

# PRACTICAL VALUE OF THE INSTITUTE OF SMALL CASES IN THE LIGHT OF CHANGES TO THE CPC OF UKRAINE

*Shvetsova Larisa*

**Member of the High Council of Justice,  
Judge of the Court of Appeal of the Kharkiv oblast,  
Ukraine**

## 1. INTRODUCTION

On December 15, 2017, the Law of Ukraine No. 2147-VIII of October 3, 2017 “On Amendments to the Commercial Procedural Code of Ukraine, the Civil Procedural Code of Ukraine, the Code of Administrative Legal Proceedings of Ukraine and other legislative acts” (hereinafter referred to as Law No. 2147-VIII) came into force.

In accordance with part one of Article 2 of the Civil Procedural Code of Ukraine (hereinafter the CPC), the task of civil proceedings is fair, impartial and timely consideration and resolution of civil cases for the purpose of effective protection of violated, unrecognized or disputed rights, freedoms or interests of individuals, the rights and interests of legal entities, as well as interests of a state.

In this papers we underlined the current legislation as well as analysed new court practice. Some of reflections to conclude were made at the end of this report.

## 2. SMALL CLAIMS AND SIMPLIFIED PROCEEDINGS – THE LEGISLATION NOVELTIES

One of the novelties of the CPC is the introduction of such institute as small cases. The Law of Ukraine of June 2, 2016, No. 1401-VIII “On Amendments to the Constitution of Ukraine (on Justice)”, supplemented the Constitution of Ukraine with Article 131-2, part 5 of which provides that the law may specify exceptions regarding representation in a court in labour disputes, disputes concerning the protection of social rights, elections and referendums, small disputes, as well as representation of infants or juveniles and persons recognized as incapacitated by the court or whose capacity is limited.

The relevance of the institution of small cases is defined in part 2 of Article 60 of the CPC, according to which in consideration of disputes arising from labor relations, as well as small cases, a person who has attained the age of eighteen years and has legal capacity to sue (with the exception of persons defined in Article 61 of this Code), may act as a representative. In addition, this Article envisages the possibility of considering these cases under simplified action procedure.

Also, the CPC states that the abovementioned institution of small cases may be applied, with appropriate features and limitations, during both appeal (provided for in Article 369, Part 1 of the CPC) and cassation review of the case.

The new wording of the Civil Procedural Code of Ukraine also introduces the institute of simplified proceedings.

In order to find out the relation between the concepts of “simplified” and “urgent” proceedings, one should take into account the approaches applied by the Council of Europe.

Thus, CEPEJ notes that one way to improve the administration of justice in a reasonable time with the preservation of the quality of decisions is, firstly, urgent proceedings aimed at better satisfying the needs of those who appeal to the court, and secondly, simplified or conciliatory procedures, designed for the consideration of simple or uncontested cases.

Accelerated proceedings often relate to pressing and urgent issues and are connected to: prevention of imminent danger or irreparable damage to the applicant; provision of evidence; disputes in which a preliminary or intermediate solution is required; labour disputes; protection of the applicant’s property interests; disputes over monetary claims; bankruptcy cases; affairs relating to marriage relations, alimony obligations, affairs related to the protection of children’s rights.

Instead, simplified procedures are often less costly, and require a shorter decision-making process.

Thus, simplified civil proceedings are used in most cases for unobjectionable cash collection (for example, *Mahnverfahren* in Germany or *Moneyclaim online* in England and Wales). Simplified proceedings may take various forms, for example, a decision without a court session, or with the latter being held in a judge’s office, a decision made by judge alone, a simplified decision, etc. Moreover, in more than half of the states, simplified procedures in civil proceedings concern not only orders for payment, but also proceedings for small amounts.

With the entry of the amendments to the CPC into force, “small cases” has become a legal category, which is subject to the application with the relevant legal criteria. Therefore, adherence to such basic principles of civil proceedings, enshrined in paragraph 3 of Article 2 of the CPC, as the reasonableness of the terms of consideration of the case, proportionality, respect for honour and dignity, equality of all participants in the trial before law and court; ensuring the right to appeal and ensuring the right to appeal a court decision in a court of cassation instance in cases established by law, as well as observance of the rule of law principle, which should be guiding principle in the course of consideration of cases in accordance with paragraph 1 of Article 10 of the CPC, depends on the correct application by judges of the new institution of small cases.

The right to a case consideration means the right of a person to apply to a court and the right to have his/her case reviewed and resolved by a court. In this case, the person shall be given the opportunity to exercise the rights in question without any obstacles or complications. The ability of a person to freely receive legal protection is the content of the notion of access to justice.

In accordance with paragraph 4 of Art. 10 of the CPC of Ukraine, in the consideration of cases the court shall apply the Convention on the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the “Convention”) of 1950 and its protocols, the consent to be bound by which was provided by the Verkhovna Rada of Ukraine and the practice of the European Court of Human Rights as a source of law.

Article 6 of the Convention guarantees the right to a fair and public hearing of a case within a reasonable time by an independent and impartial court established by law in determining the civil rights and obligations of a person.

The key principles of article 6 are the rule of law and the proper administration of justice. These principles are also fundamental elements of the right to a fair trial.

Given the fact that the right to a fair trial occupies a central place in the system of global values of a democratic society, the European Court offers rather broad interpretation of it in its practice.

In the case of *Bellet versus France* the Court stipulated that “Article 6 § 1 of the Convention contains guarantees of fair trial, one aspect of which is access to a court. The level of access provided by national legislation should be sufficient to ensure the right of a person to a court in the light of the rule of law in a democratic society. In order for access to be effective, a person shall have a clear practical opportunity to challenge actions that interfere with his/her rights.”

*Consequently, taking into account the objective of civil justice for fair, impartial and timely consideration and resolution of civil cases in order to effectively protect the violated, unrecognized or disputed rights, freedoms or interests of individuals, the rights and interests of legal entities, the interests of the state, the legislator has chosen the best way introducing an institution of small cases.*

### **3. GENERALIZATION OF THE COURT PRACTICE AND DEFINING SOME PROBLEMS OF THE NEW CPC IMPLEMENTATION**

There is no definition of a “small case” in the civil procedural legislation of Ukraine”. Paragraph 6 of Art. 19 of the CPC determines the cases that are small for the purposes of this Code. Similar provisions are contained in paragraph 5 of Art. 12 of the Commercial Procedural Code of Ukraine. In contrast to these Codes, in paragraph 20, part 1 of Art. 4 of the Code of Administrative Justice of Ukraine the definition of the notion of an administrative case of low complexity (small case). This is an administrative case in which the nature of the disputed legal relationship, the subject of evidence and the composition of the participants, etc., do not require the conduct of preparatory proceedings and (or) court sessions for the complete and comprehensive determination of its circumstances. Despite the lack of a definition of this concept in the civil process, since the entry into force of the CPC of Ukraine, small cases are a separate category of civil cases that need to be resolved in the manner prescribed by this Code.

According to Part 6 of Article 19 of the CPC of Ukraine, small cases are:

- 1) cases in which the value of a claim does not exceed one hundred sizes of subsistence minimums for able-bodied persons;
- 2) cases of low complexity, which are recognized as small by the court, except cases that are to be considered only under general procedure, and cases where the value of a claim exceeds five hundred subsistence minimum sizes for able-bodied persons.

It should be noted that the Supreme Court, in the composition of the Court of Cassation in case 127/22669/17 of March 14, 2018, expressed its opinion and noted that, considering that the provisions of Article 19 of the CPC in the structure of a legislative act are among the General Provisions of this Code, the court has the right to classify the case as a small one at any stage of its consideration. At the same time, according to the content of the rules of paragraph 1 of the sixth part of Article 19 of the CPC, cases specified in this provision, are small due to the properties inherent in such a case, based on the price of the

lawsuit and its subject, without the need for a separate court decision to assign this case to the appropriate category.

Thus, part 1 of Article 274 of the Civil Procedural Code provides that the following is to be considered under simplified action procedure: 1) small cases; 2) cases arising from labour relations.

In accordance with Part 3 of Article 274 of the CPC, the court takes the following into account in the recognition of the case as a small one:

1. the price of the lawsuit;
2. the meaning of the case to the parties;
3. the method of protection chosen by the plaintiff;
4. 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 of the case;
7. if the consideration of the case is of significant public interest;
8. the opinion of the parties on the need to consider the case under simplified procedure.

The term “small case” is used in the following articles of the CPC: parts 4 and 6 Art. 19, part 2 of Art. 60, paragraph 1, part 1 of Art. 274, part 3 of Art. 389. Considering such criterion for defining a small case as, in particular, the price of a claim, and based on a systematic interpretation of this notion, one can come to the conclusion that it is also used in the following articles of the CPC of Ukraine: paragraph 7 part 1 of Art. 161, paragraph 5, part 4 of Art. 274, part 1 of Art. 369, part 4 of Art. 394.

As noted above, the criteria for assigning a case to a small one are given in Part 6 of Art. 19 of the CPC of Ukraine. Since Art. 19 of the CPC of Ukraine is placed in Section 1 of this Code, entitled “General Provisions”, it should be applied to the courts regardless of the stage of consideration of the case, unless otherwise provided by the relevant articles of the Code, which regulate the peculiarities of consideration of the case at a certain stage. That means that both court of first instance, and the court of appeal and/or cassation instance may recognize the case as a small one and/or recognize the assignment of a case to a category of small ones as incorrect.

At the same time, taking into account that small cases are considered under the rules of simplified proceedings, and these rules are defined in the decision on opening of proceedings in the case, and in accordance with the requirements of Part 3 of Art. 3 of the CPC, proceedings in civil cases are carried out in accordance with the laws in force at the time of the commission of certain procedural actions, consideration and resolution of the case, and, taking into account the absence in the provisions of the CPC (in the wording of 2004) of such a proceeding as simplified proceedings, we consider that the case, in which proceedings are opened before December 15, 2017, cannot be defined as a small and considered according to the rules of simplified proceedings by the court of first instance. The transitional provisions of the CPC of Ukraine also do not provide for the possibility of changing the procedure for reviewing the case from the general proceedings to a simplified, as opposed to the possibility of such a change from the action to the summary proceedings (paragraph 12 paragraph 1 of the Transitional Provisions).

In Art. 19 of the CPC small cases are defined as:

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

- 2) cases of low complexity, which are recognized by the court as small ones, except cases which are subject to consideration only under the rules of general proceedings, and cases where the value of a claim exceeds five hundred sizes of subsistence minimum for able-bodied persons.

The first category of small cases includes cases of claims of property character (property disputes), the value of which does not exceed one hundred subsistence minimums for able-bodied persons.

It should be kept in mind that the indication of the value of the claim is one of the requirements to the statement of a claim (paragraph 3 part 3 Article 175 of the CPC), the failure to comply with which will result in the application of the provisions of Part 1 of Art. 185 of this Code. The strict observance of these requirements by the plaintiff helps the court in deciding on the assignment of a case to a category of small cases.

In deciding on the assignment of a case under this criterion to a category of small cases, the court should first of all be guided by the provisions of Art. 176 of the CPC of Ukraine, as well as rationally use the possibilities of Part 2 of this article of the Code.

The application of these provisions by the court is carried out in conjunction with the provisions of Part 9 of Art. 19 of the CPC of Ukraine, according to which for the purposes of this Code, the subsistence minimum for able-bodied persons is calculated as of January 1 of the calendar year in which the corresponding application or complaint is filed, a procedural act is performed or a court decision is made.

For assigning, according to this criterion, of a case to a category of small cases, which can be conventionally called “imperative (legal) basis”, the court during the decision on the opening of proceedings shall verify only the value of the claim, as well as the absence of this case by category in the list specified in Part 4 of Art. 274 of the CPC, which excludes the possibility of considering certain categories of cases, including small cases, under simplified procedure. Violation of these prescriptions, in particular, as for the consideration of the case by the rules of simplified proceedings, is the basis for the abolition of the adopted court decisions in the appeal order with the adoption of a new decision (paragraph 7 part 3 of Article 376 of the CPC) and the cassation order (paragraph 7 part 1 Article 411 of the CPC). Instead, consideration of a small case under the rules of general proceedings is not a ground for cancellation of court decisions, but is a violation of the rules of procedural law by the court, which is not a compulsory basis for the annulment of a court decision (taking into account the exceptions provided for in paragraph 2 of Article 376 of the CPC), which can only testify to the violation by the court of the principle of “procedural economy”, which is inherent in this category of cases, in accordance with the provisions of Part 4 of Art. 19 and Art. 275 of the CPC.

If the case is small in accordance with paragraph 1 part 6 of Art. 19 of the CPC, it is viable to restrict to the reference to it in the decision on opening of proceedings, indicating the category of the case and the value of the claim, as well as the indication of the consideration of the case under simplified procedure (Part 4 of Article 19, Part 2 of Article 187, Part 1, Article 274, Part 1, Article 277 of the CPC).

It should also be noted that the legislator has identified a list of cases that cannot be considered under simplified procedure: 1) cases arising from family relations, except for disputes regarding the payment of alimony and the division of property of the spouses; 2) cases regarding inheritance; 3) cases regarding the privatization of the state housing stock; 4) cases regarding the recognition of unsubstantiated assets and claims regarding them in accordance with chapter 12 of this section; 5) cases in which the value of the claim

exceeds five hundred subsistence minimums for able-bodied persons; 6) other claims combined with the requirements in the disputes specified in paragraphs 1 to 5 of this part.

Most typical small cases in which the value of the claim does not exceed one hundred sizes of the subsistence minimum for able-bodied persons are cases arising from credit relations, the collection of alimony and compensation for damage.

Thus, by an extraordinary decision of the Kupiyanskyi District Court of Kharkiv Oblast as of 05.03.2018 in case No. 628/3285/17 the claims of PJSC “Privatbank” to Individual 1 on collection of loan debt in the amount of 19877.85 UAH were satisfied.

On 03.01.2018, proceedings were opened in the said case and it was decided to conduct a trial under simplified procedure, as the said case is considered to be small.

Thus, the decision of the Frunzenskyi District Court of the city of Kharkiv dated May 30, 2018, in case No. 645/689/18, satisfied the demands of the Communal Enterprise “Kharkivvodokanal” and the arrears for the provided services for centralized water supply and drainage in the amount of 10089,23 UAH was collected jointly from Person 1 and Person 2.

On April 13, 2018, proceedings were opened in this case and it was decided to conduct court proceedings under simplified procedure, as the said case is considered to be small. Respondents did not provide a petition for a statement of claim, no requests regarding the consideration of the case with the parties’ notification were received from the parties, therefore, the case was considered without summons of the parties.

By the decision of the Kharkiv district court of Kharkiv Oblast dated March 13, 2018, in the case No. 635/7326/17, the claims of Person 1 were met, alimony for the child’s maintenance from Person 2 was settled in a solid monetary amount of 2,000 UAH monthly, but not less than 50% of the subsistence minimum for a child of the corresponding age.

On March 13, 2018, the proceedings were opened and it was decided to conduct court proceedings under simplified procedure.

According to Part 5, 6 of Art. 279 of the CPC, the court examines the case under simplified procedure without notice to the parties according to 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 notification of the parties in the case of simultaneous existence of the following conditions:

- the subject of a claim is the collection of a monetary amount, the size of which does not exceed one hundred subsistence minimums for able-bodied persons;
- the nature of the disputed legal relationship and the subject of evidence in the case do not require a court session with the notification of the parties for full and complete establishment of the circumstances of the case.

In accordance with part 8 of Art. 279 of the CPC, when considering the case under simplified procedure, 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 (summons) of the participants of the case, also hears their oral explanations and testimony. Judicial debates are not held.

In view of the changes in the civil procedural legislation, namely the introduction of the institute of simplified proceedings, the legislator tried to resolve the issue of observance of reasonable time periods for consideration of court cases, in which the subject matter of claims is objectively not sufficiently significant for consideration in the order

of general proceedings. The criterion for defining cases of this category in addition to the size of claims of 100 amounts of the subsistence minimum for able-bodied persons is the significance of the case to the parties, the method chosen by the plaintiff, the category and complexity of the case, the scope and nature of evidence in the case, including the necessity of appointing expertise in the case, the necessity of summoning witnesses, etc., the number of parties and other participants in the case and whether the consideration of the case is of significant public interest. Thus, the concept of “low significance of the case” provides for a simplified procedure for its consideration, depending on the size and nature of the claims.

As for the consideration of small cases of low complexity with the value of a claim, which does not exceed five hundred subsistence minimum sizes for able-bodied persons, the courts have considered a small number of cases of the specified category.

Thus, the Suvorov District Court considered case number 523/1493/18 on the claim of Person 1 to Person 2 on the collection of funds in the amount of 300,000 UAH on the grounds of not fulfilling obligations. A statement of claim is filed to the claim on consideration of the case in the form of simplified proceedings. The case is considered in accordance with the requirements of paragraph 2 part 6 of Art. 19 of the CPC.

The cases arising from labour relations are imperatively appointed to this category of cases.

Thus, the Illichivsk city court of Odessa oblast considered the case on the claim of Person 1 to the SE Sea Commercial Port “Chornomorsk” on the recovery of average earnings during forced unemployment in connection with execution of a court decision in the amount of 180858.72 UAH. The claim cost exceeds five hundred sizes of subsistence minimum for able-bodied persons, but it concerns labour relations, and according to Art. 274 of the CPC it refers to cases that are considered under simplified procedure.

Part 2 of Art. 274 of the CPC states that any other case that is subject to the jurisdiction of the court may be considered under simplified procedure, except for cases specified in part four of this article. The decision on the consideration of such cases under simplified procedure is carried out by the court in accordance with the requirements of Part 2 of Art. 277 of the CPC of Ukraine. The above applies to the category of cases stipulated in Part 4 of Art. 19 of the CPC of Ukraine. Therefore, the notion of “complexity of the case”, “a case of low complexity” should be used in assigning such a case to the category of small cases on the basis of paragraph 2 of Part 6 of Art. 19 of the CPC of Ukraine, as well as when deciding on the possibility of considering a case under simplified procedure on the basis of the provisions of Part 2 of Art. 274 and Part 2 of Art. 277 of the CPC of Ukraine.

When deciding on the complexity of the case as a prerequisite for being able to be classified as small, judges should also take into account the practice of the ECHR, in particular, the cases of Fedin versus Ukraine of September 2, 2010, Smirnov versus Ukraine of November 08, 2005, Matika versus Romania of 02 November 2006, Lithoselitis versus Greece, dated February 5, 2004, and others.

According to the established practice of this court, each case has a legal and factual complexity, the assessment of which takes into account, in particular, the presence of circumstances that hinder the consideration of the case; number of co-defendants, co-respondents and other participants in the process; necessity of conducting of expert reports and their complexity; the need to interrogate a large number of witnesses; participation in the case of a foreign element and the need to clarify and apply the rules of foreign law, etc.

In part, these circumstances are taken into account by the court in deciding on the consideration of a case under simplified or general procedure, which is provided, in particular, in paragraphs 4, 5, 6 part 3 of Art. 274 of the CPC.

However, this does not indicate that in resolving the issue of the recognition of a case as a case of low complexity by the court on the basis of paragraph 2 of Part 6 of Art. 19 of the CPC, the court shall take into account the circumstances envisaged in Part 3 of Art. 274 of the CPC, as these provisions are applied by the court on the basis of Part 2 of Art. 277 and Part 2 of Art. 274 of the CPC, and they are dispositive, and according to the provisions of paragraph 1, part 1 of Art. 274 and Part 7 of Art. 277 of this Code, which are imperative, all small cases, in particular, which are such on the basis of clause 2 of Part 6 of Art. 19 of the CPC are considered only under simplified procedure.

Taking into account the principles of civil proceedings, enshrined in Art. 2 of the CPC, the issue of considering small cases at the stage of appeal proceedings does not arise, as courts in most cases consider these cases in accordance with the rules of general proceedings.

Pursuant to paragraph 2 of the third part of Article 389 of the CPC, court decisions in small cases are not subject to appeal in cassation.

Regarding the consideration of these cases by the cassation court, the Supreme Court, in the composition of the Court of Cassation, noted that the rules introduced by the legislator concerning the limitation of the right of cassation appeal are complied with the Constitution of Ukraine, in accordance with Article 129 of which the basic principles of legal proceedings are, among other, the right to appeal review of the case and in cases determined by law - on a cassation appeal of a court decision.

*The above is fully in line with the legal positions of the European Court of Human Rights in cases *Levages Prestation Services v. France* and *Brualla Gomez de la Torre v. Spain*, according to which the conditions for the admissibility of a cassation appeal may, in accordance with the law, be more restrictive than for a standard application. Given the special status of the court of cassation, procedures in the court of cassation may be more formal, especially if the proceedings are conducted by a court after their consideration by the court of first instance and then by the court of appellate instance.*

*The introduction of a new institution of small cases enables the quick solution of minor conflicts and the observance by the courts of reasonable timeframes for cases.*