

GENERAL OVERVIEW OF THE UKRAINIAN JUDICIAL SYSTEM

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The principles of delivering justice are declared in the *Constitution of Ukraine*. The most important principles are: justice is carried out solely by courts; delegation of the functions of a court as well as their assumption by other state bodies or state officials are inadmissible; extension of court jurisdiction over all legal relationships emerging in the state; judgments are binding over the entire territory of Ukraine.

The judicial system of Ukraine consists of courts of general jurisdiction and the court of constitutional jurisdiction. The courts of general jurisdiction specialize in civil, criminal, commercial, administrative cases and cases on administrative offences. The courts of general jurisdiction comprise general courts and specialized courts (commercial and administrative courts). The Supreme Court of Ukraine is the highest instance in the judicial system of courts of general jurisdiction. The Constitutional Court of Ukraine is the court of constitutional jurisdiction.

Consideration of a particular case by respective courts depends on the parties involved in a dispute and the category of case. The procedure for dispute consideration is specified separately for each category of the cases by the *Civil Procedure Code of Ukraine* (2004), the *Commercial Procedure Code of Ukraine* (2012), the *Administrative Procedure Code of Ukraine* (2005), the *Code of Ukraine on Administrative Offences* (1984), the *Criminal Procedure Code of Ukraine* (2012) and *On the Constitutional Court of Ukraine* (1996), *On Bankruptcy Proceedings Act of Ukraine* (1992), the *Tax Code* (2010) and others.

Commercial courts consider disputes arising between businesses. Hence, commercial courts have jurisdiction over the following cases: disputes arising from the conclusion, alteration, termination and performance of commercial contracts; bankruptcy; disputes regarding securities; disputes arising from corporate relationships (even if one of the parties is a private individual); disputes arising from land relationships; disputes on protection of economic competition and other cases, if such consideration does not directly lie within the jurisdiction of other courts or such consideration is not excluded from jurisdiction of commercial courts by procedural law.

For example, the procedural law excluded from jurisdiction of commercial courts cases on privatization of the state residential fund, on pricing of products (goods), and also tariffs on services (conducting works), if these prices and tariffs cannot be fixed by parties according to the law, cases on approval

of standards and technical terms, cases on public legal relations and within the competence of the Constitutional Court of Ukraine and administrative courts, other disputes within the jurisdiction of other state authorities in accordance with the laws and international agreements of Ukraine.

Private individuals should appeal to administrative courts for protection of their violated rights, if the rights of a private person or an entity have been violated by a subject of state authority while exercising authorized management functions. Administrative courts also consider cases when a subject of authority files a claim against an individual or an entity, if such dispute has a public and legal nature. Administrative cases include, *inter alia*, disputes with bodies of the State Tax Administration during a taxpayer's appeal against tax notifications and decisions, disputes regarding assignment, calculation and payment of benefits, disputes against decisions, actions or inaction of local councils regarding granting of land plots to individuals or entities, disputes arising from legal relationships in connection with election procedures or referendum, etc. Procedural law sets certain restrictions on settlement of disputes by administrative courts, and their settlement comes under the jurisdiction of other courts. Thus, administrative courts have no jurisdiction in:

- public legal cases which are under the jurisdiction of the Constitutional Court of Ukraine;
- cases that must be considered in the order of criminal proceedings;
- cases on imposing administrative penalties;
- cases on relationships that are referred to internal activity or exclusive competence of a union of citizens according to the law or its charter (regulation).

General courts consider all other cases where an individual is involved, as well as cases apart from those cases that are within the jurisdiction of other courts. General courts consider disputes arising from civil, housing, land, family, labor relations, cases on establishment of legal facts, cases on recognition and enforce-

ment of decisions of foreign courts, etc. The system of general courts is the most extensive (the courts are established in districts, city districts and towns), and in this connection some cases within administrative jurisdiction are settled in general courts as administrative courts of first instance. This approach is considered justified as the district administrative courts include districts and are usually situated in regional centers.

The Constitutional Court of Ukraine is an independent body in the court system where appeals are brought to ensure compliance with laws and other normative acts of legislative and executive powers to the Constitution of Ukraine, protection of constitutional rights and personal freedoms. The Constitutional Court of Ukraine adopts decisions and verifies whether laws and other legal acts of the Verkhovna Rada (Parliament) of Ukraine, the President of Ukraine, the Cabinet of Ministers of Ukraine, the Verkhovna Rada of the Autonomous Republic of Crimea, as well as international treaties are consistent with the Constitution of Ukraine, interprets the Constitution and the laws of Ukraine, etc. The laws of Ukraine, which define the powers of courts during their consideration of certain categories of cases or powers, often become the subject of consideration by the Constitutional Court of Ukraine. For example, the Constitutional Court of Ukraine has interpreted the Constitution and laws, according to which certain categories of social and land disputes should be considered by administrative courts, and the Supreme Court of Ukraine may not act as a court of cassation, which resulted in a change by legislators of its powers. Laws are interpreted on the jurisdiction of cases, in which acts, actions or negligence of prosecutor, investigator, investigative bodies regarding statements and reports concerning committed crimes or crimes being prepared are disputed.

The system of courts of general jurisdiction has four instances.

Local courts are courts of first instance and are the most numerous. Courts of first instance decide on the merits of a case, and are therefore entitled

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Antika Law Firm was founded in 2010. The firm provides legal services to national and international companies that do business in Ukraine and abroad.

The main areas of practice are:

- antitrust;
- dispute resolution and arbitration;
- criminal defense for business;
- construction & real estate;
- subsoil use;
- energy & energy efficiency;
- project financing;
- corporate/M&A;
- legal expertise.

The firm has been recognized by authoritative international and Ukrainian guides to legal profession such as The Legal 500 EMEA, Chambers Global, Chambers Europe, Best Lawyers, Ukrainian Law Firms, 50 Top Law Firms of Ukraine, and is recommended in the area of antitrust, corporate/M&A, dispute resolution, banking, finance and capital markets, real estate, land and subsoil use.

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The firm also advises the World Bank, the European Bank for Reconstruction and Development, USAID on energy and utility efficiency projects implementation in Ukraine.

The firm is a member of the American Chamber of Commerce in Ukraine, the Canada-Ukraine Chamber of Commerce, the European Business Association, and the International Turkish Ukrainian Businessmen Association.

The firm's partners are members of: the Scientific and Advisory Council of the Higher Economic Court of Ukraine; the Public Council of the Antimonopoly Committee of Ukraine; the Managing Council (on behalf of Ukraine) for Supporting Competition in the CIS Non-Profit Partnership; the International Bar Association; the Ukrainian Bar Association; Kiev and Kiev Region Bar Association.

to establish the factual circumstances of a case by examining evidence collected in the case in question in accordance with its own inner convictions. The judgments of local courts usually enter into effect after the expiry of the term for their appeal or after review by the court of appeal, if they are not canceled or not altered according to the result of such review.

Courts of appeal are courts of second instance. The authority of courts of appeal depends on specific court specialization and categories of cases. According to the general rule courts of appeal review a case and are also vested with authority to examine evidence and to accept further evidence if such evidence was not submitted by a party to the court of first instance due to a reasonable excuse. The judgment of the court of appeal enters into effect upon its proclamation.

The respective higher courts are those of further instance, and they reconsider cases in cassation proceedings. The peculiarity of consideration of a case by the courts of cassation is that they only consider correct application of material and procedural law by the lower level courts and are not authorized to collect new evidence or evaluate collected evidence in a case. If the court of cassation decides that there was not enough evidence collected by the courts regarding factual circumstances, the case is transferred to the local court for review on its merits. The court of cassation also gives binding instructions regarding what factual circumstances the court must find at a new trial. A ruling by the court of cassation comes into force upon its proclamation.

The final and the highest instance in the system of courts of general jurisdiction is the Supreme Court of Ukraine. It is vested with the powers to review judgments in the order of exceptional proceedings. In particular, the Supreme Court of Ukraine reviews cases on civil, criminal, administrative and economic procedure, such as:

- cases on unequal application by the court (courts) of cassation of material law in similar legal relationships in the order stipulated by procedural law;
- cases where the violation of international obligations during consideration of a case by Ukrainian court is determined by an international judicial institution the jurisdiction of which is recognized by Ukraine;

Application for review of the cassation courts cases should be brought to

the Supreme Court of Ukraine within three months from the day of the relevant resolution being adopted.

Consideration of cases in the order of exceptional proceedings is carried out after the admission by the court of cassation for consideration by the Supreme Court of Ukraine. Unequal application of procedural law by the courts of cassation is not grounds for the initiation of proceedings by the Supreme Court of Ukraine.

Judgments are considered by the Supreme Court of Ukraine at the sittings of the Chamber of competent jurisdiction. The exception is review of judgments passed by the Higher Administrative Court of Ukraine related to appeals against actions or inaction by the Verkhovna Rada of Ukraine, the President of Ukraine, the Supreme Council of Justice of Ukraine. These decisions are reconsidered by the Supreme Court of Ukraine upon their appropriate application.

According to the results of a case's consideration establishing the illegality of the judgment, the Supreme Court of Ukraine cancels it and takes a new one that should include a conclusion on proper application of the substantive law regarding a legal dispute and explanation on mistaken conclusions of the court of cassation regarding this issue. In some cases, the Supreme Court of Ukraine has the right to send the case back to the court that adopted the judgment being appealed against.

The current procedural law of Ukraine stipulates that the judgments of the Supreme Court of Ukraine regarding the correct application of this or that rule of law are binding for all members of social relationships — not only for the parties but for all state bodies, including the judges who apply this rule.

The legislation which regulates the judicial system of Ukraine is rather dynamic. Legislators are constantly trying to identify and eliminate regulatory gaps in the judicial system of Ukraine by responding with new legislative acts to detected problems. The most topical legislative proposals as of today are those in the judicial system aimed at improving the status of the Supreme Court of Ukraine by returning non-procedural powers to it, namely the unification of jurisprudence, providing explanations, renewal of the Plenum of the Supreme Court of Ukraine, returning powers to determine the existence of grounds for appeal, and so on.