The principle of publicity in the court proceedings

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Annotation: In this article the questions connected from publicity guaranteed by the state of legal proceedings, in particular, civil process and considered.

Keywords: Publicity, civil legal proceedings, a transparency, judicial-legal reform.

This article looks at the role and significance of the principle of publicity in the court proceedings, as one of the prerequisites of quality of justice in civil matters. One of the areas of judicial reform is the "democratization" of civil proceedings connected with by its availability, by openness and transparency, which promotes the efficiency of justice and improving confidence the persons participating in case to the trial.

The activities courts of, as well as other public authorities, can either be surrounded by an impenetrable mystery for individuals or committed to a greater or lesser degree of openness. In the first case, the process is dominated by the principle of clerical secrecy, in the second - the principle of publicity. The social significance of transparency in that it puts the work of the court under the control of of society, provides a link between the court and the public. Open the proceedings has a positive effect on the judges involved in the case of their representatives in terms of public control over their activities and influence on their compliance with the rules of civil procedural law. This principle is a prerequisite make informed and legal of judgments order and the subsequent assessment by the of society of the courts and the functioning of the justice system.

Current legislation of the Republic of Kazakhstan, which regulates civil proceedings, in the process of radical renewal in connection with the establishment of a democratic legal system, providing warranty rights, freedoms and lawful interests of citizens and organizations[1, c. 69]..Originating on the basis of new views on the role and importance of the judiciary in society, the principles of civil procedure are important prerequisites for further development and improvement of civil procedural law in the direction of providing adequate protection of the rights of citizens by the courts and organizations. Under the principle of of publicity of civil procedure as generally understood a

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procedure for consideration of civil cases in which access to the courtroom is free for all citizens, the press and others, and the progress and results of the process can freely report in print or other media. This principle means that the proceedings before of civil cases is carried out in open court session (Part 1 of Art. 19 of the CPC RK). These provisions of the Civil Procedure Law were described in the Normative Resolution of the Supreme Court of the Republic of Kazakhstan "On the observance of the principle of publicity court proceedings in civil cases" from 28.10.2005.

Publicity can be said is a guarantee of independence of judges and their subordination only to the law, a prerequisite for an unbiased, full and complete investigation of all the circumstances of the case and making a legitimate, fair judicial decision.

Publicity principle was also formed in the Soviet era, "the Congress of the CPSU strategic course to expand the of publicity has been fleshed out in January / 1987 / Plenum, foreseen, in particular, the development of of legal acts to ensure publicity and are designed to provide conveys maximum openness in the work of state and public organizations, to give the working people a real opportunity to express its opinion on any issues of public life. "[2]All-Union Party Conference of adopted a special resolution on "public." In this document, considered appropriate to legislate the right of citizens, the media, labor groups and civil society organizations to obtain information; develop legislation defining the rights and obligations of the state bodies, officials and citizens on the implementation of the public; highlighted the need to deepen and support the most of publicity.

[3]The real effect of this principle is observed with the formation of Kazakhstan as a sovereign state. One of the areas of judicial reform is the "democratization" of civil proceedings connected with by its availability, by openness and transparency, which promotes the efficiency of justice and improving confidence in the persons participating in case to trial. Publicity court proceedings - one of the indicators of democracy proceedings. Such a procedure provides citizens the right to be present in the courtroom, to monitor the progress proceedings, to disseminate information about what they saw and heard in a court session in the media or any other available method. Thereby it carried a form of popular control over the activities of the judiciary. The development of the principle of publicity in civil proceedings is closely linked provision of the right to receive information during the consideration and resolution of civil cases. Nowadays, with such active use of ICT in the proceedings, constitutionally the principle of publicity which is understood as the free access of citizens to the hall court proceedings, expands and provides a range of great opportunities for the implementation of this principle of taking new forms. The content of the principle of publicity in civil proceedings consists of the following elements:

1) the right to be known / informed;
2) The right to familiarize;
3) the right to be present at judicial session;
4) The right to public announcement of judicial acts, as well as;
5) the obligation of the court to ensure the provision and receipt of procedural information, create conditions for its availability for the consideration and resolution of civil cases anyone interested in the person. Publicity principle provides the flow of information in the consideration and resolution of specific civil cases, as well as the availability of information on the proceedings and results of the entities participating in the case (internal information relationship) and indefinite group of persons (external information relationship) [4].

Publicity of proceedings provides for the translation of the court session, the implementation of cinema - photography and video. Persons participating in the case and present citizens have the right to open court session to fix them from their places in the hall, in writing or using the trial will proceed record, which does not require the prior authorization of the court, as well as the consent of the parties to proceedings. But the person, fixing the course of the trial, should enjoy the right to conduct record is open. That is before court session the person, fixing the course of the trial must verbally inform their use of funds or written Video Recorder for constitutional rights and freedoms of participants in the process. Since the absence of a notification of persons involved in the application of the above methods of fixing may be grounds for a violation of rights, freedoms and legitimate interests of the participants in the process, besides the information obtained can not be used later as evidence, since these materials are obtained violation of applicable law. As for the filming and photography, video, radio and TV broadcasting in the judicial process, said fixing is allowed by permission of the court taking into account the opinions of the persons participating in the case. In turn, participating in person may submit reasoned objections to the conduct of these operations. Accordingly, the fixing of the trial should not interfere with the normal course of the court session and may be limited by the court in time. Thus, in case of fixing trial with film photography and video court should ascertain the views of those involved in the case and give approval or refusal to carry out these actions, in the event that the course of the trial will be fixed attending parties in writing or using record prior permission of the court, or obtain the views of participants in the process is not required, but for the rights and legitimate interests of stakeholders is necessary to verbally notify the court and the parties involved in the implementation of the record during the trial.

Publicity principle should not violate other on the rights of persons involved in civil litigation namely: everyone has the right to privacy, personal and family secrets, protection of honor and reputation, to privacy of correspondence, telephone conversations, postal, telegraph and other communications. The right to privacy, as well as the publicity of justice, refers to the fundamental principles of building relationships between the actors of civil society, the relationship of the individual and the state. The public announcement of the judgment should not be accompanied by disclosure of information for the sake of secrecy which the hearing took place wholly or partly closed. It seems that such a decision should not reflect the information giving rise to a closed court session, or in the case of extreme need to mention them indirectly by reference to appropriate pages of the case. Publicity principle of justice, on the one hand, and the principle of freedom of expression and media -
on the other hand, involves the free access of all interested parties, especially the media, to court information. However, access to such information, media representatives must have its limits.

"The legal science has not developed a unified approach to the definition of 'transparency', 'publicity'. Some scholars regard these categories, filling them with different content. Publicity in the narrow sense of the word does not represent a self-principle, but is a consequence of, on the one hand, of Principles of immediacy and orality, requiring that the court was a private communication with the litigants, and on the other hand - the principles of adversarial proceedings and equality of rights, the first of which holds the litigants themselves procedural training material, and the second - giving them the same means of defense and attack. Carrying out all these four of Principles would be completely impossible if the action on the one hand, and caused their activities were unknown to the court the other side. Therefore, the principle of publicity for the parties has an absolute value, and does not tolerate any exceptions. Publicity, on the contrary, does not follow from the other principles of the process, it is not even a necessary companion of publicity for the parties, and represents a completely independent principle that needs special justification. The most important manifestation of which is the right typing of reports on cases in the press. Thanks to this publicity gained great practical importance. Personally attend the meetings of courts of in the state, very few; thanks to the newspaper reports, everyone can keep track of what is happening in the courts. Regarding the concept of the principles outlined in the theme, formed the author's definition of the principle of publicity of civil process: democratic constitutional provision, the regulatory enshrined in the civil procedural legislation, which determines the tasks of Civil Procedure provides access to justice and adequate public perception of judicial decisions and the overall operation of the courts. "[5]. Publicity principle is important to ensure that educational and of preventive functions of justice and a means of monitoring the activities of the court seized of the case. However, the principle of publicity of justice is often in contradiction with the institution of the privacy of individuals involved in the orbit of civil proceedings. In such cases, there is a collision of these provisions. Which of them give preference, in each case decided by a court.

Today, in the justice system are conducted measures to improve the effectiveness of the principle of publicity. For example, certain steps for the effective interaction of the judicial system to the media, to introduce a full-fledged e-justice system. Also, it initiated the study, conducted scientific conferences and "round tables". Thus, we can say that the idea of transparency, openness and transparency of justice is now recognized. Despite this, the problem of ensuring the effective implementation of this principle in practice, remains largely unresolved, causing justice to the many accusations concerning its secrecy and inaccessibility of information. The aforesaid problem is particularly acute in connection with the ongoing today in our legal and judicial reform, in need of information support and the support of the media. It is the latter largely influenced by public opinion, affect the legal position of citizens in the assessment of law enforcement agencies and the courts to protect their rights and legitimate interests, form the legal culture of the population. How
people perceive laid the basis for the idea of reform and the extent to which they support the population depends largely on the final outcome of the ongoing reforms. In addition, the openness of justice for society reduces the likelihood of mistakes, guarantees the independence of the Court, contributes to its credibility with citizens and other branches of government. Despite the increased interest in the principle under consideration, a number of important issues relating to it, in science and in practice at the moment is not resolved. In particular, there is no consensus among researchers about the concept of the principle of publicity of civil procedure. There are differences with regard to its content. In the literature, expressed different views on how to define "transparency of civil process" and that it should include. There is no consensus in science is also on the nature of the principle of publicity of civil proceedings: sometimes procedural aspects of this principle are mixed, as some researchers, this principle is considered only as a principle of public trial. This work aims to study the principle of publicity of civil procedure, the definition of its legal nature and the analysis used in relation to his terminology. To achieve the above objective it is necessary to explore the concept of "openness of justice" as a principle of proceedings in terms of Kazakh and foreign science and jurisprudence, separated from the other principles of civil procedure, as well as specifying the applicable definition. Thus, for a more in-depth and comprehensive study of civil of publicity process should reveal its objectives and functions as a guarantee of the state-controlled civil society. The purpose of the principle of publicity is to strengthen confidence in justice, in that sense, it is the socio-political importance. In addition, through a notice in the media about ongoing litigation trial publicity is a definite public scrutiny of justice. Publicity principle of justice proclaimed in various international instruments and treaties such as the Universal Declaration of Human Rights of 1948, the European Convention of Human Rights and Fundamental Freedoms and others.

Publicity of civil procedure - is not just a general theoretical position, as set in the law requirement guidelines underlying activities of the judiciary, that is, the principle of Procedure. Accordingly, it is the content of the legal nature of the use and performance of its associated legal rights and obligations guaranteed by measures of state coercion. Based on the foregoing, the principle of publicity of justice requires, firstly, the development of legal education, and education, and secondly, the establishment of additional guarantees of judicial tasks. In the legal literature there is an opinion that the principle of publicity of civil procedure combines two aspects: transparency and publicity for all the parties to, and in the latter case, it acts more broadly. However, it appears that the ability of the parties to get acquainted with the case, their right to be notified of the time and place of the hearing, to participate in the proceedings in their case, to obtain a court order in this case - is not so much the realization of the principle of publicity of justice, as the realization of their rights and responsibilities due to the specifics of their legal status as a party of civil procedure.

It should be noted that the theory of civil procedural law in Germany operates this approach, and therefore the principle of publicity is understood in two ways:
1) the principle of publicity as a principle of an obligatory judicial or die Offentlichkeit;

2) the principle of publicity (openness) of the parties or die Partei of Tentlichkeit.

In the first sense, this principle is public (state-legal) character, as follows from the operation of the principles of democracy and the rule of law and openness of the proceedings is for everyone. In the second sense, the principle of publicity means providing the right side of the case to view the procedural acts and to be present at the examination of evidence. Transparency applies to the entire course of the proceedings, including the examination of evidence, as well as the announcement of the judgment.

Thus, due to the use of the above terms - transparency, transparency, transparency, openness, publicity - as interchangeable synonyms, the very content of the most important principle of civil procedure, in fact, is made dependent on the choice of a term, the discretion of the law enforcer. This situation actually makes the category of "openness of justice" in the evaluation, preventing a precise definition of its content and legal nature. However, the use of evaluation concepts in the resolution of important procedural issues at the moment seems not to correct in the absence of sustained and perhaps even legally enshrined the conceptual apparatus. The problem of a common understanding of these valuation concepts can help to solve the corresponding generalizations vast array of jurisprudence on this issue, evolving for a long time carried out by higher Kazakh courts, taking into account the generally recognized norms and principles of international law, a purposeful comprehensive study of the problem at the doctrinal level. The unresolved questions of the causes that formed a "non-transparent" public image ships with unknown mechanism of decision-making, clearly does not comment on their actions and giving space for speculation regarding the outside influences on his work. Openness of justice contributes to the development of civil society, whose citizens are most aware of their rights and responsibilities, improve the legal culture of society, raising the professional level of participants in the process, strengthen the credibility of the judiciary. In addition, efficient, smoothly running mechanism of realization of the principle of publicity of civil procedure will facilitate correct, timely and reasonable resolution of civil cases, the strengthening of guarantees of the independence of the judiciary, improving the consistency of judicial practice and the overall position of the judiciary on various issues in the subjects of the RK. Thus, it is now possible to say that certain steps to ensure the transparency of justice in civil matters. However, it seems that the need to further develop a uniform conceptual apparatus in the field of publicity of justice in civil cases, the definition of its legal nature and content of guarantees and limits, as well as a comprehensive study on the implementation of the principle of publicity of civil proceedings in the light of the legal and judicial reform and the development of information technology.
The social significance of transparency in that it puts the work of the court under the control of society, provides a link between the court and the public. Open the proceedings has a positive effect on the judges participating in the case of their representatives in terms of public control over their activities and influence on their compliance with the rules of civil procedural law. This principle is a prerequisite make informed and legal of judgments and the subsequent assessment by the of society of the courts and the functioning of the justice system.

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