JUDICIAL REFORM OF 1864 ON THE TERRITORY OF THE UKRAINIAN PROVINCES OF THE RUSSIAN EMPIRE AND ITS IMPORTANCE FOR THE DEVELOPMENT OF CIVIL PROCEEDINGS IN UKRAINE

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The article considers the judicial reform of 1864 and its importance for the development of civil procedural legislation in Ukraine. The author supports the idea that there is a need to improve the mechanism of judicial protection of violated rights and legitimate interests in civil proceedings through judicial reforms and that this can be done by considering the lessons from history. The results of the implementation of the judicial reform of the late nineteenth century on the territory of the Russian Empire offer the best solutions to the problems that are experienced in modern civil proceedings. The way that the legal statutes were implemented, in particular the Statute of Civil Procedure in the Ukrainian provinces which were part of the Russian Empire, will provide an opportunity to analyze the legal aspects and sociocultural phenomena that influenced it. This in turn will enable conclusions to be drawn about the prospects for the harmonization of the national civil procedural law and international standards of justice. In modern conditions these approaches have a great impact on the fundamental underlying ideas of civil justice – optionality and adversarial nature of process, openness and transparency of the proceedings, the court's independence and impartiality, commitment and enforceability of judgments.

Key words: Ukrainian civil procedure; legal reforms; Russian Judicial Reform of 1864; comparative civil procedure.

1. Introduction

On the eve of the sesquicentenary of the Legal Statutes 1864, as well as the 10 year anniversary of the coming into force of the new Code of Civil Procedure of Ukraine, and in the light of recent historical events, discussion has again become

focused on the need to improve the mechanism of judicial remedy for violated rights and legitimate interests in civil proceedings through judicial reforms. Studies devoted to the preparation and implementation of judicial reforms of the late nineteenth century on the territory of the Russian Empire could indicate the best solutions to problems that are relevant today for modern civil proceedings.

Features of legal statutes, in particular the Statute of Civil Procedure in the Ukrainian provinces which were part of the Russian Empire, will provide an opportunity to analyze the legal aspects and sociocultural phenomena which influenced it. This in turn will enable conclusions to be drawn about the prospects for harmonization of national civil procedural law and international standards of justice. In modern conditions the importance gets formation of uniform approaches to the fundamental underlying ideas of civil justice – optionality and adversary nature of process, openness and transparency of the proceeding, the court's independence and impartiality, commitment and enforceability of judgments. In this regard, the lessons of judicial reforms in 1864 are important when considering further reform of civil law in Ukraine, as well as the unification of international standards of justice.

During the judicial reforms in the 1860^{s}, the Russian Empire was one of the largest countries in the world in terms of area and population. It consisted of the territories of the present day Ukraine and Poland, Finland and some other modern states. Its population was around 180 million, and according to a census in 1897 Ukrainians were about 18% of the total. At the time, Kiev was the seventh largest city with a population of nearly 250 thousand people.

Territories of modern Ukraine had been part of Muscovy since 1654 and were part of the Russian Empire until its disintegration in 1917.[1] Since the mid-17th century, Ukrainian territories were divided along the line of the Dnieper between the Polish-Lithuanian Commonwealth and Muscovy. From the mid-19th century, the territory of modern Ukraine was governed by Russian imperial legislation, in particular the Code of Laws of the Russian Empire which had replaced the numerous sources of law in force over the previous few centuries.

2. Pre-Reform Legal Source in Ukraine

During the time of the reforms in the 18th century, the most important legal source in Ukraine was a codified compilation of standards of feudal serfdom known as 'Laws by Which the Little Russian People Are Judged' 1743.[2] In 1728, the Commission

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[1] *Грушевський М.С.* Історія України-Руси. Т. 10 [Grushevsky M.S. *Istoriya Ukrayiny-Rusy. T. 10* [Mikhailo S. Grushevsky, 10 History of Ukraine-Rus']] (Pavel S. Sohan' et al., eds.) (Naukova Dumka 1998) (reprint).

[2] Права, по которым судится малороссийский народ [*Prava, po kotorym suditsya malorossiiskii narod* [Laws by Which the Little Russian People Are Judged]] (Alexander F. Kistyakovsky, ed.) (Universitetskaya Tipografiya 1879) [hereinafter Laws]; До 270-ї річниці створення українського кодексу «Прав, за якими судиться малоросійський народ» [*Do 270-yi richnitsi stvorennya ukrayinskogo kodeksu 'Prav, za yakimi*

codified the legal rules contained in the Lithuanian Statutes, the Chelmno Law, the Saxon Mirror and the Ukrainian standards of common law bringing them closer to valid Russian legislation. One of the first people to advocate the need to codify Ukrainian law was Hetman Ivan Skoropadsky. In May 1721, a special commission of jurists was appointed to review all the valid existing law compilations of the Ukrainian territory and create a uniform code.[3]

One of the sources of this compilation was the Lithuanian Statutes or the Statute of the Grand Duchy of Lithuania, which are the basic code of law of the Grand Duchy of Lithuania.[4] Rus' and Samogitia were published in 1529, 1566 and 1588, and were in use in the territory of Ukraine in the Kyiv, Podolia and Volyn provinces almost until the 19th century. The effect of these statutes was terminated by a decree of the Senate on June 25, 1840 for the territories of the Left-Bank Ukraine and they were replaced in 1843 by the Code of Laws of the Russian Empire.[5] The Statute included the basic regulations of the state, civil, family, criminal and procedural law, which were regulated by standard Roman, Russian, Polish and German law.

The Saxon Mirror or *Speculum Saxonum* was a German medieval compilation of legal norms and customs of the 1230s, which later became the foundation of Roman and canon law, and the common law of the German regions.[6] In Ukraine mainly Polish translations of this source were used, many provisions of which are represented in the 'Laws by Which the Little Russian People Are Judged.'

Chelmno Law or Kulm Law is a compilation of legal norms that were widely used in Prussia in the 13th to 15th centuries. It is based on the Chelmno or Kulm charter and privileges of the Teutonic Order which regulated the relationship between citizens and the Teutonic Order. It also included part of the regulations of Magdeburg and Flemish law.[7]

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suditsya malorosiyskii narod' [*To 270th Anniversary of the Ukrainian Code 'Laws, According to Which is Judged the Little Russian People'*]], *Tsentral'nyi derzhavnyi istorichnyi arkhiv Ukrayiny*, <http://cdiak.archives.gov.ua/v_270_rokiv_vid_stvorennia_kodeksu.php> (accessed Sep. 26, 2014) [hereinafter *To 270th Anniversary*].

3 Encyclopedic edition (6 vols.): Україна: хронологія розвитку [*Ukrayina: khronologiya rozvitku* [Ukraine: Chronology of Development]] 67 (Krion 2010).

4 Статути Великого князівства Литовського: У 3 т. [*Statuty Velykogo kniazivstva Lytovs'kogo: U 3 t.* [1–3 Codes of Law of the Grand Duchy of Lithuania]] (Sergei V. Kivalov et al., eds.) (Yuridichna Literatura 2002–04).

5 Свод законов Российской империи [*Svod zakonov Rossiiskoi imperii* [Code of Laws of the Russian Empire]], Database 'ConsultantPlus,' <http://civil.consultant.ru/code/> (accessed Sep. 26, 2014).

6 *Усенко І.Б., Ромінський Є.В.* Саксонське зерцало // Юридична енциклопедія. Т. 5 (П – С) [Usenko I.B., Romins'kii Ye.V. *Saksons'ke zertsalo // Yuridichna entsiklopediya. T. 5 (P – S)* [Igor' B. Usenko & Yevgen V. Romins'kii, *Saxson Mirror*, 5 Legal Encyclopedia (P – S)]] (Ukrayin'ska entsiklopediya 2003) [hereinafter 5 Legal Encyclopedia].

7 *Дмитришин Ю.Л.* Хелмінське право як джерело «Зібрання малоросійських прав 1807 р.» // Державне будівництво та місцеве самоврядування: Збірник наукових праць. Вип. 21 [Dmytryshyn Yu.L. *Khelmins'ke pravo yak dzherelo 'Zibrannya malorossiis'kikh prav 1807 r.' // Derzhavne budivnitstvo ta mistseve samovryaduvannya: Zbirnyk naukovykh prats.' Vyp. 21* [Dmytryshyn Yu.L. *Chelmno Law as a Source of 'Code of Little Russian Laws 1807,'* in State Building and Local Government: Collected Works. Issue 21]] 200–08 (Pravo 2011).

These sources were further developed with other compilations of law in the 'Laws by Which the Little Russian People Are Judged.' This document consisted of 30 chapters which were divided into 532 items. There were more than one and a half thousand clauses containing norms of administrative, civil, commercial, criminal and procedural law.[8]

Chapter 7, for instance, contained provisions about 'courts and judges and other persons who belong to the court, and about content of judicial procedure in judicial institutions.' Chapter 8 set out provisions for 'the petitioner and the respondent, also on a lawsuit or pre-trial lawsuit and the evidence, on decrees and verdicts, on the appeals and fines: as well as for those convicted of an incorrect claim, as for those, who is convicted for injustice.'[9]

Through these provisions of compilation almost all stages of the judicial process were settled, such as decisions in civil and criminal cases, appeals to them in the higher courts, the legal status of the plaintiff and defendant, and the order of proof in cases and forensic evidence. The distinction between civil and criminal processes was also of importance. For example, in criminal cases the investigative principle of process dominated, whereas in civil cases it was the adversarial nature of the cases as well as the possibility of a peaceful settlement of a dispute.

The adversarial nature of process was defined by mutual rights and obligations of the parties:

> Every defendant must be in court interrogated verbally, according to petition of petitioner, especially for each point, and while the previous points are not cleared, the following are not to be questioned . . . the defendant is allowed during his interrogation to keep about himself written evidence and according to it to do verbal appropriate execution concerning all points, not just to the fact that was written in petition; but the following points should be not answered by defendant and not exposed by petitioner until the first points are exposed; what was extraneous required, however a judge if their trial will include should follow order of the case, and if another court, then should refer to the appropriate court; the other defendant has, as it is questioned, to tell the truth, withholding nothing that would not have done by him; and if not so, as shown in the petition, but another way or while other event, then this also not to withhold, but only to show what regards to case or event.
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> (The order, in art. Magdeburg Law: On judges and justice, No. 34. Saxon Mirror No. 3.) (Ch. 7, Art. 12(5))

The enforceable right of the sides to settle amicably is of great importance:

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8 *See* Laws, *supra* n. 2; *To 270th Anniversary*, *supra* n. 2.

9 Laws, *supra* n. 2; *To 270th Anniversary*, *supra* n. 2.

> [A]nd if during the investigation and judicial proceedings controversial parties want to settle amicably, it is allowed to do so, but it must be with pronouncement of this reconciliation on the same court or higher instance, in Ch. 7, Art. 25, on amicable agreement, in para. 6 is represented (Ch. 7, Art. 12(12)).

Despite the fact that the compilation did not enter into force, its importance for the further development of legal science was great. It has been used to study law by generations of Ukrainian lawyers. That also gives it significant importance.

3. Beginning of Reforms and Its Main Tasks

The reforms in the Russian Empire over 60–70 years during the 19th century were the result of a variety of social and economic factors, among which one of the most important is the abolition of serfdom in 1861 which freed huge numbers of peasants who accounted for about 80% of the total population. The abolition of serfdom freed most of the population out of the so-called informal home court of the landlords where the peasants had the right of trial for minor offences.

Judicial reform in 1864 is considered to be one of the most consistent reforms in the Russian Empire. Due to this reform, the judicial system and the procedure for criminal and civil proceedings in the courts were substantially changed.

The content of judicial reform was displayed in judicial statutes which were approved on November 20, 1864. These included the Establishment of Court Places, the Regulation of Civil Procedure, the Regulation of Criminal Proceedings, and the Regulation of the Penalties Imposed by Magistrates. For example, the Regulation of Civil Procedure was considered by the State Council for two years in order to take into account the complexity of the search for an effective model for the proceedings in the absence of established legal traditions and the abolition of serfdom.

The main tasks of the judicial reforms of 1864 were the following:

1) to overcome the negative public opinion on the work of the judiciary and justice on the whole by establishing an independent electoral judiciary;

2) to eliminate non-systemic and intricate mechanism level arrangement retrials, which entailed lengthy procedures of cases;

3) to create an open and transparent public adversarial proceedings in which the parties have an equal opportunity to prove their case and defend their violated rights.

4. Reforms in System of Courts

In the pre-reform judicial systems there were two major problems, namely the duration of the case, and the many instances for its revision, each of which had the right to cancel the decision and remand the case for retrial. As a result of judicial

reforms, the feudal court was abolished and the cumbersome judicial system with numerous instances was replaced by two independent court systems where professionally qualified judges sat.

The pre-reform system of courts in Ukraine had a number of the following features. In the times of Kyivan Rus', a popular assembly, or *veche*, government had quite extensive powers to make a contract with the Knyazh for his appointment to his position and for control of its operations, including the judging. During the 17th and 18th centuries in Ukraine a republic of elected bodies, the Military Council, was formed. Hetman was head of the executive department of the government and the elected courts, the regimental city and the General Court as the highest court.[10] In this way, the division of power among different institutions that had been characteristic of Ukrainian statehood for a long time was changed. In 1710, the legal structure and the 'Covenant and the Constitution of the rights and liberties of the Zaporizhia army,' or the Orlyk Constitution, was created where it first represented the main provisions of the independence of the judiciary in Ukraine.[11] It was an independent legislative and executive judiciary headed by the General Court which was the highest judicial body.

During the 1760–63 judicial reform in Ukraine, a new system of general courts was formed: country, city (*hrodski*) and *podcomorskii*, and the general military court became a court of appeal. By the end of the 18th and 19th centuries, the legal system of Ukraine had been rebuilt to resemble the judicial system in Russia, and the General Court in particular had become a permanent body where appointed officials were paid. Its work was directly under the supervision of the Attorney of the Little Russian Collegium which undoubtedly led to abuse by this Attorney and to the transformation of the judicial system into a biased state-government institution with distinctive features, such as estates dependent on the administration, and formalism.[12]

In the process of reform, two systems of judicial institutions were created, namely justice of the peace courts with elected judges, and district courts and judicial chambers where judges were appointed.

The justice of the peace court system had the following hierarchy: the magistrate, the county congress of magistrates and the Senate. They were created in the cities and counties. The elections of magistrates were carried out by local governments in county assemblies and city councils. Candidates could be persons who met the

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[10] *Безклубий І.А., Гриценко І.С., Шевченко О.О. та ін.* Історія українського права: Посібн. [Besklubyi I.A., Gritsenko I.S., Shevchenko O.O. ta in. *Istoriya ukrayins'kogo prava: Posibn.* [Igor A. Bezklubyi et al., History of Ukrainian Law: Textbook]] 4, 168–69 (Gramota 2010) [hereinafter Bezklubyi et al., History of Ukrainian Law].

[11] *Орлик П.* Конституція, маніфести та літературна спадщина: Вибрані твори [Orlik P. *Konstytutsiya, manifesty ta literaturna spadshchyna: Vybrani tvory* [Pylyp Orlyk, Constitution, Manifestos and Literary Heritage: Selected Works]] 99–100 (Mizhregional'na akademiya upravlinnya personalom 2006).

[12] Bezklubyi et al., History of Ukrainian Law, *supra* n. 10, at 4, 270–81.

requirements of age, education, and high property qualification depending on the province, for example in Poltava and Chernihiv provinces they needed to have 400–500 acres of land whereas in Kherson it was 400–700, and in Tavria it was 400–900 acres of land.[13] Besides the district magistrates, who received compensation for their services, positions of so-called honorary magistrates with no specific area were introduced. They 'administered justice and punishment' when both sides asked for it. The free basis of this position led to the fact that the honorable magistrates often became the district and provincial marshals of nobility and large landowners. An assembly of honorary and district judges of county or city, a congress of magistrates led by a selected head, was the highest authority.

According to many experts, the creation of a magistrate was a sufficiently democratic institution under an autocracy, and had a well-deserved reputation and support of the population, but it often received groundless and undeserved criticism concerning the election of judges and their decisions.[14] Global justice was a subject of the counter-reforms of the 80[s] and 90[s], when the law about county district chiefs and the rules of legal proceedings within the jurisdiction of county district chiefs and justices of magistrates was virtually eliminated in most provinces and only the institution of honorary magistrates was retained.

Jurisdiction of the District Court was extended to up to four districts in Ukraine. The court consisted of the head of the court, his assistant and members of the court. Chambers functioned as a second instance for the district courts and consisted of the departments of civil and criminal cases. Its head and members were appointed by the Emperor on the recommendation of the Minister of Justice. In the district court of justice, several provinces were included, and in Ukraine there were three Trial Chambers – Kiev, Kharkiv and Odessa.[15]

At the same time, the reform retained the remnants of the legal proceedings of estates (*stanovy*), which consisted of *stanovy* courts – canon, military and volost (bailiwick) courts for foreigners. There were special procedures for cases of business crimes, *stanovy* representatives in judicial chambers, administrative justice, noble judges, *etc.*

In Ukraine, courts of both levels were established only in Poltava, Kherson, Katerinoslavska and Tavria provinces, while others were allowed to create justice of the peace courts several years later, *e.g.*, in the Chernigov province after 1869 following the announcement of the content of the reform.[16]

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[13] *Чехович В.А.* Судова реформа 1864 [Chekhovych V.A. *Sudova reforma 1864* [Valerii A. Chekhovych, *Judicial Reform 1864*]], 5 Legal Encyclopedia, *supra* n. 6.

[14] Історія держави і права України: Академічний курс у 2 т. Т. 1 [*Istoriya derzhavy i prava Ukrayiny: Akademichnyi kurs v 2 t. T. 1* [1 History of State and Law of Ukraine: Academical Course in 2 Vols.]] 449 (Vasil' Ya. Tatsii et al., eds.) (In Yure 2000) [hereinafter 1 History of State and Law of Ukraine].

[15] Chekhovych, *supra* n. 13.

[16] 1 History of State and Law of Ukraine, *supra* n. 14, at 449.

In 1864 in the Right-Bank Ukraine, judicial reforms were carried out in two phases. First, the Magistrate's Court was introduced in 1872, and second, the general courts, district courts and judicial chambers were introduced in 1880. At the same time, magistrates in Kyiv, Volyn and Podolia provinces were not selected but appointed by the Minister of Justice and were therefore not subject to the principle of irremovability of judges. Therefore, it would seem that the counter-reform of the Magistrate's Court in the territory of Right-Bank Ukraine which had been carried out from the very beginning, 1872, while in the territory of the Left-Bank Ukraine it was carried out in the late 80^{s}.[17] It should also be noted that according to the law of July 12, 1889 the Magistrate's Court in the territory of Right-Bank Ukraine was not eliminated.[18]

Instead of magistrates on the territory of Left-Bank Ukraine, a new complex system of judiciaries was created which consisted of a county chief who reviewed almost all the same cases as the magistrates, and also a city judge who was a member of the county district court. The second body which received the functions of the liquidated magistrate was the city judge, whose office was introduced in provincial and district towns, but not in the capital and several other cities where the system of magistrates and their congresses was still preserved. City judges were appointed by the Minister of Justice from among persons who met a number of requirements, and in particular had a law degree.[19]

The third body which replaced the magistrates were members of the District Court which were appointed by the Minister of Justice, one for each district.[20] They reviewed all civil and criminal cases related to the competence of magistrates, and were not included in the jurisdiction of district chiefs and city judges, as well as all cases of security proceedings, that were based on the statute in jurisdiction of magistrates.

With the Laws of 1889 a system of appeal and cassation instances for local courts was also introduced: one appellate court for magistrates, the congress of magistrates, and one cassation instance, the Senate. The second cassation instance for cases was the county convention which considered those cases reviewed by district chiefs and city judges. This county convention included the marshal of the nobility, a member of the district court, honorary magistrates and a county chief of district. A cassation instance for them served a provincial government under the management of the governor which consisted of a marshal of the nobility, the vice-governor, prosecutor

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17 *Воробейкова Т.У.* Судебная реформа 1864 г. // Проблемы юридической науки и правоохранительной практики [Vorobeikova T.U. *Sudebnaya reforma 1864 g. // Problemy yuridicheskoi nauki i pravookhranitel'noi praktiki* [Tatyana U. Vorobeikova, *Judicial Reform in 1864*, in The Problems of Jurisprudence and Law Enforcement Practice]] (Naukova Dumka 1994).

18 *Щербина П.Ф.* Судебная реформа 1864 года на Правобережной Украине [Shcherbina P.F. *Sudebnaya reforma 1864 goda na Pravoberezhnoi Ukraine* [Pyotr F. Shcherbina, Judicial Reform 1864 in Right-Bank Ukraine]] (Vyshcha shkola 1974).

19 Chekhovych, *supra* n. 13.

20 *Id.*

of the district court or his assistant, two members and the head or members of the district court were also invited.[21]

5. Reforms in Civil Procedure and Its Influence in the New Civil Procedural Code of Ukraine

The creation of an independent judiciary enabled the implementation and development of the main provisions of the Statute of Civil Procedure, the provisions of which were revolutionary for the time.

In the first place, this is the establishment of two major orders of justice, overall and reduced, which significantly influenced the reduction of the duration of trials by simplifying the procedure of its proceedings. Secondly, the basic derivations or principles of civil proceedings recognized competitiveness, transparency and their oral nature. There was adjudication of cases on their merits in only two instances and a judicial review only in the case of violation or misapplication of the law.

In this Statute, jurisdiction of the courts was extended to 'all kinds of disputes about civil rights.' It separated the judicial and administrative authorities:

> [T]he restoration of justice in the case of a dispute according to legally enacted order is the first and foremost duty of the government; for this purpose there are legal places and for its functioning rules must be set to ensure as much as possible the discovery of truth (Art. 2 of the Statute).

The undoubted achievement of this reform was declared in the Statute of basic principles of justice. It provided for the election of magistrates and jurors; independence and irremovability of judges; presumption of innocence; equality of all before the law, regardless of status; publicity, the oral nature and the adversarial character of the judicial process; and free evaluation of evidence by the court. However, the pre-reform legislation contained inquisitorial elements of proceedings, such as closed court hearings, written proceedings, formal evaluation of the evidence, the inequality of the parties and their dependence on status in society.

For the purposes of this study, a report by Mikhail Ivanovich Mitilino in 1913 is of interest. He was a private-docent of the Kiev University of St. Vladimir, and the report was about the 50th anniversary of judicial reform.[22] In his work, he notes first

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[21] Vorobeikova, *supra* n. 17.

[22] *Митилино М.И.* Гражданский суд до и после реформы // Труды Киевского юридического общества, состоящего при Императорском университете Св. Владимира за 1911, 1912, 1913 и 1914 гг. [Mitilino M.I. *Grazhdanskii sud do i posle reformy // Trudy Kievskogo yuridicheskogo obshchestva, sostoyashchego pri imperatorskom Universitete za 1911, 1912, 1913 i 1914 gg.* [Mikhail I. Mitilino, *Civil Justice before and after Reform*, in Works of Kiev Legal Association Being Attached to Imperial St. Vladimir University within 1911, 1912, 1913 and 1914]] 341–58 (Tipografiya Imperatorskogo Universiteta Sv. Vladimira 1915).

of all the positive results of the reform, showing its success with specific examples that helped to achieve its purpose of creating a unified court to replace individual systems of courts for the nobility and serfs. It was a simplification of a vast and often confusing system of level arrangement retrial as before the reform there could be up to 12–13 instances. In addition, there was clear differentiation of legal jurisdiction and its separation from the administrative one, whereas before the reform one case could be reviewed in court and in various administrative places. An improvement of the institution of court jurisdiction had essential importance as before the reforms the determination of an appropriate court relied on numerous and often contradictory rules, and depended on individual officials and bodies. The reform of written civil procedure was also important due to the fact that during its existence it had become the basis of corruption and abuse in the courts, emphasizing the participation of court clerks in these processes. Separately noted are the problems of the judiciary, which consisted often of people without a proper legal education and this regularly led to catastrophic consequences. As one of the contemporaries of M.I. Mitilino aptly noted regarding the significance of the reforms of 1864, 'our judicial reform . . . is not so much reform as the creation of the judiciary' (p. 353).

All this illustrates the great evolutionary value of Judicial Statutes of the 19th century, and the need for further scientific research to understand the basis and foundation of the modern civil procedural law.[23] Today, many of the evolutionary achievements of reforms from 1864 in civil justice are relevant.

The Civil Procedure Code of Ukraine [hereinafter CPC] was adopted on March 18, 2004, and entered into force on September 1, 2005. As experts have noted, the drafting of the CPC took a long time given that the working group was established in the early 1990s, more than 10 years before the CPC was adopted. It took so long because the other procedural code, namely the Code on Administrative Proceedings, was intended to come into effect simultaneously.[24]

The permanent search for the best ways of reviewing judicial decisions led to the creation of a unique system level arrangement of the revision of judicial decisions in Ukraine. There were changes in the Civil Procedure Code of Ukraine 1963, which were made in 2001 regarding new forms of appeal review of court judgments and this led to the adoption of CPC and the introduction of amendments in the instance structure of the courts of civil jurisdiction by the Law of the Ukraine – 'About the

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[23] *Комаров В.В.* Цивільне процесуальне законодавство у динаміці розвитку та практиці Верховного Суду України [Komarov V.V. *Tsyvil'ne protsesual'ne zakonodavstvo u dynamitsi rozvytku ta praktytsi Verkhovnogo Sudu Ukrayiny* [Vyacheslav V. Komarov, Civil Procedural Law in the Dynamics of Development and Practice of the Supreme Court of Ukraine]] 13–14 (Pravo 2012).

[24] Roksolana Khanyk-Pospolitak, *Judicial System and Civil Procedure in Ukraine*, <http://www.ekmair.ukma.kiev.ua/bitstream/123456789/357/1/Khanyk-Pospolitak_Judicial.pdf> (accessed Sep. 26, 2014).

Judicial System and Status of Judges' and determination of special procedural legal status of the Supreme Court of Ukraine.[25]

Today in the Ukraine, there are civil courts of first instance for civil litigation where disputes arising from civil, housing and labor relations can be adjudicated, as well as appeals and cassation courts which review the court judgments on the basis of their illegality or invalidity. Appeals courts have the right to examine the evidence, but they are denied the right to send the case to the court of first instance, a rule which follows the practice of the European Court of Human Rights and significantly affects the timing of the case. The Appellate court is the High Specialized Court of Ukraine for Civil and Criminal Cases. The Supreme Court of Ukraine has the right to review the judgments only on two grounds: 1) unequal enforcement by the court (courts) of cassation of the same regulations of substantive law that have caused different judgments in similar legal relations; 2) statements of an international judicial institution whose jurisdiction is recognized by Ukraine about violation of international obligations in court judgments by Ukraine. The Supreme Court thus provides unity of judicial practice and observation of international standards of civil justice.

The background of modern, adversarial, open and transparent civil procedure of Ukraine was laid out exactly in the Statute of Civil Procedure and has been repeatedly mentioned in the works of contemporary proceduralists. Scholars, therefore, support the change of direction of civil procedural law in the CPC where the active role of the court in civil proceedings and in directing the process to establish the truth in the case are replaced by adversarial principles and a passive role of the court as an impartial arbitrator in the case.[26] The right of the court to request the evidence in the case is valid only for cases of special proceedings. At the same time, the parties have the right to provide all the evidence in support of their claims and objections, as well as the right to participate in their study. However, it should be noted that the role of the court is one of the most difficult in legal research into civil procedure.[27]

In the CPC the right of sides to settle an amicable agreement at any stage of civil proceedings is provided. Participation of the court in the settlement of the agreement is reduced to clarifying the consequences of such decisions, checking the credentials of the representatives and the compliance of terms of the settlement agreement with the law to check that it does not violate the rights, freedoms and the interests of other persons not involved in the case.

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[25] *Гусаров К.В.* Інстанційний перегляд судових рішень у цивільному судочинстві: Автореф. дис. ... д-ра юрид. наук [Gusarov K.V. *Instantsiinyi pereglyad sudovykh rishen' u tsyvil'nomu sudochynstvi: Avtoref. dis. . . . d-ra yurid. nauk* [Kostyantin V. Gusarov, Revision of Judgments in Civil Proceedings: Synopsis of a Thesis. Doctor of Legal Sciences]] Natsional'nyi universitet 'Yuridichna akademiya Ukrayiny imeni Yaroslava Mudrogo' 2011).

[26] *Захарова О.С.* Завдання цивільного судочинства. Деякі теоретичні проблеми // Адвокат. 2009. № 11(110). С. 10–13 [Zakharova O.S. *Zavdannya tsyvil'nogo sudochynstva. Deyaki teoretychni problemy // Advokat*. 2009. No. 11(110). S. 10–13 [Olena S. Zakharova, *Tasks of Civil Proceedings. Some Theoretical Problems*, 2009(11) Lawyer 10–13]].

[27] C.H. van Rhee, *Civil Litigation in Twentieth Century Europe*, 75 Tijdschrift voor Rechtsgeschiedenis 307 (2007).

It is especially important to ensure transparency and openness of court proceedings for civil proceedings and complete recording by technical means. According to the CPC, the judging is held in an open court, and the judgment is pronounced publicly. Closed judgments of a case are held only on exceptional grounds, particularly if the public hearing could lead to disclosure of state or other secrets protected by law, or to ensure the secrecy of adoption. This prevents the disclosure of information about other personal or intimate aspects of the life of persons involved in the case, or information that violates their dignity. These are fundamental principles of civil procedure which may be seen as standards to fulfill the requirements of justice.[28]

According to the Law of Ukraine 'On Access to Court Decisions' of December 22, 2005, in order to ensure the transparency of courts of general jurisdiction, court decisions are published on the official web portal of the judiciary of Ukraine, the Unified State Register of Court Decisions. This ensures openness and transparency of justice in civil cases, which is so important for justice.[29]

6. Conclusion

Although the existing system of civil justice in Ukraine cannot be idealized, it has been shown that by applying the lessons of the past many mistakes can be avoided. The CPC and further reforms suggest that the fundamental values and traditions of open, civil, adversarial process have been strengthened and are still developing.

Further development of a democratic constitutional state is possible only on the assumption of the correct values and taking into account its historic past. In the legal sector it is especially important to understand the traditions and customs of a society which form the idea of fairness and justice, and constitute the basis and foundation for further reforms.

References

Khanyk-Pospolitak, Roksolana. *Judicial System and Civil Procedure in Ukraine*, <http://www.ekmair.ukma.kiev.ua/bitstream/123456789/357/1/Khanyk-Pospolitak_Judicial.pdf> (accessed Sep. 26, 2014).

Rhee, C.H. van, & Verkerk, Remme. *Civil Procedure*, Edgar Encyclopedia of Comparative Law 120–34 (Jan M. Smits, ed.) (Edward Elgar Publishing 2006).

Rhee, C.H. van. *Civil Litigation in Twentieth Century Europe*, 75 Tijdschrift voor Rechtsgeschiedenis 307 (2007).

Storme, Marcel. *Improving Access to Justice in Europe*, 3 Teka Komisji Prawniczej 207–17 (2010) (Wydawnictwo Uniwersytetu Przyrodniczego w Lublinie 2010),

[28] C.H. van Rhee & Remme Verkerk, *Civil Procedure*, Edgar Encyclopedia of Comparative Law 120–34 (Jan M. Smits, ed.) (Edward Elgar Publishing 2006).

[29] Marcel Storme, *Improving Access to Justice in Europe*, 3 Teka Komisji Prawniczej 207–17 (2010) (Wydawnictwo Uniwersytetu Przyrodniczego w Lublinie 2010), available at <http://www.pan-ol.lublin.pl/wydawnictwa/TPraw3/Storme.pdf> (accessed Sep. 26, 2014).

available at <http://www.pan-ol.lublin.pl/wydawnictwa/TPraw3/Storme.pdf> (accessed Sep. 26, 2014).

Безклубий І.А., Гриценко І.С., Шевченко О.О. та ін. Історія українського права: Посібн. [Besklubyi I.A., Gritsenko I.S., Shevchenko O.O. ta in. *Istoriya ukrayins'kogo prava: Posibn.* [Igor A. Bezklubyi et al., History of Ukrainian Law: Textbook]] 4, 168–69, 270–81 (Gramota 2010).

Воробейкова Т.У. Судебная реформа 1864 г. // Проблемы юридической науки и правоохранительной практики [Vorobeikova T.U. *Sudebnaya reforma 1864 g.* // *Problemy yuridicheskoi nauki i pravookhranitel'noi praktiki* [Tatyana U. Vorobeikova, *Judicial Reform in 1864*, in The Problems of Jurisprudence and Law Enforcement Practice]] (Naukova Dumka 1994).

Грушевський М.С. Історія України-Руси. Т. 10 [Grushevsky M.S. *Istoriya Ukrayiny-Rusy. T. 10* [Mikhailo S. Grushevsky, 10 History of Ukraine-Rus']] (Pavel S. Sohan' et al., eds.) (Naukova Dumka 1998) (reprint).

Гусаров К.В. Інстанційний перегляд судових рішень у цивільному судочинстві: Автореф. дис. ... д-ра юрид. наук [Gusarov K.V. *Instantsiinyi pereglyad sudovykh rishen' u tsyvil'nomu sudochynstvi: Avtoref. dis. . . . d-ra yurid. nauk* [Kostyantin V. Gusarov, Revision of Judgments in Civil Proceedings: Synopsis of a Thesis. Doctor of Legal Sciences]] Natsional'nyi universitet 'Yuridichna akademiya Ukrayiny imeni Yaroslava Mudrogo' 2011).

Дмитришин Ю.Л. Хелмінське право як джерело «Зібрання малоросійських прав 1807 р.» // Державне будівництво та місцеве самоврядування: Збірник наукових праць. Вип. 21 [Dmytryshyn Yu.L. *Khelmins'ke pravo yak dzherelo 'Zibrannya malorossiis'kikh prav 1807 r.'* // *Derzhavne budivnitstvo ta mistseve samovryaduvannya: Zbirnyk naukovykh prats.' Vyp. 21* [Dmytryshyn Yu.L. *Chelmno Law as a Source of 'Code of Little Russian Laws 1807,'* in State Building and Local Government: Collected Works. Issue 21]] 200–08 (Pravo 2011).

До 270-ї річниці створення українського кодексу «Прав, за якими судиться малоросійський народ» [*Do 270-yi richnitsi stvorennya ukrayinskogo kodeksu 'Prav, za yakimi suditsya malorosiyskii narod'* [*To 270th Anniversary of the Ukrainian Code 'Laws, According to Which is Judged the Little Russian People'*]], *Tsentral'nyi derzhavnyi istorichnyi arkhiv Ukrayiny*, <http://cdiak.archives.gov.ua/v_270_rokiv_vid_stvorennia_kodeksu.php> (accessed Sep. 26, 2014).

Захарова О.С. Завдання цивільного судочинства. Деякі теоретичні проблеми // Адвокат. 2009. № 11(110). С. 10–13 [Zakharova O.S. *Zavdannya tsyvil'nogo sudochynstva. Deyaki teoretychni problemy* // *Advokat*. 2009. No. 11(110). S. 10–13 [Olena S. Zakharova, *Tasks of Civil Proceedings. Some Theoretical Problems*, 2009(11) Lawyer 10–13]].

Історія держави і права України: Академічний курс у 2 т. Т. 1 [*Istoriya derzhavy i prava Ukrayiny: Akademichnyi kurs v 2 t. T. 1* [1 History of State and Law of Ukraine: Academical Course in 2 Vols.]] 449 (Vasil' Ya. Tatsii et al., eds.) (In Yure 2000).

Комаров В.В. Цивільне процесуальне законодавство у динаміці розвитку та практиці Верховного Суду України [Komarov V.V. *Tsyvil'ne protsesual'ne zakonodavstvo u dynamitsi rozvytku ta praktytsi Verkhovnogo Sudu Ukrayiny*

[Vyacheslav V. Komarov, Civil Procedural Law in the Dynamics of Development and Practice of the Supreme Court of Ukraine]] 13–14 (Pravo 2012).

Митилино М.И. Гражданский суд до и после реформы // Труды Киевского юридического общества, состоящего при Императорском университете Св. Владимира за 1911, 1912, 1913 и 1914 гг. [Mitilino M.I. *Grazhdanskii sud do i posle reformy // Trudy Kievskogo yuridicheskogo obshchestva, sostoyashchego pri imperatorskom Universitete za 1911, 1912, 1913 i 1914 gg.* [Mikhail I. Mitilino, *Civil Justice before and after Reform*, in Works of Kiev Legal Association Being Attached to Imperial St. Vladimir University within 1911, 1912, 1913 and 1914]] 341–58 (Tipografiya Imperatorskogo Universiteta Sv. Vladimira 1915).

Орлик П. Конституція, маніфести та літературна спадщина: Вибрані твори [Orlik P. *Konstytutsiya, manifesty ta literaturna spadshchyna: Vybrani tvory* [Pylyp Orlyk, Constitution, Manifestos and Literary Heritage: Selected Works]] 99–100 (Mizhregional'na akademiya upravlinnya personalom 2006).

Права, по которым судится малороссийский народ [*Prava, po kotorym suditsya malorossiiskii narod* [Laws by Which the Little Russian People Are Judged]] (Alexander F. Kistyakovsky, ed.) (Universitetskaya Tipografiya 1879).

Свод законов Российской империи [*Svod zakonov Rossiiskoi imperii* [Code of Laws of the Russian Empire]], Database 'ConsultantPlus,' <http://civil.consultant.ru/code/> (accessed Sep. 26, 2014).

Статути Великого князівства Литовського: У 3 т. [*Statuty Velykogo kniazivstva Lytovs'kogo: U 3 t.* [1–3 Codes of Law of the Grand Duchy of Lithuania]] (Sergei V. Kivalov et al., eds.) (Yuridichna Literatura 2002–04).

Україна: хронологія розвитку [*Ukrayina: khronologiya rozvitku* [Ukraine: Chronology of Development]] 67 (Krion 2010).

Усенко І.Б., Ромінський Є.В. Саксонське зерцало // Юридична енциклопедія. Т. 5 (П – С) [Usenko I.B., Romins'kii Ye.V. *Saksons'ke zertsalo // Yuridichna entsiklopediya. T. 5 (P – S)* [Igor' B. Usenko & Yevgen V. Romins'kii, *Saxson Mirror*, 5 Legal Encyclopedia (P – S)]] (Ukrayin'ska entsiklopediya 2003).

Чехович В.А. Судова реформа 1864 // Юридична енциклопедія. Т. 5 (П – С) [Chekhovych V.A. *Sudova reforma 1864 // Yuridichna entsiklopediya. T. 5 (P – S)* [Valerii A. Chekhovych, *Judicial Reform* 1864, 5 Legal Encyclopedia (P – S)]] (Ukrayin'ska entsiklopediya 2003).

Щербина П.Ф. Судебная реформа 1864 года на Правобережной Украине [Shcherbina P.F. *Sudebnaya reforma 1864 goda na Pravoberezhnoi Ukraine* [Pyotr F. Shcherbina, Judicial Reform 1864 in Right-Bank Ukraine]] (Vyshcha shkola 1974).

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