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SIMPLIFIED LITIGATION IN ECONOMIC PROCEEDING: PROBLEMS OF SEARCH AND DETERMINATION OF THE CRITERIA FOR THE CONFORMITY OF THE SPECIFICS OF THE DISPUTE TO THE PROCEDURE OF ITS CONSIDERATION AND RESOLUTION

The article describes simplified legal proceedings in commercial litigation and the problems with the procedure for conducting commercial court cases. Conflict norms are highlighted and conclusions are drawn on them, as well as the application of the relevant procedural rules in commercial litigation is analyzed.

The application of simplified proceedings in economic proceedings involves compliance with conditions of subjective and objective character. The objective conditions for reviewing the case in the simplified proceedings cover a set of positive (type of the case, its prevalence in the practice of economic courts, insignificance of claims, urgency of the case) and negative (lack of evidence provided by the parties to establish the circumstances of the case, the complexity of the subject matter of the case; missed deadline for the defendant to file an objection to the claim for reasons recognized by the court as vindictive) circumstances. The presence of subjective conditions is determined by the auxiliary nature of the simplified character and consists in the position of the parties regarding the expediency of personal participation in the process. It has been established that simplification of proceedings in economic proceedings cannot relate to the abolition of any stages of the economic process, but concerns only their separate stages or procedural actions. Simplification of the structure of proceedings and judicial consideration of the case provides the abolition of certain procedural actions and stages at the stages of preparatory proceedings and judicial consideration of the case. The definition of the grounds for reviewing the case in the simplified proceeding as a combination of the requirements of the normative and processual (court decision on opening of proceedings in a case using the simplified procedural form) character is supplemented.

We think that the problematic issues, connected with the procedure for conducting cases in simplified proceedings by economic courts, arise by setting an extremely short time limit for such a case − sixty days is not sufficient time for a comprehensive, complete and objective resolution of the case, leads to its return to the mainstream of the general proceedings, which places a double burden on the court. The amendments and additions to the draft law "On Amendments to the Commercial Procedural Code of Ukraine, the Civil Procedural Code of Ukraine, the Code of Administrative Proceedings of Ukraine and other legislative acts" No. 6232 of 23.03.2017, introduced by the President of Ukraine, are proposed.

Key words: *economic justice, processual form of economic legal proceedings, simplified proceedings.*

У статті досліджуються спрощене позовне провадження в господарському судочинстві та проблеми з порядком проведення розгляду господарськими

судами справ. Висвітлено колізійні норми та сформовано висновки щодо їх вирішення, а також проаналізовано застосування відповідних процесуальних норм у господарському судочинстві.

Застосування спрощеного провадження в господарському судочинстві пов'язане з дотриманням умов суб'єктивного та об'єктивного характеру. Об'єктивні умови розгляду справи у спрощеному провадженні охоплюють комплекс позитивних (типовість справи, її поширеність у практиці господарських судів, малозначність позовних вимог, терміновість справи) і негативних (недостатність доказів, наданих сторонами для встановлення обставин справи, ускладненість суб'єктного складу справи; пропуск строку відповідачем для подання заперечень проти позову з причин, визнаних судом поважними) обставин. Наявність суб'єктивних умов визначається допоміжним характером спрощеного характеру і полягає в позиції сторін щодо доцільності особистої участі у процесі. Встановлено, що спрощення провадження в господарському судочинстві не може стосуватися скасування будь-яких стадій господарського процесу, а торкається лише їх окремих етапів або процесуальних дій. Спрощення структури провадження і судового розгляду справи передбачає скасування окремих процесуальних дій та етапів на стадіях підготовчого провадження і судового розгляду справи. Доповнено визначення підстав розгляду справи у спрощеному провадженні як сукупності вимог нормативного та процесуального (рішення суду про відкриття провадження у справі із застосуванням спрощеної процесуальної форми) характеру.

Ми вважаємо, що низка проблемних питань, які пов'язані з порядком проведення розгляду господарськими судами справ у спрощеному позовному провадженні, виникає через встановлення надзвичайно короткого терміну на проведення такого розгляду справи − шістдесяти днів не завжди достатньо для всестороннього, повного та об'єктивного вирішення справи, що призводить до її повернення в русло загального виду провадження, що створює подвійне навантаження на судовий процес. Запропоновано зміни і доповнення до проекту закону «Про внесення змін до Господарського процесуального кодексу України, Цивільного процесуального кодексу України, Кодексу адміністративного судочинства України та інших законодавчих актів» № 6232 від 23.03.2017 р., внесеного Президентом України.

Ключові слова: *господарське судочинство, процесуальна форма господарського судочинства, спрощене провадження.*

Introduction. The simplification of the procedural form of justice is an interdisciplinary field of scientific researches, which is characterized by the following: a common approach in terms of determining the procedural form as a value; the role of the principle of procedural economy as a factor in the effectiveness of legal proceedings; differentiation of procedural forms, and the creation of flexible mechanisms for their change. The stage of establishing theoretical basis of simplified litigation in economic proceedings accounts for the relevance of search and determination of criteria for the conformity of the specifics of the dispute to the procedure for its consideration and resolution, as well as the identification of problems that arise when appraising EPC new laws regarding simplified legal proceedings.

Definition of the task. The purpose of this article is to reveal existing issues connected with the practical use of new EPC norms considering simplified litigation.

Research results. The main tendency of the modern stage of institutionalization of simplified litigation is its establishment as a complete alternative to an ordinary legal proceeding, as well as determination of the grounds and conditions for its maximum expansion [1, p. 11−13].

The formation of an independent type of simplified litigation corresponds to the special level of improvement of administrative justice and covers two approaches to its definition that are broad

and narrow meanings. In a broad sense, simplified administrative litigation is a set of administrative jurisdiction cases, which provide for simplifying the details of procedural stages, including the quantitative reduction of procedural actions by the subjects of the process and the narrowing of the variability of their behavior. In a narrow sense, simplified litigation is a normatively defined and universal procedural form for the consideration and resolution of typical administrative cases of a little complexity [2, p. 9].

The necessity for simplified dispute resolution procedures to appear in the economic process was linked mainly to the need of rationalization and optimization of judicial proceedings in terms of a claim form of defense of rights that appeared to be too formal and burdensome for some categories of economic disputes.

As the simplification of the order of the consideration of the case means the exclusion of certain elements from it, so it follows that the simplified proceedings in the economic process must be consistent with the goals of the judiciary and contain certain exceptions to the ordinary procedure for the investigation of cases, but herewith they are to be considered in strict accordance with the established procedural form.

Transferring this thesis into the field of economic justice, we can say that the main purpose of introducing simplified proceedings in economic justice was to ensure fast and efficient conduct of justice, to make judicial protection available (in particular by reducing the amount of the court fee), to decrease the cost of the process compared to the full-cycle court legal proceeding, to relieve courts of those cases that do not require full procedural form, and to eliminate the red tape of litigation.

However, the implementation of the simplified procedure should not object to the goals of the process as a whole. Other interests, such as the simplification of proceedings by the court itself should not be a priority while implementing simplified procedures [3, p. 9].

From the above-mentioned we can conclude that simplified proceedings in the economic process is a separate form of conducting judicial proceedings, which has been introduced to create additional procedural means to ensure the interests of participants of the process, provided that the minimized procedural form is followed.

The key features of simplified litigation in economic proceedings are: the completion of the procedural cycle within a particular judicial authority; reduction of the number of procedural actions or systematic change in the way they are committed; narrowing of the procedural capacities of the court and participants of the process; limitation of application of certain range of cases.

The consideration of the case of economic jurisdiction in the form of simplified proceedings is carried out based on the principles of economic litigation, which are characterized by particular features of their implementation. Considering that the implementation of these principles is an important guarantee of a fair trial and resolution of the case, in our opinion, the application of the simplified procedure should be consistent with the parties' position, and no alternative of considering the case in the simplified procedure is inadmissible without introducing additional procedural possibilities for them [4, p. 62–70].

The legislator enshrined clear provisions (Part 3 of Article 248 of the draft of Economic Procedural Code of Ukraine) that in solving the issue whether to consider the case in the simplified or general proceedings the court takes into account the following conditions: the price of the claim; the importance of the case to the parties; the plaintiff's chosen method of protection; the category and complexity of the case; the scope and nature of the evidence in the case, including whether it is necessary to assign an expertise, call witnesses, etc.; the number of parties and other participants of the case; whether the case is of considerable public interest; the parties' opinion on the need to hear the case under the rules of simplified legal proceedings [5, p. 7–31].

As a separate procedural form of economic litigation, simplified proceedings preserve the traditional structure, herewith it is possible to reduce separate steps or procedural actions within each stage. Thus, the features of the structure of the simplified proceedings include:

a) absence of the stage of the preliminary court hearing in cases;

b) limitation of procedural steps to ensure that participants of the process are properly informed;

c) absence of the preparatory part of the court session and the judicial debate;

d) making decisions without going to the chambers (in some cases).

With regard to such a stage of simplified proceedings as a court hearing, a number of scientists are of the opinion that there is a compulsory need for a court hearing to be held without calling the parties. Thus, according to Y.M. Medvedova, the parties are present at the session not physically, but with their positions, arguments and explanations mentioned in the legal claim, appeals to the legal claim, other explanations concerning the stated requirements, submitted in writing form [6, p. 140−145] .O.O. Fonova voices the same position by proposing the introduction of a court hearing model with a restriction on the means of proof as such that lines up more with the simplified procedure [7, p. 9].

We consider that while considering cases of the simplified procedure, the court hearing takes place without calling the parties. In fact, it means their absence, as it breaks the "chain of relationship" between the plaintiff and the defendant, who "cements" the litigation and serves as a derivative for appearing of the whole extent of the procedural rights and duties of the parties in the case.

We reckon that, despite the absence of a classic court hearing, the persons involved in the case fully submit their position to the court, which is obliged to accept their explanations in writing form and give them an appropriate assessment.

As we can see, at the very earliest stage of the emergence of the procedure for simplified legal proceedings in the EPC there are some problematic issues, which include:

– a considerable part of the preparatory actions are carried out by the economic court directly during the consideration of the case per se;

– it is difficult for the court to decide on all the circumstances of the case, and the participants of the case cannot be informed about the completeness of the subject of evidence, and as a result it raises a problem related to the efficiency and rationality of giving evidence by the participants at the court hearing;

– the inability of the court to enforce the right of litigants to submit their issues worthy of the expert's attention, if the court comes to the conclusion that it is impossible to resolve the case on the merits without the expert's opinion and appoint an expert examination (such procedural violation of rights will lead to inevitable legal consequences, including the inability of the court to use evidence to formulate its decision at the conclusion of the trial);

– the inability of the court to enforce the right of participants of the litigation to submit their issues, worthy the expert's attention, if the court comes to the conclusion that it is impossible to resolve the case per se without the expert's opinion and appoint an expert examination (such procedural violation of rights shall lead to inevitable legal consequences, including the inability of the court to use evidence to formulate its decision at the conclusion of the legal proceedings [8, p. 13−23]);

– when filing a petition by a participant or a statement that does not actually relate to the simplified legal proceedings, the court does not consider the views and opinions to satisfy or deny such a request (legal claim), which in turn is a violation of the rights of participants of the process;

– due to the lack of stage of the preparatory process, there is always a risk of inability to hear the case within the set time.

Taking into account the views of Candidates of Laws O. Uhrynovska and H. Hembar, who believe that the practical application of innovations in the establishment of the procedure to consider cases in the proceedings of simplified litigation under the jurisdiction of economic courts, does not fulfill their tasks and purposes, which they were implemented for, but, on the contrary, it gives the courts additional procedural steps and conflicting views on legal novelty, which requires clarification and legal interpretation at the legislative level [9, p. 85−89]. In our opinion, these problems can be solved without additional legislation norms, which can complicate their establishment even more. It would be an establishment of a compulsory additional stage in simplified proceedings, which is called a preliminary procedure.

Before proceeding to the consideration of the case per se, the court must announce a decision that the case will be heard in one form or another. A problematic issue regarding the procedure of consideration by economic courts of cases in simplified legal proceedings is the approach of judges to design

the introductory part of such a decision of this category of cases. In examining the judge's rulings, we found a negative pattern: the courts, as a rule, differently formulate the introductory part of the decision in this category of cases and, as a rule, do not indicate in which proceedings they consider the case.

Only a small part of the court rulings is found in the case review in:

– simplified procedure;

– simplified legal proceedings;

– simplified legal proceedings without calling the parties;

– Written simplified legal proceedings.

Studying the judicial statistics in the region, the data are simply astonishing, since between December 15, 2017 and July 1, 2018, about 24% of the total number of cases were considered in the simplified legal proceedings [10, Electronic resource].

While examining the issue of consideration of cases by economic courts in simplified proceedings, we conducted a comparative analysis of the norms of the EPC of Ukraine accepted in December 2017 [11] and the provisions of the EPC of Ukraine accepted in January 2018 [12], namely an analysis of Article 252, which has been altered in this period. The changes took place in Article 252, paragraphs 2 and 3, they concerned the specification of the terms of the trial essentially in the simplified proceedings, and the previous edition stated that the trial began only from the opening of the first court hearing.

In other words, the problematic issues related to the procedure of the economic courts to consider cases in simplified proceedings are connected with an extremely short time set for such cases. As practice shows, sixty days is not always enough to have a comprehensive, complete and objective solution.

It is possible to go from one type of proceedings to another, in this case, from a simplified claim to a general claim, which is possible at the request of the party involved in the case. According to Part 6 of Art. 259 of the Code of Civil Procedure of Ukraine, the trial begins with the stage of opening a new trial in the case, about which the court again renders a ruling on the case.

In practice, such a double procedure usually takes a lot of time from the courts, which once again gives the impression of the imperfection of optimization of the judiciary system in terms of consideration of cases of the simplified litigation by economic courts [13, p. 31]. Moreover, the detailing of legislative innovations concerns only time limits, but it does not raise the question regarding a stage of the litigation such a procedural action is possible.

In addition, the specification of the determination of the right of a trial participant to hand an objection to the case in simplified proceedings, the granting of such requests by some participants is missing, which is consequence of unclear legal authority of third parties in the case, who are also parties of the case. If third parties, who are acting, as participants in a case, are entitled with the powers mentioned, then from a legal point of view, this does not correspond to their legal status in the judicial process.

Thus, we have come up to the conclusion that the absence of a separate procedure, such as preparatory proceedings and sufficiently short deadlines set by the legislature for the purpose of the case for consideration, which is no more than sixty days (thirty days for the appointment of the case for trial and thirty days for the trial itself) causes all of the following issues, which arise in connection with the consideration of economic courts in the simplified legal proceedings.

We reckon that obtaining a copy of the court order is a necessary and fully justified condition for the practical implementation by the interested party of his or her constitutional right to appeal against the ruling of the court of the first instance.

Obtaining a copy of the court ruling and awareness of parties of its contents enable the party to state their claims and objections, as well as the grounds on which the issue of review of the ruling is raised, with reference to the relevant legislation norms and materials contained in the case or handed additionally, as it is provided by the current legislation of Ukraine.

Under the circumstances provided above, we consider that the court of appeal has no legitimate grounds, while deciding whether to appeal in cases of simplified procedure, to proceed from the date of the legal claim and especially since the date of that claim.

We consider that a number of problematic issues related to the procedure of conducting economic court cases in simplified proceedings arise from the imposition of an extremely short period for such a case.

Conclusions. We have come up to the conclusion that, in case of the simplified proceeding, a court hearing takes place without calling the parties, which, in essence, means that it is absent, since the "relationship chain" between the plaintiff and the defendant, which "cements" the lawsuit and serves as a derivative for the full scope of the procedural rights and duties of the parties to the case, is broken.

Thus, the improvement of economic litigation and the separation of simplified forms of proceedings are based on international standards of optimizing the work of judges and the principles of modern processual form, which include:

a) hearing the case no more than at two court hearings;

b) the cancellation of any attempt to misuse court procedures with sanctions against the parties;

c) the freedom to determine the form of trial by a judge, except cases provided by law.

When updating procedural legislation in Ukraine, it is advisable to use the experience of France, which has largely implemented international standards of judicial simplification.

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