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### THE COURT FEES AS VARIETY OF THE STATE DUTY

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**Vasyl Rossikhin, Halyna Rossikhina, Tetyana Kaganovska, Oleksandr Holovko, Oleksii Navrotskyi, Oleh Musiienko. The Court Fees As Variety Of The State Duty-- Palarch's Journal Of Archaeology Of Egypt/Egyptology 17(3), 1443-1450. ISSN 1567-214x**

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#### **ABSTRACT.**

The article examines the place, role and features of the legal regulation of the court fees. Attention is drawn to the problematic moments and difficult situations in the legislative registration of this concept. The need to correct them is noted and recommendations are given for improving the legal regulation of court fees.

#### **INTRODUCTION.**

In connection with Ukraine's pursuance of European standards, primarily legal ones, in 2010 a judicial reform was carried out. As part of this reform, the significant number of legislative acts were changed significantly. Among them - the creation of the law "On court fees", which aims to regulate a completely new category for Ukraine - the court fees. Considering the purpose and role of the court fee, there is no doubt about its importance and relevance of the introduction. But when analyzing legislative acts, many questions arise about one or another aspect of the legal regulation of this category.

#### **RESEARCH METHODS**

The methodological basis of the research is a set of techniques and methods of scientific perception, namely: dialectical, comparative legal, formal legal, method of system analysis and synthesis, etc. In carrying out the research, the

dialectical method became the main one, with the help of which the essence of the phenomena under study was clarified in the unity of their material content and legal form. The systemic-structured method allowed to reveal and consider the formal and legal content of the court fees as a state duty. The analysis of legal regulation of financial relationships in Ukraine in retrospect and genesis was carried out on the basis of the comparative legal method. Taken as a whole, general scientific and special methods were used for a complete and comprehensive study of the problem of modern collection of court fees. The theoretical conclusions of the paper are based on the works of the general theory of state and law, economic theory, financial, administrative and other branch legal sciences.

### ***Research analysis and target setting***

A comprehensive study of the nature of the state duty in general and court fees in particular is of great theoretical and practical importance. At different times, many scientists have paid attention to this issue: Yu. Krokhina, S. Pepelyaev, V. Rossikhin, G. Rossikhina and others. Despite the existence of a large number of opinions and scientific material, this issue is subject to further improvement and constant attention of scientists. The purpose of the article is to identify problematic issues in the field of legal regulation of court fees and to study possible ways to solve them.

## **RESEARCH RESULTS**

The court fees as a separate payment was established on the territory of independent Ukraine only in 2011. At the same time, court fees and fees on papers in cases conducted in courts were established even during the existence of Ukraine as part of the USSR. The prototype of the modern mechanism for calculating compulsory payments by the controlling authority can be called the existing procedure for determining the price of a claim by the court at that time.

The collection of state duty in Ukraine is regulated by the Law "On Court Fees", which defines the legal basis for the collection of court fees, payers, objects and rates, the procedure for payment, exemption from payment and return of court fees [1]. The legislator means the court fees by a fee levied throughout Ukraine for filing applications, complaints to the court, as well as for the issuance of documents by courts and is included in court costs. This interpretation of the court fee raises one fundamental question - how does the category "fee", which is applied to this payment, correspond to the category "fee" defined by Article 6 of the Tax Code of Ukraine. Let's try to analyze this issue.

The legislator in the Tax Code does not differentiate the concepts of collection, payment and contribution. For these three types of compulsory payments, only one definition is fixed in Art. 6: "... a collection (payment, contribution) is a compulsory payment to the relevant budget, levied from the payers of the fees, subject to the receipt of special benefits by them, including as a result of committing in the interests of such persons by state bodies, local self-government bodies, other authorized bodies and persons legally significant

actions ... " [2]. If the essence of such collection features as obligatoriness, revenues to the corresponding budget do not raise any special questions, then the reaping of special benefits by the payers of the collection from its payment seems doubtful.

Regarding the court fees, the existence of the "special benefit" criterion raises more questions than answers. Indeed, what is the benefit for the payer of the state duty when rendering of decision in which his claims are not satisfied. In this case, the payment of the court fee should be to no extent considered as the basis for obtaining any benefit. Moreover, in the case of innocence proof by the plaintiff who paid the duty, most often the obligation to reimburse it is assigned to the counterpart. Consequently, in this case, the payment of the court fee also does not bear any special benefit - it is simply transferred to the counterparty of the trial.

The purpose of the court fee is, first of all, to ensure the activities of the judicial power. Indeed, court proceedings require significant material resources, the source of which is the public funds of Ukraine and the funds of the persons participating in the case. The material and technical support of the judges is financed by the state budget, remuneration of judges, auxiliary personnel and other expenses associated with ensuring the activities of each court itself. The costs occurring due to the proceedings for the specific case are borne by the parties and other persons participating in the case. All of these costs are judicial in nature. So, the court costs are the actual monetary expenses incurred by the persons who take part in the case and other participants in the process in connection with judicial recourse and proceedings.

One of the optional elements of the legal mechanics of court fees are the benefits established by Art. 5 of the Law "On court fees" [1]. In fact, only one variety of benefits has been established - complete exemption from payment of court fees for certain categories of payers. All of them can be rated in order of several grounds, but the most important is the classification by the type of person (legal, physical). At the same time, in our view, the negative aspect is the absence of any classification in the text of the specified law - the legislator listed randomly the payers exempted from the payment of the fees.

It is necessary to pay attention to the change in the legislator's approach to the regulation of benefits in the payment of court fees. Prior to the adoption of the Law "On Court Fees", local Councils of People's Deputies were empowered to establish additional benefits for individual payers regarding the payment of the state duty counted to local budgets, and the Ministry of Finance of Ukraine - regarding state duty that were counted to the State Budget of Ukraine. Now these bodies are deprived of such authority.

When examining the court fees benefits, it should be distinguished from the costs associated with the consideration of case. The latter may arise after the commencement of proceedings on the case, that is, during the consideration of the case, and their structure and size depends on the physical acts performed

by the participants in the process, the persons participating in the case and the court. The costs structure associated with the consideration of a court case is regulated by the Civil Procedure Code of Ukraine. They include: 1) costs for legal assistance, 2) costs of the parties and their representatives associated with appearance in court, 3) costs associated with the involvement of witnesses, specialists, translators and the conduct of forensic examinations; 4) costs associated with the examination of evidence at the place of their location and the commission of other actions necessary for the consideration of the case; 5) costs associated with the publication of an announcement in the press to summon the defendant [3].

Before the adoption of the Law "On Court Fees", this list also included the costs of information and technical support. Now we can say that they are integrated into the court fees.

Payment of the court fees to the commercial court is a prerequisite for the acceptance of the relevant application for consideration. In accordance with Art. 4 of the Law "On Court Fees" when filing a statement of pecuniary claim, the amount of the state duty is set at the level of 2 percent of the cost of the claim, but not less than 1.5 times the minimum wage and not more than 60 times the minimum wage. This is a pretty significant range. At the same time, it may become clear in the process of further consideration of the case, that the price of the claim does not correspond to reality and it will be adjusted. How does this affect the obligation to pay court fees? It is quite predictable in this case to adjust the amount of the court fee. Thus, when the court fee is paid for filing a statement of claim with the court in the amount determined taking into account the price of the claim, and the price of the claim set by the plaintiff does not correspond to the fair value of the disputed property, or if its exact price is impossible to establish on the day of filing the claim, the court preliminary determines the amount of the court fee with the subsequent payment of the underpaid amount or with the return of the amount of the court fee overpayment in accordance with the price of the claim established by the court during the consideration of the case. This approach is reflected in the acts of the Supreme Commercial Court of Ukraine [4].

When paying the court fee, the nature of the claim must be taken into account. So, for filing a statement of claim, which must simultaneously have a pecuniary and non-pecuniary nature, the court fee is paid according to the rates established for statements of claim of the pecuniary and non-pecuniary nature (paragraph one of the third part of Article 6 of the Law). The above concerns the integration into one statement of claim of the pecuniary and non-pecuniary claims, related to each other on grounds that have arisen or presented evidence (Article 58 of the Code of Commercial Procedure of Ukraine), for example, on invalidating a transaction (commercial contract) and on reclamation of property transferred for it. This approach will allow to determine accurately the amount of court fees in the presence of a mixed claim.

A feature of the court fee as a mandatory payment is a special procedure for its distribution. So, if any other fee or tax included in Art. 9 of the Tax Code of

Ukraine, is distributed in accordance with the requirements of the Budget Code of Ukraine [4], then the distribution of the paid amounts of court fees between the parties is carried out by the economic court according to the rules determined by the Code of Commercial Procedure of Ukraine. So, for the disputes arising from the conclusion, amendment and dissolution of contracts, the court fee is imposed on the party that unreasonably evades acceptance of an offer of the other party, or on both parties if the part of the proposals of each of the parties is rejected by the commercial court. At the same time, in the disputes that arise during the execution of contracts and on other grounds, the court fee is imposed on the parties respectively to the amount of the satisfied plaintiff's claims [5].

It should be noted that it is the court that decides the issue of redistribution of the burden regarding the court fee payment if there are grounds for exemption of the plaintiff from paying it. When this occurs, after the consideration of the case, the court fee is levied from the defendant to the budget respectively to the amount of the satisfied claims, if the defendant is exempted from paying the court fee. Thus, the obligation to pay the court fee is shifted from the plaintiff to the defendant, but this is done taking into account the factual circumstances of each case.

We consider it necessary to draw attention to the presence of shortcomings in the legal regulation of the for the court fees distribution procedure by the court. This refers to the application of evaluative concepts in regulatory enactments. It is hard to take no notice of certain shortcomings of the legislative technique, which were admitted when making amendments to the Code of Commercial Procedure of Ukraine in connection with the adoption of the Law "On Court Fees". Article 49 of the Code states that "... to the party in whose favor the decision was made, the court shall reimburse the fee at the expense of the other party even in the case when the other party is exempted from paying the court fee ..." [5]. It is obvious that the legislator was mistaken with the terminology, remembering the state duty instead of the court fee.

Like the state duty, the court fee refers to the obligatory payments with a combined payer. The state duty payers are citizens of Ukraine, foreigners, persons without citizenship, enterprises, institutions, organizations, other legal persons (including foreign ones) and physical persons - entrepreneurs who take legal recourse [6]. So the main criterion for attribution of a person to the circle of the court fee payers is only one action - the legal recourse. The type of person (physical or legal), the presence of Ukrainian citizenship, the form of activity do not matter for the presence or absence of the state duty payer status [7].

When determining the object of the court fee, two points must be kept in mind. Firstly, the legislator has established a number of actions, when performing which the court fees must be paid. The range of these actions includes the production of a statement of claim and other statement provided for by procedural legislation in the court. It is made before the court proceedings commencement, therefore, this case concerns only the plaintiff. Secondly, the

court fee is paid already within the court proceedings upon the presentation of one of six procedural documents: a) an appeal petition against the judgment; b) a cassation appeal against a the judgment; c) petition for review of the judgment upon discovery of new facts; d) applications of the arbitrate award cancellation; e) applications for the issuance of a writ of execution for the compulsory execution of the arbitration court's decision; f) applications for review of court decisions by the Supreme Court of Ukraine.

Finally, thirdly, the court fee is paid for the issuance of documents by the courts [1]. This type of object is characterized by the significant volume, because the courts issue a large number of various documents.

Court fee rates vary by property. There are two types of rates applied, respectively, in relation to the cost of claim and in a fixed size. The court fee is levied in the appropriate size depending on the cost of the claim or the minimum wage in the monthly amount established by law on January 1 of the calendar year in which the corresponding application or complaint is filed with the court [1].

A rather difficult situation related to the setting of the court fee arises if the size of claim is increased or new claims are presented, the unpaid amount of the court fee must be paid before applying to the court with a corresponding statement. So, the plaintiff's failure to comply with this requirement entails the consequences provided for in paragraph 4 of part one of Article 63 of the Commercial Code of Ukraine in the form of a return without proceeding an application on increase the size of claims or to present new claims, according to the part three of this article of the Code does not prevent the plaintiff from reapplying to the Commercial court with a corresponding application after the additional payment of the required amount of the court fee, before such an appeal the court examines the particulars of the claim (claims) filed [4].

As noted previously, the court fee is paid when performing certain actions, the list of which is quite extensive. At the same time, the size of the court fee is calculated in some cases not as the amount of funds paid for each individual action, but only for one action within the trial. If a statement of claim is filed after filing an application for taking action or an application for securing evidence or a claim, the amount of the court fee is reduced by the amount of the court fee paid for filing an application for taking measures or an application for securing evidence or a claim. Thus, the legislator introduced a mechanism aimed at reducing the burden of the court fees payment.

One of the additional mandatory elements of the legal mechanism of any compulsory payment of a tax nature is the budget or off-budget trust fund, where the funds from its payment arrive [8]. The court fee is paid at the place of the case consideration [9] and credited to the special fund of the State budget of Ukraine [10]. A particularity of this payment is the purposefulness of its use. The means of court collection are directed to ensure the administration of justice, to strengthen the material and technical base of the courts, including the creation and maintenance of the Unified Judicial Information System functioning, the web portal of the judiciary power,

computer local networks, modern systems for recording the court proceedings, the acquisition and maintenance of computer and copying - duplicating techniques, the introduction of electronic digital signatures [11-14]. In this, there is a similarity between the court fee and payments arriving to off-budget public funds, for example, with the pension tax [15-16].

## CONCLUSION

The introduction of a court fee in Ukraine is appropriate and meets the requirements of both the current situation in the state and the European Union. However, both the Law of Ukraine "On court fees" and other legislative enactments that directly or indirectly regulate this category contain a significant amount of inaccuracies and errors that require immediate processing and correction in order to avoid confusion in practice in their application or replacement of one concept for another.

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