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**Collective Redress  
in CEE & SEE**

**Ukraine**

**Wolf Theiss**

## a) Current collective redress regime

- **What forms of collective redress are available in Ukraine?**

Ukrainian law does not provide for a statutory framework on collective redress. However, the following types of claims may be regarded, in certain aspects, as resembling collective actions:

Under the Ukrainian Consumer Protection Act, collective consumer claims may be filed by associations of consumers or State consumer protection bodies against tortfeasors. Once the court adjudicates against the tortfeasor, the affected consumers can turn to the relevant court in order to obtain a court order entitling them to specific compensation. Further, Ukrainian courts have accepted and adjudicated on a very limited number of environmental claims for damages filed by associations established by individuals suffering from the negative results of environmental infringements. In addition, trade unions have the right to represent employees as a means of safeguarding their collective rights and interests.

In addition, the Ukrainian Codes on Civil, Administrative and Commercial Procedure also offer the option of consolidating multiple claimants and their claims into a joint action. This form of joint litigation applies to most types of cases and necessitates that all asserted claims stem from substantially similar factual bases (such as multiple injured parties in the same accident) and that the court has seized has jurisdiction over all such claims. The general provisions of the relevant procedural codes apply to joint litigation proceedings. In essence, these types of cases can be treated in all substantive respects as standard litigation, except for the fact that multiple parties are involved.

Finally, administrative law provides for a specific collective proceedings mechanism. If one or more administrative courts are handling multiple similar administrative cases, and if the number of such cases warrants a model decision, the court handling one or more of these cases can refer one of them to the Supreme Court, which is to be considered the court of first instance. A Supreme Court decision in a model case must be adhered to by lower courts in similar cases. Once the Supreme Court publishes an official notification regarding its consideration of the model case on its website, all interested parties are considered duly notified of the proceedings.

For this Guide, the focus will primarily lie in collective actions under the Ukrainian Consumer Protection Act as well as the Ukrainian Codes on Civil, Administrative and Commercial Procedure, as these are the relevant collective redress mechanisms when it comes to claims for damages. If no explicit differentiation is made below, then the information outlined applies to both types of collective actions.

## b) Key features of collective redress in Ukraine

- **Is collective redress available in all areas of law or only in certain sectors?**

Currently, it mostly applies to environmental damage, consumer protection claims and claims by trade unions.

- **Who is entitled to bring an action (e.g. individuals, groups, qualified entities)?**

Under the Ukrainian Consumer Protection Act, associations of consumers or consumer protection authorities are entitled to file a claim in consumer rights protection cases. Environmental protection claims, as a matter of practice (although not stipulated by law), are filed by various non-governmental associations or entities that are explicitly established for this purpose (claims vehicles). Claims can also be filed by relevant trade unions.

Under the Ukrainian Codes on Civil, Administrative and Commercial Procedure, any individual or entity with legal standing may file a claim before the relevant court. If there are multiple claims filed, the court may, at its discretion or upon the request of the parties, consolidate these claims into a single proceeding if they involve the same subject matter and respondent.

- **Which mechanism applies – opt-in, opt-out or both?**

The mechanism used in collective actions in Ukraine (under the Ukrainian Consumer Protection Act and the Ukrainian Codes on Civil, Administrative and Commercial Procedure) can be roughly described as an opt-in mechanism, even though Ukrainian law does not explicitly use this or a similar term. The bottom line is that an individual who has suffered harm must report their claim to the relevant court or to the claims vehicle in order to receive compensation. An assignment of claims is not necessary.

- **What are the requirements to bring an action? Is there a minimum claims threshold?**

For a consolidation of claims under the Ukrainian Codes on Civil, Administrative and Commercial Procedure to be permissible, the court hearing the case must have jurisdiction over all claims and the same type of procedure must apply. The claims do not have to be identical but a particular connection must exist between all claims (essentially similar basis).

In claims filed by claims vehicles (e.g. consumer protection claims) it should be demonstrated that the claims vehicle represents a substantial number of individuals holding a right of claim (potential claimholders), even though this is not expressly regulated by the law.

There is no minimum threshold for claims.

- **What remedies are available (e.g. monetary compensation, injunctive measures, redress measures)?**

Under the Ukrainian Consumer Protection Act, claims are restricted to injunctive and declaratory relief, given that the primary purpose of these actions is to protect collective public interests. Individual claimants may subsequently file claims seeking specific damages based on the decision made in the collective claim.

The law does not specify the available remedies for other types of collective actions (*i.e.* under the Ukrainian Codes on Civil, Administrative and Commercial Procedure); therefore, the general provisions of Ukrainian law apply (*i.e.* monetary compensation, injunctive relief and various types of specific performance may be sought).

- **In claims for damages, does loss need to be collectively established or is individual proof required?**

Under the Ukrainian Consumer Protection Act, if a consumer association wins a collective consumer claim, individual claimholders must nevertheless proceed to file separate claims and provide specific proof of their losses in order to receive a court decision entitling them to compensation.

The law does not establish clear rules for proving losses in other types of collective actions (*i.e.* under the Ukrainian Codes on Civil, Administrative and Commercial Procedure). Consequently, the method for establishing losses will depend on the nature of the claims and the legal strategy employed by the claimant's counsel, whether through a claim vehicle or the aggregation of individual claims or otherwise.

- **What types of damages are recoverable (e.g. economic loss, damage to property)?**

In the absence of specific legislation governing collective actions, the default provisions of Ukrainian law regarding types of damages apply. These provisions entitle a claimant to recover real damages (*i.e.* losses incurred by a person due to the destruction or damage of property, as well as expenses that the person has incurred or must incur to restore their infringed rights), lost profits and compensation for moral loss.

Fines payable to the State exchequer are also applicable in consumer rights protection cases and environmental cases.

- **How are damages quantified? On what basis are the damages divided among class members?**

Damages are quantified on a case-by-case basis. Usually, expert reports and other evidence provided by parties are taken into consideration by the court when quantifying damages.

There is no statutory mechanism for dividing damages among class members. In consumer rights cases, damages are awarded based on the individual claims in an individual action from each relevant consumer, after a consumer association has won the collective claim. With regard to environmental cases, although few in number, damages have been awarded to claims vehicles. However, the court's decisions did not specify the procedure for distributing these damages, implying that claims vehicles should handle the division of damages according to their own internal procedures. In consolidated proceedings, damages are awarded based on the claims of each individual claimant.

- **What is the settlement structure, if any?**

There is no statutory settlement structure specifically for collective actions in Ukraine. Consequently, the general provisions of procedural law regarding amicable settlements in court proceedings apply. The parties involved in court proceedings may resolve their dispute at any stage of the proceedings through a settlement agreement approved by the court.

### c) **Collective redress proceedings**

- **How are court proceedings managed? Are there any typical procedures used in the context of collective redress?**

There is no special procedure for collective actions in Ukraine. Court proceedings are conducted in accordance with the general provisions of the Ukrainian Code of Civil Procedure.

In terms of model cases in administrative proceedings, the special procedure prescribed by the Code of Administrative Procedure of Ukraine would apply.

- **Is there a deadline by which claimholders must join proceedings?**

There is no statutory deadline for joining collective actions. However, according to the general procedural rules, all parties to the proceedings (including claimholders) should be established by the time the preparatory stage of the proceedings is completed.

- **Are there any time limits on initiating court proceedings?**

Court proceedings should be initiated within the statutory limitation period, which is three years for most claims.

- **Is pre-trial discovery available?**

Pre-trial discovery is not available in Ukraine. However, parties may submit substantiated requests to the courts to compel the other party or third parties to provide evidence in their possession. Additionally, all parties to court proceedings are expected to provide exhaustive evidence supporting their position prior to the close of the preparatory stage.

#### d) **Costs and funding of collective actions**

- **Is there a rule as to who has to bear the court fees / legal fees? Does the “loser pays” principle apply?**

The “loser pays” principle applies, with the unsuccessful party required to bear the prevailing party’s costs of the proceedings. Costs are to be calculated based on the proven reasonable expenditures of the winning party. Court fees are distributed among the parties in proportion to their success in obtaining different reliefs. In consolidation-of-cases proceedings, and in administrative model-case proceedings, each claimant bears his or her own court and legal expenses. Apart from that, no statutory regulation related to the costs of collective actions apply.

- **How are the costs of proceedings shared among class members?**

This matter is not regulated by law in Ukraine. Consequently, individual claimants may pool funds to cover legal fees, claims vehicles may use their own funds or a success fee may be applied (among other arrangements).

- **Is third-party litigation funding permitted in Ukraine?**

Third party funding is currently unregulated in Ukraine and, consequently, is not used in practice for domestic litigations.

- **Are there any restrictions on third-party litigation funding?**

There are no explicit restrictions or prohibitions on funding claims in proceedings before Ukrainian courts. However, as noted above, this arrangement is not known to be used for domestic litigation.

- **Are contingency fees permitted in Ukraine?**

Contingency fees are not prohibited. Clients and attorneys are generally free to agree on legal fees, including contingency arrangements.

## e) Jurisdictional implications

- **Are there any limitations on cross-border collective actions?**

This aspect is not expressly regulated by Ukrainian law when it comes to collective actions. However, in cases of cross-border collective action, the general provisions of Ukrainian law concerning international jurisdiction (*i.e.* exclusive competence of Ukrainian courts, choice of court agreements) and enforceability of foreign judgments, among others, would apply.

- **Can claims be brought by residents of other jurisdictions?**

There is no limitation for non-residents with regard to bringing collective actions in Ukrainian courts, provided claimants have proper standing under applicable law and all jurisdictional requirements of Ukrainian procedural law are met (*i.e.* the court has both subject-matter and personal jurisdiction).

## f) Developments and reforms in collective redress

- **Are there any expected developments / reforms in this area?**

Under the newly adopted Ukrainian Consumer Protection Act, which is due to become effective once the martial law regime is lifted in Ukraine, collective actions by consumer associations (claims vehicles) will be exempt from court fees. This should make it easier for such associations to pursue collective actions.

Several legislative bills concerning collective actions in various legal areas have been introduced in the Ukrainian Parliament in recent years. However, none of these bills has been passed, and there is currently no clarity on when this might happen.

## g) Risk assessment

- **How frequently are collective actions brought each year and in what areas are they most common?**

Due to the absence of a clear legal framework, collective actions are rare in Ukraine. There are no published annual statistics on the number of collective actions brought before the Ukrainian courts. According to media reports, collective actions are most commonly initiated by small groups of fewer than five claimholders. Collective actions are most popular in the areas of consumer protection and environmental protection, where actions are filed by consumer associations and environmental associations respectively.

- Based on the information provided above, is the risk to companies of facing collective actions high / medium / low?

Medium risk.



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