Supreme
Court

The Supreme Court in 2019: Facts and Figures

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Table of Contents

Welcome Address

Dear friends,

The year 2019 is over – the second year in the Supreme Court's operation.

Early in 2019, we were looking forward to the soonest reinforcement of the Supreme Court with new judicial personnel. This landmark event took place in May. The Court thus became fully operational. Over the year, almost 102,000 cases were considered through combined efforts of 193 judges.

Similar to 2018, the focus remained on the effective protection of human and civil rights and freedoms in accordance with European standards and principles of the Convention for the Protection of Human Rights and Fundamental Freedoms, guided not only by the domestic law and case law but also by the judgments of the European Court of Human Rights.

However, in late August 2019, amendments to the Law of Ukraine "On the Judiciary and the Status of Judges" put in jeopardy the Supreme Court's capacity to perform its functions. An onslaught on the independence of the judiciary has once again showcased the existing problems with the understanding of the courts' role in the State, the impact of ill-conceived reforms of the judiciary on Ukrainian society, liaison between branches of power and the insecurity of the a common individual, since everyone's right to fair and impartial trial within a reasonable time came under a threat.

Following extensive consultations with international partners and the legal community, we won their support in our fight for the independence of the judiciary. This, however, was only the beginning.

Late in 2019, the Constitutional Court of Ukraine began consideration of the Supreme Court's submission on unconstitutionality of certain provisions of the Law No. 193-IX.

The year 2020 should become a defining year both for the judiciary and our State, as the rule of law cannot exist without mutual respect between the branches of power, while building a democratic and law-based State would be impossible without an independent court.

Therefore, I would like to wish wisdom, patience, strength, and inspiration to all of us.

Valentyna Danishevska,
President of the Supreme Court

Foreword

The Supreme Court commenced its procedural functioning on 15 December 2017. In its first year of operation, judges of the Supreme Court had to face numerous challenges associated with administration of the institution's functions, along with heavy workload. Despite all the ordeals, 2018 turned out to be a productive year: the Supreme Court judges reviewed almost 90 thousand cases.

On average, 360 applications were received by the SC each day in 2019

In 2019, like the year before, the trove of the Supreme Court's achievements was enriched with numerous judgments, new legal position, considered pilot cases, resolved jurisdictional disputes and exceptional legal issues.

Reinforcement of the Supreme Court with new staff was, perhaps, the most anticipated event in its second year of operation. In May 2019, 75 lawyers – winners of the second competition – were appointed as the judges of the Supreme Court.

Anonymous written testing for vacant positions of the Supreme Court judges during the second competition, 14 November 2018

25 new judges joined their forces with colleagues in the Administrative Cassation Court, 22 judges – in the Civil Cassation Court, 15 – in the Commercial Cassation Court, and 13 – in the Criminal Cassation Court. Each cassation court additionally delegated one judge to the Grand Chamber of the Supreme Court, which now consists of 21 judges.

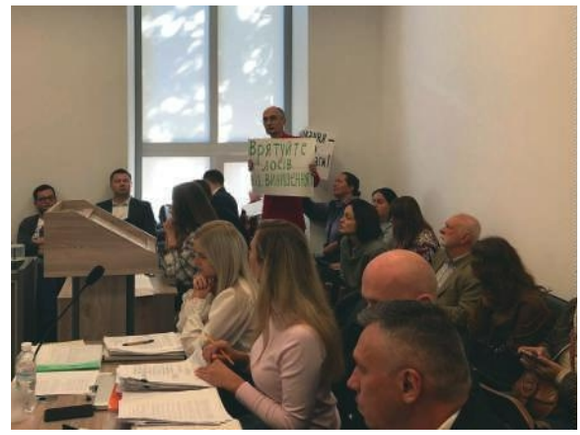
Ceremonial taking of oath by the newly appointed Supreme Court judges, 7 May 2019

Joining of additional judges at the Supreme Court made it possible to reduce the workload of the judges working at the institution since 15 December 2017 and to expedite the cases. Thus, in 2019, the Supreme Court adjudicated nearly 102 thousand cases. Altogether, in the two years of its operation, the SC adjudicated more than 192 cases.

After adding 75 newly appointed judges to the corps, the SC Plenum considered the issue of streamlining the structure and staffing table of the Court's Staff, 24 May 2019

Throughout 2019, the Court concentrated on improving the application of cassation filters, mechanisms that ensure the case-law uniformity, and on better formats and content of its judgments. The Supreme Court has successfully passed the test of resolving electoral disputes during the presidential and parliamentary elections, as well as many other cases that captured the public's attention.

Furthermore, a successful innovation was introduced last year by the Supreme Court – posting weekly reviews of judgments from the European Court of Human Rights. At the same time, the tradition initiated in 2018 – publication of digests of the SC's case law – was continued.



Consideration of a case in which the Supreme Court declared lawful the order by
the Ministry of Ecology approving the entry of elk in the Red List of Threatened Species of Ukraine
2 October 2019

In 2019, new contacts with international partners were also established, and existing ones were developed. Support from the international community was strongly felt by the Supreme Court while fighting for the judicial independence threatened by the draft law No. 1008 tabled before the Parliament and, subsequently, by the adoption of the Law of Ukraine "On Amendments to the Law of Ukraine 'On the Judiciary and the Status of Judges' and to Certain Laws of Ukraine Concerning the Operation of the Bodies of Judicial Self-Governance".

Discussing the results of two years of the SC's operation with the G7 ambassadors,
23 December 2019

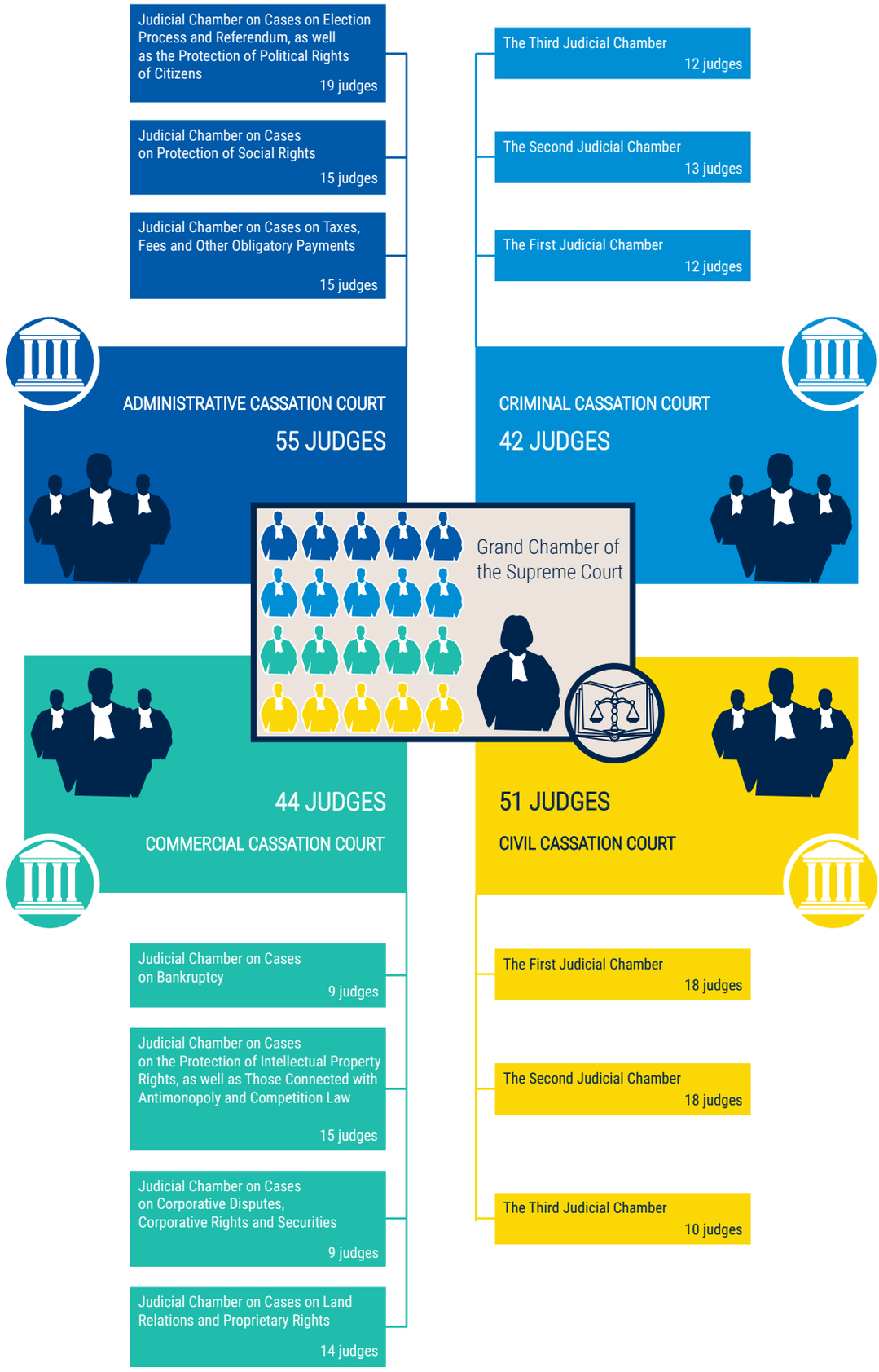
At the same time, the SC's communication with the public, the legal community, and the media was stepped up. The Supreme Court judges are always open to the public and are convinced that it is precisely the feedback and constructive criticism that help to identify shortcomings in the SC's activities and to develop measures to improve the operation of the institution.

Therefore, we would like to give you some facts and figures that illustrate the second year of the Supreme Court's operation.

About the Supreme Court

Structure of the Court

The Supreme Court — 192 judges



Profile of a judge

192

JUDGES OF THE SUPREME COURT

AMONG THEM:

83

109

140

JUDGES

35

SCIENTISTS

13

ADVOCATES

4

PERSONS WITH TOTAL WORK EXPERIENCE

35 36 years old

The youngest judge

61 64 years old

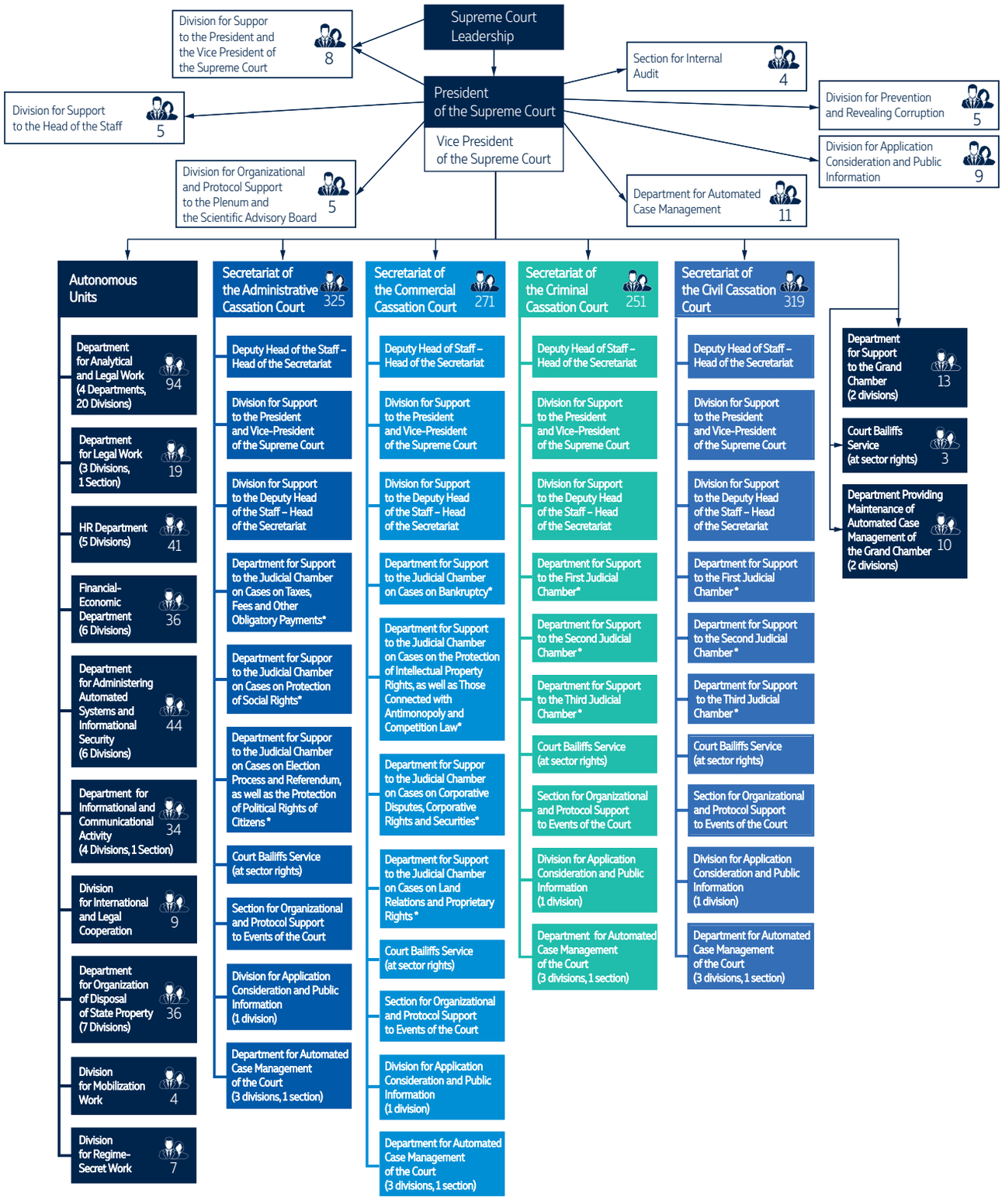
The oldest judge

72 judges — Candidates of Science

19 judges — Doctors of Sciences

Structure of the Court's Staff

1565
total number of positions

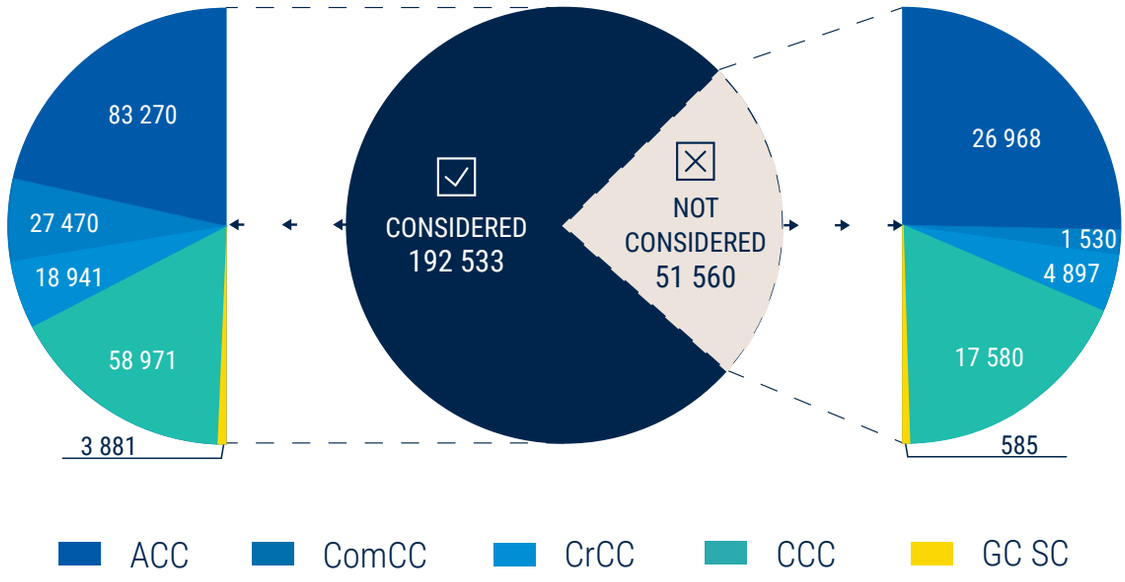


*The Department for Support to the Grand Chamber consists of the Judicial Advisory Service, the Division for Support to the Secretariat and Judges of the Judicial Chamber

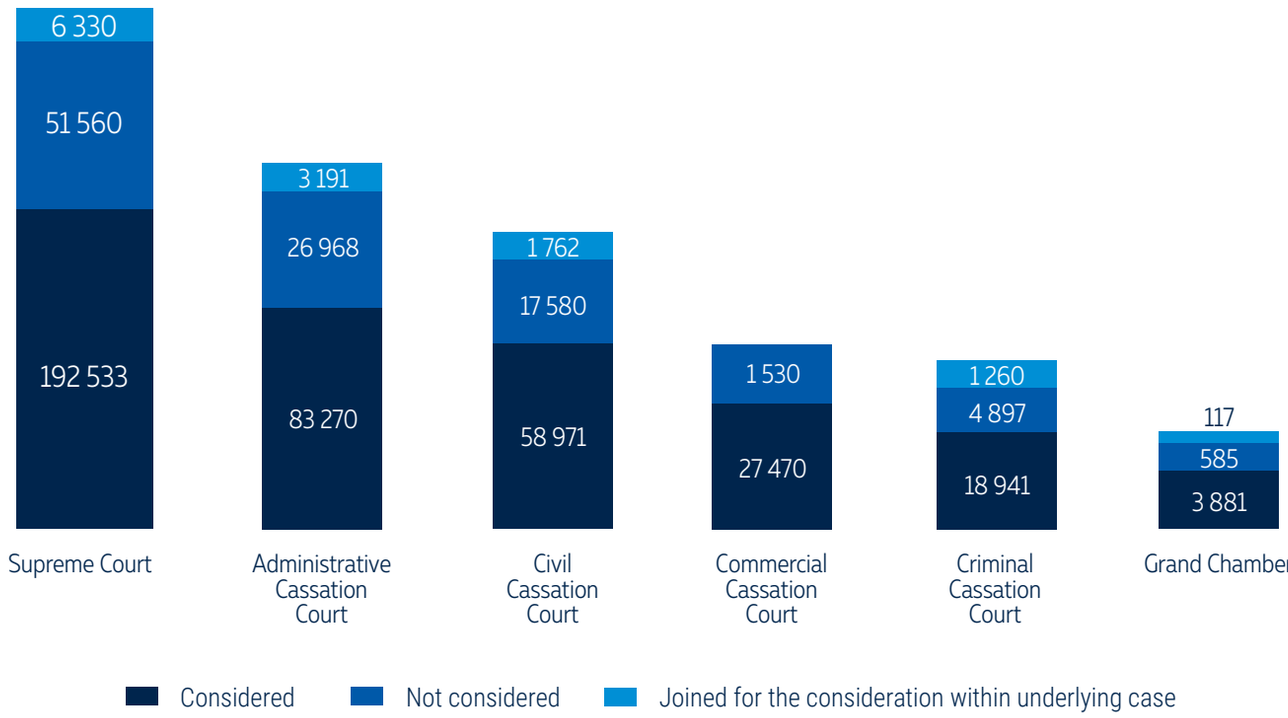
General Statistics

Appeals and case files received and reviewed between
15 December 2017 and 31 December 2019

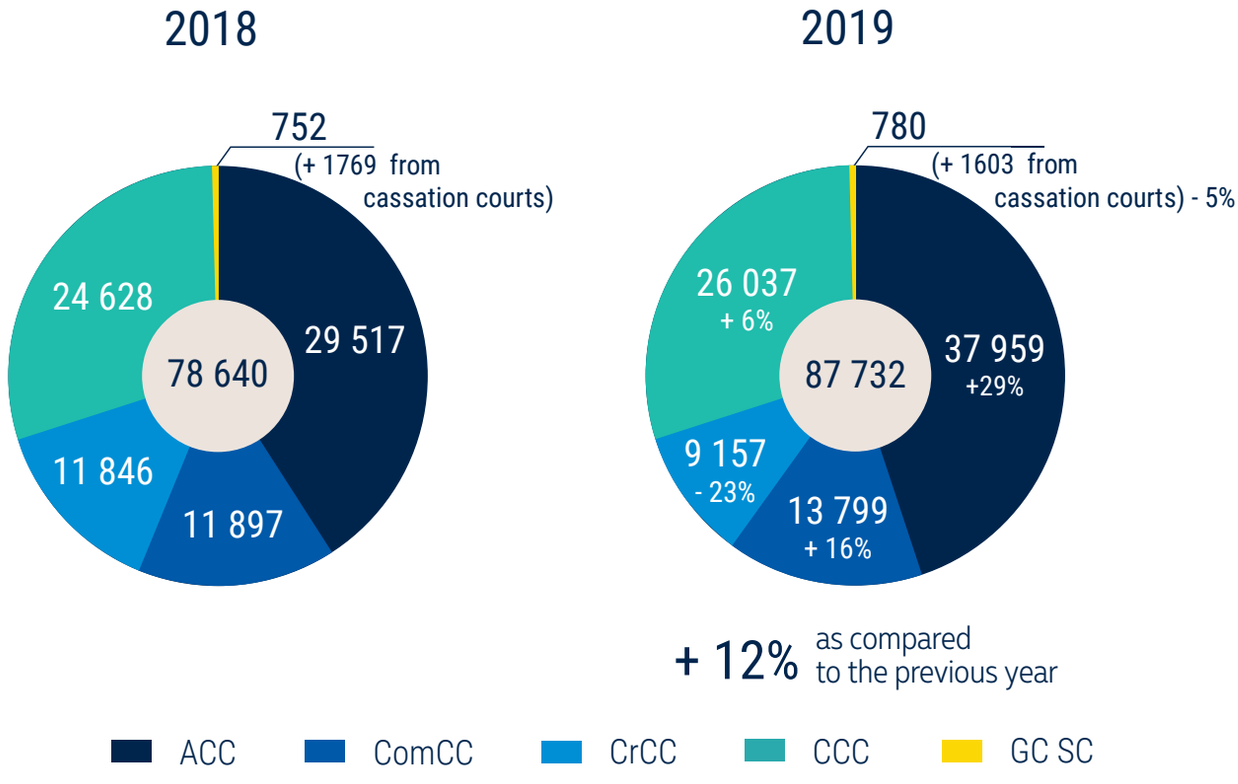
250,4 thousand filed

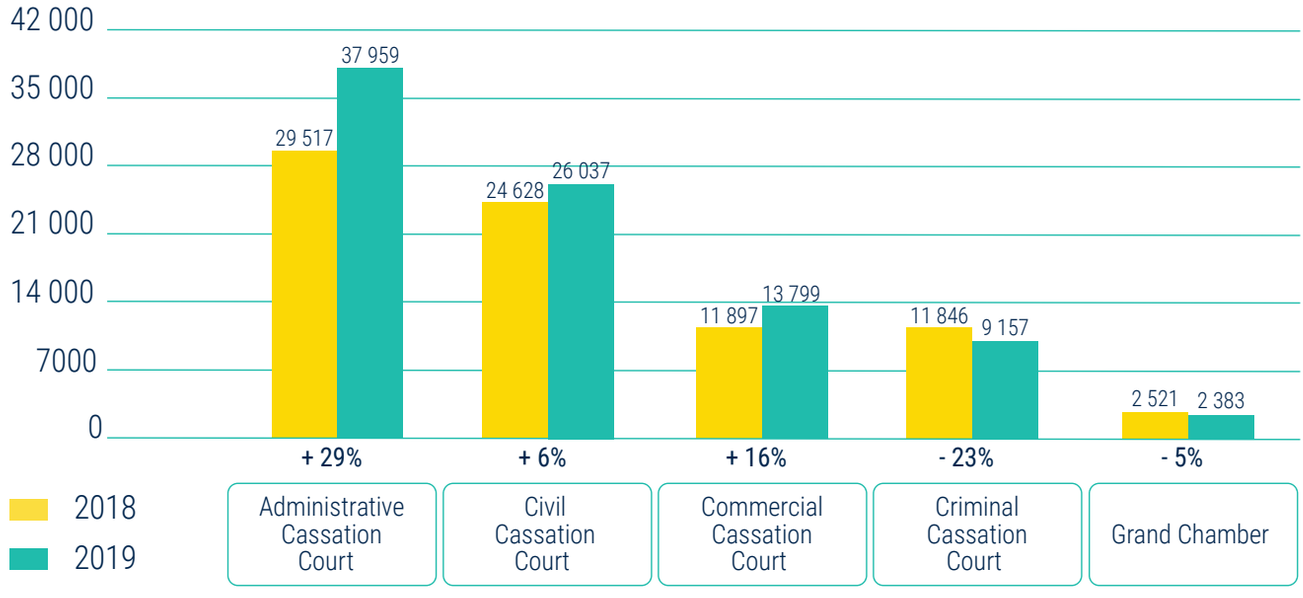


Overall performance between 15 December 2017
and 31 December 2019

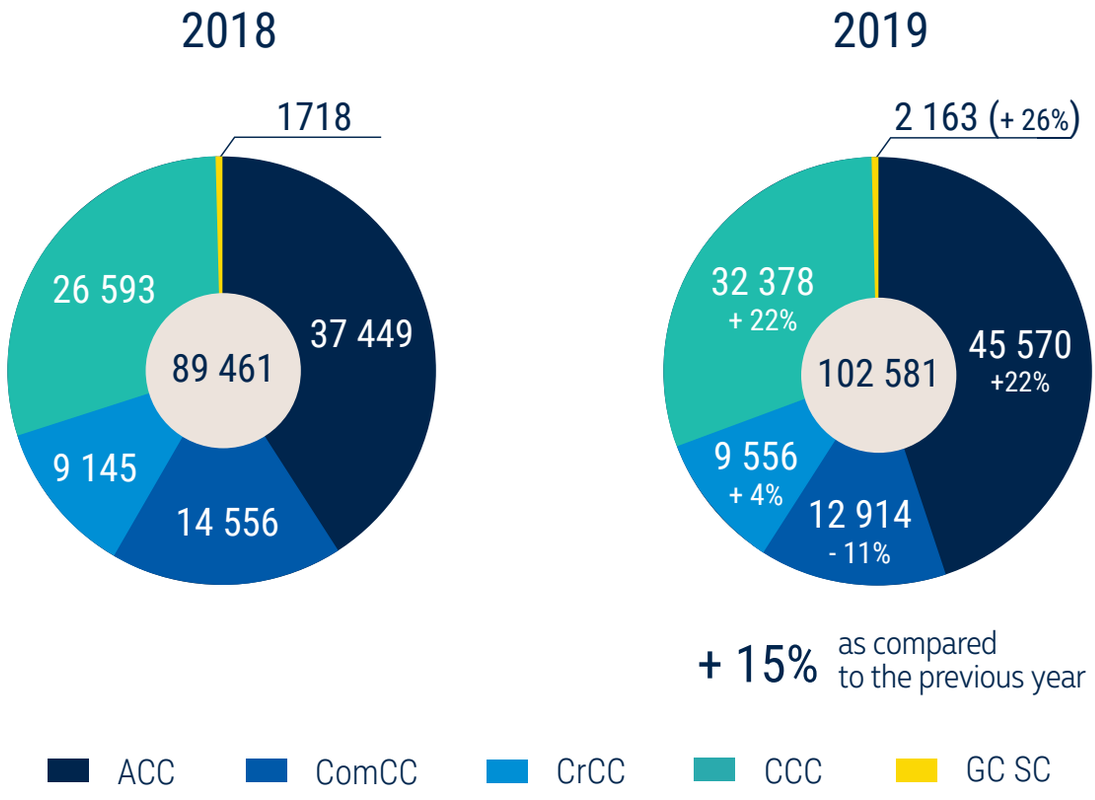


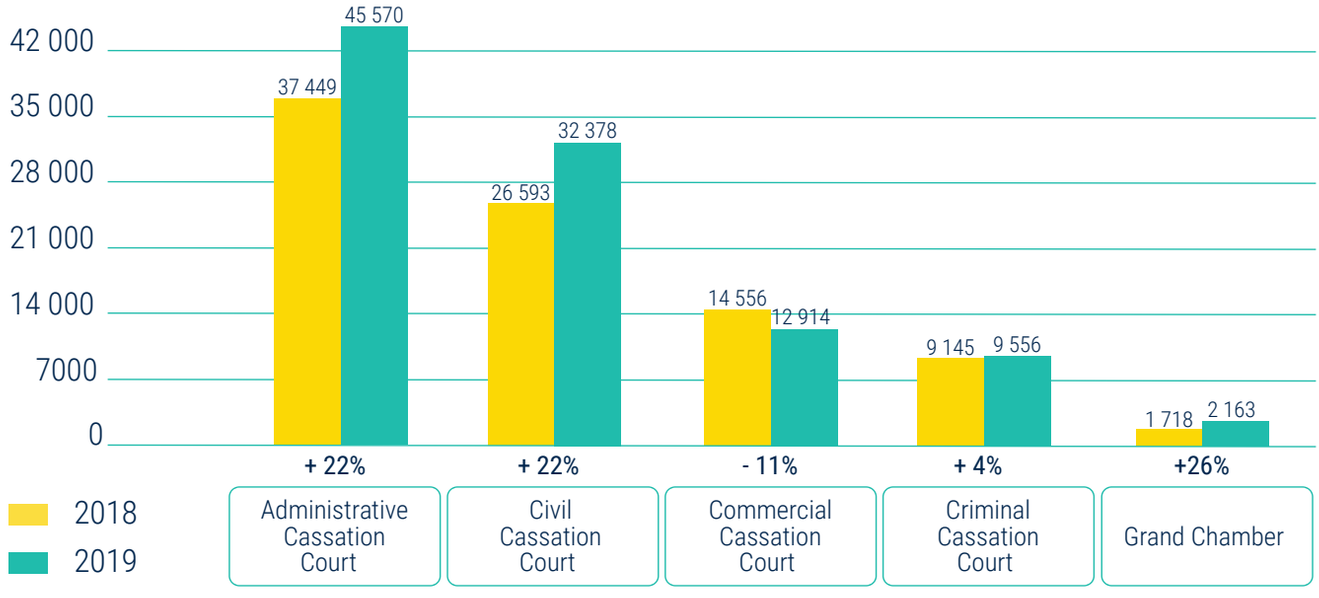
New appeals and case files received by the SC in 2018 and 2019



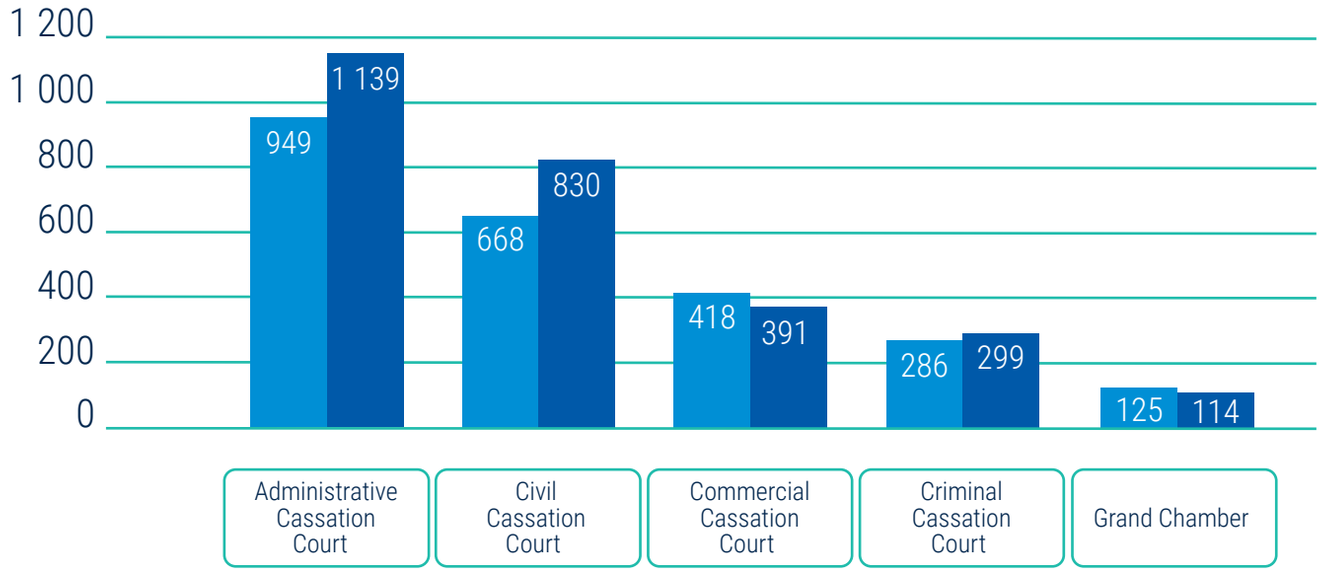


Appeals and case files reviewed by the SC in 2018 and 2019





Average number of appeals and case files per judge-rapporteur received and reviewed in 2019



filed on average
reviewed on average

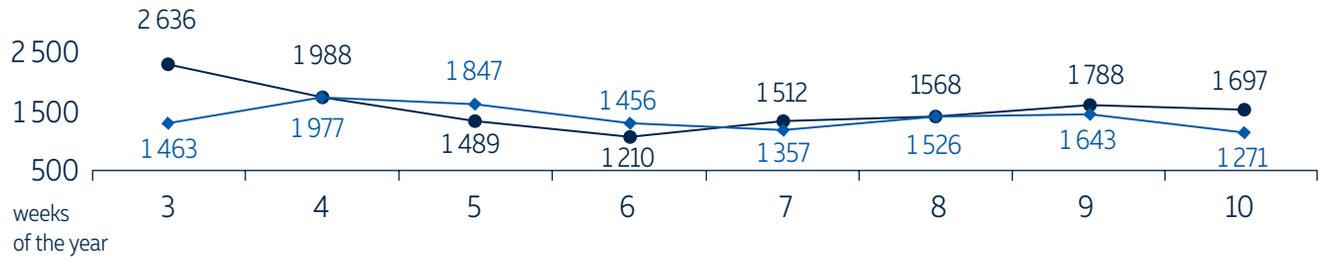
538 appeals – filed on average per one judge rapporteur

629 judgments – reviewed on average by one judge rapporteur

Appeals and case files received and reviewed each week in 2019

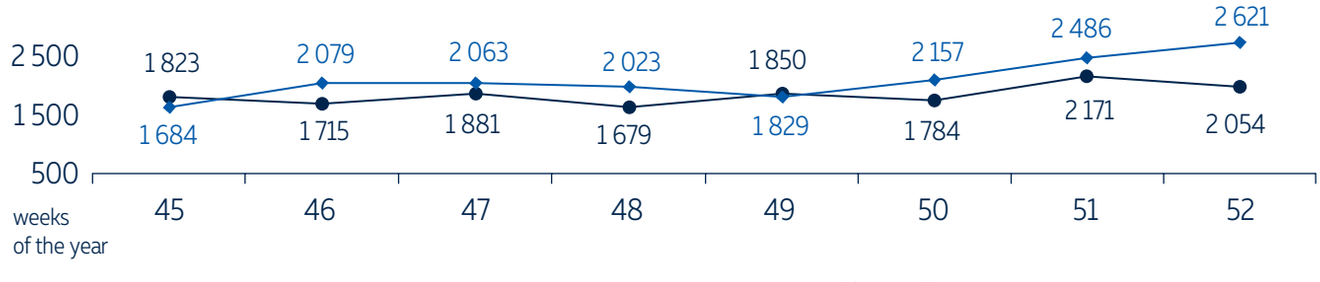
Supreme Court

3–10 weeks



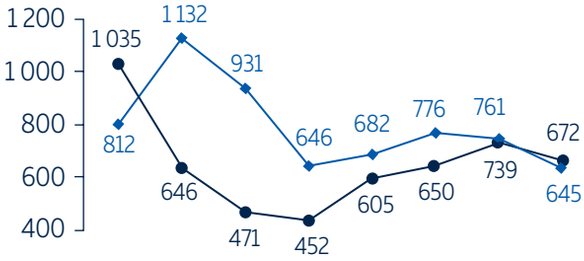
Supreme Court

45–52 weeks

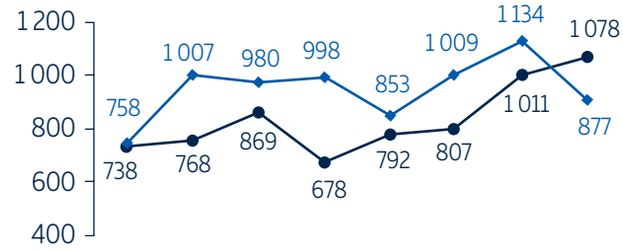


Administrative Cassation Court

3—10 weeks

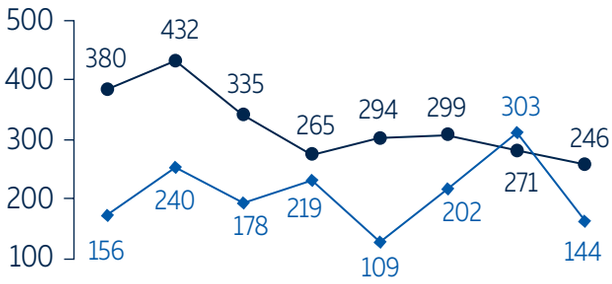


45—52 weeks

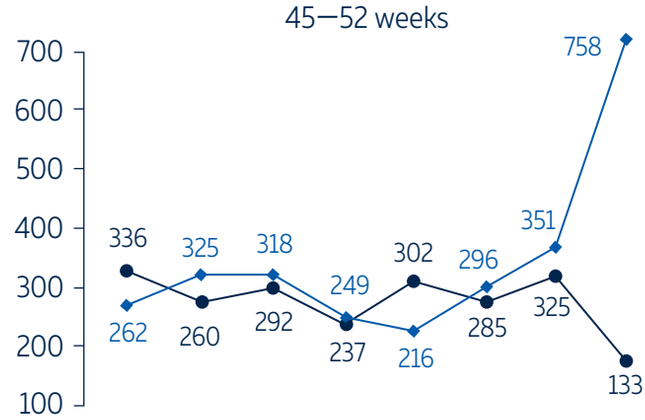


Commercial Cassation Court

3—10 weeks

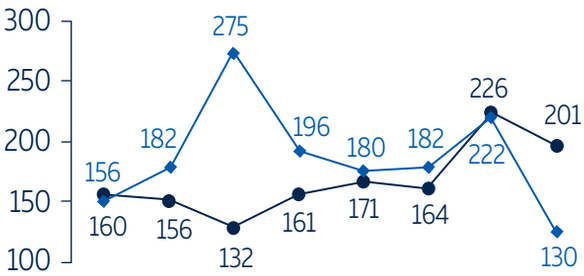


45—52 weeks

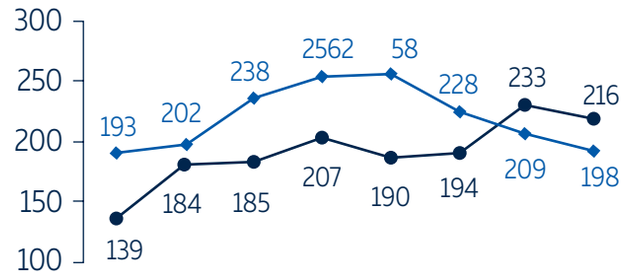


Criminal Cassation Court

3—10 weeks

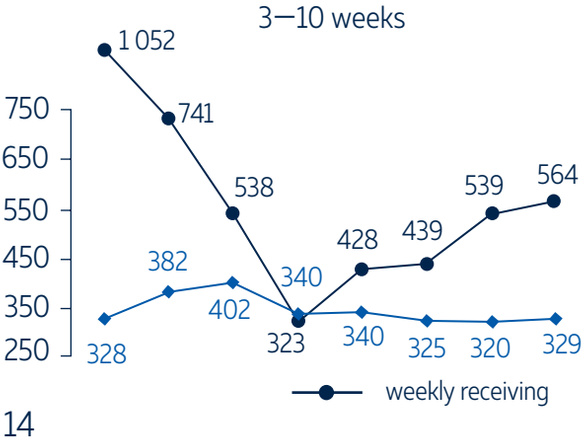


45—52 weeks

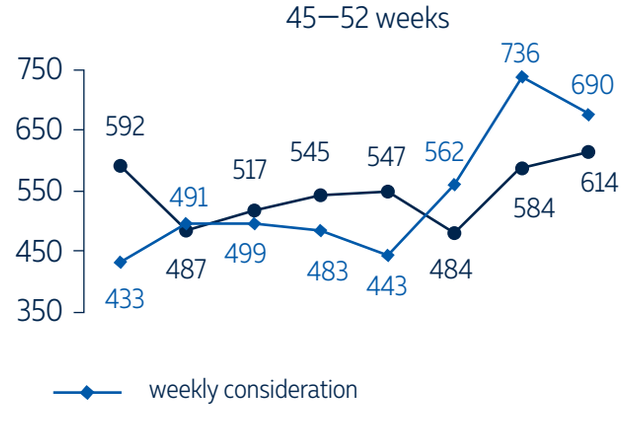


Civil Cassation Court

3—10 weeks



45—52 weeks



Key Judgments of the Supreme Court

Judgments of the Grand Chamber of the Supreme Court

In 2019, the trend continued whereby more than 80% of cases adjudicated by the Grand Chamber involved the cases where the matter of proper jurisdiction for the dispute had to be resolved. While considering this category of cases, the Grand Chamber finalised the essential system approaches in the criteria for differentiating the jurisdictional disputes, especially as regards the identification of the public- or private-law nature of certain disputes. The established case law of the GCSC offers efficient solutions to the issue of determining the proper jurisdiction for disputes both at the stage of application for judicial protection and during consideration by the courts of all instances. This is especially relevant for cases in which government and local self-government authorities are involved. The Grand Chamber has resolved complicated jurisdictional issues of land disputes, disputes involving the Deposit Guarantee Fund, has formulated the criteria for resolving disputes related to the state registration of titles to immovable property, has addressed the problem of differentiating the jurisdiction of disputes involving individual entrepreneurs, shareholders, block-of-flats co-owners associations, disputes associated with the enforcement of judgments, as well as pension-related and other social disputes.

Consideration of cases in which the cassation courts found it necessary to deviate from the opinions expressed in previous judgments of the Supreme Court of Ukraine helped address problems the resolution of which had failed to meet the principles of effective protection of violated rights and interests, particularly in family disputes, disputes around the protection of titles to joint property, as well as labour, pension, and corporate disputes. At the same time, a significant number of cases in which the GCSC has consistently supported the conclusions formulated by the Supreme Court of Ukraine evidences the GCSC's balanced approach to supporting the case-law uniformity.

The Grand Chamber has also resolved issues that became relevant in connection with the changes in legislative regulation. This, in particular, concerns corporate law disputes.

The GCSC has developed a uniform conceptual approach and general qualitative and quantitative criteria in its judgments for assessing an exceptional legal problem that must be resolved for ensuring the development of law and forming the uniform legal enforcement practice. At the same time, while considering separate cases on the grounds of existing an exclusive legal issue, the GCSC has formed legal positions on such matters as the validity of deeds, the lawfulness of decisions taken by the government and local self-government authorities, access to justice, liability of government authorities for damage, application of effective means of judicial protection, which have remained the most controversial items in case law for quite a while.

1. The Grand Chamber of the Supreme Court determines jurisdiction in disputes involving individual entrepreneurs

In the case No. 916/1261/18, the GCSC found that an individual wishing to exercise his/her constitutional right to entrepreneurial activity, upon completing the relevant registration and other statutory procedures, shall under no circumstances either lose or change his/her status of an individual that has been acquired since birth, but shall merely assume a new characteristic, i.e., that of the entrepreneur.

Furthermore, the legal status of an individual entrepreneur by itself neither affects any competences of the individual, which may stem from his/her civil legal capacity or capability, nor restricts them.

Thus, in the opinion of the GCSC, the judgment on the jurisdiction of a dispute would depend both on whether the individual – a party in the respective legal relations – acts as a business entity, and on whether these legal relations have been identified as commercial.

Judgment of the Supreme Court in the case No. 916/1261/18 dated 3 July 2019 (Proceedings No. 12-37rc19) http://www.reyestr.court.gov.ua/Review/82885809.

In the case No. 910/8729/18, the Grand Chamber of the Supreme Court examined the jurisdiction of a dispute concerning a lawsuit against an individual entrepreneur who no longer had the status of a business entity by the date of the lawsuit.

The court of the first instance, with which the court of appeal concurred, closed the proceedings, arguing that the case may not be adjudicated in commercial proceedings since the respondent is an individual and no longer had the status of a business entity by the date of the lawsuit.

The Grand Chamber of the Supreme Court, however, when resolving this jurisdictional dispute, concluded that, in the event of termination of entrepreneurial activity by an individual entrepreneur (with an entry of state registration of such termination made in the Unified State Register of Legal Entities, Individual Entrepreneurs and Community Groups), his/her (business) liabilities under the executed contracts would survive, rather than cease, since such an individual does not cease to exist as a natural person and is liable with all his/her property for the obligations associated with his/her entrepreneurial activity.

Thus, in the opinion of the GCSC, disputes concerning the discharge of obligations under commercial contracts with an individual entrepreneur who had lost this status by the date of the lawsuit shall be adjudicated in commercial proceedings.

Judgment of the Supreme Court in the case No. 910/8729/18 dated 13 February 2019 (Proceedings No. 12-294rc18): http://www.reyestr.court.gov.ua/Review/79883411.

2. The Grand Chamber of the Supreme Court determines jurisdiction in disputes on establishing the validity of state-issued title deeds to land

In the case no. 826/3985/17, the plaintiffs filed a lawsuit against the StateGeoCadastre to administrative court, demanding, in particular, that the validity (force) of state-issued title deeds to land be determined, claiming violations of their right to own and dispose the land owned by them on the right of private property.

Lower courts considered in administrative proceedings some of the claims against the defendant's actions concerning inadequate response to the plaintiffs' appeals, while the proceedings associated with the claims for establishing the validity of state-issued title deeds to land were closed since these claims did not involve protection of the plaintiffs' rights, freedoms or interests in the field of public-law relations against violations on behalf of government authorities, and rather concerned the protection of the acquired rights of ownership and the disposal of the land by the plaintiffs.

In their cassation appeal, the plaintiffs argued that the courts had wrongfully split their claims by singling out the claim for establishing the validity of state-issued title deeds to land as the claim that should be considered in civil proceedings, since establishing the validity of state-issued title deeds to land would depend on the adjudication on merits of the claims against the violations committed by the respondent when considering the plaintiffs' appeals (failure to provide complete information and provision of contradictory information).

Resolving the dispute, the GCSC disagreed with the plaintiffs' arguments and noted that the adjudication on merits in administrative proceedings of the claims relating to the inadequate response to the plaintiffs' complaints did not and could not affect the title held by the plaintiffs to the land, as certified by the state-issued title deeds that the plaintiffs demanded to be recognised as valid.

Besides, in the opinion of the GCSC, by challenging the StateGeoCadastre's actions concerning the establishment of the validity of state-issued title deeds to land, the plaintiffs, in fact, requested that the title acquired by them to the land be confirmed.

The procedure for recognising the title to any particular item held by a specific entity is defined in the Civil Code of Ukraine.

The GCSC thus concluded that, since the claims had been filed to protect a civil (property) right, the dispute concerned private-law relations and was not subject to consideration in administrative proceedings, but rather had to be adjudicated according to the provisions of the Civil Procedure Code of Ukraine.

Judgment of the Supreme Court in the case No. 826/3985/17 dated 15 May 2019 (Proceedings No. 11-20апп19): http://www.reyestr.court.gov.ua/Review/81877673.

3. The Grand Chamber of the Supreme Court determines the mechanism for actual reimbursement of the taxpayer with the agreed amount of VAT to be refunded from the State Budget

During 2012–2015, the Supreme Court of Ukraine developed a legal position stand under which the taxpayer cannot file a lawsuit for collecting the agreed amount of VAT to be refunded fromthe State Budget since such actions lie within the exclusive competence of tax authorities and bodies of the State Treasury; the court thus cannot substitute for a government authority and resolve on the collection of such debt.

Collecting the amount due on VAT from the State Budget was regarded as an improper way to protect the rights of the taxpayer. An obligation by a supervisory authority to fulfil the obligations vested in it by law and regulations to provide a Treasury authority with an opinion of the amount to be refunded from the State Budget was found to be a correct mechanism.

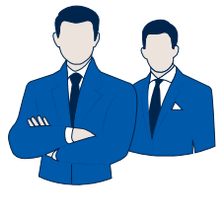
However, the GCSC decided to deviate from this opinion of the Supreme Court of Ukraine.

In the opinion of the GCSC's panel of judges, whereas the Temporary Register of Applications for Reimbursement from the State Budget, as provided for by the Transitional Provisions of the Tax Code of Ukraine, was not operational at the time of consideration of the case by the court of cassation, while applicable laws do not provide for a mechanism to reimburse the VAT amounts recorded in the Temporary Register, such means of protecting the violated right as an obligation by a supervisory authority to deliver an opinion confirming the amount claimed for a refund from the State Budget by the taxpayer or to record the company's application in the Temporary Register of Applications for Reimbursement from the State Budget would not result in an effective restoration of the taxpayer's right.

In view of this, the GCSC concluded that the only effective remedy that would ensure the restoration of the taxpayer's violated right would be to recover the VAT amount due from the State Budget of Ukraine.

Thus, not only the Grand Chamber of the Supreme Court departed from the established case law of the Supreme Court of Ukraine but also determined the mechanism for actual reimbursement of the taxpayer with the agreed amount of VAT to be refunded from the State Budget.

Judgment of the Supreme Court in the case No. 826/7380/15 dated 12 February 2019 (Proceedings No. 11-778апп18): http://reyestr.court.gov.ua/Review/80427413.



4. A deed executed by the CEO of a legal entity by colluding with a representative of the other party may be found invalid under Article 232.1 of the Civil Code of Ukraine

In the case No. 911/2129/17 involving a lawsuit by a company for declaring null and void the contracts executed by the company CEO in collusion with a representative of the other party and for reclaiming the property, the Grand Chamber of the Supreme Court examined the issue of potential application to this case of Article 232.1 of the Civil Code of Ukraine.

The GCSC found that legal relations arise between a legal entity and its officer, based on an act by the legal entity, that determine the rights and obligations of the parties in these legal relations, such as the right of the officer to execute a deed on behalf of such legal entity, including by entering into legal relations with third parties, and also stipulate the officer's liability for improper representation.

Persons acting on behalf of a legal entity are required to act not only within their powers but also reasonably and in good faith.

Furthermore, such relationship between the company and its officer are privileged and, therefore, offending behaviour by the officer constitutes improper and dishonest performance of certain actions beyond normal business risk, associated with a private interest or abuse of official duties involving personal intent (discretion), or taking manifestly ill-advised, wasteful, and knowingly self-serving decisions for the benefit of such officer.

The GCSC concluded that the relations between a legal entity and its officer fall under the concept of representation as defined in Article 237 of the CCU; therefore, a deed (contract) executed by a legal entity's officer by colluding with a representative of the other party may be found invalid under Article 232.1 of the CCU.

The GCSC thus interpreted Article 232.1 of the CCU in conjunction with Article 237.1 of the CCU in a manner that would offer the company a reasonable opportunity to sue for damages its representative and the other party to the joint obligation.

Judgment of the Supreme Court in the case No. 911/2129/17 dated 22 October (Proceedings No. 12-45rc19): http://www.reyestr.court.gov.ua/Review/85743713.

5. The Grand Chamber of the Supreme Court identifies several effective alternative ways to protect corporate rights of a company member

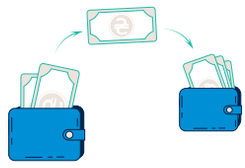
In the case No. 904/10956/16, when resolving a corporate dispute, the GCSC noted that entering into a contract with another person by the company's executive body without the consent, stipulated by the articles of association, from the company's highest body may indicate a violation of the rights and interests of the company itself in its relations with another person – a party to the contract, rather than of the corporate rights of its member.

At the same time, the GCSC clarified that a company member who believes that his/her corporate rights have been violated as a result of the contract executed by the company's director shall be entitled (together with other members) to raise the issue of convening the company's general meeting to address the matter of filing a relevant lawsuit by the company.

An appropriate way to protect the corporate rights of a company member may also include filing a lawsuit by him/her (including together with other members who hold 10 or more per cent of the company's authorised capital) in the legal entity's interests against its officer for payment of damages caused to such legal entity by the officer's actions (omission).

Where the interest held by this member is insufficient for this purpose, given the provisions of Article 54.1 of the Commercial Procedure Code of Ukraine, such member shall be entitled to withdraw from the company and demand payment of the amount of his/her interest, as well as to file a lawsuit against the company itself and/or its members, if (s)he believes that a resolution by the general meeting to dispose of assets has caused losses to him/her.

Judgment of the Supreme Court in the case No. 904/10956/16 dated 3 December 2019 (Proceedings No. 12-90rc19): http://reyestr.court.gov.ua/Review/86333853.



6. Cancellation by court of the rates in effect at the time of charging the cost of housing and communal services constitutes the grounds for recalculating, at the consumer's request, the price of the services rendered

In the case No. 757/31606/15-ц, the applicant requested that the price of housing and communal services be recalculated on a monthly basis since they were charged according to the rates adopted under the instructions from the Kyiv City State Administration and later cancelled by a court ruling.

The court of the first instance, in whose findings the court of appeal and the High Specialised Court of Ukraine for Civil and Criminal Cases concurred, rejected the claim, arguing that the rates were valid at the time of charging for the housing and communal services.

The Grand Chamber of the Supreme Court, however, disagreed with these findings and pointed out that, under the Law of Ukraine "On Housing and Communal Services", utility payments should be calculated on the basis of the approved prices/rates and meter readings or according to the duly approved usage rates.

The GCSC thus came to the conclusion that, since the price of housing and communal services for the flat in the disputed period had been charged according to the rates adopted under the instructions from the KCSA and later cancelled by a court ruling, the plaintiff would be entitled to the recalculation of the sums charged.

Judgment of the Supreme Court in the case No. 757/31606/15-ц dated 16 January 2019 (Proceedings No. 14-285цс18): http://www.reyestr.court.gov.ua/Review/79250496.

7. The Grand Chamber of the Supreme Court establishes clear criteria for determining the admissibility of findings from covert investigative (detective) actions (the "CIDAs") as evidence in criminal proceedings in the context of compliance with Article 290 of the Criminal Procedure Code of Ukraine

Following the review in cassation of the case, the GCSC concluded that its previous legal stand, as set out in its judgment in the case No. 751/7557/15-к dated 16 October 2019, concerning unconditional inadmissibility of reports of covert investigative (detective) actions (the "CIDAs") as evidence in criminal proceedings for reasons of non-disclosure of procedural documents that authorise their conduct, had failed to take into

account the specifics of the procedure for declassifying the CIDA materials, the outcome of which depends not only on the prosecution.

In the GCSC's opinion, the court should look closer at the situations where the procedural documents associated with the conducted CIDAs were not fully disclosed to the defence when the pre-trial investigation was nearing its completion – in other words, when checking compliance with the conditions of the permit issued for the CIDA conduct, the court should identify the reasons that prevented the prosecutor from disclosing them at an earlier stage.

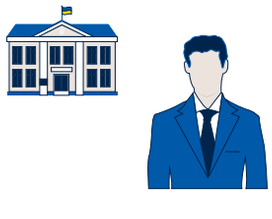
The panel of judges emphasised that the prosecution should take all the necessary and sufficient steps to declassify materials that constituted procedural grounds for conducting the CIDAs, so that the defence could be provided with these materials as soon as possible, and thus comply with the requirements on disclosure of materials to the other party under Article 290 of the CPCU.

If it is established that, during the pre-trial investigation, the prosecution has promptly taken all the necessary measures within its control to declassify the procedural documents that constituted the grounds for conducting the CIDA, although these documents were subsequently not declassified for reasons beyond the prosecutor's will and procedural conduct, the court cannot automatically regard the CIDA reports as inadmissible evidence for reasons of non-disclosure of the procedural documents that authorise the conduct of such CIDAS.

The GCSC clarified nevertheless that the procedural documents that constituted the grounds for conducting the CIDAs (rulings, resolutions, motions) and were not disclosed to defence at the pre-trial investigation stage in the manner prescribed by Article 290 of the CPCU for the reason of unavailability thereof to the prosecution (had not been declassified by the time of the disclosure of the criminal proceedings materials by the prosecution) may be disclosed to the other party during the trial, given that the prosecutor has promptly taken all the necessary measures to obtain them.

Violation of Article 290 of the CPCU would only occur where the prosecution has failed to take the necessary and timely measures to declassify the procedural documents that constituted the grounds for conducting the CIDA and which are unavailable to the prosecution.

Judgment of the Supreme Court in the case No. 640/6847/15-к dated 16 October 2019 (Proceedings No. 13-43кс19): http://www.reyestr.court.gov.ua/Review/85174578.



8. The Grand Chamber of the Supreme Court explains the implications of a decision taken by the local self-government authority in a situation where a councillor has a conflict of interest

According to the circumstances of the case, the village council resolved at its session to transfer a title to the land, for the purpose of construction and maintenance of a residential building and support structures, to a person who is the son of a village councillor. Contrary to the Law of Ukraine "On Prevention of Corruption", the said village councillor had failed to disclose this actual conflict of interest

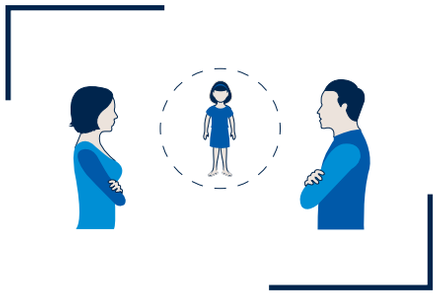
when the resolution was adopted and voted in support of it, thereby committing a corruption offence under Articles 172-7.1 and 172-7.2 of the Code of Ukraine on Administrative Offences. When resolving the dispute, the Grand Chamber of the Supreme Court noted that a resolution adopted by a village council in the context of an actual conflict of interest on the part of a councillor was illegal and should be revoked.

In establishing a violation of the decision-making procedure, the councillor's participation in voting despite the conflict of interest (whether potential or real) should be the determining factor, rather than the impact of such voting on a resolution adopted by qualified majority of the collegial body.

Furthermore, it is not only the person with a perceived conflict of interest that should be required to prevent it. This duty is directly vested in the relevant permanent commission of the local council and in each local councillor who is aware of any other local councillor having a conflict of interest.

The GCSC also noted that a person who has acquired certain rights under such a resolution may re-apply to the relevant local self-government authority for consideration of the application under applicable laws.

Judgment of the Supreme Court in the case No. 442/730/17 dated 20 March 2019 (Proceedings No. 14-557цс18): http://www.reyestr.court.gov.ua/Review/80854671.



9. Taking into consideration the opinion of a child, if his/her age allows him/her to formulate his/her own views, is relevant to adjudicating the case that concerns the life of such a child

In the case No. 357/17852/15-ц, the father of a child filed a lawsuit to deem illegal transporting the child abroad, determining the child's residence, taking the child away, as well as for moral damage.

The plaintiff pointed out that, in 2015, the child, accompanied by his mother, crossed the border of Ukraine at the Checkpoint "Boryspil" and flew to the Arab Republic of Egypt. No notarized consent to transporting the child abroad was given by the father.

Lower courts found illegal the transportation of the child abroad in view of the provisions of the co-parenting agreement, the Family Code of Ukraine, and the Convention on the Civil Aspects of International Child Abduction.

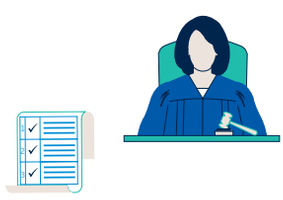
Having analysed the established case law of the European Court of Human Rights, the GCSC concluded that any judgments that affect children should give top priority to ensuring their best interests. The child's best interests, depending on their nature and gravity, may prevail over those of the parents.

In the matters that affect his/her life, a child capable of formulating his/her own views should be entitled to express them freely on all matters that concern him/her, and such views should be provided with due consideration according to the child's age and maturity.

The GCSC further notes that taking the underage child abroad by mother without father's consent violates the child's interests. The court, however, should take into consideration the child's best interests, based on the established circumstances regarding the judicially determined place of residence for the child, provision by the parent who is to accommodate the child of a comprehensive and harmonious physical, mental, spiritual, moral and social development, as well as of the living standards required for such development; and should hear the child's opinion and give regard to the prevailing circumstances that have arisen by the time of issuing the judgment.

The provisions on the equality of the parents' rights and duties in raising a child may not be interpreted to the detriment of the child's interests. Each case requires a thorough examination of the situation with due regard given to a variety of factors that may affect the child's interests, including his/her own opinion if (s)he is capable of formulating it in accordance with his/her age.

Judgment of the Supreme Court in the case No. 357/17852/15-ц dated 29 May 2019 (Proceedings No. 14-199цс19): http://www.reyestr.court.gov.ua/Review/82636307.



10. The Grand Chamber of the Supreme Court defines a sequence of actions to be taken by the court in the event that the plaintiff when substantiating the claim, has invoked a wrong rule in respect of the disputed legal relationship

In the case No. 917/1739/17, the city council filed a lawsuit for damages, arguing that the respondent has been using the land without title deeds, failed to pay the rent under the agreement despite using the land to develop real property, which resulted in a loss of revenue from leasing the land.

Lower courts have established that in the disputes concerning the collection of rent for using the land without executing a land lease agreement, funds should be collected from the land user under (in the manner prescribed by) Article 1212 of the Civil Code of Ukraine. However, in its lawsuit for damages, the city council emphasised that the funds referred to in the lawsuit were precisely the damages in the form of lost revenue, and did not invoke any CCU rule. The courts thus found that the claims could not be satisfied.

At the same time, the GCSC, upon examining the case, explained how the court should act if it is found during the proceedings that the party has invoked wrong legal rules instead of those that actually regulate the disputed legal relations.

In the GCSC's opinion, a specific legal rule revoked by the plaintiff to substantiate a claim should not be a determining factor when the court addresses the matter of the law to be governed by in resolving a dispute.

Under the legal maxim of jura novit curia ("the court knows the law"), it is the duty of the court to provide an independent legal characterisation of relations between the parties on the basis of the facts established during the proceedings and to determine the legal rule that should apply in the resolution of the dispute. For the purpose of delivering judgment, any independent application by the court of exactly those rules of substantive law that govern the relevant legal

relationship would not change the subject matter of the lawsuit and/or the mode of defence chosen by the plaintiff.

The GCSC thus concluded that the court, upon finding in the course of the proceedings that a party or other participant in the trial has referred to wrong legal rules to substantiate claims or objections instead of those that actually govern the disputed relations, should independently provide a correct legal characterisation of such relations and shall apply those rules of the substantive and procedural law which govern the respective relationship in order to deliver the judgment.

Judgment of the Supreme Court in the case No. 917/1739/17 dated 4 December 2019 (Proceedings No. 12-161rc19): http://reyestr.court.gov.ua/Review/86310237.

11. The Grand Chamber of the Supreme Court clarifies the procedure for establishing the fact of participation by an individual in the Anti-Terrorist Operation

In the case No. 233/2929/17, the applicant filed an application to court requesting to establish the fact of his participation in the combat operations to defend the independence, sovereignty and territorial integrity of Ukraine and direct participation in the ATO, including as a volunteer. The establishment of this fact is necessary for the applicant in order to be granted with the combatant status.

When resolving the dispute, the Grand Chamber of the Supreme Court noted that establishing the fact of an individual's participation in the ATO is integral to the process of granting him/her the combatant status, for which applicable laws stipulate an extrajudicial, rather than judicial procedure carried out by specially authorised bodies (commissions, inter-agency commissions).

An individual who allegedly participated in the ATO as a member of volunteer formations and who is eligible for the combatant status should apply to a commission, or the General Staff of the Armed Forces of Ukraine, or the Ministry of Defence of Ukraine, or a military unit, or the command of the Ukrainian Armed Forces' service, depending on the military formation that comprised these volunteer units.

In the event that the respective commission denies this status to an individual, (s)he may exercise his/her right to go to court – not with an application for establishing the fact of participation in the ATO, but with a claim challenging the decision of the relevant commission, including the decision about establishing the fact of participation in the ATO or other events that entitle him/her to recognition as a combatant.

Therefore, in the opinion of the GCSC, it is not necessary to go to court in order to establish the fact of an individual's participation in the ATO. This matter should be resolved extra judicially according to the statutory procedure.

Judgment of the Supreme Court in the case No. 233/2929/17 dated 3 July 2019 (Proceedings No. 14-284цс19): http://reyestr.court.gov.ua/Review/82998173.

Pilot Cases

Among the novelties in the Code of Administrative Procedure of Ukraine is the institution of model cases, borrowed from the European case law. It offers an opportunity to manage the court workload faster and supports the principle of legal certainty. The main purpose is to ensure that the citizens of Ukraine in the model cases are provided with the most effective judicial protection as soon as possible and the cases are promptly considered by the courts of the first instance guided by the model cases. Pilot judgments should be applied by all power entities.

Under Article 290 of the CAPU, the Supreme Court shall adjudicate the model cases as a court of the first instance, upon submission from one or more administrative courts that have typical administrative cases pending, the number of which determines the expediency of passing a model judgment. Article 290.11 of the CAPU stipulates that this judgment may be reviewed on appeal by the Grand Chamber of the Supreme Court.

During 2019, the Administrative Cassation Court within the Supreme Court examined 28 model cases, of which 25 were filed this year. Proceedings were denied in 13 cases, closed in 1 case, with 9 cases considered on merits.

In 2019, 2 judgments passed in 2018 and 3 judgments passed in 2019 became effective.

1. On transferring from a disability pension to a civil servant's pension

A prerequisite for preserving an individual's entitlement to a pension is compliance with a set of requirements, such as age, pensionable service period, civil service period. However, entitlement to a pension under Article 37 of the Law of Ukraine No. 3723-XII "On Civil Service" dated 16 December 1993 is only associated with the individual's length of service as a civil servant, determined under paragraphs 10 and 12 of the Final and Transitional Provisions of the Law of Ukraine No. 889-VIII "On Civil Service" dated 10 December 2015. No additional conditions for granting such a pension have been established. Thus, under the law, accrual of a disability pension is not related to such condition as reaching a certain age. Adopting a legal regulation, whereby the amount of pensions, other social benefits or care would be below the level defined in Article 46.3 of the Constitution of Ukraine and would not allow for adequate living conditions to be provided for an individual in the society or for the human dignity of an individual to be upheld, contrary to Article 22 of the Fundamental Law of Ukraine, is unacceptable.

Ruling of the Administrative Cassation Court under the Supreme Court in the case No. 822/524/18 dated 4 April 2018 (Proceedings No. Пз/9901/23/18): http://reyestr.court.gov.ua/Review/73194559.

Judgment of the Grand Chamber of the Supreme Court in the case No. 822/524/18 dated 13 February 2019 (Proceedings No. 11-555ai18): http://reyestr.court.gov.ua/Review/80147824.

2. On issuing a salary certificate to the pensioner by public prosecutor's offices to recalculate the pension

The lack of legal grounds for issuing a certificate does not mean that the prosecutor's office that has been approached by the applicant should not perform its duty of reviewing such requests and responding to them, which also includes providing reasons for denying the requested certificate. However, where the law neither entitles to recalculation of the retirement pension nor stipulates the obligation to issue a salary certificate, the prosecutor's office may not issue certificates in a free form or similarly to other regulations. The lack of a legitimate purpose for which the certificate is requested makes it impossible to use any means of achieving it.

The right to pension recalculation cannot and should not depend on the mechanism of its implementation. Therefore, the certificate must be issued if the substantive law on the right to, forms and types of pension benefits stipulates the right to, grounds for, amount and types of components in the pension recalculation, but does not regulate the procedure for issuing salary certificates. Prosecutor's offices have the right to deny issuing a salary certificate in the relevant format and having an appropriate content, as may be required to recalculate the retirement pension if the law stipulates no rules of general effect on the format, content and mechanism of issuing such a certificate.

Ruling of the Administrative Cassation Court under the Supreme Court in the case No. 825/506/18 dated 16 April 2018 (Proceedings No. П3/9901/16/18): http://reyestr.court.gov.ua/Review/73737741.

Judgment of the Grand Chamber of the Supreme Court in the case No. 825/506/18 dated 23 October 2019 (П3/9901/16/18) (Proceedings No. 11-577заі18): http://reyestr.court.gov.ua/Review/85776329.

3. On the amount of servicemen's retirement pay

The procedures for granting and recalculating pensions differ by their content and implementation mechanism. The rules that define the mechanism of recalculating a retirement pay are established by Article 63 of the Law of Ukraine "On Pension Benefits for Persons Discharged From Military Service and for Certain Other Persons".

When recalculating a pension, the only variable is the amount of salary. The percentage of the basic pension, calculated according to the plaintiff's length of service when granting the pension, remains unchanged.

Ruling of the Administrative Cassation Court under the Supreme Court in the case No. 240/5401/18 dated 4 February 2019 (Proceedings No. П3/9901/58/18): http://reyestr.court.gov.ua/Review/79615886.

Judgment of the Grand Chamber of the Supreme Court in the case No. 240/5401/18 dated 16 October 2019 (Proceedings No. 11-198заі19): http://reyestr.court.gov.ua/Review/85174587.

4. On reimbursing the combatant for the unused days of additional leave

Provisions of the Law of Ukraine "On the Status of War Veterans, Guarantees of Their Social Protection" neither restrict nor terminate the combatant's entitlement to reimbursement for all the unused days of additional leave upon retirement. The right to such leave must be acquired during military service in the special period beginning with the mobilisation announcement.

However, suspension of the leave for the duration of the special period does not imply suspension of the entitlement to the leave, which may be exercised either: 1) by directly granting the leave to a person upon the termination of the special period that may continue indefinitely; or 2) by reimbursing the person for the leave.

Ruling of the Administrative Cassation Court under the Supreme Court in the case No. 620/4218/18 dated 16 May 2019 (Proceedings No. П3/9901/4/19): http://reyestr.court.gov.ua/Review/81798649.

Judgment of the Grand Chamber of the Supreme Court in the case No. 620/4218/18 dated 21 August 2019 (П3/9901/4/19) (Proceedings No. 11-550заі19): http://reyestr.court.gov.ua/Review/84153019.

5. On the uniform compulsory state social insurance contribution payable by an individual entrepreneur pursuing independent professional activity

Among the uniform contribution payers, the legislator differentiates between individual entrepreneurs and persons pursuing the independent professional activity. Applicable legal regulations do not provide for the registration of the uniform contribution payers – individual entrepreneurs – under the independent professional activity indicator.

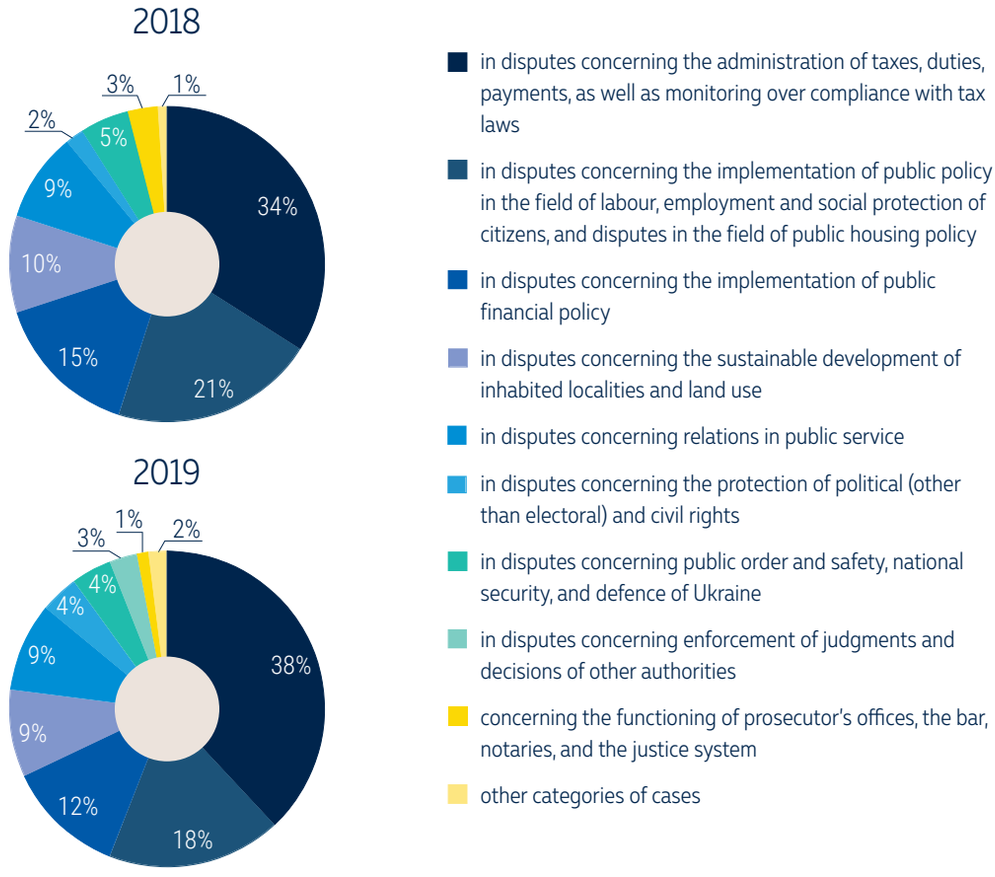
Any registration by the supervisory authority of a person as the uniform contribution payer – an individual entrepreneur – and entering this information in the register of insured persons would prevent the uniform contribution accrual under another type of payer unless appropriate decisions and changes in the person's previous registration have been made in the manner prescribed by law and statutory instruments. The supervisory authority may not change the registration of the uniform contribution payer in a manner that would be inconsistent with the law, and to charge the uniform social contribution on the basis thereof.

Ruling of the Administrative Cassation Court under the Supreme Court in the case No. 520/3939/19 dated 2 September 2019 (Proceedings No. П3/9901/10/19): http://reyestr.court.gov.ua/Review/84077152.

Judgment of the Grand Chamber of the Supreme Court in the case No. 520/3939/19 dated 4 December 2019 (П3/9901/10/19) (Proceedings No. 11-1111заі19): http://reyestr.court.gov.ua/Review/86401183.

Rulings of the Administrative Cassation Court

Cassation appeals in the administrative cases
referred to the Supreme Court



I. Legal position on the protection of social rights

Social disputes have always taken up an important place in the work of the courts of administrative proceedings of all instances, both in terms of the number of the cases received and considered, and the sensitivity and significance of their ruling for the citizens.

It is exactly the outcome of adjudication of social disputes that defines the quality of administrative proceedings in terms of achieving its tasks, including fair, impartial and timely resolution of disputes in the field of public law relations, aimed at effective protection of rights, freedoms and interests of individuals, as evidenced by the ACCSC's legal position on the following issues.

1. On protecting the rights of victims of the Chornobyl disaster

The deletion, as of 1 January 2015, of the enhanced radioecological monitoring zone from the list of radioactively contaminated territories does not deprive of the status of victim those persons who had been granted the status and issued the Chornobyl disaster victim certificate earlier, before 31 December 2014.

A person who has been issued a perpetual certificate of a citizen permanently residing within the enhanced radiological monitoring zone (Category 4) shall be regarded a victim of the Chornobyl disaster for the purposes of the application of Article 14.1.1 of the Law of Ukraine "On the Status and Social Protection of Citizens Affected by Consequences of the Chornobyl Disaster".

Judgment of the Supreme Court in the case No. 697/121/17 dated 20 March 2019 (Proceedings No. K/9901/43405/18): http://reyestr.court.gov.ua/Review/80632873.

2. On assistance for pregnancy and childbirth to internally displaced persons from temporarily occupied territories

The right of the insured person to receive assistance for pregnancy and childbirth is provided for by the Law of Ukraine «On Compulsory State Social Insurance», while the provisions of the Procedure for financial support at the expense of the social insurance fund for temporary disability of persons displaced from temporary occupied territories of Ukraine and areas of the Anti-Terrorist Operation approved by the Resolution no. 37 of the Fund Board of Directors dated 26 December 2014, which is a by-law regulatory act, restrict the possibility of exercising this right which is contrary to the rule of law.

The applicant's request to the Fund to pay funds due to her based on the medical disability certificate is justified in view of the fact that during the conduct of the Anti-Terrorist Operation, the Law of Ukraine «On Ensuring Rights and Freedoms of Internally Displaced Persons» and Final and Transitional Provisions of the Law of Ukraine «On Compulsory State Social Insurance» regulate the procedure for payment of financial assistance in connection to temporary disability to temporarily displaced persons that obtained the right to received funds due to them directly from the Fund working body at their actual place of residence as persons who were internally displaced from the temporarily occupied territory under the Law of Ukraine «On Compulsory State Social Insurance Against Temporary Disability and Covering Costs Related to Funeral».

Judgment of the Supreme Court in the case No. 754/216/17 dated 7 February 2019 (Proceedings No. K/9901/44101/18): http://reyestr.court.gov.ua/Review/79698078.

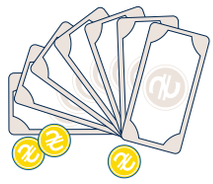
3. All graduates of educational institutions who are orphaned children and children deprived of parental care have the right to obtain financial assistance.

Under Part 3 Article 4 of the Law of Ukraine «On Ensuring Organizational and Legal Conditions for Social Protection of Orphans and Children Deprived of Parental Care», state social standards and norms shall be established, inter alia, concerning the minimum one-time state financial assistance upon graduation by such children from the educational institution.

Under Part 7 Article 8 of the said Law, graduates of educational institutions from among such children shall be provided by the educational or other relevant institution in the manner established by the Cabinet of Ministers of Ukraine with clothes and shoes, as well as one-time financial assistance in the amount of at least six subsistence minimums for individuals of the appropriate age.

Since the said Law does not specify the educational institution that the orphan or a child deprived of parental care has to graduate from, based on the contents of the above provision, all graduates of educational institutions (not only boarding schools) who are orphans or children deprived of parental care have the right to such financial assistance.

Judgment of the Supreme Court in the case No. 158/1684/16-a dated 5 June 2019 (Proceedings No. K/9901/14471/18): http://reyestr.court.gov.ua/Review/82194363.



II. Legal position in the cases concerning taxes, duties and other mandatory payments

To date, tax disputes take a lead both by the number of cases filed to the Administrative Cassation Court of the SC and the results of their consideration.

Reasonable taxpayer expectations as to the formation of the sustainable case law and ensuring uniform legal stand in this field have posed complicated challenges for the Supreme Court, which require dynamic and effective decision-making.

1. On time limits for appealing in court judgements on denial of the tax return registration in case of preliminary administrative appeal

The Judicial Chamber derogated from the conclusion that p. 56.18 Article 56 of the Tax Code of Ukraine is specific as to provisions of Article 122 of the Code of Administrative Proceedings of Ukraine, and formulated the following conclusion.

Following the adoption of the current version of the Code of Administrative Proceedings of Ukraine and distinctive legal regulation defined in Part 4 Article 122 of the Code of Administrative Proceedings of Ukraine, other decisions of controlling authorities not related to the accrual of taxpayer's pecuniary obligations, subject to applicant's prior resort to the pre-trial dispute settlement (administrative appeal procedure - pp. 3 p. 56.18 of Article 56 of the Tax Code of Ukraine) shall be appealed in court within the following terms:

a) a three-month period for appealing to court is established if the regulating authority's decision based on the results of complaint consideration was made and delivered to the taxpayer (applicant) within the time limit set forth by the Tax Code of Ukraine. At the same time, such time limit shall start on the day when the decision was delivered to the applicant based on the results of consideration of his or her complaint against the regulating authority's decision.

b) a six-month period is established if the regulating authority's decision based on the results of complaint consideration was not made/was not delivered to the taxpayer (applicant) within the time limit set forth by the Tax Code of Ukraine. Such time limit shall start on the day when the applicant filed a respective complaint to the regulating authority against its decision.

Judgment of the Supreme Court in the case No. 640/20468/18 dated 11 October 2019 (Proceedings No. K/9901/16396/19): http://reyestr.court.gov.ua/Review/85033140.

2. Permanent representative office is deemed a separate (from the non-resident) entity for the purposes of taxation

Tax rights under a certain contract shall be distributed between the states considering the degree of non-resident's presence in another state at the time when the revenue is obtained originating from the source located in that state.

The court has identified three levels of non-resident's presence in another country: obtaining revenue from another country without being present in it (interest, royalties); establishing in another country a subsidiary with all features of tax legal capacity; establishing a representative office in another country.

The concept of a «permanent representative office» is intended for the legal classification of territorial rather than legal disintegration of certain non-resident's property of staff. Thus, the concept of tax legal capacity consists in the permanent representative office being viewed as a separate (from the non-resident) entity for purposes of taxation.

The peculiarity of companies operating through representative offices is that a company bears expenses in one countries (including through its representative offices), but obtains revenues to bank accounts (of companies or other representative offices) opened in other countries.

Judgment of the Supreme Court in the case No. 2a-16434/12/2670 dated 17 October 2019 (Proceedings No. K/9901/23066/19): http://reyestr.court.gov.ua/Review/85153986.

3. Cancellation of decisions by court on customs value adjustment in relation to various supplies does not indicate the systematic nature of customs body violations.

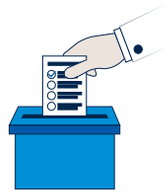
The Supreme Court overturned a separate ruling of the Appellate court on systematic unlawful decisions made by the customs on the adjustment of the declared customs value of goods due to the following.

The decision to adjust the declared customs value of goods is an individual act taken following the control over the correct determination of goods customs value in each individual case of their import based on the assessment of documents on the declared customs value in the context of the number of categories: goods type, delivery terms, contractual obligations under the foreign economic contract, the level of customs value of identical or similar goods, etc.

The cassation court deems that judicial reversal of decisions on adjustment of customs value of goods concerning various delivery cases shall not constitute a reason to make conclusions on continuous nature of violations on the part of the customs body in the furtherance of powers vested in it.

The approach adopted by the appellate court in an individual ruling is too formalised since it gives rise to a biased negative assessment of customs body actions in the new cases of customs control and customs clearance of goods.

Judgment of the Supreme Court in the case No. 821/597/18 dated 18 October 2019 (Proceedings No. K/9901/1359/19, K/9901/3061/19): http://reyestr.court.gov.ua/Review/85154589.



III. Legal position in the cases concerning electoral and referendum cases, as well as political rights protection

Given that regular Presidential elections and early Parliamentary elections took place on Ukraine in 2019, the topic of elections is of particular relevance. Public service relations, namely hiring citizens for public service, dismissal from the public service, and any disputes regarding these relations shall be under a subject-matter jurisdiction of administrative courts. Statistical data concerning administrative justice contains numerous cases in each public service area.

1. The public authority must adhere to the principle of legal certainty.

The Supreme Court found unlawful the Central Election Commission's refusal to allow a public organization to have official observers during regular Presidential elections on 31 March 2019.

Analysing the content of the same public organization's charter, the CEC found that applicant's activities were related to the electoral process and its observation, thus it was admissible; however, after a short time, it arrived at an opposite conclusion on this matter which led to the distinctive application of the law.

Legal certainty implies legislation stability and integrity, lawful implementation of administrative practices by public authorities in accordance with the rule of law, as well as the transparency and democracy when making governmental decisions.

When exercising powers to take steps or individual acts invested in it by the law, the public authority must follow the principle of legal uncertainty while ensuring sustainability and integrity of its administrative practices.

Judgment of the Supreme Court in the case No. 855/21/19 dated 9 February 2019 (Proceedings No. A/9901/13/19): http://reyestr.court.gov.ua/Review/79715978.

2. The election process is characterised by a temporal aspect, which consists in the purposeful activities of public authorities inevitably unfolding over time.

The Court reversed Central Election Commission's decision denying the registration of candidates for MPs from «Rukh Novykh Syl Mykhaila Saakashvili» political party during early elections on 21 July 2019. However, this judgement took effect after the CEC determined election participants by lot and approved the ballot with party numbers in the list; therefore, it was decided to include «Rukh Novykh Syl Mykhaila Saakashvili» under no. 22 as the last party in the ballot's list without drawing lots.

The Agrarian Party of Ukraine appealed such CEC's decision, as it believed that inclusion of the party in the ballot without drawing lots violated legislative regulations and gave this party advantages as compared to others.

In view of the below, the judicial panel of the ACC SC reversed the ruling of the appellate court on the repeated drawing of lots.

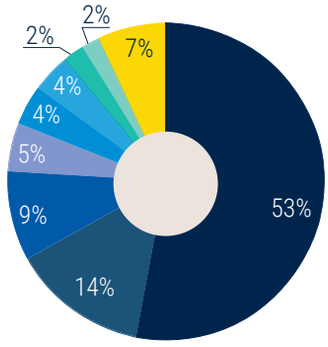
Against a backdrop of fast-paced early Parliamentary elections process, the violation of any terms would lead to the violation of terms of other procedures consequently resulting in both the infringement of rights or legal interests of an individual election process entity and rights of other entities and most importantly - the right of the sovereign people to form the legislative power as outlined in Article 3 of the First Protocol to the Convention on the Protection of Human Rights and Fundamental Freedoms.

Judgment of the Supreme Court in the case No. 855/244/19 dated 8 July 2019 (Proceedings Nos. A/9901/187/19; A/9901/188/19, A/9901/189/19, A/9901/190/19, and A/9901/190/19): http://reyestr.court.gov.ua/Review/82872775.

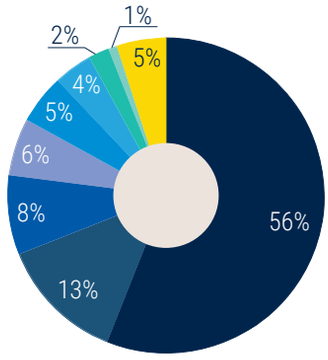
Rulings of the Commercial Cassation Court

Cassation appeals in the commercial cases
referred to the Supreme Court

2018



2019



- conclusion, modification, termination, performance, and invalidation of agreements (instruments)
- bankruptcy
- land relations
- non-contractual obligations
- protection of proprietary rights
- corporate relations
- antitrust enforcement
- protection of the intellectual property rights
- other case categories

I. Legal position of the Joint Chamber of the Commercial Cassation Court within the Supreme Court concerning the reduction and distribution of expenses on professional legal aid

One of the main principles of commercial proceedings is the reimbursement of legal expenses borne by the party for whom the judgement was made (p. 12 Part 3 Article 2 of the Commercial Procedure Code of Ukraine).

This principle is aimed at providing the person with an opportunity to effectively defend his or her rights in court should an unjustified claim be filed against such person, as well as at encouraging the parties to the pre-trial dispute settlement.

1. The Court may award only partial expenses on professional legal aid to the party in whose favour the judgement was passed.

Under Part 2 Article 126 of the Commercial Procedure Code of Ukraine, following case

consideration, the cost of professional legal aid shall be divided between two parties along with other court expenses. The procedure for dividing court expenses related to case consideration is regulated by Articles 129, 130 of the Commercial Procedure Code of Ukraine.

The general rule for dividing court expenses is determined in Part 4 Article 129 of the Commercial Procedure Code of Ukraine. However, Part 5 of the said Article established criteria that the court may apply (upon the petition from the party or at its own initiative) to depart from the general rule when considering the matter of dividing expenses on legal aid and not award such expenses fully or partially to the party that lost the case and instead impose them on the party in whose favour the judgement was passed.

In this case, when deciding on the division of court expenses, the Court shall assess the behaviour/acts/omissions of both parties in terms of correspondence to the said criteria.

Cases, when the Court may depart from the general rule of court expenses division as established by Part 4 Article 129 of the Commercial Procedure Code of Ukraine, are also determined by Parts 6,7 and 9 of Article 120 of this Code.

Thus, the commercial court should there exist an objection against the division of costs for the lawyer or at its own initiative, guided by the criteria established by Parts 5-7 and 9 of Article 129 of the Commercial Procedure Code of Ukraine, may refrain from awarding the winning party all its expenses on professional legal aid.

In this case, the court shall deny the winning party to reimburse its expenses on legal aid partially or fully and shall not impose such costs in whole or in part on the party that lost the case. Herewith, the court shall indicate in the judgement any expenses that are not subject to reimbursement in part or whole, specify the motivation of such judgment and legal grounds for its adoption.

Judgment of the Supreme Court in the case No. 922/445/19 dated 3 October 2019: http://reyestr.court.gov.ua/Review/85211544.

II. Legal position related to the protection of intellectual property rights, as well as with the antitrust and competition laws

The subjective right is of actual importance to its holder only in the presence of the required and effective means aimed at preventing violations, restoring infringed rights, and legal interests, reimbursing damage caused. Therefore, issues of legal protection play a fundamental role in the exercise of any subjective right, which is especially important for the intellectual property system where a considerable amount of violations is observed, whereas disputes in this category reasonably belong to the most complex ones.

1. The observance of the application procedure does not preclude the possibility of finding a certificate invalid

The inconsistency of markings based on the disputed trademark certificate with the terms of the

legal protection of trademarks as outlined in Article 6 of the Law of Ukraine «On the Protection of Rights to Marks for Goods and Services» shall serve as a ground to find the respective certificate of Ukraine invalid.

Legal relations related to finding a trademark certificate invalid shall be regulated by the provisions of Article 6 and 19 of the Law of Ukraine «On the Protection of Rights to Marks for Goods and Services» and shall not be subject of legal regulation in Articles 7 and 10 of this Law, as well as the Rules for drafting, submission, and consideration of the application for trademark certificate issue as approved by the Order No. 116 of the State Patent Office of Ukraine dated July 28 1995; therefore, these regulations and rules shall not be applied to respective legal relations.

Observance of the procedure for the submission and consideration of the application for Ukrainian trademark certificate does not further preclude the possibility of such certificate being invalidated by the court under Article 19 of the Law of Ukraine «On the Protection of Rights to Marks for Goods and Services».

Judgment of the Supreme Court in the case No. 910/4796/18 dated 8 October 2019: http://reyestr.court.gov.ua/Review/84817231.

2. Issues of the protection of the right to invention

Under Article 6 of the Law of Ukraine «On the Protection of Rights to Inventions and Utility Models», legal protection shall be granted to the invention which does not contradict the public order, principles of humanity and morality, and corresponds to the patentability terms. The invention (utility model) object subject to legal protection under this Law shall include, among others, the process (method).

The process protected by the patent shall be recognised applied if each feature included in the independent claim or equivalent feature is used (Article 28 of the said Law).

The sale of a product (oil MFilter® TF23 filters) transferred by the manufacturer to the distributor shall not indicate that the manufacturer's right that the manufacturer seeks to protect in court has been violated by the distributor.

The Supreme Court presumed that the Ukrainian patent for the invention protecting owner's rights to use a certain technology is valid; all features included in the independent claim of the Ukrainian patent for the invention or features equivalent thereto, were not used in the MFilter® TF23 oil filter construction; the distributor's activities lie in the import and sale of MFilter® TF23 oil filters in Ukraine, but the distributor is not engaged in the oil filter pollution control, does not offer vehicle engine installation/maintenance services, does not install the oil filter on the engine.

Judgment of the Supreme Court in the case No. 910/5438/17 dated 3 October 2019: http://reyestr.court.gov.ua/Review/84697271.

3. The Anti-Monopoly Committee of Ukraine may not consider the results of a consumer survey

When commercial courts consider cases on appealing decisions of the Anti-Monopoly Committee of Ukraine, they shall bear in mind that the results of consumer surveys in conjunction with other

evidence may be taken into account to confirm violations stipulated by Article 10 of the Law of Ukraine «On Protection Against Unfair Competition».

Under items 1 and 2 paragraph 23 of the Rules for consideration of applications and cases of violations of laws on economic competition (Rules of case consideration) as approved by the Order No. 5 of the Anti-Monopoly Committee of Ukraine dated 19 April 1994 (as amended by the Order No. 169-p dated 29 June 1998), officials of the Committee, departments tasked with the collection and analysis of evidence, shall take actions aimed at the comprehensive, complete, and objective clarification of valid case circumstances, rights and obligations of the parties.

Thus, cases may include such steps: regional and national market research; obtaining written and oral explanations that may be recorded in the protocol from parties, third parties, and other persons; seizure of written and physical evidence, including documents, items, or other information media that may serve as evidence or evidence sources in the case; arrest of items, documents, other information media that may serve as evidence or evidence sources in the case.

Judgment of the Supreme Court in the case No. 902/108/18 dated 26 February 2019: http://reyestr.court.gov.ua/Review/80211425.

III. Legal positionin the cases on bankruptcy

The Institute of Insolvency and Bankruptcy is a mechanism regulating financial and commercial relations, private and public interests within the society. It ensures the protection of interests and satisfaction of creditor's claims, prevents abuse by creditors in relation to the debtor, is aimed at financial recovery and preservation of the business entity - a debtor.

The heightened attention of the state to regulating relations of insolvency (bankruptcy) is a worldwide trend. Having undergone a considerable transformation in the course of its historical development, the institute of bankruptcy is used as an indicator of the level of development and organization of the national economy and facilitates relieving the economy of ineffective business entities.

The consideration of insolvency and bankruptcy procedures is complex and shall be carried out solely through courts.

1. On the legal nature of the tax debt accrued to the debtor as part of the liquidation procedure

Filing by the debtor for whom a liquidation procedure has been started of tax returns to the regulating authorities shall not serve as a ground for such debtor's obligation to pay taxes and fees (compulsory payments) that matured in the period following the adoption of the resolution on finding the debtor bankrupt.

Under Article 38 of the Law of Ukraine «On Restoring a Debtor's Solvency or Recognizing It Bankrupt», a debtor in the bankruptcy case for whom the judgment was made on recognizing such debtor bankrupt shall be entitled to a legitimate expectation to be exempted from the obligation

to pay taxes and fees (compulsory payments) that matured in the period following the adoption of the resolution on finding the debtor bankrupt.

Exemption from the obligation to pay taxes and fees (compulsory payments) that matured in the period following the adoption of the resolution on finding the debtor bankrupt causes debtor's rational expectation that after its insolvency is established, no additional obligations will appear.

Judgment of the Supreme Court in the case No. 910/14827/16 dated 12 March 2019: http://reyestr.court.gov.ua/Review/80684968.

2. Issues of jurisdiction over making decisions on whether to proceed to the next bankruptcy procedure

The legislator determined a procedure for making a decision to start a liquidation procedure and file a respective petition to the local commercial court. Under this procedure, the decision to start the procedure following asset management shall be made by the meeting of creditors (based on the report from the asset manager and the analysis of debtor's financial and commercial activities), while the powers to file a respective petition to the local commercial court are vested in the creditor committee as the representative body.

At the same time, the Supreme Court notes that the meeting of creditors is a body, which makes decisions with the direct participation of all creditors. This means that creditors' will shall be exercised directly rather than through a body established by the meeting of creditors - creditor committee, to which the powers to represent creditors' interest in the proceedings in the case on bankruptcy are delegated.

Judgment of the Supreme Court in the case No. 914/2618/16 dated 14 May 2019: http://reyestr.court.gov.ua/Review/82401764.

3. On lifting seizures and bans

The seizure of debtor's assets or other bans imposed on the disposal of such debtor's assets, except seizures and other bans on the disposal of its assets imposed by the judicial authorities for the sake of protecting social relations in the public sphere, shall be lifted on the day when the commercial court passes a ruling on recognizing the debtor bankrupt and starting the liquidation procedure.

To secure third-party private legal interests, asset seizures or other bans restricting the disposal of the assets of the debtor declared bankrupt shall entail lifting of all such seizures and other bans on the disposal of debtor's assets.

To secure third-party private legal interests, the commercial court considering the bankruptcy case shall be vested with procedural powers to lift the seizure or other bans on the disposal of debtor's assets imposed by courts of other jurisdictions.

Judgment of the Supreme Court in the case No. 15-50/112-09 dated 16 October 2018: http://reyestr.court.gov.ua/Review/78749896.

Judgment of the Supreme Court in the case No. 902/1260/15 dated 11 September 2019: http://reyestr.court.gov.ua/Review/84384912.

IV. Legal position in the disputes concerning the enforcement of obligations

Methods used to enforce obligations are intended to protect the interests of the party that is less protected under the contract - creditor - by imposing an additional binding obligation on the debtor and/or the third party.

All methods used to enforce obligations pursue a common goal, which is targeted at ensuring proper fulfilment of contractual and non-contractual obligations under the law, and in the absence of such guidelines - under the requirements usually applied to fulfilment, and hence to customary business practices.

1. Determining court jurisdiction in disputes concerning instruments concluded to enforce the obligation if one of the parties to the principal obligation is an individual entrepreneur.

The Law of Ukraine 2147-VIII dated 3 October 2017 took effect on 15 December 2017 which amended, among others, the current Commercial Procedure Code of Ukraine and the Civil Procedure Code of Ukraine.

It clearly delimited court jurisdiction based on the rules of civil and commercial proceedings concerning instruments concluded to ensure enforcement of the principal obligation by establishing in p. 1 Part 1 Article 20 of the Commercial Procedure Code of Ukraine, that the essence of the principal obligation shall serve as a criterion for delimiting jurisdiction in such disputes.

Thus, under p. 1 Part 1 Article 20 of the Commercial Procedure Code of Ukraine, commercial courts shall consider cases in disputes arising from commercial activities (but for cases stipulated by Part 2 hereof) and other cases in situations determined by law, in particular, cases in disputes concerning instruments concluded to enforce the obligation where its parties are legal entities and (or) individual entrepreneurs.

To the contrary, disputes relating to instruments concluded to enforce the principal obligation shall be heard under the rules of civil proceedings if at least one of the parties to this principal obligation is an individual entrepreneur that did not act as such at the time of undertaking this obligation.

Hence, the composition of the parties to the instruments concluded to enforce the principal obligation is irrelevant for determining court jurisdiction to consider a certain case. The type of proceedings (civil or commercial) shall be determined considering the parties to the principal obligation.

In view of the above, the jurisdiction of commercial courts does not include disputes concerning the performance of a contract concluded to enforce the principal obligation if at least one of the parties is a natural person who is not an entrepreneur.

Judgment of the Supreme Court in the case No. 906/764/18 dated 27 August 2019: http://reyestr.court.gov.ua/Review/83958624.

2. The court's right to reduce the penalties due

Under Article 233 of the Commercial Code of Ukraine, if penalties due are excessively large compared to creditor's losses, the court is entitled to reduce penalties. Herewith, the following must be taken into account: the extent to which the debtor fulfilled its obligations; financial status of the parties involved in the obligation; both financial and other interests of the parties that deserve attention. If the breach of the obligation did not cause damage to other economic relations participants, the court may consider debtor's interests and reduce the amount of penalties due.

Under Part 3 Article 551 of the Civil Code of Ukraine, the amount of penalty may be reduced upon court decision if it significantly exceeds the amount of losses and provided that other essential circumstances exist.

A systemic analysis of provisions of Article 551 of the Civil Code of Ukraine, Article 233 of the Commercial Code of Ukraine indicates that the court's right to reduce claimed penalties is related to the existence of exceptional circumstances to determine which the commercial court needs to assess the evidence provided by case participants and used by them to justify the existence of grounds for reducing penalties.

Thus, when deciding on the issue of reducing penalties to be recovered from the infringing party, the court must ascertain considerable excess of the penalty amount compared to the amount of losses, as well as objectively assess whether this case is exceptional in terms of the party interests deserving attention, the extent of obligation fulfilment reasons for improper fulfilment or failure to fulfil the obligation, insignificant delay in the obligation fulfilment, inconsistency between the penalty and consequences of the violation, immediate voluntary elimination of the violation and its effect by the party, etc. Herewith, the obligation to prove the existence of circumstances that can serve as the grounds for reducing the claimed penalty shall be imposed on the person filing a respective petition.

The reduction of the claimed penalty is the court's right and in the absence of a list of such exceptional circumstances in the law, having assessed the evidence provided by the parties and case circumstances in their aggregate, the court shall use its discretion to decide on the existence or absence of circumstances allowing for penalty reduction in each separate case.

Judgment of the Supreme Court in the case No. 914/2202/18 dated 3 October 2019: http://reyestr.court.gov.ua/Review/84697577.

V. Legal position in the cases concerning land relations

Under Article 14 of the Constitution of Ukraine, the land is the main national treasure under the special protection of the state. The right to land shall be guaranteed. This right shall be acquired and exercised by citizens, legal entities, and the state exclusively in accordance with the law.

In the modern conditions, the land lease is a specific kind of land use and one of the most important legal forms of land use, which is a contract-based fixed-term possession and use

of a land plot required by the leaseholder to conduct business and other activities. Today, the conclusion of a land plot lease contract is the most common ground for the obligation to transfer the land plot for temporary use to appear.

1. The lessor is entitled to demand the return of a land plot transferred for use under the contract registered in the manner not provided for by the law.

Part 1 Article 210 of the Civil Code of Ukraine establishes that an instrument is subject to state registration only in cases determined by law. Such instrument shall be deemed concluded after its state registration.

Under Article 125 of the Land Code of Ukraine, ownership of the land plot, as well as the right to permanent use and the right to lease the land plot shall appear upon state registration of the same.

Under Article 17 of the Law of Ukraine «On Land Lease», the object under a land lease contract shall be deemed transferred by the lessor to the leaseholder after the state registration of the lease right, unless otherwise stipulated by law.

Part 2 Article 152 of the Land Code of Ukraine determines that a land plot owner or a user may demand elimination of any violations of his or her rights to land even if such violations are not related to the deprivation of the right to use the land plot and the reimbursement of damages.

Therefore, if a lease contract was not registered in the manner established by law, the leaseholder has no legal grounds to use such land plot.

Judgment of the Supreme Court in the case No. 927/268/18 dated 11 April 2019: http://reyestr.court.gov.ua/Review/81143358.

2. On acquisition (registration) of proprietary rights to a communal or state land plot when acquiring ownership of the real estate object

Under Parts 1 and 2 Article 116 of the Land Code of Ukraine, citizens and legal entities shall acquire rights to own and use communal and state land plots based on the decision of executive authorities or local self-government authorities within the limits of their powers determined by this Code, or by auction results.

Part 1 Article 120 of the Land Code of Ukraine establishes that in the event of acquisition of ownership of a residential house, building, or structure owned or used by another person, the ownership, the right to use the land plot were these objects are located shall be terminated. The person who acquired ownership of the residential house, building, or structure located on the land plot owned by another person shall acquire ownership of the land plot or part thereof where they are located without any changes to the land plot purpose.

Under Part 1 Article 377 of the Civil Code of Ukraine, a person that acquired ownership of a residential house (except an apartment building), building, or structure shall also acquire the right of ownership and use of the land plot where they are located without any changes to its purpose in the scope and on the terms established for the previous landowner (land user).

Under Article 125 of the Land Code of Ukraine, ownership of the land plot, as well as the right

to permanently use and lease the land plot shall appear upon state registration of the same.

Hence, a new owner of the real estate object shall not be exempted from the need to register ownership of the land plot in accordance with the legislation.

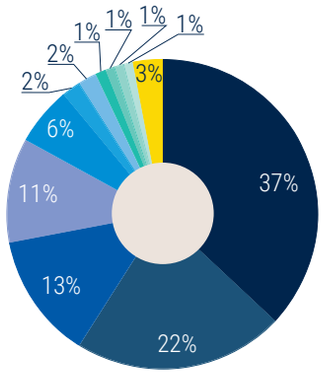
Therefore, ownership of the building or structure by a citizen or legal entity shall entail the right to obtain the land plot for use, and a corresponding authorized executive authority or local self-government authority shall consider such issue and make a relevant decision within the time limits provided for by the law.

Judgment of the Supreme Court in the case No. 911/1892/18 dated 25 June 2019: http://reyestr.court.gov.ua/Review/82800562.

Rulings of the Criminal Cassation Court

Cassation appeals in criminal cases
referred to the Supreme Court

2018



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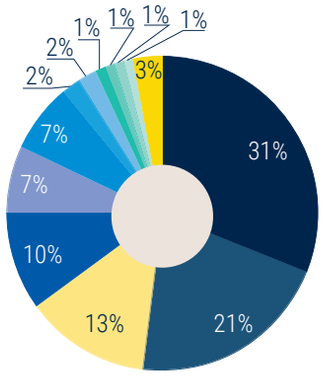


- crimes against property
- crimes against a person's life and health
- crimes under the Criminal Procedure Code of Ukraine (Article 399)
- crimes against the safety of traffic and vehicle operation
- crimes in the field of trafficking in narcotic drugs, psychotropic substances or precursor
- crimes in the field of public and professional activities related to the provision of public services
- crimes against public safety
- crimes against public order and morality
- crimes against the authority of public bodies, local self-government authorities, and associations of citizens
- crimes in the field of commercial activities
- crimes against sexual freedom and sexual integrity of a person
- crimes against justice
- cases in other categories

I. Legal position concerning crimes against life and health

Under Article 3 of the Universal Declaration of Human Rights, everyone has the right to life, liberty, and security of person. Under provisions of Article 6 of the International Covenant on Civil and Political Rights and Article 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms, the right to life is an integral right of every person which is protected by law. The above provisions of international legal standards are universal in their nature and are reflected in the Constitution of Ukraine. In particular, Article 3 of the Basic Law enshrines that the human being, his or her life and health, honour and dignity, inviolability and security are recognised in Ukraine as the highest social value. Under Article 27 of the Constitution of Ukraine, every person has the inalienable right to life; no one shall be arbitrarily deprived of life. The duty of the State is to protect human life. The establishment of criminal liability for crimes against life and health is a form of state protection of human life and personal integrity. Given the above, during re-consideration in cassation, the Supreme Court shall pay particular attention to this category of crimes.

1. The court found that the perpetrator did not suffer from extreme emotional disturbance when causing grievous bodily harm and correctly classified his actions under Part 1 Article 121 of the Criminal Code of Ukraine

Based on the court verdict, PERSON_1 was found guilty of deliberately stabbing his wife to the stomach with a knife thus causing her grievous bodily harm while being intoxicated in the course of an altercation which arose against the backdrop of personal enmity.

Considering factual circumstances of the proceedings that were established by the court, the qualification of PERSON_1 actions is correct under Part 1 Article 121 of the Criminal Code of Ukraine.

At the same time, the court found invalid arguments of the convicted stating that consequences in the form of grievous bodily harm that the victim PERSON_3 suffered resulted from her unlawful behaviour as she had caused his extreme emotional disturbance. PERSON_1 believes that his actions lack elements of a crime as provided for by Part 1 Article 121 of the Criminal Code of Ukraine, hence his actions shall be assessed under Article 123 of the Criminal Code of Ukraine.

Under provisions of the criminal law, the mental element of the crime stipulated by Article 123 of the Criminal Code of Ukraine shall be characterized not only by intent but also by the perpetrator's emotional condition, which considerably reduced his ability to understand his actions or manage them. Perpetrator's extreme emotional disturbance that appeared suddenly as a result of unlawful violence, systematic abuse, or great insult on the part of the victim is a required condition to qualify the perpetrator's actions under the said article. Violence can be physical (bodily harm or beatings, unlawful detention, etc.) and psychological (for example, a threat to cause physical, moral, or property damage). The great insult shall include victim's openly indecent behaviour which particularly degrades the dignity or dishonours the perpetrator or his or her loved ones. Extreme emotional disturbance (physiological affect) shall mean a sudden emotional process caused by the victim's behaviour which proceeds quickly and violently and to a certain extent reduces the person's ability to understand his or her actions and manage them.

As seen from the testimony given by the convicted PERSON_1 during the proceedings in the first instance court, he fully admitted his guilt in the crime stipulated by Part 1 Article 121 of the Criminal Code of Ukraine. The convicted also stated that while being at their shared place of residence, amidst their altercation his wife had struck him on his sore leg where after he caught up with her and stabbed her with a knife.

The totality of external circumstances established by the court, the nature of actions on the part of the victim and the perpetrator give no reasons to believe that PERSON_1 was in the state of extreme emotional disturbance which ensued suddenly and reduced his ability to understand his actions and manage them. Criminal proceedings files contain no data proving that PERSON_3 committed the kind of unlawful violence that could suddenly cause perpetrator's extreme emotional disturbance.

Judgment of the Supreme Court in the case No. 563/210/18 dated 31 January 2019 (Proceedings No. 51-8926км18): http://www.reyestr.court.gov.ua/Review/7963089.

2. Actions of a person who, on the grounds of personal enmity, made one shot to the victim's head from a gun loaded with rubber bullets, were qualified correctly under Part 2 Article 121 of the Criminal Code of Ukraine

Based on the verdict, PERSON_1 was found guilty of deliberate actions on the grounds of personal enmity aimed at the murder when he made one shot to the head of the victim PERSON_3 from the gun loaded with rubber bullets. After taking all the actions that he deemed necessary to finish the crime, PERSON_1 left the scene. However, the crime was not finished due to reasons beyond his control as the victim received timely medical aid which saved his life.

The court of the first instance qualified the said circumstances under Part 2 Article 15, part 1 Article 115 of the Criminal Code of Ukraine. The appellate court requalified perpetrator's actions from Part 2 Article 15, Part 1 Article 115 of the Criminal Code of Ukraine to Part 1 Article 121 of the Criminal Code of Ukraine.

Based on the factual circumstances of the criminal proceedings established by the first instance and appellate courts, actions of the PERSON_1 were qualified correctly under Part 1 Article 121 of the Criminal Code. Thus, according to provisions of Article 15 of this Code, attempted crime may be committed only deliberately when a person understands socially dangerous nature of the action (act or omission), predicts its socially dangerous consequences, and desires their onset. Where a person does not want the onset of socially dangerous consequences (in this case, the victim's death) but deliberately closes the mind on their onset, criminal liability for the attempted crime shall be excluded.

As established by the first instance and appellate courts, during a conflict with PERSON_3, PERSON_1 deliberately shot the victim with a gun loaded with less than lethal rubber bullets that lack destructive potential. Being aware of the gun properties, PERSON_1 limited his actions to just one shot where after he immediately left the crime scene. According to the panel of judges, such behaviour of the PERSON_1 indicates the presence of specific intent in the convicted person aimed at the onset of any consequences resulting from his actions, including victim's possible death. Herewith, criminal proceedings files contain no grounds to argue that when firing a shot, the PERSON_1 desired only one specific consequence in the form of victim's death.

Judgment of the Supreme Court in the case No. 686/14348/16-к dated 29 January 2019 (Proceedings No. 51-7463км18): http://reyestr.court.gov.ua/Review/79601233.

3. The mental element of the crime stipulated by Article 135 of the Criminal Code of Ukraine is always characterized by a direct intent of the very action. Perpetrator's attitude towards the consequences is always characterized by negligence. The moment when a crime ends is evading assistance to a person in a life-threatening condition.

According to the verdict, PERSON_4 was driving a car. When moving along the roadway he hit a pedestrian PERSON_5 moving along the road in the same direction and inflicted serious bodily injuries that led to death. After hitting the pedestrian PERSON_5, the driver PERSON_3 did not take all possible steps to provide first medical aid to the victim, did not call the ambulance, did not send the victim to the hospital, nor did he notify the policy body

about the traffic accident or take all necessary measures to preserve accident traces. To avoid responsibility for the act committed with a car involved in the traffic accident, he left the crime scene. PERSON_3 knowingly left the victim PERSON_5 without help though the latter was in a life-threatening condition and was deprived of the means to self-preservation resulting from his helpless condition, even though the former was the one to put the victim in such life-threatening condition and was obliged and able to help the victim. The first instance court qualified the said acts under Part 1 Article 135 of the Criminal Code of Ukraine.

The ruling of the appellate court dismissed appeals filed by the victim, prosecutor, and the defender, and the verdict was left unchanged.

Arguments of the defence on the absence of elements of crime in the actions of PERSON_3 as provided for by Part 1 Article 135 of the Criminal Code of Ukraine are unjustified.

Article 135 of the Criminal Code of Ukraine provides for liability for deliberately leaving without assistance a person in the life-threatening condition when such person is unable to take steps for self-preservation due to minor or old age, disease, or as a result of another helpless condition if the person who left the former without assistance was obliged to take care of him or her and was able to provide such assistance, as well as in case the perpetrator was the one to put the victim in such life-threatening condition. The mental element of the crime stipulated by this Article is always characterized by a direct intent of the very action. In terms of consequences, the perpetrator's attitude to them is always characterized by negligence (criminal negligence or criminal overconfidence). The legislative definition implies that the moment when a crime ends is evading assistance to a person in the life-threatening condition. To qualify perpetrator's actions under this regulation of the criminal legislation, the fact that someone else assisted or tried to assist the person left in danger is insignificant, nor is the severity of bodily injuries suffered from the traffic accident.

Based on the factual circumstances established by the first instance court, it was fully proven that the convicted PERSON_3 left the scene immediately after hitting the PERSON_5, without stopping the vehicle or providing assistance to the latter who required it due to suffered bodily injuries, hence leaving the victim in the life-threatening condition. Therefore, actions of the convicted were qualified correctly under Part 1 Article 135 of the Criminal Code of Ukraine, and his guilt in the committed act was proven beyond a reasonable doubt.

Judgment of the Supreme Court in the case No. 279/3299/16-к dated 14 February 2019 (Proceedings No. 51-7219км18): http://reyestr.court.gov.ua/Review/79957626.

II. Legal position concerning crimes against property

At the modern stage of social development, the issue of the increased number of crimes against property and the emergence of new types of unlawful encroachments constitutes a challenge for both legal practitioners who face significant difficulties in qualifying criminal encroachments on property, but also for theorists of various fields of law.

When considering criminal proceedings concerning crimes against property, the Supreme Court seeks to formulate a case law that will enable the unification of activities aimed at qualifying unlawful encroachments on the property and facilitating legal certainty in clarifying the contents of the provisions of the Criminal Code of Ukraine, which provide for criminal liability for crimes against property.

1. If at the time of the robbery, in addition to the property, a person had gained possession of the victim's official document, which the former destroyed later, such actions shall be subject to be qualified based on the totality of crimes contemplated by Articles 187 and 357 of the Criminal Code of Ukraine.

As established by the court, acting upon the previous concert, and threatening with pre-readied knives, PERSON_2 and PERSON_1 assaulted the victim and gained possession of his property. Having found the passport of a citizen of Ukraine among the property, they deliberately burnt it.

According to the panel of judges, conclusions of the first instance court concerning the evidence proving the guilt of PERSON_1 in the crimes stipulated by Part 2 Article 187, Part 1 Article 357 of the Criminal Code of Ukraine, were duly substantiated and motivated.

Arguments claiming that the actions of PERSON_1 did not contain elements of crimes as provided for by Part 1 Article 357 of the Criminal Code of Ukraine since the passport is a personal document are unjustified.

The target of the crime stipulated by Part 1 Article 357 of the Criminal Code of Ukraine is the official document defined in the note to Article 358 of this Code. When establishing the features of an official document as the target of crime, the following criteria must be applied: the document must be drafted, issued, or certified by a respective person within his or her powers in the legally prescribed form and with the indication of due reference details; information in such document must be legally significant - specific events, phenomena, or facts confirmed or certified by it must cause or be able to cause legal consequences in the form of emergence (exercise), change, or termination of certain rights and/or obligations. Document's inconsistency with at least one of the above criteria does not allow for recognizing it as official.

The court of appeal reasonably concluded that the said document was official, as the passport is the property of the state, and not of the citizen, it is issued by the state and has relevant reference details and designated purpose.

Judgment of the Supreme Court in the case No. 127/4109/16-к dated 21 March 2019 (Proceedings No. 51-4087км18): http://reyestr.court.gov.ua/Review/80751576.

2. Home invasion with a purpose of robbery is covered by a qualifying feature «break-in» regardless of the fact whether it was forced or unimpeded.

The court found that PERSON_2 broke into the victim's apartment using a key to the front door lock that he had stolen earlier. When the PERSON_2 was implementing his intent aimed at secret theft of someone else's property, the victim who had been sleeping in the said apartment noticed his actions. To counteract possible resistance on the part of the victim, PERSON_2 hit

him several times forcing the victim to give away his ring. Taking a metal screwdriver that he had found in the apartment, PERSON_2 held it to the victim's neck and threatened to use physical violence, where after he openly stole the victim's personal belongings from his apartment.

Under Article 187 of the Criminal Code of Ukraine, violent robbery is characterized by an assault that may be open or abrupt for the victim (secret). The assault is always accompanied by violence against the victim as a way to counteract actual or potential resistance to gain possession of someone else's property. Violence threatening life or health of the assaulted person is a mandatory characteristic of the violent robbery. At the same time, violence consists in the forceful influence on the victim, which leads to mild bodily harm and short-term health impairment or partial disability, medium or severe bodily harm, as well as other violent actions that did not result in the above consequences but were dangerous for life and health at the time of their commission. In the latter case, the perpetrator must realize the possibility of such bodily harm. The robbery is deemed a finished crime from the moment of the assault, combined with the use or threat of violence threatening life or health, regardless of whether the offender gained possession of the property. At the same time, break-in shall mean any home invasion aimed at robbery. It is perpetrated secretly with the need to overcome obstacles or it may be unimpeded in the form of a person's physical movement into the accommodation.

As established by the first instance court and confirmed by the court of appeal, to gain possession of the victim's property, the convicted person overpowered his resistance by threatening to use violence dangerous to victim's life and health, namely, he used the screwdriver which constitutes one of the qualifying features stipulated by Part 3 Article 187 of the Criminal Code of Ukraine.

In addition, based on the established circumstances of the crime stipulated by Part 3 Article 187 of the Criminal Code of Ukraine, the convicted person gained possession of large items belonging to the victim, which is impossible to commit unimpeded.

In this case, the panel of judges agreed with conclusions of the first instance and appellate courts concerning the proven guilty of the convicted person.

Judgment of the Supreme Court in the case No. 629/1663/16-к dated 19 February 2019 (Proceedings No. 51-6111км18): http://reyestr.court.gov.ua/Review/80080037.

3. Person's actions are qualified as the criminal act corresponding to more than one definitions outlined in item 6 Part 2 Article 115 and Part 4 Article 187 of the Criminal Code of Ukraine when the intent was initially aimed at robbery and later changed to the intent of deliberate murder.

As established by the court, upon the previous concert and to kill a victim and gain possession of his property, PERSON_1 and PERSON_4 arrived at the victim's place of residence. When the victim opened the door, PERSON_1 hit him on the head with a pre-readied fragment of a metal pipe causing the victim to fall to the floor of his house porch. Right after, acting upon single concerted intent, the accused PERSON_1 and PERSON_4 each hit the victim on the head once using the same metal pipe. The victim died on the scene from suffered bodily injuries, where after the accused broke inside the said residential house and gained possession of his property.

Files of the criminal proceedings show that except actions under p. 6 Part 2 Article 115 of the Criminal Code of Ukraine, the first instance court also qualified actions of the accused under Part 4 of Article 187 of the Criminal Code of Ukraine as the assault targeted at gaining possession of someone else's property combined with violence dangerous to the life and health of the assaulted person (violent robbery).

Classification of the person's actions under p. 6 Part 2 Article 115 and Part 4 Article 187 of the Criminal Code of Ukraine (as a criminal act corresponding to more than one definitions) is only possible when it is proven that the intent was initially targeted at robbery that involves deliberate murder.

However, it was found based on the evidence studied by the local court, that having previously agreed to kill PERSON_5 and gain possession of his property, PERSON_4 and PERSON_1 arrived at the place of residence of the latter where they murdered him, i.e., the convicted had a preliminary agreement to kill the victim on a lucrative impulse even before the assault. In view of the above and based on the circumstances established by the first instance court, the court of appeal excluded from the verdict of the first instance court the decision on convicting PERSON_1 and PERSON-4 under Part 4 Article 187 of the Criminal Code of Ukraine. The panel of judges of the Supreme Court agreed with such conclusion, as the classification of PERSON_1's and PERSON_4's actions under Part 4 Article 187 of Ukraine is excessive.

Judgment of the Supreme Court in the case No. 742/519/17 dated 12 February 2019 (Proceedings No. 51-4216км18): http://reyestr.court.gov.ua/Review/79819289.

4. Assignment of an examination in each criminal proceedings to determine the amount of damage caused by the criminal offence is limited

Defender of the person convicted under Part 2 Article 15, Part 2 Article 185 of the Criminal Code of Ukraine referred in the cassation appeal to the significant violation of the criminal procedure law and requested to overturn verdicts of the district and appellate courts and dismiss the proceedings. He argued that his client's guilt in stealing the company's property was not proven beyond a reasonable doubt in the manner prescribed by law. He noted that the only evidence of the scope of damage caused to the company were certificates of the very company, which is a stakeholder in the case. He believed that the prosecution had to provide the court with a merchandising analysis concerning the amount of financial damage inflicted by a criminal offence, but it failed to do so.

Based on consideration results, the Court made a conclusion on the application of legal regulations: compulsory involvement of an expert in the examination is required when there are two grounds: first, when the nature of external circumstances significant to the case cannot be reliably established without the engagement of the person with scientific, technical, or other specialized knowledge (which is a general ground for the examination in the framework of criminal proceedings as stipulated by Part 1 Article 242 of the Criminal Procedure Code of Ukraine as amended by the Law of Ukraine No. 1261-VII); second, when there are circumstances contemplated by Part 2 of this regulation.

The mandatory nature of p. 6 Part 2 Article 242 of the Criminal Procedure Code of Ukraine as amended by the Law of Ukraine No. 1261-VII concerning the assignment of an examination in each criminal proceedings to determine the scope of damage caused by the criminal offence, is limited in its nature since it does not refer to cases when the target of crime involves money or other securities with a monetary equivalent, as well as when the amount of financial losses, the damage inflicted by the criminal offence may be reliably determined without any specialized knowledge, and generally known and accessible knowledge or simple arithmetic calculations are enough to assess the data obtained through evidence sources other than the examination.

In other cases, at the pre-trial investigation stage, the prosecution is obliged to file a motion to the investigating judge on the involvement of an expert (according to the Law of Ukraine No. 187-IX - involve an expert), regardless of the availability of other evidence that may be used to determine the amount of financial damage.

Judgment of the Supreme Court in the case No. 420/1667/18 dated 25 November y 2019 (Proceedings No. 51-10433кмо18): http://reyestr.court.gov.ua/Review/86070671.

III. Legal position concerning crimes against justice

Crimes committed by persons to whom legal coercion means are being applied constitute an integral part of crimes against justice. The public danger of this category of crimes consists, inter alia, in that they result in exploding the reputation of the state that undertook the obligation not only to protect rights, freedoms, and legal interests of individuals and legal entities but also to take actual enforcement actions prescribed by the current legislation against perpetrators of such criminal encroachments. In addition, failure to bring to responsibility those evading legal coercion measures gives rise to the sense of impunity and encourages the commission of new crimes. In this regard, court consideration of this category of crimes against justice assumes special significance.

1. Criminal liability under Part 2 Article 389 of the Criminal Code of Ukraine shall be borne not only by those sentenced to community or correctional works but also by convicts serving a respective kind of punishment, in particular, as a substitute under Article 82 of the Criminal Code of Ukraine in case of evasion of such punishment.

In the cassation complaint, the prosecutor requested to overturn court judgements and dismiss criminal proceedings against the convict under p. 2 Part 1 Article 284 of the Criminal Code of Ukraine due to the lack of elements of crime in his acts as stipulated by Part 2 Article 389 of this Code. The prosecutor substantiated his request by the fact that the convict was not the subject of the crime, as the punishment in the form of community works that he evaded was not imposed on him by the court verdict but assigned as a substitution of the unserved part of punishment with a milder punishment in accordance with Article 82 of the Criminal Code of Ukraine. According to the prosecutor, amendments made to Article 389 of the Criminal Code of Ukraine did not extend a range of people recognized as subjects of this crime, therefore, the subject is only the person sentenced to community or correctional works on whom one

of these punishments was imposed by the court, rather than the person serving this sentence based on other court judgements.

The Supreme Court did not agree with it and noted, inter alia, that contrary to the previous version of Part Article 389 of the Criminal Code of Ukraine, which provided for the responsibility for evading community or correctional works only by a person sentenced to such punishments, Part 2 Article 389 of the Criminal Code of Ukraine as amended by the Law of Ukraine No. 1492-VIII, contemplates the responsibility for such act both by the person sentenced to the respective punishment and the convict serving such punishment.

Under Article 82 of the Criminal Code of Ukraine, when serving punishment and in the presence of certain conditions and grounds, for persons serving punishment in the form of detention or imprisonment, the unserved part of the sentence may be substituted by the court judgement with a milder punishment which the convict has to subsequently serve. Such court judgement does impact the status of the convicted person who continues serving punishment for the committed crime, though the scope of restrictions on his or her rights is reduced. Thus, such court judgement only changes the form of sentence serving in the part related to the imposed punishment, namely the unserved part thereof.

In view of the above, criminal liability under Part 2 Article 389 of the Criminal Code of Ukraine as amended by the Law of Ukraine No. 1492-VIII shall be borne not only by those sentenced to community or correctional works but also by convicts serving a respective kind of punishment, in particular, as a substitute under Article 82 of the Criminal Code of Ukraine in case of evasion of such punishment.

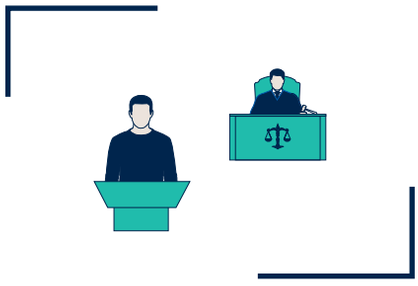
Judgment of the Supreme Court in the case No. 346/5142/17 dated 4 April 2019 (Proceedings No. 51-8002км18): http://reyestr.court.gov.ua/Review/81139086.

2. Criminal liability under Part 1 Article 389 of the Criminal Code of Ukraine for evasion from serving punishment in the form of deprivation of the right to drive vehicles is forbidden if the person has already been brought to administrative liability for the same under Part 3 Article 126 of the Code of Ukraine on Administrative Offences

After the verdict took effect, the convicted person was registered with the criminal enforcement inspectorate where he was explained his rights and obligations, as well as legal consequences of the failure to comply with the verdict, including in relation to the ban on driving vehicles during the term determined by the court. Despite this, on 1 September 2016, the convicted person was driving a vehicle. This fact was discovered by a police officer who stopped the car and registered an offence. The ruling passed on the same day brought the person to administrative liability under Part 3 Article 126 of the Code of Administrative Offences of Ukraine (driving a vehicle by a person deprived of the right to the same) and imposed a fine on him. Subsequently, Blyzniuky District Department of the Criminal Enforcement Inspectorate of the Administration of the State Penitentiary Service of Ukraine in Kharkiv Region filed a motion to the prosecutor's office requesting to bring this person to criminal liability under Part 1 Article 389 of the Criminal Code of Ukraine, which also served as the ground for criminal prosecution with subsequent conviction.

Based on consideration results, the Court came to a conclusion concerning the application of the legal regulations: criminal prosecution under Part 1 Article 389 of the Criminal Code of Ukraine, in particular, for evasion from serving punishment in the form of deprivation of the right to drive vehicles when this person has already been brought to administrative liability under Part 3 Article 126 of the Code of Administrative Offences of Ukraine (driving a vehicle by a person deprived of the right to the same) shall be excluded in the case, when legal means and consequences of the legal response to the socially dangerous behaviour are unpredictable and disproportionate for such person; established facts that led to the prosecution twice were inextricably linked, and the assessment in the criminal proceedings essentially concerned the same facts as those investigated in the administrative offence, and a most of them were used as the ground for criminal charges. In this case, charges are incompatible with the guarantees stipulated by Article 4 of the Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms, and the conviction would contradict provisions of Part 3 Article 2 of the Criminal Code of Ukraine.

Judgment of the Supreme Court in the case No. 612/712/16-к dated 2 December 2019 (Proceedings No. 51-2148кмо18): http://reyestr.court.gov.ua/Review/86275888.



IV. Right to defence

One of the rights guaranteed by Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, is the right to defence enshrined in subparagraph «c» p. 3. It is one of the fundamental principles of a fair trial. This paragraph 6 of the Convention corresponds to Article 59 of the Constitution of Ukraine and Article 20 of the Criminal Procedure Code of Ukraine. Article 7 of the Criminal Procedure Code of Ukraine stipulates that criminal proceedings shall be conducted based on the protection of the right to defence. During the consideration of criminal proceedings in cassation, the Supreme Court carefully examines whether this right as one of the fundamental rights in the criminal proceedings was observed.

1. Using as evidence in the criminal proceedings of an accused person's confession given in the manner prescribed by the Code of Administrative Offence of Ukraine in the absence of the defender

The court of appeal left aside arguments concerning the infringement of the right to defence at the time of delivering convicted persons to the police department to draft an administrative offence report. This circumstance was not verified. It should be noted that the actions of convicted persons were first qualified as an administrative offence. The court did not assess whether such initial classification was justified given that no additional circumstances were found as serving as grounds for criminal prosecution. Evidence collected in the manner prescribed by the Code of Administrative Offences of Ukraine which unlike the Criminal Procedure Code of Ukraine is simplified were used for subsequent criminal prosecution implying a more serious punishment. Given the specific connection between two proceedings, the importance of initial investigative actions cannot be underestimated, therefore, they must be considered in light of Article 6 of the

Convention for Human Rights and Fundamental Freedoms in the part relating to ensuring access to the defender. Notwithstanding the foregoing, the court of appeal did not verify specified circumstances and even referred in its judgement to the confessions of the convicted persons indicated in the administrative offence report as a proof of their guilt. In the case A.V. v. Ukraine, the ECtHR noted that the right to defence as such would be irreparably violated if the confession obtained from a person during the interrogation by the law-enforcement in the absence of the defender were to be used for conviction (see judgment in the case Salduz v. Turkey dated 27 November 2008, application No. 36391/02, p. 55). How p. 1 and subparagraph «c» of paragraph 3 Article 6 of the Convention shall be applied during pre-trial investigation depends on the peculiarities of proceedings in question and case circumstances. To determine whether the goal of Article 6 of the Convention - fair trial - was reached, the totality of national proceedings in the case must be considered (see Panovits v. Cyprus, 11 December 2008, application No. 4268/04, p. 64). It is clear from the facts in this case that the defence emphasized that convicted persons confessed at the time when they did not have access to their defenders. There is no evidence that the matter was subject to court consideration. Such violations are significant and such that prevented the court from passing a lawful and substantiated judgment.

Judgment of the Supreme Court in the case No. 734/117/15-к dated 26 February 2019 (Proceedings No. 5756км18): http://reyestr.court.gov.ua/Review/80178614.

2. Consideration of the criminal proceedings in the court of appeal in the absence of the detained accused, as well as in the absence of his or her defender who did not participate in this criminal proceedings earlier

Under Articles 342, 345, 405 of the Criminal Procedure Code of Ukraine, before starting the trial, the court of appeal must ascertain whether court summons and notices had been delivered to individuals that arrived at the trial. Failure to appear by the party to criminal proceedings shall not prevent the trial only if the person had been duly notified of the date, time and venue of the appeal proceedings and did not report any valid reason for non-appearance. Files of the criminal proceedings show that having disagreed with the local court's verdict, the detained accused PERSON_1 filed an appeal. PERSON_1 did not indicate whether he wanted to take part in the appeal proceedings. At the same time, before the appeal proceedings, the PERSON_1 filed an application to the appellate court's email with a request to hold the trial in his absence. However, based on information on the course of the hearing held on 15 March 2018, which was recorded on the information media, the court of appeal did not discuss the matter of holding the appeal proceedings in the absence of PERSON_1 and his defender. Herewith, the court of appeal did not pay attention to the fact the counsel had not participated as a defender in this criminal proceedings earlier, no documents regarding her powers were attached to case files, nor were there data in case files confirming that this defender had been duly notified in advance of the date, time, and venue of the appeal proceedings. Under specified circumstances, conducting criminal proceedings in the court of appeal without the participation of the defender indicates the infringement of PERSON_1's rights to an effective defence.

Judgment of the Supreme Court in the case No. 489/2741/17 dated 31 January 2019 (Proceedings No. 51-5254км18): http://www.reyestr.court.gov.ua/Review/79616457.

3. The fact that a drug addict is treating a mental disorder does not mean the inability to exercise rights

Under p. 3 Part 2 Article 52 of the Criminal Procedure Code of Ukraine, in the criminal proceedings, compulsory defender's participation shall be ensured for persons who are unable to fully exercise their rights due to mental or physical impairments (dumb, deaf, blind, etc) starting from the moment when the presence of such impairments is established.

However, in his complaint, the convicted person did not provide arguments indicating his significant impairments and did not specify how behavioural disorders cited in the medical certificate at the time of diagnosis, prevented him from independently defending himself in the first instance court.

In criminal proceedings against persons accused of crimes against public health, facts of specified persons being present in the specialized registers and undergoing inpatient treatment with the diagnosis «mental and behavioural disorders caused by the use of drugs, psychotropic substances, their analogies or precursors» cannot automatically indicate the inability of the accused (convicted) person to fully exercise their rights because of physical and mental impairments, and hence cannot require compulsory participation of the defender in the context of p. 3 Part 2 Article 52 of the Criminal Procedure Code of Ukraine.

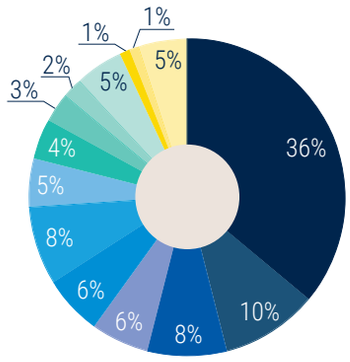
The issue of involvement of the defender must be decided based on specific case circumstances considering the established disorders, psychological, or somatic condition of the person's health, peculiarities of the person's behaviour, the style of communication with others, etc.

Judgment of the Supreme Court in the case No. 213/1425/17 dated 22 April 2019 (Proceedings No. 51-7003кмо18): http://reyestr.court.gov.ua/Review/81426087.

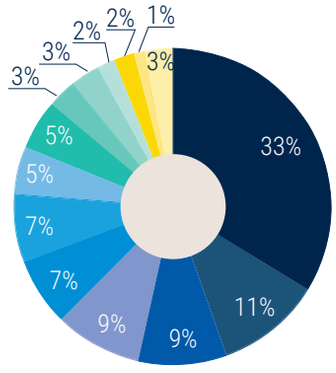
Rulings of the Civil Cassation Court

Cassation appeals in the civil cases
referred to the Supreme Court

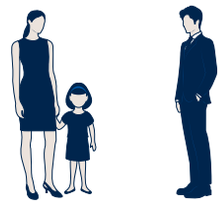
2018



2019



- disputes arising out of agreements
- disputes concerning the compensation of damages
- cases related to employment relations
- cases related to family relations
- disputes related to ownership and other proprietary rights
- disputes arising out of land relations
- cases related to residential relations
- disputes related to inheritance law
- cases involving complaints about actions or omission of the executive service
- disputes related to the application of the Law of Ukraine «On Protection of Consumer Rights»
- other litigation cases
- cases of special proceedings
- disputes related to the protection of honour, dignity, and business reputation
- cases from other categories



I. Legal position concerning the protection of rights and interests of the child to adequate development, upbringing, and education

One of the important categories of cases that the Civil Cassation Court of the Supreme Court considered last year, includes cases related to disputes arising out of family relations. Consideration of cases involving child interests required a special approach and attention of the courts as it was targeted at the implementation of the principle of «ensuring the best interests of a child».

In 2018, the Civil Cassation Court of the Supreme Court changed its approach to the resolution of disputes related to the child's place of residence; judgments passed in such cases have been aimed at ensuring the best interests of the child ever since. In 2019, the practical implementation of this principle continued which is confirmed by court judgments targeted at protecting the rights and interests of the child to the harmonious development and adequate upbringing.

1. Ensuring the best interests of a child

The Supreme Court concluded that it would be in the best interests of the child to leave her in the environment where this child had lived with a mother and brother, even given that the mother's place of residence was located in the temporarily occupied territory of Ukraine.

When studying the issue of ensuring a child's safety in the territory of her mother's residence and even with account for its status of being uncontrolled by the Ukrainian public authorities, the appellate court concluded, and the Supreme Court upheld this conclusion, that the child's father did not provide evidence that would prove that the very fact of child's residence in the territory not controlled by Ukraine created a danger for her life and health.

In addition, the Court, in this case exclusively, concluded that considering factual circumstances established by the first instance and appellate courts, the case could be resolved without a written conclusion from the child protection service on the dispute resolution since legal uncertainty might lead to the infringement of child's rights.

In the said case, the appellate court whose judgment was left unchanged by the court of cassation, took into account the child's opinion, as the child was not the subject of law, and despite her minor age and incomplete civil capacity, had a certain amount of rights.

Judgment of the Supreme Court in the case No. 431/5643/16-ц dated 2 October 2019 (Proceedings No. 61-24804св18): http://reyestr.court.gov.ua/Review/85111228.

2. The child's right to express his/her opinion and the right to take into account the child's opinion concerning issues related to his or her life

The Supreme Court supported the position of the court of appeal on the presence of grounds to determine the child's place of residence with a father.

In the case under reconsideration, the Court concluded that evidence collected in the case with account for the child's opinion and the conclusion of the child protection service indicate that minor child's residence with her father would best secure her interests.

At the same time, the Court took into account that the child's mother referred to court with a request to determine her child's place of residence after almost a year after she terminated her actual marital relations with the defender and after the adoption of a court judgment to recover from her alimony for her daughter's upbringing. During this time, she took no interest in the child's life, did not take part in her upbringing and support which is indicated by the mother's disengagement from parenting. The plaintiff provided no evidence to refute this data, even though it was her procedural obligation under Article 81 of the Criminal Procedure Code of Ukraine.

Judgment of the Supreme Court in the case No. 285/1429/17-ц dated 11 September 2019 (Proceedings No. 61-17658св18): http://reyestr.court.gov.ua/Review/84481210.

3. Child's place of residence cannot be determined solely based on the child's desire to live with one of the parents

The legal and substantiated decision on determining the child's place of residence may not be based solely on the child's opinion and her wish to live with one of the parents, since when considering such disputes the court's task is, inter alia, to protect children's rights to the development, proper upbringing, and education.

In pursuance of the instructions set forth in the ruling of the Supreme Court dated 13 June 2018, during the appellate court hearing, minor children expressed their desire to live with their mother in the presence of the school psychologist.

Meanwhile, considering the best interests of the children and the fact that children spend considerable time with their mother and her current husband, the mother picks them up from school every day, where after they go to the mosque, the mother makes her own decisions about children's hobbies without taking into account the plaintiff's opinion; besides, considering that during the period of dispute consideration, children's life circumstances changed, they stopped visiting extracurricular classes, children's entertainment centres, they no longer take part in the school events and are deprived of the father's participation in their upbringing, the court of appeal concluded, and the Supreme Court upheld such conclusion, that the father will ensure the best interests of the children consisting in the exercise of their rights to education, comprehensive development, health, upbringing surrounded by love and respect.

Judgment of the Supreme Court in the case No. 754/14768/15-ц dated 27 June 2019 (Proceedings No. 61-2958св19): http://reyestr.court.gov.ua/Review/82798180.

II. Legal position concerning the protection of a person's rights in the field of employment as the basis of the person's harmonious development

Employment-related issues considered by the Civil Cassation Court last year mostly concern the issues of employment reinstatement, accrual and recalculation of various payments regulated by the labour legislation.

At the same time, one of the methods to protect employment relations may include termination of employment. However, due to the imperfection of the national legislation and gaps in the legal regulation of this issue, persons that required to terminate their employment in court were deprived of their right to protection using the selected method. Nonetheless, in 2019, the Civil Cassation Court of the Supreme Court passed several court judgments that facilitated the actual restoration of the individual rights to an unimpeded selection of the type of activity for exercising their professional skills.

Moreover, in 2019, the Joint Chamber of the Civil Cassation Court of the Supreme Court confirmed the legal conclusion concerning guarantees against illegal dismissal of the employee during the period of temporary disability regardless of such employee's employment contract - regular or part-time.

1. A person is entitled to an unimpeded selection of the type of activity for exercising their professional skills

Referring to court with a claim to terminate his employment relations with «Revyu» LLC, the plaintiff noted that the company had not been conducting business activities since 2014, had no employees, which resulted in the plaintiff's loss of interest in employment relations with the defendant. Since the only participant of the company had died, the plaintiff was deprived of the right to terminate his employment contract with the employer, therefore, he requested the court to terminate his employment relations pursuant to Part 1 Article 38 of the Labour Code of Ukraine.

Courts of preliminary instances dismissed the claim, as they deemed that the matter of plaintiff's admission and dismissal must be decided by the General Shareholders' Meeting and the heir of the sole company participant.

The Supreme Court concluded that under the circumstances established in the case, provisions of the law concerning written notification of the owner of the employee's intention to quit shall be nullified, and the law does not provide for another procedure of dismissal at the employee's initiative. The imperfection of the law and gaps in the legal regulation of certain relations cannot serve as the ground to deprive a person of the right to defend their infringed rights using the selected method.

Under such circumstances, the plaintiff's claims are subject to satisfaction, and the appealed court judgments shall be reverted and a new judgment passed.

With this legal conclusion, the Supreme Court stated that the person's employment right can also be protected by the dismissal since before, the protection had only been associated with reinstatement of employment.

Judgment of the Supreme Court in the case No. 757/61865/16-ц dated 22 May 2019 (Proceedings No. 61-33113св 18): http://reyestr.court.gov.ua/Review/82499307.

2. The protection of the right to dismissal at the employee's initiative due to illegal inactivity of the company participant

Even though the court settlement of the issue of employment relations termination at the employee's initiative is not regulated at the legislative level, when administering civil justice, the Civil Cassation Court of the Supreme Court adopted a ruling protecting the plaintiff's rights by way of terminating his employment relations with «Ukrkesh» LLC under Part 1 Article 38 of the Labour Code of Ukraine.

When overturning judgments of the preliminary instance courts that dismissed the plaintiff's claim, the Civil Cassation Court of the Supreme Court referred to Article 22 of the Labour Code of Ukraine banning any direct or indirect restriction of rights at the time of conclusion, amendment, or termination of employment contracts and «Ukrkesh» LLC's failure to take any steps aimed at settling the issue of plaintiff's dismissal from the Company Director position, and

concluded that there were grounds to protect plaintiff's rights to terminate his employment relations with the defendant.

Judgment of the Supreme Court in the case No. 520/11437/16-ц dated 3 July 2019 (Proceedings No. 61-11763св18): http://reyestr.court.gov.ua/Review/83024956.

3. On reinstatement of the part-time employee dismissed during the period of his temporary disability due to the return of a regular employee

The Civil Cassation Court of the Supreme Court noted that the analysis of provisions of Article 43-1 of the Labour Code of Ukraine indicated that part-time employee's dismissal due to the admission of the regular (not part-time) employee to this post shall be deemed as the termination of the employment contract at the initiative of the owner or the body authorized by the owner. Therefore, dismissal based on such ground shall be deemed as the dismissal at the owner's initiative.

In this case, the Civil Cassation Court of the Supreme Court stated the fact of owner's violation of Part 3 Article 40 of the Labour Code of Ukraine and noted that the part-time employee shall be covered by all employee guarantees, hence such employee cannot be dismissed by the owner's decision during the period of temporary disability.

Judgment of the Supreme Court in the case No. 522/15685/16-ц dated 15 May 2019 (Proceedings No.61-41074сво18): http://reyestr.court.gov.ua/Review/82001390.

III. The protection and exercise of the rights of persons with disability

The Civil Cassation Court of the Supreme Court also considers cases by passing judgments on the reinstatement or protection of the rights of persons that had been infringed for years due to the legislative uncertainty.

1. Public and local self-government authorities must create an accessible environment for people with special needs

The plaintiff who is a person with category I disability moves with the help of a wheelchair, she is unable to go outside without assistance, she lives on the fourth floor of the building, therefore she requested the court to oblige the Department of Housing Economy of Kharkiv City Council to provide her with a residential room on the ground floor.

The first instance court dismissed the claim, and the court of appeal upheld this decision since the legislation does not provide for such an obligation of the city council.

The Supreme Court overturned these judgments and referred the case for reconsideration to the first instance court during which the court must take into account the following.

As a person with category I disability moving in the wheelchair, the plaintiff cannot use her residential premises on the fourth floor of the building because it is not properly equipped according to the State Construction Norms related to the accessibility of premises to people with disability.

Courts paid no attention to the legislation concerning the duty of the public and local self-government authorities to create an accessible environment for people with special needs and arrived at a wrongful conclusion on the lack of defendant's obligations about creating such conditions, they failed to clarify plaintiff's actual claims in the context of a way to eliminate infringements of her right to accessible living conditions.

Judgment of the Supreme Court in the case No. 638/968/18 dated 24 April 2019 (Proceedings No. 61-2337св19): http://reyestr.court.gov.ua/Review/81425792.

IV. Maintaining balance between public interests and the need to protect citizen rights

On 20 March 2019, as a way to fulfil the main task of civil litigation, the Civil Cassation Court of the Supreme Court passed a ruling that changed the approach to resolving cases on vindicatory actions by ensuring compliance of the national case law to the case law of the European Court of Human Rights.

1. An innocent buyer cannot be held liable due to the inactivity of the authorities

Court of preliminary instances reasonably satisfied the claim on recognizing the apartment in question escheated and recognizing its ownership by Odesa territorial community represented by Odesa City Council.

At the same time, they deemed that the disputed apartment was involuntarily disowned by Odesa territorial community, therefore, requests concerning the apartment vindication from innocent buyers were subject to satisfaction under Article 388 of the Civil Code of Ukraine.

The Civil Cassation Court of the Supreme Court did not agree with such conclusions since the satisfaction of the vindicatory claim would lead to the violation of Article 1 of the First Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms.

The legal framework where the innocent buyer loses property and is forced to seek ways to reimburse such losses independently is unacceptable and imposes an individual and excessive burden on the innocent buyer.

The innocent buyer cannot be held liable for the inactivity of the authorities in the framework of procedures that are specifically designed to prevent fraud during transactions with real estate. The fact of illegal alienation and the admission of apartment sale cannot result in legal consequences for an innocent buyer; however, it constitutes a ground for local self-government's obligations to take all necessary steps to reimburse losses suffered from such alienation.

Judgment of the Supreme Court in the case No. 521/8368/15-ц dated 20 March 2019 (Proceedings No. 61-17779св18): http://reyestr.court.gov.ua/Review/80980359.

V. Civil liability of a pedestrian guilty of the traffic accident

Guided by one of the objectives of civil proceedings concerning the fair trial, on 20 November 2019, the Civil Cassation Court of the Supreme Court passed a ruling which changed the case law in disputes regarding property damage by obliging the pedestrian guilty of the accident to bear responsibility for his actions.

1. The pedestrian guilty of a traffic accident is obliged to reimburse property damage on a common basis

The Civil Cassation Court of the Supreme Court noted that inability to qualify the pedestrian as a proper party liable for the damage caused by the source of increased danger stipulated by Article 1187 of the Civil Code of Ukraine does not indicate the lack of legal grounds to bring the pedestrian guilty of the traffic accident to civil liability for damage caused by his unlawful acts on a common basis.

Disputed relations are covered by Article 1166 of the Civil Code of Ukraine which regulates common basis for the liability for damage caused, under which property damage caused through unlawful decisions, acts, or inactivity to the personal non-property rights of the individual or legal entity, as well as damage caused to the property of the individual or legal entity, shall be reimbursed in full by the person who caused such damage. The person who caused damage shall be exempted from its reimbursement if such person proves that the damage was not caused through his or her fault.

Thus, given the fact of pedestrian's guilt consisting in the violations of traffic rules which resulted in (causal relationship) the pecuniary or non-pecuniary damage to other road users, the pedestrian must bear civil liability for damage reimbursement on the common basis as provided for by Article 1166 of the Civil Code of Ukraine.

In view of the above, by imposing on the defendant the duty of reimbursement of the plaintiff's pecuniary damage caused by the damages to his vehicle during the traffic accident, which occurred through the fault of the pedestrian as a result of his violation of traffic rules, the courts of preliminary instances came to a correct conclusion on the existence of legal grounds stipulated by Article 1166 of the Civil Code of Ukraine for reimbursement of such damage.

Judgment of the Supreme Court in the case No. 296/2509/16-ц dated 20 November 2019 (Proceedings No. 61-34163св18): http://reyestr.court.gov.ua/Review/85836172.

VI. Inheritance transmission: peculiarities of devolution of an inheritance to a person with a natural portion in the inheritance

The required condition for heirs to exercise their rights consists in the clear legislative regulation of their exercise procedure. Inheritance transmission has certain peculiarities in case of inheriting the right to inheritance acceptance, in particular,

when it comes to the heirs with a natural portion in the inheritance. In this case, courts often falsely apply Article 1276 of the Civil Code of Ukraine without considering the above peculiarity of inheritance transmission. Herewith, on 4 September 2019, the Civil Cassation Court of the Supreme Court of Ukraine considered the case No. 450/328/15-ц and found that the right to a natural portion in the inheritance is not part of the inheritance (inheritance assets) and cannot be transferred to the heir by way of inheritance (inheritance transmission).

1. The concepts of «natural portion» and «property included in the inheritance» must be delimited

The first instance court deemed that Person_4 after the death of her daughter Person_5 failed to accept the inheritance due to the fact that she had died before the six month-term to accept the inheritance passed, therefore, her right to a natural portion was terminated by death.

Not agreeing with a conclusion made by the first instance court, the court of appeal noted that since Person_4 as an heir with the natural portion accepted the inheritance after the death of the heir Person_5, then her son Person_1 was entitled to inherit all of his mother's inheritance property after her death.

The Civil Cassation Court noted that the inheritance in the form of immovable property that was vacated in favour of the heir with the natural portion shall not be transmitted to such heir automatically. Immovable property that the heir did not acquire ownership of cannot be included in the inheritance assets as the respective state registration had never taken place.

Therefore, according to judges, the right to the natural portion shall be directly excluded from the inheritance which is transferred to the heirs of the person with this right.

At the same time, the Civil Cassation Court of the Supreme Court emphasized: if the heir with the natural portion had accepted the inheritance and then died, his or her heirs would inherit the property that included this natural portion. In this case, the right to the natural portion will not be transmitted to heirs, but rather heirs will accept the inheritance under a common basis.

Given the above, the Civil Cassation Court concluded that the right to the natural portion in the inheritance is not a part of the inheritance itself (inheritance assets) and cannot be transferred to the heir by way of inheritance, therefore the first instance court made a substantiated conclusion on the lack of grounds to satisfy the claim.

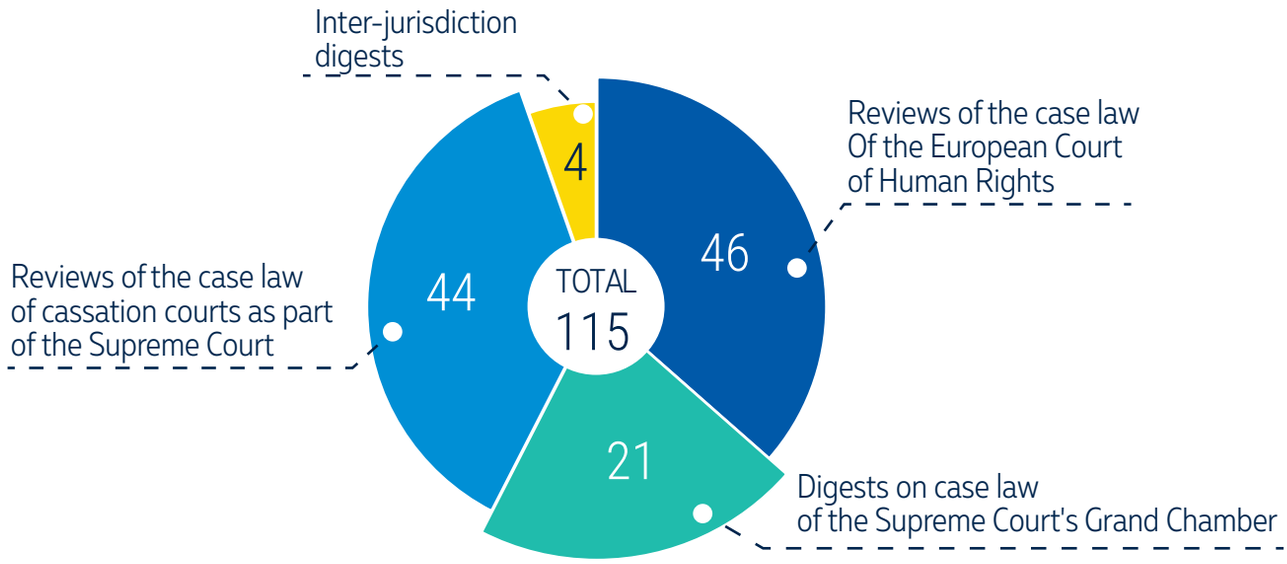
Judgment of the Supreme Court in the case No. 450/328/15-ц dated 4 September 2019 (Proceedings No. 61-14110св18): http://www.reyestr.court.gov.ua/Review/84512187.

Systematization and Case Law Promulgation

In 2019, the Supreme Court continued actively developing the line of activities related to systematization and publication of case law reviews and digests.

During 2019, the Supreme Court published over 100 such reviews. They include digests of the Grand Chamber case law; reviews of cassation court case law; inter-jurisdiction digests covering case law of all courts of cassation and the Grand Chamber, all of them related to the field of legal relations; reviews of ECtHR case law.

Published reviews and digests on case law



Today, inter-jurisdiction digests with systematized information on approaches to settling all issues in the field of legal relations are becoming more and more important. In 2019, four of such digests were prepared in the following fields: insurance, corporate relations, observance of environmental laws, disputes arising at the stage of enforcement proceedings.

Given that different cassation courts often apply the same law regulations, the case law of each of them may reflect a certain aspect of legal norm application in a specific field of legal relations, which is characterized by peculiarities of the relevant type of proceedings. Thus, inter-jurisdiction digests enable to formulate the panoramic view of all aspects of applying legal norms of a certain case law field used by the Supreme Court, and not just review the case law of cassation courts.

Digests of the Grand Chamber's case law help promptly track the development and emergence of new approaches to the administration of the law. To determine the best format and sequence of digest issue, the preferences of the professional legal community were taken into account and the decision was made to prepare and publish relevant digests monthly. In addition, the items included in them are systematized based on such criteria as jurisdiction and procedural grounds for consideration. The last of published digests contain, inter alia, information concerning considered cases and those where the Grand Chamber initiated proceedings,

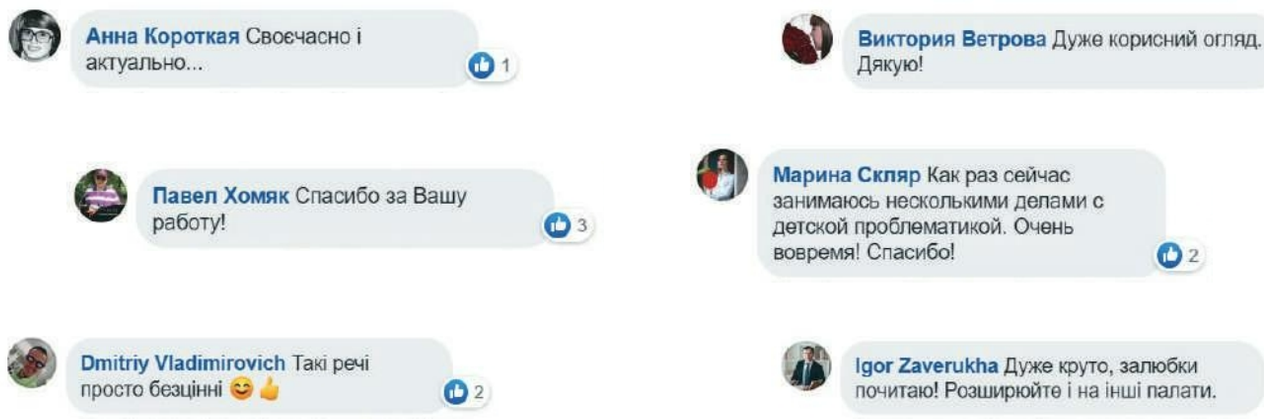
as well as cases returned to cassation courts due to the lack of grounds for their consideration by the Grand Chamber.

Case law reviews cover main approaches formulated based on the results of cassation review of court judgments in cases of a certain category which is typical for a respective kind of proceedings. Such reviews are jurisdictional and concern a certain narrow sphere of public relations, for example, relations in the field of alimony or payment of taxes, etc. These reviews also contain systematized case law of cassation courts, including basic legal stand in the relevant field.

Reviews of the ECtHR case law are published weekly. For the first time in Ukraine, the coverage of ECtHR case law has reached such scale and speed. These reviews contain a description of all ECtHR judgments passed by the court during the past week, which enables comprehensive review of cases involving Ukraine and other CoE Member-States. Descriptions of judgments prepared by the Supreme Court in Ukrainian are published on the official web portal of the ECtHR case law - HUDOC. The reviews contain detailed descriptions of case circumstances, as well as information on the judgment passed by the ECtHR. Except for basic information, recent reviews also contain the legal stand of the ECtHR and a translation of the key motives of the court.

An extensive scope of relevant information necessitates its systematization. For this purpose, the Supreme Court started preparing thematic reviews of the ECtHR case law. The Review of the European Court of Human Rights judgments related to children and ensuring their best interests is the first example of such systematization; it is focused on the issues in cases concerning family relations. These activities are expected to continue.

The professional community notes that activities of the Supreme Court in preparing digests and reviews of case law is very useful and states the unprecedented transparency of the Supreme Court and the convenience of the information provided. Considering the positive attitude to such practice and its correspondence to the best European experience, these activities will continue this year, too.



Scientific Advisory Board of the Supreme Court

In February 2018, the Scientific Advisory Board was established in the Supreme Court, and already in March, its composition was approved. Currently, 111 highly qualified specialists in the field of law are involved in the operation of this body with Leonid Loboyko, the judge of the Grand Chamber of the Supreme Court, acting as the Scientific Secretary of the Scientific Advisory Board.

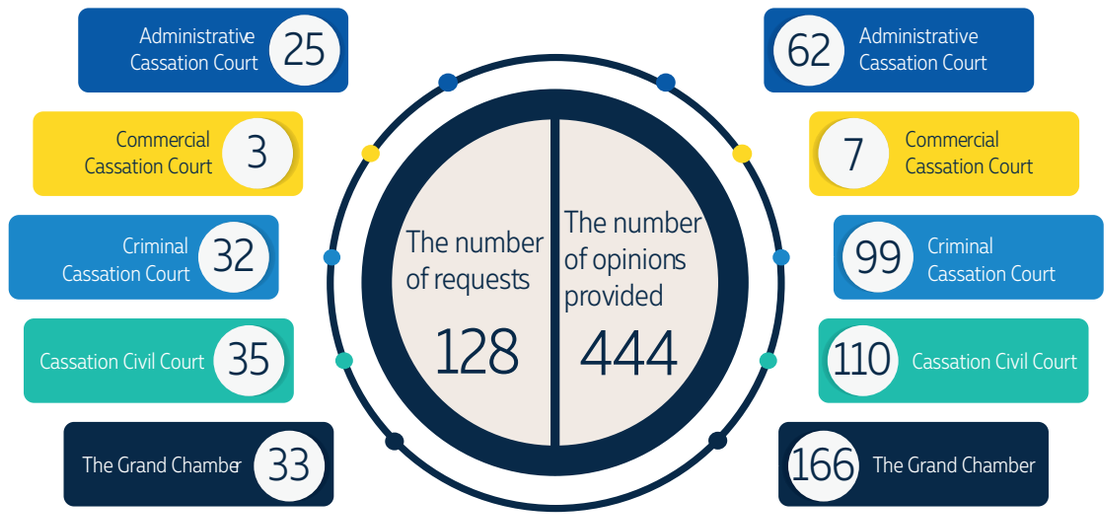
In 2019, just like in the year before, judges of the Supreme Court were actively using the possibility to address members of the Scientific Advisory Board with requests to provide a scientific opinion in specific cases. The requests concerned both general issues on the application of the law - the correlation of legal notions, the equivalent disposition of articles of laws, etc. - and the interpretation of specific legal norms regarding the imposition of punishment based on the totality of verdicts, the protection of rights of the military, land disputes, tax relations, credit contracts, notary activities, assignment of alimony, problematic issues when applying the Labour Code of Ukraine.

The efficiency of cooperation between judges of the Supreme Court and scientists - members of the Scientific Advisory Board in the field of ensuring fair justice is confirmed by the fact that in 2019, judges referred to scientists with requests 128 times and received 444 scientific opinions.

Members of the Scientific Advisory Board took an active part in round tables organized with the participation of the Supreme Court. The President of the Supreme Court issued an Order dated 19 June 2019 and expressed gratitude to ten members of the Scientific Advisory Board for fruitful cooperation and a considerable contribution into the activities of the Supreme Court.

With scientific and advisory support, the administration of justice by the Supreme Court takes place by way of the uniform enforcement of law within the state, identifying and eliminating (by judicial interpretation, where possible) any controversies, guarantying fair and unbiased justice at the national level, as required by the Charter and other instruments of the Council of Europe and its bodies.

The number of requests filed by judges of the Supreme Court to the Scientific Advisory Board and the number of scientific opinions provided by its members



International Activities

In 2019, international cooperation between the Supreme Court covered the following major areas: strengthening cooperation with other Supreme Courts in other states; participation in the international technical assistance projects; organization of international conferences and workshops; study and work visits; cooperation with international organizations, foreign diplomatic representative offices in Ukraine and Ukrainian diplomatic representative offices abroad.

1. In early 2019, the President of the Supreme Court Valentyna Danishevska traditionally participated in the ceremony to mark the official opening of the ECHR's judicial year marking the start of the judicial year at the European Court of Human Rights and the workshop on Strengthening Confidence in the Judiciary (23-26 January 2019, Strasbourg). In the framework of these events, the President of the Supreme Court met with Thorbjørn Jagland, the Secretary-General of the Council of Europe (2009-2019), and Guido Raimondi, President of the European Court of Human Rights (2015-2019).

Start of the ECtHR judicial year, 23-26 January 2019, Strasbourg (France)

2. In February and September 2019, with the assistance from the Council of Europe Project «Supporting Ukraine in the execution of judgments of the European Court of Human Rights» judges of the Grand Chambers had two visits to the CoE institutions. During the last visit, Valentyna Danishevska met with Dunja Mijatović, the CoE Commissioner for Human Rights, and Linos-Alexandre Sicilianos, the new President of the ECtHR.

The meeting of the President of the Supreme Court with Dunja Mijatović, the CoE Commissioner for Human Rights and the new President of the ECtHR Linos-Alexandre Sicilianos, 29 September 2019, Strasbourg (France)

Judges of the Grand Chamber of the Supreme Court visited several CoE institutions as part of their study visit, Strasbourg (France), 23-25 September 2019

3. In April 2019, the delegation from the Supreme Court headed by Valentyna Danishevska made an official visit to Kuria (the Supreme Court) of Hungary with a purpose of strengthening professional connections between higher judicial institutions of Ukraine and Hungary.

The official visit of the Supreme Court delegation to Hungarian Kuria, 4-5 April 2019 Budapest (Hungary)

4. On 26-29 May 2019, the President of the Supreme Court took part in the IX Conference of the Chief Justices of Central and Eastern Europe (Bratislava) at the invitation of her colleague Daniela Švecová, President the Supreme Court of the Slovak Republic. The event was held in the framework of cooperation with the CEELI Institute.

IX Conference of the Chief Justices of Central and Eastern Europe, 26-28 May, Bratislava (Slovakia)

5. With the assistance from the Council of Europe Project «Supporting Ukraine in the execution of judgments of the European Court of Human Rights», the Supreme Court organized a conference «Uniformity of Case Law: Opinions of the European Court of Human Rights» which was held on 14-15 June 2019 in Kyiv. During this conference, judges of the ECtHR and the SC, representatives of other Ukrainian authorities and institutions of the Council of Europe gave speeches and took part in the discussion of relevant issues, in particular on:

- ensuring the independence of the judiciary;
- the efficiency of court judgments through the prism of the European case law and Ukrainian reality;
- legislative and institutional support of the case law uniformity;
- aspects of dealing with corruption offences, with the application of the ECtHR case law;
- possibilities of higher judicial institutions of the High Contracting Party stipulated by the Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms to refer to the ECtHR with requests to provide advisory opinions on principal issues related to the interpretation and application of rights and freedoms established by the Conventions and Protocols thereto;
- practices of the ECtHR and national courts concerning the restoration of court proceedings.

Conference «Uniformity of Case Law: Opinions of the European Court of Human Rights»,
14-15 June 2019, Kyiv (Ukraine)

6. On 4-5 July 2019, the Supreme Court of Ukraine with the support of the partners - EU Project «Pravo-Justice», OSCE Project Coordinator in Ukraine, USAID New Justice Program, German Foundation for International Legal Cooperation, and the National University of the State Fiscal Service of Ukraine - organized the II International Scientific and Practical Conference «Court consideration of tax and customs disputes: issues, challenges, priorities». Conference participants exchanged professional opinions on the modern trends of court review of tax and customs disputes in the context of integration and globalization processes, discussed existing issues of the legal uncertainty and stability in the tax law, worked on the elimination of shared approaches to their resolution.

II International Scientific and Practical Conference «Court consideration of tax and customs disputes: issues, challenges, priorities», 4-5 July 2019, Kyiv (Ukraine)

7. Seven Supreme Court judges took part in a study visit to the European Court of Human Rights and other Council of Europe institutions (9-10 July 2019, Strasbourg, France), organized by the Council of Europe Project «Internal Displacement in Ukraine: Building Solutions». The delegation discussed the possible ways to implement Council of Europe standards on the protection of the rights of internally displaced persons (IDPs) in national jurisprudence and attended the hearings of the Grand Chamber of the European Court of Human Rights in «Brother Watch and Others v. the United Kingdom» case.

Following the visit, under support of the Council of Europe Project on Internal Displacement, an expert meeting was held in the Supreme Court on 19 August 2019 on international standards for compensation for property damage caused by armed conflict and forced displacement. Valentyna Danyshevska, the President of the Supreme Court, judges of the Grand Chamber of the Supreme Court, as well as leading international experts on compensation and representatives of the Council of Europe attended this meeting and discussed the best ways to protect property rights of IDPs and other conflict affected people.

Delegation of Supreme Court judges in study visit on internal displacement to the European Court of Human Rights and other Council of Europe institutions (9-10 July 2019, Strasbourg, France)

8. During France's Presidency in the Committee of Ministers of the Council of Europe, a conference of Chief Justices of the CoE Member-States took place in September 2019 (Paris), where the SC President took part as well. Event organizers: The Constitutional Council, the Council of State, and the Court of Cassation of France.

9. With the support of the Project: «Twinning Supreme Court: Strengthening the institutional capacity of the Supreme Court of Ukraine in the sphere of human rights protection at the national level», professional discussions, round tables, international conferences were organized where SC judges and international experts discussed mechanisms for ensuring the principle of access to justice and the rule of law in Ukraine, the use of procedural filters and the institute of court specialization, the application of information technologies to unify case law, increase the level of professional training of judges and the SC staff, strengthen the SC potential, etc.

The meeting of the Steering Committee of the Project «Twinning Supreme Court: Strengthening the institutional capacity of the Supreme Court in the sphere of human rights protection at the national level», 25 March 2019, Kyiv (Ukraine)

In the framework of this Project, the Supreme Court representatives visited EU Member-States (including, Austrian Supreme Court in June 2019) where they learned the experience of other countries in resolving issues related to the application of cassation filters, ensuring uniformity of case law, organizing the operation of the highest judicial institution, etc.

The study visit of SC judges to Austrian Supreme Court, 18-20 June 2019, Vienna (Austria)

10. In 2019, the Working group on preparing a training course in drafting court judgments was operating actively in the framework of the Canadian-Ukrainian Project "Support to Judicial Reform», which included judges from four cassation courts and the Grand Chamber of the Supreme Court.

In the framework of this project, the GC SC Secretary Vsevolod Kniazev and the judge of the Commercial Cassation Court of the SC Ivan Mishchenko took part in the Ninth Conference of the International Organization for Judicial Training which was held on 20-28 September 2019 in South Africa (Cape Town).

Judges of the Supreme Court Vsevolod Kniazev and Ivan Mishchenko presented a coursein drafting court judgments for Ukrainian judges, 22-26 September 2019, Cape Town (South Africa)

11. One of the key formats of many-year cooperation between the Supreme Court and the German Foundation for International Legal Cooperation consists in Ukrainian-German professional meetings involving the discussion of relevant justice issues and case law of higher judicial institutions of Ukraine and Germany. Thus, in September and October 2019, professional discussions were held with judges of all cassation courts and the Grand Chamber of the Supreme Court.

As a follow-up to Kyiv discussions, professional meetings of SC judges and judges of the German Federal Court of Justice took place in Bonn on 18-21 November 2019.

The visit of the SC judges to the German Federal Court of Justice, 18-21 November 2019, Bonn (Germany)

In late November 2019, the Head of the Administrative Cassation Court of the Supreme Court Mykhailo Smokovych took part in the operation of the IX German-Ukrainian Colloquium on Administrative Procedural Law which was held in Germany (Koblenz).

12. Judges of the SC made speeches and took part in discussions of relevant issues at th e VIII Judicial Forum organized by the Ukrainian Bar Association in cooperation with the Council of Europe Project «Support to the implementation of the judicial reform in Ukraine», which was held on 3-4 October 2019 in Kyiv.

Judges of the SC made speeches at the VIII Judicial Forum,
3-4 October 2019, Kyiv (Ukraine)

The Judicial Forum is one of the largest and most influential events in Ukraine, which traditionally unites at the independent platform representatives of the judiciary, international and national experts, practising lawyers to discuss relevant issues.

13. On 7 November 2019, the Supreme Court with assistance from the EU Project «Pravo-Justice» organized the International Judicial Forum «Judicial Protection of the Environment and Environmental Rights». The event was initiated by the Judicial Chamber on Cases on Protection of Social Rights of the Administrative Cassation Court of the Supreme Court. Forum participants exchanged professional opinions on existing issues of public governance in the environmental field, worked on the elimination of shared approaches to their resolution, and suggested practical guidelines concerning legislative changes, the formation of the uniform methodology for application and usage of the environmental and administrative legislation.

14. On 12-16 November 2019, the Intellectual Property Judges Forum took place in Switzerland (Geneva) which was attended by Bohdan Lvov, Vice President of the Supreme Court, President of the Commercial Cassation Court of the Supreme Court.

Bohdan Lvov, Vice President of the Supreme Court, Head of the Commercial Cassation Court of the Supreme Court, spoke at the Intellectual Property Judges Forum, 13-15 November 2019, Geneva (Switzerland)

15. Last September, as part of the Ukrainian delegation, Ihor Benedysiuk, judge of the Commercial Cassation Court of the Supreme Court, made a speech about the independence of the judiciary in Ukraine during the annual Human Dimension Implementation Meeting of OSCE participating States in Poland (Warsaw).

16. Traditionally, in the fall, OSCE Project Coordinator in Ukraine held an Annual International Forum on ECHR case law in Lviv. Last year, the Project of the OSCE Project Coordinator in Ukraine «Support to the training of judges that meets their needs» in cooperation with the Council of Europe Project «Support to the Implementation of the Judicial Reform in Ukraine» organized the VIII Forum attended by the President of the Supreme Court and judges of the GC SC. Discussions that take place during the annual forum focus on strengthening the application of the ECtHR case law in Ukraine and improvement of justice and human rights protection in line with the Convention for the Protection of Human Rights and Fundamental Freedoms.

17. Since 2019, the Supreme Court has been an associate member of the European Union Forum of Judges for the Environment (EUFJE) and has joined relevant events during the last year. Vitaliy Urkevych, judge of the GC SC, took part in the Annual EUFJE Conference in Finland (Helsinki), which was held on 13-14 September 2019, and Oleksandr Prokopenko, judge of the GC SC, participated in the Judicial Colloquium and the Twelfth Meeting of the Task Force of the Aarhus Convention on Access to Justice organized by the United Nations Economic Commission for Europe that took place on 27 February - 1 March 2019 in Switzerland (Geneva).

Vitaliy Urkevych, judge of the GC SC, took part in the Annual EUFJE Conference, 13-14 September 2019, Helsinki (Finland)

Oleksandr Prokopenko, judge of the GC SC, participated in the Twelfth Meeting of the Task Force of the Aarhus Convention on Access to Justice, 27 February - 1 March 2019, Geneva (Switzerland)

18. The Supreme Court established fruitful cooperation with Projects of the Council of Europe, the European Union, Canada, the US Agency for International Development, the German Foundation for International Legal Cooperation, the Organization for Security and Co-operation in Europe, the United Nations Organization that promoted the organization of international events in various formats which facilitate the creation in Ukraine of an efficient system of judicial protection.

In 2019, judges and staff of the Supreme Court studied foreign experience and shared their own achievements in the following countries:

Republic of Austria
Republic of Belarus
Kingdom of Belgium
Republic of India
Kingdom of Spain
Canada
People's Republic of China
Republic of Korea
Republic of Latvia
Republic of Lithuania
United Mexican States
Kingdom of the Netherlands
Federal Republic of Germany
Republic of South Africa
Republic of Poland
Slovak Republic
United States of America
United Kingdom of Great Britain and Northern Ireland
Republic of Singapore
Hungary
Republic of Uzbekistan
Republic of Finland
French Republic
Swiss Confederation

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

USAID
FROM THE AMERICAN PEOPLE

PRAVO-JUSTICE

IRZ

Canada
SUPPORT TO JUDICIAL PEFORM PROJECT

OSCE

UNITED
NATIONS

Law-Drafting Activities

One of the powers of the Supreme Court includes the provision of conclusions on draft bills related to the system of justice, the judiciary, the status of judges, enforcement of court judgments, and other issues related to the functioning of Ukrainian judiciary.

2019 was rich in various events related, inter alia, to the judicial reform where the Supreme Court took a proactive stand concerning the assessment of changes that subjects of the legislative initiative proposed to introduce into the regulatory legal acts.

Thus, in September 2019, the Supreme Court Plenum approved the conclusion related to the draft Law of Ukraine «On Amendments to Certain Laws of Ukraine on the Functioning of Judicial Governing Bodies» (No. 1008 dated 29 August 2019) and recognized it as such that threatens the independence of the judiciary.

The SC Plenum made a number of comments on the draft law No. 1008, noting that:

- draft provisions related to the reduction of the maximum number of judges in the Supreme Court from 200 to 100 persons, reduction of the remuneration for judges of the SC, as well as the re-selection of the Supreme Court judges provided for by this draft law contradict the Council of Europe standards and international obligations of Ukraine;

- the number of the Supreme Court judges cannot be reduced before proper staffing of the first instance and appellate courts, consistent ensuring of the uniformity of case law, and as a result, increasing the authority of these courts and reducing expectations of the proceedings participants in relation to the possibility of a successful appeal of judgments in the Supreme Court;

- the review of existing disciplinary procedures for judges as stipulated by the draft law narrows guarantees of judicial independence and violates the principle of legal certainty.

At the same time, the Supreme Court Plenum notes that the initiative for levelling salaries of judges in the first and appellate instances regardless of whether their qualification assessment has finished deserves support.

In addition, the SC Plenum supported the High Council of Justice's advisory opinion on the draft law No. 1008 where the HCJ made some comments on the said draft law and provided relevant proposals for standardization and specification of its provisions. The open address to Ukrainian MPs concerning this draft law was also approved by the Council of Judges of Ukraine. International partners also expressed their stand concerning the proposed changes and stressed that prompt adoption of the deficient draft law might undermine reform efforts and lead to undesired consequences.

In November 2019, the SC Plenum approved two more conclusions: on certain provisions of the draft Law of Ukraine «On Amendments to the Commercial Procedural Code of Ukraine, the Civil Procedure Code of Ukraine, the Code of Administrative Proceedings of Ukraine concerning the improvement of the consideration of court judgments in appeal and cassation»

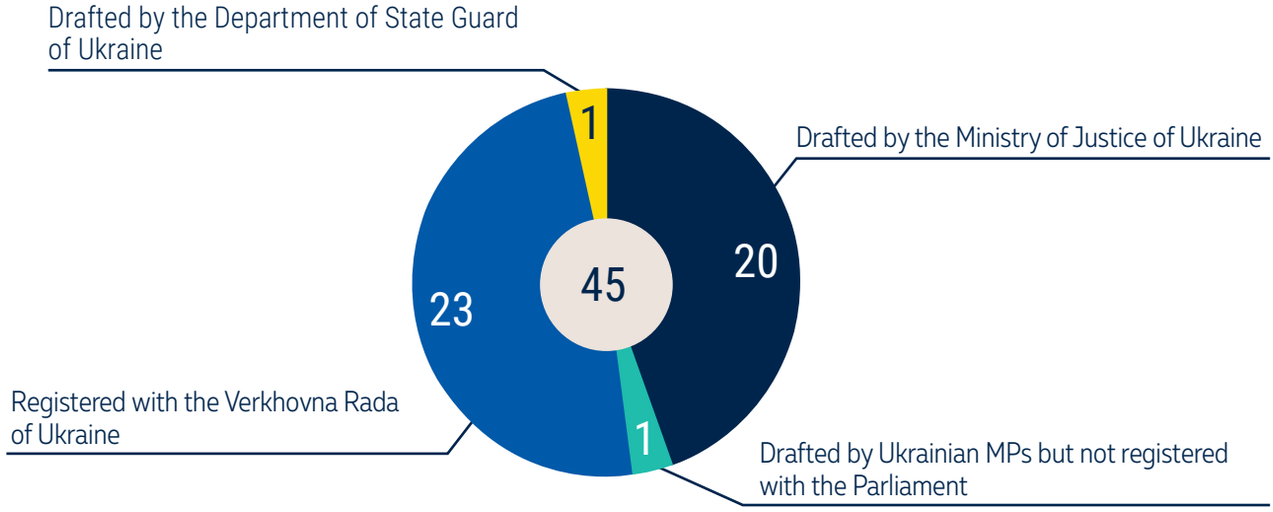
The session of the Supreme Court Plenum, 15 November 2019

(No. 2314 dated 25 October 2019) and the draft Law of Ukraine «On Amendments to the Law of Ukraine On the Judiciary and the Status of Judges concerning the improvement of the procedure for bringing judges to disciplinary liability» (No. 2271 dated 16 October 2019).

According to the SC Plenum, the first draft requires finalizing, while the implementation of the second draft will lead to violation of the principle of judicial independence. The latter offered to make amendments related to the improvement of the procedure for bringing judges to disciplinary liability having established that reversion or change of the court judgment shall result in bringing the judge involved in its adoption to disciplinary liability.

The SC Plenum noted, inter alia, that it contradicts Part 4 Article 126 of the Constitution of Ukraine which explicitly states that the judge cannot be brought to liability for the judgment passed, save for crimes or disciplinary offences.

In total, the Supreme Court conducted legal reviews of 45 draft laws of Ukraine in 2019, of which



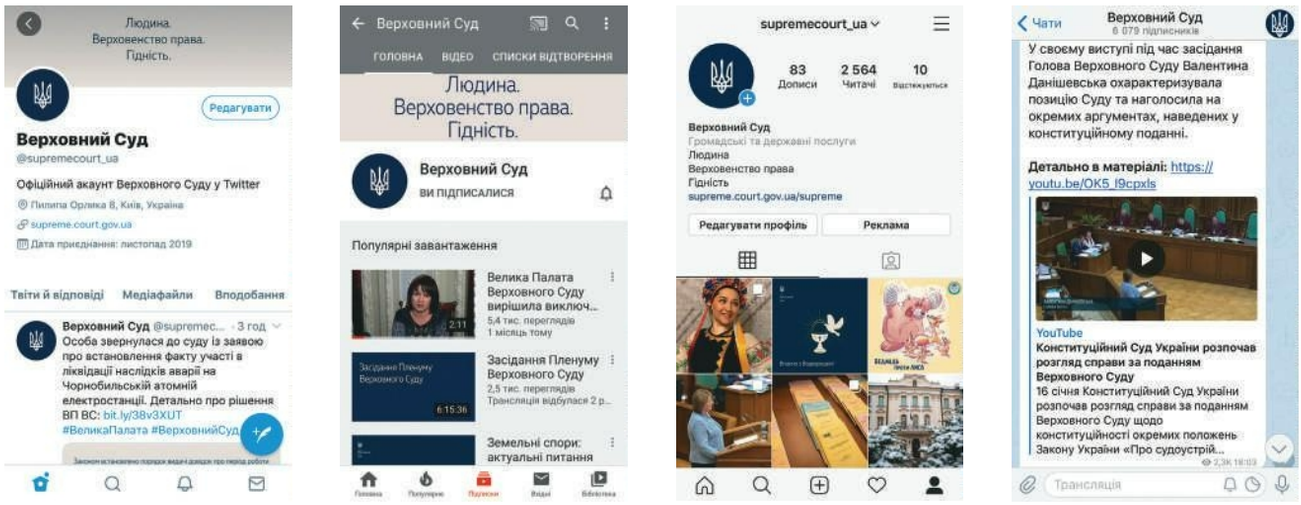
Moreover, at the requests of the Verkhovna Rada Committee on Legislative Support of Law Enforcement, the Supreme Court made proposals to the Law of Ukraine «On Organizational Legal Principles of Struggle against the Organized Crime» and proposals concerning the introduction of the institute of criminal offence and bringing regulatory and legal acts in line with the Law of Ukraine «On Amending Certain Legislative Acts Concerning Simplification of Pre-Trial Investigation of Certain Categories of Criminal Offences». The Supreme Court also formulated its proposals concerning the Law of Ukraine «On Amending the Law of Ukraine 'On Amendments to the Law of Ukraine 'On the Judiciary and the Status of Judges' and Some Laws of Ukraine Concerning the Activities of Judicial Governance Bodies».

Communication Activities

In 2019, the Supreme Court actively strengthened communications with the public and media representatives. If in 2018 the public could follow the activities of the Supreme Court on its official website and Facebook page, in 2019, the number of communication channels increased significantly.

For instance, in March 2019, an official SC channel on Telegram appeared and over 6,000 people subscribed to it. In October 2019, the Supreme Court joined Instagram and is now telling about the professional life of judges and court staff, their scientific, creative, sporting achievements, hobbies, etc. through colourful pictures. This account has 2.5 thousand followers.

Since November 2019, the Supreme Court has been present on Twitter, which lets quickly share short news about court operation.



Twitter Facebook Instagram Telegram

The Supreme Court's accounts on social media and in messengers

The Supreme Court's page on Facebook is still the most popular with the number of its followers reaching 41 thousand in 2019 (there were only 28 thousand followers in 2018).

The official website of the Supreme Court is an important channel for information sharing; in 2019, the number of its users reached almost 2 million and the number of viewed website pages exceeded 4.2 million.

The communication team of the Supreme Court is actively developing its YouTube channel.

The Supreme Court started creating its own content - news videos and comments from judges on cases they considered.

One of such videos posted on SC's Facebook page received almost 40 thousand views. It concerned the SC's judgment on charging pecuniary damage from the pedestrian who caused a traffic accident in favour of the damaged car's driver. This video attracted the attention of lawyers, drivers, the media, and social media users. In the video, the judge of the Civil Cassation Court of the Supreme Court (the judge rapporteur in this case) Maryna Chervynska commented on case circumstances.

Judge of the Civil Cassation Court of the Supreme Court Maryna Chervynska comments on circumstances of the case concerning the recovery of pecuniary damage from the pedestrian who caused the traffic accident in favour of the damaged car's driver, 13 December 2019.

Judges also explained to the public judgments in high-profile cases during events, briefings, and meetings with media representatives organized by the communication team.

Besides, the SC judges give reporters comments, interviews on other publicly important matters.

Media representatives also receive relevant information on the activities of the Supreme Court from the social media and the SC's official website and post it on their own resources.

Some SC judges have personal blogs on mass media platforms.

Judge rapporteur of the Criminal Cassation Court of the Supreme Court Svitlana Yakovlieva gives comments to media representatives during the forum «Independent courts and free media: highlighting criminal processes», 28 May 2019

Secretary of the GC SC Vsevolod Kniaziev gives comments to UA:PERSHYI TV channel on the adoption of the draft law No. 1008, 16 October 2019

The SC's communication team continues informing the public of the interesting and important Court judgments, sharing relevant statistics on case consideration, case law reviews, etc. using numerous communication channels to explain citizens key judgments of the Supreme Court and raise awareness of the activities of the highest judicial institution.

Teaching and Awareness-Raising Activities

To communicate the legal stand of the highest judicial institution to the legal community and the public, judges of the Supreme Court participate in professional workshops, round tables, and forums. Court staff also tell about the SC activities during various events.

Judge of the GC SC Dmytro Hudyma tells about the application of the vindicatory and negatory action concerning the immovable property in the case law of the GC SC sin the framework of the «Open Court» Project, 1 June 2019

Head of the Legal Department (IV) of the Department of Analytical and Legal Operations of the SC at the meeting of the Labour Law Committee of the Ukrainian Bar Association of Ukraine, 17 May 2019

Many SC judges are teachers at the National School of Judges of Ukraine where they share experiences with their colleagues from lower instance courts and take part in the development of corresponding training courses.

The judge of the Criminal Cassation Court of the Supreme Court Olha Buleyko during the meeting of the Task Force of the National School of Judges of Ukraine on the development of the training course for judges «Preventing the Administration of Justice «Procedural Interventions). Counteraction Methods», 7 October 2019

The Secretary of the Grand Chamber of the Supreme Court Vsevolod Kniazev is an Assistant Professor at the Department of Administrative Law of Admiral Makarov National University of Shipbuilding.

Students of the Faculty of Law of Ivan Franko Lviv National University have a chance to attend courses taught here by the judge of the Grand Chamber of the Supreme Court Dmytro Hudyma. The judge of the Grand Chamber of the Supreme Court Natalia Antoniuk teaches at the Department of Criminal Law of the same University.

The judge of the Grand Chamber of the Supreme Court Oleksandra Yanovska is a Professor at the Department of Justice of Taras Shevchenko National University of Kyiv. The judge of the Administrative Cassation Court if the SC Volodymyr Bevzenko teaches at the Department of Administrative Law of the Faculty of Law at the same University. His colleague, the judge of the Administrative Cassation Court if the SC Olesia Rodyshevska delivers lectures at Taras Shevchenko National University of Kyiv and the University of Warmia and Mazury in Olsztyn (Poland).

The judge of the Administrative Cassation Court if the SC Semen Stetsenko also teaches at two higher education establishments - Zaporizhia National University and the National Academy of Public Administration under the President of Ukraine.

Despite considerable load, the President of the Administrative Cassation Court if the SC Mykhailo Smokovych finds time for teaching at three higher education institutions: Taras Shevchenko National University of Kyiv, the National University of Ostroh Academy, and the National Aviation University.

The judge of the Commercial Cassation Court of the Supreme Court Kostiantyn Pilkov delivers interesting and informative lectures on international trade law and international commercial arbitration at Kyiv National University of Trade and Economics.

The judge of the Commercial Cassation Court of the Supreme Court Kostiantyn Pilkov delivers interesting and informative lectures on international trade law and international commercial arbitration at Kyiv National University of Trade and Economics.

The judge of the Commercial Cassation Court of the Supreme Court Nadiya Buhay is an Associate Professor at the Department of Trade, Environmental, and Agrarian Law of Vasyl Stefanyk Precarpathian National University where she teachers such courses as «Agrarian Law of Ukraine» and «Resolution of Land Disputes». Her colleague judge of the Commercial Cassation Court of the Supreme Court Vitaliy Zuyev is supervising several post-graduate students at the University of Customs and Finance.

The judge of the Civil Cassation Court of the Supreme Court Valentyna Zhuravel is a member of the Specialized Academic Board at Taras Shevchenko National University of Kyiv. The judge of the Civil Cassation Court of the Supreme Court Yulia Cherniak also teaches at the Department of International Private Law of the Institute of International Relations of the same University.

The judge of the Civil Cassation Court of the Supreme Court Vasyl Krat is an Associate Professor at the Department of Civil Law of Yaroslav Mudryi National Law University. The judge of the Civil

Cassation Court of the Supreme Court Valentyn Serdiuk teaches at Yuriy Buhay International Scientific and Technical University.

Some of the Supreme Court staff also teach at other educational institutions.

Judges of the GC SC Olena Kibenko and Vitaliy Urkevych take part in the All-Ukrainian initiative «A Lesson of Justice», 21 February 2019

Meeting of the judge of the Administrative Cassation Court Volodymyr Kravchuk with winners of the contests «Justice advocates», which was held on the official SC Instagram page, 26 December 2019

In addition, in 2019, judges of the Supreme Court continued participating in the All-Ukrainian initiative «A Lesson of Justice». During these educational meetings, judges tell students about the judicial process using as the example cartoons on the topic of law, like «Horse v. Hamster» and «Elephant v. Giraffe», their idea belongs to Volodymyr Kravchuk, judge of the Administrative Cassation Court of the Supreme Court. Such events were initiated by the Association for the Development of Judicial Self-Government of Ukraine with the support of the Council of Judges of Ukraine and were held in the framework of the Grant Project «Raising the Children Awareness of Court Operations» supported by the US Agency for International Development (USAID) New Justice Program.

Anyone interested may learn about the activities of the highest judicial authority and communicate with judges during a tour to the seat of the Supreme Court - Klov Palace - and other buildings where cassation courts are located

«A Lesson of Justice» for children and adults, that undergo rehabilitation treatment at Kyiv City Centre for Social, Professional, and Labour Rehabilitation of Persons with Disability, 21 December 2019

A quest on the subject of law organized for the youngest visitors of the Supreme Court, 21 June 2019

Extracurricular Activities

The Supreme Court judges and staff are united not just by the joint activities aimed at ensuring persons' rights, freedoms, and interests. In their free time, judges and court staff gather to take part in the sporting, intellectual events and do socially useful work.

In 2019, participants of the judicial running club Supreme Run established at the initiative of Olena Kibenko, the judge of the Grand Chamber of the Supreme Court, took part in marathons, half-marathons, and charitable races, including abroad. Olena Kibenko, the mastermind behind the running club, successfully finished the entire distance during London Marathon (Great Britain) and ran 42 km 195 m in one of Abbot World Marathon Majors series in Chicago (USA) that were dedicated to charitable fundraising.

Judges and staff of the Supreme Court do not stand aside Supreme Bike and Supreme Swim sporting initiatives and Supreme Mind intellectual initiative.

During the mini-football tournament held between judges, court staff, other justice bodies and institutions, the team of the Administrative Cassation Court of the Supreme Court won «2019 Themis Cup».

Judges and staff of the Administrative Cassation Court of the Supreme Court care about the urban greenspace expansion: in 2018, they planted spruce and linden in Maiyinskyi park, and in 2019, they planted snowball tree bushes in the Park of Eternal Glory.

«Run Under the Chestnut Trees» has become a good tradition of the Supreme Run running club during the celebration of Kyiv Day, 26 May 2019

Intellectual Game «What? Where? When?, 27 May 2019

Judge of the Civil Cassation Court of the Supreme Court Yevhen Synelnykov covered 10 km during the swim race across Dnipro, 13 July 2019

Judge of the GC SC Olena Kibenko ran the marathon distance during Abbott World Marathon Majors in Chicago (USA), 13 October 2019

Judges and staff of the Administrative Cassation Court of the Supreme Court plant the snowball grove at the Park of Eternal Glory, 12 April 2019

Celebrating Vyshyvanka Day is another wonderful tradition supported by the Supreme Court, 16 May 2019

The Supreme Court football team won a cup at the mini-football tournament - «2019 Themis Cup», 7 December 2019

Supreme Court cyclists Supreme Bike during the Bicycle Day, 1 June 2019

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