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## **PROCEDURAL TERMS WHEN VIEWING ACTS OF COMMERCIAL COURTS**

### **Summary**

The article discusses procedural terms when considering the acts of economic courts. The question of duration of complaints or requests for review at each stage of the economic process and timing of future viewing is substantiated. It is proposed to review the terms of unification in view of the principle of rationality and the necessity of legal deadlines for filing complaints and applications for review of acts of economic courts is emphasized.

**Key words:** business process, review acts of commercial courts, economical procedural deadlines.

**Formulation of the problem.** Relevance of the subject article is due primarily to the fact that the terms in addressing economic affairs in order of review are becoming a more important factor in considering the case. This is due to the fact that in a relatively short time, were adopted amendments to the Commercial Code of Ukraine, namely the Law of Ukraine "On the Judicial System and Status of Judges" from July 7, 2010 and the Law of Ukraine "On ensuring the right to a fair trial" on February 12, 2015. Ideas reducing and optimizing procedural deadlines in the commercial judiciary is an objective lever judicial reform implemented in the state. But it should be noted that the Law of Ukraine "On ensuring the right to a fair trial" somewhat lost so increased priority and some procedural terms, particularly in cases in the Supreme Court of Ukraine.

**Analysis of recent research and publications.** Research articles on topics barely held on, although the stage of the economic process as such in their scientific

works regarded scholars such as I.Yemelyanova, V.M. Koval, L.M. Nikolenko, T.V. Stepanova, P.M. Timchenko, but the range of their scientific interest is not included in the terms of the stage of the economic process, they touched them indirectly, as a factor that leads to the proceedings in the courts of higher instances.

**The purpose of this article** is the systematic study of timing in solving economic affairs in order of review because this economic institute procedural law is quite important lever to implement the principle of economic efficiency of the process, which distinguishes it from other commercial litigation fields procedural law.

**Presenting main material.** Procedural time as the time factor as a factor to implement the principle of efficiency and speed of judicial process as a quantitative measure of process in any case should not affect such quality indicators as pravosudnist decision. It is of this "middle ground" describes the court and trial participants in professional hand and makes it possible to say that the judicial reform, which is now declared, can be successfully implemented in our country.

Judicial protection of rights and freedoms and civil rights must be seen as a kind of public protection. The state assumes a duty pursuant to Article 55 of the Constitution of Ukraine. The right to judicial protection and provides for specific guarantees of effective remedy through justice. The lack of such opportunities restricts this right. And the meaning of Article 64 of the Constitution of Ukraine "right to judicial protection can not be restricted even under martial law or a state of emergency." Such a high position legislator determines, among other things, the right to judicial review of acts to establish the objective truth of the case. Therefore, test solutions, orders, rulings on appeal, cassation, the Supreme Court of Ukraine is the guarantee of the right to judicial protection.

Exploring the said problem, there are two aspects of procedural terms to review economic affairs: the deadline for filing appeal, appeal or application to the Supreme Court of Ukraine and the period of review of judicial acts of economic courts.

Regarding the first aspect, it should be noted that the tendency to reduce terms of justice should not be the goal, because of which lost objectivity and impartiality of the

judiciary. In particular, currently under Art. 93 Economic Procedural Code of Ukraine (hereinafter - Ukraine COD) is set ten days to appeal. However, the jurisprudence indicates lack of such a term for proper training of reasonable complaints. In practice, most such complaints are complemented by a review process, as the participants of the case, trying not to miss the filing deadline, is not fully substantiate the complaint. Often when filing an appeal are also filing with her motion to renew the term of appeal due to its space. And commercial courts almost always restore the missed deadline because it really is too small for s judgment and training at the appropriate level appeal.

An interesting on this subject submitted version of Art. 294 of the Civil Code of Ukraine, which operated until July 7, 2010 and provided that, within ten days after the proclamation of the decision could be filed a statement of appeal against the decision of the trial court and the appeal court's decision was served within twenty days after submission of the appeal. Accordingly, decisions regarding the deadline for submission of the application made five days after the approval decision, and the very appeal against the decision can be filed within ten days after filing such a declaration. Unfortunately, this position does not embodied after the unification of procedural terms in the reform of 07 July 2010. Exploring these provisions should mark their rationality and soundness, as is the majority of cases in order to view incoming ships with the application for renewal deadlines for filing complaints through their space with good reason.

In order to prevent such occurrences and to streamline the review of decisions of commercial courts consider it necessary to hold unification timing by determining the time limit for submitting the first application for appeal against the decision of the trial court within ten days after the approval decision, and the most appeal in 10 days . That is, the period for the preparation and submission of the appeal will make the whole 20 days. This period can be considered sufficient to justify their position on the appeal decision of Economic Court. According to the appeal rulings - a five-day period for filing an application for appeal and five days after the application for the filing of the complaint. In this case, if the specified application is not filed within the prescribed

period, the judgment shall enter into force 10 days after the judicial act, as is happening at present.

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With regard to the term for cassation, the period of twenty days may not be sufficient for the position that the party that has to appeal the decision, must carefully prepare minimize the need for additions and refinements after filing appeal, which can only delay the economic case. Note also that the cassation appeal filing takes place after the entry into force of the decision of Economic Court and filing appeal, as we know, does not prevent the implementation of court decisions. Given this, we consider it appropriate with a proposal similar to filing an appeal reinforce the right to apply for review in cassation within ten days from the delivery of a judicial act of Appeal economic court. Thus, the process participants to provide ten days to file an application for appeal in cassation and twenty days - for filing of the appeal, which we think is quite reasonable time to prepare fully reasoned appeal.

Regarding the revision of judicial decisions by the Supreme Court of Ukraine, taking into account the amendments made by the Law of Ukraine "On ensuring the right to a fair trial" of 12 February 2015, an application for revision of a decision of Economic Court on the grounds provided for in paragraphs 1 and 2 of Article 11116 COD Ukraine shall be submitted within three months from the day the judgment for which application is made for review of, or the day the court decision, which made reference in support of the grounds provided for in paragraphs 1 and 2 of Article 11116 GPK Ukraine (Art. 11117 COD Ukraine). However, the indicated position of the legislator was not motivated. In the previous version of the EPC of Ukraine according to the changes that were made to the Law of Ukraine "On the Judicial System and Status of Judges" of 07 July 2010, this period amounted to one month, which was fully justified in view of the limits grounds for the submission of applications for review of judgments of commercial courts referred to in Art. 11116 GPK Ukraine.

Another factor is the possibility of legal uncertainty renew the term of appeal (appeal) for valid reasons. This hypothetical assumptions about delays in review of decisions contributes to economic uncertainty party proceedings. Therefore, it seems necessary to set a time when an application for review or appeal judgments, rulings,

decisions will not be accepted even for valid reasons. This will facilitate the implementation of the principle of legality judicial act because after the decision Economic Court and the expiry of the time required review of the judicial act is generally impossible. So for filing appeal, appeal or application for review of a decision of economic courts of the Supreme Court of Ukraine consider it appropriate to set a deadline of one year for any person, as this term is sufficient to eliminate all valid reasons that could hinder a complaint (application).

Thus, establishing the term for initiating judicial review of acts of economic courts not only encourages a person protected rights or interests have been infringed to apply to the courts, but also serves the interests of the other party, setting a time limit of this appeal, the rule of law promotes stability in general.

As to the second aspect, the theory of procedural law provides for two types of judgments Views: complete and incomplete [1, p. 14]. Full characterized by a new appeal proceedings. This type of appeal is fixed, for example, French, Italian processes. The Court of Appeal not only validates the decisions of the first instance, but also solves the same deal on the same terms as the court of first instance. The objectives of the full appeals court is to eliminate errors. The parties have the right to submit new evidence may change the deal compared to how it seemed to the judges of first instance. As a result of this approach, the Court of Appeal shall finally decide the case and has no right to return it to the trial court for new proceedings and decision. For a full appeal characteristic relative slowness of proceedings as the opportunity to study an unlimited amount of new evidence requires a certain amount of time.

Incomplete appeal fastened, for example, in the Austrian and German Court of Appeal given a modest role: the process of proving concentrated in the trial court and the appellate court must review the decision based on the factual material provided by the parties in the first instance, and correct mistakes omissions lower court. The appeal proceedings are generally written using the framework. Even the parties in meeting attendance is optional, as the case may be reviewed on the basis of written regulations and, above all, the court records of the court of first instance, appeal and an

explanation for it. That is, with respect to the timing incomplete consideration of the appeal shorter.

Considered characterization of complete and incomplete to set the appeal that, based on the analysis century. 101 of the Commercial Code of Ukraine, the boundaries of view of economic affairs on appeal with a wide range, namely the right to re-considered by the evidence, including the new, but not accepted and are not considered claims that were not the subject of a commercial trial instance. According to Art. 102 EPC of Ukraine to the appeal proceedings is given two months after the adoption of resolution on approval to appeal proceedings. That is the appeal proceedings in Ukraine can be called as full because of the quality characteristics, so in view of the quantity, ie time performance relative terms that reflect the consideration of the Economic Court of First Instance.

Regarding the court of cassation should be noted that according to Art. 1117 GIC Ukraine, looking in cassation court decisions, courts of appeal on the basis of established facts of the case only checks the application by trial or appellate court of substantive and procedural law. The question of the reliability of evidence in court this instance is not considered, as well as courts of appeal does not have the right to establish or consider circumstances the courts previous instances can not verify or collect evidence. That is, the process of review in this case is incomplete. Therefore, in terms of consideration of the court of appeal must be smaller: p. 1118 Economic Procedural Code of Ukraine establishes the term of consideration of the cassation appeal within one month, and the local business court decision referred to in the first part of the century. 106 EPC statutes Ukraine Economic Court of Appeal approved the results of appeal - even in a period of 15 days. That is, in this case we can see a vivid example of incomplete type of judicial review and in accordance with the procedural task of the deadline for dealing with complaints.

Note the century. 114 EPC of Ukraine, which states that the application for revision of a judgment, decree to new circumstances considered by the economic court in court within one month from the date of receipt. And in the HPC Ukraine no article that would provide the limits of the case law. However, based on logical assumptions,

we can reach the following conclusion: in case there were new circumstances, we can determine that in the process of administration of justice must again gather, evaluate evidence that is second to hear the case, taking into account new circumstances that could significantly affect the establishing objective truth in the case. That is, such a review is appropriate to be considered complete. Moreover, it should be noted that the EPC of Ukraine does not establish a time frame in which it would be possible to apply to the Commercial Court, which heard the case on review of her new circumstances. Not defining this term, the legislator allows in fact view the case on this ground in infinite period, which may adversely affect the decision of the court or the parties in the case, which, not having confidence in the completion of the review, will operate in a voltage not having reason to believe the final decision of Economic Court. On the other hand, one can argue that setting any prybichnyy period of application for review by the new circumstances, the right side is violated to a fair trial. This can be noted that the deadline for appeal and cassation legislator provided because setting a deadline for submission of the application for review of a decision by the new circumstances is quite reasonable.

Based on the above it can be noted that if the time for taking an appeal does not cause any significant observations as balances corresponding period the merits in the first instance, the term of consideration of the cassation appeal is a little lengthy due to the fact that stage any appeal is inherently incomplete review, so impractical as to delay the process. In preparation for the trial in the court of cassation panel of judges headed by the speaker can fully assess the case file to a single court to decide the case, the more, as mentioned above, if you enable stakeholders, who contested decision in cassation prepare more thoroughly for the future - that whole period extending to prepare a cassation appeal to thirty days (10 days in the statement of appeal and 20 days in the same complaint). Perehruzhnist court cases can not serve vypravdalnym factor. The Court, in exercising their responsibilities for the administration of justice, shall as soon as possible following the law allow the parties to continue to implement its economic activity, not zvolikayuchys to litigation.

Art. 114 of the Commercial Code of Ukraine determined the month to consider economic case for new circumstances. It should be noted that, based on the principles of reasonableness in terms of business processes, such period can not be considered sufficient for the collection, research and evaluation of evidence and full review of economic affairs again. Before proceedings on new circumstances accessed the same judge who considered their first time. In this case, the re-examination of all the evidence was not necessary. But after the reforms of 2010 cases under the new circumstances consider another judge, which needed time to study the case, the definition of necessary stakeholders call for explanations, a judicial expertise, etc.

Therefore, more motivated to be considered a period of two months to consider the economic case for new circumstances which may be based on analogy with maturities consideration in economic courts of first and appeal instances due to full order retrial within economic justice, unlike the appeal.

**Conclusions.** Analyzing the current law in view of the timing of the economic process, it can be noted that the reduction or increase of terms should not be unreasonable, we must always bear in mind that to reach the objective truth of the case can only reasonable steps to be oposedredkovuvatysya formula that can be as follows: the full implementation of the procedures for review / revision - longer term, the implementation of incomplete / simplified procedure review / preview - shorter term provided by the legislator. A clear legislative norm set all procedural terms to their use caused no other interpretation. Also, in the legislative aspect prybichni should define the terms after the expiry of which would not be considered any good reasons that prevented file a complaint or application for review of decisions of commercial courts. All this will contribute to a full, fast, the most effective solution in economic courts.

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