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Oral hearing of a civil case in the context of the right to a fair trial

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The urgency of the problem under investigation is that the Civil Procedure Code of Ukraine, as of October 3, 2017, introduces new simplified proceedings and forms of proceedings in the courts of first and higher instance. These changes have, to some extent, narrowed the use of oral hearings when considering and reviewing a civil case. The aim of the article is to determine the peculiarities of the legal regulation of civil procedural relations related to the conditions and procedure of oral hearing when considering a civil as an element of the exercise of the right to a fair trial. The main method of the research is a comparatively legal method, which identifies the positive features and weaknesses of the current CPC of Ukraine in terms of regulating oral hearings and limiting them when considering civil cases and relevant jurisprudence of national courts of Ukraine in comparison with the guarantees of the European Convention for the Protection of Human Rights and fundamental freedoms and the case law of the European Court of Human Rights and other international standards of civil justice. The main results of the study are revealing rather high detailisation of the conditions of oral hearings in civil case, their limitations, sufficient legal capacity of participants of a case to present their arguments to the court during oral court hearings. The authors state a rather high level of implementation of international standards of civil justice in the civil procedural law of Ukraine regarding the regulation of the right to oral hearings and exceptions to this right. The findings can be used by scholars in the field of law to further investigate oral hearings as the main procedural form of civil litigation and resolution. The proposals made by the authors of the amendments to the civil procedural legislation, if implemented, will contribute to improving the efficiency of civil justice, ensuring timely, fair and impartial consideration and resolution of civil cases.

Keywords: civil proceedings, oral hearings, civil procedural legislation, opening remarks, implementation of international obligations at national level

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INTRODUCTION

Ukraine ratified the Convention for the Protection of Human Rights and Fundamental Freedoms (Convention for the Protection… 1950) in 1997 by the Law of Ukraine (On the Ratification of the Convention… 1997). The number of applications from citizens of Ukraine and their decisions within the time after Ukraine has recognised the jurisdiction of the European Court of Justice has been a significant part of its practice, although it has been fluctuating lately. The number of applications against Ukraine allocated to a decision-making body of the European Court of Human Rights increased from 2,819 in 2002 (Shah 2004) to 14,181 in 2014 (Annual Report European Court… 2017), and in 2018 totaled 3,207 or 7,44% of all such applications (Annual Report European Court… 2019).

The number of judgments of the European Court of Human Rights that recognise violations of Art. 6 of the European Convention on Human Rights by Ukraine increased from one judgement on one application in 2002 to 35 judgements on 2,244 applications in 2013, and in 2018 57 such judgements were adopted in 65 cases.

Thus, the quality of justice in Ukraine and its compliance with Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms remains a relevant topic in legal science and practice. One of the criteria for the right to a fair trial in Article 6 of the Convention provides for a public hearing. Oral hearings are not expressly provided for in Article 6, but are recognised as an element of the right to a public hearing.

In principle, litigants have a right to a public hearing because this protects them against the administration of justice in secret with no public scrutiny (Guide on Article… 2019). In proceedings before a court of first and only instances of the right to a "public hearing" under Article 6 § 1 entails an entity to an "oral hearing" unless there are exceptional circumstances that justify dispensing with such a hearing (Guide on Article… 2019).

The absence of a hearing at second or third instance may be justified by the special features of the proceedings concerned, provided a hearing has been held at first instance (Helmers v. Sweden, § 36, but contrast §§ 38-39; Salomonsson v. Sweden, § 36). Thus, leave-to-appeal proceedings

and proceedings involving only questions of law, as opposed to questions of fact, may comply with the requirements of Article 6 even though the appellant was not given an opportunity of being heard in person by the appeal or cassation court (Miller v. Sweden, § 30).

Regard therefore needs to be had to the particularities of proceedings in the highest courts. (Guide on Article… 2019). The judicial reform in Ukraine in 2016-2017 has changed some of the litigation in civil proceedings. These changes included, in particular, the introduction of simplified procedures for dealing with certain categories of civil cases without holding oral hearings. Therefore, the issue of providing a public hearing in the form of an oral hearing in the context of exercising the right to a fair trial in Ukraine is extremely urgent.

METHODOLOGY

Among Ukrainian scholars in the field of civil procedural law, issues of the exercise of the right to a fair trial are of considerable interest and have been the subject of a number of theoretical studies, including on compliance with international standards for oral court hearings. Exploring the international unification and harmonisation of procedural law as a direction of optimisation of civil justice in Ukraine, V.I. Bobryk notes that the cooperation of Ukraine with foreign states and international organisations stipulates the necessity to take into account the world and regional integration processes, including the processes of world economic integration, the requirements for approximation of the legislation of Ukraine with the legislation of foreign states, when improving the current legislation. Such approximation should be scientifically sound and based on international law (Bobryk 2014).

Investigating the interaction of domestic procedural law with international law R.A. Kalyuzhnyi and I.V. Atamanchuk noted that implementation is the process of transposing legislative acts, including the establishment of order and procedures for their implementation (implementation in the narrow sense); this process also includes the interpretation, practice of application, realisation and enforcement of the rules of law by public authorities (implementation in a broad sense). In international law, it is the actual implementation of international

obligations at the national level, as well as one way of incorporating international legal norms into the national legal system, provided that the purpose and international norms are respected (Kalyuzhnyi & Atamanchuk 2015). In this article, implementation will be understood to be the state of factual incorporation of international legal norms regarding oral hearings of civil cases into the civil procedural legislation of Ukraine.

RESULTS AND DISCUSSION

Oral Hearings in the Court of First Instance

The Court recalls that the right to a "public hearing" in Article 6 § 1 of the Convention necessarily provides for a right to "oral examination". The Court has examined whether the lack of a public hearing at the level below may be remedied by holding a public hearing at the appeal stage. In a number of cases, it has found that the fact that proceedings before the appellate court are held in public cannot remedy the lack of a public hearing at the lower levels of jurisdiction where the scope of the appeal proceedings is limited, in particular where the appellate court cannot review the merits of the case, including a review of the facts and an assessment as to whether the penalty was proportionate to the misconduct. If, however, the appellate court has full jurisdiction, the lack of a hearing before a lower level of jurisdiction may be remedied before that court (Ramos Nunes de Carvalho e Sá v. Portugal [GC], § 192 and case-law references therein). As a result, a complaint concerning the lack of a public hearing may be closely linked to a complaint concerning the allegedly insufficient extent of the review performed by the appellate body (ibid., § 193) (Guide on Article… 2019).

Article 7 "Publicity of legal procedure" of the Civil Procedure Code of Ukraine refers to the construal of litigation to elements of such a fundamental basis as the publicity of the judicial process. At the same time, the article states that court cases are heard orally and openly, except in cases provided for by this Code. Pursuant to Article 43 (2) to (3) of Article 43 of the Civil Procedure Code of Ukraine, parties to the case are

entitled, in particular, to participate in court hearings and to provide explanations to the court (Civil Procedure Code of Ukraine… 2004).

Oral court hearings are one of the manifestations of civil procedural form, based on the right of everyone to be heard in court in his case. Civil proceedings in Ukraine are conducted in the order of lawsuit, criminal and separate proceedings. Claims can be simplified. The rules of lawsuit, unless otherwise expressly provided by the Code, apply to other proceedings to the extent that they can be applied to achieve the purpose of civil proceedings.

The criminal proceedings are intended to hear cases of claims for recovery of small sums of money in respect of which there is no dispute or applicant does not know about its presence. Simplified lawsuit is intended for consideration of: 1) minor cases; 2) cases arising from labour relations; 3) cases of granting a court permission for a temporary departure of a child outside Ukraine from a parent who lives separately from a child, who has no arrears of child support and who is refused by the other parent to be provided with a notarised consent for such departure; 4) cases of insignificant complexity and other cases for which rapid resolution of the case is a priority. The consideration of applications for a court order is conducted without a court hearing and the notification of an applicant and a debtor. Consequently, oral hearings are not peculiar to this category of civil cases.

The court shall consider a case in the summary proceeding without informing the parties about materials available in the case in the absence of a request by either party. At the request of one of the parties or on the court's own initiative, a case shall be heard in court with a notice (summons) from parties. Thus, oral hearings in summary proceedings are optional but may occur under certain conditions. However, when oral hearings in the case of the summary judgment proceedings are held, they begin with the first court hearing in which the case is considered on the merits. The preliminary hearing in the summary proceedings is not held. Another difference between litigation involving litigants in summary and common lawsuit proceedings is the lack of summary judgment.

The first court hearing in the general proceedings is preparatory. In a preparatory meeting, parties have the right to express their views on:

– final determination of a subject of a dispute and nature of disputed legal relations, claims and composition of participants in the trial;

– objections to the claims;

– circumstances of a case to be ascertained and the gathering of relevant evidence;

– challenges;

– an order of consideration of a case.

Finding out circumstances of a case and examining the evidence at the trial begins with the opening statement of the case participants. The introductory requirements are set out in Article 227, Chapter 6, Section 3, "Lawsuit Procedure" of the Civil Procedure Code of Ukraine. Accordingly, the opening statement is peculiar to this type of proceedings. The parties are not summoned to court proceedings in criminal proceedings (see commentary in section 2 of the CPCU).

Cases of separate proceedings are considered by the court in accordance with the general rules established by this Code, except for the provisions on competition and the limits of court proceedings, and other peculiarities of consideration of these cases are established by this (section 4 of the CPCU – V.K.) section (Part 3 of Article 294 of the CPCU) . Individual cases are dealt with by the court with the participation of an applicant and interested persons (Article 294 CPC Part 4). Accordingly, the parties to the individual proceedings must also be heard in the court hearing with the opening statement. In authors' opinion, the opening statement of parties is essential to clarify the circumstances of a case, to determine the subject matter and the limits of proof, the grounds for exemption, and must therefore be specified in the relevant rulings.

The language of the judiciary in Ukraine is the state language. According to Article 12 of the Law of Ukraine "On Judiciary and Status of Judges", courts use the state language in the judicial process and guarantees the right of citizens to use their mother tongue or the language they speak in the judicial process (On the Judiciary and Status of Judges… 2016). The Law of Ukraine "On Ensuring the Functioning of the Ukrainian Language as a State" provides that the only official (official) language in Ukraine is Ukrainian.

The language of the court may be used in a language other than the state language, in the manner prescribed by the procedural codes and the

Law of Ukraine "On Judicial System and Status of Judges" (On ensuring the functioning… 2019). Accordingly, as a general rule, the introductory word is pronounced in Ukrainian. Otherwise, a party to the case is entitled to use the services of an interpreter in accordance with Article 9, paragraph 4, of the Civil Procedure Code of Ukraine.

Part 1 of Article 227 of the Code of Civil Procedure of Ukraine establishes a sequence of statements of participants in a case, which generally follows from the logic of lawsuit proceedings, when one person (plaintiff) requests another person (defendant) with a statement of claim, which the latter is forced to answer – to provide arguments and objection to plaintiff's arguments. The first to make an opening statement is a party to the case who puts forward claims against other parties – a plaintiff.

A plaintiff is represented by a third party, who acts on his side, because it is interested in satisfying claims, because the court decision in the case may have a positive effect on an exercise of his rights and interests. After that the court hears a participant of a case to which claims are put forward – a defendant. For a defendant, the word is given to the third party on the defendant's side, because the satisfaction of a claim may adversely affect its rights and interests.

A lawsuit may be filed jointly by several plaintiffs or to multiple defendants, with each of the plaintiffs or defendants against the other party acting independently in the civil process. The Code does not explicitly specify the sequence of statements made by co-plaintiffs, co-defendants and third parties acting on the plaintiff's or defendant's side. Therefore, such a sequence is determined by a chairman of a court hearing for each of the groups of participants in the case – co-plaintiffs, third parties acting on the plaintiff's side, co-defendants, third parties acting on the defendant's side, using the authority to manage a course of a court hearing, ensuring the order of the proceedings committing procedural actions, exercising the procedural rights of participants in the judicial process and fulfilling their procedural obligations, directing judicial proceedings to ensure full, comprehensive and objective clarification of circumstances of a case (Part 2 of Article 214 of the Civil Procedure Code of Ukraine).

Part 1 of Article 227 of the Civil Procedure Code of Ukraine does not explicitly specify when an introductory word should be made by a third party who makes independent claims. Third parties claiming separate

claims for the subject matter of a dispute may enter a case before the conclusion of the preliminary proceedings or before the start of a first court hearing, if a case is considered in the order of summary proceedings, by filing a claim with one or more parties. In determining the sequence of speeches with introductory remarks in cases involving third parties with independent requirements, in authors' opinion, it should be borne in mind that part 3 of Article 52 of the Civil Procedure Code of Ukraine establishes that third parties who declare independent requirements for the subject dispute, enjoy all rights and have all the responsibilities of a plaintiff.

Accordingly, in the context of Article 227 (1), such third parties should be regarded as plaintiffs. In determining the sequence of statements made by a plaintiff and a third party with independent claims, a court, in authors' opinion, should consider whether a third party makes claims only to a defendant or also to a plaintiff. If a third party makes claims against a plaintiff, it is advisable to give the opening statement to that person first – to a statement of a plaintiff, who is a defendant with respect to such third party.

The Code refers to the other parties to a case, including in a lawsuit, the bodies and persons to whom the law has been granted the right to go to court in the interests of others. Such bodies, in the person of their representatives or officials, make the opening statement after a plaintiff, third parties acting on the plaintiff's side, a defendant, third parties on the defendant's side. An exception to this rule is a case when, in case of initiation of proceedings on a claim of a public prosecutor in the interests of the state, there is no authority empowered to perform the relevant functions of the state, or it lacks the authority to appeal to a court, in connection with which a prosecutor acquires the status of a plaintiff. In this case, a prosecutor makes the opening statement as a plaintiff.

The sequence of statements of participants of a case under consideration in a separate proceeding is not explicitly established by the norms of Section 4 "Separate Proceedings" of the Civil Procedure Code of Ukraine. Given the procedural role of an applicant and other interested persons in individual proceedings, it is advisable to first give the floor to an applicant and then to other interested persons, including the authorities and persons who are empowered by law to go to court on behalf of others.

As research has shown, the rulings on the termination of the preliminary proceedings and the appointment of a case for consideration in the Unified State Register of Judgments, the courts, as a rule, do not specify a clear sequence of statements with the opening statement of the case participants, determining the sequence of clarification of circumstances of a case and examination of evidence. This approach is acceptable when the subjective composition of case participants is not complicated by the plurality of plaintiffs, defendants, third parties, and other participants in the case.

However, in this case, a simple indication of the sequence of actions, which is already established by the CPC norms, is a manifestation of the underestimation of a role of a presiding judge in the leadership during a course of a court session. Where there are co-plaintiffs and/or co-defendants and/or a third party claiming independent claims in the case, several third parties who do not make independent claims, it is appropriate to establish the sequence of their speeches with the introductory words to properly ensure their right to be heard in court.

Part 2 of Article 227 of the Civil Procedure Code of Ukraine defines the content of the opening statement: case participants briefly state the content and grounds of their claims and objections to a subject of a lawsuit, provide necessary explanations about them. To a certain extent, the opening statement reproduces the results of the preparatory proceedings, the task of which is, inter alia, the definitive determination of the subject-matter of a dispute and nature of the disputed legal relations, clarification of objections to claims, determination of circumstances to be established. Given that the subject-matter of a claim under the procedural law is a substantive legal claim of a plaintiff against a defendant in respect of which he seeks a court decision, the wording of part two of the commented article seems inaccurate, given that it is about “the content and grounds of a claims … on substantive requirements..”.

If to consider this provision as one that distinguishes the contents of a plaintiff's and a defendant's introductory words (a plaintiff sets out the content and grounds of his claims, and a defendant – the content of the objections to the subject matter of a claim), it also looks impeccable. The question arises as to why only the content of objections to the subject matter of a claim is provided by a defendant, and the objections to the

grounds of a claim are ignored? For example, pursuant to Article 178 p. 4 part 5 of the CPCU, a defendant raises objections to the circumstances and legal grounds of a claim. It seems inappropriate at various stages of the proceedings to raise a separate objection to claims and a separate objection to their grounds.

Another disadvantage of Article 227 (2) is that the content of an opening statement that it has determined does not correspond to the procedural role of a third party on a plaintiff's side. Such a third party does not make its own claims and, as a rule, to object to a plaintiff's claims is not in its interest. Therefore, it is in its interest to speak in support of a plaintiff's claims, which the wording does not provide. Given the requirement of concise statement of arguments in the opening statement, it seems advisable not to repeat literally what is stated in the written statements of case participants, but to focus on those aspects that, based on the content of the written statements of case participants, most substantially justify the claims or substantiate the objections against them.

Article 227 of the Civil Procedure Code of Ukraine does not provide for the right of the presiding judge to suspend the opening of the opening statement by a party to a case. At the same time, the powers of a presiding judge, enshrined in Article 214 of the Code, give him reason to suspend a party to a case when his opening statement does not relate to a subject matter and grounds for a claim, removing from a trial all that is not essential to the solution of a case. After a speech of a case participant, his representative is heard.

The Code defines representatives as a separate type of litigant, distinguishing them from participants of a case and other participants of a judicial process. Thus, the fixing of a special rule on the statement with the introductory word of a representative of a case participant in an article "Opening statement of a case participant" is a prerequisite for a representative to take such a procedural action.

A person involved in a case may not make an opening statement when making this request. Such a request may be made orally and resolved by a court without access to a conference room. The refusal to grant such a request seems meaningless, since the content of an opening statement cannot be influenced by a court. A party to a case may confine himself solely to expressing his support for claims or denying them, which will

not contribute to the fulfilment of the objectives of civil proceedings and the achievement of his purpose. Pursuant to Article 227 (4), the court may order the parties to the case to provide a separate explanation for each of the claims.

Given that the parties to the case are a priori interested in the fullest substantiation of their legal position, the right of the court to oblige itself to give a separate explanation for each claim is somewhat inconsistent with the dispositive nature of civil proceedings. It seems appropriate here to emphasise the power of the presiding officer to make the opening statement on each of the claims separately.

Part 5 of Article 227 of the Code provides for the right of the parties to a case with the permission of a presiding judge to ask each other questions and establishes the order in which parties to a case ask such questions. This right also applies to representatives of participants in a case, who may also raise questions to other parties to a case. The refusal of a case participant to give the opening statement does not release him from the obligation to answer questions posed by case participants and a presiding judge. Although the first sentence of Part Five is worded in such a way that it can be interpreted as implying the right of a presiding judge not to allow the participants of a case to ask each other questions, it seems that a presiding judge does not have such a right.

A presiding judge is obliged to provide full, comprehensive and objective clarification of the circumstances of a case, which is impossible without participants of a case to ask each other questions about the subject and grounds of a claim. This provision merely indicates that a presiding judge determines at what point the parties to a case may ask questions. In doing so, a presiding judge must enable a party to whom a question is to be raised to complete the opening of the opening statement on the subject matter and the grounds for the claim. Thereafter, the presiding judge should be given the opportunity to ask the other parties to the case in the order specified in paragraphs 1-3 of part five of Article 227 of the Code.

The sequence in which the participants in a case ask each other generally corresponds to the procedural role they play in the process and coincides with the sequence of speeches with the opening remarks with one exception. The court hears the opening statement of a person who has addressed the court in the interests of another person as another party to

the case after hearing the plaintiff, a third party on his side, the defendant, a third party on his or her side, unless such person acquires the status of the plaintiff (see (comment on part one of this article). The question to be asked by a person who has appealed to the court in the interests of another person is right after the claimant. Participants in a court hearing may also participate in the examination of evidence. They have the right to give their explanations regarding written, physical and electronic evidence or protocols of their review, to ask questions to experts. The first question is asked by a person at whose request an expert was called. A person on whose statement the witness was summoned, raises the question of the former. Other persons may ask a witness a question in the order specified for an opening statement.

The general action is brought to a close by the court debate that precedes a decision. In the court debate, the participants of a case make speeches (a final word). In these speeches, reference can only be made to circumstances and evidence examined at a hearing. Each party to a case is given equal time to speak in a court debate. In the court debate, a plaintiff and his representative are the first to speak. Third parties, without independent requirements, appear in the court debate after a party from which side they are involved. The third party who has filed separate claims for the subject-matter of a dispute and his representative in the court debate are speaking after the parties. And only representatives of parties and third parties may participate in the court debate with requests.

The court may oblige a party to a case to determine whether only such party or his representative will make a speech. Bodies and persons who are empowered to go to court for a benefit of others are the first to debate the proceedings. They are represented by persons whose interests are in the proceedings. The length of the court debate is determined by a presiding judge, taking into account the opinion of the parties to a case, based on a reasonable time to give a speech. A presiding judge can stop the speaker only when he or she goes beyond the court hearing or repeats, or substantially exceeds the court-appointed time limit for speaking in court debates. With the permission of the court, speakers can exchange replicas. The right of the last reply always belongs to a defendant and his representative. Therefore, a presiding judge cannot refuse a reply to a

defendant or his representative after giving a reply to any other party to a case.

Oral Hearings in Higher Courts

Before the appellate courts: Article 6 § 1 does not compel the Contracting States to set up courts of appeal or of cassation, but where such courts do exist the State is required to ensure that litigants before these courts enjoy the fundamental guarantees contained in Article 6 § 1 (Andrejeva v. Latvia [GC], § 97). However, the manner of application of Article 6 § 1 to proceedings before courts of appeal depends on the special features of the proceedings involved; account must be taken of the entirety of the proceedings in the domestic legal order and of the role played therein by the appellate court (Helmers v. Sweden, § 31) or the court of cassation (K.D.B. v. the Netherlands, § 41; Levages Prestations Services v. France, §§ 44-45). 284.

Given the special nature of the Court of Cassation's role, which is limited to reviewing whether the law has been correctly applied, the procedure followed may be more formal (ibid., § 48). The requirement to be represented by a specialist lawyer before the Court of Cassation is not in itself contrary to Article 6 (G.L. and S.L. v. France (dec.); Tabor v. Poland, § 42) (Guide on Article… 2019).

With regard to the application of Art. 6 in the proceedings before the ECtHR of Appeal in § 176 of the decision in Chernega and Others v. Ukraine states that as the Court has stated on many occasions, Article 6 § 1 of the Convention does not compel the Contracting States to set up courts of appeal or of cassation, but a State which does institute such courts is required to ensure that persons having access to the law enjoy before such courts the fundamental guarantees in Article 6 (Chernega and others v. Ukraine 2019**)**. However the Court notes that the prevailing approach in its case-law is that Article 6 § 1 is applicable also to leave-to-appeal proceedings and that the manner of its application depends on the special features of the proceedings involved, account being taken of the entirety of the proceedings conducted in the domestic legal order and of the role of the appellate or cassation court therein (Case of Pasquini v. San Marino 2019).

The ECtHR also notes that given the special nature of the role of cassation courts, which is limited to reviewing whether the law has been correctly applied, the Court is able to accept that the procedure followed in such courts may be more formal (CASE OF ZUBAC v. CROATIA: *Judgment of the Second Section*. 11 October 2016. § 34).

In opening the question of open hearings in higher courts, the ECtHR indicates that the absence of a hearing at the second or third instance may be justified by the special features of the proceedings concerned, provided a hearing has been held at the first instance (Helmers v. Sweden, § 36, but contrast §§ 38-39; Salomonsson v. Sweden, § 36).

Thus, leave-to-appeal proceedings and proceedings involving only questions of law, as opposed to questions of fact, may comply with the requirements of Article 6 even though the appellant was not given an opportunity of being heard in person by the appeal or cassation court (Miller v. Sweden, § 30) (Guide on Article… 2019).

Important for the issue under study is Recommendation No. R (95) 5 of the Committee of Ministers to Member States Concerning the Introduction and Improvement of the Functioning of Appeal Systems and Procedures in Civil and Commercial Cases adopted by the Committee of Ministers on 7 February 1995 (Recommendation No. R (95) 1995). According to an article 6 of Recommendation in order to ensure that appeals are heard expeditiously and efficiently, states should consider taking any or all of the following measures:

– in states where oral proceedings are possible in the second court, enabling parties to agree to have the case decided without a hearing, unless the second court finds it necessary;

– reducing the length of oral hearings to what is strictly necessary, for instance by making more use of written procedures or by using outline arguments or written addresses;

– where oral hearings take place, ensuring that they are completed as soon as possible ("concentration of oral hearings"). The court should consider the case in connection with the hearing and should pass judgment immediately thereafter or within a short time period as provided for by the law.

Pursuant to Article 368 of the Code of Civil Procedure of Ukraine (2004), the case is considered by the court of appeal according to the rules

established for the consideration of the case in the procedure of summary proceedings, with the features established by this chapter. Cases before the court of appeal should be heard in court with the notification of the parties to the case, except in cases provided for by Article 369 of this Code.

Appeals against a court decision in a case involving a price lower than one hundredth of the subsistence level for able-bodied persons, other than those that are not subject to review in summary proceedings, are considered by the court of appeal without notification to the parties to the case. Appeals against a significant number of court decisions are heard without notice to the parties involved. However, in both of these cases, the court of appeal may consider appeals with participation of the parties involved in the case.

At the hearing, after the report of a judge-rapporteur, a person who filed an appeal provides explanation. If both parties have filed appeals, a plaintiff is the first to explain. Further explanations are given by other parties to a case. Having clarified circumstances and verified the evidence, the Court of Appeal gives the parties to a case an opportunity to speak in the court in the same sequence in which they explained.

At the beginning of the court session, the court may announce the time allotted for court debate. Each person involved in the court of appeal is given the same amount of time to speak. In the court of cassation, a complaint is considered according to the rules of the case consideration by the court of first instance in the order of simplified lawsuit procedure without notification of participants of a case. If necessary, case participants may be summoned to provide clarification on the case.

CONCLUSIONS

Thus, a comparative study of the case law of the European Court of Human Rights, the Recommendation of the Committee of Ministers of the Council of Europe, the existing civil procedural legislation of Ukraine and the practice of its application give grounds to conclude that the civil procedural legislation of Ukraine has largely incorporated the generally accepted European approaches to hearings of civil cases in the courts of first and higher instance. In the trial court, participants in a case have

ample opportunity to participate in oral hearings of their civil case. At the same time, a participant of a case has an opportunity not only to present the arguments of his claims and objections independently, but also to ask questions concerning the subject of evidence, other participants of a case, witnesses, experts.

Consideration of an application for a court order is absolutely justified without notification of the parties. After all, the relevant claims must be unchallenged and should be based on evidence that allows the court to ascertain the unchallenged claims. In such a case, it is inappropriate to spend litigation on organising and conducting an oral hearing. According to the debtor's statement, duly executed and filed, the court order is revoked and the claim can be further considered in the proceedings with all the guarantees of the right to an oral hearing.

Appeal review, given its current content, requires, to a lesser extent, oral hearings. Although the right to an oral hearing was substantially restricted in the trial court, the court of appeal should correct this deficiency and allow the party to state his or her arguments at the hearing. The cassation proceedings relate mainly to matters of law. In this regard, an oral hearing of the case participants is generally not required.

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