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ECONOMIC PROCEDURAL LAW

METHODOLOGICAL MANUAL

of the course of lectures in English for Law students and post-graduates of the National University «Odesa Law Academy»

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Methodological manual is worked out for the law students of higher education institutions who study law disciplines in English. It provides students with wide prospect of particularities of Economic procedural law, allowing them to acquire deep knowledge in the specifics of legal regulation of economic procedural relations. Methodological manual consists of the programme of the course, lecture course, includes list of exam questions.

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INTRODUCTION

Nowadays, most of world economics develop really fast. They are characterized by the processes of globalization and transformation, as well as that economic relations between entities become more complex involving big number of participants into these relations. In this condition the role of state is to ensure proper protection of disputed rights and legal interests of business entities. The major place in this process in Ukraine is held by economic courts.

Under economic courts' jurisdiction are all disputes between economic entities arising during conduction of economic activity. The specialization of economic courts provides the opportunity of protection of main rights and interests of economic entities, ensuring the stable conditions for their functioning and development. According to Article 2 of Economic Procedural Code of Ukraine the objective of economic litigation is fair, impartial and timely resolution of disputes related to the conduct of economic activity and the consideration of other cases assigned to the jurisdiction of the economic courts with the purpose of efficient protection of violated, unrecognized or disputed rights and legitimate interests of individuals, legal entities and state.

It should be emphasized, that due to the recent reform of court system of Ukraine, unification of procedural rules, adoption of new provisions in the procedural codes, the necessity of studying of economic procedural law particularities has increased.

Economic procedural law is a branch of law that shows the benefits of combination of theoretical provisions with practice for resolving of complicated problems of economic procedure. Therefore, study discipline of economic procedural law gives the possibility to deeply understand the special features of economic procedure, broaden the understanding of particularities of commercial activity.

While studying of economic procedural law students will have possibility to understand all the specialties of economic litigation and other forms of procedure in economic courts, will elaborate the possibility to resolve the dispute by arbitral courts, will study the special issues of enforcement proceeding. Moreover, studying of this scientific discipline in English will create conditions for development of fluency and accuracy in usage of procedural terminology and special vocabulary.

LECTURE COURSE

TOPIC 1.
The definition and the system of economic procedural law of Ukraine

1. The system, composition and the structure of Economic courts of Ukraine, their place in the court system of Ukraine.
2. Tasks of Economic courts. Connection between economic activity and economic dispute. The principles of economic litigation.
3. The right to apply to Economic court.
4. The definition of economic procedural law, its object and methods. Forms and stages of economic litigation.
5. Sources of economic procedural law.

1. The system, composition and the structure of Economic courts of Ukraine, their place in the court system of Ukraine.

Pursuant to the Law of Ukraine "On the Judicial System and Status of Judges" dated 2 June 2016 (the "Law"), the existing court system of Ukraine has changed significantly.

The Law provides for a three-tier court system in Ukraine comprising local courts, appellate courts, and the Supreme Court. No changes are introduced as to the specialization of the local and the appellate courts.

The Supreme Court consists of five chambers: the Cassation Civil Court, the Cassation Criminal Court (both acting as the cassation instance court for cases resolved by the local and the appellate common courts), the Cassation Economic Court (acting as the cassation instance court for cases resolved by the local and the appellate economic courts), the Cassation Administrative Court (acting as the cassation instance court for cases resolved by the local and the appellate administrative courts), and the Grand Chamber of the Supreme Court (responsible for the uniform application of legislation by the cassation courts and acting as the appellate instance court in cases considered by the Supreme Court).

Each cassation court consists of separate chambers specializing in particular categories of case. The Cassation Economic Court includes separate chambers

for resolving corporate disputes, bankruptcy cases, antimonopoly disputes.

In addition, there are two new courts: the Supreme Court on Intellectual Property Issues (still in the process of formation) and the Supreme Anti-Corruption Court. Both of them act as first instance courts in resolving cases of their specialization.

The courts of Ukraine form a unified system. Creation of emergency and special courts is not allowed.

The structure of economic courts.

According to the Chapter 2 of Law "On the Judiciary and the Status of Judges" local economic courts are district economic courts.

The local court is a court of first instance and carries out justice in accordance with the procedure established by the procedural law.

Local economic court consists of judges. It has a chairman of the court and the deputy chairman (vice-chairman).

According to Article 26 of the Law appellate courts for the review of economic cases are the appellate economic courts, which are formed in the appellate districts.

The Court of Appeals may form *court chambers* for consideration of certain categories of cases.

The court chamber is headed by the secretary of the court chamber, who is elected from among the judges of this court for a term of three years.

The Court of Appeals has the chairman and the deputy chairman.

The Supreme Court is the higher court in the judicial system of Ukraine, which ensures the consistency and unity of judicial practice in the manner established by procedural law.

The Supreme Court includes judges in a number not more than two hundred.

As were mentioned above, the Supreme Court consists of:

1) the Grand Chamber of the Supreme Court;
2) Court of Cassation Administrative Court;
3) Economic Court of Cassation;
4) Cassation Criminal Court;
5) Cassation Civil Court.

Each cassation court consists of judges of the specialization.

The Supreme Court has a Plenum of the Supreme Court to resolve issues identified by the Constitution of Ukraine and the Law **"**On the Judiciary and the Status of Judges".

The Supreme Court is headed by the Chairman of the Supreme Court elected and removed by a secret ballot by the Plenary Session of the Supreme Court from among the judges of the Supreme Court in accordance with the procedure established by the Law.

The Court of Cassation is headed by its chairman.

The deputy chairman of the cassation court exercises administrative powers, determined by the chairman of the cassation court.

According to Article 45 of the Law the Grand Chamber of the Supreme Court is a permanent collegiate body of the Supreme Court, which consists of twenty-one judges of the Supreme Court.

The Grand Chamber of the Supreme Court:

1) in cases determined by law, review judgments in cassation order in order to ensure the uniform application of the rules of law by the courts;

2) acts as a court of appellate instance in cases considered by the Supreme Court as a court of first instance;

3) analyze the judicial statistics and study judicial practice, carry out the generalization of judicial practice;

4) carries out other powers, determined by law.

The Plenum of the Supreme Court is a collegiate body composed of all judges of the Supreme Court.

The Plenary Session of the Supreme Court adopts resolutions. The decisions of the Plenum of the Supreme Court shall be signed by the presiding judge at the plenary session and the plenary secretary and published in an official press and placed on the website of the Supreme Court.

The Scientific Advisory Board is formed at the Supreme Court from among highly qualified specialists in the field of law for the preparation of scientific opinions on the activities of the Supreme Court, which require scientific support (Article 47 of the Law of Ukraine "On the Judicial System and Status of Judges).

For the resolution of business-related disputes, a foreign or Ukrainian legal entity or individual entrepreneur may apply to an appropriate Ukrainian court or to an appropriate arbitration tribunal or institution within or outside Ukraine. A legal entity's/individual's right to apply to a Ukrainian court may not be waived by contract, not even by an arbitration agreement between the parties. If an arbitration agreement exists between the parties, the party objecting to the review of the dispute by a Ukrainian court must raise such objection in the relevant court proceedings before making its first submission

on the merits of the dispute; otherwise, the court will accept jurisdiction and will proceed to review the dispute and to render a decision.

2. Tasks of Economic courts. Connection between economic activity and economic dispute. The principles of economic litigation.

According to Article 2 of Economic Procedural Code of Ukraine the objective of economic litigation is **the fair, impartial and timely resolution of disputes related to the conduct of economic activity** and the consideration of other cases assigned to the jurisdiction of the economic court with the purpose of effectively protecting the violated, unrecognized or disputed rights and legitimate interests of physical and legal entities, state.

The court and parties to the court proceedings must be guided by the tasks of economic proceedings, which prevails over any other considerations in the court proceeding.

Therefore, the main task of economic litigation is fair, impartial and timely resolution of economic disputes, that relate to conducting of economic activity.

As to the **connection between economic activity and economic dispute** it should be outlined that, according to Article 3 of Economic Code of Ukraine economic activity should be understood as the activity of business entities in the area of social production, aimed at manufacturing and sale of products, execution of works or providing services of value character that have price distinction.

Economic activity, carried out to achieve economic and social results and in order to generate profit shall be deemed entrepreneurship, and business entities shall be deemed entrepreneurs. Economic activity may be carried out without the purpose to generate profit (non-profit economic activity). Economic and production relationships shall be deemed those, arising between business entities in the course of economic activity.

So, due to the abovementioned definition of economic activity, it could be concluded, that economic dispute essentially occurs when relations between businesses break down. For example, a dispute may arise when one party fails to pay money that they owe to another. Or a dispute might develop over a disagreement as to the terms of a lease. **Economic disputes occur from economic activity and have economic characteristics.** Economic disputes occur before the economic court procedure.

The basic principles of litigation are:

1) the rule of law;
2) the equality of all participants in the trial before the law and the court;
3) transparency and openness of the trial and its complete fixation by technical means;
4) competition of the parties;
5) dispositivity;
6) proportionality;
7) obligatory of court decision;
8) ensuring the right to appeal against a court decision in cases determined by law;
9) the reasonableness of the terms of consideration of the case by the court;
10) the inadmissibility of abuse of procedural rights;
11) reimbursement of the court expenses of the party in whose favour the court decision has been made.

The interdisciplinary principles of economic litigation are:

- Independence of courts. (Art. 6 of the Law of Ukraine "On the Judicial System and Status of Judges"). While executing justice, the courts are independent of any unlawful influence. Courts administer justice on the basis of the Constitution and laws of Ukraine and on the principles of the rule of law.
- The right to a fair trial. (Art. 7 of the Law). Everyone is guaranteed protection of his rights, freedoms and interests in a reasonable time by an independent, impartial and fair court.
- The principle of hearing the case in a competent court (Art. 8 of the Law). Nobody shall be deprived of the right to hear his case in a court to whose jurisdiction it is assigned by a procedural law. A judge shall examine cases received in accordance with the procedure for the distribution of court cases established in accordance with the law. The distribution of court cases between judges cannot be influenced by the wishes of a judge or any other person.
- Equality before the law and the court. (Art. 7 of Economic Procedural Code of Ukraine). Justice in economic courts is carried out on the principles of equality of all legal entities, regardless of the legal form, form of ownership, subordination, location, place of creation

and registration, the legislation according to which the legal entity is established, and other circumstances; the equality of all individuals irrespective of race, colour, political, religious or other beliefs, gender, ethnic or social origin, property status, place of residence, language or other characteristics; equality of physical persons and legal persons, regardless of any signs or circumstances.

- The principle of free access to professional legal assistance. Everyone has the right to a professional legal assistance. In cases stipulated by law, the state provides professional legal assistance for free.
- Publicity and openness of court proceedings (Art. 11). Judicial decisions, court hearings and information on cases that are considered by the court are open, except in cases established by law. No one may be restricted in the right to receive verbal or written information on the outcome of the case consideration in court. Any person has the right to free access to a court decision in accordance with the procedure established by law.

The consideration of cases in economic courts shall be conducted orally and openly, except in cases stipulated by the Code. Any person has the right to be present at an open court hearing. From a person who wishes to be present at a court session, it is prohibited to require any documents other than a document certifying a person (Art. 8 of Economic Procedural Code of Ukraine).

- Obligatory nature of court decisions. (Art. 13 of Economic Procedural Code of Ukraine). The court shall exercise control over the execution of a court decision within the limits of the powers granted to it by law.
- The principle of realization of the right to review a case and appeal a court decision (Art. 14 of Economic Procedural Code of Ukraine).
- Also some specific principles of economic litigation should be outlined, among them are:
- the principle of procedural savings or rationalization;
- the principle of stimulation of pre-court and arbitrational regulation of dispute, of conclusion a settlement agreement;
- the principle of operational efficiency;
- the principle of procedural formality;
- the principle of priority of object competence under general competence.

3. The right to apply to Economic court.

According to Article 4 of the Economic Procedural Code of Ukraine legal entities and individual - entrepreneurs, individuals who are not entrepreneurs, state bodies, bodies of local self-government authorities have the right to apply to the economic court for the protection of their violated, unrecognized or disputed rights and legitimate interests in cases assigned to the jurisdiction of the economic court, as well as for the implementation of measures envisaged by law aimed at preventing an offense.

The persons entitled to apply to the court in the interests of other persons have the right to apply to the economic court in cases brought under the law to its jurisdiction.

A legal entity's/individual's right to apply to a court may not be waived by contract, not even by an arbitration agreement between the parties. The right to apply to the Economic Court in the procedure established by the Code is guaranteed. No one shall be deprived of the right to review his case in the economic court, to which jurisdiction it is assigned by law.

For the resolution of business-related disputes, a foreign or Ukrainian legal entity or individual entrepreneur may apply to an appropriate Ukrainian court or to an appropriate arbitration tribunal or institution within or outside Ukraine.

4. The definition of economic procedural law, its object and methods. Forms and stages of economic litigation.

Economic procedure law is a complex of legal provisions, which regulates the organization and procedural activity of economic courts and other entities while realization of justice in economic cases. As well as that, economic procedural law regulates relations concerning prejudicial and arbitration dispute resolution and execution of economic courts judgments.

The object and methods of economic procedural law of Ukraine. Economic law, like any other branch of law, has its object – a range of relationships and activities that are regulated by the rules of this branch of law. Such an object are economic procedural relations and economic procedural activity.

As to the methods of economic procedural law the two main parts of its method could be outlined – the method of subordination (imperative method) and the method of coordination (dispositive method).

The method of subordination means that:

- procedural norms ensure the leading part of a court as the body of government authority;
- the court has the right of control over the actions of participants of the trial;
- there is a possibility to enforce the execution of a court decision;
- the consideration of the case take place in a clearly-established procedure, where binding and prohibitive norms dominate;
- rulings, decisions and judgements of the economic court are obligatory to execution by physical persons and legal entities, state, governmental bodies and bodies of local self-government authorities.

The dispositive method of economic procedural law means that:

- the parties to the case are free to use their procedural rights according to the provisions of Economic Procedural Code of Ukraine;
- a large part of the procedures in the economic litigation is regulated by the, so said, empowering norms (for instance, this applies to the conclusion of a settlement agreement, refusal from the claim, etc.)
- in some cases, procedural legislation provides the parties of the case with the possibility to choose alternative way of behaviour (for example, defendant have the right to acknowledge a claim completely or in a part);
- legislator give the possibility to parties to stipulate some particularities of the procedure in the agreement (for instance, it concerns the right of the parties to the case to include in the text of the agreement the arbitration clause).

To summarize, it should be highlighted, that imperative method prevails in the regulation of economic procedural relations.

Forms and stages of economic litigation.

Article 12 of Economic Procedural Code of Ukraine defines following forms of economic proceedings:

- writ proceeding;
- economic litigation (general or simplified).

Writ proceeding is intended for consideration of applications for the recovery of small amounts of money for which there is no dispute or its availability to the applicant is unknown.

Simplified litigation is intended for consideration of minor cases, cases of small complexity and other cases for which priority is given to a quick resolution of a dispute.

General litigation is intended for consideration of cases which due to their complexity or other circumstances are inappropriate to be considered in simplified proceedings.

The conditions under which a court has the right to consider claims for collection of money in the writ proceeding, or cases under the rules of general or simplified proceedings are determined by the Economic Procedural Code of Ukraine.

According to the provisions of Economic Procedural Code minor cases are:

1) cases in which the value of a claim does not exceed one hundred sizes of minimum living wages for able-bodied persons;

2) cases of insignificance, which are recognized as insignificant by the court, except cases that are to be considered only in accordance with the rules of general proceedings, and cases where the value of a claim exceeds five hundred sizes of minimum living wage for able-bodied persons.

Economic courts shall consider bankruptcy cases taking into account the particularities of bankruptcy law.

As well as that, following forms of economic litigation could be outlined:

- bankruptcy proceedings;
- proceedings of compulsory execution of court and arbitrational decisions;
- pre-court regulation proceedings;
- proceedings of realization of measures to secure a claim (preliminary injunction measures).

The following general stages of economic litigation can be outlined:

- opening of the proceeding on the case;
- the preparation of the case (preparation of the court hearings);
- court hearing;
- procedure of revision of court decisions for newly discovered or exceptional circumstances;
- appellation revision of court decisions;
- cassation revision of court decisions by the Supreme Court;

enforcement of decisions of the court.

5. Sources of economic procedural law.

Among sources of economic procedural law are:

- legislation;
- international legal treaties;
- procedural traditions;
- court practice;
- scientific doctrine.

Constitution of Ukraine (Articles 124-130) determines basic principles, that stipulate competence of economic courts, define the status of judges of economic courts, as well as that determine the basis of economic court proceedings.

The basic legal act of economic procedural law as the Economic Procedural Code of Ukraine, dated 06.11.1991. It should be highlighted that Economic Procedural Code of Ukraine fall under complete reformation during recent years, which was in line with the rebuild of judicial system of Ukraine.

Moreover, economic procedural law includes number of legislative acts that define specialties of some forms economic litigation. First of all, it is about the newly adopted Code of Ukraine on Bankruptcy proceedings from 18.10.2018. After the Bankruptcy Code come into force on 21.10.2019, the Law of Ukraine «On the restoration of debtor's solvency or declaring it bankrupt» is no longer valid.

Economic procedural law is in close connection with the provisions of Economic Code of Ukraine (for example, article 187 of Economic Code defines the rules of jurisdiction of economic courts).

Another legal acts, that contain the procedural legal provisions, is the Law of Ukraine «On international private law». The Law of Ukraine "On International Private Law" dated 23 June 2005, contains some particularities of consideration of cases with a foreign element by the Ukrainian courts. The Law of Ukraine «On Arbitral Courts», dated 11.05.2004 and the Law of Ukraine «On international commercial arbitration», dated 24.12.1994 provide the possibility to consider commercial disputes by arbitrational institutions (except cases of exclusive jurisdiction of national courts).

The Law of Ukraine «On court fee», dated 08.07.2011 contains legal provisions of calculating of court fees. The Law of Ukraine «On enforcement proceedings» from 02.06.2016 determines the legal procedure of execution of court decisions. Another important legislative act, that should be mentioned,

is the Law of Ukraine «On enforcement of decisions and application of practice of European Court of Human Rights», dated 23.02.2006.

Among *international legal treaties* as source of economic procedural norms following agreements should be mentioned:

- Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 1950);
- United Nations Convention on Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958);
- The agreement between Ukraine and the Republic of Bulgaria on legal assistance in civil cases in 2004;
- Agreement between Ukraine and the Republic of Georgia on legal assistance and legal relations in civil and criminal cases in 1995;
- The agreement between Ukraine and the Estonian Republic on legal assistance and legal relations in civil and criminal cases in 1995;
- The agreement between Ukraine and the Republic of Latvia on legal assistance and legal relations in civil, family and criminal cases in 1995;
- and many others international agreements.

Procedural traditions play quite an important role as a source of economic procedural law. For example, according to Article 199 of Economic Procedural Code of Ukraine participants of economic litigations, as well as others present in the court session, apply to the court with the words "Your Honour". Such a legal provision of the Code is nothing more than a procedural tradition that has become law.

It should be highlighted, that nowadays *court practice* plays a significant role as a source of economic procedural law.

Here we are talking about the decisions of European Court on human rights, which have obligatory power for the national courts according to the provisions of Law of Ukraine «On enforcement of decisions and application of practice of European Court of Human Rights». Also the important role of the decisions of Constitutional Court of Ukraine should be mentioned. Such decisions eliminate legal gaps.

As well as that, the decisions of the Supreme Court are the source of economic procedural law. Thus, according to the Article 236, Part 4 of Economic Procedural Code of Ukraine **in choosing and applying the rules of law to controversial legal relations, the court shall take into account the conclusions regarding the application of the rules of law set forth in the decisions of the Supreme Court.**

Doctrine is not a formal source of law. However, it still has great influence on the development and interpretation of the law. Doctrine, as scientific writings of legal scholars, contribute to the development of procedural law, may guide judges on the application of legal provisions while considering the case, shows the legislator possible ways of law improvement. Besides, the doctrine has developed the rules of the application of the analogy in law and analogy in statutory law, the rules of interpretation of law.

TOPIC 2.
The economic court jurisdiction and subject-matter jurisdiction. Legal expenses.

1. The definition of economic subject-matter jurisdiction. Exclusive subject-matter jurisdiction of Economic courts. Criteria for division between economic, administrative and civil subject-matter jurisdictions.
2. Territorial and exclusive jurisdiction of Economic courts.
3. Types of legal expenses in economic litigation.
4. The legal order of payment of legal expenses. Exclusions in expenses payment.

1. The definition of economic subject-matter jurisdiction. Exclusive subject-matter jurisdiction of Economic courts. Criteria for division between economic, administrative and civil subject-matter jurisdictions.

Jurisdiction is a defined by law complex of economic courts powers in consideration of cases of economic court competence.

So jurisdiction gives the possibility to make division between economic cases and cases, which belonged to the consideration of other courts.

There are three main criteria, which can help to make a division between economic and other courts' jurisdiction. They are:

- **Objective criteria** – defines the type of disputed relations. These relations should be economic, arise from economic relations and economic activity.
- **Subjective criteria**. Economic disputes arise between:

1) Business entities - Legal entities and individual – entrepreneurs;

2) State bodies, bodies of local self-government authorities have the right to apply to the economic court for the protection of their violated, unrecognized or disputed rights and legitimate interests in cases assigned to the jurisdiction of the economic court, as well as for the implementation of measures envisaged by law aimed at preventing an offense. For example, the dispute about cancellation of leasing agreement of state property is in the jurisdiction of economic court, because in these relations state body is an equal participant of economic relations.

3) Individuals who are not entrepreneurs can apply to the economic

courts of Ukraine only in cases of exclusive jurisdiction of economic courts, among which are:

- cases in disputes arising from corporate relations;
- cases in disputes concerning the privatization of property, except for disputes concerning the privatization of state housing fund;
- cases in disputes concerning legal rights on securities (except debt securities owned by an individual and promissory notes used in tax and customs relations);
- bankruptcy cases.

- **Matter criteria**. Article 20 of Economic Procedural Code of Ukraine stipulates list of disputes that are in the exceptional jurisdiction of economic courts irrespectively to the type of relations and the status of their participants.

According to Article 20 of Economic Procedural Code of Ukraine:

Economic courts consider cases in disputes arising in connection with the conduct of economic activities, and other cases determined by law, in particular:

1) cases in disputes arising during the conclusion, modification, termination and execution of economic agreements, except for deals, the party of which is an individual who is not an entrepreneur, as well as in disputes regarding the agreements concluded for ensuring performance of obligations, parties of which are legal entities and / or individuals - entrepreneurs;

2) cases in disputes concerning the privatization of property, except for disputes concerning the privatization of state housing fund;

3) cases in disputes arising from corporate relations, including disputes between the parties (founders, shareholders, members) of a legal entity or between a legal entity and its participant (founder, shareholder, member), including a participant who left legal entity, related to the creation, operation, management or termination of the activity of such a legal entity, except for labour disputes;

4) cases in disputes arising from deals concerning shares, other corporate rights in a legal entity, except for deals in family and inheritance legal relations;

5) cases in disputes concerning securities, including those related to securities rights and rights arising therefrom, concerning issuing, placing, turnover and redemption of securities, accounting for securities rights,

securities liabilities, except for debt securities owned by an individual who is not an entrepreneur and promissory notes used in tax and customs relations;

6) cases in disputes concerning the right of ownership or other property rights to property (movable and immovable, including land), registration of rights to property, which (the rights to which) are the subject of a dispute, the invalidation of acts that violate such rights, except for disputes of which a non-entrepreneur is a party, as well as disputes concerning the seizure of property for public needs or for reasons of public necessity, as well as cases in disputes concerning property that is the subject of enforcement of an obligation whose parties are legal entities and / or individuals - entrepreneurs;

7) cases in disputes arising from the relations related to the protection of economic competition, the restriction of monopoly in economic activities, protection against unfair competition, including disputes related to appealing decisions of the Antimonopoly Committee of Ukraine, as well as cases for statements of the bodies of the Antimonopoly Committee of Ukraine on issues assigned by law to their competence, except for disputes that are assigned to the jurisdiction of the High Court of Intellectual Property;

8) cases of bankruptcy and cases in disputes with property claims to the debtor, in respect of which bankruptcy proceedings were opened, including cases in disputes concerning the invalidation of any transactions (agreements) concluded by the debtor; collection of wages; the renewal of the work of officials and officials of the debtor, except for disputes regarding the determination and payment (collection) of monetary obligations (tax debt) determined in accordance with the Tax Code of Ukraine, as well as disputes regarding the invalidation of deals under the claim of the controlling authority for the exercise of its powers, defined by the Tax Code of Ukraine;

9) cases on applications for approval of a debtor financial recovery plan before the opening of bankruptcy proceedings;

10) cases in disputes concerning the appeal of acts (decisions) of business entities and their bodies, officials in the field of organization and conduction of economic activity, except for acts (decisions) of subjects of power taken to fulfil their governmental management functions, and disputes where a non-entrepreneur is a party;

11) cases on appealing against decisions of arbitral courts and on issuing orders for enforcement of decisions of arbitral courts established in accordance with the Law of Ukraine “On Arbitration Courts”, if such decisions are approved in the disputes specified in this article;

12) cases in disputes between a legal entity and its official (including an official whose powers have been terminated) on compensation for losses caused to a legal entity by actions (inactivity) of such an official, on the claim of the owner (participant, shareholder) of such legal entity, made in its interests;

13) requirements for the registration of property and property rights, other registration actions, invalidation of acts violating the rights to property (property rights), if such claims are derived from a dispute regarding such property or property rights or a dispute arising from corporate relations, if this dispute is subject to consideration in the economic court and submitted to its consideration together with such requirements;

14) cases in disputes concerning the protection of business reputation, except for disputes the party of which is an individual who is not an entrepreneur or self-employed person;

15) other cases in disputes between economic entities;

16) cases on applications for the issuance of a court order, if the applicant and the debtor is a legal entity or an individual entrepreneur.

17) cases about conclusion, changing, cancellation or execution of public-private partnership contracts, including concession contract, except disputes which should be considered on the rules of other jurisdiction.

According to Part 2 of Article 20 of Economic Procedural Code of Ukraine the *Supreme Intellectual Property Court* considers cases concerning intellectual property rights, in particular:

1) cases in disputes concerning the rights to an invention, utility model, industrial design, trade mark (mark for goods and services), economic name and other intellectual property rights, including the right of prior use;

2) cases in disputes concerning the registration of intellectual property rights, invalidation, extension of validity, early termination of patents, certificates, other acts that certify intellectual property rights or on the basis of which such rights arise, or which violate such rights or the related law interests;

3) cases of recognition of a trademark well-known;

4) cases in disputes concerning the rights of the author and related rights, including disputes concerning collective management of the author's property rights and related rights;

5) cases in disputes regarding the conclusion, modification, termination and execution of an agreement on the disposal of intellectual property rights, franchising;

6) cases in disputes arising out of relations related to protection against unfair competition in relation to: the misuse of signs or goods of another producer; copy the appearance of the product; collection, disclosure and use of economic secrets; appeal against decisions of the Antimonopoly Committee of Ukraine on intellectual property issues.

According to Article 21 of Economic Procedural Code of Ukraine it is not allowed to combine in a one proceeding a number of requirements that are subject to consideration in the order of different proceedings, unless otherwise provided by the Economic Procedural Code of Ukraine.

2. Territorial and exclusive jurisdiction of Economic courts.

Territorial jurisdiction gives the possibility to divide various economic cases between different economic courts depending on the territorial, subjective or objective principles.

As a general rule a claim should be filed to an economic court at the location of the defendant, unless otherwise provided by the Economic Procedural Code of Ukraine (Article 27 of the Code).

The location of a legal entity and an individual entrepreneur must be determined in accordance with the Unified State Register of Legal Entities, Individuals - Entrepreneurs and Public Associations.

The place of residence of an individual who is not an entrepreneur is a place of residence or stay registered in the manner prescribed by law.

Article 28 of the Economic Procedural Code of Ukraine defines special rules of territorial jurisdiction of economic courts for cases in which one of the parties is a court or a judge. So, the jurisdiction of an economic case in which one of the parties is an economic court or a judge of an economic court, is determined by a decision of a higher court, issued without notice to the parties.

The jurisdiction of cases in which one of the parties is the Supreme Court is determined by the general rules of jurisdiction.

Also, in some cases, there is a possibility of plaintiff to choose between economic courts.

According to Article 29 of the Economic Procedural Code claims in disputes involving several defendants may be filed to an economic court at the location or place of residence of one of the defendants.

Claims arising out of the activities of a branch or representative office of a legal entity may also be filed at their location.

Claims to the collector about the recognition of the executive inscription by a notary as not being enforceable, or the return of the collected under the notary's executive letter, may also be filed at the place of the execution.

Claims in disputes arising out of contracts, which can be performed only in a certain place, may also be filed at the place of execution of these agreements.

Claims to the defendant, which place of registration or stay/residence is unknown, are filed at the location of the defendant's property, or the most recent registered place of residence/stay, or at the place of permanent activity of the defendant.

Claims for compensation of losses caused by measures to secure a claim may also be filed at the place of application of these measures (to the court that applied the appropriate measures).

Claims for damages caused to property may also be filed at the place of damages.

Claims for damage caused by collision of vessels, as well as the collection of compensation fees for sea rescue, may also be filed at the location of the ship of the defendant or port of registration of the vessel.

Claims to the defendant who does not have a place or residence in Ukraine may be filed at the location of his property.

Article 30 of Economic Procedural Code of Ukraine prescribes the rules of **exclusive jurisdiction of cases of economic courts**.

Thus, disputes arising from a contract of cargo carriage, in the case when one of the defendants is a carrier, shall be considered by the economic court at the location of the carrier.

Cases concerning the arrest of a vessel for the purpose of securing a maritime claim must be considered by the economic court at the location of the Ukrainian seaport, in which the ship is or is to going to, or at the location of port of registration of the vessel.

Disputes about immovable property must be considered by the economic court at the location of the property or its main part. If the related claims are filed simultaneously concerning several objects of real estate, the dispute is considered at the location of the object, the price of which is the highest.

Disputes about the rights of ships and aircrafts, inland navigation vessels, space objects must be considered by the economic court at the place of their state registration.

Disputes in which the defendant is the Cabinet of Ministers of Ukraine, a ministry or other central executive body, the National Bank of Ukraine, the Accounting Chamber, the Verkhovna Rada of the Autonomous Republic of Crimea or the Council of Ministers of the Autonomous Republic of Crimea, regional, Kyiv and Sevastopol city councils or regional, Kyiv and Sevastopol city state administrations, as well as cases, the materials of which contain state secrets, are considered by the local economic court, whose jurisdiction extends to the city of Kyiv.

Disputes arising from corporate relations, including disputes between the parties (founders, shareholders, members) of a legal entity or between a legal entity and its participant (founder, shareholder, member), including the participant who left the legal entity, except for labour disputes, as well as disputes arising out of deals concerning corporate rights (other than shares) in a legal entity, are considered by the economic court at the location of the legal entity.

Disputes between a legal entity and its official (including an official whose powers are terminated) on compensation for losses caused to a legal entity by actions (inaction) of its official, must be considered by the economic court at the location of the legal entity.

Disputes related to issue, placement or redemption of securities are considered by the economic court at the location of the issuer.

Bankruptcy cases must be considered by the economic court at the place of the debtor.

A counter-claim and a claim of a third person who files independent claims regarding the subject matter of the dispute, irrespective of their jurisdiction, must be submitted to the economic court at the place of consideration of the initial claim. This rule does not apply when, in accordance with the other rules of exclusive jurisdiction, such a claim must be considered by a court other than the court hearing the original claim.

In the case of consolidation of claims for the conclusion, modification, termination and execution of an agreement with requirements for another agreement concluded to secure of main obligation, the dispute must be considered by the economic court at the location of the defendant who is a party to the main obligation.

Requirements for the registration of property and property rights, other registration actions, if consideration of such claims is subject to the jurisdiction of the economic court, are considered by the economic court,

determined by the rules of jurisdiction of the dispute, the derivative of which such requirements are.

3. Types of legal expenses in economic litigation.

Legal expenses consist of *court fees* and *expenses related to the proceedings.*

According to Article 123 of Economic Procedural Code of Ukraine the amount of the court fee, the procedure for its payment, repayment and exemption from payment is established by law.

Expenses related to the case include expenses:

1) for professional legal assistance;

2) connected with the involvement of witnesses, specialists, translators, experts and expert examination;

3) connected with the demand for evidence, a review of evidence at their location, securing of evidence;

4) connected with the commission of other procedural actions necessary for consideration of the case or preparation for its consideration.

4. The legal order of payment of legal expenses. Distribution of court expenses. Exclusions in court fee payment.

Together with the first statement on the merits of the case, each party must submit to the court a preliminary (indicative) calculation of the amount of legal expenses that it incurred and which it expects to incur in connection with the consideration of the case.

In the event that the party fails to make a preliminary calculation of the court expenses, the court may refuse to reimburse such legal expenses, except for the amount of the court fee paid by the party.

The preliminary calculation of the amount of court expenses does not limit the party to the proof of another actual amount of court expenses, which are subject to division between the parties on the outcome of the proceedings.

The court may pre-determine the amount of court expenses (except for the cost of professional legal assistance) related to the consideration of a case or to a certain procedural action. Such a court's pre-determined amount does not limit the court to the final determination of the amount of court expenses.

According to Article 125 of Economic Procedural Code of Ukraine the court may require the parties to deposit on a deposit account of a court a predetermined amount of court expenses related to the consideration of a case or to a provision certain procedural action, as decided by the court *(securing of legal expenses)*.

The court may oblige the participant in the case who has filed a petition for a witness summon, appointment of an expert examination, the involvement of a specialist, translator, or review of evidence at their location, to pay the costs associated with the relevant procedural act in advance.

If the party fails to make such an advance payment of court expenses, as required by a court, the court has the right to reject to conduct certain procedural actions (witness summons, expert examination etc.).

Article 126 of Economic Procedural Code of Ukraine stipulates specialities of calculating and payment of expenses for professional legal assistance.

Thus, the costs associated with the legal assistance of an attorney-at-law must be borne by the parties, except for legal assistance at the expense of the state.

As a result of the consideration of the case, the expenses for the professional legal assistance of the attorney-at-law must be distributed among the parties together with other legal expenses.

For the purposes of distribution of court costs:

1) the amount of expenses for the professional legal assistance of an attorney-at-law is determined in accordance with the terms of the contract on the provision of legal assistance and on the basis of relevant evidence, confirming the amount of services rendered and works performed and their price, paid by the relevant party or third party;

2) the amount of the sum that is due to pay for compensation of the expenses of the attorney must be established in accordance with the terms of the contract on the provision of legal assistance on the basis of relevant evidence, confirming these expenses.

In order to determine the amount of expenses for professional legal assistance for the purpose of distributing court costs, the party to the case must submit a detailed description of the work (services rendered) performed by an attorney-at-law and the expenses incurred for the provision of legal assistance.

The cost of the attorney-at-law fees must be commensurate with:

1) the complexity of the case and the work performed by the attorney (services rendered);

2) the time spent by an attorney to perform the relevant work (provision of services);

3) the amount of services and work performed by an attorney;

4) the price of the claim and (or) value of the case for the party, including the influence of the decision on the reputation of the party or public interest in the case.

In the event of non-compliance with the abovementioned requirements, the court may, at the request of the other party, reduce the amount of expenses for professional legal assistance of the attorney-at-law, which shall be distributed among the parties.

The obligation to prove the ineligibility of expenses is borne by the party claiming to reduce the costs of paying for the attorney's legal assistance.

Articles 127-128 of Economic Procedural Code define the particularities of calculating of the amount of court expenses related to the summon of witnesses, experts, specialists, translators, conducting of expert examinations, demanding evidences, exanimating evidences at their location.

Articles 129-130 of the Code establish the rules of the distribution of court expenses.

The court fee should be paid:

1) in disputes arising from the conclusion, modification and termination of contracts, to a party that unreasonably refuses to accept the proposals of the other party, or on both sides, if the court has rejected a part of the proposals of each party;

2) in disputes arising from the performance of contracts and for other reasons, - on the parties in proportion to the size of satisfied claims.

The court fee, the payment of which the plaintiff is exempted from in accordance with the established procedure, must be levied from the defendant to the state budget in proportion to the amount of the satisfied claims, if the defendant is not exempted from payment of the court fee.

Unless otherwise provided by law, if the claim is left without satisfaction, the procedure is closed or the claim is left without consideration, and the plaintiff is exempt from payment of the court fee, court fee paid by the defendant, is compensated by the state in accordance with the procedure established by the Cabinet of Ministers of Ukraine.

Other court costs related to the proceeding must be borne by:

1) in case of satisfaction of the claim - by the defendant;

2) in case of refusal in the claim - by the plaintiff;

3) in the case of partial satisfaction of the claim – by both sides in roportion to the amount of satisfied claims.

When deciding on the distribution of court costs, the court shall take into account:

1) whether these costs are related to the case;

2) is the amount of such expenses justified and proportional to the subject of the dispute, taking into account the price of the claim, the value of the case for the parties, including whether the outcome of its decision may affect the reputation of the party or the case is of public interest;

3) the behaviour of the party during the consideration of the case, which led to delays in the consideration of the case, in particular, the submission by the party groundless applications and petitions, etc..;

4) the actions of the party in relation to the pre-trial settlement of the dispute and the settlement of the dispute in amicable way during the consideration of the case, the stage of consideration of the case in which such actions were committed.

If the amount of court costs claimed for compensation substantially exceeds the amount claimed in the preliminary (indicative) calculation, the court may refuse the party in whose favour the decision has been made to reimburse legal expenses in respect of such excess, unless the party proves, that it was impossible to foresee such expenses at the time of submission of the preliminary (indicative) calculation.

The amount of a court fee is defined by Law of Ukraine «On a court fee», dated 08.07.2012.

In particular, for filing to the Economic Court:

- a claim of pecuniary (material) character - 1.5 percent of the claim price, but not less than 1 size of the subsistence minimum for able-bodied persons and no more than 350 subsistence minimum for able-bodied persons;
- a claim of non-material character - 1 size of subsistence minimum for able-bodied persons
- an appeal against a court decision - 150 percent of the rate to be paid when filing a claim, another statement or a complaint;

- a cassation appeal against a court decision - 200 per cent of the rate to be paid when filing a claim.

Also, the Law of Ukraine «On a court fee» in Article 5 defines the list of persons exempted from paying a court fee. For instance, citizens who, in cases stipulated by law, apply to the court for the protection of rights and interests of others, do not pay a court fee for filing such claims.

TOPIC 3.
Participants of economic litigation

1. Classification of participants of economic litigation.
2. The legal status of a judge in economic litigation.
3. Parties of the case. Legal status of plaintiff and defendant.
4. The legal position of third parties filing independent claims regarding the subject matter of the dispute and third parties not filing independent claims regarding the subject matter of the dispute. Procedural succession.
5. The legal status of bodies and persons authorized by law to apply to court in the interests of other persons. Participation of a prosecutor in consideration of economic dispute.
6. Representatives in economic litigation.
7. A witness, an expert, a legal expert, a specialist, an interpreter in economic litigation.

1. Classification of participants of economic litigation.

According to Economic Procedural Code of Ukraine among participants are:

- Judge;
- Disputing parties (plaintiff and defendant);
- Third parties (Third parties filing independent claims regarding the subject matter of the dispute and Third parties who do not declare independent claims regarding the subject matter of the dispute);
- Representatives of parties (legal representatives and attorney-at-law);
- Prosecutors (only as a representative of a governmental body, when the violation of public interest exist);
- Expert, a specialist, a legal expert, an assistant to a judge examining a case, a secretary of a court hearings, court administrator;
- Translator;
- Witnesses.

According to the bankruptcy law among the participants in bankruptcy cases are:

- Parties (debtor and creditors);
- Insolvency officer (during the bankruptcy procedure acquire

the status of asset manager, business rescue manager (sanation manager), liquidator);
- State property fund of Ukraine;
- Representatives of local self-government authorities;
- Representatives of debtor employees;
- Attorney of joint-stock company, limited liability company, additional liability company.

Therefore, **all the participants may be divided into two main groups:**
- Persons, who take part in a case;
- Persons, who assist in case consideration.

2. The legal status of a judge in economic litigation.

The Law of Ukraine «On the Judiciary and the Status of Judges», dated 02.06.2016, establishes legal requirements to the judges.

According to Article 69 of the abovementioned Law the position of a judge may acquire a citizen of Ukraine who is not under the age of thirty and not older than sixty-five years, who has a higher legal education and experience of professional activity in the field of law for at least five years, is competent, honest and speaks the official language.

A judge of an appellate court may be a person who meets the requirements for candidates for the position of a judge, according to the results of the qualification assessment confirmed the ability to administer justice in the court of appeal, and meets one of the following requirements:

1) has at least five years of experience as a judge;

2) has a scientific degree in law and experience of scientific research in the field of law for at least seven years;

3) has experience in the professional activities of an attorney-at-law, including the performance of representation in the court and / or protection from criminal prosecution for at least seven years;

4) has accumulated experience (work experience) (professional activity) in accordance with the requirements specified in clauses 1-3 of this part for at least seven years (Article 28 of the Law).

A judge of the Supreme Court may be a person who meets the requirements for candidates for the position of judge, according to the results of the qualification assessment, confirmed the ability to administer justice in the Supreme Court, and meets one of the following requirements:

1) has at least ten years of experience as a judge;

2) has a scientific degree in law and experience of scientific research in the field of law for at least ten years;

3) has experience in the professional activities of an attorney-at-law, including the performance of representation in the court and / or protection from a criminal prosecution for at least ten years;

4) has accumulated experience (work experience) (professional activity) in accordance with the requirements specified in clauses 1-3 of this part for at least ten years.

The determination of a judge who will consider the case is carried out by the Single Judicial Information and Telecommunication System during the registration of the documents, taking into account the specialization and the workload of each judge, on the principle of randomness and in the chronological order of the receipt of cases (Article 32 of Economic Procedural Code of Ukraine).

Cases in courts of first instance must be considered by a judge individually.

Any case relating to the jurisdiction of the court of first instance, depending on the category and complexity of the case, may be considered collectively in the composition of three judges, except for cases considered in writ and simplified proceedings.

Cases in the High Court on Intellectual Property are considered by the panel of judges consisting of three judges.

A review in court of appeals of court decisions of courts of first instance is carried out by a panel of judges of the court of appellate instance composed of three judges.

Review of court decisions of the courts of the first and appellate instances is carried out by the panel of judges of the court of cassation, consisting of three or more unpaired numbers of judges.

According to Article 35 of Economic Procedural Code the judge cannot consider the case and is subject to recuse if:

1) a judge is a member of a family or close relative (husband, wife, father, mother, stepfather, stepmother, son, daughter, stepchild, brother, sister, grandfather, grandmother, grandchild, granddaughter, adopter or adopted, guardian or caretaker, family member or close relative of these persons) of the party or other parties to the case, or other judge hearing the case;

2) a judge participated in the case as a witness, an expert, a specialist, a translator, a representative, an attorney-at-law, a secretary of a court session,

or provided the party or other participants with legal assistance in this or other case;

3) a judge is directly or indirectly interested in the outcome of the case;

4) the procedure for determining the judge for the consideration of the case was violated;

5) there are other circumstances that raise doubts about the impartiality or objectivity of the judge.

The refusal of the party to the judge's decisions, the decision or the separate opinion of the judge in other cases, the publicly expressed opinion of the judge on a particular legal issue cannot be the reason for the recusal.

A judge who participated in the decision of a court of first instance cannot take part in the consideration of the same case in the courts of appeal and cassation instances, as well as in a new consideration in a court of first instance after the reversion of a court decision or a decision to close a proceeding in the case (Article 36 of the Code).

The issue of the recusal of a judge shall be decided by the court hearing the case. The court accepts the recusal if it concludes that it is grounded.

The issue of recusal shall be considered not later than two days from the date of receipt of the application for recusal, and in the case of consideration of the application for recusal by a judge of another court - not later than ten days from the date of receipt of the application for recusal.

The court must decide about recusal without notice of the participants of the case. At the initiative of the court, the issue of recusal can be resolved in a court session with the notification of the participants of the case. The absence of the participants in the court hearing, which resolves the issue of recusal, does not prevent the court from reviewing the issue.

The issue of the self-recusal of a judge shall be decided by a court hearing a case in the deliberative room by a court ruling.

3. Parties of the case. Legal status of plaintiff and defendant.

The participants of economic litigation are disputing parties **(plaintiff and defendant) and third parties.** The bodies and persons authorized by law to apply to the court in the interests of other persons may also take part in cases.

The participants of a **writ proceeding** – are **applicant and debtor**.

According to Articles 42, 46 of Economic Procedural Code of Ukraine the parties of the case have equal procedural rights.

The participants in the case have the right to:

1) get acquainted with the materials of the case, make extracts, copies, receive copies of court decisions;

2) submit evidence; to participate in court sessions, unless otherwise specified by law; to participate in the study of evidence; ask questions to other participants of the case, as well as witnesses, experts and specialists;

3) submit applications and petitions, provide explanations to the court, present their arguments, considerations regarding issues that arise during the trial, and objections to allegations, petitions, arguments and considerations of other persons;

4) get acquainted with the minutes of the court session, the recording of the court sessions by technical means, make copies of them, submit written comments about their mistakes or incompleteness;

5) to appeal court decisions in cases determined by law;

6) use other procedural rights determined by law.

The participants of the case are obliged:

1) to show respect for the court and other participants in the court process;

2) to contribute to timely, comprehensive, complete and objective establishment of all circumstances of the case;

3) to appear in a court session at the call of a court, if their appearance is recognized by the court compulsory;

4) to submit all evidence available to them in the order and in the terms established by law or court, not to conceal evidence;

5) to provide the court with complete and reliable explanations of the issues raised by the court, as well as the participants in the case in the court session;

6) to perform procedural actions in the terms established by law or by court;

7) to perform other procedural duties, determined by law or by court.

As well as that,

- the plaintiff has the right to refuse the claim (all or part of the claim), the defendant has the right to acknowledge the claim (all or part of the claim) - at any stage of the litigation;
- the plaintiff has the right to increase or decrease the size of claims - before the end of the preparatory meeting or before the beginning

of the first court hearing, if the case is considered in the order of simplified proceedings;

- the defendant has the right to file a counter-claim within the terms established by the Code.

Before the end of the preparatory meeting, the plaintiff has the right to change the subject or grounds of the claim by submitting a written application. If a case is considered under the rules of simplified litigation, the change in the subject matter or grounds of the claim is allowed not later than five days before the start of the first court hearing in the case.

In the case of referral of a case for a new consideration to the court of first instance, the change of subject matter, the grounds of the claim are not allowed, except cases when it is necessary to protect the rights of the plaintiff in connection with the change of the actual circumstances of the case that has occurred after the end of the preparatory meeting or if the case was considered by the rules of simplified litigation – after the beginning of the first court hearing in the initial hearing of the case.

The court does not accept the refusal of the claim, reduction of the size of the claims, acknowledging of the claim by the defendant in the case when the participant is represented by legal representative, and his actions contradict the interests of the person that he represents.

The parties may conclude a settlement agreement at any stage of the litigation.

Sometimes it is possible to file a claim jointly by several plaintiffs or several defendants. In this case, each plaintiff or defendant acts in court proceeding independently.

In some cases, there could be a necessity to involve co-defendant to participate in litigation. Therefore, the court of first instance have the right, upon the petition of the plaintiff, before the end of the preparatory proceedings, and in the case of consideration of the case by the rules of the simplified litigation, before the beginning of the first court hearing, to involve the co-defendant in participation in it.

If the claim is not filed against the person to be responsible for the claim, the court must, before the end of the preparatory proceedings, and in the case of consideration of the case on the rules of the simplified litigation, before the beginning of the first court session, at the request of the plaintiff, replace the original defendant with the proper defendant, without closing proceedings in the case. After the expiration of mentioned period for

the replacing of defendant or involving of co-defendant the court has the possibility to replace or involve the defendant only if the plaintiff proves that he did not know and could not know before filing a claim in the case the basis for the involvement of such a co-defendant or the replacement of an improper defendant.

At the request of a new defendant or a co-defendant consideration of the case begins from the beginning.

4. The legal position of third parties filing independent claims regarding the subject matter of the dispute and third parties not filing independent claims regarding the subject matter of the dispute. Procedural succession.

According to Article 49 of Economic Procedural Code of Ukraine third parties claiming independent claims regarding the subject matter of the dispute may enter into the case before the completion of the preparatory proceedings or before the beginning of the first court hearing, if the case is considered in the simplified litigation, by filing a claim to one or more parties.

Third parties who claim independent claims regarding the subject matter of the dispute have all rights and bear all the obligations of the plaintiff.

After joining the case of a third party filing independent claims regarding the subject of the dispute, on the petition of such party the case is considered initially.

Third parties who do not declare independent claims regarding the subject matter of the dispute may enter into a case on the part of the plaintiff or the defendant before the completion of the preparatory proceedings in the case or before the beginning of the first court hearing if the case is considered in the simplified litigation, in case when the court decision may affect their rights or obligations with respect to one of the parties. They may be involved in the case also on the application of the participants in the case.

If the court, when deciding on the opening of proceedings or in the preparation of a case for consideration, determines that a ruling of an economic court may affect the rights and obligations of persons not party to a case, the court shall involve such persons in the case as third parties who do not file independent claims regarding the subject matter of the dispute.

In applications for the involvement of third parties and applications by third parties for entering the case on the part of the plaintiff or the defendant, it should be indicated on what grounds the third parties must be involved in the case. On the involving of a third person without independent claims the

court issues a ruling defining which rights and duties of such person and how it may affect the decision of the court in the case.

Entry into the case of a third person who does not declare independent claims regarding the subject matter of the dispute does not lead to consideration of the case initially.

Article 52 of the Economic Procedural Code defines specialities of procedural succession in economic litigation.

In the event of the death or declaration of an individual deceased, the termination of a legal entity by reorganization (merger, accession, division, transformation), the replacement of a creditor or debtor in an obligation, as well as in other cases, the replacement of a person in the relationship in which the dispute arose, the court engages the successor of the participant in the case at any stage of the trial.

All actions committed in the trial before the successor's entry into case are binding on him in the same way as they were binding on the predecessor.

5. The legal status of bodies and persons authorized by law to apply to court in the interests of other persons. Participation of a prosecutor in consideration of economic dispute.

According to Article 53 of Economic Procedural Code of Ukraine in cases established by law, public authorities, local self-government bodies, natural persons and legal entities may apply to the court in the interests of other persons, state or public interests and to take part in these cases.

Bodies of state power, bodies of local self-government authorities, who appeal to the court for the protection of the rights and interests of other persons, must provide the court with documents confirming the existence of the grounds to apply in the interests of such persons.

In cases determined by law, **the prosecutor** appeals to the court with a statement of claim, participates in the consideration of cases on his claim, and may also enter on his initiative a case on which the proceedings were opened in a claim of another person, before the commencement of consideration of the case on the merits, may file appeal, cassation appeal, application for review of a court decision for newly discovered or exceptional circumstances.

The prosecutor who appeals to the court in the interests of the state, in a claim or other statement substantiates what is the violation of the interests of the state, the need for their protection, the legal grounds which stipulate

the prosecutor's rights to file a claim, as well as outlines the body of state power authorized to carry out the relevant functions in controversial legal relationships.

In the event of the opening of proceedings on a claim by a person who has been granted the right to apply to the court in the interests of other persons (except for the prosecutor), the person in whose interests the claim is filed acquire the plaintiff's status.

In the case of opening a proceeding on a claim filed by the prosecutor in the interests of the state the body of state power authority authorized to exercise the functions of the state in controversial legal relations acquires the status of the plaintiff. In the absence of such a body or the lack of authority to apply to the court, the prosecutor shall indicate this in the statement of claim and in this case shall acquire the status of the plaintiff.

So, according to the provisions of the Code, prosecutor may apply to the court only in the interests of the state, if such state interests were violated.

As well as that there are some particularities of participation in the court process of persons, by which the law has been granted the right to apply to a court in the interests of a legal entity in disputes concerning compensation of losses caused by its official.

Due to Article 54 of the Economic Procedural Code the owner (participant, shareholder) of a legal entity who owns 10% or more of the authorized capital of the company (except for preference shares) or a share owned by a legal entity of 10% or more may file a claim for damages in the interests of such a legal entity, caused to a legal entity by its official.

In case of opening of proceedings on such claim, the said legal entity acquires the status of the plaintiff but is not entitled to exercise its procedural rights and obligations without the consent of the owner (participant, shareholder) who filed the claim.

6. Representatives in economic litigation.

Article 57 of Economic Procedural Code of Ukraine defines the status of legal representatives in economic litigation.

The interests of children under the age of fourteen, as well as incapacitated individuals, must be represented in court by their parents, adopters, guardians or other persons specified by law.

The interests of juveniles from fourteen to eighteen years of age, as well as persons whose civil capacity is limited, may be represented in court by their

parents, adopters, guardians or other persons as defined by law. A court may involve a child or a person whose civil capacity is restricted in such cases.

The legal representatives may entrust the conduct of the case in court to other persons who, in accordance with the law, have the right to be a representative in the court.

The court must involve an appropriate body or person, which according to law has the right to protect the rights and interests of other persons, if the actions of the legal representative are in conflict with the interests of the person who is represented.

As to the question who may be a representative in economic litigation, the Article 58 of Economic Procedural Code stipulates that a representative in the court may be an **attorney-at-law** or **legal representative.**

It should be taken into consideration, that Constitutional Court of Ukraine adopted a decision from 31.10.2019 № 4-в/2019 about abolishing of advocacy monopoly. By this decision Constitutional Court recognized, that Draft Law № 1013 about changes to Constitution of Ukraine (as to abolishing of advocacy monopoly) met the requirements of Articles 157 and 158 of Constitution of Ukraine.

As a result of this, business entities participate in the case via the head of a legal entity, the members of the executive bodies or other persons, who are entitled to represent the business entity according to the law, statutory documents, employment contract, or through the representative.

One and the same person may be representative of several plaintiffs or several defendants, as well as several third parties on one side, if there is no conflict of interest between them.

Article 59 of the Code defines persons who cannot be a representative in economic litigation. Among such persons are, in particular, a person participating in the case as the secretary of a court session, an expert, a specialist, a translator, a witness, or an assistant to a judge examining a case. A person may not be a representative if he represents another person in this case whose interests in this case are contrary to the interests of his principal. Judges, prosecutors, investigators, employees of the units conducting operational search activity may not be representatives in court, except when acting on behalf of the appropriate body that is a party or a third party in the case or as legal representatives.

The credentials of representatives of the parties and other participants in the case must be confirmed by the following documents:

1) the power of attorney of a physical person or legal entity;

2) a certificate of birth of a child or a decision on the appointment of a guardian, trustee or guardian of inherited property;

3) statutory documents (including, articles of association), employment contract.

The power of attorney of an individual must be certified by notary or, in cases determined by law, by another person.

The power of attorney on behalf of the legal entity must be certified by signature (electronic digital signature) of an official authorized by the law or statutory documents.

The powers of an attorney-at-law as a representative must be confirmed by a power of attorney or a warrant issued in accordance with the Law of Ukraine "On Advocacy and Advocate Activity".

The power of attorney of an individual on whose request a decision was made to grant him free secondary legal assistance may be certified by an official of the body (institution) who has made such a decision.

The conformity of a copy of the document confirming the authority of the representative, with the original can be certified by the signature of the judge.

Originals of the documents specified above, copies of them certified by a judge, or copies thereof, certified in accordance with the procedure established by law, shall be attached to the materials of the case.

In case of submission by the representative of the application on the merits of the case in electronic form, he may add to it a power of attorney or an order in electronic form, signed by an electronic digital signature in accordance with the Regulation on the Single Judicial Information and Telecommunication System.

Attorney-at-law may realize functions of representation of legal entities in economic courts on the basis of an employment contract or on the basis of an agreement about professional legal assistance.

7. A witness, an expert, a legal expert, a specialist, an interpreter in economic litigation.

New type of participants in economic litigation is **a witness.**

The need to introduce such participants into economic litigation was a subject of a long scientific discussions and was questioned by many scholars due to rather formalized nature of economic relations. However,

the appearance of this type of participants in the Economic Procedural Code of Ukraine testifies the tendency to the unification and liberalization of procedural provisions and may have the positive effect on the consideration of economic disputes by increasing the list of possible evidence in litigation. But, at the same time, it is necessary to take into account the particularities of economic relations and specifics of a certain economic disputes, when circumstances of the case can be established solely on the basis of written evidence.

A witness in economic litigation may be any capable individual who is aware of any circumstances relevant to the case.

A witness must appear before the court at the appointed time and give true evidence of circumstances known to witness. In the absence of objections of the participants of the case, the witness may participate in the court session in the videoconference mode. In case of impossibility of coming to court and participating in a court session in a videoconference mode, at the call of the court, the witness must notify the court in advance.

A witness shall have the right to give testimony in his own language or the language in which he speaks, to use written records, to refuse to testify in cases established by law, as well as the right to receive a compensation for expenses incurred in connection with a summons to a court.

Article 67 of the Economic Procedural Code of Ukraine stipulates the list of persons who cannot be witnesses in economic litigation.

Thus, cannot be questioned as witnesses:

1) incapacitated individuals, as well as persons who are registered or treated in a psychiatric institution and are unable, due to their physical or mental defects, to properly perceive the circumstances relevant to the case or to testify;

2) persons legally obliged to keep in secret the information entrusted to them in connection with the provision of professional legal assistance or mediation services (mediators) during an extrajudicial settlement of a dispute - on such information;

3) priests - about the information they received on the confession of the believers;

4) judges and jurors - about the circumstances of discussion in the deliberation room of questions that arose during the adoption of a court decision or information that became known to a judge during the settlement of a dispute with his participation;

5) other persons who cannot be questioned as witnesses in accordance with the law or an international agreement, approved by the Verkhovna Rada of Ukraine, without their consent.

Persons who have diplomatic immunity cannot be questioned as witnesses without their consent, and representatives of diplomatic missions – without the consent of the diplomatic representative.

According to Article 68 of the Code a witness may refuse to testify about himself or about his relatives. A witness who appeared at the court's request and refuses to testify is obliged to state the reasons for the refusal.

An expert.

A person, who possesses the special knowledge necessary to clarify the circumstances of the case, may be an expert.

The expert may be appointed by the court or involved in the case.

An expert must provide grounded and objective written opinion on the questions posed to him.

The expert is obliged to appear in court on court's request, explain his conclusion and answer the questions of the court and the participants of the case. In the absence of objections of the participants in the case, the expert may participate in the court session in the videoconference mode. The expert do not have the right to entrust the examination to another person.

An expert has the right:

1) get acquainted with the materials of the case;

2) apply for additional materials and samples if the examination is appointed by the court;

3) present in the conclusion of the examination findings revealed during its conduct that are relevant to the case and about which questions to him have not been raised;

4) to be present during the commission of procedural actions concerning the subject and objects of expert examination;

5) for the purpose of conducting an examination, apply for a questionnaire to participants in the case and witnesses;

6) use other rights provided by the Law of Ukraine "On Forensic Examination".

An expert has the right to be paid for the work done and to receive compensation for the costs associated with conducting an examination and a summons to a court.

An expert appointed by the court may refuse to give an expert opinion if the materials provided upon his request do not sufficiently satisfy the duties assigned to him. The statement of refusal must be motivated.

A legal expert.

As a legal expert, a person with a scientific degree in law and a highly recognized legal experience, may be involved. The decision on the admission to participation in the case of a legal expert and the attachment of his conclusion to the case is made by the court.

The legal expert is obliged to appear in court on the court request, to answer questions put by the court, to provide explanations. In the absence of objections of the participants in the case, the legal expert can participate in the court session in the videoconference mode.

The legal expert shall have the right to know the purpose of his call to court, to refuse to participate in the trial, if he does not have the relevant knowledge, as well as the right to get payment for services and compensation of expenses incurred in connection with a summon to a court (Article 70 of Economic Procedural Code).

Specialist.

A specialist is a person who possesses the special knowledge and skills necessary for the exploitation of technical devices and is appointed by the court for the provision of consultations and technical assistance in the course of the execution of procedural actions related to the use of such technical devices (taking photographs, drawing up plans etc.).

The specialist's advice and assistance do not replace the expert's conclusion.

A specialist has the right to know the purpose of his call to court, to refuse to participate in a trial, if he does not possess the relevant knowledge and skills, to pay attention of the court on the specific circumstances or particularities of evidence, as well as the right to be paid for work and compensation for expenses, related to a summon to a court (Article 71 of Economic Procedural Code of Ukraine).

Interpreter.

An interpreter is a person fluent in the language of the proceedings and in another language whose knowledge is necessary for interpretation or translation from one language to another, as well as a person who has the

technique of communicating with persons with hearing or speaking impairment.

An interpreter may be appointed by a court decision upon application by a participant in the case or appointed on the initiative of a court.

The participation of an interpreter who has the technique of communicating with person with hearing or speaking impairment is obligatory when considering a case, one of the participants of which is such person. The qualification of such interpreter is confirmed by the relevant document issued in accordance with the procedure established by the legislation.

The interpreter has the right to ask questions in order to clarify the translation, refuse to participate in the trial, if he does not have sufficient knowledge of the language required for translation, as well as to be paid for the work done and to get compensation for the costs associated with the summon to court.

The interpreter must appear in court at the request of a court, carry out a complete and correct translation, certify the correctness of the translation by his signature on procedural documents handed over to the parties in translation into their native language or language, which they speak. In the absence of objections of the participants in the case, the interpreter may participate in the court session in the videoconference mode.

TOPIC 4.
Evidences in economic litigation

1. The legal definition of evidences, characteristics of evidences.
2. The order of evidence submission. Evaluation of evidences.
3. Types of evidences in economic litigation. Characteristics of the testimony of a witness.
4. Written evidences, material evidences, electronic evidences.
5. Expert conclusion, legal expert opinion as evidences in Economic court.

1. The legal definition of evidences, characteristics of evidences.

Article 73 of the Economic Procedural Code of Ukraine stipulates that evidence is any data on the basis of which the court establishes the presence or absence of circumstances (facts) justifying the claims and objections of the participants in the case, and other circumstances that are relevant for the resolution of the case.

These data could be set by the following means:

1) written, material and electronic evidence;

2) expert conclusions;

3) testimony by witnesses.

It should be also emphasized that evidence is not any data, but information (information about facts) obtained in the manner prescribed by law.

The process of proof in economic litigation could be defined as a logical and procedural activity of the economic court and other participants in the economic process, aimed at establishing the truth in a particular case and resolving the dispute between the parties.

Subject of proof are circumstances, that justify the legal demands and objections of the participants, or are of importance for the consideration of the case, and should be established while making a court decision (Part. 2 Article 76 of Economic Procedural Code).

The subject of proof are:

- Circumstances, that justify the demands of the plaintiff (ground of a claim);
- Circumstances, that justify objections of the defendant;

- Other circumstances, that are important for the proper resolution of a dispute.

The subject of proof has limits. The limits of proof are a necessary and sufficient set of evidence, which being gathered in the case, ensures its correct solution.

Characteristics of evidence:

- Relevance of evidence (Article 76 of Economic Procedural Code of Ukraine)

Relevant evidences are those on the basis of which it is possible to establish the circumstances of the subject of proof. The court does not take into consideration evidence that does not relate to the subject of proof.

- The admissibility of evidence (Article 77 of Economic Procedural Code of Ukraine).

Circumstances which, according to the law, must be confirmed by certain means of proof, cannot be confirmed by other means of proof.

Evidence obtained in violation of the law is not accepted by the court.

For example, in accordance with clause 129 of the Charter of railways of Ukraine, circumstances which may be the basis for the liability of the railway, shipper, consignee, passengers during the railway transportation, are certified by commercial acts or acts of the general form, which are made by railway stations.

- **The reliability of evidence** (Article 78 of Economic Procedural Code of Ukraine)

On the basis of reliable evidence, it is possible to establish the actual circumstances of the case.

If the court or participants of a case have doubts as to the reliability of certain evidence, they must be eliminated by means of comparing these evidence with other evidence, verifying the correctness of the content and form of the document, by appointing, where necessary, expert examination, etc.

- **Probability of evidence** (Article 79 of Economic Procedural Code of Ukraine).

The existence of a circumstance on which the person relies as the basis for its claims or objections are considered to be proved, if the evidences provided to support such a circumstance are more probable, than evidences provided to refute it.

The question about probability of evidences to establish circumstances

of the case, that are essential for the case, is decided by court in accordance with its internal conviction.

However, not all the facts in economic litigation should be proved. Article 75 of Economic Procedural Code of Ukraine defines **grounds for exemption from proof.**

Thus, should not be proved in economic litigation:

- Facts, that are recognized by the participants;
- Well-known facts;
- Prejudicial facts.

Therefore, the **circumstances, which are recognized by the parties to the case**, are not subject to proof, if the court has no reasonable doubt as to the authenticity of these circumstances or the voluntary nature of their recognition. Circumstances recognized by the parties to the case may be indicated in statements on the merits of the case, explanations of the participants in the case and their representatives.

A refusal to recognize circumstances shall be accepted by the court if the party proves that it has accepted these circumstances as a result of a material error, deception, violence, threat or other serious grounds. The court decides on the acceptance of the party's refusal to recognize the circumstances. In case of a court's refusal to recognize the circumstances, they are proved in the general order.

Circumstances well known by the court do not require proof.

Circumstances established by a court ruling in an economic, civil or administrative case that has become legally valid shall not be proved in the consideration of another case, in which the same persons or the person in respect of which these circumstances were established, participate, unless otherwise provided by law.

Circumstances established in relation to a person by a court decision in an economic, civil or administrative case that has become legally valid may, in general, be denied by a person who has not taken part in a case in which such circumstances have been established.

The verdict of the court in criminal proceedings, the decision to close the criminal proceedings and the release of a person from criminal liability or a court ruling in an administrative offense, which has become legally binding, are binding on the economic court that is considering a case only in the question whether certain actions (inaction) took place and whether they were committed by certain person.

The legal assessment given by the court to a particular fact when considering another case is not mandatory for economic court.

Circumstances established by a decision of an arbitral tribunal or international economic arbitration shall be proved in the general order when considering a case by economic court.

2. The order of evidence submission. Evaluation of evidences.

According to Article 74 of Economic Procedural Code of Ukraine each party must prove the circumstances to which it refers as a basis for its claims or objections. The court cannot gather evidence relating to the subject matter of the dispute on its own initiative, except for seeking evidence by a court in cases where it has doubts about the fair exercise by the parties of their procedural rights and obligations as to the evidence submission.

The participants in the case submit the evidence in the case directly to the court.

The plaintiff, the person to whom the law grants the right to apply to the court in the interests of other persons, must submit evidence together with the filing of a claim.

The defendant, a third person who does not file independent claims regarding the subject matter of the dispute, must file evidence to the court together with the submission of the statement of defence or written explanations of the third person.

If the evidence cannot be filed in the prescribed time-limit for objective reasons, the party to the case must notify the court in written form and indicate: the evidence which cannot be filed; the reasons why evidence cannot be filed within the specified time period; evidence that the person has made all the necessary actions to obtain the needed evidence.

In the event of the recognition of the valid reasons for failure by the party to submit evidence in the indicated term, the court may establish an additional period for filing of the evidence.

Evidence not filed within the time limit established by law or court shall not be considered by a court, except when the person submitting them substantiated the impossibility of filing them within the specified time for reasons that were not dependent on it.

Copies of evidence, (except material evidence), filed in court shall be forwarded or provided by the person submitting them to the other parties to the case. *The court does not take into account the relevant evidence in the*

absence of a confirmation of the sending (provision) of copies thereof to other participants of the case, except in the event that such evidence is available to the relevant party to the case or the amount of evidence is excessive, either submitted to the court electronically or is publicly available.

If a statement is submitted that the document attached to the case or submitted to the court by the participant in the case for examination raises doubts about its authenticity or is fake, the person who submitted this document may ask the court before the end of the preparatory meeting to exclude it from the number evidence and consider the case on the basis of other evidence (Article 80 of Economic Procedural Code of Ukraine).

Article 81 of the Code stipulates, that the participant of the case, in case of impossibility to provide evidence on his own, has the right to file a petition for demanding of evidence by a court.

Sometimes, there could be a necessity to reviewing evidences at their location.

In this case, the participants of the case shall be informed of the date, time and place of examination of the evidence at their location. The absence of these persons is not an obstacle to the conduct of the review.

If necessary, witnesses, translators, experts, specialists, as well as photographs, audio and video recorders may be involved in participating in the review of evidence at their location, including at the request of the participant. A record of reviewing of evidences at their location shall be drawn up, signed by all persons participating in the review. All the documents, connected with the reviewing of evidence at their location, should be attached to the materials of the case.

Assessment of evidence.

The court assesses evidence according to its internal conviction, based on a comprehensive, complete, objective and direct examination of the evidence available.

There is no evidence for a court of a predetermined force. The court evaluates the reliability, admissibility, authenticity of each evidence separately, as well as the sufficiency and reciprocity of evidence in their totality.

The court assesses both the evidence collected in the case as a whole and each evidence separately (a group of similar evidence) contained in the case, motivates the deviation or consideration of each evidence (group of evidences) (Article 86 of the Code).

3. Types of evidences in economic litigation. Characteristics of the testimony of a witness.

All the evidence in economic litigation could be divided into three main groups:

1) written, material and electronic evidence;

2) expert conclusions;

3) testimony by witnesses.

According to Article 87 of Economic Procedural Code of Ukraine **a witness testimony** is a statement about circumstances known to witness that are relevant to the case. If a witness cannot call the source of his knowledge of a particular circumstance or if a witness statement is based on other people's words, such information is not an evidence and is not considered by a court.

According to the testimony of witnesses, circumstances (facts), which according to the legislation or business practices should reflected (recorded) in relevant documents, cannot be established. The law may specify other circumstances that cannot be established on the basis of witness testimony.

Parties, third parties and their representatives, with their consent, including on their own initiative, unless otherwise provided by the Code, may be questioned as witnesses of circumstances known to them which are relevant to the case.

The testimony of a witness based on the reports of other persons is not taken into consideration by the court. The testimony of the witness should be formulated in written form by means of a witness statement.

The witness's signature on the witness statement shall be certified by a notary. At the same time, it is not required to notarize signature of the parties, third parties, their representatives, who have agreed to be questioned as witnesses.

The witness statement must be filed to court within the time limit set for the submission of evidence.

A witness must be summoned by a court for interrogation on the initiative of the court or at the request of the party to the case, if the circumstances set forth by the witness in the statement contradict other evidence or raise doubts as to their content, authenticity or completeness.

If the witness, without valid reasons, did not appear in the court session or did not participate in the court session in the video conference, the court does not take into account witness testimony.

In a decision on the summon of a witness, the court warns the witness of criminal liability for knowingly false testimony.

According to Article 90 of Economic Procedural Code of Ukraine the participant in the case has the right to put in the first statement on the merits of the case not more than ten questions to another party to the case about the circumstances relevant to the case.

The participant of the case, to which the question is posed, is obliged to provide a full answer separately for each question on the merits.

The answers of the participant of the case, who is a legal entity, should be made by its head or other official on the behalf of a legal entity.

Answers to the questions shall be submitted to the court by the participant of the case - the individual, the head or other official of the legal entity in the form of a statement of the witness not later than five days before the preparatory meeting, and in the case considered in the simplified proceedings - for five days before the first court session.

The participant has the right to refuse to answer the questions:

1) if the questions concern the family or relatives of the participant, or if such participant cannot be questioned as a witness according to Articles 67-68 of the Code;

2) if the question is not relevant to the circumstances of the case;

3) if more than ten questions were asked by a party to the case.

If there are grounds for refusal to answer, the participant of the case must inform the other participant and the court in time for the answering to the questions. The court, at the request of another participant in the case, may recognize the grounds for refusal to be absent and oblige the participant to answer the questions.

4. Written evidences, material evidences, electronic evidences.

According to Article 91 of Economic Procedural Code of Ukraine **written evidences** are documents (other than electronic documents) that contain information about circumstances relevant to the proper resolution of the dispute.

Written evidence must be submitted in the original or in a duly certified copy. If only a part of the document is relevant to resolving the dispute, a certified extract from it should be submitted.

The participants in the case have the right to file written evidence in

electronic copies, certified by electronic digital signature, equivalent to a personal signature in accordance with the law. An electronic copy of written evidence is not an electronic evidence.

The participant of the case, who submits written evidence in copies (electronic copies), must indicate that he or another person has the original written evidence. If a copy (electronic copy) of written evidence is submitted, the court may, at the request of the participant in the case or on his own initiative, request the original written proof as well.

If the original of the written evidence is not filed, and the participant or the court questions the conformity of the submitted copy (electronic copy) to the original, such evidence is not taken into account by the court.

A foreign official document subject to diplomatic or consular legalization may be a written evidence if it is legalized in the established manner. Foreign official documents are acknowledged as written evidence without their legalization in cases stipulated by international agreements, approved by the Verkhovna Rada of Ukraine.

The participant of the case confirms the correspondence of a copy of the written evidence to the original which he has, with his signature, indicating the date of such certification.

As well as that, the Law of Ukraine "On advocacy and advocate activity", dated 05.07.2012, in p. 1 of Article 20 stipulates, that while exercising attorney's-at-law activity, the attorney-at-law has the right to certify copies of documents in cases, where attorney-at-law acts as a representative, except in cases where the law establishes another obligatory way of certifying of copies of documents.

Article 93 of Economic Procedural Code defines, that **material evidences** are the objects of the material world, which by their existence, their qualities, properties, location, other signs allow to establish circumstances that are relevant to the case.

Material evidence before the entry into force of a decision is retained in the case file or, under a separate description, are transferred to the special storage room of material evidence in the court.

Evidence that cannot be brought to court shall be kept at their location. The evidence must be described in detail in the inspection report and, if necessary and possible, their essential features must be photographed or recorded in a video or in another similar manner, after which they are to be sealed. Review protocols and images of evidence are added to the case file.

After reviewing and investigating material evidence, they are returned to the persons from whom they were received, if such persons have made a request for it and if satisfaction of such request is possible without harm to the consideration of the case.

According to Article 96 of the Economic Procedural Code **electronic evidence** is information in an electronic (digital) form that contains information about circumstances relevant to the case, in particular electronic documents (including text documents, graphic images, plans, photographs, video and audio recordings, etc.), websites (pages), text, multimedia and voice messages, metadata, databases, and other data in electronic form. Such data may be stored, including on portable devices (memory cards, mobile phones, etc.), servers, back-up systems, and other places of data storage in electronic form (including the Internet).

5. Expert conclusion, legal expert opinion as evidences in economic court.

The expert's conclusion is a detailed description of the research carried out by the expert, as a result of which the expert prepares conclusions and answers to the questions put to the expert.

The subject of the expert's opinion cannot be the question of law.

The expert's examination may be hold on the order of the party to the case or on the basis of a court order on the appointment of an examination.

The expert's conclusion must be done in written form and attached to the case.

The court has the right, on the application of the participants in the case or on its own initiative, to call an expert to provide oral explanations on his conclusion.

The expert's conclusion should, in particular, contain information that the expert is warned (informed) about responsibility for a knowingly false conclusion, and in the case of appointment of an examination by a court, as well as the responsibility for refusing, without valid reason, to perform his duties.

If an expert prepares the conclusion about circumstances relevant to the case, but in respect of which the questions were not asked, he has the right to include his opinion on these circumstances in the expert conclusion.

According to Article 102 of Economic Procedural Code of Ukraine the materials necessary for conducting an expert examination are provided by

the court, if the examination is appointed by the court, or by the participants in the case if the examination is carried out at their request.

An expert does not have the right, on his own initiative, to collect materials for conducting an examination, to disclose information that became known to him in connection with the examination, or to notify anyone other than the court and the participant in the case about the examination results. The expert appointed by the court has no right to communicate with the participants of the case outside the court session.

According to Article 104 of the Code the expert's conclusion does not have a predetermined force to the court and is assessed by the court along with other evidence in accordance with the rules established by Article 86 of the Code. The rejection by the court of the expert's conclusion must be motivated in a judicial decision.

There is a possibility to appoint complex, additional and repeated expert examination (Articles 106-107 of the Code).

Expert opinion in the field of law.

The participants in the case have the right to file the legal expert opinion regarding:

1) application of the analogy of the law;

2) the content of the rules of foreign law in accordance with their official or generally accepted interpretation, practice of application, doctrine in the relevant foreign state.

The expert's conclusion in the field of law cannot contain an assessment of evidence, indications of authenticity or unreliability of a particular evidence, the privilege of some evidence over others, which decision should be made on the outcome of the case (Article 108 of the Code).

It should be taken into consideration, that the expert's conclusion in the field of law is not evidence, has a subsidiary (advisory) character and is not binding on the court.

The court may refer in a decision to the expert opinion in the field of law as the source of the information contained therein and must make independent judgments on relevant issues (Article 109 of the Code).

TOPIC 5.
Securing a claim

1. The definition and types of measures for securing a claim (Preliminary injunctions measures).
2. Legal procedure of filing an application to secure a claim.
3. Counter-injunction while securing a claim.
4. Execution of the decision of preliminary injunctions measures application.
5. Measures for securing a claim in foreign countries.

1. The definition and types of measures for securing a claim (Preliminary injunctions measures).

It should be highlighted that due to the recent court reform and according to the latest changes made in Economic Procedural Court of Ukraine the legal institute of temporary restraining measures was abolished and now in the economic litigation only the institute of preliminary injunctions measures exist. **These measures could be invoked by the economic court also prior the claim.**

A preliminary injunction, in equity, is an injunction entered by a court prior to a final determination of the merits of a legal case, in order to restrain a party from going ahead with a course of conduct or compelling a party to continue with a course of conduct until the case has been decided. If the case is decided against the party that has been enjoined, then the injunction will usually be made permanent. If the case is decided in favour of the party that has been enjoined, the injunction will usually be dissolved or dismissed.

In most courts in the United States, the party seeking the *preliminary injunction* must demonstrate all six things together:

- That there is a substantial likelihood of success on the merits of the case,
- That they face a substantial threat of irreparable damage or injury if the injunction is not granted,
- The threat is immediate,
- That the balance of harms weighs in favour of the party seeking the preliminary injunction,
- There is no other available remedy,

That the grant of an injunction would serve the public interest.

According to Article 136 of Economic Procedural Code of Ukraine on the application of the party to the case, the court has the right to take measures for securing the claim stipulated in the Economic Procedural Code.

Securing a claim is admissible both at the stage prior the claim and at any stage of consideration of the case, if the non-use of such measures can substantially complicate or prevent the execution of a court decision or the effective protection or renewal of the rights or interests of the plaintiff in the protection or defence of which he applied or intends to apply to court.

Types of preliminary injunction measures:

1) the seizure of property and (or) money, which belonged, should be transferred or paid to the defendant and are held by him or other persons;

2) the prohibition of the defendant to take certain actions;

3) establishing the duty to perform certain actions;

4) the prohibition on other persons to take actions in relation to the subject of the dispute or to make payments, or transfer the property to the defendant, or to perform other obligations thereunder;

5) suspension of enforcement on the basis of an executive document or other document, on which the collection is carried out in an unconditional manner;

6) the suspension of the sale of property, if a claim is made to recognize the title to this property, or to exclude it from the description and the withdrawal from its arrest;

7) the transfer of the thing that is the subject of a dispute to another person who is not interested in resolving a dispute;

8) suspension of customs clearance of goods or objects containing objects of intellectual property;

9) arrest of a ship engaged in maritime claims;

10) other measures necessary for the effective protection or restoration of the rights and disputed interests.

However, there can be no arrest on objects that are spoiled quickly.

The court may apply several **preliminary injunction measures.**

It should be taken into consideration, that preliminary injunction measures, except for the arrest of seagoing vessels, to ensure the maritime claim, must be commensurate with the claims which is filed by the plaintiff.

Some actions cannot be applied by a court as measures to secure a

claim. Thus, according to p. 5 Article 137 of the Code it is not permitted to secure a claim in disputes arising out of corporate relations by prohibiting:

1) to hold a general meeting of shareholders or members of a business entity (company) and make decisions by them, except for the prohibition to take specific decisions determined by the court, which directly concern the subject of the dispute;

2) provide the issuer, custodian, depositary with the register of holders of registered securities, information about shareholders or participants of a legal entity (company) for holding general meetings of the company;

3) participation (registration for participation) or non-participation of shareholders or participants in the general meeting of the company, determination of the competence of the general meeting of shareholders or members of a business entity;

4) to exercise state bodies, local governments, the Fund for the Guaranteeing of Individuals' Deposits their functions specified by law, except of prohibition to make specific actions, determined by a court, decisions, do actions directly related to the subject of the dispute.

It is not allowed to secure a claim by suspending decisions, acts of the National Bank of Ukraine, as well as imposing a prohibition or obligation on the National Bank of Ukraine or its officials to take certain actions.

It is not allowed to provide **preliminary injunctions measures** in cases where the defendant has an insolvent bank or a Deposit Guarantee Fund, by:

1) imposition of seizure on property or sums belonging to the defendant;

2) the prohibition of the defendant, his officials to take certain actions.

2. Legal procedure of filing an application to secure a claim.

Article 138 of Economic Procedural Code outlines the procedure of filing an application to secure a claim.

The statement for application pf preliminary injunction measures is filed:

1) before filing a claim - according to the rules of jurisdiction established by the Code for the relevant claim, or to the court at the location of the subject of the dispute - if it is impossible to determine the court to which the case belongs;

2) simultaneously with the filing of the claim - to the court to which the claim is filed, according to the rules of jurisdiction established by the Code;

3) after the opening of proceedings in the case - in the court in whose proceedings is the case.

An application for arrest of an offshore vessel shall be filed at the location of the port of registration of the vessel or at the location of the seaport in which the ship is or is heading to, irrespective of whether such a court has jurisdiction over the merits of the case concerning the maritime claim, which is the basis for arrest.

In case of filing an application for securing the claim before filing a claim, the applicant must file a claim **within ten days**, and in the case of filing an application for seizure of the ship – **within thirty days** from the date of the decision to secure the claim.

3. Counter-injunction while application of preliminary injunctions measures.

The court may require a person who has filed a claim to use preliminary injunction measures, provide compensation for possible losses of the defendant, which may be caused by the provision of a claim (counter-injunction).

Counter-injunction, as a rule, is carried out by depositing a cash deposit to a deposit account in the amount determined by the court. If the plaintiff for valid reasons is not able to make an appropriate amount, the counter-injunction may also be carried out by:

1) the provision of a bank guarantee or other financial security to the amount determined by the court and a person agreed upon by the court, with regard to the financial capacity of which the court has no doubts;

2) the commission of other actions determined by the court to eliminate the potential losses and other risks of the defendant, related to the securing of a claim.

The amount of counter-injunction is determined by the court, taking into account the circumstances of the case. The counter-injunction must be commensurate with the measures of securing the claim, applied by the court, and the amount of losses that the defendant may incur in connection with the provision of a preliminary injunctions measures.

The issue of the use of counter-injunction is decided by the court in the decision on securing the claim. If the petition for counter-injunction is filed after the court applies the measures for securing the claim, the issue of counter-injunction is decided by the court within ten days after the submission of

such petition. A copy of the decision on counter-injunction should be sent to the participants of the case no later than the day following the day it was determined.

The decision on the securing of a claim or on counter-injunction should indicate the amount of counter-injunction or other actions to be performed by the applicant on the basis of counter-injunction.

The term of the provision of counter-injunction should be determined by the court and may not exceed ten days from the date of the decision on the securing of the claim or the decision on counter-injunction, unless otherwise provided by the content of the counter-injunction measures.

A person, on the application of which **preliminary injunctions measures** were applied with the use of counter-injunction, during the time specified by the court must provide the court with documents confirming the provision of counter-injunction.

If a person whose application for measures to secure a claim does not comply with the court's request for counter-injunction, the court must abolish the decision on the securing of the claim and on counter-injunction.

The decision on counter-injunction can be appealed together with the decision on securing the claim or separately.

4. Execution of the decision of preliminary injunctions measures application.

According to Article 144-146 of Economic Procedural Code the decision of the economic court to secure the claim must comply with the requirements of the executive document, established by law. Such a decision is subject to immediate execution from the date of its adoption, regardless of its appeal and the opening of enforcement proceedings.

A copy of the claim for securing the claim shall be sent immediately to the applicant, to all the persons concerned by the measures of the claim, which the court may identify, and, depending on the type of measures taken, shall be sent by the court for immediate execution to the state and other authorities for the taking of appropriate measures.

A court order to arrest a ship shall be a ground for arresting a ship or restraining its movement in the port where the ship is or is going to, until the abolition of measures to secure a claim in the form of seizure of an offshore vessel.

The court may abolish measures to secure a claim on its own initiative or upon a motivated petition of a party to the case.

Following the results of consideration of the application for the abolition of measures to secure the claim, taken by the court, a ruling is issued. Such a ruling may be appealed.

In the event of a court decision on the satisfaction of the claim, the measures of securing the claim shall continue to operate within ninety days from the date of entry into force of the decision, or may be revoked upon a motivated petition of the party to the case.

If within the specified period, on the application of the plaintiff (the payer), an enforcement proceeding is be opened - the said measures of securing the claim are valid until the full execution of the court decision.

If the claim is left without consideration, closure of the proceeding in the case or in the event of a decision to deny the full satisfaction of the claim, the court shall, in the relevant court decision, announce the abolishing of measures to secure the claim. In this case, the measures of securing the claim remain valid until the entry into force of the relevant decision or court order.

Measures to secure the claim, taken by the court before the claim is filed, are abolished by the court also in case:

1) the applicant does not submit the corresponding claim in accordance with the requirements of part three of Article 138 of the Code;

2) the return of the claim;

3) refusal to open the proceedings.

There is a possibility to get a compensation for losses incurred as a result of measures to secure a claim.

In the event of the claim was left without consideration or closure of proceedings, or in the case of a court decision about the complete or partial refusal to satisfy a claim, the defendant or another person whose rights or interests were violated as a result of taking measures to secure a claim, has the right to receive compensation for damages caused by the securing of a claim at the expense of the person on whose application such measures were taken.

In the case of filing an appropriate claim for reimbursement of losses caused by the securing of a claim, within twenty days from the date of the legal validity of the court decision, compensation for damage caused by the use of measures to secure the claim, should be carried out at the expense of counter-injunction.

5. Measures for securing a claim in foreign countries.

Different European countries have various procedures of application of preliminary injunction measures in order to secure a claim.

For example, in **Belgium** preliminary injunction measures could be applied only to the claims on which the court procedure has been opened. Future claim cannot be secured.

Content of measures to secure a claim is not determined by law, but the court determines each case on its individual particularities.

There is a liability of creditor (plaintiff) if the preliminary injunction measures were based on incorrect factual allegations of the debtor.

General rules of application of preliminary injunction measures in **Denmark** are the following.

- Claim has not to be due;
- Future claim can be secured;
- Debtor can address a protective writing to the court;
- Court of enforcement measures can order a security on its discretion, if appellant has not proofed his claim yet - difference to arrest is that the amount of security does not depend on a pecuniary claim;
- If an application about preliminary injunction was filed prior a claim main proceeding has to be initiated by the creditor within one week.

Rules of application of preliminary injunction measures in **France** stipulate, that:

- Only a measure which explicitly maintains the status quo is available.
- In case of urgency, court can order all kinds of preliminary measures if the claim is not seriously opposed by the other party or the existence of a dispute makes preliminary injunction measures necessary.
- As to the content of measures to secure a claim, the content is determined according to the individual particularities of each case.
- As to the enforcement procedure no specific enforcement organ exists for enforcing of such measures. It is the responsibility of the court.

Germany has following rules of application of preliminary injunction:

- Injunction should be applied in relation to a disputed claim or other legal relationship.
- The claim has not to be due. As a rule, a future claim cannot be secured. The creditor must not present any title. The court's order serves as the title.

- All measures sought are strictly limited by the possible relief in the main proceedings.
- As a rule, the court decides on the injunction in adversarial (often written) proceedings. In the case of urgency or if specific protection is needed, the injunction is ordered ex parte. The debtor can address to the court a protective writing.
- The content of a decision to apply a preliminary injunction is determined by legislation. The judge can freely make decision. The content is to order the debtor to act or not to act.
- The creditor must provide for a security. The amount is determined by the court it depends on the possible damages which the debtor will incur.

In Sweden the following rules of securing a claim are defined:

- The claim should be due before or during the proceedings. A future claim cannot be secured. The creditor has not present an enforceable title.
- The applicant must show that it is reasonable to suspect that the opposing party, by absconding, removing property, or other action, will evade payment of the debt.
- Jurisdiction: the court hearing the main procedure.
- It is not stipulated to which extent the creditor should produce evidence. He has to show probable cause that he has a claim and it should be reasonable to suspect that the debtor will evade payment.
- As a general rule, the opposing party must be given an opportunity to respond to an application on a provisional attachment/security measure before the court makes a decision. If the applicant show that delay places the applicant's claim at risk the court can make the decision immediately and without hearing the debtor.
- The debtor cannot address to the court a protective writing.
- A measure may include:
  - Prohibition, subject to a default fine, of carrying on a certain activity or performing a certain act or
  -an order, subject to a default fine, to have regard to the applicants claim or
  -an order to the appointment of a receiver or
  -an issue of a direction suitable in other ways to safeguard the applicants right.

- If enforcement of the order is necessary an application has to be made to The Enforcement Authority.
- The Content of the temporary injunction depends on the claim and the court decision.
- When a measure has been granted before the main proceedings are pending, the applicant must present within a month of the order on provisional measure institute a court order action on the matter at issue. If not, the provisional measure lapse immediately. The same time limit applies if the main proceedings are held in another country.
- Except in some exceptional cases the applicant must deposit a security at the court for the loss that the opposing party may suffer. The security shall compromise a pledge or a guarantee. Often the security consists of a bank guarantee.
- The execution of the provisional measures is subject to the general law of enforcement.
- The enforcement of the decision normally takes place immediately, without notifying the debtor[1].

As to **United Kingdom:**

- The claim that is to be secured does not have to be due; future claims can be secured.
- Application notice to defendant: three days before trial; the delay can be neglected by court in case of urgency.

Discretionary decision of court, used in accordance with the following principles:

For general temporary injunction

1) Serious question must be tried;
2) (Later) Damages must be an inadequate remedy for the applicant;
3) Adequate undertaking by claimant for damages;
4) Balance of interests in favour of claimant;
5) The court should take account of such measures as are calculated to preserve the status quo;
6) There may be special factors to be considered in the particular circumstances of individual cases.

- The content of the temporary measure depends on the manner of injunction being sought: a freezing injunction blocks of assets

[1] https://ec.europa.eu/civiljustice/publications/docs/prov_measures_3_en.pdf

and prohibits the disposition of the seized goods; it is valid against debtor/third party debtors.

- The claimant is required to give an undertaking in damages on being granted an interim injunction. The undertaking is to pay compensation to the defendant for any loss incurred by the injunction.

TOPIC 6.
Consideration of commercial disputes by Arbitration courts

1. Commercial Arbitration – general characteristics.
2. World practice of commercial arbitration.
3. The legal status of Arbitration courts in Ukraine. The jurisdiction of Arbitration courts in Ukraine. Arbitration clause.
4. Enforcement of the decision of the Arbitration court in Ukraine.
5. Legal order of appeal of the decisions of the Arbitration courts in Ukraine.

1. Commercial Arbitration – general characteristics.

Among main sources, that regulates the specialties of arbitration in Ukraine, are: Laws of Ukraine "On arbitration courts", "On International commercial arbitration", Economic Procedural Code of Ukraine, New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 etc.

Arbitration is an alternative way of resolving economic disputes.

A business-related dispute between a foreign legal entity (or individual entrepreneur) and a Ukrainian legal entity (or individual entrepreneur) may be referred, by agreement of the parties, for settlement by either ad hoc or institutional international commercial arbitration, either within or outside Ukraine. A business-related dispute involving only Ukrainian parties may be referred to either an ad hoc or an institutional arbitration only in the territory of Ukraine (domestic arbitration) and is not subject to international commercial arbitration. At the same time, disputes of Ukrainian legal entities with foreign investments between themselves or their participants, as well as their disputes with other Ukrainian entities, may be referred to international commercial arbitration.

It should be noted that, such categories of cases as, for example, real estate, labor, corporate disputes and disputes on establishment of legal facts have been exempted from disputes which can be resolved by means of domestic arbitration. Disputes which arise from corporate relations between a company and its participant (founder, shareholder), including a former participant, or between the participants (founders, shareholders) relating to the

establishment, activity, management or termination of their company (corporate disputes) also cannot be resolved by international commercial arbitration and must be referred to the competent Ukrainian court.

Currently, there are two well-established institutional arbitration bodies in Ukraine: the International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry, and the Maritime Arbitration Commission at the Ukrainian Chamber of Commerce and Industry.

2. World practice of commercial arbitration.

There are many arbitration institutions all over the world. Among them are:

- International Chamber of Commerce International Court of Arbitration
- London Court of International Arbitration
- American Arbitration Association and International Center for Dispute Resolution
- Permanent Court of Arbitration
- Swiss Chamber's Arbitration Institution
- Vienna International Arbitral Centre
- **Stockholm Chamber of Commerce Arbitration Institute**
- Singapore International Arbitration Centre
- Hong Kong International Arbitration Centre
- Chinese International Economic and Trade Arbitration Centre
- Cairo Regional Centre for International Commercial Arbitration
- World Intellectual Property Organization
- Court of Arbitration for Sport
- German Institution of Arbitration
- Japanese Commercial Arbitration Association
- Australian Centre for International Commercial Arbitration
- Kuala Lumpur Regional Centre for Arbitration
- Indian Council of Arbitration
- JAMS International

Disputes with Ukrainian legal entities quite often are considered by the Arbitration Institute of the Stockholm Chamber of Commerce (SCC). SCC is a frequently chosen venue for resolving of disputes with the participation of East European business entities.

The Arbitration Institute of the Stockholm Chamber of Commerce (SCC) has developed into one of the world's leading forums for dispute resolution.

The SCC was established in 1917 and is part of, but independent from, the Stockholm Chamber of Commerce. The SCC consists of a Board and a Secretariat and provides efficient dispute resolution services for both Swedish and international parties.

The SCC was recognized in the 1970's by the United States and the Soviet Union as a neutral centre for the resolution of East West trade disputes. Also China recognized the SCC as a forum for resolving international disputes around the same time. The SCC has since expanded its services in international commercial arbitration and emerged as one of the most important and frequently used arbitration institutions worldwide.

In recent years the number of cases filed with the SCC – both domestic and international – has increased considerably. The high number of international cases - nearly 50% - clearly evidence the strong position of the SCC as a preferred venue for dispute resolution among the international business community. Every year parties from as many as 30-40 countries use the services of the SCC.

Sweden and the SCC also play a unique role in the international system developed for bilateral and multilateral investment protection worldwide. In at least 120 of the current bilateral investment treaties (BITs) Sweden or the SCC is cited as the forum for resolving disputes between investors and the state. Today, the SCC is the world's second largest institution for investment disputes.

The managing bodies of the SCC are the Secretariat and the Board. The SCC Secretariat handles the daily case management, organization of events, producing publications etc.

A Secretary General heads the SCC Secretariat, which has a multilingual staff of nine people. The cases are administered in English, Swedish or Russian allotted to one of three divisions, each consisting of a legal counsel and a case administrator. Any other agreed language may of course be used in the arbitral proceedings before the tribunal, once it has been constituted.

The SCC Board is composed of one chairperson, two or three vice chairpersons and a maximum of 12 additional members. The Board includes both Swedish and non-Swedish nationals, all of whom are distinguished and highly qualified experts in international commercial dispute resolution.

The function of the SCC Board is to make decisions as required under the SCC Rules. This includes decisions regarding prima facie jurisdiction, appointment of arbitrators, challenge to arbitrators and the costs of the arbitration.

The arbitration procedure on the SCC offers a quick and efficient resolution to a dispute.

This dispute resolution method is quick, efficient, confidential and results in an arbitral award which is enforceable in more than 150 countries.

Arbitration is an internationally established way of resolving disputes outside the public court system. The procedure is faster than a court proceeding and is often the preferred method of dispute resolution in international business relations.

Arbitration requires an agreement between the parties (arbitration agreement). An arbitration procedure administered by the Arbitration Institute of the Stockholm Chamber of Commerce (SCC) requires that the parties have agreed that the dispute shall be resolved by arbitration under the SCC Arbitration Rules. The parties most often include such a clause in their business agreement (arbitration clause). However, the parties can also agree to settle the dispute by arbitration after the dispute has arisen. In the absence of such an agreement between the parties, the SCC is prevented from administering the dispute.

The role of the SCC within the scope of the procedure is to make decisions in accordance with the SCC Arbitration Rules, e.g:

- Appoint arbitrators
- Determine the costs of the arbitration
- Decide on challenges to arbitrators
- Ensure that the award is made on time

An arbitration proceeding is initiated by one party filing a request for arbitration with the SCC. Upon filing the request for arbitration, the claimant must pay a registration fee to the SCC.

Arbitration is a one-instance procedure and it is therefore not possible to appeal an arbitration award. The arbitration procedure, however, is regulated by law. The law specifies how an arbitration procedure must be carried out in order to meet the requirements of legal certainty. A public court determines whether or not an arbitration procedure has met the requirements of legal certainty upon the request of a party[2].

[2] https://sccinstitute.com/about-the-scc/

In order to transfer the dispute resolution to a certain arbitration institution, the parties should include in the text of their agreement an arbitration clause.

3. The legal status of Arbitration courts in Ukraine. The jurisdiction of Arbitration courts in Ukraine. Arbitration clause.

According to Article 6 of the Law "On arbitration courts" arbitration courts, in the manner prescribed by this Law, may consider any cases arising out of civil and commercial relations, except:

1) cases in disputes arising during the conclusion, change, termination and execution of commercial contracts related to the satisfaction of state needs;

2) cases concerning state secrets;

3) cases concerning the restoration of the debtor's solvency or recognition of bankruptcy;

4) cases in which one of the parties is a body of state power, a local self-government authority, their official or serviceman, another entity during the exercise of his power management functions on the basis of legislation, including for the exercise of delegated authority, a state institution or organization, state-owned enterprise;

5) cases in disputes concerning immovable property, including land plots;

6) cases arising out of corporate relations in disputes between a commercial entity and its participant (founder, shareholder), including the withdrawing participant, as well as between the participants (founders, shareholders) of the business entity related to the creation, activity, management and termination of these entities;

7) other cases, which according to the law are to be resolved exclusively by courts of general jurisdiction or by the Constitutional Court of Ukraine;

8) cases where at least one of the parties to the dispute is a non-resident of Ukraine.

According to Article 12 of the Law "On arbitration courts" the arbitration agreement is concluded in writing. An arbitration agreement is concluded if it is signed by the parties or is concluded by means of exchange of letters, teletype messages, telegraph, or using electronic or other means of communication that ensures the fixing of such an agreement, or by referring

a response to a claim in which one of the parties confirms the existence of an agreement, and the other party does not object to this.

An arbitration agreement must contain information about the name of the parties and their location, the subject of the dispute, the place and date of the transaction.

The reference in the contract that it contains an arbitration clause, is an arbitration agreement, if the contract is concluded in writing and this reference makes the arbitration agreement part of the contract.

The invalidity of certain provisions of a contract, containing an arbitration clause, does not entail invalidity of such an arbitration clause.

An arbitration agreement may contain both an indication of a specific arbitral tribunal and a simple reference to the resolution of relevant disputes between the parties by the arbitral court.

For instance, arbitration clause may be formulated as following: «The Parties will settle any disputes resulting from the execution and performance of the Contract amicably by negotiations held for a period of 30 (thirty) days from a Party's receiving from the other Party written notice of a dispute that has arisen.

If the dispute will not be resolved by the Parties within the above period, any such dispute, controversy or claim arising out of or in connection with this contract, or the breach, termination or invalidity thereof, shall be finally settled by arbitration in accordance with the **Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce**. The language to be used in the arbitration proceedings shall be English. The Arbitration Tribunal shall be composed of three (3) arbitrators of whom the claimant and the respondent each shall select one in accordance with the Arbitration Rules. The two thus named arbitrators shall select a third arbitrator to serve as presiding arbitrator of the Arbitration Tribunal».

4. Enforcement of the decision of the Arbitration court in Ukraine.

Decisions of Arbitration Court are enforced according to the general rules of courts' decisions enforcement in Ukraine.

A decision of an arbitral court that is not performed voluntarily is enforceable in the manner prescribed by the Law of Ukraine "On Enforcement Proceedings".

According to Article 56 of the Law of Ukraine «On enforcement

proceedings» the procedure for issuing an executive document is the following.

An application for the issuance of an executive document may be filed with the competent court **within three years** from the date of the decision by the arbitral tribunal. Such a statement is subject to review by the competent court within 15 days from the date of its receipt in court. The parties shall be notified of the time and place of the consideration of the application, but failure to appear by the parties shall not be an obstacle to the consideration of the application.

Foreign court decisions are recognized and enforced in Ukraine only based on the relevant international agreements or under the reciprocity principle, which is presumed to operate unless otherwise is proved. Ukraine has international agreements on the reciprocal enforcement of foreign court decisions with several countries.

A foreign court decision will not be enforced in Ukraine if it is determined that: the foreign court decision did not come into force; and/or Ukrainian courts or other Ukrainian authorities have exclusive jurisdiction over such disputes; and/or a Ukrainian court has rendered a decision or is currently considering a dispute in the same matter between the same parties and such consideration had started before opening of the proceedings by the foreign court; and/or the established term for applying for enforcement of a foreign decision expired; and/or under Ukrainian legislation a disputed matter is not subject to a court's consideration. Ukrainian courts will also not recognize a foreign court decision against a party which was not given an opportunity to participate in the proceedings due to improper notification, or if the enforcement of such court decision would threaten the interests of Ukraine, or in other cases prescribed in international treaties and Ukrainian legislation.

Foreign arbitral awards are, in general, easier to enforce in Ukraine than foreign court decisions, since Ukraine is a member of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

A foreign arbitral award should be recognized as binding and enforced upon the filing by a party of an appropriate motion with the competent Ukrainian court, unless the opposing party proves the existence of any of the grounds established by the 1958 New York Convention or the applicable Ukrainian legislation for the denial of the recognition and enforcement of the foreign arbitral award.

Grounds for denial of the recognition and enforcement of the foreign arbitral award

(1) the agreement to arbitrate is invalid under the chosen law;

(2) one of the parties, while entering into the arbitration agreement, was legally incapable;

(3) the losing party was not duly notified of the appointment of the arbitrator or the conduct of the arbitration proceedings;

(4) the losing party could not submit its explanations for valid reasons;

(5) the arbitration award was rendered on an issue outside the scope of the arbitration agreement;

(6) the arbitral tribunal or procedure did not comply with the arbitration agreement;

(7) the arbitral award did not enter into force, or was annulled or its execution was suspended by the court of the country, according to the laws of which such arbitral award was rendered

Similarly, a foreign or local arbitral award may be unenforceable in Ukraine if a Ukrainian court determines that the subject-matter of the dispute cannot be subject to arbitration under Ukrainian legislation, or the recognition and enforcement of such arbitral award contradicts the public order of Ukraine.

According to Article 352 of Economic Procedural Code of Ukraine arbitral awards are enforced on the basis of a court order.

The issuing of an order for enforcement of a decision of an arbitral tribunal shall be considered by the court on the application of the person in whose favour the decision of the arbitral tribunal has been made.

The application for issuing an order for enforcement of the decision of the arbitration court shall be submitted to the Economic Court of Appeal at the place of the arbitration hearing within three years from the date of the decision of the arbitral tribunal. An application filed after the expiration of the specified term is returned without consideration. The court, at the applicant's request, may renew the missed time period for filing an application for the issuance of an order to enforce a decision of the arbitral tribunal if it recognizes the reasons for its passage to be valid.

An application for the issuance of an order for enforcement of a decision of an arbitral tribunal shall be considered by a judge individually within fifteen days from the date of its receipt in court in a court session with notification of the parties (Article 354 of the Code).

There are also grounds for refusal to issue an order for enforcement of a decision of an arbitral tribunal (Article 355 of the Code).

Thus, the court shall refuse to issue an order to enforce a decision of an arbitral tribunal if:

1) on the day of the decision on the application for the issuance of the order of the decision of the arbitral tribunal was cancelled by the court;

2) the case in which the decision of the arbitral tribunal was taken, was not subject to the arbitration according to the law;

3) the time limit for applying for the issuance of the order was missed, and the reasons for its passage were not recognized by the economic court as valid;

4) the decision of the arbitral tribunal is made in a dispute not provided for by the arbitration agreement, or this decision resolved issues that go beyond the bounds of the arbitration agreement;

5) the arbitration agreement is invalid;

6) the composition of the arbitral tribunal, which the decision was made, did not meet the requirements of the law;

7) the decision of the arbitral tribunal contains means of protecting the rights and interests not specified in law;

8) the permanent arbitral tribunal did not provide the relevant case at the request of the economic court;

9) the arbitral tribunal resolved the issue of the rights and obligations of persons who did not participate in the case.

According to Article 356 of the Code following the consideration of the application for the issuance of an order for enforcement of the decision of the arbitral tribunal, the economic court shall rule on the issuance of the order or the refusal to issue the order for enforcement of the decision of the arbitral tribunal according to the rules provided for by the Code for the adoption of the decision.

5. Legal order of appeal of the decisions of the Arbitration courts in Ukraine.

It should be highlighted that the decisions of domestic arbitration courts may be appealed to appellate court of Ukraine in accordance with Part VII of Economic Procedural Code of Ukraine.

According to the Article 346 of Economic Procedural Code of Ukraine parties, third parties, as well as persons who did not take part in the case, if

the arbitral tribunal has decided on their rights and / or duties, have the right to apply to the court with the application to cancel the decision of the arbitral tribunal.

An application for the cancellation of an arbitral tribunal's decision shall be submitted to the Economic Court of Appeal at the place of consideration of the case by a party, a third party within **ninety days from the day the decision was taken by the arbitral tribunal**, and by the person who did not participate in the case, if the arbitral tribunal has resolved the issue of her rights and / or duties - within ninety days from the day when he/she learned or should have been informed of the adoption of the decision of the arbitral tribunal.

An application filed after the expiration of the established term must be returned. The court, at the applicant's request, may renew the missed time for filing an application for cancellation of the arbitral tribunal's decision if it recognizes the reasons for its passage as valid.

The case on appeal of a decision of an arbitral tribunal shall be considered by a judge individually within thirty days from the date of receipt of the application to abolish the decision of the arbitral tribunal before the economic court. The participants of the case shall be informed of the date, time and place of the trial. The absence of persons duly notified of the date, time and place of the case does not prevent the consideration of the case.

When considering a case in a court session, the court establishes the presence or absence of grounds for the cancellation of the arbitral tribunal's decision.

The case is considered by the economic court in accordance with the rules established for consideration of the case by the court of first instance in the order of simplified proceedings, with the features established by the Part VII of the Code.

As a result of the review of the application for the cancellation of the arbitral award, an economic court shall have the right:

1) to decide on the refusal to accept the application and to leave the decision of the arbitral tribunal unchanged;

2) to decide on the complete or partial cancellation of the decision of the arbitral tribunal.

According to Article 350 of the Economic Procedural Code of Ukraine the decision of the arbitral tribunal may be cancelled only in the cases provided for by this article.

The decision of the arbitral tribunal may be cancelled if:

1) the case in which the decision of the arbitral tribunal is made, is not the subject to the arbitration in accordance with the law;

2) the decision of the arbitral tribunal is made in a dispute not provided for in the arbitration agreement, or this decision resolved issues that go beyond the bounds of the arbitration agreement. If the arbitral tribunal has resolved issues that go beyond the bounds of the arbitration agreement, only the part of the decision that relates to matters beyond the bounds of the arbitration agreement may be cancelled;

3) the arbitration agreement was declared invalid by the court;

4) the composition of the arbitral tribunal, which made the decision, did not meet the requirements of the law;

5) the arbitral tribunal resolved the issue of the rights and obligations of persons who did not take part in the case.

The cancellation by the Economic Court of the decision of the arbitral tribunal does not deprive the parties of the right to re-apply to the arbitral tribunal, except in cases stipulated by law.

As a result of the consideration of the case on the appeal of the decision of the arbitral tribunal, the economic court shall issue a ruling.

The decision of the economic court to cancel the decision of the arbitral tribunal or refusal to cancel it may be appealed in the appeal procedure established for appealing against the decision of the court of first instance.

A court decision on the consequences of considering an application for the cancellation of an arbitration award, if it has not been appealed, becomes valid after expiration of the time limit for appeals.

In the case of filing an appeal, the court ruling shall come into force after consideration of the case by the court of appellate instance.

TOPIC 7.
Pre court consideration of economic disputes. Mediation procedure as a way of economic disputes solving. Settlement agreement in economic litigation

1. Legal order of filing pre court letter (letter before action).
2. Definition of mediation as alternative form of dispute resolution.
3. Settlement agreement in economic litigation.
4. Foreign experience of application of alternative forms of commercial disputes resolution.

1. Legal order of filing pre court letter (letter before action).

According to Article 222 of Economic Code of Ukraine participants of economic relations who have breached property rights or legal interests of other entities shall renew them before claims have been laid or filed to the court. If it is necessary to compensate losses or impose other sanctions, economic entity or other participant of economic relations whose rights or legal interests have been violated, have the right to make written note (pre-trial letter) aimed at direct settlement of a dispute. Such a written note shall include: full name and postal details of the claimant and person (persons) to whom the claim is addressed; date and reference number of the claim; grounds of the claim; proofs of these grounds; claimant's demands with reference to legal acts; amount of claim and its calculation if applicable; claimant's bank details; list of the documents attached. Attached documents confirming the claimant's demands shall be originals or duly certified copies. Documents that other party also has in possession may not be attached. The pre-court letter shall be considered within one month from the date of its receipt unless otherwise provided by the Economic Code or other legal acts. Grounded demands of the claimant shall be satisfied by the person to whom the letter was addressed. Considering the claim, the parties, if necessary, shall check calculations, perform examination or take other measures to ensure pre-trial dispute settlement. The claimant shall be notified about the result of consideration in writing. Response to pre-court letter shall be signed by the authorized official or representative of the recipient and sent to the claimant by registered letter or letter with declared value, or handed to him/her against receipt.

According to Article 19 of Economic Procedural Code of Ukraine the parties shall take measures for the pre-trial settlement of a dispute by agreement between themselves or in cases where such measures are mandatory in accordance with the law.

Persons who violated the rights and legitimate interests of other persons are obliged to renew them without waiting for a claim.

2. Definition of mediation as alternative form of dispute resolution.

Mediation is an alternative (out-of-court) dispute resolution method by which two or more parties to the dispute try to reach an agreement to resolve their dispute within the structured process with the participation of the mediator. Mediator is an independent mediator who helps the parties to resolve mediation disputes.

As a rule, the following benefits of the mediation are outlined:

Communication. Most conflict is the result of inadequate or ineffective communication. Mediation enables parties to have conversations, to address difficult issues and to work through differences of view in a carefully structured way guided by a skilled third party. Crucially, in many situations (neighbours, business partners, contractors, families, in the work place) this can help to restore, enhance and rebuild relationships.

Confidentiality. The ability to discuss privately the real issues and not to be bound by anything said or done unless and until an agreement is reached.

Control. The parties retain control over the outcome rather than handing it over to lawyers or a judge or other third party adjudicator. Lawyers are often involved in mediation as advisers, advocates and confidantes but one of its defining features is party autonomy.

Closure. For many people, ending a dispute is as important as the outcome. Thus being able to bring a matter to a sensible conclusion without the time, stress, possible publicity, management cost, opportunity cost, reputational risk and loss of morale entailed in long, drawn out conflict is a real advantage. The vast majority of matters dealt with by mediation are resolved quickly and effectively.

Certainty. Allied to closure and control is the knowledge of an agreed outcome and avoidance of the risk and uncertainty inherent in handing over dispute resolution to third parties. Being a consensual process, mediation has a remarkably high success and implementation rate.

Cost-saving. While there are different formats for mediation (given its flexibility), broadly, mediation takes a day (or perhaps two) to help parties to reach a conclusion. From first inquiry through to agreement, only a few weeks is generally required. Overall, this should be much less expensive than other procedures, especially court or tribunal. From the perspective of individual cases, this enables resolution without (often hugely) disproportionate expenditure; from the overall perspective of public sector spending, this can bring significant savings in the overall justice budget[3].

According to the provisions of Draft Law of Ukraine «On mediation» mediation can be applied in any conflicts (disputes), including civil, family, labour, economic, administrative, as well as in criminal proceedings and cases of administrative offenses.

Mediation may be conducted in the event of a conflict (dispute), either before a claim to a court (arbitration court), during or after a judicial or arbitral proceeding, including during an enforcement proceeding.

Mediation is carried out by mutual consent of the parties of mediation on the basis of the principles of voluntary participation; independence and neutrality of the mediator; confidentiality of mediation information. Participation in mediation is voluntary. Any pressure on the parties to conduct or terminate the mediation is prohibited. The mediation parties themselves choose a mediator.

The parties to the mediation independently determine the range of issues discussed by them, the options for resolving the dispute between them, the content of the agreement on the results of mediation, the timing and methods for its implementation, other issues regarding their dispute and mediation procedures, taking into account the advice of the mediator and other mediation participants. Final decisions are made only by mediation parties.

A mediator does not depend on mediation parties, state bodies, other legal entities and individuals. Intervention of state bodies, any legal entities and individuals in the activities of the mediator during the preparation and conduct of mediation is prohibited.

In the event of contact with any person, in connection with its possible appointment as a mediator for resolving a dispute between the parties, that person must report any circumstances that may give rise to reasonable doubts as to its neutrality and / or independence. The mediator, from the moment

[3] http://www.core-solutions.com/mediation/benefits-of-mediation/

of its appointment and during the entire mediation procedure, must notify the parties without delay about such circumstances, unless he has informed them of these circumstances prior to the appointment as the mediator.

A mediator cannot act as a lawyer, representative and / or legal representative of the mediation party. The mediator has no right to resolve the dispute between the parties of the mediation. The mediator is not entitled if the mediation parties did not agree in writing about the other, provide instructions and recommendations regarding the dispute settlement options, assess the behaviour and positions of the mediation parties, with the exception of a clear violation of their legal or ethical norms, the mediation procedure.

Mediation may be conducted by the mediator independently or with the assistance of the mediation organization.

3. Settlement agreement in economic litigation.

As to the settlement (amicable) agreement of the parties, it could be concluded at any stage of economic litigation. According to Article 192 of Economic Procedural Code settlement agreement is concluded by the parties with a view to settling the dispute on the basis of mutual consensus and should concern only the rights and obligations of the parties.

The parties may conclude a settlement agreement and notify the court, by making a joint written declaration, at any stage of the trial.

The agreement concluded by the parties shall be approved by the court ruling, the operative part of which shall indicate the terms of the agreement. When approving an amicable agreement, the court by the same ruling simultaneously closes the proceedings.

The court shall rule on the refusal to approve the settlement agreement and shall continue the trial if:

1) the terms of the settlement agreement are in conflict with the law or violate the rights or interests protected by the law of other persons, or

2) one of the parties to the settlement agreement is represented by its legal representative, whose actions are contrary to the interests of the person he represents.

4. Foreign experience of application of alternative forms of commercial disputes resolution.

The European Union actively promotes methods of alternative dispute resolution (“ADR”), such as mediation. The Mediation Directive applies in

all EU countries. The Directive concerns mediation in civil and commercial matters.

Encouraging the use of mediation facilitates the resolution of disputes and helps to avoid the worry, time and cost associated with court-based litigation, thus enabling citizens to secure their legal rights in an efficient way.

The Mediation Directive applies to cross-border disputes in civil and commercial matters. It covers disputes in which at least one of the parties is domiciled in a Member State other than that of any other party on the date on which they agree to use mediation or on the date mediation is ordered by a court.

The principal objective of this legal instrument is to encourage the recourse to mediation in the Member States.

For this the directive contains five substantive rules:

- It obliges each Member State to encourage the training of mediators and to ensure high quality of mediation.
- It gives every judge the right to invite the parties to a dispute to try mediation first if she/he considers it appropriate given the circumstances of the case,
- It provides that agreements resulting from mediation can be rendered enforceable if both parties so request. This can be achieved, for example, by way of approval by a court or certification by a public notary.
- It ensures that mediation takes place in an atmosphere of confidentiality. It provides that the mediator cannot be obliged to give evidence in court about what took place during mediation in a future dispute between the parties to that mediation.
- It guarantees that the parties will not lose their possibility to go to court as a result of the time spent in mediation: the time limits for bringing an action before the court are suspended during mediation[4].

According to the provisions of EU Directive of 21 May 2008 on certain aspects of mediation in civil and commercial matters

Mediation means a structured process, however named or referred to, whereby two or more parties to a dispute attempt by themselves, on a voluntary basis, to reach an agreement on the settlement of their dispute with

[4] https://e-justice.europa.eu/content_eu_overview_on_mediation-63-en.do

the assistance of a mediator. This process may be initiated by the parties or suggested or ordered by a court or prescribed by the law of a Member State.

It includes mediation conducted by a judge who is not responsible for any judicial proceedings concerning the dispute in question. It excludes attempts made by the court or the judge seized to settle a dispute in the course of judicial proceedings concerning the dispute in question.

Mediator means any third person who is asked to conduct a mediation in an effective, impartial and competent way, regardless of the denomination or profession of that third person in the Member State concerned and of the way in which the third person has been appointed or requested to conduct the mediation.

Mediation can provide a cost-effective and quick extrajudicial resolution of disputes in civil and commercial matters through processes tailored to the needs of the parties. Agreements resulting from mediation are more likely to be complied with voluntarily and are more likely to preserve an amicable and sustainable relationship between the parties. These benefits become even more pronounced in situations displaying cross-border elements.

Mediation should not be regarded as a poorer alternative to judicial proceedings in the sense that compliance with agreements resulting from mediation would depend on the good will of the parties. Member States should therefore ensure that the parties to a written agreement resulting from mediation can have the content of their agreement made enforceable. It should only be possible for a Member State to refuse to make an agreement enforceable if the content is contrary to its law, including its private international law, or if its law does not provide for the enforceability of the content of the specific agreement. This could be the case if the obligation specified in the agreement was by its nature unenforceable.

TOPIC 8.
Terms in economic litigation.
Responsibility in economic litigation.

1. Types of terms in economic litigation. Calculation of terms.
2. Suspension of legal terms. Renewal and extension of missed terms in economic litigation.
3. The definition and types of procedural coercion measures.
4. The legal order of application of procedural coercion measures in economic litigation.

1. Types of terms in economic litigation. Calculation of terms.

According to Article 114 of Economic Procedural Code of Ukraine the court shall establish reasonable time limits for the conduct of procedural actions. A time limit is reasonable if it ensures sufficient time, taking into account the circumstances of the case, for the commission of a procedural actions, and corresponds to the task of economic legal proceedings.

Types of terms in economic litigation and the rules of their calculation are specified in Articles 115-116 of the Code. Thus, terms established by law or by court are calculated by years, months and days, and may also be determined by an indication of an event that should inevitably occur.

The procedural time runs from the next day after the corresponding calendar date or the occurrence of the event, with which its begins. The term, calculated by years, ends in the corresponding month and the date of the last year of the term.

The term calculated by months ends with the corresponding date of the last month of the term. If the expiration of a term calculated by months falls on a month that does not have a corresponding date, the term ends on the last day of this month.

If the expiration of the term falls on the weekend or other non-working day, the last day of the term is the first after it working day.

The course of the term, the end of which is associated with an event that should inevitably occur, ends the next day after the occurrence of the event.

The last day of the period lasts up to 24 hours, but when during this time it was necessary to perform procedural action only in the court, where

the working time expires earlier, the term ends at the time of the expiration of this time.

The term shall not be considered as missed if, before its expiration, the application, complaint, other documents or materials or funds are deposited in the mail or transferred by other appropriate means of communication.

2. Suspension of legal terms. Renewal and extension of missed terms in economic litigation.

As stipulated in Articles 117-119 of Economic Procedural Code of Ukraine the suspension of the proceedings in the case stops the procedural terms. From the date of the restoration of the proceeding, the procedural terms continue.

It should be taking into consideration by participants of economic litigation, that the right to commit procedural actions is lost with the expiration of the term prescribed by law or appointed by the court.

The applications, complaints and documents filed after the expiration of the procedural time-limits shall remain without consideration, except cases provided in the Economic Procedural Code.

However, there is a possibility to renew or extend the missed procedural term.

The court, on the application of the party to the case, renews the missed term, established by law, if it recognizes the reasons for its passage to be valid, except for cases when the Code establishes the impossibility of such renewal.

The procedural term established by a court may be extended by a court upon the application of a participant filed before the expiration of this term or on the initiative of the court.

The decision to refuse to renew or extend the procedural time limit may be appealed in accordance with the procedure established by the Code.

3. Procedural coercion measures.

Sometimes during economic litigation there could be a necessity to apply to the participants' measures of procedural coercion.

Measures of procedural coercion are procedural actions committed by the court in cases specified in the Economic Procedural Code of Ukraine in order to motivate the persons to comply with the established rules of the court, to faithfully carry out procedural duties, to stop abuse of rights and

to prevent the creation of unlawful obstacles in the implementation of legal proceedings (Article 132 of Economic Procedural Code).

Measures of procedural coercion are:

1) warning;

2) removal from the courtroom;

3) temporary seizure of evidence by a court;

4) fine.

The application to a person of measures of procedural coercion does not relieve him of the performance of duties established by the Code.

4. The legal order of application of procedural coercion measures in economic litigation.

A warning shall be applied to the participants of the trial and other persons present in the court session, for violation of the order during the court session or failure to comply with the instructions of the judge (presiding judge).

In the absence of written, substantive or electronic evidence requested by the court, without valid reasons, the court may order the temporary removal of these evidence by the state executor for the investigation of the court (Article 134 of Economic Procedural Code of Ukraine).

According to Article 135 of Economic Procedural Code of Ukraine the court may rule on collecting from the participant a fine in the amount of one to ten times of subsistence minimum for able-bodied persons to the state budget in the cases of:

1) failure to perform procedural duties, in particular, evasion from the commission of actions imposed by a court on a participant in a judicial process;

2) abuse of procedural rights, commission of acts or assumption of inactivity in order to interfere with legal proceedings;

3) failure to inform the court of the impossibility of submitting evidence demanded by the court, or failure to submit such evidence without valid reason;

4) failure to comply with the decision on the securing of the claim or evidence, etc.

The decision on the collection of a fine may be appealed to the court of higher instance. An appeal against such a decision does not preclude the consideration of the case. The decision of the court of appellate court on the

results of the review of the decision on the imposition of a fine is final and not subject to appeal.

The Supreme Court's decision on the imposition of a fine is not subject to appeal.

The decision on the imposition of a fine is an executive document and must comply with the requirements of the executive document established by law. The collector for such an executive document is the State Judicial Administration of Ukraine.

The court may revoke its ruling on the imposition of a fine if the person, in respect of which it has been imposed, has corrected the violation and / or provided evidence of the reasons for not fulfilling the relevant requirements of the court or of procedural duties.

TOPIC 9.
Writ proceeding. Claim in economic litigation

1. General characteristic of writ proceeding.
2. Statement of claim in economic litigation. Scope and form of a claim. Price of a claim. Other statements of fact in economic litigation.
3. The rules of filing a claim.
4. Preparatory proceeding in economic litigation.

1. General characteristic of writ proceeding.

Writ proceeding is a new form of proceedings in economic courts.

According to Article 147 of Economic Procedural Code of Ukraine a court writ is a special form of a court decision issued by a court on the results of consideration of minor cases, which have monetary nature and on which there is no dispute between parties.

An application for the issuance of a court writ could be made by a person who has the right to file a claim.

The applicant and the debtor in the writ proceeding may be legal entities and natural persons - entrepreneurs.

The court writ is enforceable in accordance with the rules established by law for the enforcement of court decisions.

Due to the provisions of Article 148 of Economic Procedural Code a court writ may be issued only on the basis of the requirements for collecting monetary debts under an agreement concluded in the written (including electronic) form, if the amount of the claim does not exceed one hundred of minimum living wage for able-bodied persons.

A person, who has the right to apply to the court with the requirements for issuing a court writ, can choose between simplified proceedings or writ proceeding for consideration of the claim.

As to the jurisdiction of cases for issuing a court writ an application for the issuance of a court writ shall be filed to the court of first instance according to the general rules of jurisdiction.

An application for the issuance of a court writ shall be filed to the court in written form and signed by the applicant.

According to Article 154 of the Code the court considers the application

for the issuance of a court writ within five days from the date of its receipt. The procedure is conducted without a court hearing and the notification of the applicant and the debtor.

Following a review of an application for the issuance of a court writ, the court shall issue a court writ or decide on a refusal to issue a court writ.

The court writ is not subject to appeal, however, it may be recalled. In the event of non-receipt by the court of an application from the debtor to recall the court writ within five days after the expiration of the term for its submission, the court writ becomes valid.

2. Statement of claim in economic litigation. Scope and form of a claim. Price of a claim. Other statements of fact in economic litigation.

According to Article 161 of Economic Procedural Code of Ukraine in case of consideration of a case by a court in the procedure of the litigation, the participants of the case shall formulate in written form their claims, objections, arguments, explanations concerning the subject of the dispute exclusively in statements on fact of the case.

Statements of fact (statements on the merits of the case) are: a claim; statement of defence; response to the statement of defence; counterargument (objections); explanation of a third party regarding to the claim or the counterclaim.

Statement of claim – is a set of facts sufficient to justify a right to sue to obtain money, property, or the enforcement of a right against another party. The term also refers to the legal theory upon which a plaintiff brings suit (such as breach of contract, etc.). The legal document which carries a claim is often called a Statement of Claim in English law, or a Complaint in U.S. federal practice and in many U.S. states. It can be any communication notifying the party to whom it is addressed of an alleged fault which resulted in damages, often expressed in amount of money the receiving party should pay/reimburse.

Statement of claim consists of two main parts – subject matter of the claim and cause of action of the claim.

The subject matter of the claim – the requirements for the protection of the violated or challenged rights and interests and the way to protect these rights and interests.

Cause of action (legal grounds of the claim) – are the legal facts, which justify the demand for the protection of the right or legitimate interest.

According to Article 162 of the Code in statement of claim, the plaintiff sets out his claims regarding the subject of the dispute and their justification.

The claim shall be submitted to the court in written form and signed by the plaintiff or his representative or another person who has the right to apply to the court in the interests of another person.

The claim must contain:

1) the name of the court of first instance to which it is filed;

2) the full name (for legal entities) or the name (for individuals) of the parties and other participants of the case, their location (for legal entities) or place of residence or stay (for individuals), etc.;

3) indication of the price of the claim if the claim is subject to monetary valuation; reasonable calculation of the price of claim;

4) the content of the claim: the method (methods) of protecting the rights or interests envisaged by law or agreement, or another method (methods) for the protection of rights and interests that does not contradict the law and which the plaintiff asks the court to determine in the decision; if the claim is filed to several defendants – the content of the claims for each of them;

5) a statement of the circumstances by which the plaintiff justifies his claims; indication of evidence, confirming the specified circumstances; the legal basis of the claim;

6) information on the taking of measures of pre-trial settlement of a dispute – in the event that the law establishes a mandatory pre-trial procedure for settling a dispute;

7) information on taking measures to secure evidence or a claim before filing a statement of claim, if any;

8) a list of documents and other evidence attached to the claim;

9) preliminary (indicative) calculation of the amount of court costs incurred by the plaintiff and which he expects to incur in connection with the consideration of the case;

10) confirmation of the plaintiff that he has not filed another claim (claims) to this same defendant (defendants) with the same subject and for the same reason.

If the claim is filed by a person exempted from payment of a court fee in accordance with the law, it shall indicate the grounds for the exemption from payment of the court fee.

In the case of a claim submitted by a person who has the right to apply to the court in the interests of another person, the grounds confirming the

right to file such a claim must be stated.

The statement of claim may contain other information necessary for the proper resolution of the dispute.

The price of a claim is determined by:

1) in claims for the collecting of money – the amount charged or the amount disputed by an enforcing or other document for which the collection is carried out in an unconditional order;

2) in claims for the recognition of title to property – the value of property;

3) in claims that consist of several independent claims – the total sum of all claims.

If the price determined by the plaintiff is not clearly in line with the real value of the disputed property or at the time of the claim, it is impossible to establish its exact price, the amount of the court fee is pre-determined by the court with the subsequent collection of the underpaid amount or with the return of the overpayment fee according to the price of the claim established by the court when considering the case.

In case of an increase in the amount of claims or changes in the subject of the claim, the unpaid sum of the court fee shall be paid before the application to the court with such a statement.

The statement of claim shall be accompanied by documents confirming:

1) sending to the other participants of the case copies of the statement of claim and the documents attached thereto;

2) payment of court fees in the established order and amount, or documents confirming the grounds for exemption from payment of court fees in accordance with the law.

The plaintiff is required to attach to the claim all evidence available to him that confirms the circumstances on which the claims are based (if the plaintiff is provided with written or electronic evidence, he may attach a copy of the relevant).

A statement of claim signed by the plaintiff's representative shall be accompanied by a power of attorney or other document confirming the powers of the representative of the plaintiff.

In statement of defence, the defendant shall file an objection to the claim (Article 165 of the Code). If the defendant fails to provide a statement of defence within the term established by the court without valid reasons, the court shall settle the case on the available materials.

In the response to statement of defence, the plaintiff sets out his explanations, thoughts and arguments regarding the defendant's objections and the reasons for their recognition or rejection (Article 166 of the Code).

In the **counterargument (objections)**, the defendant shall explain his arguments, thoughts and explanations regarding the answers given by the plaintiff in response to counterclaim, and the reasons for their recognition or rejection.

In the **explanations of a third person regarding a claim or a counterclaim**, a third person who does not declare independent claims regarding the subject matter of the dispute, sets out his/her arguments in support of or objection to the claim.

The explanations of a third person shall be signed by a third person or its representative.

According to Article 180 of the Code the defendant has the right to file **a counterclaim** in time for filing the counterclaim. The counterclaim is accepted for joint review with the original claim if both claims are interrelated and their joint consideration is appropriate, in particular, if they arise from one legal relationship or when the satisfaction of a counterclaim may exclude in whole or in part the satisfaction of an initial claim.

3. The rules of filing a claim.

According to Articles 171-172 of Economic Procedure Code of Ukraine a claim shall be filed by means of filing a statement of claim in the court of first instance, where it should be registered and not later than the next day, passed to a judge.

A plaintiff, a person who makes a claim in the interests of another person, is required to submit a copy of a statement of claim and copies of the documents attached to it with a letter describing the attachment to the participants of the case.

The court may leave the statement of claim with no further action (Article 174 of the Code).

The decision to leave the statement of claim with no further action shall outline the defects of the claim, the manner and terms of their removal, which may not exceed ten days from the date of delivery of the decision to leave the claim with no further action. If the decision to leave the statement of claim with no further action is made out because of the non-payment of the court fee in the amount established by law, the court in such a decision shall

indicate the exact amount of the court fee that is to be paid.

The legal grounds for return of the statement of a claim are the following:

- the claim is filed by a person who has no procedural capacity, is not signed or is signed by a person who is not entitled to sign it, or by a person whose position is not specified;
- the rules of consolidation of claims were violated;
- before the decision to open the proceedings in the case a statement on the settlement of the dispute or a statement on the withdrawal of the statement of claim is being received from the plaintiff;
- there are no grounds for the prosecutor's appeal to the court in the interests of the state or to appeal to the court of a person who has the right to apply to the court in the interests of another person;
- the plaintiff has filed to the same court another claim to the same defendant on the same subject and on identical grounds;
- the evidences of the application of measures of pre-trial settlement of a dispute, in the event when such measures are mandatory in accordance with the law, were not attached.

On the return of the statement of claim, the court shall issue a ruling which may be appealed.

The return of the statement of claim does not prevent the repeated application with it to the Economic Court in the general procedure after elimination of defects of claim.

As well as that, according to Article 175 of the Economic Procedural Code the court has the right to refuse to open a proceeding.

Economic court refuses to open a proceeding, when:

1) the application is not subject to consider by the rules of economic litigation;

2) a judgment or a court ruling about closing of proceedings in the case between the same parties, on the same subject and on the same grounds, is legally valid, or a court writ on the same requirements has become legally binding;

3) in the course of this or another court, there is a dispute between the same parties about the same subject and on the same grounds;

4) the decisions of the arbitral tribunal or international economic arbitration exist, which were taken within their competence in Ukraine in a dispute between the same parties, on the same subject and on the same grounds,

except for cases when the court refused to issue an enforcement document for the enforcement of such decisions;

5) the decisions of a court of a foreign state or international economic arbitration exist, which are recognized in Ukraine in accordance with the procedure established by law, in a dispute between the same parties on the same subject and on the same grounds;

6) the death of an individual has been declared or the business entity was dissolved, who filed the lawsuit or to whom the claim was filed, if the controversial legal relationships do not allow succession.

The decision to refuse to open the proceedings in the case may be appealed. In case of cancellation of this ruling, the claim is deemed to be filed on the day of the initial application to the court.

In the absence of grounds for leaving a claim with no further action, return of a statement of claim or refusal to open a proceeding, the court shall **open proceedings** in the case within five days from the day the statement of claim was received.

On the acceptance of a statement of claim for consideration and opening of the proceedings in a court, the court shall issue a ruling stating:

1) the name of the economic court, the name and initials of the judge who opened the proceedings in the case, the case number;

2) the name (for legal entities) or the name (surname, name and patronymic, if any, for individuals) of the parties, their location (for legal entities) or place of residence (for individuals);

3) the subject matter and grounds of the claim;

4) according to rules of which litigation (general or simplified) the case will be considered;

5) the date, time and place of the preparatory meeting, if the case will be considered in general proceedings;

6) the date, time and place of the court hearing to consider the case on the merits, if the case is to be considered in the order of simplified proceedings with the notification (call) of the parties;

7) the result of the resolution of applications and petitions of the plaintiff, received together with the statement of claim, if their resolution does not require the summoning of the parties;

8) the time limit for submission of a statement of defence by a defendant;

9) the term of submission of explanations by third parties involved in the proceedings;

10) the time period for the submission of the response to the statement of defence and the objections, if the case will be considered under the rules of simplified litigation;

11) web address of the page on the official web-portal of the judiciary of Ukraine on the Internet, in which the participants of the case can obtain information on the case under consideration.

4. Preparatory proceeding in economic litigation.

The objectives of preparatory proceedings are:

1) the final determination of the subject matter of the dispute and the estimation of the nature of the controversial legal relationship;

2) clarification of objections against claims;

3) the determination of the circumstances of the case, which are subject to establishment, and the collection of relevant evidence;

4) deciding about recusation of a judge;

5) commission of other actions in order to ensure the proper and timely consideration of the case on the merits.

According to Article 177 of Economic Procedural Code preparatory proceedings begin with the opening of litigation and end up with the closing of the preparatory proceedings.

The preparatory proceedings must be held within sixty days from the date of opening of the proceedings. In exceptional cases, for the proper preparation of the case for consideration on the merits, this period may be extended by no more than thirty days at the request of one of the parties or on the initiative of the court.

TOPIC 10.
Consideration of economic disputes in the first instance

1. Consideration of economic cases in the first instance. Settlement of a dispute with the participation of a judge.
2. Refusal of the plaintiff from the claim. Settlement (amicable) agreement of the parties.
3. Consideration of the case on the merits.
4. Leaving of a claim without consideration. Suspension and closing the proceedings.
5. Court decisions.
6. Consideration of cases in the order of simplified litigation.

1. Consideration of economic cases in the first instance. Settlement of a dispute with the participation of a judge.

Economic Procedural Code of Ukraine defines the possibility to settle an economic dispute with the participation of a judge. This procedure is quite new for economic litigation. In this procedure the judge acts as a mediator, helping the parties to resolve their dispute in amicable way.

According to Articles 186-190 of Economic Procedural Code settlement of a dispute with the participation of a judge shall be conducted with the consent of the parties prior to the commencement of consideration of the case on the merits.

The settlement of a dispute with the participation of a judge is not allowed in disputes (cases):

1) on the restoration of solvency of the debtor or recognition of it as a bankrupt;

2) on applications for approval of plans of sanation the debtor before the opening of proceedings in the bankruptcy case;

3) in the case of a third party claiming an independent claim regarding the subject of the dispute.

On the procedure for settling a dispute with the participation of a judge, the court shall issue a ruling which simultaneously suspends the proceedings.

In the event of the parties failing to reach an amicable settlement of the dispute, the re-settlement of the dispute with the participation of a judge shall not be allowed.

The settlement of a dispute with the participation of a judge shall be conducted by the judge-rapporteur individually, regardless of the composition of the case.

At the beginning of the first joint dispute settlement meeting, the judge shall explain to the parties the purpose, the procedure for settling the dispute with the participation of the judge, the rights and obligations of the parties.

In conducting joint meetings, the judge shall find out the grounds and subject of the claim, the grounds for objection, explain to the parties the subject of evidence regarding the category of the dispute being considered, invites the parties to submit proposals on ways of amicable settlement of the dispute and other actions aimed at an amicable settlement of the dispute. The judge may offer the parties a possible way of an amicable settlement of the dispute.

During closed meetings, the judge has the right to draw the parties' attention to court practice in similar disputes, to offer the party possible ways of amicable settlement of the dispute.

During the settlement of a dispute, the judge has no right to provide legal advice and recommendations to the parties, to provide an assessment of the evidence in the case.

Information received by any of the parties, as well as the judge during the settlement of the dispute, is confidential. During the settlement of a dispute with the participation of a judge, the minutes of the meeting are not held or fixed by technical means.

The settlement of a dispute with the participation of a judge shall be terminated:

1) in the case of submission by the party of an application for the termination of the settlement of a dispute with the participation of a judge;

2) in the case of expiration of the term of the dispute settlement with the participation of a judge;

3) upon the initiative of a judge in case of delaying the settlement of a dispute by any of the parties;

4) in the case of the conclusion of the settlement agreement, refusal from the claim or recognition of the claim by the defendant.

The settlement of a dispute with the participation of a judge shall be held within a reasonable time, but not more than thirty days from the date of the decision to hold it.

The term of the settlement of a dispute with the participation of a judge cannot be extended.

2. Refusal of the plaintiff from the claim, acknowledging of the claim by the defendant. Settlement agreement of the parties.

According to Article 191 of Economic Procedural Code of Ukraine the plaintiff may refuse the claim, and the defendant can acknowledge the claim at any stage of the proceedings, mentioning it in the statement on the merits of the case or in a separate written statement.

Prior to the adoption of a court decision in connection with the refusal of the plaintiff from the claim or acknowledging of the claim by the defendant, the court shall explain to the parties the consequences of the respective procedural actions, verify whether the representative of the party has the authority to commit these actions.

In case of refusal of the plaintiff from the claim, the court shall rule on the closure of the proceedings.

If the defendant acknowledges a claim, the court shall decide on the satisfaction of the claim. If the defendant's acknowledging of a claim is in conflict with the law or violates the rights or interests of other persons, the court shall rule on refusal to accept the acknowledging a claim by a defendant and continue the litigation.

The court does not accept the plaintiff's refusal from the claim, the acknowledging of the claim by the defendant in a case in which the person is represented by a legal representative, if his actions contradict the interests of the person he represents.

Due to the provisions of Article 192 of Economic Procedural Code the settlement agreement is concluded by the parties with a view to settling the dispute on the basis of mutual consensus and should concern only the rights and obligations of the parties. In a settlement agreement, the parties may go beyond the subject of the dispute, provided that the settlement agreement does not violate the rights or legal interests of third parties. The parties may conclude a settlement agreement and notify the court, by making a joint written declaration, at any stage of the litigation.

Prior to the adoption of a court decision in connection with the conclusion of a settlement agreement by a party, the court shall explain to the parties the consequences of such a decision, verify whether the parties are not restricted to do the relevant actions.

The agreement concluded by the parties shall be approved by the court ruling, the operative part of which shall indicate the terms of the agreement. **When approving a settlement agreement, the court by the**

same ruling simultaneously closes the proceedings.

The court shall rule on the refusal to approve the settlement agreement and shall continue the trial if:

1) the conditions of the settlement agreement are in conflict with the law or violate the rights or interests protected by the law of other persons; or

2) one of the parties to the settlement agreement is represented by its legal representative, whose actions are contrary to the interests of the person he represents.

According to Article 193 of the Code implementation of the settlement agreement is carried out by the persons who have concluded it, in the order and terms stipulated by this agreement.

The decision on the approval of a settlement agreement is an executive document and must comply with the requirements of the executive document established by the Law of Ukraine "On Enforcement Proceedings".

In the event of failure to comply with a court-approved settlement agreement, a court ruling on the approval of a settlement agreement may be filed for its enforcement in the manner prescribed by law for the enforcement of court decisions.

3. Consideration of the case on the merits.

The purpose of the consideration of the case is the consideration and resolution of the dispute on the basis of the materials collected in the preparatory proceedings, as well as the allocation of court costs.

The court shall begin the examination of the case on the merits not later than sixty days from the date of opening of the proceedings, and in case of extension of the preparatory proceedings, no later than the next day after the expiration of such term.

The court examines the case on its merits within thirty days from the date of commencement of consideration of the case on the merits.

Article 196 of Economic Procedural Code stipulates, that the consideration of the case takes place in a court session. The court informs the participants of the case about the place, date and time of the court session.

The participant in the case has the right to file a petition for consideration of the case in his/her absence. If all parties to the case have made such a request, the court proceedings are conducted on the basis of materials available to the court.

The court session is held in a specially equipped room - the courtroom. Separate procedural actions, if necessary, may be committed outside the courtroom.

There is a possibility to consider the case in a videoconference mode (Article 196 of the Code).

Participants in the trial, as well as others present in the court session, apply to the court with the words "Your Honour".

The procedure of the consideration of the case is strictly defined in the Code. Thus, persons present in the courtroom must stand up when the court is coming in and out. Court judgments all persons, which are present in the courtroom, hear while standing. Participants in the trial and other persons present in the courtroom, apply to court and to each other, provide explanations, statements, conclusions, consultations, etc. while standing. The participants of the case shall hand over documents and other materials to the chairman through the court administrator.

According to Article 201 of the Code in the time appointed for consideration of the case, the chairman shall open a hearing and declare which case is to be considered. From this moment the consideration of the case on the merits begins.

The presiding judge must define the persons who participate in the court session, as well as verify the credentials of the representatives.

Failure to appear in a court session of any party to the case, provided that he/she is duly notified of the date, time and place of the trial, shall not prevent the consideration of the case on the merits, except some cases.

Therefore, the court postpones the consideration of the case in a court session within the time limits established by the Code for the following reasons:

1) absence in the court session of the participant in the case, for which there is no information about sending him/her a message on the date, time and place of the court session;

2) the first non-appearance in the court session of the participant of the case, which has been notified of the date, time and place of the court session, if he/she has informed about the reasons for non-appearance, which the court recognized as valid;

3) the emergence of technical problems that make it impossible for a person to participate in a court session in a videoconference mode, except in cases where according to the Code a court session may take place without the

participation of such person;

4) the necessity of seeking new evidence, in the case where the participant of the case substantiated the impossibility of making a corresponding application within the framework of preparatory proceedings.

If the participant in the case or his representative has been duly informed about the court session, the court will consider the case in the absence of such a participant in the case of:

1) non-attendance of the court session of the participant (his representative) without valid reasons or without notice of the reasons for non-appearance;

2) a repeated absence in the court session of the participant (his representative), regardless of the reasons for non-appearance;

3) absence of a representative in a court session, if the person who he represents or another representative of the party appeared in the court session;

4) non-appearance in the court session of the participant of the case, if his representative appeared, except in cases when the court recognized the appearance of the participant of the case obligate.

In the event of the plaintiff's failure to appear in the court session without valid reasons or failure to inform him of the reasons for non-appearance, the court shall leave the claim without consideration, except in case if the court receives an application for consideration of the case in absence of the plaintiff and plaintiff's absence does not interfere with the resolution of the dispute.

On the postponement of the consideration of the case, a ruling is issued.

During the consideration of the case on the merits the court must clarify the circumstances of the case and study evidence.

According to Article 208 of the Code the Court shall hear the introductory words of the plaintiff and the third party who participates in it, the defendant and the third party participating in it, as well as other participants in the case. In the introductory word, the participants of the case orally summarize the content and grounds of their claims and objections to the subject of the claim, provide the necessary explanations for them.

The court, having heard the introductory word of the participants of the case, finds out the circumstances on which the participants of the case refer as the basis of their claims and objections, and investigate, in the order

determined in the preparatory meeting in the case, the evidence on which they are substantiated.

The court during the examination of the case must directly examine the evidence in the case: to review written and electronic evidence, expert opinions, explanations of the participants in the case, set out in the statements on the merits of the case, testimonies etc.

Evidence that was not the subject of an investigation at a court session cannot be taken by the court as basis for the court decision.

A witness examination shall be conducted only by a court order in cases established by the Code. Each witness is questioned separately.

Witnesses who have not yet given evidence may not be in the courtroom during the hearing of the case. A witness can use records while giving evidence only if his testimony relates to any calculations and other data that is difficult to store in memory. These records are submitted to the court and the participants of the case and can be attached to the case by court order.

The expert's conclusion upon the petition of the participant of the case shall be announced in the court session during the investigation of written evidence. The court may only declare the summary of the expert's opinion.

The participants in the case may give their explanations regarding the expert's opinion.

During the investigation of evidence, the court may use oral consultations or written explanations (conclusions) of specialists.

According to Article 216 of the Code if the dispute, the consideration of which has essentially begun, cannot be resolved in this court session, a court **may declare a break** within the time limits established by the Code for the consideration of a case, the duration of which is determined according to the circumstances that have caused it, followed by an indication of it in a decision.

On the postponement of consideration of a case or a break in a court session, the place, date and time of a new court hearing or the continuation of a court session, the court shall notify the participants of the case, witnesses, experts, specialists, translators who were present at the court hearing.

In case of postponement of consideration of the case, the court shall question the witnesses who arrived. Only in exceptional cases, according to a court order, witnesses are not questioned and summoned again.

If the proceedings were postponed, the court will continue the proceedings in the case from the stage at which the trial was postponed. In

the case of postponement of consideration of a case during its consideration of the merits, the court may begin the consideration of the case on the merits initially.

If a break was announced in the court session, the proceedings in the case after its expiration shall continue from the stage at which the break was announced.

After the circumstances of the case were clarified and all the evidences were studied the court announce **judicial debates**. Due to Article 218 of the Code the participants in the case declare speeches in the court debates. In these speeches it is possible to refer only to the circumstances and evidence examined in the court session. In a debate, a participant acts independently or nominates one representative for a speech. The procedure of conducting, the duration of the court debates and the order of the speeches of the participants of the case shall be determined by the chairman judge on the basis of a reasonable time necessary for the parties to state their position on the case. With the consent of the court speakers can exchange replicas. The right of the last replica always belongs to the defendant and his representative.

During the litigation the secretary of the court session fixes the court session by technical means.

After the litigation, the court proceeds to the deliberation room (a specially equipped room for judgments) to make a decision, announcing the indicative time for its announcement.

No one has the right to be present in a deliberation room, except of the judges hearing the case. During stay in a deliberation room, the judge shall not have the right to consider other court cases. Judges shall not have the right to disclose the process of discussion and decision-making in a deliberative room.

4. Leaving of a claim without consideration. Suspension and closing the proceedings.

According to Article 226 of the Economic Procedural Code of Ukraine, the **court leaves the claim without consideration if:**

1) the claim is filed by a person who has no procedural capacity;

2) the statement of claim is not signed or signed by a person who is not entitled to sign it or by a person whose position is not specified;

3) in the course of this or another court, there is a dispute between the same parties about the same subject and for the same reasons;

4) the plaintiff, without valid reasons, failed to file the evidence requested by the court necessary for the resolution of the dispute, or the plaintiff (his representative) did not appear in the court session or did not report the reasons for non-appearance, except if the plaintiff had filed an application for consideration of the case in his absence and non-appearance does not prevent the resolution of the dispute;

5) the plaintiff, before the commencement of the consideration of the case on the merits, filed an application for the leaving a claim without consideration;

6) the plaintiff, within the time-limit specified by the court, did not deposit funds for the court costs of the defendant and the defendant submitted an application for the leaving of the claim without consideration;

7) the parties entered into an agreement on the transfer of the dispute to the arbitral tribunal or international economic arbitration and from the defendant not later than the commencement of consideration of the case on merits, but before the submission of the first application on the merits of the dispute, objections were raised against the resolution of the dispute in the economic court;

8) the proceedings were opened on the application submitted without observance of the requirements set forth in Articles 162 , 164 , 172 , 173 of the Code, and the plaintiff did not eliminate these downsides within the term established by the court;

9) a person, in whose interests the case was opened by another person, filed an application, where he does not support the declared requirements;

10) upon opening of the proceedings by the court it was established that the plaintiff has filed another claim to the same court to the same defendant (defendants) with the same subject and on identical grounds;

11) an agreement on transferring a dispute to a court of another state has been concluded between the parties, if the right to conclude such an agreement is provided by law or an international treaty of Ukraine, except if the court finds that such an agreement contradicts the law or international treaty of Ukraine, is invalid, has expired or cannot be fulfilled.

On the leaving of the claim without a consideration the court issues a ruling. The decision to leave the claim without consideration can be appealed.

A person whose claim is left without consideration, after eliminating the downsides that were the reason for the leaving of the claim without consideration, has the right to apply to the court repeatedly.

In some cases the court is obliged or has the right to **suspend the proceeding.**

Due to Article 227 of Economic Procedural Code **the court is obliged to suspend proceedings in cases when:**

1) death or declaration as dead of an individual who was a party to the case or a third party with independent claims regarding the subject of the dispute, if the controversial legal relationship permits succession;

2) the need to appoint or replace the legal representative of the party;

3) the presence of a party or a third person who claims independent claims regarding the subject matter of the dispute, in the Armed Forces of Ukraine or other formations formed in accordance with the law, transferred to a military state or involved in an anti-terrorist operation;

4) making a decision on settling a dispute with the participation of a judge;

5) the objective impossibility of considering the case before the consideration of another case, which is considered by way of constitutional proceeding, administrative, civil, economic or criminal proceedings, until the legal entry into force of a court decision in another case; the court cannot rely on the objective impossibility of considering a case in cases where the evidence collected allows to establish and evaluate the circumstances (facts) that are the subject of the trial.

According to the provisions of Article 228 of the Code **the court has the right, on the application of a party to the case, and also on its own initiative, suspend the proceedings in cases:**

1) the presence of a party at an alternative (non-military) service outside the place of residence or on time military service;

2) the appointment by the court of expert-examination;

3) sending a court order to collect evidence in the manner prescribed by Article 84 of the Code;

4) applying for a court order on the provision of legal aid or the giving of a summons to a court or other documents to a foreign court or other competent authority of a foreign state;

5) receipt of the application for the recusal of a judge;

6) the decision to temporarily withdraw evidence from a state executor for trial by a court;

7) revision of a court decision in similar legal relations (in another

case) in cassation by the Chamber, the Joint chamber, the Grand Chamber of the Supreme Court.

On the suspension of a proceeding the court issues a ruling.

The proceedings are resumed at the request of the participants in the case or at the initiative of the court not later than ten days from the day the court receives notification of the elimination of the circumstances causing its suspension. On the resumption of proceedings, the court issues the ruling. The litigation is running on from the stage on which it was suspended.

The Economic Court closes the proceedings if (Article 231):

1) the dispute is not subject to consideration in the economic proceedings;

2) there is no subject of dispute;

3) the court establishes the circumstances which are grounds for the refusal to open proceedings;

4) the plaintiff has refuses from the claim and the refusal has been accepted by the court;

5) after the opening of the proceedings in the case between the parties an agreement on transferring the dispute to an international economic arbitration tribunal or an arbitral tribunal has been concluded, unless the court finds that such an agreement is invalid;

6) the death of an individual or the termination of a legal entity who has been one of the parties, if the controversial legal relationship does not allow succession;

7) the parties have entered into a settlement agreement and it has been approved by the court.

If the proceedings are closed because the dispute cannot be considered by economic courts, the court shall explain to the plaintiff to the jurisdiction of which court it is assigned to hear the case.

In case of closing of the proceedings, a repeated appeal to a court from a dispute between the same parties, about the same subject and for the same reasons is not allowed. The existence of a ruling on the closure of proceedings in connection with the adoption of a refusal of a plaintiff from a claim does not deprive the defendant in this case of the right to apply to the court for resolving this dispute.

On closing of the proceedings, the court issues the ruling, as well as decides on the division between the parties of court costs, the return of court fees from the budget. A ruling may be appealed.

5. Court decisions.

Due to the provisions of Economic Procedural Code there are **four types of court decisions:**

1) court rulings;

2) judgements;

3) resolutions;

4) court orders.

Procedural issues related to the movement of the case in the court of first instance, the petition and statements of the persons involved in the case, the question of postponing the consideration of the case, the announcement of a break, the suspension or closure of the proceedings, shall be decided by the court by means of the issuing of court rulings.

The examination of the case by the court of first instance ends with the judgement of the court.

Review of court decisions in appeal and cassation ends with the adoption of a resolution.

In cases stipulated by the Code, as well as in bankruptcy cases, the trial ends with the issuance of a ruling, the adoption of a resolution or the issuance of a court order.

According to Article 233 of Economic Procedural Code of Ukraine courts shall make decisions in the name of Ukraine immediately after the trial. Judgements and resolutions shall be made, drawn up and signed in the deliberative room by the composition of the court hearing the case.

A judgment shall be based on the principles of the rule of law, be lawful and justified.

In choosing and applying the rules of law to controversial legal relations, the court shall take into account the conclusions regarding the application of the rules of law set forth in the decisions of the Supreme Court (Part 4, Article 236 of the Code).

While making a decision the court must consider the following issues:

1) whether there were circumstances (facts) that substantiated the claims and objections and which evidence they are supporting;

2) Is there any other factual data relevant to the decision of the case, and evidence of their confirmation?

3) what legal norm should apply to these legal relationships;

4) whether the claim should be satisfied or whether the lawsuit should be defeated;

5) how to allocate costs between the parties;

6) whether there are grounds for cancelling the measures to secure the claim (preliminary injunction measures).

According to Article 238 of the Code the decision of the court consists of **introductory, descriptive, motivational and operative parts.**

The decision of the court shall be announced in a court session, which ends the consideration of the case, in public, except in cases established by the Code. The court may declare only an introductory and operative part of the decision.

The judgement of the Economic Court shall come into force upon expiration of the term for filing an appeal, if no appeal has been filed (Article 241).

If an appeal is filed, the decision, if it has not been cancelled, becomes valid after the return of the appeal, refusal to open or close the appeal proceeding or the adoption of a ruling of the court of appellate instance as a result of the appeal review.

6. Consideration of cases in the order of simplified litigation.

According to Article 247 of Economic Procedural Code of Ukraine in the order of simplified litigation, minor cases are considered.

When deciding on the consideration of a case in the order of simplified or general litigation, the court shall take into account:

1) the price of the claim;

2) the value of the case for the parties;

3) the method of protection chosen by the plaintiff;

4) the category and complexity of the case;

5) the scope and nature of the evidence in the case, including whether it is necessary to appoint an expert examination, to summon witnesses, etc.;

6) the number of parties and other participants in the case;

7) whether the consideration of the case is a significant public interest;

8) the opinion of the parties on the need to consider the case on the rules of simplified litigation.

In the order of simplified litigation proceedings cannot be considered cases:

1) about bankruptcy;

2) on applications for approval of financial recovery plans before the opening of proceedings in the bankruptcy case;

3) in disputes arising out of corporate relations, and disputes concerning transactions in respect of corporate rights (shares);

4) in disputes concerning the protection of intellectual property rights, in addition to cases of collection of a monetary amount, the amount of which does not exceed one hundred subsistence minimum for able-bodied persons;

5) in disputes arising from relations of the protection of economic competition, restriction of monopoly in economic activity, protection against unfair competition;

6) in disputes between a legal entity and its official (including an official whose powers have been terminated) on compensation for losses caused by such an official to a legal entity by its actions (inaction);

7) in disputes concerning the privatization of state or communal property;

8) in which the value of the claim exceeds five hundred subsistence minimum for able-bodied persons.

The court shall consider the cases in the simplified procedure within a reasonable time, but not more than sixty days from the date of opening of the proceedings (Article 248 of the Code).

A plaintiff's application for review of the case in the form of a simplified litigation shall be submitted in written form at the same time as the filing of the statement of claim or may be contained therein. Such a petition should concern the consideration in the order of simplified litigation in the whole case and cannot relate only to a certain part of the claim, otherwise the court will not accept it for consideration, as should be indicated in the decision to open the proceedings.

The court decides on the consideration of the case in the order of simplified litigation in the decision on opening of proceedings.

If the court, on the basis of the results of consideration of the petition of the plaintiff, comes to a conclusion on the consideration of the case in the form of a simplified procedure, it should be indicated in the decision to open the proceedings.

If the defendant submits a statement of objections against the consideration of the case in the manner of simplified proceedings, the court, depending on the validity of the objections of the defendant, decides on:

1) leaving the defendant's application without satisfaction;

2) consideration of the case according to the rules of the general

proceedings and replacement of the consideration of the case on the merits by the preparatory meeting.

If the defendant fails to file such objections within the term established by the court, he has the right to initiate a transition to a case under the rules of general proceedings only if he proves that he missed the term for valid reasons.

If the court has decided to consider the case in the simplified procedure, but in the future on its own initiative or at the request of the participant of the case, issued a ruling on the consideration of the case on the rules of the general proceedings, the consideration of the case begins with the stage of opening the proceedings. In such a case, the return of the case for consideration under the rules of simplified proceedings is not allowed.

Article 251 defines specific features of consideration of the case in the order of simplified litigation.

The consideration of the case in the order of simplified proceedings is carried out by the court in accordance with the rules established by the Code for the consideration of the case by way of general proceedings, with the certain particularities.

Thus, consideration of the case on the merits in the simplified litigation begins with the opening of the first court session or after thirty days from the date of opening of the proceedings, if the court session is not held.

If, for the consideration of the case in the simplified litigation in accordance with the Code, judicial proceedings are not held, procedural actions, the term of which according to the Code is limited to the first court hearing in the case, may be committed within thirty days from the date of opening of the proceedings.

A preparatory meeting is not conducted in the course of simplified proceedings.

The first court hearing in the case shall be held not later than thirty days from the date of opening of the proceedings. At the request of a party, the court may postpone consideration of the case for the purpose of providing additional time for the submission of a response and / or an objection if they were not filed before the first court hearing for valid reasons.

The court examines the case in the form of a simplified litigation without notifying the participants of the case on the materials available in the case, in the absence of a petition of any of the parties about the other. At the request of one of the parties or on its own initiative, the court proceedings

are conducted in a court session with the notification (summoning) of the parties.

The court may refuse to satisfy a party's request to hear a case in a court session with the notice of the parties for the simultaneous existence of the following conditions:

1) the subject of a claim is the collection of a monetary amount, which does not exceed one hundred subsistence minimum for able-bodied persons;

2) the nature of the controversial legal relationship and the subject of evidence in the case do not require the holding of a court session with the notification of the parties for full and complete establishment of the circumstances of the case.

When considering the case in the simplified proceedings, the court examines the evidence and written explanations set forth in the statements on the merits of the case, and in the case of consideration of the case with the notification (call) of the participants of the case - also hears their oral explanations. Judicial debates are not held.

In the course of proceedings in the order of simplified litigation, witnesses are not summoned. In the event that the circumstances set forth by the witness in a statement contradict other evidence or raise doubts as to their reliability, the court does not take into account the testimony of the witness.

TOPIC 11.
Insolvency procedure in Ukraine

1. The definition of bankruptcy. Parties to insolvency proceedings.
2. The judicial insolvency proceedings.
3. Solvency renewal proceedings (Sanation of a debtor).
4. Liquidation of a debtor.
5. Particularities of insolvency of certain debtors.

1. The definition of bankruptcy. Parties to insolvency proceedings.

Bankruptcy in Ukraine is governed by the new Code on Bankruptcy Proceedings, from 18.10.2018., the Civil Code of Ukraine, the Economic Code of Ukraine, the Economic Procedural Code of Ukraine. Furthermore, there are a number of related regulations, which provide for certain details of insolvency procedure. Moreover, some specific aspects of regulations can be found in court practice. Insolvency cases are considered by the economic courts in Ukraine.

Before the adoption of the new Code on Bankruptcy Proceedings the debtor could be exclusively either a *legal entity or a private entrepreneur.* However, with the adoption of the new Code the possibility for individuals to undergo the bankruptcy procedure is defined in the Code as well.

Participants in the bankruptcy case - the parties, the arbitration manager, the state body on bankruptcy, the State Property Fund of Ukraine, a representative of the local self-government authority, a representative of the debtor's employees, an authorized person of the debtor's founders (participants, shareholders), other participants in the bankruptcy case regarding the rights or obligations of which there is a dispute.

One of the key figures in bankruptcy case is **arbitration manager**. According to the provisions of Bankruptcy Code arbitration manager is an individual who has received the relevant certificate and information about whom is included in the Unified Register of Arbitration Managers of Ukraine.

During the bankruptcy procedure arbitration manager can acquire the status of the manager of sale, restructuring manager and manager of sanation.

The manager of the sale - the arbitration manager appointed by the economic court in the case of the insolvency of an individual for the

realization of the property of the bankrupt and satisfaction of the claims of creditors.

Restructuring manager - the arbitration manager appointed by the economic court in the case of insolvency of an individual for the restructuring of debtor debts.

Manager of sanation - arbitration manager, and in cases envisaged by the Code - the head of the debtor appointed by the economic court for the implementation of the procedure for the debtor's rehabilitation.

According to Article 10 of the Bankruptcy Code arbitration managers are subjects of independent professional activity. **One and the same person may exercise the powers of the arbitration manager at all stages of the bankruptcy proceeding.**

Article 11 stipulates, that an arbitration manager may be a citizen of Ukraine with a higher legal or economic education, a total work experience in a specialty not less than three years or one year after receiving full higher education in management positions, has undergone training and probation within six months in accordance with the procedure established by the state, speaks a state language and passed a qualification examination.

A person who intends to obtain a certificate of the right to exercise the activities of the arbitration manager shall submit a corresponding application to the qualification commission with documents confirming compliance with the requirements specified by the Bankruptcy Code to the arbitration manager (Article 16). The qualification exam is held by means of anonymous testing.

The parties to insolvency proceedings are the debtor and the creditors (secured, current and competitive). In addition, the director of the debtor, his or her employees or shareholders may also be involved in the proceedings.

The secured creditors are those whose claims are secured by pledge or mortgage.

Competitive creditors on claims that arose prior to the day of instituting bankruptcy proceedings.

Current creditors are those, whose claims arose after the day of instituting of bankruptcy proceedings.

While the creditor has the right to file insolvency claim, the debtor is obliged to apply within a month to the economic court with a statement on opening of proceedings in the bankruptcy case in the event of the following circumstances:

- satisfaction of claims of one or more creditors will lead to the impossibility of fulfilling the debtor's monetary obligations in full against other creditors (the threat of insolvency);
- in other cases, envisaged by the Bankruptcy Code.

If the head of the debtor has violated these requirements, he is jointly and severally liable for dissatisfaction of the claims of the creditors.

According to Article 34 of the Bankruptcy Code an application for opening bankruptcy proceedings shall be submitted by the debtor or creditor in written form.

The creditor's application for opening bankruptcy proceedings shall be accompanied by:

- evidence of payment of a court fee, except in cases where according to the law it is not subject to payment;
- power of attorney or other document certifying the credentials of the representative, if the application is signed by the representative;
- evidence of advance payment to the arbitration manager of three minimum wages for three months for the exercise of his/her authority;
- evidence of sending a copy of the application and the documents attached thereto to the debtor.

The creditor's application, in addition, shall contain information on the size of the creditor's claims to the debtor, indicating separately the amount of the fine (or other financial sanction) to be paid.

It should be taken into account, that according to the current provisions of the Bankruptcy Code regarding legal persons, the minimum size (threshold) of the debt and the delay period for the creditor's application to court is not provided at all. In the Bankruptcy Code, in general, there is no notion of uncertainty of monetary claims. So, there are no legal demands about the necessity of filing evidences about indisputability of claims, or about necessity of filing court decisions on satisfaction of claims of the creditor, which has become legally valid, as well as the corresponding decision of the state executor or the private executor about the opening of enforcement proceedings for the fulfillment of the requirements of the creditor will no longer be served. This situation is quite different if compare with the provisions of the Law of Ukraine «On restoring debtor's solvency or declaring it insolvent», which is no longer valid. Because, according the provisions of this Law the creditor could file a claim for insolvency only in the event if the debtor was unable to cover the monetary liabilities within three months following the

date they fall due. In addition, the amount of such unperformed liabilities had to be of no less than 300 statutory minimal wages at the date of filling of the respective insolvency claim. So in current legislation there is no such legal prerequisites for creditors to file a claim about opening of bankruptcy proceedings against debtors.

2. The judicial insolvency proceedings.

Due to Article 6 of the Code of Ukraine on bankruptcy proceedings in accordance with this Code, the following **legal procedures for insolvency apply to a debtor-legal entity:**

- assets administration procedure;
- debtor's rehabilitation (sanation);
- liquidation of the bankrupt.

As well as that, in accordance with this Code, the following **insolvency proceedings are applied to a natural person's debtor:**

- debt restructuring of the debtor;
- repayment of debtor debts.

The procedure for satisfying the claims of creditors is introduced in the bankruptcy case, along with the recognition of the debtor bankrupt.

It should be emphasized, that the Bankruptcy Code provides the possibility to take measures to prevent bankruptcy of a debtor-legal entity.

Therefore, according to Article 4 of the Bankruptcy Code the founders (participants, shareholders) of the debtor, the owner of the property (the body authorized to manage the property) of the debtor, the debtor's creditors, and other persons within the limits of measures to prevent bankruptcy of the debtor may be provided with financial assistance in the amount sufficient to repay the debtor's monetary obligations before creditors, including obligations to pay taxes and duties (mandatory payments), insurance premiums on compulsory state pension and other social insurance in order to restore of the solvency of the debtor a (refinancing of the debtor before the opening of proceedings in the bankruptcy case).

In the event that the financial assistance is provided to the debtor, he shall assume respective obligations to the persons who provided such assistance in accordance with the procedure established by law.

Recovery of the debtor before the opening of bankruptcy proceedings – a system of measures to restore the debtor's solvency, which

may be performed by the debtor's founder (participant, shareholder), the owner of the property (the body authorized to manage the property) of the debtor, and other persons for the purpose of preventing bankruptcy of the debtor by using organizational, economic, managerial, investment, technical, financial and economic, legal measures in accordance with the law before the opening of proceedings in the bankruptcy case.

According to Article 5 of the Bankruptcy Code the debtor, at the decision of the founders (participants, shareholders) of the debtor, has the right to initiate a sanation procedure before the opening of proceedings in the bankruptcy case.

The sanation of the debtor before the opening of the bankruptcy proceeding is carried out in accordance with the plan of the debtor's rehabilitation before the opening of proceedings in the bankruptcy case.

Article 39 of the Bankruptcy Code outlines the **specific of opening of the bankruptcy proceedings.** The examination of the validity of the claims of the applicant, as well as the establishment of the grounds for opening a bankruptcy proceeding, shall be conducted by an economic court at a preparatory meeting.

In order to identify creditors and persons who have expressed their desire to participate in the debtor's rehabilitation, on the official web-portal of the judiciary of Ukraine no later than the day following the issuance of a court order to open a bankruptcy proceeding, a notice about opening the bankruptcy proceeding shall be published by the court.

Access to information on bankruptcy proceedings posted on the official web portal of the judiciary of Ukraine is free of charge.

The decision to open a bankruptcy proceeding is valid from the moment of its passing.

The preparatory meeting of the court shall be held no later than on the fourteenth day after the decision to accept the claim on opening bankruptcy proceedings, and if there are valid reasons (payment of monetary obligations to creditors, etc.), no later than the twentieth day (Article 35 of the Bankruptcy Code).

The assets administration procedure shall be introduced by the economic court at the same time as the order for opening proceedings in the case.

In the assets administration procedure, the property manager: (i) identifies the creditors; (ii) prepares the register of the creditors and the amounts claimed from the debtor for further approval by the court; and

(iii) organizes the general meeting of the debtor's creditors, which in turn appoints the committee, etc. (Article 44 of the Bankruptcy Code).

As a general rule, following commencement of the insolvency proceedings the assets administration procedure is introduced along with a moratorium on satisfaction of the creditors' claims. Such procedure may be referred to as transitional, because, on one hand, the debtor continues its economic activities, but, on the other hand, the moratorium restricts the debtor in performing any actions with its property. During the administration of property regime, the debtor is precluded from satisfaction of the creditors' claims, except for the current creditors and salary payments. As well as that, in the assets administration procedure the debtor has no right without the consent of the committee of creditors conclude contracts of significant value, etc.

So, the *assets administration procedure means a system of measures for supervision and control over the management and administration of the debtor's property in order to ensure the safe, efficient use of the property assets of the debtor, an analysis of its financial situation, as well as the determination of the next procedure (sanation or liquidation).*

About the appointment of the property manager a decision is made.

The assets administration procedure shall be introduced for a period of up to one hundred and seventy calendar days.

In the assets administration procedure, the debtor has no right to sell the essential assets of the debtor without the consent of the committee of creditors (or lenders' meetings until the election committee of creditors).

The property manager shall not have the right to interfere in the operational and economic activities of the debtor, except in cases provided by the Bankruptcy Code (Article 44 of the Bankruptcy Code).

Article 45 of the Bankruptcy Code prescribes the procedure of identification of creditors and persons wishing to take part in the debtor's rehabilitation (sanation).

Competitive creditors with the requirements that arose prior to the day when the bankruptcy proceedings were opened shall be obliged to file written claims to the economic court, as well as documents confirming them, **within thirty days from the day of the official announcement of the opening bankruptcy proceedings.**

The calculation of the time period for the application of the monetary claims of the creditors to the debtor begins on the day of the official announcement about the opening of bankruptcy proceeding.

The creditor, upon application of which the opening of proceedings, has the right to declare additional monetary claims to the debtor within the abovementioned 30-day period.

Secured creditors are required to file a claim with monetary claims to the debtor during the bankruptcy proceedings in respect of claims that are unsecured.

If the competitive creditors with the requirements that arose prior to the day when the bankruptcy proceedings were opened failed to file their claims during the abovementioned period, their claims are satisfied in the last priority of claims.

During the assets administration procedure the preliminary sitting of the economic court shall be held not later than 70 calendar days, and in the case of a large number of creditors - not later than three months after the preparatory meeting of the court. The parties, as well as other participants in the bankruptcy proceeding, shall be notified of the preliminary court hearing.

At the preliminary sitting, the commercial court shall consider all claims of creditors received within the 30-day period, including those concerning which the debtor or the property manager has objected.

According to the results of the preliminary sitting, the Economic Court shall issue a ruling stating:

- the size and the list of all claims of creditors recognized by the court, which are entered by the property manager in the register of claims of creditors;
- the size and the list of claims of creditors not recognized by the court;
- the date of the meeting of creditors and the committee of creditors, etc. (Article 47 of the Bankruptcy Code).

Due to Article 48 of the Bankruptcy Code within ten days after the ruling on the results of the preliminary sitting of the economic court, the property manager shall in written form notify the creditors in accordance with the register of claims of creditors, the authorized person of the debtor's employees and the authorized representative of the debtor's founders (participants, shareholders) about the place and time of the meeting of creditors and arrange them for holding.

Participants of the meeting of debtors' creditors with the right of deciding vote are competitive creditors, recognized by the economic court in the preliminary sitting and entered by the property manager in the register of claims of creditors.

At the time of the bankruptcy proceedings, the creditors' meeting shall be elected by a committee of creditors of not more than seven persons.

In the final meeting of the court in the assets administration procedure, the transition to the next judicial procedure (sanction, liquidation procedure) is carried out or the proceedings are closed.

Before the expiry of the assets administration procedure, a committee of creditors shall take one of the following decisions:

- approve the plan of rehabilitation and submit to the economic court a petition for the introduction of the sanation procedure and approval of the plan of rehabilitation;
- submit to the economic court a petition for declaring the debtor bankrupt and opening a liquidation procedure.

If, during the meeting of creditors within the period of validity of the assets administration procedure, none of the decisions have been taken, the economic court, in the presence of signs of bankruptcy, within five days after the expiry of the procedure, shall adopt a resolution recognizing the debtor bankrupt and opening a liquidation procedure.

3. Solvency renewal proceedings (Sanation of a debtor).

Sanation is the system of measures taken in the bankruptcy proceedings in order to prevent the recognition of the debtor as bankrupt, aimed at improving the financial and economic situation of the debtor, as well as satisfaction in full or in part, the requirements of creditors by means of restructuring the enterprise, debt and assets, as well as changes in the organizational and legal structure of the debtor.

The strict terms of sanation procedure are not defined in the Bankruptcy Code.

According to Article 51 of the Bankruptcy Code in the plan of sanation, the size of requirements of each class of creditors, which would be satisfied in case of introduction of the procedure for liquidation of the debtor, must be specified.

The sanation plan may be changed in the manner prescribed for its approval.

The plan of rehabilitation (sanation) should include measures to restore the debtor's solvency.

Measures to restore the debtor's solvency, which include a plan of rehabilitation, may be:

- enterprise restructuring;
- resettlement of production;
- closure of unprofitable productions;
- deferral, installment or forgiveness of a debt or part thereof;
- performance of a debtor's obligation by third parties;
- satisfaction of claims of creditors in other ways that do not contradict the Bankruptcy Code;
- the restructuring of the debtor's assets in accordance with the requirements of the Bankruptcy Code;
- sale of part of the debtor's property, etc.

So, the solvency renewal plan (the plan of sanation) may include the corporate restructuring of the debtor, the sale of its assets, the recovery of receivables, debt restructuring, restructuring of assets, the sale or cancellation of the debt, and other means of renewal of the debtor's solvency. The solvency renewal plan may also provide for the replacement of assets, a procedure according to which a part of the debtor's assets and obligations can be alienated to a newly established entity created by the debtor. The shares of such newly created entities can be included in the debtor's assets and sold through auction.

In order to make a decision on approval or rejection of the plan of sanation, all competitive creditors are divided into classes. Creditors included in each individual queue form a separate class of creditors. A creditor whose claims are subject to inclusion in two or more queues shall be included in, respectively, two or more classes of creditors.

In order to restore the solvency and satisfy the claims of the debtor's creditors, the plan of rehabilitation may include the sale of all or part of the debtor's property if it is a single property complex or several single property complexes (Article 54 of the Bankruptcy Code).

4. Liquidation of a debtor.

The court introduces the liquidation proceedings with the relevant ruling, if the debtor has failed to restore its solvency in accordance with the solvency renewal plan, upon the request of the committee.

It should be noted that the committee may ask the court to commence the liquidation proceedings after the assets administration proceedings, omitting the solvency renewal proceedings. Upon the introduction of the liquidation proceedings, the court will appoint the liquidator, who will act as the head

of the debtor. For the period of the liquidation proceedings, other managing bodies of the debtor will not be able to exercise their statutory powers.

In liquidation proceedings, the liquidator must determine the liquidation value of the debtor's assets, sell these assets and pay off the debt to the creditors in accordance with the priority order of the satisfaction of the creditors' claims as established by the law.

According to Article 58 of the Bankruptcy Code, the liquidation procedure is held by the liquidator, who is appointed by economic court from among the arbitration managers entered into the Unified Register of Arbitration Managers of Ukraine.

The liquidator from the date of his appointment shall exercise the following powers:

- performs functions of managing and disposing of bankrupt property;
- conducts an inventory and assessment of the property of a bankrupt;
- analyzes the financial situation of the bankrupt;
- carries out the powers of the head (control) of the bankrupt;
- forms a liquidation mass;
- has the right to receive a loan for the payment of benefits to employees who are discharged as a result of bankruptcy liquidation, which is repaid in accordance with the Code, without delay, at the expense of funds received from the sale of property of a bankrupt;
- takes measures aimed at the search, identification and return of property of a bankrupt from a third party, etc.

During the liquidation procedure the property of the debtor could be sold at an auction.

Sale of the debtor's property at the auction takes place in the electronic trading system. The procedure for the functioning of the electronic trading system, the organization and conduct of electronic auctions, determination of the size, payment, return guarantee payments and remuneration of operators of electronic platforms, shall be approved by the Cabinet of Ministers of Ukraine (Article 68 of the Bankruptcy Code).

Upon the completion of the liquidation proceedings, the liquidator will prepare the report, as well as the liquidation balance sheet of the debtor, and provide them to the court for consideration and approval. Based on the results of the liquidation proceedings, the court may approve the report and the liquidation balance sheet of the debtor, dissolve the debtor and terminate the bankruptcy proceedings.

Priority of Claims (Article 64 of the Bankruptcy Code).

Amounts received from the sale of the bankrupt's assets are used to pay the claims of its creditors in the following order:

First priority: • The payment of termination allowances to the bankrupt's employees, and repayment of any loan received by the bankrupt for the purpose of the payment of such termination allowances. • Claims of the creditors under insurance agreements. • Claims for recovery of costs associated with the conduct of the bankruptcy proceedings.

Second priority: • Liabilities arising from the infliction of harm to life or health of an individual, by means of capitalization of the respective payments, inter alia, to the Employment Injuries and Occupational Diseases Insurance Social Fund regarding the employees insured in this fund. • Liabilities relating to mandatory pension and social security contributions. • Claims of individuals whose property or funds are deposited with the bankrupt (where the bankrupt is a trust company or "dovirche tovarystvo", a bank or other credit-financial institution, or any other business entity attracting the assets of individual depositors)

Third priority: • Local and state taxes and other mandatory payments. • Claims of the State Reserve Fund.

Fourth priority: • Claims of creditors not secured by a pledge (mortgage) of the bankrupt's assets (other than the claims of the fifth priority and the sixth priority), including claims that have arisen during the assets administration proceedings or the solvency renewal proceedings.

Fifth priority: • Claims for the "repayment of the bankrupt's employees' contributions to the charter fund" of the bankrupt. • Claims for the payment of additional remuneration to the solvency renewal administrator or the liquidator.

Sixth Priority: • Other remaining claims. Higher priority claims must be satisfied in full before any lower ranking claims may be paid. In the event that the cash proceeds from the sale of the property are insufficient to satisfy all claims with equal priority, they must be satisfied pro rata. Claims not paid due to the insufficiency of funds in the liquidation proceedings are deemed extinguished. Any assets remaining after the satisfaction of the claims of the creditors are to be returned to the "owners" of the debtor (i.e. its shareholders or holders of its participatory interests) if the court decides to dissolve the debtor. The court will not be able to dissolve the debtor if the remaining assets of the debtor exceed the amount of assets that is required by the law for the operation of a relevant legal entity.

5. Particularities of insolvency of certain debtors.

There are some specialties of bankruptcy of certain debtors. For example, the special features of insolvency of insurers, professional participants of the securities market, participants of the joint investment institutions, farming entities can be outlined.

Due to the provisions of Article 92 of the Bankruptcy Code in case of insolvency proceedings, the insurer shall be recognized as a party to the bankruptcy proceeding by a specially authorized central body of executive power in matters of supervision of insurance activities. The arbitration manager in an insolvency case must pass an examination under the program of preparation of arbitration managers in bankruptcy cases of insurance organizations. As well as that, according to Article 93 of the Bankruptcy Code, if the special law does not establish a separate bankruptcy procedure of the relevant professional stock market participant, such participant shall apply the provisions of the Bankruptcy Code taking into account some specifics. In considering cases of bankruptcy of legal entities that are professional participants of the stock market, participants of the bankruptcy case are defined by the National Commission on Securities and Stock Market.

Absolutely new provisions about insolvency of individuals, who are not entrepreneurs, are stipulated in the Bankruptcy Code.

Thus, according to Article 115 of the Bankruptcy Code the proceedings on insolvency of the debtor - an individual or an individual entrepreneur may be opened only on the application of the debtor.

The debtor has the right to apply to the economic court with a statement on the opening of bankruptcy proceedings in the event that:

1) the size of the debtor's overdue obligations to the creditor (the creditors) is not less than thirty minimum wages;

2) the debtor has ceased repayment of loans or other plan payments in the amount of more than fifty per cent of monthly payments for each loan and other obligations within two months;

3) a ruling has been passed in the enforcement proceedings concerning the absence of property from an individual which can be recovered;

4) there are other circumstances that confirm that in the near future the debtor will not be able to fulfill the monetary obligations or to carry out ordinary current payments (the threat of insolvency).

The composition of monetary claims, including the payment of taxes,

duties (compulsory payments), does not include a penalty (fine) and other financial sanctions.

In the bankruptcy proceedings of an individual a moratorium on the satisfaction of creditors' claims shall be introduced for a period of 120 days from the date of commencement of bankruptcy proceedings. The decision to open proceedings in the insolvency case is the basis for stopping enforcement actions against the debtor.

According to Article 131 of Bankruptcy Code the debtor's property, which is subject to sell in the procedure of debt repayment of the debtor, forms the liquidation mass.

The liquidation mass shall include all the property of the debtor in its ownership, as well as that which will be acquired by him after the debtor has been declared bankrupt and before the completion of the procedure for repayment of the debtor's debts, except for the property specified in Article 132 of the Code.

From the moment when the debtor is declared bankrupt, all rights to property that is part of the liquidation mass is exercised by the manager of assets selling on behalf of the debtor.

The composition of the liquidation mass does not include housing, which is the only place of residence of the debtor's family (an apartment with a total area of no more than 60 square meters or a living area not more than 13.65 square meters for each member of the debtor's family, or a residential house, the total area not more than 120 square meters) and is not subject to collateral, as well as other property of the debtor, which according to the legislative acts of Ukraine cannot be recovered.

Economic court has the right, upon a motivated petition of the debtor and other participants in the insolvency proceeding, to exclude from the composition of the liquidation mass the debtor's property.

Article 134 of the Bankruptcy Code defines, that economic court, when deciding on the completion of the procedure for repayment of debtor debts and closing proceedings in the insolvency case, shall decide on the dismissal of the debtor - an individual from the debt.

An individual shall not be exempted from further compliance with the requirements of creditors after the completion of bankruptcy proceedings, namely:

1) compensation for damage caused by injury, other damage to health or the death of an individual;

2) payment of alimony;

3) fulfillment of other requirements, which are inextricably linked with the individual.

Such claims that have not been fully settled in the insolvency case may be claimed after the bankruptcy proceedings have been closed.

Article 135 provides restrictions on persons who were declared bankrupt. Thus, within five years after the recognition of an individual as a bankrupt, insolvency proceedings cannot be opened on his application, except in the event that the debtor has repaid all debts in full in the manner prescribed by the Bankruptcy Code.

Within five years after the recognition of an individual as a bankrupt, such person is obligated, in writing, to notify of the fact of its insolvency other parties to such agreements prior to entering into loan agreements, bail-out agreements or contracts of collateral.

An individual cannot be regarded as having an impeccable business reputation within three years after being declared bankrupt.

TOPIC 12.
Reviewing of judicial decisions: Appeal proceedings.

1. General rules of filing an appeal.
2. The legal order of opening of appeal proceedings.
3. The legal order of appeal review.
4. Powers of the Court of Appeal.
5. Resolution of the Court of Appeal.

1. General rules of filing an appeal.

Participants in the case, persons who did not take part in the case, if the court has decided on their rights, interests and / or duties, have the right to file an appeal against the decision of the court of first instance.

Rulings of the court of first instance can be appealed **separately** from the court decision **only** in cases stipulated by Article 255 of the Economic Procedure Code. All other rulings cannot be appealed separately from the court's decision.

An appeal against a **court decision** shall be filed within **twenty days**, and upon a **court ruling** - within **ten days from the day of its proclamation.**

If only the opening and resolution parts of the court's decision were announced in the court session, or in case of consideration of the case without notice of the participants of the case, the said period shall be calculated from the day the complete court decision was made.

The time limit for appeals may also be renewed in case of availability of valid reasons, except cases, when there is a ruling on the closure of proceedings on the basis of the refusal from the appeal by the same person, who is filing an appeal, on the same court decision.

An appeal should be filed directly to the court of appellate instance.

Article 258 of Economic Procedural Code of Ukraine stipulates the legal demands to the form and content of appeal complaint. Thus, an appeal shall be filed in written form. An appeal shall contain information about applicant and participants of the case, as well as that, the applicant shall include information about what is the unlawfulness of a decision or ruling (incompleteness of establishing circumstances relevant to the case, and / or incorrect establishment of circumstances relevant to the case,

unjustified refusal to accept evidence, an incorrect study or assessment, failure to provide evidence for valid reasons, etc.); new circumstances to be established, evidence to be examined or evaluated, justification for the reasons for not submitting evidence to the court of first instance, objections to the evidence used by the court of first instance, etc.

2. The legal order of opening of appeal proceedings.

The court of appeal may remain an appeal complaint without movement or return the appeal complaint.

An appeal is remained without movement if it is filed after the expiration of the time limits established by Article 256 of the Economic Procedure Code and the person who filed it does not raise the issue of renewal of this term or if the grounds indicated in her statement are considered to be disrespectful. At the same time, within ten days from the date of delivery of the ruling about remaining the appeal without movement, the person has the right to apply to the court of appeal with a statement about the renewal of the term or to indicate other reasons for renewal of the term.

According to Article 260 of the Economic Procedural Code of Ukraine **the appeal complaint shall not be admissible and shall be returned by the court of appellate instance:**

1) an appeal is filed by a person who has no procedural capacity, is not signed or signed by a person who is not entitled to sign it, or by a person whose position is not specified;

2) before deciding to open an appeal proceeding, the person who filed the complaint filed a statement on its revocation;

3) the complaint is filed in a different way than through the court of appeal;

4) the complaint is filed against a ruling that is not subject to appeal separately from the court decision.

The issue of leaving the appeal without motion shall be decided by the judge-rapporteur within five days from the date of receipt of the appeal. The issue of returning the appeal to the court of appeals shall be resolved within five days from the date of receipt of the appeal or from the date of expiration of the deadline for elimination of deficiencies.

On the return of the appeal, a ruling is issued that may be appealed in cassation.

As well as that, the appellate court has the right **to refuse to open an appeal proceeding**, if:

1) an appeal is filed on a court decision that is not subject to appeal;

2) there is a ruling on the closure of proceedings on the basis of the refusal from the appeal by the same person, who is filing an appeal, on the same court decision;

3) there is a resolution about the dismissal of an appeal of the same person or the court ruling to refuse to open an appeal proceeding;

4) the complainant (appellant) has not filed an application for the renewal of the term for appeal, within the time limit specified by the court, or the reasons for the renewal of the term for appeal are not considered by appellate court as valid.

Regardless of the importance of the reasons for the expiration of the time limit for appeal, the appeal court shall refuse to open the appeal proceeding if the appeal complaint is filed after the expiration **of one year from the date of the complete text of the court decision was made** except in the following cases:

1) submission of an appeal by a person who has not been notified of the consideration of a case or was not involved in participation in it, if the court has made a decision on its rights, interests and / or duties;

2) the passing of the term for appeal because the occurrence of force majeure circumstances.

According to Article 262 of the Code on the opening of an appeal review the court of appellate instance issues a ruling.

Before the opening of the appeal proceeding, the participants in the case have the right to file a protest against the opening of the appeal proceeding.

The Court of Appeal closes an appeal proceeding if:

1) after the opening of the appeal proceedings, the person who filed the appeal filed a petition about refusal from the complaint, except in the case of objections of other persons who joined the appeal;

2) after the opening of the appeal proceedings, it turned out that the appeal was not signed, filed by a person who has no procedural capacity or signed by a person who is not entitled to sign it;

3) while opening of the appeal proceeding it has been established that the court decision does not raise the issue of the rights, interests and / or duties of the person who had filed this appellate complaint.

About closure of the appeal proceeding, the court of appellate instance shall issue a ruling which may be appealed in cassation.

3. The legal order of appeal review.

While preparing the case for consideration in the court pf appeal, the presiding-judge:

1) find out the question of the composition of participants in the trial;

2) determine the nature of the controversial legal relationship and the law governing them;

3) ascertains the circumstances referred to by the participants of the case as the basis for their claims and objections;

4) find out what circumstances are recognized or denied by the participants of the case;

5) decides on the importance of the reasons for not submitting evidence to the court of first instance;

6) at the request of the parties and other participants in the case, decides on the issue to summon witnesses, to appoint of an examination, the reclamation of evidence, the court orders for the gathering of evidence, the involvement of a specialist, an interpreter;

7) at the request of the participants of the case decides on the application of measures to secure the claim, etc.

After the preparatory actions, the judge-rapporteur reports on them to the panel of judges, which decides on the additional preparatory actions, if necessary, and the appointment of the case for consideration.

The parties to the case shall be informed of the date, time and place of the case, if the case is considered with notice of the participants (Article 268 of Economic Procedural Code of Ukraine).

Article 269 of the Code outlines **limits of the review of the case in the court of appellate instance:**

1. The Court of Appeal reviews the case on the evidences available in it and additionally submitted evidences and verifies the legality and validity of the decision of the court of first instance within the framework of the arguments and requirements of the appeal complaint.

2. The Court of Appeal shall study evidence relating to facts to which the parties of the case refer to.

3. Evidence not filed before a court of first instance shall be excepted

by a court only in exceptional cases if the participant in the case proved that it was impossible to submit these evidences to the court of first instance for reasons that were not objectively dependent on him.

4. The court of appeal is not limited with the arguments and requirements of the appeal complaint, if during the consideration of the case the fact of the significant violation of the procedural law or incorrect application of the material law is established.

5. The legal demands that were not subject of consideration in the court of first instance are not accepted and are not considered in the court of appellate instance.

In a court of appellate instance cases are reviewed according to the rules of consideration of cases in the order of simplified proceedings, taking into account some specialities (Article 270 of the Code).

The terms of consideration of the case in a court of appeal:

An appeal against a **decision** of a court of first instance shall be considered within sixty days from the date of the decision to open an appellate proceeding in a case.

An appeal against a **ruling** of the court of first instance shall be considered within thirty days from the date of the decision to open an appeal proceeding in the case.

It should be taken into account, that in a court of appellate instance, the plaintiff has the right to refuse the claim, and the parties - to conclude a settlement agreement in accordance with the general rules about these procedural actions, regardless of who filed the appeal.

4. Powers of the Court of Appeal.

According to the provisions of Article 275 of Economic Procedural Code of Ukraine the appellate court while considering the case in appeal has the following powers:

1) to leave the court decision unchanged, and the complaint without satisfaction;

2) to overturn the court decision in full or in part and to make a new decision in the relevant part or to change the decision;

3) to declare the court decision of the first instance invalid in whole or in part in cases provided for in the Economic Procedural Code and to close the proceedings in the relevant part;

4) to overturn a judicial decision in whole or in part and to close the proceedings in full or in part or to leave a claim without consideration in whole or in part;

5) to overturn the court decision and refer the case for consideration to another court of first instance according to the established jurisdiction;

6) to overturn the ruling that prevent further consideration of the case and to refer the case for further consideration to the court of first instance;

7) in the cases provided for in the Economic Procedural Code, overturn the ruling of an appellate court of (in whole or in part) and take one of the decisions specified above.

The Court of Appeal leaves the appeal without satisfaction, and remains the court decision unchanged, if it recognizes that the court of first instance has adopted a court decision complying with the rules of material and procedural law.

Grounds for the overturn of a court decision in whole or in part and the adoption of a new decision:

1) incomplete clarification of the circumstances relevant to the case;

2) the uncertainty of circumstances relevant to the case, which the court of first instance has considered as established;

3) inconsistency of the conclusions set forth in the decision of the court of first instance with the circumstances of the case;

4) violation of the procedural law or incorrect application of the substantive law.

Violation of material and procedural law:

- Incorrect application of the substantive (material) law means: incorrect interpretation of the law, or application of the law that is not subject to application, or non-application of the law that should be applied.
- Violation of the procedural law may be the reason for the overturn of the decision, if this violation has led to an incorrect resolution of the case.

Violation of procedural law rules is a compulsory basis for the overturn of a court decision of a court of first instance and the adoption of a new court decision if:

1) the case was considered by the non-authorized court;

2) in the adoption of a court decision took part the judge, who was a subject for recusal, and the grounds for his/her recusal were found as

grounded by the court of appeal;

3) the case was considered by the economic court in the absence of any party to the case not properly notified of the date, time and place of the court hearing (if such notification was mandatory), and such participant of the case substantiates his appeal complaint on such a basis;

4) the court made a judicial decision about the rights, interests and / or responsibilities of persons not involved in the case;

5) the court decision is not signed by any of the judges or signed by not all the judges specified in the decision;

6) the court decision was adopted by judges who were not part of the panel who considered the case;

7) the court considered, in the order of simplified proceedings, a case that was subject to consideration under the rules of general proceedings.

The court decision, which ends the consideration of the case, can be reversed by sending a case for consideration under the law established jurisdiction, if the decision was taken by the court in violation of the rules of territorial jurisdiction. The case is not subject to reversion for a new consideration in connection with violations of the rules of territorial jurisdiction, if the participant in the case who filed the appeal, during the consideration of the case by the court of first instance, without valid reasons, did not declare the inadmissibility of the case due to the violation of rules of territorial jurisdiction (Article 279 of the Code).

5. Resolution of the Court of Appeal.

The resolution of the court of appellate instance consists of:

1) an introductory part indicating:

a) the date and place of its adoption, the case number;

b) the name of the court of appellate instance, the names and initials of judges and the secretary of the court session;

c) the names of the parties and the person who filed the complaint;

d) the name of the court of first instance, the decision of which is appealed, time and place of adoption of the appealed decision, the date of completion of a full text of the appealed decision;

2) a descriptive part with the indication:

a) the summary of the claims and the decision of the court of first instance;

b) the summary of the requirements of the appeal complaint;

c) the general arguments of the person who filed the appeal;

d) generalized arguments and objections of other participants of the case;

3) motivational part indicating:

a) established by the court of first instance and uncontested circumstances, as well as the circumstances established by the court of appellate instance, and the legal relationship determined in accordance with them;

b) the arguments by which the court of appeal has agreed or disagreed with the conclusions of the court of first instance;

c) the reasons for the acceptance or rejection of each argument set forth by the participants in the case in the appeal complaint and the reference to the appeal;

d) whether there were and by whom were violated, unrecognized or disputed rights or interests, for the protection of which a person appealed to the court;

e) conclusions on the results of consideration of the appeal, with reference to the rules of law, taken by the court of appellate instance;

4) the operative part indicating:

a) the conclusion of the court of appellate instance on the merits of the requirements of the appeal;

b) a new distribution of court costs incurred in connection with the consideration of the case in the court of first instance – in case of cancellation or amendment of a court decision;

c) the distribution of court costs incurred in connection with the review of the case in the court of appellate instance;

d) the term and order of the entry into force of the decision and its appeal.

The decision of the court of appeal may be appealed in cassation order in cases stipulated by the Economic Procedural Code.

The resolution of the Court of Appeal is valid from the date of its adoption (Article 284 of the Economic Procedural Code of Ukraine).

TOPIC 13.
Reviewing of judicial decisions: Cassation proceedings

1. The right for filing a cassation complaint.
2. Opening of cassation proceedings.
3. The rules of cassation consideration of the case. The limits of consideration of a case by a court of cassation instance.
4. Grounds for the transfer of the case to the Chamber or the Grand Chamber of the Supreme Court.
5. Powers of the Court of Cassation.
6. Decisions of the Court of Cassation.

1. The right for filing a cassation complaint.

The Court of Cassation in economic cases is the Supreme Court.

Participants of the case, as well as persons who did not take part in the case, if the court has decided on their rights, interests and / or duties, have the right to file a cassation complaint against:

1) the decision of the court of first instance after its appeal review and the judgement of the court of appellate instance;

2) rulings of the court of first instance and appellate courts;

3) decisions and rulings of the court of first instance after their revision in the appeal procedure and the ruling of the court of appellate instance in bankruptcy (insolvency) cases.

The grounds for cassation review of the case are incorrect application by the court of substantive law or violation of procedural law.

There is a list of court decisions, that cannot be appealed in cassation order. Among these decisions are:

1) decisions, rulings of the court of first instance and judgements, rulings of the court of appellate instance in cases, decisions of which are subject to review by the Supreme Court as a court of appeal;

2) judgments in minor cases, except in cases where:

a) the cassation appeal concerns a right that is fundamental to the formation of a single enforcement practice;

b) the person submitting the cassation appeal, in accordance with the Code, is not able to deny the circumstances established by the appealed court

decision while consideration of another case;

c) the case represents a significant public interest or is of exceptional importance to the party who filed the cassation complaint;

d) the court of first instance has classified the case as minor by mistake.

According to Article 288 of the Economic Procedural Code of Ukraine a cassation complaint to a court decision shall be filed within twenty days from the day of its proclamation.

The term for filing a cassation complaint may also be renewed for valid reasons.

A cassation complaint must be filed directly to the court of cassation.

Article 290 of Economic Procedural Code defines the legal requirements to the cassation complaint. In a cassation complaint it should be justified what is the wrong application of the rules of substantive law or violation of the rules of procedural law, which led to the adoption of an illegal court decision, the requirements of the person submitting the complaint, etc.

2. Opening of cassation proceedings.

Due to the provisions of Economic Procedural Code a cassation complaint is not admissible for review and is returned by the court if:

1) a cassation complaint is filed by a person who has no procedural capacity, is not signed, signed by a person who is not entitled to sign it, or by a person whose position is not indicated;

2) the complaint is filed in a different way than through the court of cassation;

3) before the decision to open the cassation proceedings the person who had filed a cassation complaint filed a statement on its withdrawal;

4) the cassation complaint does not set out the grounds provided by the Code for appealing the court decision in cassation.

As well as that, the court of cassation can refuse to open a cassation proceeding. The court of cassation refuses to open a cassation proceeding in case when:

1) a cassation complaint is filed on a court decision that is not subject to appeal;

2) there is a ruling on the closure of proceedings in connection with the refusal from the previously appealed cassation complaint of the same person on the same court decision;

3) there is an order to leave the cassation complaint of the same person without satisfaction or the decision to refuse to open the cassation proceedings on the cassation complaint of this person on the same court decision;

4) the complainant within the time period specified by the court has not submitted a statement on the renewal of the term for a cassation appeal, or the reasons given for renewal of the term for the appeal were not recognized by the court as valid.

Supreme Court may declare a cassation complaint as groundless and refuse to open a cassation proceedings:

1) in minor cases, as well as in the case of appeal against the ruling, if the Supreme Court has already elaborated in its decision an opinion on the correct application of the rule law that is the base for the cassation appeal, and the court of appeal reviewed the judgment in accordance with such a conclusion; or

2) the correct application of the rule of law is obvious and does not cause any reasonable doubt about its application or interpretation (in minor cases and in cases of appeal against ruling).

Regardless of the reason for the delay to file a cassation complaint, the court of cassation refuses to open the cassation proceedings if the cassation complaint was filed after the expiration of one year from the date of the complete text of the court decision, except in the following cases:

1) submission of a cassation complaint by a person who has not been duly notified about the consideration of the case or was not involved in it, if the court has made a decision on its rights, interests and / or duties;

2) the time limit for filing of a cassation complaint was passed as a result of the circumstances of force majeure.

According to Article 290 of the Code in the absence of grounds for leaving the cassation complaint without motion, returning the cassation complaint or refusal to open the cassation proceedings, the court of cassation decides to open a cassation proceedings in a case. Before the opening of the cassation proceedings, the parties to the case have the right to file a protest against the opening of the cassation proceedings.

Due to Article 296 of the Code the court of cassation closes the cassation proceedings if:

1) after the opening of the cassation proceedings, the person who filed the cassation appeal has filed a petition for refusal of the complaint, except when there are objections of other persons who joined the cassation appeal;

2) after the opening of the cassation proceedings, it turned out that the cassation appeal has not been signed, filed by a person who has no procedural capacity or signed by a person who is not entitled to sign it;

3) after the opening of the cassation proceedings on the cassation appeal submitted by the person on the basis of a decision by the court of the first or appellate instance on his rights, interests and / or duties, it has been established that by the court decisions the questions about rights, interests and / or obligations of this person was not resolved.

3. The rules of cassation consideration of the case. The limits of consideration of a case by a court of cassation instance.

When reviewing court decisions in cassation, the court of cassation within the limits of the arguments and requirements of the cassation appeal and on the basis of the established factual circumstances of the case, verifies the correct application of the rules of substantive and procedural law by the court of the first or appellate instance.

The court of cassation does not have the right to establish or assume proven circumstances not established in the decision or ruling of the court or rejected by it, to decide on the authenticity of a particular evidence, the superiority of certain evidence over others, to collect or to accept new evidence or additionally check the evidence.

The court of cassation does not accept or consider claims that were not subject to consideration in the court of first instance. A change in the subject matter and grounds of the claim in the court of cassation is not allowed.

The court is not limited to the arguments and requirements of the cassation appeal, if during the consideration of the case there will be found violations of procedural law, which are obligatory grounds for cancellation of the decision, or incorrect application of the substantive law.

According to Article 301 of Economic Procedural Code of Ukraine in a court of cassation, a complaint is considered on the rules of consideration of the case by a court of first instance in the form of a simplified litigation.

Consideration of cases in the court of cassation begins with the opening of the first court session or fifteen days from the date of opening of the cassation proceedings, if the case is considered without notice of the participants of the case.

Consideration of cases in the court of cassation is carried out in a court session with notification of the participants of the case.

Revision of the decisions of the court of first instance and the decisions of the appellate instance in cases where the value of the claim does not exceed five hundred subsistence minimum sizes for able-bodied persons is carried out without notice to the participants of the case, except for cases which are not subject to consideration in the simplified proceedings.

The chairman opens the court session and announces what case on whose complaint is hearing.

The participants of the case give their explanations regarding the cassation complaint and the reference thereto in accordance with the procedure established by the chairman. The court may limit the length of the explanation by establishing for all participants of the case an equal period of time, which is announced at the beginning of the court session.

In their explanations the parties to the case may make only those arguments concerning the grounds for a cassation review of a court decision.

After hearing the explanations of the participants in the case, the court goes to the deliberation room.

Cassation complaints on court decisions should be considered within sixty days, and cassation complaint on court rulings - within thirty days from the date of the court decision to open the cassation proceedings.

4. Grounds for the transfer of the case to the Chamber or the Grand Chamber of the Supreme Court.

The issue of the transfer of the case to the Chamber, the Joint Chamber or the Grand Chamber of the Supreme Court shall be decided by the court on its own initiative or at the request of the party to the case.

The court of cassation transfers the case to the Chamber, which includes such a panel, if the panel considers it necessary to deviate from the conclusion on the application of the rule of law in similar legal relations set forth in the previously adopted decision of the Supreme Court composed of a panel of judges from the same Chamber.

The court that considers the cassation complaint has the right to refer the case to the Grand Chamber of the Supreme Court if it concludes that the case contains an exclusive legal problem and such a transfer is necessary for the development of law and the formation of a single law enforcement practice.

The case is subject to transfer to the Grand Chamber of the Supreme

Court in all cases where a party to a case appeals a court decision on the grounds of violation of the rules of subject-matter and subject jurisdiction.

If the Grand Chamber of the Supreme Court concludes that there are no grounds for transferring the case to its consideration, the case shall be returned (passed) to the relevant chamber for consideration. On this decision the ruling is issued. The case, returned to the Chamber or Joint Chamber cannot be referred again to the Grand Chamber.

5. Powers of the Court of Cassation.

The court of cassation according to the results of consideration of a cassation appeal has the right:

1) leave the court decisions of the courts of first instance and appellate instance unchanged, and the complaint without satisfaction;

2) to cancel the court decisions of the courts of the first and appellate instances in full or in part and to transfer the case in full or in part for a new hearing;

3) to cancel the court decisions in full or in part and take a new decision in the relevant part or change the decision without transferring the case for a new hearing;

4) to cancel the decision of the court of appellate instance in whole or in part and maintain the decision of the court of first instance in the relevant part;

5) to cancel the court decisions of the court of the first and appellate courts in whole or in part and to close the proceedings in the case or to leave the claim without consideration in the relevant part;

6) to declare decisions of the courts of the first and appellate instances invalid in whole or in part and to close the proceedings in the relevant part.

According to Article 309 of Economic Procedural Code of Ukraine the court of cassation leaves a cassation appeal without satisfaction, and judgments - unchanged, if it recognizes that the decision was adopted in compliance with the rules of substantive and procedural law. The correct, grounded and legitimate decision cannot be cancelled only on the basis of formal reasons.

Judicial decisions are subject to cancellation with referral for a new consideration if:

1) the case was considered and resolved by the non-authorized court composition;

2) in the adoption of a court decision took part the judge, who was a subject for recusal, and the grounds for his/her recusal were found as grounded by the court of cassation;

3) the court decision is not signed by any of the judges or signed by the judges not mentioned in the court decision;

4) the court decision was made by the judges who were not part of the panel that considered the case;

5) the case was considered in the absence of any of the participants of the case, not duly notified of the date, time and place of the court session, if such participant of the case substantiates his cassation appeal on such grounds;

6) the court decision was adopted in violation of the rules of the subject-matter jurisdiction or territorial jurisdiction;

7) the court considered, in the order of simplified proceedings, a case that was subject to consideration under the rules of general proceedings;

8) the court made a decision on the rights, interests and / or responsibilities of persons not involved in the case.

The grounds for the cancellation of a court decision and the referral of a case for a new consideration are also violation of the rules of procedural law, which made it impossible to establish the factual circumstances that are relevant for the correct resolution of the case if:

1) the court did not study evidences gathered in the case; or

2) the court unreasonably rejected the petition for the review of evidences, or another petition (statement) of the party to the case regarding the establishment of circumstances that are relevant for the correct resolution of the case; or

3) the court has established the circumstances which are essential, on the basis of inadmissible evidence.

The grounds for the cancellation of decisions in whole or in part and the adoption of a new decision in the relevant part or a change in the decision are incorrect application of substantive law or violation of procedural law.

Violations of the procedural law may be grounds for cancellation or amendment the of decision only if this violation has led to the adoption of an illegal decision.

Incorrect application of the substantive law means: incorrect interpretation of the law, or the application of a law that is not subject to application, or non-application of the law to be applied.

6. Decisions of the Court of Cassation.

The resolution of the court of cassation consists of:

1) an introductory part indicating:

a) the date and place of its adoption;

b) the name of the court of cassation, the names and initials of the judges and the secretary of the court session;

c) the name (name) of the participants of the case and the name of the person who filed the appeal;

d) the name of the court of the first and (or) appellate instance, the decision of which is appealed, the case number, the date of the court decision, the name and initials of the judge (judges);

2) a descriptive part with the indication:

a) the brief content of claims and decisions of the courts of the first and appellate instances;

b) the summary of the requirements of the cassation appeal;

c) the general arguments of the person who filed a cassation appeal;

d) a summary statement of the position of other participants in the case;

3) motivational part indicating:

a) the reasons for the acceptance or rejection of each of the arguments set out in the cassation complaint;

b) the arguments by which the court of cassation agreed or disagreed with the conclusions of the court of the first and (or) appellate instance;

c) conclusions on the results of consideration of the cassation complaint, with reference to the rules of law, which the court applied;

d) actions that must be performed by the court of the first and / or appellate instance in the case of cancellation of a court decision and referral of a case for a new consideration;

4) the operative part indicating:

a) the conclusion of the court of cassation on the merits of the requirements of the cassation complaint;

b) a new distribution of court costs incurred in connection with the consideration of the case in the court of first instance and appellate instance - in case of cancellation of a decision and adoption of a new decision or change of decision;

c) the distribution of court costs incurred in connection with the review of the case in the court of cassation;

d) turning the enforcement proceeding in case of cancellation of

decisions of courts in the presence of an appropriate statement and grounds.

The decision of the Chamber, the Joint Chamber, the Grand Chamber of the Supreme Court must contain a conclusion on how the appropriate rule of law shall be applied.

The decision of the court of cassation is valid from the moment of its adoption.

The decision of the court of cassation is final and cannot be appealed.

TOPIC 14.
Reviewing of court decisions for newly discovered or exceptional circumstances

TOPIC 15.
General characteristics of enforcement proceedings

TOPIC 16.
Proceedings in cases with participation of foreign entities.

1. Grounds for review of court decisions for newly discovered or exceptional circumstances.
2. The procedure of reviewing of court decisions for newly discovered or exceptional circumstances.
3. Participants of enforcement proceeding.
4. Legal procedure of enforcement of economic court decisions.
5. Proceedings in cases with participation of foreign entities.

1. Grounds for review of court decisions for newly discovered or exceptional circumstances.

According to Article 320 of Economic Procedural Code of Ukraine decisions, ruling and judgments of economic courts, which has become legally valid, may be revised for newly discovered or exceptional circumstances.

The grounds for review of a court decision under **the newly discovered circumstances** are:

1) availability of the circumstances essential to the case that were not established by the court and were not and could not be known to the person submitting the application at the time of the consideration of the case;

2) the fact of giving a knowingly incorrect expert opinion, knowingly false testimony of the witness, knowingly wrong translation, falsification of written, material or electronic evidence, that was established by a judgment or decree on the closure of criminal proceedings and the release of a person from criminal liability and had led to the adoption of an illegal decision in this case;

3) the cancellation of the court decision, which became the basis for the adoption of a judicial decision that is subject to review.

The grounds for reviewing decisions in connection **with exceptional circumstances** are the following:

1) the Constitutional Court of Ukraine establishes the unconstitutionality (constitutionality) of the law, other legal act or their separate provision applied (not applied) by the court in deciding the case, if the court decision has not yet been enforced;

2) the establishment of an international judicial body whose jurisdiction is recognized by Ukraine, violation of Ukraine's international obligations in resolving this case by a court;

3) establishment by a court verdict which has become legally valid the guilt of a judge in committing a crime, which resulted in the adoption of a court decision.

There is no reason to review a court decision for newly discovered circumstances in the case of:

1) reassessment of the evidence assessed by the court in the process of consideration of the case;

2) evidence which was not assessed by the court in relation to the circumstances established by the court.

When reviewing a court decision for newly discovered or exceptional circumstances, the court cannot go beyond the requirements which were the subject of consideration at the time of the adoption of the court judgment, to consider other requirements or other grounds of the claim.

Article 321 of the Economic Procedural Code identifies the procedure and time for submission of an application for review of court decisions for newly discovered or exceptional circumstances.

For example, an application for review of a court decision for newly discovered or exceptional circumstances may be filed:

1) on the grounds specified in clause 1 of part two of Article 320 of the Code – by the participants of the case within thirty days from the day the person learned or could find out about the circumstances which became the basis for review of the court decision;

2) from the ground specified in paragraph 2 of part two of Article 320 of the Code – by the participants of the case within thirty days from the day when the verdict (decision) in the criminal proceeding became valid, etc.

At the same time, it should be taken into consideration, that an application for revision of a court decision on the basis of newly discovered or exceptional circumstances may be filed:

1) from the grounds specified in clause 1 of part two of Article 320 of this Code - not later than three years from the day of the entry into force of such court decisions;

2) not later than ten years from the date of entry into force of a court judgment, on the grounds specified in paragraphs 2 , 3, part two and part three of Article 320 of the Code.

These terms cannot be renewed.

An application for review of a court decision of a court of first instance on the grounds specified in part two, paragraphs 1, 3 of part three of Article 320 of the Code, shall be submitted to the court which has issued the court decision.

An application for review of court decisions of courts of appellate and cassation instances on the grounds specified in part four of Article 320, which amended or cancelled a court decision, shall be submitted to the court which has changed or approved a new court decision.

An application for review of a court decision on the grounds specified in paragraph 2 of part three of Article 320 of the Code shall be submitted to the Supreme Court and shall be considered by the Grand Chamber.

2. The procedure of reviewing of court decisions for newly discovered or exceptional circumstances.

An application for review of a court decision for newly discovered or exceptional circumstances must be forwarded to a judge or a panel of judges.

Within five days after receipt of the application by the court, the judge (presiding judge) verifies its compliance with the requirements of Article 322 of the Code and decides whether to open the proceedings for newly discovered or exceptional circumstances, and issues a ruling.

Due to Article 324 of the Code a person who has filed an application for revision of a court decision for newly discovered or exceptional circumstances may refuse such an application before the beginning of the consideration of the case in a court session. In case of acceptance of the refusal, the court closes the proceedings for newly discovered or exceptional circumstances, and issues a ruling.

In case of acceptance of the refusal from the application for review of a court decision for newly discovered or exceptional circumstances, other participants in the case may demand compensation from the person, who

has filed it, of the legal costs incurred by them during the review of the court decision for newly discovered or exceptional circumstances.

A person who has refused the application for revision of a court decision for newly discovered or exceptional circumstances cannot re-apply to the court with the same application on the same grounds.

According to Article 325 of Economic Procedural Code of Ukraine an application for review of court decisions for newly discovered or exceptional circumstances shall be considered by the court in a court session **within thirty days** from the date of opening of proceedings for newly discovered or exceptional circumstances.

The case is considered by the court in accordance with the rules established by the Code for the proceedings in the court, that review the case. In the court of first instance, the case is considered in the form of simplified litigation with notification of the participants of the case.

Following the review of a court decision for newly discovered or exceptional circumstances, the court may:

1) refuse to accept the application for review of a court decision for newly discovered or exceptional circumstances and to leave a relevant judicial decision in force;

2) to satisfy the application for review of a court decision for newly discovered or exceptional circumstances, to cancel the relevant court decision and adopt a new decision or change the decision;

3) cancel the court decision and close the proceedings in the case or leave the claim without consideration.

As a result of a review of a court decision for newly discovered or exceptional circumstances, the Supreme Court may also cancel a judicial decision in whole or in part and refer the case for a new consideration to the court of the first or appellate instance.

In case of refusal to accept the application for revision of a decision for newly discovered or exceptional circumstances, the court shall issue a ruling, a resolution or a judgement.

With the entry into force of new court decisions, the court decisions of other courts in this case become invalid.

A decision on the results of the review of a court decision for a newly discovered or exceptional circumstances may be reviewed on a general basis.

3. Participants of enforcement proceeding.

The enforcement proceedings is the final stage of judicial proceedings. Enforcement proceeding is governed by the Law of Ukraine «On enforcement proceeding», from June 2, 2016 and by the Section V of Economic Procedural Code of Ukraine.

The participants in the enforcement proceedings are the executor, the parties (claimant and debtor), representatives of the parties, the prosecutor, an expert, a specialist, an interpreter, a subject of valuation activity - legal entities, persons whose intellectual property rights are violated.

In order to carry out executive actions, the executor shall, if necessary, involve the witnesses, police officers, representatives of the guardianship authorities, other bodies and institutions in accordance with the procedure established by the Law.

Enforcing of decisions is carried out by bodies of the state executive service (**state executors**) and, in cases provided by the Law, by **private executors** whose legal status is specified in the Law of Ukraine "On the bodies and persons carrying out the enforcement of court decisions and decisions of other bodies". It should be taken into account, that not all the decisions of economic courts can be enforced by the private executors. The list of such decisions is defined in Part 2 of Article 5 of the Law of Ukraine «On enforcement proceeding».

The unified register of debtors is a systematic database of debtors, which is part of an automated system of enforcement proceedings, and is aimed at publicizing in real time information about debtors and preventing the alienation of debtors' property.

Information about debtors included in the Unified Register of Debtors is open and posted on the official website of the Ministry of Justice of Ukraine.

Information about the debtor shall be included into the Unified Register of Debtors simultaneously with the passing of a ruling on the opening of enforcement proceedings.

According to Article 19 of the Law of Ukraine «On enforcement proceeding» the debtor must:

1) refrain from committing actions that make it difficult or impossible to execute a decision;

2) to allow the executor, in the manner prescribed by law, to housing and other possessions, premises and repositories belonging to him or used

by him for the performance of executive actions;

3) by decisions of a property nature, to submit to the executor, within five working days from the date of the opening of enforcement proceedings, a declaration of income and property of the debtor;

4) notify the executor of the change of the information specified in the declaration of income and property of the debtor not later than the next working day from the date of occurrence of the relevant circumstance;

5) to appear promptly at the request of the executor;

6) provide explanations on the facts of non-execution of decisions or legal requirements of the executor or other violation of the requirements of the law on enforcement.

4. Legal procedure of enforcement of economic court decisions.

According to the provisions of the Law of Ukraine «On enforcement proceeding» enforcement proceeding is carried out on the basis of the following executive documents:

- executive letters and orders issued by the courts;
- court decisions, arbitration awards, decisions of international commercial arbitration, decisions of foreign courts, etc.;
- judgments, rulings of courts in civil, economic, administrative cases etc.

The execution of an economic court decision is carried out on the basis of an **order** issued by the court which considered the case as a court of first instance.

The court orders shall be issued in electronic form using the Single Judicial Information and Telecommunication System by filling in the appropriate forms of procedural documents and signed by an electronic digital signature of the judge (in the case of a joint review - electronic digital signatures of all judges who considered a case).

An order, a court order, and in cases established by the Economic Procedural Code - a court ruling are executive documents. The order, court order, court ruling must comply with the requirements of the executive document established by law.

Within five days after the entry into force of a court decision, an executive document shall be included into the Unified State Register of executive documents, and a copy thereof (text) containing information about the web

address of such document in the Unified State Register of executive documents, shall be sent to the claimant at its official electronic address, or, in the absence thereof, by a recommended or a valuable letter.

The court which issued the enforcement document may, at the request of the claimant or debtor, correct the mistake made in its registration or issue, or to declare the performance document to be non-enforceable.

The court shall declare an executive document as non-enforceable in whole or in part if it was issued in error or if the debtor's liability is not full due to its termination, voluntary execution by the debtor or other person or for other reasons.

There are also grounds for return of the executive document. Among such grounds are:

1) the decision on the basis of which the executive document was issued has not become valid (except in cases when the decision is made in accordance with the law for immediate execution);

2) the indicated term for submission of the executive document to the enforcement has been missed;

3) the debtor was declared as bankrupt;

4) the National Bank of Ukraine adopted a decision on withdrawal of a banking license and the liquidation of the bank-debtor;

5) the legal entity - the debtor has been suspended;

6) the executive document does not meet the requirements provided in the article 4 of the Law "On enforcement proceedings";

7) execution of the decision does not foresee the application of measures for the enforcement of decisions;

8) the claimant has not provided confirmation of paying of the advance payment, if advance payment is obligatory;

9) the executive document is not subject to execution by the bodies of the state executive service (bailiffs), a private executor;

10) the executive document has been filed not at the place of execution or not under the jurisdiction.

In case of non-compliance of the executive document with the requirements stipulated by the law, the claimant has the right to apply to the court or other authority who issued the executive document to bring it in line with the specified requirements.

According to the Law «On enforcement proceedings» measures to enforce a court decision are the following:

1) attachment of funds, securities, other property (property rights), corporate rights, property rights of intellectual property, objects of intellectual, creative activity, other property (property rights) of the debtor;

2) attachment of salary, retirement, scholarship and other debtor income;

3) withdrawal from the debtor and transfer to the claimant of the items specified in the decision;

4) a prohibition on the debtor to dispose of and / or use property owned by him on the right of ownership, including money, or to establish a debtor's obligation to use such property on terms and conditions specified by the executor;

5) other measures.

Obligations to pay are enforceable by means of attachments. If the attachment concerns a sum of money, the sum attached will be assigned to the creditor (for instance, attachment of bank account). If the attachment concerns an asset belonging to the debtor, the attachment will result in the compulsory sale of the asset and the profit of the sale will be assigned to the creditor, up to the limit of his claim.

Executive documents may be enforced for a period of **three years**, except for the certificates of labor disputes and executive documents, on which the claimant is a state or a state body, that can be subject to enforcement within three months.

A claimant who has missed the deadline for submission of an executive document to the execution may apply for renewal of the term to the court hearing the case as a court of first instance.

The application for renewal of the missed time period shall be submitted to the court which considered the case as a court of first instance and is considered in the court session with notification of the participants of the case. Their absence is not an obstacle to solving the issue of renewal of the missing term. The court will consider such an application within ten days.

Executive actions are carried out by the state executor at the place of residence, work of the debtor or at the location of his property. The right to choose the place for the opening of enforcement proceedings between several bodies of the State Executive Service, which may execute enforcement actions in the territory to which their functions are extended, belongs to the claimant.

For carrying out of enforcement actions enforcement fee can be charged.

The enforcement fee shall be charged by the state executor in the amount of 10 percent of the amount of sum that should be collected, or value of the property of the debtor, which is subject to transfer under the executive document.

For enforcement of decision of a non-personal nature, executive fees shall be charged in the amount of two minimum wages from the debtor - an individual and in the amount of four minimum wages from the debtor - a legal entity.

The Law identifies the procedure for payment of collected sums of money to claimant – legal entity. Thus, the monetary amounts collected from the debtor (including those received from the sale of the debtor's property) are transferred to the appropriate account of the state executive service, or at the account of the private executor.

To the claimant - the legal entity, the monetary amounts collected from debtor are transferred by the executor in accordance with the established procedure on the accounts determined by the claimant.

5. Proceedings in cases with participation of foreign entities.

According to Article 365 of Economic Procedural Code of Ukraine foreign entities have the same procedural rights and obligations as citizens of Ukraine and legal entities established under the legislation of Ukraine, except rights and obligations, established by law or an international agreement, that were approved by Verkhovna Rada of Ukraine.

If in the course of consideration of a case an economic court must hand over documents, obtain evidence, conduct separate proceedings in the territory of another state, an economic court may apply to the foreign court or other competent authority of a foreign state an appropriate court order, in accordance with the procedure established by the Code or an international agreement, approved by Verkhovna Rada of Ukraine.

The content and form of the court order on the provision of legal aid must comply with the requirements of the appropriate international agreement, and if it is not concluded, with the requirements of the Article 368 of Economic Procedural Code of Ukraine.

The court order on the provision of legal aid, procedural and other documents attached thereto shall be certified by the signature of the judge and affixed with the stamped seal.

The national courts may also provide legal assistance to the foreign

courts – the delivery of calls to court or other documents, the interrogation of parties or witnesses, the conduct of expertise, the commission of other procedural acts passed to them in accordance with the procedure established by an international agreement, approved by Verkhovna Rada of Ukraine, and if it is not concluded, - by diplomatic channels.

The court order of a foreign court is not admissible if it:

1) can lead to a violation of Ukraine's sovereignty or create a threat to its national security;

2) does not belong to the jurisdiction of this court;

3) contravenes the law or an international treaty, approved by Verkhovna Rada of Ukraine.

According to Article 371 of the Code the judicial order on the delivery of documents to a citizen of Ukraine residing in the territory of a foreign state may be performed by employees of the diplomatic mission or consular post of Ukraine in the respective state.

SEMINAR PROGRAMME

Topic 1. The definition and the system of economic procedural law of Ukraine (2 hours)

1. The system, composition and the structure of Economic courts of Ukraine, their place in the court system of Ukraine.
2. Tasks of Economic courts. Connection between economic activity and economic dispute. The principles of economic litigation.
3. The right to apply to Economic court.
4. The definition of economic procedural law, its object and methods. Forms and stages of economic litigation.
5. Sources of economic procedural law.

Sources:

1. Law of Ukraine «On the Judiciary and the Status of Judges» from July 2, 2016 URL: https://zakon.rada.gov.ua/laws/show/1402-19
2. Economic Procedural Code of Ukraine from December 06, 1991 URL: https://zakon.rada.gov.ua/laws/show/1798-12
3. Господарське процесуальне право: Підручник / О.П. Подцерковний, О.О. Квасніцька, Т.В. Степанова та ін.; за ред. О.П. Подцерковного, М.Ю. Картузова. – Х. : Одіссей, 2011. – 400 с.

Topic 2. The economic court jurisdiction and subject-matter jurisdiction. Legal expenses (2 hours)

1. The definition of economic subject-matter jurisdiction. Exclusive subject-matter jurisdiction of Economic courts. Criteria for division between economic, administrative and civil subject-matter jurisdictions.
2. Territorial and exclusive jurisdiction of Economic courts.
3. Types of legal expenses in economic litigation.
4. The legal order of payment of legal expenses. Exclusions in expenses payment.

Sources:

1. Economic Procedural Code of Ukraine from December 06, 1991 URL: https://zakon.rada.gov.ua/laws/show/1798-12
2. Law of Ukraine «On a court fee» from July 08, 2011 URL: https://zakon.rada.gov.ua/laws/show/3674-17
3. CHARLES T. KOTUBY, JR.&LUKE A. SOBOTA, General principles of law and international due process: principles and norms applicable in transnational disputes xiii, 157–202 (2017).
4. S.I. Strong General Principles of Procedural Law and Procedural Jus Cogens URL: http://www.pennstatelawreview.org/wp-content/uploads/2018/03/Strong-final-print.pdf
5. Thomas O. Main The Procedural Foundation of Substantive Law // Washington University Law Review, Volume 87, Issue 4, January 2010
6. Щербина В.С. Історія розвитку господарської юрисдикції в Україні (1922-2011 роки) / В.С. Щербина // Вісник господарського судочинства . – № 2. – 2011. – С. 6-13.

Topic 3. Participants of economic litigation (2 hours)

1. Classification of participants of economic litigation.
2. The legal status of a judge in economic litigation.
3. Parties of the case. Legal status of plaintiff and defendant.
4. The legal position of third parties filing independent claims regarding the subject matter of the dispute and third parties not filing independent claims regarding the subject matter of the dispute. Procedural succession.
5. The legal status of bodies and persons authorized by law to apply to court in the interests of other persons. Participation of a prosecutor in consideration of economic dispute.
6. Representatives in economic litigation.
7. A witness, an expert, a legal expert, a specialist, an interpreter in economic litigation.

Sources:

1. Economic Procedural Code of Ukraine from December 06, 1991 URL: https://zakon.rada.gov.ua/laws/show/1798-12
2. Law of Ukraine «On the Judiciary and the Status of Judges» from July 2,

2016 URL: https://zakon.rada.gov.ua/laws/show/1402-19
3. Law of Ukraine "On Advocacy and Advocate Activity" from July 05, 2012 URL: https://zakon.rada.gov.ua/laws/show/5076-17
4. Robert Bell and Caroline Abela A lawyer's duty to the court URL: https://www.advocates.ca/Upload/Files/PDF/Advocacy/InstituteforCivilityandProfessionalism/Duty_to_Court.pdf
5. The Attorneys' Code of Ethics URL: https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/National_Regulations/DEON_National_CoC/EN_Croatia_The_Attorneys_Code_of_Ethics.pdf

Topic 4. Evidences in economic litigation (2 hours)

1. The legal definition of evidences, characteristics of evidences.
2. The order of evidence submission. Evaluation of evidences.
3. Types of evidences in economic litigation. Characteristics of the testimony of a witness.
4. Written evidences, material evidences, electronic evidences.
5. Expert conclusion, legal expert opinion as evidences in Economic court.

Sources:

1. Economic Procedural Code of Ukraine from December 06, 1991 URL: https://zakon.rada.gov.ua/laws/show/1798-12
2. Зятіна Д.В. Докази і доказування в господарському процесі: новітня практика Касаційного господарського суду // Підприємництво, господарство і право. - № 6. – 2019. – С. 83-88.
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Topic 5. Securing a claim (2 hours)

1. The definition and types of measures for securing a claim (Preliminary injunctions measures).
2. Legal procedure of filing an application to secure a claim.
3. Counter-injunction while securing a claim.
4. Execution of the decision of preliminary injunctions measures application.
5. Measures for securing a claim in foreign countries.

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2. Temporary injunctions (measures maintaining the status quo pending determination of the issues at trial) URL: https://ec.europa.eu/civiljustice/publications/docs/prov_measures_3_en.pdf

Topic 6. Consideration of commercial disputes by Arbitration courts (2 hours)

1. Commercial Arbitration – general characteristics.
2. World practice of commercial arbitration.
3. The legal status of Arbitration courts in Ukraine. The jurisdiction of Arbitration courts in Ukraine. Arbitration clause.
4. Enforcement of the decision of the Arbitration court in Ukraine.
5. Legal order of appeal of the decisions of the Arbitration courts in Ukraine.

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Topic 7. Pre court consideration of economic disputes. Mediation procedure as a way of economic disputes solving. Settlement agreement in economic litigation (2 hours)

1. Legal order of filing pre court letter (letter before action).
2. Definition of mediation as alternative form of dispute resolution.
3. Settlement agreement in economic litigation.
4. Foreign experience of application of alternative forms of commercial disputes resolution.

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4. EU Directive of 21 May 2008 on certain aspects of mediation in civil and commercial matters URL: https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32008L0052

Topic 8. Terms in economic litigation. Responsibility in economic litigation (2 hours)

1. Types of terms in economic litigation. Calculation of terms.
2. Suspension of legal terms. Renewal and extension of missed terms in economic litigation.
3. The definition and types of procedural coercion measures.
4. The legal order of application of procedural coercion measures in economic litigation.

Sources:

1. Economic Procedural Code of Ukraine from December 06, 1991 URL: https://zakon.rada.gov.ua/laws/show/1798-12

Topic 9. Writ proceeding. Claim in economic litigation (2 hours)

1. General characteristic of writ proceeding.
2. Statement of claim in economic litigation. Scope and form of a claim. Price of a claim. Other statements of fact in economic litigation.
3. The rules of filing a claim.
4. Preparatory proceeding in economic litigation.

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Topic 10. Consideration of economic disputes in the first instance (2 hours)

1. Consideration of economic cases in the first instance. Settlement of a dispute with the participation of a judge.
2. Refusal of the plaintiff from the claim. Settlement (amicable) agreement of the parties.
3. Consideration of the case on the merits.
4. Leaving of a claim without consideration. Suspension and closing the proceedings.
5. Court decisions.
6. Consideration of cases in the order of simplified litigation.

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Topic 11. Insolvency procedure in Ukraine (2 hours)

1. The definition of bankruptcy. Parties to insolvency proceedings.
2. The judicial insolvency proceedings.
3. Solvency renewal proceedings (Sanation of a debtor).
4. Liquidation of a debtor.
5. Particularities of insolvency of certain debtors.

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Topic 12. Reviewing of judicial decisions: Appeal proceedings (2 hours)

1. General rules of filing an appeal.
2. The legal order of opening of appeal proceedings.
3. The legal order of appeal review.
4. Powers of the Court of Appeal.
5. Resolution of the Court of Appeal.

Sources:

1. Economic Procedural Code of Ukraine from December 06, 1991 URL: https://zakon.rada.gov.ua/laws/show/1798-12

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Topic 13. Reviewing of judicial decisions: Cassation proceedings (2 hours)

1. The right for filing a cassation complaint.
2. Opening of cassation proceedings.
3. The rules of cassation consideration of the case. The limits of consideration of a case by a court of cassation instance.
4. Grounds for the transfer of the case to the Chamber or the Grand Chamber of the Supreme Court.
5. Powers of the Court of Cassation.
6. Decisions of the Court of Cassation.

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Topic 14. Reviewing of court decisions for newly discovered or exceptional circumstances.

Topic 15. General characteristics of enforcement proceedings.

Topic 16. Proceedings in cases with participation of foreign entities (4 hours)

1. Grounds for review of court decisions for newly discovered or exceptional circumstances.
2. The procedure of reviewing of court decisions for newly discovered or exceptional circumstances.
3. Participants of enforcement proceeding.
4. Legal procedure of enforcement of economic court decisions.
5. Proceedings in cases with participation of foreign entities.

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2. Law of Ukraine «On enforcement proceeding», from June 2, 2016 URL: https://zakon.rada.gov.ua/laws/show/1404-19
3. Enforcement of judgements and arbitral awards in Ukraine: overview URL: https://uk.practicallaw.thomsonreuters.com/w-007-5078?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1

LIST OF EXAM QUESTIONS

1. Court system of Ukraine. The place of Economic courts in court system of Ukraine.
2. General characteristics, importance and the structure of Economic Procedure Code of Ukraine.
3. The system, composition and the structure of Economic courts of Ukraine.
4. Tasks of Economic courts.
5. Principles of economic litigation, their types and importance for proper resolution of a dispute.
6. The definition of economic procedural law, its object and methods.
7. Sources of economic procedural law.
8. The right to apply to Economic court.
9. Forms and stages of economic proceedings.
10. Exclusive subject-matter jurisdiction of Economic courts. Criteria for division between economic, administrative and civil subject-matter jurisdictions.
11. Definition and types of jurisdiction of Economic courts, their characteristics.
12. Territorial and exclusive jurisdiction of Economic courts.
13. Securing a claim in economic litigation. Types of measures for securing a claim.
14. Counter-injunction while securing a claim.
15. The definition and types of legal expenses in economic litigation.
16. The amount of court fee, legal order of its payment.
17. Terms of consideration of a case by Economic Court. Legal grounds and procedure for the extension of terms of consideration of a case.
18. Classification of participants in economic litigation.
19. Rights and obligations of participants in the case.
20. The legal status of a judge in economic litigation.
21. Legal grounds for recusal of a judge in economic litigation.

22. The legal status of the parties of the case in economic litigation.
23. Legal status of a plaintiff and defendant in economic litigation.
24. The legal status of third parties in economic litigation.
25. Representatives in economic litigation.
26. Documents, confirming the powers of representatives in economic litigation.
27. The legal status of bodies and persons authorized by law to apply to a court in the interests of other persons.
28. Participation of a prosecutor in consideration of economic dispute.
29. An expert, a legal expert, a specialist in economic litigation.
30. The legal status of a witness in economic litigation.
31. The legal definition of evidences, characteristics of evidences.
32. Types of evidences in economic litigation, the rules of their assessment by the court.
33. The legal order of evidence submission.
34. Written, material and electronic evidences in economic litigation, the legal order of their submission.
35. Appointment of expert examination by Economic court. Assessment of the expert conclusion by Economic court.
36. The legal status of Arbitration courts. The jurisdiction of Arbitration courts in Ukraine.
37. Grounds and legal order of appeal of decisions of Ukrainian Arbitration courts.
38. Competence of Arbitration courts in Ukraine. Legal status of the International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry.
39. Consideration of disputes by Arbitration courts. Arbitration clause. Enforcement of the decision of Arbitration court.
40. Characteristic of writ proceeding.
41. The legal status of participants of writ proceeding.
42. Statement of claim in economic litigation. Scope and form of a statement of claim. Price of a claim.
43. The rules of filing of a statement of claim.

44. Statements on the merits in economic litigation.
45. Legal grounds for leaving the claim without consideration, suspending and closure the proceedings.
46. Legal grounds for return of the statement of claim.
47. The legal grounds for refusal to open a proceeding.
48. The legal order of the opening of economic litigation. Objectives and terms of preparatory proceedings.
49. The legal order of settlement of a dispute with the participation of a judge in economic litigation.
50. Refusal of the plaintiff from the claim. Acknowledging of the claim by the defendant. Settlement (amicable) agreement of the parties.
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55. Legal characteristic of court decisions.
56. Types of court decisions.
57. Consideration of cases in the order of simplified litigation.
58. Comparison of general and simplified litigations in Economic courts.
59. The definition of bankruptcy.
60. General characteristic of bankruptcy proceedings.
61. The judicial insolvency (bankruptcy) proceedings.
62. Parties to insolvency proceedings and their rights.
63. The legal status of insolvency manager in the bankruptcy proceeding.
64. Solvency renewal proceedings in the bankruptcy cases (sanation of a debtor).
65. Liquidation of a debtor in bankruptcy cases.
66. Particularities of insolvency of certain debtors.
67. General rules of filing an appeal complaint.
68. The legal order of opening of appeal proceeding.

69. The legal order of appeal review.
70. The legal procedure of appeal of the rulings of Economic court.
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72. Decisions of the Court of Appeal.
73. The right for filing of a cassation complaint. The legal order of filing a cassation complaint.
74. Content of cassation complaint.
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77. Grounds for the transfer of the case to the Grand Chamber of the Supreme Court.
78. Types of proceedings for reconsideration of the Economic court decisions, their characteristics and specialties.
79. Grounds for review of court decisions for newly discovered or exceptional circumstances.
80. Legal order of filing a claim to Economic court of Ukraine by foreign entities.
81. Legal procedure of enforcement of Economic court decisions.

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Навчальне видання

Діна Володимирівна Зятіна

ГОСПОДАРСЬКЕ ПРОЦЕСУАЛЬНЕ ПРАВО

МЕТОДИЧНИЙ ПОСІБНИК

з курсу лекцій для студентів
Національного університету «Одеська юридична академія»,
які вивчають юридичні дисципліни англійською мовою

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