NATIONAL UNIVERSITY OF LIFE AND ENVIRONMENTAL SCIENSE OF UKRAINE

Faculty of Law

Department of Civil and Commercial Law

Methodical recommendations for preparation for seminars classes in the discipline **“Business Law”**

For students of the Faculty of Economics

of the Bachelor's degree in the 4th year of study in the specialty 076

“Entrepreneurship, Trade and Exchange Activities”

for full-time students”

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The methodological recommendations are designed to provide students with an in-depth study of the "Business Law" discipline, to acquire skills of independent processing of theoretical and practical material, and to structure the necessary information. A list of recommended reading is provided.

Methodical recommendations for preparation for seminars classes in the discipline "Business Law" For students of the Faculty of Economics of the Bachelor's degree in the 4th year of study in the specialty 076 "Entrepreneurship, Trade and Exchange Activities" for full-time students" / Compilers: Piddubnyi O.Y., Pankova L.O., Adamovych O.V., Oleksiuk V.P. Kyiv, 2024, 204 p.

General methodological recommendations for preparation for seminars and classes and their implementation in the discipline "Business Law"

The course **"Business Law"** is aimed at forming a system of students a system of knowledge about the regulation of legal relations arising in during the implementation of entrepreneurial activity; to characterize and systematize the main instruments of legal regulation of After studying the discipline, students should master the ability to analyze current legislation and use the acquired knowledge in practical activities. resolution of corporate disputes, liability for violation of corporate law.

The discipline is divided into 2 content modules that combine lecture material, seminars and practical classes, independent work of students and testing. The level of mastery of the module material is assessed by by the results of practical assignments and module tests. and module control work. In order to fully study this course, the student must learn how to apply various legal means, analyze legislation and current case law that helps to resolve issues that arise before the manager in the process of carrying out his/her activities, forms students' understanding of how the relevant legal legal norm corresponds to the current realities and economic situation in the country.

A **seminar** is a form of classroom instruction in which according to which the teacher organizes a discussion around predefined topics for which students prepare which students prepare theses on the basis of individually completed assignments (abstracts). Seminar classes are held in classrooms or in classrooms with one academic group, can be held online, using video conferencing platforms.

Tasks assigned to students for preparation:

- study of theoretical issues and scientific sources;
- analysis of current regulations;
- writing essays;
- writing essays;
- creation of multimedia presentations;
- solving practical problems with the use of current case law

practice.

In order to study the **theoretical issues** that are submitted for consideration for each seminar, the student must attend lectures on the relevant topics, dedicated to the relevant topics and familiarize themselves with the content of the lecture in electronic format, which is posted on the official website of the NULES of Ukraine on the on the Elearn platform.

When studying theoretical issues, the student is obliged to pay due attention to the processing of **scientific sources**, including special legal literature, as well as the analysis of **regulations** that regulating the relations that are the subject of consideration in the seminar (the list of scientific sources and regulations is contained in the electronic lecture notes, which are an integral part of the educational and methodological complex in the discipline “Business Law”).

The development of regulatory legal acts should include determining the range of social relations regulated by this act, as well as determining the subject matter and ways of its influence on the relevant legal relations.

Regulatory legal acts required for the seminar should be in printed and/or electronic form for each student, present at the seminar.

The result of a proper study of theoretical issues and scientific sources, legal analysis of current regulations is an oral answer at the seminar, which is evaluated by the teacher in points: from 1 point to 15 points.

If the list of individual assignments for the list of individual assignments for the seminar includes writing essays and papers, the by the teacher who conducts the seminar, students must prepare written papers on the relevant topics that must meet the requirements described below.

Preparation for essays and papers should begin with compiling a bibliography on the chosen research topic.

In order to prepare essays and papers, you can work with the funds of the following libraries:

- Library of the National University of Life and Environmental Law of Ukraine (Kyiv, 13 Heroiv Oborony St., academic building No. 4; branch of the library: 17

Vasylkivska St., Kyiv, academic building 6);

- Vernadsky National Library of Ukraine (Kyiv, 3, Holosiivskyi Ave. 62, Volodymyrska St., Kyiv; branch No. 2 м. Kyiv, 79 Akademika Vernadskoho Ave;)

- Legal library of the Ukrainian Legal Foundation (41 Saksahanskoho str., Kyiv).

41, Saksahanskoho Str., Kyiv);

- Yaroslav Mudryi National Library of Ukraine (1, Hrushevskoho str.1, Hrushevskoho Str., Kyiv);

- M. Maksymovych Scientific Library of the Taras Shevchenko National Taras Shevchenko National University of Kyiv (58 Volodymyrska St., Kyiv).

The study of literature on the chosen research topic should start with the relevant textbooks, manuals, reviewing own lecture and seminar notes, gradually moving on to

familiarization with monographic studies, articles in scientific professional journals, materials of scientific and practical conferences, texts of and other texts.

First of all, you need to analyze the new literature, and then you can you can go deeper into the study of older sources.

It is also recommended to pay attention to Ukrainian legal journals, in particular: “Law of Ukraine, Entrepreneurship, Economy and Law, “Yurydychnyi Visnyk Ukrayiny, Yurydychna Ukraina, Yuryst, Bulletin of the of the Constitutional Court of Ukraine, etc.

Particular attention should be paid to problematic issues and discussions, controversial opinions and statements, shortcomings and inconsistencies in legislation.

It should be remembered that it is necessary to use the current regulatory legal acts in their latest, up-to-date version. To this end, you should use official publications and official websites of public authorities, in particular:

- Bulletin of the Verkhovna Rada of Ukraine;
- Official Gazette of Ukraine;
- “Governmental Courier”;
- https://rada.gov.ua;
- https://www.kmu.gov.ua;
- https://minjust.gov.ua;
- https://mon.gov.ua;

- http://www.me.gov.ua.

References to regulatory legal acts not in the current version or to legal acts that are not in force is possible only if the issue is studied in the historical or comparative legal aspect.

The abstract should consist of the following parts:

- Introductory (devoted to highlighting the relevance of the topic chosen by the author (dedicated to highlighting the relevance of the topic chosen by the author; the purpose and objectives of the study are highlighted);

- Main (should contain the main content of the study; the main theoretical provisions; analysis of national and foreign regulatory legal acts);

- Conclusions (the most important results of the study are presented). the most important results of the study).

The abstract ends with a list of references to which the referenced in the paper and used in its preparation.

The volume of the main text of the abstract should be no less than 15 pages and no more than 30 pages.

The main text includes:

- title page (1 page);

- Table of contents (1 page);

- introduction (1-2 pages);

- main part (10-25 pages);

- conclusions (1-3 pages);

- list of references (at least 10 references).

The result of the proper execution of the essay is: written work and a student's report on the topic of the essay at a seminar, which are evaluated by the teacher in points: 1-5 points - oral response; 1-5 points – written written essay. The minimum number of points that a student can receive can receive for completing the essay is 2 points, the maximum is 10 points.

When creating multimedia presentations, students should adhere to the following recommendations.

The presentation should be completed after the student has developed the general structure of the presentation and collected illustrative material.

The first slide should contain the title of the topic, the author's name, surname, and the author's name and patronymic, and the purpose of the work.

It is advisable to add tables, charts, diagrams and graphs.

The main presentation of the material should be made on 10-12 slides.

Conclusions and recommendations should be placed on 1-2 slides. One slide should contain a list of references.

The presentation should not exceed 20 slides. The optimal number of slides is 15-16. The font size should be at least 20-22pt.

The result of a proper multimedia presentation is presentation design on electronic media and in printed form. Evaluation of the multimedia presentation is carried out by the teacher after it’s disclosure in a seminar class or after viewing a printed or electronic version of it or electronic version. The maximum number of points that a student can receive can receive for a multimedia presentation is 15 points.

It is extremely important to prepare for the seminar class by solving practical problems with the use of current case law.

Before solving a practical task, the student must familiarize himself or herself with the content of the lecture in electronic format, which is available on the official website of the NULES of Ukraine on the Internet. Then the student should analyze literary sources and regulations on the issues set forth in the terms of the task.

When solving a practical task, the student must take into account the provisions of the current legislation and refer to the current judicial case law, links to which can be obtained from the instructor.

The result of solving practical problems with the use of the current case law is: formalization of the solution of the practical task in writing and announcement of the results obtained at the seminar class. The minimum number of points that a student can receive for solving a practical task is 1 point, the maximum number is 5 points.

Description of the discipline
“Business law”

Load distribution, hours.

Total - 180 hours;

Lectures - 30 hours;

Practical - 30 hours;

Independent work - 120 hours;

The purpose of studying the discipline “Business Law” is the need to training of specialists in the economic sphere who will work in the conditions of building of the rule of law and market economy; study of a set of legal norms that regulate social relations and are formed in the course of ensuring by the executive authorities in the realization and protection of the rights, freedoms and legitimate interests of individuals and legal entities interests of individuals and legal entities, as well as in the process of public administration economic, socio-cultural and administrative-political construction in the state, the formation of legal awareness and legal culture in of future employees of the business elite, legal regulation of economic activities, the legal status of business and public authorities.

Objectives of the discipline:

- to provide the necessary amount of theoretical knowledge about the forms of business activities and legal support for the organization and activities of business organizations;

- to familiarize students with the stages of the rulemaking process, the principles of rulemaking technique, ways of presenting normative prescriptions and rules for resolving legal conflicts;

- to form students' understanding of the procedure for creating and organizing and organization of governing bodies in entrepreneurial and non-entrepreneurial companies;

- outline the features of legal expertise and its types, classifications of management decisions, the process of their preparation and adoption, the procedure for maintaining

management documentation;

- to comprehensively consider the requirements for legal acts that are created by business entities, the procedure for their adoption, promulgation, enactment, termination and cancellation;

- to highlight the legal status of officials of legal entities of private and legal entities of private and public law of Ukraine.

General competencies (GC)

GC2. Ability to apply the acquired knowledge in practical situations.

GC3. Ability to communicate in the state language both orally and in writing.

GC5. Skills in the use of information and communication technologies.

GC6. Ability to search, process and analyze information from various sources.

GC 10. Ability to act responsibly and consciously.

GC 11. Ability to realize their rights and responsibilities as a member of society, to realize the values of civil (free democratic) society and the need for its sustainable development society and the need for its sustainable development, the rule of law, human and freedoms of man and citizen in Ukraine.

Professional (special) competencies (PC):

SC3. Ability to carry out activities in the interaction of market participants of market relations.

SC 6. Ability to carry out activities in compliance with the requirements of regulatory legal documents in the field of business, trading and exchange activities.

Program learning outcomes

2. Apply the acquired knowledge to identify, formulate and solve tasks in various practical situations in business, trading and exchange activities.

3. Have skills in written and oral professional communication in the state and foreign languages and foreign languages.

4. To use modern computer and telecommunication technologies for the exchange and dissemination of professionally oriented information in the field of business, trade and exchange activities.

5. To organize search, self-selection, qualitative processing of information from different sources to form databases in the field of entrepreneurship, trade and exchange activities.

9. To know the requirements for activities in the specialty due to the need to ensure sustainable development of Ukraine, its strengthening as a democratic social and legal state.

10. Demonstrate the ability to act socially responsibly on the basis of ethical, cultural, scientific values and achievements of society.

11. Demonstrate basic and structured knowledge in the field of entrepreneurship, trade and exchange activities for further use in practice.

12. Possess methods and tools to justify management decisions on the creation and operation of decisions on the creation and operation of business, trading and exchange structures.

13. Use knowledge of the forms of interaction of market participants to to ensure the operation of business, trading and exchange structures.

16. To know the regulatory and legal support of business, trade and exchange structures and apply it in practice.

Prerequisites for studying the course

The discipline “Business Law” involves the study of student’s basic legal institutions of Ukrainian law, constitutional norms, civil, commercial, corporate, labor law, based on the basis of the acquired knowledge.

Further use of the acquired knowledge

After studying the discipline “Business Law”, students should be prepared for the application of theoretical and practical knowledge and skills in the process of professional activity, through effective of entrepreneurial activity in both the private and public sectors of the economy.

Total hours - 30 hours

Content module 1

Topic 1: General provisions on legal regulation of entrepreneurial activity. The concept of business law and business activity.

Topic 2. Sources of business law.

Topic 3. Subjects of entrepreneurial activity. Organizational and legal forms of entrepreneurial activity.

Topic 4. Concept and types of corporate enterprises in Ukraine. Corporate management.

Topic 5. Legitimization of a business entity.

Topic 6. Termination of a business entity.

Content module 2

Topic 7. Property basis of entrepreneurial activity.

Topic 8. Contracts in business activity.

Topic 9. Intellectual property in the field of entrepreneurship.

Topic 10. General provisions of labor law applicable to entrepreneurial activity applicable to entrepreneurial activity. Legal status of officials of entrepreneurial companies.

Topic 11. Concept and methods of protection of the rights of business entities.

Program and structure of the discipline

1. Description of the discipline

	SYLLABUS OF THE DISCIPLINE **“Business law”**
	Degree of higher education - Bachelor's degree
	Specialty - 076 “Entrepreneurship, trade and exchange activity”
	Educational program - Entrepreneurship, trading and stock exchange activity
	Year of study, semester - 3, 6
	Form of study - Full-time, part-time
	Number of ECTS credits - 6.
	Language of instruction - Ukrainian
Course lecturer	Doctor of Law, Professor Oleksii Piddubnyi
Contact information	м. Kyiv, 17 Vasylkivska St., academic building 6, room. 209 tel. (044) 259-97-25
lecturer (e-mail)	piddubny_o@nubip.edu.ua
Course page in eLearn	

COURSE STRUCTURE

Topic	Hours (lectures/laboratory, practical, seminars)	Objectives
Module 1		
Topic 1. General provisions on the legal regulation of of entrepreneurial activity. The concept of entrepreneurial law and entrepreneurial activity. and entrepreneurial activity.	**4/4**	Problem solving. Testing. Performing independent work, including in eLearn.
Topic 2. Sources of business law.	**2/2**	Problem solving. Testing. Performing independent work, including in eLearn.
Topic 3. Subjects of entrepreneurial activity of entrepreneurial activity. legal forms of implementation of entrepreneurial activity	**4/4**	Problem solving. Testing. Performing independent work, including in eLearn.
Topic 4. The concept and types of corporate enterprises in Ukraine. Corporate governance	**2/2**	Problem solving. Testing. Performing independent work, including in eLearn.
Topic 5. Legitimization of the subject of of entrepreneurial activity	**2/2**	Problem solving. Testing. Performing independent work, including in eLearn.
Topic 6. Termination of a business entity of entrepreneurial activity	**2/2**	Problem solving. Testing. Performing independent work, including in eLearn.
Topic 7. Property basis of of entrepreneurial activity	**2/2**	Problem solving. Testing. Performing independent work, including in eLearn.
Topic 8. Contracts in entrepreneurial activity	**4/4**	Problem solving. Testing. Performing independent work, including in eLearn.
Topic 9. Intellectual property property in the field of of entrepreneurial activity.	**2/2**	Problem solving. Testing. Performing independent work, including in eLearn.
Topic 10. General provisions of labor law of labor law applicable in applicable to business activities. Legal status of officials officials of entrepreneurial companies.	**4/4**	Problem solving. Testing. Performing independent work, including in eLearn.
Topic 11. Concept and ways to protect the rights of business entities	**2/2**	Problem solving. Testing. Performing independent work, including in eLearn.
Total for the semester	**30/30**	

The structure of the course **"Business Law"** includes topics that cover theoretical and practical provisions of legal science aimed at effective regulation and conduct of business activities, implementation of quality management of business entities, and preparation of specific documentation.

The discipline "**Business Law"** is studied for one semester by full-time and part-time students of the Faculty of Economics of the Bachelor's degree program in the 4th year of study for 1 semester. According to the curriculum, 180 hours are allocated for the course, including 30 hours of lectures, 30 hours of practical classes, and 120 hours of independent work.

The discipline is divided into 2 content modules, which combine lecture material, seminars and practical classes, independent work of students and testing. The level of mastery of the module material is assessed based on the results of practical assignments and module tests.

Lecture classes are a form of classes that help to activate students' thinking, allow them to raise problematic issues of the course, show contradictions, and familiarize students with the history of scientific research. In addition, lectures allow students to put forward problems for independent study. The topics of lectures and the distribution of lectures by modules and weeks are given in the calendar plans for full-time and part-time study, respectively.

Seminars and practical classes. The purpose of the seminars is to test, deepen and consolidate the theoretical knowledge gained by students during lectures and independent work; in-depth study of recent changes in legislation; consideration of issues not covered in lectures; formation of students' ability to interpret and apply corporate law in specific situations; providing students with a set of practical skills necessary for the formation of professional skills.

Seminars are one of the organizational forms of higher education. They are designed to ensure the development of creative professional thinking, cognitive motivation and professional application of knowledge in an educational setting, and to form students' interest in science and scientific and legal research.

Seminar classes are closely related to all types of academic work, including lectures and independent work, and also provide for a sequence of preparation for them and a certain order of conduct. Students prepare speeches or abstracts on theoretical issues. Speeches should be illustrated with references to the source base. They are then discussed by the group.

Independent and individual work is a form of study aimed at expanding and researching the issues covered in lectures, as well as working on issues that were not covered in lectures, seminars and practical classes.

Knowledge control is carried out in the form of a test. Full-time and part-time students take the exam in the 7th semester. The recommended topics and forms of classes provide an opportunity to use and consolidate knowledge and skills not only from special courses on corporate law, but also from civil law of Ukraine, commercial law of Ukraine, administrative law, financial law, and other disciplines studied by students.

Mastering the theoretical provisions related to the regulation of management activities and the experience of applying the acquired skills is impossible without studying special literature and regulations, the lists of which are given below.

PROGRAM OF THE ACADEMIC DISCIPLINE

Topic 1: General provisions on legal regulation of entrepreneurial activity. The concept of business law and business activity.

The essence and types of entrepreneurship. The concept and essence of business law. Subject method, principles of business law. The system of business law.

Topic 2. Sources of business law.

Basic approaches to the definition of the concept of "source of law". Types of sources of law and their structure. Normative acts and their types. The system of legislation. The concept of business legislation. The system of sources of business law.

Topic 3. Subjects of entrepreneurial activity. Organizational and legal forms of entrepreneurial activity

Legal relations in entrepreneurial activity. General characteristics of a business entity. An individual as a business entity. The right to engage in entrepreneurial activity. Legal entities of public and private law. The concept of "legal entity" in business law. Classification of business entities.

Topic 4. Concept and types of corporate enterprises in Ukraine. Corporate governance.

The concept and characteristics of business entities. Legal regulation of a general partnership. Legal regulation of a limited partnership. Legal regulation of a limited liability company. Legal regulation of a company with additional liability.

Legal regulation of joint stock companies. Legal regulation of production cooperatives. Other types of corporate enterprises.

Corporate governance. The concept and principles of corporate governance. Supreme governing bodies of a corporate enterprise. Executive management bodies of corporate enterprises. Supervisory board. Audit committee (auditor). Corporate secretary. Other bodies of corporate enterprises. Peculiarities of corporate governance in personal business companies.

Topic 5. Legitimization of a business entity

The procedure for establishing business entities. State registration of business entities of entrepreneurial activity. Legislative regulation of business entities of entrepreneurship.

Topic 6. Termination of a business entity

General provisions on the termination of a corporate entity corporate entity - a corporate enterprise. Reorganization as a form of termination. Liquidation as a form of termination. The concept of bankruptcy, parties to the bankruptcy case bankruptcy, bankruptcy proceedings, bankruptcy procedure.

Module 2

Topic 1: Property basis of entrepreneurial activity

The concept of property rights. Forms of ownership. Property and property rights as the basis of entrepreneurial activity. Rights and obligations of the property owner. Formation of he property basis of entrepreneurial activity. Property rights of subjects of entrepreneurial activity. The concept and types of property in business in entrepreneurial activity. The use of natural resources in business. Securities in business activity. Corporate rights of business entities of entrepreneurship.

Topic 2. Contracts in business activities

The concept and features of a business contract. Types of business contracts. Functions of a business contract. Content and form of a business contract.

Topic 3. Intellectual property in the field of entrepreneurship. General provisions of intellectual property rights. Use of intellectual property rights in business activities. General conditions for the protection of intellectual property rights under special legislation.

Topic 4. General provisions of labor law applicable to business activities. Legal status of officials of business companies.

The concept of labor relations. Subjects of labor relations. Rights and obligations of employers. Rights and obligations of employees. Social guarantees of employees. Labor contract.

The concept of officials of a corporate enterprise. Restrictions on the acquisition of the status of an official of a corporate enterprise. Responsibility of officials of a corporate body. Legal status of the head of the executive body of a business entity.

Topic 5. The concept and methods of protecting the rights of business entities

The concept and methods of protecting the rights of business entities. Protection and defense of trade secrets. Protection of honor, dignity and business reputation. General principles of liability of participants in economic relations. Contractual liability, compensation for damages. Concept, signs and principles of economic and legal liability. Administrative and economic sanctions in business activities.

TOPICS OF SEMINARS

Content module 1.

Topic 1: General provisions on legal regulation of entrepreneurial activity. The concept of business law and business activity.

1. The essence and types of entrepreneurship.
2. The concept and essence of business law.
3. Subject method, principles of business law.
4. The system of business law.
5. Business law and its features.
6. Business law as a sub-branch of law, a sub-branch of legislation, an academic discipline and as a branch of law.

Topic 2. Sources of business law.

1. Basic approaches to the definition of "source of law".
2. Types of sources of law and their structure.
3. Normative acts and their types.
4. The system of legislation.
5. The concept of business legislation.
6. The system of sources of business law.

Topic 3. Subjects of entrepreneurial activity. Organizational and legal forms of entrepreneurial activity

1. Legal relations in entrepreneurial activity.
2. General characteristics of a business entity.
3. An individual as a business entity.
4. The right to engage in entrepreneurial activity.
5. Legal entities of public and private law.
6. The concept of "legal entity" in business law.
7. Classification of business entities.

Topic 4. The concept and types of corporate enterprises in Ukraine. Corporate governance

1. The concept and characteristics of business entities.
2. Legal regulation of a general partnership.
3. Legal regulation of a limited partnership.
4. Legal regulation of a limited liability company.
5. Legal regulation of a company with additional liability.
6. Legal regulation of a joint stock company.
7. Legal regulation of production cooperatives. Other types of corporate enterprises.
8. Corporate governance.
9. The concept and principles of corporate governance.
10. The highest governing bodies of a corporate enterprise.
11. Executive management bodies of corporate enterprises.
12. Supervisory board.
13. Audit commission (auditor).
14. Corporate Secretary.
15. Features of corporate governance in personal business companies.

Topic 5. Legitimization of a business entity

1. The procedure for establishing business entities.
2. State registration of business entities.
3. Legislative regulation of business entities.

Topic 6. Termination of a business entity

1. General provisions on the termination of the subject of corporate law - a corporate enterprise.
2. Reorganization as a form of termination.
3. Liquidation as a form of termination.
4. The concept of bankruptcy, parties to the bankruptcy case, the procedure of bankruptcy proceedings.

Module 2

Topic 1: Property basis of entrepreneurial activity

1. The concept of property rights. Forms of ownership.
2. Property and property rights as the basis of entrepreneurial activity.
3. Rights and obligations of the owner of the property.
4. Formation of the property basis of entrepreneurial activity.
5. Ownership of business entities.
6. The concept and types of property in business.
7. The use of natural resources in business.
8. Securities in business activity.
9. Corporate rights of business entities.

Topic 2. Contracts in business activity

1. The concept and characteristics of a business contract.
2. Types of business contracts.
3. Functions of a business contract.
4. The content and form of the business contract.
5. Stages of concluding a business contract.
6. Rights, obligations and responsibilities of the parties under the relevant contract of entrepreneurial activity.
7. Procedure for amendment and termination of business contracts.
8. Consequences of non-compliance with the terms of a business contract.

Topic 3: Intellectual property in the field of entrepreneurship.

1. General provisions of intellectual property law.

2. Use of intellectual property rights in business activities property rights in business activity.

3. General conditions for the protection of intellectual property rights under special legislation.

Topic 4. General provisions of labor law applicable to in entrepreneurial activity. Legal status of officials of entrepreneurial companies.

1. The concept of labor relations.

2. Subjects of labor relations.

3. Rights and obligations of employers.

4. Rights and obligations of employees.

5. Social guarantees of employees.

6. Employment contract.

7. The concept of officials of a corporate enterprise.

8. Restrictions on the acquisition of the status of an official of a corporate of a corporate enterprise.

9. Responsibility of officials of a corporate body.

10. Legal status of the chairman of the executive body of the company.

Topic 5. Concept and methods of protection of the rights of business entities

1.The concept and methods of protecting the rights of business entities.

2.Protection and defense of trade secrets.

3.Protection of honor, dignity and business reputation.

4.General principles of liability of participants in economic relations. Contractual liability, compensation for damages.

5.Concept, signs and principles of economic and legal liability.

6.Administrative and economic sanctions in business activities.

INDEPENDENT WORK

Questions for independent work

1. Causes and conditions that lead to violations of anti-corruption legislation and measures to eliminate them.
2. Constitutional principles of legal regulation of economic processes in Ukraine.
3. The main directions of organizational and legal influence on economic activity.
4. Legal support of public administration in the field of education and science, health care, social protection and culture.
5. Legal support of public administration in the field of health care, social protection and culture.
6. Administrative and legal regulation of public administration in the field of defense.
7. State regulation of the Ukrainian economy in the transition period.
8. Control in the field of state regulation.
9. Anglo-American model of corporate governance.
10. Western European model of corporate governance.
11. Japanese model of corporate governance.
12. Entrepreneurial models of corporate governance.
13. Features of the application of corporate governance models
14. Corporate culture.
15. Legal status of corporations in Ukraine.
16. Legal status of joint stock companies.
17. The procedure for establishing a joint stock company.
18. General meeting of shareholders.
19. Management Board of a joint stock company.
20. The Supervisory Board is the management body of a joint-stock company.
21. Rights and obligations of the founders of a joint stock company.
22. Legal regulation of rights and obligations of shareholders.

23.Procedure for issuing shares.

24.Liquidation of a joint stock company.

25.Characteristics of the stock market in Ukraine.

26.Management of the stock exchange.

27.Models of corporate control.

28.Forms of corporate control.

29.Audit: concept and types.

30.Controlling audit service.

31.Confidential information.

32.The emergence and evolution of the concept of entrepreneurship.

33.General characteristics of the concepts of “entrepreneur” and “entrepreneurship”.

34. The relationship between the concepts of “entrepreneurship” and “business”.

35. Characteristics of the branch of business law.

36.Subject, method and system of business law.

37.Entrepreneurial activity: concept, features and correlation with economic activity .

38.Features of the legislation of Ukraine on entrepreneurship.

39.The concept and types of sources of business law.

40.The system of entrepreneurial legislation.

41.Laws of Ukraine as sources of business law.

42.By-laws as sources of business law.

43. Local acts as sources of business law.

44.Entrepreneurial legal capacity and its relationship with civil legal capacity legal capacity and its correlation with civil legal capacity.

45. The moment of emergence of entrepreneurial legal personality.

46.The concept and classification of business entities.

47.Object of business legal relations.

48.Content of business legal relations.

49.General characteristics of corporate enterprises.

50.Characterize small, medium and large enterprises.

51.General characteristics of business associations. Types of associations of enterprises of enterprises.

52.The concept and legal status of holding companies

53.General characteristics of the legal regime of property in business in entrepreneurial activity.

54.The concept of immovable and movable things according to the Civil Code of Ukraine.

55. The concept of tangible and intangible assets.

56. Fixed assets for production and non-production purposes.

57. General conditions for the protection of intellectual property rights under special of intellectual property rights under special legislation.

58. General characteristics of securities in business.

59. General characteristics of the system of depository accounting of securities

60. General characteristics of corporate rights of business entities.

61.Rights, obligations and responsibilities of the parties under the relevant contract of entrepreneurial activity.

62. Procedure for amendment and termination of business contracts.

63.Contractual liability, compensation for damages.

64.General characteristics of economic and legal liability.

65.Compensation for losses, penalties and operational and economic sanctions.

66.General characteristics of administrative and economic sanctions in entrepreneurial activity.

67.Responsibility for violation of antitrust and competition law legislation.

68. Types of violations of antitrust and competition law for which liability arises liability.

69.Features of criminal liability in entrepreneurial activity.

70.General characteristics of the concept: “contract” “economic contract”.

INDIVIDUAL TASKS FOR INDEPENDENT WORK OF FULL-TIME AND PART-TIME STUDENTS

GUIDELINES FOR CREATING MULTIMEDIA PRESENTATIONS

A **multimedia presentation** is a program that can contain textual materials, photographs, drawings, charts and graphs, slideshows, sound design and voiceover, video clips and animation, and three-dimensional graphics.

The main difference between presentations and other ways of presenting information is their special richness of content and interactivity, i.e. the ability to change in a certain way and respond to user actions.

Advantages of a multimedia presentation:

- visualizes the materials being presented;

- Increases the efficiency and objectivity of evaluating the results of scientific research;

- promotes the development of productive, creative functions of students' thinking, the formation of an operational style of thinking.

Recommendations for presenting materials in electronic form

Structure of materials in electronic form

The materials consist of:

- title slide;

- information slides;

- a closing slide.

The title slide contains:

- topic;

- name, surname and patronymic of the speaker;

- name, surname and patronymic of the supervisor, position, place of work.

Information slides contain the following information:

- relevance of the problem;
- scientific apparatus;
- research objectives;
- progress, content of the study;
- research results;
- main conclusions;

In addition, information slides may contain charts and graphs, necessary text, tables and other materials.

The choice of the type of information, data structuring schemes and the order of their presentation is made by the speaker in accordance with the purpose of the presentation.

The **final slide** should contain a thank you for your attention.

It is rational to use slide numbering through the presentation, i.e., the title slide is slide number 1, the first information slide is slide number 2, and so on. The slide number is displayed in the upper right corner. The title and closing slides may not have a number.

Slide format

Page parameters:

- Slide size should match the screen size;
- slide orientation - landscape;
- slide width - 24 cm;
- slide height - 18 cm;
- slides should be numbered in Arabic numerals without number marks, dashes, etc;
- the format of slide presentation is “Demonstration”.
- graphic and textual materials are placed on the slides so that there is a clear field at least 0.5 cm wide to the left and right of the slide edge.

Slide background

The background is an element of the background. It should highlight and emphasize the information on the slide, but not obscure it.

Using different backgrounds on slides within the same presentation does not create a sense of unity, coherence, or style of information.

To avoid this mistake, creating a color scheme for a presentation should start with choosing two main functional colors that are used for the background and the body text.

The combination of two colors - the text color and the background color - has a significant impact on the viewer: some color pairs not only tire the eyes, but can also lead to stress.

The tradition of our perception is that the background should be light and the text should be dark. This contrasting image came from the “book” text. In printed texts, we are faced with the maximum contrast: black - white. We are used to it, it does not tire the eye. However, the perception of text from the screen has a slightly different specificity. In particular, the screen generates radiation, and therefore the sharp contrast between color and background tires the eye. There are techniques to soften this sharp contrast. For example, you can choose a background and a color in the same range, that is, just make the background as light as possible and the font as dark as possible.

You need to remember one more rule for choosing a background.

Any background picture increases eye fatigue and reduces the efficiency of assimilation of the presented material.

Using photos as a background is not always a good idea due to difficulties with font selection. In this case, you should either use more or less monochromatic, sometimes slightly blurred photos, or place the text not on the photo itself, but on a colored background. However, this variant of background design should be justified by the purpose of the presentation.

A background in the form of an animated object also interferes with the perception of textual information.

It is recommended that you use a light background for your slides (by color: red - at least 255; green - at least 225; blue - at least 225; recommended combination - 230, 240, 250).

4. METHODS OF TRAINING

A teaching method is a certain way of purposefully implementing the learning process and achieving the goal. The correct selection of methods in accordance with the purpose and content of training, age characteristics of students contributes to the development of cognitive abilities, mastery of their skills and abilities to use the acquired knowledge in practice, prepares students for independent acquisition of knowledge, and shapes their worldview.

Verbal teaching methods

A **lecture -** is a teaching method that involves the disclosure in verbal form of the essence of phenomena, scientific concepts, processes that are logically related to each other and united by a common theme.

Storytelling - a teaching method that involves narrative and descriptive forms of disclosure of educational material in order to encourage students to create a certain image in their minds.

Explanation - is a verbal teaching method that involves revealing the essence of a certain phenomenon, process, or law. It is based not so much on imagination as on logical thinking using students' previous experience.

Conversation - is a dialogic teaching method that involves using students' previous experience in a particular area of knowledge and, on this basis, engaging them in a dialogue to understand new phenomena, concepts, or reproduce existing knowledge.

Working with a textbook

This method of teaching involves students working independently with a printed text, which allows them to comprehend the material, consolidate it, and demonstrate independence in learning.

Methods of stimulating and motivating learning and cognitive activity

Practical control checks - involve the practical solution of control tasks.

Test methods of knowledge testing - involve the student choosing one of the correct answers.

An **exam** is a test of students' performance, the purpose of which is to determine the level of knowledge and mastery of the material.

The exam can be in the form of written work, testing, and defense of research papers.

5. FORMS OF CONTROL

The types of control over the knowledge of higher education students are current control, intermediate and final certification.

Current control is carried out during practical, laboratory and seminar classes and is aimed at checking the level of readiness of higher education students to perform specific work.

Intermediate certification is carried out after studying the program material of each content module. The educational material of the disciplines taught during one semester - autumn or spring - is divided by lecturers into two or three content modules.

Intermediate certification should determine the level of knowledge of higher education students on the program material of the content module (rating assessment of the content module), obtained during all types of classes and independent work.

Forms and methods of intermediate certification, mastering the program material of the content module are developed by the lecturer of the discipline and approved by the relevant department in the form of testing, written test, colloquium, the result of an experiment that can be evaluated numerically, calculation or calculation-graphic work, etc.

The mastery of the program material of the content module by the higher education applicant is considered successful if the rating is not less than 60 points on a 100-point scale.

A student's academic performance rating is rounded to the nearest whole number.

The academic performance rating may be affected by the additional work rating and the penalty rating.

The rating for additional work is added to the rating for academic work and may not exceed 20 points. It is determined by the lecturer and given to higher education students by the decision of the department for performing work that is

not provided for in the curriculum, but contributes to improving their knowledge of the discipline.

The maximum number of points (20) is given to the applicant for higher education for:

- obtaining a diploma of the first degree of the winner of the student scientific conference of an educational and research institute or faculty (college) in the the relevant discipline;

-receiving a diploma of the winner (I, II or III place) of the second stage of the All-Ukrainian Student Olympiad in the discipline or specialty (field of study) in the current academic year;

-receiving a diploma (I, II or III degree) of the winner of the All-Ukrainian competition of student research papers in the relevant discipline in the current the current academic year;

-Authorship (co-authorship) in the submitted application for an invention or received patent of Ukraine in the relevant discipline;

-authorship (co-authorship) in a published scientific article in the relevant discipline;

-production of a personal training stand, model, device, instrument; development of a computer program (provided that the above is used in the educational process in teaching the relevant discipline).

The penalty rating does not exceed 5 points and is deducted from the academic performance. It is determined by the lecturer and introduced by the decision of the department for higher education applicants who have not mastered the materials of the content modules, did not adhere to the work schedule, missed classes, etc.

The final certification includes semester and state certification of higher education students.

Semester certification is conducted in the form of a semester exam or a semester test in a particular academic discipline.

A semester exam (hereinafter referred to as the exam) is a form of final

certification mastery by a higher education student of theoretical and practical material in of the academic discipline for the semester.

Semester credit (hereinafter referred to as credit) is a form of final certification that consists in assessing the mastery of theoretical and practical material by a higher education applicant practical material (performed by him certain types of work in practical, seminars or laboratory classes and during independent work) in the academic discipline per semester.

Differentiated credit is a form of certification that allows you to evaluate the implementation and mastery of the program of industrial practice, preparation and defense of course work (project).

Applicants for higher education are required to take exams and tests in accordance with the requirements of the working curriculum within the timeframe provided by the schedule of the educational process. The content of examinations and tests is determined by the working curricula of the disciplines.

Procedure for admission of higher education students to examination sessions.

Full-time higher education students are admitted to to the examination session if they have fulfilled all the requirements of the working curriculum for the current semester.

A higher education applicant is allowed to take an exam or test in discipline, if they have fully completed all types of work in this discipline, provided by the working curriculum and the working curriculum, and his/her rating for academic work in this discipline is not less than 42 points (60 points x 0,7 = 42 points).

Applicants for higher education who have missed classes in the current semester and did not master the material of the missed topics and sections of content modules of academic disciplines in additional classes (have a rating of less than 42 points in academic work), to the semesterare not allowed to take part in the semester certification in the relevant discipline.

In the list against the names of higher education students who are not admitted to (test), the lecturer of the discipline makes an entry “Not admitted” and

puts his/her signature.

In case of disputes regarding the non-admission of higher education students to the semester education to the semester certification, they are resolved by the lecturer of the discipline together with the head of the relevant department.

Applicants for higher education by correspondence are admitted to to the examination session if they have no academic debt for tthe previous semester and have timely completed the tasks of independent work on academic disciplines that are submitted for the current examination session.

Applicants for higher education of part-time study who are admitted to the to the examination session, the deans of the faculties (directorate of the other structural subdivisions) issue certificates of challenge of the established sample.

Part-time higher education students who have not fulfilled the requirements of the of the curriculum and are not entitled to additional paid leave can come to the examination session to eliminate academic to eliminate academic debt on their own.

Part-time higher education students are allowed to exams (tests) if they have successfully mastered the program material of the content modules of academic disciplines and their rating in academic work is not less than 42 points in each discipline, which are submitted for the current examination session.

Table of the distribution of evaluation points for the implementation of various types of educational activities for each module and the “weight” of each module in the overall rating assessment.

Table of correlations between national and ECTS grades.

Rating of higher education applicants, points	National grade for the results of the examination	
	examinations	credits
90-100	Excellent	Enrolled
74-89	Okay	
60-73	Satisfactory	
0-59	Unsatisfactory	Not credited

METHODOLOGICAL SUPPORT

1. Tsyrfa H. O., Kukharchuk A. M. Work program of the discipline "Entrepreneurial. law". 2021: https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjOkpzui5_0AhWD-yoKHR2XCXwQFnoECAIQAQ&url=https%3A%2F%2Farb.kpi.ua%2Ffiles%2F124%2Fsil_b%2F320%2FPidpryiemnytske-pravo.pdf&usg=AOvVaw2PPQyXtUBgZsGlrY53PM8r.

Regulatory and legal acts

1. The Constitution of Ukraine of June 28, 1996.
2. Civil Code of Ukraine of January 16, 2003
3. Commercial Code of Ukraine of January 16, 2003
4. Family Code of Ukraine of January 10, 2002
5. Housing Code of the Ukrainian SSR. Approved by the Law of the Ukrainian SSR of June 30, 1983.
6. The Labor Code of Ukraine: 1971.
7. Law of Ukraine "On Copyright and Related Rights" of July 11, 2001.
8. Law of Ukraine "On Business Associations" of September 19, 1991.
9. The Law of Ukraine "On State Registration of Legal Entities and Individual Entrepreneurs" of May 15, 2003.
10. Law of Ukraine "On Pledge" of October 2, 1992.
11. Law of Ukraine "On Mortgage" of June 5, 2003.
12. The Law of Ukraine "On the Procedure for Compensation for Damage Caused to a Citizen by Unlawful Actions of the Bodies of Inquiry, Preliminary Investigation, Prosecutor's Office and Court" of December 1, 1994
13. Law of Ukraine "On Liability for Late Fulfillment of Monetary Obligations" of November 12, 1996.
14. Law of Ukraine "On Insurance" of March 7, 1996.
15. Law of Ukraine "On Protection of Consumer Rights" of May 12, 1991.

16.Law of Ukraine “On Limited Liability Companies and Additional Liability Companies” of February 06, 2018.

19.The Law of Ukraine “On Joint Stock Companies” dated September 17, 2008.

20.The Law of Ukraine “On Public Associations” of 22.03.2012

21.The Law of Ukraine “On Citizens' Appeals” of 02.10.1996

22.The Law of Ukraine “On the Prosecutor's Office” of 05.11.1991

23. Association Agreement with the EU [Electronic resource] - Access mode: https://zakon.rada.gov.ua/laws/show/984_011

24.Agreement on Partnership and Cooperation between Ukraine and the European Communities and their Member States of June 14, 1994

25. Judgment of the European Court of Human Rights in the case of Feldman and Bank Slavyansky v. Ukraine (Application no. 42758/05) of December 21, 2017.

26.Judgment of the European Court of Human Rights in the case of Industrial and Financial Consortium “Investment and Metallurgical Union” v. Ukraine (Application no. 10640/05) of June 26, 2018.

27. Judgment of the European Court of Human Rights in the case of Sovtransavto-Holding v. Ukraine (Application no. 48553/99) of July 25, 2002.

28. Agreement on the Procedure for Settlement of Disputes Related to the Conduct of Business Activities of April 08, 1993.

29. Resolution of the Plenum of the Supreme Economic Court of Ukraine “On Certain Issues of the Practice of Dispute Resolution Arising from Corporate Legal Relations” of February 25, 2016.

Literature for the course Basic:

1. Fundamentals of Business Law of Ukraine (General Part): a textbook / V. A. Dovbysh - Vinnytsia: VNTU, 2015. 219 p. - UFL:http://dovbysh.vk.vntu.edu.ua/file/5382e412bcee12a2d56ef914b52f4aeb.p

2. Business Law of Ukraine: Study guide / Y. V. Korneev. - K. : Center for Educational Literature, 2019. - 120 p.

3. Business law in schemes: general part: Study guide / Edited by S.I. Bevz / Bevz S.I. - K PP "Firm 'Granmna', 2012. 292 p. - UFL: https://law.sspu.edu.ua/files/documents/books/library/25/pidpriemnicke_pravo_zagchastina_v_shemah.pdf

4. Commercial Law: Textbook / V. S. Shcherbyna - 6th ed.

5. Commercial Law of Ukraine: textbook: in 2 parts. Part 1 [Andreeva O. B., Zhornokuy Y. M., Hetmanets O. P. et al.

6. Entrepreneurial law. Subjects of entrepreneurship. Crediting. Renting. Leasing. Foreign economic activity. Investments. Antimonopoly legislation. Protection against unfair competition. Advertising: textbook / N. O. Saniakhmetova, 2nd ed. - K.: A.S.K., 2002. - 704 p.

7. Entrepreneurial law: a textbook / N. Saniakhmetova - Kyiv: A.S.K., 2004. - 704 p.

Additional:

1.Liberal theory of the rule of law: Translated from English by R. Semkiv - Kyiv: Kyiv-Mohyla Academy Publishing House, 2008. 385 p.

2. Busova N. A. Modernization, rationality and law.a. Kh.: Prometheus Press, 2004. - 352 p.

3. Vynnyk O.M. Commercial law: a course of lectures (general part). - Kyiv: Lira-K Publishing House, 2017. - 240 p.

4. Introduction to the theory of legal systems / Edited by O. Zaychuk, N. Onishchenko: Monograph.- Kyiv: Yuryd. dumka, 2006. - 432 p.

5. Hayek F.A. The Constitution of Freedom: Lviv: Litopys, 2004. 556 p.

6. Economic Law of Ukraine: textbook: in 2 parts G72 Part 1 / Andreeva O. B., Zhornokuy Y. M., Hetmanets O. P. and others - 2nd ed: Kharkiv National University of Internal Affairs, 2016. 324 p.

7.Höfe O. Democracy in the Age of Globalization: Trans. from German - K.: PPS-

2002, 2007. - 436 p.

8.Dashkovska O. R. Woman as a subject of law in the aspect of tender equality. - Kharkiv: Pravo, 2005. 224 p.

9. Dworkin R. A serious look at rights: First translated from English - K.: Osnovy, 2000. - 519 c.

10.State Personnel Policy in Ukraine: State, Problems and Prospects for Kovbasyuk Y.V., Vashchenko K.O., Surmin Y.P. and others: NAPA, 2012. - 72 p.

11.General Theory of State and Law (basic concepts, categories, legal structures and concepts, categories, legal structures and scientific concepts): Study guide. / Edited by O. V. Zaychuk, N. M. Onishchenko - K.: Yurinkom Inter, 2008.- 400

12.General Theory of Law: Textbook / [M. I. Kozyubra, S. P. Pohrebniak, O. V. Tselyev et al. Kozyubra, S. P. Pohrebnyak, O. V. Tseliev, etc.]; edited by M. I. Kozyubra - K. : Vayte, 2015.

13.Zayets A.P. The rule of law in the context of the latest Ukrainian experience. K.: Parliamentary Publishing House, 1999. 247 p.

14.Kelsen G. Pure jurisprudence: With the addition: The problem of The problem of justice: First translated from German - K.: Universe, 2004. - 496 p.

15. Kozyubra M. General Theoretical Jurisprudence: Soviet Tradition and European Perspective // Ukrainian Law and Justice. European perspective // Ukrainian law. - No. 1 (18). - 2005.

16.Kolodii A. Principles of Law of Ukraine - K.: Yurinkom Inter, 1998. 208 c.

17.Kolpakov V.K. Administrative law of Ukraine: textbook / V.K. Kolpakov. Kolpakov, O.V. Kuzmenko - Kyiv: Jurinkom Inter, 2003. - 544 p.

18.Kolpakov V.K. Administrative and tort legal phenomenon: Monograph / V.K. Kolpakov. - Kyiv: Jurinkom Inter, 2004. - 528 p.

19. The Constitution of Ukraine: Scientific and practical commentary. / Ed. board: V.Y. Tatsiy, Y.P. Bytyak, Y.M. Groshevyi - Kharkiv: Pravo, 2003. - 808 c.

20. Corporate law in schemes: a textbook / A. V. Smityukh.Odesa: I. I. Mechnikov Odesa National University, 2017. - 322 c.

21. Corporate Law: a textbook / O.V. Pushkina, S.V. Nesinova, T.M. Lezhneva,

I.B. Probko, T.A. Todoroshko; under the editorship of S.V. Nesynova - Dnipro: Alfred Nobel University, 2018. 276 p.

22. Kravchuk V.M. Corporate law: Scientific and Scientific and practical commentary on legislation and judicial practice-K.: Istyna, 2005. 719c.

23.Kravchuk V.M. Termination of corporate legal relations in economic Monograph. - Lviv: Krai, 2009. -4

24.Kulagin M.I. Selected works on shareholder and commercial law. 2004.–363c.

25.Letnyanchyn L.I. Constitutional duties of a person and a citizen in Ukraine: problems of theory and practice: Monograph / L.I. Letnyanchyn. - Kharkiv: Vapnyarchuk N.M., 2006. 256 p.

26.Lukach I.V. Legal. Principles of establishing control in the holding group. / Bulletin of economic proceedings.-2006.-No. 4 - P. 197-206.

27.Lukach I.V. Legal models of holding group management // Bulletin of economic of economic proceedings.-2006.-No.3-P.180-190.

28.Maidanik R.A. Legal entities of public law in Ukrainian and and international law. Almanac of Civilistics: Collection of articles. Issue 3. / Edited by R.A. Maidanik - K.: Alerta; KNT; Center for Educational Center for Educational Literature, 2010. - pp. 81 - 118.

29.Maidanik R.A. Legal entities of public law in the countries of continental law // Yurydychna Ukraina. - 2010. № 1 (85).

30.Matveev G.K. Guilt in Soviet civil law. Kyiv, 1955.

31.Matveev G.K. Osnovy gosudarstvenno-legalnoy otnoshenosti [The foundations of civil liability]. - M.: Legal Literature, 1970. - 315 c.

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34.Ortynsky V.L. Management in the executive authorities of Ukraine: a textbook. Ortynsky V.L., Kisil Z.R., Kovaliv M.V. - K.:Center for Educational Literature, 2008. 296 p.

35.Otradnova O.O. Non-contractual obligations in the civil law of Ukraine. Study guide.-K.: “Yurinkom Inter”, 2009.

36.Theory of State and Law. Study guide. [E.V. Biloziorov, V.P. Vlasenko, O. Horova, A. Zavalnyi, N. Zayats, etc. C. D. Husarev, O. D. Tikhomirov - K. : NAIA, Education of Ukraine, 2017 320 c.

37.Theory of State and Law: a textbook / [E. V. Biloziorov, V. P. Vlasenko, O. B. Horova, A. M. Zavalnyi, N. V. Zayats, et al.Husarev, O. D. Tikhomirov. - Kyiv: NAIA, Education of Ukraine, 2017. 320 p.

38.Tikhomirov Y.A. Uravlenie na basise prava [Management on the basis of law] / Y.A. Tikhomirov: Formula Prava, 2007. 485 p.

39.Labor law: textbook / V.V. Zhernakov, S.M. Prylypko, O.M. Yaroshenko and others; edited by V. V. Zhernakov - X. : Pravo, 2012. - 496 p.

40.Labor law of Ukraine: academic course: textbook for students of higher educational Pylypenko P. D. and others; edited by Doctor of Law, prof. P. D. Pylypenko. K. : In Yure, 2014. 548 p.

41.Civil Law of Ukraine: Textbook: In 2 books / Edited by O.V. Dzera, N.S. Kuznetsova - K.: Yurinkom Inter, 2010.

42. Civil Law of Ukraine: Textbook: In 2 vols. Baranova L.M., Zhylinkova I.V. and others; Under the general editorship of V.I. Borysova, I. V. Spaso-Fateieva, V. L. Yarotskyi - K.: Yurinkom Inter, 2004 - Vol. 1. - 480 c .

Internet sources:

1. https://rada.gov.ua;

2. https://www.kmu.gov.ua;

3. https://minjust.gov.ua;

4. https://mon.gov.ua;

5. http://www.me.gov.ua.

6. Kuznetsova Natalia Semenivna: Evolution of doctrinal views on legal entity as a subject of civil law as a subject of civil law An individual entrepreneur Individual entrepreneur taxes 2020 | 1, 2, 3 groups and taxes on minimum wage

9. Educational movie about agricultural service cooperatives

Additional materials for preparation for seminars:

Review of the Supreme Court case law

Digest of case law of the Supreme Court in the first half of 2021:

1. Cases considered on the grounds of exceptional legal problem

1.1. Administrative jurisdiction

The fact that single contribution payers are registered with the authorities of income and fees located on the territory of the ATO settlements is a ground for applying is a ground for non-application of measures of influence and penalties to such payers for failure to fulfill the obligations of a single contribution payer by virtue of the direct effect of clause 94 of Section VIII "Final and Transitional Provisions" of the Law of Ukraine "On Collection and Accounting of the Single Contribution for Compulsory State Social Insurance" (as amended). Insurance" (as amended by February 13, 2020), which prohibited bringing to liability for failure to fulfill the obligations of a single contribution payer.

The text of the resolution of the Supreme Court of Ukraine dated February 10, 2021 in case № 805/3362/17-a can be found at the link https://reyestr.court.gov.ua/Review/95242254

The content of the concept of an advocate, the subject of the practice of law, as well as the mechanism of obtaining such a certificate indicate that the process of acquiring the status of as well as the practice of law itself are incompatible with the status of a judge.Restrictions and ways to eliminate them, provided for in Article 7 of the Law of Ukraine "On the Bar and Practice of Law, are established for persons who already have the status of an advocate and who wish to engage in other (incompatible with the activities of an advocate) activities, and not for representatives of other legal professions who wish to to practice law.

For more details on the text of the resolution of the Supreme Court of Ukraine dated February 10, 2021 in case № 822/1309/17 can be found at the link https://reyestr.court.gov.ua/Review/95439673.

For more details, please read the text of the decision of the Supreme Court of April 14, 2021 in case №. 826/9606/17 can be found at the link

https://reyestr.court.gov.ua/Review/96933508

Presence of the grounds provided for in paragraph 1 of part four of Article 169 of the Code of Administrative Procedure of Ukraine grounds for returning the complaint, namely, failure to eliminate its individual deficiencies in terms of form and content (not related to non-compliance with the procedural deadline) after leaving the complaint without motion, along with the absence of grounds for renewal term, does not preclude refusal to open proceedings on such a complaint on the grounds of on the grounds provided for in paragraph 4 of part one of Article 299 of the Code of Administrative Procedure of Ukraine.

For more details, the text of the resolution of the Supreme Court of Ukraine dated April 28, 2021 in case №640/3393/19 can be found at the link https://reyestr.court.gov.ua/Review/96694993.

1.2. Commercial jurisdiction

The tax authority, as well as other bankruptcy creditors in bankruptcy cases bankruptcy, must submit to the economic court claims against the debtor regarding its monetary obligations to pay taxes and fees that arose before the day of opening the proceedings (proceedings) in the bankruptcy case together with documents confirming these obligations, and the economic court is obliged to consider all claims and objections to them on the basis of documents submitted by the creditor and the debtor, to assess the legitimacy of these requirements, regardless of the presence of a dispute in the administrative court regarding uncoordinated tax liability, from which the creditor's the tax authority's claim.

For more details, the text of the resolution of the Supreme Court of Ukraine dated December 15, 2020 in case No. 904/1693/19 can be found at the link https://reyestr.court.gov.ua/Review/95439649.

1.3 Civil jurisdiction

Failure to comply with the requirements of Article 38 of the Law of Ukraine "On Mortgage" regarding notifying the mortgagor of a specific method of satisfying

the claims of the mortgagee by concluding a contract of sale of the mortgaged property. mortgage with any buyer does not result in the nullity of such a transaction of such transaction and is not a ground for invalidation of such agreement (subject to compliance with other requirements of the law regarding this type of transaction) in case of the mortgagee complies with the requirements of Article 35 of the Law of Ukraine "On Mortgage" regarding the proper sending to the mortgagor and the debtor, if different from the mortgagor from the mortgagor, a demand to eliminate the violation of the principal obligation, however, may be the basis for compensation to the mortgagor for the damages to the mortgagor.

For more details, the text of the resolution of the Supreme Court of Ukraine dated September 29, 2020 in case No.757/13243/17 can be found at the link https://reyestr.court.gov.ua/Review/94071331.

2. Cases considered on the grounds of the need to depart from the legal opinion of the Supreme Court of Ukraine

2.1. Departure from the legal opinion of the Supreme Court of Ukraine

The Grand Chamber of the Supreme Court deviated from the legal opinion of the of the Supreme Court of Ukraine on the procedure for changing the amount of rent as a result of changes in the normative monetary value of land, determining that if the land lease agreement is changed by the court, the contractual obligation in terms of the amount of rent, changes from the moment the court decision enters into force into force.

For more details on the text of the resolution of the Supreme Court of Ukraine dated February 16, 2021 in case No. 921/530/18 can be found at the link https://reyestr.court.gov.ua/Review/95849041.

The Grand Chamber of the Supreme Court deviated from the legal opinion of the of the Supreme Court of Ukraine and the Supreme Court on the procedure for changing the type of land use within its intended purpose, determining that the change the type of land use does not require compliance with the procedure that required to change the designated purpose.

For more details on the text of the resolution of the Supreme Court of Ukraine dated June 1, 2021 in case No. 925/929/19 is available at the link https://reyestr.court.gov.ua/Review/97926626 .

3. Cases considered on the grounds of the need to depart from the previously expressed position of the Supreme Court position of the Supreme Court

3.1. Confirmation of the previously expressed position of the Supreme Court

The Grand Chamber of the Supreme Court upheld the legal opinion of the Civil Court of Cassation of the Civil Court of Cassation within the Supreme Court on the territorial jurisdiction(jurisdiction) of cases on recovery of rent for the use of real estate property, determining that disputes on debt collection that arose as a result of non-fulfillment of obligations under an agreement concluded for the use of real estate, are subject to the exclusive rules of jurisdiction (part three of Article 30 of the Commercial Procedural Code of Ukraine).

For more details, please read the text of the decision of the Supreme Court of Ukraine on February 16, 2021 in case No. 911/2390/18 can be found at the link https://reyestr.court.gov.ua/Review/95573681.

The Grand Chamber of the Supreme Court upheld the legal opinion of the Civil Court of Cassation of the Civil Court of Cassation as part of the Supreme Court regarding the composition of the court that should decide on the issue of refusal to open appeal proceedings, having determined that the court of appeal, which, in accordance with parts one and two of Article 358 of the Code of Civil Procedure of Ukraine should decide on the refusal to open in the opening of appeal proceedings is a panel of judges of the court of appeal consisting of three judges.

The text of the resolution of the Supreme Court of Ukraine dated February 23, 2021 in case No. 263/4637/18 can be found at the link https://reyestr.court.gov.ua/Review/96406952 .

The Grand Chamber of the Supreme Court upheld the legal opinion of the Civil

Court of Cassation Civil Court within the Supreme Court regarding the replacement of a party to enforcement proceedings, determining that the replacement of a party to enforcement proceedings by a legal successor is possible even after the closure of enforcement proceedings in connection with its execution.

If the enforcement proceedings are closed in connection with its execution, a person who considers himself or herself to be the legal successor of the plaintiff/claimant and wishes to acquire and exercise the existing procedural rights inherent in the plaintiff/claimant (to appeal a court decision and/or a resolution of the state enforcement officer, to file application for review of a court decision due to newly discovered or exceptional circumstances)may apply to replace a party to the case by initiating the opening of the relevant stage of the proceedings. If after the opening of the proceedings it is established that such a person has not acquired the rights and obligations of the legal predecessor, the court shall close the respective proceedings by its ruling.

For more details, please read the text of the decision of the Supreme Court of February 16, 2021 in case No. 911/3411/14 is available at the link https://reyestr.court.gov.ua/Review/96208264 .

The Grand Chamber of the Supreme Court upheld the legal opinion of the Civil Court of Cassation Civil Court within the Supreme Court regarding the competition of the provisions of Article 49 of the Law of Ukraine "On Mortgage" and Article 61 of the Law of Ukraine "On Enforcement Proceedings", determining that the mortgagee, as the sole claimant in enforcement proceedings for the enforcement of a court decision on the recovery of in his favor, on the basis of part one of Article 49 of the Law of Ukraine "On Mortgage" has the right to retain the mortgaged property at the initial price by offsetting its secured claims against the price of the foreclosed property based on the results of each auction that are declared to have failed.

…

4.2. Cases to be considered in commercial proceedings For more details on the text of the resolution of the Supreme Court of Ukraine dated February 23, 2021 in case

No. 753/17776/19 can be found at the link https://reyestr.court.gov.ua/Review/954396.

Dispute at the suit of the company's financial director, dismissed on the basis of of paragraph 5 of part one of Article 41 of the Labor Code of Ukraine, regarding reinstatement and recovery of wages for the period of forced absenteeism is subject to consideration in commercial proceedings.

Dispute regarding appealing the results of a public auction for the sale of property included in the bankruptcy estate of a legal entity, is subject to consideration in commercial proceedings within the framework of the case on For more details on the text of the resolution of the Supreme Court of Ukraine dated February 9, 2021 in case No. 635/4741/17 can be found at the link https://reyestr.court.gov.ua/Review/96406951 .

Dispute on the company's claim, in respect of which the commercial court decides the issue of initiating bankruptcy proceedings, to its former director about the obligation to transfer to this company the originals of documents and seals is corporate and is subject to consideration in the order of economic proceedings (before the opening of bankruptcy proceedings).

For more details on the text of the resolution of the Supreme Court of Ukraine dated May 11, 2021 in case No. 759/9008/19 can be found at the link https://reyestr.court.gov.ua/Review/96933504 .

4.3. Cases to be considered in civil proceedings

Dispute on the claim of a non-governmental organization (consumer association) that represents the interests of an indefinite number of consumers on the basis of the Law of Ukraine “On Protection of Claimants' Rights”, to a legal entity that provides utilities, regarding the obligation to recalculate services for maintenance of buildings, structures and adjacent territories is subject to consideration in civil proceedings.

For more details, the text of the resolution of the Supreme Court of Ukraine dated

March 23, 2021 in case No. 367/4695/20 is available at the link https://reyestr.court.gov.ua/Review/96179832 .

Dispute on the claim of an individual - co-owner of an apartment building and a member of a condominium about invalidation of the contract for the provision of management and maintenance of a building, concluded between a condominium and a business entity, shall be subject to civil shall be considered in civil proceedings.

Case law on disputes arising from labor relations

- Disputes arising in connection with the conclusion, amendment, termination and termination of an employment contract.

On November 20, 2019, the Supreme Court composed of the panel of judges of the Third Judicial Chamber of the Civil Court of Cassation considered in written proceedings on the claim of PJSC VAB Bank represented by the Authorized person of the DGF for the liquidation of PJSC VAB Bank to PERSON_1 about the recognition of the labor contract as invalid due to its fictitiousness.

The court found that on March 12, 2014, the defendant was transferred to the position of Director of the Zhytomyr Regional Center of PJSC VAB Bank with a salary in accordance with the staffing table.

On October 1, 2014, PJSC VAB Bank and the defendant entered into an employment contract, the terms of which stipulate that the defendant is hired as the position of Director of the Zhytomyr Regional Center to perform the work stipulated by the contract and job description. Also the terms of the agreement also provide for the rights and obligations of the parties, working hours, remuneration and social benefits of the employee, liability of the parties, the term of the agreement and other terms of the agreement.

Referring to the fact that the signing of the employment agreement of October 1, 2004 for the same position, but with a higher amount of basic and additional salary, without issuing an order is aimed not at the onset of labor duties, but to obtain an unlawful benefit, the plaintiff asked the court to recognize the employment agreement

of October 1, 2014, as invalid due to its fictitious nature on the basis of part two of Article 234 of the Civil Code of Ukraine.

In resolving the dispute, the court of first instance, with which the court of appeal agreed, proceeded from the fact that in accordance with part five of Article 203 of the Civil Code of Ukraine a transaction must be aimed at the actual occurrence of legal consequences that stipulated by it.

Based on the results of the consideration, the Supreme Court, composed of the panel of judges of the Civil Court issued a resolution stating the following.

From the analysis of part one of Article 21 of the Labor Code of Ukraine, it is clear that the subject matter of an employment agreement (contract) is the work (labor function) of a person who is the object of labor relations, which are fully regulated by labor legislation (in particular, Articles 3, 7, 9, 9-1, 44 of the Labor Code of Ukraine) provisions of the Civil Code of Ukraine on the conditions for the validity of a transaction and legal consequences invalidity of a transaction shall not be applied to regulate social relations arising in connection with the conclusion of an employment agreement (contract).

Thus, the court of first instance, with which the court of appeal agreed, having established the existence of labor relations between the parties to the contract, which are regulated by the norms of labor and special legislation, and the fact of the conclusion of this agreement in connection with the existence of labor legal relations, came to a reasonable conclusion that the agreement concluded is not a transaction within the meaning of Article 202 of the Civil Code of Ukraine, which is subject to provided for in Articles 203, 215 of this Code, the general requirements for validity of a transaction and which may be invalidated on the grounds provided for by the by the Civil Code of Ukraine with the application of the consequences of invalidity of the transaction.By the decision of the Supreme Court of November 20, 2019, the decision of the Bohunskyi District Court of Zhytomyr dated March 21, 2018 and the decision of the Zhytomyr Regional Court of Appeal of June 19, 2018 were upheld.

For more details, please read the text of the Supreme Court's resolution of November 20, 2019 in case No. 295/8991/17 (proceedings No. 61-41341св18) is

available at the link http://reyestr.court.gov.ua/Review/85868744

A similar legal conclusion is formulated in the resolution of the Supreme Court dated May 22, 2019 in case No. 757/49315/16-ц (proceedings No. 6128768св18) http://www.reyestr.court.gov.ua/Review/82156773 .

- **Dismissal from the position of general director of an LLC under paragraph 5 of part one of Article 41 of the Labor Code of Ukraine must be carried out with compliance with the dismissal procedure and the conditions stipulated by the labor. In addition, the protection of the violated right in the field of labor relations is ensured by restoring the situation that existed before violation of this right (for example, reinstatement), and a mechanism for compensation for moral damages.**

On August 19, 2019, the Supreme Court composed of the panel of judges of the First Judicial Chamber of the Civil Court of Cassation considered in the order of written proceedings on the claim of PERSON_1 to the Limited Liability Company Limited Liability Company "Trading House 'Gomelsklo-Ukraine' (hereinafter referred to as "TD "Gomelsklo-Ukraine" LLC) for reinstatement, recovery of average monthly salary for the period of forced absenteeism, and non-pecuniary damage.The courts found that the plaintiff worked under an employment contract dated July 22, 2015 as the General Director of Gomelsklo-Ukraine Trading House LLC. "Gomelsklo-Ukraine. By an order dated May 30, 2016, she was dismissed from her position in connection with the termination of her powers under Article 41(5) of the Labor Code of Ukraine (hereinafter - the Labor Code of Ukraine).

By the decision of the District Court of Cherkasy of July 22, 2016 in the case No. 711/5711/16-ц, the claim was upheld and she was reinstated in her position as CEO by an order dated 22 July 2016 was reinstated in her position as CEO. On July 25, 2016, at the general meeting of shareholders of Gomelsklo-Ukraine Trading House LLC adopted a decision to terminate her employment contract.

The district court partially satisfied the claim.

The decision of the Court of Appeal changed the decision of the court of first instance and on the grounds that the plaintiff was dismissed from his position in

violation of the requirements of clause 11 of the contract concluded on July 22, 2015 between the parties, i.e., the dismissal procedure under Article 41(5) of the Labor Code of Ukraine.

Based on the results of the consideration, the Supreme Court issued a ruling in which it stated the following.

According to clause 9.17 of the Charter of Gomelsklo-Ukraine Trading House LLC, the General Director is appointed and dismissed by the general meeting of the company's shareholders.

Article 65 of the Commercial Code of Ukraine provides that the management of an enterprise is carried out in accordance with its constituent documents; the owner exercises his rights to manage the enterprise directly or through authorized bodies in accordance with the company's charter or other constituent documents; to manage the economic activity of the enterprise the owner (owners) or their authorized body appoints (elects) the head of the enterprise; in case of hiring the head of the enterprise, an agreement (contract) is concluded with him/her an agreement (contract) is concluded with him/her, which defines the term of employment and rights, duties and responsibilities of the head, conditions of his/her financial support, dismissal of his/her material support, dismissal from the position, other terms of employment as agreed by the parties. The head of the enterprise may be dismissed from the position early on the grounds provided for by the agreement (contract) in accordance with the law.

Pursuant to clause 11 of the employment contract of July 22, 2015, it may be unilaterally terminated by the employer, in particular, by the employer's unilateral decision with a prior notice to the employee of at least at least 2 months in advance with payment of the compensation stipulated by the contract (3 times the monthly salary). The procedure for appointment and dismissal of an employee, including a manager, is determined by the relevant provisions of the Labor Code of Ukraine.

Part 3 of Article 21 of the Labor Code of Ukraine provides that a contract is a special form of labor agreement, in which the term of its validity, rights, obligations and liability of the parties (including material), conditions of material and organization of the employee's work, terms of termination of the contract, including earl

termination, may be established by the including early termination, may be established by agreement of the parties.

The procedure for appointment and dismissal of employees, including the CEO, is determined by the relevant provisions of the Labor Code of Ukraine. Thus, the courts of first instance and appeal came to a reasonable conclusion that the plaintiff was dismissed at the initiative of the employer on the grounds specified in paragraph 5 of part one of Article 41 of the Labor Code of Ukraine without complying with the requirements set forth in clause 11 of the contract, i.e. without mandatory advance notice of at least 2 months prior to dismissal. At the same time, the court of appeal reasonably refuted the defendant's arguments regarding application of Article 99 of the Civil Code of Ukraine to the disputed legal relations, stating that in this case it is the special provisions of the Labor Code of Ukraine regulate the termination of labor relations with an employee, and not part three of Article 99 of the Civil Code of Ukraine, as the defendant had stated.

Protection of the violated right in the field of labor relations is ensured by restoration of the situation that existed before the violation of this right (e.g, reinstatement), and a mechanism for compensation for non-pecuniary damage, such as negative consequences (losses) of a non-property nature resulting from mental suffering experienced by a person in connection with an encroachment on his or her labor rights and interests.

The specific method on the basis of which compensation for non-pecuniary damage is chosen by the injured person, taking into account the nature of the offense, its consequences and other circumstances (Articles 3, 4, 11, 31 of the Civil of Ukraine).

That is, in the event of a violation of an employee's rights in the field of labor relations (unlawful dismissal or transfer, non-payment of monetary amounts due to him/her, etc. monetary amounts, etc.), compensation for non-pecuniary damage based on Article 237-1 of the Labor Code of Ukraine is carried out in the manner chosen by the employee, in particular in the form of a one-time cash payment.

By recovering the amount of non-pecuniary damage from the defendant in favor of the plaintiff, the court of first instance, whose conclusions were upheld by the court

of appeal, found that the violation of the plaintiff's legitimate interests had led to the suffering and anxiety, loss of normal life ties, came to the a reasonable conclusion that in order to organize his life, he is forced to make additional efforts to organize her life. In determining the amount of non-pecuniary damage to be recovered, the courts of previous instances took into account the amount of severance pay paid severance pay paid to the plaintiff upon first dismissal, the degree of moral suffering and emotional distress, and set the amount of compensation based on the principles of the principles of balance and reasonableness, which, in the opinion of the Supreme Court is consistent with the provisions of Article 237-1 of the Labor Code of Ukraine.

By the decision of the Supreme Court of August 19, 2019, the decision of the Prydniprovsky District Court of Cherkasy of February 28, 2017 in unchanged and the decision of the Court of Appeal of Cherkasy region of May 11, 2017 May 2017 were left unchanged.

For more details, please read the text of the Supreme Court's decision of August 19, 2019 in case No. 711/7311/16-ц (proceedings No. 61-24354св18) is available at the link http://reyestr.court.gov.ua/Review/83749435

- **Dismissal of the chief accountant of a municipal enterprise under paragraph 5 of part one of Article 41 of the Labor Code of Ukraine is unlawful, as this provision applies to officials of business entities that are special entities.**

On January 16, 2018, the Supreme Court composed of the panel of judges of the First Judicial Chamber of the Civil Court of Cassation considered in a simplified action proceeding the case on the claim of PERSON_1 to the Funeral Service of the Kyiv Crematorium Specialized Utility Enterprise (hereinafter referred to as the Kyiv Crematorium SRSU) on the recognition of the order on dismissal, reinstatement, cancellation of the following entries in the employment record book as illegal and cancellation of the order on dismissal the record of dismissal, recovery of wages for the period of forced absenteeism and compensation for non-pecuniary damage.

The courts found that the plaintiff had been working at the “Kyiv Crematorium as a chief accountant and by order of 06 April 06, 2015 she was dismissed from work on the basis of paragraph 5 of part one of Article 41 of the Labor Code of Ukraine in

connection with the termination of the powers of the official.

Referring to the fact that the grounds for her dismissal were unlawful, and specifying her claims, she asked to recognize the order on her dismissal as unlawful and to cancel it, reinstate her as chief accountant, and cancel the entry “Chief Accountant” in her employment record book. the entry in her employment record book “Dismissed from the position in accordance with paragraph 5 of part 1, paragraph 5, Article 41 of the Labor Code of Ukraine due to termination of powers”, to recover from the defendant the salary for the period of forced absenteeism, reimburse the bonus for high achievements in labor in the amount of 50% of the of the official salary, as well as non-pecuniary damage.

Part one of Article 41 of the Labor Code of Ukraine was supplemented by paragraph 5 on the basis of the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine on Protection of Investors' Rights” No. 1255-II dated May 13, 2014, which stipulates that in addition to the grounds provided for in Article 40 of this Code, an employment contract may be terminated at the initiative of the owner or his authorized body may also be terminated in the event of termination of powers of officials.

The said Law entered into force on June 1, 2014. was to improve the investment climate by providing investors (owners) of business entities the right to dismiss officials (managers, members of executive bodies) without giving any reason, as well as harmonization of labor and commercial laws in this context.

Thus, paragraph 5 of part one of Article 41 of the Labor Code of Ukraine applies to Officials of business entities that are special entities in respect of to which the said provision may be applied.

Taking into account that the plaintiff worked as the chief accountant of the Kyiv Crematorium “Kyiv Crematorium, the conclusion of the courts of previous instances is correct on the illegality of her dismissal on the basis of clause 5 of part 1 of Article 41 of the Labor Code of Ukraine, since this rule of law applies to officials of business entities that are not companies, which is not the Kyiv Crematorium, and the plaintiff is not a special entity to which this legal provision may be applied, legal provision may

be applied.

The conclusions of the courts of first instance and appellate courts of first instance and appellate courts on the existence of the grounds provided for in Article 235 of the Labor Code of Ukraine for to recover the average earnings for the period of forced absenteeism, as well as the grounds provided for in Article 237-1 of the Labor Code of Ukraine for compensation for non-pecuniary damage, the amount of which, in the amount of UAH 2 thousand, is proportionate to the damage caused to the plaintiff and meets the requirements of reasonableness and fairness.

Regarding the calculation of average earnings

The average earnings of an employee are determined in accordance with Article 27 of the Law of Ukraine "On Remuneration of Labor" in accordance with the rules provided for in the Procedure for calculating the average salary, approved by the Resolution of the Cabinet of Ministers of Ukraine dated February 08, 1995 No. 100

According to clause 5 of Section IV of the Procedure, the basis for determining the total amount of earnings to be paid for the period of forced absenteeism is the average daily (average hourly) salary of the employee, which, in accordance with clause 8 of this Procedure is determined by dividing the salary for the actual working (calendar) hours worked during (calendar) days actually worked during two months by the number of working days (hours) worked (hours), and in cases provided for by the current legislation - calendar days during this period.

After determining the average daily wage as a calculated value for calculating payments to an employee, the total amount of average earnings for the period of forced absenteeism, which is calculated by multiplying the average daily wage by the average monthly number of working days in the calculation period (paragraph 2 of clause 8 of the Procedure).The average monthly number of working days is calculated by dividing by 2 the total the number of working days for the last two calendar months according to the work schedule enterprises, institutions, organizations, established in compliance with the requirements of legislation (paragraph 3 of clause 8 of the Procedure).

This legal position is expressed in the resolution of the Supreme Court of Ukraine No. 6-64815 dated December 16, 2015.

When calculating the average monthly salary for the period of forced absenteeism only payments accrued to the employee for the last two calendar months are taken into account. months, except for the payments specified in paragraph 4 of the Procedure.

By the decision of the Supreme Court of January 16, 2018, the decision of the Solomyansky District Court of Kyiv dated November 13, 2015 and an additional decision of the of the Solomyansky District Court of Kyiv dated November 30, 2015 in

in the part upheld by the decision of the Court of Appeal, and the decision of the Kyiv City Court of Appeal dated March 29, 2016 were upheld.

For more details, please see the text of the Supreme Court's resolution of January 16, 2018 in case No. 760/9269/15-ц (proceedings No. 61-151 св 17) is available at http://reyestr.court.gov.ua/Review/71588880.

- **The chairman of the oblast council is empowered to hire and dismiss heads of municipal institutions that are under the management of the oblast council, and therefore the powers provided for in by part one of Article 147-1 of the Labor Code of Ukraine, to apply disciplinary sanctions against the said employees.**

On January 16, 2018, the Supreme Court composed of the panel of judges of the First Judicial Chamber of the Civil Court of Cassation considered the case under the simplified action procedure in the claim of PERSON_1 against the Chairman of the Kherson Regional Council, the Kherson Regional Council, third parties on the defendant's side who do not assert independent claims: Regional Utility Company "Energy Service Company" of the Kherson Regional Council (hereinafter - UCP "Energy Service Company"), Municipal Institution "Agency for the Development of Jointly Owned Objects of Territorial Communities of the Kherson Region" of the Kherson Regional Council (hereinafter referred to as the Agency for the Development of Jointly Owned territorial communities of Kherson region"), in which he asked to recognize illegal and to cancel the order of the Chairman of the Kherson Regional Council of April 18, 2016 "On reprimanding the director of the municipal of the Kherson Regional Council "Kherson Psychoneurological Boarding House"

PERSON_1”.

The courts found that on the basis of the order of the Department of Social Protection of the Kherson Regional State Administration of May 21, 2002. the plaintiff was appointed director of the Kherson Psychoneurological Boarding House, which in 2007 changed its name to the Municipal Institution of the Kherson Regional Council “Kherson Psychoneurological Boarding House”.

By the order of the Chairman of the Regional Council of April 18, 2016, the plaintiff was reprimanded the plaintiff was reprimanded, based on the violations of the requirements of part five of Article 40 of the Law of Ukraine “On Public Procurement”, paragraph 11 of the Rules for the transportation of goods by road of Ukraine, approved by the Order of the Ministry of Transport of Ukraine No. 363 of October 14, 1997, the Rules of Technical Operation of thermal installations and networks, approved by the order of the Ministry of Fuel and Energy of Ukraine No. 71 dated February 14, 2007, and a number of other regulatory legal acts.

The plaintiff asked the court to declare illegal and cancel the order of the regional council on reprimanding him.

Based on the results of the review, the Supreme Court issued a ruling in which it stated the following.

In accordance with paragraph 1 of part one of Article 147, part one of Article 147-.1 of the Labor Code of Ukraine (hereinafter - the Labor Code of Ukraine), for violation of labor discipline, an employee may be subject to penalties in the form of a reprimand or dismissal. Disciplinary penalties are applied by the body authorized to hire (elect, approve and appointment) of the employee in question.

According to clause 6.1 of the Regulation on the Municipal Institution of the Kherson Regional Council “Kherson Psychoneurological Residential Care Home” (hereinafter – the Regulations), approved by the decision of the XXV session of the 6th convocation of the Kherson Regional Council of October 03, 2013, the management of the residential care home is carried out by the director, who is appointed and dismissed by the decision of the Kherson Regional Council and acts on the basis of sole authority and bears full personal responsibility for the preservation of the life and health of the

wards and the activities of the home. Clauses 5.6 and 8.2 of the said Regulation stipulate that the financing of the home is carried out, in particular, at the expense of the at the expense of the regional budget, and the inspection of the work of the home is carried out, among other things, by the Kherson Regional Council.

Article 17 of the Law of Ukraine “On Local Self-Government in Ukraine” stipulates that the relations of local self-government bodies with enterprises, institutions and organizations that are in the communal owned by the respective territorial communities are based on the principles of their subordination, accountability and control to local self-government bodies.

According to paragraph 15 of part six of Article 55 of the Law of Ukraine “On Local Self-Government in Ukraine, the chairman of the regional council represents the council in relations with state authorities, other local self-government bodies self-government bodies, citizens' associations, labor collectives, administration of enterprises, institutions, organizations, citizens, etc.

By the decision of the third session of the Kherson Regional Council of the VII convocation of January 22, 2016 approved the order of the Chairman of the Kherson Regional Council issued in the of December 28, 2015 “On Approval of the Official Powers of the Chairman of the Regional powers of the chairman of the regional council, the first deputy chairman of the regional council and deputy chairmen of the regional council”.

The official powers of the chairman of the regional council stipulate that the said The official shall ensure the resolution of the following issues in accordance with the procedure established by law appointment and dismissal of heads of jointly owned facilities territorial communities of villages, towns, and cities managed by the regional council.

Thus, the chairman of the oblast council is empowered to hiring and dismissal of heads of municipal institutions that are managed by the oblast council, and therefore, the powers provided for in Part 1 of Article 147-1 of the Labor Code of Ukraine, to apply disciplinary sanctions against these employees.

Thus, the decision of the court of first instance complies with the circumstances

of the case and the requirements of the of the law.

Reversing the decision of the local court to dismiss the claim against the Kherson

Regional Council, the Court of Appeal did not take into account the above circumstances and did not establishing the true nature of the legal relationship between the plaintiff and the regional council, came to the erroneous conclusion that there was no the parties had no labor relations. Such a conclusion does not comply with the provisions of part three of Article 36 of the Labor Code of Ukraine, according to which the change of subordination of an enterprise, institution, organization does not terminate the of an employment contract.

By the Supreme Court's decision of January 16, 2018, the decision of the Court of Appeal of Kherson region of September 28, 2016 in part of reversal of the decision of the Bilozersky District Court of Kherson region of June 14, 2016 and satisfying the claims of PERSON_1 to the Kherson Regional Council the decision of the Bilozersky District Court of Kherson Oblast of Court of Kherson region of June 14, 2016.

For more details, see the text of the Supreme Court's decision of January 16, 2018 in case No. 648/2416/16-ц (proceedings No. 61-852 св 17) is available at the link http://reyestr.court.gov.ua/Review/71588866

A dispute regarding the appeal against the decision of the company's authorized bodies to dismissal of a person from the position of the general director belongs to corporate disputes and is subject to consideration in commercial proceedings.

On November 28, 2018, the Grand Chamber of the Supreme Court considered in the cassation appeal of Person-3 against the decision of the Rivne Oblast Court of Appeal of June 22, 2017 in the case of the claim of Person Z against UT-AGRO ZERNO LLC for reinstatement in the workplace, recovery of wages for the period of forced absenteeism and non-pecuniary damage, and issued a resolution stating the following.

The courts found that according to the minutes of the constituent assembly of the founders of Shevchenko LLC dated 22 December 2013. Shevchenko LLC dated July

22, 2013, Person 3 was elected as the general director of this company. By the decision of the general meeting of LLC “Im. Shevchenko LLC dated June 27, 2016, the name of the said company was changed to UT-AGRO ZERNO LLC. According to the minutes of the general meeting of participants of “UT-AGRO ZERNO” LLC dated December 30, 2016 N 7, it was decided to dismissal of Person 3 from the position of the General Director of “UT-AGRO ZERNO LLC as of December 30, 2016.

The court found that as of today, the decision of the general meeting of participants of LLC “UT-AGRO ZERNO” LLC dated December 30, 2016 N 7 is valid, it has not been appealed in the manner prescribed by law procedure established by law, it has not been appealed.

Pursuant to Part 3 of Article 99 of the Civil Code of Ukraine, the powers of a member of the executive body may be terminated at any time or he may be temporarily suspended from exercising his powers.

The exclusive competence of the general meeting of shareholders of a limited liability company includes the creation and revocation of the executive body of the company (part 4 of Article 145 of the Civil Code of Ukraine).

The Constitutional Court of Ukraine in its Decision No. 1-2/2010 dated January 12, 2010 in the case on official interpretation of part 3 of Article 99 of the Civil Code of Ukraine clarified that realization of corporate rights to participate in the management of a joint-stock company by its shareholders in its management by making decisions by the competent authority on election (appointment), removal, suspension, recall of members of the executive body of this company also applies to the vesting or deprivation of their powers to manage the company. Such decisions of the body authorized to do so must 276 Decisions entered into the USRCD for the period from January 17, 2018 to January 02, 2020. Digest of the Supreme Court case law on disputes arising from labor relations be considered not within the framework of labor relations, but corporate legal relations that arising between the company and persons entrusted with the authority to manage it.

The content of the provisions of para. 3 of Article 99 and part. 4 of Art. 145 of the Civil Code of Ukraine should be understood as the right of the competent

(authorized) body of the company to recall a member of the executive body from performing the duties assigned to him. Since the basis of the claim filed by Person 3 is non-compliance with the requirements of the law and constituent documents during the convening and holding of the general meeting of the company, which is a violation of the shareholder's rights to manage the company, and not the labor rights of the company's director, the dispute in this part by its legal nature and legal consequences, as correctly noted by the correctly noted by the Court of Appeal, belongs to corporate disputes and is subject to resolution by commercial courts.

For more details, please read the text of the resolution of the Grand Chamber of the Supreme Court dated November 28 November 2018 in case No. 562/304/17 (proceedings No. 14-471цс18) is available at the link http://reyestr.court.gov.ua/Review/78977586

- **Dispute regarding the appeal against the decision of the company's authorized bodies on removal of a company's director from the office is a corporate dispute, and therefore is subject to consideration in commercial legal proceedings.**

On September 10, 2019, the Grand Chamber of the Supreme Court considered in the cassation appeal of PERSON_1 against the decision of the Lviv Economic Court of Appeal of August 6, 2018 and decision of the Economic Court of Ternopil Oblast of April 18, 2018 in No. 921/36/18 in the claim of PERSON_1 to the Private Joint Stock Company “Ternopil Plant for the Production of Road Construction Materials” (hereinafter referred to as materials” (hereinafter - PJSC ‘Ternopil KSHBM’) and the Baikovetska village Council of Ternopil District of Ternopil Region, with the participation of a third party, who does not claim any independent claims regarding the subject matter of the dispute, on the part of the first defendant - PERSON_2, on invalidation of the decision of the supervisory board, cancellation of the record of changes to the information about the legal entity, obligation to update the information, and issued a resolution in which it stated the following.

The basis for the acquisition of powers by the company's executive body is

the fact of its election (appointment) by the general meeting of participants (shareholders) as the supreme management body of the company or, as stated in part 5 of Article 58 of the Law of Ukraine “On Joint Stock Companies, the conclusion of an employment contract with a member of the company's executive body an employment contract with a member of the company's executive body, which may be signed on behalf of the company by the chairman of the Supervisory Board or a person authorized by the Supervisory Board. Removal of members of the company's executive body from performance of duties or removal of the chairman of the executive body of the company from the performance of powers by their legal nature, subject matter of regulation legal relations and legal consequences differs from the removal of from work on the basis of Article 46 of the Labor Code of Ukraine. That is why the possibility of the authorized body of the company to remove a member of the executive body from performing his/her duties is not contained in the provisions of the Labor Code of Ukraine, but in Art. 99 of the Civil Code of Ukraine, i.e. it is not subject to regulation by labor law. Realization of corporate rights to participate in the company's management by its shareholder’s management through the adoption by the competent body of decisions on the election (appointment), removal, suspension, recall of members of the executive body of this association also applies to the vesting or deprivation of their the authority to manage the company.

Although such decisions of the Commissioner body may have consequences within the framework of labor relations, but corporate legal relations are decisive in such circumstances.

In this regard, suspension in accordance with Part 3 of Article 99 of the Civil Code of Ukraine is an action of the company's authorized body aimed at preventing the a member of its executive body to exercise powers in the field of management activities. The need for such a rule is due to the specific status of a member of the executive body who has received the right to manage of the company has received the right to manage. By the nature of corporate relations company shareholders should be given the opportunity at any time to promptly respond to the actions of

person who performs representative functions to the detriment of the company's to the detriment of the company's interests, by depriving them of their respective powers.

In view of this, the content of the provisions of Part 3 of Article 99 of the Civil Code of Ukraine entitles the competent (authorized) body of the company to remove a member of the executive body from performing the duties assigned to him at any time, at its time, at its discretion, for any reason.

This form of protection is a specific action of holders of corporate rights in relations with the person whom they have entrusted to manage the company, and cannot be considered company, and cannot be considered in the context of labor law, in particular inthe aspect of Article 46 of the Labor Code of Ukraine.

Thus, the claim for invalidation of the decision of the Supervisory Board of PJSC “Ternopil SSBM” of January 4, 2018, by which PERSON_1 was removed from the powers of the company's director, is one that arose from corporate relations, and therefore, its resolution is within the jurisdiction of the jurisdiction of the commercial court.

A similar legal position was set forth by the Grand Chamber of the Supreme Court in its decision dated January 30, 2019 in case No. 145/1885/15-ц. The Grand Chamber of the Supreme Court also notes that the termination of powers of the head or other member of the executive body is not a violation of his or her labor rights, as it does not necessarily entail their dismissal.

The termination of powers of a director or other member of the executive body and dismissal are different legal institutions. Termination of powers of the director or other member of the executive body entails the suspension of the work of such an official caused by the lack of organizational conditions, necessary for the performance of work, since without powers the official cannot exercise management or functions of a member of the executive body.

Pursuant to clause 5 of part 1 of Article 41 of the Labor Code of Ukraine, the termination of powers of an official may be grounds for termination of an employment contract at the the initiative of the owner or his authorized body and

payment of severance pay severance pay in the amount of at least six months' average earnings (Article 44 of the Labor Code of Ukraine), but instead of terminating an employment contract with the consent of employee may be transferred to another job (Article 32 of the Labor Code of Ukraine).

If a person is removed from the position of a manager or other member of the executive body and another person is elected to temporarily exercise of such powers, this also does not mean the dismissal of the director or other member of the executive body, since the current legislation does not provide for such a ground for dismissal. In this case, there is also a suspension of work of an official caused by the lack of organizational conditions necessary for to perform the work, since without the authority the official cannot exercise management or functions of a member of the executive body.

Relations between the parties regarding payment for the time of suspension of an official's work, transfer to another job (including temporary), dismissal shall be governed by the provisions of the Labor Code of Ukraine. Disputes in this regard are labor disputes. Such disputes are considered under the rules of the Civil Procedure Code of Ukraine.

At the same time, in this case, the plaintiff is challenging the Supervisory Board's decision to to remove him from his position as a director. This dispute is not a labor dispute, but is related to the management of a legal entity.

Thus, disputes related to the establishment, operation, management or termination of a legal entity are corporate disputes within the meaning of clause 3 ч. 1 Art. 20 of the Commercial Code of Ukraine, regardless of whether the plaintiff is a shareholder 74 (participant) of a legal entity and should be considered according to the rules of the Commercial of Ukraine.

For more details, please read the text of the resolution of the Grand Chamber of the Supreme Court dated September 10 September 2019 in case No. 921/36/18 (proceedings No. 12-293гс18) can be available at http://reyestr.court.gov.ua/Review/85412893.

- **When bringing a civil servant to disciplinaryliability, the**

terms defined by part three of Article 65 and part five of Article 74 of the Law of Ukraine "On Civil Service", and not the terms for the application of disciplinary penalties provided for in Article 148 of the Labor Code of Ukraine.

On December 11, 2018, the Grand Chamber of the Supreme Court considered in open the cassation appeal of PERSON_5 against the decision of the Kyiv District Administrative Court of June 27, 2017 and the decision of the Kyiv Administrative Court of Appeal of November 06, 2017 in case No. 810/1224/17 (K/9901/17539/18) on the claim of PERSON_5 to the State Judicial Administration of Ukraine to declare unlawful and cancel the order, and issued a resolution in which it stated the following.

The Law of Ukraine "On Civil Service" is a special law on entry, performance and termination of civil service, which includes issues of disciplinary liability of civil servants.

In accordance with the provisions of this Law, for failure to perform or improper performance of official duties, acts of public authorities, orders (orders) and instructions of managers adopted within their powers, a civil servant may be brought to disciplinary liability with the imposition by the appointing authority or the head of the civil service on such civil servant a disciplinary sanction in the form of a reprimand.

As established by the courts of previous instances and confirmed by the materials of the case, the grounds for initiating disciplinary proceedings against PERSON_5 were the results of an unscheduled compliance audit and financial audit of certain issues in the SJA in Kyiv region, conducted by the SJA department in accordance with the defendant's order issued at the by the head of the Tarashchanskyi District Court of Kyiv Region. In particular, the SJA received the above-mentioned letter from the Chairman of the Tarashchansky District Court of Kyiv region, which stated that the management of the SJA in Kyivregion does not take any actions and does not take measures to continue and to continue and complete the overhaul of the court premises.

The facts contained in this letter were verified by conducting an unscheduled compliance and financial audit of certain issues in the SJA in Kyiv region on the basis of an order of the SJA. The results of the audit confirmed the facts set forth in the letter from the head of the Tarashchansky District Court of Kyiv region, and therefore the audit team concluded that the identified violations and shortcomings in the financial and economic activities of the Kyiv region are the result of systematic failure to fulfill official duties by the head of this department PERSON_5.

Having examined the materials collected during the disciplinary proceedings, taking into account the explanations provided by the plaintiff regarding the violations identified, and taking into account the combination of factors specified in Part 1 of Article 74 of the Law of Ukraine "On Civil Service", the SJA disciplinary commission concluded that the actions of the Head of the SJA in Kyiv region PERSON_5 constituted a disciplinary offense under paragraph 5 of Part 2 of Article 65 of this Law, and the grounds for bringing him to disciplinary responsibility under para. 2 of Part 1 of Article 66 of the said Law.

According to the preamble of Law No. 889-VIII, this Law defines the principles, legal and organizational framework for ensuring public, professional, politically impartial, effective, citizen-oriented civil service, which functions in the interests of the state and society civil service that functions in the interests of the state and society, as well as the procedure for of realization by citizens of Ukraine of the right of equal access to the civil service, based on their personal qualities and achievements.

According to Article 1 of this Law, civil service is a public, professional, politically impartial activity for the practical fulfillment of the tasks and functions of the state, in particular with regard to:

1) analysis of state policy at the national, sectoral and regional levels and preparation of proposals for its formation, including the development and examination of draft programs, concepts, strategies, draft laws and other regulatory acts, draft international agreements;

2) ensuring the implementation of state policy, implementation of national sectoral and regional programs, implementation of laws and other regulatory legal acts;

3) ensuring the provision of accessible and high-quality administrative services;

4) exercising state supervision and control over compliance with legislation;

5) management of state financial resources, property and control over their use and control over their use

6) personnel management of state bodies

7) exercise of other powers of the state body as defined by the legislation.

A civil servant is a citizen of Ukraine who holds a position of civil service in a public authority, other state body, its apparatus (secretariat) (hereinafter referred to as a state body), receives a salary at the expense of the state budget and exercises the powers established for this position powers directly related to the performance of tasks and functionsof such a state body, and also adheres to the principles of civil service.

Based on part one of Article 3 of Law No. 889-VIII, this Law regulates relations arising in connection with entering the civil service, its employee, and defines the legal status of a civil servant.

Parts one and two of Article 5 of Law No. 889-VIII stipulate that the legal regulation of the civil service is carried out by the Constitution of Ukraine, this and other laws of Ukraine, international treaties ratified by the Verkhovna Rada of Ukraine, resolutions of the international treaties ratified by the Verkhovna Rada of Ukraine, resolutions of the Verkhovna Rada of Ukraine, decrees of the President of Ukraine, acts of the Cabinet of Ministers of Ukraine and the central executive body that ensures formulation and implementation of the state policy in the field of civil service.

Relations arising in connection with the entry into, performance and termination of the civil service shall be regulated by this Law.

Thus, Law No. 889-VIII is a special law on the entry, performance and termination of civil service, which also includes the issue of disciplinary liability of civil servants.

According to part one of Article 8 of the said Law, a civil servant is obliged to: 1) comply with the Constitution and laws of Ukraine, act only on the basis, within the limits of authority and in the manner prescribed by the Constitution and laws of Ukraine; 2) adhere to the principles of civil service and rules of ethicaland the rules of ethical behavior; 3) respect human dignity, not to prevent violation of human and civil rights and freedoms; 4) to respect the state symbols of Ukraine to treat the state symbols of Ukraine with respect; 5) to use the state language in the performance of the state language in the performance of their official duties, not to allow discrimination of the state language and to counteract possible attempts to discriminate against it. 6) to ensure, within the limits of the powers granted, the effective performance of tasks and functions of state bodies; 7) to perform their official duties in good faith and professionally; 8) to execute decisions of state bodies, orders (orders), instructions of supervisors issued on the basis and within the limits of the powers provided for by the Constitution and laws of Ukraine; 9) to comply with the requirements of the legislation on prevention and counteraction to corruption; 10) to prevent real or potential conflict of interest during civil service; 11) to constantly improve their professional competence and the organization of official activities 12) to keep state secrets and personal data of persons that became known to him/her in connection with that became known to him/her in connection with the performance of official duties, as well as other information that is not subject to disclosure in accordance with the law; 13) provide public information within the limits established by law.

According to part one of Article 64 of Law No. 889-VIII, failure to perform or improper performance of official duties as defined by this Law and and other regulatory legal acts in the field of civil service, job description job description, as well as violation of the rules of ethical behavior and other

violation of service discipline, a civil servant shall be brought to disciplinary liability in accordance with the procedure established by this Law.

Part one of Article 65 of Law No. 889-VIII provides that the grounds for bringing a civil servant to disciplinary liability is committing a disciplinary offense, i.e. an unlawful culpable act or inaction or decision-making, which consists in the failure to perform or improper performance by a civil servant of his/her official duties and other requirements established by this Law and other regulatory legal acts, for which a disciplinary penalty may be imposed.

Pursuant to paragraph 5 of part two of Article 65 of the said Law a disciplinary offense is the failure to perform or improper performance of of official duties, acts of public authorities, orders (instructions) and instructions of managers adopted within their authority.

The provisions of part one of Article 66 of Law No. 889-VIII stipulate that civil servants are subject to one of the following types of disciplinary penalties: 1) remark; 2) reprimand; 3) warning of incomplete service; 4) dismissal from the civil service.

If a civil servant commits disciplinary offenses provided for in paragraphs 4, 5, 12 and 15 of part two of Article 65 of this Law, the appointing authority or the head of the civil service may reprimand such civil servant such civil servant may be reprimanded. Disciplinary sanctions, provided for in paragraphs 2-4 of part one of this Article shall be imposed exclusively upon the proposal of the Commission on Senior Civil Service (hereinafter - the Commission), the submission of the disciplinary commission (parts three and six of Article 66 of Law No. 889-VIII).

According to the rules of Article 68 of Law No. 889-VIII, disciplinary proceedings are initiated by the appointing authority. Disciplinary penalties are imposed on the basis of Supreme Court case law on disputes arising from labor relations (applied) to civil servants holding civil service positions of categories service positions of categories “B” and “C”: reprimands - by the subject of appointment; other types of disciplinary penalties - by the appointing authority upon the recommendation of the disciplinary commission.

In accordance with parts one, nine through eleven of Article 69 of Law No. 889-. VIII for the implementation of disciplinary proceedings to determine the degree of guilt, nature and gravity of the committed disciplinary offense a disciplinary commission for consideration of disciplinary cases (hereinafter referred to as disciplinary commission).

The disciplinary commission shall consider the disciplinary case of a civil servant. formed in accordance with the procedure established by this Law.

The result of consideration of a disciplinary case is a proposal of the Commission or a proposal of the Commission or a submission of the disciplinary commission, which are of a recommendatory nature for the subject of appointment.

Within 10 calendar days, the appointee is obliged to make a decision on the basis of the Commission's proposal or the submission of the disciplinary commission or provide a reasoned refusal within this period.

According to Article 75(1) of Law No. 889-VIII, before imposing a disciplinary sanction, the appointing authority must receive a written explanation from the civil servant being disciplined. The refusal to provide an explanation shall not prevent the disciplinary proceedings and the imposition of a disciplinary sanction on disciplinary sanction on the civil servant.

Part one of Article 74 of the said Law provides that disciplinary penalty should correspond to the severity of the offense and the fault of the civil servant. When determining the type of penalty, it is necessary to the nature of the misconduct, the circumstances under which it was committed, circumstances mitigating or aggravating liability, results of the performance appraisal of the civil servant, the availability of incentives, penalties and his/her attitude to service.

The decision to impose a disciplinary sanction on a civil servant or closure of disciplinary proceedings shall be made by the subject of appointment within 10 calendar days from the date of receipt of the Commission's proposals, or the submission of the disciplinary commission at the state body. The decision shall be formalized by the relevant act of the appointing authority. In the decision, which is formalized by an order (instruction), the name of the state body, the date of its

adoption, information about the civil information about the civil servant, a summary of the circumstances of the case, the type of disciplinary offense and his/her legal qualification, type of disciplinary sanction applied (parts one and two of Article 77 of Law No. 889-VIII).

Thus, from the above provisions of Law No. 889-VIII, it can be seen that for failure to perform or improper performance of official duties, acts of public authorities, orders (instructions) and instructions of managers adopted within their authority, a civil servant may be brought to disciplinary responsibility with the imposition of disciplinary action by the appointing authority or the head of the civil service on such civil servant disciplinary sanction in the form of a reprimand.

The Grand Chamber of the Supreme Court considers the conclusions of the courts of first instance and appeal to be justified that the circumstances revealed by the results of the audit of the financial and economic activities of the SJA in Kyiv region and confirmed in the course of disciplinary proceedings against PERSON_5, indicate improper performance of official duties by the plaintiff, and therefore the existence of grounds for imposing a disciplinary sanction in the form of a reprimand.

According to part three of Article 65 of Law No. 889-VIII, a civilcivil servant cannot be brought to disciplinary responsibility, if six months have passed since the day when the head of the civil service learned or should have learned about the commission of a disciplinary offense, excluding the time of temporary disability of the civil servant or his/her stay on on vacation, or if one year has passed since the offense was committed.

According to part five of Article 74 of Law No. 889-VIII, a disciplinary sanction against a civil servant shall be applied no later than six months from the date of discovery of the disciplinary offense, excluding the time of temporary disability or vacation, and shall not be applied if one year has passed since the offense was committed.

Thus, a disciplinary penalty may be imposed on a civil servant no later than six months from the date of discovery of the disciplinary offense, not taking into

account the period of temporary disability of the civil servant or vacation, but not later than one year after the offense was committed.

At the same time, Article 148 of the Labor Code of Ukraine provides that disciplinary penalty is applied by the owner or his authorized body directly upon discovery of the offense, but not later than one month from the date of of its detection, not counting the time of the employee's release from work due to temporary disability or vacation.

Disciplinary sanctions may not be imposed later than six months from the date of committing the offense.

However, as noted above, Law No. 889-VIII is a special law on entry, performance and termination of civil service.

Section VIII “Disciplinary and material liability of civil servants” of this Law defines, inter alia, the concept of disciplinary civil servants” of this Law defines, inter alia, the concept of disciplinary responsibility of a civil servant, the grounds for bringing civil servant to disciplinary liability, types of disciplinary sanctions and conditions for their application, the procedure for bringing of disciplinary liability of a civil servant, which are significantly differ significantly from the types of disciplinary sanctions, procedure and terms of their application application, defined in Articles 147-152 of the Labor Code of Ukraine.

At the same time, according to part three of Article 5 of Law No. 889-VIII, the provisions of labor legislation applies to civil servants in terms of relations not regulated by this Law.

In view of the above, the Grand Chamber of the Supreme Court concluded that when bringing a civil servant to disciplinary liability, the time limits set forth in part three of Article 65 and part five of Article 74 of Law No. 889-VIII, and not the terms for the application of disciplinary sanctions provided for in Article 148 of the Labor Code of Ukraine.

For more details, please read the text of the resolution of the Grand Chamber of the Supreme Court dated December 11 2018 in case No. 810/1224/17 (proceedings No. 11-733апп18) is available at the link

http://reyestr.court.gov.ua/Review/79300690.

- **Dispute over appealing a decision of a local government body, related to the appointment of the head of a municipal higher education institution shall be considered in civil proceedings.**

On January 30, 2019, the Grand Chamber of the Supreme Court considered in the cassation appeal of PERSON_3 against the decision of the Rivne City Court of Rivne Oblast of April 11, 2017 and the decision of the Rivne Regional Court of Appeal of July 13, 2017 in case on the claim of PERSON_3 to the Rivne Regional Council for recognition as illegal, cancellation of the decision, obligation to take action, and issued a resolution in which it noted the following.

The courts found that on September 08, 2016, the defendant adopted a decision which amended the charter of the Institute in terms of determining the procedure for appointing the head of this higher education institution. The plaintiff is an applicant for the vacant position of the Rector of the Institute, as he applied to the Rivne Regional Council with a relevant application and provided the necessary documents to participate in the competition.

In February 2017, the defendant informed PERSON_3 that the issue of the appointment of the rector of the Institute is decided at the session of the regional council. When filing this lawsuit, the plaintiff stated that the procedure for the appointment of the head of this higher education institution, defined by clause 4.1 of the Institute's charter and approved by the contested decision of the local contradicts the requirements of Art. 42 of Law No. 1556-VII, which violates his rights as a candidate for the post of rector of the Institute. He considered that the defendant has the right only to nominate candidates for this position for further voting by the higher education institution and the conclusion of a contract, and also noted the non-compliance with the regulations by the Rivne Regional Council when adopting the decision of September 08, 2016.

According to part one of Article 3 of the Civil Procedure Code of Ukraine (hereinafter - in the wording, effective at the time of consideration of the case in the courts of first instance and appeal), every person has the right, in accordance

with the procedure established by this Code, to apply to the court for protection of rights, freedoms or interests.

Rules for determining the competence of courts to hear civil cases are provided for in Article 15 of the Code of Civil Procedure of Ukraine: courts consider cases in civil proceedings for the protection of violated, unrecognized or disputed rights, freedoms or interests arising out of civil, housing, land family, labor relations, as well as other legal relations, except for cases when the consideration of such cases is carried out in accordance with the rules of other legal proceedings.

The criteria for distinguishing cases of civil jurisdiction from other cases are, firstly, the presence of a dispute over civil law.

Secondly, such a criterion is the subject composition of such a dispute (as a rule, one of the parties to the dispute is an individual).

According to part one of Article 5 of the Code of Administrative Procedure of Ukraine (hereinafter - the CAP of Ukraine) as amended on October 03, 2017, every person has the right to apply to an administrative court in accordance with the procedure established by this Code if he or she believes that a decision, action or inaction of of a public authority has violated their rights, freedoms or legitimate interests have been violated, and request their protection.

Thus, one of the parties to an administrative dispute is a subject of power authority - a public authority, a local self-government body, their official or employee, other entity in the exercise of their public administrative functions on the basis of legislation.

Also, the Code of Administrative Procedure of Ukraine, both in the version effective until December 15, 2017, and in the as of October 03, 2017, defines a public law dispute as - as a dispute in which at least one party exercises public administration functions, including the functions, including in the exercise of delegated powers, and the dispute arose in connection with the performance or non-performance of such functions by such party (clause 1 of part one of Article 3 of the Code of Administrative Procedure of Ukraine in the version effective

until December 15, 2017 and clause 1 of part one of Article 4 of the Code of Administrative Procedure of Ukraine as amended on October 03, 2017) and administrative proceedings - the activities of administrative courts to consider and resolve cases in accordance with the procedure established by this law (clause 4 of part one of Article 3 of the Code of Administrative Procedure of Ukraine in version in force until December 15, 2017, and paragraph 5 of part one of Article 4 of the Code of Administrative Procedure of Ukraine as amended on October 03, 2017).

Article 17 of the Code of Administrative Procedure of Ukraine (hereinafter referred to as the version in force at the time of the case consideration by the courts of previous instances), states that the jurisdiction of administrative courts extends to legal relations arising in connection with the exercise of by a public authority in the exercise of administrative functions.

According to paragraph 1 of part two of the said article, the jurisdiction of administrative courts extends to public law disputes, including disputes between individuals or legal entities and a public authority regarding appeals against its decisions (regulatory legal acts or legal acts of individual action), actions or inaction.

The term “public authority” used in this procedural rule means a public authority, local self-government body, their official or employee, other entity in the exercise of their management functions on the basis of legislation, including the exercise of delegated powers.delegated powers (Article 3(7)(1) of the Code of Administrative Procedure of Ukraine).

Thus, the competence of administrative courts includes disputes between individuals or legal entities with a state or local authority, or with a self-government body, their official or employee, the subject of which is verification of the legality of decisions, actions or omissions of these bodies (persons), taken or committed by them in the course of exercising their administrative functions.

According to part two of Article 2 of the Code of Administrative Procedure of Ukraine any decisions, actions or omissions of public authorities

may be appealed to the administrative courtsauthorities, except in cases where such decisions, actions or omissions are subject to a different procedure established by the Constitution or laws of Ukraine of judicial proceedings.

The main feature of a case of administrative jurisdiction is the essence (content, nature) of the dispute. A public law dispute subject to the jurisdiction of administrative courts is a dispute between the administrative courts, is a dispute between participants in public law relations relations and concerns these relations.

At the same time, private law relations are characterized by the presence of a property or non-property personal interest of the participant. A dispute is of a private law nature if it is caused by a violation or threat of violation of a private right or interest, usually property, of a specific entity, which is subject to protection in the manner prescribed by law for the sphere of private law relations, even if the violation of a private right or interest was caused by administrative actions of public authorities.

The analysis of the content of Article 15 of the Civil Procedure Code of Ukraine and Article 17 of the Code of Administrative Court Procedure of Ukraine (as amended, in force at the time of consideration of the case in the courts of first instance and appeal) in together gives grounds to conclude that when deciding on the issue of delimitation of the competence of courts to consider administrative and civil cases in each particular case, it is not enough to apply exclusively formal criterion - determination of the subjective composition of disputed legal relations (participation of a public authority in them). The defining feature for the correct resolution of such an issue is the nature of the legal relationship from which the dispute arose from.

Labor relations in the field of higher education are regulated by the Law No. 1556-.VII. Paragraphs 7, 10 of part one of Article 11 of this Law define higher education institution is a separate type of institution that is a legal entity of private or public law, acts in accordance with the issued license for Proceedings 207 Decisions entered into the USRCD for the period from 17.01.2018 to

02.01.2020 educational activities at certain levels of higher education, conducts scientific, scientific and technical, innovative and/or methodological activities, ensures the organization of the educational process and the acquisition of higher education by persons, and postgraduate education, taking into account their vocations, interests and abilities; the founder of a higher education institution - public authorities on behalf of the state, the relevant council on behalf of the territorial community (communities), a natural and/or legal entity, by the decision and at the expense of the property of which the higher education institution was founded higher education institution was founded. The rights of the founder provided for by this Law are also acquired on the following grounds the grounds provided for by civil law.

According to clause 6 of part one of Article 11 of Law No. 1556-VII, the higher education system education system is composed of bodies that manage higher education.

In accordance with paragraph 6 of part one of Article 12 of this Law, the management in the higher education within the limits of their authority is carried out by the founders of higher education institutions.

According to Article 14 of the Law No. 1556-VII, local governments, which higher education institutions are under their jurisdiction, within the limits of their powers, including directly or through a body authorized by them body, exercise the rights and obligations of the founder provided for by this and other laws of Ukraine, in relation to higher education institutions of Ukraine that belong to their management.

Article 15 of the said Law provides for the powers of the founder (founders) of a higher education institution, in particular: the founder (founders) of a higher education institution or his (their) authorized body approves the charter of the higher education institution and, upon the recommendation of the higher collegial body of public self-government of the higher education institution amends it or approves a new version;concludes within one month a contract with the head of the higher education institution, elected by competition

in accordance with the procedure established by this Law; control the observance of the charter of the higher education institution;exercises other powers provided for by law and the charter of the higher education institution education institution.

Part one of Article 34 of the Law No. 1556-VII stipulates that the direct management of the activities of a higher education institution is carried out by its head (rector, president, head, director, etc.) Their rights, duties and responsibility are determined by the legislation and the charter of the higher education institution. education institution.

According to Article 42 of this Law, the founder (founders) or the body (person) authorized by them or a body (person) authorized by him (her) is obliged to announce a competition for the position of the head of a higher education institution no later than two months before the expiration of the contract of the person holding this position. In case of early termination of the powers of the head of a higher education institution, the competition shall be announced within one week from the date of the vacancy. The founder (founders) or a body (person) authorized by him (them) within two months from the date of announcement of the competition for the position of the head of a higher education institution accepts (accepts) proposals for candidates for the position of the head of a higher education institution of a higher education institution and within 10 days from the date of expiration of the deadline for submission relevant proposals shall submit (submit) candidates who meet the requirements of this Law, to the higher education institution for voting.

The head of a higher education institution is elected by secret ballot for a term of five years in the manner prescribed by this Law and the charter of the higher education institution. Methodological recommendations on the peculiarities of the electoral system, the procedure for of the electoral system, the procedure for electing the head of a higher education institution and the standard form of the contract with the head of a state higher education institution shall be approved by the Cabinet of Ministers of Ukraine.

The procedure for appointing heads of higher education institutions is

regulated by their charters (regulations), registered in accordance with the procedure established by law.

According to Article 13 of Law No. 5067-VI, everyone has the right to appeal decisions, actions or omissions of state authorities, local self-government bodies, enterprises, institutions and organizations, regardless of the form of ownership, type of activity and business, individuals using hired labor, as well as hired labor, as well as actions or omissions of officials that led to violation of a person's right to employment, in accordance with the law.

Thus, the Rivne Regional Council, by amending the Institute's charter in part of the organizational and legal framework, exercised the powers of the powers of the founder of a higher education institution provided for by law, that is, it acted as a subject of civil law, since it is endowed with the rights and obligations of the owner in relation to the said higher education institution as another legal entity - an object of communal property and at the same time a subject of private law.

The Grand Chamber of the Supreme Court believes that the plaintiff's appeal to the court with the said claim is aimed at restoring his right to work as a result of violation, in the opinion of PERSON_3, of the defendant's hiring procedure, which is protected by the means and norms defined by the civil (labor) and civil procedural legislation.

The court of first instance, whose conclusions were upheld by the court of appeal, mistakenly considered the dispute between the parties to be a public law dispute related to appealing a decision of a public authority, and therefore unreasonably refused to initiate proceedings against the plaintiff on the basis of on the basis of clause 1, part 2, Article 122 of the Code of Civil Procedure of Ukraine (in the version in force at the time of the relevant procedural action).

For more details, please read the text of the resolution of the Grand Chamber of the Supreme Court of January 30, 2019 in case No. 569/5553/17 (proceedings No. 14-48018) can be available at http://reyestr.court.gov.ua/Review/79834971

3.1.2. A. A dispute between a teacher and a general education school that is part of the structure of the educational colony of the State Penitentiary Service of of Ukraine, on the recognition of unlawful change of essential working conditions and recovery of lost earnings is a private law case and should be considered in civil proceedings.

B. Reducing the teaching load entails a change in the mode of work of a teacher of the teacher's work and, as a result, a corresponding decrease in salary, which, by virtue of by virtue of the requirements of paragraph 3 of Article 32 of the Labor Code of Ukraine is a change in essential working conditions.

C. The Labor Code of Ukraine is a special law regulating labor relations, provides for the time limits for applying to the court (Article 223). This time limit is applied by the court regardless of the parties' application.

On November 28, 2018, the Grand Chamber of the Supreme Court considered in the cassation appeal of the Dubno Educational colony against the decision of the Dubno City District Court of Rivne region of September 19, 2016 and the decision of the Court of Appeal of Rivne region of December 21 December 2016 in the case of the claim of PERSON_3 to the Dubno Educational colony, Dubno school No. 9 on the recognition of the unlawful change of essential working conditions, restoration of previous working conditions, recovery of lost earnings, and adopted a resolution in which it stated the following.

A. Regarding the jurisdiction of the dispute The criteria for delimitation of judicial jurisdiction, i.e., the statutory conditions under which a particular case is subject to consideration under the rules of a particular type of court proceedings, are the subject matter of legal relations, the subject matter of the dispute and the nature of the disputed substantive legal relations in their entirety. In addition such a criterion may be a direct indication in the law of the type of court proceedings in which a certain category of cases in which a certain category of cases is considered.

The dispute that arose between the plaintiff and the defendants concerns

the mode of work and determination of working hours, which affects the amount of wages. Such legal relations are labor relations and are subject to the provisions of the Labor Code of Ukraine.

According to the general rule provided for in paragraphs 1, 3 of part one of Article 15 of the Code of Civil Procedure of Ukraine (in the version in force at the time PERSON_3 filed this lawsuit), courts consider in civil proceedings cases on the protection of violated, unrecognized or disputed rights, freedoms or interests that arising from civil, housing, land, family, labor relations, other legal relations, except when such cases are considered in accordance with the rules of other legal proceedings.

A similar provision is enshrined in part one of Article 19 of the Civil Procedure Code of Ukraine in as amended on October 03, 2017.

In other words, civil proceedings are conducted in cases that arising from private law relations.

Pursuant to part one of Article 17 of the Code of Administrative Procedure of Ukraine (as amended at the time of filing this the jurisdiction of administrative courts extends to legal relations arising in connection with the exercise by a public authority powers of the authority, as well as in connection with the public formation of a public authority by means of elections or referendum.

According to the content of part two of this article, the jurisdiction of administrative courts shall have jurisdiction over public law disputes, in particular

1) disputes of individuals or legal entities with a subject of authority regarding appealing against its decisions (normative legal acts or legal acts of individual acts), actions or omissions;

2) disputes concerning the admission of citizens to the public service, its passage, dismissal from public service;

3) disputes between public authorities regarding the exercise of their competence in the field of governance, including delegated powers;

4) disputes arising from the conclusion, execution, termination, cancellation or invalidation of administrative agreements;

5) disputes at the request of a public authority in cases established by the Constitution and laws of Ukraine;

6) disputes concerning legal relations related to the election or referendum process or referendum process;

7) disputes of individuals or legal entities with the public information manager regarding appealing against their decisions, actions or inaction in terms of access to public information.

Paragraph 15 of part one of Article 3 of the CAP of Ukraine in the version that was in force until December 15, 2017 it was enshrined that public service is an activity in state political positions, professional activities of judges and prosecutors, military service, alternative (non-military) service, diplomatic service, other civil service, service in the bodies of the Autonomous Republic of Crimea, local self-government bodies.

In accordance with paragraph 17 of part one of Article 4 of the Code of Administrative Procedure of Ukraine (as amended on October 03, 2017), public service is an activity in public political positions, in state collegial bodies, professional activities of judges, prosecutors, military service, alternative (non-military) service, other civil service, patronage service in state bodies, service in authorities of the Autonomous Republic of Crimea, local self-government bodies.

In accordance with Article 24 of the Law of Ukraine of May 13, 1999 No. 651-XIV "On General Secondary Education" (hereinafter - Law No. 651-XIV), a pedagogical shall be a person of high moral character who has appropriate pedagogical education and/or professional qualification of a pedagogical professional qualification of a pedagogical employee, an appropriate level of professional training, carries out pedagogical activities, ensures the effectiveness and quality of their work, whose physical and mental state of health allows to perform professional duties in institutions of the general secondary education system. The list of positions of pedagogical of the general secondary

education system is established by the Cabinet of Ministers of Ukraine (hereinafter - CMU).

According to the List of positions of pedagogical and scientific-pedagogical workers approved by the Cabinet of Ministers of Ukraine on June 14, 2000, teachers are classified as positions of pedagogical workers.

According to Article 28 of Law No. 651-XIV, the rights and obligations of pedagogical employees of the general secondary education system are determined by the Constitution of Ukraine, the Law of Ukraine, the Law of Ukraine “On Education”, the Labor Code of Ukraine, this Law and other and other legal acts.

Paragraph 15 of part three of Article 3 of the Law of Ukraine of December 10, 2015 No. 889-VIII “On Civil Service”, which came into force on May 01, 2016 the legislator clearly stipulated that this Law does not apply to employees of state-owned enterprises, institutions, organizations, and other entities state-owned business entities, as well as educational institutions, established by state authorities.

In other words, the position of a teacher is neither a state nor a public service.

Subject matter jurisdiction is provided for in part one of Article 15 of the Civil Procedure Code of Ukraine in the version in force at the time the plaintiff filed the lawsuit.

The plaintiff's claims relate to the violation of her labor rights, in terms of legal relations, the dispute does not have signs of public law, as it arose from the defendant's failure to fulfill its obligation to give written notice to the employee the employee about changes in essential working conditions and wage losses, i.e the dispute is a private law dispute and, in accordance with the above requirements of the law, should be considered in civil proceedings.

B. Changes to essential working conditions

Article 93 of the Labor Code of Ukraine defines wages as remuneration, usually calculated in monetary terms, which the owner or authorized body pays to

an employee for the work performed. Pursuant to Article 97 of the Labor Code of Ukraine, the owner or an authorized body or an individual has no right to unilaterally make decisions on remuneration issues that worsen the conditions established by law, agreements, collective bargaining agreements.

In accordance with Article 21 of the Law of Ukraine No. 108/95-.VR "On Remuneration of Labor" (hereinafter - Law No. 108/95-VR), an employee has the right to Remuneration for their labor in accordance with the laws and collective bargaining agreement on the basis of a concluded labor agreement.

According to Article 22 of this Law, entities organizing remuneration do not have the right to The right to unilaterally make decisions on remuneration of labor, that worsen the conditions established by law, agreements and collective agreements and collective bargaining agreements.

According to Article 32(3) of the Labor Code of Ukraine, due to changes in the organization of and labor organization, it is allowed to change the essential working conditions while continuing to work in the same of work in the same specialty, qualification or position. Changes in essential working conditions working conditions, such as systems and amounts of remuneration, benefits, and working hours, establishing or canceling part-time work, combining professions, change of categories and titles of positions and others - the employee must be notified no later than two months in advance.

Pursuant to Article 29 of Law No. 108/95-VR, when an employee enters into an of an employment agreement (contract), the employer shall inform the employee of the terms of remuneration, the amount, procedure and terms of payment of wages, and the grounds according to which deductions may be made in cases provided for by law.

The employer must notify the employee of new or downward changes in the existing terms of remuneration the employer must notify the employee of new or downward changes in the existing terms and conditions of remuneration months prior to their introduction or change.

One of the grounds for termination of an employment contract under

Article 36(6) of the Labor Code of Ukraine of the Labor Code of Ukraine is the employee's refusal to be transferred to another location with the enterprise, institution, or organization, as well as refusal to continue working to continue working due to changes in essential working conditions.

In 2015, when he filed a claim for the restoration of his violated labor rights and compensation for non-pecuniary damage, PERSON_3 expressed disagreement with the change of essential working conditions. The school administration had to resolve the issue of the dismissal of the employee on the basis of Article 36(6) of the Labor Code of Ukraine, but failed to do so, thus violating the requirements of labor law.

C. Regarding the time limits for applying to the court

Pursuant to Article 233(1) of the Labor Code of Ukraine, an employee may apply

apply for the resolution of a labor dispute directly to the district labor court, district, city district, city or city district court within three months from the date from the date when he or she learned or should have learned of the violation of his or her right.

The Labor Code of Ukraine is a special law regulating labor relations, did not apply. The case file does not contain a request for the renewal of this period.

In satisfying the claim of PERSON_3 to appeal against the order of the director of Dubno Secondary School No. 9 of August 31, 2015 should be dismissed due to due to the missed deadline for applying to the court.

The court shall apply the said period regardless of the availability of the

the defendant's application for the application of such a term, since in accordance with part one of Article 9 of the Civil Code of Ukraine, the provisions of this Code in labor disputes may be applied only subsidiarily, unless they are regulated by other acts of legislation. Whereas the time limits for applying to the court are provided for in the Labor Code of Ukraine separately.

In accordance with the requirements of Article 32 of the Labor Code of

Ukraine on changing essential working conditions, which include changes in the systems and amounts of remuneration, working hours, establishment of 213 Decisions entered into the USRCD for the period from 17.01.2018 to 02.01.2020 time limits for applying to the court. Article 223 of the Labor Code of Ukraine of the Labor Code of Ukraine, the time limit for applying to court applies regardless of the of the parties. The trial court disregarded the defendant's arguments that the plaintiff appealed the order of the director of Dubno School No. 9 in violation of the three-month period, which violated the substantive law. The Court of Appeal court did not pay attention to these errors of the court of first instance or canceled part-time work, combining professions - an employee must be notify no later than two months in advance.

Article 25 of Law No. 651-XIV stipulates that the distribution of teaching load in a general education institution is carried out by its management and approved by the relevant educational authority. Paragraph 2 of this article stipulates that the teaching load of a teacher of a general educational institution, regardless of subordination, type and form of ownership, in the amount less than the tariff rate is established only with his/her consent.

Reducing the teaching load entails a change in the teacher's working hours. and, as a result, a corresponding reduction in salary, which, by virtue of the requirements of Article 32(3) of the Labor Code of Ukraine is a change in essential working conditions.

Since the case file does not contain adequate and admissible evidence of the plaintiff was notified at least two months in advance of the change in her essential of the plaintiff's labor conditions, as well as her consent to such changes, the Grand Chamber of the Supreme Court agrees with the conclusions of the courts of previous instances on that the defendant violated PERSON_3's labor rights in this regard.

According to paragraph 2 of Article 233 of the Labor Code of Ukraine, in case of violation of the legislation on labor remuneration, an employee has the right to file a lawsuit with the court to recovery of wages due to him/her without

any time limit.

PERSON_3 was not notified within the time period established by Article 32 of the Labor Code of Ukraine within the two-month period established by Article 32 of the Labor Code of Ukraine, so the salary for the for the specified period based on an 18-hour workload should be collected from Dubno Educational Colony in favor of the plaintiff.

More details with the text of the resolution of the Grand Chamber of the Supreme Court dated November 28 November 2018 in case No. 559/321/16-ц (proceedings No. 14-367цс18) is available at the link http://reyestr.court.gov.ua/Review/78376917.

- **Dispute over a claim filed by a person dismissed due to the expiration of an employment contract against the Deposit Guarantee Fund and its authorized representative for reinstatement, recovery of monetary compensation, average earnings for the period of forced absenteeism and compensation for non-pecuniary damage is private law and, accordingly to the subject matter should be considered in civil proceedings. proceedings, according to the subject matter.**

On July 04, 2018, the Grand Chamber of the Supreme Court considered in the cassation appeal of PERSON_3 against the decision of the Court of Appeal of Odesa Region of March 30, 2017 in the case of PERSON_3's claim against the Fund, the Fund's authorized person to recognize the dismissal order as unlawful, and to recover monetary compensation, average earnings for the period of forced absenteeism and non-pecuniary damage, and issued a resolution stating the following.

The criteria for delimitation of judicial jurisdiction, i.e., the statutory conditions under which a particular case is subject to consideration under the rules of a particular type of court proceedings, are the subject matter of legal relations, the subject matter of the dispute and the nature of the disputed substantive legal relations in their entirety. In addition such a criterion may be a direct indication in the law of the type of court proceedings in which a

certain category of cases in which a certain category of cases is considered.

In accordance with paragraphs 1, 3 of part one of Article 15 of the Civil Procedure Code of Ukraine, the courts Considered in civil proceedings cases on protection of violated, unrecognized or disputed rights, freedoms or interests arising from civil, housing, land, family, labor relations, and other legal relations, except when such cases are considered in accordance with the the rules of other legal proceedings.

According to Article 1 of the Commercial Code of Ukraine, enterprises, institutions, organizations, and other legal entities (including foreign ones), citizens who carry out entrepreneurial activity without the establishment of a legal entity and in accordance with the established and have acquired the status of a business entity in accordance with the established procedure, have the right to apply to the economic court in accordance with the established jurisdiction economic cases for the protection of their violated or disputed rights and interests protected by law, as well as to take the measures provided for by this.

Code to take measures aimed at preventing offenses cases provided for by the legislative acts of Ukraine, the economic state and other bodies and individuals also have the right to apply to the economic court, and individuals who are not business entities.

Pursuant to Article 2(1) of the Commercial Procedural Code of Ukraine, a commercial court shall initiate cases on claims filed by enterprises and organizations that apply to the economic court to protect their rights and legally protected interests; state and other bodies that apply to the economic court in cases provided for by legislative acts of Ukraine; prosecutors who apply to the economic court in the interests of the state; the Accounting Chamber, which appeals to the economic court in the interests of the state within the limits of the powers provided for by the Constitution and laws of Ukraine.

According to paragraphs 2, 7 of part one of Article 12, economic

courts have jurisdiction over are jurisdictional, in particular: bankruptcy cases; cases on disputes with property claims to the debtor against whom bankruptcy proceedings have been initiated, including cases in disputes over the recognition of on invalidation of any transactions (contracts) concluded by the debtor; recovery of wages; reinstatement of officials and employees of the debtor, except for disputes related to the determination and payment of with the determination and payment (collection) of monetary obligations (tax debt) determined in accordance with the debt) determined in accordance with the Tax Code of Ukraine, as well as cases in disputes on the invalidation of transactions (contracts), if the relevant claim is filed by a controlling authority in exercise of its powers, as defined by the Tax Code of Ukraine.

In this case, the defendant, who filed a motion to dismiss the proceedings, did not provide any evidence of the existence of a bankruptcy case bankruptcy proceedings against Finrostbank. Therefore, there are no grounds for applying the requirements of Law No. 2343-XII, and to consider the case under the rules of the Commercial Procedural Code of Ukraine, are not seen.

At the same time, when considering the jurisdiction of the dispute, it is necessary to analyze the provisions of Law No. 4452-VI, which are special for resolving the issue of bank insolvency.

According to paragraph 8 of part one of Article 1 of Law No. 4452-VI an insolvent bank is a bank in respect of which the National Bank of Ukraine has made a decision to classify it as insolvent in accordance with the procedure provided for by Law No. 2121-III. Declaring a bank insolvent and removing it from the market (including liquidation) in accordance with the Law No. 4452-VI differs from the procedure for declaring a bank bankruptcy and liquidation procedure in accordance with the Law No. 2343-XII.

Measures to remove an insolvent bank from the market are carried out by a special legal entity of public law - the Fund (part two of Article 3 of the Law No. 4452-VI), which has separate property that is subject to state

ownership and state property and is under its economic management. The Fund is a subject of property management, independently owns, uses and disposes of the property, performing any actions in relation to it (including alienation, transfer to including alienation, lease, liquidation) that do not contradict the legislation and the purpose of the Fund's activities in one of the ways specified in Article 39 of the Law No. 4452-VI (paragraph 2 of part one of Article 2 of this Law).

According to the fifth part of Article 34 of the Law No. 4452-VI, during the temporary administration, the DGF has the full and exclusive right to manage the bank in accordance with this Law and the DGF's regulations and perform actions provided for in the resolution plan.

In accordance with the requirements of part one of Article 36 of this Law, from the date of commencement of the procedure for withdrawal of the bank from the market by the Fund, all powers of the bank's governing bodies (general meeting, supervisory board and management board (board of directors)) and control bodies (audit committee and internal audit). The Fund acquires all the powers of the bank's management and supervisory bodies from the date of commencement of the temporary administration and until its termination.

According to part two of Article 37 of the said Law, the Fund directly or an authorized person of the Fund in case of delegation of powers shall have the right to,in particular, to perform any actions and make decisions that belong to the powers of the bank's management and control bodies; to enter into any agreements (execute transactions) on behalf of the any agreements (transactions) necessary to ensure the bank's the bank's operating activities, banking and other business operations, subject to the requirements established by this Law.

The consequences of the start of the bank liquidation procedure are provided for in Article 46 of the Law No. 4452-VI. Part two of the said article provides that from the date of commencement of of the bank liquidation

procedure, all powers of the bank's governing bodies (general management bodies (general meeting, supervisory board and management board (board of of directors) and control bodies (audit committee and internal audit).

If the bank being liquidated has been under temporary administration, from the date of the decision to revoke the banking license and liquidate the bank the temporary administration of the bank is terminated. Bank managers shall be dismissed from work in connection with the liquidation of the bank.

And part one of Article 48 of the said Law states that the Fund directly or by delegating powers to an authorized person .

From the date of commencement of the bank liquidation procedure, the Fund shall exercise, in particular, the following powers: exercises the powers of the bank's governing bodies; takes measures to satisfy creditors' claims; dismisses bank employees in accordance with the labor legislation of Ukraine.

In this case, the plaintiff is challenging an employment agreement concluded between him and the authorized person of the Fund, formalized by the relevant order, and requests to recognize the order on his dismissal in connection with the expiration of the employment contract of the employment contract.

The analysis of the above provisions shows that the DGF's authorized representative in terms of exercising his/her powers in relation to the bank to which the temporary administration is applied to, exercises the powers of the management body of the latter, since after the appointment of the interim administration, the management of the bank loses its powers.

Thus, in disputes related to the dismissal of employees, including hired to ensure the procedure of withdrawal of an insolvent bank from the market or its liquidation, the provisions of Law No. the provisions of the Law No. 4452-VI, which are special, shall be applied.The Grand Chamber of the Supreme Court considers that the conclusion of the court of appeal that the claim of

PERSON_3 is subject to consideration in the of commercial proceedings does not meet the requirements of both Article 15 of the Civil Procedure Code of Ukraine and Articles 1, 2, 12 of the Commercial Code of Ukraine, given the subject matter and content of the legal relations, since no commercial court has ever bankruptcy proceedings against JSC Finrostbank, the liquidation procedure of the bank as insolvent was initiated by the Fund in accordance with the requirements of Law No. 4452-VI, whose provisions are special.

An individual filed a lawsuit against the DGF and its authorized with claims related to the violation of his labor rights, i.e. the dispute is private law and, according to the subject matter, should be considered in civil proceedings.

For more details, please read the text of the resolution of the Grand Chamber of the Supreme Court dated July 04 July 2018 in case No. 521/11503/15-ц (proceedings No. 14-238цс18) is available at the link http://reyestr.court.gov.ua/Review/75287302#

Case law on disputes arising from corporate relations relations

- **Change of the organizational and legal form of a business entity in which the in the authorized capital of which the share of the state exceeds 50%, is carried out on the basis of decisions of central executive authorities or other subjects of management of corporate rights of the state by approval of the Cabinet of Ministers of Ukraine and does not violate the rights of officials of such a company**

Pursuant to the Resolution of the Cabinet of Ministers of Ukraine of June 5, 2000

No. 897 “On further reform of the medical and microbiologica industry”, the State Joint Stock Company “UKRMEDPROM WAS ESTABLISHED. The founder and shareholder of the company is the state represented by Ministry of Health of Ukraine, its authorized capital is created by transferring the property of state-owned enterprises that belong to the management of the Ministry of Health of Ukraine and on the basis of which subsidiaries are formed of the company, and

stakes in joint stock companies that are in state ownership.state-owned companies.“Urmedprom was established as a state joint-stock company in the organizational and The legal form of the company is an open joint stock company. Thus, SJSC “UKRMEDPROM” is a state-owned enterprise and an object of state ownership, the governing body of which is the Ministry of Health of Ukraine and which subject to the Law of Ukraine “On Management of State-Owned property”.

According to Part 4 of Article 11 of the Law of Ukraine “On Management of State-Owne Property” (in the version in force at the time of the dispute) the functions of managing the corporate rights of the state are performed in accordance with this Law directly, without convening a shareholders' meeting, The Cabinet of Ministers of Ukraine, the State Property Fund of Ukraine, authorized management bodies if the corporate rights of the state constitute 100% of the authorized capital of a business organization.

102 Decisions entered into the USRCD as of July 15, 2019 For more details on the text of the resolution of the Grand Chamber of the Supreme Court dated May 23 May 2018 in case No. 910/9010/17 is available at http://reyestr.court.gov.ua/Review/74376380

- **According to clauses 1, 4 of the Regulation on the Ministry of Health of Ukraine, approved by the Decree of the President of Ukraine dated April 13, 2011 No. 467/2011, the Ministry of Health of Ukraine is a central executive body authority, whose activities are directed and coordinated by the Cabinet of Ministers of Ukraine.**

In accordance with its tasks, the Ministry of Health of Ukraine, in particular, establishes liquidates, reorganizes enterprises, institutions and organizations, including medical institutions, approves their regulations (charters) in accordance with the established procedure appoints and dismisses their heads, forms a personnel reserve for the positions of heads of enterprises, institutions and organizations belonging to the to the sphere of management of this Ministry.

Thus, the Ministry of Health of Ukraine, as a subject of management of

stateproperty, is vested with appropriate powers in relation to enterprises that belong to its management by making the relevant decision, therefore, when adopting the challenged order, the Ministry acted on the basis and within the powers provided by law.

According to the case file, the Order of the Ministry of Health of Ukraine No. 505 was adopted with the aim of bringing the constituent documents of the "UKRMEDPROM" in accordance with the requirements of the legislation of Ukraine in pursuance of the order of the National Securities and Stock Market Commission dated March 28, 2013 No. 636-ЦД-1-Е on elimination of violations of the legislation on securities, which requires the elimination of violations of clause 5 of section XVII "Final and Transitional Provisions" of the Law of Ukraine 'On Joint Stock Companies'. Companies" regarding bringing the charters and internal regulations of the company in line with the norms of regulations of the company in accordance with the provisions of this Law by April 30, 2011.

According to clause 3.1 of the Charter of the State Joint Stock Company "UKRMEDPROM" approved by the order of the Ministry of Health of Ukraine dated April 7, 2009, in the version that was in force before the approval of the new version of the Charter of JSC "UKRMEDPROM" it is established that the company is established in the form of an open joint stock company.

In view of the above, in accordance with the Order of the Ministry of Health of Ukraine dated July 17, 2014 No. 505 of the Ministry of Health of Ukraine dated 17 December 2014, no changes in the organizational and legal form of the State Joint Stock Company "UKRMEDPROM" has not been changed, but only the name of the of the company.

In accordance with subparagraph 21 of paragraph 1 of the Resolution of the Cabinet of Ministers of Ukraine No. 313 dated April 2, 2008 April 2, 2008, No. 313 "On measures to improve the management of State-Owned Property", it is established that central executive authorities, other authorities, other entities managing the corporate rights of the state in approval of the Cabinet of Ministers

of Ukraine: make decisions on reorganization of business entities in which the share of the state in the authorized capital exceeds 50%; approve the tasks of the state exceeds 50%; approve tasks for their representatives to for voting in the respective governing bodies of the companies when making of the said decisions.

Since there have been no changes in the organizational and legal form of UKRMEDPROM did not take place, the change of the company's name did not require the approval of the Cabinet of Ministers of Ukraine.The court panel agrees with the position of the courts of previous instances regarding the failure to change the composition of the Supervisory Board of PJSC “UKRMEDPROM”, since the order of the No. 505 of the Ministry of Health of Ukraine dated July 17, 2014 “On changing the name and approving of the new version of the Charter of the State Joint Stock Company “UKRMEDPROM” the composition of the Supervisory Board of PJSC “UKRMEDPROM” was not changed.

The courts of previous instances did not establish, and the plaintiff did not prove, that the challenged orders violate the rights, freedoms or interests of the plaintiff, and relate directly to the interests of PJSC “UKRMEDPROM” and PERSON_4, who did not raise the issue of canceling such orders.

As for the plaintiff's arguments about the violation of his labor rights and illegal dismissal from the position of the Chairman of the Executive Board of UKRMEDPROM the panel of judges agrees with the conclusion of the court of first instance and the court of appeal that the Order of the Ministry of Health of Ukraine No. 505 of July 17, 2014 “On changing the name and approval of the new version of the Charter of the State Joint Stock Compan “UKRMEDPROM” and No. 121-o of July 21, 2014 ”On Appointment of the General Director of the Public Joint Stock Company “UKRMEDPROM” are not decisions to dismiss the plaintiff.As can be seen from the case file, the termination of PERSON_2's powers and and termination of the employment contract took place on the basis of the order of the Ministry of Health of Ukraine dated No. 117-o of July 17, 2014 “On the termination of PERSON_2's powers”, and this order creates legal

consequences for the plaintiff and can be appealed in accordance with the established procedure.

The plaintiff appealed against the order of the Ministry of Health of Ukraine dated July 17, 2014 No. 117-o“On Termination of Powers of PERSON_2” to the Darnytsia District Court of Kyiv. of Kyiv, which is not disputed by the parties and is confirmed by the decision of the Darnytsia District Court of Kyiv dated October 14, 2014 in case No. 753/13978/14-ц, a copy of which is contained in the case file.Based on the above, the panel of judges agrees with the conclusion of the courts that the Ministry of Health of Ukraine acted within the powers defined by the Law, and did not violate the rights, freedoms and interests of the plaintiff by adopting Order No. 505 of July 17, 2014 “On changing the name and approving a new of the Charter of the State Joint Stock Company “UKRMEDPROM” and No. 121-o of July 21, 2014. July 21, 2014 No. 121-o “On the appointment of the General Director of the Public Joint Stock Company “UKRMEDPROM”, and therefore the claims claims in this part are not subject to satisfaction April 24, No. 826/12847/14 http://www.reyestr.court.gov.ua/Review/73634662

- **In disputes regarding the recognition of illegal and cancellation of an order on dismissal of a person from the position of director of a state-owned enterprise that is in bankruptcy and reinstatement of the person in his/her position, the proper the defendant is the enterprise represented by the State Property Fund of Ukraine, and not the Fund itself.**

On June 5, 2019, the Grand Chamber of the Supreme Court considered in the the cassation appeal of PERSON_3 against the decision of the of the Pechersk District Court of Kyiv of February 23, 2018 and the decision of the of the Kyiv City Court of Appeal of May 24, 2018 in a civil case on PERSON_3's claim against the State Property Fund of Ukraine, third parties who do not not claiming any independent claims regarding the subject matter of the dispute: PJSC “Kryvyi Rih PJSC, PERSON_4, on the recognition of illegal and cancellation of the order of the No. 1019 of June 20, 2017 on her dismissal from the position of the

General Director of PJSC “Kryvyi Rih Heat and Power Plant” as of June 22, 2017. and reinstating her in the said position from the same date and adopted a resolution in which it stated the following.

The courts found that on June 8, 2016, the Fund and PERSON_3 entered into a a contract, according to which the latter was appointed to the position of General Director of the State Enterprise Kryvyi Rih Heat and Power Plant, the successor of which is PJSC “Kryvyi Rih Heat and Power Plant, and adopted a resolution stating the following.By order of the Fund dated June 20, 2017, the plaintiff was dismissed from her position as from the position of General Director of PJSC Kryvyi Rih Heat and Power Plant on June 22, 2017. 2017 on the basis of clause 14 of the contract of June 8, 2016, clause 8 of Article 36 of the Labor Code of Ukraine. The contract was terminated on June 22, 2016 in accordance with clause 29 of the contract.

When applying to the court with the said claim, PERSON_3 noted that the above-mentioned order did not specify the grounds for her dismissal and termination of her contract. of the contract, in addition, her dismissal took place in contravention of the provisions of Art. 184 of the Labor Code of Ukraine, as well as in violation of Articles 4, 7 of the Convention

International Labor Organization Convention No. 158 concerning the termination of employment at the of 1982, and therefore the plaintiff asked to recognize as illegal the Fund's order on her dismissal of June 20, 2017, as unlawful and to reinstate her in the position of General Director of PJSC Kryvyi Rih Heat and Power Plant.

In connection with the entry into force on January 19, 2013 (except for certain provisions) of the Law of Ukraine provisions) of the Law of Ukraine No. 4212-VI dated December 22, 2011, the Law of Ukraine “On Restoration of the Law of Ukraine “On Restoration of Debtor's Solvency or Declaring a Debtor Bankrupt”.

According to para. 7 of Section X “Final and Transitional Provisions” of the said Law Art. 12 of the Commercial Procedural Code of Ukraine was

supplemented by clause 7, according to which the jurisdiction of Commercial courts are to hear cases on disputes over reinstatement of officials and employees of the debtor in respect of which a bankruptcy case has been initiated. bankruptcy proceedings.

According to the Law of Ukraine No. 5405-VI dated October 2, 2012 “On Amendments to Certain Legislative Acts of Ukraine on Fulfillment of of Economic Obligations” Section X ”Final and Transitional Provisions”of the Law of Ukraine “On Restoring Debtor's Solvency or Recognizing of the Law of Ukraine “On Restoring Debtor's Solvency or Recognizing It as Bankrupt” is supplemented by para. 1-1, which stipulates that the provisions of this Law shall be applied by commercial courts when considering bankruptcy cases bankruptcy proceedings initiated after the entry into force of this Law came into force.Thus, when deciding on the jurisdiction (subject matter jurisdiction) of a case in disputes over the reinstatement of officials and officials of the debtor, the courts must take into account the provisions of clauses 1-1 of section X “Final and Transitional Provisions” of the Law of Ukraine “On Restoring of Debtor's Solvency or Declaring a Debtor Bankrupt, the requirements of Art. 15 of the Civil Procedure Code of Ukraine, Article 12 of the Commercial Procedure Code of Ukraine and take into account the date of initiation the date of initiation of bankruptcy proceedings by the economic court.

A similar legal conclusion was made by the Grand Chamber of the Supreme Court in decision of October 31, 2018 in case No. 541/459/17, and there are no grounds for to deviate from it.

Since PERSON_3 filed a lawsuit for reinstatement in the position of in the position of General Director, i.e. reinstatement of an official PJSC “Kryvyi Rih Heat and Power Plant”, against which the bankruptcy case was initiated bankruptcy proceedings after January 19, 2013, the courts of previous instances

made a reasonable conclusion that the proceedings in the case were closed for the reasons provided for in paragraph 1 of part 1 of Article 255 of the Civil Procedure Code of Ukraine, since the said dispute is subject to to be considered

by the economic court, which is considering the case of bankruptcy, which makes it impossible to consider the case in civil proceedings.

Regarding the plaintiff's reference to the fact that she filed claims against the Fund, which directly issued the disputed order and is not in bankruptcy proceedings bankruptcy and is not a debtor in the bankruptcy case, and not to PJSC “Kryvyi Rih Heat and Power Plant, the following should be noted.

The courts found that on December 8, 2015, the Fund, by Order No. 1869, made the following decisions the decision to privatize Kryvyi Rih Heat and Power Plant, and the Ministry of of Energy and Coal Industry of Ukraine by its order of January 20, 2016 transferred the Kryvyi Rih Heat and Power Plant to the Fund's management.

It was also found out that the Order of the Cabinet of Ministers of Ukraine dated November 30, 2016 No. 911-r November 2016 No. 911-r approved the plan for the privatization of the single property complex of the State Enterprise “Kryvyi Rih Heat and Power Plant”.

According to Article 1 of the Law of Ukraine “On the State Property Fund of Ukraine”, the Fund is a central executive body with a special status that implements state policy in the field of privatization, lease, use and alienation of of state property, management of state property, including corporate rights of the state in relation to state property objects that belonging to its management, as well as in the field of state regulation valuation of property, property rights and professional valuation activities.

According to paragraph 9 of clause 2 of part 1 of Article 5 of the Law of Ukraine “On the State Property Fund of Ukraine, the Fund exercises the powers of the owner of state property, including corporate rights, in the process of privatization and controls the activities of enterprises, institutions and organizations under its management.

Paragraph 4 of Part 1 of Article 6 of the Law of Ukraine “On Management of State Property” stipulates that the authorized their tasks, appoint and dismiss the following persons heads of state unitary enterprises that do not have a

supervisory board institutions, organizations and business entities, in the authorized capital of which more than 50 percent of shares in the authorized capital of which more than 50 percent of shares (stakes) belong to the state, and in which no supervisory board, conclude and terminate contracts with them, monitor compliance with their requirements.

Subparagraph “e” of clause 1 of part 1 of Article 7 of the Law of Ukraine “On Management of State Property stipulates that the Fund, in accordance with the legislation in relation to state-owned enterprises, institutions and organizations exercises the powers determined by powers in the course of bankruptcy proceedings of state-owned enterprises under its management and economic organizations with corporate rights of the state, including maintaining their registers.

According to part 4 of Article 11 of the said Law, if the state is the sole shareholder (participant) of a business organization, the functions of managing the corporate rights of the state are performed in accordance with this Law directly, without convening a general meeting of shareholders (participants) of a business entity.

Part 1 of Art. 18 of the Law of Ukraine No. 2163-XII of March 4, 1992 “On Privatization of State Property”, in force at the time of the disputed legal relations, stipulates that when a state-owned enterprise is transformed into a joint stock company in the process of privatization, its founder is a state privatization body acting within the powers provided for by by the legislation.

A similar provision is contained in the Law of Ukraine of January 18, 2018, No. 2269 VIII “On Privatization of State and Communal Property”, effective as of 110 at the time of consideration and resolution of the case by the courts of previous instances (part 2 of Art.17).

Thus, the Fund in the process of privatization and during the bankruptcy proceedings bankruptcy proceedings of this company, taking into account the above legal requirements and relations between the parties, the Fund exercises organizational powers in relation to PJSC “Kryvyi Rih Heat and Power Plant”.

The Fund acts as the supreme body of the company, and therefore may appoint the executive body of the company at its own discretion.

At the same time, based on the essence of the claims, the defendant in this case is is actually PJSC Kryvyi Rih Heat and Power Plant (after renaming on April 26, 2018 April 2018 - Joint Stock Company “Kryvyi Rih Heat and Power Plant”) represented by the Fund, and not the Fund itself, as erroneously stated in the statement of claim.

For more details, please read the text of the resolution of the Grand Chamber of the Supreme Court of June 2019 in case No. 757/42740/17-ц can be found at at the link http://www.reyestr.court.gov.ua/Review/82703523

- **Failure to appoint a representative of the Fund as a member of the supervisory board of State Property, if the state owns more than 25% of the authorized capital of the legal entity's authorized capital, entails invalidation of the decision of the general meeting of shareholders**.

The State Property Fund of Ukraine (hereinafter - the Fund, the plaintiff) applied to the Commercial Court of Ivano-Frankivsk region with a claim against the Public Joint Stock Company “Neftekhimik Prykarpattya” (hereinafter - PJSC “PJSC Neftekhimik Prykarpattya, the Company, the defendant) to invalidate the decision of the general meeting of PJSC “Neftekhimik Prykarpattya” dated April 17, 2018, formalized by the minutes of 17.04.2018.

The claims are based on the fact that the general meeting of shareholders of PJSC PJSC “Neftekhimik Prykarpattya”, held on 17.04.2018, was held with in violation of the requirements of the current legislation, in particular without taking into account the proposal of the State Property Fund of Ukraine regarding candidates for the Supervisory Board, in accordance with Article 38 of the Law of Ukraine “On Joint Stock Companies”, the defendant failed to comply with the deadlines for sending a notice of the general meeting and the draft agenda. In addition, the plaintiff points to the defendant's refusal to register the plaintiff's representative for participation in the general meeting representative to participate in the general meeting.

The court has the right, taking into account all the circumstances of the case, to uphold the contested decision if the violations do not violate the legal rights of the shareholder appealing the decision.

The courts of previous instances have established that the plaintiff was duly notified on holding the general meeting by sending on 16.03.2018 notice and draft agenda to the shareholders, as evidenced by a receipt-list of Form 103, as well as the publication of the announcement on the same date in the database of the National Securities and Stock Market Commission on the official website of the Commission and in the daily printed edition of the National Securities and Stock Market Commission No. 52 dated 16.03.2018p.

Letter of the State Property Fund of Ukraine No. 10-17-6621 dated 03.04.2018 regarding the candidate to the Supervisory Board of PJSC "Neftekhimik Prykarpattya" The Company received the letter after the meeting, namely on April 24, 2018.According to clause 9.1.4, clause 9.2.1 of the Charter of PJSC "Neftekhimik Prykarpattya", it is established that at least for three years, the agenda of the general meeting must include issues, in particular, the election of members of the supervisory board.Courts of previous instances have established that the State Property Fund of Ukraine is one of the founders of PJSC "Neftekhimik Prykarpattya", the amount of contribution to the authorized capital of which amounts to UAH 852,865 and owns 3,411,562 ordinary registered shares, which is 26% of the authorized capital of PJSC "Neftekhimik Prykarpattya".

Paragraph 3 of Part 1 of Article 5 of the Law of Ukraine "On the State Property Fund of Ukraine" stipulates that the powers of the State Property Fund of Ukraine in the field of management of the state's corporate rights include, in particular, the following management of corporate rights that are in its sphere of management.

The Law of Ukraine "On Management of State Property Objects" in accordance with the Constitution of Ukraine defines the legal basis for the management of stateproperty.

Part 1 of Art. 3 of the said Law provides that the objects of management of state property are, in particular, corporate rights belonging to the state in the authorized capital of economic organizations. the authorized capital of economic organizations.

According to Part 1 of Article 4 of the Law of Ukraine "On Management of State Property Objects property" the State Property Fund of Ukraine is one of the subjects of management state property objects.

According to paragraph 12 of Article 11 of the said Law, if the corporate rights of the of the state exceed 25 percent of the authorized capital of the economicorganization, the supervisory board and audit committee must include a representative of the State Property Fund of Ukraine or a representative of the State Property Fund of Ukraine or an authorized management body.

This provision is imperative and is subject to implementation not only by the State Property Fund of Ukraine, but also by PJSC Neftekhimik Prykarpattya, whose shareholder owns 3,411,562 ordinary registered shares, which is 26% of the authorized capital of PJSC Neftekhimik Prykarpattya.

Taking into account the above, the court of appeal came to the rightful conclusion that PJSC "Neftekhimik Prykarpattya", holding the general meeting of the Company and electing members of the Supervisory Board, did not comply with the mandator of the Law of Ukraine "On Management of State Property Objects", by virtue of which a representative of the by virtue of which a representative of the State Property Fund of Ukraine must be included in the supervisory board. must be included in the supervisory board.

That is, the failure of the State Property Fund of Ukraine to submit proposals for candidates to the company's bodies and failure to include such a candidate of the Fund to the ballot for cumulative voting and the draft procedure the agenda of the general meeting makes it impossible for the general meeting on this issue.

The Supreme Court agrees with the position of the court of appeal that these violations of the Law of Ukraine "On Management of State Property"

cannot be eliminated property" cannot be eliminated by holding an extraordinary general meeting, since according to the company's charter, the total number of members of the Supervisory Board is five persons, and by the decision of the general meeting of the Company, formalized by the minutes of 17.04.2018 (clause 14), this number of members has already been elected, which makes it impossible to elect another member of the Supervisory Board (representative of the State Property Fund of Ukraine), as provided for by the aforementioned Law.

The Supreme Court states that the failure of PJSC "Neftekhimik Prykarpattya" within the time limit provided for in Article 38 of the Law of Ukraine "On Joint Stock Companies" proposals of the State Property Fund of Ukraine regarding a candidate to the Supervisory Board from the State Property Fund of Ukraine does not exempt the defendant from the obligation to comply with the mandatory provisions of paragraph 12 of Article 11 of the Law "On Management of State Property Objects" in PJSC "On Joint Stock companies".June 25, 2019 No. 909/637/18 http://reyestr.court.gov.ua/Review/82672219

- **If the state owns 50 percent plus one share in the authorized in the authorized capital of a PJSC, the powers of the State Property Fund of Ukraine the right to appoint members of the supervisory board of such a PJSC.**

The courts found that the state, represented by the Fund, owned 50 percent plus one share in the authorized capital of PJSC. That is, the Fund as a shareholder and legal entity - a body managing the state's corporate rights, could be a member of the supervisory board and had the right to delegate its powers to perform duties in this board to other persons.

By the Order of the Fund No. 1970 dated July 14, 2014, the following powers were transferred to the Fund's branch the powers to manage the corporate rights of the state, including PJSCS. The Department of Corporate Rights of the State and the Department of Financial analysis and restoration of the Fund's solvency within two weeks from the from the date of signing this order, are

instructed to ensure the transfer of acceptance and transfer to the regional office of the documents and materials on management of corporate rights of the state, including PJSCs.

Pursuant to the Regulation, the Fund's office issued Order No. 924 dated July 28, 2014, No. 924 on acceptance of the authority to manage the corporate rights of the state in business entities, including PJSCs.

In addition, on September 8, 2014, the Fund's office issued a controversial order on appointment of three representatives of the regional office to the of the Supervisory Board of the PJSC, given that on September 13, 2010, at the general shareholders meeting of the company elected three representatives of the state represented by the Fund to the Supervisory Board representatives of the state represented by the Fund were elected to the supervisory board.

At the same time, by a controversial order, one of the representatives of the regional branch in the supervisory board was appointed chairman, in accordance with subpara. 3 of clause 8.3.2 of the charter, since the state's corporate rights in the authorized capital of the enterprise exceed 50 percent of the company's authorized capital.

On September 10, 2014, the defendant sent a letter to the plaintiffNo. 11-14-04320 on the appointment of representatives of the Fund to the Supervisory Board of the PJSC. Subsequently, the Fund confirmed the powers of the representatives appointed by the representatives appointed by the regional office as members of the supervisory board - three representatives of the state three representatives of the state, also issued the relevant powers of attorney dated October 8, 2014. 2014, No. 282, No. 283, No. 284, to represent the interests of the state in the the Supervisory Board of the PJSC and thus confirmed the rights and capabilities of the representatives of the regional office specified in the disputed order.

Taking into account the established circumstances of the case, the Court agrees with the conclusions of the courts of first instance and appeal on the legality of the disputed order in regarding the appointment of three state

representatives to the supervisory board of PJSC and that it was adopted within the powers and in the manner prescribed by the Law.

As for the legality of the appointment of the chairman of the supervisory the court of appeal, having analyzed the requirements of Articles 32, 33, 54 of the Law of Ukraine "On Joint Stock Companies" and clause 8.3.15 of the charter, came to the correctly concluded that the legality of the election (re-election) of the chairman of the supervisory board, who are not the plaintiff or the appellant in the case. Therefore, since the disputed order in terms of appointment of the chairman of the supervisory board does not violate the rights of the plaintiff or the appellant, this does not lead to any legal result for the plaintiff or the appellant as a shareholder of the company when taking part in the management of a joint stock company's management.

More details on the text of the resolution of the Supreme Court as part of the panel of judges Administrative Court of Cassation can be found at

http://www.reyestr.court.gov.ua/Review/79589003

According to clause 24 of Procedure No. 777, a candidate for the position of the company is subject to approval by the Cabinet of Ministers of Ukraine, as well as the order of the SPF of Ukraine (as the entity managing the corporate rights of the of the state in this company) on approval of the voting task for the state representative to vote at the general meeting of the company in accordance with paragraph 4 of Procedure No. 678.

The panel agrees with the defendant's arguments that both procedures defined by Procedure No. 777 and Procedure No. 678 are not mutually exclusive or contradictory to each other. The procedure established by them for managing of the state's corporate rights in business organizations is consistent and is aimed at realizing the right of the state as the owner of such rights in order to meet state and public needs.

In satisfying the third party's claims, the courts of previous instances came to the erroneous conclusion that, by establishing the Commission to conduct the competition for the position of the Chairman of the Board of PJSC Centrenergo,

the Ministry in thus decided to elect the head of this company without the participation of its shareholders and contrary to the company's constituent documents and the provisions ofof the Law No. 514-VI of Ukraine “On Amendments to Certain Laws of Ukraine on Ensuring Competitive Conditions for Electricity Generation from alternative energy sources”. This conclusion is hasty and based on misunderstanding of the provisions of the Law of Ukraine “On Management of State-Owned State-Owned Property, as well as the provisions of Order No. 777 and Order No. 678.

Competition for the selection of a candidate for the head of a business entity of the public sector of economy is only a prerequisite for the adoption the relevant decision by the general meeting of the company, respectively, at this stage stage (competitive selection of the head), the rights and interests of PERSON_2 as a shareholder of the company are not violated.

In addition, in the scope of the factual circumstances established in this case, described above, taking into account their content and legal nature, the panel of judges concluded concluded that the challenged decisions of the Ministry and the Commission are not acts of as a candidate for the head of the company, and PERSON_2 as a shareholder of this company as a shareholder. Their arguments do not prove the existence of a real negative impact on their specific rights or interests from the issuance of the contested decision of the Ministry and the Commission, which makes it impossible to the application of the jurisdictional method of recognizing these acts ars illegal.

The text of the resolution of the Supreme Court as part of the panel of judges of the Administrative Court of Cassation can be found et http://www.reyestr.court.gov.ua/Review/74718229

- **The period when a company shareholder may convene an an extraordinary general meeting of shareholders independently, should be carried out from the moment the company receives the request to convene of the extraordinary general meeting**

The notice of extraordinary general meeting shall be approved by the

shareholders who convene the general meeting.

In this regard, the courts have established that the State, represented by the State Property property of Ukraine, as a shareholder of the Public Joint Stock Company “Scientific andProduction Concern “Nauka” with a share in the company's authorized capital of 46.4489 %, has exercised the right provided for by the law and the defendant's charter the right to convene an extraordinary general meeting of shareholders in connection with the failure of the Supervisory Board of the company to convene such meeting and, in particular, on 25.10.2016, i.e. the Fund for compliance with part 6 of Article 47 of the Law of Ukraine “On Joint Stock Companies” (on the the day after the expiration of the 10-day period established by the said provision). period for the Supervisory Board of the defendant to make a decision to convene an extraordinary meeting), took actions to determine the date and place of the meeting, notification of shareholders, election of the registration commission, temporary and a temporary counting commission.

In particular, the Order of the State Property Fund of Ukraine No. 1902 dated 25.10.2016, the date of the extraordinary general meeting of shareholders was set as 28.11.2016. of the extraordinary general meeting of shareholders of the company, approved the form of the notice of extraordinary general meeting of shareholders was approved, 25.10.2016 was set as the date for compiling the list of shareholders who are to be to be notified of the extraordinary general meeting was set as 22.11.2016. the date of compilation of the list of shareholders entitled to participate in the the extraordinary general meeting, elected the registration commission for registration of shareholders, authorized the registration commission to exercise its powers the temporary counting commission.

The panel of judges disregards the plaintiff's reference in the cassation appeal to the fact that the courts of previous instances violated the requirements of parts 2 and 6 of Article 47 of the Law of Ukraine “On Joint Stock Companies” and incorrectly determined the period when the plaintiff as a shareholder of the

defendant had the opportunity to convene an extraordinary general shareholders' meeting, since based on the content of these norms, the countdown of such period should be counted from the moment the company receives a request to to convene an extraordinary general meeting, and the plaintiff's claim that such date is November 4, 2016, are based on an incorrect application of the said provisions to the disputed legal relations.

The panel of judges also disregards the plaintiff's reference in the cassation appeal that the courts of previous instances applied to the disputed legal relations the wording of Part 6 of Article 47 of the Law of Ukraine “On Joint Stock Companies”, which was not in force at the time of the disputed legal relations, since comparative analysis of the wording of the said provision applied by the courts, which came into force on January 1, 2018, and the version in force at the time of the State Property Fund's request to convene an extraordinary of the general meeting of PJSC “Scientific and Production Concern ‘Nauka’, indicates that these versions do not contain significant differences that would affect (refute) the conclusions of the courts of previous instances in this case.

The courts of previous instances found that on October 27, 2016, the State Property Fund of Ukraine of State Property of Ukraine as a shareholder of the defendant in accordance with the requirements of the law and the provisions of the charter of PJSC “Scientific and Production Concern ‘Nauka’ entered into an agreement with

PJSC “National Depository of Ukraine”, i.e. with the person who keeps records of ownership rights to the company's shares, an agreement on the provision of services for providing personal notification of shareholders about the holding of the General Meeting of Shareholders No. 429, and on November 16, 2016, entered into an agreement on the provision of services to ensure personal notification of shareholders about changes to the draft agenda of the General Meeting of Shareholders No. 459, which were included in the agenda on the basis of the order of the of the State Property Fund of Ukraine No. 2015 dated November 8, 2016.Pursuant to the above requirements of the applicable

law, the provisions of the defendant and the terms of the agreement concluded between the State Property Fund of Ukraine and PJSC “National Depository of Ukraine, the National Depository of Ukraine sent to all shareholders of the company by registered mail personal notices of the extraordinary general meeting to be held on November 28, 2016

Extraordinary General Meeting of Shareholders with all necessary information and notifications of changes to the agenda, which is confirmed by the lists of grouped mailings available in the case file for October 28, 2016 and for November 16, 2016 with the mark of “Ukrposhta”

Thus, the State Property Fund of Ukraine, at the request of which the on November 28, 2016, the extraordinary general meeting was convened, fulfilled the obligation provided for of the company to send notices of the general meeting of the joint-stock company and the draft agenda within the time limit specified by law and in accordance with the procedure established by law and the provisions of the charter Sending notifications by concluding relevant agreements with the person who keeps records of ownership of the company's shares, the relevant service agreements.

At the same time, as correctly stated by the court of appeal, the following is required fulfillment by the company's shareholder of the obligation provided for by law and the charter obligation to send notices of general meetings is not linked to the fact of the fact that the company's shareholder received such a notice, and therefore the panel of judges does not take into account the plaintiff's reference in the cassation appeal to the fact that he was not properly notified of the extraordinary general meeting.

In addition, the courts have established that the Fund, in order to take an additional measures to notify the company's shareholders of the meeting published in the specialized printed edition “Bulletin of the National Securities and Stock Market Commission” (No. 206) announcement of an extraordinary general meeting of shareholders of the company, which specifies the place, date and time of registration of shareholders, holding such

meeting, and the agenda.

In view of the established circumstances, the panel of judges agrees with the conclusions of the courts of previous instances that mailed notices of the extraordinary general meeting and amendments to the agenda were sent in the manner and within the time limits established by special legislation that regulating corporate legal relations, and therefore correctly and correctly and reasonably rejected the plaintiff's reference to the defendant's failure to comply with when sending notices of meetings the requirements of Article 15 of the Convention commercial matters, since according to Art. 1 of the Convention it applies in civil and commercial matters in all cases where there is a need to transmit judicial and extrajudicial documents for service abroad, and therefore the provisions of the said Convention, in particular, regarding the terms of sending notices to non-resident shareholders of a company are not applicable to corporate legal relations.

The courts found that on November 28, 2016, at the extraordinary general shareholders' meeting was held on November 28, 2016, as a quorum was reached, since two shareholders, represented by authorized representatives two shareholders in the person of authorized representatives, who in together own 61.6293% of the shares. At the same time, the courts found that there is no evidence of the lack of authority of the shareholders' representatives who were present at the meeting, the case file does not contain any evidence of a lack of authority. The above refutes the claim of the plaintiff that the plaintiff's claim that the extraordinary general meeting did not reach the required quorum at the extraordinary general meeting.

In view of the above, the panel of judges believes that the courts of previous instances correctly concluded that during the convening and holding of the extraordinary general meeting of PJSC Research and Production Concern Nauka PJSC complied with the requirements of the current legislation and the constituent documents of PJSC “Scientific and Production Concern “Nauka”, the extraordinary general meeting was was held at the

request of the State Property Fund of Ukraine as a shareholder the defendant, which has taken all the necessary actions required by law and the charter actions to convene and hold the meeting.

Read more with the text of the resolution of the Supreme Court composed of the panel of judges Commercial Court of Cassation on April 24, 910/3794/17 http://www.reyestr.court.gov.ua/Review/73699871

- **Review of legal positions of the Supreme Court on the application of the provisions of the Bankruptcy Code of Ukraine:**

GENERAL PROVISIONS

1. Rehabilitation of the debtor before the opening of bankruptcy proceedings (Article 5 of the BEP)

Failure to include all creditors of the debtor in the rehabilitation plan is not a violation of of the provisions of the BEP

Despite the settlement of the debtor's rehabilitation prior to the opening of bankruptcy proceedings by a special law on bankruptcy procedures – the legislator, however, does not extend the entire range of means and mechanisms of legal regulation characteristic of the bankruptcy procedure. bankruptcy, including the competitive nature and priority of satisfaction of claims creditors in compliance with the specific Bankruptcy Code for the bankruptcy procedure priority of satisfaction of creditors' claims.

The only reservation regarding the priority of creditors' claims is contained in the third paragraph of part three of Article 5 of the BEP, according to which the rehabilitation plan does not include the claims of the first and second priority of satisfaction of claims of creditors specified in this Code.

In turn, this provision, together with the second sentence of the fourth paragraph of part three and the first paragraph of part ten of Article 5 of the BEPB indicate that participation in the rehabilitation of all creditors of the debtor and inclusion of all obligations of the debtor to the rehabilitation plan is not a requirement for its preparation in within the meaning of the provisions of

part two of Article 5 of the BEP, and the failure to include all creditors in the to include all of the debtor's creditors in the rehabilitation plan is not a violation of the said provisions of the Law.

When making a decision to refuse to approve the rehabilitation plan submitted by the or to approve it, the court must, in a court hearing examine the objections of the creditor who voted against the approval of the or against the introduction of this pre-trial procedure in general, as well as analyze the creditor's arguments to establish the circumstances of the possibility of satisfying its claims in the event of the implementation of the pre-trial rehabilitation plan in an amount exceeding the amount of claims that can potentially be satisfied in the liquidation procedure, as well as the grounds for refusal to accept the application for opening of rehabilitation prior to the initiation of bankruptcy proceedings and approval of the rehabilitation plan.

The legislator, having granted the court the power under part two of Article 5 of the CEPB to verify and evaluate the rehabilitation plan, did not authorize it to carry out a detailed economic assessment of each of the measures planned by the debtor in the of the measures to restore the debtor's solvency.

At the same time, the court is obliged to determine, based on the information from the liquidation analysis, whether the implementation of the rehabilitation plan is beneficial for creditors as compared to liquidation (Article 5(2)(b) of the Unified Commercial Bankruptcy Code).

For more details on the text of the resolution of the CGS of the Supreme Court of 18.05.2021 in case No. 922/2071/20 is available at the link https://reyestr.court.gov.ua/Review/98391246

A similar legal position is given in the decision of 09.06.2021 in case No. 924/1083/20.

2. Procedure for consideration of disputes in which the debtor is a party (Article 7 of the CUGB) On the need to comply with the principle of procedural economy when considering a case

According to Article 7 of the Code of Commercial Procedure, if the debtor is not a party to a property dispute or there are no claims against the debtor and its property, such a shall be considered in a separate lawsuit, and not within the debtor's bankruptcy case the debtor's bankruptcy case.

In reversing the decision of the court of first instance, the Commercial Court of Appeal was guided only by the fact that the claim should be considered in a separate a separate action, and not within the bankruptcy proceedings.

At the same time, there were no violations of procedural law by the local court or incorrect application of the substantive law on the merits of the dispute, the court of the court of appeal did not establish, nor did it comment on the correctness of the court's conclusions on the partial satisfaction of the claims on the mortgage foreclosure.

Such actions of the court of appeal contradict the principle of procedural economy, required in bankruptcy proceedings, according to which the economic court and the participants in the court proceedings must use all procedural means established by law in an economical and efficient manner use all procedural means established by law for correct and prompt consideration of the bankruptcy case in compliance with procedures and deadlines.

Taking into account the principle of procedural economy, only in the case of appellate review the court's decision on the merits of the dispute and in the presence of established by the appellate court, the grounds for reversal of this decision as as such that was made in violation of the substantive law and the actual circumstances of the absence of a property dispute with respect to the party in bankruptcy proceedings, such a court decision may be set aside, including on the grounds of consideration of the dispute in a separate action.

The disputes specified in part two of Article 7 of the BIPB are considered and are considered and resolved by the court, although within the debtor's main bankruptcy case, but in a separate action proceeding in

accordance with the rules of the Commercial Procedure Code of Ukraine.

For consideration in the action proceedings within the bankruptcy case, which is governed by the rules of the BEP, a property or non-property dispute, the commercial court must calculate the amount of the court fee from the rate payable for filing a claim, respectively, of a property or non-property (subparagraphs 1, 2 of paragraph 2 of part two of Article 4 of the Law of Ukraine "On Court Fees").

At the same time, the rates of court fees for filing applications in the main bankruptcy procedure bankruptcy procedure are provided for in subparagraphs 8-10 of paragraph 2 of part two of Article 4 of the Law of Ukraine "On Court Fees".

For more details on the text of the resolution of the CGS of the Supreme Court of 14.04.2021 in case No. 905/1818/19 can be found at the link https://reyestr.court.gov.ua/Review/96483494.

BANKRUPTCY OF LEGAL ENTITIES

3. Bankruptcy proceedings

Regarding the prohibition on opening bankruptcy proceedings during the period of of quarantine

Direct indication in the provisions of paragraphs 1-2 of the Final and Transitional Provisions of the BEP and the Law of Ukraine "On Amendments to the Code of Bankruptcy Procedures on preventing abuses in the field of bankruptcy for the period of implementation of measures aimed at preventing the occurrence and spread of the COVID-19 coronavirus disease" (hereinafter referred to as Law No. 728-IX), which introduced relevant amendments to this Code, to prevent the opening of proceedings in bankruptcy cases of debtors - legal entities at the request of creditors on claims to the debtor that arose from March 12, 2020, is a separate reservation regarding the procedure and calendar period of application of this and the extension of this rule to legal relations in time.

The entry into force of these amendments to the LCUJB on 10/17/2020

does not limit the application of the relevant provisions of the CGLB and Law No. 728-IX and their extension to substantive legal relations and procedural legal relations on the opening of bankruptcy proceedings that arose before the entry into force of into force on October 17, 2020.

Existence of legislative restrictions in the form of a ban on the opening of bankruptcy proceedings against a debtor whose claims arose from a creditor after the creditor after 12.03.2020 - during the quarantine period established by the Cabinet of Ministers of Ukraine to prevent the spread of coronavirus disease COVID-19, is the basis for refusing to open bankruptcy proceedings in the case of the debtor's bankruptcy.

More details on the text of the decision of the CCC of the Supreme Court of 21.04.2021 in case No. 911/2766/20 is available at the link https://reyestr.court.gov.ua/Review/96702578 Regarding the court's determination of the existence of a dispute of law in the preparatory hearing

Given the time limit for the preparatory hearing and the standards of proof that the court may use at this stage of the process, the evidence submitted by the creditor to the application for commencement of bankruptcy proceedings bankruptcy proceedings, the evidence submitted by the creditor to confirm the validity of the claims against the debtor must convincingly demonstrate the absence of a dispute over the right to claim of the initiating creditor and the existence of a violated (unfulfilled) economic and legal obligation.

The absence of a dispute of law in the context of bankruptcy proceedings is as follows absence of ambiguity regarding the resolution of issues related to the essence (subject matter) of the obligation, the basis for the obligation, the amount of the obligation and debt structure, term of fulfillment of the obligation, etc.

Therefore, establishing the absence of a dispute over the right to claim the initiating creditor is a prerequisite for creditor is a necessary prerequisite for the opening of bankruptcy proceedings against the debtor.

He opposite will result in a refusal to open bankruptcy proceedings in accordance with part six of Article 39 of the BEP, according to which the grounds for refusal to open bankruptcy proceedings is that the creditor's claims indicate the existence of a dispute about the right, which is subject to resolution in the course of action proceedings.

Therefore, the outcome of the final court decisions in cases No. 905/370/20 and No. 925/731/18, the presence/absence of legal grounds for theof the legal basis for the stated claims, as well as the determination of the specific amount of monetary the initiating creditor's claims against the debtor, which indicates the existence of a dispute on the right to be resolved in the course of the action proceedings and makes it impossible to open bankruptcy proceedings against the debtor, since the claimed monetary claims against the debtor arose and were claimed on the basis of on the basis of the supply agreement, the validity of which is the subject of litigation in case No. 905/370/20.

The existence of a court decision that has entered into force at the time of the application the initiating creditor to the court with an application to initiate bankruptcy proceedings. bankruptcy proceedings, in the absence of evidence of its repayment by the debtor, is confirmation of the resolution of a dispute over rights by a court in an action.

The provisions of the BIP do not establish an obligation for the initiating creditor to to prove that the debtor in the bankruptcy case is unable to fulfill the property obligations that have come due. Proving the circumstances of the ability to fulfill the property obligations that have come due is the responsibility of on the debtor, as evidenced by the fact that the debtor can provide confirmation of the ability to fulfill its obligations and repay debt (part three of Article 39 of the UBPU). Absence of a debtor's response to the application for opening bankruptcy proceedings, as well as lack of confirmation by the debtor of its ability to fulfill itsobligations and repay the debt do not prevent the proceedings in the the proceedings.

Imposition of the obligation on the initiating creditor to prove the circumstances of the debtor's ability to fulfill its property obligations that have come due, is contrary to the principles of adversarial proceedings.

More details on the text of the decision of the CCC of the Supreme Court of 16.06.2021 in case No. 910/6210/20 is available at the link https://reyestr.court.gov.ua/Review/97783505

4. Invalidation of the debtor's transactions (Article 42 of the BIP)

Regarding the application of Article 42 of the CUGBU to transactions made by the debtor before the entry into force of this Code

The law (other regulatory legal act), during which they occurred or during which they occurred or took place.

The compliance or non-compliance of a transaction with the requirements of the law shall be be assessed by the court in accordance with the legislation in force at the time of the transaction.

Article 42 of the CUZPB, taking into account the provisions of paragraph 4 of the Final and Transitional provisions of this Code, which relates to the procedural rules of the CGPU, shall apply to all applications of insolvency trustees and creditors filed after the entry into force of the BEP, and the temporal criterion for its application is the date of the opening of bankruptcy proceedings. This article provides for three-year period is in any case calculated from the date of opening of the bankruptcy proceedings. Such a period is based on the entry into force of the CUZPB as of 10/21/2019 can be fully effective only if the relevant proceedings are opened after 10/21/2022.

The provisions of Article 42 of the Unified Commercial Bankruptcy Code regarding the grounds for invalidation of transactions of the debtor shall not be applicable to transactions made by the debtor by the debtor prior to the date of entry into force of the UGBU, i.e., before 10/21/2019. To legal relations that existed before 10/21/2019 are subject to the provisions of Article 20 of the Bankruptcy Law shall apply.

Conclusion of the debtor's agreement outside the “suspicious period”

(one year preceding the initiation of bankruptcy proceedings), as defined in Article 20 of the Bankruptcy Law, and the lack of grounds for applying Article 42 of the BEP, given the non-extension of its effect to legal relations that existed before the entry into force of the BEP, do not exclude the possibility of invalidating the debtor's transaction aimed at avoiding foreclosure on its property, in accordance with the general principles of civil law and due to the inadmissibility of abuse of law, and the appropriate method of defense guarantees a practical and effective opportunity to protect the violated rights.

The text of the resolution of the CGS of the Supreme Court of 02.06.2021 in case No. 904/7905/16 can be found at the link https://reyestr.court.gov.ua/Review/97806436 On the need to apply categories of evidence standards

To prevent the threat of recognition by the bankruptcy court of of fictitious accounts payable in case of appeal by interested of the debtor's transactions in accordance with the special provisions of the BEP or the rules of the of the Civil Code of Ukraine, the court should consider the relevant applications related to the invalidity of transactions, applying the principles of adversarial proceedings combined with detailed verification of the reality of business transactions and the intention to create the legal consequences inherent in certain types of business transactions.

Pursuant to Article 234 of the Civil Code of Ukraine, a fictitious transaction is a transaction made without the intention to create the legal consequences stipulated by the transaction.

A fictitious transaction is characterized by the fact that the parties enter into such a transaction only “for the sake of appearances”, knowing in advance that it will not executed; by entering into a fictitious transaction, the parties have other goals than those than those provided for by the transaction. Any transaction may be recognized as fictitious if it has no transaction may be recognized as fictitious if it is not intended to establish the legal consequences

that established by law for this type of transaction (the conclusion set forth in the the resolution of the OP CGS of the Supreme Court of 07.12.2018 in case No. 910/7547/17).

The main signs of a fictitious transaction are misleading (before or at the time of the transaction) of a third party regarding the actual circumstances of the transactionor the true intentions of the parties, a deliberate intention to fail to fulfill the obligations of the of the agreement, concealment of the true intentions of the parties to the transaction.

In case of challenging a transaction by an interested person, it is necessary to assess the actions of the parties to the agreement in the context of the criteria of good faith, fairness, inadmissibility of abuse of rights, in particular, aimed at depriving the plaintiff of the plaintiff's legitimate property rights in the future.

When deciding on the fictitiousness of a contract concluded against the plaintiff's interests of the plaintiff, the court must determine the true intentions of the parties, i.e. whether the purpose of the contract was different from that implied by the content of the of the agreement.

For more information on the text of the resolution of the CGS of the Supreme Court of 30.06.2021 in case No. 927/889/18 is available at https://reyestr.court.gov.ua/Review/98203025

5. Consideration of creditors' monetary claims (Article 45 of the CUEPB) Regarding the application of changes in bankruptcy legislation in the case when the relevant right has already been lost by the creditor at the time of filing a lawsuit by the creditor by law.

Application of a person for recognition of claims of a bankruptcy creditor to the debtor, which are repaid under Article 14 of the Bankruptcy Law in the version before January 19, 2013, which was in force at the time when the applicant had to take procedural actions to claim the debtor from the bankruptcy creditor is not justified, as it will result in the recognition and inclusion in the register of already repaid creditor's claims, and therefore lead

to a violation of the rights of the debtor and other creditors.

Repayment of a person's claims under the Bankruptcy Law as a bankruptcy creditor excludes the right to judicial protection in a bankruptcy case, including bankruptcy, including by filing creditor's claims during the period of the new legislation on restoration of the debtor's solvency or declaring it bankrupt - the Unified Commercial Bankruptcy Code.

For more details on the text of the resolution of the CGS of the Supreme Court of 06.04.2021 in case No. 10/47-08, please available at https://reyestr.court.gov.ua/Review/96309386

Regarding the accrual of the inflation index and three percent per annum on on the debt that was recognized as bankruptcy claims in the bankruptcy proceedings

The accruals made in accordance with Article 625 of the Civil Code of Ukraine and declared independently of the main obligation that arose before the opening of the of bankruptcy proceedings (claims under which are recognized as bankruptcy) cannot be recognized as current within the meaning of Article 1 of the Bankruptcy Law and are subject to the legal regime of moratorium in the bankruptcy case.

Or true intentions of the parties, deliberate intent to fail to fulfill obligations of the agreement, concealment of the true intentions of the parties to the transaction.

In the event of a transaction being challenged by an interested party, it is necessary to provide an assessment of the actions of the parties to the agreement in the context of the criteria of good faith, fairness, inadmissibility of abuse of rights, in particular, aimed at depriving the plaintiff of legitimate property rights in the future. rights in the future.

When deciding on the fictitiousness of a contract concluded against the plaintiff's interests of the plaintiff, the court must determine the true intentions of the parties, i.e. whether the purpose of the agreement was different from the one that follows from the content of the agreement.

More details on the text of the resolution of the CGS of the Supreme Court of 30.06.2021 in case No. 927/889/18 can be found at the link

https://reyestr.court.gov.ua/Review/98203025

5. Consideration of creditors' monetary claims (Article 45 of the CUEPB)

Regarding the application of changes in bankruptcy legislation in cases where the time of filing a lawsuit, the relevant right has already been lost by the creditor under by law.

An application by a person for recognition of a bankruptcy creditor's claims against the debtor, which are repaid under Article 14 of the Bankruptcy Law in the version before 19.01.2013, which was in force at the time when the applicant had to take procedural actions to assert the bankruptcy creditor's claims against the debtor are not reasonable, as it will result in the recognition and inclusion in the register of already repaid creditor's claims, and therefore will lead to a violation of the rights of the debtor and other creditors.

The repayment of a person's claims in accordance with the Bankruptcy Law as a bankruptcy creditor excludes the right to judicial protection in a bankruptcy case, including by filing creditor claims during the period of the new legislation on restoring the debtor's solvency or recognizing it as a bankrupt, bankrupt - the Unified Commercial Bankruptcy Code.

For more information on the text of the resolution of the CGS of the Supreme Court of 06.04.2021 in case No. 10/47-08 can be found at the link https://reyestr.court.gov.ua/Review/96309386 Regarding the calculation of the inflation index and three percent per annum on the debt that was recognized as bankruptcy claims in the bankruptcy.

Accruals made in accordance with Article 625 of the Civil Code of Ukraine and declared independently of the main obligation that arose before the opening of bankruptcy proceedings (claims under which are recognized as competitive), cannot be recognized as current within the meaning of the provisions of Article 1 of the Law on Bankruptcy Law and are subject to the

legal regime of the moratorium in the bankruptcy case bankruptcy proceedings.

Debt that is of a bankruptcy nature may not be subject to inflationary losses and three percent per annum pursuant to part two of Article 625 of the Civil Code of Ukraine during the period when the debtor was in bankruptcy proceedings, since such accruals are subject to a moratorium that suspends the debtor's fulfillment of obligations that arose before the date of initiation of the bankruptcy proceedings, i.e., stops the delay in the payment of such debt, and according to the provisions of part two of Article 625 of the Civil Code of Ukraine, the relevant charges may be made only in case of delay in fulfillment of this obligation.

The general thrust and purpose of the Bankruptcy Law is primarily to creating the necessary conditions for overcoming bankruptcy and recovery of the debtor's solvency and the possibility of full settlement with creditors without applying to the debtor a liquidation procedure with termination of its business activity, as it allows the debtor to legitimately expect the determination of the total amount of accounts payabledebt and stop its growth through penalties, three percent per annum, inflationary charges, etc.

Therefore, the plaintiff is not entitled to accrue the inflation index and three percent per annum on debts that have been recognized as bankruptcy claims in a bankruptcy case, as they are not bankruptcy case, as it is subject to a moratorium on satisfaction of creditors and the debtor's (defendant's) delay in paying of such debt during the entire period of this moratorium.

For more information on the text of the resolution of the CGS of the Supreme Court of 16.06.2021 in case No. 910/17380/19 can be found at the link https://reyestr.court.gov.ua/Review/97783487

Regarding the creditor's will to refuse (in full or in part) from the collateral Paragraph three of part two of Article 45 of the UBPU stipulates that secured creditors may reject collateral in whole or in part. If the value of the collateral is insufficient to cover the entire claim, the creditor must be treated

as secured only to the extent of the value of the collateral.

The balance of the claim is considered unsecured.

This procedure for including the secured creditor's claims provides the secured the secured creditor an alternative to choose to include its claims in the claims in the appropriate order of priority in accordance with part one of Article 64 of the UBPU or to extraordinary, taking into account the evidence provided by him at the time of formation of the register creditors' claims regarding the collateral, its value and taking into account the will of this creditor to refuse (in full or in part) from the collateral.

The UBPU imperatively defines the creditor's right to refuse to secure of its own claims. Such a waiver must be duly declared by the creditor.

In case of failure to make such a waiver and failure to file the relevant claims the creditor fails to file the relevant claims, the information on the collateral shall be included in the register as provided for in part eight of Article 45 of the UBPU.

For more details on the text of the decision of the CCC of the Supreme Court of 19.05.2021 in case No. 925/367/20 can be found at the link

https://reyestr.court.gov.ua/Review/97218310

Regarding the grounds for the emergence of a monetary obligation to pay the main monetary remuneration to a private enforcement officer within the meaning of Article 1 of the CEPB

The main remuneration of a private enforcement officer by its purpose is remuneration to a private enforcement officer for taking measures of enforcement execution of the decision, provided that such measures led to full or partial enforcement of the judgment, and is charged to the debtor in the amount proportional to the amount actually recovered.

A systematic analysis of the rules governing the basic remuneration of a private enforcement officer gives grounds to conclude that the amount of this remuneration is set in the resolution on the recovery of the basic remuneration from the debtor of a private enforcement officer, which is adopted when

opening enforcement proceedings, and it is payable in favor of the private enforcement officer simultaneously with the amount to be recovered under the enforcement document in favor of the recoverer.

Since the law binds the payment of the main remuneration of the private executor simultaneously with the satisfaction of the claimant's claims, the right of a private enforcement officer arises at the moment of actual execution of the enforcement document by the debtor. Accordingly, simultaneously with the emergence of the private enforcement officer's right to the payment of the basic remuneration, the and the debtor's monetary obligation within the meaning of Article 1 of the BEP.

For more details, the text of the resolution of the CGS of the Supreme Court of 02.06.2021 in case No. 910/11384/20 can be found at the link

https://reyestr.court.gov.ua/Review/97628017 .

Regarding the peculiarities of amending the register of creditors' claims approved by the commercial court register of creditors' claims

Amendments to the special law (the BEP) do not fall under any of the grounds specified by both the by the Bankruptcy Law and the UBPU, which are the grounds for amending the register of creditors' claims approved by the court decision, in particular regarding priority of creditor/secured creditor claims.

For more details on the text of the resolution of the CGS of the Supreme Court of 25.05.2021 in case No. Б8/065-12 is available at the link https://reyestr.court.gov.ua/Review/97418245. A similar legal position is set out in the decision of 17.06.2021 in case No. 916/1950/16.

Regarding the decision to declare the debtor bankrupt

When declaring a debtor bankrupt, the court must establish its insolvency, i.e. insufficiency of property to satisfy creditors' claims, and therefore determine the debtor's assets and liabilities and compare information on both values.

The court's decision cannot be based solely on the petition of the

creditors' committee.The amount of the debtor's liabilities is to be determined in accordance with the register of creditors' claims approved by the court in accordance with Article 47 of the BEP.

The property manager's report on the financial and property status of the debtor must contain information about the debtor's assets. Such a report should be subject to consideration by the meeting of creditors (creditors' committee), on the basis of which the creditors make the decision to initiate the next court procedure. Subsequently, the information shall include on the financial and property status of the debtor (asset) should be considered in the bankruptcy court hearing.

If the debtor's liability is established in a preliminary the final legal assessment of the debtor's assets and liabilities and the possibility of restoring the debtor's solvency or declaring it bankrupt is provided at the final court hearing, taking into account the proceedings in the procedure for disposing of the debtor's property.

More details on the text of the decision of the CCC of the Supreme Court of 14.04.2021 in case No. 904/1693/19 can be found at the link

https://reyestr.court.gov.ua/Review/96483387

Regarding the decision of the economic court to introduce the following judicial procedure against the debtor with the use of judicial discretionPursuant to the provisions of the BEP (Article 49), at the end of the procedure for disposing of the debtor's property, the creditors' meeting is obliged to decide on the transition to the next court procedure.

At the same time, the legislator granted the court the right (part four of Article 49 of the BEP) even in the absence of a relevant decision of the creditors' meeting of the debtor, but in the presence of certain circumstances (after the expiration of the terms, determined by the BEP regarding the duration of the property disposal procedure, in the presence of signs of bankruptcy and in the absence of proposals for rehabilitationthe debtor) to adopt a resolution declaring the debtor bankrupt and initiate a liquidation

procedure on its own initiative.

International documents for preparation for seminars:

AGREEMENT ON THE PROCEDURE FOR RESOLVING DISPUTES RELATED TO WITH THE IMPLEMENTATION OF ECONOMIC ACTIVITIES

Date of signature by Ukraine: March 20, 1992.
Date of entry into force for Ukraine: December 19, 1992.

The governments of the member states of the Commonwealth of Independent States, attaching the importance of developing cooperation in the field of resolving disputes related to the disputes related to the implementation of economic activities between entities located in different located in different member states of the Commonwealth of Independent States, based on the need to provide all economic entities with equal opportunities to protect their rights and legitimate interests, have agreed on as follows:

Article 1

This Agreement regulates the settlement of cases arising from contractual and other civil law relations between business entities, their relations business entities, their relations with state and other authorities, as well as and the enforcement of judgments thereon.

Article 2

For the purposes of this Agreement, business entities shall mean enterprises, their associations, organizations of any organizational and legal form forms, as well as citizens who have the status of an entrepreneur in accordance with the legislation in force in the territory of the member states of the Commonwealth Independent States, and their associations.

Article 3

Economic entities of each of the member states of the Commonwealth Independent States shall enjoy on the territory of another member state of the Commonwealth of Independent States with legal and judicial protection of their property rights and legitimate interests equal to those of economic entities of this state. Economic entities of each of the member states of the Commonwealth of the Commonwealth of Independent States have on the territory of other member states Commonwealth of Independent States have the right to apply to courts without hindrance, arbitration (commercial) courts, arbitration tribunals and other bodies whose competence includes competent to resolve cases referred to in Article 1 of this Agreement (hereinafter referred to as the competent courts), may appear before them, file petitions, file lawsuits and perform other procedural actions.

Article 4

1. The competent court of a state member of the Commonwealth of Independent States shall have the right to consider the disputes referred to in Article 1 of this Agreement if on the the territory of this state - member of the Commonwealth of Independent States:

a) the defendant had a permanent place of residence or location on the the day the claim was filed.

If the case involves several defendants located in the territory of the territory of different member states of the Commonwealth, the dispute shall be considered at the location of any defendant at the choice of the plaintiff;

b) trade, industrial or other economic activity is carried out of the defendant's enterprise (branch);

c) obligations have been fulfilled or are to be fully or partially fulfilled from the contract that is the subject of the dispute have been fulfilled or are to be fulfilled in full or in part;

d) there was an act or other circumstance that became the basis for claims for compensation for damage;

e) the plaintiff has a permanent place of residence or location in the plaintiff in a claim for protection of business reputation;

f) there is a counterparty-supplier, contractor or one who provides services (performs work), and the dispute concerns the conclusion, amendment and termination of contracts.

2. The competent courts of the member states of the Commonwealth of Independent States shall also consider cases in other cases if there is a written agreement to that effect Parties to refer the dispute to court. If there is such an agreement, the court of another member state of the Commonwealth terminates the proceedings at the request of the defendant, if such a request is made before a decision is made in the case.

3. Claims of business entities for ownership of real property shall be considered exclusively by property shall be considered exclusively by a court of a member state of the Commonwealth of Independent States, on the territory of which the property is located.

4. Cases on invalidation of acts of state and of normative nature, acts of state and other bodies, as well as on compensation for damages caused to business entities by such acts or which arose as a result of improper performance by the said bodies their duties towards business entities, shall be considered exclusively by the court at the location of the said body.

The competence of the courts specified in clauses 3 and 4 may not be changed by agreement of the of the Parties.

5. A counterclaim and a claim for set-off arising from the same legal relations as the legal relations as the counterclaim, shall be considered in the same court that is hearing the main action.

Article 5

The competent courts and other authorities of the Commonwealth

member states Independent States undertake to render mutual legal assistance.

Mutual legal assistance includes the service and transmission of documents and performance of procedural actions, including expert examination, hearing of the Parties, witnesses, experts and other persons.

When providing legal assistance, the competent courts and other authorities of the states - of the Commonwealth of Independent States shall communicate with each other directly.

When executing orders for the provision of legal aid, the competent courts and other authorities from which assistance is requested shall apply the legislation of their of their own state.

When applying for legal aid and enforcement of judgments the attached documents shall be in the language of the requesting state, or in Russian.

Article 6

Documents issued or certified by an institution or a specially or an authorized person within their competence in the prescribed form and and affixed with an official seal on the territory of one of the member states of the Commonwealth of Independent States, are accepted on the territory of other states - member states of the Commonwealth of Independent States without any special certificate.

Documents that are treated as documents on the territory of one of the member states of the Commonwealth of are treated as official documents on the territory of one of the member states of the Commonwealth of Independent States other member states of the Commonwealth of Independent States have the evidentiary force of official documents.

Article 7

States members of the Commonwealth of Independent States shall mutually recognize and enforce the decisions of competent courts that have entered into legal and have come into force.

Judgments rendered by the competent courts of one member state of the Commonwealth of Independent States shall be enforced on the territory of other member states of the Commonwealth of Independent States.

Judgments rendered by the competent court of one member state of the Commonwealth of Independent States member state of the Commonwealth of Independent States in terms of foreclosure on the property of the defendant are enforceable in the territory of another member state of the Commonwealth of Independent States by the bodies appointed by the court or determined by the legislation of that state.

Article 8

Enforcement of the award shall be at the request of the interested Party.

The motion shall be accompanied by

-a duly certified copy of the judgment, the enforcement of which the petition is filed;

-an official document stating that the judgment has entered into force, unless this is not clear from the text of the decision itself;

-evidence of notification of the other Party of the proceedings;

an enforcement document.

Article 9

The enforcement of a judgment may be refused at the request of the Party against whom it is directed against which it is directed, only if that Party submits to the competent court at the place where the enforcement of the judgment is sought, evidence that

a) a court of a member state of the Commonwealth of Independent States that has previously rendered a judgment that has entered into force in a case between the same Parties, on the same subject matter and on the same grounds;

b) there is a recognized judgment of a competent court of a third

state party to the of the Commonwealth of Independent States or a state that is not a member of the Commonwealth, on a dispute between the same Parties, on the same subject matter and on the same basis the same subject matter and on the same basis;

c) a dispute under this Agreement has been resolved by an incompetent court;

d) the other Party has not been notified of the proceedings;

e) the three-year limitation period for filing an enforcement action has expired for enforcement.

Article 10

Supreme Judicial Bodies of the Member States of the Commonwealth of Independent States shall regulate disputes arising in connection with the execution of decisions of competent courts.

Article 11

Civil legislation of one member state of the Commonwealth of the Commonwealth of Independent States shall be applied on the territory of another member state of the Commonwealth of Independent States. Commonwealth of Independent States in accordance with the following rules:

a) civil legal capacity and legal capacity of legal entities and entrepreneurs shall be determined by the legislation of a member state of the Commonwealth of the Commonwealth of Independent States, on the territory of which the legal entity is founded, registered entrepreneur;

b) relations arising from the right of ownership shall be governed by the law of the location of the property. The right of ownership of transport vehicles subject to entry into state registers is determined by the legislation of the state where the vehicle is entered into the register;

c) the emergence and termination of ownership or other property rights to property is determined by the legislation of the state in the territory of

which the property is located at the moment when the action or other circumstance that became or other circumstance that gave rise to the creation or termination of such a right.

The emergence and termination of ownership or other real right to property that is the subject of the transaction shall be determined by the law of the place of of the transaction, unless otherwise provided by the agreement of the Parties;

d) the form of the transaction shall be determined by the law of the place of its execution. The form of agreements regarding buildings, other real estate and rights thereto shall be determined by the law of the location of such property;

e) the form and validity period of the power of attorney shall be determined by the laws of the state in the territory of which the power of attorney is issued;

f) the rights and obligations of the Parties under the Agreement shall be determined by the laws of the place of performance, unless otherwise provided by the agreement of the Parties;

h) the rights and obligations of the Parties under the obligations arising from damage shall be determined by the laws of the state where the the event or other circumstance that gave rise to the claim for compensation damage.This legislation does not apply if the event or other circumstance that gave rise to the claim for damages, under the law of the place of the dispute are not unlawful under the law of the place of dispute resolution;

h) issues of limitation of actions shall be resolved under the laws of the state, applicable to regulate the relevant relations.

Article 12

The supreme judicial authorities and ministries of justice of the member states of the of the Commonwealth of Independent States shall, upon request, provide each other with similar bodies of the other Party, information

on the legislation in force or that has been in force in force or that has been in force in these states and the practice of its application.

Article 13

This Agreement is open for signature by the member states of the Commonwealth of Independent States and shall be ratified. It shall enter into force shall enter into force upon ratification by at least three member states of the Commonwealth from the date of deposit of the third instrument of ratification with the depositary state.For states that ratified the Agreement later, it enters into force into force on the date of deposit of their instrument of ratification.

Done in Kyiv on March 20, 1992, in one true copy in the Russian language. A true copy shall be kept in the Archives of the Government of the of the Republic of Belarus, which shall send a certified copy to the signatory states of this Agreement certified copy to the signatory states.

DECISIONS OF THE EUROPEAN COURT OF HUMAN RIGHTS

The case of Feldman and Slavyansky Bank v. Ukraine

(Application no. 42758/05)

STRASBOURG

December 21, 2017

FINAL

28/05/2018

This decision has become final in accordance with Article 44(2) of the Convention. 44 of the Convention. Its text may be subject to editorial corrections.

In the case of Feldman and Bank Slavyansky v. Ukraine the European Court of Human Rights (Section 5), sitting as a Chamber, composed of.

PROCEDURE

1. The case originated in an application (no. 42758/05) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Ukrainian national, Mr Borys Mordukhovych Feldman ("the first applicant"), and Slovyanskyy Commercial Joint-Stock Bank ("the applicant bank"), on 20 October 2005. In the proceedings before the Court the first applicant acted on his own behalf and on behalf of the applicant bank.

2. The applicants were represented by Mr V. Ageyev, a lawyer practising in Kyiv. The Ukrainian Government ("the Government") were represented by their Agent, most recently, Mr I. Lishchyna.

3. Relying on Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, the applicants alleged, in particular, that they had not had access to a court to challenge the decision on the liquidation of the applicant bank and that that decision had violated their property rights.

4. On 15 November 2006 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The first applicant was born in 1958 and lives in Dnipro, Ukraine. The applicant bank was a commercial joint-stock bank based in Ukraine with its registered office in Zaporizhzhya. Its banking licence was revoked on 11 January 2001 (see paragraph 12 below). Subsequently, the applicant bank was liquidated (see paragraph 19 below).

6. The first applicant was the vice-president, founder and majority shareholder of the applicant bank.

7. In February and March 2000 the domestic authorities instituted two sets of criminal proceedings for tax evasion and abuse of office by the management of the applicant bank.

8. In March 2000 the first applicant was arrested as part of the criminal proceedings (for more details see *Feldman v. Ukraine*,

nos. 76556/01 and 38779/04, 8 April 2010). In April 2000 the Ukrainian news agency UNIAN reported on a session of the Coordination Committee on Combating Corruption and Organised Crime. The relevant extract reads:

"'It is a matter of honour for the General Prosecutor's Office and the State Tax Administration to bring the story of Slovyanskyy Bank to its logical conclusion,' said the President of Ukraine during his speech at the session ... He stated that the chairs of the bank had turned it into a source of uncontrolled personal income. 'Such money-makers have powerful patrons, and there is great pressure on the investigation,' stated the President."

9. On 29 June 2000 the National Bank of Ukraine ("the NBU") suspended the applicant bank's licence for some of its operations, considering that its financial position had deteriorated sharply and that it had been performing risky operations which threatened its solvency.

10. In July 2000 an investigator from the tax police of the State Tax Administration, acting in the course of the criminal proceedings, ordered an attachment of the applicant bank's securities.

11. On 18 September 2000 the NBU put the applicant bank under temporary administration, which involved suspending the functions of some of the bank's managers.

12. On 11 January 2001 the NBU issued a resolution "On the Liquidation of Slovyanskyy Commercial Joint-Stock Bank" by which, among other things, (1) the applicant bank's operating licence was revoked in full; (2) the powers of the board, the council and the general shareholders' meetings were terminated; and (3) the applicant bank was ordered to be liquidated. By the same resolution the NBU approved the composition of a liquidation commission for the bank, consisting of eleven officials from the regional departments of the NBU and two members of staff from the local tax office.

13. On 5 March 2001 the first applicant, who was in detention at the time, brought a claim under the rules of Chapter 31-A of the Code of Civil Procedure of 1963 with the Pechersky District Court of Kyiv, challenging the NBU's

decision. He maintained that the impugned resolution was unlawful and that the NBU had decided to liquidate the applicant bank owing to its failure to fulfil its financial obligations, whereas that failure had been caused by the NBU itself and the tax authorities. The first applicant emphasised that after the resolution had been adopted, the applicant bank had not been able to protect its rights and interests on its own. He added that the resolution had been detrimental to the interests of the applicant bank's shareholders, including himself.

14. On 26 June 2001 the court found that the first applicant could bring a claim, however, it had to be dismissed. The court held that the NBU had been competent to adopt the impugned resolution, that the measures taken had been lawful and that they had been made necessary by gross violations of banking legislation by the applicant bank and its difficult financial position.

15. The first applicant appealed against that decision.

16. On 5 July 2002 the Kyiv City Court of Appeal upheld the decision of 26 June 2001 in part, but changed its reasoning. It held that the NBU's resolution of 11 January 2001 had not concerned the first applicant and it had not been established during the determination of the claim that his rights and freedoms had been violated. For those reasons the court of appeal dismissed the claim.

17. The first applicant appealed on points of law.

18. On 21 April 2005 the Supreme Court of Ukraine quashed the decisions of 26 June 2001 and 5 July 2002 and terminated the proceedings, considering that the claim was inadmissible. It found as follows:

"... The first and second-instance courts have established that **Mr B.M. Feldman** brought a claim as a shareholder of Slovyanskyy Bank, however he **did not request the protection of his own rights and freedoms but, in fact, acted in the interests of Slovyanskyy Bank, without being duly authorised** [bold text in the original].

According to Articles 1 and 12 of the Code of Commercial Proceedings, disputes between a subject of entrepreneurial activities and enterprises, institutions and organisations concerning the protection of their rights and

freedoms, and their disputes concerning the declaration of legal acts as invalid, should be examined by the commercial courts.

Given that a shareholder is not entitled to apply to a court for the examination of such a dispute and that this case is not to be examined in accordance with civil procedure, the decisions adopted in this case should be quashed and the proceedings should be terminated, in accordance with Article 136 § 2 (1) and Article 227 § 1 of the Code of Civil Procedure ..."

19. The liquidation process of the applicant bank was completed on 30 November 2012. The bank was removed from the legal entities official database on 4 August 2014.

II. RELEVANT DOMESTIC LAW

A. Domestic legislation on access to court

20. Chapter 31-A of the Code of Civil Procedure of 1963 (in force at the relevant time) sets out the rules for challenging the decisions, acts or omissions of a State body, legal entity or official and for the consideration of such claims before the civil courts.

21. Article 1 of the Code of Commercial Procedure of 1991 provides, *inter alia*, that legal entities and citizens who have been registered as private entrepreneurs are entitled to apply to the commercial courts, in accordance with the rules of jurisdiction, for the protection of their rights and interests.

B. Domestic legislation on banking supervision

22. Section 62 of the Law "On the National Bank of Ukraine" of 20 May 1999 provided, among other things, that the National Bank was entitled to revoke a bank's operating licence and take decisions about the reorganisation or liquidation of a bank and the appointing of a liquidator. It could make such decisions if the bank had violated laws and other regulations, which had resulted in a significant loss of assets or income and caused the bank to become

insolvent, or if it had inflicted serious damage to its clients or concealed any accounts, other documents or assets.

23. On 17 January 2001 a new law, the Law "On Banks and Banking Activities", came into effect, repealing section 62 of the Law "On the National Bank of Ukraine". It also introduced a judicial procedure for liquidating banks.

THE LAW

24. The applicants complained that it had not been possible to have the NBU's resolution of 11 January 2001 reviewed by a tribunal, within the meaning of Article 6 § 1 of the Convention. They further complained that the NBU's resolution and the measures taken by the tax authorities concerning the applicant bank's assets had been contrary to Article 1 of Protocol No. 1. Those provisions, in so far as relevant, read as follows:

Article 6 § 1 of the Convention

"In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

Article 1 of Protocol No. 1

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

I. PRELIMINARY PROCEDURAL POINTS

25. The first applicant lodged the above complaints on his own behalf and on behalf of the applicant bank. The question arises whether the first applicant had standing to act before the Court on behalf of the applicant bank.

26. The Court reiterates that as a general rule a shareholder of a company cannot claim to be a victim of an alleged violation of the company's rights under

the Convention (see *Agrotexim and Others v. Greece*, 24 October 1995, §§ 59-72, Series A no. 330-A). The piercing of the "corporate veil" or the disregarding of a company's legal personality will be justified only in exceptional circumstances, in particular where it is clearly established that it is impossible for the company to apply to the Convention institutions through the organs set up under its articles of incorporation or – in the event of liquidation – through its liquidators (ibid., § 66).

27. In *Credit and Industrial Bank v. the Czech Republic* (no. 29010/95, ECHR 2003-XI (extracts)) the Court stated that where the essence of the complaint was the denial of effective access to a court to oppose or appeal against the appointment of a compulsory administrator, to hold that the administrator alone was authorised to represent the bank in lodging an application with the Convention institutions would be to render the right of individual petition conferred by Article 34 theoretical and illusory (ibid., § 51).

28. As regards the present case, in lodging the complaints on behalf of the applicant bank, the first applicant acted in his capacity as the bank's majority shareholder and vice-president. At the time of the application, the shareholders and the executive bodies of the applicant bank had been deprived of their powers to administer the applicant bank's business. The bank was under the control of the liquidation commission, which consisted of officials from the regional departments of the NBU, who were by far in the majority, and staff from the local tax office (see paragraph 12 above). Accordingly, having regard to the situation of the applicant bank and the nature of the present complaints, the Court finds that there existed exceptional circumstances which entitled the first applicant to lodge the present application on behalf of the applicant bank (see *Credit and Industrial Bank*, cited above, §§ 46-52, and *Capital Bank AD v. Bulgaria* (dec.), no. 49429/99, 9 September 2004).

29. The Court further considers it appropriate to continue examination of the present case despite the termination of legal personality of the applicant bank (see *Capital Bank AD v. Bulgaria*, no. 49429/99, §§ 74-80, ECHR 2005-XII

(extracts) and *International Bank for Commerce and Development AD and Others v. Bulgaria*, no. 7031/05, § 88, 2 June 2016, with further references therein).

II. ADMISSIBILITY OF THE FIRST APPLICANT'S COMPLAINTS

30. The Court considers that the first applicant's complaints in his personal capacity as a majority shareholder are incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) of the Convention and must be rejected in accordance with Article 35 § 4 (see *Credit and Industrial Bank v. the Czech Republic*, no. 29010/95, Commission decision of 20 May 1998, and *Terem Ltd, Chechetkin and Olius v. Ukraine*, no. 70297/01, §§ 28-30, 18 October 2005).

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

A. Admissibility

1. The Government's objection

31. The Government submitted that the applicant bank had not exhausted the available domestic remedies as it had failed to challenge the NBU's impugned resolution before the commercial courts.

32. The applicant bank insisted that it had not been possible to institute proceedings before the commercial courts to challenge the measures taken by the NBU because the applicant bank had been controlled by the liquidation commission, which consisted of officials from NBU departments and the tax office.

33. The Court notes that the question of the use of the remedy referred to by the Government is closely linked to the substance of the applicant bank's complaint. The Court therefore joins the Government's objection to the merits.

2. As to the six-month rule

34. The Court reiterates that as a rule, the six-month period under Article 35 § 1 of the Convention runs from the date of the final decision in the process of the exhaustion of domestic remedies. Where it is clear from the outset, however, that no effective remedy is available to the applicant, the period

runs from the date of the acts or measures complained of, or from the date of acquiring knowledge of that act or its effect on or prejudice to the applicant. Where an applicant avails himself of an apparently existing remedy and only subsequently becomes aware of circumstances which render the remedy ineffective, it may be appropriate, for the purposes of Article 35 § 1, to take the start of the six-month period as the date when the applicant first became or ought to have become aware of those circumstances (see *Varnava and Others v. Turkey* [GC], nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, § 157, ECHR 2009, with further references).

35. The present application was submitted to the Court within six months of the completion of the domestic proceedings instituted by the first applicant challenging the NBU's resolution of 11 January 2001. The question of whether or not the first applicant's claim was admissible had not been decided in a straightforward way by the courts. In particular, the first-instance court found that even though the impugned resolution had concerned the applicant bank, the first applicant was still in position to raise the matter before the civil courts. The court of appeal did not reject the claim as inadmissible, but dismissed it after examining it and finding that the matter did not concern the first applicant's rights. Lastly, the Supreme Court terminated the proceedings on the grounds that the first applicant's claim was inadmissible. The Supreme Court considered that shareholders could not apply to the courts in their own capacity on such matters and that, furthermore, the case should be examined by the commercial courts.

36. In view of this diverse reasoning of the domestic courts as well as the applicants' specific situation, it cannot be argued that at the relevant time during the period when the proceedings were pending it was clear that the remedy tried by the first applicant in the interests of the applicant bank was ineffective and should not have been pursued. On the contrary, the Court considers that introduction of the present complaint after the completion of the domestic proceedings was justified in the circumstances and it is not appropriate to blame

the first applicant for his attempt to settle the applicant bank's case at the domestic level (see, *mutatis mutandis, Voloshyn v. Ukraine*, no. 15853/08, § 42, 10 October 2013). Accordingly, the present complaint cannot be dismissed as being submitted out of time (see, *mutatis mutandis*, *Kaverzin v. Ukraine*, no. 23893/03, § 99, 15 May 2012).

3. Otherwise as to admissibility

37. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

38. The applicant bank maintained that it had not had access to a court to challenge the NBU's resolution of 11 January 2001.

39. The Government insisted that the applicant bank's right of access to a court had not been infringed because the matter could still be examined by the commercial courts.

40. The Court notes that the measures introduced by the NBU's resolution of 11 January 2001 had a crucial impact on the applicant bank's civil rights and obligations. In particular, the resolution led to the applicant bank's licence for all its operations being revoked, the powers of the applicant bank's statutory bodies were terminated, and the applicant bank itself was put into liquidation.

41. The Court notes that where decisions taken by administrative authorities which determine civil rights and obligations do not themselves satisfy the requirements of Article 6 of the Convention, it is necessary that such decisions be subject to subsequent control by a "judicial body that has full jurisdiction" and that provides the guarantees of that Article (see *Albert and Le Compte v. Belgium*, 10 February 1983, Series A no. 58, § 29; *Ortenberg v. Austria*, 25 November 1994, Series A no. 295-B, § 31; and *Bryan v. the United Kingdom*, 22 November 1995, Series A no. 335-A, § 40).

42. The Court observes that the proceedings before the civil courts initiated by the first applicant did not ultimately result in any judicial review of the impugned measures. The Supreme Court terminated the proceedings, rejecting the claim as inadmissible after finding that the first applicant had not been empowered to apply on behalf of the applicant bank and that the claim fell under the jurisdiction of the commercial courts.

43. Further to the Supreme Court's position, the Government contended that the applicant bank had failed to apply to the commercial courts, which had been competent to examine the matter. In that regard the Court notes that at the relevant time the applicant bank was under the control of the liquidation commission. The composition of the commission, which mostly consisted of employees from regional departments of the NBU, clearly indicated that there was a conflict of interests between the commission and the applicant bank, making it unfeasible for the latter to lodge a claim with the commercial court challenging the NBU's resolution.

44. Similarly, it cannot be reasonably assumed that the first applicant could lodge such a claim with the commercial courts. Those courts dealt with claims submitted by legal entities and individuals could only institute commercial proceedings if they were acting in the capacity of private entrepreneurs, which was not the first applicant's case (see paragraph 21 above). In any event, the position of the Supreme Court in its decision of 21 April 2005 (see paragraph 18 above) suggested that the first applicant, as a shareholder, had not been entitled to institute proceedings before any courts, including the commercial courts.

45. The Court therefore dismisses the Government's objection based on the rule of exhaustion of domestic remedies. It further finds that the applicant bank did not have access to a court in the dispute concerning its civil rights and obligations.

46. There has therefore been a violation of Article 6 § 1 of the Convention in respect of the applicant bank.

IV. THE ALLEGED VIOLATION OF ARTICLE 1 OF THE FIRST PROTOCOL TO THE CONVENTION

A. Alleged violation of the applicant bank's property rights by the NBU

47. The applicant company complained under Article 1 of Protocol No. 1 that the NBU's resolution of 11 January 2001 had been unlawful and disproportionate and that there had been no opportunity to obtain an independent review of the measures taken by the NBU because the domestic courts had failed to deal with the relevant issues.

1. Admissibility

48. The Court notes that this complaint is linked to the one examined above under Article 6 § 1 of the Convention and must therefore likewise be declared admissible.

2. Merits

(a) The parties' submissions

49. The applicant bank maintained its complaint.

50. The Government conceded that the NBU's resolution of 11 January 2001 had constituted an interference with the applicant bank's property rights. However, that decision had been taken in full compliance with the domestic legislation that was in effect at the relevant time. The subsequent legislative amendments (see paragraph 23 above) had not affected the lawfulness of the impugned resolution. The Government also submitted that the NBU's measures had been entirely necessary in the circumstances in order to protect the interests of others.

(b) The Court's assessment

(i) Applicability of Article 1 of Protocol No. 1

51. It is common ground between the parties that Article 1 of Protocol No. 1 is applicable to the present complaint. The Court notes that the NBU's resolution of 11 January 2001 revoked the applicant bank's licence and put it into liquidation. Such measures prevented the applicant bank from

pursuing its business and interfered with its right to the peaceful enjoyment of its possessions.

52. As regards the applicable provision of Article 1 of Protocol No. 1, the Court observes that the NBU's resolution was taken as a measure to control the banking sector in the country. It is true that it involved a deprivation of property, in so far as the banking licence itself could be considered a possession, but in the circumstances the deprivation formed part of the mechanism of controlling the banking industry. The Court therefore considers that it is the second paragraph of Article 1 of Protocol No. 1 which is applicable (see *Capital Bank AD v. Bulgaria*, no. 49429/99, §§ 130 - 131, ECHR 2005-XII (extracts)).

(ii) Compliance with Article 1 of Protocol No. 1

53. The Court reiterates that the first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possessions should be lawful: the second sentence of the first paragraph authorises a deprivation of possessions only "subject to the conditions provided for by law", while the second paragraph recognises that States have the right to control the use of property by enforcing "laws". Moreover, the rule of law, one of the fundamental principles of a democratic society, is inherent in all the Articles of the Convention (see *Iatridis v. Greece* [GC], no. 31107/96, § 58, ECHR 1999-II).

54. The Court's power to review the compliance of an impugned measure with national law is limited and it is not its task to take the place of the domestic authorities in making such an assessment (see *Malone v. the United Kingdom*, judgment of 2 August 1984, Series A no. 82, § 79, and *Sovtransavto Holding v. Ukraine*, no. 48553/99, § 95, ECHR 2002-VII). This is particularly relevant to the present case, which concerns a decision aiming, according to the NBU, at ensuring the stability of the banking system, a delicate area in which the Contracting States enjoy a wide margin of appreciation (see *Olczak v. Poland* (dec.), no. 30417/96, § 85, ECHR 2002 X (extracts), and *Capital Bank AD,* cited above, § 136). Nevertheless, that does not dispense the Court of its

duty to determine whether the interference at issue complied with the requirements of Article 1 of Protocol No. 1.

55. The requirement of lawfulness, within the meaning of the Convention, presupposes, among other things, that domestic law must provide a measure of legal protection against arbitrary interference by public authorities with the rights safeguarded by the Convention. Furthermore, the concepts of lawfulness and the rule of law in a democratic society require that measures affecting fundamental human rights be, in certain cases, subject to some form of adversarial proceedings before an independent body competent to review the reasons for the measures and the relevant evidence. It is true that Article 1 of Protocol No. 1 contains no explicit procedural requirements and the absence of a judicial review does not amount, in itself, to a violation of that provision. Nevertheless, it implies that any interference with the peaceful enjoyment of possessions must be accompanied by procedural guarantees affording to the individual or entity concerned a reasonable opportunity of presenting their case to the responsible authorities for the purpose of effectively challenging the measures interfering with the rights guaranteed by this provision. In ascertaining whether this condition has been satisfied, a comprehensive view must be taken of the applicable judicial and administrative procedures (see *Capital Bank AD,* cited above*,* § 134).

56. In the present case the NBU decided to revoke the applicant bank's operating licence and opened a liquidation process. The decision was taken in compliance with the domestic law applicable at the relevant time. Later amendments to the domestic legislation introduced a judicial procedure for the liquidation of banks (see paragraph 23 above). While those amendments applied to subsequent decisions in the course of the applicant bank's liquidation, the Government validly submitted that the impugned NBU decision of 11 January 2001 was not affected by them.

57. In line with the judgment in *Capital Bank AD* (cited above), the Court considers further that an act entailing such grave consequences can only be

legitimate if it is carried out after or is subject to some sort of verification in proceedings that afford a reasonable opportunity to the bank concerned to present its case to a competent authority with a view to effectively challenging such measures (ibid., § 135 *in fine*).

58. The administrative procedure leading to the impugned measures was entirely entrusted to the NBU, which exercised wide discretion in that area, and it does not appear that adequate guarantees for an independent and impartial decision-making process were put in place. Those guarantees were particularly relevant in the present case in view of the NBU's involvement in the applicant bank's situation by way of the taking of preliminary control measures before the impugned resolution of 11 January 2001 (see paragraphs 9 and 11 above) and in view of the other circumstances which surrounded the applicant bank and the first applicant at the relevant time (see paragraphs 7 and 8 above). Furthermore, there is nothing to suggest that the administrative procedure resulting in the NBU's resolution of 11 January 2001 involved any effective participation by the management of the bank to enable them to present their position on the situation and to object, if appropriate, to the contemplated measures before they were carried out. There is nothing to indicate that the necessity for such effective participation in the procedure was outweighed by any valid considerations, including those of urgency or emergency (ibid., § 136).

59. Finally, there were no effective retrospective remedies that could be used by the applicant bank against the NBU's resolution. In particular, the above analysis under Article 6 § 1 of the Convention has shown that the applicant bank did not have access to a court to challenge the NBU's measures.

60. In the light of the foregoing, the Court concludes that the interference with the applicant bank's possessions was not surrounded by sufficient guarantees against arbitrariness and was not therefore lawful within the meaning of Article 1 of Protocol No. 1. The above considerations are sufficient for the Court to find that there has been a violation of that provision.

B. Allegedly unlawful measures concerning the applicant bank's assets

61. The applicant bank complained under Article 1 of Protocol No. 1 that in July 2000 an attachment order had unlawfully been applied to its assets. It further submitted that the attached assets had been subsequently seized without proper grounds and that those measures had caused the economic destruction of the bank, which had eventually resulted in liquidation proceedings.

Admissibility

62. The Government maintained that the applicant bank had failed to exhaust domestic remedies as it had not challenged the impugned measures before the domestic courts. The Government specified that in 2001 the attachment had been lifted and the assets had remained at the disposal of the applicant bank's liquidation commission.

63. The applicant bank argued that it had been controlled by the liquidation commission and that the only available remedy had been the civil action against the NBU taken by the first applicant.

64. In considering the applicant bank's contention, the Court notes that the measures complained of took place when the applicant bank could still act through its statutory bodies to seek protection of its property rights before the domestic authorities. As to the subsequent period when the applicant bank could not effectively operate via its statutory bodies, the Court does not consider that the action of the first applicant should be taken into account as regards the present complaint. The first applicant challenged only the NBU's resolution, he did not seek to declare the investigator's impugned measures unlawful and did not seek any other relief in that regard. The property issues raised in the present complaint were therefore never examined within those proceedings.

65. The Court further notes that, by virtue of the requirements of Article 35 § 1 of the Convention, the applicant bank should have either raised the present complaint at the domestic level or – if there was no effective remedy to use – submitted it to the Court within six months of the impugned measures

taking place. That was not done, however. The relevant events took place in 2000, whereas the applicant bank lodged its complaint with the Court in 2005. It follows that this part of the application should be rejected as inadmissible, pursuant to Article 35 §§ 1 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

66. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

67. The applicant bank claimed 1,430,584,319 euros (EUR) in respect of pecuniary damage, based on the assessment of profitability, capital and growth rates of the applicant bank at the relevant time.

68. The Government, referring to the Court's case-law, submitted that the claim had to be rejected as unfounded.

69. The Court does not discern any causal link between the violation found and the pecuniary damage alleged. While the measures taken by the NBU in respect of the applicant bank might have had adverse financial consequences for it, the Court cannot speculate as to what the result of the case might have been if the applicant bank had been provided with access to a court in accordance with the requirements of Article 6 § 1 of the Convention and if the decision-making process by the NBU had been compatible with procedural safeguards enshrined in Article 1 of Protocol No. 1 (see *Tre Traktörer AB v. Sweden*, 7 July 1989, § 66, Series A no. 159; *Credit and Industrial Bank v. the Czech Republic*, cited above, § 88; *Fredin v. Sweden (no. 1)*, 18 February 1991, § 65, Series A no. 192; *Capital Bank AD v. Bulgaria*, cited above, § 144, and *International Bank for Commerce and Development AD and Others v. Bulgaria*, cited above, § 160). No award can therefore be made in respect of pecuniary damage.

B. Costs and expenses

70. The applicant bank did not submit any claims under this head. The Court therefore makes no award.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Holds* that the first applicant has standing to lodge and pursue the present application on behalf of the applicant bank;

2. *Joins to the merits* the Government's objection concerning the non-exhaustion of domestic remedies in respect of the applicant bank's complaint of access to a court and rejects this objection after an examination of the merits;

3. *Declares* the applicant bank's complaints under Article 6 § 1 of the Convention (as regards the right of access to a court) and Article 1 of Protocol No. 1 (the alleged violation of property rights by the NBU) admissible and the remainder of the application inadmissible;

4. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the applicant bank;

5. *Holds* that there has been a violation of Article 1 of Protocol No. 1 concerning the interference with the applicant bank's property rights by the NBU;

6. *Dismisses* the claim for just satisfaction.

Done in English, and notified in writing on 21 December 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Case "Industrial and Financial Consortium "Investment and Metallurgical Union" v. Ukraine (Application No. 10640/05)

STRASBOURG

June 26, 2018

FINAL

26/09/2018

In the case of Industrial Financial Consortium Investment Metallurgical Union v. Ukraine,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Vincent A. De Gaetano, *President,*

Ganna Yudkivska,

Faris Vehabović,

Egidijus Kūris,

Carlo Ranzoni,

Georges Ravarani,

Marko Bošnjak, *judges,*

and Marialena Tsirli, *Section Registrar,*

Having deliberated in private on 5 June 2018,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 10640/05) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Ukrainian joint venture based in Kyiv with legal personality under Ukrainian law, Industrial Financial Consortium Investment Metallurgical Union ("the applicant company"), on 22 March 2005.

2. The applicant company was represented by Mr V. Yasinskiy, the head of the consortium's executive board, and by different lawyers, most recently Mr J. Reynolds of White & Case LLP based in London. The Ukrainian Government ("the Government") were represented by their Agent, most recently Mr I. Lishchyna of the Ministry of Justice.

3. The applicant company complained, in the main, under Article 6 § 1 of the Convention of unfair proceedings, under Article 1 of Protocol No. 1 that the unfair proceedings had entailed the unlawful deprivation of its property, and of a violation of Articles 10, 11, 13, 14 and 18 of the Convention.

4. On 1 December 2008 the application was communicated to the Government. The applicant company and the Government each filed observations on the application.

5. Written submissions were also received from ArcelorMittal Duisburg GmbH, a private company with legal personality under German law, which had been granted leave to intervene by the President of the Section at the time.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Background to the case

1. Privatisation of Kryvorizhstal State Metallurgical Enterprise

6. On 6 August 2003 the Cabinet of Ministers decided that Kryvorizhstal State Metallurgical Enterprise (hereinafter "Kryvorizhstal") was to be privatised. At the time Kryvorizhstal was one of the world's largest steel manufacturing companies, employing about 60,000 people and producing about 20% of Ukraine's annual steel supply. On 4 November 2003 the Ministry of Economy and European Integration included Kryvorizhstal in a list of State-owned assets which were to be privatised. Subsequently, the Ministry of Industrial Policy and the State Commission on Securities and the Stock Market adopted decisions designed to ensure the privatisation of the enterprise.

7. The applicant company was founded in April 2004 by nine private companies, five of which were owned or controlled by A., one of the leaders of the Party of Regions. Members of that party held the majority of posts in the Cabinet of Ministers in the period 2003-2004, including the post of Prime Minister. The remaining four companies were owned or controlled by P., the son-in-law of Mr L. Kuchma, the second President of Ukraine who held the post from 19 July 1994 to 23 January 2005.

8. On 12 May 2004 the State Property Fund ("the Fund") announced a bidding competition for the purchase of 93.02% of the share capital of Kryvorizhstal. A condition of bidding was that a bidder had to have produced one million tons of charcoal of Ukrainian origin and two million tons of steel in

Ukraine in each of the three years preceding the competition. The applicant company took part in that competition.

9. Out of six bids submitted by various companies, the Fund selected bids by the applicant company and Consortium Industrial Group, finding that these companies satisfied the conditions of the competition.

10. On 14 June 2004 the applicant company was declared the winner (successful bidder) of the bidding competition. On the same day the applicant company concluded a purchase contract with the Fund and paid 4,260,000,000 Ukrainian hryvnas (UAH), the equivalent of about 608,000,000 euros (EUR) at the time, for the shares at issue. The shares were transferred to the applicant company's deposit account at ING Bank Ukraine.

11. On 23 July 2004 the applicant company appointed T. to represent it as the owner of the Kryvorizhstal shares and to complete the formalities of the transfer pursuant to the contract of 14 June 2004.

12. Without any further specification or evidence, the applicant company stated that it had invested substantial financial resources in Kryvorizhstal during the period of its control.

2. The 2004 presidential election and the reprivatisation of Kryvorizhstal

13. The lawfulness and transparency of the privatisation of Kryvorizhstal was contested by the political opposition, whose leaders in 2004 were Mr V. Yushchenko, Mrs Y. Tymoshenko and Mr O. Moroz. In their public statements, they all accused President Kuchma, P. and A. of fraud, and called for the enterprise to be returned to the State.

14. During the 2004 presidential election campaign the issue was debated by two main rivals, Mr Yushchenko and Mr Yanukovych. Mr Yanukovych, whose candidature was openly supported by President Kuchma and A., insisted that the privatisation of Kryvorizhstal had been lawful and fair.

15. Between late November 2004 and January 2005 a series of protests took place in the immediate aftermath of the run-off vote of the 2004 election, an election which, according to numerous national and international reports, was

compromised by massive corruption, voter intimidation and direct electoral fraud. These events are commonly known as the Orange Revolution.

16. Following the revote of 26 December 2004, Mr Yanukovych lost the election to Mr Yushchenko, who became the third President of Ukraine on 23 January 2005. On 24 January 2005 Mrs Tymoshenko was appointed to the post of interim Prime Minister. On 4 February 2005 the Verkhovna Rada (Ukrainian Parliament) approved the appointment of the new Cabinet of Ministers, headed by her. The Party of Regions formed the parliamentary opposition.

17. According to different media reports submitted by the applicant company, between January and April 2005 President Yushchenko and Prime Minister Tymoshenko made public statements that the privatisation of Kryvorizhstal had been unlawful, and that the enterprise would be returned to the State and subsequently resold.

18. In particular, in an interview of 26 January 2005 Prime Minister Tymoshenko said that "Ukrainian enterprises, like Kryvorizhstal, which had blatantly been stolen, had to be returned to the State."

19. On 4 February 2005 President Yushchenko made the following statement when addressing the Verkhovna Rada:

"...I promise that fair privatisation will be carried out this year. Those facilities which were stolen, starting with Kryvorizhstal, will be returned to the State ..."

20. On 12 February 2005 the Cabinet of Ministers revoked its decision of 6 August 2003 by which the privatisation of Kryvorizhstal had been launched. On 15 February 2005 the Fund also revoked its decisions concerning the privatisation.

21. On 8 June 2005 the State took control of Kryvorizhstal, pursuant to commercial court decisions declaring its privatisation unlawful (see paragraphs 51-53 and 56-57 below). By a decree of 11 June 2005, the Cabinet of Ministers declared the contract of 14 June 2004 invalid and withdrew the Kryvorizhstal shares from the applicant company.

22. On an unspecified date the money paid for the shares in the enterprise in 2004 was returned to the applicant company.

23. By two decrees of 23 June 2005, the Cabinet of Ministers launched the procedures for resale of 93.02% of Kryvorizhstal's share capital. On 9 August 2005 it approved the bidding conditions. The next day the bidding competition was officially announced.

24. The applicant company did not participate in the competition. Instead, it challenged the authorities' decrees issued in February and June 2005 before the commercial courts and the courts of general jurisdiction, but to no avail. The applicant company did not provide any further details of those proceedings.

25. On 24 October 2005 the bidding competition was completed by an auction, which was broadcast live by major television stations. Mittal Steel Germany GmbH was declared the successful bidder. On 28 October 2005 it concluded a purchase contract with the Fund and became the new owner of 93.02% of Kryvorizhstal's share capital, for the price of UAH 24,200,000,000, the equivalent of about EUR 3,964,021,752 at the time. Eventually, Mittal Steel Germany GmbH was succeeded by ArcelorMittal Duisburg GmbH, which, according to the documents submitted by that company, made significant investments in Kryvorizhstal.

3. Events after the 2004 election concerning one of the applicant company's owners

26. According to the applicant company, after the 2004 election A. was targeted for his political expression and association. In particular, companies which he owned or controlled were subjected to various checks by the authorities. The authorities allegedly attempted to nationalise some of those companies, though they were unsuccessful. The applicant company submitted copies of several petitions to the domestic authorities made by third parties with a view to preventing the nationalisation of those companies.

B. Proceedings before the courts of general jurisdiction instituted by private individuals

1. Proceedings instituted by N., S. and Kh.

27. On 28 May, 3 and 11 June 2004 respectively, three private individuals, N., a lawyer practising in Kyiv, S. and Kh., members of Parliament, lodged with the Golosiivskyy District Court of Kyiv three separate administrative law complaints against the decisions of the Fund and the State Commission on Securities and the Stock Market concerning the organisation of the 2004 bidding competition, contending that those decisions had violated the right of every citizen to participate in the privatisation of State property.

28. On an unspecified date the President of the Kyiv Court of Appeal transferred the case to the Pecherskyy District Court of Kyiv ("the Pecherskyy Court"). By separate decisions of 8 and 14 June 2004, the latter court refused to consider those complaints, and ordered that its decisions be immediately "enforced". No copy of those decisions was provided to the Court.

29. On 2 August 2004 the Kyiv Court of Appeal changed the decisions of 8 and 14 June 2004 in part by excluding the provisions concerning their immediate enforcement.

2. Proceedings instituted by I. and N.

30. On 14 June 2004 I., a private individual, and N. lodged with the Shevchenkivskyy District Court of Kyiv a claim against the Fund, the State Commission on Securities and the Stock Market, and ING Bank Ukraine, challenging the validity of their decisions and actions in connection with the privatisation of Kryvorizhstal. On an unspecified date the case was transferred to the Pecherskyy Court.

31. At the claimants' request, the applicant company was invited to participate in the proceedings as a third party. By letters of 20 October and 25 November 2004, the Pecherskyy district prosecutor applied to the court for leave to participate in the case to represent the interests of I. and those of the State. The prosecutor's application was granted.

C. Proceedings before the commercial courts instituted by Consortium Industrial Group

32. On 25 June 2004 Consortium Industrial Group, the losing party in the 2004 bidding competition, instituted proceedings in the Kyiv Commercial Court against the applicant company, the Fund, the Ministry of Industrial Policy and the State Commission on Securities and the Stock Market, challenging the validity of the authorities' decisions adopted in connection with the privatisation of Kryvorizhstal and the contract of 14 June 2004. It contended that the 2004 bidding competition had been unlawful and unfair.

33. In particular, Consortium Industrial Group argued that the shares in Kryvorizhstal had not been issued in accordance with the law; that the competition had not been announced in due time; that the conditions of the competition had been too narrow and restrictive, thereby limiting the circle of potential bidders and disrespecting the statutory right of every citizen to participate in the privatisation of State assets; that the shares should have been sold through the stock exchange; and that its total offer, including the money it had planned to invest in Kryvorizhstal, had been higher than the amount paid by the applicant company for the shares in the enterprise. It also argued that, because the complaints by three private individuals against the decisions concerning the organisation of the 2004 bidding competition had been ongoing before the courts in the period May-June 2004, any decision adopted between 8 and 14 June 2004 in relation to the competition had been invalid.

34. On 5 July 2004 the applicant company lodged a counterclaim against the other parties to the proceedings, asking the court to endorse its right to 93.02% of the Kryvorizhstal shares.

35. By a procedural ruling of 20 July 2004, the Kyiv Commercial Court found that the Office of the Prosecutor General had to participate in the proceedings, and ordered it to designate a representative in the proceedings. Notwithstanding that ruling, no prosecutor appeared before the Kyiv Commercial Court or the Higher Commercial Court in 2004.

36. Kryvorizhstal took part in the proceedings as a third party.

37. On 19 August 2004 the Kyiv Commercial Court, having considered the arguments of Consortium Industrial Group in detail, dismissed them as unsubstantiated and found that the privatisation of Kryvorizhstal had been carried out in accordance with the relevant legislation. The court held, *inter alia*, that citizens' rights to participate in the privatisation had not been restricted, since they had been free to establish companies and participate in the competition through such companies. It also stated that the complaints by the private individuals against the competition had not been lodged in accordance with the law, and thus had had no suspensive effect. The court further endorsed the applicant company's property rights over the Kryvorizhstal shares, and banned any actions by the defendants which could violate these rights.

38. Consortium Industrial Group appealed in cassation to the Higher Commercial Court.

39. On 22 October 2004 the Higher Commercial Court held a hearing in the presence of the parties' representatives and upheld the judgment of 19 August 2004. The parties made no appeal to the Supreme Court against the decision of 22 October 2004.

40. On 7 February 2005 the Prosecutor General lodged a cassation appeal in the interests of the State with the Supreme Court, alleging that the contested decisions of the Kyiv Commercial Court and the Higher Commercial Court concerned the rights and obligations of the Cabinet of Ministers. The Prosecutor General sought an extension of the time-limit for lodging his appeal, stating, without giving any further details, that he had missed it since he had only become aware of the decision of 22 October 2004 in the course of examining a complaint by S. to the Prosecutor General. According to the Government, the Office of the Prosecutor General had received that complaint on 30 December 2004, and it had been directed mainly against the decision of the Higher Commercial Court of 22 October 2004.

41. In his appeal, the Prosecutor General mainly challenged the application of the law by the Kyiv Commercial Court and the Higher

Commercial Court, and alleged that those courts' decisions had been inconsistent with a decision of the Supreme Court in a similar case. He also stated that the courts had failed to invite the Cabinet of Ministers to take part in the proceedings, although the subject matter had concerned its functions under the relevant privatisation regulations.

42. On 17 February 2005 the Supreme Court granted the extension requested and opened the proceedings on the merits of the Prosecutor General's cassation appeal. No copy of that procedural ruling was provided to the Court.

43. On 1 March 2005 the Supreme Court allowed the appeal by the Prosecutor General, quashed the decisions of the lower courts, and remitted the case for fresh consideration. It found that under Ukrainian law neither Consortium Industrial Group nor the applicant company had been eligible to participate in the 2004 bidding competition; that the competition had not been announced in due time, as required by law; and that the lower courts, when allowing the applicant company's counterclaim, had erred in applying the rules of procedure, which stated that no counterclaim could be lodged by a defendant against another defendant in the proceedings.

44. On 21 March 2005 the Deputy Prosecutor General lodged with the Kyiv Commercial Court, to which the case had been remitted, a claim in the interests of the State and on behalf of the Fund against the applicant company, the Ministry of Industrial Policy, and the State Commission on Securities and the Stock Market. His claim was directed against the decisions concerning the privatisation of Kryvorizhstal and the contract of 14 June 2004. He also sought the return of the Kryvorizhstal shares to the Fund, and asked the court to seize the shares as a temporary measure until the dispute was finally resolved.

45. The Deputy Prosecutor General argued that the 2004 bidding competition had not been organised in a lawful and fair way, particularly regarding the conditions which the potential bidders had had to satisfy. He further submitted that the bidders whose offers had been chosen had not satisfied the legislative requirements for participating in that competition.

46. On 23 March 2005 the court held a hearing in camera at which it decided to open the proceedings and invite the parties to submit their arguments on the case. It also scheduled the next hearing for 1 April 2005.

47. On 1 April 2005 the court ordered that ING Bank Ukraine, where the shares at issue had been deposited, participate in the case as a defendant. The Office of the General Prosecutor was granted leave to take part in the proceedings as a third party on behalf of the Cabinet of Ministers.

48. On 15 April 2005 the applicant company requested that the court allow journalists to attend the hearings in the case. The court rejected that application, finding that the journalists had not obtained official authorisation from the court administration.

49. Subsequently, journalists obtained the necessary authorisation and attended the hearings.

50. On 21 April 2005 a copy of the Pecherskyy Court's decision of 21 April 2005 (see paragraph 83 below) was included in the case file and examined by the court at a hearing on the same day.

51. On 22 April 2005 the court delivered a judgment in the case whereby it allowed the claims of Consortium Industrial Group and the Office of the Prosecutor General, which it found to be of the same nature. It annulled the authorities' decisions concerning the 2004 privatisation and the contract of 14 June 2004, and ordered the Fund to return the money paid by the applicant company for the Kryvorizhstal shares. The applicant company's counterclaim was rejected, and it was ordered to return the shares to the Fund and pay UAH 1,903, the equivalent of about EUR 291 at the time, to the State for costs and expenses.

52. The court held that the Fund had failed to announce the competition in due time; that it had unlawfully introduced a condition concerning the production of charcoal and steel; that the Fund had failed to set out specific conditions of sale of certain number of the Kryvorizhstal shares outside the bidding competition; that the Fund's decisions issued between 8 and

14 June 2004 in relation to the competition had been invalid, as the complaints of three private individuals against the decisions concerning the organisation of the 2004 bidding competition had been ongoing before the courts during that period; and that the applicant company and Consortium Industrial Group had unlawfully been allowed to participate in the competition.

53. By a procedural ruling of 28 April 2005, the same court seized the shares at issue. On the same day, bailiffs started enforcement proceedings in respect of that ruling.

54. The applicant company appealed against the judgment of 22 April 2005 and the ruling of 28 April 2005. According to the text of the Kyiv Commercial Court of Appeal's decision of 2 June 2005 (see paragraph 56 below), the applicant company contended that the Kyiv Commercial Court had wrongly established the circumstances of the case, and that it had erred in applying the law. The applicant company further challenged the lawfulness of the bailiffs' actions as regards enforcement of the ruling of 28 April 2005. No copy of the applicant company's appeal was provided to the Court.

55. In the appeal proceedings, the applicant company asked the Kyiv Commercial Court of Appeal to suspend the proceedings before the commercial courts pending the outcome of the proceedings before the courts of general jurisdiction (see paragraphs 81-87 below). The court rejected that application on the grounds that the latter proceedings were not decisive for the outcome of the commercial case.

56. On 2 June 2005 the Kyiv Commercial Court of Appeal changed the judgment of 22 April 2005 in part. In particular, the appeal court found that the claims by Consortium Industrial Group had to be rejected, as it had not been eligible to participate in the 2004 bidding competition. The applicant company's appeal was dismissed as unsubstantiated.

57. By the same decision, the appeal court annulled the ruling of 28 April 2005 for non-compliance with the procedural rules, and refused to consider the applicant company's complaints against the bailiffs, on the basis

that the matter fell outside its jurisdiction. The court further ruled to seize the Kryvorizhstal shares for the purpose of securing the claim by the Office of the Prosecutor General.

58. The applicant company appealed in cassation. No copy of the cassation appeal was provided to the Court.

59. On 21 July 2005 the Higher Commercial Court rejected the applicant company's cassation appeal as unsubstantiated.

60. On 31 August 2005 a panel of three judges of the Supreme Court rejected the applicant company's further cassation appeal. No copy of that appeal was provided to the Court.

61. In the course of the proceedings before the commercial courts between February and June 2005 the applicant company challenged the impartiality of the judges and the courts dealing with its case on a number of occasions, alleging that their decisions and actions were influenced by government officials. According to the text of the judgment of the Kyiv Commercial Court of 22 April 2005 and the decision of the Kyiv Commercial Court of Appeal of 2 June 2005 (see paragraphs 51-52 and 56-57 above), the applicant company's procedural applications were rejected as unsubstantiated. No further explanation in that regard was given by the courts.

D. Public statements concerning the proceedings before the commercial courts instituted by Consortium Industrial Group

62. After 1 March 2005, and while the applicant company's case was being considered by the commercial courts, the President and the Prime Minister made a number of public statements concerning the proceedings. The applicant company submitted different media reports reproducing and/or interpreting those statements. The Government argued that some of the reports had not interpreted the statements accurately. In particular, they referred to the reports concerning the Prime Minister's press conference of 5 April 2005, at which she had made statements as to when the ongoing proceedings before the Kyiv Commercial Court might be completed.

63. According to a number of other reports, at a press conference of 11 April 2005 the Prime Minister said:

"... Facilities such as Kryvorizhstal ... I think that today the [authorities] are involved in the court proceedings concerning the return of those assets to the State. We are confident that we have a clear position [in relation to the case], and these enterprises will be returned to the State ..."

In an interview of 14 April 2005 the President stated:

"... If the owners refuse to cooperate voluntarily, we will go down the legal route and will undoubtedly win [the case]. [However,] this will take several months...

The facility has been stolen, and the cost of that theft is several billion [United States] dollars. For me, this is a fact...

We prepare the terms of a new [bidding] competition..."

64. On 23 April 2005, commenting on the possibility that the applicant company could appeal against the judgment of 22 April 2005, the Prime Minister stated:

"... This will be an important decision by the appeal [court]. It will be evidence not only of the court's objectivity, but also of the [past] negotiations behind closed doors between various representatives from the authorities and the business..."

E. Proceedings before the courts of general jurisdiction instituted by Consortium Industrial Group

65. In July 2004 Consortium Industrial Group instituted proceedings in the Pecherskyy Court against the applicant company, the Fund, the Ministry of Industrial Policy and the State Commission on Securities and the Stock Market, challenging the validity of the authorities' decisions issued in connection with the privatisation of Kryvorizhstal and the contract of 14 June 2004. Consortium Industrial Group relied mainly on the same circumstances and considerations referred to in its claims before the commercial courts. Its claims before the courts of general jurisdiction contained an additional element – a challenge to

the validity of T.'s appointment on 23 July 2004 as the applicant company's representative in the procedures following the 2004 bidding competition.

66. T. took part in the proceedings as a defendant. Kryvorizhstal participated in the proceedings as a third party.

67. On 25 August 2004 the court delivered a judgment dismissing the claims of Consortium Industrial Group. For the most part, it contained identical reasons to those in the judgment of the Kyiv Commercial Court of 19 August 2004 (see paragraph 37 above).

68. On 1 and 27 December 2004 respectively the Kyiv Court of Appeal and a panel of three judges of the Supreme Court upheld the judgment of 25 August 2004.

69. On 9 February 2005 N. lodged an application for review of the above case with the Pecherskyy Court, in the light of newly discovered circumstances. In particular, she argued that the findings concerning the right of every citizen to participate in the privatisation of State assets contained in the judgment of 25 August 2004 had been contrary to the judgment of the Constitutional Court of 1 December 2004 (see paragraph 99 below). She also contended that the courts had not been aware of the fact that the decisions of the Pecherskyy Court of 8 and 14 June 2004 had been challenged on appeal, and thus they had not become final before 2 August 2004.

70. N.'s application was dealt with by the same judge of the Pecherskyy Court who had sat in the main proceedings.

71. By a telegram of 15 February 2005, the court informed the applicant company that the next day it would hold a hearing, at the request of N..

72. On 15 February 2005 the applicant company lodged with the court an application to consult the case file. The application was not granted.

73. On 16 February 2005 the court held a hearing on the merits of N.'s application. Consortium Industrial Group, T., the State Commission on Securities and the Stock Market and Kryvorizhstal, who had been the parties to the main proceedings, did not take part in the hearing.

74. The representatives of the applicant company requested leave to consult the case file and the adjournment of the hearing on the grounds that they had not been informed about the merits of the application before the hearing, and accordingly had not been able to prepare for it. They also sought the withdrawal of the judge dealing with the case, challenging her impartiality.

75. The judge rejected the applications by the applicant company's representatives, and read out the application by N.

76. The applicant company's representatives objected to the application, arguing that N. was not entitled to ask for a review of the case, since she had not been a party to the original proceedings, and there were no newly discovered circumstances or other reasons capable of warranting the reopening of the proceedings.

77. The applicant company's representatives did not receive a copy of the application either before or during the hearing.

78. On 17 February 2005 the court allowed the application. It found that the right of every citizen, including that of N., to participate in privatisation and challenge its lawfulness had been confirmed by the judgment of the Constitutional Court of 1 December 2004. It also held that the ruling of 8 June 2004 on N.'s complaint concerning the 2004 competition had not entered into force at the time when the competition had taken place, and thus it could not have served as one of the grounds for rejecting the claims by Consortium Industrial Group.

79. The court quashed its judgment of 25 August 2004 and held that the higher courts' decisions of 1 and 27 December 2004 were no longer valid.

80. On an unspecified date the case was transferred to another judge of the Pecherskyy Court for fresh examination.

F. Joined proceedings before the courts of general jurisdiction

81. On 28 February 2005, following an application by N., the Pecherskyy Court decided to examine the claims of I., N., and Consortium Industrial Group

(see paragraphs 30 and 65 above) jointly, holding that they were of the same nature and concerned the same defendants.

82. On an unspecified date the applicant company lodged an application for review of the ruling of 17 February 2005 with the same court, in the light of newly discovered circumstances.

83. On 21 April 2005 the court granted the application by the applicant company, quashed the ruling of 17 February 2005, and rejected N.'s application of 9 February 2005 on the grounds that she had not participated in the original proceedings concerning the claims by Consortium Industrial Group.

84. By a separate ruling of the same date, the court rejected the claims by I. and N., finding that they had not participated in the 2004 bidding competition and did not have an arguable claim in respect of the subject matter of the proceedings. The court held that their claims represented a disguised attempt to settle a dispute between legal entities falling within the jurisdiction of commercial courts.

85. By decisions of 20 and 27 July 2005, the Kyiv Court of Appeal quashed the ruling of 21 April 2005, stating that, in the light of newly discovered circumstances, the ruling of 17 February 2005 was not to be reviewed, and that, with regard to Article 6 of the Convention, the Pecherskyy Court had unlawfully limited I.'s and N.'s right of access to a court.

86. On 15 October 2007 the Donetsk Regional Court of Appeal, acting as a court of cassation, upheld the decisions of 20 and 27 July 2005.

87. The case was remitted to the Pecherskyy Court, which on 6 February 2008 decided not to examine the claim of Consortium Industrial Group, because its representatives had failed to appear before the court.

88. No appeal was lodged against the decision of 6 February 2008. According to the Government, on the basis of that decision the joined proceedings before the courts of general jurisdiction were terminated. The applicant company did not contest this.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The 1991 Code of Commercial Procedure, as worded at the material time

89. Article 53 of the Code set out that, at the request of a party to proceedings or a prosecutor, or on its own initiative, a court could renew a time-limit if it considered that there were valid reasons for the time-limit being missed.

90. Under Articles 111-11, 111-14 and 111-16, a decision of the Higher Commercial Court had the force of law when delivered, but parties to proceedings and the Prosecutor General were entitled to lodge a cassation appeal with the Supreme Court within one month of the decision being delivered.

91. Article 111-15 provided that the Supreme Court had to examine cassation appeals if they were based on one of the following grounds: (i) the Higher Commercial Court's application of a legal act contravening the Constitution; (ii) an impugned decision's inconsistency with the case-law of the Supreme Court or a different specialised higher court on the application of the same substantive law provisions; (iii) the Higher Commercial Court's inconsistent application of the same legal provision in similar cases; (iv) an impugned decision's inconsistency with the international treaties of Ukraine approved by Parliament; and (v) a finding by an international judicial authority with jurisdiction recognised by Ukraine that an impugned decision violated the international commitments of Ukraine.

92. In accordance with Article 111-19, the Supreme Court had the power to quash a decision of the Higher Commercial Court if it was inconsistent with the Constitution or Ukraine's international treaties approved by Parliament, or if it was based on the incorrect application of substantive law. The Supreme Court's decision was final and could not be appealed against (Article 111-20).

B. The 1963 Code of Civil Procedure (repealed on 1 September 2005)

93. As set out in Article 4 of the Code, any interested person was entitled to apply to a court to defend a violated or disputed right or interest protected by law.

94. Article 248-1 of the Code established that every citizen was entitled to lodge a complaint with a court if he or she considered that his or her rights, freedoms or lawful interests had been infringed by a decision or action of a public authority or official, or by inactivity on the part of a public authority or official. In accordance with Article 248-4, the lodging of such a complaint suspended the execution of the impugned decision.

95. Under Article 347-2 of the Code, judgments and rulings of courts of first instance, appeal courts and cassation courts could be reviewed in the light of newly discovered circumstances. The same Article set out five grounds for such a review: (i) significant circumstances which had not been and could not have been known to the person applying for a review; (ii) the intentionally false testimony of a witness, intentionally incorrect expert conclusions, intentionally incorrect translations, forged documentary or material evidence leading to the issuing of an unlawful judgment, as established by a final judgment in a criminal case; (iii) criminal offences committed by parties, other persons participating in a case, or judges, in the course of a case being considered, as established by a final judgment in a criminal case; (iv) the annulment of a judgment, court ruling or decision of another authority on which the judgment or ruling at issue was based; and (v) the law applied by a court in the determination of a case being declared unconstitutional.

96. Article 347-3 of the Code contained a list of those who were entitled to apply for a review of judgments and court rulings in the light of newly discovered circumstances: parties to a case, other persons participating in proceedings, and prosecutors. They could do so within three months of discovering grounds for such a review.

97. Under Article 347-6, an application for review had to be examined at a hearing of which parties, other persons participating in the case and a

prosecutor had been informed. Their failure to appear at that hearing did not prevent a court from examining the application. If the court decided to allow the application and annul a judgment or ruling, the case was to be considered in accordance with the procedure set out by the Code.

98. In accordance with Article 347-7 of the Code, the decision to grant an application for review of a judgment or ruling of a court in the light of newly discovered circumstances was final and could not be challenged on appeal.

C. Judgment of the Constitutional Court of 1 December 2004

99. The relevant provisions of the Constitutional Court's judgment read as follows:

"1... [The members of Parliament] of Ukraine lodged with the Constitutional Court of Ukraine an application for an official interpretation of the notion 'interest protected by law', as used in the first paragraph of Article 4 of the Code of Civil Procedure ..., and for an [official] explanation as to 'whether this notion concerns an individual's interest – a shareholder in a joint-stock company who applies to a court with a view to defending the violated rights of the joint-stock company ..., taking into account the fact that, because of the violation of the rights of the joint-stock company, the rights of the company's shareholder[s], as set out in the current legislation of Ukraine and/or the company's articles of association, have also been infringed'.

...

the Constitutional Court decided:

1. The notion 'interest protected by law' ... is to be understood as an inclination to use pecuniary and/or non-pecuniary benefits ... [an inclination] which is a distinct object of judicial protection and of other remedies aimed at satisfying individual and collective needs which are not contrary to the Constitution and laws of Ukraine, social interests, [the principles of] fairness, good faith, reasonableness, or other fundamental principles of law.

2. In the context of the question raised in the constitutional application, the provisions of the first paragraph of Article 4 of the Code of Civil Procedure

of Ukraine are to be understood as meaning that a shareholder may defend his rights and interests protected by law through an application to a court if they are violated, disputed or not acknowledged by the joint-stock company [in which he or she holds shares], its organs or by other shareholders of that company.

The law shall determine the procedure of judicial protection of the joint-stock company's rights and interests ... violated by any person, including third parties, where those rights and interests are not considered to equate simply to the totality of the individual interests ... of its shareholders...."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 AND ARTICLE 13 OF THE CONVENTION

100. The applicant company complained, in its original application of 22 March 2005 which was subsequently amended on 21 June 2005, of a violation of Article 6 § 1 and Article 13 of the Convention, stating that after the 2004 election the proceedings concerning the 2004 bidding competition before the courts of general jurisdiction and the commercial courts had been conducted in an unfair manner.

101. Firstly, according to the applicant company, the principle of legal certainty had not been observed in those proceedings in view of (i) the annulment of the final judgment of the Pecherskyy Court of 25 August 2004 and the decisions of the Kyiv Court of Appeal and the Supreme Court of 1 and 27 December 2004; (ii) its case being reconsidered following an appeal by the Prosecutor General, who had not been a party to the proceedings, after being finally determined by the Higher Commercial Court on 22 October 2004; (iii) the failure of the Kyiv Commercial Court and the Commercial Court of Appeal to take into account the findings contained in the judgment of the Pecherskyy Court of 25 August 2004 as regards the same parties, facts and arguments; and (iv) the conflicting approaches to the interpretation of the relevant domestic law of the commercial courts and the courts of general jurisdiction dealing with its cases.

102. Secondly, the applicant company alleged that the review proceedings before the Pecherskyy Court in February 2005 had not been fair. In particular, it complained that the application to reopen the proceedings in the light of newly discovered circumstances had been lodged by a person who had not participated in the main proceedings, and that there had been no reason to reopen the case. It further alleged that the Pecherskyy Court had failed to respect the principle of equality of arms when considering that application, in that the applicant company's lawyers had not been promptly informed of the hearing of 16 February 2005 or provided with a copy of the application to reopen the proceedings, or the documents in support of that application. Consequently, they had not been able to prepare for that hearing and comment effectively on the merits of the application.

103. Thirdly, the applicant company stated that the proceedings before the Supreme Court in the period February-March 2005 had also been unfair, arguing that the Prosecutor General's cassation appeal had been considered on the merits, notwithstanding the fact that it had been lodged out of time.

104. Fourthly, the applicant company alleged that its lawyers had had no opportunity to put forward their arguments at the hearing of 23 March 2005 before the Kyiv Commercial Court, that journalists had not been allowed to attend that hearing, and that the judgment of 22 April 2005 lacked reasons.

105. Fifthly, the applicant company claimed that the courts dealing with its cases after the 2004 election had not been impartial and independent, and that their decisions which had been unfavourable to it had been politically motivated and influenced by top government officials. By making public statements concerning the ongoing proceedings, the authorities had violated Article 6 of the Convention.

106. In its submissions of 19 March 2008, the applicant company also complained regarding the unfavourable outcome of its application for review of the decision of the Pecherskyy Court of 17 February 2005, and of the failure of the authorities to inform it of the hearing of 21 July 2005 before the Higher

Commercial Court, and the fact that the hearing had been held in the absence of its lawyers.

107. In its submissions of 7 July 2009, the applicant company further complained that there had been a violation of the principle of impartiality in the reopened proceedings in its case, in that the State authorities had revoked their decisions relating to the launch and conduct of the process privatising Kryvorizhstal while those proceedings had been ongoing (see paragraph 20 above).

108. The Court considers that the applicant company's complaints fall to be examined under Article 6 § 1 of the Convention, which reads, in so far as relevant, as follows:

"In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law."

A. Admissibility

109. At the outset, the Court notes that the applicant company's complaints essentially concern the manner in which the courts of general jurisdiction and the commercial courts examined the dispute concerning the lawfulness of the privatisation of Kryvorizhstal after the 2004 election. There are three main issues regarding which the applicant company complained: (i) the quashing of the final decisions in its cases and the subsequent reopening of the proceedings in February 2005; (ii) the allegedly inconsistent decisions taken by the courts after the proceedings were reopened; and (iii) the alleged violation of the principles of independence and impartiality. The Court will firstly examine the admissibility of those issues and then the admissibility of the applicant company's other complaints under Article 6 § 1 of the Convention regarding an unfair hearing.

1. Annulment of the final decisions and the reopening of the proceedings

(a) The parties' submissions

110. The Government argued that Article 6 § 1 of the Convention did not apply to the proceedings in question, as they had not been decisive for the applicant company's civil rights or obligations. In particular, the decisions of the commercial courts of 19 August and 22 October 2004, and the decisions of the courts of general jurisdiction of 25 August and 1 and 27 December 2004 (see paragraphs 37, 39, 67 and 68 above) rejecting the claims against the applicant company, had not changed its legal status as the owner of Kryvorizhstal. Nor had the quashing of those decisions resulted in a change in that status. Also, the applicant company's counterclaim in the commercial proceedings had not concerned a dispute, as it had been directed against different State bodies, which had not challenged the applicant company's title in respect of Kryvorizhstal and which procedurally had been the applicant company's co-defendants.

111. The Government further argued that the applicant company could not claim to be a victim regarding this part of its complaints, as the quashing of the court decisions at issue had not resulted in a change in the applicant company's legal status as the owner of Kryvorizhstal. Moreover, the claim by Consortium Industrial Group had ultimately been rejected by the courts of general jurisdiction in February 2008 (see paragraph 87 above). Also, the applicant company could not claim to have been in a state of uncertainty following the quashing of the decisions of the commercial courts of 19 August and 22 October 2004, as those decisions had been reconsidered in the course of the ordinary cassation procedure.

112. The applicant company stated that Article 6 § 1 of the Convention was applicable to the impugned proceedings, as they had essentially concerned its title in respect of Kryvorizhstal and thus its consequent civil rights and obligations. Its title had been challenged directly and indirectly, initially by a private company and later by a private individual and the State through the Prosecutor General. The outcome of the proceedings had been decisive for the applicant company's title.

(b) The Court's assessment

113. The Court reiterates that, for the civil limb of Article 6 § 1 to be applicable, there must be a dispute over a "civil right" which can be said, at least on arguable grounds, to be recognised under domestic law, irrespective of whether that right is protected under the Convention. The dispute must be genuine and serious; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise; and, finally, the result of the proceedings must be directly decisive for the right in question, mere tenuous connections or remote consequences not being sufficient to bring Article 6 § 1 into play (see, among many other authorities, *Micallef v. Malta* [GC], no. 17056/06, § 74, ECHR 2009, and *Boulois v. Luxembourg* [GC], no. 37575/04, § 90, ECHR 2012).

114. Turning to the present case, the Court notes that the proceedings before the commercial courts and the courts of general jurisdiction concerned a genuine dispute between different parties over the lawfulness of the decisions and the contract by which the applicant company had acquired shares in Krivorizhstal. Thus, they were decisive for the determination of the applicant company's right over the shares, which was a civil right within the meaning of Article 6 § 1 of the Convention. These considerations are not altered by the fact that the decisions of the courts, which were eventually quashed in February 2005, were favourable to the applicant company and endorsed its title in respect of the shares, or that the quashing of those decisions entailed no change in the applicant company's legal status.

115. In the light of the foregoing, the Court finds that Article 6 § 1 applied to the impugned proceedings. Accordingly, the Government's objections in that regard (see paragraph 110 above) must be rejected.

116. In so far as the Government argued that the applicant company had no victim status as regards the quashing of the decisions in its favour (see paragraph 111 above), the Court considers that the Government's argument is closely linked to the substance of this part of the applicant company's

complaints. Accordingly, their objection in this regard must be joined to the merits.

117. The Court further finds that the applicant company's complaints about the quashing of the final decisions in its cases in February 2005 are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and are not inadmissible on any other grounds. They must therefore be declared admissible.

2. Allegedly inconsistent decisions taken by the courts after the proceedings were reopened

118. In so far as the applicant company complained that the Kyiv Commercial Court and the Commercial Court of Appeal had failed to take into account the findings contained in the judgment of the Pecherskyy Court of 25 August 2004, the Court considers that this complaint has to be examined in the context of the applicant company's more general complaint relating to the fact that the dispute regarding the lawfulness of the 2004 privatisation had been dealt with by the courts in the framework of two "parallel" judicial procedures (see paragraph 101 above). While the existence of multiple parallel and interrelated proceedings concerning substantially the same legal issue may potentially have implications for compliance with the principle of legal certainty (see, for instance, *Mullai and Others v. Albania*, no. 9074/07, §§ 81, 86-88, 23 March 2010), the Court reiterates its finding that the dispute in the present case was finally resolved by the commercial courts, and the "parallel" proceedings before the courts of general jurisdiction were eventually discontinued (see paragraph 87 above). Although the applicant company argued that at some stage in those proceedings there had been some inconsistency between the decisions of the commercial courts and those of the courts of general jurisdiction, it has not been demonstrated that this was the case or that the alleged inconsistency persisted until the time when the matter was finally determined by the Supreme Court (see paragraph 60 above).

119. Accordingly, this part of the applicant company's complaints should be rejected as manifestly ill-founded pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

3. Alleged non-compliance with the guarantees of independence and impartiality

(a) The parties' submissions

(i) The Government

120. The Government argued that the applicant company had no victim status as regards the alleged non-compliance with the guarantee of impartiality, since (i) no such complaint was contained in the application form, and (ii) public comments concerning the domestic proceedings had been made by individuals holding no government posts, in the context of an election debate.

121. The Government further argued that the applicant company had failed to exhaust domestic remedies as regards this part of the application, since it had not raised the issue of alleged bias in the domestic proceedings before the higher courts.

122. As to the proceedings before this Court, the Government stated that the applicant company had raised no complaint of bias on the part of the courts between 31 August 2005 and 28 February 2006, that is during the six months following the final determination of its case by the Supreme Court (see paragraph 60 above). The applicant company's complaints in that regard raised outside that period had to be rejected as lodged out of time.

123. According to the Government, the applicant company's allegations regarding a violation of the guarantees of independence and impartiality contained no complete and objective information about the statements by the politicians concerning the impugned proceedings. They were based on media reports containing incorrect interpretations of the statements, and the applicant company had misinterpreted some of the statements, in particular by saying that the Prime Minister had said that the proceedings "would" be finished by a certain date (see paragraph 62 above). Also, the applicant company had failed to

demonstrate how the politicians' statements had influenced the courts in the present case. For those reasons, the Government submitted that the applicant company's allegations were manifestly ill-founded.

(ii) The applicant company

124. The applicant company maintained its complaints that, following the 2004 election, the commercial courts dealing with its cases had not been independent and impartial, and their decisions had been influenced by top government officials.

125. The applicant company also contended that its appeals to the Higher Commercial Court and the Supreme Court had provided no effective remedy, since the judgment of the Kyiv Commercial Court of 22 April 2005 had become effective on 2 June 2005, and the State authorities had started the reprivatisation process before the higher courts had examined its appeals.

(b) The Court's assessment

126. The Court notes that, in so far as the applicant company's complaints concern proceedings before the courts of general jurisdiction, the applicant company can no longer claim to be a "victim" within the meaning of Article 34 of the Convention, as the civil claims against it were not pursued and, for that reason, the impugned proceedings were discontinued in February 2008 (see paragraph 87 above). It follows that this part of the applicant company's complaints must be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention (see, *mutatis mutandis*, *Dilipak v. Turkey*, no. 29680/05, § 32, 15 September 2015, with further references).

127. As regards the complaints regarding a violation of the guarantees of independence and impartiality in the proceedings before the commercial courts, the Court notes that the applicant company raised those complaints in its amended application form of 21 June 2005 (see paragraph 105 above). The complaints were essentially based on different media reports, according to which the Ukrainian authorities, acting at the highest level, made public statements concerning the outcome of those proceedings before the courts finally

determined it. Notably, such statements were made by the President and the Prime Minister in January, February and April 2005 (see paragraphs 17-19 and 62-64 above). Thus, the Government's objection as to the applicant company's victim status must be rejected.

128. The Court further notes that the Government provided no evidence demonstrating that the impugned media reports had either been untrue or incorrectly reproduced the statements. Accordingly, the Government's objection in that regard (see paragraph 123 above) must be also dismissed.

129. As to the Government's objection as to non-exhaustion (see paragraph 121 above), the Court notes that the applicant company raised its complaints of a violation of the principle of impartiality before the Kyiv Commercial Court and the Kyiv Commercial Court of Appeal. Those courts rejected its complaints as unsubstantiated, providing no reasons for their decision (see paragraph 61 above). Even assuming that the applicant company did not maintain those complaints before the Higher Administrative Court and the Supreme Court, there is no information demonstrating that the alleged violation of the principle of impartiality could have been remedied in the proceedings before those courts. Nor did the Government submit a specific example showing similar complaints having been remedied in the course of those types of proceedings (see, *mutatis mutandis*, *Sovtransavto Holding v. Ukraine* (dec.), no. 48553/99, 27 September 2001). Therefore, the Government's objection as to non-exhaustion should be dismissed.

130. In the light of the foregoing conclusion that the proceedings before the Higher Administrative Court and the Supreme Court could offer no remedy for the alleged violation of the principle of impartiality (see paragraph 129 above), the applicant company should not be reproached for having lodged the complaints at issue with this Court on 21 June 2005, which was before those courts finally determined the case (see paragraphs 59 and 60 above). In any event, in accordance with the Court's case-law, the last stage in the exhaustion of remedies may be reached after the lodging of an application but before the Court

is called upon to pronounce on the issue of admissibility (see, for instance, *Yazıcı and Others v. Turkey (no. 2)*, no. 45046/05, § 18, 23 April 2013 with further references). Accordingly, the Court also rejects the Government's objection based on the six-month rule (see paragraph 122 above).

131. In so far as the Government argued that the applicant company had failed to demonstrate how those statements had influenced the courts (see paragraph 123 above), this objection is closely linked to the substance of the applicant company's complaints. Therefore, it must be joined to the merits.

132. On the whole, the Court finds that the applicant company's complaints regarding a breach of the guarantees of independence and impartiality in the proceedings before the commercial courts in 2005 are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and are not inadmissible on any other grounds. They must therefore be declared admissible.

4. The applicant company's remaining complaints under Article 6 § 1 of the Convention

133. The applicant company complained regarding different procedural violations in the way the Kyiv Commercial Court had dealt with its case in March 2005. However, it submitted no copy of its appeals against the judgment of that court of 22 April 2005. Nor did it demonstrate that those complaints had been duly raised in the ensuing proceedings before the higher courts. Accordingly, the complaints must be rejected for non-exhaustion of domestic remedies pursuant to Article 35 §§ 1 and 4 of the Convention.

134. The Court notes that the applicant company's complaints of 19 March 2008 and 7 July 2009, in so far as they concern the commercial proceedings, were lodged more than six months after the final domestic decision had been given by the Supreme Court on 31 August 2005 (see paragraph 60 above). Accordingly, those complaints should be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

135. The applicant company's complaint of 19 March 2008 about the outcome of its application for review of the decision of the Pecherskyy Court of 17 February 2005 must be rejected as incompatible *ratione materiae* with the Convention, pursuant to Article 35 §§ 3 (a) and 4, since the impugned proceedings concerned no determination of civil right or obligations, but the question of admissibility of the applicant company's extraordinary appeal.

B. Merits

136. The Court reiterates that the applicant company's admissible complaints concern two issues: (i) the quashing of the final decisions in its cases and the subsequent reopening of the proceedings in February 2005 and (ii) the alleged violation of the principles of independence and impartiality in the proceedings before the commercial courts in 2005. The Court will examine those issues in turn in order to determine whether the impugned proceedings met the requirements of fairness within the meaning of Article 6 of the Convention.

1. The parties' submissions

(a) The Government

(i) The quashing of the final decisions in its cases and the subsequent reopening of the proceedings in February 2005

137. The Government argued that the quashing of the decisions in February 2005 had entailed no violation of Article 6 § 1 of the Convention.

138. In particular, the decisions of the commercial courts of 19 August and 22 October 2004 had been challenged by the Prosecutor General by means of an ordinary appeal on points of law, the time-limit for which had been extended for the valid reason that the Prosecutor General had not been informed promptly of those decisions. The time-limit had been extended after a short delay, and the matter had been within the discretion of the Supreme Court. In contrast with the situation in *Sovtransavto Holding v. Ukraine* (no. 48553/99, ECHR 2002-VII), in the present case, the Prosecutor General had enjoyed no special standing *vis-à-vis* other parties. The Prosecutor General had acted on behalf of the State, whose interests had been violated by the impugned decisions

delivered in breach of the substantive and procedural law. The quashing of those decisions had entailed no change in the applicant company's legal status as the owner of the shares in Kryvorizhstal, and had not hindered its participation in the subsequent fresh examination of the case.

139. As regards the proceedings before the general courts, the Government argued that the procedure of review in the light of newly discovered circumstances had been used to correct a miscarriage of justice and provide a remedy for N.'s legally protected interest or right to take part in the privatisation of Kryvorizhstal. This interest or right had been confirmed by the judgment of the Constitutional Court of 1 December 2004 after the applicant company's case had already been examined by the first-instance and appeal courts, and thus that judgment had not been taken into account by the courts. When examining the case in the light of that judgment, the Pecherskyi Court had not gone beyond its terms. In any event, it was not the Court's task to substitute itself for the domestic courts in the interpretation and application of domestic law.

(ii) Alleged non-compliance with the guarantees of independence and impartiality

140. The Government stated that the relevant legislative provisions offered sufficient guarantees of independence and impartiality of the judiciary through the special procedure of the appointment and dismissal of judges, judges' special legal and social status and protection, judges' self-administration, the guarantees of adequate financial support for the courts, and the legal prohibition of any influence on judges.

141. The applicant company's allegations of undue pressure from the executive on the judges of the commercial courts dealing with its case after the 2004 election were devoid of any substance. The statements at issue were part of a political debate on a subject of public interest, and had not influenced the courts' decisions in the applicant company's case.

142. The Government further argued that the applicant company had had ample opportunity to challenge the judges dealing with its case, and the courts had given reasoned decisions in that regard.

(b) The applicant company

(i) The quashing of the final decisions in its cases and the subsequent reopening of the proceedings in February 2005

143. The applicant company stated that the procedure leading to the quashing of the decisions of the commercial courts of 19 August and 22 October 2004 had not been an ordinary one, as the time-limit for an appeal against those decisions had already expired at the time when the Prosecutor General had lodged his appeal with the Supreme Court. Furthermore, the impugned decisions had been quashed after the matter had been finally determined by the Supreme Court in the framework of the proceedings before the courts of general jurisdiction. Also, according to the applicant company, the Prosecutor General had provided no valid reason for his application for an extension of the time-limit for his appeal. Nor had such a reason existed, as the Prosecutor General must have been aware of the developments in the proceedings; at the outset of those proceedings the participation of the Office of the Prosecutor General had been ruled compulsory, and the ensuing proceedings had been closely followed by the public and reported in the media.

144. In relation to the proceedings before the general courts, N., who had not been a party to the proceedings terminated by the final decision of the Supreme Court of 27 December 2004, and thus who had had no right to lodge an appeal in the light of newly discovered circumstances, had provided no acceptable justification for requesting that the applicant company's case be reconsidered. The findings in the judgment of the Constitutional Court of 1 December 2004 were vague and could not serve as a basis for her intervention in the applicant company's case. The applicant company also pointed to the fact that N.'s extraordinary appeal had been examined by the same judge of the

Pecherskyi Court who had heard the case at first instance in August 2004 (see paragraph 70 above).

(ii) Alleged non-compliance with the guarantees of independence and impartiality

145. The applicant company maintained its complaints of the alleged non-compliance with the guarantees of independence and impartiality, making reference to a speech by the President of Ukraine on 25 May 2006 in which he had criticised the Ukrainian judiciary and stated that the courts were affected by "deep corruption". It also argued that the courts' biased approach was evidenced by the fact that the proceedings before the commercial courts had been reopened on the same date as those before the civil courts (see paragraphs 42 and 78 above).

2. The Court's assessment

(a) General principles

(i) The quashing of final decisions

146. The Court observes that the relevant Convention principles have been set out in *Brumărescu v. Romania* ([GC], no. 28342/95, §§ 61-62, ECHR 1999-VII) and *Ryabykh v. Russia* (no. 52854/99, §§ 51-52, ECHR 2003-X). Notably, in *Ryabykh*, cited above, the Court held:

"51. ... [T]he right to a fair hearing before a tribunal as guaranteed by Article 6 § 1 of the Convention must be interpreted in the light of the Preamble to the Convention, which, in its relevant part, declares the rule of law to be part of the common heritage of the Contracting States. One of the fundamental aspects of the rule of law is the principle of legal certainty, which requires, among other things, that where the courts have finally determined an issue, their ruling should not be called into question (see *Brumărescu*, cited above, § 61).

52. Legal certainty presupposes respect for the principle of *res judicata* (ibid., § 62), that is the principle of the finality of judgments. This principle underlines that no party is entitled to seek a review of a final and binding judgment merely for the purpose of obtaining a rehearing and a fresh

determination of the case. Higher courts' power of review should be exercised to correct judicial errors and miscarriages of justice, but not to carry out a fresh examination. The review should not be treated as an appeal in disguise, and the mere possibility of there being two views on the subject is not a ground for re-examination. A departure from that principle is justified only when made necessary by circumstances of a substantial and compelling character."

147. In a number of judgments which have followed, the Court has held that the principle of legal certainty may be set aside in order to ensure the correction of a "fundamental defect". For instance, it has stressed that merely considering that the investigation in an applicant's case was "incomplete and one-sided" or led to an "erroneous" acquittal cannot, in itself, in the absence of jurisdictional errors or serious breaches of court procedure, abuses of power, manifest errors in the application of substantive law or any other weighty reasons stemming from the interests of justice, indicate the presence of a fundamental defect in the previous proceedings (see, for instance, *PSMA, spol. s r.o. v. Slovakia*, no. 42533/11, §§ 69-70, 9 June 2015, with further references).

(ii) The guarantees of independence and impartiality

148. In accordance with the Court's case-law, in order to establish whether a tribunal can be considered "independent" for the purposes of Article 6 § 1, regard must be had to, *inter alia*, the manner of appointment of its members and their term of office, the existence of safeguards against outside pressures, and the question of whether it presents an appearance of independence. As to the requirement of "impartiality" within the meaning of Article 6 § 1, there are two aspects to this requirement. Firstly, the tribunal must be subjectively free of personal prejudice or bias. Secondly, it must also be impartial from an objective viewpoint, that is, it must offer sufficient guarantees to exclude any legitimate doubt in this respect. Under the objective test, it must be determined whether, quite apart from the judges' personal conduct, there are ascertainable facts which may raise doubts as to their impartiality. In this respect, even appearances may be of a certain importance. What is at stake is the confidence which the courts in

a democratic society must inspire in the public and, above all, in the parties to proceedings (see, among other authorities, *Kleyn and Others v. the Netherlands* [GC], nos. 39343/98 and 3 others, §§ 190-91, ECHR 2003-VI).

149. In deciding whether in a given case there is a legitimate reason to fear that these requirements are not met, the standpoint of a party is important but not decisive. What is decisive is whether this fear can be held to be objectively justified (see *Kleyn and Others*, cited above, § 194).

150. The concepts of independence and objective impartiality are closely linked, and accordingly the Court will consider both issues together as they relate to the present case (see *Kleyn and Others*, cited above, § 192).

(b) Application of the general principles to the present case

151. Turning to the present case, the Court notes that both sets of proceedings at issue were terminated before February 2005. Following two different types of appeal – an appeal in the light of newly discovered circumstances in the proceedings before the courts of general jurisdiction, and an appeal on points of law in the commercial proceedings – court decisions favourable to the applicant company, which had a *res judicata* effect, were quashed, and both sets of proceedings were reopened. The Court will examine the applicant company's complaints as regards each of the two sets of proceedings separately.

(i) Proceedings before the courts of general jurisdiction

152. The Court notes that the proceedings before the courts of general jurisdiction were terminated by the final decision of the Supreme Court of 27 December 2004. About a month later the proceedings were reopened upon an extraordinary appeal – an appeal in the light of newly discovered circumstances – by a private individual. That person had not participated in the original proceedings, and thus under the Ukrainian law then in force was not entitled to lodge such an appeal (see paragraph 96 above).

153. The Court observes that this situation is somewhat similar to that in *Diya 97 v. Ukraine* (no. 19164/04, 21 October 2010), which also concerned

the reconsideration of terminated civil litigation following a domestic court's departure from the applicable procedural rules. The Supreme Court had allowed the appeal of a person who had not been entitled to lodge such an appeal. In that case, the Court found that this was not justified and breached the principle of legal certainty. The Court does not find any reason to depart from those findings in the present case.

154. Moreover, having regard to the reasoning behind N.'s appeal, it was an "appeal in disguise" rather than a "conscientious effort to make good a miscarriage of justice" (see, for instance, *Pravednaya v. Russia*, no. 69529/01, § 33, 18 November 2004). Her appeal was based essentially on the argument which had already been examined and dismissed in the original proceedings – that the statutory right of every citizen to participate in the privatisation of State assets had been unlawfully restricted in the course of privatisation of Kryvorizhstal (see paragraphs 37 and 67 above). The same argument was also dismissed in the course of the proceedings instituted by N. and two other people in the period May-June 2004 (see paragraphs 27 and 28 above).

155. Although the Pecherskyy Court held that the judgment of the Constitutional Court of 1 December 2004 constituted newly discovered circumstances in the applicant company's case, it was not demonstrated, either in the decision of the Pecherskyy Court of 17 February 2005 or in the Government's submissions, that the findings in that judgment, which concerned the relationship between a joint-stock company and its shareholders, had altered or could have altered the view taken by the courts in the original proceedings – that citizens' rights to participate in the privatisation of Kryvorizhstal had not been restricted, since they had been free to establish companies and participate in the competition through such companies (see paragraphs 37, 67 and 99 above).

156. In any event, the Court considers that neither the appeal of N. nor the decision of the Pecherskyy Court of 17 February 2005 were based on "circumstances of a substantial and compelling character" justifying the

interference with the final and binding judgment in the applicant company's favour.

(ii) Proceedings before the commercial courts

157. With regard to the proceedings before the commercial courts, the Court notes that those proceedings were terminated by the decision of the Higher Commercial Court of 22 October 2004 upholding the judgment of the Kyiv Commercial Court of 19 August 2004, a judgment which was favourable to the applicant company. No appeal was lodged against that decision of the Higher Commercial Court within the one-month time-limit provided for by the law then in force (see paragraph 90 above), and thus the decisions had a *res judicata* effect. However, upon an appeal lodged more than two months after the expiry of that time-limit by the Prosecutor General, who acted in the interests of the State, those decisions were quashed (see paragraphs 40-43 above).

158. In several previous cases raising somewhat similar procedural issues, the Court has held that if the time-limit for an ordinary appeal is extended after a considerable lapse of time, such a decision can breach the principle of legal certainty. While it is primarily within the domestic courts' discretion to decide on any extension of the time-limit for an appeal, such discretion is not unlimited. In every case, the domestic courts should verify whether the reasons for extending the time-limit for an appeal can justify the interference with the principle of *res judicata*, especially when the domestic legislation does not limit the courts' discretion as to either the time or the grounds for extending the time-limits, as in the present case (see paragraph 89 above). The courts are also required to indicate the reasons for their decision to extend the time-limits (see, for example, *Ponomaryov v. Ukraine*, no. 3236/03, § 41, 3 April 2008, and *Ustimenko v. Ukraine,* no. 32053/13, § 47, 29 October 2015).

159. In the present case, the proceedings were reopened after a delay of about four months, which is substantially shorter than the delays of over two years and one year respectively in *Ponomaryov* and *Ustimenko* (both cited above). However, this does not mean that, in the present case, for the purposes of

Article 6 § 1 of the Convention, the Supreme Court enjoyed unfettered discretion when considering whether to reopen the proceedings upon the belated appeal of the Prosecutor General. The Supreme Court was required to apply the relevant procedural rules in compliance with the principle of legal certainty (see, for instance, *Diya 97*, cited above, § 47, with further references). Thus, the Court must firstly examine whether the Supreme Court's decision to extend the time-limit for the appeal by the Prosecutor General was duly justified.

160. As indicated by the Government's submissions, the Supreme Court endorsed the Prosecutor General's argument that he had become aware of the decision of 22 October 2004 from a complaint by a member of Parliament, and granted the requested extension of time (see paragraphs 40-42 above). Although it is not the Court's task to substitute itself for the domestic courts in their assessment of the relevant circumstances, it notes that there are several aspects of the case which are important to the question of whether the above argument could justify the reopening of the case. Firstly, the Office of the Prosecutor General was informed of the original proceedings as early as July 2004, though no representative from that office attended the court hearings, notwithstanding the Kyiv Commercial Court's specific order in that regard (see paragraph 35 above). Secondly, representatives from different State bodies took part in the proceedings and they became aware of the decision of 22 October 2004 on the same day, but lodged no appeal against it (see paragraphs 32 and 39 above). In his appeal, the Prosecutor General, who acted on behalf of the State, did not suggest that those representatives had been precluded from defending the State interests at stake in the case. Nor did he suggest that there had been any kind of communication problem within the Government resulting in the information about the outcome of the case in October 2004, which had been a matter of public concern (see paragraphs 13 and 14 above), not reaching those concerned. Thirdly, even assuming that the Office of the Prosecutor General had been informed of the decision of 22 October 2004 on 30 December 2004, no

explanation was given as to why the appeal had been lodged more than a month after that date, and why the time-limit should be extended to 7 February 2005.

161. The Government did not argue that the Supreme Court had given consideration to those important aspects when deciding on the extension application by the Prosecutor General. Thus, the Court finds no acceptable justification for the Supreme Court's decision to grant the extension requested by the Prosecutor General.

162. The Court further observes that the appeal of the Prosecutor General contained no information demonstrating that the lower courts had made judicial errors of the kind amounting to a miscarriage of justice or a fundamental defect (see paragraphs 40 and 41 above). No such information can be found in the decision of the Supreme Court of 1 March 2005, by which it annulled the lower courts' decisions. The Supreme Court's reasoning in that decision amounts merely to a different reading of legal texts (see paragraphs 43 above). It must also be added that the Supreme Court gave no consideration to possible implications of its decision for the principles of *res judicata* and legal certainty in the terminated litigation, and for the related interests of the parties, notably those of the applicant company.

163. In the light of the foregoing, the Court finds that, by accepting the belated appeal by the Prosecutor General and eventually quashing the decisions of the Kyiv Commercial Court of 19 August 2004 and the Higher Commercial Court of 22 October 2004, the Supreme Court infringed the principle of legal certainty.

164. The Court further observes that the impugned quashing of the decisions favourable to the applicant company and the subsequent reopening of the terminated proceedings took place after the President and the Prime Minister had made statements concerning the privatisation of Kryvorizhstal in January and February 2005 (see paragraphs 18 and 19 above). They unequivocally expressed the opinion that the enterprise "had been stolen", that the dispute had to be reconsidered and that the enterprise had to be returned to the State. While

the reopened proceedings were pending, the President and the Prime Minister made similar statements (see paragraphs 51, 56 and 62-64 above).

165. The Government contended that those statements had had no influence on the judges dealing with the proceedings in the present case, whereas the applicant company submitted no proof to the contrary. Nevertheless, the Court sees no reason to speculate on what effect those statements may have had on the course or the outcome of the proceedings in issue (see, *mutatis mutandis*, *Sovtransavto Holding*, cited above, § 80; *Agrokompleks v. Ukraine*, no. 23465/03, §§ 134, 6 October 2011; *Kinský v. the Czech Republic*, no. 42856/06, § 112, 9 February 2012; and *Ivanovski v. the former Yugoslav Republic of Macedonia*, no. 29908/11, § 147, 21 January 2016). The Court considers that the impugned statements by the State officials between January and April 2005 and the Supreme Court's unjustified decision to reconsider the dispute, those issues being taken together and cumulatively, objectively shed conspicuous light on the independence and impartiality of the commercial courts which had to deal with the case.

166. In the circumstances, the Court finds it unnecessary to deal with the Government's argument concerning the domestic guarantees of judicial independence and impartiality (see, *mutatis mutandis*, *Agrokompleks*, cited above, §§ 132 and 136). Their argument that the applicant company had had procedural means to remedy the present issue has already been addressed and rejected by the Court in the context of the admissibility of this part of the applicant company's complaints (see paragraph 129 above).

(iii) Conclusion

167. In the light of the foregoing considerations, the Court finds that the decisions leading to the annulment of the decisions of the courts of general jurisdiction of 25 August and 1 and 27 December 2004, and the decisions of the commercial courts of 19 August and 22 October 2004, infringed the principle of legal certainty and the applicant company's related legitimate interest of respect for the final determination of its civil rights in those proceedings. The impugned

proceedings, seen as a whole and taking into account the statements made by the President and the Prime Minister between January and April 2005, did not meet the requirements of fairness within the meaning of Article 6 § 1 of the Convention. Accordingly, the Court rejects the Government's objections as regards the applicant company's victim status and its concerns as to the independence and impartiality of the commercial courts dealing with its case, which have been previously joined to the merits (see paragraphs 116 and 131 above) and considers it unnecessary to examine the applicant company's other complaints relating to the quashing of those decisions in the context of this part of the case (see paragraphs 102 and 103 above).

168. Consequently, there has been a violation of Article 6 § 1 of the Convention in this regard.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

169. The applicant company complained of a violation of Article 1 of Protocol No. 1 on account of (i) the authorities' alleged failure to ensure that it could enjoy its possessions in accordance with the final and binding decisions issued in its cases before January 2005; (ii) the quashing of those decisions in February 2005 and various shortcomings in the related proceedings (see paragraphs 102 and 103 above); (iii) the allegedly inconsistent decisions taken by the courts after the reopening of the proceedings in 2005; and (iv) the alleged lack of independent and impartial reconsideration of its cases in 2005. The applicant company also complained that it had been deprived of its assets – 93.02% of the Kryvorizhstal share capital – unlawfully because of one of its owners' political opposition to the authorities, and that the authorities had failed to reimburse it for the improvements it had made to those assets. Article 1 of Protocol No. 1 reads as follows:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public

interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

A. Admissibility

1. The parties' submissions

(a) The Government

170. The Government raised objections as to the admissibility of the applicant company's complaints under Article 1 of Protocol No. 1 on the basis of non-exhaustion of domestic remedies, failure to comply with the six-month rule and the absence of victim status.

171. In particular, the Government argued that in order to comply with the rule of exhaustion of domestic remedies under Article 35 § 1 of the Convention as regards this part of its complaints, the applicant company should have lodged with the commercial courts a claim for its recognition as a *bona fide* acquirer of the Kryvorizhstal share capital based on the premise that it had not been aware that the authorities had acted *ultra vires* when transferring the disputed shares to it (see paragraph 52 above).

172. Also, according to the Government, the applicant company failed to comply with the rule of exhaustion of domestic remedies, as its counterclaim was not lodged in accordance with the relevant procedural regulations (see paragraph 34 above). The applicant company had to lodge it separately or to change it so that it was directed against the authorities and not the private company.

173. The Government further argued that the applicant company had not had the victim status on account of the alleged deprivation of its possessions, as it had lodged its relevant complaints under Article 1 of Protocol No. 1 before the proceedings concerning the title to the Kryvorizhstal share capital had been

completed on 31 August 2005 (see paragraph 60 above). For the same reason, the Government argued that those complaints had been premature.

174. The Government stated that, as the applicant company had raised no complaint under that provision between 31 August 2005 and 28 February 2006, that is during the six months following the final determination of its case by the Supreme Court (see paragraph 60 above), this part of the application could be rejected also as lodged out of time.

(b) The applicant company

175. The applicant company contested the Government's submissions, stating that the core issue in the case - the validity of the contract of 14 June 2004 - had been determined in the framework of the proceedings before the commercial courts (see paragraph 51 above), whereas the procedure relating to the recognition of the status of *bona fide* acquirer had had no relevance to the dispute in question.

176. The applicant company also reiterated its argument that its appeals to the Higher Commercial Court and the Supreme Court had provided no effective remedy, since the judgment of the Kyiv Commercial Court of 22 April 2005 had become effective on 2 June 2005 and the State authorities had started the reprivatisation process before the higher courts had examined its appeals (see paragraph 125 above).

2. The Court's examination

177. At the outset, the Court notes that the applicant company's complaint regarding the authorities' failure to ensure enforcement of the final decisions adopted in its cases before January 2005 is wholly unsubstantiated. Notably, the applicant company failed to specify what measures the authorities had had to take in that regard.

178. Also, the Court has rejected the applicant company's complaint under Article 6 § 1 of the Convention regarding the allegedly inconsistent decisions taken by the courts after the reopening of the proceedings in 2005 as manifestly ill-founded (see paragraphs 118 and 119 above), and there is no

reason to make a different decision as regards the same complaint by the applicant company under Article 1 of Protocol No. 1.

179. The Court further notes that the applicant company failed to submit any reliable evidence in support of its complaint that it had been deprived of its assets because of one its owners' political opposition to the authorities.

180. Thus, those parts of the applicant company's complaints under Article 1 of Protocol No. 1 must be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

181. The Court further notes that the applicant company's remaining complaints under that provision are essentially based on the argument that the unfair proceedings in its cases had entailed the unlawful deprivation of its property (see paragraph 169 above). These complaints are closely linked to those under Article 6 § 1 of the Contention, which the Court has examined above and declared admissible (see paragraphs 117 and 132 above). The Government provided no new argument compelling the Court to depart from those findings as regards this part of the applicant company's complaints under Article 1 of Protocol No. 1. Notably, they did not demonstrate that the applicant company's recourse to the *bona fide* acquirer proceedings or lodging its counter-claim in a different manner could have remedied the alleged procedural shortcomings or could have led to a different outcome in the case. Accordingly, this part of the applicant company's complaints under Article 1 of Protocol No. 1 must likewise be declared admissible.

B. Merits

182. The applicant complained that the unfair manner in which the proceedings concerning the title to the Kryvorizhstal share capital had been conducted had had entailed a violation of its right to peaceful enjoyment of its property under Article 1 of Protocol No. 1.

183. The Government contended that the applicant company had been deprived of the Kryvorizhstal share capital lawfully and in the public interest of ensuring fair and efficient privatisation and the best financial result for the State

Budget and the budgets of local and regional authorities. According to the Government, States enjoyed a wide margin of appreciation in that area. Furthermore, the impugned deprivation was not disproportionate, as the applicant company received back promptly the sum it had paid for the shares and claimed no further compensation. Thus, it bore no excessive individual burden.

184. The Court reiterates that Article 1 of Protocol No. 1 comprises three rules: the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers the deprivation of property and subjects it to conditions; the third rule, stated in the second paragraph, recognises that States are entitled, amongst other things, to control the use of property in accordance with the general interest. The second and third rules, which are concerned with particular instances of interference with the right to peaceful enjoyment of property, must be read in the light of the general principle laid down in the first rule (see, among other authorities, *Sporrong and Lönnroth v. Sweden*, 23 September 1982, § 61, Series A no. 52, and *Depalle v. France* [GC], no. 34044/02, § 77, ECHR 2010).

185. The Court further reiterates that the first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possessions should be lawful: the second sentence of the first paragraph authorises a deprivation of possessions only "subject to the conditions provided for by law" and the second paragraph recognises that States have the right to control the use of property by enforcing "laws". Moreover, the rule of law, one of the fundamental principles of a democratic society, is inherent in all the Articles of the Convention (see *Capital Bank AD v. Bulgaria*, no. 49429/99, §§ 132-33, ECHR 2005-XII (extracts), with further reference to *Iatridis v. Greece* [GC], no. 31107/96, § 58, ECHR 1999-II).

186. The principle of lawfulness also presupposes that the applicable provisions of domestic law are sufficiently accessible, precise and foreseeable in their application (see *Beyeler v. Italy* [GC], no. 33202/96, §§ 109-10, ECHR

2000-I). Likewise, domestic law must provide a measure of legal protection against arbitrary interferences by the public authorities with the rights safeguarded by the Convention (see *Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, § 84, ECHR 2000-XI). It is true that Article 1 of Protocol No. 1 contains no explicit procedural requirements and the absence of judicial review does not amount, in itself, to a violation of that provision (see *Fredin v. Sweden* (no. 1), 18 February 1991, § 50, Series A no. 192, and *S.C. Antares Transport S.A. and S.C. Transroby S.R.L. v. Romania*, no. 27227/08, § 46, 15 December 2015). Nevertheless, it implies that any interference with the peaceful enjoyment of possessions must be accompanied by procedural guarantees affording to the individual or entity concerned a reasonable opportunity of presenting their case to the responsible authorities for the purpose of effectively challenging the measures interfering with the rights guaranteed by that provision. In ascertaining whether that condition has been satisfied, a comprehensive view must be taken of the applicable judicial and administrative procedures (see *Jokela v. Finland*, no. 28856/95, § 45, ECHR 2002-IV with further references, and *Stolyarova v. Russia*, no. 15711/13, § 43, 29 January 2015).

187. Furthermore, any interference with the enjoyment of a right or freedom recognised by the Convention must pursue a legitimate aim. The principle of a "fair balance" inherent in Article 1 of Protocol No. 1 itself presupposes the existence of a general interest of the community. Moreover, it should be reiterated that the various rules incorporated in Article 1 are not distinct in the sense of being unconnected and that the second and third rules are concerned only with particular instances. One of the effects of this is that the existence of a "public interest" required under the second sentence, or the "general interest" referred to in the second paragraph, are in fact corollaries of the principle set forth in the first sentence, so that an interference with the exercise of the right to the peaceful enjoyment of possessions within the meaning of the first sentence of Article 1 must also pursue an aim in the public interest (see *Beyeler*, cited above, § 111).

188. In addition, Article 1 of Protocol No. 1 requires that any interference be reasonably proportionate to the aim sought to be realised (see *Jahn and Others v. Germany* [GC], nos. 46720/99, 72203/01 and 72552/01, §§ 81-94, ECHR 2005-VI). The requisite fair balance will not be struck where the person concerned bears an individual and excessive burden (see *Sporrong and Lönnroth*, cited above, §§ 69-74).

189. Turning to the present case, the Court observes that it transpires to be the parties' common agreement that there was an interference with the applicant company's right to peaceful enjoyment of possessions which ultimately amounted to a "deprivation" of its property.

190. The parties mainly disagreed as to whether this interference had been lawful within the meaning of Article 1 of Protocol No. 1, the applicant company's principal arguments being directed against the manner in which the proceedings culminating in the decision depriving it of the Kryvorizhstal share capital had been conducted. The Court will examine those arguments in turn.

191. Notably, the applicant company argued that Article 1 of Protocol No. 1 had been violated because of the annulment of the final decisions in its civil and commercial cases in February 2005. In this regard, the Court notes that it has found that the annulment at issue was in violation of the requirement of legal certainty under Article 6 § 1 of the Convention (see paragraph 167 above). However, the situation in the present case differs from the vast majority of cases in which the Court has found violations of Article 1 of Protocol No. 1 as regards the annulment of final and binding decisions (see, for example, *Agrotehservis v. Ukraine*, no. 62608/00, 5 July 2005, and *Timotiyevich v. Ukraine*, no. 63158/00, 8 November 2005).

192. In the present case, the domestic judicial decisions whose annulment the Court has held to be contrary to the principle of legal certainty did not directly provide for a transfer of the title in respect of the Kryvorizhstal share capital or the shares to the applicant company. At the time the courts examined the cases in 2004 the applicant company was formally and actually in possession

of the assets in dispute. Although the commercial courts also endorsed the applicant company's title in respect of those assets and banned any actions capable of violating that title, no party was required to take specific action in that regard (compare and contrast with *Ivanova v. Ukraine*, no. 74104/01, § 37, 13 September 2005, in which the defendant in the original proceedings had been ordered to take specific action in order not to impede the applicant's enjoyment of her property).

193. The Court further notes that the applicant company was formally and actually deprived of the Kryvorizhstal shares in June 2005 (see paragraph 21 above), that is after the dispute had been determined on the merits by the judgment of the Kyiv Commercial Court of Appeal of 2 June 2005, which, according to the procedure, became enforceable on that date (see paragraphs 56-57 above).

194. Nonetheless, the Court is mindful that the impugned annulment of the previous decisions in the applicant company's favour created a situation of legal uncertainty, essentially removing the *res judicata* protection of the validity of the applicant company's title to the Kryvorizhstal share capital and leading to a full reconsideration of that matter (see paragraph 167 above). Thus, even though the impugned annulment did not directly result in a change in the applicant company's title to or actual possession of the Kryvorizhstal shares, it might arguably constituted an interference with its right to those assets (see, *mutatis mutandis*, *Rysovskyy v. Ukraine*, no. 29979/04, § 68, 20 October 2011).

195. In any event, in the present case the decisions resulting in the reopening of the proceedings in the applicant company's case cannot be taken in isolation. Regard must be had to the fact that the applicant company, unlike the applicants in the cases of *Agrotehservis*, *Ivanova* and *Timotiyevich*, cited above, was eventually awarded and actually paid compensation for its lost assets. While the applicant company argued that that sum had not covered the damage it had

sustained as a result of being deprived of its assets, no evidence was submitted in support of that argument.

196. In so far as the applicant company argued that it had been unlawfully deprived of its property because of other procedural shortcomings in the domestic proceedings, the Court reiterates that not every procedural shortcoming in a case will take an interference with the right of property outside the scope of the "principle of lawfulness" (see *Ukraine-Tyumen v. Ukraine*, no. 22603/02, § 52, 22 November 2007).

197. The Court recalls that in certain exceptional cases it has found a violation of Article 1 of Protocol No. 1 on account of the unfair manner in which the relevant court proceedings had been conducted, including the "blatant interference" of the State authorities at the highest level in those proceedings (see *Sovtransavto Holding*, cited above, §§ 97-98, and *Agrokompleks*, cited above, §§ 135, 138 and 170).

198. The Court discerns no such situation in the instant case, as it does not concern the kind of interference by public officials in the judicial process, as was in the cases of *Sovtransavto Holding* and *Agrokompleks*, both cited above. Furthermore, there is no basis for a finding that the impugned proceedings in the present case were flawed to the extent that their outcome could no longer be accepted or that the decisions issued by the commercial courts between April and August 2005 (see paragraphs 51, 56, 59 and 60 above) were contrary to the "principle of lawfulness", within the meaning of Article 1 of Protocol No. 1. Nor did the applicant company demonstrate that it had been denied the opportunity to defend effectively its property rights and interests at stake in the course of the reopened proceedings before the commercial courts.

199. The Court further notes that the applicant company did not contest the Government's argument that the impugned interference had been in the public interest. Nor did it demonstrate that it had been made to bear an excessive individual burden.

200. In the light of the foregoing, the Court finds that there has been no violation of Article 1 of Protocol No. 1.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

201. The applicant company complained under Articles 10, 11 and 14 of the Convention, alleging that it had been the victim of persecution by the authorities for the political activities of one of its owners.

202. The applicant company also complained under Article 18 of the Convention that the procedural limitations applied to it during the hearing resulting in the Pecherskyy Court's decision of 17 February 2005, and that decision itself, had been politically motivated.

203. The Court has examined the rest of the applicant company's complaints and considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. Accordingly, the Court rejects them as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

204. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

1. The parties' submissions

(a) The applicant company

205. The applicant company claimed 12,900,000,000 United States dollars, the equivalent of about 10,000,000,000 euros (EUR) at the material time, in respect of pecuniary damage, referring mainly to an increase in the price of Kryvorizhstal, the income that company had received in the period of 2005-2007 and the applicant company's allegedly related loss of dividends.

(b) The Government

206. The Government contested the applicant company's claim.

(c) The third-party intervener

207. ArcelorMittal Duisburg GmbH submitted that it had made significant investments in Kryvorizhstal since acquiring it in October 2005, and that it feared possible substantial losses if the applicant company succeeded in the present case.

208. In particular, ArcelorMittal Duisburg GmbH was of the view that, in bringing its case before the Court, the applicant company was ultimately seeking restoration of its ownership rights over Kryvorizhstal. According to ArcelorMittal Duisburg GmbH, if the Court found that the domestic proceedings at issue had not complied with the requirements of the Convention, the applicant company might request that the case be reheard at domestic level, which might create grounds for annulling the 2005 privatisation of Kryvorizhstal and entail ArcelorMittal Duisburg GmbH's loss of its title in respect of that enterprise.

2. The Court's examination

209. The Court does not discern any causal link between the violation found and the pecuniary damage alleged by the applicant company; it therefore rejects its claim.

B. Costs and expenses

210. The applicant company lodged no claim for costs and expenses.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Joins* to the merits the Government's objection as to the applicant company's victim status in respect of its complaints under Article 6 § 1 of the Convention about the quashing of the final court decisions favourable to it in February 2005, and *rejects* it;

2. *Joins* to the merits the Government's objection that the applicant company's complaint under Article 6 § 1 of the Convention regarding a breach of the guarantees of independence and impartiality in the proceedings before the

commercial courts between February and August 2005 was manifestly ill-founded, and *rejects* it;

3. *Declares* the following complaints admissible:

(a) the applicant company's complaints under Article 6 § 1 of the Convention about the quashing of the final court decisions favourable to it in February 2005; and

(b) the applicant company's complaint under Article 6 § 1 of the Convention regarding a breach of the guarantees of independence and impartiality in the proceedings before the commercial courts between February and August 2005; and

(c) the applicant company's complaints under Article 1 of Protocol No. 1 that the proceedings concerning its assets – 93.02% of the Kryvorizhstal share capital – had been conducted in the unfair manner and that the authorities had failed to reimburse it for the improvements it had made to those assets;

4. *Declares* the remainder of the application inadmissible;

5. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

6. *Holds* that there has been no violation of Article 1 of Protocol No. 1;

7. *Dismisses* the applicant company's claim for just satisfaction.

Done in English, and notified in writing on 26 June 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Section Registrar **Marialena Tsirli**

President **Vincent A. De Gaetano**

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