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Simplified claim proceedings: Legislative regulation of the Economic Procedure Code of Ukraine

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Abstract

In building a legal state, one of its key criteria is the creation of an honest, transparent, and effective judiciary. The essential need for radical changes in the judicial system and the reform of its individual institutions is a requirement of time. The main purpose of the judicial and legal reform in Ukraine should be to create legislative and organizational conditions for the establishment of an independent, effective, and responsible judiciary, which will be trusted by society. During the study, the method of analysis and synthesis was used for the methodological basis, thanks to which the main types of simplified procedures, their features, and legal nature were determined. Using the historical method, the emergence and development of simplified judicial procedures was investigated. Based on the dialectical method, the terms "simplified judicial procedures", "writ proceedings" and "simplified claim proceedings" were formulated. The formal logical method was used to identify shortcomings in the legal regulation and procedural regulation of simplified judicial procedures under the new Economic Procedural Code of Ukraine. The theoretical and predictive method was used to develop and outline the main vectors for introducing changes to the legislation of Ukraine within the framework of consideration of cases in simplified proceedings. The qualifying

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features of simplified judicial procedures were formulated as follows: a special procedural form, voluntary application by stakeholders, special admission criteria, a special regime for applying evidence, and a special procedure for reviewing court decisions. Considering the legal nature of simplified judicial procedures, it was justified that the latter should include only writ and simplified claim proceedings. Therewith, writ proceedings are a special form of simplified judicial procedures in the economic process, which lies in persistent protection of undisputed rights, freedoms, and legitimate interests of a person, which occurs based on issuing a suitable court order. Simplified claim proceedings are a special form of simplified court procedures within the framework of economic proceedings, which lies in the rapid protection of the rights, freedoms, and legitimate interests of a person, based on the insignificance of 6 stated requirements, the availability of written documents, without holding full-fledged court sessions and with the issuance of a special court decision. It was proposed to add amendments to the corresponding economic procedural legislation of Ukraine regarding the regulation of the procedure for considering economic disputes in the simplified claim proceedings. Judicial legal reform in Ukraine is complex and involves amendments to the Constitution of Ukraine, legislation on the judicial system and status of judges, reform of related institutions (prosecutor's office, bar, law enforcement agencies), as well as improvement of procedural legislation and legislation governing the procedure for executing court decisions. The article notes that legislative changes have been introduced to the Economic Procedural Code of Ukraine, new forms of economic proceedings have been initiated, one of the forms of economic proceedings is simplified claim proceedings, which are designed to consider minor cases, cases of minor complexity, and other cases for which a quick resolution of the case is a priority. Along with the simplified procedure and procedure for considering an economic case, the introduction of such a form of judicial dispute consideration also revealed certain shortcomings in its regulation. The materials of this paper are of practical value for further research in this area, considering the ability to substantially relieve economic courts and increase the efficiency of economic proceedings, while raising the level of trust in them

Keywords: economic proceedings, minor cases, legislation, shortcomings, procedure

Introduction

On 15.12.2017, with the entry into force of the Law of Ukraine No. 2147-VIII "On Amending the Economic Procedural Code of Ukraine, the Civil Procedural Code of Ukraine, the Code of Administrative Procedure of Ukraine and other legislative acts" dated 10.03.2017 embodied certain jurisprudential preferences regarding unification, and in some issues – uniformity of all national procedures of courts. However, along with the positive changes in the Economic Procedural Code of Ukraine (EPC of Ukraine), which during the judicial reform was marked by the development and adoption of new economic procedural legislation, some innovations of the code, specifically simplified claim proceedings, should be evaluated critically.

Certain norms governing the procedure for considering such a category of cases reduce the efficiency of courts' activities and, as a result, judicial protection of the rights of participants in economic legal relations, which requires an analysis of the issues present in economic legal proceedings.

The introduction of amendments to the EPC of Ukraine introduced new procedural institutions and substantially changed the procedure of economic legal proceedings, which has been reflected in the studies of Ukrainian researchers. Theoretical and practical issues of the main provisions of the economic procedural legislation were considered by O.A. Belianevych, O.M. Vinnyk, R.A. Dzhabrailova, V.O. Kaverznev, O.M. Korotun, T.D. Suiarko,

V.S.Shcherbina and others, along with this, some problematic issues of economic legal proceedings stayed out of the attention of scientists, which determined the relevance of this study.

The purpose of this paper was to analyse individual provisions and institutions of the economic process to identify shortcomings in legal regulation and develop proposals aimed at improving the economic process, which has theoretical and practical significance.

Results and Discussion

Ambiguous legislative changes introduced to the EPC of Ukraine prompted scientists and practitioners to turn their attention to research the provisions of the new wording of the code. V.O. Koverznev, focusing on the implementation of modern international legal standards for judicial protection of the rights of parties to economic relations in the national legislation, notes the presence in the of certain norms in the EPC of Ukraine that reduce the effectiveness of judicial protection of the rights of parties to economic relations and suggests areas for improving the economic procedural legislation of Ukraine [1].

Currently, because of judicial reform, the updated procedural codes contain many similar norms and institutions on general and procedural issues. Unified changes to the procedural legislation have both positive and negative consequences. The EPC of Ukraine as amended before 03.10.2017 was characterized by simplicity and flexibility of provisions, adaptability to prompt and informal resolution of economic disputes. The new wording of the EPC of Ukraine, according to A.I. Fomin, has become cumbersome and does not fully consider the specifics of the economic procedure within the framework of introducing a generalized model of distinct types of legal proceedings. The developers of

the new wording of the EPC focused on unification, implementation of certain ideal models and theoretical, conditional standards of legal proceedings, but without considering the entire range of legal issues, problems, and situations that the EPC should solve. The authors of the new version of the EPC followed the path of excessive regulation of procedural activities and limiting the independence of the court in determining the procedure for hearing a case, introducing institutions that are not typical of economic proceedings, and excessive formalization of the procedure. As a result, this can create conditions under which there will be a risk of using the legal requirements to abuse procedural rights, delay the process and distort its tasks [2].

Notably, A.A. Belianevich expressed reasonable concerns about trends towards unification, which is manifested in legislation, as evidenced by the analysis of the content of those norms that were introduced into the procedural codes. The researcher noted that this can lead, if not to the merger of individual procedural branches, then to their unity and to the rejection of certain procedural forms that have historically developed (specifically, from the economic procedural form of protecting the rights and legitimate interests of business entities) [3].

Despite the positive changes, the analysis of the provisions of the EPC of Ukraine indicates that along with positive changes in the economic procedural legislation, there are separate norms in the code that should be evaluated critically.

The introduction of simplified claim proceedings has become a crucial step to improve the efficiency of economic proceedings. Article 12 of the EPC of Ukraine introduces simplified claim proceedings, which are intended for consideration of minor

cases, cases of minor complexity and other cases for which a quick resolution of the case is a priority. In their statement of claim, the plaintiff is entitled to state a request for consideration of the case according to the rules of simplified legal proceedings (Article 171.2 of the EPC of Ukraine). Cases specified in the EPC of Ukraine are insignificant due to the properties inherent in such categories of cases, based on the price of the claim and its subject matter, without the need for a separate court decision to assign the specified case to the corresponding category.

According to Article 287.3.2 of the EPC of Ukraine, court decisions in minor cases and in cases with a claim price not exceeding five hundred minimum wages for able-bodied individuals are not subject to cassation appeal, except for cases prescribed by the EPC. Therewith, the procedural law does not contain restrictions on cassation appeals against court decisions taken in other cases that are considered in simplified claim proceedings but are not insignificant.

According to Article 247.2 of the EPC of Ukraine, any other case referred to the jurisdiction of the economic court may be considered per the procedure of simplified legal proceedings, except for the cases specified in Article 247.4 of the EPC. Therefore, cases considered in simplified claim proceedings should not be confused with other cases. That is, according to the procedure of simplified claim proceedings, other cases may also be considered, for which a quick consideration of the case is not a priority, which contradicts the purpose of introducing this form of legal proceedings.

A systematic analysis of the provisions of the EPC of Ukraine indicates that there are three categories of cases that can be considered in simplified proceedings: minor cases;

cases of minor complexity; and other categories of cases. Simplified claim proceedings are intended for consideration of minor cases, cases of minor complexity and other cases for which the priority is to quickly resolve cases (Article 12.3 of the EPC of Ukraine). Due to the provisions of Article 247.3 of the EPC of Ukraine, other categories of cases do not include cases that cannot be considered per the procedure of simplified legal proceedings.

Furthermore, the provisions of Article 12.5.2 of the EPC of Ukraine classify minor cases as low-priority cases: “for the purposes of this Code, low-priority cases are cases of insignificant complexity, recognized by the court as minor, except for cases subject to consideration exclusively per the rules of general legal proceedings, and cases where the cost of the claim exceeds five hundred minimum wages for able-bodied individuals”. But Article 12.5.1 of the EPC of Ukraine defines low-priority cases as those “in which the price of the claim does not exceed one hundred minimum wages for able-bodied individuals”. Thus, in two articles, the legislator created a substantial discrepancy regarding which cases should be considered per the procedure for simplified proceedings, as well as how such cases are differentiated. Both norms require greater certainty and clarification [4].

This legislator’s approach to defining the category of “minor cases” gives the court discretionary power to determine whether a particular case is of considerable complexity or insignificant. Since the judge determines the complexity of the case based on a statement of claim, it may become clear in the future (a response from the defendant, an explanation from a third party that the case is complex). A judge can move from a simplified proceeding to a general one, but they cannot change their mind and recognize a case that

they have already recognized as low priority to be otherwise. In this case, the big problem will not be how the court will consider the case, but the fact that such a case will not be subject to appeal in cassation. As a possible solution to this problem, the EPC of Ukraine should make provision for a clear and exhaustive list of cases that would be considered low-priority without giving the court the opportunity to recognize cases as low-priority.

The conditions that allow the case to be considered in simplified proceedings are the absence of objections from the defendant, the presence of consent of the parties to consider the case in simplified proceedings, i.e., those events that have not yet occurred and the occurrence of which (or non-occurrence) cannot be predicted. It is the presence of a combination of grounds and conditions that allows determining the necessary and sufficient prerequisites for consideration of the case per the procedure of simplified proceedings [5].

Article 252 of the EPC of Ukraine establishes that the court considers the case per the procedure of simplified legal proceedings without notifying the parties to the case based on the materials available in the case, in the absence of a request from any of the parties otherwise. At the request of one of the parties or on the court's own initiative, the case is considered in a court session with notification (summons) of the parties.

According to A.O. Zhama, the procedure of simplified proceedings "does not limit the rights and legal interests of the parties to the economic procedure, at least because the evidence base of the economic procedure is built on written evidence, even explanations of the representatives of the parties and other persons taking part in the legal procedure, upon request judges may be set

forth in writing. The simplified procedure for trying the case will create added leverage on the discipline of the parties to the economic procedure in the context of timely provision of evidence to the court and justification of their own clear position on the case, and will speed up obtaining the final result in the case" [6]. At the same time, there are opposing opinions that the practical application of innovations regarding the introduction of the procedure for trying cases in the simplified claim proceedings under the competence of economic courts does not fulfil its tasks and does not achieve the goals for which they were implemented. On the contrary, it adds to the courts supplementary procedural actions and conflicting opinions on legal innovation, which requires clarification and legal interpretation at the legislative level [7].

While sharing the positive aspects of the optimization of judicial proceedings introduced by the amendment regarding simplified proceedings, it should be emphasized that this imposes certain restrictions on the parties to the proceedings. Specifically, this applies to cassation appeal. Notably, limiting the right to a cassation appeal in the format as it is prescribed in the current procedural codes – specifically, not establishing clear criteria for the impossibility of an appeal, but giving the judges of the Supreme Court the right to decide regarding the impossibility of accepting a cassation appeal for consideration – contradicts the principle of legal certainty, which is a component of the rule of law principle. The basis of the principle of legal certainty is the idea of the predictability of the expectation by the subject of relations of certain legal consequences (legal result) of their behaviour, which corresponds to the normative prescriptions available in society. In its decisions, the Constitutional Court of

Ukraine has repeatedly emphasized that the principle of legal certainty requires the clarity and unequivocalness of the legal norm and ensuring that legal relations stay predictable (Decision No. 5-пп/2005 dated 22.09.2005, No. 17-пп/2010 dated 29.06.2010, No. 23-пп/2010 dated 22.12.2010, No. 10-пп/2011 dated 11.10.2011) [8].

Therefore, the regulatory requirements of the procedural legislation must be precise and understandable. Accuracy is considered one of the key properties of the language of a legislative act. It is no coincidence that F. Bacon associated the accuracy of the law with its justice [9].

Conclusions

Despite the large number and diversity of scientific opinions on the problematic issues of economic litigation, the conducted study of the provisions of the new wording of the Economic Procedural Code of Ukraine allowed identifying certain shortcomings of the legislative regulation of simplified claim proceedings and formulating the author's vision of eliminating the issues existing in current economic litigation, which will contribute to improving the efficiency of commercial courts and protecting the rights of parties to economic legal relations.

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Спрощене позовне провадження: Законодавча регламентація ГПК України

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Анотація

В процесі розбудови правової держави, одним з її найбільш важливих критеріїв є створення чесної, прозорої та ефективної судової влади. Суттєва необхідність докорінних змін судової системи та реформування окремих її інститутів є вимогою часу. Головною метою проведення судово-правової реформи в Україні має стати створення законодавчих та організаційних умов для утвердження незалежної, ефективної та відповідальної судової влади, якій довірятиме суспільство. Під час дослідження для методологічної основи був застосований метод аналізу та синтезу, завдяки якому було визначено основні види спрощених процедур, їх ознаки та правову природу. За допомогою історичного методу було досліджено виникнення та розвиток спрощених судових процедур. На основі діалектичного методу сформульовано поняття «спрощені судові процедури», «наказне провадження» та «спрощене позовне провадження». Формально-логічний метод використовувався для виявлення недоліків правового регулювання та процесуальної регламентації спрощених судових процедур в рамках нового ГПК України. Теоретико-прогностичний метод використовувався для розробки та окреслення основних напрямів внесення змін до законодавства України в рамках розгляду справ у порядку спрощених проваджень. Сформульовано кваліфікуючі ознаки спрощених судових процедур: особлива процесуальна форма, добровільність застосування зацікавленими особами, особливі критерії допуску, спеціальний режим застосування доказів, особливий порядок перегляду судових рішень. Обґрунтовано, враховуючи правову природу спрощених судових процедур, що до останніх слід віднести лише наказне та спрощене позовне провадження. При цьому наказне – це особлива форма спрощених судових процедур у господарському процесі, що полягає у наполегливому захисті безспірних прав, свобод та законних інтересів особи, що відбувається на підставі видачі відповідного судового наказу. Спрощене позовне – це особлива форма спрощених судових процедур в рамках господарського судочинства, що полягає у швидкому захисті прав, свобод та законних інтересів особи, на підставі малозначності 6 заявлених вимог, наявності письмових документів, без проведення повноцінних судових засідань та з винесенням особливого судового рішення. Запропоновано додати зміни до відповідного господарського проц-есуального законодавства України в частині процесуальної регламентації порядку розгляду господарських спорів у порядку спрощеного позовного провадження. Судово-правова реформа в Україні має комплексний характер і передбачає внесення змін до Конституції України, законодавства з питань судоустрою та статусу суддів, реформування суміжних інститутів (прокуратури, адвокатури, правоохоронних органів), а також вдосконалення процесуального законодавства та законодавства, що регулює порядок виконання судових рішень. Зокрема, у статті наголошено, що законодавчі зміни внесені до Господарського процесуального кодексу України, започаткували нові форми господарського судочинства, однією із форм господарського судочинства є спрощене позовне провадження, яке призначене для розгляду малозначних справ, справ незначної складності та інших справ, для яких пріоритетним є швидке вирішення справи. Поряд із спрощеним порядком та процедурою розгляду господарської справи, запровадження такої форми розгляду судового спору виявило і певні недоліки в її регламентації. Матеріали статті становлять практичну цінність для подальших досліджень у цій сфері, враховуючи здатність суттєво розвантажити господарські суди та підвищити ефективність господарського судочинства, водночас піднявши рівень довіри до них

Ключові слова: господарське судочинство, малозначні справи, законодавство, недоліки, процедура