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Small Claims in Civil Procedure in Ukraine: Panacea or an Obstacle to Access Justice

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Secção I

Investigação Científica*

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Small Claims in Civil Procedure in Ukraine: Panacea or an Obstacle to Access Justice[1]

As acções de pequeno montante em processo civil na Ucrânia: Panaceia ou obstáculo ao acesso à justiça

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ABSTRACT: One of the directions of development of civil procedure of the majority of the world is the differentiation of civil proceedings, in particular, through the introduction of various simplified proceedings. The introduction of such procedures for the consideration of small claims was recommended in a number of Council of Europe documents and was seen as a way to improve access to the court. In Ukraine, these trends have been implemented through the introduction of simplified legal proceedings, including for consideration of small cases in 2017 as novelties of civil proceedings. Does the civil procedure institution of small claims comply with the principle of the rule of law and the basic principles of judicial proceedings defined by the Constitution of Ukraine? Does the civil procedure institute of small claims hinder the exercise of the right to judicial protection? Whether the fundamental proportionalities are defined in paragraph 1.5 of part 6 of Art. 19 of the Civil Procedure Code of Ukraine, the value of the claim for the qualification of cases is insignificant. The authors tried to answer these questions, justifying this by analyzing the legislation of different European countries, the practice of the European Court of Human Rights, and systematic research of the provisions of the Convention for the Protection of Human Rights. The conclusions justified the need to publish a formula for determining a small claims with reference to the level of minimum income in a particular country.
KEYWORDS: small claims; civil procedure; right to a fair trial; courts; access to justice.

RESUMO: Uma das direcções de desenvolvimento do processo civil na maior parte do mundo é a diferenciação dos processos civis, em especial através da introdução de vários processos simplificados. A introdução de tais procedimentos para a apreciação de acções de pequeno montante foi recomendada numa série de documentos do Conselho da Europa e foi considerada como uma forma de melhorar o acesso ao tribunal. Na Ucrânia, estas tendências foram implementadas através da introdução de

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processos judiciais simplificados, nomeadamente para a apreciação de acções de pequeno montante em 2017, como novidades do processo civil. O instituto de processo civil para acções de pequeno montante respeita o princípio do Estado de direito e os princípios básicos do processo judicial definidos pela Constituição da Ucrânia? O instituto do processo civil para acções de pequeno montante dificulta o exercício do direito à proteção judicial? Se as proporcionalidades fundamentais estão definidas no n.º 1.5 da parte 6 do art. 19. 19 do Código de Processo Civil da Ucrânia, o valor do pedido de qualificação dos processos é insignificante. Os autores tentaram responder a estas questões, justificando-as com a análise da legislação de diferentes países europeus, a prática do Tribunal Europeu dos Direitos do Homem e a pesquisa sistemática das disposições da Convenção para a Proteção dos Direitos do Homem. As conclusões justificam a necessidade de publicar uma fórmula para determinar as acções de pequeno montante com referência ao nível de rendimento mínimo num determinado país.
PALAVRAS-CHAVE: acções de pequeno montante; processo civil; direito a um julgamento justo; tribunais; acesso à justiça.

1. Experience in applying the institute of small claims and simplified proceedings in different countries of the world

At the bottom of the ways to speed up and reduce the cost of consideration of civil cases is the differentiation of proceedings in certain (or simplified) proceedings in cases of a certain category in order to speed up the proceedings in various ways. B. Garth, M. Cappelletti and N. Trocker, in their report "Access to Justice: Comparative General Report",[4] which was implemented in the Recommendation of the Committee of Ministers of the Council of Europe on ways to facilitate access to justice,[5] stressed the importance of small claims for ensuring the availability of justice. Subsequently, they repeatedly noted the need to expand the use of small claims to overcome various obstacles to access to justice.

The introduction of simplified procedures in civil proceedings, in particular for the consideration of small claims, was recommended in a number of Council of Europe documents and was seen as a way to improve access to the court. Thus, in Recommendations R (81) 7[6] of the Committee of Ministers to Member States on ways to facilitate access to justice, it is noted that for disputes on

[4] GARTH, Bryant, CAPPELLETTI, Mauro, and TROCKER, Nicolo. Access to Justice: Comparative General Report. *The Rabel Journal of Comparative and International Private Law*. 1976, vol. 40, n. 3, pp. 669–717.
[5] COUNCIL OF EUROPE (CoE), COMMITTEE OF MINISTERS. Recommendation no. R (81) 7 On Measures Facilitating Access to Justice (adopted on 14 May 1981). *Council of Europe* [online]. 1981 [viewed 21 June 2023]. Available from: <https://rm.coe.int/168050e7e4>
[6] O'NEILL, Cara. *Everybody's Guide to Small Claims Court.* 19th edn. Berkeley: Nolo, 2022. ISBN 1413329535.

claims for a small amount, a procedure should be established that allows the parties to go to court without incurring costs incommensurable with the amount of money that is the subject of the dispute. To this end, it would be possible to provide for simplified legal proceedings, avoid unnecessary court hearings and limit the right of appeal. In Recommendations R (84) 5 on the principles of civil proceedings aimed at improving the judicial system, the Committee of Ministers of the Council of Europe stated the need to consolidate rules that speed up the resolution of a dispute in cases involving uncontested law and claims for small amounts. In particular, principle 8 establishes that specific rules or a set of rules should be provided that expedite the resolution of the dispute: a) in cases that do not tolerate delay; b) in cases involving an indisputable right, pre-assessed damages, as well as in cases involving claims for small amounts; c) in connection with traffic accidents, labor disputes, issues relating to the relationship between the landlord and the tenant, and certain issues of family law, in particular the establishment and revision of the amount of alimony.[7]

Today, more than two-thirds of the Council of Europe member states have small claims procedures in their national legislation, and a pan-European procedure operates at the EU level. CEPEJ reports that simplified procedures for small claims are enshrined in the national legislation of countries such as Albania, Austria, Andorra, Belgium, Bosnia and Herzegovina, the United Kingdom (England and Wales, Northern Ireland, Scotland), Greece, Estonia, Ireland, Spain, Italy, Latvia, Lithuania, Luxembourg, Macedonia, Malta, Monaco, Montenegro, Germany, Norway, Poland, Portugal, Romania, Serbia, Slovakia, Slovenia, Hungary, France, Croatia, Czech Republic, Sweden and Israel. In addition, a pan-European order operates in all EU states. These include Bulgaria and Cyprus. In total, 35 out of 47 countries participating in the CoE. At the same time, there are 12 member states of the Council of Europe where there is no procedure for consideration of small claims: Armenia, Azerbaijan,

[7] COUNCIL OF EUROPE (CoE), COMMITTEE OF MINISTERS. Recommendations no. R (84) 5 On the Principles of Civil Procedure Designed to Improve the Functioning of Justice (adopted on 28 February 1984). *Council of Europe* [online]. 1984 [viewed 21 June 2023]. Available from: <https://rm.coe.int/16804e19b1>

Denmark, Finland, Georgia, Iceland, Moldova, the Netherlands, Switzerland, Turkey.[8]

Central to the EU civil procedure system, of course, is the European Small Claims Procedure, introduced by Regulation (EC) No 861/2007 of 11 July 2007 (hereinafter referred to as Regulation No. 861/2007). This procedure applies from January 1, 2009 in all EU member states, with the exception of Denmark. The ESCP procedure has become an integral part of the EU's unified civil procedure system and regulates the procedure for the trial of small civil and commercial disputes of a cross-border nature, the value of which does not exceed 2000 euros. Taking into account the effectiveness of the introduced procedure, it was proposed to increase the limit on the definition of small disputes to 10,000 euros, which is approximately half of the commercial disputes considered by courts in the EU.[9]

Describing the procedure established by Regulation No. 861/2007, it should first of all be noted that the ESCP procedure is an alternative to national procedures for resolving such disputes. The EOR/ESCP Green Paper reasonably notes that the lack of such a simplified rational procedure that corresponds to the value of the claim is the cause of situations where the consideration of the case is accompanied by significant disproportionate costs, and this is a particularly serious problem when considering cross-border disputes, which entail additional costs for the services of two lawyers, translation, relocation, etc. (The peculiarities of regulating the consideration of small claims in different EU countries are: 1) in most Member States, these procedures are available not only for monetary claims; at the same time, the

[8] UZELAČ, Alan, and RHEE, CH van, eds. *Revisiting Procedural Human Rights: Fundamentals of Civil Procedure and the Changing Face of Civil Justice.* Cambridge: Intersentia, 2017. ISBN 978-17-8068-533-5; EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE (CEPEJ). *European Judicial Systems: Efficiency and quality of justice.* Council of Europe, 2018, CEPEJ Studies n. 26, pp. 10, 120. ISBN 978-92-871-8566-2.

[9] EUROPEAN UNION (EU). Regulation (EC) no. 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure. *EUR-Lex* [online]. 2007 [viewed 21 June 2023]. Available from: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:l16028>; EUROPEAN COMMISSION (EC). Commission Staff Working Document Impact Assessment Accompanying the document Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) no. 861/2007 of the European Parliament and of the Council establishing a European Small Claims Procedure and Regulation (EC) no. 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure. *EUR-Lex* [online]. 2006 [viewed 21 June 2023]. Available from: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A52013SC0459>

use of a simplified procedure is often mandatory for claims for a certain amount; 2) in many states, forms for filing a claim have been established for small dispute resolution procedures; at the same time, some assistance in resolving procedural issues is provided by the secretary and the judge himself, without violating the principle of impartiality, but now none of the Member States requires the mandatory participation of a lawyer in the procedures for the consideration of small disputes; 3) simplification of the rules for obtaining evidence is one of the most important issues in these procedures, and in many cases the judge is vested with the power to decide such matters; at the same time, it is possible to conduct a purely written procedure instead of oral hearings 4) in some cases, the rules relating to the content of the court decision are quite simplified, while the requirements for limiting the time of the decision are fixed; 5) the procedural rules for reimbursement of expenses vary significantly, but in most Member States all costs must be paid by the respondent in the event that he loses; 6) along with this, the Member States have significantly different procedures for appealing against court decisions adopted in the procedure for consideration of small disputes.[10]

If we turn to the regulation of the issue of simplified procedures in the legislation of the EU countries, and, for example, highlighting individual proceedings, the Polish legislator was guided either by the special nature of the cases that were considered (for example, in the case of proceedings in marriage cases or labor law proceedings), or sought to speed up the proceedings in specific cases by various means. In order to define individual proceedings included in the latter category, the Polish doctrine uses the term "expedited proceedings". These proceedings include: a payment order, a simplified procedure, a European payment procedure, a European procedure for small claims and electronic payment court proceedings. One of the criteria for the separation of expedited proceedings is their binding or optionality.

The provisions governing the simplified procedure were introduced by the Law of May 24, 2000 on amendments to the Polish Civil Procedure Code. The

[10] EUROPEAN COMMISSION (EC). Green Paper on a European Order for Payment Procedure and on Measures to Simplify and Speed up Small Claims Litigation COM(2002)746 of 20 December 2002. *Publications Office of the European Union* [online]. 2002 [viewed 21 June 2023]. Available from: <https://op.europa.eu/en/publication-detail/-/publication/57e40e93-d701-4a25-b741-fbf37ab73648>; IZAROVA, I. O. *Theoretical Foundations of Civil Procedure of the European Union.* Kyiv: Dakor, 2015, pp.198-201. ISBN 978-617-7020-48-5.

Registered Liens and Bail Registry Act, the Civil Litigation Act and the Bailiffs and Enforcement Act. At the time of the introduction of the simplified procedure, it included cases on contractual claims in which the amount of the dispute did not exceed 5,000 zlotys (approximately 1,200 euros), as well as on receivables related to the use of residential premises. Similar to Lithuania, also in Poland, the cost of claims for which the simplified procedure is applied is constantly growing. Since February 5, 2005, this amounted to 10,000 zlotys (about 2400 euros), and now from June 1, 2017 it is 20,000 zlotys (about 4750 euros). It should be noted that the current value of claims recognized in a simplified manner is very similar to the value of claims that can be recognized in the European small claims procedure.[11]

Differentiation of proceedings at the value of the claim can lead not only to the simplification of the general judicial procedure and the separation of one or more simplified procedures, but also to the specialization of courts, in particular the creation of specialized courts for the consideration of small civil cases.[12]

Analysis of the legislation of different EU Member States gives grounds for the conclusion that the filters of human access to appeal against a court decision in cassation can be determined by the following criteria:[13]

- Financial, which can be conditionally divided by the value of the claim and the amount of legal costs that the party must pay in order to be able to protect its rights.
- Subject (in such countries as France, Belgium, the Netherlands, Estonia, Spain, Greece and Italy, the legislation limits the possibility of applying to the court of cassation directly to the parties to the dispute. in this case, such a right is granted exclusively to the lawyers of the Supreme Court who are authorized to exercise the powers granted. In principle, practicing lawyers are obliged to advise their clients about

[11] MAY, Joanna, and MALCZYK, Malgorzata. European Small Claims Procedure and Its Place in the System of Polish Separate Proceedings. *Access to Justice in Eastern Europe*. 2019, vol. 2, n. 2, pp. 36-52. DOI: 10.33327/AJEE-18-2.3-a000012; RADOSŁAW, Flejszar, IZAROVA, Iryna, and VIGITA, Vėbraitė, Access to Justice in Small Claims Procedure: Comparative Study of Civil Procedure in Lithuania, Poland and Ukraine. *International Journal of Procedural Law*. 2019, vol. 9, n. 1, pp. 97-117.

[12] PETÉ, Stephen, et al. *Civil Procedure: A Practical Guide.* 3rd edn. Cape Town: Oxford University Press South Africa, 2017. ISBN 9780190412241.

[13] SIME, Stuart. *A Practical Approach to Civil Procedure.* 25th edn. Oxford: Oxford University Press, 2022. ISBN 9780192859365.

possible results and thereby act as a kind of filter for unreasonable appeals to the Supreme Court court).

- Substantive, which consists in the fact that decisions of the courts of appeal only for specific categories of cases can be the object of cassation appeal.

If we systematize these approaches, then in a general sense, civil cases that fall under the procedural filters of cassation appeal are "small claims".[14]

In the theory of law and law enforcement, a fairly reasonable question arises regarding determining the value of the claim so that the case is considered insignificant (small). Thus, in 2017, the report of leading European scientists "Accelerated settlement of small disputes: the experience of the EU Member States" was published, which noted that the monetary threshold for qualifying a material and legal claim as "insignificant" (small) is usually determined by the economic conditions of the country, but it may also reflect the political choice to subordinate a certain part of the total demand for judicial services to specific procedural norms. Based on the research, it was found that such thresholds in the EU member states account for between 3 and 39 percent of gross domestic product per capita.[15]

Bosnia and Herzegovina can see that 70% of all civil cases are insignificant, and if they are not handled quickly and efficiently, they can lead to cluttering up the justice system, which can manifest itself in limited judicial resources and the accumulation of unresolved cases. On the other hand, some small disputes never go to court due to the too high cost of legal costs, which means a certain restriction of access to justice. Thus, unresolved small disputes can exacerbate the inefficiency of trials and contribute to the lack of access to justice. Countries cannot afford to allow the growing volume of small

[14] BERMAN, Paul Schiff, and WOO, Margaret. *Global Issues In Civil Procedure.* 2nd edn. St Paul: West Academic Press, 2021. ISBN 9781642428544.

[15] TELES, Patrícia Galvão, and RIBEIRO, Manuel de Almeida. *Case-law and the Development of International Law: Contributions by International Courts and Tribunals.* Leiden; Boston: Brill Nijhoff, 2022. ISBN 978-90-04-46765-1; RADOSŁAW, Flejszar, IZAROVA, Iryna, and VIGITA, Vėbraitė, Access to Justice in Small Claims Procedure: Comparative Study of Civil Procedure in Lithuania, Poland and Ukraine. *International Journal of Procedural Law*. 2019, vol. 9, n. 1, pp. 97-117; HARLEY, Georgia, and SAID, Agnes Cristiana. *Fast-Tracking the Resolution of Minor Disputes: Experience from EU Member States* [online]. Washington, D.C.: World Bank Group, 2017. Available from: <https://policycommons.net/artifacts/1289242/fast-tracking-the-resolution-of-minor-disputes/1890376>

disputes to pollute the judicial system, slow down economic activity and increase social tensions.[16]

Thus, more and more countries are developing special procedures and rules, and in some countries even specialized courts are being created to consider small disputes.[17]

The substantive criterion for classifying civil disputes as insignificant in different EU countries is diverse – commercial, consumer disputes, disputes concerning movable property, collection of rent, contractual claims, etc. The legislation of some EU countries is limited solely to determining the monetary equivalent of the subject matter of the claim.[18]

Only in some EU countries there are no restrictions on the subject matter of the dispute, since only the value of the claim is normatively fixed. So, in accordance with Art. 495(a) of the German Code of Civil Procedure, the court may, at its fair discretion, decide how to conduct the proceedings if the value of the claim does not exceed 600 euros. In turn, in the order of revision of court decisions, an appeal is made only if the cost of the subject of the appeal exceeds 600 euros (Article 511 of the German Civil Procedure Code). In turn, the Lithuanian procedural legislation, although it also defines the value of the claim as belonging to small disputes, but contains certain exceptions. Also, Article 441 of the Civil Procedure Code of Lithuania provides that cases on the award of sums of money not exceeding one thousand euros are considered according to the general rules of legal proceedings. If the amount of the claim does not exceed the amount specified in part one of this article, the court considering the case has the right to independently determine the form and procedure for consideration of the case. The case is considered in oral

[16] NYLUND, Anna, and STRANDBERG, Magne, eds. *Civil Procedure and Harmonisation of Law.* Cambridge: Intersentia, 2019. ISBN 9781780686936; PANZARDI, Roberto O., OSMANOVIC-PASIC, Zuhra, and PETKOVA, Svetozara. *Fast-Tracking Small Claims in Bosnia and Herzegovina: A Comparative Analysis and Reform Proposals* [online]. Washington, D.C.: World Bank Group, 2019. Available from: <https://policycommons.net/artifacts/1280760/fast-tracking-small-claims-in-bosnia-and-herzegovina/1872735>; SVIRCEV, Srdjan. Gladys Senderayi, and Svetozara Petkova, 'How Fast is Fast Enough? Why Resolving Commercial Disputes Swiftly Matters for Serbia's Business Environment. *World Bank Blogs* [online]. 2020 [viewed 21 June 2023]. Available from: <https://blogs.worldbank.org/europeandcentralasia/resolving-commercial-disputes-serbia>

[17] NAGY, Csongor István, ed. *Cross-Border Litigation In Central Europe: EU Private International Law Before National Courts.* Alphen aan den Rijn: Kluwer Law International, 2022. ISBN 9789403537054.

[18] HESS, Burkhard, BERGSTRÖM, Maria, and STORSKRUBB, Eva, eds. *EU Civil Justice: Current Issues and Future Outlook.* Oxford: Hart Publishing, 2016. ISBN 9781849466820.

proceedings, if there is a petition of at least one party. This filter is reflected in Art. 303 of the Code of Civil Procedure of Lithuania, according to which appeal is not possible in small disputes, when the disputed amount is less than two hundred and fifty euros. This restriction does not apply to disputes arising from the collection of wages, compensation for damages related to harm to the health of an individual, death or occupational illness.[19]

Similar rules are provided for in the procedural legislation of Luxembourg, Malta and Romania. The exclusion of certain categories of cases from the number of small cases according to the subject criterion is also provided for in the legislation of Denmark, Italy, Slovenia and Sweden. So, for example, in Art. Art. 444 of the Slovenian Civil Procedure Law provides that the rules for the consideration of small disputes do not apply to disputes relating to real estate, copyright, protection and use of inventions and violation of the right of possession.[20]

The procedure for consideration of small disputes, as a rule, applies only to those cases where the subject of consideration is a small amount of money. In the EU, this amount of money varies depending on each country's determination of its own threshold limits. Having considered the national procedural legislation of the EU member states, it can be seen that in the general sense there is no scheme for determining the threshold levels of classifying civil cases as insignificant. So, the lowest threshold can be seen in

[19] FEDERAL REPUBLIC OF GERMANY. Code of Civil Procedure 'Zivilprozessordnung (ZPO)' (version as promulgated on 5 December 2005). *Federal Ministry of Justice* [online]. 2005 [viewed 21 June 2023]. Available from: <https://www.gesetze-im-internet.de/englisch_zpo/englisch_zpo.html>; REPUBLIC OF LITHUANIA. Code of Civil Procedure 'Civilinio proceso kodeksas' no. IX-743 of 28 February 2002. *WIPO* [online]. 2002 [viewed 21 June 2023]. Available from: <https://www.wipo.int/wipolex/en/text/202108>; VĖBRAITĖ, Vigita. Some Important Features of Lithuanian Civil Procedure. *Access to Justice in Eastern Europe*. 2019, vol. 2, n. 1, pp. 45-51. DOI: 10.33327/AJEE-18-2.1-a000007.

[20] GRAND-DUCHÉ DE LUXEMBOURG. Nouveau Code de Procédure Civile 2018. *International Labour Organization (ILO)* [online]. 2021 [viewed 21 June 2023]. Available from: <https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=107472&p_count=8&p_classification=01>; REPUBLIC OF MALTA. Chapter 380, Small Claims Tribunal Act of 16 October 1995. *EUR-Lex* [online]. 2016 [viewed 21 June 2023]. Available from: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=NIM:286294>; REPUBLIC OF SLOVENIA. Civil Procedure Act 'Zakon o pravdnem postopku (ZPP)' of 25 March 1999. *Uradni List* [online]. 2007 [viewed 21 June 2023]. Available from: <https://www.uradni-list.si/glasilo-uradni-list-rs/vsebina/2007-01-3965?sop=2007-01-3965>

Germany and Croatia, where the upper limit is 600 euros. In Lithuania and Slovakia, this threshold ranges from 1000 to 1500 euros.[21]

Of interest is the regulatory fixation of the threshold for small disputes in Austria, where there is no limit on labor disputes and disputes that arise regarding violations of social security legislation. In turn, with regard to monetary requirements, the maximum limit is set at 15000 euros.[22]

For comparative analysis, we can say that in Estonia, Ireland. Latvia, Poland, Romania, Slovenia and Sweden have a threshold limit of small disputes ranging from 2000 to 2400 euros. According to the laws of Hungary, Malta, Slovenia and France, such a threshold for small disputes ranges from 3500 to 4000 euros. The highest ranges for determining threshold levels are provided in Austria, Luxembourg, the Netherlands, Portugal and Spain, which range from 10000 to 25000 euros.[23]

Among the Scandinavian countries, there is a rather big difference in what is a small dispute. Norway has the highest threshold for small disputes. All disputes costing less than NOK 125000 (€11756) are considered small. Typical small disputes under Danish law are considered as those in which the value of the claim does not exceed 6700 euros. And only Swedish law does not clearly set the amount of the threshold for determining small disputes, since Art. Art. 3 of the Swedish Law on Judicial Procedures defines civil cases that need to be settled in a simplified manner if the value of the claim does not exceed half the base amount under the National Insurance Act (as of 2023, half of this base amount is 2346 euros).[24]

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[21] MOLITERNO, James E. *Experiencing Civil Procedure.* 3rd edn. St. Paul, MN: West Academic Publishing, 2022. ISBN 9781684678334; CROSS, John T. *Civil Procedure: Cases, Problems and Exercises: 2021 Supplement*. 4th edn. St. Paul, Mn: West Academic Publishing, 2021. ISBN 9781636599120.

[22] REPUBLIC OF AUSTRIA. Code of Civil Procedure 'Gesetz über das gerichtliche Verfahren in bürgerlichen Rechtsstreitigkeiten (Zivilprozessordnung) (ZPO)' of 1 August 1895. *Rechtsinformationssystem des Bundes* [online]. 2023 [viewed 21 June 2023]. Available from: <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10001699>

[23] MESQUITA, Lurdes Varregoso, and CEBOLA, Catia Marques. European Small Claims Procedure: An Effective Process? A Proposal for an Online Platform. *Access to Justice in Eastern Europe*. 2022, vol. 5, n. 2, pp. 7-21. DOI: 10.33327/AJEE-18-5.2-a000206.

[24] KINGDOM OF NORWAY. Act no. 90 On Mediation and Proceedings in Civil Disputes (The Disputes Act) 'Lov om mekling og rettergang i sivile tvister (tvisteloven)' of 17 June 2005. *WIPO* [online]. 2019 [viewed 21 June 2023]. Available from: <https://www.wipo.int/wipolex/en/text/507254>; KINGDOM OF DENMARK. Administration of Justice Act 'Retsplejeloven: Lov om rettens pleje' no. 90 of 11 April 1916. *eLov* [online]. 2022 [viewed 21 June 2023]. Available from: <https://www.elov.dk/retsplejeloven>; KINGDOM OF

In our opinion, for a more detailed and comparative analysis of the institution of small disputes, we consider it necessary to refer to the legislation of China, Canada and the United Kingdom.

Thus, in Chinese law, "small" refers to a dispute over the recovery of $75000 in cash without any participation from professional attorneys. In Canada, Ontario, it is assumed that the threshold for small disputes is $35,000. But in this case, if the plaintiff expresses an intention to go to court to resolve his small dispute, he must pay $637 in legal costs, regardless of whether the value of the claim will be $1000 or $35,000. And if during the year he goes to court for the resolution of small disputes more than 10 times, then he must pay $ 886 for filing each lawsuit.[25]

On June 1, 2022, the practical Instruction to the Civil Procedure "Pilot Project for the Determination of Small Disputes" entered into force in Veklikologitania, according to which all disputes up to 1000 pounds will be resolved in a simplified manner without calling the parties to the dispute solely on the basis of documents submitted by the parties.[26]

Determining the maximum threshold for determining small disputes should still be proportional to the minimum income in each country. According to statistics on the minimum wage in Europe, we can see that the legislative definition of thresholds for small disputes in certain countries is somewhat overestimated and cannot meet European standards of access to justice.[27]

2. Rule of law and review of court decisions

SWEDEN. The Swedish Code of Judicial Procedure Ds 1998:65. *Regeringen* [online]. 2015 [viewed 21 June 2023]. Available from: <https://www.regeringen.se/rattsliga-dokument/departementsserien-och-promemorior/1998/01/ds-199865>

[25] HONG KONG (PEOPLE'S REPUBLIC OF CHINA). Chapter 338 Small Claims Tribunal Ordinance. *Hong Kong eLegislation* [online]. 2018 [viewed 21 June 2023]. Available from: <https://www.elegislation.gov.hk/hk/cap338?tab=m&xpid=ID_1438403031374_001>;
ONTARIO. Small Claims Court: Suing Someone. *Government of Ontario* [online]. 2023 [viewed 21 June 2023]. Available from: <https://www.ontario.ca/page/suing-someone-small-claims-court>

[26] UNITED KINGDOM, MINISTRY OF JUSTICE. Civil Procedure Rules Practice Direction 51ZC – The Small Claims Paper Determination Pilot of 1 June 2022. *Justice* [online]. 2022 [viewed 21 June 2023]. Available from: <https://www.justice.gov.uk/__data/assets/pdf_file/0004/177322/cpr-143-update.pdf>

[27] GASCON INCHAUSTI, Fernando, and HESS, Burkhard, eds. *The Future of the European Law of Civil Procedure: Coordination or Harmonisation?* Cambridge: Intersentia, 2020. ISBN 9781780688596.

The rule of law and access to justice are among the basic principles of a democratic society and, accordingly, the cornerstones of democracy as such. We must agree with the point of view of the President of the European Court of Human Rights Guido Raimondi, who noted that the rule of law is what distinguishes Europe, one of the achievements of our civilization, the main bastion in the fight against tyranny. This is what Europe is – the part of the world where the established rules of the democratic game apply and where these rules are guaranteed by the constitutional and supreme courts.[28]

Based on the approaches to determining the rule of law, it can be concluded that the absence of one of the elements will lead to a violation of the fundamental rights and freedoms provided for in the ECHR.[29]

National courts of cassation play a crucial role in the process of protecting human rights and freedoms, which are guaranteed by the ECHR within the legal systems of each member state of the Council of Europe. In accordance with Art. 124 of the Constitution of Ukraine,[30] justice in Ukraine is administered exclusively by courts that are independent and governed by the rule of law.

The fundamental principles of civil proceedings in accordance with the Civil Procedure Code of Ukraine and the Law of Ukraine "On the Judiciary and Status of Judges" are the rule of law and, in particular, ensuring the right to appeal against a case, as well as ensuring the right to cassation appeal of a court decision in cases established by law.[31]

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[28] SWENSON, Geoffrey. *Contending Orders: Legal Pluralism and the Rule of Law.* Oxford: Oxford University Press, 2022. ISBN 978-0197530429; RAIMONDI, Guido. Opening Address of the President Guido Raimondi. In: *Solemn Hearing for the Opening of the Judicial Year, European Court of Human Rights, 27 January 2017* [online]. 2017 [viewed 21 June 2023]. Available from: <http://www.echr.coe.int/Documents/Speech_20170127_Raimondi_JY_ENG.pdf>

[29] MAY, Christopher and WINCHESTER, Adam. *Handbook on the Rule of Law.* Cheltenham, UK: Edward Elgar Publishing, 2018. ISBN: 9781786432438.

[30] UKRAINE. Constitution of Ukraine no. 254 k/96-BP of 28 June 1996. *Legislation of Ukraine* [online]. 2020 [viewed 21 June 2023]. Available from: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>

[31] UKRAINE. Civil Procedure Code of Ukraine no. 1618-IV of 18 March 2004. *Legislation of Ukraine* [online]. 2023 [viewed 21 June 2023]. Available from: <https://zakon.rada.gov.ua/laws/show/1618-15#Text>; UKRAINE. Law no. 1402-VIII On the Judiciary and Status of Judges of 2 June 2016. *Legislation of Ukraine* [online]. 2023 [viewed 21 June 2023]. Available from: <https://zakon.rada.gov.ua/laws/show/1402-19#Text>; UHRYNOVSKA, Oksana. Novelization of Civil Procedural Legislation of Ukraine in Cassation Review: Panacea or Illusion? *Access to Justice in Eastern Europe*, 2020, vol. 3, n. 4. pp. 209-225. DOI: 10.33327/AJEE-18-3.4-a000036.

The decision of the Constitutional Court of Ukraine of November 2, 2004, No. 15-rp/2004[32] establishes that in accordance with part one of Article 8 of the Constitution of Ukraine, the principle of the rule of law is recognized and in force in Ukraine. The rule of law is the domination of law in society. The rule of law requires the state to implement it in law-making and law-enforcement activities, in particular in laws that, in their content, should be penetrated primarily by the ideas of social justice, freedom, equality, etc. One of the manifestations of the rule of law is that law is not limited to legislation as one of its forms, but also includes other social regulators, in particular moral norms, traditions, customs, etc., which are legitimized by society and are due to the historically achieved cultural level of society. All these elements of law are united by a quality that corresponds to the ideology of justice, the idea of law, which is largely reflected in the Constitution of Ukraine.

Thus, the rule of law implies such a component as justice. Justice is one of the basic principles of law, is decisive in defining it as a regulator of social relations, one of the universal dimensions of law. Justice is usually seen as a property of law, expressed, in particular, in an equal legal scale of conduct and in proportionality of legal liability to the offense committed.

According to Article 129 of the Constitution of Ukraine, one of the main principles of judicial proceedings is to ensure the right to appeal of the case and, in cases determined by law, to appeal against a court decision, and in accordance with Article 6 of the Convention, such a constitutional right should be ensured by fair judicial procedures.

The right to appeal against court decisions in the courts of appeal and cassation instances is part of a person's constitutional right to judicial protection. It is guaranteed by the basic principles of legal proceedings determined by the Constitution of Ukraine, which are mandatory for all forms of legal proceedings and all judicial instances, in particular, ensuring the right to appeal of the case and, in cases determined by law, to appeal against a court decision.

The constitutional right to judicial protection provides, as an integral part of such protection, the possibility of restoring the violated rights and freedoms of

[32] UKRAINE, CONSTITUTIONAL COURT. Case no. 1-33/2004 Decision no. 15-rp /2004 of 2 November 2004. *Legislation of Ukraine* [online]. 2004 [viewed 21 June 2023]. Available from: <https://zakon.rada.gov.ua/laws/show/v015p710-04#Text>

citizens, the legitimacy of the requirements of which is established in due process and formalized in a court decision, and specific guarantees that would allow it to be implemented in full and ensure effective restoration of rights through justice that meets the requirements of justice, which is also consistent with Article 13 of the Convention.[33]

Thus, in the decision in the case "*Volovik v. Ukraine*" of December 6, 2007, application No. 15123/03,[34] the ECtHR noted that in accordance with paragraph 1 of Article 6 of the Convention, if the appeal exists in the national legal order, the state is obliged to provide persons during the consideration of the case in the courts of appeal, within the jurisdiction of such courts, compliance with the fundamental guarantees provided for in Article 6 of the Convention, taking into account the peculiarities of the appeal proceedings, and the procedural unity of the court proceedings in the national legal order and the role of the appeal court in it should be taken into account (decision in the case "Podbielski and PPU Polpure v. Poland" of July 26, 2005, application No. 39199/98, para. 62).

In order to be able to use the provided conventional guarantees of the rule of law, which protect the courts of cassation, first of all, it is necessary to exercise their right of access to these courts. In the presence of restrictions or prohibitions on the exercise of this right, the guarantees of the rule of law provided to these courts remain quite illusory.[35]

At the same time, the right to access the court, which is guaranteed by Art. 6 The ECHR is not absolute. In this context, attention should be paid to the decision of the ECHR *"Delcourt v. Belgium",*[36] which states that the Convention does not oblige Contracting States to establish courts of appeal or cassation. However, the State establishing such courts is obliged to ensure that persons subject to the law enjoy in these courts the basic guarantees contained in

[33] UKRAINE, CIVIL CASSATION COURT OF THE SUPREME COURT. Case no. 127/27294/20 Decision of 20 April 2022. *Unified Register of Court Decisions* [online]. 2022 [viewed 21 June 2023]. Available from: <https://reyestr.court.gov.ua/Review/104086053>

[34] EUROPEAN COURT OF HUMAN RIGHTS (ECtHR). Case of Volovik v. Ukraine (App. no. 15123/03) Judgment of 6 December 2007. *HUDOC* [online]. 2007 [viewed 21 June 2023]. Available from: <https://hudoc.echr.coe.int/eng?i=001-83877>

[35] WOHLWEND, Denise. *The International Rule of Law: Scope, Subjects, Requirements.* Cheltenham: Edward Elgar Publishing, 2021. ISBN: 9781789907414.

[36] EUROPEAN COURT OF HUMAN RIGHTS (ECtHR). Case of Delcourt v. Belgium (App. no. 2689/65) Judgment of 17 January 1970. *HUDOC* [online]. 1970 [viewed 21 June 2023]. Available from: <https://hudoc.echr.coe.int/eng?i=001-57467>

Article 6 of the ECHR. In cases where there is an opposite regulation of this guarantee in national legislation, This can lead to negative consequences. Therefore, Art. 6 The ECHR should and should be applied to cassation proceedings. However, how it is applied should definitely depend on the specifics of such proceedings.

The restriction of the right of access to cassation appeals against court decisions in accordance with the national legislation of the Member States of the Council of Europe is carried out through various filters, which are the result of a compromise between public and private interests. In this case, on the one hand, it is necessary to ensure the necessary balance between the right of the parties to a fair trial and the implementation of the rule of law, and on the other hand, the public interest, which consists in preventing unnecessary interference of the highest national judicial body.[37]

Thus, the Grand Chamber of the European Court of Human Rights in its decision of April 5, 2018 (the case "*Zubac v. Croatia*" App No. 40160/12)[38] indicated that the right to access the court is not absolute and may be subject to restrictions that are allowed indirectly, since the right to access the court by its nature requires regulation by the state, and such regulation can vary in time and place according to the needs and resources of society and individuals. The method of application of Article 6, paragraph 1, of the Convention to the courts of appeal and cassation depends on the peculiarities of the court proceedings in question, and it is necessary to take into account the entire set of procedural actions carried out within the framework of the national law and order, as well as the role of the courts of cassation in them; The conditions for the admissibility of a cassation appeal regarding legal issues may be stricter than for a regular complaint (para. 82).

In accordance with paragraph 83 of the foregoing decision, the application of the ratione valoris threshold provided by law for filing complaints with the Supreme Court is a lawful and reasonable procedural requirement, taking into

[37] NORKUS, Rimvydas. The Filtering of Appeals to the Supreme Courts: Introductory Report. In: *Network of the Presidents of the Supreme Judicial Courts of the European Union: Dublin Conference, Farmleigh House, 26-27 November 2015* [online]. 2015 [viewed 21 June 2023]. Available from:<https://www.lat.lt/data/public/uploads/2018/01/introductory-report-the-filtering-of-appeals-to-supreme-courts-president-rimvydas-norkus.pdf>

[38] EUROPEAN COURT OF HUMAN RIGHTS (ECtHR). Case of Zubac v. Croatia (App. no. 40160/12) Judgment of 5 April 2018. *HUDOC* [online]. 2018 [viewed 21 June 2023]. Available from: <https://hudoc.echr.coe.int/eng?i=001-181821>

account the very essence of the supreme court's authority to consider only cases of an appropriate level of significance.

In addition, the European Court of Human Rights attention to the fact that it is the national Supreme Court, if required by national law, that must assess whether the threshold of ratione valoris provided by law has been reached for filing a complaint with this particular court. Accordingly, in a situation where the relevant national law allowed it to filter out cases coming to it, the supreme court cannot be bound by or limited by errors in assessing the said threshold, which were made by lower courts in determining whether to provide access to it (decision in the case of Dobric v. Serbia, para. 54) (para. 86).

In addition, this issue of restricting the right of access to the court was already the subject of research by the CCU (but not in the context of small disputes). It was in the Decision of the CCU of 08.04.2015 in case 3-рп/2015[39] that it was noted that the European Court of Human Rights in its decisions repeatedly emphasized that the state has the right to establish certain restrictions on the right of persons to access the court; such restrictions should pursue a legitimate purpose, not violate the very essence of this right, and there should be a proportional correlation between this purpose and the measures introduced (paragraph 57 of the Decision in Ashingdain v. the United Kingdom of 28 May 1985, paragraph 96 of the Judgment in Crombach v. France of 13 February 2001).

Thus, according to the Constitution of Ukraine, it is allowed to limit the right to appeal and cassation appeal against a court decision (paragraph 8 of part three of Article 129), but it cannot be arbitrary and unfair. Such a restriction should be established exclusively by the Constitution and the laws of Ukraine; pursue a legitimate goal; to be conditioned by the public need to achieve this goal, proportionate and objectified. In case of restriction of the right to appeal against court decisions, the legislator is obliged to introduce such a legal regulation that will make it possible to optimally achieve a legitimate goal with

[39] UKRAINE, CONSTITUTIONAL COURT. Case no. 1-6/2015 Decision no. 3-rp/2015 of 8 April 2015. *Legislation of Ukraine* [online]. 2015 [viewed 21 June 2023]. Available from: <https://zakon.rada.gov.ua/laws/show/v003p710-15#Text>

minimal interference with the exercise of the right to judicial protection and not violate the essential content of such a right. [40]

In this context, it is worth noting that if the regulatory regulation and interpretation of the ambiguity of disputes in the practice of the ECtHR (as a source of civil procedure) and existing international treaties differ from national regulation, then a question arises of a more rhetorical nature – do courts have the right to apply the law enforcement practice of the ECtHR, the ECHR norms and other international treaties when considering a particular case?

Trying to consider this issue, it is necessary to separately analyze national approaches to the interpretation of the "rule of law" on the one hand and how such an interpretation relates to the need for courts to apply the principles of European civil proceedings and the practice of the ECtHR.[41]

Thus, the decision of the Constitutional Court of Ukraine of November 2, 2004, No. 15-rp/2004[42] establishes that in accordance with part one of Article 8 of the Constitution of Ukraine, the principle of the rule of law is recognized and operates in Ukraine. The rule of law is the domination of law in society. The rule of law requires the state to implement it in law-making and law-enforcement activities, in particular in laws that, in their content, should be penetrated primarily by the ideas of social justice, freedom, equality, etc. One of the manifestations of the rule of law is that law is not limited to legislation as one of its forms, but also includes other social regulators, in particular moral norms, traditions, customs, etc., which are legitimized by society and are due to the historically achieved cultural level of society. All these elements of law are united by a quality that corresponds to the ideology of justice, the idea of law, which is largely reflected in the Constitution of Ukraine.

This understanding of law does not give grounds for its identification with the law, which can sometimes be unjust, including limiting the freedom and equality of the individual. Justice is one of the basic principles of law, is decisive in defining it as a regulator of social relations, one of the universal dimensions

[40] ibid.
[41] SILKENAT, James R., HICKEY, Jr. James E. and BARENBOIM, Peter D., eds. *The Legal Doctrines of the Rule of Law and the Legal State (Rechtsstaat).* New York: Springer, 2014. ISBN: 9783319055848.
[42] UKRAINE, CONSTITUTIONAL COURT. Case no. 1-33/2004 Decision no. 15-rp /2004 of 2 November 2004. *Legislation of Ukraine* [online]. 2004 [viewed 21 June 2023]. Available from: <https://zakon.rada.gov.ua/laws/show/v015p710-04#Text>

of law. Justice is usually seen as a property of law, expressed, in particular, in an equal legal scale of conduct and in proportionality of legal liability to the offense committed.

On the other hand, the Constitutional Court of Ukraine, refusing to open proceedings on the constitutional submission of the Commissioner for Human Rights of the Verkhovna Rada of Ukraine on the interpretation of Art. Article 9 of the Constitution of Ukraine noted the following. The provision of part one of Article 9 of the Constitution of Ukraine does not refer to the application of international treaties, but only determines that they are part of the national legislation of Ukraine, provided that consent to their binding nature is provided by the Verkhovna Rada of Ukraine. And all disagreements regarding unequal legislation should be resolved by the Supreme Court in accordance with paragraph 6 of part two of Article 36 of the Law of Ukraine "On the Judiciary and the Status of Judges".[43]

Thus, increasing the role of law enforcement activities of national courts, the CCU to a greater extent focused on the role of the Supreme Court as an institution that is authorized to ensure the unity of judicial practice.

Due to the significant legislative changes that took place in the civil procedure legislation of 2017, one of the key theoretical and practical novelties is the introduction of the institution of small disputes as a kind of procedural filter for civil cases. It is through the category of " small claims " that the goal and objectives of civil proceedings, which is provided for in Art. 2 of the Civil Procedure Code of Ukraine, namely, fair, impartial and timely consideration and resolution of civil cases in order to effectively protect the violated, unrecognized or disputed rights, freedoms or interests of individuals, rights and interests of legal entities, interests of the state.[44]

According to Article 129 of the Constitution of Ukraine, one of the main principles of legal proceedings is to ensure the right to appeal of the case and,

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[43] UKRAINE, CONSTITUTIONAL COURT. Case no. 1-77/2018 (4117/17) Resolution Grand Chamber no. 28-u/2018 of 31 May 2018. *Legislation of Ukraine* [online]. 2018 [viewed 21 June 2023]. Available from: <https://zakon.rada.gov.ua/laws/show/v028u710-18#Text>

[44] RHEE, C. H. (Remco) van. Towards Harmonised European Rules of Civil Procedure: Obligations of the Judge, the Parties and their Lawyers. *Access to Justice in Eastern Europe*. 2020, vol. 3, n.1, pp. 6-33. DOI: 10.33327/AJEE-18-3.1-a000024; RHEE, C. H. (Remco) van and MAAN, E. A. Civil Procedure Reform: The Way Forward. *Access to Justice in Eastern Europe*. 2020, vol. 3, n. 4, pp. 180-208. DOI: 10.33327/AJEE-18-3.4-a000035.

in cases determined by law, to appeal against a court decision, and in accordance with Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, such a constitutional right should be ensured by fair judicial procedures.

The right to appeal against court decisions in the courts of appeal and cassation instances is part of a person's constitutional right to judicial protection. Appeal against court decisions is not unconditional, since the provisions of paragraph 8 of Art. Art. 129 of the Constitution provides for the possibility of limiting the right to cassation in cases specified by law. The existence of procedural filters of access to the court of cassation in the legislation is a fairly common world practice and is due to the specifics of the nature of cassation as an extraordinary form of revision of court decisions. The possibility of restricting access to higher judicial institutions is consistent with the provisions of the Recommendation of the Committee of Ministers of the Council of Europe R (95) 5 of 07 February 1995 "On the enactment and improvement of the functioning of systems and procedures for appeals in civil and commercial cases", which emphasize to Member States the need to take measures to exclude from the right to appeal certain categories of cases, among which, in particular, there are cases on claims for a small amount (paragraph "a" of Article 3 of the Recommendations). In this case, paragraph "c" of Art. 7 The recommendations separately provide that complaints to the court of third instance should be filed, first of all, within the framework of those cases that will develop the right or contribute to the monotonous interpretation of the law and provided that such cases have already been heard in the courts of two instances. In addition, the range of such cases may be limited to those complaints that relate to issues of law that are relevant to the whole society as a whole, as a result of which the Committee of Ministers recommends requiring the person filing the complaint to justify why his case will contribute to the achievement of the above goals.

The issues of introducing "procedural filters" on the way to the court of cassation, in the context of ensuring the right to access to justice, are contained in the practice of the European Court of Human Rights. In a number of decisions, the ECtHR emphasizes that the right to a court, one of the aspects of which is the right to access the court, is not absolute and it may be limited, especially with regard to the conditions of admissibility of the complaint. At the

same time, the right of access to the court cannot be limited in such a way or to such an extent that its very essence will be violated. These restrictions must have a legitimate purpose and maintain proportionality between the means used and the objectives achieved (decisions in Golder v. the United Kingdom and Guerin v. France). In the decisions on the cases "*Levage Prestación Service v. France*" and "*Brualla Gomez de la Torre v. Spain*", the ECtHR noted that the conditions for accepting a cassation appeal for consideration may be stricter than for an application in the first instance. Given the special status of the court of cassation, procedural procedures in the court of cassation may be more formal, especially if the proceedings are carried out by the court after their consideration by the court of first instance, and then by the court of appeal.[45]

In the decision of the ECHR *"Delcourt v. Belgium",* which states that the Convention does not oblige Contracting States to establish courts of appeal or cassation. However, the State establishing such courts is obliged to ensure that persons subject to the law enjoy in these courts the basic guarantees contained in Article 6 of the ECHR. In cases where there is an opposite regulation of this guarantee in national legislation, This can lead to negative consequences. Therefore, Art. 6 The ECHR should and should be applied to cassation proceedings. However, how it is applied should definitely depend on the specifics of such proceedings.[46]

The restriction of the right of access to cassation appeals against court decisions in accordance with the national legislation of the Member States of the Council of Europe is carried out through various filters, which are the result of a compromise between public and private interests. In this case, on the one hand, it is necessary to ensure the necessary balance between the right of the parties to a fair trial and the implementation of the rule of law, and on the other

[45] NYLUND, Anna and KRANS, Bart, eds. *The European Union and National Civil Procedure.* Cambridge: Intersentia, 2016. ISBN 9781780683805; POPOV, A. I. Minority of the Case as a Procedural Filter of Access to the Court of Cassation Instance. In: *Minor Disputes: European and Ukrainian Experience in Resolution: International Scientific and Practical Conference, Kyiv, Ukraine, 23-24 November 2018*. Kyiv: Dakor, 2018, pp. 134-146. ISBN 978-617-7020-56-0.

[46] EUROPEAN COURT OF HUMAN RIGHTS (ECtHR). Case of Delcourt v. Belgium (App. no. 2689/65) Judgment of 17 January 1970. *HUDOC* [online]. 1970 [viewed 21 June 2023]. Available from: <https://hudoc.echr.coe.int/eng?i=001-57467>

hand, the public interest, which consists in preventing unnecessary interference of the highest national judicial body.[47]

It is worth noting that the Civil Procedure Code of Ukraine does not exclude the possibility of cassation review of the decision in a small case. In accordance with Art. Art. 389 of the Civil Procedure Code of Ukraine provides for the possibility of overcoming the "cassation filter" on the basis of the ambiguity of the case in some cases, namely if: 1) the cassation appeal concerns a question of law that is fundamental for the formation of a unified law enforcement practice; 2) a person who files a cassation appeal, in accordance with this Code, is deprived of the opportunity to refute the circumstances established by the appealed court decision when considering another case; 3) the case is of significant public interest or is of exceptional importance to the party to the case who files the cassation appeal 4) the trial court classified the case as insignificant by mistake.

Resolution of the issue of opening cassation proceedings in a small case, taking into account those listed in paragraph 2 of part 3 of Art. 389 of the Civil Procedure Code of Ukraine, the legislator brings cases to the plane of judicial discretion. However, the exercise of discretionary powers of the court of cassation should not be perceived as unlimited judicial discretion, in terms of compliance with the requirements of the principle of legal certainty. According to the content of the Recommendation of the Committee of Ministers of the Council of Europe R (80) 2 of 11 March 1980 "On the exercise of discretionary powers by administrative authorities",[48] discretionary is recognized as the power entity to choose in a specific situation between alternatives, each of which is legitimate. Based on this, it should not be allowed that the use of discretionary powers in the application of these norms leads to a violation of the legal rights and interests of persons who applied to the court.

[47] NORKUS, Rimvydas. The Filtering of Appeals to the Supreme Courts: Introductory Report. In: *Network of the Presidents of the Supreme Judicial Courts of the European Union: Dublin Conference, Farmleigh House, 26-27 November 2015* [online]. 2015 [viewed 21 June 2023]. Available from:<https://www.lat.lt/data/public/uploads/2018/01/introductory-report-the-filtering-of-appeals-to-supreme-courts-president-rimvydas-norkus.pdf>

[48] COUNCIL OF EUROPE (CoE), COMMITTEE OF MINISTERS. Recommendation no. R (80) 2 Concerning the Exercise of Discretionary Powers by Administrative Authorities (adopted on 11 March 1980). *Council of Europe* [online]. 1980 [viewed 21 June 2023]. Available from: <https://rm.coe.int/16804f22ae>

3. Ukrainian experience in the implementation and functioning of the simplified litigation procedure

In accordance with part 6 of Art. 19 of the Civil Procedure Code of Ukraine small cases are:

1) cases in which the value of the claim does not exceed one **hundred times the subsistence minimum for able-bodied persons**;

2) cases of insignificant complexity, recognized by the court as insignificant, except for cases that are subject to consideration only under the rules of general legal proceedings, and cases in which the value of the claim exceeds two hundred and fifty times the subsistence minimum for able-bodied persons;

3) cases on recovery of alimony, increase in their amount, payment of additional costs for the child, recovery of penalties (penalties) for late payment of alimony, indexation of alimony, change of the method of their recovery, if such claims are not related to the establishment or contestation of paternity (motherhood);

4) divorce cases;

5) cases on consumer protection, the value of the claim in which does not exceed two hundred and fifty amounts of the subsistence minimum for able-bodied persons.

As noted above, in itself, paragraph 1 of art. Art. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, which enshrines guarantees of the right to a fair trial, does not enshrine the right to cassation appeals against court decisions in civil cases. In interpreting the aforementioned rule, the European Court of Human Rights proceeds from the fact that it does not oblige Contracting States to establish courts of appeal and cassation. However, if such courts exist, it is necessary to comply with the guarantees specified in Art. 6 The ECHR, for example, in the part in which it guarantees to the participants in the judicial process an effective right of access to the court that will decide the dispute regarding their rights and obligations of a civil nature.

At the same time, the right to access the court within the meaning of the ECtHR is not absolute and may be subject to restrictions that are allowed

indirectly, since the right to access the court by its nature requires regulation by the state, and such regulation may vary in time and place according to the needs and resources of society and individual countries. Assessing the legitimacy of restrictions imposed at the level of national law and order, the ECtHR always applies the proportionality test, within which a set of circumstances should be determined: 1) whether there is a restriction of the right to access to the court by national legislation; 2) whether such restriction has a legitimate purpose; 3) what means were used to limit the said right; 4) whether the means used to limit the said right and the legitimate purpose pursued in a particular case are commensurate, i.e. whether the principle of proportionality is observed when limiting the right to access the court; 5) does not contradict the restriction of the very essence of the right to access the court.[49]

As a general rule, the possibility of using as a precondition the right to cassation appeal the criterion of ratione valoris (the value of the claim) of the ECtHR is not denied, however, in cases in which the question of limiting the right to access the court of cassation is raised, a number of additional criteria are taken into account when assessing the "legitimacy" of its application. First, the ECtHR draws attention to the predictability of the restriction, that is, whether the cassation appeal procedure, which should be followed, should be considered predictable from the point of view of the participant in the process in order to establish whether the application of such a restriction does not lead to a violation of the principle of proportionality. Predictability, as a general rule, is evidenced by the existence of a coherent national case law and its consistent application. Secondly, it is taken into account who exactly – the applicant or the respondent State – should have the negative consequences of errors made during the proceedings that led to the applicant's being denied access to the Supreme Court. Thus, in cases where, accordingly, the procedural error arose only on the one hand, on the part of the applicant or on the part of the relevant authorities, in particular the court(s), depending on the case, the ECtHR, as a rule, tends to impose a burden on the party that allowed it. In the event that

[49] EUROPEAN COURT OF HUMAN RIGHTS (ECtHR). Case of Ashingdane v. The United Kingdom (App. no. 8225/78) Judgment of 28 May 1985. *HUDOC* [online]. 1985 [viewed 21 June 2023]. Available from: <https://hudoc.echr.coe.int/eng?i=001-57425>

mistakes were made both on the part of the applicant and on the part of the relevant authorities, the ECtHR assesses all the circumstances of the case, taking into account whether the lawyer represented the interests of the applicant and whether the applicant and / or his lawyer showed the necessary diligence in seeking appropriate procedural actions; whether mistakes could have been avoided from the outset; who predominantly or objectively caused the errors – the applicant or the relevant authorities, i.e. the court(s). Thirdly, the ECtHR always evaluates the application of restrictions through the prism of "excessive formalism". At the same time, he, on the one hand, emphasizes the value and importance of observing the formalized norms of civil procedure, and on the other hand, emphasizes that "excessive formalism" may contradict the requirement to ensure a practical and effective right to access the court in accordance with paragraph 1 of Art. 6 ECHR.[50]

The latter usually occurs in the case of a particularly narrow interpretation of the procedural rule that prevents the applicant's claim from being considered on the merits, with the associated risk of violating his or her right to effective judicial protection [Zubac v. Croatia, no. 40160/12, § 85-99]. The ECHR has repeatedly established the absence of violation of the right to access the court of cassation as a result of the use of ratione valoris by national courts. As an example, in the case of Brualla Gómez de la Torre v. Spain the applicant complained about the violation of her right to access the court of cassation, on the basis that after she submitted a notice of intention to appeal the court decision of the second instance in the case of termination of the right to lease property, but before the direct presentation of the cassation appeal, the Law No. 10/92 of 30.04.1992 came into force, which increased the minimum allowable amount of the value of the claim and, accordingly, the Supreme Court, on the basis of the transitional provisions of the aforementioned law, found the complaint to be unenforceable. The ECtHR, deciding not in favor of the applicant, proceeds from the role of the Supreme Court as a court of cassation, as well as the fact that the fairness of the case in the courts of the first two instances was not disputed by the applicant.

[50] SAKARA, N. Y. Right to Cassation Appeal of Court Decisions in Small Cases: problems legislative regulation. In: *Minor Disputes: European and Ukrainian Experience in Resolution: International Scientific and Practical Conference, Kyiv, Ukraine, 23-24 November 2018*. Kyiv: Dakor, 2018, pp. 161-171. ISBN 978-617-7020-56-0.

Today, in accordance with Art. 19 of the Civil Procedure Code of Ukraine a small dispute will be recognized as one in which the value of the claim will not exceed UAH 268,400, which is approximately 6700 euros. If we compare this amount of the minimum wage for 2023, then this amount will be approximately 2500 euros.

Small disputes, being a certain procedural filter, make it impossible to review civil cases in the order of cassation proceedings. The exceptions are the prerequisites that are provided for in part 3 of Art. 389 of the Code of Civil Procedure, according to which court decisions in small cases and in cases with a claim value not exceeding two hundred and fifty of the subsistence minimum for able-bodied persons are not subject to cassation appeal, except in cases where:[51]

a) the cassation appeal concerns a question of law that is fundamental to the formation of a unified law enforcement practice;

b) a person filing a cassation appeal, in accordance with this Code, is deprived of the opportunity to refute the circumstances established by the appealed court decision when considering another case;

c) the case is of significant public interest or is of exceptional importance for the party to the case who submits a cassation appeal;

d) the trial court classified the case as insignificant by mistake.

If you count in monetary terms, you can see that in accordance with Art. 19 of the Civil Procedure Code of Ukraine, a small dispute will be recognized as one in which the value of the claim will not exceed UAH 268400. Article 389 of the Civil Procedure Code of Ukraine, as a special rule, which is a procedural filter of access to the court of cassation, defines a dispute in which the value of the claim is UAH 671,000, without associating it with an insignificant one.

On October 9, 2018, the European Court of Human Rights ruled on the inadmissibility of application No. 26293/18 in the case of '*Azyukovska v.*

[51] PANYCH, Nazar. Access to Justice as Illustrated by the Institute of Small Claims: An Assessment of the Procedural Law Reform in Ukraine. *Access to Justice in Eastern Europe*. 2019), vol. 2, n. 1, pp. 52-66. DOI: 10.33327/AJEE-18-2.1-a000009; UHRYNOVSKA, Oksana. Novelization of Civil Procedural Legislation of Ukraine in Cassation Review: Panacea or Illusion? *Access to Justice in Eastern Europe*. 2020, vol. 3, n. 4. pp. 209-225. DOI: 10.33327/AJEE-18-3.4-a000036.

Ukraine',[52] in which it noted that the application of the criterion of ambiguity of the case in the case was predictable, the case was considered by the courts of two instances that had full jurisdiction, the applicant did not demonstrate the existence of other exceptional circumstances that, according to the provisions of the Code, could require cassation consideration of the case (paragraphs 20-22).

Thus, according to the case law of the European Court of Human Rights, the restriction of access to the Supreme Court is covered by the generally accepted legitimate purpose of the ratione valoris threshold established by law for complaints filed with the Supreme Court, which is to ensure consideration in the Supreme Court, taking into account the very essence of its functions, only cases of the required level of significance.

On the other hand, the analysis of the ECtHR Decision "*Pönkä v. Estonia*" deserves attention.[53] This case concerned the order in which the legitimacy of the special procedure for the consideration of small disputes and its compliance with Art. 6 ECHR. The Court found that Member States may consider it appropriate to introduce a simplified procedure for the consideration of small claims in civil proceedings. Such a simplified procedure may be in the interests of the parties, as it facilitates access to justice, reduces the costs associated with the consideration of the case and speeds up the settlement of disputes. The Court also observes that Member States may decide that such simplified civil procedure should generally be conducted as part of written proceedings, unless the court finds it necessary to hold an oral hearing or if one of the parties makes such a request. Such a simplified procedure for consideration of small claims in civil proceedings must comply with the following principles of fair trial, which are provided for in Art. 6-1 ECHR as orality and publicity. Thus, in the event that the courts restrict the right of the parties to the dispute to "public proceedings", the Court considers this an indisputable violation of the ECHR.

When deciding on the procedure for consideration of small disputes, the provisions of Part 1 of Art. 11 and part 3 of art. 274 of the Code of Civil Procedure 2017, based on the principle of proportionality of civil proceedings,

[52] EUROPEAN COURT OF HUMAN RIGHTS (ECtHR). Case of Azyukovska v. Ukraine (App. no. 26293/18) Decision of 9 October 2018. *HUDOC* [online]. 2018 [viewed 21 June 2023]. Available from: <https://hudoc.echr.coe.int/eng?i=001-187765>

[53] EUROPEAN COURT OF HUMAN RIGHTS (ECtHR). Case of Pönkä v. Estonia (App. no. 64160/11) Judgment of 8 November 2016. *HUDOC* [online]. 2016 [viewed 21 June 2023]. Available from: <https://hudoc.echr.coe.int/eng?i=001-168375>

as well as abz. 2 part 4 art. 19 CPC of Ukraine. In view of this, courts should motivate their decisions, as well as more broadly apply the provisions of the principles of proportionality of civil proceedings and cooperation between the parties and the court to ensure the implementation of the main task – the effective protection of violated rights of persons.[54]

Conclusion

Summing up, it can be argued that the legislative consolidation of the institution of small disputes in the civil proceedings of Ukraine reflects the chosen European vector of the country's foreign policy. This follows not only from national legislation, but also from international regulations that Ukraine has ratified.

The civil procedure institution of small disputes complies with the rule of law and the basic principles of judicial proceedings and, accordingly, it does not impede the exercise of the right to judicial protection.

But in our opinion, the threshold levels for classifying cases as insignificant should be revised not only in the context of the expediency of introducing a simplified procedure for consideration of the case, but also taking into account the principle of proportionality.

For an objective answer to the question of the dimensionality defined in Art. 19 of the Code of Civil Procedure of the property criterion for classifying cases as insignificant, it is necessary to obtain a formula, statistical data, etc., which guided the legislator in determining the boundaries. To assess whether the value of the claim is proportional, it is also necessary to use the data of judicial statistics on how many percent of decisions on small cases are appealed to the appeal instance and to the cassation instance.

In addition, the principle of proportionality involves taking into account the interests of all parties to the case, and not only those who are dissatisfied with the court decision or those who are trying to abuse procedural rights. The state's expenses for ensuring the consideration of one civil case are also subject to consideration.

[54] IZAROVA, I. O. and Prytyka, Y. D. Simplified Lawsuit of Civil Proceedings in Ukraine: The Challenges of the First Year of Application in Judicial Practice. *Problem of Legality*, 2019, n. 145, pp. 51-67. DOI: 10.21564/2414-990x.145.160567.

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