

COURT FEE SYSTEM IN UKRAINE AND IN SELECTED MEMBER STATE OF THE EU: GENERAL COMPARATIVE ANALYSES

The article addresses the issue of the functioning of the court fee system in Ukraine and selected the Member States of the EU. Special attention is given to the solution of the funding of administrative courts from the proceeds of court fees and features of tax exemptions for its payment in Ukraine and other foreign countries.

Key words: court costs, court fee in Ukraine, court fee system in EU, tax exemptions, the funding of the judiciary.



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Protection of rights and interests of a person itself and other persons in courts is one of the guarantees of implementation of the constitutional right of every person to judicial protection and implies application to court of state bodies, bodies of local self-government, natural and legal persons who are granted with a right to apply with claims on protection of rights, freedoms and interests of other persons by law. Such judicial recourse is connected with a necessity to pay court fee which influences the possibility of access of an individual to justice and receiving judicial protection guaranteed by Article 55 of the Constitution of Ukraine [2].

Nevertheless, like all of its legislation, Ukraine inherited its court system structure from the Soviet Union. Only recently the court system has begun undergoing reforms with the passage of a number of laws. Under the reformed judicial system, there is the Constitutional Court of Ukraine and a system of general jurisdiction courts based on the principles of territoriality, specialization and instances. Taking into basis these criteria a unified system of general jurisdiction courts with resolution to consider civil, criminal, commercial, administrative cases, exists in Ukraine.

Currently in Ukraine it has become necessary to effect payment for lodging an application to general jurisdiction courts, court costs (litigation costs, judicial expenses). Court costs are comprised of court fee and expenses

relating to proceedings in this case. In general the costs related to consideration of the case can include:

- Fees for legal services (attorneys, legal advisers, law firms, etc.);
- Expenses related to the appearance of parties and their representatives;
- Expenses related to the involvement of witnesses, interpreters and experts;
- Expenses related to examination of evidence on site and implementation of other actions required for judicial proceedings.

In Ukraine and almost in all the member states of the EU, the parties must pay court fees to initiate non-criminal law proceedings. But for some criminal law proceedings, in some states parties must pay also court fees [10, p. 73–74]. For example, in Greece free access to all courts is applied only to those who have been granted legal aid. In Hungary fees must be paid in a criminal law case only when there is a private prosecution or for a civil claim. In Portugal the «assistente», i.e. the parties claiming damages, have been included in the circle of persons allowed to start proceedings before a court in accordance with the Portuguese Code of Criminal Procedure. In Switzerland in criminal matters, advance on fees is generally requested at the second-instances level only.

On 8 July 2011, the Law of Ukraine «On Court Fee» № 3674-VI (the «Law») was adopted by the Ukrainian Parliament and became effective on the 1st of November, 2011 [3]. The Law replaced the respective provisions of the Decree of the Cabinet of Ministers of Ukraine «On State Duty» № 7–93, dated 21

January 1993 [8], which established the amounts of the court fees payable to the general jurisdiction courts and the process of payment of such fees. The Law instructed the Cabinet of Ministers of Ukraine to bring its acts into compliance with the provisions of the Law within a month from the date the Law becomes effective. Accordingly, the enactment of the Law lead to cancellation of the Regulation of the Cabinet of Ministers of Ukraine «On Procedure of Payment and Amounts of Fee for Informational and Technical Support of Civil and Commercial Proceedings», dated December 21, 2005.

Before 2011, the Ukrainian court fee system embraced two types of payments: state duty and informational and technical support fee. The state duty was normally calculated as either a percentage of the value of a claim or as a tax free allowance, while the amount of the informational and technical support fee was fixed depending on the substance of the court claim. Both the state duty and the informational and technical support fee were payable only for the filing of a statement of claim or the filing of an appeal and no payment was required for procedural motions, such as applications for interim relief.

The Law abolishes the abovementioned two-fold system, replacing it with the requirement to pay a single court fee (судовий збір – укр.). Further, has been established a new system of fee calculation under which the court fee is calculated as a percentage of either the value of the court claim or the statutory minimum wage. This amount is calculated based on the rate of the minimum wage effective in Ukraine as of the 1st of January of the

year in which a claim is filed to a court (in 2014 – UAH 1218 [2]).

For example, the Law sets forth that filing a monetary claim in the administrative courts is charged two percents of the amount claimed but no less than 1,5 of the minimum wage amount and more than 2 of the minimum wage amount (in 2014 – UAH 4 873). At the same time, the amount of court fee payable for filing a non-monetary claim in the administrative courts increased from only UAH 3.40 (in 2011) up to 0,06 of the minimum wage amount (in 2014 – UAH 20.30). The amount of court fee payable for filing a petition for review of court ruling by Supreme Court of Ukraine – 70 percent of the rate to be paid when filing a claim and in case of monetary claim – 70 percent of the rate calculated based on the amount in dispute.

Additionally, a court fee is payable for the filing of an application for interim measures and the filing of an application for issuing a writ of enforcement. Moreover, paying the court fee is a pre-requisite to the filing of an appeal (50 percent of the rate to be paid when filing a claim and in case of monetary claim – 50 percent of the rate calculated based on the amount in dispute) or a cassation appeal (70 percent of the rate to be paid when filing a claim and in case of monetary claim – 70 percent of the rate calculated based on the amount in dispute). In addition, the Law introduces court fees for filing an application on joining the appellate or cassation complaints and for submission of an application requesting reconsideration of a court default judgment rendered in the absence of the defendant, which before 2011 were free of charge.

However, comparing the amount of court fees in Ukraine and some member states of the EU by taking absolute figures carries a certain risk with it, since the real price to be paid for court services can only be obtained by relating it to the real value of money in a given country. For example, if we deal with an administrative case (administrative procedure concerning a complaint about a building licence) the highest rates are charged in Scotland (EUR 500), Italy (EUR 340), Northern Ireland (EUR 172), the Netherlands (EUR 141 – partly because of the fact that the defendant has to pay as well) and Germany (EUR 121) [9, p. 136]. Whereas in Denmark, Spain, Luxemburg, Portugal, Sweden no court fees are due, since those countries hold the view that access to administrative justice should be free of charge. In comparison to these figures, in Ukraine for filing a administrative case about a building licence (monetary claim), the rate of court fee is two percents of the amount claimed but no less than 1,5 of the minimum wage amount and more than 2 of the minimum wage amount (UAH 4 873 – EUR 305) [3]. Thus, what could be taken as a fair price for filing a certain demand in one country could therefore possibly amount to extortion elsewhere? So court fees should be related to the buying power of the currency.

But it's reasonable to state, that court fees have generally increased throughout Europe in recent years. While no justice system is fully funded by court fees, a number of jurisdictions in Europe (e.g., the United Kingdom, the Netherlands, and Germany) have increased court fees significantly [9, p. 134–136].

Countries that did not have court fees, such as France (only from 2011 a contribution is EUR 35), have now introduced them. Increasing or introducing court fees has three main beneficial effects: firstly, it helps prevent spurious litigation; secondly, it shifts the expenditure burden from taxpayers to litigants, and if carefully targeted, re-distributes the burden to those litigants most able to carry it; and thirdly, it increases overall public revenue.

However, in this regard, it is important to distinguish, on the one hand, we have fees for obtaining information, making or modifying entries in state registers, and, on the other hand, the costs of judicial proceedings. Regarding this last aspect, it is important for ensuring an effective access to justice that the court fees do not become an obstacle for citizens for initiating judicial proceedings.

Besides that, the Law of Ukraine «On Court Fee» № 3674-VI [3] determines the legal beginnings of collection of court fee, payers, objects and the rates of court fee, the payment procedure, exemptions and returns of court fee. By Law, court fee is the collection levied on all territory of Ukraine for submission of statements, claims in court, for issue by courts of documents, and also in case of adoption of the separate judgments provided by this Law.

According to Article 2 of the Law payers of court fee are citizens of Ukraine, foreigners, stateless persons, enterprises, institutions, organizations, other legal entities (including foreigners) and natural persons-entrepreneurs who apply to court or who have a court decision adopted with respect to them

envisaged by this law. Article 3.2 of the Law established the list of objects of court fee:

- for giving in court of the action for declaration and other statement provided by the procedural legislation;
- for giving in court of appeal and cassation claims to judgments, statements for review of the judgment in connection with again opened circumstances, statements for cancellation of the decision of reference tribunal, the statement;
- for issue of the executive document on forced accomplishment of the decision of reference tribunal and the statement for review of judgments by the Supreme Court of Ukraine;
- for issue by courts of documents;
- in case of adoption of the judgment provided by this Law.

It also should be noted that in line with the old legislation, the Law establishes privileges for certain classes of applicants, such as a court fee payment exemption. Article 5 of the Law provided the exhaustive list of subjects who are exempted from court fee for applying to court with a claim, complaint and for issuing documents by courts as well as grounds for exemption of persons who apply with claims to protect not their personal rights but rights and interests of other persons protected by law from paying court fee. For example, court fee is not levied for giving:

- 1) statements for review by the Supreme Court of Ukraine of the judgment in case of establishment by the international legal agency which jurisdiction is acknowledged as Ukraine, violations by Ukraine of the international obligations in case of the solution of case by court;

2) statements for cancellation of the writ;

3) statements for change or establishment of the method, procedure and term of accomplishment of the judgment;

4) statements for turn of accomplishment of the judgment;

5) statements for pronouncement of the additional judgment;

6) statements for annulment of marriage with the person recognized in the procedure established by the law as absent or incapacitated, or with the person, condemned to imprisonment for term at least than three years;

7) statements for factual determination of the mutilation if it is necessary for purpose of pension or receipt of the help on obligatory national social insurance;

8) statements for factual determination of death of the person who were missing under circumstances which threatened it with death or give the grounds to consider it the victim from the certain accident as a result of emergency situations of technogenic and natural nature;

9) statements for restriction of civil capacity to act of physical person, recognition of physical person incapacitated and renewal of civil capacity to act of physical person;

10) statements for provision to the minor person of full legal civil capacity;

11) statements for provision to the person of the psychiatric help involuntarily etc.

Moreover, the court may reduce the court fee for under-privileged people. It should also be noted that the Law gives courts the right to postpone the payment of court fees or even grant exemption in

view of the financial situation of the parties. But this norm is unpopular in practice and very difficult to apply. Because the Parliament did not set any clear criteria for assessing the financial condition of a party and leaves it to the court to decide. Similar norms are contained in the Civil Procedural Code of Ukraine, the Administrative Procedural Code of Ukraine and the Commercial Procedural Code of Ukraine.

However, Decision of the Constitutional Court of Ukraine, dated November 28, 2013 No. 12-rp/2013 in the case upon the constitutional appeal of the association «House of Music Authors in Ukraine» concerning the official interpretation of the provisions of Article 5.1.7 of the Law of Ukraine «On Court Fee» in connection with the provisions of item «r» Article 49.1 of the Law of Ukraine «On Copyright and Related Rights» [6], states that according to Article 5.1.7 of the Law only state bodies and state enterprises, institutions and organizations which apply to court with claims on protection of rights and interests of other persons in cases envisaged by law are exempted from paying court fee. The Court deems that the mentioned provision of the Law does not apply to organizations of collective management as legal entities of private law. Also the Constitutional Court of Ukraine noted that civil organizations which applied to court with claims on protection of rights and interests of other persons in cases envisaged by law are also exempted from paying court fee.

Interesting that most of the member states of the EU provide the exemptions on court fees. In many states, such exemption is automatic for those per-

sons entitled to legal aid (Czech Republic, France, Luxembourg, Monaco, Norway, «the former Yugoslav Republic of Macedonia», UK-Northern Ireland). Exemptions from court fees can concern categories of vulnerable persons such as those in receipt of welfare support/social benefits (Andorra, Belgium, Croatia, Finland, Turkey, UK-Scotland), disabled persons, invalids and war victims (Bosnia and Herzegovina, Croatia, Estonia, Ukraine), or minors, students, foreigners – subject to reciprocity (Bosnia and Herzegovina). Public bodies can be exempted (Bulgaria, Croatia, Estonia, Lithuania) as well as NGOs and humanitarian organisations (Bosnia and Herzegovina, Croatia, Portugal, Ukraine) such as the Red Cross (Bulgaria) [10, p. 78].

Furthermore, in the majority of European states, the exemption from court fees is also aimed at specific cases, for instance some civil procedures (Albania), procedures related to the defence of constitutional rights and values (Portugal), administrative law (Bulgaria, Estonia), labour law and/or social law (Armenia, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Croatia, Estonia, Italy, Lithuania, Republic of Moldova, Poland, Romania, Slovenia, Switzerland), family or juvenile law (Finland, Ireland, Italy, Lithuania, Republic of Moldova, Norway, Spain, Poland, Portugal, Romania), civil status (Spain), agriculture (Italy), taxes (Portugal), electoral law (Romania) or as regards house rentals (Switzerland). Some states require that court fees be paid only at the end of the proceedings (Finland). Exemption from court fees can also take the form of free notices in legal journals (Spain, Turkey).

Another important issue is that the scope of instances where a court fee is payable had been significantly expanded in order to increase the budget of the Ukrainian courts and to enhance the courts' logistical support and funding. However, pursuant to the Constitution of Ukraine (art. 130) [1] and Decision of the Constitutional Court of Ukraine № 7-rp/2010, dated 11 March, 2010 [5] (in the case upon the constitutional petition of the High Commercial Court of Ukraine concerning official interpretation of Article 130.1 of the Constitution of Ukraine (the case on financial provision of operation of courts), the funding and adequate conditions for the functioning of courts and activities of judges shall be provided by the state from tax revenue in the State Budget of Ukraine only.

Support for the functioning of the judiciary shall include the following:

- 1) determining in the State Budget of Ukraine the expenditures to fund courts not lower than a level high enough to ensure full and independent administration of justice in accordance with the law;
- 2) legislative guarantees for full and timely funding of courts;
- 3) guarantees for a sufficient level of social protection of judges.

At the same time, Law of Ukraine «On the Judiciary and the Status of Judges» № 2453-VI, dated 7 July 2010 [4], stipulated main principles of funding of courts:

1. All courts in Ukraine shall be funded from the State Budget of Ukraine. Budget allocations for maintenance of courts shall be protected items of expenditures in the State Budget of Ukraine.

2. The functions of the main distributor of the funds of the State Budget of Ukraine appropriated for the financing of courts shall be performed by: courts of general jurisdiction; the Constitutional Court of Ukraine; the State Judicial Administration of Ukraine – in regards to the funding of the operation of the High Qualifications Commission of Judges of Ukraine, bodies of judicial self-government, the National School of Judges.

3. There shall be separate items in the State Budget of Ukraine for expenses related to the maintenance of each court.

4. Allocations from the State Budget of Ukraine for the maintenance of courts may not be reduced in the current fiscal year.

5. Supervision of compliance with the requirements of this Law in terms of the funding of courts shall be exercised in the manner specified by the law.

6. The particularities of preparation and consideration of the parts of a draft law on the State Budget of Ukraine relating to the funding of courts and other bodies and institutions of the judicial system shall be established by law.

Material and welfare support and social protection of judicial system employees guaranteed by state in all democratic countries. The rates of salaries of court staff and employees of the State Judicial Administration of Ukraine, the High Qualifications Commission of Judges of Ukraine and the National School of Judges of Ukraine and their welfare support and social protection level shall be determined by the law and may not be lower than the levels enjoyed by the respective categories of public servants of the legislative and

executive branches. The main distributors of the funds of the State Budget of Ukraine regarding funding of operation of the courts shall bear the cost of burial and perpetuation of the memory of judges, including retired judges. The cost estimates of the courts of general jurisdiction and the Constitutional Court of Ukraine shall provide costs for hospitality expenses [4].

In addition, courts of general jurisdiction shall be funded on the basis of cost estimates and monthly lists of expenditures approved in accordance with the requirements of this Law within the limits of the annual amount of expenditures provided for by the State Budget of Ukraine for a current fiscal year in the manner prescribed by the Budget Code of Ukraine. Total annual approved budget allocated to the whole justice system in Ukraine for 2014 is UAH 4,57 millions [2], comparing to UAH 4,42 million in 2013.

Interesting that the overall budget of justice in several European countries has increased since 2008: less than 5% (Austria, Bulgaria, Montenegro, Netherlands), between 5 and 10% (Bosnia and Herzegovina, Finland, Italy, Monaco, Slovenia), between 10% and 20% (Belgium, Denmark, France, Luxembourg, Spain), between 20 and 50% (Lithuania, Norway, Portugal), of more than 50% (Azerbaijan, Cyprus, Turkey) [10, p. 23]. Some member states explicitly refer to economic investments in the judiciary (Sweden has invested to safeguard effective public prosecution services the quality of the judiciary, the effective prison and probation systems and to strengthen the victim perspective throughout the justice system), sig-

nificant investments in courts buildings (Azerbaijan, Cyprus), developments in the prison system (Azerbaijan, Bosnia and Herzegovina) or large investment in IT applications (Azerbaijan, Portugal). On the contrary, other member states indicate a decrease in the overall budget of justice due to the financial and economic crisis (Albania, Estonia, Hungary, Ireland, Latvia, Romania, Serbia, and Slovakia).

At the same time, a majority of European states the court fees constitute a significant financial resource, allowing some to cover a major part of the court operating costs, or even to generate a net profit [10, p. 81]. Such a system, if accompanied by an effective legal aid system for enabling access to court to litigants who would not have sufficient means otherwise, is part of the current strong trend of public policy aimed at partly balancing the costs of public services borne by the users and the tax payers.

These member states of EU have chosen to generate a certain level of income for the courts. When the annual revenue from court fees received by states is compared with the budget allocated to courts, it can be noted that in some member states this revenue is almost equal to (Portugal, UK-Northern Ireland, Slovakia, Denmark, Latvia, Estonia, San Marino) or even exceeds (Bulgaria, Malta, Serbia) a half of the budget allocated to courts. In other member states this revenue represents around one-third of the court budget (Slovenia, Cyprus, Switzerland, Montenegro, Ireland, UK, Bosnia and Herzegovina, and Poland). However, in the majority of states where court fees are applied,

these receipts are not «earmarked» for the payment of the costs related to the operation of courts but are defined as general revenue for the state. The analysis of the evolution of the courts' financial receipts resulting from court fees in Ukraine shows a share of court fee in the court budget on the level of 3,5% only in comprising to 109% in Austria which makes a profit from it [10, p. 79].

Summarizing the results of the performed general comparative analysis we can draw out the following conclusions. Court fee joins in structure of court costs in Ukraine and most of member state of the EU. The obligatory payments that are connected with the production of justice in Ukraine are not determined in Tax Code of Ukraine. The essence of current court fee includes two separate judicial payments: judicial informatively-technical payment and judicial payment, which have public, obligatory character, the basic elements of legal mechanism of which are determined in the Law of Ukraine «On Court Fee» № 3674-VI. But court fee system of Ukraine cannot be characterized as a fully functional as the Law need to set an extra legal features. These features shall be:

- the general basis of the system (full cost recovery, reallocation of means);
- the way court fees are used as an instrument of judicial policy by promoting or discouraging procedural choices;
- the basis on which court fee rates are fixed (kind of case, quality of the litigating parties, value of the claim, cost of the judicial service);
- uniformity or pluriformity in respect to the different kinds of procedures;
- the moment the court fee is imposed (e.g. at the filing of a form, the

commencement of a procedure, after the outcome of the case);

- the moment the court fee is due;
- the existence of procedural sanctions related to non-payment of court fees;
- the existence of layered charging (building up the fee as the case evolves);
- the party that is charged;
- the way counterclaims are treated;
- the way rates are fixed in the case of appeal and interim judgments;
- the relation between court fees and the financial situation of the parties;
- the way increase and reduction of the claim are treated;
- the way undue hardship is dealt with.

Thus, the Law of Ukraine establishes a completely new and more comprehensive system for determining court fees which rates are notably higher than in selected member state of the EU. It also abolishes the requirement to pay an additional fee for informational and technical support of the court proceedings by introducing «single fee scheme». But Ukraine needs unified system of providing funds for the functioning of the judiciary from the State Budget of Ukraine and higher share of court fee in the court budget. Judicial bodies, other bodies of state shall take part in organizational support for the operation of courts from tax revenue.

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Радишевська О. Р. Система судового збору в Україні і в окремих державах ЄС: загальний порівняльний аналіз.

Статтю присвячено висвітленню окремих аспектів функціонування системи судових платежів в Україні та деяких державах-членах Європейського Союзу, зокрема вдосконаленню вітчизняного законодавства про судовий збір. Детальніше автор звертає свою увагу на питання фінансування діяльності адміністративних судів за рахунок надходжень з судового збору, а також особливостей надання податкових пільг щодо його сплати в Україні та зарубіжних країнах.

Ключові слова: судові платежі, судовий збір України, система судових зборів ЄС, податкові пільги, фінансування судової влади.

Радишевская О. Р. Система судебного сбора в Украине и в отдельных государствах ЕС: общий сравнительный анализ.

Статья освещает отдельные аспекты функционирования системы судебных платежей в Украине и некоторых государствах-членах ЕС, в частности совершенствования отечественного законодательства о судебном сборе. Подробнее автор обращает внимание на вопросы финансирования деятельности административных судов за счет поступлений судебного сбора, а также особенностей предоставления налоговых льгот по его уплате в Украине и в зарубежных странах.

Ключевые слова: судебные платежи, судебный сбор Украины, система судебных сборов ЕС, налоговые льготы, финансирование судебной власти.

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