – for example, by not presenting all the documents pertaining to the case, from which, if they had been presented in their entirety, the judge could have found that the creditor's right to the claim towards the debtor is contestable. Thus, having the purpose to effectively and fairly ensure civil procedural guarantees for both parties in the writ proceedings, we believe it possible that the debtor can also request apply of interim measures.

Therefore, since the rules on interim measures stated by CPC of the RM are not targeted exclusively to a certain judicial procedure, and with the view to effectively guarantee the creditor's legitimate rights and interests, we support the timely possibility to apply interim measures to secure the lawsuit also in writ proceedings, provided preventing the impossibility of enforcement of the court order (Art. 174 of the CPC of the RM).

Following the carried out analysis in Chapter 4 of the PhD thesis, we stated lack of sufficient legal regulations, presence of gaps and inaccuracies in the current provisions of Chapter XXXV of the CPC, which leads us to the need to re-write Chapter XXXV of the CPC of the RM in a new wording, according to the proposal laid down in Annex no. 4 in the PhD thesis.

GENERAL CONCLUSIONS AND RECOMMENDATIONS

The results of the analysis of the procedural-civil legislation, the theory and practice of judging cases in the writ proceedings, lead to the following ***conclusions***:

1. The writ proceedings is an independent and free-standing civil judicial procedure within the civil process, being a viable alternative to the civil action procedure, which has proven its effectiveness through the application of the simplified mechanism for the defence of non-litigious subjective civil rights. The purpose of the writ proceedings is to ensure the fast and efficient enforcement of debtor's obligations confirmed by creditor through authentic, truthful, certain and complete documents, thereby defending the creditor's legitimate rights and interests. In the writ proceedings, this defence is carried out within a short time, through efficient and time-wise court procedural actions, with minimum time and efforts from the part of the creditor and the debtor, and with lower court's procedural burden.

The efficiency of the writ proceedings depends, to a large extent, on the speed of the judicial proceedings and the correct determination by the judge of the absence or presence of the litigious character of the creditor's claims. (Chapter 1, para. 1.1., 1.2.; Chapter 2, para.2.1.)

2. As per its legal nature, the writ proceedings are a non-litigant procedure. The creditor can submit a request for release of the court order only in certain circumstances: h/she is entitled to claim from the debtor the collection of sums of money or the claim of goods; his/her claim falls within the scope of those expressly and limitedly listed at Art. 345 of the CPC of the Republic of Moldova; the creditor has authentic, certain, complete and truthful documents confirming his/her claim, which is certain and enforceable, and the debtor does not object to the claim. In its essence, the writ proceedings represent a simplified and accelerated mechanism for vesting with an enforceable formula the creditor's claim, in respect of which the conflicting state with the debtor is limited only to the non-execution of the claim by the debtor, as the court does not solve a legal dispute in writ proceedings. In the "creditor-debtor" legal relationship, the claims are unilateral, being expressed only by the creditor, and the debtor having only a passive position, avoiding, out of his/her unwillingness or due to lack of financial possibilities, from fulfilling his/her obligation towards the creditor. In such a situation, the creditor addresses the court seeking to obtain the legal possibility of enforcing the debtor's obligation. (Chapter 2, para.2.1.)

3. The requirements for admitting the creditor's claims based on each specific ground for issuing the court order set forth at Art. 345 of the CPC of the Republic of Moldova, must be determined by the judge in the light of the material law aspects to be verified, in order to fairly assess the indisputable right of the creditor to the submitted claim and, respectively, issue the court order to

the creditor (Art. 354 of the CPC of the Republic of Moldova), otherwise refusal to receive the request for release of court order (Art. 348 of the CPC of the Republic of Moldova). At the same time, through the complex research of the current grounds for the release of the court order, it was demonstrated the need to adjust and complete them, in line with the current law regulations and from the standpoint of vesting them with greater utility. (Chapter 3, para. 3.1., 3.2., 3.3. and 3.4.)

4. Based on the study of the particularities of the procedure for examining the request for release of the court order, it was found that in the writ proceedings the functional principles of the civil procedural law manifest in a specific and more restricted way, compared to the procedure in civil action, the writ proceedings, in general, being dominated by the principle of carrying out civil procedural activities in written form – which, however, does not diminish the civil procedural guarantees of the parties from the point of view of ensuring the right to a fair trial. Despite the fact that in the writ proceedings some procedural-civil activities are not carried out, in writ proceedings, justice is done as the judge examines the evidence, assesses the factual circumstances of the case, qualifies the legal position of the parties, thus performing review of the merits of the case. (Chapter 2, para. 2.2.; Chapter 4, para. 4.2.)

At the same time, when analysing the norms of the writ proceedings, we found that certain regulations from the civil action procedure are also applied in the writ proceedings, although the law maker does not specify this. Thus, we believe that in the writ proceedings, the institution of exemption from state tax and/or stamp duty, the postponement and staggered payment of the state tax, as well as the application of interim measures, can be applied. The hesitancy of the judges to apply in the writ proceedings interim measures, reduces the efficiency of the civil procedural guarantees of the parties; the application of interim measures to secure the lawsuit in the writ proceedings, is designated to guarantee the countering of the abuse of law, both on the part of the creditor and the debtor, as well to ensure real and effective enforcement of the court order. We consider it appropriate the possibility of applying interim measures in the writ proceedings at any stage thereof.

At the same time, having analysed the current civil procedural norms regulating the writ proceedings, a series of shortcomings and gaps were identified, which calls for the need to develop more effective civil procedural guarantees for the debtor, as well as upgrade the civil procedural guarantees for the creditor, including to counteract possible bad faith actions both on the part of the creditor and on the part of the debtor. (Chapter 2, para. 2.1.; Chapter 4, para.4.2.)

5. Following the identified shortcomings and gaps in the content of the writ proceedings regulations, the insufficiency and inaccuracy of some provisions in the content of Chapter XXXV of the CPC of the Republic of Moldova, we consider it necessary to comprehensively revise its

content, and amend by many changes, and, therefore, the need to re-write Chapter XXXV of the CPC of the RM. (Chapter 4, para. 4.2. and Annex 4 to the doctoral thesis)

Taking into account the conclusions set out above, in order to improve the civil procedural legislation that regulates the writ proceedings, we propose the following ***recommendations*** as ***lex ferenda:***

1. Reword the text of Item 1.8 of Annex no. 2 of the State Tax Law no. 213 of 31.07.2023, as follows: "1.8. The Ministry of Internal Affairs, bailiffs, administrative authorities and its decentralized institutions, the State Fiscal Service and the National Anticorruption Centre are exempt from state tax and stamp duty. (Chapter 4, para. 4.2.)

2. Completion of Art. 267 letter k) of the CPC of the RM, to read as follows: "the court postponed or staggered the payment of the state tax, and the plaintiff or the creditor in the writ proceedings, did not pay it within the term set by the court". (Chapter 4, para. 4.2.)

3. Re-word the text of Art. 123 para. (2) of the CPC of the RM and read as follows:

"Article 123. Grounds for exemption from burden of proof:

"(2) The facts established by an irrevocable court decision or a court order in a civil case previously settled in a court of common law or in a specialized court are binding for the court that hears the case and do not require to be proven again, nor can they be contested at the trial of another civil case in which the same persons participate." (Chapter 4, para. 4.2.)

4. Amend Art. 254 para. (3) of the CPC of the RM and read as follows:

"Article 254. Final and irrevocable court decisions

"(3) After court decision or court order remains irrevocable, the parties and other participants in the process, as well as their successors in rights, cannot submit a new lawsuit or request for the release of court order with the same claims and on the same grounds, nor to challenge in another process the facts and legal relationships established in the irrevocable court decision or court order." (Chapter 4, para. 4.2.)

5. Amend the text of Art. 169 para. (1) letter b) of the CPC of the Republic of Moldova and read as follows:

"Article 169. Refusal to receive the lawsuit

"(1) The judge refuses to receive the lawsuit if:

b) there is an irrevocable court decision or court order regarding a dispute between the same parties, on the same subject and having the same grounds, or a court resolution on approval of process termination following the plaintiff's motion to withdraw the lawsuit or that the parties have concluded a settlement contract;" (Chapter 4, para. 4.2.)

6. The need to re-write Chapter XXXV of the CPC of the RM in a new wording, according to the proposal laid down in Annex no. 4 in the PhD thesis.

All the lex ferenda proposals carried out in the PhD thesis, as a result of the study and complex analysis of the rules of civil procedure that regulate the writ proceedings, are meant to improve the normative framework of the writ proceedings, which will increase the overall efficiency of the writ proceedings, thus contribute to ensuring the defence, in a more efficient, simplified and accelerated way, of subjective civil rights in the process of judging civil cases in the Republic of Moldova in the writ proceedings.

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ADNOTARE

JOSANU Ilona, „Procedura în ordonanță",
Teză de doctor în drept, Chișinău, 2024.

Structura tezei: adnotări (în trei limbi), lista abrevierilor, introducere, 4 capitole, concluzii generale și recomandări, bibliografie din 275 de titluri, 5 anexe, 216 pagini text de bază (pînă la Bibliografie). Rezultatele obținute sunt publicate în 11 lucrări științifice.

Cuvintele-cheie: instanța de judecată, judecător, procedura în ordonanță, ordonanța judecătorească, creditor, debitor, pretenție, cerere de eliberare a ordonanței judecătorești, document, procedură judiciară necontencioasă, obiecțiile debitorului.

Scopul lucrării: realizarea unei cercetări științifice complexe și aprofundate a instituției procedurii în ordonanță, determinarea naturii juridice și esenței procedurii în ordonanță, concretizarea specificului pretențiilor în temeiul cărora poate fi eliberată ordonanța judecătorească și elaborarea recomandărilor teoretico - practice vizînd revizuirea și perfecționarea cadrului normativ ce reglementează procedura în ordonanță.

Obiectivele cercetării: (1) determinarea naturii juridice și esenței procedurii în ordonanță; (2) analiza raționamentelor științifice și eficienței instituirii procedurii în ordonanță în procesul civil; (3) cercetarea complexă a temeiurilor eliberării ordonanței judecătorești pentru a stabili cerințele concrete de admitere a pretențiilor creditorului în baza fiecărui temei; (4) studierea particularităților procedurii de examinare a cererii de eliberare a ordonanței judecătorești și identificarea lacunelor și deficiențelor normelor procesual-civile actuale de reglementare a procedurii în ordonanță; (5) elaborarea propunerilor legislative în vederea perfecționării procedurii în ordonanță.

Noutatea și originalitatea științifică: insuficiența studierii procedurii în ordonanță în doctrina procesual-civilă. Subliniem că noutatea științifică a tezei de doctor constă în elaborarea unei noi abordări a reglementării juridice a procedurii în ordonanță, ca instituție a dreptului procesual civil.

Rezultatele obținute care contribuie la soluționarea unei probleme științifice importante: elaborarea reconceptualizării instituției procedurii în ordonanță, fapt care a condus la clarificarea naturii juridice și esenței acesteia, stabilirea specificului pretențiilor în temeiul cărora poate fi eliberată ordonanța judecătorească, creînd baza teoretică pentru perfecționarea cadrului normativ a procedurii în ordonanță în vederea asigurării apărării, într-un mod mai eficient, simplificat și accelerat, a drepturilor subiective civile în procesul de judecare a cauzelor civile în Republica Moldova în procedura în ordonanță.

Semnificația teoretică: pentru prima dată în doctrina procesual-civilă națională, a fost realizată o cercetare complexă privind procedura în ordonanță, cu implicații profunde asupra esenței, conținutului și condițiilor de eliberare a ordonanței judecătorești de către instanța de judecată și importanței existenței procedurii în ordonanță ca formă simplificată de apărare judiciară a drepturilor subiective civile.

Valoarea aplicativă: totalitatea propunerilor și recomandărilor elaborate în rezultatul analizei complexe a normelor de procedură civilă și a practicii judiciare, poate fi îndreptată spre revizuirea și perfecționarea reglementărilor procedurii în ordonanță în procesul civil.

Implementarea rezultatelor științifice: utilizarea rezultatelor științifice în procesul educațional al Facultății de Drept a Universității de Stat din Moldova, precum și în activitatea practică din domeniul judiciar.

АННОТАЦИЯ

ЖОСАНУ Илона, «Приказное производство», диссертация на соискание ученой степени доктора права, Кишинэу, 2024.

Структура диссертации: аннотация (на трех языках), список использованных сокращений, введение, 4 главы, общие выводы и рекомендации, библиография из 275 наименований, 5 приложений, 216 страниц основного текста (до Библиографии). Полученные результаты опубликованы в 11 научных работах.

Ключевые слова: судебная инстанция, судья, приказное производство, судебный приказ, кредитор, должник, требование, заявление о вынесении судебного приказа, документ, бесспорная судебная процедура, возражения должника.

Цель исследования: (1) определение правовой природы и сущности приказного производства; (2) анализ научной обоснованности и эффективности существования приказного производства в гражданском процессе; (3) проведение комплексного исследования требований, по которым выносится судебный приказ ввиду определения конкретных условий для вынесения судебного приказа по каждому из видов требований; (4) изучение особенностей процедуры рассмотрения заявления о вынесении судебного приказа и выявление пробелов и недостатков действующих норм гражданского процессуального права регулирующих приказное производство; (5) разработка законодательных предложений в целях совершенствования приказного производства.

Задачи исследования: анализ научного обоснования и эффективности института приказного производства в гражданском процессе; определение правовой природы сущности приказного производства; проведение комплексного исследования оснований вынесения судебного приказа с целью установления конкретных условий по удовлетворению требований кредитора по каждому основанию вынесения судебного приказа; изучение особенностей процедуры рассмотрения заявления о вынесении судебного приказа и выявление пробелов и недостатков в действующем гражданском процессуальном законодательстве регламентирующего приказное производство; разработка законодательных предложений в целях улучшения приказного производства.

Новизна и научная оригинальность: недостаточность изучения приказного производства в гражданско-процессуальной науке. Особым образом отмечаем, что научная новизна данной докторской диссертации состоит в разработке нового подхода к правовому урегулированию приказного производства как института гражданского процесса.

Полученные результаты способствуют решению важной научной проблемы: разработка реконцептуализации института приказного производства, что позволило раскрыть правовую природу и сущность приказного производства, определить специфику конкретных требований, на основании которых может быть вынесен судебный приказ, создав теоретическую основу для усовершенствования правовой базы, регламентирующей приказное производство, с целью обеспечения более эффективной, упрощенной и ускоренной защиты гражданских субъективных прав при рассмотрении судами гражданских дел в порядке приказного производства в Республике Молдова.

Теоретическая значимость: впервые в отечественной процессуально-гражданской науке было осуществлено многостороннее исследование приказного производства, с предложенным детальным анализом сущности, содержания и условий вынесения судом судебного приказа, а также значения существования приказного производства как упрощенной формы судебной защиты субъективных гражданских прав.

Прикладная ценность: предложения и рекомендации, разработанные в результате комплексного анализа норм гражданского процесса и судебной практики, могут быть направлены на переосмысление и совершенствование регулирования приказного производства в гражданском процессе.

Внедрение научных результатов: использование научных результатов в учебном процессе Юридического факультета Молдавского государственного университета, а также в практической судебной деятельности.

ANNOTATION

JOSANU Ilona, The Writ Proceedings, Philosophy Doctoral Thesis in Law, Chisinau, 2024.

Doctoral thesis structure: Annotation (in three languages), List of Abbreviations, Introduction, 4 chapters, General Conclusions and Recommendations, Bibliography including 275 titles, 5 Addendums, 216 pages of main text (ante the Bibliography). The results obtained were published in 11 scientific papers.

Keywords: court, judge, writ proceedings, court order, creditor, debtor, claim, request to issue a court order, document, non-litigant judicial procedure, debtor's objections.

Purpose of the study: develop a complex and in-depth scientific research of writ proceedings, determine the legal nature and essence of the writ proceedings, the specifics of the claims on the basis of which the court may issue a writ, and elaboration of theoretical and practical recommendations for the review and improvement of the normative framework that regulates the writ proceedings.

Objectives of the study: (1) determine the legal nature and essence of the writ proceedings; (2) analyse the scientific reasoning and the efficiency of the establishment of the writ proceedings in the civil process; (3) perform a complex research of the grounds for issuing the writ order to establish the concrete requirements for admitting the creditor's claims based on each specific ground; (4) study the particularities of the procedure for examining the writ order request and identify the shortcomings and gaps of the current civil procedure norms regulating the writ proceedings; (5) elaborate legislative proposals to improve the writ proceedings.

Novelty and scientific originality: the lack of sufficient study of the writ proceedings in the civil procedural doctrine. We emphasize on the scientific novelty of this Philosophy Doctoral Thesis in Law which is the development of a new approach to the legal regulation of the writ proceedings, as a civil procedure law institution.

The obtained results contribute to the solution of an important scientific problem: elaboration of the reconceptualization of the writ proceedings institution, which led to the clarification of its legal nature and essence, the establishment of the specifics of the claims on the basis of which the writ order can be issued, creating the theoretical basis for improving the normative framework of writ proceedings to ensure a more efficient, simplified and accelerated defence of subjective civil rights in the process of judging civil cases in the Republic of Moldova in writ proceedings.

Theoretical significance: for the first time in the national procedural-civil doctrine, complex research was carried out on the writ proceedings, with detailed outline of the essence, content and conditions for issuing by court of a court order and the importance of the existence of the writ proceedings as a simplified way of judicial defence of subjective civil rights.

Applied value: the entire set of proposals and recommendations developed as result of the complex analysis of the rules of civil procedure and judicial practice, can be directed to review and improve the regulation of the writ proceedings in the civil process.

Implementation of scientific results: application of the obtained scientific results during the educational process of the Law Department of the Moldovan State University as well as in the judicial practice.

JOSANU ILONA

THE WRIT PROCEEDINGS

553.03 – CIVIL PROCEDURAL LAW

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