

PECULIARITIES OF THE CIVIL LITIGATION IN THE MAGISTRATES` COURTS

Jurisdiction of the Magistrates Court in Great Britain. The jurisdiction of the Magistrates Court is determined by the nature of the law to be applied, i.e. customary law or general law, the complexity of the legal issues and the quantum of the monetary claim. The work of the Magistrates Courts is generally understood to be broadly divided into two types of proceedings: civil and criminal. Essentially all proceedings that are not for the prosecution of an offence are considered civil. The term civil is derived from the area of civil litigation, but there are many other kinds of matters in the civil jurisdiction including applications for domestic violence protection orders and child protection applications.

The purpose of the Domestic and Family Violence Protection Act is to provide for safety and protection for people from further violence occurring in domestic relationships through the making of protection orders. The Act covers physical, emotional and financial violence committed in spousal, intimate personal, family and informal care relationships.

Child protection applications are heard by magistrates sitting as the Childrens Court, and additionally, urgent temporary applications may be made after hours by telephone or fax. Many of the child protection applications are contested, but a large portion are resolved in court ordered conferences. In other words, it deals with the cases that affect the daily needs of the people. It is the non-customary court that is widely accessed geographically as in all provinces there is one or more Magistrates Court.

Key features of procedure in the Magistrates Court. The civil procedure in the Magistrates Court is made up of two distinct procedures namely action and application procedure. Generally the Magistrates Court (Civil) Rules 'the Rules' provide for all matters to be brought in the Magistrates Court. The various segments of the Rules are referred to as Orders. The rules of procedure also provide for definitions of certain terms to be used in Court, i.e. they define who is a Plaintiff or defendant among other things. In addition, the court rules provide for time limits of which specific procedural steps are to be taken. The Rules also provide for the manner of execution of Court process. They provide as to who should serve the court process. The Rules further provide for the duties of the Clerk of court the proceedings in the Court. The Rules do not allow Magistrates and Court clerks to assist litigants to write an affidavit, pleadings or any court process for a litigant. The Rules however provide for self representation or representation by a legal practitioner. The Rules also provide for the procedure through which a party who wishes to sue as a pauper can apply for leave to do so. In addition the Rules provides that such a litigant would be exempted from paying Court fees only but still has to pay the messenger of court and disbursements. However if the pauper wins the case with costs, he/she will pay the court fees in retrospect. In addition, if he/she loses and an order to pay costs is made against him/her, the pauper will have to pay such costs.

Action procedure in the Magistrates Court. Action procedure is usually initiated by a letter of demand through which the defendant is required to meet his /her obligation failing which, legal action will be taken. Under summons commencing action stage, a plaintiff issues summons against the defendant. It is a requirement in terms of the Rules that in the summons, the plaintiff states the claim, the time period within which the defendant is required to give notice of intention to defend. Once the summons has been issued and served on the defendant by the messenger of court, the defendant in terms of the Rules is then supposed to enter an appearance to defend i.e. give written notice of intention to defend within the time stated in the summons. There are a number of things that may happen before it is entered or after an appearance to defend has been entered. In terms of the Rules it is possible for the defendant may file a claim in reconvention, that is, make a counter claim to the claim in question. The Rules then provide that defendant may consent to judgment. This occurs when the defendant has no defense to the claim. In addition some defendants may willfully or ignorantly fail to enter an appearance to defend. In those circumstances the Rules provide that a default judgment may be granted. Once the plea is filed, the parties proceed to other stages of action procedure that will be dealt with below. The Rules in action procedure in the Magistrates Court allows parties to file exceptions and motions to strike out court documents filed by their opponents that are defective. In some cases defendants file appearance to defend for the sake of buying time. In those circumstances, the Rules allow the Plaintiffs to file a summary judgment application. Application for summary judgment allows a litigant to be granted a judgment summarily if the court believes there is no defense at all. A plea can be a plea of denial or confession and avoidance or admittance. In other words, the defendant may deny the claim or admit it but set out facts which absolve him/her or admit the claim. After the plea, the Rules require that the plaintiff may reply to plea. Once that has been done, or the time within which to file the reply has expired, the pleadings will be closed. After the closure of pleadings parties, the Rules provide for a stage called discovery of documents.

At discovery stage parties exchange the documents they intend to use at trial. The rationale is to discourage ambushing of each other by the parties. Once discovery has been made, parties proceed to hold a pre – trial conference. In terms of the Rules, at a pre –trial conference, a number of issues are dealt with, namely, admissions, consolidation of issues, number of witnesses for trial, interpretation issues, duration of trial. Sometimes matters are settled at the pre – trial conference. At trial parties lead oral evidence and each witness normally goes through three stages - evidence in chief, cross – examination and there – examination.

The Rules provide that plaintiff usually has the onus of proof. And their witnesses give evidence first. Once they finish leading all their evidence, the plaintiff's case is closed. This marks the opening of the defendant's case which goes through the same stages as those of the plaintiff in most cases. Once the defendant is through with its case, the Magistrate presiding over the case may request that the parties submit written closing submissions. Once everything has been done, the Magistrate may proceed to hand down a judgment in the matter. The Rules allows plaintiff, once he or she has the judgment in his or her favour, he or she should issue a warrant for execution of the judgment if he or she wishes to enforce the judgment. There Rules provides that costs attached for the attachment and execution process which should be met by the plaintiff. The action procedure is not always as clear and straightforward as outlined above. The Rules provides that there are other interim procedures which can commence during the main proceedings, such as withdrawal and dismissals of claims, applications for summary judgment.

Court system in Ukraine

Today Ukraine's judicial system is made up of courts of general jurisdiction and the Constitutional Court of Ukraine. Courts of general jurisdiction form the unified system of courts. The Constitutional Court of Ukraine is the single body of constitutional jurisdiction in Ukraine. The judicial system обеспечивает access to justice for each individual according to the procedure established by the Constitution of Ukraine and Ukrainian laws. Establishment of emergency and special courts shall not be allowed.

Justice in Ukraine shall be administered exclusively by courts. It shall not be allowed to delegate the functions of courts, as well as appropriate these functions by other bodies or officials. Court of the first, appeal and cassation instances shall operate in Ukraine for the purpose of ensuring comprehensive, complete and objective consideration of cases, and legality of court decisions. Nobody can be лишённых сна of the right to participate in the consideration of their case according to the procedure определено by procedural law in a court of any level.

Consideration of cases in courts shall be open, except for cases envisaged by procedural law. Participants of a court consideration and other individuals at present an open court sitting shall have the right to take notes. Consideration of cases in a closed court shall be sitting allowed by a court decision in cases envisaged by procedural law. According to the Constitution of Ukraine, the system of courts of general jurisdiction is designed on the principles of territorial division and specialization.

The system of courts of general jurisdiction is made up from:

- local courts;
- courts of appeal and the Court of Appeals of Ukraine;
- the Court of Cassation of Ukraine;
- highest specialized courts;
- the Supreme Court of Ukraine.

The first instance administrative courts are district courts which have analogy to commercial ones. Unspecialized appeal courts are analogous to those district courts plus military courts for military districts and the Appeal Naval Court of Ukraine. The systems of appellate commercial and administrative courts are organized according to similar court districts. For instance: Odessa Appeal Court District consists of Odesskaya oblast, Khersonskaya область, Nikolaevskaya oblast and Autonomous Republic of Crimea. The High Commercial Court of Ukraine and High Administrative Court of Ukraine act the part of a court of review.

To draw the conclusion, Ukraine is rather arbitration-unfriendly country, but the development during the years of independence suggests that the world standards of international arbitration may be pave the way for realization of the legal principles of the global game in Ukraine. As the country is developed and players become familiar with the rules of the game, the practice of international arbitration will grow and tendencies may perhaps change towards a friendlier approach not only in this field, but also in public justice as well.

Список використаних джерел

1. Sithole, E., 2006. Civil Procedure. Supplement 39.
2. Anon, 2012. Human rights .com. Available at: <http://www.humanrights.com/what-are-human-rights.html> [Accessed March 21, 2012].
3. Bhansali, L., 2005. Access to justice elements of judicial reform care course on legal and judicial reform. In Washington Dc: LACPREM.

4. Buhai, S.L., 2009. Access to justice for unrepresented litigants: a comparative perspective. *Loyola of Los Angeles Law Review*, 42.
5. Brewer, E.S.C.J.L., 2008. The virtue of following the role of Inter-American litigation in campaigns for social justice.