GOLAW

HANDBOOK

Civil and Commercial litigation

The structure of **court systems**

Civil and commercial court systems are three-tiered and include:

Civil and commercial courts do not have subdivisions according to:

- subject matter;
- nature of the claim;
- size of the claim.

Cases in the courts of the first instance (local courts) are usually considered by a sole judge. Appellate and cassation reviews are carried out by a panel of at least three or more (an odd number) of judges.

I The role of **the judge**

In civil and commercial proceedings the judge plays a more passive role in comparison with the participants in the case. In particular, the judge:

- manages the course of the trial;
- favours the reaching of an agreement between the parties;
- explains to the participants their procedural rights, obligations and the consequences of committing or failing to commit procedural actions;
- assists participants in exercising their procedural rights;
- prevents the participants' abusing of their rights and takes measures to fulfil the obligations of the participants.

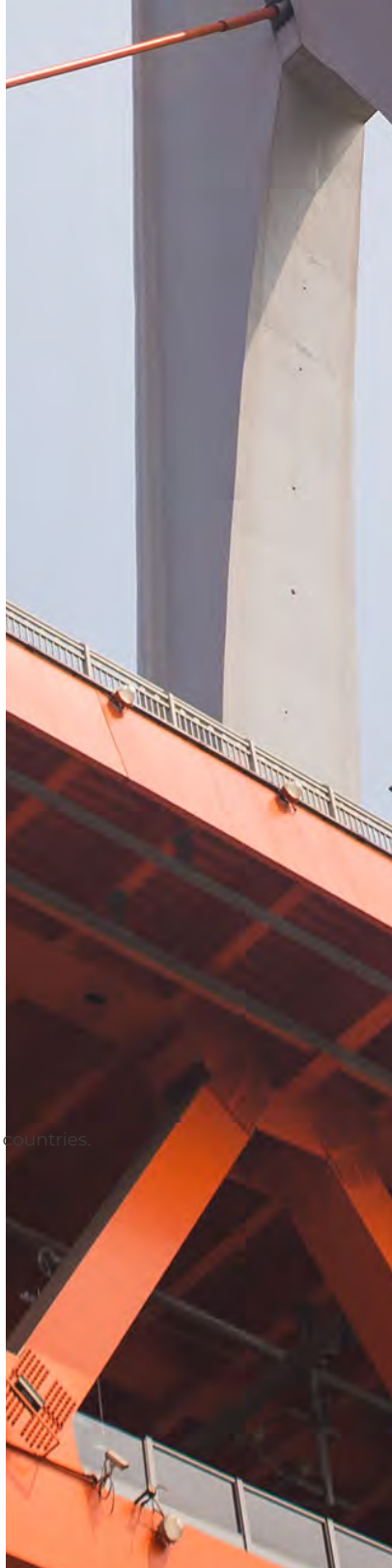
Normally, the judge has no inquisitorial role. However, in certain cases the judge has the right to collect evidence relating to the subject matter of the dispute on his or her own initiative.

I The role of **the jury**

Civil cases are normally considered by judges, however the tribunal consists of one judge and two jurors in certain types of cases such as:

- restriction of civil capacity of an individual, recognition of an individual as incapable and restoration of civil legal capacity of an individual;
- recognition of an individual as missing or declaring him/her dead;
- adoption;
- providing a person with compulsory psychiatric care;
- forced hospitalization in an anti-tuberculosis institution.

The list of jurors is compiled by the relevant local councils. Afterwards, the territorial administration of the State Judicial Administration of Ukraine confirms the proposed list of jurors for three years | Commercial cases are not considered by the jury.



countries.

I **Limitation** period

3 (three) years

The **Civil Code of Ukraine** determines the general limitation period (three years) and specific limitation period (reduced or extended).

The specific limitation period is established by law for certain types of claims.

1 (one) year

A one-year limitation period is applied, for example, in the following cases:

- for recovery of a forfeit (penalty, fine);
- for disclaimer of false information placed in mass media;
- in connection with defects of a sold goods;
- for cancellation of a contract of donation;
- in connection with freight, mail transportation;
- on invalidation of the decision of the general meeting of the company.

4 (four) years

A four-year limitation period shall apply to the claims for the recognition of unfounded assets and their recovery into state revenue.

Some laws establish another limitation period regarding of the nature of claim. Thus, the Labour Code of Ukraine sets one-month period to appeal the order of dismissal.

The parties to a dispute may not agree to suspend time limits. Ukrainian legislation allows the parties to a contract to extend the limitation period established by law, but it is not possible to reduce it.

Pre-action behaviour

The pre-action dispute resolution procedures are optional unless otherwise set out in the agreement between the parties or provided by the law.

At the same time the Constitutional Court of Ukraine, in its decision dd. 09/07/2020 in case No. 1-2/2002, ruled that

> ***a person's right to apply to the court for dispute resolution may not be restricted by law or other regulations.***

The Constitutional Court of Ukraine decided that

> ***the right to apply to the court cannot be conditional on the use of pre-trial dispute resolution procedures.***

It is possible to request the preservation of evidence before filing a claim if there is a risk that the evidence may be lost or the collection or submission of such evidence will subsequently become impossible or difficult. Before filing a claim, a claimant can ask the court to impose interim measures.

Starting proceedings

If the statement of claim meets the requirements of the procedural law, the court commences a case within five days from the receipt of the statement of claim. If the statement of claim does not meet the requirements, the court leaves it without action or subsequently returns to the claimant.

Since the case has been opened, the court informs the participants to the case thereof.
The information on case status (including the case commencement) is available at the governmental website 'Judiciary'. The ruling on the case commencement is at free online access at the Unified State Register for Court Decisions, but without including personal data.

The typical procedure and timetable for a claim

Civil and commercial claims are mostly considered at the action proceedings.
The action proceedings can be either general or expedited.

Case consideration within the general proceedings shall not exceed

122 days

The time limit for the expedited proceedings is

65 days

However, in practice, due to high caseloads, the established time limits for case consideration can be overrun.

As a rule, typical civil or commercial claim consideration includes the filing of four main procedural documents:

- the statement of claim;
- the statement of defence;
- the reply to the statement of defence;
- the rejoinder to the reply.

The statement of defence shall be filed within the term established by the court's ruling, which may not be less than

15 days

from the date of service of the ruling on a case commencement. The term for submission of the reply and rejoinder is also established by the court's ruling and usually ranges between

5 and **20** days

from the receipt of the relevant statement on case.

Having received the abovementioned statements, the court considers the case on its merits and subsequently renders a decision.

Parties` control over the procedure and the timetable

Generally, the parties cannot control the procedure and the timetable.

However, the parties may have some influence on the timing of the case, in particular by exercising their rights prescribed by the procedural law.

Thus, the parties have the right to:

- submit applications and motions;
- provide explanations to the court;
- provide objections to the applications, motions and explanations of other parties.

Therefore, it is possible to ask the court to fast track case consideration or conversely to extend the term of case consideration or postpone the hearing.

In Ukraine, the High Council of Justice considers various issues, inter alia, complaints about judges. In the event of unreasonable and intentional delay by the judge in considering the case or when a judge's actions infringe a person's rights and freedoms, etc, a person has the right to file a complaint with the High Council of Justice.

Preservation of documents and other evidence pending trial

Ukrainian legislation provides for the possibility to request the preservation of evidence pending trial if there is a risk that the evidence may be lost or the collection or submission of such evidence will subsequently become impossible or difficult.

The party is obliged to disclose the documents on which it relies. There is no obligation to disclose documents that negatively affect the party's own position or support the other party's case unless the court orders it to disclose such documents.

Documents are disclosed by filing the originals or copies with the court and all parties to the case. A party cannot rely on a document that it failed to disclose when submitting the claim, defence or relevant motion. If a party is not able to disclose certain documents, such information, including the reasons for this, shall be given to the court.

A party also may ask the court to order the disclosure of documents from the person possessing them if such documents are relevant to the case.

PRIVILEGED DOCUMENTS

The Provisions of the Law of Ukraine '**On the Advocacy and Practice of Law**' state that

> *issues raised by clients, advice given and other information obtained by an attorney during his or her professional activities are subject to attorney-client privilege.*

The rights and obligations arising from attorney-client privilege do not apply to in-house lawyers and foreign lawyers (unless they are admitted to the Ukrainian Bar).

The documents containing the following information are also deemed confidential and shall be disclosed on the court's order only. Therefore, Ukrainian law protects the secrecy of:

- personal data and information on an individual's medical condition;
- information stored by notaries;
- confidential information of the business entity, including commercial secrets;
- information concerning bank secrecy;
- personal communications and notes;
- information acquired by telecommunications operators on subscribers' communications and other details on telecommunications services;
- state secrets.

PRETRIAL EVIDENCE

The parties shall not exchange written evidence from witnesses at the pretrial stage. At the same time, written witness statements and expert opinions can be obtained prior to trial as a means of preservation of evidence.

Written expert opinions, given to the court on a party's initiative, are usually submitted to the court and parties before the hearing of the case on merits.

PRESENTATION OF EVIDENCE AT TRIAL

In civil matters the court calls a witness to give oral evidence at trial upon the application of the participants in the case. Witnesses give their evidence orally. A witness can be cross-examined on the contents of his or her witness statement by the judge and participants to the dispute.

In commercial matters witness statements are made in writing. Presentation of witness` evidence orally is not obligatory and shall be subject to the decision of a judge.

Experts rarely give oral evidence at trial. However, they can be called to the court to clarify their expert opinion and answer the participants' questions.

The court is obliged to examine all evidence duly submitted by the parties.

I **Interim** remedies

The most popular interim measures are the following:

Interim measures in civil and commercial cases can be applied either before filing the claim with the court or together with the claim, as well as during the whole case consideration in the courts of the first and second instances.
Generally, the application on interim measures is considered by the court within 2 days from its receipt.

In Ukraine, interim measures are not available in support of foreign litigations. The only possible option is to recognise and enforce the foreign court decision granting the interim measures.

I **Substantive** remedies

In view of the Civil Code of Ukraine the claimant is entitled to seek the following remedies:

- recognition of a right;
- recognition of a transaction as invalid;
- termination of an action violating a right;
- restitution and restoration of the situation that existed before the violation;
- specific performance;
- alteration or termination of legal relationships;
- damages recovery and other methods for property loss recovery;
- compensation for moral (non-pecuniary) damage;
- recognition of the invalidity of a decision, action and failure to act of a governmental entity, municipal entity or their officers.

The court can apply other remedies to protect a civil right or interest, if established by contract, law, as well as international agreements or by the court in circumstances specified by law.

If the law and the contract do not determine an effective way to protect rights, freedoms or interests, the court at its own discretion may determine a method of protection that does not contradict the law.

IMeans of **enforcement**

To enforce a court decision or court order, a person shall obtain a writ of execution from the court. Then the relative application and writ of execution shall be submitted to the Bailiffs' Service.

Ukrainian legislation provides for the following means of enforcement:

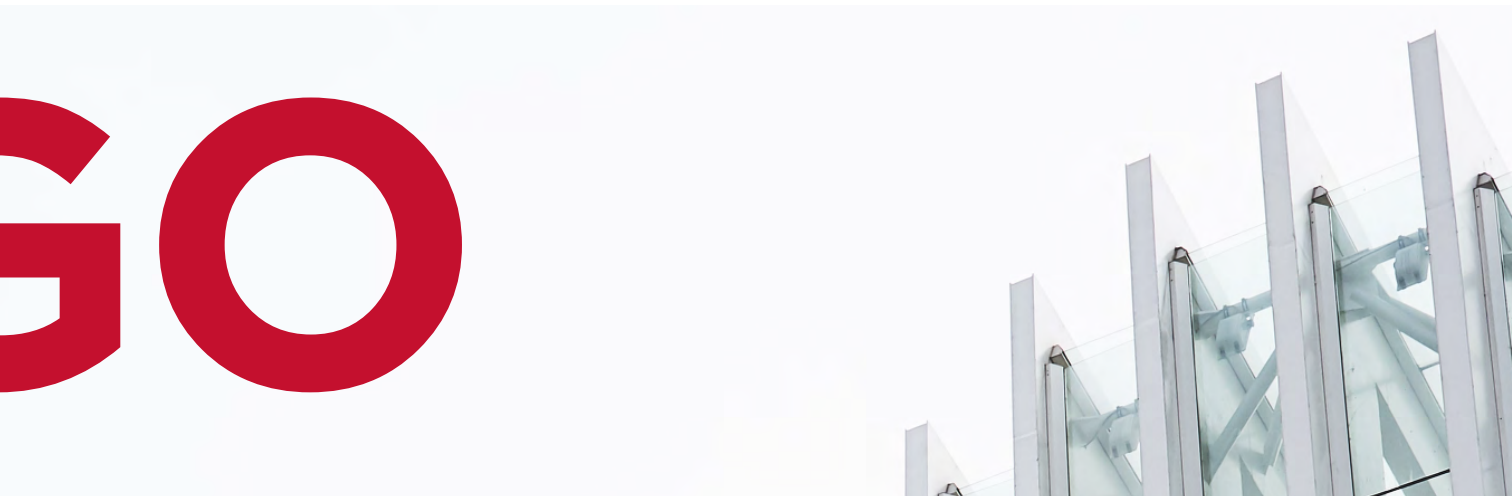
- Recovery of funds, securities, corporate rights, intellectual property rights, objects of intellectual and creative work, other property (property rights) of the debtor.*
- Recovery of salary, retirement benefits, scholarships and other income of the debtor.
- Seizure of the items specified in the decision from the debtor and their further transfer to the creditor.
- Prohibition on the debtor disposing of or using the property belonging to him or her, including funds; or imposing on the obligation to use such property under conditions determined by the bailiff.

** including those belonging to the debtor from other persons, or the debtor manages them together with other persons*

These enforcement measures are not exhaustive.

If an individual debtor evades the obligations imposed by the court decision, the court may ban the individual from travelling abroad. The bailiff also has the right to impose a fine on the debtor.

The enforcement of a court decision or court order can be processed either by state or private enforcement officer.



Costs

The parties can ask the court to recover the court costs that the person has incurred in connection with the case. Based on the results of the case, the court has power to distribute court costs between the parties in accordance with the rules set out in the procedural codes of Ukraine. The costs are assessed on the basis of the evidence submitted by the parties and in accordance with the established rules of law.

Generally, the payment of court fees and other court costs is ordered against the losing party in the case.

The court may oblige the parties to deposit into the court's deposit account a predetermined amount of court costs related to the proceedings or a certain procedural action.

Funding **arrangements**

Contingency and conditional fee agreements between lawyers and their clients are not prohibited in Ukraine. At the same, success fee agreements are currently allowed according to the **Resolution of the Grand Chamber of the Supreme Court dd. 12.05.2020 in case No. 904/4507/18.**

I Appeal

Ukrainian procedural law entitles persons to file an appeal with the competent appellate court against the court decision on the merits and some types of rulings.

The grounds for appeal can be various and differ for each particular case. The appellant must mention in his or her appeal why the decision of the local court is unlawful or unsubstantiated.

Usually, the most common reasons stated by the appellants are the following:

- **Violation of procedural law**
- **Incorrect enforcement of material law**
- **Failure to establish the facts of the case**
- **Incorrect establishment of the facts of the case**

The Supreme Court can further review the decisions of the previous instances courts. However, the procedural codes of Ukraine limit the circumstances for cassation appeals.

Recognition and enforcement of foreign judgments

The legislation of Ukraine provides for the possibility of recognition and enforcement of foreign judgments on its territory.
Before applying to the court, the applicants should establish whether Ukraine and the country where the court has rendered the relevant decision have an international legal treaty that regulates the recognition and enforcement of court decisions of these countries.

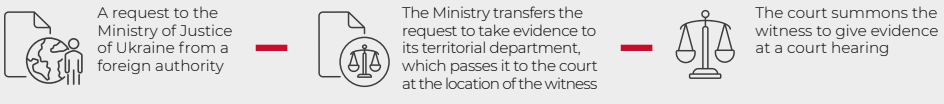
If the agreement on mutual legal assistance between the countries provides for rules other than those defined in the relevant act of Ukrainian legislation, the rules of the international agreement shall be applied. In the absence of such an agreement, the recognition and enforcement of a foreign court decision is carried out on the principle of reciprocity in accordance with the provisions of the Civil Procedure Code of Ukraine. In practice, the Ukrainian courts deem that reciprocity between Ukraine and the respective country exists unless proven otherwise by the opposing party.

The procedure for recognition and enforcement is simple. The applicant submits an application for the recognition and enforcement of foreign decisions together with the requested annexes to the court, which considers the application, renders a ruling thereon and issues a writ of execution, which is a ground for initiating enforcement proceedings in the competent enforcement authorities of Ukraine.

Obtaining evidence for use in civil proceedings in other jurisdictions

Ukrainian courts may assist foreign courts with witness examination, conducting expert examination, etc.

The procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions:



The witness must respond to the questions listed in the request. The Ukrainian court can order the police to deliver a witness if a properly summoned witness fails to appear before the court with no valid reason.

Afterwards, the Ukrainian court records in a protocol the witness's responses to the listed questions and transmits the protocol to the foreign court via the Ministry of Justice of Ukraine.

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GOLAW Partner Kateryna Manoylenko heads the Litigation and Dispute Resolution practice. She has a proven track record of complex clients' disputes settlement. Such experience includes not only the complete lead of cases in the courts of all instances and jurisdictions, but also the pretentious settlement of disputes and the lead of the court decisions execution.

Kateryna successfully protects her clients' interests in labour disputes, as well as disputes arising from contractual relationships and in the area of property rights protection. In addition, Kateryna has a significant experience in maintaining bankruptcy procedures, both on the owner's decision and on the creditors' initiative.

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Kateryna has an impressive track record of successful representation of clients in complex litigation projects in courts of all levels and jurisdictions. Kateryna's competence includes support in commercial, civil and administrative disputes across a variety of sectors including banking, energy, real estate, pharmaceutic and other industries.

Relying on her more than 10 year professional experience, Kateryna advises and effectively represents clients in contractual litigations, disputes with state authorities, labor litigations, debt collection, real estate disputes, enforcement proceedings and bankruptcy.

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