

# Reform of Civil Justice in Ukraine: A Differentiation of Action Proceedings and Review of Court Decisions

Iryna Izarova

Assoc. Prof. Dr. Habil.  
Law Faculty, Taras Shevchenko National University of Kyiv  
Volodymyrska, 60, Kyiv – 01033, Ukraine  
Office: +38 044 239 31 86

During the reform of 2014–2017 Ukrainian legislation was approved significantly, among them the Constitution, laws, related to judiciary and litigation, enforcement as well. The advocacy reform is last. This has led to the evolutionary renewal of justice in Ukraine, which was positively faced by the international community.

This article proposes to consider some components of civil justice reform, which were substantially updated, as well as to analyse their compliance with international and European standards. This refers to (1) a general review of judicial statistics and (2) new approaches to the trial of a court of first instance – order, simplified, general proceedings, criteria for demarcation of civil cases (3), and (4) peculiarities of settling a dispute with the participation of a judge. The conclusions summarize the most progressive results of reforms, as well as make suggestions on further development of the potential of civil justice.

**Keywords:** court of first instance, judge, civil justice reform, demarcation of civil cases, judicial statistics.

## Реформа гражданского судопроизводства в Украине: дифференциация искового производства и обзор судебной практики

В ходе реформы 2014–2017 годов украинское законодательство было значительно изменено, в том числе Конституция, законы, касающиеся организации судоустройства и судопроизводства, а также исполнительное производство. Реформа адвокатуры является последней текущей стадией реформы. Это привело к эволюционному обновлению системы правосудия в Украине, которое было в целом позитивно оценено международным сообществом.

В данной статье предлагается рассмотреть некоторые компоненты реформы гражданского правосудия, которые были существенно изменены, а также проанализировать их соответствие международным и европейским стандартам. В частности речь идет (1) об общем обзоре судебной статистики и (2) новых подходах к судебному разбирательству в суде первой инстанции – это упрощенный порядок, а также критериям дифференциации гражданских дел (3) и (4) особенностям разрешения спора с участием судьи. В выводах обобщены наиболее прогрессивные результаты реформ, а также внесены предложения по дальнейшему развитию потенциала гражданской юстиции.

**Ключевые слова:** суд первой инстанции, судья, реформа гражданского правосудия, дифференциация гражданских дел, судебная статистика.

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## Introduction

In December 2018, a year had passed since the beginning of work of the new Supreme Court in Ukraine, as well as since the application of the procedural codes in the new wording of 3 October, 2017. The grand reform of the justice system was intended to ensure the effective realization of the right of individuals to a fair trial, and, in fact, – to restore public trust in the judicial authorities of Ukraine.

During the reform of 2014–2017 several documents were approved, among them the Strategy of reforming the judiciary, court proceedings and related legal institutions for 2015–2020<sup>1</sup>, the Law “On judicial system and status of judges” No 1402-VIII<sup>2</sup>, the Law of Ukraine “On High Council of Justice” No 1798-VIII<sup>3</sup>, the Laws “On Enforcement Proceedings” No. 1404-VIII<sup>4</sup> and “On the Bodies and Persons Who Execute the Enforcement of Court Decisions and Decisions of Other Bodies” No. 1403-VIII<sup>5</sup>). The Laws “On Free Legal Aid” and “On the Prosecutor’s Office” received substantial update; and the changes were approved to the procedural codes – the bill on amendments to the Commercial Code of Ukraine, Civil Procedural Code of Ukraine, the Code of Administrative Procedure of Ukraine and other legislative acts No 6232<sup>6</sup>.

Of high significance are the amendments to the Fundamental Law of Ukraine – the Constitution of Ukraine (the Law “On making amendments to the Constitution of Ukraine (concerning justice)”<sup>7</sup>, adopted on 2 June, 2016, the provisions of which now secure the right to mandatory provision of professional legal assistance in courts. Currently, the Verkhovna Rada of Ukraine is considering the Draft Law on the Bar and Practice of Law<sup>8</sup> of 6 September 2016 aiming at the completion of the complex judicial reform.

All the above mentioned has led to the evolutionary renewal of justice in Ukraine, in particular, of the organization of courts and the order of appointment of judges; the judiciary and procedure for reviewing civil, economic, administrative and criminal cases, as well as the procedure for reviewing approved court decisions; system of execution of court decisions and introduction of the institution of private executives; in the course of active reforming the Bar Association of Ukraine.

The international community expressed a generally positive assessment<sup>9</sup> of the work of the renewed judicial power during the last year. The Annual Report on the Status of Independence of Judges in

<sup>1</sup> Strategy of reforming the judiciary, court proceedings and related legal institutions for 2015–2020 available at <<http://zakon2.rada.gov.ua/laws/show/276/2015>>.

<sup>2</sup> Law On judicial system and status of judges No 1402-VIII of June 02, 2016 available at <<http://zakon3.rada.gov.ua/laws/show/1402-19/print1452602755913155>>.

<sup>3</sup> Law of Ukraine On High Council of Justice No 1798-VIII of December 21, 2016 available at <<http://zakon2.rada.gov.ua/laws/show/1798-19/print>>.

<sup>4</sup> Law of Ukraine On Enforcement Proceedings No. 1404-VIII of June 2, 2016 available at <<http://zakon0.rada.gov.ua/laws/show/1404-19/print>>.

<sup>5</sup> Law of Ukraine On the Bodies and Persons Who Execute the Enforcement of Court Decisions and Decisions of Other Bodies No. 1403-VIII of June 2, 2016 available at <<http://zakon0.rada.gov.ua/laws/show/1403-19/print>>.

<sup>6</sup> Bill on amendments to the Commercial Code of Ukraine, Civil Procedural Code of Ukraine, the Code of Administrative Procedure of Ukraine and other legislative acts No 6232 March 23, 2017 r. available at <[http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=61415](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=61415)>.

<sup>7</sup> Law On making amendments to the Constitution of Ukraine (concerning justice) available at <<http://zakon0.rada.gov.ua/laws/show/1401-19>>.

<sup>8</sup> Draft Law on the Bar and Practice of Law available at <[http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=64557](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=64557)>.

<sup>9</sup> See EU report: Ukraine makes important progress in its reforms but more needs to be done in particular on the judiciary and fight against corruption available at <[http://europa.eu/rapid/press-release\\_IP-18-6322\\_en.htm](http://europa.eu/rapid/press-release_IP-18-6322_en.htm)> and DB 2019 Training for Reform Economy Profile Ukraine available at <<http://www.doingbusiness.org/content/dam/doingBusiness/country/u/ukraine/UKR.pdf>>.

Ukraine<sup>10</sup>, prepared by the High Council of Justice, states that today the relevant legislation reflects the high level of objective independence of the judiciary in Ukraine, and despite the low level of subjective independence of judges, as well as the low level of trust in the judiciary of the society, there are unprecedented qualitative changes in the judicial system of Ukraine. According to the High Qualifications Commission of Judges of Ukraine of 2016, 31% of judges resigned, not willing to undergo a qualification assessment<sup>11</sup>. Thus, we can state that the face of the judicial system of the country is changing. This will definitely become a guarantee of changes in the representation of the courts in the state.

Also, an integral part of the reform is the change in the procedural order for reviewing cases by the courts. This article proposes to consider some components of civil justice reform, which were substantially updated, as well as to analyse their compliance with international and European standards. This refers to (1) a general review of judicial statistics and (2) new approaches to the trial of a court of first instance – order, simplified, general proceedings, criteria for demarcation of civil cases (3), and (4) peculiarities of settling a dispute with the participation of a judge. The conclusions summarize the most progressive results of reforms, as well as make suggestions on further development of the potential of civil justice.

## 1. Differentiation of cases that are considered in civil proceedings

The statistical reports on the work of courts that emerged during 2017 indicate that the situation remains essentially unchanged: there is an annual tendency for courts to consider about 3.9 million cases, of which almost 35% are civil cases<sup>12</sup>, as well as 4% of commercial cases. In recent years (2016–2017), the number of cases considered in the administrative (7.4–7.8%) and criminal proceedings (30.8–32.1%), as well as the number of cases of administrative offenses (23–24%) rose. This cannot be considered a stable tendency in view of the objective circumstances and events taking place in the country, the completion of which will restore the traditional ratio of civil and criminal cases.

The current tendency of reduction of the number of civil cases that were considered by the courts of first instance in 2016–2017 is approximately 1.04–0.95 million cases, as well as 101–91 thousand cases in the courts of appeal. At the same time, the number of cases considered in the order proceedings rose from 9,94% in 2016 to 11,07% in 2017, as well as from 8,17% to 8,98% in a separate proceeding. The latter tendency is objective in view of the fact that a separate proceeding deals with a special category of cases on establishing the fact of the birth or death of a person in the temporarily occupied territory of Ukraine. At the same time, the tendency of increase of the number of cases considered under the order proceeding is quite stable and has been observed over the last years. Simultaneously, in 8–5% of the total number of cases considered in order proceeding were filed applications for the cancellation of a court order during 2016–2017.

The vast majority of civil cases (which is 73–72% of the total number of cases) are considered in order proceeding. This fact gives order proceeding additional attention. It was this process that went through substantial changes during the last reform and will be the subject of our study.

<sup>10</sup> On the Status of Independence of Judges in Ukraine: Annual Report for 2017. – Kyiv, the High Council of Justice, 2017. – p. 277, available at <[http://www.vru.gov.ua/content/file/Щорічна\\_доповідь\\_за\\_2017\\_рік.pdf](http://www.vru.gov.ua/content/file/Щорічна_доповідь_за_2017_рік.pdf)>.

<sup>11</sup> Every fourth judge did not pass the qualifying test – the first results <<https://vkksu.gov.ua/ua/news/kozienchtietwertij-suddia-nie-projshow-kwalifikacijnie-ociniuwannia-piershi-riezultati/>>.

<sup>12</sup> Overview of data on the implementation of justice in 2017 available at <[https://court.gov.ua/userfiles/file/DSA/2018\\_DSA\\_NAKAZY/ogl\\_2017\\_copy.pdf](https://court.gov.ua/userfiles/file/DSA/2018_DSA_NAKAZY/ogl_2017_copy.pdf)>.

Among the cases of litigation the dominant are the disputes arising out of contracts and disputes arising from family relations, which make up 32–35% in each category, and together with disputes over inheritance rights (more than 11%) they make up almost 80% of cases<sup>13</sup>:

Category of cases	2016	% of the total number of cases considered in order proceedings	2017	% of the total number of cases considered in order proceedings
Disputes arising from contracts	205 650	35,2	180 545	32,8
Disputes concerning family relations	198 031	33,8	196 163	35,7
Disputes concerning inheritance law	66 651	11,4	63 110	11,5
Disputes concerning the right to property and other property rights	29 919	5,1	28 011	5,1
Disputes arising from residential relations	29 407	5	27 584	5
Disputes concerning non-contractual obligations	16 816	2,9	18 438	3,4
Disputes arising from labour relations	14 745	2,5	12 280	2,2
Disputes arising from land relations	10 809	1,8	9 632	1,8
Protection of consumer rights	4 903	0,8	4 119	0,7
Disputes about the protection of non-property rights of individuals	1 548	0,3	1 336	0,2
Disputes about the intellectual property rights	306	0,05	206	0,03

One of the facts that immediately attracts attention when analysing the statistics is an extremely large number of disputes arising from relations in which the parties enter into their own accord, and, not finding a more effective way of resolving the dispute arising from these relations, apply to the court. Attention is also drawn to an extremely large number of cases arising from family and inheritance relationships, in which the lion's share of participants are relatives or close people. All this leads to the interest and the need to consider more effective mechanisms for out-of-court dispute resolution or at least a simplified judicial decision, as discussed in more detail in Part 3.

All these cases before the reform of 2017 were considered in civil proceedings, which were not differentiated. From 15 December, 2017, these cases will be dealt with either in simplified or general proceedings. However, statistics on such differentiation will be available only in 2019, as it was not immediately introduced among statistical data<sup>14</sup>.

<sup>13</sup> Consideration of cases and applications in the civil procedure by local general courts available at <[https://court.gov.ua/inshe/sudova\\_statystyka/porivn\\_tabl\\_17](https://court.gov.ua/inshe/sudova_statystyka/porivn_tabl_17)>.

<sup>14</sup> See the report of Maksym Titov, Judge, Vice-Head of the Forth Circuit Court of Kyiv, Tetiana Korotenko, a judge assistant entitled "Simplified Action Procedure: new practice and experience for Ukrainian judges" / Access to Justice in Eastern Europe, Issue 1, 2018, pp. 53–61.

## 2. General characteristics of order, simplified and general proceedings in civil justice

### 2.1. The general action proceedings

The *general action proceedings* are held in stages:

- 1) the opening of proceedings;
- 2) the preparatory proceedings;
- 3) the consideration of the case on merits and the decision.

In a court ruling on the acceptance of a claim for consideration and opening of proceedings, the court shall determine the category of proceedings (general or simplified) in which the case will be considered. If the case will be considered under general procedure, the date, time and place of the preparatory meeting as well the date, time and place of the trial for the consideration of the merits of the case, if the case is to be dealt with in a simplified proceedings with the notification (summons) of the parties should be determined.

The deadlines for the submission of a response to the claimant for an action, for the submission of a response to a petition and objections should be determined, if the case will be dealt with under the rules of simplified proceedings, as well as to provide explanations to third parties who were involved in the opening of proceedings.

This resolution specifies the web address of the page on the official web portal of the judiciary of Ukraine on the Internet, where the participants of the case can obtain information on the case under consideration.

*The task of the preparatory proceedings* is the final definition of the subject of the dispute and the nature of the disputed legal relations, claims and the composition of the participants in the trial, as well as the determination of objections to the claims; the determination of the circumstances of the case to be established and the collection of relevant evidence; determination of the procedure for consideration of the case; committing other actions in order to ensure a correct, timely and unhindered consideration of the merits.

*The court in the general proceeding necessarily conducts a preparatory court hearing* during which the court finds out whether the parties want the conclusion of a peace agreement, refer the case to the arbitral tribunal or apply to the court for a settlement of the dispute with the participation of a judge (more about this proceedings see 1.3).

*Consideration of the case on merits* is the central stage of the proceedings, the task of which is to consider and resolve the dispute on the basis of materials collected in the preparatory proceedings, as well as the distribution of court costs.

*The main stages of the consideration on merits of the civil case:*

1. *Opening of the case on merits*, during which the presiding judge shall announce which case will be considered. It is determined who is present and what are the consequences of non-appearance, identify the persons who appeared. The chairmen also explain to the participants the conditions and rights of revocation, and the translator, the expert and specialist are explained their rights and responsibilities.

2. *The clarification of the circumstances of the case and the study of evidence*, in which the participants of the case exchange questions, determine the procedure for clarifying the circumstances of the case and study evidence, which justify the claims and objections.

3. *Judicial debates and decision-making*, in which speeches are made by the participants of the case, the court is removed for decision-making in the consultative room (a specially equipped room for

judgments), declaring the indicative time for its proclamation, adopts a decision on court costs and declares the judicial decision in the court session, which ends the consideration of the case in public, except in cases established by the CPC; explanation of its content, the procedure and terms of its appeal.

## 2.2. The simplified procedure

The following elements of simplified procedure can be outlined:

1. *Starting the proceeding with the claimant's motion*, to which the court may accept the motion and set the time for the defendant to file an application with objections regarding the case hearing in the form of simplified proceedings; or reject the motion and to hear the case pursuant to the rules of the general proceedings. Defendant's objection, in response to which the court may rule to leave the defendant's application without satisfaction; or hear the case according to the rules of the general proceedings and replace the meeting for the case hearing with the preparatory meeting.

2. *Submission of applications and evidence* within fifteen days from the date of the ruling to start the proceedings. The claimant has the right to file a response for the withdrawal to the court, and the defendant – to file an objection within the time limits set by the court in the ruling to start the proceedings. Third parties have the right to submit an explanation on the claim within the time limit set by the court in the ruling to start the proceedings, and in respect of the withdrawal, within ten days from the day of its receipt.

3. *Case hearing includes opening of the first court session no later than thirty days* after the date of starting the proceedings without notice of the parties on the materials available in the case, when there is no motion of any of the parties (about the other); studying the evidence and written explanations set forth in the statements on the merits of the case, and, if hearing the case upon the notification of the participants of the case, also hearing their oral explanations and witness testimonies.

At the stage of the adoption and proclamation of the court's decision it should be assumed that this is a simplified procedure, and that it is therefore not necessary to apply the general provisions for the adoption, proclamation and award of judgments.

## 2.3. The court order procedure

In the procedure of court order issuing the following stages are included:

- *the submission* of an application for the issuance of a court order, its registration in court and the appointment of a judge who checks the location of the debtor for the purpose of determining jurisdiction;
- *issuing a court order* within five days from the date of receiving the application or *refusing to issue a court order on the grounds, listed in CPC*.

The court order to appeal is not subject to appeal, *but can be cancelled only on the request of the debtor* to cancel the court order by the debtor within fifteen days from the day the copy of the court order and the documents attached to it were submitted to the court which issued it.

Comparing the simplified action proceeding and order proceeding with the general proceeding, it should be noted that on the whole they provide an opportunity to ensure the effective protection of the rights of the person who appealed to the court and also correspond to the general notions of case management, providing the court with discretionary powers regarding the final choice of the procedure for consideration of the case, while ensuring the accessibility of justice.

### 3. Criteria for differentiation between cases that may be considered in order, simplified and general proceeding of civil justice

It is worthwhile to begin with the cases for court order procedure due to its alternative with simplified procedure.

*Grounds for appealing to the court in order proceedings are the following:*

1) a claim is made for the charging the amount of wages and average earnings during the delay of the calculation, which was calculated but not paid to the employee;

2) a claim is made for compensation of expenses for the search of the defendant, the debtor, a child or vehicles of the debtor;

3) a claim is made for collection of debts for payment of housing and communal services, telecommunication services, television and radio services, taking into account the inflation index and 3 percent annual interest accrued by the applicant on the amount of the debt;

4) a claim is made for the payment of alimony for one child in the amount of one quarter, for two children of one third, for three and more children of half of the earnings (income) of the alimony payer, but not more than ten subsistence minimums per child of the corresponding age for each child if this requirement is not connected with the establishment or contesting of paternity (motherhood) and the need to involve other interested persons;

5) a claim is made for the payment of alimony for a child in a solid monetary amount of 50 per cent of the subsistence minimum for a child of the corresponding age, if this requirement is not connected with the establishment or contest of paternity (motherhood) and the need to involve other interested persons;

6) a claim is made for the return of the value of the goods of inadequate quality if there is a court decision which has become valid, establishing the fact of sale of goods of inadequate quality, approved in favour of an uncertain range of consumers;

7) a claim is made to a legal entity or individual entrepreneur about the collection of debts under a contract (other than the provision of housing and communal services, telecommunication services, television and radio broadcasting services), concluded in writing (including electronic form), if the amount requirements do not exceed one hundred subsistence minimum for able-bodied persons<sup>15</sup>.

It should be noted that after the reform the CPC of 2017 established the alternative: the applicant may choose the procedure and apply to the court with the above requirements in an *order procedure* or in a *simplified procedure* of his choice. It depends on whether a dispute between the applicant and the other party is absent or when applicant doesn't know of its existence.

To hear case in simplified procedure is much more difficult. Firstly, the provisions of paragraph 2 of Article 274 of the CPC 2017, the range of cases that can be heard by the court through simplified proceedings, is unlimited:

Article 274. Cases heard through simplified action proceedings

2. Any other case that is subject to the jurisdiction of the court may be heard through simplified action proceeding, except for the cases specified in part four of this article.

Despite this, in the list of cases which are to be considered only according to the rules of the general action proceedings according to the Article 274, paragraph 4, of the CPC we find:

Article 274. Cases heard through the simplified proceedings

<sup>15</sup> Civil Procedure Code of Ukraine edition № № 2147-VIII of 03 October 2017 available at <<http://zakon3.rada.gov.ua/laws/show/1618-15/print>>.



4. Under simplified proceedings, the following cases can not be heard in disputes:

- 1) arising from family relations, except for disputes concerning the collection of alimony and the division of property of a spouse;
- 2) on inheritance;
- 3) regarding the privatization of the public housing;
- 4) regarding the recognition of unsubstantiated (unjustified) assets and their enforcement in accordance with chapter 12 of this section;
- 5) in which the price of the claim exceeds (from 1 January, 2019) approximately EUR 30 000);
- 6) other requirements combined with claims in the disputes specified in paragraphs 1 to 5 of this part.

In accordance with Part 6, Article 19 of the CPC, the following cases may be dealt in simplified action civil proceedings:

- first, these are cases in which the cost of the claim does not exceed the established limit (from January 1, 2019, approximately EUR 6 200);
- second, these are cases of small complexity that meet the following three conditions:
  - 1) they are construed as ‘small claims’ by the court;
  - 2) they are not excluded;
- third, these are cases arising from labour relations;
- fourth, these may also be cases provided for in paragraph 1 of Article 161 of the CPC (these are the grounds for court order issuing).

Therefore, the wider range of cases is so-called court-decided-small according to the paragraph 1 of the Article 11 and paragraph 3 of the Article 274 during the start of proceedings:

#### Article 11. Proportionality in Civil Proceedings

1. The court shall, within the limits established by this Code, determine the procedure for conducting proceedings in accordance with the principle of proportionality, taking into account: the tasks of civil justice; ensuring a reasonable balance between private and public interests; features of the subject of the dispute; price of a claim; complexity of the case; the value of the consideration of the case to the parties, the time required for the commission of one action or another, the amount of court costs related to the relevant procedural actions, etc<sup>16</sup>.

#### Art. 274. Cases resolved in the form of simplified proceedings

3. When deciding on the case resolution in the order of simplified or general proceedings, the court shall take into account:

- 1) the amount of the claim;
- 2) the significance of the case to the parties;
- 3) the method of protection chosen by the claimant;
- 4) the category and complexity of the case;
- 5) the scope and nature of the evidence in the case, including whether it is necessary to appoint an expert examination, to summon witnesses, etc.;
- 6) the number of parties and other participants in the case;
- 7) whether the case resolution is of significant public interest;
- 8) the opinion of the parties on the need to hear the case on the rules of simplified proceedings.

The court decision about the procedure category for resolving the case (general or simplified), is not appealed separately from the final decision of the court (Article 353 of the CPC).

<sup>16</sup> Civil Procedure Code of Ukraine edition № 2147-VIII of 03 October 2017 available at <<http://zakon3.rada.gov.ua/laws/show/1618-15/print>>.



In court practice, for inst., according to Kyiv Obolonskyi District Court generalization for the period from the first half of 2018, 6,035 civil cases and materials were handled by judges (including 65 cases arising from labour relations), 3206 cases/materials were received during this period (31 cases), 3164 civil cases (including 27 cases arising from labor relations) and materials were considered<sup>17</sup>, and due to the absence of specific data we can only suppose that less than approximately 20% were considered in simplified procedure. The statistic data will be available only from the next period.

This generalization made it clear that the court appoints civil cases for consideration under simplified procedure in such cases as collection of arrears under a loan agreement; debt collection under a credit agreement; collecting alimony; reduction of alimony; increase of alimony; recognition of a person as a such who has lost the right to use a housing facility; compensation for damage caused by a road accident; reimbursement of expenses related to studying at a higher educational institution; determining the procedure for using an apartment that is in common partial ownership; recognition of the contract as invalid; marriage annulment; cases of the collection of average earnings during the delay of payment of wages making an employee redundant; cases on eviction and removal from the registration; etc.

We should support the point, that one of the problems concerning the fact that the CPC of Ukraine clearly stipulates that some cases should be considered under simplified proceedings, however, taking into account certain features (in particular, taking into account the provisions of Articles 11 and 3 of Article 274 of the CPC of Ukraine), in the opinion of the court they should be appointed for consideration under general proceedings. These are labour disputes which are to be considered under general action procedure. For inst., a civil case of F. to Kyiv City Employment Center on the recognition as unlawful and the cancellation of orders for bringing to disciplinary liability and the order of dismissal, renewal at work and the recovery of average earnings during forced unemployment the claims are motivated by the fact that during September 2018 the defendant had declared two reprimands to the plaintiff, which she considered illegal. By order of the Director of Kyiv City Employment Center dated 11 September, 2018, the plaintiff is dismissed from the post of deputy director of Obolonskyi District Branch of Kyiv City Employment Center. The said order is considered unlawful by the plaintiff. In the court's opinion, it is not reasonable to consider the dispute under the rules of simplified lawsuit, as in this case, it is necessary to conduct preparatory proceedings for clarification, in particular, for the final determination of the subject of the dispute and the nature of the litigious legal relationships, claims and the composition of the participants of the case.

#### **4. Settlement of a dispute with the participation of a judge – a novel of the CPC of 2017**

Prior to the commencement of consideration of the case on the merits, with the consent of the parties in the proceedings, a special procedure provided for in Chapter 4 of Section III of the CPC of Ukraine may be carried out – *settlement of the dispute with the participation of a judge*. This is a novel of civil justice, since in 2004 the CPC only introduced the institution of a settlement agreement. Then several provisions of the law were devoted to it, which, in particular, resolved the question of the rights of the parties to conclude a settlement agreement at any stage of civil proceedings, as well as the conditions under which such a settlement agreement could be approved by the court – absence of violation of the law and the rights of third parties.

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<sup>17</sup> See the report of Maksym Titov, Judge, Vice-Head of the Forth Circuit Court of Kyiv, Tetiana Korotenko, a judge assistant entitled "Simplified Action Procedure: new practice and experience for Ukrainian judges" / Access to Justice in Eastern Europe, Issue 1, 2018, pp. 53–61.

Today, the CPC provides for the possibility of appointing a separate dispute settlement procedure with the participation of a judge, which is intended to promote the general direction of the worldwide settlement of disputes, the participants of which have appealed to the court.

The basic idea of pre-trial settlement of a dispute is set out in the general principles of the civil process: Article 16. General provisions of pre-trial settlement of a dispute

1. The Parties shall take measures for the pre-trial settlement of a dispute by agreement between themselves or in cases where such measures are mandatory in accordance with the law.
2. Persons who violated the rights and legitimate interests of other persons are obliged to restore them without waiting for a complaint or claim<sup>18</sup>.

The law also refers to the mandatory settlement of the dispute, but today there are no such provisions of the law.

*The conditions for settling a dispute with the participation of a judge* are the consent of the parties and the absence of a third person who claims independent demands regarding the subject matter of the dispute.

*The procedure for settling a dispute with the participation of a judge:*

1. *Issue of a decree of the court about the settlement of a dispute*, which simultaneously suspends the proceedings. Judge's repeated participation in the consideration of this case is not allowed.
2. *Conduct of joint and/or closed meetings* (with each of the parties separately), in particular, in the video conference with the participation of all parties, their representatives and the judge.
3. *Termination of the settlement of a dispute with the participation of a judge* by the issuance of a ruling that is not subject to appeal, on the following grounds:
  - 1) in the case of submission by the party of an application for the termination of the settlement of a dispute with the participation of a judge;
  - 2) in the case of expiration of the term of the dispute settlement with the participation of a judge;
  - 3) upon the initiative of a judge in case of delaying the settlement of a dispute by any of the parties;
  - 4) in the case of the conclusion of the settlement agreement by the parties and appeal to the court with a statement on its approval or petition of the plaintiff in court with a statement on the leaving the claim without consideration, or in the event of the applicant's refusal from the claim or recognition of the claim by the defendant. In this case another judge is appointed to hear the case.

To conclude briefly we can state the following. The lack of real and effective alternative ways of resolving disputes in Ukraine has a severe negative effect on the level of trust in the judiciary, as a huge number of cases simply should not reach the courts, as they can be reviewed more effectively in the form of mediation and other conciliatory methods. This is extremely important for cases arising from contractual relations, in which the parties have the opportunity to enter into their own accord and determine the terms of concluding, executing and termination. The lion's share of affairs arising from family and inheritance relationships, in which most of the relatives are among the participants, is also likely to be a good example. No matter how simplistic and fast litigation would be, these are public processes that are not immanent to matters arising from contractual and family relationships. The introduction and promotion of the development of conciliatory procedures for resolving such disputes in general will have a positive effect on the level of trust in the administration of justice in the country. In view of this, it is worthwhile defining in more detail the criteria by which a court can govern and appoint a settlement procedure, as well as maintain a mandatory pre-trial settlement of disputes.

<sup>18</sup> Civil Procedure Code of Ukraine edition № № 2147-VIII of 03 October 2017 available at <<http://zakon3.rada.gov.ua/laws/show/1618-15/print>>.

## General Conclusions and Prospects for further reform

The differentiation of order proceeding in civil legal proceedings in Ukraine, under which more than 1 million 100 thousand cases are considered annually, should be attributed to the absolute advantages of the reform. Attempts to find a more effective and optimal way of reviewing these cases should be welcomed. In particular, according to our belief, the introduction of the management and court-related litigation over a certain period of time should have a positive effect and ensure the timely consideration of cases and the prevention of abuse of procedural rights.

It is worth noting that during the reform of the CPC, the general tendency can be seen to take into account the achievements and best European experience, in particular the principles of cooperation between the parties and the court, the peaceful settlement of the dispute and the proportionality (see interim reports of the European Rules of Civil Procedure ELI-Unidroit).

At the same time, the specifics of these cases predetermine the need for a broader integrated approach to ensure real protection of the rights of civil society members. Therefore, it is worth continuing the reform towards the introduction and support of extrajudicial forms of dispute resolution. Lack of support, respectively, for the active development of the potential of alternative forms of dispute resolution such as mediation and the like, leads to the extension of the court's form of protection of rights to such disputes that are not rationally dealt with in that order.

The introduction of order proceedings in the CPC in 2004 should allow for a simplified procedure for the collection of uncontested debt from the debtor, and in the course of the past time, about 10% of all civil cases were considered by courts in this proceeding. At the same time, the proposed approach to defining in the law the specific categories of cases that may be considered under order procedure considerably narrows and reduces the potential for application of this procedure, which is optimal for use in cases with unconditional requirements for the recovery of funds, in particular, in those cases that are dealt with in simplified proceedings: in such cases as collection of arrears under a loan agreement; debt collection under a credit agreement; collecting alimony.

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