

Year in review 2023

Dispute Resolution

ARZINGER 20 YEARS

WHAT 2023 HAS BROUGHT TO COMMERCIAL DISPUTES

Further Development of E-Court Proceedings



On July 21, 2023, Law No. 3200-IX («Law») came into effect, introducing the mandatory registration of litigants in the electronic case management system «Electronic Court» of the Unified Judicial Information and Telecommunication System («UJITS»).

WHO IS REQUIRED TO REGISTER THE ELECTRONIC CABINET:

- attorneys-at-law
- court experts
- notaries
- government bodies/ other state authorities
- state and private bailiffs
- local self-government bodies
- arbitration administrators
- other legal entities

NB! Registration of the Electronic Cabinet by other individuals (individuals, individual entrepreneurs) remains voluntary.

WHEN REGISTRATION OF THE ELECTRONIC CABINET IS NOT REQUIRED:

If registration in UJITS contradicts the religious beliefs of a person obliged to register → the consequences below do not apply if the person **simultaneously declares such circumstances when submitting the relevant document by filing a separate written statement.**

IMPLEMENTATION STAGES:

Until October 18, 2023

all private legal entities must register electronic cabinets for commercial litigation.

Until February 20, 2024

for civil and administrative litigation purposes.

CHANGES IN THE SUBMISSION/RECEIPT OF COURT/ENFORCEMENT DOCUMENTS:

- If a person obligated to register an electronic cabinet fails to do so → the other party is exempted from the obligation to send procedural documents in paper form by postal means to that person.
- Receiving court decisions and enforcement documents in electronic form.
- It is still possible to obtain a court decision and submit paper copies of documents to the court.
- The day of receiving a court decision = the day the court receives a notification of delivering a copy of the court decision to the electronic cabinet.

PROCEDURAL CONSEQUENCES OF NOT REGISTERING ELECTRONIC CABINETS:

- **Dismissal/return of applications (including those related to securing a claim/evidence), deferral of commencement proceedings under the applications, appeals/cassation** complaints if submitted by a person legally obligated to register an electronic cabinet but failed to do so.

The way to rectify procedural document defects → **registration of an Electronic Cabinet.**

- **Non-consideration of response to the statement of claim** → The court has the right to decide the case based on the available materials if a response is submitted by a person who did not register an electronic cabinet although was obliged to do so and did not provide valid reasons for not fulfilling this obligation.

NB! The above procedural consequences are also applied in the case of an application to the court by a representative of a person who has not registered an electronic cabinet, although was obliged to do so.

Unlocking the work of the High Qualification Commission of Judges of Ukraine ("HQCJ")



On June 1, 2023, the High Council of Justice («HCJ») appointed new members to the HQCJ, thus unblocking its work.

The unlocking of the HQCJ's work will allow for the selection of judges for over 2,000 vacant positions and complete the qualification assessment of judges.

Currently, competitions are ongoing for candidates to fill vacant positions in local and appellate courts and the High Anti-Corruption Court.

Establishment of the Service of Disciplinary Inspectors (SDI)



On February 7, 2023, the HCJ established an independent division within its Secretariat - the Service of Disciplinary Inspectors.

On December 19, 2023, a public competition was announced for the Head of the Service, deputies, and inspectors.

NB! The competence of disciplinary inspectors includes disciplinary proceedings against judges, so we expect that this will solve the problem of the pile of unexamined disciplinary complaints accumulated since 2021 (which is at least 12 thousand complaints) and will give a start to disciplinary investigations against judges.

Reduction of the "threshold" for minor (or so-called insignificant) cases



In 2023, the Constitutional Court of Ukraine, by its Decision No. 10-p(II)/2023 of 22.11.2023, found unconstitutional the provisions of the Civil Procedural Code of Ukraine (the «CPC of Ukraine»), which established the «threshold» amount of a claim for minor cases (as of 2023, the amount of a claim is UAH 268,400 and UAH 671,000 in consumer protection cases).

The corresponding provisions of the Civil Procedural Code of Ukraine will become invalid 6 months after the CCU's decision, i.e., in May 2024.

WHAT DOES THIS MEAN IN PRACTICE? Previously, decisions in these cases could not be appealed to the Supreme Court due to their insignificance.

Now, until that date, the Verkhovna Rada should adjust the regulatory framework established by these clauses of the Civil Procedural Code of Ukraine in line with the decision of the CCU and, in particular, determine the amount of the claim that is not excessive for the chosen purpose and does not mislead the understanding of the case as insignificant for the person.

Some important judicial decisions



BANKRUPTCY:

the claims of legal entities falling under the moratorium according to Resolution of the Cabinet of Ministers of Ukraine No. 187 dated March 3, 2022 (i.e., having a connection with the Russian Federation) cannot be recognized as creditor claims in bankruptcy proceedings.

[Judgments of the Supreme Court dated June 21, 2023, in case No. 910/2529/22, and May 30, 2023, in case No. 925/1248/21]

ENFORCEMENT OF CONTRACTS AND FORCE MAJEURE:

the mere fact of hostilities or the imposition of restrictions during wartime does not exempt a party from liability **if such circumstances do not directly prevent the physical or legal performance of a specific obligation under the contract.**

Armed aggression against Ukraine, devaluation of the hryvnia, or a martial law status cannot automatically be an exemption from fulfilling any obligations in Ukraine by anyone, regardless of whether there is a real possibility of fulfilling them.

[Judgments of the Supreme Court dated March 14, 2023, in case No. 922/1093/22, and June 15, 2023, in case No. 910/8580/22]

The force majeure certificate does not have a prejudicial effect → The court assesses it in conjunction with other evidence → The party must not only prove the existence of force majeure but also that they were force majeure for the specific case + causal relationship.

Even without a force majeure certificate, the party is not deprived of the opportunity to prove the existence of force majeure by other means unless otherwise provided by law or contract.

[Judgments of the Supreme Court dated September 4, 2023, in case No. 902/1144/22, and September 13, 2023, in case No. 910/7679/23]

EXPECTATIONS FOR 2024

- Completion (extension) of announced HQCJ competitions for vacant judge positions with the condition of prompt appointments will reduce the current workload and expedite case consideration.
- Increase in disputes with the state (due to an increased regulatory role of the state).
- The expected development of the defense industry may lead to a new category of disputes.
- Increase in disputes related to compensation for damages associated with the military aggression of the Russian Federation.

