

JUDICIAL SYSTEM AND CIVIL PROCEDURE IN UKRAINE

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I. A SHORT HISTORY OF THE UKRAINIAN LEGAL SYSTEM, ESPECIALLY OF CIVIL PROCEDURE

Civil Procedure Law, like the Ukrainian legal system as a whole, is very closely related to the Romano-Germanic legal family.

The Civil Procedure Code developed in three stages:

- Before Ukraine entered the Soviet Union;
- While Ukraine was a part of the Soviet Union as one of its Republics; and
- After Ukraine gained its independence.

Before the October Revolution of 1917, Ukraine's territory was divided into three parts, which were occupied by different states: The Western part of Ukraine was part of the Austrian-Hungarian Empire and after that, of Poland; Bukovina is given to Romania, and the East of Ukraine was part of the Russian Empire. It was the legal systems of those countries that defined the court system and the way disputes were resolved on the territory of Ukraine. Ukraine did not have any code or other kind of act to regulate civil procedure. Instead, throughout that period, the respective acts of Poland, Romania and the Russian Empire regulated legal life in particular territories. After the October Revolution, the establishment of Soviet law in Ukraine was tightly connected to the spreading of Soviet power and the creation of Soviet state bodies. The peculiarity of the Soviet legal system in Ukraine was its basis on the legal system of Bolshevik Russia. That is, it was a reception in a very primitive form, namely the application of the laws of one state to the conditions of the other. As in every federal state, in the USSR the competencies were divided between the Union and the Union Republics. Basic laws, codes, laws decrees of the Presidiums of the Supreme Councils of the USSR and of Ukraine, various legal acts adopted by All-Union and Republic Ministries, including those adopted jointly with the CPSU Central Committee, regulations, instructions, guiding materials, statutes, branch enactments and even the revolutionary feeling of justice were used as legal sources. Judicial practice was not considered a legal source. Access to the legislation was restricted. The⁹⁶ criteria of such restrictions were not defined, but in essence, it was a policy of depriving people of their individual rights and liberties.

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As a part of the Soviet Union, the Ukrainian Soviet Socialist Republic (Ukr.SSR) adopted Civil Procedure Codes (CPC) of its own in 1922 and again in 1963. When designing and adopting those Codes, their authors were instructed from the "Center". The CPC of the Ukr.SSR practically did not differ from the Civil Procedure Codes of the other Soviet Republics. The civil procedure was considered as the process of execution of socialist justice as established by the Soviet State in civil cases. Courts did not play any substantial role in Soviet society. It was in the Soviet period that State Arbitration courts were established for resolving disputes among legal entities. In all legal relations the legal entities did not have the liberty of choice and in particular could not invoke the principle of liberty of agreement, instead, they were regulated by state acts only. That was why all their disputes were resolved according to the special procedure before the State Arbitration courts.

After Ukraine declared independence, the need appeared to build a new state and to reform the existing legal system in accordance with state building tasks. The main challenges for the new state were to reject the inappropriate dogmas of Soviet law and to establish the foundations and elements of a market economy with its characteristic legal relationships. The promulgation of new legislation began with the adaptation of relevant norms, with the adoption of normative acts in those fields that had not been regulated by previous legislation, and with the development of comprehensive codifications embracing all areas of the law. By joining the Council of Europe, Ukraine has committed itself to improve its legislation with regards to the protection of human rights and to ensure legal and judicial reform. This gave a great impetus for the acceleration of systematic changes in the legislative system of Ukraine, especially in the fields of civil and criminal law, as well as for the judiciary.

In the sphere of Ukrainian civil procedure law, the Civil Procedure Code of the Ukraine Soviet Socialist Republic of 1963 was replaced by a new Code on March 18, 2004, which entered into force on 1 September 2005. The drafting of the new Code (the CPC of Ukraine) took a long time. The working group was established in the early 1990s, more than 10 years before the Code was adopted. It took so long because the other procedural code, namely the Code on Administrative Proceedings, was intended to come into effect simultaneously.

If we compare the 2004 CPC of Ukraine and the 1963 CPC of the UkrSSR, we find that the CPC of Ukraine is much better structured. Even more importantly, it is designed in a way that takes into account: 1. Ukraine's international obligations towards the Council of Europe (thus, it follows the main provisions of the pertinent conventions of the Council of Europe as well as the decisions of the European Court of Human Rights); 2. International experience; 3. The provisions of the Constitution of Ukraine of 1996; and 4. Domestic legal and court experience. It should also be mentioned that Ukrainian civil procedure law belongs to the continental legal system and is rather closely related to French law.

The CPC of Ukraine consists of 11 sections that are divided into chapters, and of 415 articles. From the moment of the CPC's adoption, eight amendments have been introduced. An analysis of the articles shows that the CPS can be divided into two parts: General and Special. The General Part incorporates provisions that regulate all kinds and phases of court proceedings. It regulates the subjects of the civil lawsuit,

evidence, measures of judicial compulsion, court fees, procedural timeframes, deadlines, etc. The Special Part covers mandatory, actional, and special proceedings; court hearings by upper instances (appellate, cassational, etc.) and court hearings involving foreign elements.

After 1991, separate courts that resolve disputes between legal entities have continued to exist along with the general court system. They were named Economic Courts instead of the former State Arbitration. Economic courts are regulated by the Economic Procedural Code, which went into force on 1 March 1992. The Economic Procedure Code of Ukraine consists of 14 sections and 125 articles.

It should be mentioned that the draft of the EPC has been elaborated in Ukraine. The new EPC court proceedings are similar to the proceedings regulated by the CPC of Ukraine. There is an opinion in Ukraine that Economic courts should be abolished and that it would be preferable to have only general courts with specialized judges for commercial law. It is not likely, however, that the two types of courts (civil and economic) will be merged, because this idea meets with strong resistance from the judges and the administration of the Economic courts.

II. THE JUDICIAL SYSTEM OF UKRAINE⁸⁶

The court system of Ukraine shall be discussed in two parts: State Courts and Non-Governmental Courts.

A. State Courts

The Judicial System may be divided, depending on the kind of procedure (or the form of justice), under art. 124-125 of the Constitution of Ukraine and art. 1 of the Law "On the Judicial System in Ukraine".

In compliance with the legislative provisions quoted above, court power is executed through the enforcement of justice in the form of civil, economic, administrative, criminal and constitutional court procedures. Court procedures are carried out by the Constitutional Court of Ukraine and by courts of general jurisdiction.

Organization, powers and procedures of the Constitutional Court are defined by the Law "On the Constitutional Court of Ukraine" as of 1996.

Courts of general jurisdiction constitute the unified court system. Under this system, general and specialized courts of certain jurisdictions have been established. The specialized courts are defined as economic, administrative and "other" courts. Currently, there are only economic and administrative specialized courts in Ukraine but in the future, some others may be established. Particularly, specialized courts to resolve disputes in the area of intellectual property are planned.

In compliance with the Constitution, the general jurisdiction courts system is established according to geographical needs and specialization. This system consists of: 1. Local courts; 2. Appellate courts; 3. Higher specialized courts; and 4. the Supreme Court of Ukraine.

⁸⁶ See also graph 1,2.

B. Non-governmental Courts

However, the Judicial System may also be divided depending on formation method of the courts. The criterion is whether the court is established by the state or upon the agreement of the parties.

As indicated above, the courts of general jurisdiction constitute the state court system. Non-governmental courts encompass the arbitration courts and the International Commercial Arbitration Court at the Chamber of Commerce of Ukraine.

The Law "On Arbitration Courts" of May 11, 2004 regulates the establishment and activities of the arbitration courts in Ukraine and the requirements for arbitration proceedings for the protection of property and non-property rights and the legally protected interests of the citizens and of legal entities. Any civil or economic dispute can be filed with arbitration courts upon the agreement of the parties except for cases stipulated by law (e.g. cases to plead certain legal documents invalid; disputes related to conclusion, alteration, termination and execution of economic agreements in the area of meeting state demands; cases on state secrets, etc.).

Only citizens, legal entities and physical persons who are subjects of entrepreneurial activities and residents of Ukraine may file suits with arbitration courts. Both permanent and ad hoc arbitration courts may be established. Currently there are more than 150 permanent arbitration courts in Ukraine.

The Law "On International Commercial Arbitration" of February 24, 1994 regulates international commercial arbitration. It may be chosen for any kind of commercial dispute if at least one party is a non-resident of Ukraine. This procedure for disputes resolution is recognized worldwide.

In the following section, only the courts of general jurisdiction, economic courts, and civil proceedings before the state courts shall be discussed.

III. SYSTEM OF LEGISLATION ON CIVIL PROCEEDINGS⁸⁷

Normative acts regulating different aspects of civil proceedings stand in a certain hierarchy. The basic act that defines the court system of Ukraine and contains the main principles for ensuring justice is found in the Constitution of Ukraine of 1996, Section 7, named "Justice" (articles 124 - 131). This section also contains provisions on the principle of the independence and immunity of judges.

Next in importance comes the Law "On the Judicial System in Ukraine" of February 7, 2002. It defines the legal grounds for the organization of the court power and the execution of justice, the system of courts of general jurisdiction, the main requirements for the formation of the professional judges' body and the procedures for accomplishing self-regulation of judges. Besides this, it sets general rules for the performance of court activities and regulates other issues of the court system.

As has been stated before, the main normative acts in the field of civil proceedings are the Civil Procedure Law of Ukraine and the Economic Procedure Code of Ukraine. Both Codes define the subjects of the civil proceedings; accountability and

⁸⁷ See graph 3.

judicial jurisdiction; evidence and the procedure for consideration of evidence; filing of applications; consideration at the court of the first instance and at the appellate and cassation levels and some aspects of enforcement proceedings. It should also be noted that the Law "On Enforcement Proceedings" covers the procedure for enforcement of court verdicts. Bailiffs fall under the competence of the Ministry of Justice (for details see the Law "On the State Enforcement Service").

But not all issues of civil proceedings are regulated by the above-mentioned Codes. Other important legislation includes the Laws "On the Bar", "On Prosecution", "On Court Expert Inspections", etc. See also the Decree of the Cabinet of Ministers of Ukraine "On State Charges".

Besides, there are a number of by-laws, usually adopted on the level of the Cabinet of Ministers, including the regulations of the Cabinet of Ministers of Ukraine "On Procedure of Reimbursement for Civil Cases Consideration Information and Technical Support Costs"; "On Assessment of the Expenses Related to the Search of Defendant", etc.

Though the documents issued by courts are not sources of law, courts actively use them in their day-to-day activities. Namely, the Plenum of the Higher Economic Court has the right to issue explanations, and the Plenum of the Supreme Court of Ukraine has the right to issue resolutions that sum up legal practices.

IV. SHORT SURVEY OF THE CIVIL AND THE ECONOMIC PROCEDURE CODE OF UKRAINE⁸⁸

A. The Civil Procedure Code

The Civil Procedural Code aims at just and timely consideration and settlement of civil cases in the courts for the protection of the rights, freedoms or interests of natural persons, the rights and interests of legal entities and of the state. Foreigners, stateless persons, foreign legal entities, foreign states (their bodies and officials) and international organizations have procedural rights and duties that are equal to those of the Ukrainian natural persons and legal entities.

The main principles of civil proceedings are adversary proceedings, equal protection under the law, publicity and others. Legal proceedings must be conducted in the official language and judicial documents must be composed in the official language. Persons who do not speak the official language may use interpreters (translators).

The courts consider cases on the protection of violated, non-recognized or disputed rights, freedoms or interests, which arise from civil, housing, land, family, labor relations, as well as from other legal relations.

⁸⁸ See table 1.

As regards the composition of the courts, civil cases must be considered:

- in the courts of first instance - by one judge (in some cases by one judge and two people's assessors⁸⁹);
- in the court of appeal - by three judges and
- in the court of cassation - by five judges.

The CPC states that parties to civil proceedings shall be a plaintiff and a defendant. These may be natural persons, legal entities or the state. An attorney or another person who is at least eighteen years old and has capacity to conduct civil proceedings and properly certified authorities to be a representative in court may represent the parties.

Pursuant to the CPC, the courts of first instance settle cases upon a claim, an order and as a separate procedure.

The order procedure may be applied, if:

- the claim is based on legal proceedings conducted in a written form;
- it refers to an unpaid salary of an employee or
- It refers to the reimbursement of expenses for the search of a defendant, a debtor or a child or of a debtor's transportation vehicle. In such cases the procedure under order shall be applied to an authorized entity claim for the recovery from the debtor of monetary funds or property.

The result of such procedure shall be the granting of a so-called court order. In the separate procedure, the court shall consider cases about:

- limitation of civil capability of a natural person, recognition of a natural person as incapable and restoration of the civil capability of a natural person;
- granting of full civil capability to a minor;
- recognition of a natural person as missing or declaration of death;
- adoption;
- ascertaining of facts that have legal significance;
- renewal of rights to a lost bearer and registered security;
- transfer of ownerless real estate to communal ownership;
- certification of inheritance;

⁸⁹ People's assessors shall be Ukrainian citizens that judge together with professional judges under the circumstances set forth by the procedural law and thus providing for direct participation of people in administration of justice in compliance with the Constitution of Ukraine. People's assessors shall enjoy all rights of judges for the period of administrating the justice. The list of people's assessors shall be approved by the local council upon the nomination of the head of the local court. Lists of the people's assessors shall be approved for 4 year period.

- forced rendering of psychiatric care;
- compulsory hospitalization;
- disclosure by a bank of information which constitutes a bank secret regarding legal entities and natural persons.

The result of such procedure shall be the passing of a decision. All other cases that must be settled under civil proceedings are considered as falling under the claim procedure.

In order to start court proceedings an interested party shall file a written brief of complaint that have a content stipulated by the CPC with a court. The required contents of the application are defined by the CPC.

According to the rules, cases must be considered at the court of the first instance within two months starting from the beginning of the court proceedings.

Court decisions may be re-considered under appeal or cassation procedure and in case of exceptional or newly revealed circumstances.

The CPC also defines the procedure for recognition and enforcement of decisions of foreign courts.

B. The Economic Procedural Code

In accordance with the Economic Procedural Code (EPC), the following parties are entitled to go to the economic court for the protection of violated or disputed rights and legally protected interests:

- legal entities (including foreign entities and state bodies);
- citizens who are subjects of entrepreneurial activity.

According to the EPC, the Economic Court considers cases originating from the conclusion, alteration or performance of economic contracts; on privatization of the state housing fund; on bankruptcy; cases originating from corporate relationships, etc. Cases on bankruptcy and cases on corporate relationships are within the exclusive competence of the economic courts, even if one of the parties is a natural person.

The principles of the Economic Process are adversary proceedings, equal protection under the law, publicity, etc. Legal proceedings must be conducted in the official language and judicial documents must also be composed in the official language.

As regards the composition of the courts, the civil cases shall be considered:

- in the courts of first instance - by one judge;
- in the court of appeal - by three judges;
- in the court of cassation - by three or more judges.

The Code defines that parties to civil proceedings shall be a plaintiff and a defendant. The party may have a representative.

Pursuant to the EPC, the courts settle cases under a claim procedure. To start court proceedings, an interested party must file a claim whose contents are defined by the EPC.

According to the rules, cases shall be considered at the court of the first instance within two months starting from the beginning of the court proceedings.

Court decisions shall be re-considered under appeal or cassation procedure or in case of newly revealed circumstances.

V. PHASES OF CIVIL PROCEDURE IN UKRAINE⁹⁰

The phases of civil procedure must be considered separately, for those according to the norms of the Civil Procedure Code or of the Economic Procedure Code respectively. The norms of the codes will be discussed only for action proceedings, as other types of proceedings (mandatory, special and bankruptcy cases) have their own peculiarities.

A. Phases According to the Civil Procedure Code

To start proceedings before the court of first instance, an interested party files a written application with the court. As has been said before, at the courts of first instance one judge considers the case. The judge is given ten days to decide whether to start court proceedings. If there is no ground to dismiss the case (there is an exhaustive list of such grounds in the CPC), the judge issues an order and schedules court hearings. The preliminary hearing is held within one month from the starting date of proceedings to provide a correct and speedy resolution of the case. The first instance court verdict must be passed within two months from the starting date of proceedings. But in practice these deadlines are often broken.

If the participants of the proceedings (parties, third parties) are not satisfied with the court verdict, they may contest the verdict in accordance with the appellate procedure at the appellate court. To do so they must file an appeal within ten days after the verdict is issued. The CPC does not contain clear requirements as to the deadlines for dispute resolutions at the appellate level. The appellate level generally reviews the case. As stated before, three judges consider a case at the appellate level.

The verdict on appeal may be contested in accordance with the cassation procedure at the Supreme Court. The CPC does not contain any timeframes for cassation reviews. Grounds for cassation proceedings may be incorrect application of the norms of the material law or violation of the norms of procedural law. Five judges consider a case.

In certain situations under cassation procedure, the participants of the civil proceedings have the right to contest court verdicts in civil lawsuits due to exceptional circumstances after a lawsuit was considered. The list of exceptional circumstances is

⁹⁰ See graph 4.

limited and includes the following: different application of the same legal provision by cassation level courts and definition of the court verdict as violating the international obligations of Ukraine by an international court institution whose jurisdiction is recognized by Ukraine.

A final court verdict or court decision that has come into effect may also be reviewed due to newly discovered circumstances. These are circumstances which either substantiate assertions or objections of parties or have any other substantial influence on the proper trial of the case and which already existed at the moment of the decision or verdict but were not known to the participants (e.g. fraudulent testimony of a witness; incorrect conclusion of an expert; unconstitutional nature of a law established by the Constitutional Court of Ukraine, etc.). The list of newly revealed circumstances is limited and set forth by the CPC.

At each level, civil proceedings are comprehensively recorded by technical means.

B. Phases According to the Economic Procedure Code

The Economic Procedure Code provides for some kinds of pre-trial settlement, but this phase is not mandatory.

To start proceedings before the court of first instance, the interested party files a written application with the court. As in civil proceedings, one judge considers the case. The judge is given five days to dismiss court proceedings. If there is no ground to dismiss the case (here also, there is an exhaustive list of grounds in the law), the judge issues an order and schedules court hearings. The first instance court verdict shall be passed within two months from the starting date of proceedings. But in practice deadlines are often broken as in the civil proceedings.

The parties may file an appeal with the appellate court within ten days after the local economic court has passed its verdict. The appellate court generally reviews the case. Three judges consider the case at the appellate level.

The parties may file a cassation claim against the verdict of a local economic court as well as against the verdict of an appellate court. The cassation claim must be filed within one month starting from the date the verdict of a local economic court or of an appellate court has come into effect. In contrast to civil proceedings where a cassation hearing may be carried out only after appellate re-consideration of the case, in economic proceedings the verdict of a court of first instance may be appealed without prior review. Another significant difference from civil proceedings consists of the fact that there no grounds are required for reconsidering a case in cassation procedure. The cassation court is the Higher Economic Court of Ukraine.

The parties may start cassation proceedings against a verdict of the Higher Economic Court in a reconsideration of a verdict of a local economic court which has come into effect, and against a decision of the Higher Economic Court dismissing a cassation claim with the Supreme Court in the following cases: 1. application of legislation contradicting the Constitution by the Higher Economic Court; 2. non-compliance with verdicts of the Supreme Court on the proper application of the material law; 3. different application of the same legal provision in similar cases by the Higher Economic Court; 4. non-compliance of a verdict with international agreements which

were found to be mandatory by the Verkhovna Rada (Parliament) of Ukraine; and 5. determination of the court verdict as violating the international obligations of Ukraine by an international court whose jurisdiction is acknowledged by Ukraine. In other words, the Economic Procedural Code of Ukraine stipulates "a second cassation" in contrast to civil proceedings as regulated in the CPC.

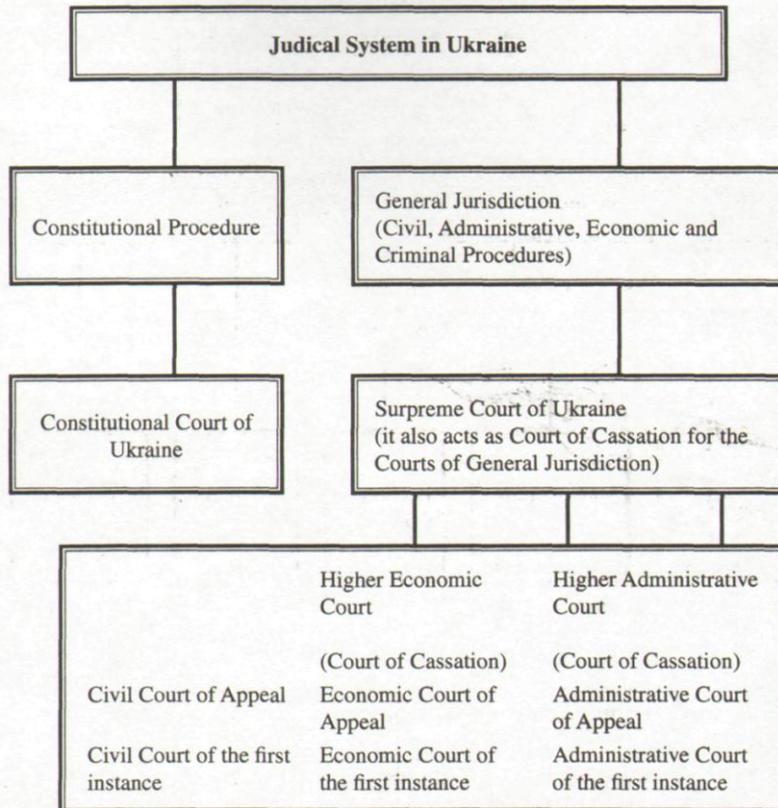
The economic court may reconsider its legally binding verdict based on newly revealed circumstances that are of substantial importance for the case and could not have been known to the plaintiff. Reconsideration of a court verdict due to exceptional circumstances is not set forth in the EPC. Thus, a comparison of the two codes shows both similarities and significant differences. Not all phases are mandatory for the participants in the proceedings.

After the court verdict has become final (under both the economic and the general jurisdiction) it may be enforced. To this purpose an order of enforcement, which can be obtained from the court, shall be filed with the State Enforcement Service. The pertinent Law "On Enforcement Proceedings" has already been mentioned above.

Graph 1.

Judicial System of Ukraine

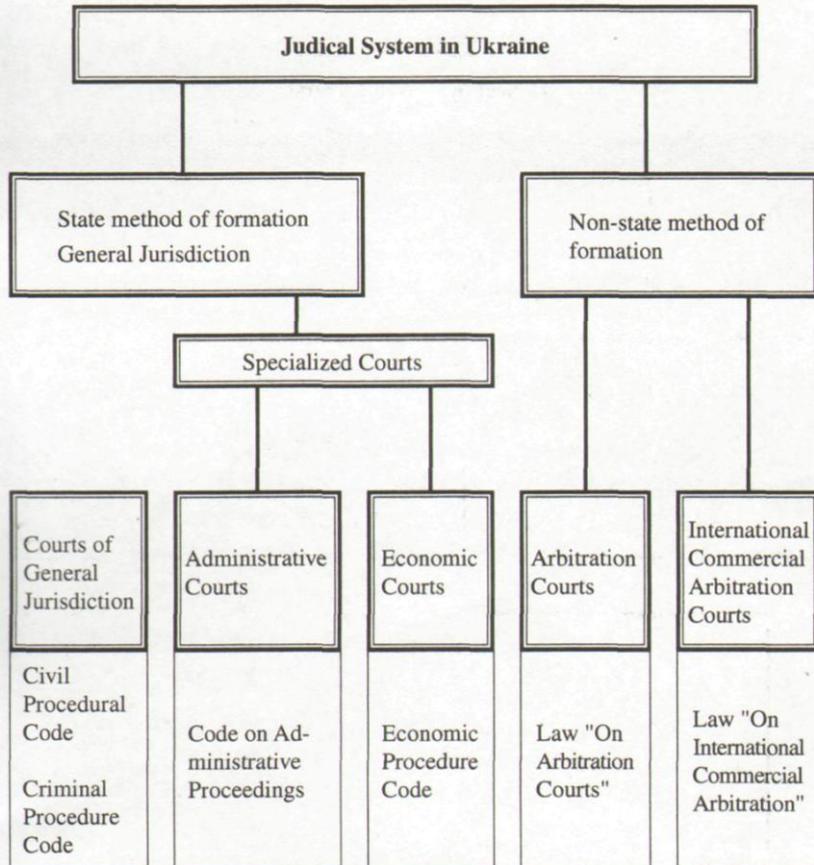
A. Division of the Judicial System according to the kind of procedure, based on art. 124-125 of the Constitution of Ukraine and the Law "On Judicial System in Ukraine"



Graph 2.

Judicial System of Ukraine

B. Division of the Judicial System according to the method of formation of the Courts



Graph 3.

System of Legislation on Civil Proceedings in Ukraine

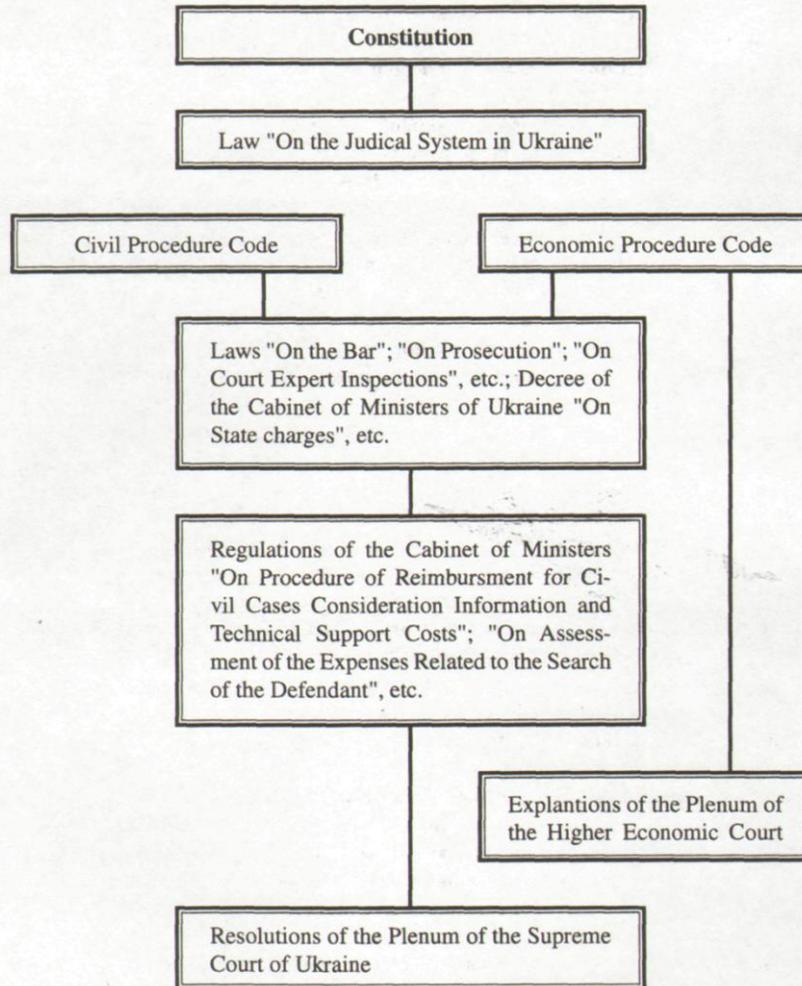


Table 1.

Comparison of the Civil and the Economic Procedure Code

	Civil Procedure Code	Economic Procedure Code
Main acts of Material Law which are used by the courts Jurisdiction	<p>Civil Code; Family Code; Labor Code, Housing Code; Land Code</p> <p>The courts consider cases on protection of violated, nonrecognized or disputed rights, freedoms or interests, which arise from civil, housing, land, family, labor relations, as well as other legal relations.</p> <p>One party in this procedure must be a natural person.</p>	<p>Civil Code; Economic Code; Land Code</p> <p>Legal entities (including foreign entities and state bodies); citizens – subjects of entrepreneurial activity may apply to the economic court for protection of violated or disputed rights and legally protected interests.</p> <p>The Court consider cases:</p> <ul style="list-style-type: none"> - originating from conclusion, alteration or performance of economic contracts; on privatization of state housing fund; etc. - on bankruptcy; - originating from corporate relationships, etc.
Principles	adversary proceedings, equal protection under the law, publicity etc.	adversary proceedings, equal protection under the law, publicity etc.
Composition of Court	<p>in the courts of first instance – one judge (in some cases one judge and two assessors);</p> <p>in the court of appeal – three judges; in the court of cassation – five judges</p>	<p>in the courts of first instance – one judge; in the court of appeal – three judges; in the court of cassation – three or more judges</p>
Participants	The parties (plaintiff and defendant), third parties, prosecutor and other persons	The parties (plaintiff and defendant), third parties, prosecutor and other persons

Representation	Voluntary and legal	Voluntary and legal
Challenge of judge	Stipulated	Stipulated
Rights of parties and other participants to the proceedings	<p>Persons participating in a case have the right to get acquainted with the case materials, make extracts of them, make copies of the documents, participate in court hearings, present evidence, participate in the investigation, ask questions, present petitions and file objections, give oral and written explanations to the court, and enjoy all the procedural rights provided by the Code.</p> <p>The plaintiff is entitled to change a ground or an object of the claim, increase or reduce the amount or to withdraw the claim. The defendant has the right to acknowledge the claim in general or partially or to file a counterclaim.</p> <p>The parties may conclude a court settlement.</p>	<p>Parties have the right to get acquainted with the case materials, make extracts of them, make copies of the documents, participate in economic court hearings, present evidence, participate in the investigation, ask questions, present petitions and file objections, give oral and written explanations to the court, and enjoy all the procedural rights provided by the Code.</p> <p>The plaintiff is entitled to change a ground or an object of the claim, increase or reduce the amount or to withdraw the claim. The defendant has the right to acknowledge the claim in general or partially or to file a counterclaim.</p> <p>The parties may conclude a court settlement.</p>
Kind of procedure	Claim procedure, order and separate procedure	Claim procedure
Evidence	Testimony of parties, witness testimony, written and material (real) evidences, expert reports	Written and material (real) evidence, expert reports and sometimes testimony of parties
Costs of litigation	Court fees and expenses related to the proceedings	Court fees and expenses related to the proceedings
Court fees	General rule – 1% of the amount of the claim, but	General rule – 1% of the amount of the claim, but

no less than 51 ua (about \$10) and no more than 1.700 ua (see art. 3 of the Decree of the Cabinet of Ministers of Ukraine "On State Charges")

no less than 102 ua (about \$20) and no more than 25.500 ua (see art. 3 of the Decree of the Cabinet of Ministers of Ukraine "On State Charges")

Provision of a claim

Stipulated

Stipulated

Graph 4.

Stages of Civil Proceedings in Ukraine

*According to the Civil
Procedure Code*

*According to the Economic
Procedure Code*

