



Andris Pešudovs

**THEORETICAL AND PRACTICAL
PROBLEMS OF UNDISPUTED
ENFORCEMENT OF OBLIGATIONS
WHICH ARE SECURED
WITH A PUBLIC PLEDGE**

Summary of Doctoral Thesis
for obtaining the degree of Doctor of Law

Speciality – Law
Subfield – Civil Procedure Law

Rīga, 2017

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The Doctoral Thesis was carried out at Rīga Stradiņš University.

Scientific supervisor:

Dr. iur. **Ivars Kronis**,
Rīga Stradiņš University, Latvia

Official reviewers:

Dr. habil. iur. Professor **Osvalds Joksts**,
Rīga Stradiņš University, Latvia

Dr. iur. Professor **Valērijs Reingolds**,
Baltic International Academy, Latvia

Dr. iur. Professor **Ingrīda Veikša**,
Turība University, Latvia

Defence of the Doctoral Thesis will take place at the public session of the Doctoral Council of Legal Sciences on 7 March 2017 at 14.00 in Hippocrates Lecture Theatre, Dzirciema Street 16, Rīga Stradiņš University.

The Doctoral Thesis is available at RSU Library and RSU website www.rsu.lv.

Secretary of the Promotional Council:

Dr. iur. Professor **Sandra Kaija**

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INTRODUCTION

Topicality and practical significance of the Doctoral Thesis

The incorporated, by Section 50 of the Civil Procedure Law (hereinafter – CPL), undisputed compulsory enforcement of obligations (hereinafter – UCEO) as an alternative to a claim proceedings process contains particular potential to improve the law efficiency; the main objective thereof is to implement the principle of the procedural economy. The procedural economy per se on the level of its functions is to be first supposed the necessity not an option so that realization of the concept of the legal state may continue also in the circumstances of limited resources and growing impairment of the rights, by the state power ensuring protection of the impaired rights in the court. The study focuses at those theoretical and practical matters of the provided in Section 400 Paragraph One Clause 1 of CPL undisputed enforcement of secured by public mortgage or commercial pledge obligations that are related to correct understanding of the UCEO law institutes and the particular law norm and application thereof in accordance with the requirements of the law system. The topicality of the study is to be generally valuated within the context of the current judicial practice, which was commenced in January 2008¹ and substantially changed the legal consequences originated in the result of applying the said procedural law norm by restricting UCEO only to selling the pledge.

Inquiring correct operation of the procedural law norms of Section 50 of CPL, substantiation of correct usage of the incorporated in the procedural law institute of UCEO concepts of substantive law '*pledge*' and '*obligation*' as well as verification of the actions performed by the law applier against the requirements of the legal method and the concepts of the legal theory – such

¹See: Decision of the Supreme Court Senate Department of the Civil Cases taken on January 9, 2008 in case No SPC-2.

would be the theoretical topicality of the study which simultaneously also provides grounds for the procedural economy to be expressed in practice. Whereas the practical significance manifests in substantiation of such procedural order the operation mechanism of which per se is necessarily linked to establishing a debt by transferring appropriate obligations for enforcement. The result of such inquiring substantiates possibility of an expedited procedural order to solve the matters of debt recovery in all the secured with a public pledge loans provided the debtors has chosen UCEO and the debtor has not contested the undisputed decisions taken according to the procedure provided by CPL. Thereby, the operating efficiency of the legal regulation mechanism is increased by deciding the matter with the practicably minimal expenditure of the resources.

The alternative order of UCEO provides possibility to avoid the requirement to verify the evidence in the proceedings when such is dispensable; the court is unburdened and the resources of the judicial system are economised. That is how the principle of procedural economy being implemented by UCEO manifests itself. The current application of the legal norms, restricted only to enforced sale of the pledge counters to the procedural economy, provides grounds for additional proceedings regarding recovery of the debt remnants after selling the pledge; does not unburden the judicial system; increases the total expenditure of litigation, and serves to nothing but the creditor's ability to utilise the pledge as soon as practicable.

In the case of UCEO, the case law exceeds a separate opinion of a law applier; the argumentation thereof has been also directly adopted by the legal science², and such understanding of Section 400 Paragraph One Clause 1of CPL being nothing but procedural means for expedited sale of the pledge has become an independent element of the national law system. Correct application

² See: Torgāns K. Civilprocesa likuma komentāri. II Daļa. – Rīga: Tiesu namu aģentūra, 2012. – 632–642. lpp.

of a legal norm and reaching the objectives of the law in general directly depend on interpretation of the legal norms. German law scientist Hans Kelsen has provided that a legal norm functions as a scheme for interpretation of an action and determination of the meaning of such an action in the aspect of law is nothing but a result of the norm having been interpreted³. In the said author's opinion, interpretation is to be perceived as the principal means to establish a legal fact. Reflection of such a theoretical idea is also apparent in Section 2 of the Civil Law (hereinafter – CL) – the law is applicable to all legal issues, to which its text or interpretation relates⁴. Application of the legal norms that conform to the Constitutional Law incorporates finding the correct legal norm and appropriate interpretation thereof⁵ – that is how the Constitutional Court has also perceived the significance of interpretation of a legal norm. As provided by E. Meļķis – the text of the law is solely the outwardly apparent framework thereof. The interpretable text matters for a lawyer in order to, on the basis of *ratio legis* as appropriate as practicable, make the decision.⁶ Summarising the said opinions, it shall be concluded regarding interpretation of a legal norm text as a relatively independent result of the intellectual activity of the law applier which must not be unequivocally identified with the norm text itself. In other words, in some respect the text of a legal norm is only to be perceived as the factor limiting the interpretation. A body governed by the law mostly feels the effect of the legal norm indirectly through mediation of a legal act being applied the substance of which is produced not only by substantiation thereof by the legal norm, but mainly by the result of understanding the legal norm by the law applier. Concluding the opinion, I will point out the

³ Kelsen. H. Pure Theory of Law – University of California Press, 1970. – Pp. 3.–4.

⁴ Civillikums. Ievads: LR likums. Valdības Vēstnesis, 20.02.1937, Nr. 41.

⁵ Adjudication given by the Constitutional Court of the Republic of Latvia in case No 2004-16-01 'On conformity of Section 124(1 and 2) of the Administrative Procedure Law on paying the state fee in the cases of administrative offences to Article 92 of the Constitutional Law of the Republic of Latvia', Thesis 17. January 4, 2005. – Latvijas Vēstnesis, January 6, 2005, Nr. 3.

⁶ Meļķis E. Juridiskās metodes pamati. 11 soļi tiesību normu piemērošanā. – Rīga: BO SIA Ratio iuris, 2003. – 15. lpp.

confidence expressed by V. Sinaiskis – interpretation of the Law in general and of the civil law in particular actually is nothing but appropriate application of these laws for the purpose thereof. Consequently, it is understandable that the problem of interpreting the law per se also develops in the matter regarding understanding the laws, i.e., regarding appropriate understanding thereof⁷. The developed by the case law current interpretation of Section 400 Paragraph One Clause 1 of CPL in the framework of the legal institute of UCEO has consolidated as generally recognised judicature and the basis for commentaries to CPL. Nevertheless, is it also supposed to be an appropriate understanding of the law. This is the central focus of the study which contains the main problems related to the undisputed enforcement of obligations secured with a public pledge, and ascertaining the answer to this question accordingly determines the objective of the thesis and the content of its task. Considering the deciding role of interpretation in the process of applying the legal norms of the law institute of UCEO and establishing the legal consequences thereof, the study perceives and examines the case law as an independent phenomenon of the law sphere.

Limits of the study

Simultaneously, the aforesaid marks the limits of the study. Within the study, the author restricts to the following: inquiring such regularities of the determined by CLP procedural order that provides the needed grounds for implementation of the procedural economy which is incorporated in the procedural institute of UCEO and for facilitation of the efficiency of the legal norm application; establishment of the needed for admissibility of expedited procedural order conditions; study of the procedural significance of the form of public pledge, and inquiry of the significance of appropriate usage of the aforesaid concepts of the substantive law. Thereby, arguments are produced to

⁷ Sinaiskis V. Civillikuma iztulkošanas problēma// Jurists, 1933, Nr.6, 166. lpp.

reveal the deficiencies of the current case law and the legal science simultaneously with establishing methodological mistakes.

Research matters

1. What principles of the civil procedure law allow and ensure functioning legitimacy of UCEO and how legitimate restriction of the adversarial principle manifests?
2. How the principle of the procedural economy implemented by UCEO functions in the practice and how the application efficiency of the legal norms manifests?
3. What are the preconditions for applying UCEO?
4. What is the significance of the form of public pledge and warning the debtor in admissibility of UCEO?
5. Does the pledge right as the right to the property worth also incorporates the right to fulfilment?
6. What preconditions of further development of the law have not been observed in applying UCEO?
7. What consequences in the law system are originated by transferred through UCEO 'pledge obligation'?

Scientific maturity of the research subject

Within the subject of the study, several legal disciplines are at the interface: civil procedural law, civil law and the theory of law. The significance of the provided headings as inalienable core elements for developing comprehension of the law is demonstrated by wide and detailed scientific elaboration thereof both on the national and international level. To inquire the subject of the study, the following was employed: the results regarding the analogue to UCEO procedural order *Urkunden – und Wechselprozess* reached by the German law scientist, the author of the commentaries to the Civil

Procedure Code of Germany Hans Putzo and Thomas Heinz, as well as the results reached by law scientists having analysed the German procedural law in USA Peter L. Murray and Rolf Stürner regarding the analogue to UCEO procedural order *Urkunden – und Wechselprozess*; the opinions expressed by the Russian law scientists, experts of the civil procedural law: V. V. Jarkovs, M. K. Treušņikovs, A. G. Pļešanovs and M. A. Rožkova, concerning the theory of the civil procedural law, particularly the reached thereby results concerning regularities in the procedural legal facts and facilitating procedural efficiency and the significance of the principle of disposition; the results reached by *Common law* scientists Larry L. Teply, Ralph U. Whitten, Richard L. Marcus, Martin H. Redishand, Edward F. Sherman regarding regularities of alternative procedural mechanisms, as well as the conclusions made by the civil procedure law scientists from Latvia: Vladimirs Bukovskis and Daina Ose; the opinions expressed by the law scientists from Latvia: Nikolajs Vīnzarājs, Konstantīns Čakste, Vasilijs Sinaiskis, Jānis Rozenfelds, Kalvis Torgāns, Gunta Višņakova, Kaspars Balodis, Andris Grūtups and Erlens Kalniņš regarding the principal ideas of substantive and liability law have been analysed excessively; also the theoretical results reached by foreign specialists Bram Akkermans, Gregory S. Alexander and Eduardo M. Penalver concerning shared regularities in the substantive law of the European states. The conclusions drawn in the study are substantiated by the results reached in the problematics of the law theory by internationally renowned authors: Norbert Horn, Reinhold Zippelius, Karl Larenz and Latvian law scientists: Edgars Meļķisis, V. Jakubeņecs, Jānis Broks, Jānis Neimanis and E. Kalniņš; the substantiation of the study is also based on the fundamental concepts of Plato, Aristotle and Kant regarding the idea of law. The studies conducted by other authors have been also used, including regarding the procedural economy as the base for the reforms of the civil procedural laws in Germany, France, Italy, Finland, Sweden, England, USA etc.

Significantly fewer resources are available regarding the coherence between the concept of substantive law and procedural law. The matter of connectedness between the pledge law and civil procedural law has been inquired in a more detailed manner in the Russian legal literature. The scientific research carried out by Dr.iur. V. A. Mačalova has partly affected the study problematics within such context.

The Doctoral Thesis is the first scientific study regarding the subject problematics within the national system of law. Formerly, application of the law norms and explaining the correctness thereof has been based in the opinions provided by the Supreme Court Senate of the Republic of Latvia. The conviction is based on those, which, as the response to the initiated polemics by the author, is reflected in the commentaries to the Civil Procedure Law.

The purpose and the tasks of the Doctoral Thesis

The objective – to substantiate the significance of public pledge as a procedurally important legal fact which attributes certain degree of increased credibility to the evidence grounding a debtor's obligations, alleviates proving a debtor's obligation and places no restrictions on choice of the means enforcing UCEO decisions.

The tasks:

1. To inquire and determine the core principles of UCEO functioning, the regularities thereof and the significance of public pledge in these processes. To extensively inquire correlation of principles of disposition, adversity and procedural economy and provide evaluation of the consequences should the functionality of the said principles be disregarded;
2. To summarise and analyse the expressed opinions in the legal literature regarding UCEO, the incorporated in this procedural law institute concepts of substantive law; to summarise and analyse the practice of applying Section 400 Paragraph One Clause 1 of CPL, to ascertain the reasons for the necessity to

alter the application of the law norm, and to verify conformity of such alteration substantiation to the requirements of the law system;

3. To ascertain the functional coherence of UCEO and claim proceedings; the implementable thereby law principles and regularities of functioning of such principles;

4. To summarise information regarding the needed preconditions for applying alternative procedural order by paying particular attention to the legal facts, the procedural vestige of such facts and the means for establishing thereof;

5. To analyse the abilities of the substantive law consequences of the pledge right to establish the right of creditor's recovery and affect the procedural order, by paying attention both to the theoretical concepts of the law science and the expressed in the law practice opinions;

6. To establish the consequences caused by inappropriately to the functioning principles of UCEO and the claim proceedings and the law system in general applied alternative procedural order.

Research object – undisputed enforcement of secured with public pledge obligations and effect made on the procedural law institute by such form of the pledge right.

Research subject – the respective law norms, the law institutes incorporating thereof, the scientifically methodological concepts and the result reach through applying the law norms.

Research methods

Within the study, the information has been processed and the conclusions have been made mainly by applying the analytical, comparative and historical methods. Necessity to select such methods was determined by securing fulfilment of the study tasks proposed.

The concerned, by the problematics of the Thesis, elements of the law system have been separately segregated and subjected to a critical analysis: the law institute of UCEO in general; incorporated in that provided in Section 400 Paragraph One Clause 1 of CPL procedural law norm; respective conditions of enforced execution of court decisions; the provided in CPL preconditions for legitimate restricting the adversary principle; the concepts of the pledge law (and the public forms thereof) and the liability law. Over the analyses of these elements, by inquiring their substance, critical arguments have also been expressed regarding the propagated in the legal literature and the case law opinions. The author's approach manifests necessity for a shared opinion concerning the said law elements and preventing unsubstantiated, redundant and obstructive contradictions that reduce efficiency of law norms.

The conclusions regarding the subjected to analyses elements of the law system provided grounds for determination of mutual systemic coherence. The procedural UCEO order, claim proceedings, conditions for enforced execution of decisions and the legal consequences of a public pledge were subjected to comparative analyses. Systemic coherences were established among the said research objects, which substantiate comprehensive functioning of such legal construction within which the public pledge right functions as a procedural legal fact bearing significance of proof in the procedural order of UCEO. Simultaneously, deficiencies of the system have been established when a pledge in UCEO is not considered apart from its legal substantive consequences; and inability of such a system to implement the functions of UCEO has been proven as side-effects by creating risks of impaired personal rights. Taking into consideration similarity of UCEO, to the provided in Germany ZPO *Urkunden – und Wechselprozess*, the both said procedural orders have been subjected to comparative analyses by substantiating the implementation process of enforced execution of obligations instead of the process of selling the pledge. With a similar approach the procedural orders of

expedited execution of an obligation in the Russian Federation, Scandinavian states, England and the USA have been considered.

The significance of the historical method manifests in inquiring the development of the regulating the UCEO procedural rights norms. The obtained results indicating historical invariability of the procedural law institute of UCEO are opposed to the alterations in the case law by activating necessity and admissibility of such alterations.

The regulatory legislative, theoretical and empirical grounds of the study

The regulatory legislative grounds of the study are constituted by the laws of the Republic of Latvia: the Constitutional Law of the Republic of Latvia; the Law on Judicial Power; the Civil Procedure Law; the Civil Law (Part III. Substantive Law; Part IV. Liability Law); the Land Register Law; the Law on Commercial Pledge. The foreign procedural laws: the Civil Procedural Code of Germany; the Civil Procedural Code of Russia; the Civil Procedure Law of Estonia; the Civil Procedural Code of Switzerland, as well as the Law on the Public Auctions of Germany (*Gesetz über die Zwangsversteigerung und die Zwangsverwaltung, ZVG*). Sources have been employed containing examples of the conditions for the alternative civil procedure order of claim proceedings in Germany, Russia, France, Italy, Scandinavian states, England, the USA and Japan.

The theoretical basis is constituted by the aforesaid authors' works in the civil law, civil procedural law and the legal theory. Theoretical studies comprise results reached both in continental law and common law systems. However, the interdisciplinary category of law – coherence of the procedural law norms and the pledge rights have been scarcely studied on the theoretical level. Therefore, the theoretical base of the Thesis is constituted by performed, by the author, synthesis of theoretical results in the substantive law and the procedural law by employing the general concepts of the law theory.

The empirical base is constituted by: adjudications of the Constitutional Court of the Republic of Latvia; judgments of the Supreme Court of the Republic of Latvia; 150 judgments of the first instance courts regarding historical application of Section 400 Paragraph One Clause 1 of the Civil Procedure Law; 150 judgments of the first instance courts within the current court practice; 86 adjudications regarding recovery of the remnant debt after selling the pledge; the aggregated by the Court Administration and the Financial and Capital Market Commission statistic data.

Theoretical and practical novelty of the Doctoral Thesis

The significance of the legislative form of public pledge as a procedural legal fact in civil procedure unrestricted by the substantive legal consequences of the said category of the substantive law is essential. The main benefit in the theoretical domain is substantiation of relevant usage of legal concepts ‘pledge right’ and ‘obligation’ within the context of the UCEO procedural order that simultaneously provides grounds for correct application of the law norms in practice.

Distinguishing the significance of such pledge right is essentially related to achieving the objective of procedural economy due to undisputed enforcement within the conditions of impaired disposition, which allow transferring the debtor’s obligation for enforcement unrestricted by the value of the pledge and preference of the means of enforcement – directing recovery at the real estate. In such a manner each undisputed judgment regarding the provided in Section 400 Paragraph One Clause 1 UCEO unburdens the judicial system of examination such matter through proceedings.

Approbation of the results of the Doctoral Thesis

Result of the Doctoral Thesis presentation in scientific conferences:

1. Thesis presentation in the 11th Scientific Conference of Rīga Stradiņš University, March 29–30, 2012;
2. Thesis presentation in the 4th Scientific Conference “Society health welfare”; November 22–23, 2012;
3. Thesis presentation in the 5th Scientific Conference “Society health welfare”; November 26–28, 2014;
4. Thesis presentation in the 8th International Scientific Conference organised by Daugavpils University “Social sciences for regional development 2013”; October 10–12, 2013;
5. Thesis presentation in the 9th International Scientific Conference organised by Daugavpils University “Social sciences for regional development 2014”; October 17–18, 2014;
6. Thesis presentation in the 11th International Scientific Conference organised by Daugavpils University “Social sciences for regional development 2016”; March 14–15, 2016;
7. Thesis presentation in the 6th Scientific Conference “Society health welfare”; November 23–25, 2016.

Published scientific articles:

8. “Role of case law to ensure judicial power”. 4th International Interdisciplinary Scientific Conference SOCIETY HEALTH WELFARE, Riga, Latvia, November 22–23, 2012. SHS Web of Conferences, Vol. 10 (2014). Published by EDP Sciences, 2014. ISBN 978-2-7598-1639-2. DOI:10.1051/shsconf/20141000031;
9. “Significance of undisputed enforcement and role thereof in civil circulation processes”. 8th International Scientific Conference “Social sciences for regional development 2013 proceedings. Part II ‘Current

- problems of the state and law”’. Daugavpils: Academic publishing house of the Daugavpils University ‘Saule’, 2014. ISSN 2255-8853; ISBN 978-9984-14-688-1. Incorporated in GESIS Socio Guide database;
10. “Substantive and procedural consequences of public mortgage and commercial pledge”. 9th International Scientific Conference “Social sciences for regional development 2013 proceedings. Part II ‘Current problems of the state and law’”. Daugavpils: Academic publishing house of the Daugavpils University ‘Saule’, 2015. ISSN 2255-8853; ISBN 978-9984-14-737-6. Incorporated in Electronic Journals Library of University of Regensburg.

Articles submitted for publishing:

11. “Undisputed enforcement of a pledge obligation as an inferior element of legislative regulation mechanism”. Submitted for publishing in Rīga Stradiņš University Law Faculty electronic journal ‘Socrates’; December 2016;
12. “Systemic coherence of undisputed enforcement and claim proceedings”. Submitted for incorporating in proceedings of the 11th International Scientific Conference “Social sciences for regional development 2016” (ISSN 2255-8853) organised by Daugavpils University;
13. “Legal fact in undisputed enforcement of obligations”. Submitted for incorporating in proceedings of the 11th International Scientific Conference “Social sciences for regional development 2016” (ISSN 2255-8853) organised by Daugavpils University.
14. “Undisputed enforcement of obligations – the procedural order for establishing the creditor’s right to recovery”. Submitted for incorporating in proceedings of the 11th International Scientific Conference “Social sciences for regional development 2016” (ISSN 2255-8853) organised by Daugavpils University;

15. “Deficiencies in following the methodology in further developing of the law when applying undisputed enforcement in secured with a public pledge obligations”. Submitted for incorporating in proceedings of the 11th International Scientific Conference “Social sciences for regional development 2016” (ISSN 2255-8853) organised by Daugavpils University;
16. “Partial execution of judgement of undisputed enforcement and consequence of recurrent proceedings after directing recovery against the pledge”. Submitted for incorporating in proceedings of the 11th International Scientific Conference “Social sciences for regional development 2016” (ISSN 2255-8853) organised by Daugavpils University;
17. “Significance of the decision the undisputed compulsory enforcement of obligations and the legal consequences thereof”. Submitted for publishing in Baltic International Academy scientific theoretical journal ‘Administratīvā un Kriminālā Justīcija’; December 2016.

The author’s conclusions have been used in argumentation of a judgment taken by the Supreme Court:

18. As for theoretical contribution and topicality thereof testifies utilisation of the expressed by the author argumentation in the adjudication given on March 31, 2015 by the Supreme Court Department of Civil Cases of the Republic of Latvia in case No C31230009.

1. FUNCTIONING REGULARITIES OF UNDISPUTED ENFORCEMENT OF OBLIGATIONS

1.1. Principles of procedural law ensuring operation of expedited procedure

UCEO in the CPL legal norms system must be seen as possibility of dispositive principle realization and there are direct indications for that reason. The creditor has a right to make a choice between claim proceeding and its alternative – UCEO. Debtor in his turn has an opportunity to accept the debt amount ordered in UCEO decision or use the right to controvert creditor demand in clime proceeding (S.406. of the CPL).

The mentioned legal norms 6th month`s term for debtor`s claim, to review creditors demand validity, by Constitutional court of the Republic of Latvia and its Supreme court has been qualified as procedural term for UCEO decision appeal. This systemic link between claim proceeding and UCEO is essential for accelerated proceeding to be legitimate. To recognize such creditor and debtor procedural right, balance is necessary for reasonable application of Section 400 Paragraph One of the CPL. It is important to keep in mind that a debtor`s right to appeal (S.406. of the CPL) contains a possibility to establish creditor claim acceptance as direct dispositive principle realization if the right is not used.

The principle of disposition provides not only freedom of choice for taking a legal action in court, but also affects parties` rights in proceeding itself. So the following considerations are necessary: it is not allowed to prohibit plaintive rights to disclaim, negotiate with defendant, to accept defendant rejoinder; party it must be allowed to dispute opponent rejoinder or accept it, to

submit evidence or not, appeal court decision and refuse those rights⁸. Mentioned overall prescribes court limited competence affect parties procedural rights and complete parties autonomy to act with their substantive rights.

Given dispositive principle, theoretical basis has been directly included in normative acts. For example, Section 58 (*Dispositions und Officialgrundsatz*) of the Civil Procedure Law of Switzerland provides court competence boundaries dependency from parties' dispositive actions with their rights within proceedings – court adjudge not exceeding the claim, but not less than other party accept⁹. The basis of simplify proceeding is integrated dispositive and adversary principle functions. Procedural economy is reached by compromising adversary principle in acceptable boundaries, but dispositive principle determines such acceptance legitimacy.

Considering the influence of adversary principle and principle of disposition, it is not correct to fulfil the content of UCEO as procedural institution concept only with the label of simplicity and acceleration. Including parties' autonomy of self-determination, it is more appropriate to define UCEO as a civil procedural possibility to make a decision equal to executive document out of adversary principle and evidence examination, when creditor disturbance and corresponding debtor obligations are established by CPL given formal conditions only together with debtor rights to appeal, to set back compulsory enforcement and to initiate review of creditor request in claim proceeding.

⁸ Плешанов А.Г. Диспозитивное начало в сфере гражданской юрисдикции: проблемы теории и практики. – Москва: НОРМА, 2002.– стр. 19.

⁹ Schweizerische Zivilprozessordnung (Zivilprozessordnung, ZPO), Die Bundesversammlung der Schweizerischen Eidgenossenschaft, gestützt auf Artikel 122 Absatz 1 der Bundesverfassung, nach Einsicht in die Botschaft des Bundesrates vom 28. Juni 2006, legütz no: <https://www.admin.ch/opc/de/classified-compilation/20061121/201601010000/272.pdf> (sk.14.04.2016.).

1.2. Classification problems of the undisputed enforcement institute

Mentioned systemic links between the UCEO provided by Chapter 50 of the CPL and claims litigation that prevent the accelerated procedure institute to be treated as a standalone procedure. This links between alternative proceeding and claim litigation are more brightly demonstrated in CPL of Germany. Its Chapter 5 provides UCEO similar accelerated procedure – proceedings on claims arising from a deed, in which solely documentary evidence is submitted, and proceedings on claims arising from a bill of exchange (*Urkunden – und Wechselprozess*)¹⁰. According to Section 596, plaintiff can backslide to claims litigation. Section 599 provides decision with excuse to protect the rights for defendant who has raised objections. According to Section 600, if decisions with excuse have been made, defendant can use all his procedural rights to object plaintiff statements, the case will be examined in general order (additional proceeding)¹¹. German CPL commentators accentuate that additional proceeding (*nachverfahren*) and *Urkunden* process together are seen as one unity¹². In the German law, accelerated proceeding and claim litigation are connected not only by statement of claim, but is united in one case file.

In this context the right of appeal and procedural elements provided by Section 406 of the CPL that justifiably limit the adversarial principle; for example, admitting the claim, non-contestation, not raising objections, are essential. There is a necessity to separate UCEO from voluntary sale of immovable property at auction through the court (Chapter 49 of the CPL)

¹⁰ Zivilprozessordnung. Ausfertigungsdatum: 12.09.1950. Zivilprozessordnung in der Fassung der Bekanntmachung vom 5. Dezember 2005 (BGBl. I S. 3202; 2006 I S. 431; 2007 I S. 1781). Iegüts no: https://www.gesetze-im-internet.de/englisch_zpo/englisch_zpo.html (sk.15.02.2016.).

¹¹ Гражданское процессуальное уложение Германии. Вводный закон к Гражданскому процессуальному уложению. Книга 3.– Москва: Wolters Kluwer, 2006. – стр. 188.

¹² Thomas H., Putzo H., Reichold K., Hüßtege R. Zivilprozessordnung. C.H.Beck'sche Verlagsbuchhandlung. München, 1999., S. 956. –957.

within the internal classification of procedural institutions of law, which would limit the inappropriate understanding of the UCEO (S.400 p.1, c.1 of the CPL) by applying it as procedural institution to establish the creditor's recovery right and not applying it as a procedural tool to sell mortgage when the right to sell the mortgage at a free price has not been contractually agreed.

1.3. The civil procedural significance of the undisputed enforcement of obligations

The aim of UCEO is to provide a procedural economy and according to Constitutional court of the Republic of Latvia for the decision such aim is necessary to ensure accelerated judgment legitimacy – fundamental rights restriction has been made to reach the legitimate aim: fast proceeding, court system relieve and person rights protection¹³. One of the main state functions is to provide a person's right to protection in fair trial. To maintain such functionality Germany, France, Italy, Finland and Sweden procedural law reforms have been based on reaching the same aim – increase procedural economy.

Aim of procedural economy units in these countries solve the same tasks – reject not reasonably exaggerated formalism and replace it with rationality. History of legal institutions discloses a clinging to form. The formalism of its beginnings is Germanic formalism of Anglo-Saxon law tempered by the formalism of the Norman invader, notably modified by the introduction of the Norman inquest, – itself, strangely enough, an outgrowth of Germanic formalism, and affected by the infiltration of ideas drawn from the

¹³ Latvijas Republikas Satversmes tiesas spriedums lietā Nr.2009-93-01 „Par Civilprocesa likuma 400. panta pirmās daļas 1. punkta un 405. panta pirmās un trešās daļas atbilstību Latvijas Republikas Satversmes 92. pantam” 12.2. tēze. 2010. gada 17. maijs. Latvijas Vēstnesis, 2010. gada 20. maijs, Nr. 79.

medieval Roman law. On this basis it develops its distinctive forms which imparted to its mechanism a distinctive character of rigidity. But, as in other systems, with increasing stability of the courts and growing confidence in their justice, judicial discretion becomes by degrees a surrogate of the old supremacy of form, and there is progression from rigidity to flexibility in the rules of procedure¹⁴. Overall, it is possible to conclude that procedural economy with its possibilities to increase law efficiency is actual comprehensive question and one of the solutions is UCEO and other procedural forms of accelerated judgment. These simplified procedural forms are a valid tool to help provide high standard of a person's right to protection in fair trial, when constant number of claim increasing becomes reality.

1.4. Mechanism of the procedural economy and the limits of operation thereof

The works of procedural economy allow (in the law made permissibility boundaries) to resolve law question outside the claim litigation. UCEO require significantly less court system resources. This is the way to gain procedural economy and make legal norm application more efficient in general.

To keep in mind disposition principle, the UCEO stands out from judge controlled process. The aim of procedural economy is dependent on creditor's choice between simplified proceeding and claim litigation and debtor's choice to agree or appeal accelerated judgment. UCEO as part of the self-adjusting component of law mechanism becomes influenced by a person's judicial awareness. It is the form of consciousness, which reflects those person's ideas, theories, gospel, belief, emotions etc. about legal aspects of

¹⁴ Millar R.W. Civil Procedure Of The Trial Court In Historical Perspective. – New Jersey: The Law Center Of New York University, 2005. – Pp. 6.

individual and society function and person entitlement and obligations¹⁵. This definition has been made by legal scholar V. Jakubaņecs. The author also accentuated self-adjusting law elements as an important part of legal regulation mechanism – rights must be seen as a tool to stimulate society self-regulation¹⁶. Legal scholar V. V. Jarkov also promoted improvements of legal regulation outside of strengthening sanction – civil proceeding norm mechanism together include the function of many factors: economic, political, psychological, moral, tradition etc. It is important to keep in mind all those factors when the aim is to affect proceeding participant action¹⁷. Mentioned procedural right's free choice is the main limitation factor process of economy, so UCEO cannot be taken as universal salvation for procedural economy in secured debt recovery cases. Though research, authors proposed legal norms' (S.400 p.1, c.1 of the CPL) application as necessary for UCEO actualization, because correct application directly affects the mentioned process of self-regulation.

It is interesting to see some judicial practice examples from the point of judicial awareness. Supreme Court reviewed protests on UCEO decisions by considering such actuality: creditor in UCEO application had pointed out the amount of debtor obligation's main debt LVL 60000, default interest LVL 3846.58, penalty LVL 3000 and penalty LVL 693600¹⁸; main debt LVL 2850, interest LVL 4493.50 and penalty LVL 26647.50¹⁹. Judicial awareness deformation is not controllable and is the main factor which obstructs the UCEO's procedural economy aim. Those Supreme Court decisions later

¹⁵ Jakubaņecs V. Tiesību jēdziens, struktūra un formas. Piektais papildinātais izdevums. – Rīga: P&Ko, 2002.–29. lpp.

¹⁶ Jakubaņecs V. Tiesību normas. – Rīga: P&Ko, 2002. –21. lpp.

¹⁷ Яркoв В. В. Юридические факты в механизме реализации норм гражданского процессуального права. Автореферат диссертации на соискание ученой степени доктора юридических наук. – Екатеринбург, 1992. – стр. 15.

¹⁸ Augstākās tiesas Senāta Civillietu departamenta 2008. gada 9. janvāra lēmums lietā Nr. SPC-2.

¹⁹ Augstākās tiesas Senāta Civillietu departamenta 2008. gada 27. augusta lēmums lietā Nr. SPC-49/2008.

became theoretical basis to change Section 400 Paragraph One Clause 1 of the CPL application.

For dealing with such situations, the importance of court controlled process stays high. First, civil proceedings serve to demonstrate the effectiveness of the law; secondly, they provide the opportunity for the judges to perform their function of interpreting, clarifying, developing and, of course, applying the law²⁰. Claim litigation simplified alternatives actualization is necessary, but those main roles remain to give procedural possibility for separating non-contentious matters from others.

²⁰ Jolowicz J.A. On Civil Procedure. – Cambridge: Cambridge University Press, 2000. – Pp. 71.

2. ADMISSIBILITY OF APPLICATION OF THE UNDISPUTED ENFORCEMENT OF OBLIGATIONS

2.1. The legal fact in undisputed enforcement of obligations

It is essentially important to establish the signs of the necessary legal facts for the correct application of Section 400 Paragraph One Clause 1 of the CPL. The main problem is mainly related to the understanding of the notion of public mortgage included in the regulation. There is a question whether the said regulations provide a procedural possibility to sell the mortgage or to expedite the collection. In this context, for suitable interpretation of the regulations regarding the UCEO there is a necessity to distinguish such signs of a legal fact that have only procedural meaning. Analyzing the conclusions of the case law regarding the relation of payment obligations submitted for UCEO, the opinion on legal fact and cause of action expressed in the legal science the meaning of public mortgage as a procedural legal fact is revealed, limited to the discussion of admissibility of UCEO.

As German civil procedural code commentators notice that there are only claims on performing debtor obligations allowable (including obligations to pay set amount of money) in written process (*Urkunden – und Wechselprozess*)²¹. The same has been said in German civil procedural code itself. According to its Section 592, simplified proceeding is allowed in claims to collect a set amount of money²². The judicial abstraction of fact, formally with low level of abstraction, is written in Section 400 Paragraph One Clause 1 of the CPL (UCEO is permitted pursuant to agreements regarding obligations

²¹ Thomas H., Putzo H., Reichold K., Hüßtege R. *Zivilprozeßordnung*. C.H.Beck'sche Verlagsbuchhandlung. München, 1999., S. 956.–957.

²² *Zivilprozessordnung*. Ausfertigungsdatum: 12.09.1950. *Zivilprozessordnung in der Fassung der Bekanntmachung vom 5. Dezember 2005 (BGBl. I S. 3202; 2006 I S. 431; 2007 I S. 1781)*. legüts no: https://www.gesetze-im-internet.de/englisch_zpo/englisch_zpo.html (sk.15.02.2016.).

which are secured with a public mortgage or a commercial pledge) and in Section 403 Paragraph One (UCEO applications to enforce obligations to pay a set amount of money)²³. These legal indications by the Supreme Court are notified as important in the session of the Constitutional Court of the Republic of Latvia – in the UCEO cases, the judge bases a decision motivation on facts about debtor's non-performed obligations. Secured obligation must be an obligation to pay a set amount of money²⁴. Mentioned payment obligation as non-performed debtor action to pay the debt makes the core of legal fact in Section 400 Paragraph One Clause 1 cases.

Given Section normative legal fact abstraction requires such criteria – exist not performed debtor obligation, for example, repaid the borrowed money in equal amount – Section 1943 of Civil law²⁵. As obligation transfer to creditor a set amount of money, payment obligation had been characterized by legal scholar O. Joksts²⁶. So, it is necessary to establish such fact of creditor rights' disturbance in matter fact conditions to give them legal sense. Legal scholar M. K. Treušņikov had characterized legal facts as necessary precondition for civil procedural legal conditions. Exactly for that kind of Section 400 Paragraph One Clause 1 of the CPL application precondition must be seen as a creditor rights' disturbance. To keep in mind the mentioned reference, this substantive law legal fact also finds procedural fact importance.

The legal norm application in civil proceeding unavoidably touches both –substantive legal facts and legal facts only with procedural meaning. It is determined by civil procedure nature itself when substantive and procedural

²³ Civilprocesa likums: LR likums. Latvijas Vēstnesis, 03.11.1998., Nr. 326/330.

²⁴ Latvijas Republikas Satversmes tiesas spriedums lietā Nr.2009-93-01 „Par Civilprocesa likuma 400.panta pirmās daļas 1.punkta un 405. panta pirmās un trešās daļas atbilstību Latvijas Republikas Satversmes 92. pantam” 7. tēze.

2010. gada 17. maijs. Latvijas Vēstnesis, 2010. gada 20. maijs, Nr.79.

²⁵ Civillikums. Ceturtā daļa. Saistību tiesības: LR likums. Valdības Vēstnesis, 26.02.1937., Nr. 46.

²⁶ Joksts O. Saistību tiesības saimnieciskos darījumos. – Rīga: Turība, 2003. – 26. lpp.

law is applied. Public pledge itself is not the UCEO object, but can be seen only as necessary procedural legal fact.

As German legal scholar N. Horn had said, there are such law and norms, which helps establish and realize substantive rights (procedural law)²⁷. Substantive and procedural norms in their application phase keep realize their own different aims. In the civil proceeding, the establishing creditor rights' disturbance and debtor obligation to pay a set amount of money will still be determined by substantive law, and at the same time Section 400 Paragraph One Clause 1 of the CPL will be applicable for allowance to review matter in procedural form of accelerated judgment.

2.2. Evidence, public reliability and the limits thereof

Public pledge procedural sense is possibility to use such pledge form as written evidence added validity factor. V. V. Jarkov noticed that one of the procedural legal fact characteristics is its evidence value²⁸. The question of evidence and its possibility plays central role in the UCEO procedural institution. Evidence is a conjunctive criteria for claim classification to allow review in accelerated proceeding. There are listed the forms and nature of evidence in Section 400 Paragraph One of the CPL.

The obligation (secured by mortgage or commercial pledge) has been written in public register. Obligation right within law noticed conditions makes a public pledge record content useful for giving an extra validity to obligation-based documents. Obligation records in handbook directly indicate Section 1907 of Civil law – obligation rights written in handbook are not subject to

²⁷ Horns N. Ievads tiesību zinātnē un tiesību filosofijā // Likums un tiesības, 12.1999., Nr.4, 99. lpp.

²⁸ Ярков В. В. Юридические факты в механизме реализации норм гражданского процессуального права. Автореферат диссертации на соискание ученой степени доктора юридических наук. – Екатеринбург, 1992.– стр. 15.

limitation²⁹. Handbook records of obligation rights content have been mentioned by legal scholar V. Bukovskis – to register the mortgage, it is necessary to notice the core of secured claim and enlarge its responsibility amount³⁰.

Together the public register and public pledge fact justifying properties are limited. It is determined by the possibility to register the public pledge before money lending and cancel the record after repay had been made. As noticed by V. Bukovskis, mortgage is not different from regular pledge. Mortgage registration in handbook did not give an answer about the claim arise and its amount³¹. These words were accepted by another legal scholar J. Rozenfelds – mortgage as claim security arise earlier as claim itself (before money lending), but ends its existence after performing of secured liabilities has been done³². Public pledge form itself is not equal to fact (not performed debtor obligation). Public pledge is just a base for reasonable assumption on possible debtor liabilities in creditor's proclaimed amount.

However, systemic links between pledge and secured obligation as accessory rights existence precondition, make public pledge form useful tool to prove debtors liabilities. Section 1283 of Civil law determines – pledge as accessory right validity is limited by validity of its secured obligation. Therefore, such deduction is possible – if the assumption of pledge right is valid, assumption about obligation is also valid.

Public form as obligatory condition of evidence was rejected by German and Russian procedural law. According to Section 592 of the Civil

²⁹ Civillikums. Ceturtā daļa. Saistību tiesības: LR likums. Valdības Vēstnesis, 26.02.1937., Nr. 46.

³⁰ Буковский В. Сводъ гражданских узаконений губерний Прибалтиских съ продолжением 1912–1914 гг. и с разъяснениями в 2 томах. Том I. – Рига, 1914. – стр. 549.

³¹ Ibid.

³² Rozenfelds J. Lietu tiesības. – Rīga: Zvaigzne ABC, 2011. – 188. lpp.

procedural code of Germany, claim must be based on written documents³³. Court verifies claim validity and satisfies it in written documents proven amount³⁴. Claim review is allowed in *Urkunden* proceeding, if all facts are motivated by written evidence³⁵. Section 121 of Russia civil procedural code provide possibility to apply simplify proceeding (*приказное производство*) when claim is proved by written contracts without necessary public form³⁶. This context shows the main role of disposition principle, providing possibility for claim litigation. Public pledge form as written evidence added validity factor in claim litigation alternative proceedings plays a secondary role.

2.3. Significance of a debtor being warned

Debtor's warning about UCEO application realize two functions: rights arising and protecting. First, it is necessary for a creditor to prove a debtor's warning and thereby fulfil the application form requirements determined by Section 404 Paragraph Three Clause 3. This form requirement itself contains procedural legal fact value. Protecting function of warning provides debtor's rights to be informed about accelerated judgment. UCEO, including Section 400 Paragraph One Clause 1 of the CPL, application is limited by current norm content (S.404 p.3, c.3 of the CPL), which has simplified proceeding dependant on a debtor's will to receive a creditor's

³³ Zivilprozessordnung. Ausfertigungsdatum: 12.09.1950. Zivilprozessordnung in der Fassung der Bekanntmachung vom 5. Dezember 2005 (BGBl. I S. 3202; 2006 I S. 431; 2007 I S. 1781). Iegüts no: https://www.gesetze-im-internet.de/englisch_zpo/englisch_zpo.html (sk.15.02.2016.).

³⁴ Braucher R. German Civil Justice. – Durham , North Carolina: Carolina Academic Press, 2004. – Pp. 426.

³⁵ Thomas H., Putzo H., Reichold K., Hüßtege R. Zivilprozeßordnung. C.H.Beck'sche Verlagsbuchhandlung. München, 1999., S. 956.–957.

³⁶ Гражданский процессуальный кодекс Российской Федерации. Принятие 23.10.2002., Государственная Дума,

Вступление в силу N 138-ФЗ от 14.11.2002. Iegüts no: http://www.consultant.ru/document/cons_doc_LAW_39570/.

warning. This creates basis for rights to use in malice way and hold back procedural economy.

This condition requires strengthening influence on a person who uses fair trial defensive mechanism malice. The court's possibilities must be broadened and case starting process must be improved. The main legal fact system's aim in a case's starting phase is to provide every person with real access to trial protection³⁷. Current order for a debtor's warning in a current real access possibility is not ensured for everyone. The German legal science declares malice use of rights when unfair situation itself gains for a person advantages in proceeding³⁸. Russian scientists have increased the list of unfair indications: the rights' malice used subject always is a rightful person; in malice situation law is not broken; other person's subjective rights are invaded; civil law principles are not followed³⁹. The malice use of procedural rights itself could be determine as a form of delict in the cases when law formally is not broken. Mentioned obstructs the realization of procedural aims and invade other process participants rights⁴⁰. All said is dedicated to debtor's rights to be informed and to law provided alternatives how to deal with them. Not to receive creditor's warning makes debtor procedural advantages in the case of UCEO. It is not possible to use accelerated judgment, creditor subjective rights continue to stay broken; formally procedural rules are observed; debtor's action and overall unfair situation cannot be reasonably affected for reaching UCEO aims.

³⁷ Ярков В. В. Юридические факты в механизме реализации норм гражданского процессуального права. Автореферат диссертации на соискание ученой степени доктора юридических наук. – Екатеринбург, 1992. – стр. 17.

³⁸ Аболонин В. О. Злоупотребление правом на иск в гражданском процессе Германии. Москва.: Wolters Kluwer, 2009. – стр. 76.

³⁹ Малиновский А.А. Злоупотребление субъективным правом. Москва.: Юрлитинформ, 2007. – стр. 68.

⁴⁰ Юдин А.В. Злоупотребление процессуальными правами в гражданском и уголовном судопроизводстве: межотраслевой анализ. – Санкт-Петербург., 2006. – стр. 977.–979.

3. SIGNIFICANCE IN CIVIL PROCEDURE OF THE SUBSTANTIVE LAW CONCEPTS USED IN THE PROCEDURAL LAW INSTITUTE OF UNDISPUTED ENFORCEMENT OF OBLIGATIONS

3.1. The procedural order of the undisputed enforcement of obligations and the substantive consequences of the pledge right

Considering established public pledge as procedural legal fact value, farther attention is dedicated to pledge as substantive right consequence capability affect UCEO procedural order. This question makes theoretical sense in context with national judicature and legal science cognitions that UCEO deals with Section 400 Paragraph One Clause 1 of the CPL proclaimed debtor's obligation as obligation of the pledge provider to be liable in the pledge amount. To clarify a person's freedom to operate with law established property forms, the principle of *numerus clausus* was analyzed. In countries such as France, Germany and the Netherlands, a separate part in the Civil Code deals with the law of property. When these systems adhere to the principle of *numerus clausus*, this means that in principle only those property rights that are allowed by the Civil Codes especially are recognized as property rights. As a result, parties can only create property rights that fulfil the criteria set by this legislation, leaving a limited freedom or no freedom at all to shape the content of their property relations⁴¹. Thereby, interpretation of Section 400 Paragraph One Clause 1 of the CPL also is *numerus clausus* determinate. Law interpreters as parties must follow the rights' forms included in property law. Pledge right content changes, replacing it with meaning of pledge provider obligations, is

⁴¹ Akkermans B. The Principles of Numerus Clausus in European Property Law. – Portland: Oxford, 2008. – Pp. 6.

not allowed and acceptable and could be seen as significant law content variation.

Public pledge form itself is a final result of pledge provider activities; that gives a creditor independency from a debtor or pledge owner. Such legal construction does not contain any pledge provider's obligations. Then a pledge itself, as substantive form of rights, is not UCEO object, because these rights do not contain obligation for making valuable action.

To underline differences, also the bases of obligation, liability concept must be reviewed. Legal scholar K.Torgāns has explained that obligation is associated with the situation where someone is bounded by promise. It is important but not clarifies the root of meaning. In Contract rights it is not so important to establish the situation, but there is a duty to fulfil the obligation and such performance result⁴². O. Joksts has a similar claim, making accent on obligation as duty performing debtor's activity. Creditor is Contract rights' empowered party who has the right to demand, debtor is the party who has a duty to perform or keep action⁴³. Legal scholar E. Kalniņš has formulated Civil law Contract rights concept as whole legal content of party's right and obligation in Contract rights and as a creditor's right for debtor's performance. The pledge does not contain such duty to perform liabilities. It already contains a debtor's performance result alternative, which a creditor can get without a debtor's will and performance possibilities.

⁴² Torgāns K. Saistību tiesības. – Rīga: Tiesu namu aģentūra, 2014. – 18. lpp.

⁴³ Joksts O. Saistību tiesības saimnieciskos darījumos. – Rīga: Turība, 2003. – 75. lpp.

3.2. Undisputed enforcement of a pledge obligations an inadequate element of the legal regulation mechanism

The Study has analysed justification of the interpretation of Section 400 Paragraph One Clause 1 of the CPL that permitted pursuant to agreements regarding obligations which are secured with a public mortgage or a commercial pledge as the concept of *accessory pledge obligation*, formed as a result of further development of law that later in the legal doctrine has been established as *obligation of the pledge provider to be liable in the pledge amount*. In the CLP commentary application of the mentioned norm had clarified as follows – the object of compulsory enforcement is pledge agreement as pledge provider accessory obligation to be liable in the pledge amount. Pledge obligation is substantive pledge provider obligation⁴⁴. The Supreme Court, making judicial practice summary, has tried to solve the same problem: which liabilities are meant to be compulsory enforced – debtor's obligation or pledge provider's accessory obligation, pledge act with public mortgage or commercial pledge power⁴⁵. The study has found that roots of such concept come from Socialist law system. The concept of pledge as accessory obligation was formed in the book "The Soviet Civil Law" – pledge legal construction is accessory obligation, additional obligation which arises from pledge agreement or law⁴⁶. To keep in mind the Socialist law system's low private law actuality, such approach is not well grounded argument to initiate changes in CPL as part of Continental Europe law system perception.

Definition of such concept states unjustified deviation from the text of legal provisions that is viewed as *contra legem* (against the law) result of

⁴⁴ Torgāns K. Civilprocesa likuma komentāri. II Daļa. – Rīga: Tiesu namu aģentūra, 2012. – 637., 638. lpp.

⁴⁵ Latvijas Republikas Augstākās tiesas 2010.gada apkopojums par tiesu praksi saistību bezstrīdus piespiedu izpildīšanā. – 3. lpp.

⁴⁶ Vēbrs J., Torgāns K., Šulcs V. Padomju Civiltiesības. – Rīga: Zvaigzne, 1986. – 50. lpp.

further development of law. For the purpose of justifying the meaning of Section 400 Paragraph One of CPL in identifying the enforcement right of the creditor, it is proposed to make amendments to Clause 1 of Paragraph 1 of the given section that would emphasize the meaning of a public pledge form as a simplified means of proof.

Judicial practice for further development of law must preserve law principle invariability. In some cases further development of law had provoked collapse of the law system⁴⁷. Realized changes of Section 400 Paragraph One Clause 1 of the CPL perception have limited the dispositive principle function, and obstructive consequences are possible.

3.3. Undisputed enforcement of obligations as procedural means for establishing the creditor's right of recovery

The meaning of Section 400 Paragraph One of the CPL as the component of the procedural institution of law on UCEO is to establish a creditor's recovery right. National judicial practice and legal science have made the methodological mistake; it does not separate the concepts of "exercising the mortgage right" and "levying the recovery to immovable property". There is also misconception about the pledge right separation from its secured obligation⁴⁸. This conclusion contradicts Section 1280 of Civil law, which proclaims pledge rights dependency from obligation – each pledge needs a claim to secure. The emphasis is put on exercising the mortgage right which in the framework of the national law system is not possible beyond the creditor's right of recovery established in a court judgement, if no right to sell the

⁴⁷ Horns N. Ievads tiesību zinātnē un tiesību filosofijā // Likums un tiesības, 08.2000., Nr.8(12). – 232. lpp.

⁴⁸ Latvijas Republikas Augstākās tiesas 2010.gada apkopojums par tiesu praksi saistību bezstrīdus piespiedu izpildīšanā. –3., 7. –9. lpp.

mortgage at a free price has been awarded to the creditor in addition to the mortgage right. Within the framework of judicial practice UCEO under Section 400 Paragraph One Clause 1 of the CPL, it is justified as a means of simplified sale of pledge, not enforcement of the debtor's obligations that is not correct.

Pledge right and its links with creditor right on debtor's liability performing had researched legal scholars N. Vīnzarājs and V. Sinaiskis. They compared Latvian and German law. In German Civil law, mortgage is specific substantial liability (creditor right on pledged property owner liability performing for debt repayment) and pledge right (limited possession rights as rights on pledge value) compound. The mentioned above is not dedicated to our Civil law. According to its Section 1278, pledge gives only debt collection possibility, but not the right for debt payment. Mentioned second right arises from obligation. Pledge right is just right on its value but not the right on debtor performance for debt repayment. Our law does not provide such substantial liability element in pledge rights⁴⁹. Pledge dependency from obligation and Civil law differences in Germany and Switzerland also is accentuated by V. Sinaiskis. German and Switzerland law recognizes institutions of substantial liabilities as *Grundschuld* in Germany and *Guelt* in Switzerland. Substantial liabilities as legal instruments for secure obligations is different from pledge by arising without claim; in other words, there are no accessory right indications. These institutions are not known by our Civil law⁵⁰. It means that establishing the pledge right is not enough to recognize debt obligation. For acceptable compulsory execution, only the facts about debtor's default obligations will make sense. Thereby, UCEO role is to establish the creditor's right of recovery, which cannot be found in pledge content itself.

⁴⁹ Vīnzarājs N. Civiltiesību problēmas. – Rīga: Kalniņa E., Tihonova V. Izdevums, 2000. – 58., 59. lpp.

⁵⁰ Sinaiskis V. Latvijas civiltiesību apskats. Lietu tiesības. Saistību tiesības. – Rīga: Latvijas juristu biedrība, 1996. – 40., 89. lpp.

4. CONSEQUENCES OF INAPPROPRIATE TO THE LAW SYSTEM APPLICATION OF THE UNDISPUTED ENFORCEMENT IN THE SECURED BY PUBLIC PLEDGE OBLIGATIONS

4.1. Significance of the decision and the legal consequences thereof

UCEO decision procedural economy value expresses in possibility to enforce it as regular judgment. It is a dispositive principle given effect to use UCEO as an alternative to claim litigation in non-contentious debt recovery cases.

For finding procedural simplification tools and judgment acceleration possibilities, it is necessary to value “litigation formalities” given advantages. The potential for procedural economy possibilities mainly gives the necessity only for optimal content of legal facts to ensure administration of justice. One of those optimal legal fact constructions, which give high dynamics of litigation, is court order (*приказное производство*). In this way V. V. Jarkovs has described UCEO similar proceeding in Russia procedural law⁵¹. UCEO constricts necessary fact content and creates that minimum of precondition for judgment within simplifying procedural order.

Preconditions for reaching UCEO procedural economy aim requires accelerated judgment (S.400 p.1, c.1, 405 p.1, c.3 of the CPL) and judgment on enforcing set amount of money (S.195 of the CPL) equal legal consequences in law application process. The comprehensive UCEO judgment without enforcing limitations gives base for creditor neutral dispositive choice to select claim litigation or its simplified alternative. Such choice and debtor’s rights’

⁵¹ Ярков В.В. Юридические факты в механизме реализации норм гражданского процессуального права. Автореферат диссертации на соискание ученой степени доктора юридических наук. – Екатеринбург, 1992. – стр. 18.

defence possibility (S.406 of CPL) brings equal dispositive principle realization values. If the UCEO decision enforcement is limited to choose CPL provided enforcement modes, the mentioned principle balance will be lost and deficient procedural economy as its result will acquire.

4.2. Significance of the further law development methodology being observed

The study has established the necessity and admissibility of further development of law regarding the amendments made in the meaning of Section 400 Paragraph One Clause 1 of the CPL. The application of this section when the debtor's obligation has been submitted for UCEO has been substantially changed. The current application of the regulation is limited to the sale of mortgage. The motivation for the necessity to further develop the law has been checked and it was found that the notion of pledge rights as the duty of the pledger to sell the pledge, created within the rights of judges, does not comply with the requirements of the legal system. It upsets the balance between the legal consequences of the UCEO decision and the amount of its appeal, interferes with full expression of disposition and the implementation of the procedural economy principle.

The constant uniformity of judicial practice makes obligation for judge to follow such practice or motivate necessity for making a shift. Judge must prove precedent wrongfulness and that other salvation will be not only more legitimate, but also more appropriate to legal system⁵². The study has summarized judicial practice from 1 March 1999 till 9 January 2008 when Section 400 Paragraph One Clause 1 of the CPL was related to debtor obligation enforcement without any compromising or decision enforcement

⁵² Langenbuhere K. Tiesnešu tiesību attīstība un iztulkošana. – Rīga: Tiesu namu aģentūra, 2005. – 156.,164.,167.,170. lpp.

limitation. Together actual judicial practice does not contain motivation for necessity for the mentioned norms different application. The only argument was reference to Section 1330 of the Civil law – if pledge sell result does not totally cover the debt, creditor keeps the right to collect the remaining amount in claim litigation. The study has established that such judicial practice conclusion is directly borrowed from Civil law commentary text, which is not a source of law. In general the norm is not applicable to UCEO, because in the norm the creditor deals with pledge right realization without judgment on his recovery rights.

Section 400 Paragraph One Clause 1 of the CPL as procedural norm has formal character which expresses in its content low abstraction. In that way the legislator had strictly signed norms implication boundaries and show discretion that other legal consequences are not allowed. If the judicial practice exceeds these boundaries, the law norm application in *contra legem* has happened⁵³. Actual judicial practice, contrariwise procedural norms certainty, in result of further development of law has made a non-allowed significant law content variation. Not legitimate law content variation and caused procedural economy aim limitation directly indicates *contra legem* further development of law. The made changes do not find foundation in legal system.

4.3. Reducing effectiveness of the legal regulation mechanism

Concept of claim permanently is related to right protection in fair trial⁵⁴. Rights to bring a claim together realize a person's constitutional rights for court protection. Litigation initiate rights are not identified as person's broken subjective rights, but a possibility to get a right to protection in

⁵³ Neimanis J. Tiesību tālākveidošana. – Rīga: Latvijas Vēstnesis, 2006. – 15. lpp.

⁵⁴ Абова Т.Е. Избранные труды. Гражданский и арбитражный процесс. Гражданское и хозяйственное право. – Москва: Статут, 2007. – стр. 192.

procedural law determined order⁵⁵. This legal science conclusion is consistently valid and reflects claim meaning provided by Section 1 of the CPL. Though in legal relations when a person's rights have been broken, there exists a possibility for a situation without dispute. A debtor does not perform obligation and does not deny it. Debt acknowledgement itself does not guaranty enforcement, and executive document is required. If contract form is appropriate, these are the cases for UCEO to realize its procedural economy capability. The development of "alternative dispute resolution" demonstrates an official view that civil litigation may actually be unnecessary where nothing but the settlement of the parties' dispute is in question⁵⁶. Section 400 Paragraph One Clause 1 limitation fully intercepts UCEO aim realization and the functioning of procedural economy mechanism. Judicial practice determines necessity for the additional claim litigation to collect pledge not covered debt, do not relieve but gives extra load to court system. Each UCEO application contains possibility for additional claim litigation. Situation shows courts dictated investigation and distrust to debtor's dispositive choice not to appeal accelerated judgment. This demonstrates dispositive principle prohibition to arise civil case based on court's initiative negligence.

Dispositive principle disturbance has made a negative influence. Additional process takes place between the same parties, on the same legal facts. This litigation that way does not follow appropriate CPL prohibitions. Moreover, additional proceeding does not help clarify the truth because this process deals with facts already clarified in UCEO judgment and in auction verify decision. Therefore, such litigation is useless. Only civil procedural possibility for fact examination within adversary principle is Section 406 of the CPL provided appeal rights' realization.

⁵⁵ Треушников М.К. Гражданский процесс. Москва.: Городец, 2007. – стр. 242.

⁵⁶ Jolowicz J.A. On Civil Procedure. – Cambridge: Cambridge University Press, 2000. – Pp. 3.

4.4. Impairment of the debtor's rights within the context of equality and justice

The study has detected impairment to the rights caused by the application of Section 400 Paragraph One Clause 1 of the CPL within judicial practice created concept of “pledge obligation” when a decision made pursuant to Section 405 of the CPL is limited in terms of enforcement only to recovery of immovable property. “Pledge obligation” as further development of law *contra legem* standing contrary the law requirements not only decreases legal regulation mechanism efficiency but also has direct impact on the UCEO and additional claim litigation participant rights. Moreover, the mentioned impairment consequences stand across law central idea of justice and equality.

The participant Section 34 Paragraph One Clause 9 of the CPL rights on lower litigation costs has been restricted. In case of additional litigation when law question has been already adjudicated in UCEO proceeding, debtor's liabilities will rise in amount of additional litigation costs (S 34 p.1, c. 1 of the CPL). Debtor's rights restriction consists of additional litigation costs factor and the fact that litigation costs have been applied twice.

Additional litigation also has created creditor's legal opportunity to count default interest from sentenced amount. In the case of UCEO judgment as Section 195 of the CPL analogy⁵⁷, creditor is empowered to count default interests till auction closing day, and he can continue default interest calculation after judgment of additional litigation become in power.

Increase of the liability of the debtor in the amount of court expenses and default interests following partial execution of an UCEO decision which is incompatible with principles of fairness and equality. These impairments were mainly caused by permitting different legal consequences in similar facts. In

⁵⁷ Sk.: Latvijas Republikas Augstākās tiesas Senāta 2008.gada 16.aprīļa lēmums lietā Nr. SPC-30.

the fact of two similar debts provided in Section 400 Paragraph One Clause 1 appropriate to UCEO procedural order, the result in total debtor liability amount will be different if one case will be reviewed in claim litigation. These liabilities' increasing influence is determined only by applicable procedural order, and it is extremely unreasonable that more expensive and disadvantageous come out simplifying proceedings the main task of which is to save court system and participants' resources. Overall conclusion is that in identical fact and substantive law conditions, the judicial practice and its cognitions absorbed national legal doctrine in the form of CPL commentary insist on different result of legal consequences.

CONCLUSIONS AND RECOMMENDATIONS

Conclusions

1. Legitimate functioning of UCEO occurs within the framework of the dispositive principle when restricting the adversary principle is the legal consequence of the parties' free choice waiving their rights or refusing them and thereby affecting development of the proceedings.

1.1. UCEO is first to be regarded as an option to express the interested persons' dispositive choice granted by the procedural law, and it is one of the kinds of the procedural law to implement the private autonomy.

1.2. The principle of disposition manifests both when a creditor prefers the alternative process and when a debtor chooses in favour of admitting the established in the decision facts or utilising the provided in Section 406 of CPL rights' protective procedural means. Only such expression of dispositive origin of the procedural order respected by a creditor and a debtor ensures balance in the law and provide the needed preconditions for implementing the procedural economy that constitutes the UCEO objective, which per se is nothing but a result of unimpaired disposition.

1.3. The civil procedural option for protection of a debtor's rights the result of which is verification of the established through UCEO facts in the claim proceedings, for expedited examination of cases excludes the possibility to be classified as an independent type of civil procedural proceedings in the system of procedural institutes of CPL, by convincingly indicating at close systemic relation thereof with the claim proceedings; and only such relation secures justified functioning of UCEO or a legitimate procedural form. There is a choice for a claimant between the claim proceedings and UCEO within the same subject of the claim. Likewise, a debtor is granted a right to admit the same claim subject within the obligation transferred by UCEO or to request the court verify the claim by claim proceedings.

2. The UCEO procedural economy is comprised by the generated thereby option to decide the matter of rights within the restricted by the law legal substances. Should a judgment not be disputed (Section 406 of CPL), the matter of rights has been decided outside the claim proceedings thereby economizing the resources of the judicial system and in general ensuring more effective application of the legal norms.

2.1. The problematic of the procedural economy and efficiency is the core issue in the procedural agenda of nearly all legal states, which has become particularly aggravated due to the economical fluctuations in order to provide persons, based on law protection of their rights, in court while the resources are limited and amount of civil disputes has been growing.

2.2. Regardless the fact the undisputed enforcement has been directly incorporated in the procedural order of the claim proceedings or it exists as a procedural stage one result of which is verification of legal facts within a claim proceedings – the formulae substantiating the circumstances for undisputed judgments utilise similar elements: admittance of the claim, non-instituting of objections, non-contesting etc.

2.3. Achieving the objective of UCEO procedural economy is restricted by the dispositive nature of the alternative procedural option. The result of the procedural economy as an element of legal regulation mechanism being self-regulative will directly depend on the level of legal awareness and application of appropriate norms of expedites proceedings, when balance is observed between the directed by a judge proceedings and freedom of the participants of such, which, in its turn, conforms to the fundamental factors in development of more efficient procedural order developing from steadfastness to flexibility. The alternative proceedings is not a complete means to improve efficiency of the law application; therefore, the legal opinion is to be simultaneously developed to improve the efficiency of claim proceedings.

3. Undisputed enforcement of payment obligations is an alternative to debt recovery through claim proceedings. Thereby the preconditions in taking a positive judgment must be identical. A legal fact must exist regarding impairment of a creditor's rights in the form of appropriately non-fulfilled debtor's obligation, and the procedural order must provide a possibility to establish such facts.

3.1. Within the process of scientific inquiry in the study, the matter of the legal fact takes the most significant position in the hypotheses verification. Problematic of such kind has activated not because of deficient understanding or variability of opinions regarding the identity of the legal fact in UCEO, but regarding inappropriate application of such legally significant factual circumstances and developing coherences with the public pledge right. The national law science and the practice of law application do not segregate the concept of procedural legal fact, which may be deemed as decisive methodological deficiency.

3.2. The needed legal fact to apply substantive law norms in order to establish the creditor's right to recovery is a conforming impairment of the creditor's rights in the form of unfulfilled debtor's obligation. Furthermore, such a legal fact bears also procedural meaning. Public pledge resides outside a legal fact regarding a debtor's duty to fulfil the obligation, and a judge's decision as an individual act of the law application does not change the legal status of the pledger and the pledgee, which simultaneously indicate to residing of such substantive right outside the object of the UCEO procedural order by attributing it with nothing but significance of a procedural legal fact. Within such circumstances, utilisation of the formulae that relate and substantiate the debtor's duty to repay the debt with the creditor's pledge rights as the rights to the worth of the pledged object is not unsubstantiated and cannot be justified in the terms of the method of application of legal norms and of the principles of the legal regulation mechanism.

3.3. When the same subject of claim exists, the decisively needed criterion for the claim proceedings in admissibility of alternative procedural order is just practicability of proving the claim in the UCEO procedural order. Impairment of a creditor's rights in the form of non-returned debt as a necessary quality of the legal fact substance determines the procedural essence of Section 400 Paragraph One Clause 1 of CPL – this legal norm when functioning within the system of the UCEO law institute indicates possibility of the debt recovery not selling the pledge. The said may simultaneously confirm the thesis – the selected procedural order does not affect the substantively legal grounds of the claim.

3.4. The substantive and procedural norms at the stage of application thereof continues implementing the tasks and objectives of each of those. Establishing impairment of the creditor's rights and respective debtor's obligations in the civil procedural legal relationship will manifest as the consequence of realization of the substantive law norms, whereas application of section 400 Paragraph One Clause 1 of CPL will only be applicable to establishing the admissibility of examining the particular claim pursuant the UCEO procedural order.

4. In the event of UCEO, only the form of a public pledge as a procedurally significant legal fact unburdens proving the obligation. Likewise, warning the debtor also bears significance of a procedural legal fact, which incorporates the function to ensure the rights and develop such.

4.1. The public pledge right per se is not an object to be established in the relations of a creditor and a debtor of UCEO as a law institute, but it may be regarded only as the needed civil procedural legal fact or specifically – as necessary element for an appropriate substance of a procedural legal fact that bears significance of proof. The significance of the form of the public pledge manifests as procedurally significant legal fact in order to attribute certain

degree of credibility to the evidence proving the debtor's obligation, and it is needed in a civil proceedings solely to establish admissibility of UCEO.

4.2. In applying the legal norms in practice, the significance of public credibility is overrated. The principle of public credibility is limited and it has no comprehensive significance; in the UCEO context it originates just certain grounds for an assumption regarding existence of obligation as an object of proof instead of confidence of existence of an appropriate legal fact. A mortgage or a commercial pledge only provided grounds for reasonable assumption regarding possibility of existence of an obligation in the provided by the creditor amount. Public credibility may not replace the provided in CPL for the debtor expression of dispositive principle without employing the option to contest the judgment. Actually it is the decisive procedural means to verify the solidity of the UCEO judgment.

4.3. Another necessary procedural legal fact deciding the admissibility of UCEO is warning a debtor. In the event of UCEO deliberate non-receipt (avoiding) of the warning or employing possibilities not to receive the warning (absence from the declared place of residence; non-existence of such) create favourable procedural status to the debtor – excludes application of UCEO. Simultaneously, if protracting in such way taking lawful and grounded judgment without violating the law as to substance, impairment of subjective rights is unjustifiably delayed. In such regard it is necessary that the developing functions of the warning rights and the function of ensuring the rights are balanced in order to strengthen impact to the persons who entertain the judicial protection mechanism in bad faith.

5. Within the national law system, the pledge right is nothing but the right to the worth of the pledged property and expression thereof is reduced in the pledger's advantage against other creditors. The pledge right does not comprise the right to require fulfilment. Recovery can be directed against the pledge in the common procedure provided for

directing recovery against the real estate owned by the debtor. The right to require fulfilment from the debtor is to be established in procedural order. UCEO is simplified, expedited process to establish the creditor's right to recovery.

5.1. The pledge right, the substantive legal consequence thereof resides outside a legal fact of impairment of the creditor's rights. The pledge right is nothing but the right to worth of the property, not the right to the debtor's performance or payment of the debt. The procedural significance of the pledge right manifests only in an assumption on the needed for the pledge right as an ancillary right obligation the fulfilment of which it ensures, thereby *the form of the public pledge provides possibility to establish a debtor's obligation*. In the judicial practice, by the means of further development of law an attempt has been made to the included in Section 400 Paragraph One Clause 1 of CPL concepts *coherence* and *pledge right* by adjusting those to the comprehension of *the pledger's obligation*. In this regard the borrowed from the Soviet law concept of 'pledge obligation'. The concept 'pledge obligation' is artificially constituted and cannot be systematically united with the comprehension of the concept of the pledge right, which has historically consolidated in the law system of the continental Europe.

5.2. By the said concept, it has been attempted to replace the consolidated in the composition of the CPL norm qualities of abstraction of the actual circumstances (on created by a debtor impairment of the creditor's rights in the form of a non-fulfilled payment) with the said 'pledge obligation' – the pledge giver's obligation to respond in the amount of the pledge in the event of non-fulfilment of the loan obligation. Non-conformity is to be observed on two levels. First, the result of the concept of 'pledge obligation' is completing the composition of Section 1278 of CL on a creditor's right to the worth of foreign property with qualities on the pledge giver's duty to respond for unsecured debt. Second, mistaken is application of Section 400 Paragraph One Clause 1 of

CPL when the norm is utilised to determine the substantive duty in the subjective legal relations (pledger's duty to sell), outside its function to establish such legal facts that have civil procedural significance – to verify conformity of the actual substance to examination thereof according to the UCEO procedural order, admissibility of such order.

5.3. The provided in CL existence of the pledge right depends on simultaneous existence of the two qualities – relation and pledge right; and it is only possible to talk about the pledge right per se as totality of the both said elements. Result of the summarised practice of the Supreme Court regarding directing recovery at the pledge by allowing 'incredulity' in the debtor's obligation is internally contradictive and is not substantiated in the law.

5.4. Within UCEO, in parallel to the procedural consequences the substantive legal consequences of the pledge right also continue existing, and such they preserve by the time these rights have been utilised. Within CPL, the substantive legal consequences of the pledge manifests in distribution of the money that has been received for selling the encumbered by the pledge movable property and the immovable property among the collectors, which is laid down in Sections 627 and 628 of this law respectively.

5.5. The summary of the Supreme Court features substantial systemic deficiency. Two independent legal concepts have not been segregated: 'utilisation of the pledge right' and 'directing recovery against immovable property'. Besides the former is substantive, but the latter expressively procedural by its legal nature. Selling through an auction as for its consequences is identical to ordinary selling (Section 2086 of CL). Nevertheless the legal grounds for such auction may differ: both a court judgment regarding debt recovery (established impairment of a creditor and his appropriate right of recovery), and an auction is part of the provided in CPL directing the recovery against the owned by the debtor immovable property, as well as the granted by the pledger to the creditor right to independently alienate

the pledge as the consequence of partial derivation of the ownership (selling outside the established in the court judgment right of recovery). In the second event, the judgment may also be limited to establishing the pledge right and the right to alienate granted by the owner to utilise it. In the first event it is necessary to establish the debt and the respective right of the creditor to recovery.

5.6. Considering needed for UCEO qualities of a legal fact, this procedural order cannot be regarded as an inferior surrogate of voluntary selling through an auction by the court (Part 49 of CPL) – as a substitute of such an order when the pledgee has not been granted the right to sell the pledge for a free price.

6. In the judicature of the Supreme Court and the legal science, there cannot be found grounds for the necessity to abandon forwarding a loan agreement (a contract of obligations) for enforced execution, as well as no justification has been provided to accept the result of further development of such violating the limits of the law concept – ‘pledge obligations’.

6.1. The established in the study practice of application of Section 400 Paragraph One Clause 1 of CPL within the period of time from March 1, 1999 to January 9, 2008, when through UCEO was forwarded the debtor’s obligation, is per se to be regarded as the fact that requires substantiation of the necessity of the current judicial practice, where such systemic and detected by the Supreme Court Senate coherence of the law norm and the law principles would be reflected, which would facilitate reaching the UCEO objectives and in its totality may be characterised as more equitable, more fair, cheaper – generally more effective application of the norm. Necessary existence of such substantiation provides preconditions to recognise the current judicial practice and justify it. If such does not exist, the historical application of Section 400 Paragraph One Clause 1 of CPL outside the concept of ‘pledge obligation’ is to

be deemed as correct per se and therefore presently continues competing the current reading.

6.2. 'Pledge obligations' as *contra legem* result of developing the law contradicts the legal system. Such negative consequences of the unjustifiably originated by the judges' rights manifest in needlessly exaggerated ascertaining of the truth, which per se does not improve functioning of the principle of objective investigation, but encumbers expression of the involved in UCEO persons' dispositivity and thereby excludes achieving the objective of procedural economy caused by alternative order (the result of reading the law as unacceptable to the legal state conflict of the law principles).

7. Negative consequences are caused by derogation from the principle of disposition when the debtor's choice to waive the rights to contest the UCEO judgment is not respected as the result of legitimate restricting the adversary principle.

7.1. The result of the 'pledge obligation' is required by the applier of the law recurrent debt recovery between the same parties, the same object and on the same grounds, which not only constitutes opposite to the procedural economy effect, but also unjustifiably and in contradiction to the law increased the amount of the debtor's responsibility in the form of the litigation expenses and delay interests.

7.2. The established non-conformity with the principle of justice and equality and the encumbered efficiency of law implementation also simultaneously provide grounds for the proposal of the applier of the law norms in order to withdraw interpretation of Section 400 Paragraph One Clause 1 of CPL that envisages forwarding the 'pledge obligation' to enforced execution.

7.3. Within recurrent proceedings, the adjudications are based on two facts, the already established subjected to enforcement obligation from which the amount of the recovered through the auction money means is subtracted. The only contribution of such proceedings is performance of an arithmetic

operations (obligation – pledge worth = debt), as the two facts: both the subjected to enforcement obligation and the confirmed by the court decision deed of auction – as undisputed have been already instituted in other court judgements which cannot be affected by procedural means in recovery of the remnant debt. In the proceedings for recovery the remnant debt no comprehensive claim proceedings is practicable within the adversary principle. Thereby, such a process cannot be referred to the right protection or such protection is not justification for necessity of examining the said matters in procedural order.

7.4. Improvement of the UCEO law institute cannot be unequivocally related with recurrent civil procedure regarding already decided in undisputed order matter, and is to be related to such changes that do not concern restricting the principle of disposition and does not encumber implementing of the principle of the procedural economy. Optimal and fair compromise must be found between the objectives of competing norms – and thereby also between the principles of the implementable norms (justice and procedural economy).

Recommendations

On the basis of the results made in the result of the study, the author proposes that in Section 400 Paragraph One Clause 1 of CPL:

1. Within the mechanism of increasing efficiency of the procedural order law, UCEO functions as alternative of claim proceedings creating possibility to achieve a similar procedural result by utilising predictably limited resources. Within such context the task of a law applier is directly related not only with examination of the admissibility of the application as for the form, but with establishing the impairment of a creditor's duty and respective debtor's duty as to substance in the form of formally restricted by the law factual compositions.

2. In application Section 400 Paragraph One Clause 1 of CPL, the author proposes to focus on establishing a creditor's rights impairment in the form of properly non-fulfilled obligations, and utilise the information that is obtained in the form of public pledge only as the means to fulfil the said task. The proposal also refers to application of the said procedural norm in accordance with its objective – to determine admissibility of UCEO.

3. The author proposes to strictly segregate the substantive consequence of the pledge right and the procedural significance of the public form of such right. Simultaneously, when applying Section 400 Paragraph One Clause 1 of CPL, the author has necessarily indicate unacceptable dualism of the totalities of the elements constituting the pledge right, separate and segregated evaluation of the debtor's right and the securing thereof pledge - directing recovery against the immovable or movable property (pledge) is not legally justified and acceptable, unless an appropriate duty of fulfilment of the debtor's obligation – debts and respective recovery right of a creditor.

4. One of the procedural results of UCEO is a possible dispute regarding the rights between a creditor and a debtor according the procedure of the claim proceedings, where in the centre of the claim object resides the creditor's claim and respective subjected to UCEO debtor's duty (obligation). The author proposes to take this regularity in consideration by reassessing within the case law the consequences of Section 405 of CPL regarding the judgments upon the obligation of Section 400 Paragraph One Clause 1 of CPL. The bid price in an auction – the worth of the pledged property per se does not originate a dispute over the rights.

5. Decisive in implementing the significance of the UCEO procedural economy is undisturbed expression of the dispositive principle in the activities of a creditor and a debtor. In this regard the author proposes to equally respect in application the law norms both the creditor's choice to establish the legal facts and receive the document to be enforced through expedited procedural

order, and the debtor's choice to agree to the legitimacy and solidity of the court judgement that has been taken through such an order without utilising the provided in CPL rights to contest thereof.

6. In totality, the author proposes not to restrict the decision that is made within the UCEO regarding an obligation of Section 400 Paragraph One Clause 1 of CPL in enforced execution thereof with the worth of the pledge and selection of the means of enforcement.

7. In applying the legal norms, the author proposes to utilise in the court judgements the defined in CPL concepts *obligation* and *pledge right* in accordance with their true sense and meaning. Simultaneously, it is proposed to reserve from usage of inappropriate to the law system word and grammar constructions: such as *pledge obligation* (in the sense of a pledger's duty); *pledge agreement, that is secured with a public mortgage; obligations that follow from a pledge agreement; pledge obligations that secure the debtor's obligation; to forward for undisputed enforcement the debtor's obligation against the creditor pursuant a pledge agreement; obligation between the applicant and the debtor – mortgage etc.*

In order to unburden interpretation of Section 400 Paragraph One Clause 1 of CPL, to maximally ensure observing a debtor's rights in protection of a creditor's rights and in aggregate to reveal more exactly the content of the UCEO law institute and facilitate implementing of the principle of the procedural economy, the author proposes such alterations in CPL:

1. To alter in Chapter 7 of CPL the provided classification of the kinds of the procedural orders, move the provided in Chapter 49 Voluntary selling the real estate by an auction through the court to another one or separate it in an independent section of the Law;

2. To amend Section 44 Paragraph Six of CPL by completing it with a sentence in such wording: 'If the action is instituted on the grounds of a deed

pursuant to which UCEO is permitted and the defendant has fully admitted the action in the court of the first instance, on the provided in Section 163 Paragraph Two of this Law procedural stage the expenses for paying for the assistance of an advocate are not reimbursed to the claimant’;

3. To amend Section 400 Paragraph One Clause 1 of CPL by expressing it in such wording: *‘Undisputed enforcement of obligations is permitted pursuant contracts on money payment obligations which are grounded by entries in the Land Registry and the Commercial Pledge registry’*;

4. To amend Section 403 Paragraph Two of CPL by expressing its first sentence in such wording – Applications for undisputed enforcement *according to contracts on money payment obligations which are grounded by entries in the Land Registry* and pursuant to immovable property pledge documents or the obligation to vacate or return leased or rented immovable property, shall be submitted to the Land Registry Office of a district (city) court based on the location of the debtor’s place of residence.

5. To complete Section 404 Paragraph Three with Item 1³ in such wording – The application is attached with: *according to the contracts on money payment obligations which are grounded by entries in the Land Registry – a certified printout from the respective division of the Land Registry with a valid entry about the obligation to be enforced through the procedure of undisputed enforcement and deed from which the secured claim follows*;

6. To complete Section 404 Paragraph Three with Item 1⁴ in such wording – The application is attached with: *according to the contracts on money payment obligations which are grounded by entries in the Commercial Pledge registry – a certified reference of the commercial pledge and certified by the Commercial Pledge registry deed to be enforced through the procedure of undisputed enforcement from which the secured claim follows*;

7. In order to reinstate the balance in warning a debtor between the function of the developing thereof and the ensuring thereof rights, Section 404

Paragraph Three Clause 3 of CPL needs: to complete the text of the first sentence following the words 'from the law' with '*or from the very deed*'; complete the second sentence with words '*or the documents confirming issuing the proof through mediation of a sworn notary*'.

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