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Efficiency of process

The regulatory basis of justice in Ukraine is represented by the Constitution that sets forth that justice in the country may be exercised exclusively by courts. Delegation or assumption of the courts' functions by any other authority is prohibited. Also, according to the Constitution, the courts have competence over any legal dispute or criminal charge, and establishment of extraordinary courts is not allowed. The Constitution contains a separate chapter that addresses fundamentals of the justice, courts, and judges functioning in the country, such as independence of justice, the general structure of a court system, jurisdictions, qualification requirements and status of judges and the main principles of justice. The President of the country appoints judges to the office based on the application made by the Supreme Council of Justice.

A court resolution is mandatory and binding for any person in the territory of the country.

The Supreme Council of Justice is the highest body that manages matters related to justice (except the administration of justice itself), such as, for example, submissions to the President for the appointment of judges, disciplinary sanctions on judges or state attorneys, permissions for the arrest of a judge, suspensions of judges, etc.

There is also the Law "On Justice System and Judges", which is a key enactment that regulates organisation and functioning of courts in Ukraine. This law sets forth that, *inter alia*, judgments, court hearings, and information about court cases are open to public observation, and any person can attend a court hearing and make an audio or video recording of it except in specifically provided exclusions from this rule or when the court rules for the closed hearing on good reason.

The judiciary system of Ukraine consists of courts of the first instance (local courts), courts of appeals, and the Supreme Court of Ukraine. The courts are also divided by specialisation – Civil, Criminal, Commercial and Administrative, as per clause 18 of the Law "On Justice System and Judges". At the same time, as of May 2019, there is also the High Anti-Corruption Court and the High Court on intellectual property matters, and the Constitutional Court of Ukraine functioning in the country, each of which represents separate specialisation.

Between 2016–2018 in Ukraine, we have seen the continuation of the process referred to as the "Judicial reform". It started with the introduction of several fundamental restatements and innovations in the laws regulating the judicial system organisationally – in particular amendments to the Constitution of Ukraine relating to justice functions, the Law "On High Council of Justice", restatement of the Law "On Justice System and Judges" – and had been developing further by the restatement of the major laws on procedures. Thus, the Codes of Civil Procedure, of Administrative Procedure and of Commercial Procedure have undergone complete restatements; the law on the "High Anticorruption Court" has been enacted.

This process of reforming the judicial system and procedures has resulted in some substantial changes in the respective areas and appears to have been aimed at improving justice efficiency, independence, and transparency of the courts, the optimisation of judicial procedures and raising their productivity.

According to the Ukrainian Constitution, the courts of Ukraine have jurisdiction over all and any disputes arising in the country. Therefore, a situation where a claimant has no competent court to consider a case is unlikely to happen. However, the prevailing opinion among the Ukrainian public for years has been that courts in the country are often biased and even corrupt, and are not an effective instrument to exercise justice. Parties that face litigation usually prepare for a prolonged process with an outcome that is hardly predictable, even for those who have reason to feel they are on the right side. For example, according to the public opinion survey, conducted in October 2018 by the "New Justice" Program with the support of the USAID, only 16% of the surveyed respondents expressed trust in the judiciary system of the country (but this, however, demonstrated an increase in trust to judiciary from 5% in 2015).

Courts of each jurisdiction have their instance levels and territorial competence, except for the Constitutional Court of Ukraine, which is a separate (and the only) judicial authority to hear constitutional cases, and whose resolutions are not the subject of review by the Supreme Court of Ukraine or any other authority. Establishment of a separate Anti-Corruption Court is a part of the judicial reform and anti-corruption efforts, prompted more by the international institutions, such as the IMF and the World Bank, than by domestic stakeholders. Though Ukrainian policymakers were fast at assuming the merits of passing the law on the Anti-Corruption Court, both local and international communities have observed anxiously the consistent efforts of the legislature to stall the process of the law passing and dilute the law itself. Moreover, the mere fact that the Anti-Corruption Court has been perceived as a necessary instrument to fight corruption in the country speaks of the inability of all the other numerous courts to cope with it.

Judicial consideration of most disputes starts in the courts of the first instance. Administrative courts consider disputes arising out of public-private relations, i.e. when a private law person or entity has a conflict with a public law entity. Commercial courts consider cases arising out of commercial activity, where disputing parties may be entities as well as individuals engaged in some sort of business activity, plus some specific cases, e.g. corporate disputes, insolvency cases, disputes relating to titles on securities, antitrust disputes, and some others. Civil courts have competence over all other disputes, some administrative disputes and also handle criminal cases. Proceedings in courts are governed by respective Codes of the procedure – the named above Codes and the Criminal Process Code. Courts of appeal consider cases that have been heard by the courts of the first instance and based on the evidence and arguments presented by the parties during the first instance hearing unless it is proven that presentation of the new materials had been impossible earlier for sound reasons. Courts of cassation consider cases only within the limits of the submitted statement of cassation. The Judicial Reform has led to the three formerly existing separate courts of cassation being eliminated and transfer of all cassation authority to the Supreme Court.

Some categories of disputes are heard by courts of appeal or even by the Supreme Court as the court of the first instance. For example, the Administrative Court of Appeal in Kyiv would consider cases arising out of challenging the Central Elections Commission acts, or actions of presidential candidates and their trustees, as a first instance court. The Supreme

Court, as a first instance court, would consider cases arising out of challenging the Central Elections Commission resolutions on the results of elections or referendum, actions or inactivity of the President, the Parliament and some other entities and early termination of an MP's powers. Civil courts of appeal consider cases arising out of challenging the awards of the arbitration courts and sanctioning of enforcement of the arbitration awards. In cases where a court of appeal considered a case as a court of the first instance, the Supreme Court would hear the case as a court of the appellate instance.

The ultimate level for cassation appeals in the country is the Supreme Court of Ukraine and appeals are admissible there only for specific type of cases, which do not include, for example, so-called "insignificant cases". There is also a possibility to initiate judicial review of a case after the final judgment has been made and even enforced, if new circumstances pertaining to the case have been discovered and such circumstances would have had influenced the outcome of the hearing substantially had they been found at the time of the hearing – this procedure has its specific rules and limitations, set forth by the process laws. As a rule, judgments of the courts of the first instance come into force and become enforceable either upon the lapse of the time for appeal or, if appealed, after a court of appeals upholds the resolution on the case, delivered by the court of the first instance. Judgments of the appellate courts come into force immediately at proclamation.

The Ukrainian courts have broad authorities as to the management of the cases they consider. In particular, courts may adjourn hearings in some cases, determine a procedure for hearing a case, suspend a proceeding, hold a hearing outside of the court premises, join or split proceedings, etc. Of course, this may be done only on good reason, provided by the law. The restated Codes of procedure have structured the process more strictly. In particular, the concept of a preparatory proceeding has received more weight and become more important in the process. While the Codes set forth three months as the maximum term for hearing a case in the court of the first instance, preparatory procedure takes up two of these three months, and the idea is that with the end of the preparatory procedure the parties will lose the right to submit new arguments related to the substance of the case, unless it will be well grounded that arguments were unavailable to a party during the preparatory procedure. At the same time, courts may act in strict compliance with the process laws only, and cannot operate in a way that is not set forth directly by the law of procedure. While hearing cases, the courts issue: a) definitive resolutions that settle disputes, order actions or confirm facts that have legal consequences; and b) procedural orders, rulings, etc. that are instruments of the proceedings' management. Ukrainian names for resolutions and orders depend on the kind of proceeding, court jurisdiction, the composition of the court (one judge or a panel) and the instance of proceeding (first, appellate or cassation). Apart from that, some courts are authorised to issue "separate rulings" that may be addressed to any person regarding whom a court has identified an illegal activity, and requesting such person to terminate violations of the law. Moreover, by issuing a separate ruling, in some cases, a court can initiate the start of a criminal investigation.

Process laws set forth quite short run-through terms for consideration of disputes, except criminal process, where an appropriate run-through term in the first instance is determined as "reasonable". In Civil, Administrative and Commercial proceedings, courts of the first instance must resolve the case within 90 days from the commencement of the procedure, as a general rule for disputes resolution; in the appellate and cassations instances – within 60 days. Theoretically, most disputes may be resolved in the first, appellate and cassation instances during a four-to-five month period; however, in practice, this usually takes from

one to three years. Commercial and Administrative courts are somewhat faster than Civil Courts, but it is a very rare occasion when a court considers a case faster than within six months.

Notwithstanding the recent changes in Ukraine and the reform aimed at raising the standards of justice, the courts are still seen by the majority of Ukrainians as corrupt and incompetent (following various public opinion polls). The Judicial Reform, at its beginning, was viewed as a chance to improve the situation and raise the trustworthiness of the judicial system. According to the new version of the Law "On Justice System and Judges", which came into effect in September 2016, a special non-governmental organ has been created as an aid to the High Qualification Commission of Judges – its name can be translated from Ukrainian as the "Public Integrity Council". This Council has been composed of representatives of NGOs, advocates, scholars, and journalists who respond to certain criteria and have gone through the defined selection procedure. The Council's function is to evaluate judges in the process of qualification testing and give recommendations to the High Qualification Commission of Judges.

In March 2018, the Public Integrity Council even declared that it was terminating cooperation with the High Qualification Commission of Judges because the latter systematically overruled, by the qualified majority, recommendations of the Council and admitted through the tests judges who did not qualify according to the Councils criteria of integrity. Another obstacle to the progress of the judiciary functioning had been the President of the country, incumbent in 2014–2019, who systematically breached a 30-day period of appointment of the newly qualified judges, stipulated by the law – in some cases, the President stayed the signing of the appointment decrees for years, without having any justification for that. At the same time, as of March 2019, there have been 2,116 vacant judiciary seats across the country. In other words, the effort to make the judges' qualification system transparent to society has obviously failed.

It would be inappropriate to say that the courts of Ukraine are entirely malfunctioning. Also, a good attorney usually can, if not fully eliminate the flaws of the judiciary, then substantially reduce these flaws by accurate and consistent actions.

Integrity of process

The laws of Ukraine provide that the courts form a separate, independent branch of the state authority and resolve disputes based on comprehensive, impartial and independent consideration of cases. There is a possibility to seek recusal of judges if grounds arise to suggest that a judge cannot exercise an unbiased approach to the case. In each court, cases are required to be allocated to judges automatically by a special software system. The purpose of the automatic allocation is to provide for impartial consideration of disputes and to resist corruption, as well as using it as a workload-management tool. There is also an online register of courts' resolutions in place, where the public can view court resolutions, definitive as well as procedural, throughout the court system; however, this register still operates with some flaws and does not guarantee absolute completeness. Some of the court resolutions may be recognised as classified, in part or in whole, in which case such resolutions are not accessible to public observation.

In general, court proceedings in Ukraine are public, which means that the public, and reporters, have a right to attend and observe the process unless a court specifically rules on a closed proceeding.

The Codes on procedure provide for the functioning of the Unified Courts Information-

Telecommunication System (UCITS), that would allow most of the process functions to be performed in the electronic form. However, from October 2017, when the implementation of the UCITS has been sanctioned by the Codes, the UCITS development has not been completed. Many of the judiciary experts express the opinion that the implementation of the UCITS is being deliberately hindered.

According to the Civil, Administrative and Commercial process law, if a court, while considering a case, believes that a law or other regulation is not compliant with the provisions of the Constitution, the court may refrain from application of such a law or regulation and apply provisions of the Constitution directly – in such a case, the court must apply to the Supreme Court for initiating a statement to the Constitutional Court for consideration of the constitutionality of the respective enactment.

Though the Constitution of Ukraine is an act that can be directly implemented by the courts while hearing cases, and the Ukrainian law doctrine recognises all values of the modern concept of human rights, quite often in practice Ukrainian courts, as compared to other European countries, deliver judgments that lack proper interpretation of laws and raise questions as to their impartiality – this is reflected not only in professional opinions but also in the media reports. As a consequence, the European Court of Human Rights appeals from Ukraine form one of the largest categories of cases. The statute law has overriding priority over natural justice, therefore litigating parties are highly dependent on the literal provisions of the applicable regulations.

To some extent, judicial discretion is balanced by the operation of the High Council of Justice and its Disciplinary Chamber and the High Qualification Commission of Judges which is involved in the appointment, dismissal and sanctioning of judges. The public has very little influence on the process of judges' appointment and dismissal. Efforts are being made currently by Ukrainian society and some state authorities to improve the operation of the country's judiciary. One of the positive results of the 2017 restatements of the procedure Codes is that provisions of the European Convention on Human Rights, and practice of the European Court of Human Rights, have been made a source of law for courts with even more certainty than before, by reflecting strict provisions to this effect in the Codes.

At the same time, this has been noticed by the legal professionals that courts, especially Civil courts of the first instance, quite often randomly refer to the resolutions of the ECHR when motivating their judgments, without proper analysis of how exactly an ECHR resolution pertains to the particular case and how it must influence the judgment to be made.

Privilege and disclosure

As a general rule, a party to a court hearing may be present in the court in person or be represented by a licensed law practitioner – an advocate. The fundamental enactment that governs client-advocate relationships is the Law "On Advocacy and advocates activity". This Law introduces a concept of the "advocacy privilege" which encompasses any information, known to an advocate, advocate's assistant or trainee, any other employee of an advocate, regarding the client or a person who applied to be a client, as well as regarding any matters related to such persons. Information or documents may be excluded from the advocacy privilege on a written request or consent of a client or potential client.

Advocates, as well as their assistants, trainees, and other employees, are obliged to keep undisclosed the information that falls within the advocacy privilege and they are also obliged to provide for facilities for keeping the privileged information undisclosed.

At the same time, advocates are obliged to disclose the privileged information in accordance with the legislation that regulates the anti-money-laundering activity, counteraction to terrorism financing and mass weapons proliferation.

The Rules of advocates' ethics, as an obligatory regulation, set forth criteria of conflict of interests avoidance that all advocates must observe when working with the clients.

The Law "On Advocacy and advocates activity" also sets forth guarantees of advocates that represent various restrictions on activities that may interfere and impede the work of an advocate or breach the advocacy privilege.

The Criminal Code of Ukraine contains four *corpus delicti* addressing specifically crimes that may be committed against advocates in connection with their professional activity, in particular: interference in the activity of an advocate; intimidation of or violence against an advocate; willful damage of advocate's property; and assault on an advocate.

Apart from the advocacy privilege, there are some other categories of information that are treated by Ukrainian law as information with restricted or privileged access. The best examples are military information with restricted access, personal data, and medical information. In cases where it is necessary to obtain and consider such information in a court proceeding, a court would issue a special ruling sanctioning necessary actions including the conduct of a closed (with no admission of the public) court hearing. In general, any person who has obtained a document, or has been acquainted with the information with restricted access or under privilege, is obliged to preserve it from unauthorised disclosure and otherwise treat it as provided by the applicable laws, irrespective of whether this was received during a court proceeding or otherwise.

Evidence

According to the Code of Civil Procedure, each litigating party is obliged to prove the facts to which it refers as to the ground for its statements, with some rare exceptions from this rule, stipulated by the law. Therefore, the evidence must be provided by the party who refers to it. Evidence cannot be based on assumptions. There is a direct prohibition for the courts to collect evidence on their own initiative except for specifically provided occasions, e.g. when the court doubts in *bona fide* the party or when the party applies to the court for requisition of the specific evidence based on the inability of the party to provide it independently. It is also required that a party that initiates requisition of evidence substantiates the impossibility of obtaining such a piece of evidence without the involvement of the court.

According to the law, any person who received a court requisition order must provide the requested evidence or justify the impossibility of doing so. A court may also issue an order compelling a person to provide evidence which can be enforced by the bailiff service. The Code of the Commercial Procedure contains the same rules.

Regulation of this subject in the Administrative procedure is predominantly the same but with some differences, reflecting the public-private nature of the administrative disputes and unequal ability of the parties to provide evidence in some cases. While the general rule is that each party is obliged to provide the evidence it refers to, a state institution shall be obliged to prove the legality of its resolution, activity or inactivity even in the role of a defendant. Also, a state institution cannot provide to the court evidence for the support of its challenged resolution if this evidence was not used as a ground for the resolution at the time of its conclusion, unless it is proven that obtaining such evidence at the time of conclusion of the resolution was not possible in spite of performing all necessary actions.

Courts may order the parties or third parties to submit evidence directly to the court or through one of the parties to the proceeding, and courts are authorised to decide whether a piece of evidence is admissible and relevant to the proceeding.

Costs

The costs of court proceedings consist of court duty and the expenses of the litigating parties. Expenses include legal fees and other factual spending which can be compensated to the winning party on account of the losing party according to the court ruling, in amounts that may be appropriately substantiated and recognised as reasonable by the court. While amount of court duties are set forth by the law, expenses vary from case to case. The court duties are usually payable by the party that initiates a proceeding or some procedural action in advance and differ depending on court jurisdiction, instance and the nature of the claim or motion. For example, a pecuniary lawsuit in the general Civil, Commercial or Administrative court of the first instance, filed by a legal entity, would be subject to a court duty of 1.5% of the claimed value, but not less than the equivalent of €64 and not more than €22,411 – in the Civil and Commercial courts, and from €64 to €640 in the Administrative courts (as of 10 June 2019).

Statements of appeal and cassation are mostly subject to a percentage of the court duty of the first instance (150 and 200%, accordingly).

As a rule, courts allocate officially confirmed costs of proceedings between the parties depending on the final judgment and in proportion to the upheld claims. A court may decide not to recognise some expenses of a party as a cost of proceeding, thus refusing to reimburse them on account of a failing party. The restated Codes on Civil and Commercial Procedure introduced the concept of preliminary determination of litigation cost and guaranteed deposit of cost. With filing a lawsuit and response to the lawsuit, the claimant and the defendant, respectively, must submit to the court a preliminary estimate of the cost. Failure in doing so will most probably result in refusal to award the costs to the party even in the case of a win. The court, in some cases, may oblige the claimant to deposit an estimated cost in the court's bank account in order to protect the defendant's rights to regain the cost should the judgment be in favour of the defendant. Some actions during the process, e.g. involvement of a third-party expertise, may be conditioned by a provision of the cost deposit by the initiating party.

The practice of recent years has shown that courts often demonstrated reluctance in recognising attorneys' fees as a redeemable cost if these fees exceed really meager amounts. That is to say, if a foreign entity compensates the attorney in accordance with the standards of the developed markets, it should be prepared to receive a refusal of the court to redeem the litigation cost in the full amount. Ironically, many Ukrainian judges, while going through the qualification appraisal procedure between 2016–2018, were exposed to having acquired assets of which value exceeded their official salaries thousands of times.

Litigation funding

There are no particular rules on litigation funding in Ukrainian law, except for state legal aid, where those eligible for the aid may receive it from the assigned state authorities. Any fee structure, including hourly rates, fixed fees, conditional or success fees, are permitted in Ukraine. All of these fee structures are used in practice. Third-party funding is allowed. However, it is impossible to have legal fees and other litigation-related expenses compensated unless they are factually paid exactly by the party to the proceedings.

Insurance of the litigation expenses is not practiced by the local insurance companies. It is quite common for the litigation attorneys to agree with the clients on a success fee contingent on the outcome of the effort.

Class actions

Ukrainian law does not recognise Class Actions as a specific category of cases. According to the process law, each party that seeks judicial protection of its interests has to file its own statement of claim against a particular defendant. There is a concept of a "third party with own claims" which means a party that joins an already commenced litigation proceeding with its own claims on the subject of the dispute. The number of such third parties that may join the proceeding is not limited.

Interim relief

In any type of proceedings, various interim measures aimed at securing the claim are available after the claim is filed and, in some cases, prior to that, such as seizure of assets, provision of proof, prohibition of certain actions, obligation to perform certain actions (the named may be treated as Ukrainian analogs for attachment and injunction), suspension of a public agency's decision, etc. Examples of what resembles interim relief applications that parties may file are motions for the involvement of third parties; preliminary injunctions or orders; requests for obtaining evidence; requests for expert opinions; summoning and questioning of witnesses, etc.

Usually, a party filing an interim relief application covers the costs that arise as a result of this. For example, the party requesting an expert opinion would be required to make an advance payment for the services of the expert or expert institution. These costs are to be finally allocated between the parties by the court when rendering a judgment. Restatements of the Codes of the civil, administrative and commercial procedure provide for pre-action interim remedies on a broader basis than before the restatements. These remedies may be such as the provision of evidence, observation of premises related to the disputed matter, prohibition to perform specific actions and the arrest of assets. In civil and commercial proceedings, courts may apply interim remedies not explicitly mentioned by law if it is considered most appropriate in a particular case. Litigating parties in the civil and commercial procedure may also avail from counter-remedies, whereby a party that is granted by the court with interim relief is at the same time obliged by the court to procure possible compensation of losses to the other party.

In order to obtain pre-action interim remedies, the interested party should file a motivated motion to the court; the latter has the authority to uphold the motion as well-grounded or to dismiss it as not sufficiently grounded. A claimant must file a statement of claim within a limited number of days following the court ruling on granting pre-action interim remedies. If the claimant fails to do so, the pre-action remedies terminate.

As regards interim relief within international arbitration, the Law "On International Commercial Arbitration" provides that it is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, a court to order interim measures of protection and for a court to take a decision granting such measures. A court may request a party to provide security to cover possible losses on the other's party side as a result of imposing interim measures. Some instruments used in other jurisdictions, e.g. freezing orders or some kinds of the injunction, are not known in the Ukrainian procedure regulations, but in most cases, there are instruments with similar effect. Difficulties that arise in using

them stem more from the weak law-enforcement system in Ukraine than from the lack of legislative instruments.

Enforcement of judgments

The Ministry of Justice of Ukraine is the governmental body that is responsible for the operation of the state enforcement service and the regulation of private bailiffs. There are specific regulations that govern enforcement proceedings. The fundamental regulations in this area are the Law "On entities that enforce judgments and resolutions" and the Law "On enforcement procedures", both enacted in June 2016. The Laws provide for the operation of the state and the private bailiffs and regulate the proceedings of enforcement.

There is the Unified Register of Debtors that is run by the Ministry of Justice. The debtors (except state and municipal institutions, debtors in non-property claims and some others) become reflected in the Register at the time of commencement of the enforcement proceeding. The Register is open for access and it is possible to check whether a particular person or an entity is registered there as a debtor with outstanding obligations under enforcement.

The general limitation term for the presentation of an enforceable resolution for enforcement is three years, but for the state institutions as claimants it is three months, from coming of the resolution into force. The state enforcement service withholds an enforcement duty (in proprietary claims it is 10% of the amount or assets' value to be enforced, with some specific exceptions and alterations from this).

As a general rule, a holder of a court award needs to apply to the state enforcement service with a statement of enforcement or to assign a private bailiff, and if such application or assignment is done in accordance with the regulation, the state enforcement service or a bailiff will commence an enforcement proceeding. In the course of the enforcement proceeding, parties to it (the claimant and the defendant) and, in some cases, third parties, may apply to courts, or vertically up the Ministry of Justice functions, with appeals and statements regarding protection of their interests.

Foreign judgments are subject to enforcement proceedings in the same manner as domestic judgments, but after their recognition by a local court, per the Ukrainian civil procedure and applicable international treaties that govern such recognition, or on a reciprocity basis. The general limitation term for the presentation of a foreign judgment for recognition in Ukraine is three years from the day of the award.

Enforcement against foreign individuals or entities, situated or having assets in Ukraine, is to be exercised according to the general rules.

Foreign arbitral awards can be enforced in Ukraine pursuant to the international treaties, such as the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) and the European Convention on International Commercial Arbitration (Geneva, 1961), as well as under the reciprocity principle. In the latter case, it shall be presumed that a basis for reciprocity exists unless it is proven otherwise. Provisions of the Code of Civil Procedure apply to the enforcement of foreign judgments at all times when there is no superior international treaty on the matter at hand. The Code provides that enforcement of a foreign court resolution can be rejected when any of the explicitly listed circumstances exist, but the state courts do not have the competence to review foreign judgments or arbitral awards in their substance. There is a list of grounds for rejection of enforcement of foreign judgments, set forth by the Code of Civil Procedure, which may be complemented or superseded by international treaties. The basic grounds for

dismissal of the award include: breach of exclusive competence of the Ukrainian courts; unawareness of a party to the dispute about the procedure; unenforceability of the judgment in accordance with the laws of the place of trial; existence of a conflicting judgment or active procedure in Ukrainian courts; lapse of the term for recognition; inadmissibility of the subject matter of the dispute for consideration in the Ukrainian courts; existence of an earlier judgment on the same subject between the same parties; and possible violation of the Ukrainian public order or national interests by the requested enforcement. Also, foreign judgments and awards against a strategic defense industry enterprises are not enforceable in Ukraine, as well as judgments in favour of an "aggressor" country or entities associated with it. It is also possible to obtain interim measures from the state courts at the stage of recognition and enforcement of an arbitral award in Ukraine. Garnishment enforcement measures are provided for by the law, and they may be exercised if there are assets of the debtor in possession of a third party or owed by it to the debtor.

Cross-border litigation

The Code of Civil Procedure and the Code of Commercial Procedure of Ukraine set forth that foreign parties can sue and be sued in Ukraine in the same way as the residents. The Code of Administrative Procedure sets forth that foreign persons and entities have the same rights to justice as the residents have. Some exceptions from this general rule can be provided explicitly by the law, but this has not been done to any substantial extent so far, except as by the sanctions introduced in relation to the conflict in eastern Ukraine and Crimea. In addition to the local laws, the international treaties apply to the procedural status of foreign parties to the litigation. In the Administrative jurisdiction, foreign parties generally may act as claimants in the same manner as the local parties, while the defendant side may be represented by the Ukrainian public bodies according to the subject matter of this jurisdiction, with some exclusions from this rule, specifically mentioned by law. For example, compulsory extradition of a foreign citizen from Ukraine requires an administrative lawsuit to be filed by a competent authority versus an individual.

There is a concept of "legal assistance" used in the Ukrainian process regulations, which means cooperation between judicial and enforcement authorities of different countries. In the process of litigation, a Ukrainian court can interact with authorities from other countries where there is a treaty governing international legal assistance in order to receive help in the litigation process, such as the summoning of parties, provision of evidence, service of documents, etc. In the same manner, Ukrainian courts and other authorities may assist foreign courts in litigation proceedings that involve Ukrainian elements. In particular, Ukraine is a successor-party to the Hague Convention on Civil Procedure of 1954, and starting from 2001 is a party to the Hague Convention on the obtaining of evidence abroad in civil and commercial proceedings of 1970. Legal assistance is available to the litigating parties also in the absence of international treaties, however, in this case, the interaction between the judicial authorities would be exercised via the Ministry of Foreign Affairs offices and therefore would be considerably slower and less efficient.

International arbitration

In addition to the state courts, Ukrainian law recognises domestic arbitration and permanent or *ad hoc* international commercial arbitration. There is a category of disputes that fall within the exclusive jurisdiction of the Ukrainian state courts and the Constitutional Court of Ukraine, which includes, as a rule, relationships with the involvement of the state interest. For example, disputes falling under the jurisdiction of the Administrative or Criminal courts

may not be resolved in the arbitration or ADR procedures. The primary rules governing international arbitration with the seat of the tribunal in Ukraine are set forth by the Law of Ukraine "On International Commercial Arbitration". Some rules concerning international arbitration are also found in the Code of Civil Procedure, the Law of Ukraine "On enforcement procedures". The permanent Ukrainian arbitration courts operate according to their by-laws.

The general rule is that a national court may not intervene in arbitral proceedings except for very few reasons specifically provided by the law. If any of the parties so requests, a state court shall stay its proceeding and refer parties to arbitration in disputes that are covered by an arbitration agreement, unless it finds that the latter is not applicable. In some cases, a party may also request a competent court to consider the issue of arbitral tribunal jurisdiction. According to Ukrainian law, arbitration awards are binding upon the parties and enforceable through the state courts and the enforcement service or private bailiffs. To get enforcement of an arbitration award, a claimant needs to apply to a general Civil court to get an enforcement order within three years from the date of the arbitration award. An arbitral award may be set aside by a local court of appeals if reasons for that, explicitly listed in the law, exist. Disputes regarding the competence of an arbitration, situated in Ukraine, fall within the territorial jurisdiction of the respective courts of appeals. The application for setting aside an award of arbitration should be made by the complainant within three months from the date of the award, and reasons for setting aside an award include undermined competence of the arbitration tribunal, incorrectness of the arbitration procedure and non-conformity with the public order. There are two main international commercial arbitration institutions in Ukraine – the International Commercial Arbitration Court and the Maritime Arbitration Commission of the Ukrainian Chamber of Commerce and Industry. Also, there are a number of arbitration institutions at various industry organisations and professional associations, however many of them do not function actively.

Mediation and ADR

Litigation remains the prevailing method of dispute resolution in Ukraine, though arbitration is also frequently used. Generally, cross-border commercial disputes, with few exceptions, may be referred to either local or foreign commercial arbitration. Mediation is emerging but is rarely used, except for financial relations between corporate borrowers and banks, who can benefit from the Law "On Financial restructuring" which came into force in October 2016 and set forth in detail the organisation and procedure for the restructuring of non-performing loans. There is also a concept of settlement agreement used in the Civil and Commercial process codes, and disputing parties may agree on any procedure of reaching a settlement agreement unless it contradicts the applicable laws.

As regards settlement of disagreements between business entities and state institutions, the office of the Business Ombudsman is worth mentioning – it was established in 2014 and its core body, the Council, operates as the mediator between businesses and regulators. Negotiations are generally recognised as a helpful means of dispute resolution, but the involvement of outside experts is uncommon. When concluding commercial contracts, domestic businesses mostly rely on litigation as a dispute resolution method in case of a conflict with their counterparts. As an exception from this general trend, banks rather frequently insist on referring disputes with retail borrowers to the arbitration tribunals, but this is mainly because these tribunals operate on the basis of the banking associations.

Regulatory investigations

There are several public agencies operating in Ukraine whose functions may be characterised

as "investigatory"; however, the term itself is not embedded in any of the regulations governing the activity of these agencies. Amongst the most active agencies that combine regulation and controls over compliance with the rules are: the National Bank of Ukraine (the NBU); the Anti-Monopoly Committee (the AMC); and the State Fiscal Service (the SFS) of Ukraine (which currently is under process of splitting into separate State Tax Service and State Customs Service). The AMC has the authority to investigate anti-trust and anti-competition violations, and its authority covers almost all areas of commercial activity in the country and a wide range of public regulatory activity. The NBU started investigatory action in 2015, commencing with thorough banking industry diagnostics, aimed at identification and resolution of malfunctioning, non-transparent and non-compliant banks. A substantial part of these diagnostics consisted of procedures based on the investigatory methodologies. Moreover, the investigatory element has been interwoven into many regulations of the NBU related to banking supervision and AML control, which are likely to stay for a long time. The SFS's purpose is to investigate tax avoidance, and this agency uses instruments both unique, as well as similar to those used in the investigation of other white-collar crimes and violations.

According to all applicable laws, any regulatory investigation in Ukraine may only be conducted in strict compliance with the procedural rules that specifically apply to the particular survey. Therefore, any deviation from the applicable regulations, wrong action or inaction, is a ground for applying to the competent court (in most such cases, to the Administrative courts) for protection of rights.

The courts have jurisdiction over any and all procedures exercised by the state institutions.

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Oleksandr Zavadetskyi started his career in 1996 and received his advocacy licence in 2001. Oleksandr has gained substantial hands-on experience in Litigation, White-Collar Crime, and Finance Regulation. Zavadetskyi Advocates Bureau has been assigned to handle litigation and white-collar crime cases, as well as to provide advice in various areas of business and civil law, by high-profile international corporations. Upon introduction of the US and the EU sanctions, related to the conflict in eastern Ukraine, Oleksandr has also been dealing with sanctions delisting assignments.

Along with practising as an advocate, Oleksandr previously occupied managerial positions in multinational banking groups such as Raiffeisen, Citigroup, Swedbank, Commerzbank, where he managed legal affairs and recovery of non-performing loans, and in the National Bank of Ukraine.

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