

APPEAL PROCEEDINGS

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INTRODUCTION

One of the generally recognized international and European legal standards is the possibility of any person convicted of a crime to file a complaint with the Supreme court with the requirement to review the judgment. This standard is enshrined in the domestic legislation. Part 4 of article 125 of the Constitution of Ukraine provides that in accordance with the law in Ukraine there are local and appellate courts, and the provision of appeal and cassation appeal of the court decision referred to the basic principles of criminal justice (part 3, paragraph 8 of article 129 of the Constitution of Ukraine)

By ensuring that the tasks of criminal proceedings are carried out, the higher courts verify the legality and validity of the sentences and rulings handed down by the court of first instance. Under the new code of criminal procedure of Ukraine, there are four types of judicial review: appeal proceedings; cassation proceedings; proceedings on newly discovered circumstances; proceedings in the Supreme Court of Ukraine.

All four types of judicial review are an integral part of the criminal process, each of them is an independent stage.

1. General characteristics of the appeal proceedings. Courts of appeal

The difference between the previously existing cassation and the now fixed appeal.

Appeal proceedings – a stage of civil proceedings to review decisions (definitions) of the court of first instance, which have not entered into force, which occurs at the initiative of interested persons. The introduction of an appeal in civil proceedings is the implementation of the constitutional provision (article 129 of the Constitution of Ukraine) to ensure the appeal and cassation appeal of court decisions except in cases established by law.

Review of court decisions on appeal is the competence of the court of second instance (court of appeal).

Analysis of Chapter 1 of Section V of the code of civil procedure of Ukraine gives grounds to determine the following characteristics of the Institute of appeal: the appeal filed on the decision (ruling) of the court of first instance, not entered into force; the appeal due to the imposition, in the opinion of the person concerned, the illegal and (or) unjustified court

decisions (rulings); the decision of the court of first instance depending on the will of the person who submits the appeal is being appealed in full or partially; the proceedings in the court of appeal is filed within certain appeal framework. When considering the case on appeal, the court of appeal checks the legality and validity of decisions of the court of first instance within the arguments of the appeal and the requirements stated in the court of first instance (article 303 of the CPC of Ukraine); the decision or determination, completed appellate review, shall enter into force from the moment of their proclamation¹.

The powers of the court of appeal allow it to examine evidence that the court of first instance has examined in violation of the established procedure or the study of which was wrongfully refused, as well as new evidence, the failure to submit to the court of first instance was due to valid reasons.

It is important to note that the court of appeal is not limited to the arguments of the appeal (that is, the limits of appeal are expanded), if the case will be found improper application of substantive law or violation of procedural law, which is a mandatory basis for the cancellation of the decision.

Also, if beyond the attention of the arguments of the appeal there was an obvious illegality or groundlessness of the decision of the court of first instance in cases of special proceedings, the court of appeal checks the case in full.

According to article 26 of the Law of Ukraine “on the judicial system and status of judges” in the system of courts of General jurisdiction there are appellate courts as courts of appeal for consideration of civil and criminal, economic, administrative cases, cases of administrative offenses.

Appellate courts review civil, criminal cases and cases on administrative offences are: the courts of appeal of oblasts, courts of appeal of the cities of Kiev and Sevastopol, Appeal court of the Autonomous Republic of Crimea.

According to Art. 291 of the civil procedure code of Ukraine, the appellate instance in civil cases is the judicial chambers in civil cases of the appellate General courts, within the territorial jurisdiction of which there is a local court, which adopted the appealed court decision².

Previously, the current civil procedure legislation provided for a different method of appeal and verification of court decisions and rulings that have not entered into force-the cassation procedure. The cassation appeal that has

¹ Yasinok M., Kroitor V. principles of oral, immediacy and continuity in civil proceedings: monograph. Kharkov.: Espada, 2007. 152 p.

² Stefan O. Claim proceedings in cases of copyright and related legal relations in civil proceedings of Ukraine. Kiev, 2003. 236 p.

been filed by the person concerned, was only a starting point for the court of cassation, as in the proceedings in cassation court also reviewed the legality and validity of decisions of the court of first instance in the part which was contested by, and in part that is not disputed and in respect of persons who have not filed a complaint. The court was not bound by the arguments of the cassation appeal and is obliged to check the case in full. This is the main difference between the previously existing cassation from the current appeal, given that at present the civil procedural legislation enshrines a rule that limits the powers of the court of appeal beyond the requirements of the appeal. This approach has its origins in Ancient Rome: “tantum devolutum quantum appellatum” – how many complaints, so much decisions.

2. Right of appeal. Terms of appeal. Form and content of the appeal. Procedure for filing an appeal

The parties and other persons who participated in the case, as well as persons who did not participate in the case, have the right to appeal against court decisions, if the court has decided on their rights and obligations. These persons may appeal the decision of the court of first instance in whole or in part (article 292 of the civil procedure code of Ukraine).

The subjects having the right of appeal, first of all, are the parties-the plaintiff and the defendant, since the decision on the case affects primarily their rights and interests. However, if in the court of first instance, the plaintiff is always an active party, as directly on his application, the proceedings are opened, then in the appellate instance, the initiative of the appellate proceedings may belong to the defendant, in the case when he does not agree with the decision and wants it reviewed by a higher court³.

The right of appeal is also enjoyed by the co-defendants and co-defendants, who may appeal to the court of appeal both jointly and separately from each other.

Other subjects of appeal may be third parties who claim independent claims on the subject of the dispute, and third parties who do not claim independent claims on the subject of the dispute.

Despite the fact that a third party with independent claims has its own purpose in the case, puts forward its own claims in respect of the subject matter of the dispute between the parties, it can exercise the right to appeal against a decision that does not meet its interests.

A third party without independent claims on the subject of the dispute also has the opportunity to file an appeal. This is due to the fact that although

³ Civil process of Ukraine: academic course: Ptruck. for students. Yuri. spets. no. Uch. zakl.; for zag. ed. Kyiv: publisher Fursa S.: KNT, 2009. 848 p.

the court decision only indirectly affects its rights, freedoms or interests, but in the future, this decision may affect the legal relationship of a third party with one of the parties, as well as entail undesirable legal consequences for this person (for example, the presentation of a recourse claim).

A judicial representative (lawyer, legal adviser, etc.) may appeal a court decision on appeal only if the person whose interests he represents has not limited him in this power. Limits of authority to commit certain procedural actions (including on appeal) should be specified in the power of attorney.

Legal representatives (parents, adoptive parents, guardians or other persons defined by law) may perform all procedural actions on behalf of the persons they represent, including appeals against the decision. This means that the legal representative, in contrast to the contractual representative, at its discretion decides on the need to appeal to the court of appeal in order to protect the rights and legitimate interests of the person he represents⁴.

Bodies and persons who are granted the right to protect the rights, freedoms and interests of other persons by law (article 45 of the civil procedure code of Ukraine) also have the opportunity to appeal the decision, but on condition that they participated in the consideration of the case by the court of first instance. This restriction does not apply to the Prosecutor.

Unlike other persons listed in Art. 45 of the civil procedure code of Ukraine, the Prosecutor, even if he did not participate in the case, can appeal the decision of the court of first instance on appeal.

The subjects of appeal are also applicants and interested persons in cases of special proceedings, collectors and debtors in cases of writ proceedings.

Special attention should be paid to the implementation of the right to appeal by persons who did not participate in the case, but the court decided on their rights and obligations. In item 1 of the resolution of Plenum of the Supreme Court of Ukraine No. 12 of October 24, 2008 “About judicial practice of consideration of civil cases in the appeal order” it is explained that in connection with possibility of the appeal of a judgment by the specified persons, they according to part 9 of art. 6 code of civil procedure are entitled to the court which made the decision, verbal or written information about the outcome of the case, to get acquainted with case materials, make extracts, make copies of documents attached to the case, receive copies of decisions and determinations, and the proceedings in the appellate court acquires rights of persons involved in the case, in particular, to participate in the proceedings, to submit petitions, get acquainted with the case materials, submit evidence, and the like.

⁴ Belousov Y., Ugrinovska O. civil process: Uch. POS. Kiev: Precedent, 2005.

The appeal is filed after the expiration of the term of appeal, if the person who filed it does not violate the question of the restoration of this term, or if the grounds for the renewal of the term specified in the application are found to be disrespectful, remains motionless. On leaving the appeal without motion, the court makes a determination. Thus within thirty days from the moment of receipt of such decision the person has the right to address in appellate court with the statement on restoration of term or to specify other bases for renewal of term (in case of recognition by appellate court of the reasons of the pass of term specified in the statement submitted earlier, disrespectful).

The court of appeal can restore the term of appeal if it was missed for good reasons (business trip, illness, etc.). The decision on this issue is made by the court of appeal on the basis of the application submitted by the interested person and the necessary evidence. The legislation does not clearly define what reasons can be recognized as valid, so the court assesses them as relative to each specific situation⁵.

Restoration of the term of appeal taking into account the requirements of article 73 of the civil procedure code of Ukraine.

In case of failure of the person of the statement in the term specified above or the bases specified by it for renewal of term of the appeal disrespectful, the appellate court refuses opening of appeal proceedings.

Regardless of the validity of the reason for missing the term of appeal, the court of appeal refuses to open appeal proceedings if the appeal of the Prosecutor, public authority or local self-government body is filed after the expiration of one year from the date of announcement of the appealed court decision (part 3 of article 297 of the civil procedure code of Ukraine).

Civil procedural legislation regulates in detail the requirements for the form and content of the appeal. According to article 295 of the code of civil procedure of Ukraine the appeal is filed in writing.

In the appeal complaint shall be specified:

- 1) the name of the court to which the complaint is filed;
- 2) the name (name) of the person filing the complaint, his / her place of residence or location;
- 3) the name (name) of the persons participating in the case, their place of residence or location;
- 4) the decision or decision to be appealed;
- 5) the illegality and (or) the invalidity of the decision or resolution (incompleteness of establishment of circumstances relevant to the case, and

⁵ Stefan O. Claim proceedings in cases of copyright and related legal relations in civil proceedings of Ukraine. Kiev, 2003. 236 p.

(or) the fallacy of establishing the circumstances relevant to the case, due to unjustified refusal to accept evidence, improper investigation or evaluation, failure to submit evidence for valid reasons and (or) incorrect definition according to the established court circumstances of legal relationship);

6) new circumstances to be established, evidence to be investigated or evaluated, justification of the validity of the reasons for the failure to submit evidence to the court of first instance, objections to the evidence used by the court of first instance;

7) petition of the person who filed the complaint;

8) list of documents and other attached materials.

The appeal is signed by the person who submits it, or a representative of such person.

The power of attorney or other document certifying powers of the representative if these documents were not submitted earlier shall be attached to the appeal filed by the representative.

The appeal shall be accompanied by copies of the complaint and the attached written materials according to the number of persons involved in the case.

In addition, the appeal must be accompanied by a receipt for payment of the court fee for filing a complaint. The law of Ukraine “About court fee” is determined by that of the appeal court’s decision, statement on joining the appeal to the court will be charged 50 percent of the rate payable when submitting the claim, other claims, and in the case of filing a claim of material nature – 50 percent of the rate calculated on the basis of the disputed amount. That is, in this case, the court fee is equal to half the amount of the court fee paid when applying to the court of first instance.

According to the rules of part 1 of article 296 of the civil procedure code of Ukraine, an appeal is filed to the court of appeal through the court of first instance, which adopted the appealed judgment.

The court of first instance shall send the appeal together with the case to the court of appeal the next day after the deadline for filing the appeal. Appeals received after that, not later than the next working day after their receipt are sent to the court of appeal.

3. Opening of appeal proceedings in the case

At the stage of opening the appeal proceedings in the case, the possibility of accepting the appeal for consideration in the court of appeal is determined.

Within this stage, the judge of the court of appeal (Judge-Rapporteur) carries out a number of procedural actions provided for in article 297 of the civil procedure code of Ukraine. Thus, the case is registered in the court of

appeal in the manner prescribed by parts 2 and 3 of article 11-1 of the CPC, and not later than the next day is transferred to the Judge-Rapporteur. Within three days after the receipt of the case, the Judge-Rapporteur decides on the opening of appeal proceedings⁶.

To the appeal which is not issued according to the requirements established by Art. 295 CPC, and also in case of non-payment of the sum of judicial collecting provisions of Art. 121 CPC apply (the appeal remains without movement).

In addition, the court of appeal may leave the complaint without motion on the grounds specified in part 3 of article 297 of the CPC (in case of missing the deadline for its submission or recognition of the reasons for missing such a deadline as disrespectful), or, if there are conditions provided for by this norm, refuse to open proceedings, as mentioned earlier.

Also, the Judge-Rapporteur refuses to open appeal proceedings in cases where:

- 1) the case is not subject to appeal in civil proceedings;
- 2) there is a decision to close the appeal proceedings in connection with the refusal of the person from the appeal;
- 3) there is a decision to refuse to satisfy the appeal of this person or to refuse to open appeal proceedings on the appeal.

On the opening or refusal to open the appeal proceedings in the case, leaving the appeal without motion or return of the complaint, the Judge-Rapporteur shall make a determination. A copy of the ruling on the return of the appeal or refusal to open the appeal proceedings, together with the materials attached to the complaint, is sent to the person who filed the appeal, and the appeal remains in the case. To other persons participating in business, the copy of the corresponding resolution goes.

The decision on the return of the appeal, the refusal to open appeal proceedings in the case may be appealed in cassation.

Upon receipt of improperly decorated case, with the outstanding comments on the correctness and completeness of fixing trial by technical means or with outstanding written observations regarding the completeness or incorrectness of the journal of the hearing, or without addressing the question of the adoption of an additional decision judge returns the case to the court of first instance, decides what the definition indicating the period during which the court of first instance should address the shortcomings.

The court of appeal not later than the next day after the ruling on the opening of appeal proceedings in the case sends copies of the appeal and

⁶ Kroitor V. Civil process: Textbook for preparation for the test and exam. Ed. 3rd, pererab. I DOP. Kharkiv: Espada, 2006.

attached materials to persons who take part in the case, and sets the period within which objections to the appeal may be filed (article 298 of the civil procedure code of Ukraine)⁷.

If the complaint is accepted by the court of appeal for consideration, interested persons have the opportunity to join this appeal (article 299 of the civil procedure code of Ukraine), which drew attention to above.

The person who filed the appeal has the right to Supplement, change or withdraw it or refuse the appeal in compliance with the procedure established by Art. 300 of the civil procedure code of Ukraine.

4. Preparation of the case for consideration in the court of appeal.

Appointment of the case to the court of appeal

The purpose of this stage of appeal proceedings (preparation of the case) is to implement a system of procedural actions that will ensure in the future timely, comprehensive (within the arguments of the appeal and the requirements stated in the court of first instance) and objective consideration of the case by the court of appeal.

Within ten days from the date of receipt of the case, the Judge-Rapporteur performs the following preparatory actions:

- 1) clarify the question of the composition of the persons involved in the case;
- 2) determines the nature of the disputed legal relations and the law that regulates them;
- 3) clarify the circumstances referred to by the parties and other persons involved in the case as the basis of their claims and objections;
- 4) find out what circumstances are recognized or denied by the parties and other persons;
- 5) decides on the validity of the reasons for failure to submit evidence to the court of first instance;
- 6) at the request of the parties and other persons involved in the case, decides on the call of witnesses, appointment of expertise, reclamation of evidence, court orders to collect evidence, involvement in the case of a specialist, an interpreter;
- 7) at the request of persons participating in the case, decides on the adoption of measures to ensure the claim;
- 8) performs other actions related to ensuring the appellate consideration of the case (article 301 of the civil procedure code of Ukraine).

⁷ Course of civil procedure: Textbook / V. Komarov, V. Bigun, V. Barankova et al.; ed. Kharkiv: Pravo, 2011. 1352 p.

After carrying out preparatory actions, the Judge-Rapporteur reports on them to the panel of judges, which, if necessary, decides on the conduct of additional preparatory actions and the appointment of the case for consideration.

The case must be appointed for consideration within a reasonable time, but not later than seven days after the end of preparation for consideration (article 302 of the civil procedure code of Ukraine)⁸.

5. The procedure for consideration of the case by the court of appeal.

Consequences of non-appearance in court session of the persons participating in business. Term of consideration of the appeal

Consideration of the case in the court of appeal is the most important stage of the appeal proceedings, as it directly deals with the essence of the issues outlined by the interested person in the filed appeal.

Cases in the court of appeal are considered according to the rules established for consideration in the court of first instance, but with exceptions and additions provided for by Chapter 1 of section V of the CPC (article 304 of the CPC of Ukraine).

The appeal to the court of first instance considered in open court (article 6 of CPC of Ukraine) a panel of three judges, the presiding judge of which is determined in accordance with the law (art. 11-1, 18 code of civil procedure of Ukraine). Closed trial is allowed on the same grounds as in the court of first instance (article 6 of the civil procedure code of Ukraine)⁹.

The session of the court of appeal consists of the following parts:

- 1) preparatory;
- 2) consideration of the appeal on the merits;
- 3) judicial debate;
- 4) adoption and proclamation of the decision by the court of appeal.

In the preparatory part of the hearing, the court resolves a number of issues: whether a complaint in case of absence in judicial session someone from the participants or of all persons involved in the case; whether the proceedings in this part of the court; clarifies the rights and obligations of persons participating in the case; decides the declared petitions and the like. In case of the statement of petitions for challenges, the court considers them in the order of Art. 20–25 of GPK of Ukraine.

Prineas appeal sumasali involved in the case, a panel of judges in accordance with article 305 of the CCP, with the possibility of proceedings

⁸ Civil process of Ukraine: academic course: Ptruck. for students. Yuri. spets. no. Uch. zakl.; for zag. ed. Kyiv: publisher Fursa S.: KNT, 2009. 848 p.

⁹ Belousov Y., Ugrinovska O. civil process: Uch. POS. Kiev: Precedent, 2005.

in this court. According to part 1 of article 305 of the CCP, the court of appeal adjourns the proceedings in case of absence in judicial session of the person participating in business, concerning which there is no information on the award of her subpoena, or at his request, when informed of the reasons of absence will be recognized by a court as valid.

The failure of the parties or other persons participating in business, properly informed on time and place of the hearing, but absent at the hearing for unknown or valid reasons does not preclude consideration of the case.

Consideration of the appeal on the merits begins with a report of the Judge-Rapporteur, which outlines the content of the appealed decision (ruling) of the court of first instance, the arguments of the appeal, the limits within which must be checked by the decision (order) to establish the circumstances and explore the evidence.

After the report, the presiding judge determines whether the person supports the appeal filed by him or her and whether the parties do not wish to conclude the case with a settlement agreement. Then the explanations of the person who filed the appeal are heard. In the case of an appeal against the decision (determination) of the court by both parties, the plaintiff first gives an explanation. Further explanations are given by other persons involved in the case.

In this part, the court of appeal also clarifies the circumstances of the case and checks them with evidence. According to Art. 303 of the civil procedure code of Ukraine, the court of appeal examines evidence that the court of first instance was investigated in violation of the established procedure or the study of which was wrongfully refused, as well as new evidence, the failure to submit to the court of first instance was due to valid reasons.

After consideration of the appeal on the merits, the court of appeal provides the persons participating in the case, the opportunity to speak in the judicial debate in the same sequence in which they gave explanations. The court may limit the duration of judicial debate, setting for all participants in the process an equal period of time, as announced at the beginning of the court session¹⁰.

After the end of the debate, the court goes to the deliberative room to make a decision. All issues arising during the discussion and adoption of the decision of the court of appeal shall be resolved by a majority vote. At the decision of each question none of judges has the right to abstain from vote. The Chairman votes last (article 19 of the CPC of Ukraine).

¹⁰ Stefan M. Civil procedural law of Ukraine: Academic course: Textbook. for students. Yuri. spets. no. Uch. zakl. Kiev: Concern "Publishing House "In Jure", 2005.

The decision adopted by the appellate instance is proclaimed publicly (articles 317, 218 of the civil procedure code of Ukraine).

After the end of the appeal proceedings, the case is sent to the court of first instance, which considered it, within seven days.

The appeal to Rsankarsub Konstantin to be considered within two months from the date of the ruling on acceptance of appeal for consideration, and the appeal of first instance within fifteen days from the date of the ruling on acceptance of appeal for consideration.

In exceptional cases at the request of the party taking into account features of consideration of the case the appellate court can prolong term of consideration of the case, but no more than for fifteen days about what the corresponding definition resolves (Art. 303-1 CPC of Ukraine).

6. Powers of the court of appeal

The powers of the court of appeal are enshrined in the CPC of Ukraine, represent the totality of its rights to carry out certain procedural actions regarding the decision (determination) of the court of first instance, which is the subject of verification on appeal.

Having considered the case on appeal against the decision of the court of first instance, the court of appeal has the right:

1) to decide the decision to reject the appeal and leave the decision unchanged;

2) cancel the decision of the court of first instance and take a new decision on the merits of the claims;

3) to change the decision;

4) to decide on the abolition of the decision of the court of first instance and the closure of proceedings or abandonment of the application without consideration (Art. 307 of the CPC of Ukraine).

Abandonment of the decision without changes, that is rejection of the appeal, can take place in that case when this decision is lawful and reasonable, accepted with observance of norms of material and procedural law on the basis of comprehensive research of the proofs collected on business, their correct assessment and the reasoned conclusions. According to article. 308 of the civil procedure code of Ukraine cannot be canceled in fact correct and fair judgment for only formal reasons¹¹.

In paragraph 18 of the resolution of Plenum of the Supreme Court of Ukraine № 12 of October 24, 2008 “On judicial practice of consideration of

¹¹ Civil procedure code of Ukraine: Scientific and practical commentary: In 2 vols. / For zag. ed. K.: publisher Fursa S. Y.: KNT, 2007.

civil cases on appeal” it is noted that the disadvantages that do not result in the violation of the basic principles of civil procedural law and legally protected rights and interests of persons involved in the case, and do not affect the essence of the decision include the payment of court fees, carried out after the commencement of the case; the lack of the signature in the statement of claim if the plaintiff participated in the hearing and supported claims; absence of the signature of the Secretary of the court session in the journal of the court session; leaving without consideration of the application for recusal, if there were no grounds for recusal. The same drawback can be recognized in itself the lack of technical records with indisputable evidence, which justified the decision.

The grounds for revoking the decision of the court of first instance and making a new decision or changing the decision are:

- 1) incomplete clarification by court of the circumstances having value for business;
- 2) lack of evidence of circumstances relevant to the case, which the court considered established;
- 3) discrepancy of conclusions of court to circumstances of business;
- 4) violation or incorrect application of norms of substantive or procedural law, as well as consideration and decision of the case by an inferior court; participation in the decision of the judge, who was challenged on the basis of circumstances that raised doubts about the impartiality of the judge, and the application for his challenge was recognized by the court of appeal as justified.

Norms of substantive law are considered violated or improperly applied if a law is applied that does not apply to these legal relations, or the law that was subject to application is not applied.

Violations of procedural law may be grounds for cancellation or change of the decision, if such violations led to improper resolution of the case (article 309 of the civil procedure code of Ukraine).

Cancellation of the court decision on appeal with the termination of proceedings or abandonment of the application without consideration occurs from the grounds provided by articles 205 and 207 of the civil procedure code of Ukraine (article 310 of the civil procedure code).

If the court of first instance made a legitimate and reasoned decision, the death of the natural person or termination of legal entities – parties in contentious relationship after deciding that prevents succession, cannot be the basis for the application of the requirements of part 1 of article 310 of CPC of Ukraine.

According to the results of consideration of the appeal against the court order the court of appeal has the right:

1) to decide on the rejection of the appeal and leave the court order unchanged. The decision of the court of appeal to dismiss the appeal against the court order and leave the court order unchanged is final and is not subject to appeal;

2) decide the order abolishing a court order and to clarify that the creditor requirements may be considered in action proceeding, subject to the General rules for filing a claim. A court order, which is a special form of a court decision, may be revoked on appeal, if the court of appeal establishes the absence between the claimant and the debtor of certain legal relations, on the basis of which the claim under part 1 of article 96 of the civil procedure code was declared. The decision of the court of appeal on cancellation of the court order is final and is not subject to appeal (Art. 309-1 of the civil procedure code of Ukraine).;

3) change the court order. If a court order is changed, the court of appeal must issue a new court order. At the same time, the previous court order issued by the court of first instance loses its legal force¹².

By results of consideration of the appeal on determination of court of the first instance the appellate court has the right:

1) to decide the decision to reject the appeal and leave the decision unchanged;

2) cancel the definition and adopt a new definition;

3) change the definition;

4) to cancel the definition preventing further production on business, and to direct business for continuation of consideration in court of the first instance.

Grounds for rejection of the complaint to the determination of the court of first instance or changes or cancellations of the decision specified in article. 312 CPC of Ukraine. So, having considered the complaint on determination of court of the first instance, appellate court:

1) dismisses the complaint and leaves the definition unchanged, if the court of first instance decided the definition in compliance with the requirements of the law;

2) changes or cancels determination of court of the first instance and decides the resolution on this question if it was decided by court of the first instance with violation of norms of procedural law or at the correct decision the essence of procedural action or the bases of its application was mistakenly formulated;

¹² Yasinok M., Kroitor V. principles of oral, immediacy and continuity in civil proceedings: monograph. Kharkov.: Espada, 2007. 152 p.

3) cancels the decision and transfers the question for new consideration to the court of the first instance if the last violated the order established for its decision.

Grounds for cancellation of the court ruling preventing further proceedings in the case, and the direction of the case for further consideration in the court of first instance:

- 1) incomplete clarification by court of the circumstances having value for business;
- 2) lack of evidence of circumstances relevant to the case, which the court of first instance considers established;
- 3) discrepancy of conclusions of court to circumstances of business;
- 4) violation of the norms of substantive or procedural law, which led to the wrong solution of the issue (article 311 of the civil procedure code of Ukraine).

7. The procedure for making decisions and decisions determinations by the court of appeal

According to article 313 of the CPC of Ukraine the court of appeal takes a decision and makes decision according to the rules of article 19 and Chapter 7, section III of the code of civil procedure of Ukraine with the exceptions and additions set forth in articles 314 to 316 of the CPC of Ukraine.

The decision (definition) of appellate court is made out by the judge-the Rapporteur and signed by all structure of court which considered business.

In accordance with part 1 of article 314 of the civil procedure code of Ukraine, the court of appeal, having considered the case, makes a determination in cases:

- 1) rejection of the appeal and leaving the court decision unchanged;
- 2) cancellation of the definition preventing further production on business, and the direction of business for continuation of consideration in court of the first instance;
- 3) cancellation of the court decision with the closure of the proceedings or leaving the application without consideration;
- 4) rejection of the appeal and leaving the court's ruling unchanged;
- 5) changes in the ruling of the court of first instance;
- 6) cancellation of definition and the decision of a question on the merits.

In addition, the determination is made in the case of rejection of the appeal against the court order and leaving the court order unchanged, as well as in the case of cancellation of the court order.

The content of the decision of the court of appeal is determined by article 315 of the civil procedure code of Ukraine, in particular it consists of:

- 1) the introductory part indicating:

- time and place of its resolution;
 - the name of the court;
 - names and initials of the presiding officer and judges;
 - surnames and initials of the Secretary of court session;
 - name of the case and full names (names) of persons participating in the case;
- 2) descriptive part indicating:
- summary of the requirements of the appeal and the judgment of the court of first instance;
 - generalized arguments of the person who filed the appeal;
 - generalized arguments and objections of other persons involved in the case;
 - the circumstances established by the court of first instance;
- 3) the motivational part indicating:
- the reasons from which the court of appeal proceeded in the decision of the ruling, and the provisions of the law, which guided it;
- 4) the operative part indicating:
- conclusion of the court of appeal;
 - allocation of court costs;
 - the term and procedure for the entry into force of the resolution and its appeal.

When rejecting an appeal, the decision notes the reasons for its rejection.

In case of cancellation of definition of court which prevents further proceedings and sending the case to continue before the court of first instance in the resolution should be stated, what violations of law were committed by the trial court.

Under 2 Art. 314 CPC the appellate court makes the decision in cases of cancellation of the judgment and acceptance of new or change of the decision.

The content of the decision of the court of appeal is determined by article 316 of the civil procedure code of Ukraine, in particular, it consists of:

- 1) the introductory part indicating:
- time and place of its adoption;
 - the name of the court;
 - names and initials of the presiding officer and judges;
 - surnames and initials of the Secretary of court session;
 - name of the case and full names (names) of persons participating in the case;
- 3) descriptive part indicating:
- review of the content of claims and decisions of the court of first instance;

- summary of the requirements of the appeal;
 - generalized arguments of the person who filed the appeal;
 - generalized arguments and objections of other persons involved in the case;
- 4) the motivational part indicating:
- reasons for changing the decision, revoking the decision of the court of first instance and making a new decision;
 - established by the court of first instance and not contested circumstances, as well as the circumstances established by the court of appeal, and defined in accordance with them legal relations;
 - were and by whom violated, unrecognized or challenged the rights, freedoms or interests, for the protection of which the person appealed to the court;
 - title, article, its part, paragraph, paragraph, sub-paragraph of the law on the basis of which the case was decided, as well as procedural law, which guided the court;
- 5) the operative part indicating:
- decision of the court of appeal to change or cancel the decision, satisfaction of the claim or refusal of the claim in whole or in part;
 - conclusions of the court of appeal on the merits of claims;
 - allocation of court costs;
 - the term and procedure for the entry into force of the decision and its appeal.

Decisions and decisions of the court of appeal are proclaimed according to the rules established by Art. 218 of the civil procedure code of Ukraine.

The decision or determination of the court of appeal shall enter into force from the moment of their proclamation (article 319 of the civil procedure code of Ukraine).

Court decisions (decisions) of the court of appeal are issued, issued or sent in the manner prescribed by Art. 222 of the civil procedure code of Ukraine.

Copies of court decisions (rulings) of the court of appeal are re-issued by the court of first instance, where the case is stored (article 321 of the civil procedure code of Ukraine).

8. Appeal against the decisions of the court of first instance

According to article 293 of the civil procedure code of Ukraine separately from the decision of the court can be appealed in the appellate order of the court of first instance:

- 1) refusal to accept an application for the issuance of a court order or the cancellation of a court order;

- 2) security of the claim, and also about cancellation of security of the claim;
- 3) return of the application to the plaintiff (applicant);
- 4) refusal to open proceedings;
- 5) commencement of proceedings in the case of non-compliance with the rules of jurisdiction;
- 6) transfer of the case to another court;
- 7) refusal to restore or extend the missed procedural term;
- 8) recognition of the settlement agreement at the request of the parties;
- 9) determination of court costs;
- 10) correction of the decision;
- 11) refusals to make an additional decision;
- 12) explanation of the decision;
- 13) suspension of proceedings;
- 14) closure of the proceedings;
- 15) abandonment of the application without consideration;
- 16) abandonment of the application for revision of the absentee decision without consideration;
- 17) refusal to open proceedings on newly discovered circumstances;
- 18) issuance of a duplicate of the writ of execution;
- 19) restoration of the missed term for presentation of the Executive document for execution;
- 20) deferrals and installments, changes or establishment of the method and order of execution of the decision;
- 21) temporary placement of the child in a children's or medical institution;
- 22) announcements of search of the Respondent (debtor) or the child;
- 23) forced entry into housing;
- 24) the levy of execution on funds held in the accounts;
- 24-1) temporary restrictions on the right to travel outside Ukraine;
- 25) replacement of the party of enforcement proceedings;
- 26) determination of the share of the debtor's property in the property that he owns jointly with other persons;
- 27) decisions, actions or inaction of the state Executive or other official of the State Executive service;
- 28) turning the execution of the judgment;
- 28-1) correction of an error in the Executive letter or recognition of the writ of execution not subject to execution;
- 29) denial of renewal of the lost judicial proceedings;
- 30) dismissal (appointment) of a guardian or Trustee;

31)refusal to open proceedings in the case of cancellation of the decision of the arbitration court;

32)return of the application for cancellation of the decision of the arbitration court;

33)return of the application for issuance of the writ of execution for enforcement of the arbitration court decision.

In the case of an appeal to the court of first instance, paragraphs 2, 7, 9, 18–30 part 1 of article 293 of civil procedure, the court of appeals transmitted a copy of materials necessary for consideration of the complaint. If necessary, the court of appeal may also request copies of other case materials.

During consideration of the complaint on determination of court of the first instance the appellate court shall comprehensively and completely check legality of the made decision on the basis of the case materials provided to it.

Filing an appeal against the decision of the court of first instance does not prevent the continuation of the case by this court.

Decisions of the appellate instance, made on the basis of consideration of appeals against the decisions of the courts of first instance, shall enter into force immediately after their proclamation.

Objections to rulings that are not subject to appeal separately from the court's decision are included in the appeal against the court's decision "(see: "Form and content of the appeal"). In case of filing an appeal against a ruling that is not subject to appeal separately from the court's decision, the court of first instance returns it to the applicant, as decided by the ruling that is not subject to appeal.

CONCLUSIONS

The essence and significance of the appeal proceedings. Right of appeal. Terms of appeal. Form and content of the appeal. The procedure for filing an appeal. The procedure for accepting an appeal for consideration. Preparation of the case by the court of appeal. Appointment of the case to the court of appeal. The procedure for consideration of the case by the court of appeal. Powers of the court of appeal. The order of decision-making and decision-making by the court of appeal. Appeal against decisions of the court of first instance.

SUMMARY

Appeal proceedings are the stage of the criminal process in which the higher court hears on appeals against judicial decisions of the courts of first instance, which have not entered into force, and can eliminate the

shortcomings and judicial errors made during the consideration of the lower court. The law provides for a wide range of subjects of criminal proceedings who have the right to appeal against a court decision of the court of first instance on appeal. The law establishes mandatory requirements for an appeal. An essential novelty of the appeal proceedings is the possibility of the court of appeal to accept a criminal case for its production, to consider it on the merits and decide its verdict.

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