SUMMARIES OF THE CONFERENCE "SMALL CLAIMS PROCEDURE: THE EUROPEAN AND THE UKRAINIAN EXPERIENCE"

by Iryna Izarova and Radoslaw Flejszar

The International Scientific and Practical Conference, devoted to the topic of simplified proceedings '**Small Claims Procedure: the European and the Ukrainian Experience',** was held on 23-24 November in Kyiv, Ukraine. This conference was a significant event, firs of all, because of the composition of the co-founders, among which were the best Ukrainian law high schools – Taras Shevchenko University of Kyiv, National University 'Kyiv-Mohyla Academy' and National University 'Yaroslav the Wise Law Academy'. Our partnership with the Jagellonian University, undoubtedly, contributed to sharing of the best European practice with Ukraine!

During the conference the discussion and sharing of the leading European countries` knowledge was held, particularly in the field of national small claims procedures and the European Small Claims Procedure.

The well-known academics were among the key-speakers of the conference from the leading universities of Europe – Jagellonian University, Maastricht University, Leuven University, Salzburg University, Pavia University and Vilnius University. The conference was attended by the representatives of ten countries – Ukraine, Poland, Lithuania, Croatia, Italy, Germany, Austria, the Netherlands, Belgium and Luxemburg, ten of them were from the Council of Europe and nine – from the European Union. This was a great opportunity to hold an international discussion for sharing knowledge and the best European practices related to small claims.

Among the reports, included in the conference book, there are significant researches, related both to national small claims procedure of various states and the European small claims procedure, such as *The European Small Claims Procedure and its place in the system of Polish separate Proceedings*, written by **Dr. Małgorzata Malczyk**, assoc. prof. of Civil Procedure Department, Jagiellonian University and **Dr. Joanna May**, assoc. prof. The Nicolaus Copernicus University in Toruń.

Some of the authors` conclusions are extremely important for science development, among which the idea that the European Small Claims Procedure can be included in simplified and accelerated proceedings, since the course of this proceeding, and, in particular, the possibility of considering a case at a secret sitting indicates common features with this group of separate proceedings. Definitely, we

should agree, that in the case when the claimant submits the application in electronic form of payment, while in the course of which there will be no grounds for issuing a payment order, or the court ex officio waives the payment order or there is an effective opposition against the order for payment, it is not permissible the use of the European Small Claims Procedure.

One of the brilliant essays is devoted to comparing the Ukrainian Small Claims Procedure and the German Small Claims (*Bagatellverfahren*), as well as the European Small Claims Procedure, written by **Dr. Nazar Panych**, Dr. jur., LL.M., Institute of East European Law, Christian-Albrechts-University zu Kiel. According to their conclusions, comparative analysis of Part 6 of Article 19 of the Civil Procedure Code of Ukraine and para 495a of the CPC of Germany testifies that today the Ukrainian procedural law establishes considerably wider - in comparison with the German procedural law - limits for assigning the relevant case to a category of small ones. Moreover, if take into account the powers of the Ukrainian court, the cases of low complexity are also small, the price of which exceeds approximately 28,850 Euros, then the differences between the minor cases according to Ukrainian and German law become apparent. And only in comparison with the norms of the EU law, in particular, part 1 of Article 2 of Regulation (EC) No 861/2007 concerning the aspect of margin of discretion, these differences lose their essential character.

The essential difference between the CPC of Ukraine and the CPC of Germany is the regulation of the powers of the court to decide whether the consideration of a minor matter is to be with the notification (call) of the parties or without it. While the German court should consider a minor case with the notification (challenge) of the parties in the presence of the relevant request, the Ukrainian court has the right – even if there is a corresponding request - to decline it. Although the CPC of Ukraine theoretically sets a high barrier for a court that should prevent its potentially arbitrary rejection of the relevant request, it is impossible to exclude the formal reference by the court to the lack of a need for a court session, given the nature of the controversial legal relationship and the subject of evidence. This clause, in opinion of **Dr. Panych**, creates preconditions for simplifying small cases by limiting the participation in the case of the parties to the case, thereby contributing to a potential imbalance between the interests of the court and the parties to the case and, thus, may be one of the prerequisites for their further recourse to the ECHR.

An extremely important and interesting study published in the conference book is *Jurisdiction of small claims in civil proceedings* written by **Dr. Roksolana Khanyk-Pospolitak,** Head of Private Law Department, Law Faculty, National University 'Kyiv-Mohyla Academy.' In particular, it is worthwhile to support the viewpoint of the author regarding the unjustified placement of a definition of cases, which are small, in the paragraph on jurisdiction in the CPC of Ukraine, on the basis that in this case the question of which court shall consider the case is not resolved. The definition of 'small' cases, as the author rightly points out, should be contained directly in the chapter on simplified proceedings. The absence in the CPC of Ukraine of special rules for determining the territorial jurisdiction in the categories of cases considered under simplified procedure shows that such provi-

sions are governed by the provisions on the definition of territorial jurisdiction contained in Articles 26-30 of the CPC of Ukraine.

The simplified proceedings in the post-reform process also became a universal procedure for the courts of appeal and cassation. In view of this, the report of **prof. Kostyantyn Gusarov**, Head of Civil Procedure Department, National University 'Yaroslav the Wise Law Academy', entitled '*Simplicity of Proceedings for the Revision of Court Decisions in Civil Procedure*" is very interesting. In his work, the author defends the position that the term 'simplified proceedings' does not correspond to rather complicated procedures by which cases are solved in the Court of Cassation. Such 'not summary justice' within the limits of the civil procedural law of simplified proceedings in the order of cassation may take place, under condition of the necessity to depart from the conclusion on the application of the rules of law in similar legal relations set forth in decisions previously passed by the colleges or chambers of the Supreme Court. A separate mandatory condition for the transfer of the case to the Grand Chamber of the Supreme Court is the appeal of court decisions on grounds of violation of the rules of substantive and subjective jurisdiction. According to the author`s belief, the possibility of verifying the validity and (or) legality of a court decision using simplified forms of proceedings is highly controversial, and an instantiated review of court decisions under the rules of simplified proceedings should take place only in the absence of multi-subjective substantive legal and procedural legal relations. At the same time, the price of the claim or the value of the subject of the claim should be taken into account if the claim is not subject to monetary valuation. It seems also inappropriate to review a court decision under in simplified proceedings in the case when the person initiating such review is a person who did not participate in the consideration of the case, under condition that the court decides on the question of his/her rights, freedoms, interests and / or responsibilities.

The problems of cassation appeal of court decisions in small cases are extremely relevant and repeatedly raised in the theses of reports of the participants of the conference. The work of **Dr. Natalia Sakara,** assoc. prof. of the Civil Procedure Department, National University 'Yaroslav the Wise Law Academy', is specifically devoted to the problems of implementing *the right to appeal against judicial decisions in minor cases*. As the author rightly justifies, the legislative imposition of restrictions on the implementation of the right to appeal against judicial decisions in small cases does not in itself violate clause 1 of Art. 6 The ECHR, however, the lack of the legislative criteria to be taken into account by the courts in classifying the case as a small one as well as the uncertainty of the stage at which this issue is to be resolved and, subsequently, of the authorized court, may indicate a lack of "predictability" of the restriction and lead to a violation of the right to access the court of cassation.

Moreover, the practical experience was discussed with the representatives of judicial power – judges from Ukraine, Poland and Germany. A few of the generalization of the court practice reports were included in the conference book.

In the report of **Maksim Tytov**, Judge, Vice-Head of the Forth Circuit Court of Kyiv, **Tetiana Korotenko**, a judge assistant entitled '*Simplified Action Procedure:*

New Practice and Experience for Ukrainian Judges' it is stated, that it is not possible to provide statistics on the number of cases considered under simplified action procedure, compared to the total number of cases pending to be considered under action procedure, as well as the number of decrees on transition to consideration of the case under the rules of general proceedings, since Kyiv Obolonskyi District Court does not hold the records, which, in our opinion, is a disadvantage, which in future will not allow a more detailed generalization of the judicial practices.

According to this generalization, the authors argued, that the simplified action proceeding is intended to deal with the simplest cases, in proportion to the value of the claim, the priority of the written form, as well as in the absence of mandatory representation, it is necessary to clearly define in the legislation which cases can be considered in simplified proceedings. Taking into account the above, in the authors opinion, the court practice should develop clear, transparent, understandable criteria for assigning particular categories of cases to small ones, and accordingly, to consider these cases under simplified procedure. According to this, the court practice should develop an established procedure for determining in which cases the court can transfer from simplified proceedings to general proceedings, if the proceedings are open before the new edition of the CPC of Ukraine comes into force, but the parties wish to consider it in an order of simplified proceedings etc.

In the other court report written by **Larysa Shvetzova**, Member of the High Council of Justice, Judge of the Kharkiv Region Appeal Court, *The Practical Value of Small Claims in the Light of the CPC Changes,* the issues of appeal in Small Claims raise. As author admitted, the introduction of a new institution of small cases enables the quick solution of minor conflicts and the observance by the courts of reasonable timeframes for cases. In view of this, and also in view of the special status of the court of cassation, according to the author, the procedures in the court of cassation may be more formal, especially if the proceeding is carried out by the court after their consideration by the court of first instance, and then by the court of appellate instance.

In conclusion, we wish to express our gratitude for all the colleagues from judiciary for their reports, and thank for the contribution to the conference book! We hope that it will contribute to the further development, cooperation and dissemination of knowledge and experience of the best European practices in Ukraine and Poland as well.