Supreme
Court

Supreme Court Facts and Figures in 2020

COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

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Welcome speech

Dear fellows!

The Supreme Court has reached the end of its third year, a year of real challenges not only for the Court but also for the world. The global crisis caused by the COVID-19 pandemic has affected every family and industry.

In 2020, the priorities of the Court remained unchanged, with the focus firmly on ensuring the rule of law and the effective protection of human rights and freedoms.

However, the pandemic forced us to pay greater attention to the issues of protecting the life and health of both the Court's employees and visitors, as well as ensuring that cases are heard remotely.

The Supreme Court and the entire judiciary showed extraordinary commitment, resilience, courage, and stability amid the ongoing global health crisis. And despite all the difficulties, the Supreme Court heard 93,500 cases in 2020, matching the pace of the year before. I am grateful to every judge and every employee of the administrative office for such effective and selfless work in these hard times.

The global crisis, however, was not the only challenge for the Supreme Court, because in 2020, as with the year before, the Court had to fight for the independence of the judiciary, as well as defend the rights of our citizens before the Constitutional Court of Ukraine and seek the abolition of those quarantine restrictions that contradict the Constitution of Ukraine. In our opinion, the restrictions did not meet the legitimate aim and affected the equality of the rights and freedoms of citizens, in particular, the rights to peaceful assembly and entrepreneurial activity, the right of access to health care, the level of material security of employees, officials, and servants of budgetary institutions, namely judges.

The Constitutional Court of Ukraine upheld both submissions of the Supreme Court on the unconstitutionality of some provisions in the Law of Ukraine "On Amendments to the Law of Ukraine "On the Judiciary and the Status of Judges" and of Some Laws of Ukraine on the Activity of Judicial Governance Bodies" (No. 193-IX) and the Law of Ukraine "On Amendments to the Law of Ukraine "On the Protection of the Population against Infectious Diseases" to Prevent the Spread of the Coronavirus Disease (COVID-19)" (No. 55-IX), stating another attack on the independence of the judiciary by the legislative and executive authorities.

Therefore, in 2020, one of our main tasks was to build an effective dialogue between the branches of government for the greater public good in Ukraine.

This task is also relevant for the coming years, particularly in light of the continued reform of the justice sector, which, undoubtedly, should be implemented with respect for the independence of the judiciary. Indeed, without an independent court, all attempts to build a state governed by the rule of law will be in vain.

Finally, I wish everyone wisdom, health, strength, and inspiration as we work together in order to establish the rule of law and protect the rights and interests of every citizen of our state.

President of the Supreme Court
Valentyna Danishevska

Introduction

The third year of the Supreme Court's activity can be described as unprecedented in terms of the number of trials. First, this implies upholding justice under challenging COVID-19 quarantine conditions, as well as another attack on the independence of the judiciary, and many other obstacles.

However, in 2020, the Supreme Court accepted these challenges with dignity and continued to hear cases. During the year, 93,500 cases were heard and 79,000 cases were filed with the Court. As of 1 January 2021, the balance was 34,500 cases.

The President of the Supreme Court, Valentyna Danishevska, and judges of the Supreme Court during the session at the Grand Chamber of the Constitutional Court of Ukraine in the case submitted by the Supreme Court on compliance of the next judicial reform with the Constitution of Ukraine, 21 January 2020

In order to prevent interference with the independence of judges and encroachment on the rights and freedoms of citizens, the Plenum of the Supreme Court addressed the relevant submissions to the Constitutional Court of Ukraine several times during 2020, including on the unconstitutionality of restrictions on the rights and freedoms of citizens imposed by the parliament and the government due to the quarantine.

In addition, the Supreme Court provided conclusions concerning the draft laws on the judiciary and the status of judges and made efforts to resolve the personnel and financial issues of the judiciary.

In 2020, the Plenum of the Supreme Court appealed to the Constitutional Court of Ukraine three times in order to protect the independence of judges and the rights and freedoms of citizens

One of the unpredictable challenges of 2020 was the Supreme Court's hearing of cases under quarantine, meaning they had to quickly readjust to a new mode of operation. Following the Constitution of Ukraine and the Convention for the Protection of Human Rights and Fundamental Freedoms, which guarantee everyone the right of access to justice, the Supreme Court, like the entire judiciary, continued to operate even during a full lockdown.

At the same time, the Court took measures to prevent the spread of coronavirus in the administration of justice. The Supreme Court minimised mass events unrelated to procedural activities, recommended the use of alternative means of communication with the Supreme Court (by e-mail and phone). Parties could apply to the Supreme Court with a motion to postpone the hearing in a case due to the quarantine.

During court hearings, the Supreme Court took measures aimed at preventing the spread of COVID-19

The legislator also provided assistance in preventing the spread of an infectious disease: the procedural codes were supplemented with provisions on the peculiarities of hearing cases under quarantine measures. In particular, during the quarantine period, participants in a case were allowed to participate in the court session via videoconference outside the courthouse using their own technical means.

The first session of the Administrative Cassation Court of the Supreme Court held via videoconference under the new procedure: the parties to the case were outside the courthouse and used personal technical means, 15 April 2020

The quarantine restrictions, in particular the need for social distancing, did not prevent the judges of the Supreme Court from participating in legal activities, since most of them took place online. Webinars introduced in 2020 with the Supreme Court judges devoted to relevant judicial practice became popular amongst lawyers.

In addition, online training for judges of the Supreme Court took place from October to December 2020. It was aimed at their sustainment and organised by the National School of Judges of Ukraine in co-operation with international technical assistance projects. During their studies, judges from the Supreme Court had the opportunity to adopt the experience of peers from European institutions, to communicate with judges and presidents of courts from partner countries, as well as with Ukrainian and foreign experts.

Judge of the Criminal Cassation Court of the Supreme Court, Svitlana Yakovleva, during online training

Meanwhile, it continued the work started in the first two years of the Supreme Court's operation – the publication of digests of the Supreme Court case law and briefs of judgments by the European Court of Human Rights.

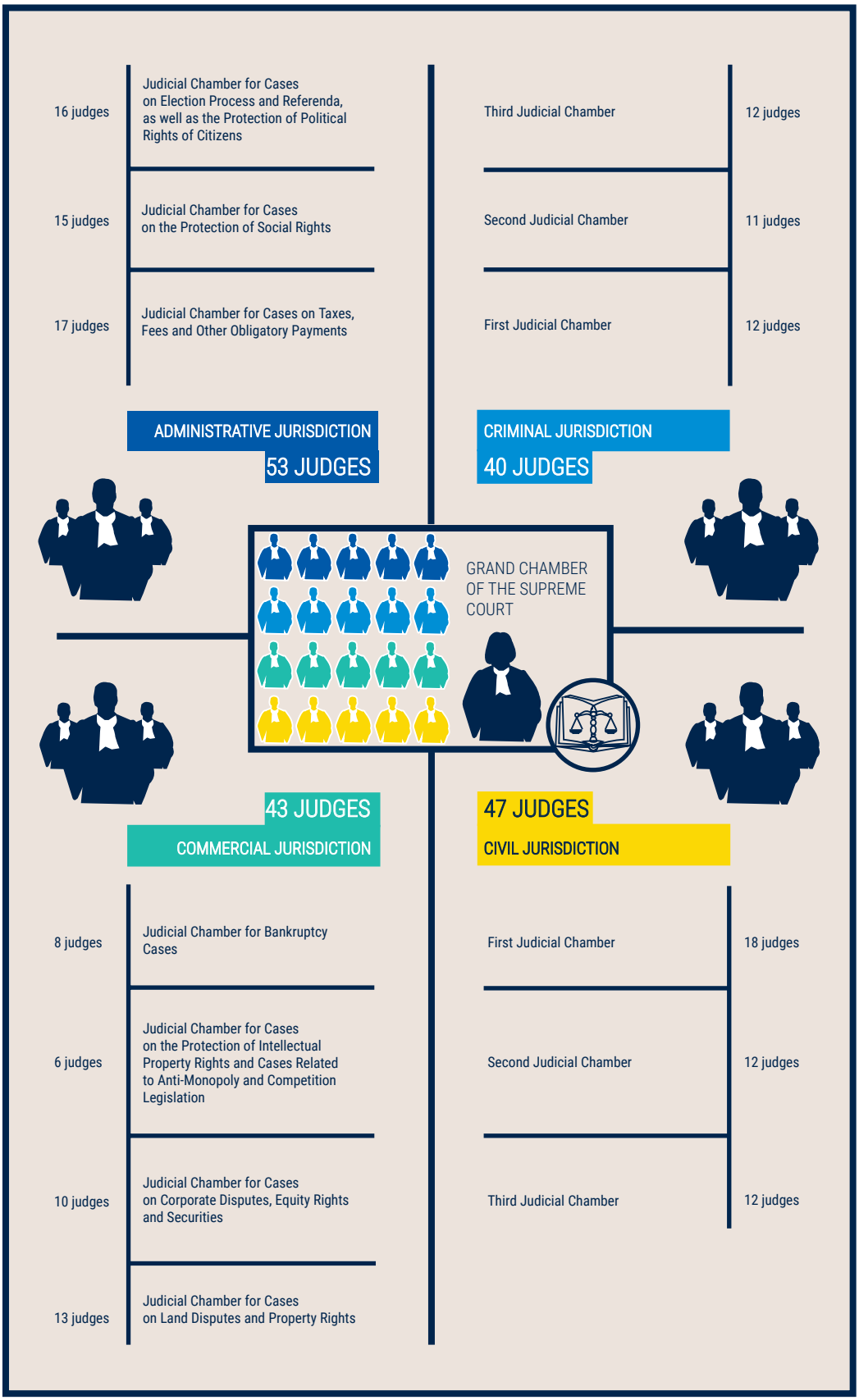
The Supreme Court also actively developed contacts with international partners, made improvements in communication with the media and the public by creating new information products, and was engaged in awareness-raising activities amongst children and young people.

We invite you to learn more about the third year of the Supreme Court from this report.

About the Supreme Court

Procedural structure of the Supreme Court

183 judges*



* As of date of report's publication

Judge Profile

183

JUDGES OF THE SUPREME COURT

77

106

36 37 y.o.

The youngest judge

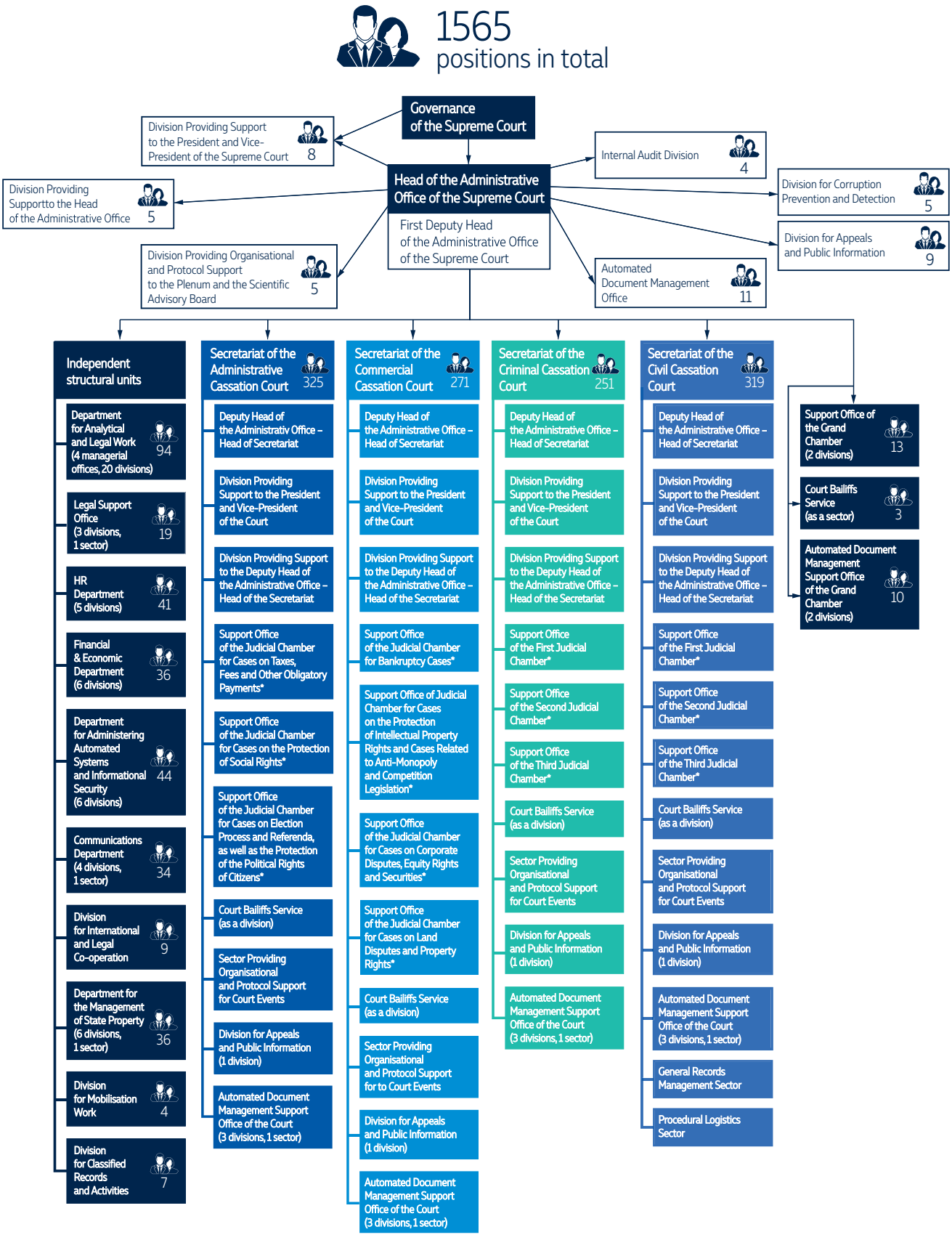
63 64 y.o.

The oldest judge

72 judges — CANDIDATES OF SCIENCES

22 judges — DOCTORS OF SCIENCES

Structure of the Supreme Court administrative office

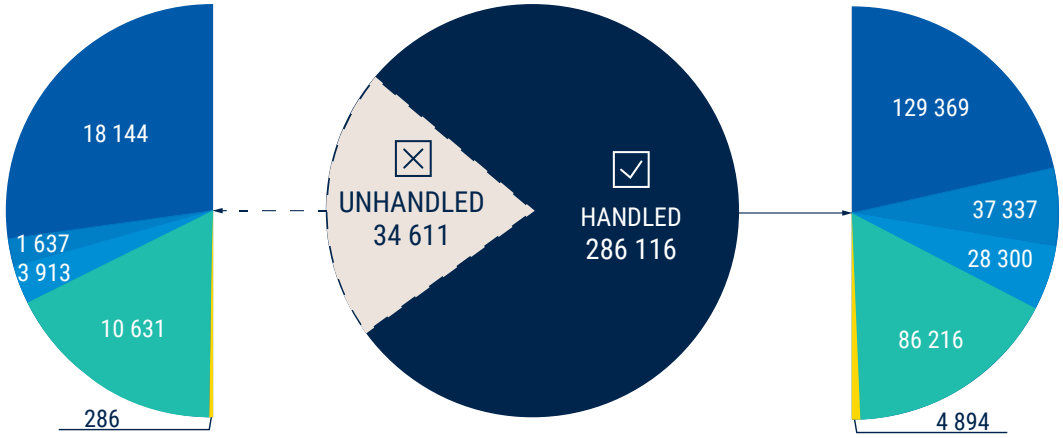


*The Support Office of any Judicial Chamber consists of an Executive Support Service, the Support Office of the Secretariat, and Judges from the Judicial Chamber

General Statistics

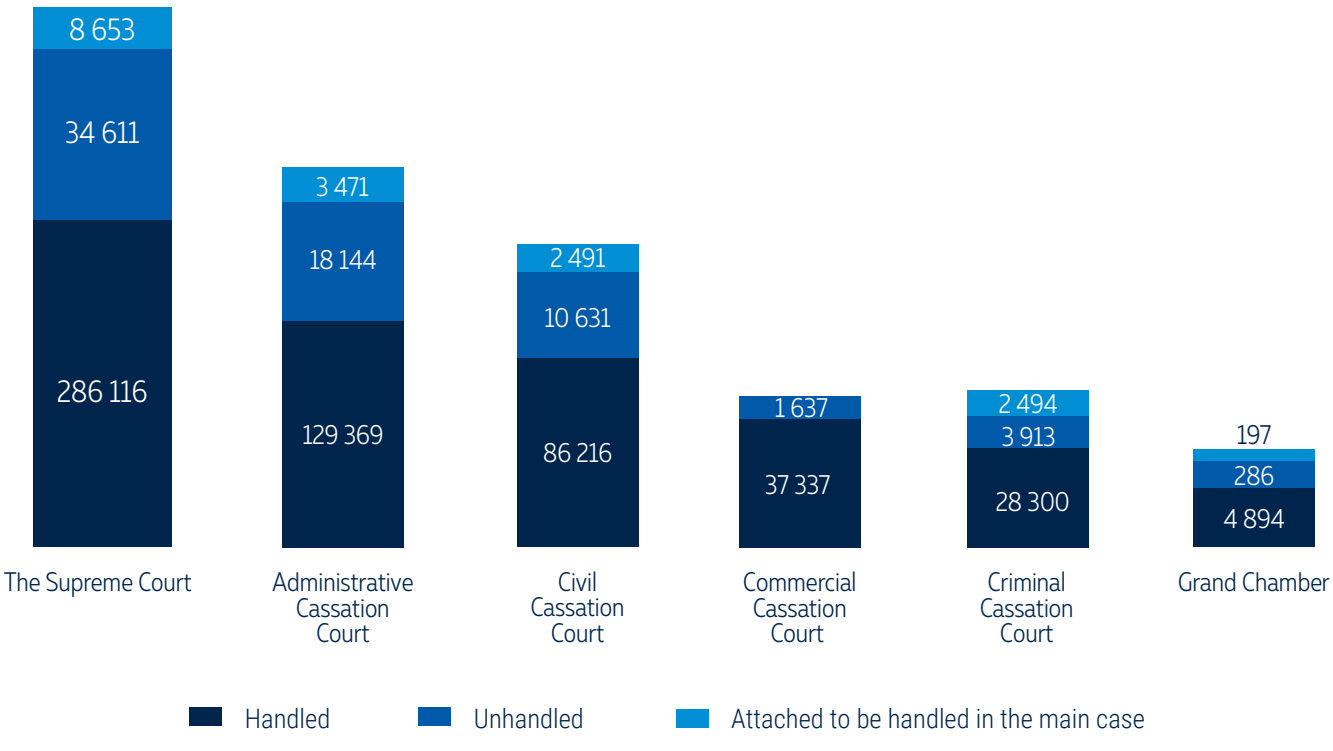
Receipt and handling of cases and materials
from 15 December 2017 to 31 December 2020

329, 4 thousand received

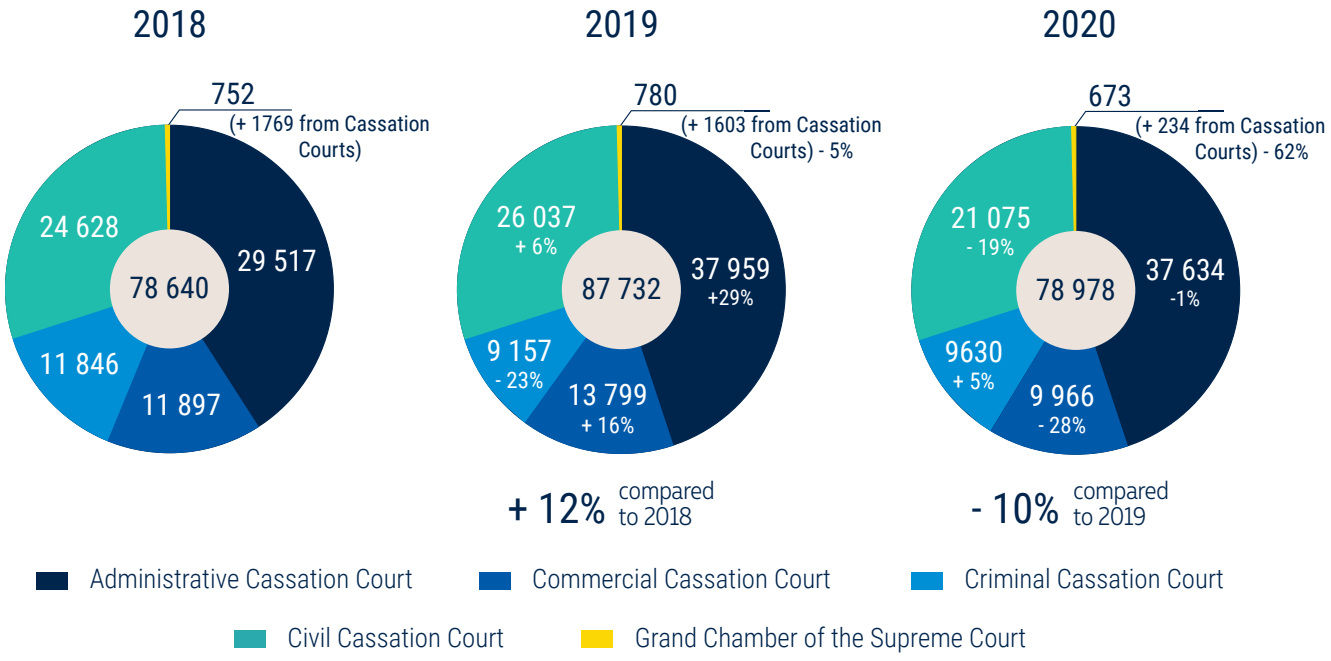


Administrative Cassation Court
Civil Cassation Court
Commercial Cassation Court
Grand Chamber of the Supreme Court
Criminal Cassation Court

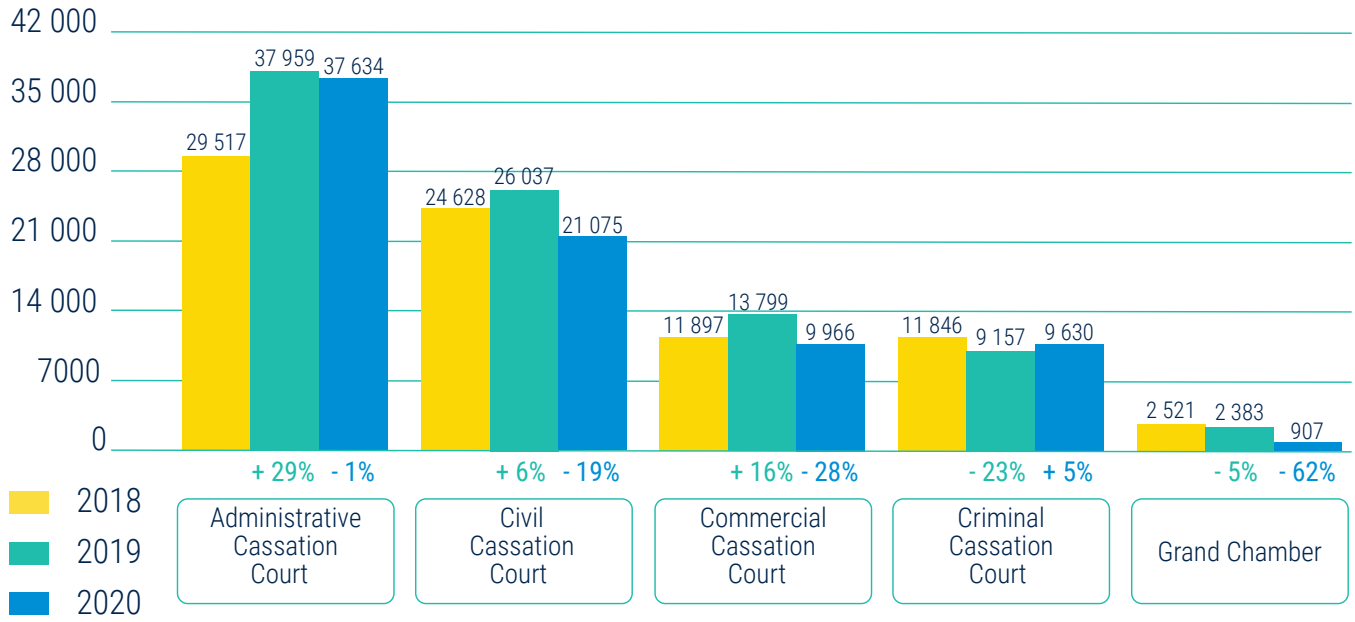
Overall performance
from 15 December 2017 to 31 December 2020



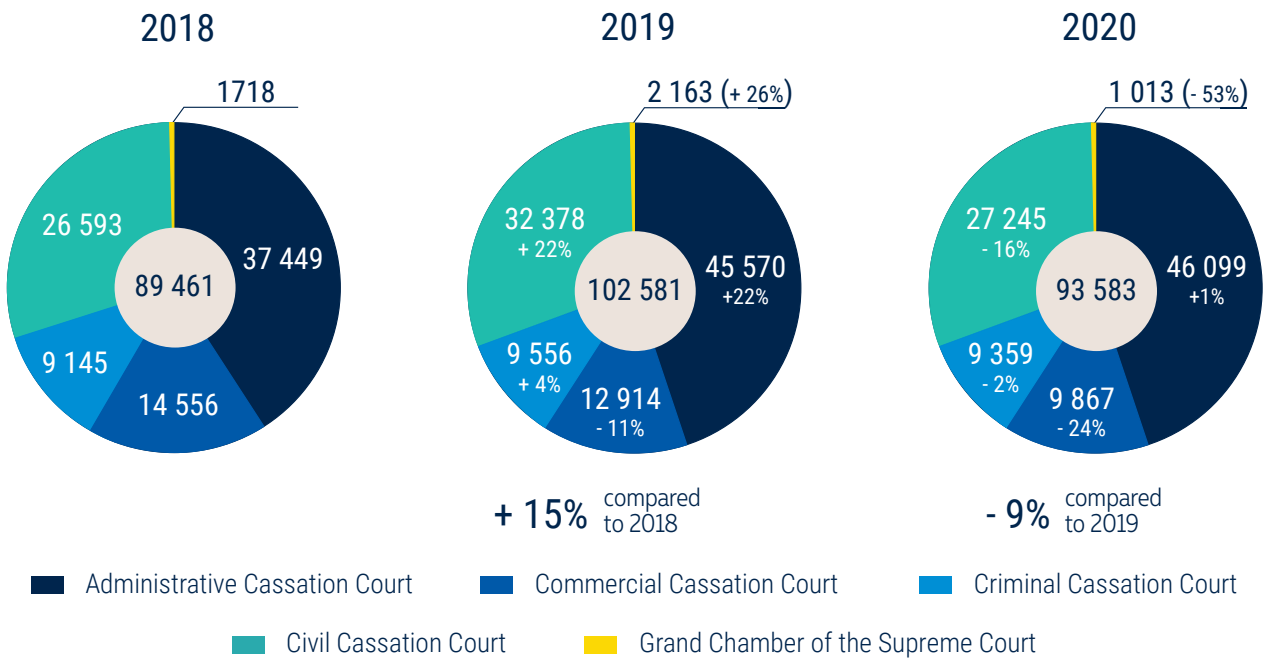
New cases and materials received by the Supreme Court in 2018, 2019 and 2020



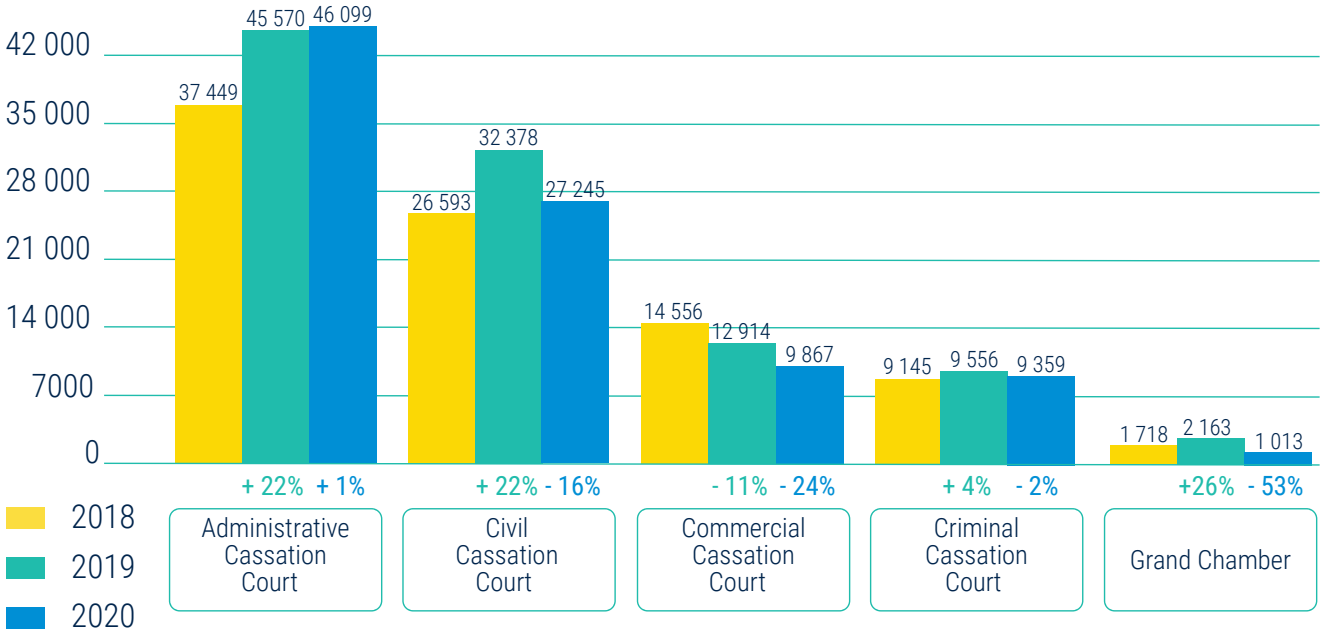
Receipt by jurisdictions



Cases and materials handled by the Supreme Court in 2018, 2019 and 2020



Handling by jurisdictions



Judges of the Grand Chamber of the Supreme Court

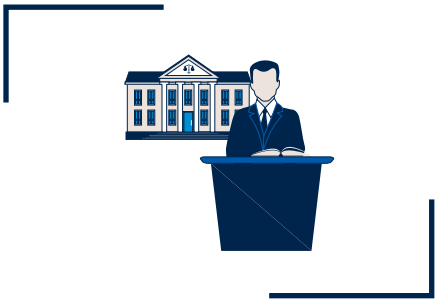
(2018–2020)

Judgments of the Grand Chamber of the Supreme Court

Compared to 2019, when the majority of cases before the Grand Chamber involved jurisdictional issues, the number of such cases decreased significantly in 2020. This is due to the changes in the procedural legislation that came into force in November 2019. Prior to this, all cassation appeals that raised the issue of jurisdiction had to be referred to the Grand Chamber. Under the current wording of the relevant provisions of the procedural codes, such appeals shall be referred to the Grand Chamber on limited grounds.

Following these changes, the Grand Chamber of the Supreme Court receives a much smaller number of relevant appeals for determining a proper jurisdiction, as the vast majority of them are now heard by the Cassation Courts. More attention was thus given to the cases referred to the Grand Chamber on the grounds of exceptional legal issue as well as on the grounds of the need to deviate from the findings of the Supreme Court and the Supreme Court of Ukraine.

In hearing such cases, the Grand Chamber shaped a number of important legal positions on the issues which had long remained problematic. In particular, these relate to the lawyer's "success fee" and the conditions of its assessment by the court, the issue of the grounds for state representation in court by a prosecutor, the jurisdiction of disputes over the termination of an employment contract with the head of a legal entity, the increase in the amount of a loan without the consent of a guarantor, the criteria for the court to reduce the average earnings for the delay in settlement upon dismissal of an employee, and other positions described below.



1. The Grand Chamber of the Supreme Court has shaped a legal position concerning the grounds for state representation in court by a prosecutor in case of omission by a competent authority.

In case No. 912/2385/18, deciding on whether a prosecutor has grounds for representing the state, the Grand Chamber of the Supreme Court noted that a prosecutor, when bringing an action before the court, should substantiate and prove the grounds for representation, which include omission by a competent authority.

By contacting the competent authority before bringing an action under Article 23 of the Law of Ukraine "On the Prosecutor's Office," the prosecutor actually gives it the opportunity to respond to the alleged violation of state interests, in particular, by ordering to verify the violations of the legislation detected by the prosecutor, taking action to remedy the situation, namely filing an action or a reasoned notification to the prosecutor that no such violation has occurred.

The failure of the competent authority to take any action within a reasonable time after the authority has become aware or should have become aware of the alleged violation of the state interests shall be qualified as an omission on the part of the relevant authority. The reasonableness of the time limit is determined by the court taking into account whether the interests of the state required immediate protection (in particular, due to the expiry of the limitation period or the possibility of further alienation of property which has unlawfully been taken from State ownership), as well as such factors as the significance of the violation

of State interests, the possibility of imminent negative consequences resulting from the omission by the competent authority, the existence of objective reasons which prevent such application and so forth.

However, the Grand Chamber of the Supreme Court noted that the court, when deciding whether there are grounds for representation, does not have to establish precisely the unlawfulness of the omission by the competent authority or its official.

Thus, the Grand Chamber of the Supreme Court concluded that it is sufficient for the prosecutor to comply with the procedure set out in Article 23 of the Law of Ukraine "On the Prosecutor's Office", and if the competent authority fails to bring an action in the interests of the state by itself within a reasonable time after receiving the notice, this would be a sufficient argument to confirm its omission. If the prosecutor is aware of the reasons for such failure, he/she should include them mandatorily in the statement of grounds for representation contained in the action, but if it is not possible to ascertain such reasons from the response of the competent authority to the prosecutor's application or no such response has been received at all, that does not constitute grounds for considering the prosecutor's application unfounded.

In addition, the Grand Chamber of the Supreme Court has resolved the issue of the procedural consequences of a prosecutor's failure to provide a court with the statement of grounds for representing the state's interests before the court.

In particular, the Grand Chamber of the Supreme Court noted that if after initiating the proceedings in a case, the court, in the light of the arguments put forward by the parties to the case and the evidence provided, finds that there are no grounds for the prosecutor to represent the state before the court, the court shall dismiss the statement of a claim brought by the prosecutor in the interests of the state represented by the competent authority, in accordance with the provisions of paragraph 2 of Article 226(1) of the Commercial Procedure Code of Ukraine.

The ruling of the Grand Chamber of the Supreme Court dated 26 May 2020 in case No. 912/2385/18: https://reyestr.court.gov.ua/Review/90458902.

2. An increase in the amount of a loan without the consent of a guarantor, even if the surety contract provides for the guarantor to agree to increase the principal obligation when entering into that contract, is a ground for termination of the surety

In case No. 761/9584/15-ц, the Grand Chamber of the Supreme Court considered the issue of surety termination in the event of increasing the amount of a loan without the consent of a guarantor if the surety contract provides for the guarantor to agree to increase the principal obligation.

The Grand Chamber of the Supreme Court found that the provisions of Article 559(1) of the Civil Code of Ukraine stipulate special regulations for changes in the surety-secured obligation and hence in the contract, which determines the extent of debtor's obligations, given the guarantor's

declaration of intent and notice in addition to that of the parties to the contract, and establish the legal consequences of failure to consent the guarantor.

As a general rule, and as established in Article 651(1) of the Civil Code of Ukraine, changing the terms of the contract is allowed only by agreement of the parties unless otherwise provided by the contract or law.

The terms of the surety contract in that the guarantor agrees to increase the principal obligation when entering into this contract do not exclude the application of the rules stipulated in Article 202(3), paragraph 3 of the Civil Code of Ukraine, and, accordingly, the need to agree certain unilaterally made changes to the principal obligation with the guarantor in due form.

Thus, the Grand Chamber of the Supreme Court concluded that an increase in the amount of the loan without the consent of the guarantor, even if the surety contract provides for the guarantor to agree to increase the principal obligation when entering into that contract, shall constitute grounds for termination of the surety based on Article 559(1) of the Civil Code of Ukraine.

The ruling of the Grand Chamber of the Supreme Court dated 26 June 2020 in case No. 910/13109/18: https://reyestr.court.gov.ua/Review/90111804.

3. The Grand Chamber of the Supreme Court has established the criteria for the court to reduce the average earnings for the delay in settlement upon dismissal of an employee

After the cassation review of the case, the Grand Chamber of the Supreme Court concluded that the mechanism for compensation by the employer of employee's average earnings for the period of delay in settlement upon dismissal, as provided for in Article 117 of the Labour Code of Ukraine does not provide clear criteria for assessing the proportionality of the just and reasonable balance between the interests of the employee and the employer.

At the same time, the criteria formulated in the ruling of the Supreme Court of Ukraine dated 27 April 2016, in case No. 6-113цс16, under which the court may reduce the amount of compensation under Article 117 of the Labour Code of Ukraine does not correspond to the purpose of compensating the employee for the pecuniary losses he suffers due to the delayed settlement by the employer, and which could have been reasonably assumed.

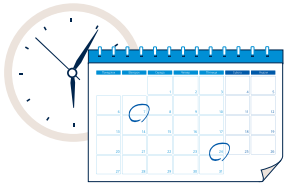
In the opinion of the Grand Chamber of the Supreme Court, based on the principles of reasonableness, justice, and proportionality, a court may, under certain circumstances, reduce the amount of compensation provided by Article 117 of the Labour Code of Ukraine.

When reducing the amount of compensation based on the average earnings for the period of delay in settlement by the employer under Article 117 of the Labour Code of Ukraine, the following shall be taken into account: the amount of the employer's overdue debt on payment of all amounts due to the employee upon dismissal, as provided for by labour legislation, collective agreement, contract

or employment contract as of the date of dismissal; the period of delay in payment of such debt, as well as the reason for the duration of such period from the date of violation of the employee's right and to the date of his/her claim for recovery of the relevant amounts; the likely amount of the employee's pecuniary losses associated with the delayed settlement upon dismissal; other circumstances of the case established by court, in particular the actions of the employee and the employer in the disputed legal relationship, the proportionality of the likely amount of the employee's pecuniary losses associated with the delayed settlement upon dismissal and the average earnings for the untimely settlement upon dismissal declared by the plaintiff for recovery.

Furthermore, the court may reduce the amount of the average earnings for the period of delay in settlement upon dismissal of an employee irrespective of whether it upholds the claim for recovery of the amounts due to the dismissed employee in full or in part.

The ruling of the Grand Chamber of the Supreme Court dated 26 June 2019 in case No. 761/9584/15-ц: https://reyestr.court.gov.ua/Review/87952206.



4. The Grand Chamber of the Supreme Court has clarified the procedure for extending leave in the event of temporary incapacity for work occurring during such leave

Under the circumstances of the case, the plaintiff fell ill during her annual leave and submitted a certificate of incapacity for work to the Financial and Accounting Office. The plaintiff had, however, been dismissed from her employment on the basis of Article 40(1), paragraph 4 of the Labour Code of Ukraine. The reason for the dismissal was the absence of applications for extension of annual leave.

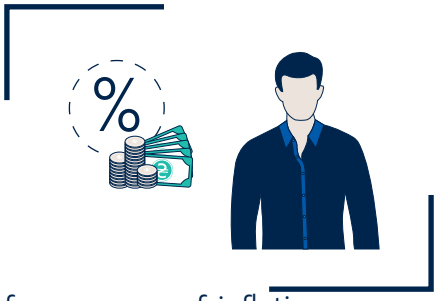
In resolving the dispute, the Grand Chamber of the Supreme Court noted that Ukrainian labour law does not provide for an employee to apply for extended leave, nor does it require the consent of the employer, because the period of leave had already been agreed upon by the parties, but the impossibility of using it exactly on the dates specified in the order was caused by circumstances beyond the control of either party.

The only obligation of the employee is to notify the employer of temporary incapacity for work, which is certified in the prescribed manner, namely by issuing a certificate of incapacity for work. Such notice can be given in any way, and the certificate of incapacity for work can be provided after the employee returns from leave, which will confirm the legitimacy of such an extension.

According to the Grand Chamber of the Supreme Court, the lack of an employee's application for an extension of leave cannot cancel the legally established obligation of the employer to extend the leave by the number of days of temporary incapacity for work, and especially it cannot be a decisive reason for imposing disciplinary liability on the employee in the form of dismissal for an unexcused absence.

Thus, the Grand Chamber of the Supreme Court came to the conclusion that the extension of annual leave in the case of the employee's temporary incapacity for work, which occurred during the leave, is automatic and is the employer's obligation, requiring only the receipt a notice of temporary incapacity for work from the employee who has been certified thus in the prescribed manner (that is, a certificate of incapacity for work), regardless of whether the employee has filed the appropriate application.

The ruling of the Grand Chamber of the Supreme Court dated 13 October 2020 in case No. 712/9213/18: https://reyestr.court.gov.ua/Review/93217983.



5. The Grand Chamber of the Supreme Court has determined the jurisdiction of disputes over a taxpayer's claim for recovery of inflationary and annual interest accrued on the overdue amount of budget arrears for VAT refunds

In case No. 910/4590/19, resolving the dispute on the jurisdiction, the Grand Chamber of the Supreme Court noted that the claim for recovery of inflationary accruals and the amount of three percent per annum is not a type of compensation for damage caused by illegal decisions, acts or omissions of the authority, which is subject to proof of the amount of damage caused.

Recovery of inflation and annual interest specified in Article 625(2) of the Civil Code of Ukraine is a mean to compensate the pecuniary losses of the creditor and not a way to compensate for damages. Penalties are of the same nature. In particular, a penalty at the NBU official discount rate of 120 percent, which is accrued on the amount of budget arrears for VAT refunds according to paragraph 200.23 of Article 200 of the Tax Code of Ukraine is a way to compensate the pecuniary losses of the creditor but not a way to compensate for damages.

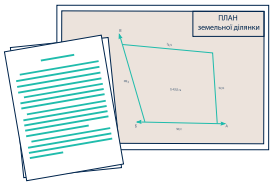
Inflation and the annual interest are accrued on the amount of the overdue principal obligation. Therefore, the obligation to pay inflation and annual interest is an accessory obligation, additional to the principal one, depends on the principal obligation and shares its fate. Accordingly, the claim for inflation and annual interest is added to the principal claim.

In the case at hand, the claim for inflation and annual interest is additional, and the principal claim is the claim for payment of budget arrears for VAT refunds. In resolving the dispute on the recovery of inflation and annual interest from the budget, the court will necessarily face the issue of the existence of the budget arrears for VAT refunds, the amount of such arrears, the term of payment of such arrears, and the overdue period, namely the issue to be resolved by the rules of the administrative proceedings.

Thus, the Grand Chamber of the Supreme Court concluded that the dispute on the claim for recovery of inflation and annual interest accrued on the overdue amount of the budget arrears for VAT refunds shall be considered by the rules of administrative proceedings regardless of whether such claim is combined with one of the claims referred to in paragraphs 1-4 of Article 5(1) of Code

of Administrative Procedure of Ukraine, whether it is combined with the claim for recovery of the budget arrears for VAT refunds and whether these claims are heard in another case.

The ruling of the Grand Chamber of the Supreme Court dated 7 April 2020 in case No. 910/4590/19: https://reyestr.court.gov.ua/Review/89252068.



6. The Grand Chamber of the Supreme Court of Ukraine held that before the time of entering into a lease agreement for a land plot in state or municipal ownership (at the pre-contract stage), the parties should act legally, and if there are two or more parties wishing to secure a lease of the land plot, the lease right for the said land plot shall be subject to a competitive bidding process (land auction) in accordance with Article 135 of the Land Code of Ukraine

In case No. 688/2908/16-ц, the plaintiff received permission for the development of the land allotment and management plan for lease but was denied approval of the plan. Subsequently, the plaintiff discovered that the land plot had already been granted to another person under the lease agreement, which the plaintiff considered illegal.

In resolving the dispute, the Grand Chamber of the Supreme Court pointed out that the lease legal arrangements only arise at the time the lease agreement is concluded. Before that, starting from the moment a person applies to the relevant executive authority or local self-government body for permission to develop a land allotment and management plan, pre-contractual relations continue: the parties negotiate about the subject of the agreement.

At the same time, the Grand Chamber of the Supreme Court remarked that the absence of contractual relations between the parties prior to the conclusion of the agreement does not mean that the parties do not have any obligations towards each other during the pre-contractual stage. During the pre-contractual stage, the parties should act lawfully and, in particular, act in good faith, take reasonable account of each other's interests, and refrain from acting in bad faith or omissions.

Manifestations of such bad faith or unreasonable conduct are numerous and cannot be exhaustively determined; therefore, it is impossible to provide a single universal answer to whether the conduct of an executive authority or local self-government body permitting several persons to develop a land allocation and management plan is lawful or unlawful. The answer to this question depends on the assessment of such conduct as lawful or unlawful, and such assessment should be made on a case-by-case basis, taking into account the specific circumstances of the case.

In the event of failure to obtain such a land plot, a person who has incurred costs for the development and approval of a land management plan provided the land plot is formed, may claim reimbursement of the costs incurred.

The Grand Chamber of the Supreme Court noted herewith that the non-competitive granting of a land plot for usage provided that there are two or more interested parties does not comply

with the principles of justice, reasonableness, and good faith. Therefore, if there are two or more parties wishing to take out a lease of a land plot in state or municipal ownership, the lease right for such land plot shall be subject to a competitive bidding process (land auction) pursuant to Article 135 of the Land Code of Ukraine. This rule also applies in the case of transferring land plots to citizens for farming (if the legal relations arose before 18 February 2016).

The ruling of the Grand Chamber of the Supreme Court dated 29 September 2020 in case No.688/2908/16-ц: https://reyestr.court.gov.ua/Review/92137264.

7. State registration of ownership rights to unauthorised construction for the person who carried out the unauthorised construction does not change the legal regime of such construction as unauthorised and does not exclude the possibility of demolishing the real estate in accordance with the procedure established for unauthorised constructions

In case No. 916/2791/13, the Grand Chamber of the Supreme Court examined the issue of the possibility of demolishing the real estate property for which the ownership right was registered under the procedure established for unauthorised constructions.

The Grand Chamber of the Supreme Court stated that the application of the Law of Ukraine "On state registration of rights to real estate and their encumbrances" does not entail other legal consequences, except for the official recognition and confirmation by the state of the relevant legal facts, establishing the presumption of accuracy of registered information from the register for third parties. State registration of ownership rights to real estate is one of the legal facts in the legal framework necessary for the emergence of ownership rights and has no independent meaning regarding the grounds for ownership rights.

The systemic analysis of the above provisions of legislative acts allows for the assertion that the state registration determines only the moment after which the ownership right arises, in the presence of other legal facts stipulated by law as necessary for arising of the ownership right.

At the same time, the wording of provisions in Article 376 of the Civil Code of Ukraine excludes other ways of legitimising unauthorised construction and acquiring ownership rights to such real estate than those set out in this Article.

Thus, state registration of ownership rights to unauthorised construction for the person who carried out the unauthorised construction does not change the legal regime of such construction as unauthorised and does not exclude the possibility of demolishing such real estate in accordance with the procedure established for unauthorised constructions.

The ruling of the Grand Chamber of the Supreme Court dated 7 April 2020 in case No. 916/2791/13: https://reyestr.court.gov.ua/Review/89564248.

8. The Grand Chamber of the Supreme Court has determined that it is possible to recover non-pecuniary damage for breach of the terms of a consumer contract when this is not provided for by law or the contract

In case No. 216/3521/16-ц, the plaintiff brought an action for the protection of consumer rights and recovery of a bank deposit. In addition, the plaintiff sought recovery of non-pecuniary damage caused by the defendant's unlawful actions.

In rejecting the plaintiff's claim for recovery of non-pecuniary damage, the lower courts had held that in disputes on consumer protection, the applicable civil law provided for compensation for non-pecuniary damage if the damage was caused to the property of the consumer or took the form of injury, other health damage, or death. The term deposit agreement also did not provide compensation for non-pecuniary damage.

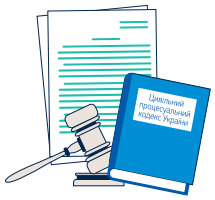
The Grand Chamber of the Supreme Court disagreed with these findings and pointed out that despite the terms of the contract, the bank's breach of obligations to return the deposit constitutes a product defect (improper provision of financial services) within the meaning of the legislation on consumer protection and in accordance with Articles 4 and 22 of the Law of Ukraine "On the Protection of Consumer Rights" shall entail compensation for non-pecuniary damage caused to the depositor by such improper provision of financial services.

Moreover, based on the provisions of Articles 16 and 23 of the Civil Code of Ukraine and the content of the right to compensation for non-pecuniary damage generally as a means of protecting legal civil rights, compensation for moral damage shall be made in any case of its infliction: the right to compensation for non-pecuniary (moral) damage arises from the violation of a person's rights regardless of the special rules of civil law.

Thus, the Grand Chamber of the Supreme Court concluded that in resolving a dispute on non-pecuniary damage for breach of a consumer contract, particularly in a case where a bank violated its obligation to return the deposit, the courts should consider that non-pecuniary damage may be compensated even if it is not directly provided for by law or any agreement and shall be recoverable under Articles 16 and 23 of the Civil Code of Ukraine and Articles 4 and 22 of the Law of Ukraine "On the Protection of Consumer Rights" even in cases where the right to compensation for non-pecuniary damage is provided by the agreement.

At the same time, the Grand Chamber of the Supreme Court held that provisions in the consumer contract that restrict a consumer's right to compensation for losses and pecuniary damage incurred by the bank due to non-fulfilment or untimely fulfilment of obligations under this contract are unfair and should be declared invalid.

The ruling of the Grand Chamber of the Supreme Court dated 1 September 2020 in case No. 216/3521/16-ц: https://reyestr.court.gov.ua/Review/91644731.



9 The Grand Chamber of the Supreme Court has shaped a legal position on the compensatory nature of liability measures in civil law and the possibility for the court to reduce both the amount of forfeit, fine, and interest per annum provided for by Article 625 of the Civil Code of Ukraine

In case No. 902/417/18, during the cassation review of the case regarding recovery of annual interest from the debtor for the period of default on a monetary obligation at the interest rate determined by the contract terms, the Grand Chamber of the Supreme Court examined the possibility for the court to reduce the interest.

The Grand Chamber of the Supreme Court stated that the common feature of civil liability was its compensatory nature. Civil liability measures are not aimed at punishing the debtor but at restoring the victim's pecuniary aspect after the offence.

In order to protect the interests of the injured party, the legislator may establish rules aimed at ensuring that the party is not deprived of compensation for pecuniary losses. Such rules are aimed at compensating for pecuniary losses to the injured party at the expense of the offender in a predetermined amount (set by law or contract) in a simplified manner compared to that for the recovery of damages, and this simplification is that the creditor (injured party) does not have to prove the amount of losses in contrast to proving the amount of damages.

For example, these rules include the rules on forfeit in Articles 549-552 of the Civil Code of Ukraine. To avoid attributing the forfeit to a punitive sanction, Article 551(3) of the Civil Code of Ukraine stipulates that the court has the right to reduce the amount of the forfeit if it is too large compared to the amount of the losses which could reasonably have been assumed.

If the forfeit is charged in excess of the losses (Article 624(1) of the Civil Code of Ukraine) it is also not a punitive sanction but exactly of a compensatory nature. Such forfeit is charged not in excess of actual losses but only in excess of the losses in the proved amount, which, as a rule, is less than actual losses. In order to prevent the forfeit from turning into a punitive sanction, the court shall apply the right to reduce it.

If the liability of the debtor to the creditor for the improper fulfilment of the obligation to pay on time is not limited in any way but depends solely on contractual interest (fines, penalties, annual interest), the extent of the liability may be unreasonable under certain circumstances, given its disproportionality to the consequences of the offence. It may be unfair to the debtor as well as to third parties because the pecuniary burden of the respective payments may make it impossible for the debtor to fulfil certain obligations. In such cases, the court's failure to recognise the right to mitigate the liability may lead to clearly unreasonable and unfair consequences. That is, a reasonable balance should be struck between the interests of the debtor and the creditor.

Accrual of inflationary losses on the amount of debt and three percent per annum under Article 625 of the Civil Code of Ukraine is a measure of the debtor's liability for default on a monetary obligation because it is a way to protect the property rights and interests consisting of recovery

for the creditor's pecuniary losses from the depreciation of funds due to inflationary processes and compensation from the debtor for improper fulfilment of obligations.

Given the above reasons for the compensatory nature of liability measures in civil law, the Grand Chamber of the Supreme Court concluded that, based on the principles of reasonableness, justice and proportionality, the court may under certain conditions reduce the amount of both forfeit, fine and interest per annum for delay of payment in accordance with Article 625 of the Civil Code of Ukraine, because they all are aimed at restoring the pecuniary aspect of the debtor.

The ruling of the Grand Chamber of the Supreme Court dated 18 March 2020 in case No. 902/417/18: https://reyestr.court.gov.ua/Review/88952210.

10. The Grand Chamber of the Supreme Court has shaped a legal position on how to protect the rights and interests of a person violated by changes in the membership or the allocation of shares in a limited liability company or an additional liability company and has determined the jurisdiction of such disputes

In case No. 466/6221/16-a, the Grand Chamber of the Supreme Court studied the jurisdiction of a dispute about appealing against state registration of changes in constituent documents of a legal entity in terms of changes in membership and reallocation of shares in the authorised capital of the company.

In deciding on the jurisdiction of the dispute, the Grand Chamber of the Supreme Court concluded that such disputes are related to those associated with the establishment, operation, management, or winding up of a legal entity, are corporate disputes within the meaning of paragraph 3 of Article 20(1) of the Commercial Procedure Code of Ukraine regardless of whether the plaintiff is a shareholder (member) in a legal entity and should be considered in commercial litigation.

At the same time, the Grand Chamber of the Supreme Court also drew attention to the fact that Article 17 of the Law of Ukraine, "On state registration of legal entities, individual entrepreneurs and public organisations" contains a comprehensive list of ways to protect a person who believes that his/her right or legitimate interest is violated by changes in the membership or the allocation of shares in a limited liability company or an additional liability company, and the rules of this Law are special for these companies.

In the event that the plaintiff seeks to restore the company's membership as it was prior to the alleged violation of his/her rights or interests, and such restoration cannot be effected by the recovery (reclamation from possession) of the defendant's share (part of the share) in the authorised capital of the company (paragraph 3-e of Article 17(5) of this Law), then the proper method of protection, in this case, is a claim to determine the authorised capital of the company and the shares of the company's members (paragraph 3-d of Article 17(5) of this Law). A defendant in such a lawsuit is not only a company but also individual members of the company, who,

as a result of such a claim being upheld, may be deprived of their shares in the authorised capital or their parts in monetary or percentage terms.

The ruling of the Grand Chamber of the Supreme Court dated 18 March 2020 in case No. 466/6221/16-a: https://reyestr.court.gov.ua/Review/89083012.

Judgments of the Supreme Court in Model Cases

Under Article 290(1) of the Code of Administrative Procedure of Ukraine, the Supreme Court, as the court of the first instance, examines model cases on a submission from one or more administrative courts which proceedings include typical administrative cases, the number of which determines the appropriateness of a model judgment. Article 290(11) of the Code of Administrative Procedure of Ukraine establishes that the Grand Chamber of the Supreme Court is allowed to review such a judgment on appeal.

During 2020 the Administrative Cassation Court heard 7 cases. In addition, 8 judgments took effect in 2020.

1. On recalculation of the monthly allowance of a judge who retired before 30 September 2016 (before the entry into force of the Law of Ukraine No. 1402-VIII dated 2 June 2016 "On the Judiciary and the Status of Judges")

In case No. 0640/3835/18, the Supreme Court decided on the correct application of Article 142(4) of the Law of Ukraine No. 1402-VIII dated 2 June 2016 "On the Judiciary and the Status of Judges" in order to recalculate the monthly lifetime allowance of judges who have retired before the entry into force of this Law (before 30 September 2016).

The Supreme Court found that the amount of the monthly lifetime allowance of a retired judge depends on the amount of the judicial remuneration of a sitting judge, while the payment of the increased amount of judicial remuneration under Law No. 1402-VIII depends on the completion and result of the qualification assessment, or appointment to the position through a competition.

If the completion and result of the qualification assessment is relevant for determining the amount of the judicial remuneration of sitting judges, as well as for determining the amount of the monthly lifetime allowance of a judge who retires three years after the assessment, this very circumstance should also be taken into account when recalculating this type of allowance for judges who retired earlier, that is before 30 September 2016.

Another application of the provisions stated in Article 142(4) of Law No.1402-VIII would lead to the fact that the judges, who had retired before 30 September 2016 and did not work a single day under the conditions of significantly increased constitutional requirements for a judge, would receive a higher allowance than the judges who have confirmed the compliance with these requirements (completed the qualification assessment) and worked under such conditions for at least three years.

Thus, the position of a judge who has retired before 30 September 2016 is not "appropriate," nor equivalent to that of a judge of the same court who completed the qualification assessment, confirmed the ability to administer justice, and continues to work in that court. In order to apply Article 142(4) of Law No. 1402-VIII for recalculating the amount of monthly lifetime allowance

of judges who have retired before the entry into force of this Law, namely until 30 September 2016, an "appropriate" position shall mean the one of a judge, who works in the same court before the qualification assessment and in accordance with paragraph 23 of Section XII "Final and transitional provisions" of Law No. 1402-VIII receives judicial remuneration determined under the provisions of the Law of Ukraine No. 2453-VI dated 7 July 2010 "On the Judiciary and the Status of Judges."

The judgment of the Administrative Cassation Court of the Supreme Court dated 1 November 2018 in case No. 0640/3835/18: https://reyestr.court.gov.ua/Review/77586339;

The ruling of the Grand Chamber of the Supreme Court dated 13 May 2020 in case No. 0640/3835/18: http://reyestr.court.gov.ua/Review/90458918.

2. On accrual and payment of a pension increase for non-working pensioners residing in the area of radioactive contamination

In case No. 240/4937/18, the Supreme Court examined the issue concerning the amount of a pension increase for non-working pensioners residing in areas of radioactive contamination.

The Supreme Court held that since the adoption of Decision No. 6-p/2018 dated 17 July 2018 by the Constitutional Court of Ukraine, the pension authorities shall pay a pension increase to non-working pensioners residing in the areas of radioactive contamination in the amounts established by Article 39 of the Law of Ukraine No. 796-XII dated 28 February 1991 "On the Status and Social Protection of the Population who Suffered from the Consequences of the Chernobyl Disaster," in accordance with the wording of this provision in force until 1 January 2015.

When deciding on the amount of pension increase, the Supreme Court proceeded from the fact that the Decision of the Constitutional Court of Ukraine No. 3-рп/2012 dated 25 January 2012 does not entitle the Cabinet of Ministers of Ukraine to reduce the amount of benefits, compensations, and guarantees established by this Law, and the Cabinet of Ministers of Ukraine regulates the procedure and amount of social payments and assistance, which are paid from the state budget of Ukraine, in accordance with the Constitution and the laws of Ukraine unless a law directly provides for the amount of such payments.

Thus, in accordance with the Decision of the Constitutional Court of Ukraine No. 6-p/2018 dated 17 July 2018 and Article 39 of the said Law, since 17 July 2018, the plaintiff is entitled to a monthly pension increase as a non-working pensioner residing in the area of radioactive contamination in the amount of two minimum wages.

The judgment of the Administrative Cassation Court of the Supreme Court dated 21 January 2019 in case No. 240/4937/18: https://reyestr.court.gov.ua/Review/79388117;

The ruling of the Grand Chamber of the Supreme Court dated 18 March 2020 in case No. 240/4937/18: https://reyestr.court.gov.ua/Review/88952401.

3. On recalculation and payment of pensions to military personnel by the authorities of the Pension Fund of Ukraine, taking into account additional types of monetary allowance when this is not specified in the statement issued by the military commissariat

In case No. 240/6263/18, the plaintiff appealed against the refusal by the Main Directorate of the Pension Fund of Ukraine to recalculate and pay his pension as military personnel from 1 January 2018, taking into account the average monthly amount of additional types of monetary allowance. The Main Directorate of the Pension Fund of Ukraine referred to the fact that the recalculation of the pension had been made in full compliance with the components of the monetary allowance specified in the relevant statement of the military commissariat.

In resolving the dispute, the Supreme Court proceeded from the fact that the military commissariat's statement of the amount of monetary allowance taken into account for the recalculation of pensions had been issued to the plaintiff in accordance with the Resolution of Cabinet of Ministers of Ukraine No. 103 dated 21 February 2018 "On the recalculation of pensions for persons dismissed from military service and certain other categories of persons". According to paragraph 1 of the Resolution, such recalculation shall be made taking into account the three components of the updated monetary allowance determined as of 1 March 2018: basic salary, military (special) rank pay, and length-of-service pay. This Resolution does not provide for taking into account other types of monetary allowance.

The procedure of state bodies for recalculation of pensions in accordance with the current legislation provides that the main directorates of the Pension Fund of Ukraine recalculate pensions on the basis of statements received from oblast military commissariats, which specify the amount of monetary allowance for such recalculation. The authorities of the Pension Fund of Ukraine are entitled to check the accuracy of statements in part of their formal content but have no right to independently determine the components and amount of monetary allowance of persons whose pensions are subject to recalculation.

Meanwhile, the Supreme Court noted that the issue of taking into account the average monthly amount of additional types of monetary allowance in the scope of the monetary allowance could be a matter of controversy in declaring unlawful the actions of a military commissariat on making up the statement of the amount of monetary allowance for recalculation of the plaintiff's pension without taking into account the average monthly amount of additional types of monetary allowance, and it cannot be examined in this administrative case.

The judgment of the Administrative Cassation Court of the Supreme Court dated 13 March 2019 in case No.240/6263/18: https://reyestr.court.gov.ua/Review/80482567;

The ruling of the Grand Chamber of the Supreme Court dated 19 February 2020 in case No. 240/6263/18: http://reyestr.court.gov.ua/Review/88168813.

4. On recalculation and payment of pensions to military personnel after the abolition of the paragraphs in the Resolution of the Cabinet of Ministers of Ukraine, which established the step-by-step payment of the pension increase

In case No. 160/3586/19, the plaintiff, who receives a pension for the length of service appointed in accordance with the Law of Ukraine "On Pension Provision for Persons Dismissed from Military Service and Some Other Persons", applied to the Main Directorate of the Pension Fund of Ukraine for recalculation starting from 5 March 2019 and payment of pension, taking into account 100% of its increase as determined as of 1 March 2018. However, the pension authority refused to grant the plaintiff's application due to the fact that the Cabinet of Ministers of Ukraine had not approved the procedure for recalculating pensions under conditions other than those defined by the partially abolished Resolution of the CMU No. 103 dated 21 February 2018.

In resolving the dispute, the Supreme Court noted that following the entry into force of the Cabinet of Ministers Resolution No. 704 dated 30 August 2017, which amended (increased) the amounts of monetary allowances for military personnel, the plaintiff had grounds for recalculating the pension. These grounds are not affected by the court abolition of paragraph 1 of the Cabinet of Ministers Resolution No. 103 dated 21 February 2018.

According to paragraph 2 of the Cabinet of Ministers of Ukraine (CMU) Resolution No. 103 dated 21 February 2018, the increased pensions recalculated under paragraph 1 of this Resolution (taking into account supplements to the previous amount of pensions, increases, indexation, and other supplements to pensions established by law (except increases, additional pensions, targeted monetary assistance, pensions for special services to Ukraine defined by law)) shall be paid starting from 1 January 2018 in the following amounts: from 1 January 2018 – 50%; from 1 January 2019 to 31 December 2019 – 75%; from 1 January 2020 – 100% of the pension increase as determined as of 1 March 2018.

Due to the court abolition of paragraph 2 of CMU Resolution No. 103 dated 21 February 2018, the limitation on partial payment of the amount of pension increase has been abolished.

Therefore, the Supreme Court concluded that starting from 5 March 2019, the plaintiff's pension is payable in the amount of 100% of the pension increase.

The judgment of the Administrative Cassation Court of the Supreme Court dated 6 August 2019 in case No. 160/3586/19: https://reyestr.court.gov.ua/Review/83494363;

The ruling of the Grand Chamber of the Supreme Court dated 11 March 2020 in case No. 160/3586/19: http://reyestr.court.gov.ua/Review/88601598.

5. On the application of acts of the Cabinet of Ministers of Ukraine in determining the amount of statutory pension supplements to combat veterans

In case No. 300/1695/19, the Supreme Court studied the issue of whether the supplements envisaged for combat veterans, namely: a pension increase in the amount of 25% of the subsistence

minimum for persons who lost their capacity for work as established by Article 12(4) of the Law of Ukraine "On the Status of War Veterans, Guarantees of their Social Protection," and targeted monetary assistance for living expenses in the amount of UAH 40 provided for by the Law of Ukraine "On the Improvement of the Material Status of Combat Veterans and Disabled War Veterans," – are supplements which are subject to the regulatory effect of paragraph 2 of CMU Resolution No. 103 and which, respectively, were to be paid during 2018 in stages in the amount of 50%. When analysing the provisions of the CMU Resolution No. 103, which was in force at the time of the disputed legal relations, the Supreme Court drew attention to the fact that paragraph 2 of this legal act differentiates supplements and increases established by law (supplements to the previous amount of pension, increase, indexation and other supplements to the pension); increase determined by law (increase, additional pension, targeted monetary assistance, pension for special services to Ukraine).

At the same time, the Supreme Court highlighted a different legal meaning of increased pensions, which are: a) established by law; b) defined by law. The first group – established by law – according to the wording of paragraph 2 of the CMU Resolution No. 103 was taken into account during the staggered increase of pensions (from 1 January 2018 – 50%; from 1 January 2019 to 31 December 2019 – 75%; from 1 January 2020 – 100% of the pension increase as determined as of 1 March 2018). However, the second group – defined by law – was not subject to the regulatory effect of paragraph 2 of CMU Resolution No. 103. Consequently, their amounts (increases, supplementary pensions, targeted monetary assistance, pensions for special services to Ukraine defined by law) were not changed.

Therefore, the pension increase in the amount of 25% of the subsistence minimum for persons who lost their capacity for work (UAH 363), as well as the monthly targeted monetary assistance for living expenses (UAH 40) established for the plaintiff, was not affected by the CMU Resolution No. 103 as they are defined by law.

The judgment of the Administrative Cassation Court of the Supreme Court dated 6 August 2019 in case No. 160/3586/19: https://reyestr.court.gov.ua/Review/83494363;

The ruling of the Grand Chamber of the Supreme Court dated 11 March 2020 in case No. 160/3586/19: http://reyestr.court.gov.ua/Review/88601598.

6. On the procedure for actions of authorities regarding recalculation of pensions for military personnel

In the case, the Supreme Court examined the recalculation of pensions for military personnel due to the invalidity of the provisions in paragraphs 1 and 2 of CMU Resolution No. 103, which did not take into account the additional monthly types of monetary allowance allotted to active military personnel in the calculation of pensions.

Due to the entry into force of the Decision on 5 March 2019, which declared unlawful and invalid paragraphs 1 and 2 of CMU Resolution No. 103 dated 21 February 2018, the plaintiff applied

to the authorised structural unit of the Ministry of Defence of Ukraine with a request to submit an updated statement on the amount of his monetary allowance as of 5 March 2019 for the Main Directorate of the Pension Fund of Ukraine with information on the amount of additional monthly types of monetary allowance for the calculation and recalculation of his pension starting from 5 March 2019, which was rejected.

Declaring unlawful the actions of the structural unit of the Ministry of Defence of Ukraine on refusing to prepare and submit to a territorial body of the Pension Fund of Ukraine an updated statement on the amount of monetary allowance of the military personnel, the Supreme Court clarified the procedure of relevant authorities for recalculating pensions for military personnel based on the current legislation.

From the effective date of the court decision, which declared unlawful and invalid paragraphs 1 and 2 of Resolution No. 103 and amendments to paragraph 5 and Annex 2 of Procedure No. 45, the grounds appeared for recalculation of pensions granted according to the Law of Ukraine No. 2262-XII dated 9 April 1992 "On Pension Provision for Persons Dismissed from Military Service and Some Other Persons", taking into account the amount of basic salary, military (special) rank pay, percentage length-of-service pay and additional types of monetary allowance.

The state body from which the persons were dismissed shall be responsible for drawing up a statement on the amount of monetary allowance for recalculation of pensions in case of the CMU adopting a decision to change the amount of at least one type of monetary allowance for certain persons or to introduce for them new monthly additional types of monetary allowance (pays, additional payments, increases) and bonuses in the amounts established by law after receipt from a territorial pension authority of a list of persons, whose pensions are subject to recalculation.

No obligation to recalculate the plaintiff's pension arises until the pension authority receives a proper statement from the defendant.

The judgment of the Administrative Cassation Court of the Supreme Court dated 17 December 2019 in case No. 160/8324/19: https://reyestr.court.gov.ua/Review/86432492;

The ruling of the Grand Chamber of the Supreme Court dated 24 June 2020 in case No. 160/8324/19: https://reyestr.court.gov.ua/Review/90228179.

7. On determining the amount of judicial remuneration for judges who have not undergone a qualification assessment due to the change of reference value

In case no. 200/9195/19-a, the dispute concerned whether a territorial body of the State Judicial Administration (SJA) of Ukraine made an accurate calculation of judicial remuneration after the entry into force of the Decision of the Constitutional Court of Ukraine No. 111-p/2018 dated 4 December 2018. According to the plaintiff, the judge's remuneration should be calculated on the basis of the minimum wage rather than the subsistence minimum for able-bodied persons established as of 1 January of the relevant calendar year.

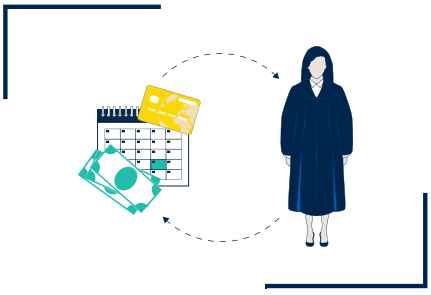
By the above Decision, the Constitutional Court of Ukraine declared non-compliant with the Constitution of Ukraine (unconstitutional) the provision in Article 133(3) of the Law of Ukraine "On the Judiciary and the Status of Judges" (in the wording of the Law of Ukraine "On enforcing the right to a fair trial" No. 192-VIII dated 12 February 2015), according to which the basic salary of a local court judge was reduced from 15 to 10 minimum wages. Such amendments were recognised by the Court as an infringement on the guarantee of judicial independence in the form of material security and a prerequisite for influencing both the judge and the judiciary in general.

At the same time, the Law of Ukraine No. 1774-VIII dated 6 December 2016 "On Amendments to Certain Legislative Acts of Ukraine," which entered into force on 1 January 2017, changed the approach to the determination of basic salaries and wages of employees, as well as other payments, in particular, introduced a new reference value for the determination of certain payments by replacing the minimum wage with a subsistence minimum. Thus, this Law did not change the amount of judicial remuneration, but the reference value – the subsistence minimum for able-bodied persons established as of 1 January of the relevant calendar year – and it is this value that has to be applied.

The Supreme Court pointed out that the amount of the basic salary of a judge, who has not undergone a qualification assessment, did not, in fact, change after the change of the reference value in Law No. 1774-VIII, and this indicates that the amendments introduced by this Law caused no violation of the judge's guarantee in terms of the amount of their material security. Moreover, following the Constitutional Court's Decision No. 11-p/2018 dated 4 December 2018, the amount of judicial remuneration for judges, who have not undergone a qualification assessment, has increased since the effective date of the Decision, as the absolute value of the basic salary was changed from 10 to 15.

The judgment of the Administrative Cassation Court of the Supreme Court dated 11 March 2020 in case No. 200/9195/19-a: https://reyestr.court.gov.ua/Review/88124771;

The ruling of the Grand Chamber of the Supreme Court dated 4 November 2020 in case No. 200/9195/19-a: https://reyestr.court.gov.ua/Review/93302481.



8. On the recalculation of the monthly lifetime allowance for a judge who has retired before completing his qualification assessment as a judge

When resolving the dispute in the case, the Supreme Court proceeded from the fact that since the date of the decision by the Constitutional Court of Ukraine dated 18 February 2020 in case No. 2-p/2020, the Law of Ukraine No. 1402-VIII dated 2 June 2016 "On the Judiciary and the Status of Judges" does not contain provisions that would have different procedures for calculating the monthly living allowance of retired judges.

Consequently, from 19 February 2020, the day following the adoption of the above Decision by the Constitutional Court of Ukraine, the plaintiff gained the right (grounds) for the recalculation

of the monthly lifetime allowance of a judge in accordance with the Law of Ukraine No. 1402-VIII, since it is from this date that the restrictions, which were set out in paragraph 25 of Section XII of the Final and Transitional Provisions of this Law, were repealed and a certain differentiation in determining the amount of the judicial remuneration and the amount of the monthly monetary allowance for a retired judge depending on the completion of the qualification assessment was introduced.

A change in the amount of the judge's basic salary, which is a component of the judicial remuneration, is a ground for recalculating the retired judge's monthly lifetime allowance. The difference in the rights of retired judges to the recalculation of their monthly lifetime allowance depending on whether they underwent the qualification assessment while serving as a judge and/or on the need to serve as a judge for three years after the qualification assessment violates the status of judges and the guarantees of their independence.

Thus, the Supreme Court concluded that the monthly lifetime allowance of a judge who has retired before completing his qualification assessment as a judge should be commensurate with the judicial remuneration received by a competent judge.

The judgment of the Administrative Cassation Court of the Supreme Court dated 16 June 2020 in case No. 620/1116/20: https://reyestr.court.gov.ua/Review/89872243.

Panels of Judges for the Judicial Chamber for Cases on Taxes, Fees and Other Obligatory Payments*

Mykola Husak, Yevheniia Usenko, Mykola Himon

Raisa Khanova, Ihor Olender, Iryna Honcharova

Iryna Vasylieva, Svitlana Pasichnyk, Valentyna Yurchenko

Mykola Yakovenko, Ihor Dashutin, Oleh Shyshov

Panels of Judges for the Judicial Chamber for Cases on the Protection of Social Rights*

Larysa Moroz, Andrii Rybachuk, Anna Buchyk

Yan Bernaziuk, Nataliia Kovalenko, Ihor Zhelieznyi

*Members of the panels that were in operation during 2020

Oleksandr Starodub, Volodymyr Kravchuk, Albert Yezerov

Larysa Tatsii, Semen Stetsenko, Tetiana Strelets

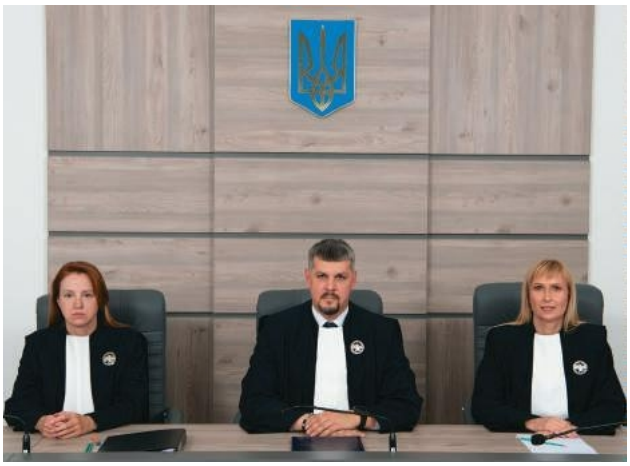
Vasyl Sharapa, Volodymyr Bevzenko, Serhii Chyrkin

Panels of Judges for the Judicial Chamber for Cases on Election Process and Referendum, as well as the Protection of the Political Rights of Citizens

Myroslava Bilak, Olena Kalashnikova, Olena Hubska

Volodymyr Sokolov, Liudmyla Yeresko, Andrii Zahorodniuk

*Members of the panels that were in operation during 2020



Nataliia Martyniuk, Andrii Zhuk, Zhanna Melnyk-Tomenko

Olesia Radyshevska, Serhii Ukhanenko, Olha Kapshur

Nadiia Danylevych, Viktoriia Matsedonska, Nataliia Shevtsova

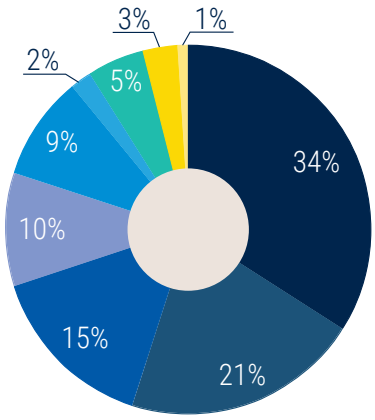
Nadiia Danylevych, Mykhailo Smokovych, Nataliia Shevtsova

*Members of the panels that were in operation during 2020

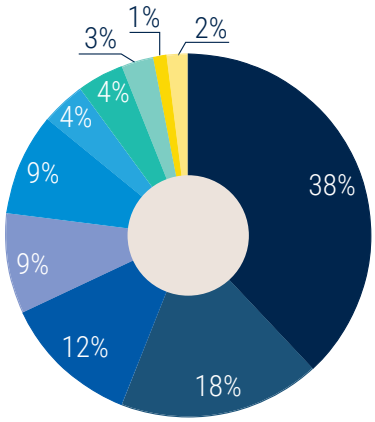
Judgments of the Supreme Court (administrative jurisdiction)

Cassation appeals in administrative cases
brought before the Supreme Court

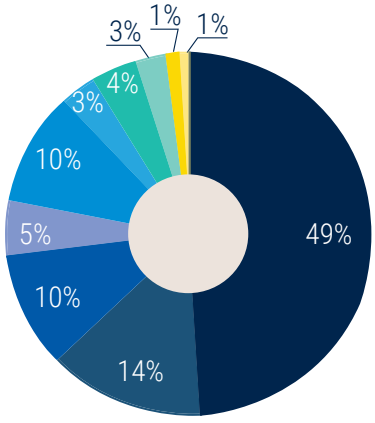
2018



2019



2020



- on disputes related to the administration of taxes, fees, and charges, as well as control over compliance with tax legislation
- on disputes related to the implementation of public policy with regard to labour, employment of the population, and social protection of citizens, as well as disputes related to public housing policy
- on disputes related to the implementation of public financial policy
- on disputes related to ensuring the sustainable development of settlements and land use
- on disputes related to public service relations
- on disputes related to the protection of political (except electoral) and civil rights
- on disputes related to ensuring public order and security, national security and defence of Ukraine
- on disputes related to enforcing court decisions and the decisions of other agencies
- on the functioning of the prosecution service, the bar, notaries, and justice agencies
- other categories of cases

I. Legal positions in cases on the protection of social rights

Social disputes are by their nature rather diverse and touch upon many areas of social protection, in particular pension provision; social payments to disabled citizens, payments for state compulsory social insurance; protection of citizens suffering from the consequences of the Chernobyl disaster, internally displaced persons, families with children; employment of the population, and others.

The legal positions formulated in the Supreme Court judgments on such disputes are of particular interest to society because they indicate the level of effective protection of the rights, freedoms, and interests of individuals. In addition to social disputes, the Judicial Chamber for Cases on the Protection of Social Rights also considers certain other categories of disputes.

1. On the grounds for the payment of one-off monetary assistance to graduates – orphans and children deprived of parental care

In case No. 303/5848/16-a, the acting head of the local Public Prosecutor's Office on behalf of a minor deprived of parental care brought an action against a regional boarding school with enhanced military and physical training for the recovery of one-off monetary assistance.

In upholding the claim, the court of first instance, whose findings were sustained by the court of appeal, proceeded from the fact that the law established the obligation to pay monetary assistance to all graduates of educational institutions, rather than dividing them into separate categories: those who had continued their studies at another educational institution; those who had gained employment and others. Thus, the mere fact of graduation constitutes grounds for the payment of one-off monetary assistance in the amount of at least six subsistence minimums, as established by law.

The Supreme Court agreed with the finding of the courts of first and appellate instances and took into consideration that the amount of the one-off monetary assistance to be paid upon graduation from an educational institution, which provided support, in particular, for children deprived of parental care, and as defined by the Law of Ukraine "On Ensuring Organisational and Legal Conditions for the Social Protection of Orphans and Children Deprived of Parental Care" was inconsistent with the amount of such one-off monetary assistance as defined by CMU Resolution No. 226.

On this ground, the Supreme Court stated that proceeding from general principles of the priority of laws over other by-laws and the fact that the provisions of CMU Resolution No. 226 adopted before this Law came into force were inconsistent with it, while resolving the disputable issue the law provisions shall be applied according to which the one-off monetary assistance is to be paid to the plaintiff in the amount of six subsistence minimums.

Thus, the Supreme Court concluded that the fact that a child deprived of parental care has graduated from an educational institution constitutes grounds for paying him/her one-off monetary assistance in the amount of at least six subsistence minimums as established

by law, regardless of whether such child continues studying in another educational institution or is employed.

The ruling of the Administrative Cassation Court of the Supreme Court dated 26 May 2020 in case No. 303/5848/16-a: https://reyestr.court.gov.ua/Review/89459806.

2. The National Commission for State Regulation of the Financial Services Markets has the power to take measures aimed at eliminating violations related to the understatement of the insurance indemnity, the amount of which is determined by law

In case No. 813/3214/17, the issue before the court was whether the National Commission for State Regulation of the Financial Services Markets has the power to respond to violations of legislation by an insurance company reducing the amount of insurance indemnity.

In resolving the dispute, the Supreme Court pointed out that it was within the Commission's competence to take enforcement actions precisely for violations of laws and other regulatory legal acts governing the provision of financial services.

These powers are aimed at protecting the rights of consumers, controlling the quality of financial services, and are in line with the state's obligations as set out in Article 42(3) of the Constitution of Ukraine.

Violations of terms, amounts, the procedure of insurance payouts expressly determined by law, in particular, the pay-out of the insurance sum in an amount inconsistent with law, indicates a violation of legislation governing the provision of financial services.

The amount of indemnity shall be determined by the insurance company. However, when the amount of indemnity and the terms of payout are determined by the law and the insurance company reduces it arbitrarily by referring to circumstances not provided for by law, it violates consumer rights and the legal provisions governing the financial services market.

Undoubtedly, a person who has received less insurance indemnity than he/she is entitled to, may file a claim with the court. However, this does not mean that the injured party cannot complain to the Commission.

Having established that the indemnity amount had been determined as in violation of the Law of Ukraine "On the Compulsory Insurance of Civil and Legal Liability for Owners of Inland Motor Vehicles" and that it had been paid in an untimely manner, the Commission had the authority to take measures to remedy this violation. The Commission acted within its powers and in order to protect the consumer's rights to receive the insurance indemnity in full and on time.

The ruling of the Administrative Cassation Court of the Supreme Court dated 4 March 2020 in case No. 813/3214/17: http://reyestr.court.gov.ua/Review/87995530.

3. The Supreme Court has clarified the procedure for calculating the duration of unemployment benefit when reapplying within the statutory period of two years

The core of the dispute in case No. 308/13678/16-a was that the plaintiff had, several months after being granted unemployment status and awarded unemployment benefit, become self-employed

and filed a withdrawal application with the employment office. The plaintiff was therefore exempted from receiving the benefit and from registering as unemployed. Some time later, before the expiry of the two-year period following the first application, the plaintiff applied for a second time to the local employment office for unemployment status, whereupon she was granted such status and was awarded unemployment benefit. However, referring to paragraph 12 of Article 31(1) of the Law of Ukraine "On Compulsory State Social Insurance in the Event of Unemployment," the local employment centre stopped paying the benefit to the plaintiff due to the expiration of the payment period, that is the two-year period after the application. The total number of calendar days during which she was paid unemployment benefit for two years was 283 days.

Upon an appeal review of the case, the Supreme Court stated that the total number of calendar days for payment of unemployment benefit to insured persons shall not exceed 360 calendar days within a two-year period from the date of the award.

At the same time, within a two-year period, the number of days of unemployment benefits paid is counted cumulatively for all cases of registration (re-registration) of the unemployed person, taking into account the days of reduced duration of unemployment benefits.

If the unemployed person registers (re-registers) within a two-year period once again, the corresponding balance of the unemployment benefit shall be paid to him/her.

Those registered as unemployed who have received the full amount of unemployment benefit in the current two-year period shall receive unemployment benefit for the next two-year period, provided that they are re-registered after being employed.

So, having found that the total number of calendar days during which the plaintiff received unemployment benefit was 283 days, which is less than the 360 calendar days during the statutory two years, the Supreme Court held that the defendant had no legal basis for terminating the payment of unemployment benefit to the plaintiff.

The ruling of the Administrative Cassation Court of the Supreme Court dated 23 June 2020 in case No. 308/13678/16-a: https://reyestr.court.gov.ua/Review/89977375.

4. On the purpose of administrative and economic sanctions

In case No. 826/4778/16, the company filed a lawsuit against the State Architectural and Construction Inspectorate of Ukraine (SACI) for declaring unlawful and abolishing the resolutions of the SACI Department on imposing fines exceeding UAH 1 million for offences in the area of town planning.

In resolving the dispute, the Supreme Court noted, inter alia, that the application of administrative and economic sanctions to the defendant did not meet the purpose of this type of liability.

The Supreme Court determined that administrative and economic sanctions, in particular pecuniary sanctions (fines), have the goal of preventing an offence and eliminating its consequences. A business entity may not be held liable if it can prove that it took all the measures necessary to prevent an economic offence.

Taking into consideration that violations of the town-planning legislation did not pose a real danger, the plaintiff challenged the abolition of the declaration of construction readiness in court, and after the dismissal of his claim, promptly developed new documentation, received permission, and applied for a declaration of construction readiness, that is, voluntarily remedied the violations, the Supreme Court concluded that bringing him to liability does not meet the purpose of economic liability.

Moreover, by imposing fines exceeding UAH 1 million the defendant had violated the requirement of proportionality which requires at least observing the necessary balance between any adverse consequences for the rights, freedoms, and interests of the person and the aims towards which the decision (action) was directed. The Supreme Court found that the negative consequences for the plaintiff were clearly disproportionate to the aim of stopping the offence, as it was de facto stopped at the time the fine was imposed.

The ruling of the Administrative Cassation Court of the Supreme Court dated 29 July 2020 in case No. 826/4778/16: https://reyestr.court.gov.ua/Review/90674279.

II. Legal positions of the Supreme Court in cases on taxes, fees, and other Obligatory payments

Tax and customs disputes accounted for half of the total number of disputes brought before the Supreme Court in 2020.

This is due to the social importance of the respective legal relations, their development and complexity, particularly in terms of the implementation of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, on the one part, and Ukraine, on the other part, from 1 January 2016, as well as the development of the respective legal regulation.

1. The unproven origin of some components of the disassembled goods from the EU countries does not always indicate lack of grounds for the application of preferential duty rates

In case No. 460/621/19, the economic entity challenged before the court the notification decisions of the State Fiscal Service (SFS), which imposed additional customs duties, because the plaintiff had not in fact proved the origin of the goods as being entirely from the European Union and, therefore, groundlessly used preferences stipulated by the customs legislation. Under the circumstances of the case, the plaintiff provided the customs authority with the EUR.1 movement certificate when importing the goods, but the authorised bodies of the exporter's country stated that the origin of the vast majority of the components of the imported goods indicated in the certificate had not been proven.

In resolving the dispute, the Supreme Court stated that the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, on the one part, and Ukraine, on the other part, dated 27 June 2014, shall be applicable from 1 January 2016, and its Title IV "Trade and Trade-Related Matters," establishes the procedure for trade in goods originating in the territories of the Parties. Taking into account the provisions

of Article 29(1) of Title IV of the Association Agreement, each Party shall reduce or eliminate customs duties on goods originating from the other Party in accordance with the Schedules set out in Annex I-A to this Agreement.

One of the prerequisites for taking advantage of the preferences provided for in the Association Agreement is the submission of a document certifying the origin of the goods, in particular the EUR.1 movement certificate.

However, the unproven origin of certain components of the disassembled goods from the EU countries may not necessarily mean that preferential duty rates do not apply.

Goods derived in the European Union from materials that have not been produced entirely in the EU may be deemed to have originated in the European Union if such materials have undergone sufficient processing in the EU in accordance with Article 6 of Protocol 1 to the Association Agreement.

The EUR.1 movement certificate shall be issued by the customs authorities of a Member State of the European Union or Ukraine if the goods in question may be recognised as originating from the European Union or Ukraine and fulfil other conditions of Protocol I to the Association Agreement.

The ruling of the Administrative Cassation Court of the Supreme Court dated 16 September 2020 in case No. 460/621/19: https://reyestr.court.gov.ua/Review/91643311.

2. The Supreme Court has clarified the conditions under which a taxpayer legal entity is not obliged to submit a report on controlled transactions involving relations with non-resident counterparties

Case No. 820/1427/16 concerned an appeal of a tax notification decision of a controlling authority which imposed punitive (financial) sanctions on the plaintiff for failure to submit a report on controlled transactions for 2014.

The Supreme Court upheld the legal findings of the courts of lower instances that the disputed tax notification decision was unlawful and that there were grounds to uphold the claim, based on the fact that the taxpayer had no obligation to submit the report on controlled transactions in relations with a non-resident whose country is included in the List of States (territories) where profit tax rates (corporate tax) are 5 or more percentage points lower than in Ukraine.

If the counterparty is registered as a partnership and founders are legal entities from countries included in the List of States (territories), where profit tax rates (corporate tax) are 5 or more percentage points lower than in Ukraine, but the counterparty itself is a resident of the country which is not included in the relevant list, it indicates the absence of obligation of the latter to submit a report on controlled transactions in such relations.

The ruling of the Administrative Cassation Court of the Supreme Court dated 21 May 2020 in case No. 820/1427/16: https://reyestr.court.gov.ua/Review/89396403.

III. Legal positions of the Supreme Court in cases on electoral process and referenda as well as the protection of political rights of citizens

A significant number of cases of administrative jurisdiction were and still are electoral and referenda disputes, as well as those related to the protection of political rights; disputes on public service relations, namely the admission of citizens to public service, its performance, dismissal from public service; disputes related to ensuring the functioning of prosecution offices, the bar and others.

1. On the legal grounds on which the Central Electoral Commission is obliged to publicise the parties that choose to contest the local elections

According to the circumstances of the case, the political party "National Platform" sent a package of documents to the CEC by the courier service on 4 September 2020, and the courier service employee tried to deliver it to the defendant by 6 September 2020 but was refused. The documents were submitted to the CEC on 9 September 2020 by placing them in the appropriate correspondence box located at the CEC premises. Therefore, the plaintiff requested that the omission of the CEC be found unlawful and that they be obliged to publicise the political party, as such, which had decided on the participation of its local organisations in all local elections to be held on 25 October 2020, on its official website.

The Supreme Court pointed out that based on the regulatory provisions of Article 217 of the Electoral Code of Ukraine, a copy of the decision by the supreme governing body of the party on participation of its local organisations in the relevant elections, signed and stamped by the party leader, shall be submitted to the CEC no later than 48 (calendar) days before election day. The CEC shall publicise a list of these political parties on its official website no later than 45 days before election day.

As the party did not meet the statutory deadline for submitting to the CEC a copy of the decision by the supreme governing body of the party on the participation of its local organisations in the elections, the CEC had no obligation to publicise on its official website the list of political parties that had decided on the participation of their local organisations in the respective local elections, which would have included the plaintiff.

The Supreme Court noted that the electoral process is irreversible and continuous, with all electoral procedures closely interlinked and implemented in a clear sequence, and regulated deadlines that cannot be renewed.

The ruling of the Administrative Cassation Court of the Supreme Court dated 16 September 2020 in case No. 855/48/20: https://reyestr.court.gov.ua/Review/91571726.

2. On including the length of service (seniority) in tax police bodies into the length of service in the police

The subject matter of the dispute in case No. 826/16143/18 on the claim of an individual against the Department of Internal Security of the National Police of Ukraine was the issue of including the plaintiff's length of service in the tax police in his length of service in the police.

In resolving the dispute, the Supreme Court proceeded from the fact that, when determining the existence or absence of the right to include the disputed length of service, in particular, due to the lack of subordination of the State Tax Service of Ukraine to the Ministry of Internal Affairs of Ukraine, it is not the subordination of the state authorities that is to be considered, but the essence of the person's activity, the functions that he had performed, and determination of the service status as valid at the time of his service.

Having analysed the powers, tasks, and functions of these authorities, the Supreme Court came to the conclusion that the status of those who had served in the tax authorities was equal to the status of those who had served in the bodies of internal affairs of Ukraine according to the legislation valid at the time of origination of the disputed legal relations. Such a conclusion is also confirmed by the fact that the plaintiff, during his service in the tax police, was awarded the special rank of lieutenant in the tax police, and then senior lieutenant in the tax police, which, in turn, was awarded on the basis of the Regulations on the service of regular and senior staff of the internal affairs bodies No. 114 dated 29 July 1991 and approved by the Cabinet of Ministers of the Ukrainian Soviet Socialist Republic.

The ruling of the Administrative Cassation Court of the Supreme Court dated 7 October 2020 in case No. 826/16143/18: https://reyestr.court.gov.ua/Review/92051849.

3. On the obligation of the Central Election Commission to take measures, at its own initiative, to restore the violated electoral rights

The dispute in case No. 855/111/20 was caused by the plaintiffs' enjoyment of the right to be elected (passive electoral right) to the local self-government bodies as guaranteed by Article 38 of the Constitution of Ukraine.

The plaintiffs cited as grounds for action the failure to enforce court decisions obliging the village territorial election commission to amend the ballot papers and failure to include them as valid candidates on the ballot papers. Despite a number of separate rulings submitted to the CEC, elections in the multi-mandate constituencies and the single-mandate constituency took place while the plaintiffs' names were not included on the ballot papers.

In revoking the decision of the court of first instance to dismiss the claim, the Supreme Court proceeded from the fact that the circumstances of multiple and systemic violations of the plaintiffs' electoral rights necessitated close scrutiny by the defendant to ensure that the plaintiffs' and voters' electoral rights were respected. According to the Electoral Code of Ukraine, in case of an unlawful decision or omission by a territorial election commission, the CEC has the authority, at its own initiative, to revoke such a decision and/or make an appropriate decision.

A necessary way to restore the electoral rights of plaintiffs, who have been arbitrarily disqualified as candidates for the position of village council deputy and candidate for the position of village council head, is the CEC's obligation to take decisions aimed at restoring the violated electoral rights. Choosing how to exercise the function of control over the observance of the law in terms of making decisions within the timeframe established by law on the issues related to the preparation and conduct of local elections falls within the discretionary powers of the CEC.

The ruling of the Administrative Cassation Court of the Supreme Court dated 12 November 2020 in case No. 855/111/20: https://reyestr.court.gov.ua/Review/92842041.

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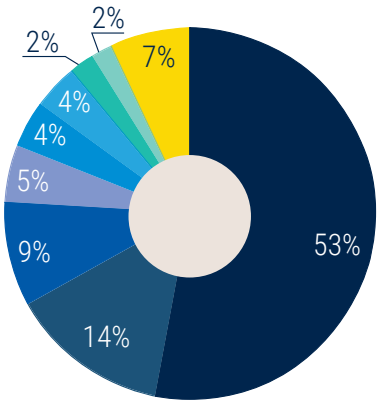
Kostiantyn Pilkov, Hryhorii Machulskyi, Yehor Krasnov

*Members of the panels that were in operation during 2020

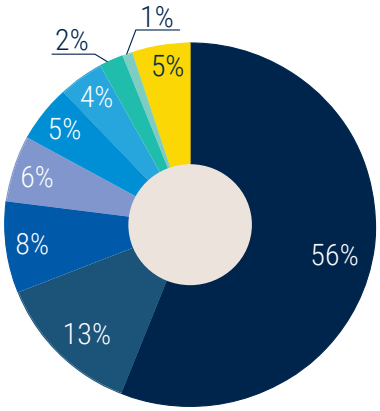
Judgments of the Supreme Court (commercial jurisdiction)

Cassation appeals in commercial cases
brought before the Supreme Court

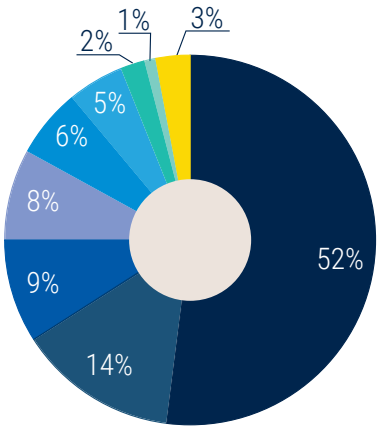
2018



2019



2020



- conclusion, amendment, termination, performance, and invalidation of contracts (transactions)
- on bankruptcy
- land relations
- non-contractual obligations
- protection of property rights
- corporate relations
- application of anti-monopoly legislation
- intellectual property rights protection
- other categories of cases

I. Legal positions on the application of the law on liability for breach of obligations

An integral part of the content of any legal civil right is the possibility, guaranteed by the state, to protect it from violations by third parties. At the same time, the peculiarities of these or other means of protection are determined mainly by the object, the content of the violated legal relations and the legal status of their participants. Only due account of the influence of the totality of these factors, combined with compliance with the fundamental postulates of the rule of law, can ensure the high efficiency of the mechanism for legal regulation of protective relations, including those that arise from the application of liability measures for breach of obligations.

1. Reduced limitation periods do not apply to the forfeit stipulated by Article 785(2) of the Civil Code of Ukraine for unlawful use of the property after termination of the lease agreement

Lease relations in case of unlawful use of property may be regulated by the provisions of the agreements, which define the consequences of unlawful use of property, and by the provisions of law imperatively applied to persons who broke the obligations in the sphere of lease relations.

Article 549 of the Civil Code of Ukraine and Article 230 of the Commercial Code of Ukraine define the general concept of punitive sanctions, which in economic proceedings include forfeits, fines, and penalties that a party to economic relations shall pay in case it violates the rules of economic activity, fails to comply with economic obligations.

Article 785(1) of the Civil Code of Ukraine stipulates that in case of termination of the lease agreement, the Lessee shall immediately return the property to the lessor in the condition in which it was received, taking into account normal wear and tear or in the condition specified in the agreement. Part 2 of this article stipulates sanctions for breach of this obligation: if the lessee does not fulfil the obligation to return the property, the lessor is entitled to demand that the lessee pay a forfeit amounting to twice the fee for the use of the property for the time of the delay.

According to general and special rules of law, the sanction (forfeit) is provided in Article 785 of the Civil Code of Ukraine and is a measure of liability established by the legislator for unlawful use of the property after termination of the agreement. Considering that the specified measure of liability is applied to a perpetual offence (failure to return the property to the lessor), the sanction is also time related in nature (an obligation to pay a double fee for the use of the property for the entirety of the unlawful use of the property).

The specified sanction (forfeit), which is determined by a special rule of law, has certain application peculiarities as compared to other punitive sanctions specified in Article 230 of the Commercial Code of Ukraine and Article 549 of the Civil Code of Ukraine.

So, the reduced limitation period does not apply to the forfeit as a special liability measure determined by the legislator in Article 785(2) of the Civil Code of Ukraine because the lessor

is entitled to claim such forfeit for the whole time of unlawful use of the property after termination of the agreement. In particular, the provisions of Article 232 of the Commercial Code of Ukraine about ceasing to charge punitive sanctions after 6 months are not applied to it because Article 785(2) of the Civil Code of Ukraine stipulates otherwise.

The ruling of the Joint Chamber of the Commercial Cassation Court of the Supreme Court dated 20 November 2020 in case No. 916/1319/19: https://reyestr.court.gov.ua/Review/93149464.

II. Legal positions on the application of provisions of the Law of Ukraine "On state registration of rights to real estate and their encumbrances"

Such an important activity as state registration of rights to real estate gradually takes its due place in the modern process of reforming property relations. State registration is designed to protect and defend the rights and legitimate interests of owners and users of real estate by creating additional guarantees for them. State registration of rights minimises the possibility of unscrupulous parties registering rights that do not belong to them and therefore prevents unlawful transactions with real estate. Such disputes are classified as highly complicated.

1. State registration of rights is not a ground for the acquisition of ownership rights but is only a certification by the state of the ownership right already acquired, which makes it impossible to identify the fact of acquisition of ownership rights with the fact of their state registration

In case No. 910/10987/18 on the claim of a bank against a limited liability company regarding the foreclosure of a mortgaged property, the Joint Chamber of the Commercial Cassation Court of the Supreme Court noted that in accordance with Article 2 of the Law of Ukraine "On state registration of rights to real estate and their encumbrances", the state registration of rights to real estate and their encumbrances (state registration of rights) is the official recognition and confirmation by the state of the facts of acquisition, change or termination of rights to real estate, encumbrances of such rights by making an entry into the State Register of Rights to Real Estate.

In accordance with Article 12(2) of the Law of Ukraine "On state registration of rights to real estate and their encumbrances" entries contained in the State Register of Rights to Real Estate shall correspond to the information contained in the documents on the basis of which the registration was made. In case of a discrepancy, the information contained in the documents on the basis of which the registration actions were carried out shall prevail.

The above norm regulates the legal situation where the information contained in the State Register of Rights to Real Estate does not correspond to the existing valid and unabolished documents of title on the basis of which registration actions took place and which prevail over the entries contained in the State Register of Rights to Real Estate.

However, the courts of lower instance did not apply the provisions of the said norm to the disputed legal relations and did not take into consideration that the registration of ownership rights

in the State Register of Rights to Real Estate for the limited liability company was conducted on the basis of purchase and sale agreements for the disputed property. At the same time, the courts of lower instance overlooked the circumstances of the legitimacy of transactions (purchase and sale agreements) which served as the basis for the defendant's acquisition of ownership rights to disputed property and grounds for making an entry in the State Register on disputed property ownership rights. The courts did not find out with certainty whether these transactions created legal consequences for the parties, whether the defendant acquired the ownership rights to the disputed property under these transactions, whether such transactions were challenged and declared invalid by the court.

The Commercial Cassation Court of the Supreme Court noted that the findings of the courts of lower instance that the defendant's ownership rights to the disputed property had been terminated was based only on the information on the termination of the ownership rights contained in the State Register of Rights to Real Estate, and was premature.

The Commercial Cassation Court of the Supreme Court indicated that in examining the circumstances of a person's ownership rights, the court shall first establish the basis on which the person acquired such rights, as the state registration of rights in itself is not the basis for the emergence of ownership rights, and the law does not provide for such a basis.

The ruling of the Joint Chamber of the Commercial Cassation Court of the Supreme Court dated 24 January 2020 in case No. 910/10987/18: http://reyestr.court.gov.ua/Review/87559633.

III. Legal positions in disputes over the right to permanent use of land plots

Given the imperfections in land legislation and its constant amendment, land disputes are laden with complexity. They touch upon the essential interests of the parties and, in many cases, are socially significant. Also, disputes in cases regarding the right to permanent use of a land plot deserve particular attention amongst land disputes.

1. On the termination of the right for permanent use of land plots

In order to uphold the claim for termination of the right to permanent use of a land plot and invalidation and abolition of the state certificate of the right to permanent use of land, there should be evidence of the defendant's voluntary rescission of the right to permanent use of the land plot certified by the respective state certificate, or grounds as per Article 143 of the Land Code of Ukraine for the compulsory termination of the right to permanent use of land.

The corresponding legal position is stated by the Commercial Cassation Court of the Supreme Court in case No. 909/108/19 on the claim of a city council against a private industrial and commercial firm for the termination of the right to permanent use of a land plot and invalidation and abolition of the state certificate of the right to permanent use of land.

The termination of the right to use a land plot shall be effected in accordance with the general procedure on the grounds set forth in Article 141 of the Land Code of Ukraine, and the procedure

set forth in Article 144 of the Code due to the use of a land plot in violation of the land legislation.

At the same time, Article 143 of the Land Code of Ukraine defines specific cases when rights to a land plot are forcibly terminated by a court.

Considering the said case, the Commercial Cassation Court of the Supreme Court observed that the content of Article 143 of the Land Code of Ukraine envisages that the list of grounds for forcible termination of rights to a land plot by a court is exhaustive.

Therefore, in upholding the claim, the courts of lower instance came to the premature conclusion with regard to forcible termination of the right for permanent use of a land plot referring to the grounds mentioned in Article 141 of the Land Code of Ukraine, such as alienation of the real estate located on the disputed land plot and systematic failure to pay the land tax.

Grounds for forcible termination of the right to permanent use of the land plot determined by the courts of lower instance are beyond the grounds set out in Article 143 of the Land Code of Ukraine and constitute a violation of the defendant's right to use the land plot that was acquired lawfully.

The ruling of the Commercial Cassation Court of the Supreme Court dated 20 February 2020 in case No. 909/108/19: http://reyestr.court.gov.ua/Review/88149692.

IV. Legal positions in disputes involving farms

During the establishment and operation of farms, land relations are decisive. The prerequisite for state registration of a farm (with the status of a legal entity) is acquisition by a citizen (or several citizens) of Ukraine, wishing to establish such a farm, of ownership rights or rights to the use of a land plot. Disputes over land plots for farming constitute one of the important categories of disputes heard by the Commercial Cassation Court of the Supreme Court last year.

1. Considering the methods for protecting the rights to land plots stipulated in Article 152 of the Land Code of Ukraine and the requirements for the effectiveness of the method for protecting the rights as set forth in Article 5 of the Commercial Procedure Code of Ukraine, the plaintiff in a dispute for protection of rights to a land plot may bring any claim not provided for by law or agreement, and the court may protect the violated right in the manner declared, including through recognising the absence of the rights, but provided that such method of protecting the rights to a land plot chosen by the plaintiff restores (protects) the violated right of the plaintiff or mitigates negative consequences due to the violation of the right; that is, it is an effective method of protection and eliminates the further need for other suits to protect (restore) the violated right.

The matter of the lawsuit was the claim of the First Deputy Head of the Oblast Prosecutor's Office, who brought a claim against the farm on recognising the absence of the rights to permanent use of a land plot on behalf of the state represented by the Main Regional Department of the State

Service of Ukraine for Geodesy, Cartography, and Cadastre. The claim was justified with reference to the fact that the right for permanent use of the land plot was not included in the inheritance and, therefore, the land plot did not belong to the new owner of the farm but was used by the farm in the absence of proper legal grounds.

The Supreme Court represented by the Chamber for Cases on Land Disputes, and Property Rights of the Commercial Cassation Court agreed with the findings of the courts of lower instance that there were no grounds to uphold the claim due to the prosecutor's choice of an ineffective method of protecting the violated rights, noting the following:

The application of a particular method of protecting a civil right depends both on the content of the right or interest sought to be protected and on the nature of its violation, non-recognition, or contestation. Such a right or interest should be protected by a court in a manner that is effective, namely appropriate to the content of the right or interest in the question, the nature of its violation, non-recognition or contestation, and the consequences caused by such actions.

The Cassation Court agreed with the findings of the courts that the prosecutor's claim for recognition of the absence of the right to permanent use of the land plot if upheld, would neither lead to the restoration of the violated right or the protection of state interests nor ensure the fulfilment of the legal obligation by the obligated party, the negative consequences would not be levelled and the plaintiff's right to use or dispose of a particular material good – the land plot – would not be restored.

Recognition of the defendant's lack of the right to use the land plot, in this case, is, in fact, the establishment of circumstances which may further be specified as grounds for claiming the protection of the violated right. It also indicates the inefficiency of the protection method chosen by the prosecutor since it does not restore the violated right but requires the submission of another claim.

The ruling of the Commercial Cassation Court of the Supreme Court dated 22 June 2020 in case No. 922/2155/18: http://reyestr.court.gov.ua/Review/90154778.

V. Legal positions on procedural issues

With the adoption of the new Commercial Procedure Code of Ukraine, case law on the application of commercial procedural legislation is relevant to a better understanding of all procedural issues.

1. Court fees shall be charged for the filing of (cassation) appeals against rulings on dismissing a claim for an additional court judgment

Within the meaning of paragraph 2 of Article 258(3) of the Commercial Procedure Code of Ukraine, the proof of court fee payment shall be attached to the appeal.

According to Article 123(2) of the Commercial Procedure Code of Ukraine, the amount of the court fee, the procedure for its payment, return, and exemption from payment shall be determined by law.

Article 4(1) of the Law of Ukraine "On Court Fees" stipulates that the court fee shall be charged in the respective amount based on the subsistence minimum for able-bodied persons established by law as of 1 January of the calendar year when the relevant application or complaint filed with the court – as a percentage of the claim price and in a fixed amount.

In accordance with sub-paragraph 7 of paragraph 2 of Article 4(2) of the Law of Ukraine "On Court Fees". the court fee for filing an appeal and cassation against the court ruling with the commercial court shall be one subsistence minimum for able-bodied persons.

Sub-paragraph 7 of paragraph 2 of Article 4(2) of the Law of Ukraine "On Court Fees" set the rate of the court fee in the amount of one subsistence minimum for able-bodied persons for filing appeals and cassation appeals against all the rulings of the commercial court without exception, regardless of whether this Law provides for a court fee for those applications that result in the relevant rulings.

Thus, the court fee shall be charged for the filing of (cassation) appeals against the rulings on dismissing a claim for an additional court judgment.

The ruling of the Joint Chamber of the Commercial Cassation Court of the Supreme Court dated 24 July 2020 in case No. 911/4241/15: https://reyestr.court.gov.ua/Review/90566045.

2. On the application of interim relief for non-pecuniary claims

According to Article 136(2) of the Commercial Procedure Code of Ukraine, interim relief may be applied both before bringing a claim and at any stage of the proceedings, if failure to take such relief may significantly complicate or make impossible the enforcement of a court decision or the effective protection or restoration of the violated or disputed rights or interests of the plaintiff for protection of that which he/she has applied to or intends to apply to the court for.

In deciding on the issue of interim relief, the commercial court shall assess the validity of the applicant's arguments on the need to take appropriate measures considering the reasonableness, validity and adequacy of the applicant's claim for relief; the balance of interests of the parties as well as other parties to the proceedings; the relationship between the particular relief and the subject matter of the claim, in particular, whether such a measure can ensure actual enforcement of the court judgment in case the claim is upheld; the probability of hindrance to the enforcement or non-enforcement of the commercial court decision if such interim relief is not applied; prevention of infringement, in connection with the application of such relief, of the rights and legally protected interests of persons who are not parties to the proceedings.

Sufficient justification for securing a claim is the existence of factual circumstances proved by evidence, to which a certain type of interim relief is related. Adequacy of an interim measure applied by the commercial court is determined by its correspondence with the requirements to be secured by it. Such adequacy shall be assessed by the commercial court, in particular, taking into account the correlation between the rights (interest) sought to be protected by the plaintiff and the value of the property to be secured or the pecuniary consequences of prohibiting the defendant from taking certain actions.

Meanwhile, if the plaintiff has applied to the court with non-pecuniary claims, the judgment, if upheld, would not require enforcement, such ground for applying interim relief measures as a sufficiently justified assumption that the failure to take such measures may significantly complicate or make it impossible to enforce the court judgment, shall not be subject to examination.

In this case, the ground for applying interim relief measures in non-pecuniary claims is a sufficiently justified assumption that the failure to take such measures may significantly complicate or make impossible the effective protection or restoration of the violated or disputed rights or interests of the plaintiff, for the protection of which he/she has applied or intends to apply to court.

The ruling of the Commercial Cassation Court of the Supreme Court dated 17 December 2020 in case No. 910/11857/20: http://reyestr.court.gov.ua/Review/93624154.

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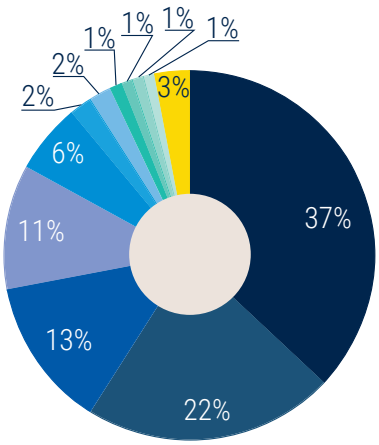
Mykola Mazur, Svitlana Vus, Andrii Chystyk

*Members of the panels that were in operation during 2020

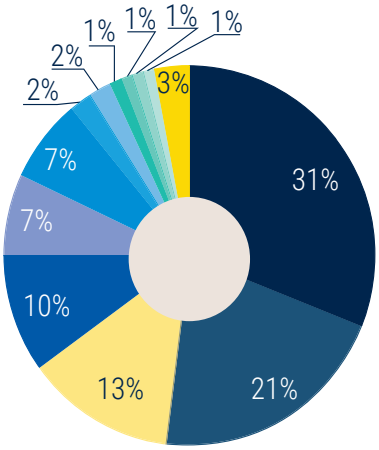
Judgments of the Supreme Court (criminal jurisdiction)

Cassation appeals in criminal cases brought before the Supreme Court

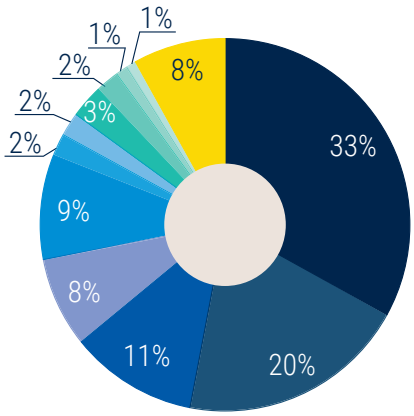
2018



2019



2020



- crimes against property
- crimes against human life and health
- crimes under the provisions of the Criminal Procedure Code of Ukraine (Article 399)
- crimes against traffic safety or safety of transport operations
- crimes related to trafficking of narcotic drugs, psychotropic substances, their analogues or precursors
- crimes related to official activity and professional activity connected with the provision of public services
- crimes against public safety
- crimes against public order and morality
- crimes against the authority of state authorities, local self-government bodies, or associations of citizens
- crimes related to economic activity
- crimes against sexual freedom and sexual integrity of a person
- crimes against justice
- cases of other categories

I. Legal positions on determining the nature of criminal offences against human life and health

The Criminal Code of Ukraine contains a number of provisions stipulating liability for criminal offences against human life and health. In particular, these include regulations for murder (Arts. 115-119), bodily injury (Arts. 121-125), and domestic violence (Article 1261). In addition, the Criminal Code of Ukraine contains provisions concerning circumstances precluding the criminality of an act, such as the right of all persons to necessary defence, which is enshrined in Article 36 of the Criminal Code of Ukraine. This right is an important guarantee of implementing the provision of Article 27(3) of the Constitution of Ukraine that everyone shall have the right to protect his or her life and health and the lives and health of other persons against unlawful encroachments.

In 2020, the Criminal Cassation Court of the Supreme Court paid attention to ensuring criminal law protection of human rights to life and health by shaping legal positions, which contributed to achieving such qualitative criteria of the case law as sustainability and unity.

1. On determining the nature of actions in case of causing the death of one person, if the intent to cause the death of another victim failed for reasons beyond the control of the perpetrator

In case No. 640/18653/17, evaluating the particular situation when the accused had committed a crime with the direct specific intent to cause the death of two victims, but one of the victims stayed alive, through the prism of the principle "non bis in idem", which excludes double jeopardy (incrimination) under Article 61(1) of the Constitution of Ukraine and Article 2(3) of the Criminal Code of Ukraine, the Joint Chamber of the Criminal Cassation Court has drawn the legal conclusion as follows.

If the court established the sole direct specific intent to cause the death of two or more persons, the murder of one person and an attempt on the life of the other person should be defined as an inchoate offence – an attempt to murder two or more persons, because the sole criminal intent to kill two persons had not been perpetrated due to reasons beyond the control of the guilty person under the respective clause of Article 15, paragraph 1 of Article 115(2) of the Criminal Code of Ukraine irrespective of the sequence of the criminal actions and under Article 115(1) of the Criminal Code of Ukraine or the respective clause of Article 115(2) of this Code (or under other special regulations) if there are such grounds.

In addition, it is concluded that defining the actions of the guilty person under Article 115(1) of the Criminal Code of Ukraine and Article 15(2), paragraph 1 of Article 115(2) of the Criminal Code of Ukraine violates the principle of "non bis in idem", which excludes double jeopardy (incrimination) under Article 61(1) of the Constitution of Ukraine and Article 2(3) of the Criminal Code of Ukraine, because the consequence of the death of one person is not an obligatory (constitutional) feature of an attempt on the lives of two or more victims, so the separate criminal law assessment of such consequence in determining the nature of a crime shall not constitute double jeopardy. Determining the nature of a crime only under Article 15(2), paragraph 1 of Article 115(2) of the Criminal Code

of Ukraine does not reflect the causing of death to one person, which by its nature is the most dangerous consequence, which is irreversible.

The ruling of the Criminal Cassation Court of the Supreme Court dated 28 September 2020 in case No. 640/18653/17 (proceeding No. 51-543кмо20): https://reyestr.court.gov.ua/Review/92021156.

2. On the application of the criminal law provision stipulating liability for domestic violence (Article 1261 of the Criminal Code of Ukraine), which was added to the Criminal Code of Ukraine pursuant to the Law of Ukraine No. 2227-VIII dated 6 December 2017 "On the Amendments to the Criminal and Criminal Procedure Codes of Ukraine in order to implement the provisions of the Council of Europe Convention on preventing and combating violence against women and domestic violence"

The provision of a legal opinion by the Joint Chamber of the Criminal Cassation Court of the Supreme Court was necessitated by the need to decide whether there are grounds for closing the criminal proceedings on the basis of paragraph 7 of Article 284(1) of the Criminal Procedure Code of Ukraine in case a person was charged with a criminal offence under Article 125 of the Criminal Code of Ukraine that took place before the mentioned Law entered into force and the respective violence was committed by the accused against a family member.

In case No. 453/225/19, the Joint Chamber of the Criminal Cassation Court of the Supreme Court, while delivering its judgment, pointed out that the wording of a "crime related to domestic violence" was broader than the concept of "domestic violence" in Article 1261 of the Criminal Code of Ukraine and could involve not only the commission of this crime but also other socially dangerous acts that have the elements of domestic violence.

The Joint Chamber of the Criminal Cassation Court of the Supreme Court also noted that the commission of a crime against a family member or another person referred to in Article 3(2) of Law No. 2227-VIII does not automatically abolish the guarantees of the right to defence. If the prosecution believes that a socially dangerous act is related specifically to domestic violence, it should indicate this in the notice of charges, in the indictment, and provide relevant evidence to support its position. Otherwise, the suspect (accused) will be deprived of the procedural opportunity to effectively defend his/herself and refute the accusation.

Considering the above, the Joint Chamber of the Criminal Cassation Court of the Supreme Court formed the following legal opinion: a crime related to domestic violence shall be deemed as any criminal offence, the circumstances of which show that the act has at least one of the elements (indicia) listed in Article 1 of the Law No. 2229-VIII, regardless of whether the incriminated article (part of the article) of the Criminal Code of Ukraine lists them as elements of an essential and aggravated corpus delicti. The prohibition of closing criminal proceedings set out in paragraph 7 of Article 284(1) of the Criminal Procedure Code of Ukraine applies to persons who have committed a crime related to domestic violence, provided that the investigating authorities have brought such charges against them, and they have had an opportunity to defend themselves against these charges.

The ruling of the Criminal Cassation Court of the Supreme Court dated 12 February 2020 in case No. 453/225/19 (proceeding No. 51-4000кмо19): http://reyestr.court.gov.ua/Review/87602679.

3. On the existence of necessary defence in the actions of a person who caused harm to the health of another person (moderate bodily injury) during a conflict with the latter

In case No. 612/890/16-к, the Criminal Cassation Court of the Supreme Court found that the state of necessary defence existed only during a socially dangerous encroachment that had its initial and final moment and only if it was necessary to immediately prevent or terminate such encroachment. The necessity of immediate prevention or termination of socially dangerous encroachment occurs when the delay on the part of the defender in inflicting harm on the assailant threatens immediate and imminent harm to the legally protected interests.

In assessing a particular situation, the Criminal Cassation Court of the Supreme Court held that the decisions of the courts of first and appellate instances were substantiated, in which they found that all the elements of necessary defence were present in a situation where medium bodily injuries were inflicted in resolving a conflict between two persons. At the same time, the actions of the person who caused these injuries do not constitute a criminal offence under Article 122 of the Criminal Code of Ukraine because this person was defending himself against the socially dangerous encroachment of another person to prevent him from inflicting harm to his health.

The ruling of the Criminal Cassation Court of the Supreme Court dated 29 October 2020 in case No. 612/890/16-к (proceeding No. 51-3895км20): https://reyestr.court.gov.ua/Review/92602222.

II. Legal positions on determining the nature of criminal offences involving violations of the traffic safety rules

Ensuring traffic safety in Ukraine is an important aspect of state activity. Traffic accidents result in grave consequences in the form of death and bodily injuries to one or more persons and pecuniary losses which are subject to reimbursement.

As follows from the analysis of case law, the most common cause of accidents remains driving a vehicle while intoxicated, which is prohibited at all levels of legal regulation of traffic safety in Ukraine. This determines the adequate choice of the form of criminal law response of the state to unlawful behaviour in such a case. In particular, this refers to the possibility of the guilty persons who, while intoxicated, committed the criminal offence under Article 286 "Violation of Traffic Safety Rules" of the Criminal Code of Ukraine being given a lighter penalty than prescribed by law (Article 69 of the Criminal Code of Ukraine) and being released from serving a sentence with probation (Article 75 of the Criminal Code of Ukraine).

In addition, the Criminal Cassation Court of the Supreme Court assessed situations in which a traffic accident was caused by the negligent behaviour of several road users: several drivers, a driver and a pedestrian, a driver, and a person driving animal-drawn transport. In such a case, a coincidence of negligence was established on the part of several parties in causing common damage, which requires a detailed analysis as to the elements of actus reus of a criminal offence under Article 286 of the Criminal Code of Ukraine, in particular, the assessment of causation in the current situation.

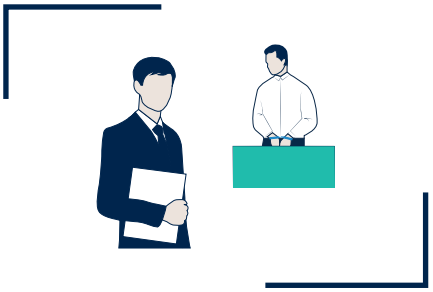
The Criminal Cassation Court of the Supreme Court focused its law enforcement activities on solving these and other problems arising during the consideration of criminal proceedings under Article 286 of the Criminal Code of Ukraine.

1. On the choice of criminal law response in case of a criminal offence under Article 286 of the Criminal Code of Ukraine, as well as the reasoning for such choice in the courts' decisions

During 2020 the case-law of the Criminal Cassation Court of the Supreme Court in relation to the release from serving a sentence with probation of the person convicted of a criminal offence under Article 286 of the Criminal Code of Ukraine was formed in such a way as to instruct the courts to take a balanced approach to such a release and to reason the decision taken. In particular, the judgments of the Criminal Cassation Court of the Supreme Court consistently substantiate the position that the application of Article 75 of the Criminal Code of Ukraine in the said proceedings may be considered as improper application of the law of Ukraine on criminal liability. In particular, this is the case when a defendant has repeatedly been held administratively liable for the violation of traffic rules, but without drawing the appropriate conclusions, in a short period of time, committed a traffic accident with serious consequences (case No. 490/9758/17), committed a criminal offence while intoxicated (case No. 755/9680/19), violated the traffic rules causing serious consequences for several persons (case No. 640/8605/15-к).

At the same time, the Criminal Cassation Court of the Supreme Court has shaped the legal position that even in cases when the court does not consider it appropriate to punish the person found guilty of the criminal offence under Article 286 of the Criminal Code of Ukraine, it may impose a lighter punishment than that prescribed by law (Article 69 of the Criminal Code of Ukraine) if there are reasons and conditions determined by the said Article (case No. 640/8605/15-к).

The ruling of the Criminal Cassation Court of the Supreme Court dated 25 June 2019 in case No. 490/9758/17 (proceeding No. 51-5847км18): http://reyestr.court.gov.ua/Review/82769652.
The ruling of the Criminal Cassation Court of the Supreme Court dated 22 October 2020 in case No. 755/9680/19 (proceeding No. 51-3258км20): http://reyestr.court.gov.ua/Review/92483003.
The ruling of the Criminal Cassation Court of the Supreme Court dated 8 August 2020 in case No. 640/8605/15-к (proceeding No. 51-1373км20): https://reyestr.court.gov.ua/Review/91555050.



III. Legal positions on determining the nature of criminal offences against human life and health

According to the case law of the European Court of Human Rights, the right of everyone accused of a criminal offence to an effective defence provided by the defence counsel, who is formally appointed when necessary, is one of the fundamental elements of a fair trial. In doing so, the Court has repeatedly stressed that the rights set out in the Convention for the Protection of Human Rights and Fundamental Freedoms should not be theoretical or illusory but practical and effective.

According to Article 129 of the Constitution of Ukraine, ensuring the accused's right to a defence is the basic principle of the judicial proceedings and, according to Article 7 of the Criminal Procedure Code of Ukraine, it is referred to in the general principles of the criminal proceedings. This constitutional basis for criminal proceedings creates the general conditions for the legal regulation of the right to defence against criminal prosecution as a fundamental right guaranteed, in particular, by international standards, and establishes the general requirements to be met by the parties to criminal proceedings in their procedural activities for the proper exercise of the defence function.

The right to defence is an inalienable, natural human right guaranteed by international law and the Constitution of Ukraine. This right is enshrined in a number of international legal acts, in particular, in Article 6(3)c of the Convention for the Protection of Human Rights and Fundamental Freedoms, is one of the basic constitutional rights of a human being and a citizen, in accordance with Article 63(2) of the Constitution of Ukraine.

1. On whether there has been a substantial infringement of the requirements of the criminal procedure law in case the court has failed to replace one defender with another due to the incompetence of the former

In case No. 525/897/19, the Criminal Cassation Court of the Supreme Court shaped a legal position that a violation of the right to defence is a substantial infringement of the requirements of the criminal procedure law if the appeal court did not examine a convicted person's motion for replacement of one defence counsel due to incompetence in rendering assistance in criminal proceedings with another and decided to continue the criminal proceedings with the participation of the defence counsel whose competence and credibility the convicted person had expressed doubt about.

Justifying this legal position, the Criminal Cassation Court of the Supreme Court proceeded from the fact that ensuring the right to defence of a suspect, accused, convicted and acquitted in criminal proceedings is one of the most important guarantees of protecting the human and civil rights and freedoms, as set forth in the Article 59, Article 63(2), Article 129(3)5 of the Constitution of Ukraine and the international instruments constituting national legislation on human rights and fundamental freedoms (Article 11 of the Universal Declaration of Human Rights; Article 14(3) of the International Covenant on Civil and Political Rights; Article 6(3) of the Convention for the Protection of Human Rights and Fundamental Freedoms). Furthermore, the Criminal Cassation Court noted that the European Court of Human Rights had repeatedly stressed in its judgments that it was the state's duty to ensure the exercise in good faith of the rights guaranteed by Article 6 of the Convention. An adequate defence for the accused, both at first instance and in the higher courts, is crucial to justice in the criminal procedure system. In fact, the appellate court did not comply with such requirements and did not take a procedural decision on the convict's motion for replacement of the defence counsel, who had provided his defence on appointment, with another defence counsel due to his incompetence, which was stated during the court hearing.

The ruling of the Criminal Cassation Court of the Supreme Court dated 20 May 2020 in case No. 525/897/19 (proceeding No. 51-746км20): https://reyestr.court.gov.ua/Review/89395935.

2. On determining in which courts the participation of a defence counsel should be ensured in juvenile court proceedings

In case No. 570/5368/17, the Criminal Cassation Court of the Supreme Court assessed a situation in which the appellate court reviewed a local court sentence imposed following proceedings against a juvenile in the absence of a defence counsel, who had appealed against the court decision.

Having considered the appeal of the defence counsel, the Criminal Cassation Court shaped the following legal position: the participation of a defence counsel in judicial proceedings against a juvenile shall be ensured in all instances, regardless of the stage of the proceedings and the appealer, and regardless of when the person concerned reached the age of majority at the time of the trial.

The Criminal Cassation Court ruled that the failure to ensure the participation of a defence counsel in such a case constituted a fundamental violation of criminal procedure law and unconditional grounds for revoking such a decision.

The ruling of the Criminal Cassation Court of the Supreme Court dated 16 April 2020 in case No. 570/5368/17 (proceeding No. 51-5958км19): https://reyestr.court.gov.ua/Review/88880612.

3. On the determination of persons who, due to their physical or mental disabilities, are unable to exercise the right to defence

In case No. 199/330/18, the Criminal Cassation Court determined whether there had been a violation of the right to defence when certain investigative actions in criminal proceedings had been taken against the accused who, according to a certificate from a drug treatment clinic and an examination certificate by the special medical commission for medical examinations of the drug treatment clinic contained in the criminal case file, was registered with a diagnosis of chronic alcoholism.

The Criminal Cassation Court of the Supreme Court clarified that in accordance with the requirements of Article 52(1) of the Criminal Procedure Code of Ukraine, the participation of a defender is mandatory in criminal proceedings involving particularly grave crimes. In this case, participation of a defence counsel is ensured from the moment when a person achieves the status of suspect. In other cases, the participation of a defence counsel is mandatory in criminal proceedings, including in relation to persons who, due to mental or physical disabilities (deaf, dumb, blind, etc.), are unable to fully exercise their rights – from the moment such disabilities are identified (Article 52(2)3 of the Criminal Procedure Code of Ukraine).

The Criminal Cassation Court, on the basis of the materials of the criminal proceedings, stated that at the pre-trial investigation stage the accused's right to defence had been duly secured, and such legal position had been formulated.

Persons who, due to their physical or mental disabilities, cannot exercise the right to defence themselves shall be understood in particular as persons with major defects of speech, vision, hearing, etc., as well as persons who, although found sane, have mental disabilities that prevent

them from defending themselves against the prosecution. The mere fact that a person is on the special register does not mean that a convicted person could not fully exercise his or her right to defence.

During court proceedings, the issue of engaging a defence counsel should be resolved in the specific circumstances of the case, taking into account the nature of identified disabilities, the mental or somatic state of health of a person, the features of his or her behaviour, communication style with others and the like.

The ruling of the Criminal Cassation Court of the Supreme Court dated 28 May 2020 in case No. 686/25855/18 (proceeding No. 51-365км20): http://reyestr.court.gov.ua/Review/89564033.

IV. Legal positions on treating the law enforcement officers' actions as provocation of a criminal offence or lawful conduct

One of the urgent problems that is important for human rights protection in criminal proceedings is the problem of protection against provocation of a person to commit a criminal offence. Thus, under Article 271 of the Criminal Procedure Code of Ukraine, when preparing and undertaking measures to control the commission of a criminal offence, it is prohibited to provoke (incite) a person to commit such an offence for the purpose of its further exposure by helping the person to commit the criminal offence which he/she would not have committed had the investigator not facilitated it, or to influence his/her behaviour with violence, threats or blackmail. Things and documents obtained in this way cannot be used in criminal proceedings.

The prohibition of provocation (incitement) of a person to commit a criminal offence during covert investigative (search) activities and criminal intelligence operations in criminal proceedings is cross-cutting in nature.

In the practice of the Criminal Cassation Court of the Supreme Court, there was a treatment of law enforcement officers' actions as provocation of a criminal offence or their lawful conduct. Herewith, the Court's judgment has been guided not only by domestic criminal procedure law but also by relevant international standards. This refers to the European Court of Human Rights case law (for example, Edwards and Lewis v. the United Kingdom, Ramanauskas v. Lithuania, Khudobin v. Russia, Teixeira de Castro v. Portugal, Bannikova v. Russia, Constantin and Stoian v. Romania, Shannon v. the United Kingdom, Burak Hun v. Turkey, Malininas v. Lithuania, Vanyan v. Russia, Veselov and Others v. Russia, Sepil v. Turkey, Ali v. Romania, V. v. Finland and Lagutin and Others v. Russia).

1. On identifying the cases of incitement to commit a criminal offence by a law-enforcement official with a view to further exposure of a convicted person

In case No. 164/104/18, the Criminal Cassation Court of the Supreme Court upheld the findings of the courts of first and appellate instances of incitement to commit a criminal offence, because an employee of a criminal intelligence unit, without observing the established procedure, actually

conducted an operation to control the commission of a corruption act by providing means of audio and video recording, identifying the cash notes and giving them to a person who was to give money to the accused as an improper benefit. In doing so, the requirements to prevent provocation of a crime were not complied with.

In the above case, the Criminal Cassation Court of the Supreme Court shaped the following legal position: incitement to commit a criminal offence by a law enforcement officer committed with the aim of further exposing a convicted person takes place when such officer, without observing the requirements to prevent provocation of a crime, specially involved a witness to conduct criminal intelligence operations against the convicted person before the initiation of criminal proceedings, provided the witness with special means of covert audio, video recording of events, as well as identified cash notes for their hand-over to the convicted person as an improper benefit before their first meeting.

The ruling of the Criminal Cassation Court of the Supreme Court dated 8 April 2020 in case No. 164/104/18 (proceeding No. 51-10414км18): https://reyestr.court.gov.ua/Review/88749774.

2. On the need for the prosecution to ensure the appearance of a legendised person at court hearings to give evidence confirming the absence of provocation of a criminal offence

In case No. 643/10749/14-к the Criminal Cassation Court of the Supreme Court shaped a legal position that in order to establish the absence of provocation during the control over the commission of the crime involving the controlled buy of drug substances, the prosecution shall take measures to ensure the appearance of a legendised person at court hearings to provide relevant evidence. At the same time, in the relevant proceedings, the prosecution failed to ensure the interrogation of such a legendised person, although the criminal proceedings had been pending for a long time.

Moreover, the Criminal Cassation Court concluded that the absence of documented confirmation of issuing the special purpose cash money used by the police officers for the controlled buy of drug substances and termination of criminal activity of the accused, which is a requirement of departmental regulations of the Security Service of Ukraine and the Ministry of Internal Affairs of Ukraine, constitutes a substantial breach of the requirements of the criminal procedure law. Therefore, as noted in the judgment of the Criminal Cassation Court of the Supreme Court, in the absence of special purpose costs, operatives were objectively unable to give the buyer of the controlled buy the cash funds that were necessary for the controlled buy of drug substances from the accused.

The ruling of the Criminal Cassation Court of the Supreme Court dated 1 July 2020 in case No. 643/10749/14-к (proceeding No. 51-2273км20): https://reyestr.court.gov.ua/Review/90202735.

3. On the lawfulness of the actions by law enforcement officers who controlled the commission of a crime as the only possible measure to prevent the death of the victim

In case No. 266/3474/15-к, the Criminal Cassation Court of the Supreme Court found that during the pre-trial investigation, it was established that in this criminal proceeding, the accused had been looking for a candidate for the murder of another person, and it was impossible to stop her illegal activity without covert investigative (search) activities because a particularly grave

crime was being prepared. Consequently, control over the crime was the only possibility of preventing the victim's death. The court found that in the criminal proceedings, the crime would have been committed without the intervention of law enforcement agencies, which was confirmed by witness statements and the results of covert investigative (search) activities.

Thus, the law enforcement officers had sufficient information about the accused's preparation of a particularly grave crime prior to taking control of the commission of the crime and had joined the offence at the stage of preparation, while the agent's behaviour had been passive.

The ruling of the Criminal Cassation Court of the Supreme Court dated 1 July 2020 in case No. 266/3474/15-к (proceeding No. 51-7086км18): https://reyestr.court.gov.ua/Review/87902035.

V. Legal positions regarding appellate proceedings

The Constitution of Ukraine stipulates that one of the basic principles of judicial proceedings is to ensure the right to appeal. The scope of the right to appellate review, as defined by law, should guarantee the effective exercise of the right to judicial defence to achieve the goals of justice while protecting the other constitutional rights and freedoms of that person. Restriction of access to a court of appeal as part of the right to judicial defence is possible only with mandatory respect for constitutional norms and principles, namely the priority of protecting fundamental human and civil rights and freedoms, as well as the principle of the rule of law, according to which the state shall introduce an appellate review procedure to ensure the effectiveness of the right to judicial defence at this stage of proceedings, in particular by providing the possibility to restore the violated rights and freedoms of a person and to prevent negative individual consequences of possible judicial error of the court of first instance (Decision of the Constitutional Court of Ukraine No. 4-p/2019 dated 13 June 2019).

The Criminal Cassation Court shaped a number of important legal findings and legal positions in terms of effective enforcement of the right to appeal against court decisions during 2020.

Panels of Judges for the First Judicial Chamber*

Ruslan Lidovets, Yuliia Cherniak, Borys Hulko, Dmytro Luspenyk,
Iryna Vorobiova, Hanna Kolomiiets

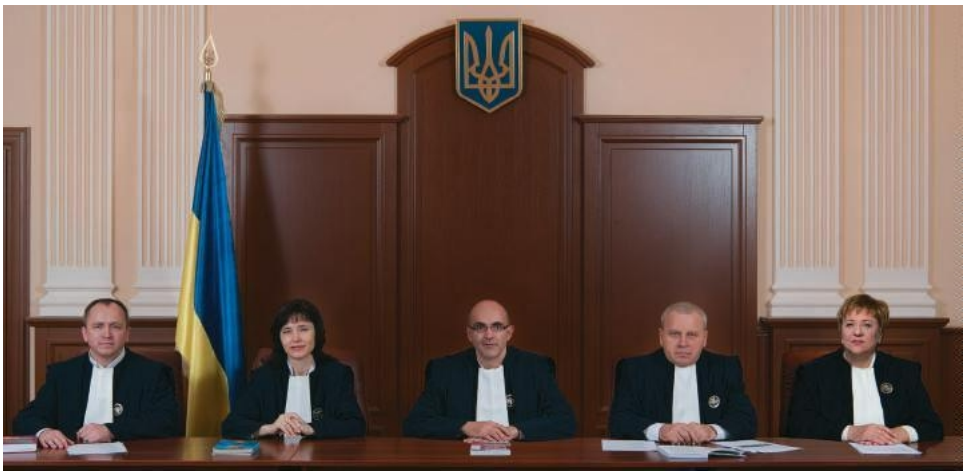
Serhii Khopta, Olena Bilokon, Yevhen Synelnykov, Oleksii Osiian,
Nataliia Sakara, Vladyslav Shupovych

Ihor Huleikov, Serhii Pohribnyi, Olha Stupak, Hryhorii Usyk,
Alla Oliinyk, Vasyl Yaremko

*Members of the panels that were in operation during 2020

Panels of Judges for the Second Judicial Chamber*

Vadym Korotun, Serhii Burlakov, Maryna Chervynska,
Andrii Zaitsev, Yevhen Korotenko



Yevhenii Krasnoshchokov, Iryna Dundar, Vasyl Krat,
Mykola Rusynchuk, Nataliia Antonenko

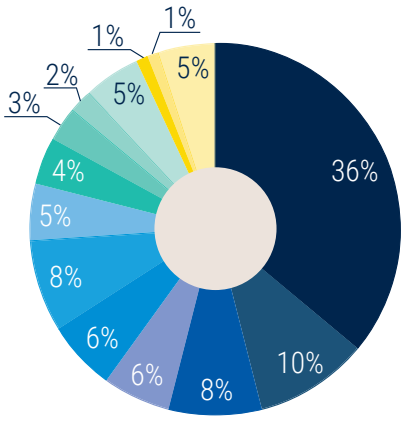
Panel of Judges for the Third Judicial Chamber*

*Members of the panels that were in operation during 2020

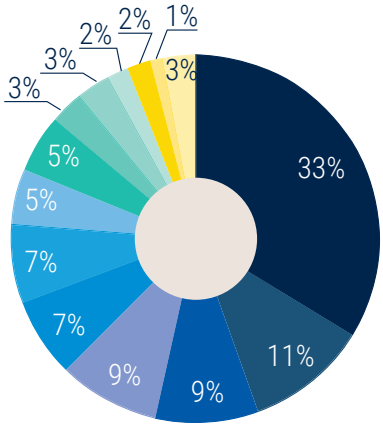
Judgments of the Supreme Court (civil jurisdiction)

Cassation appeals in civil cases
brought before the Supreme Court

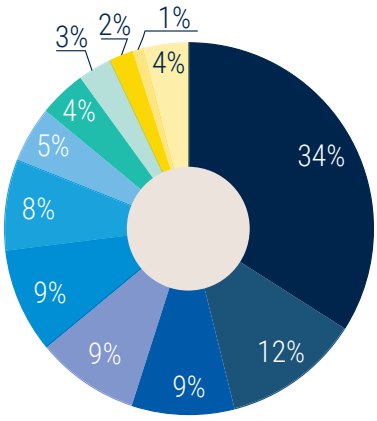
2018



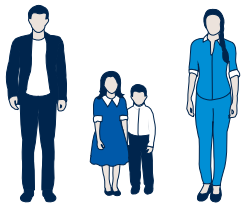
2019



2020



- disputes arising from contracts
- disputes about compensation for damages
- labour law cases
- family law cases
- disputes on ownership and other proprietary rights
- land law disputes
- housing law cases
- disputes concerning inheritance law
- cases related to complaints against acts or omissions of the enforcement service
- disputes related to the application of the Law of Ukraine "On the Protection of Consumer Rights"
- other action cases
- special proceedings
- cases regarding the protection of honour, dignity, and business reputation
- cases of other categories



I. Legal positions in cases on family law disputes

Family law disputes are one of the most important categories in civil proceedings. Disputes relating to the return of minor children to their country of permanent residence require special attention as the international abduction of children/taking of them by one of the spouses out of the country of permanent residence is a real contemporary problem. Categories of judgment regarding adult children and their duty of care to their incapacitated parents are also weighty.

1. Under the Convention on the Civil Aspects of International Child Abduction, the court may refuse to return a minor child to his/her country of residence, provided that more than one year has elapsed since the child was displaced, and he/she has settled in a new environment

The plaintiff brought an action seeking to enforce the return of the minor child to the Italian Republic. The parties in the case were in a de facto marital relationship, during which they had a child in the territory of the Italian Republic, who is a citizen of Ukraine. The mother went to Ukraine with the child even though the father did not give his consent.

The Civil Cassation Court of the Supreme Court upheld the decisions of the previous instances, which had denied the claim, and pointed out that one of the reasons for which a court could refuse to return the child to the place of residence under the Law of Ukraine "On Accession of Ukraine to the Convention on the Civil Aspects of International Child Abduction", was that more than a year had passed since the child was displaced and the child had settled in a new environment (Article 12(2) of the Convention).

Article 8 of the Convention on the Civil Aspects of International Child Abduction imposes on the domestic authorities a particular procedural obligation in this respect: when assessing an application for a child's return, the courts must not only consider arguable allegations of a "grave risk" for the child in the event of a return, but must also make a ruling giving specific reasons in the light of the circumstances of the case. Both a refusal to take account of objections to the return capable of falling within the scope of Articles 12, 13, and 20 of the Convention and insufficient reasoning in the ruling dismissing such objections would be contrary to the requirements of Article 8 of the Convention and also to its aim and purpose.

The statement that a child has settled in his or her new environment may be proved by the following facts: attendance at a pre-school educational institution – kindergarten, various clubs; medical care for the child; the child has friends, hobbies, family ties; change of spoken language and other facts showing that the child considers his or her place of residence as permanent, comfortable and a family home, and so on.

The Supreme Court pointed out that these facts have to be assessed in aggregate with respect to the interests of the child both now and in the future, the balance of interests and rights of the parents, the opinion of the child if he or she has reached that age and level of maturity, and the like.

The ruling of the Civil Cassation Court of the Supreme Court dated 5 August 2020 in case No. 521/14556/16 (proceeding No. 61-38913св18): http://reyestr.court.gov.ua/Review/90932482.

II. Legal positions in cases on labour law disputes

Labour disputes considered by the Civil Cassation Court of the Supreme Court in 2020 mainly concern issues of reinstatement in a job and the accrual and recalculation of various payments, which are governed by labour law.

1. Causing damage to the mental health of a student by a teaching employee as a result of bullying, which has been documented, is a ground for dismissal of such employee for immoral misconduct under Article 41(1)3 of the Labour Code of Ukraine

While examining the lawfulness of an employee's dismissal for immoral misconduct under paragraph Article 41(1)3 of the Labour Code of Ukraine, the court of the first instance, upheld by the court of appeal, proceeded from the fact that the plaintiff had been performing pedagogical educational work under her official duties, and therefore she was the one who could be dismissed for immoral misconduct incompatible with the continuation of this work, namely for committing a systematic pressure on a student, which is deemed as a fact of bullying between the participants in the educational process.

The Civil Cassation Court of the Supreme Court upheld these findings and also noted that an employee who performs an educational function – a teacher, educator, tutor – is required to be a person of high moral convictions and impeccable behaviour. The personal example of a teacher and his/her authority and high moral conduct are of the utmost importance in shaping the conscience of young people. Therefore, if a teacher compromises him/herself before the students or other persons due to improper conduct, violates moral norms, and thereby loses authority and discredits him/herself as an educator, he/she may be dismissed from the position pursuant to Article 41(1)3 of the Labour Code of Ukraine. Only employees engaged in an educational activity – educators, teachers, lecturers, practical psychologists, social pedagogues, job training instructors, methodologists, and pedagogues of out-of-school establishments – may be dismissed on the grounds of having committed immoral misconduct incompatible with the continuation of this work. Dismissal cannot be recognised as correct if it is only the result of a general assessment of the employee's conduct which is not supported by concrete facts.

Having established the circumstances of the teacher's commission of immoral misconduct contrary to the requirements of teaching ethics, morality, respect for the child's dignity, the teacher's duty to protect children from any form of physical or mental violence, as well as contrary to the generally accepted norms and rules, violating the moral foundations of society, the moral values which have developed in society, the courts have come to a reasonable conclusion that she was dismissed in accordance with the requirements of the labour law.

The ruling of the Civil Cassation Court of the Supreme Court dated 7 December 2020 in case No. 279/44/20 (proceeding No. 61-10636св20): https://reyestr.court.gov.ua/Review/93472096.

III. Legal positions in cases on housing law disputes

Article 47 of the Constitution of Ukraine states that everyone has the right to housing. Housing disputes occupy an important place in resolving issues related to a person's right to housing and his or her right to live in it. For example, the Civil Cassation Court of the Supreme Court noted that a person registered in housing may not be evicted from it if she or he does not any other have accommodation and has nowhere to live.

1. The long period of residence in the disputed flat/house of a person who has no other accommodation is sufficient grounds to consider the flat/house to be the accommodation of that person within the meaning of Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms

According to a gift contract, the grandmother gave her grandson a flat, but the plaintiff's aunt, who is registered in the flat and has no other place to live, remains living in it. The Civil Cassation Court of the Supreme Court reversed the ruling of the court of appeal which had declared the defendant to have lost the right to use the flat since this decision would have led to her eviction from the disputed flat, and upheld the decision of the district court, which had reasonably established that the plaintiff, having accepted the flat as a gift, namely having acquired the property free of charge, knew that the defendant, a family member of the previous owner of this accommodation, who had no other accommodation, was residing in it; therefore his right to this property could not be protected by declaring the defendant to have lost the right to use the accommodation, as she would thereby become homeless, which was not equitable in all the circumstances of the case.

However, the Civil Cassation Court of the Supreme Court stressed that in deciding a case, determining the statutory grounds for eviction or declaring a person to have lost the right to use, which in effect would result in eviction, bearing in mind the rule of law, the court must, in each particular case, assess whether interference with a person's right to respect for their home is not only lawful but also "necessary in a democratic society". In other words, it must meet a "pressing social need" and, in particular, be proportionate to the legitimate aim pursued.

The ruling of the Civil Cassation Court of the Supreme Court dated 15 January 2020 in case No. 754/613/18-ц (proceeding No. 61-1634св19): http://reyestr.court.gov.ua/Review/87053022.

IV. Legal positions on land law cases

The court practice has repeatedly considered the issues related to the transfer of a person's right to a land plot when acquiring a title to a residential house, building or construction. In particular, the Civil Cassation Court of the Supreme Court shaped a legal position on determining the order of use of land plots by co-owners of a dwelling house for its maintenance.

V. Legal positions in cases on declaring transactions valid/ invalid

The Civil Cassation Court of the Supreme Court shaped a legal position on declaring a transaction invalid, noting that a contract performed to the detriment of creditors (fraudulent contract) may be both a commutative and a gratuitous contract. The application of the fraudulence scheme in a commutative civil law contract has certain peculiarities, which can be seen in the circumstances allowing a commutative contract to qualify as such, that are performed to the detriment of a creditor.

1. A court's recognition of a non-notarised contract as valid does not exclude its further recognition as invalid due to fraudulence

Interpretation of Article 220 of the Civil Code of Ukraine indicates that the court decision to recognise a contract as valid in the case of parties' non-compliance with the requirement for its notarisation "cures" only this defect, as a lack of contract notarisation. Accordingly, it does not exclude the invalidation of a contract that was declared valid due to the lack of notarisation as such, if performed to the detriment of a creditor (fraudulent contract).

The Civil Cassation Court of the Supreme Court noted that private law instruments (in particular, the invalidation of a contract due to the lack of notarisation) shall not be used by parties to business transactions in order to avoid the payment of a debt (funds, losses, damages) or the enforcement of a valid judgment to recover a debt (funds, losses, damages).

The ruling of the Civil Cassation Court of the Supreme Court dated 18 November 2020 in case No. 569/6427/16 (proceeding No. 61-39814св18): https://reyestr.court.gov.ua/Review/93053362.

VI. Legal positions in disputes arising from insurance relations

The Civil Cassation Court of the Supreme Court also hears cases deciding on the restoration or protection of individuals' social rights. In particular, as the Court noted in one of its judgments, Ukrainian citizens have the right to choose their place of residence while retaining all constitutional rights, including the right to social security, and consequently, depriving a person of insurance payouts simply because he/she resided abroad violates the Constitution of Ukraine.

1. The refusal to restore the insurance payouts, intended for the person indefinitely due to labour injury, only because he/she resided in a state with which Ukraine has not signed an international treaty on insurance payouts and social services provision, is unreasonable and violates the constitutional guarantees of the person for social security due to the loss of capacity for work

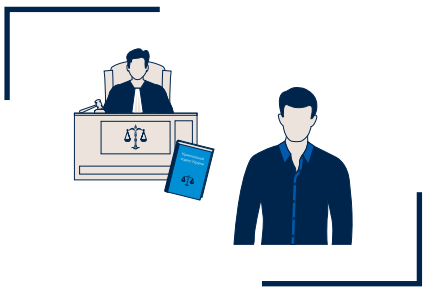
In examining the issue of restoring the insurance payout to a person who had lost the capacity for work due to a labour injury, the court of first instance, upheld by the court of appeal, proceeded

on the basis that the plaintiff was permanently residing abroad and therefore the termination of such payouts was legitimate.

The Supreme Court disagreed with this conclusion and also pointed out that Article 46(1) of the Law of Ukraine "On Compulsory State Social Insurance," which provides for the termination of insurance payouts for the period of the victim's residence abroad unless otherwise provided for by the international treaty of Ukraine, contradicts Articles 24(1, 2), 25(3), 41(1, 4), 46(1), 64(1) of the Constitution of Ukraine.

Considering the fact that the plaintiff had applied to the appropriate social insurance body on the territory of Ukraine, the Supreme Court recognised the refusal to restore the insurance payouts assigned to the plaintiff indefinitely due to the labour injury only under the very fact of his residence in the State of Israel with which Ukraine had not signed an international treaty on insurance payouts and social services provision as unreasonable and violating the constitutional guarantees of the plaintiff for social security due to the loss of capacity for work.

The ruling of the Civil Cassation Court of the Supreme Court dated 25 November 2020 in case No. 234/9296/17 (proceeding No. 61-25865св18): https://reyestr.court.gov.ua/Review/93217644.



VII. Legal positions in cases on protection of honour, dignity, and business reputation

Legal disputes related to the protection of honour, dignity, and business reputation are of great social and political significance and attract close attention from citizens and the media. Often it is possible to restore the rights violated by dissemination of false information through pre-trial proceedings, but in most cases, the only opportunity to restore the rights is to seek protection in court. The choice of the method of protecting personal non-property rights, in particular the right to respect for honour and dignity and the right to inviolability of business reputation, rests with the plaintiff. At the same time, plaintiffs sometimes manipulate their rights by choosing an inappropriate method of protection.

VIII. Legal positions in disputes about compensation for damages

As to the resolution of disputes on compensation for damages, it is worth mentioning, in particular, the ruling of the Civil Cassation Court of the Supreme Court that the Law of Ukraine "On the Protection of Consumer Rights" extends to legal relations arising between the parties to the purchase and sale agreement for property rights to real estate – housing construction, even if the said agreement does not provide for the compensation of non-pecuniary damage.

1. Obligations arising from a person's property rights to real estate are subject to the Law of Ukraine "On the Protection of Consumer Rights." Therefore, the developer may be charged with

non-pecuniary damage for late commissioning of a house. even in cases where the agreement does not provide for the right to compensation for non-pecuniary damage

In examining the question of compensation for non-pecuniary damage for the improper fulfilment of contractual obligations, the court of first instance, upheld by the court of appeal, proceeded from the fact that the purchase and sale agreement for property rights to real estate did not provide for such compensation.

The Supreme Court did not uphold such a conclusion and pointed out that they made an erroneous conclusion that the Law of Ukraine "On the Protection of Consumer Rights" should not be applied to disputed legal relations because the purchase and sale agreement for property rights implies that the purchaser's ownership right to the flat would subsequently be acquired, and therefore such legal relations are subject to the said Law. Articles 4 and 22 of the Law of Ukraine "On the Protection of Consumer Rights" expressly provide the consumer's right to compensation for non-pecuniary damages in legal relations between consumers and producers and sellers of goods, performers of works, and service providers. That is, non-pecuniary damages for violation of a civil law contract as a way to protect a legal civil right may be compensated even if this is not directly provided by law or this or that agreement and may be recovered on the basis of Articles 16 and 23 of the Civil Code of Ukraine, Articles 4 and 22 of the Law of Ukraine "On the Protection of Consumer Rights" even in cases where the contract does not provide for the right to compensation for non-pecuniary damage.

The ruling of the Civil Cassation Court of the Supreme Court dated 7 October 2020 in case No. 755/3509/18 (proceeding No. 61-17721св19): https://reyestr.court.gov.ua/Review/92458135.

IX. Legal positions on the application of procedural law

According to Article 3(3) of the Civil Procedure Code of Ukraine, proceedings in civil cases shall be conducted in accordance with the laws in force at the time of certain procedural actions, and be given due consideration in order to resolve the case. Studying the issue of appealing a judgment, which was subject to appeal at the time of filing an appeal, in accordance with the procedural legislation that excluded a judgment from the list of those subject to appeal, the Civil Cassation Court of the Supreme Court pointed out that laws and other regulatory legal acts have no retroactive effect, except for cases where they mitigate or cancel a person's liability.

1. Where a person has appealed a judgment that was subject to appeal at the time of filing the appeal, the return of the appeal in accordance with the procedural legislation that excluded the judgment from the list of those subject to appeal constitutes a violation of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms

The courts found that the court of first instance's ruling had initiated the proceedings in the case in question. The appeal court ruling refused to initiate the appeal proceedings under the person's appeal against the court ruling on the basis of Article 358(1)4 of the Civil Procedure Code of Ukraine.

A ruling of the Supreme Court quashed the ruling of the court of appeal and transferred the case to the court of appeal to decide on the issue of initiating the appeal proceedings.

The court of appeal's ruling returned the appellant's appeal against the court of first instance's ruling on the basis of Article 357(5)4 of the Civil Procedure Code of Ukraine.

Returning the appeal to the person, the court of appeal mistakenly assumed that the applicant appealed against the court ruling to initiate the proceedings in the case in violation of jurisdiction rules separately from the court decision, whereas in accordance with the provisions of Article 353(1) of the Civil Procedure Code of Ukraine as amended by the Law of Ukraine "On Amendments to the Commercial Procedure Code of Ukraine, the Civil Procedure Code of Ukraine, the Code of Administrative Proceedings concerning the Improvement of the Procedure for Consideration of Court Cases", the ruling to initiate proceedings in the case in violation of jurisdiction rules shall not be subject to appeal separately from the court decision.

However, when appealing to the court of appeal in October 2019, the person was waiting for its consideration in accordance with the procedure established by the Civil Procedure Code of Ukraine, which was in force at the time of such a procedural action (the principle of legitimate waiting).

The Civil Cassation Court of the Supreme Court also noted that court procedures must be just; therefore, a person cannot be unreasonably deprived of the right to appeal a judgment as this would violate the right under Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms to a fair trial, which also includes the right to appeal.

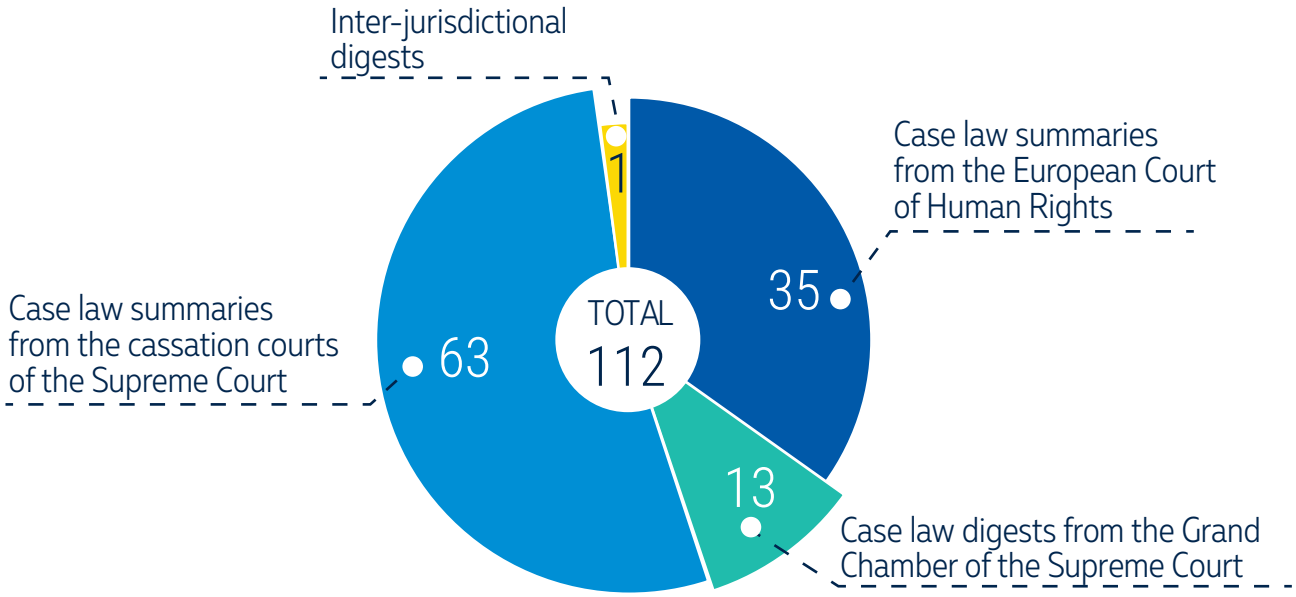
The ruling of the Civil Cassation Court of the Supreme Court dated 3 June 2020 in case No. 161/18471/18 (proceeding No. 61-4729св20): https://reyestr.court.gov.ua/Review/89872318.

Systematisation and publication of case law

In 2020, the Supreme Court continued to actively develop its activities related to the systematisation and publication of case law summaries and digests.

During the year, the Supreme Court published 112 digests and summaries. These included 13 monthly and topical case law digests from the Grand Chamber; 63 case law summaries from the cassation courts (12 from the Administrative, 16 from the Commercial, 18 from the Criminal, and 17 from the Civil Cassation Courts), one inter-jurisdictional digest covering the case law of all cassation courts and the Grand Chamber consolidated by legal relations; 35 case law summaries from the European Court of Human Rights.

Published case law summaries and digests



In 2020, the case law digest of the Grand Chamber of the Supreme Court was made public for the first time. This digest reflects all the case law of the Grand Chamber that has emerged since its establishment, cases in which the Grand Chamber of the Supreme Court has departed from its legal positions or the legal positions of the Supreme Court of Ukraine. Such a digest ensures a clear understanding of which legal position is still in force and helps avoid the application of irrelevant case law.

The frequency has been established for the publication of summaries from the Supreme Court cassation courts. Today, the Supreme Court regularly publishes monthly case law summaries of all four cassation courts, which contain the most important legal positions shaped by the cassation courts for each preceding month.

In addition, topic case law summaries from the cassation courts have been prepared, which reflect the main approaches formed as a result of the cassation review of judgments in cases of a particular category peculiar to the relevant type of proceedings. Such summaries are jurisdictional and relate to a particular narrow area of social relations. In particular, in 2020, the Supreme Court prepared a comprehensive digest of Supreme Court case law on disputes arising from labour relations; on disputes arising between persons living as a family but not married, in taxation and customs matters, and the like.

In 2020, the Supreme Court changed the format for preparing and publishing the case law summaries from the European Court of Human Rights. In order to systematise only the most interesting European Court of Human Rights judgments, it was decided to prepare and publish relevant summaries on a monthly basis. The summaries detail not only the circumstances of a case and information about the judgment by the European Court of Human Rights, but also indicate the legal position of the European Court of Human Rights and provide a translation of the Court's key motives. Moreover, for ease of reference, the judgments in the summaries are organised according to the Articles of the Convention for the Protection of Human Rights and Fundamental Freedoms, allowing us to understand just from the contents of the summary which aspect of the Convention rights is referred to. Descriptions of judgments prepared by the Supreme Court are published in Ukrainian on the official HUDOC web portal for European Court of Human Rights case law.

The Supreme Court continues to prepare European Court of Human Rights case law summaries. In 2020, a summary was published related to the judgments of the European Court of Human Rights concerning interference with the right to freedom of expression enshrined in Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

Activities of the Plenum of the Supreme Court

The Plenum of the Supreme Court, a collegial body, composed of all Supreme Court judges, held its first meeting on 30 November 2017. On that day, amongst other things, the leadership of the Supreme Court was elected, and 15 December 2017 was defined as the day on which the Supreme Court began its work.

In general, in addition to solving personnel issues, the Plenum of the Supreme Court gives opinions on draft legislative acts concerning the judiciary, proceedings, the status of judges, enforcement of court judgments and other issues related to the functioning of the judiciary in Ukraine, appeals to the Constitutional Court of Ukraine regarding the constitutionality of laws and other legal acts, regarding the official interpretation of the Constitution of Ukraine, as well as exercises other powers stipulated by law.

Secretary of the Plenum of the Supreme Court Dmytro Luspenyk

Appeal to the Constitutional Court of Ukraine

In 2020 the Plenum of the Supreme Court adopted 14 resolutions, and during the whole period of its activity, more than 50 resolutions.

At the same time, it was in the third year of the Supreme Court that, taking into account the events that took place in the state during 2020, the Plenum addressed the Constitutional Court of Ukraine with the largest number of submissions.

The Supreme Court's submissions to the Constitutional Court of Ukraine dealt with the following problematic issues.

1. Constitutional submission concerning the constitutionality of restrictions for the period of lockdown envisaged by the provisions of certain regulatory legal acts adopted by the Cabinet of Ministers of Ukraine and the Verkhovna Rada of Ukraine (Resolution of the Plenum of the SC No. 7 dated 29 May 2020).

As the Plenum of the Supreme Court noted, the essence and practical implementation of such regulations do not comply with the Constitution of Ukraine, restrict the rights and freedoms of citizens (in particular the right to freedom of movement, to peaceful assembly, to entrepreneurial

activity, to access to medical care), and will also lead to non-enforcement of court decisions, disproportionate interference with property rights of employees, officials of budget institutions, people's deputies of Ukraine, judges, prosecutors and other persons whose salaries are regulated by special laws.

The Constitutional Court of Ukraine, having considered this submission, reached the following conclusions in its Decision No. 10-p/2020 dated 28 August 2020. The Cabinet of Ministers of Ukraine, by imposing the lockdown, went beyond its constitutional powers. Temporary restriction of an indisputable write-off of funds from the state budget and local budgets by the State Treasury Service of Ukraine on the basis of a court decision contradicts the norms of the Constitution of Ukraine regarding compulsory enforcement of court decisions. Temporary limitation of the amount of salaries and monetary allowances of employees, officials of budgetary institutions as well as the amount of judges' remuneration is unjustified and contradicts the principle of legal certainty as well as the principle of the independence of judges.

As for lockdown restrictions, the Constitutional Court of Ukraine noted: "The Constitutional Court of Ukraine stresses that restrictions on constitutional human and civil rights and freedoms are possible in cases determined by the Constitution of Ukraine. Such a restriction is allowed to be imposed only by law – an act adopted by the Verkhovna Rada of Ukraine as the sole legislative authority in Ukraine. The establishment of such a restriction by a by-law contradicts Articles 1, 3, 6, 8, 19, 64 of the Constitution of Ukraine". However, due to the invalidation of the act of the Cabinet of Ministers of Ukraine that established these restrictions, the Constitutional Court of Ukraine closed the constitutional proceedings in this matter.

President of the Supreme Court Valentyna Danishevska at a session of the Plenum of the Supreme Court

2. The constitutional submission on the official interpretation of the norm of the Fundamental Law of Ukraine (Article 105(1)) concerning the possibility of bringing the President of Ukraine to administrative liability for an administrative offence committed during the exercise of his/her powers (Resolution of the Plenum of the SC No. 10 dated 18 September 2020).

The Plenum of the Supreme Court concluded that there is a need for an official interpretation of Article 105 of the Constitution of Ukraine in the aspect of extending the immunity of the President of Ukraine to cases of administrative offences. Thus, under Article 105(1) of the Constitution

of Ukraine, the President of Ukraine enjoys the right of immunity during the term of his/her office. In other words, the Fundamental Law of Ukraine does not specify what exactly constitutes the immunity of the President of Ukraine; the legislation lacks norms that would detail the immunity of the head of state and would clarify the grounds and the procedural order for holding him/her liable for administrative offences.

3. Constitutional submission concerning the moratorium on enforcement of judgments (Resolution of the Plenum of the SC No. 11 dated 18 September 2020).

The Plenum of the Supreme Court concluded that the regulations contained in paragraph 3 of Section III "Final and Transitional Provisions" of the Law of Ukraine No. 145-IX dated 2 October 2019 "On Repealing the Law of Ukraine "On the List of State Property Items Not Subject to Privatisation" contradicts a number of constitutional provisions. And such legislative regulation is evidence of obvious interference by the state in the human right to judicial defence protected by the Constitution of Ukraine due to the impossibility of enforcing the judgments made.

Therefore, in order to prevent narrowing the content and scope of constitutional human and civil rights and freedoms for judicial defence and to ensure constitutional order in enforcing the judgments when adopting new laws, the Supreme Court appealed to the Constitutional Court of Ukraine with the respective submission.

Vice-President of the Supreme Court, President of the Commercial Cassation Court Bohdan Lvov at a session of the Plenum of the Supreme Court

In 2020, the Plenum of the Supreme Court received an answer to an important question it had posed to the Constitutional Court of Ukraine back in 2019 (submission approved by Resolution of the Plenum No. 15 dated 15 November 2019). The Plenum of the Supreme Court deemed unconstitutional the norms of Law of Ukraine No. 193-IX dated 16 October 2019 "On Amendments to the Law of Ukraine "On the Judiciary and the Status of Judges" and Certain Laws of Ukraine on the Activities of Judicial Administration Bodies" concerning the reduction of the number of Supreme Court judges from 200 to 100 persons, the reduction of the basic salary of a Supreme Court judge, winding-up the High Qualification Commission of Judges of Ukraine, vesting the Commission on Integrity and Ethics with powers to examine the members of the High Council of Justice.

The Constitutional Court of Ukraine in its Decision No. 4-p/2020 dated 11 March 2020, agreed, inter alia, with the arguments of the Supreme Court on the need to guarantee judicial independence, including the irremovability of judges (which refers, in particular, to reducing the number of Supreme Court judges), and Law No. 193-IX in this part was declared unconstitutional.

This Decision of the Constitutional Court of Ukraine was endorsed by the European Community. The President of the Venice Commission of the Council of Europe, Gianni Buquicchio, said that the Decision of the Constitutional Court of Ukraine strengthens the independence of not only the Supreme Court but also the entire judicial system. The Decision was also welcomed by the Council of Europe Directorate General for Human Rights and Rule of Law.

At a session of the Grand Chamber of the Constitutional Court of Ukraine

Judge of the Grand Chamber of the Supreme Court Tetiana Antsupova and judge of the Civil Cassation Court of the Supreme Court Vasyl Krat at a session of the Grand Chamber of the Constitutional Court of Ukraine

Approval of opinions on draft laws and appeals to the authorities

In 2020, the Plenum of the SC also expressed its position on legislative initiatives and judicial independence issues by adopting such rulings.

In its opinions on draft laws and in appeals to the authorities, the SC pointed out the need to observe the guarantees of judicial independence

1. On approval of the opinion of the Plenum of the Supreme Court on the Draft Law of Ukraine "On Amendments to Paragraph 24 of Section XII "Final and Transitional Provisions" of the Law

of Ukraine "On the Judiciary and the Status of Judges" (reg. No. 2670 dated 23 December 2019). The Draft Law proposed postponing for one year an increase in the basic salary for judges of local, appellate, and higher specialised courts (although this norm had already entered into force by that time). In the Supreme Court's view, the adoption of the Draft Law as the law would not have meant a postponement but a reduction in the existing amount of judges' remuneration for one year, which is in violation of the Constitution of Ukraine in terms of guaranteeing the independence of judges.

The Draft Law of Ukraine No. 2670 was returned to the initiator for improvement.

2. On the Draft Law of Ukraine "On Amendments to the Law of Ukraine "On the Judiciary and the Status of Judges" concerning the Limitation of the Maximum Monthly Remuneration of Judges during the State of Emergency in Ukraine" (reg. No. 3495 dated 15 May 2020).

This Draft Law is currently under consideration by the Verkhovna Rada Committee on Legal Policy.

3. On certain aspects of judicial independence and accountability, the Plenum of the Supreme Court addressed to President of Ukraine, the Chairperson of the Verkhovna Rada of Ukraine, and the Prime Minister of Ukraine regarding the inadmissibility of improper funding of the judiciary, which is an attack on the independence of judges, threatens the proper administration of justice and the proper conditions for citizens to exercise their rights and interests in the courts, and may lead to a decrease in the level of citizens' trust in the public authorities.

In addition, the Plenum of the Supreme Court approved a statement on the steadfast assertion of the authority of justice.

Law-drafting activities

During 2020, the Supreme Court prepared 157 opinions on draft laws of Ukraine. Most of them were provided upon the requests of the committees of the Verkhovna Rada of Ukraine on legal policy and law enforcement. Representatives of the Supreme Court took part in working groups on the development of draft laws and in the meetings of the specialised committees of the Verkhovna Rada of Ukraine.

The most important draft laws on which the Supreme Court provided opinions are the following.

1. Draft Law of Ukraine "On Amendments to the Law of Ukraine "On the Judiciary and the Status of Judges" and Certain Laws of Ukraine regarding the Activities of the Supreme Court and Judicial Administration Bodies" (reg. No. 3711 dated 22 June 2020).

The Draft Law is linked to addressing the issue of the enrolment of judges of the Supreme Court of Ukraine to the Supreme Court pursuant to the Decision of the Constitutional Court of Ukraine No. 2-p/2020 dated 18 February 2020, solving the urgent problem of forming the composition of the High Qualification Commission of Judges of Ukraine, as well as certain issues aimed at improving the activity of this body.

The Supreme Court was involved in the preparation of this Draft Law and expressed its support for it. In providing the opinion on the Draft Law, the Supreme Court noted that the main task is to resolve the issue of resuming the activity of the High Qualifications Commission of Judges of Ukraine, and the parliament should focus on it and adopt the necessary legislative changes without delay.

2. Draft Law of Ukraine "On Amendments to the Commercial Procedure Code of Ukraine, the Civil Procedure Code of Ukraine, the Administrative Procedure Code of Ukraine on the Procedural Deadlines during the Lockdown established by the Cabinet of Ministers of Ukraine to prevent the spread of Coronavirus Disease (COVID-19)" (reg. No. 3383 dated 23 April 2020).

The Draft Law envisaged the possibility of extending and renewing the procedural time limits established by law or court for the duration of the lockdown only upon application of the parties to a case, as in practice there were questions about the entry into force of the final court decision. The Supreme Court upheld the draft law. The law was adopted on 18 June 2020.

3. The Supreme Court has also been examining the draft laws "On Amendments to the Criminal Code of Ukraine regarding liability for a judge (judges) adopting a biased judgment" (reg. No. 3500 dated 18 May 2020), "On Amendments to the Criminal Code of Ukraine regarding liability for a judge (judges) adopting an unjust judgment" (reg. No. 3500-1 dated 2 June 2020), "On Amendments to Article 375 of the Criminal Code of Ukraine" (reg. No. 3500-2 dated 3 June 2020), "On Amendments to Article 375 of the Criminal Code of Ukraine regarding wilful adoption of a knowingly unlawful and unreasonable judgment" (reg. No 3500-3 dated 4 June 2020).

In particular, Draft Law No. 3500 proposes to introduce a new concept – "biased judgment" – to replace the term "unjust judgment" provided in Article 375 of the Criminal Code of Ukraine. At the same time, the concept of "biased judgment" is disclosed with the use of features characteristic to an unlawful judgment. The Supreme Court of Ukraine, in its opinion, mentioned that in the new wording of Article 375 of the Criminal Code of Ukraine, there should be a clear distinction between the features of an unlawful judgment and a judgment causing criminal responsibility, and also provided other remarks. The Supreme Court also recommended the rejection of the alternative draft laws.

4. Draft Law of Ukraine "On Amendments to the Criminal Procedure Code of Ukraine on Enhancing the Effectiveness of the Combat Against Cybercrime and the Use of Electronic Evidence" (reg. No. 4004 dated 1 September 2020).

This Draft Law deals with the important issue of the implementation of electronic evidence. The Supreme Court agreed with the need to improve the criminal procedure legislation in the context of combating cybercrime, in particular by enshrining the norms on electronic evidence in the Criminal Procedure Code of Ukraine, while providing some comments on the provisions of the Draft Law.

Scientific Advisory Board of the Supreme Court

In February 2018, the Scientific Advisory Board was established to provide scientific support to the Supreme Court, and its membership was approved in March of the same year.

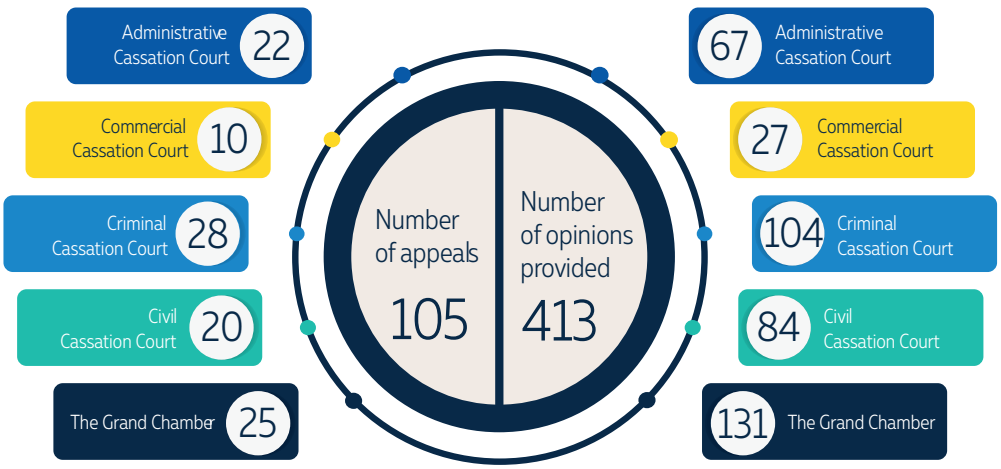
Scientific Secretary of the Scientific Advisory Board Leonid Loboiko

In 2020, the members of the Supreme Court Scientific Advisory Board were joined by new highly qualified legal experts. At the session on 7 February 2020, the Plenum of the Supreme Court approved the new membership of the Scientific Advisory Board consisting of 123 scholars.

During its lifetime, the Scientific Advisory Board, which is composed of respected legal scholars, has become an effective and efficient advisory body of the Supreme Court, which makes a significant contribution to the Supreme Court's fulfilment of one of its main tasks – ensuring the unity of judicial practice. This is evidenced by the following figures: in 2018, members of the Scientific Advisory Board provided more than 300 opinions upon the request of Supreme Court judges, and in 2019 – more than 400.

In 2020, the Supreme Court judges sent 105 requests to the Scientific Advisory Board (Grand Chamber – 25, Administrative Cassation Court – 22, Commercial Cassation Court – 10, Criminal Cassation Court – 28, Civil Cassation Court – 20). Scholars prepared 413 opinions: for judges of the Grand Chamber – 131, Administrative Cassation Court – 67, Commercial Cassation Court – 27, Criminal Cassation Court – 104, Civil Cassation Court – 84.

Number of Supreme Court judges appeals to the Scientific Advisory Board and scientific opinions provided by its members



Administrative Office of the Supreme Court

Introduction

Head of the Administrative Office of the Supreme Court Olha Bulka

In accordance with the Law of Ukraine, "On the Judiciary and the Status of Judges," the main task of the administrative office is organisational support for the court.

The functions of the administrative office of the Supreme Court have been defined in the Regulation on the Administrative Office of the Supreme Court approved by the Plenum of the Supreme Court.

Every year, the Administrative Office provides financial, personnel, logistics, legal, documentary, methodological, analytical, legal, information and technical, and other support to the activities of the Court, organises information and communication work, international legal co-operation, internal audit, conducts secret activities and ensures the implementation of measures for the mobilisation training of the Supreme Court.

The need to take measures to prevent the spread of infectious diseases, including those caused by the COVID-19 coronavirus, made substantial adjustments to the organisation of the Court operation in 2020.

The Court Administration Office made every effort to protect participants in court hearings, judges, and staff members who support the judicial process and support the life of the Court, in particular:

- all employees were provided with personal hand and respiratory protection equipment;
- surfaces were regularly treated with disinfectants;
- air in offices and courtrooms was disinfected by means of fixed and mobile germicidal recirculators;
- Court premises were equipped with non-contact dispensers, which were constantly filled with antiseptic agents, and disinfection mats in the entrance area, which was sprayed with a disinfectant solution;

- sanitary rooms were provided with disposable towels and liquid soap;
- sanitary and hygienic treatment (disinfection) of the administration buildings of the Supreme Court was conducted regularly in co-operation with the Kyiv Emergency Rescue Service and Kataros Plius LLC;
- remote temperature measurement and external examination were ensured for all those who entered the premises of the Supreme Court for signs of acute respiratory diseases.

In order to prevent the spread of infectious diseases,
all Court staff and visitors were temperature checked.

Last year, activities aimed at preventing and detecting corruption were organised at a high level in the Administration Office of the Supreme Court.

The National Agency for Corruption Prevention assessed the performance of authorised units of state and local government bodies, state enterprises, institutions, and organisations in the first half of 2020.

According to the results of this research, the Supreme Court's Division for Corruption Prevention and Detection has achieved high rankings in two ratings: 13th position in the top 50 effective anti-corruption authorised state and local government bodies and 9th position in the rating that shows the efficiency index of anti-corruption authorised central executive authorities and other general government agencies.

Below, you have an opportunity to look at some of the key performance indicators of the Court Administrative Office in 2020.

Staffing

In order to fulfil the tasks entrusted by the legislator to the Supreme Court, the best professionals are needed, not only amongst judges but also amongst the staff of the court. In order to appoint highly qualified professionals, three competitions and 51 temporary selections for vacant positions have been held. There were approximately 5,660 applications for 102 positions; on average more than 50 persons applied for each position. As a result of these procedures, 94 positions were filled.

Together with the appointments, there were also dismissals: 119 employees ceased to work at the Supreme Court Administrative Office. Another 141 persons were transferred to other positions within the Administrative Office of the Supreme Court.

In 2020, 31 employees of the Administrative Office of the Supreme Court joined the ranks of the judicial profession, they took the oath of office on 28 July and 15 December and will administer justice in local courts.

Taking the oath of judges on 15 December 2020

A great deal of work has been done on the paperwork related to leave, business trips, the appointment of ranks, as well as internships, practical trainings, and advanced trainings for the employees.

Financial support

During the year, the following documents were prepared in the formation and use of the financial resources of the general and special funds of the state budget:

1) the Supreme Court budget estimates for 2020 under budget programme 0551010 "Administration of Justice by the Supreme Court";

2) distribution of indicators of consolidated estimates, distribution of indicators of consolidated allocation plans for the general fund of the state budget, distribution of indicators of consolidated allocation plans for the special fund of the state budget, consolidation of indicators of the special fund;

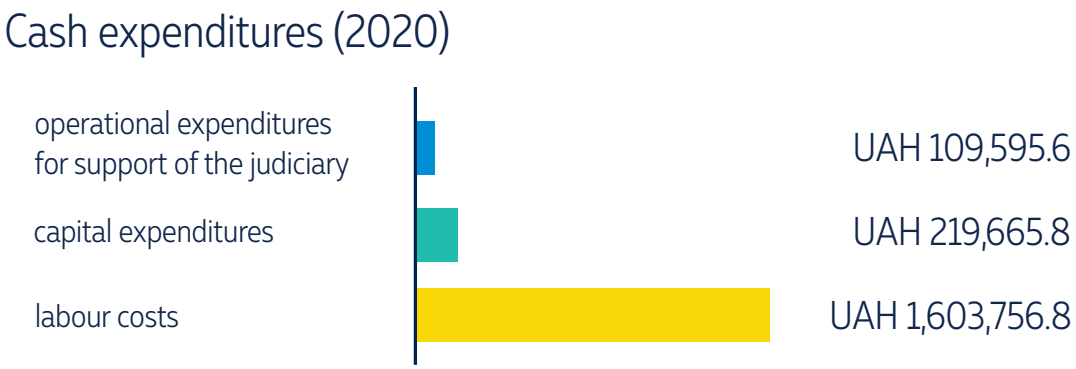
3) Supreme Court estimates for 2020 and amendments thereto, general budget fund allocation plan, budget special fund plan, consolidation of indicators from the special fund of the estimates for 2020;

4) datasheet of the budget programme for 2020;

5) manning table of judges of the Supreme Court for 2020 and manning table of the Administrative Office of the Supreme Court for 2020.

Also, the proposals of the structural units of the Supreme Court regarding the expenditures provided in the budget request for 2020 were summarised in accordance with the approved estimates.

In general, the expenditures can be grouped into three main areas. They are social (salaries and accruals), operational expenditures for support of the judiciary (materials, services), and capital expenditures.



All expenditures have been incurred within the limits of the approved estimates for 2020.

Legal support

For the proper functioning of the Supreme Court, 145 public procurement procedures were organised last year, and 500 contracts for the procurement of goods, works, and services necessary for the proper functioning of the structural divisions of the Court were concluded.

Representation of Court interests was ensured in 157 court proceedings. During the current year, 14,923 regulatory legal acts of the current legislation and 3,132 amendments to 135 laws, codes, other regulatory acts were processed.

Information and technical support

In order to introduce modern information and communication technologies into the activity of the Court, to maintain the creation and introduction of the information and automated systems, the Court Administrative Office organised the purchase and started updating automated workplaces for its employees. In particular, 182 sets of computer equipment were purchased last year.

The anti-virus software was purchased, and anti-virus protection was provided for automated workplaces for judges and employees of the Administrative Office, servers, etc., amounting to 1,939 pieces of equipment.

Technical support was provided to enable 3,936 court hearings via videoconferencing, including 58 court hearings with broadcasting on the YouTube channel of the Supreme Court and 126 court hearings with audio fixation.

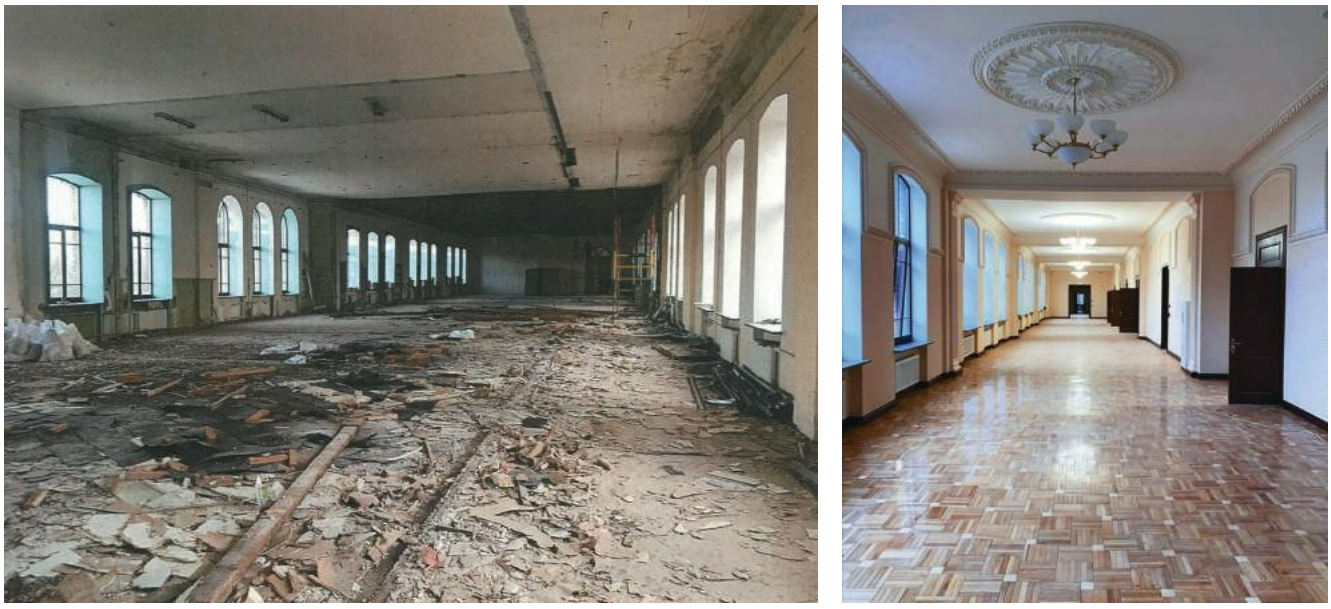
At a court hearing of the Criminal Cassation Court of the Supreme Court via videoconference

As part of the creation and implementation of a Court Integrated Information Security System (CIISS), the first section of the Action Plan for the construction and implementation of the CIISS at the information facilities in the Supreme Court, approved by Order No. 64 of the Head of the Administrative Office of the Supreme Court dated May 22, 2020, was fulfilled.

Logistics support

During the reporting period, the functions and tasks on the management and administration of the state property of the Supreme Court were performed. A total of 236 contracts for the purchase of goods, works, and services were concluded, totalling UAH 254,030k.

During 2020, the construction projects of the Supreme Court were implemented, and the work on capital and restoration repair, reconstruction, and construction of the Court facilities was in progress. In particular, the restoration repair was completed in the right wing of the building at 28 Povitroflotskyi Avenue, where the Civil Cassation Court of the Supreme Court is located. As a result of repair and restoration works in this part of the building built in 1914-1918, the courtrooms equipped with modern technical means were rehabilitated to ensure the judicial process; the public areas were arranged for visitors to the court; barrier-free access to the courtroom was provided for people with disabilities and limited mobility; the monument of cultural heritage was restored. After restoration works in the left wing, the Civil Cassation Court of the Supreme Court is assumed to function in this building, and the Criminal Cassation Court of the Supreme Court will be located on the right wing.



The Supreme Court premises on Povitroflotskyi Avenue before and after restoration

In 2020, a great number of measures were taken to ensure the proper conditions for the conduct of judicial proceedings and stay in court, in particular, tactile directional signs in Braille were produced and installed in the premises of the Supreme Court.

All buildings of the Supreme Court now have tactile Braille signs for the visually impaired.

Induction training on occupational health and fire safety was provided for 145 staff members of the Supreme Court, and pre-medical training took place for 20 persons.

Internal Audit

In order to improve the management system, internal control, prevent the facts of illegal, ineffective, and inefficient use of budget funds, the occurrence of errors, or other shortcomings in the activities of the Court, there was a continuous assessment of the functioning of the internal control system, the efficiency of planning and implementation of budget programmes and their results, the management of budget funds, the use and safeguarding of assets, the reliability, efficiency and effectiveness of information systems and technology, the management of state assets, the correctness of accounting and the reliability of financial and budgetary reporting; the risks that adversely affect the functions and tasks of the Supreme Court.

This proactive control contributes to the prevention of possible accounting irregularities before the adoption of management decisions and administrative documents, the conclusion of contracts, etc.

In general, despite all the challenges of 2020, the operation of the Court in all areas was organised at a high level, maximum efforts were made to ensure proper consideration of court cases, creation of safe and comfortable conditions for court visitors in its premises, and the work of judges and court staff.

International activities

In 2020, international co-operation on the part of the Supreme Court was significantly affected by the unpredictable COVID-19 pandemic.

The introduction of lockdown and restrictions on crossing the state border aimed at preventing the spread of COVID-19 on the territory of Ukraine made it impossible for judges and staff members of the Supreme Court to make business visits abroad or to receive foreign delegations whose visits were planned in 2020 (the Curia of Hungary, the Supreme Court of the People's Republic of China).

Under such circumstances, the Court managed to adapt quickly to the changes and, as early as in March, start online communication with international partners.

The year began traditionally with the participation of the President of the Supreme Court, Valentyna Danishevska, in the judicial year opening festivities of the European Court of Human Rights and in the seminar "The European Convention on Human Rights: living instrument at 70" (29 January-1 February 2020, Strasbourg). The judge of the Grand Chamber of the Supreme Court Dmytro Hudyma, also took part in the event.

Valentyna Danishevska and President of the European Court of Human Rights Linos-Alexandre Sicilianos

Dmytro Hudyma and Valentyna Danishevska at the opening of the European Court of Human Rights judicial year

In January 2020, as part of co-operation between the Supreme Court and the European Union Project Pravo-Justice, the Commercial Cassation Court held an international scientific and practical conference on "The Application of the Court of Justice of the European Union case law to the Ukrainian legal order."

Bohdan Lvov, Vice President of the Supreme Court, and Virgilijus Valancius, judge of the European Court of Human Rights

The official launch of the Council of Europe project "Further support for the execution by Ukraine of judgments in respect of Article 6 of the European Convention on Human Rights"

On 6-10 July 2020, within the framework of an advisory project aimed at providing technical assistance for the establishment and operation of the High Intellectual Property Court in Ukraine (Ukraine CCLS IP Court Project, which is being implemented by a team from the Centre for Commercial Law Studies at the Queen Mary University of London), an online training was organised on intellectual property law. It was attended by judges of the Commercial Cassation Court of the Supreme Court, legal practitioners, IP experts, and academics from the UK, the Netherlands, Germany, the USA, and Italy.

The online training for Supreme Court judges took place from October-December 2020 within the proficiency maintenance programme and consisted of five training sessions. The event was arranged by the National School of Judges of Ukraine with the support of the USAID New Justice Program, the project of the OSCE Project Coordinator in Ukraine "Support for the Professional Training of Judges," the European Union Project Pravo-Justice, the Council of Europe projects "Human Rights Compliant Criminal Justice System in Ukraine" and "Supporting Constitutional and Legal Reforms, Constitutional Justice and Assisting the Verkhovna Rada in Conducting Reforms aimed at Enhancing its Efficiency".

In particular, reports for the Supreme Court judges were delivered by Chief Justice of the Washington Supreme Court (USA), Debra Stephens; Judge at the European Court of Human Rights, Hanna Yudkivska; Judge at the European General Court, Rimvydas Norkus; barrister Mockton Chambers (London); Council of Europe expert, Jeremy McBride; Professor of Public Law at the Sorbonne University Law School, Laurence Burgorgue-Larsen; Director of the Institute of Eastern European Law and Comparative Law at the University of Cologne (Germany), member of the European Commission for Democracy through Law (Venice Commission), judge at the European Court of Human Rights (2011-2019), Angelika Nussberger; judge at the European Court of Human Rights, Lado Chanturia.

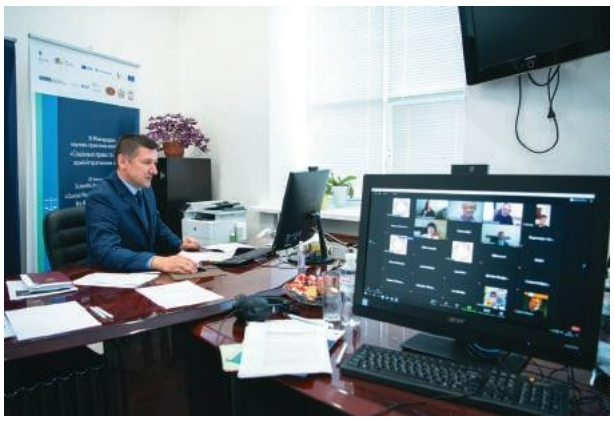
Online training for judges of the Supreme Court arranged by the National School of Judges of Ukraine in co-operation with international technical assistance projects

In addition, this training included an online conference on "Ensuring the Uniformity of Judicial Practice: Legal Views of the Grand Chamber of the Supreme Court and the Standards of the Council of Europe", which was attended by over 550 judges, academics, human rights activists and representatives of public associations. During the event, the participants discussed issues on the judicial practice of the Grand Chamber of the Supreme Court, the challenges faced by the Grand Chamber during three years of operation, its achievements and future challenges, as well as the uniformity of judicial practice in the context of standards under Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

On 30 November and 7 December 2020, the President of the Supreme Court, Valentyna Danishevska, participated in an online conference of Presidents of the Supreme Courts of Central and Eastern Europe. The event is traditionally held in co-operation with the CEELI Institute and is an effective platform for the interaction amongst the judiciary community and the search for new approaches to solving urgent issues in the field of justice. The event was co-organised by the Supreme Court of the Republic of Azerbaijan.

At the conference, Valentyna Danishevska told her colleagues about successful examples of judicial communication

The co-operation of the Supreme Court with the Council of Europe projects was active this year. In February 2020, there was the official launch of the Council of Europe project "Further support for the execution by Ukraine of judgments in respect of Article 6 of the European Convention on Human Rights". Amongst a number of events organised by the project, the panel discussion "Effective procedure on interaction with the European Court of Human Rights: Implementation of Protocol No. 16 to the ECHR" as well as the Third Annual Forum "Execution of judgments of national courts in Ukraine" deserves particular attention and were organised online in October and November respectively. The latter event resulted in general conclusions and recommendations, which can be found at https://rm.coe.int/recommendations-third-annual-forum-execution-of-judgments-ukr-final/1680a14497.



Vsevolod Kniaziev, Judge of the Grand Chamber of the Supreme Court, and Semen Stetsenko, judge of the Administrative Cassation Court of the Supreme Court, during an online discussion on the implementation of Protocol 16 to the European Convention on Human Rights

On 26 October, the Council of Europe Project "Support for the implementation of judicial reform in Ukraine" presented the third updated edition of Documents of the Consultative Council of European Judges, which covers a large part of the standards and recommendations of the Council of Europe for the reform and harmonisation of the judiciary in Ukraine with the standards of the Council of Europe. A round table concerning the "Presentation of the Report on the results of the study 'The Attitude of Ukrainian Citizens to the Judicial System' and Opinion No. 23 of the Consultative Council of European Judges 'The role of the associations of judges in supporting judicial independence'" was held on 18 December 2020, and was attended by the President of the Supreme Court Valentyna Danishevska.

Within the Council of Europe project "Human Rights Compliant Criminal Justice System in Ukraine", the Ukrainian user interface of the European Court of Human Rights search system HUDOC was officially launched on 6 November. The HUDOC Ukrainian interface contributes to the search of relevant European Court of Human Rights case law and proper justice by Ukrainian courts.

Stanislav Kravchenko, President of the Criminal Cassation Court of the Supreme Court, and Rasim Babanly, Head of the Analytical and Legal Department, during the presentation of the Ukrainian interface of the European Court of Human Rights search engine - HUDOC

Amongst the areas of co-operation between the Supreme Court and the European Union Project Pravo-Justice in 2020, the following ones are worth mentioning:

- support to the International Forum "Alternative Methods of Dispute Resolution in the Context of International Experience and the Draft Law on Mediation" held on 6 November;
- preparation of the All-Ukrainian Survey on the Legal Needs of SMEs in Ukraine in co-operation with the Centre for Democracy and the Rule of Law and The Hague Institute for Innovation of Law (HiiL), which was launched on 22 October;
- drafting and discussion on 11 and 16 December of the interim version of the report "Discretion in Administrative Proceedings";
- a series of important events on the introduction of mediation in Ukraine.

Within the framework of co-operation with the USAID New Justice Program, the President of the Supreme Court took part in the presentation of the innovative platform "Solution Finder" (17 December 2020). The platform was developed by the Program's experts with the help of the High Council of Justice in co-operation with judges, lawyers, mediators, and other specialists. During the event, Valentyna Danishevska stressed that in the conditions of staff shortages and the excessive workload of judges in the judicial system, developments and advice that can help judges to speed up the processing of cases are extremely important.

In 2020, judges, assistants, and staff of the Supreme Court were invited to participate in a series of webinars arranged as part of the co-operation between the National School of Judges of Ukraine and the National Judicial College in Reno, USA, at the initiative of the USAID New Justice Program. The online webinars covered the organisation of the judiciary in the COVID-19 pandemic, as well as issues on how to write judgments in plain language, how to arrange and conduct jury trials, how to communicate ethically in social media, and the like.

The Supreme Court's co-operation with the Canadian-Ukrainian Project "Support for Judicial Reform" in 2020, focused mainly on the preparation of a training course on improving plain-language judgment writing, which was piloted with Supreme Court judges and their assistants last September. This area of co-operation is one of the most important for increasing citizens' trust in the courts.

Traditionally, the OSCE Project Co-ordinator in Ukraine holds the Annual International Forum on European Court of Human Rights Case Law in Lviv in the autumn. This year the IX Forum took place on 9-10 December. The organisers of the online event included the OSCE Project Co-ordinator in Ukraine, the Council of Europe Project "Further support for the execution by Ukraine of judgments in respect of Article 6 of the European Convention on Human Rights", the Supreme Court, the National School of Judges of Ukraine and the Ivan Franko National University of Lviv.

Also, as part of the Supreme Court's co-operation with the OSCE Project Co-ordinator in Ukraine, a database (software) was created to unify the preparation of procedural documents (rulings related to the decision on the initiation of proceedings) adopted by the Supreme Court, and an online course on basic judicial communication was developed for judges and court spokespersons.

An international workshop on "Legal implications of declaring a regulatory act unconstitutional for the protection of human rights in administrative proceedings" was organised on 31 July at the initiative of the Administrative Cassation Court of the Supreme Court, on the occasion of the 15th anniversary of the Administrative Procedure Code.

The event was supported by the Canadian-Ukrainian Project "Support for Judicial Reform," the German Foundation for International Legal Co-operation, the Council of Europe projects "Internal Displacement in Ukraine: Building Solutions", "Supporting Constitutional and Legal Reforms, Constitutional Justice and Assisting the Verkhovna Rada in Conducting Reforms aimed at Enhancing its Efficiency," the European Union Project Pravo-Justice, and the OSCE Project Co-ordinator in Ukraine.

Participants discussed the risks of introducing retroactivity, as well as the formation of judicial practice on the specifics of applying the human rights protection mechanism in the context of the review of judgments due to exceptional circumstances.

Also, on 4 September 2020, the Administrative Cassation Court of the Supreme Court, together with the National Academy of Legal Sciences of Ukraine, the V. M. Koretsky Institute of State and Law, the National School of Judges of Ukraine, the European Union Project Pravo-Justice, the Council of Europe project "Promoting social human rights as a key factor of sustainable democracy in Ukraine", the OSCE Project Coordinator in Ukraine, the German Foundation for International Legal Co-operation, organised the III International scientific-practical conference "Social Rights and Their Protection by Administrative Courts". Participants discussed the efficiency of judicial protection of social rights, the application of European Court of Human Rights case law by courts in resolving social disputes, and learnt about the international experience of the judicial protection of social rights.

Henrik Willadsen, OSCE Project Co-ordinator in Ukraine,
and Valentyna Danishevska

In 2020, a new project "Using e-judgments during the COVID-19 crisis to manage court and proceedings", the partners of which are the Supreme Court, the Supreme Court of Latvia, the Court Administration of Latvia and the State Court Administration of Ukraine, organised a series of events on the arrangement of the judicial process and the functioning of courts during the pandemic.

On 8-9 October 2020, the city of Sviatohirsk (Donetsk oblast) was a venue for a Judicial Forum on "Current Issues of Dispute Resolution Related to the Protection of the Rights of Individuals

in the Area of Joint Forces Operation." The event was organised by the Norwegian Refugee Council (NRC) in Ukraine, the Civil Cassation Court of the Supreme Court, and the Association for the Development of Judicial Self-Government for judges of appellate and local general courts in the Donetsk and Luhansk oblasts.

Judges of the Civil Cassation Court of the SC at the Judicial Forum.
Sviatohirsk, October 2020

In 2020, the Supreme Court judges participated in a series of online seminars conducted by international environmental organisations: The United Nations European Commission (Aarhus Convention), European Union Forum of Judges for the Environment (EUFJE Network), the World Wide Fund for Nature - Ukraine (WWF-Ukraine), the environmental charity (ClientEarth). On 5 October 2020, the European Court of Human Rights together with the EUFJE Network organised an online conference on Human Rights on the Planet.

Division for International and Legal Co-operation of the Supreme Court organises the Court's international and legal cooperation and promotes relations with international partners

International partners of the Supreme Court

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

USAID
FROM THE AMERICAN PEOPLE

PRAVO-JUSTICE

IRZ

Canada
SUPPORT TO JUDICIAL PEFORM PROJECT

OSCE

UNITED NATIONS

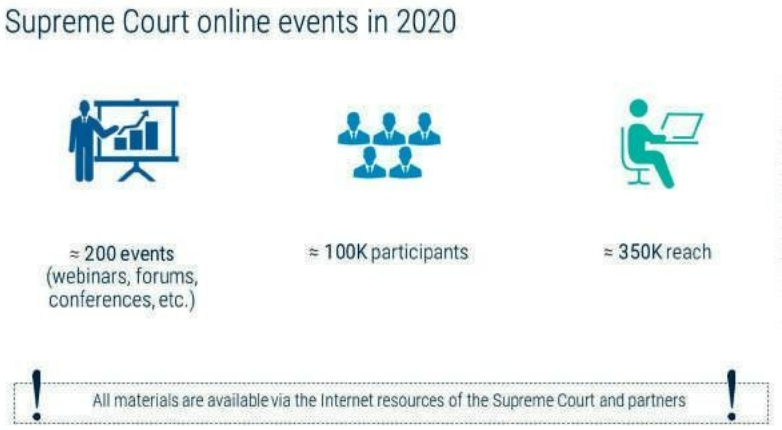
EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Communication activities

Communication activities of the Supreme Court

In 2020, the Supreme Court developed its communication activities and expanded its presence in the information space. Challenges caused by quarantine restrictions, in particular the ban on public events, prevented some communication projects from being realised, on the one hand, but facilitated the rapid mastering and effective use of videoconferencing and online events, on the other hand.

Therefore, the communication activity of the Supreme Court with the media and the public has not diminished. Obstacles to live communication were compensated for by the participation of judges and Court staff in various online events: webinars, round tables, conferences, etc. For example, judges and court staff took part in more than 200 online and offline events last year. Around 100,000 registered participants joined these events, with a total of over 350,000 people showing an interest in the webinars.



Coverage of a wide range of issues by representatives of the Supreme Court during their participation in various events contributed to a growth in the audience of the Court's communication platforms. The official Facebook page of the Supreme Court became even more powerful.

The number of page followers has grown to almost 50,000 (in 2019 – 41,000, in 2018 – about 28,000). This figure could well compete with the ratings of professional media.

In total, the postings on the official Facebook page of the Supreme Court were viewed more than 10 million times by the network users during 2020. This resource actively covers all events taking place in the Supreme Court with the participation of judges and court staff (participation in professional discussions, conferences, meetings, round tables, and seminars, in sports, cultural and intellectual events) and publishes press releases on the content of judgments.

Engagement of the readers of the Supreme Court's official Facebook page

The readers of the Supreme Court's Facebook page are particularly interested in the press releases on judgments and news of the case law of the Supreme Court and the European Court of Human Rights contained in the electronic collections (digests and summaries). In co-operation with the Department for Analytical and Legal Work, the communication team of the Supreme Court prepares digests to be posted on the main official information resources, as well as sends them to courts of first instance and courts of appeal and other state institutions.

35 case law summaries from the European Court of Human Rights

≈ 700 000

13 digests from the Grand Chamber of the Supreme Court

≈ 260 000

63 summaries from the cassation courts of the Supreme Court

1 575 000

Readership reach on the official Facebook page of the Supreme Court in 2020

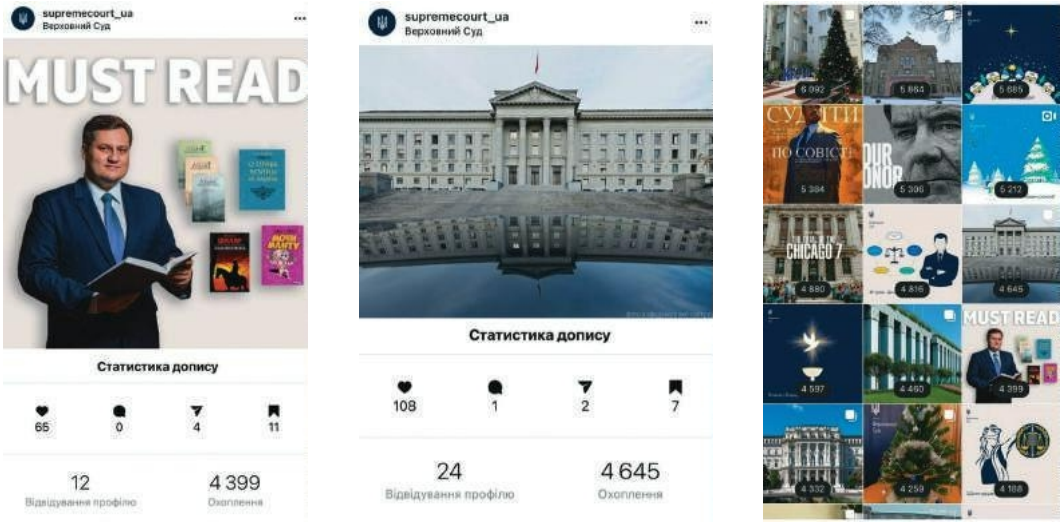
A lengthy discussion on improving the quality of writing judgments has prompted the Supreme Court judges to create a thematic Facebook group, "How to write a judgment: practical tips." The group facilitates the exchange of useful tips and is of practical importance, as on this platform, judges from all jurisdictions, from all regions, and instances discuss best practices from courts in various countries on how to write a judgment. Members of the group also share examples of how to write claims, pleadings, complaints, and other procedural documents. At the end of last year, the group had more than 1,700 members.

The number of readers of the Court's page on other social media – Instagram, Twitter, as well as subscribers to the Court's Telegram and YouTube channels – is also growing.

The official website of the Court remains one of the most powerful information channels of the Court.

Communication channels of the Supreme Court (2020)

Website	7280 publications	4 566 871 views	855K users
Facebook	1283 posts	49 644 followers	9M 125K reach
Twitter	1114 tweets	300 followers	207K reach
Telegram	712 messages	8 211 subscribers	1M 780K reach
Instagram	160 posts	4 312 followers	800K reach
YouTube	158 videos	1061 subscribers	195K reach



Which books to read and which films to watch – judges advise on the Supreme Court's Instagram page under #mustread and #mustwatch

In 2020, the Supreme Court began creating videos for YouTube and Facebook users with summaries of the previous week's judgments and announcements of interesting cases scheduled for hearing in the current week. Text versions of such summaries and announcements can be found on the Court's official website.

On a weekly basis, the communication team of the Supreme Court prepares videos of the cases reviewed and the ones intended to be reviewed

The work of the Supreme Court is not only covered on the Court's communication platforms, the judges of the Supreme Court and the staff of the Communication Department constantly communicate with representatives of the media. Amongst other things, they prepare answers to numerous written and oral requests from journalists, provide information on high-profile cases, give interviews to leading legal and general political media, comment to media representatives on judgments in high-profile and publicly significant cases, keep their own blogs on professional topics.

The judge of the Civil Cassation Court of the Supreme Court, Nataliia Sakara, explains to the TV channel "Ukraine 24" the judgment of the Civil Cassation Court of the Supreme Court in the case of compensation for non-pecuniary damage for late commissioning by the builder

Arkadii Bushchenko, judge of the Criminal Cassation Court of the Supreme Court, appeared on Lofiep's Secrets legal podcast

Myroslava Bilak, judge of the Administrative Cassation Court of the Supreme Court, took part in the project "Court Made Simple: Judges Explain" by the NGO "Human Rights Vector"

An important step in the development of communications of the Supreme Court was the establishment of co-operation with representatives of public organisations. Thus, in September 2020, judges Dmytro Luspenyk and Ruslan Lidovets held an online training for participants of the project "Svoi Liudy" (a community of lawyers who help journalists and NGOs, an initiative of Bihus.Info) on "Civil cases on compensation for non-pecuniary damage: features of hearing." The webinar is also posted on the Supreme Court's YouTube channel.

On 9 October 2020, the judge of the Commercial Cassation Court of the Supreme Court, Hanna Vronska, took part in the Pre-Forum "Women in the Legal Profession: Looking into the New Decade" held by the Ukrainian Women Lawyers Association JurFem, where she joined the discussion on the important educational role of women in the legal profession.

Hanna Vronska, judge of the Commercial Cassation Court of the Supreme Court, at the Pre-Forum "Women in the Legal Profession: Looking into the New Decade"

The communication activities of the Supreme Court are different in that the Supreme Court develops its own visual content for publication on the website and social media. Therefore, when under quarantine conditions, the Court had to discontinue the traditional tours of the court

premises; this prompted the communication team of the Supreme Court to create a virtual tour of the Klov Palace. Therefore, as of July 2020, anyone could take a virtual tour of the palace premises, see the historical sights, visit the courtroom of the Great Chamber of the Court, the Plenum Hall, and so on.

During the lockdown, the Supreme Court created a virtual tour of the Klov Palace

Now it is possible to visit the session hall of the Supreme CourtPlenum online

Overall, despite the adjustments made as a result of the pandemic, the Supreme Court's communication activities in 2020 did not decrease compared to last year's figures. Judges and staff are eager to take advantage of new opportunities for communication, and the communication team continues to keep the public informed on a daily basis of the Court's current news.

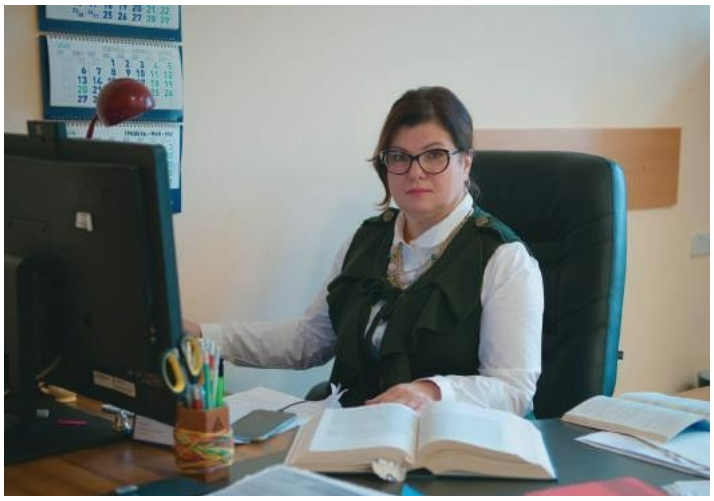
Teaching and outreach activities

Many judges and Court staff have academic degrees and titles and, despite their heavy workload, find the time to devote attention to teaching activities. Judges of the Supreme Court give lectures to law students at leading institutions of higher education, such as the Taras Shevchenko National University of Kyiv, the Yaroslav the Wise National Law University, the Ivan Franko National University of Lviv, the National Academy of Public Administration under the President of Ukraine, the Academy of Advocacy of Ukraine, the National University of Ostroh Academy, and others.

Also, judges from the Supreme Court give lectures to their colleagues from the First and Appellate Courts at the National School of Judges of Ukraine on a permanent basis and take part in the development of relevant training courses. Such exercises may herewith take the form of the author's lectures by Supreme Court judges, as well as seminars with several lecturers. In January last year, for example, the Commercial Cassation Court of the Supreme Court hosted a training session on the programme of the National School of Judges of Ukraine to maintain the proficiency of the judges of commercial appellate courts. In November, the National School of Judges of Ukraine, together with the Supreme Court organised an all-Ukrainian seminar for judges of local general and appellate courts on "Problematic Issues of Enforcement in Civil Proceedings. Case Law and Findings of the Supreme Court", where judges of the Civil Cassation Court of the Supreme Court gave lectures on topical issues.

Judges of the Supreme Court during a training on improving the writing of judgments for judicial assistants within the Canadian-Ukrainian Project "Support for Judicial Reform," 11-13 September 2020

In addition, Supreme Court judges discuss with first instance and appellate judges the ongoing work, legal positions, and practical problems faced by judges on the ground. Thus, before the introduction of the restrictive measures, in February 2020, a working meeting at the Supreme Court was devoted to topical issues of administration of justice with the presidents of appellate courts. Since the introduction of the lockdown, such events have moved mainly to an online format. In particular, in October, the Secretary of the Plenum of the Supreme Court, Dmytro Luspenyk, told judges of appellate courts of general jurisdiction about the practice in the application of the innovations in the Criminal Procedure Code of Ukraine during the three years of its validity.



Olha Buleiko, judge of the Criminal Cassation Court of the Supreme Court, held a workshop for judges of appellate and local general courts organised by the National School of Judges of Ukraine

Also, in November, judges of commercial courts held an online discussion concerning the first year of application of the Code of Ukraine on Bankruptcy Procedures organised by the Commercial Cassation Court of the Supreme Court.

In July, a round table on "Administrative Proceedings in Ukraine: Status and Challenges" was held on the occasion of the 15th anniversary of the adoption of the Administrative Procedure Code of Ukraine. A video on the establishment of administrative proceedings in Ukraine and the current operation of the Administrative Cassation Court of the Supreme Court was also produced to mark the date.

In 2020, communication between the Supreme Court and the professional community had deepened. Thus, on 9 April 2020, together with the Ukrainian Bar Association and the Association for the Development of Judicial Self-Government of Ukraine, a series of webinars was launched with judges of the Supreme Court to discuss the current practice of the Supreme Court. These meetings have proved very popular with lawyers. Up to a thousand participants have registered for each webinar. During 9 months of the project, the Supreme Court judges have held 18 such webinars, during which, based on Supreme Court practice, they highlighted such relevant topics as ensuring the unity of court practice, delineation of court jurisdictions, use of cassation filters implemented by recent legislative changes, effective ways to protect rights and interests, and the application of European Court of Human Rights case law in national court practice. The judges talked about court practice in land, family, tax, corporate disputes, and bankruptcy cases. They gave an insight into criminal proceedings.

Given the interest of the legal community in this format of professional communication, it was decided to extend the webinars with Supreme Court judges.

A series of online webinars were held, during which judges briefed lawyers on the current case law of the Supreme Court

In addition, co-operation with other professional legal associations was actively developed. Thus, in February, Olha Stupak, Judge of the Civil Cassation Court of the Supreme Court, delivered a lecture on Supreme Court practice in inheritance cases at a seminar on professional development for lawyers organised by the Ukrainian Bar Association in co-operation with the Kyiv City Bar Association.

In August 2020, an online professional development seminar for Kyiv oblast lawyers was held with the participation of Oleksandra Yanovska, judge at the Grand Chamber of the Supreme Court.

During the meeting of the UBA Civil, Family and Inheritance Law Committee "Mortgage Readings 2020" held on 25 February 2020, the judges of the Civil Cassation Court of the Supreme Court discussed with lawyers practice in mortgage disputes.

Volodymyr Pohrebniak, Secretary of the Judicial Chamber for Bankruptcy Cases of the Commercial Cassation Court of the Supreme Court, and Vasyl Krat, judge of the Civil Cassation Court of the Supreme Court, held workshops organised by the journal "Law of Ukraine" and the Ratio Decidendi legal portal

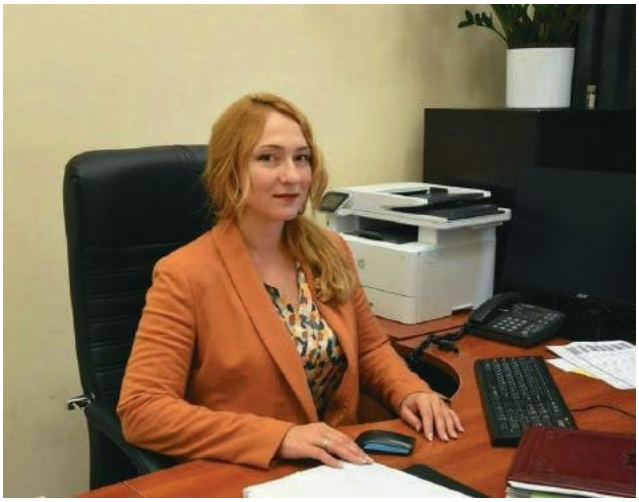
In addition to professional associations, the Court co-operated with educational institutions in organising educational events. For example, in April, a professional online conference was organised jointly by the Supreme Court, the NGO "Civilised Platform" and the Civil and Administrative Law Departments of the Taras Shevchenko National University on "State Liability for Damage Caused by the State: Dispute over the Subject of Regulation or Civil Lawyers v. Administrative Lawyers."

Of particular note was the participation of Supreme Court judges in events aimed at finding legal solutions to problems arising from the occupation of Crimea and the armed conflict in Eastern Ukraine. Both first instance and appeal judges, as well as lawyers and other legal professionals, required prompt clarifications, exercises on the application of often contradictory rules of law in this category of disputes.

In particular, in May, judge Mykola Mazur spoke at a webinar organised by the Ukrainian Helsinki Human Rights Union together with the Representative Office of the President of Ukraine in Crimea on "Criminal proceedings for crimes related to the occupation of Crimea and the conflict in Donbas under the 'in absentia' procedure: current status and prospects for improvement".

In November, the Administrative Cassation Court of the Supreme Court, with the support of European partners, held a webinar on the "Protection of social rights of internally displaced persons and other vulnerable groups: the European Social Charter, other Council of Europe standards and the practice of administrative courts in Ukraine".

The Supreme Court has traditionally paid considerable attention to educational activities for children and young people. In particular, in November, the judges of the Administrative Cassation Court of the Supreme Court delivered online lessons for high school students and taught them about the role of the court and judges in society.




Judges of the Administrative Cassation Court of the Supreme Court, Nataliia Kovalenko and Volodymyr Bevzenko, during online lessons for high school students

Also, in November, judges of the Civil Cassation Court of the Supreme Court joined as lecturers in a series of online classes with undergraduate students of the Kyiv National University of Trade and Economics, taking a special course on "Legal Findings of the Supreme Court in Civil Proceedings". In December, Dmytro Hudyma, judge of the Grand Chamber of the Supreme Court, took part in the educational event "Online career talks" organised by the Chernivtsi branch of the European Law Students' Association (ELSA).

During the quarantine, the judges of the Supreme Court continued to introduce young people to their profession online and held numerous webinars for law students. In particular, last June, judges Svitlana Yakovlieva and Olena Kibenko joined the project "How to Become a Judge" organised by the Students League of the Ukrainian Bar Association and participated in the webinar "From University to Robe", during which they gave instructions to law students who plan to work in the judiciary in the future.

Judge at the Commercial Cassation Court of the Supreme Court, Olena Kibenko, told students how to become a judge during the webinar "From University to Robe".

In October, judge Vasyl Krat participated in an online meeting of the students' club on civil law at the Yaroslav the Wise National Law University and spoke to young people about integrity in judicial practice.

Prior to the quarantine, the Supreme Court took part in a nationwide educational project NEOsvitnii Arsenal, which took place from 27 February to 1 March. Judges and staff members of the Supreme Court held "Lessons on Justice" and quizzes for children, during which the latter learned about the Court's work and got to know the judges of the Supreme Court.

First Lady, Olena Zelenska, visited the Supreme Court's stand at the NEOsvitnii Arsenal

Judges and staff of the Supreme Court at the forum talked about the court and the judges, showed a specially created educational cartoon "Horse v. Hamster" (which became the basis of the "Lessons on Justice" initiated by Volodymyr Kravchuk, a judge at the Administrative Cassation Court of the Supreme Court), offered to resolve a real court dispute, initiated roleplay as a judge, allowed the trying on of a judicial robe and the opportunity to sit in a judicial chair and communicate with judges.

During the four-day forum, more than 500 children and their parents visited the "Lessons on justice" event.

The children enjoyed interacting with the judges, resolving a real court dispute, and tryingon the judge's robe

Out-of-hours activities

2020 made adjustments not only to the established process of hearing cases by the Supreme Court but also to the out-of-hours activities of the judges and staff of the Supreme Court.

Due to quarantine restrictions, most of the activities in which the judges and the staff of the Supreme Court participated in their free time took place in the new online format.

In spite of this, the Supreme Court's achievements in 2020 were supplemented by real sporting successes. Judge at the Criminal Cassation Court of the Supreme Court, Mykola Mazur, and his assistant, Oleh Zotov, ran a 21-kilometre distance in a number of half-marathons.

Judge of the Criminal Cassation Court of the Supreme Court, Mykola Mazur, and his assistant, Oleh Zotov, took part in several half-marathons

In addition, the Supreme Court team took part in an online sports and charity event, the Chestnut Run, which was held in support of medics in the fight against COVID-19.

To support medics in the fight against COVID-19, judges and staff of the Supreme Court took part in the Chestnut Run, 31 May 2020

Apart from running, swimming and cycling are also popular hobbies amongst judges and staff at the Supreme Court. For the first time, the combination of these sports in one event took place in 2020: judge of the Civil Cassation Court of the Supreme Court, Yevhen Synelnykov, covered the Half Ironman triathlon distance.

Judge of the Civil Cassation Court of the Supreme Court,
Yevhen Synelnykov, covered the Half Ironman triathlon distance:
swimming – 1.9 km, cycling – 90 km, and running – 21 km, June 2020

The Administrative Cassation Court team won a challenge cup in the mini-football tournament "Administrative Court Cup 2020", timed to take place at the same time as Ukraine's Independence Day celebrations.

The Administrative Cassation Court team won the mini-football tournament "Administrative Court Cup 2020", August 2020

Judges of the Supreme Court were also involved in social projects. The team of the Administrative Cassation Court of the Supreme Court helped replenish the home library of a family-type orphanage within the project "Dream Library". The Civil Cassation Court of the Supreme Court organised an exhibition of children's drawings "Independence through the eyes of a child", and the Administrative Cassation Court of the Supreme Court organised "Court through the eyes of a child".

During 2020, the Supreme Court organised several exhibitions of children's drawings on judicial topics

It has already become a good tradition for the judges of the Administrative Cassation Court of the Supreme Court and the court staff to take care of the landscaping of the capital: in 2018, they decorated Mariinsky Park with fir trees and lime trees, in 2019 – the Park of Eternal Glory with cranberry bushes.

In 2020, on the occasion of the 15th anniversary of the adoption of the Administrative Procedure Code of Ukraine, a memorial oak tree was planted in Mariinsky Park.

Every year the judges of the Administrative Cassation Court of the Supreme Court and the staff of the Court plant trees and flowers

The traditional flash mob for Vyshyvanka Day in 2020 was also online, but the embroidered shirts were no less beautiful, and their owners were no less happy and inspired on this festive day.

It's going to be Vyshyvanka!

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