

THE ROLE OF ECONOMIC COURTS IN THE ECONOMIC DEVELOPMENT OF UKRAINE

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Abstract. The *subject* of the study is the role of economic courts in the economic development of Ukraine. The *purpose* of the article is determined by the current economic processes taking place in the country in connection with the full-scale aggression of the Russian Federation and the introduction of martial law in the territory of the state by the Decree of the President of Ukraine of February 24, 2022. According to preliminary forecasts, by the end of 2022 inflation in the country will increase to over 30%, and by the end of 2023 and 2024 it is expected to reach 20.7% and 9.4% respectively. Therefore, the purpose of the article is to provide a theoretical and practical substantiation of the impact of economic courts on the support and development of the State's economy in modern conditions. The *methodological basis* of the work is a set of general philosophical, general scientific and logical methods, the combination of which allowed to achieve a certain level of objectivity, comprehensiveness, as well as the validity of the study and the reliability of the conclusions. The leading role in the work is played by the statistical method, which made it possible to outline the trends in the number of considered economic cases, the amount of property claims of plaintiffs and the amount of funds allocated for recovery (indicators for 2021, 2020, 2019, 2018, etc. were considered). The results of the study make it possible to conclude that the influence of economic courts is both direct and indirect. Direct influence is manifested in the results of administration of justice, resolution of commercial disputes and satisfaction of interests of business entities. The indirect impact is related to the replenishment of the special fund of the State Budget of Ukraine by economic courts through the receipt of court fees. In addition, the difficulties faced by judges of economic courts in the context of the full-scale aggression of the Russian Federation against Ukraine are highlighted: 1) the danger to the life and health of judges, court staff and visitors to the court in general (for example, in Odesa from February 24, 2022 to September 8, 2022, air alert was announced fifty-one times, its total duration was thirty-nine hours); 2) destruction or damage to the material and technical base of economic courts (for example, in the Economic Court of Donetsk region and the Economic Court of Luhansk region, located in the same building, the plaster on the facade of the building was damaged, the building of the Economic Court of Mykolaiv region was damaged); 3) lack of judges (this is due to the suspension of the work of the High Qualification Commission of Judges of Ukraine, on the one hand, and the fact that some judges left the country with the beginning of hostilities); 4) insufficient level of funding (in 2020, the Supreme Court received six appeals from economic courts regarding insufficient funding, and in 2021, special attention was paid to the problem of underfunding of the Economic Court of Kyiv region, which led to a shortage of funds in the wage fund of the court staff). *Practical implications.* It is determined that any further actions of the state should be aimed at raising the qualification level of judges of economic courts and public confidence in them, popularization of the procedure for applying to economic courts and legal proceedings. *Value/originality.* The study confirms the effectiveness of economic courts and allows to analyze it from a new perspective, since, as most scientific studies show, the effectiveness of economic courts is mainly associated with: the speed of consideration of cases; a small number of decisions appealed to a higher instance (compared to the indicators of general and administrative courts); the percentage of cases considered.

Key words: commercial (economic) courts, judicial system, economics, entrepreneurship.

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1. Introduction

The expediency of the existence of economic courts in the judicial system of Ukraine for a long time caused a heated debate among both scholars and practitioners. However, during their functioning these courts have proved their effectiveness. Based on the data of the vast majority of studies, the efficiency of economic courts is mainly associated with:

- 1) the speed of processing cases;
- 2) a small number of decisions that are appealed to a higher instance (compared to the indicators of general and administrative courts);
- 3) the percentage of cases considered (in 2021, 99.75% of cases from the total number received were considered (Court statistics, 2021).

Unfortunately, the role of these courts in the development and strengthening of the country's economy remains without due attention.

It should be noted that both narrow and broad approaches are used to define the concept of "national economy". According to the first, the national economy is a set of economic entities and relations between them, which has a spatially defined and specifically formed national organizational structure, is characterized by economic integrity and is aimed at meeting the needs of society in material and social benefits. According to the second approach, the national economy is an economic activity on a national scale, structured in the sectoral and territorial space, which is regulated by an institutional system that corresponds to the economic, political and ideological system (order) formed in the country (Zamrygha, 2019).

It is impossible to disagree with the fact that there is a direct link between the state of the economy and the standard of living of the population, which is an indicator of the level of well-being and the degree of satisfaction of basic life needs of society. In this regard, it is worth paying attention to the concept of "sustainable economy", which can be defined as an economy with a relatively stable, moderately fluctuating product of the population and per capita consumption. The advantage of such an economy is that it experiences neither growth nor decline, but has a constant population (and, hence, a "stock" of labor)

and a constant stock of capital (Czech, E. Daly, 2004).

In the context of full-scale aggression by the Russian Federation, the state of Ukraine's economy is one of the most important problems of our time. As noted in previous forecasts, the economy of our country by 2022 will fall by one third, and inflation will increase to more than 30%. The National Bank of Ukraine expects inflation to reach 20.7% in 2023 and 9.4% in 2024 (Shevchuk, 2022). Such indicators are due to the fact that with the beginning of hostilities one third of Ukrainian enterprises ceased their activities due to destruction, temporary occupation of certain regions, serious damage to logistics and production links and communications, forced migration of the population, etc. (Zhyrij, 2022) Thus, the problem of the role of economic courts in strengthening the economy under such conditions is extremely relevant and requires a comprehensive and consistent study.

2. Current state of economic courts

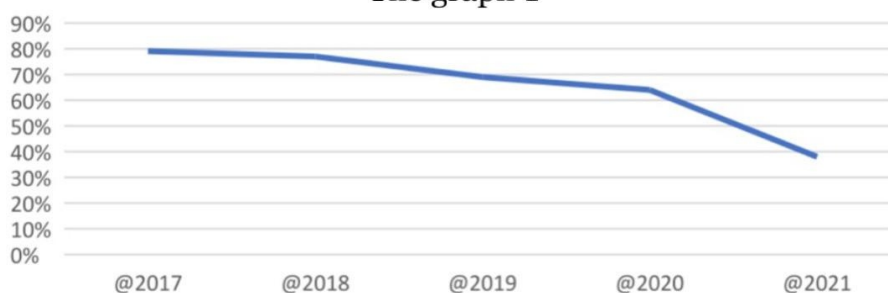
Administration of justice at a high level requires proper organizational, financial, logistical and other conditions. The study of the impact of economic courts on the development of the national economy will not be comprehensive without highlighting the problems faced today, in particular, by judges of economic courts:

1. Threat to the life and health of judges, court staff and court visitors. For example, in Odesa, from 24 February 2022 to 8 September 2022, air-raid alert was declared fifty-one times, with a total duration of thirty-nine hours (Statistics of air-raid alerts, 2022).

2. Destruction or damage to the material and technical base of economic courts (for example, in the Economic Court of Donetsk region and the Economic Court of Luhansk region, which are located in the same building, the plaster on the facade of the building was damaged, the building of the Economic Court of Mykolaiv region was significantly damaged).

3. Lack of judges. This situation is caused both by pre-war problems, primarily related to the suspension of the work of the High Qualification Commission of Judges of Ukraine, and by the fact that with the outbreak of hostilities some judges left the country.

The graph 1



4. Insufficient level of funding. In 2020, the amount of funding could meet the needs of the courts only by 50-60%, and in 2021, the financial support of the courts was only 38.4% of the required amount, which is the lowest figure for the last few years (in 2017 this figure was 79.1%, in 2018 – 77.9%, in 2019 – 69.5%, in 2020 – 64.4% (Semysocjky, 2021) (see Figure 1 below). In addition, in 2020, the High Council of Justice received six appeals from economic courts regarding insufficient funding, and in 2021, special attention was paid to the problem of underfunding of the Economic Court of Kyiv Region, which led to a shortage of funds in the wage fund of the court staff (Economic Court of Kyiv Region, 2021).

3. The importance of economic courts for the economy of the state

In order to clearly demonstrate the importance of economic courts in strengthening the economy, it is advisable to consider statistical indicators on the selected issues through the prism of two aspects: 1) in relation to economic entities (which has a direct character); 2) in relation to the state (with an indirect character).

As for business entities, when applying to the court, these entities aim to resolve a certain type of legal disputes – economic disputes. In general, a dispute is a contradiction, different opinions of two or more persons regarding a certain phenomenon or subject. In turn, economic disputes are a type of legal disputes that arise in the process of economic activity (Dictionary of the Ukrainian Language, 1970–1980). It should be noted that for the first time in the legislative acts of Ukraine the term "economic dispute" was used in Article 1 of the Law of Ukraine "On Arbitration Court".

There is no single definition in the legal literature. Thus, O. Grebentsov believes that an economic dispute in the narrow sense is a dispute arising in connection with the implementation of entrepreneurial activity and is directly related to it, and in the broad sense is a dispute arising from any property relations, as well as in connection with the implementation of entrepreneurial activity. In turn, O. Belyanevich defines the economic dispute as a legal conflict in economic relations arising from the direct implementation of economic activity and its management, which affects the subjective rights and obligations of their participants (Talykin, 2014).

Without dwelling in detail on the concept of "economic dispute", which is not the direct subject of the study, it should be noted that in the current conditions of war Ukrainian enterprises have faced a number of problems. Among them, for example, is the need to evacuate production facilities. According to statistics, during the two months of war, about

1171 Ukrainian enterprises started the process of evacuation of their production facilities (about 400 enterprises partially or completely moved their facilities, 216 of them resumed their work). The following regions were most often chosen for business relocation: Transcarpathian, Lviv, Ivano-Frankivsk, Ternopil, Khmelnytskyi, Chernivtsi, Vinnytsia, Volhynia and Rivne regions (Alenin, 2022).

Regarding the importance of business entities for the country's economy, it is worth supporting the thesis that it is entrepreneurs who ensure the welfare of the population, because the functioning of enterprises provides the population with jobs, goods, services and products for consumption. In addition, domestic companies allocate funds to support the Armed Forces of Ukraine. For example, during the first month of the charity campaign for online payment and automatic withdrawal of NovaPay funds, Nova Poshta transferred UAH 3.4 million to support the Armed Forces of Ukraine (funds were transferred to a special account of the National Bank of Ukraine for the Armed Forces of Ukraine (Nova Poshta, 2022).

Returning directly to commercial disputes, it should be noted that in 2018–2021, the total amount of claims filed with the courts of first instance amounted to UAH 1 250 000 000 000, of which UAH 491 billion were penalties (39.3%). During the same period, fines in the amount of UAH 103.9 billion were imposed in 52.8 thousand cases (17.4% of cases considered in the courts of first instance), of which UAH 66.7 billion, or 64.2% of the imposed fines, were recovered.

In order to highlight in more detail the amount of money that was the subject of dispute in courts, it is important to pay attention to court statistics on individual cases in certain years.

Thus, in 2021, based on the results of consideration of 48,000 commercial cases with property claims of plaintiffs for a total amount of UAH 273.3 billion, UAH 128 billion (46.8% of the amount of claims filed by plaintiffs) was sent for recovery. In 2020, based on the results of consideration of 40,200 commercial cases with property claims of the plaintiffs in the amount of UAH 260.2 billion, UAH 83.2 billion (32% of the claims) were awarded for recovery (Supreme Court, 2021).

Thus, the amount of funds allocated as penalties in 2021 increased by almost 54% compared to 2020.

In addition, it is impossible to ignore the penalties that are applied to business entities. It should be reminded that penalties in accordance with Article 230 of the Commercial Code of Ukraine are a sum of money (forfeit, fine, penalty), which a participant of economic relations is obliged to pay in case of violation of the rules of economic activity, non-fulfillment or improper fulfillment of economic

obligations. Thus, in 2021, fines in the amount of UAH 24.6 billion (26% more than in 2020 – UAH 19.5 billion) were imposed in 13.9 thousand cases (16.2% of those considered in the courts of first instance), and a total of UAH 17.7 billion (71.6% of the declared fines) was paid, which is 80.6% more than in 2020 (UAH 9.8 billion).

In 2020, the number of cases considered by local economic courts amounted to 79.1 thousand, of which 46.7 thousand claims were fully or partially satisfied (59%). The total amount of the claimed claims amounted to UAH 260.2 billion, of which UAH 83.2 billion (32%) was subject to recovery. In 13.6 thousand cases (17.2%), penalties in the amount of UAH 19.5 billion were claimed, of which UAH 9.8 billion (50%) were recoverable.

In 2019, the number of cases considered by local economic courts amounted to 75.1 thousand, of which 43.1 thousand claims were fully or partially satisfied (57.4%). The amount of the claimed claims amounted to UAH 269.4 billion, of which UAH 112.4 billion (41.7%) were penalties. In turn, in 13.3 thousand cases (17.7% of the cases considered), penalties in the amount of UAH 29 billion were declared, of which UAH 17.7 billion (61%) were penalties. (Supreme Court, 2021).

In 2018, the number of cases considered by local economic courts was lower compared to the previous year and amounted to 63.2 thousand cases. The total amount of the claimed claims amounted to UAH 447.5 billion, of which UAH 167.4 billion (37.4%) were penalties. In 12 thousand cases (19% of cases), penalties in the amount of UAH 30.7 billion were claimed, of which UAH 21.5 billion (70% of the claimed amount) were penalties.

Thus, on the example of the above indicators it is possible to trace the tendency to increase the amount of claims with each subsequent year. And this trend is quite long-lasting: in 2015, according to the results of court proceedings, about UAH 231 billion was recovered in favor of economic entities, while in 2014 it was twice less – UAH 109.6 billion (Lviv, 2016).

Taking into account the difficult economic situation in the country, international investments play a significant role for Ukraine and are able to support the state of the national economy and quality indicators of economic activity. It should be noted that foreign direct investment today is available in all sectors of the national economy. At the same time, most investors represented in the Ukrainian market prefer the processing industry, as well as wholesale and retail trade. This situation is determined by the fact that new products appear here quickly, their assortment changes just as quickly and costs are recouped, and economic risks are relatively low. Also popular are industries that do not require long-

term capital investments and the development of new technologies, in particular the financial sector and real estate sector (Markevych, 2019).

In 2021, the top five countries in terms of foreign direct investment were the United States, China, Hong Kong (China), Singapore and Canada. As for the present, the investment climate has also suffered and undergone significant changes due to military actions. Preliminary data for the first quarter of 2022 indicate that the volume of new project announcements decreased by 21%, cross-border mergers and acquisitions activity decreased by 13%, and the volume of international project financing transactions decreased by 4% (UNCTAD, 2022).

It is important to emphasize that the movement of finance across national borders allows capital to find the best source of profit. In addition, international capital flows contribute to the dissemination of best practices in corporate governance, accounting rules and legal traditions, as well as protect states from unfavorable policies (Loungani, Razin, 2001).

Given the importance of foreign investment for the country's economy, especially in these difficult times, we consider it necessary to pay attention to the court statistics on cases involving foreign investors.

Thus, during 2018–2021, the economic courts of first instance considered 7 thousand cases involving foreign investors for a total amount of UAH 47.7 billion in penalties. Based on the results of consideration of 3.8 thousand cases (54.6% of the cases considered), the claims were fully or partially satisfied and UAH 7.9 billion of penalties were recovered (16.5% of the declared funds):

- in 2018, 2.2 thousand cases were considered, of which 56%, or 1.2 thousand cases, were satisfied, and UAH 3.3 billion of penalties were sent;
- in 2019, 2.4 thousand cases were considered (by 8.9% more), of which 43%, or 1 thousand cases, were satisfied and UAH 2.1 billion of penalties were sent;
- in 2020, 1,600 cases were considered, of which the claims were satisfied in 63%, or 1 thousand cases, and UAH 0.6 billion of fines were accrued;
- in 2021, 0.7 thousand cases were considered, 73% of claims were satisfied, or in 0.5 thousand cases, and UAH 1.6 billion of fines were imposed (Supreme Court, 2021).

Therefore, the award for the deduction of funds is a manifestation of the protection of the legitimate interests of business entities. The funds received can be used to continue further production, pay wages, pay taxes and fees, utilities, etc. Thus, entrepreneurs support not only their own employees, who are also consumers of goods and services, but also the economy of the state as a whole.

As for the second aspect, namely the strengthening of the economy indirectly through the state, it is

worth paying attention to the filling of the special fund of the State Budget of Ukraine by economic courts.

According to statistics, in 2021, the special fund of the State Budget of Ukraine received UAH 839.5 million from the budget of Ukraine for the consideration of cases by economic courts. It should be noted that the Commercial Court of Cassation received UAH 330.2 million, which is 20.9% more than in 2020 (UAH 273.2 million) and accounts for almost 64.9% of the total amount.

In 2016, the amount of court fees paid to the special fund of the State Budget of Ukraine for the consideration of cases by the economic courts of Ukraine amounted to UAH 868 million (Supreme Court, 2021).

In 2015, the applicants paid UAH 49.4 million of court fees to the special fund of the State Budget of Ukraine for consideration of cases in the cassation instance, while in 2014 this amount was UAH 31.9 million (an increase of 54.8%) (Resolution of the Plenum of the HSCU, 2017). In the same year, 107 million UAH of court fees were paid for consideration of cases by commercial courts on appeal, which is 79.7% more than in 2014 (59.6 million UAH) (Resolution of the Plenum of the HSCU, 2016).

In 2008, to the State Budget of Ukraine decisions on dedication of state duty in an amount exceeding UAH 60 mln (Supreme Economic Court of Ukraine, 2008).

To demonstrate the effectiveness of the economic courts, it is worth paying attention to the expenditures planned in the State Budget of Ukraine for the administration of justice. Thus, in accordance with the Law of Ukraine "On the State Budget for 2021", almost UAH 14 million is allocated to ensure the administration of justice by local and appellate courts, as well as the functioning of bodies and institutions of the justice system (Law of Ukraine "On the State Budget for 2021", 2019). In 2020, this amount amounted to almost UAH 13 million (Law of Ukraine "On the State Budget for 2020",

2020), and in 2016, UAH 93,909,000 thousand was provided for the administration of justice by the Supreme Economic Court of Ukraine, and UAH 3,447,964.4 thousand for the administration of justice by local and appellate courts (Law of Ukraine "On the State Budget for 2016", 2016). Thus, it can be argued that there is a significant disproportion between the costs of courts and the revenues they provide. It should be noted that the availability of money in the budget in the current conditions is absolutely necessary, because it will help to support the Ukrainian army as much as possible, to pay salaries to employees of state-owned enterprises in a timely manner, to preserve social programs for low-income groups, including IDPs, and other categories of people in need of support and assistance.

4. Conclusions

The above statistical indicators of the functioning of economic courts allow us to conclude that they are extremely important for the economic development of the state, and disputes about the expediency of their existence are groundless. The authors believe that further actions of the state should be aimed at raising the level of qualification of judges of these courts, public confidence in them, popularization of procedures for applying to economic courts and court proceedings. Achievement of the set tasks is possible with the help of judicial self-government bodies, the National School of Judges of Ukraine, mass media, higher educational institutions (holding joint scientific and practical conferences, round tables, lectures, methodological seminars, etc.) As for the last task, which concerns the popularization of the procedure for applying to commercial courts and consideration of cases, in our opinion, in the current conditions of digitalization and obtaining information by the vast majority of the population through various social platforms (for example, special chatbots in Telegram, as well as social platforms such as Facebook, YouTube, etc.

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