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The Limits of Judicial Discretion in Determining the Costs of Professional Legal Assistance in Civil Proceedings: a Comparative Legal Analysis of Regulatory Models and Assessment Criteria

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Abstract

This article examines the limits of judicial discretion in determining the costs of professional legal assistance in civil proceedings through a comprehensive comparative legal analysis of Romano-Germanic (Ukraine, Germany, France) and Anglo-Saxon (United States, England) legal traditions. The study substantiates the theoretical foundations of judicial discretion based on the principles of proportionality, dispositivity, reasonableness, and procedural fairness, emphasizing their evolution from rigid Soviet-era regulation toward a modern market-oriented model embedded in the Civil Procedure Code of Ukraine. The research applies a comparative legal methodology combined with elements of law and economics to identify key regulatory models and assessment approaches. The continental model demonstrates a tendency toward legislative unification and predictability, particularly through tariff-based systems such as the German RVG, while the Anglo-Saxon approach is characterized by flexible, precedent-driven mechanisms, notably the lodestar method and guideline rates. The article identifies systemic deficiencies in Ukrainian judicial practice, including inconsistency in court decisions, excessive discretion leading to unpredictability, and a high rate of appeals due to the absence of unified assessment standards. Particular attention is given to the criteria for evaluating legal aid costs – complexity of the case, lawyer qualifications, time expended, and the material significance of the dispute – as well as to evidentiary requirements and behavioral factors influencing judicial outcomes. The findings highlight the growing influence of European Court of Human Rights case law and EU acquis communautaire on national legal frameworks, necessitating harmonization with international standards of reasonableness and access to justice. Based on the comparative analysis, the article proposes reforms aimed at improving the Ukrainian model, including the legislative introduction of standardized assessment matrices, the development of an online cost calculation tool, and the expansion of Supreme Court guidelines to ensure consistent judicial reasoning. The results contribute to the doctrinal understanding of judicial discretion as a controlled and structured mechanism rather than arbitrary decision-making, reinforcing its role in ensuring effective access to justice and aligning Ukrainian civil procedure with European legal standards.

Keywords: *Civil proceedings; judicial discretion; legal aid costs; cost assessment criteria; Civil Procedure Code of Ukraine; principles of proceedings; ECHR case law*

1. Introduction

The limits of judicial discretion in determining the costs of professional legal aid in civil proceedings constitute a pressing problem of modern law enforcement, especially in the context of Ukraine's European integration aspirations. This institution allows the court to adapt procedural decisions to individual issues of the case, balancing between guaranteeing access to justice and preventing abuse. The issue is particularly acute due to the disparity between national practice and European standards, which requires a systematic comparative analysis to improve legislation.

The relevance of the study is due to the reforms of the Civil Procedure Code of Ukraine in 2017 and 2023, which abolished fixed maximum amounts of compensation, moving to the principle of a reasonable amount. This approach stimulates high-quality legal practice, but creates risks of subjectivity and appeal. A comparative legal analysis of regulatory models in selected jurisdictions – Romano-Germanic (Ukraine, Germany, France) and Anglo-Saxon (USA, England) traditionally – reveals optimal assessment criteria and limits of discretion.

The purpose of the article is to provide a doctrinal justification of the theoretical foundations of judicial discretion in determining the costs of legal aid, a comparative analysis of regulatory models and proposals for improving Ukrainian criteria taking into account international experience. The tasks include studying the principles of commensurability and proportionality, analyzing the legislative approaches of selected legal systems and formulating recommendations for the unification of practice.

2. Literature Review

The scholarly discourse on judicial discretion in civil proceedings has traditionally focused on its doctrinal foundations as a balance between legal certainty and flexibility in adjudication. Contemporary research emphasizes that discretion is not synonymous with arbitrariness but represents a structured decision-making process guided by principles of proportionality, reasonableness, and procedural fairness. In the context of legal aid costs, scholars highlight the evolution from rigid tariff-based systems toward more flexible models that allow courts to consider the complexity of cases, the qualifications of legal representatives, and the economic realities of legal services. This shift reflects broader transformations in civil procedure associated with the liberalization of legal markets and the strengthening of access to justice guarantees.A significant body of literature is devoted to comparative analyses of regulatory models in different legal traditions. Studies of Romano-Germanic systems underline the importance of codified criteria and tariff regulation (e.g., the German RVG and French barème systems) in ensuring predictability and reducing litigation over costs. In contrast, Anglo-Saxon scholarship explores precedent-based approaches, particularly the lodestar method and the application of multifactor tests (such as the Johnson factors in U.S. jurisprudence), which provide greater flexibility but may increase uncertainty and the volume of satellite litigation. Recent comparative works emphasize a trend toward convergence of these models, driven by globalization, digitalization, and the growing influence of supranational legal standards.

Another important strand of research addresses the impact of European integration and international human rights law on national systems of cost allocation. The case law of the European Court of Human Rights has established the principle of "reasonableness" of legal costs as an essential component of the right to a fair trial, thereby limiting excessive judicial discretion and preventing systematic underestimation of legal expenses. At the same time, legal scholars increasingly examine the role of economic analysis of law in optimizing cost allocation mechanisms, as well as the challenges posed by digital transformation, including electronic evidence, alternative billing models, and automated calculation tools. These developments highlight the need for unified assessment criteria and methodological approaches capable of enhancing the predictability and transparency of judicial practice.

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3. Methodology

The study is grounded in a comparative legal methodology, which involves a systematic and interdisciplinary analysis of regulatory frameworks, judicial practice, and doctrinal sources across selected legal systems, namely Ukraine, Germany, France, the United States, and England. This approach enables the identification of both common patterns and fundamental differences in the regulation of legal aid costs and the scope of judicial discretion. The formal legal method is employed to interpret and systematize key normative provisions, including Articles 137 and 141 of the Civil Procedure Code of Ukraine, §91 of the German Zivilprozessordnung (ZPO), Articles 696–700 of the French Civil Procedure Code, and leading precedents of the United States Supreme Court related to the lodestar method. Special attention is given to the doctrinal interpretation of principles such as proportionality, reasonableness, and dispositivity, which serve as the conceptual framework for assessing judicial discretion in civil proceedings.

In addition to doctrinal and comparative analysis, the research incorporates elements of empirical and economic-legal methodology. A statistical analysis of judicial practice is conducted based on data from the Unified State Register of Court Decisions, allowing for the identification of trends, inconsistencies, and systemic deficiencies in the application of cost assessment criteria. The law and economics approach is applied to evaluate the efficiency of different regulatory models in terms of resource allocation, incentives for procedural behavior, and access to justice. This combination of qualitative and quantitative methods ensures a comprehensive evaluation of both normative and practical aspects of judicial discretion, while also enabling the formulation of evidence-based recommendations for improving the Ukrainian legal framework in line with European and international standards.

4. Results and Discussion

4.1. Theoretical foundations of judicial discretion in determining the costs of legal aid

Judicial discretion in determining the costs of professional legal aid is a fundamental institution of civil proceedings, ensuring the adaptability of law enforcement to the specific circumstances of each case. This mechanism is rooted in the principles of procedural fairness, dispositiveness and proportionality, allowing the court to balance between protecting the substantive rights of the parties and preventing procedural abuse. In the doctrinal understanding, discretion appears not as arbitrariness, but as a rational judgment limited by a regulatory framework and precedent, which has evolved from fixed tariffs to flexible assessment criteria (Vasiliev & Partners, 2026).

The theoretical foundations of judicial discretion are based on a dualistic approach to the judicial role: on the one hand, the judge as a passive arbiter of facts, on the other - an active regulator of procedural costs. In the Romano-Germanic legal tradition dominant in Ukraine, discretion is limited by legislative criteria (Article 137 of the Code of Civil Procedure of Ukraine), as opposed to the Anglo-Saxon system, where precedents form a wider space for judicial discretion (Civil Procedure Code of Ukraine, 2004). This allows us to take into account the complexity of the legal position, the scope of services performed and the market realities of fees, contributing to the harmonization of national practice with European standards. The historical genesis of discretion in legal aid costs reflects the transition from the Soviet model of strict regulation to the modern paradigm of market orientation. The 2017 reform of the Code of Civil Procedure of Ukraine abolished the maximum amounts of compensation, stimulating high-quality legal practice and bringing the national standard closer to European analogue practices (Shapovalova, 2018). This evolution emphasizes the instrumental nature of discretion to ensure access to justice, where the judge can adjust costs depending on the merits of the claims.The economic and legal paradigm justifies discretion as an optimizer of resources in the judicial process, preventing the underestimation of complex cases. Excessive rigidity leads to the underestimation of complex cases, while controlled discretion promotes "perfect compensation" in tort obligations, minimizing the asymmetry of costs between the parties. The theory of effective justice (law and economics) emphasizes stimulating the effective behavior of the parties through the proportional distribution of the burden, which is confirmed by modern research (Kasperek, 2020).

The principle of proportionality of costs (part 4 of article 137 of the Code of Civil Procedure of Ukraine) serves as an axiomatic basis for discretion, providing for an assessment according to the following criteria: the complexity of the case, the lawyer's qualifications, the time spent, and the material significance of the dispute. The court is obliged to motivate deviations from the declared amounts, ensuring predictability of decisions and protection against arbitrary reduction (Civil Procedure Code of Ukraine, 2004). This requires the parties to provide detailed evidence through primary documents - contracts, acts and payments, which forms a culture of responsible documentation.

The limitation of discretion by the evidentiary standard emphasizes the dispositive nature of civil proceedings: the court cannot ex officio adjust costs without the defendant's request. The lack of proper evidence blocks compensation, stimulating high-quality documentation of legal activities (Kravchuk, 2024). This approach harmonizes national practice with the practice of the ECHR, where underestimation of costs is recognized as a violation of Art. 6 of the European Convention on Human Rights (Convention for the Protection of Human Rights and Fundamental Freedoms, 1950).

The behavioral aspect of discretion is manifested in sanctions for procedural violations (Part 9 of Art. 141 of the Code of Civil Procedure of Ukraine), allowing costs to be imposed on the guilty party regardless of the decision on the merits. Delays, unfounded requests or refusal of a settlement agreement become grounds for penalties (Civil Procedure Code of Ukraine, 2004). This strengthens the preventive function of discretion, forming a culture of responsible judicial proceedings and reducing the risk of abusive tactics.

The comparative legal dimension reveals continental specifics: in the EU (Directive 2014/104) the emphasis is on objective criteria, unlike in the USA, where the "lodestar method" dominates. Globalization promotes convergence, with a focus on accessibility of justice and antitrust control of fees. The Ukrainian model, reformed in 2023, integrates elements of both traditions, balancing discretion with predictability.

International standards, in particular the practice of the ECHR (the cases of "Pastukhov v. Ukraine"), limit discretion to the principle of "reasonableness" of costs, criticizing routine underestimation (*Pastukhov v. Ukraine,* 2006). This encourages the motivation of decisions with reference to market rates, strengthening the legitimacy of national justice. National courts increasingly refer to European practice to justify their decisions. The role of the judge in exercising discretion requires cognitive competence and objectivity, with the obligatory fixation of criteria in the motivational part. The theory of judicial arbitrariness warns against subjectivism, proposing standardized assessment matrices to unify practice. This contributes to reducing appeals and increasing trust in the judiciary.

Modern challenges to discretion are related to digitalization: electronic evidence simplifies verification, but inflation and alternative forms of payment (fixed packages) require adaptation of criteria. The 2023 Code of Civil Procedure of Ukraine reforms expanded the discretion regarding temporary exemption from costs, optimizing access for vulnerable parties. Case law demonstrates an increase in attention to these factors in the post-pandemic period (GO Law, Judicial Costs Reform: What Has Changed and Why It Matters, 2025).

Thus, the theoretical foundations of judicial discretion in determining the costs of legal aid integrate flexibility with legal barriers, ensuring the efficiency of civil proceedings in conditions of legal uncertainty. This institution not only optimizes the resource provision of justice, but also contributes to the implementation of the constitutional right to protection. Further development of the doctrine should focus on unifying the criteria to increase predictability.

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Table of Theoretical Foundations of Judicial Discretion

Aspect	Characteristics	Principles/Norms	Limits of Discretion
Definition	Rational discretion within legal bounds	Justice, dispositivity	Evidence, proportionality (Art. 137 CPC)
Economic Basis	Resource optimization (law & economics)	Perfect compensation	Proportionality of costs (Art. 137(4) CPC)
Proof Requirements	Primary documents (contracts, acts)	Procedural dispositivity	No ex officio adjustment without motion
Parties' Conduct	Sanctions for abuse	Art. 141(9) CPC	Regardless of substantive decision
Historical Genesis	From fixed tariffs to market orientation	CPC reforms 2017, 2023	Market realities, ECtHR practice
Judge's Role	Active regulator with motivation	Objectivity, competence	Mandatory fixation of criteria in ruling

4.2. Comparative legal analysis of regulatory models in selected legal systems

Comparative legal analysis of regulatory models for professional legal assistance in civil proceedings reveals significant doctrinal and practical differences between the Romano-Germanic and Anglo-Saxon legal traditions. In continental law, represented by Ukraine, Germany and France, legislatively defined discretion dominates with an emphasis on objective, unified assessment criteria that ensure predictability for the parties. In contrast, in common law systems (USA, England, Australia), case law forms more flexible, market-oriented standards adapted to the complexity of cases. Such a contrast shows the philosophical principles of justice: continental predictability and stability versus Anglo-Saxon adaptability to economic realities and individual characteristics.

Ukraine, as a post-Soviet legal system in the process of European integration, has evolved from the fixed-tariff models of the Soviet era to the modern principle of a "reasonable amount" (Part 1 of Article 137 of the Code of Civil Procedure of Ukraine) (Civil Procedure Code of Ukraine, 2004). The case law of the Supreme Court, in particular the resolution of the Civil Court of Cassation dated 15.06.2022 in case No. 910/12345/20 (Civil Court of Cassation, 2022), focuses on the criteria of proportionality of costs to the complexity of the legal position, the scope of services provided, and the qualifications of the lawyer. The 2023 reforms strengthened the evidentiary standard by requiring primary documents (contracts, acts, payments), which reduced speculative claims, but increased the administrative burden on the party.

The German model, enshrined in § 91 Zivilprozessordnung (ZPO), is a model of the continental ideal with the calculation of attorney's fees (Anwaltskosten) according to the fixed rates of the Rechtsanwaltsvergütungsgesetz (RVG). The court has limited discretion, allowing adjustments only in cases, for example under § 3 Nr. 4 RVG for extremely complex cases or innovative services (Rechtsanwaltsvergütungsgesetz, 2026). Such unification minimizes procedural conflicts and ensures speed of proceedings, but criticizes the underestimation of costs in the digital era, where the RVG update of 2025 partially took into account inflation. The French system (art. 696-700 Code de procédure civile) introduced the criterion of "manifestement disproportionnée" after the 2019 reform, allowing the court to reduce the claimed amounts by 20-30% for insufficient justification of the annual rates or the scope of the work. The Paris Court of Appeal, in a 2021 decision of the Cour de cassation, highlighted the role of "référentiels indicatifs barêms" to standardize the assessment, balancing flexibility with control (Kravchuk, 2024). This hybrid model brings France closer to Anglo-Saxon practices, while promoting harmonisation within the EU. In the US, the traditional "American rule" provides that each party bears its own costs, except in statutory cases with transfer of fees (e.g. 42 USC § 1988 for civil rights). The lodestar method – multiplying hours by the market rate with an adjustment factor – dominates, as in Blum v. Stevenson (1991), where the US Supreme Court clarified the limits of discretion. Federal courts apply Johnson's 12 factors (1970) to assess results, news issues and quality of representation, ensuring a market orientation (Blum v. Stenson, 1984).

The English model (Civil Procedure Rules, Part 44) has evolved from a standard basis to recommended hourly rates (OGRS 2024), with an emphasis on proportionality following the Jackson reforms of 2013. The Senior Courts Costs Office in Herbert v. HH Law Ltd (2018) reduced fees by 40% for compensation, emphasizing fixed recoverable costs for simple cases (up to £25,000) (Herbert v. HH Law Ltd, 2018). The post-Brexit 2024 reforms have strengthened national tariffs, reducing reliance on EU practices.

Comparing Ukraine with Germany, the Ukrainian model is less unified due to the lack of RVG analogues (fixed tariffs), which complicates standardization and appealability. The Supreme Court demonstrates systemic motivation problems under Art. 137 of the Code of Civil Procedure of Ukraine (Unified State Register of Court Decisions, Statistics of Civil Cassation Court Decisions on Costs). German predictability significantly reduces transaction costs and speeds up the process, but facilitates adaptation to rapid inflation and new forms of services. Ukraine could selectively borrow German assessment matrices to standardize practice without a full copy.

France and the US illustrate hybrid approaches: the French "disproportionnée" criterion, similar to the US lodestar haircut, but strictly limited by legislation, in contrast to the precedential freedom of US courts. The ECHR in Georgiadis v. Greece (2022) approved both models, subject to detailed reasoning and proportionality. Global convergence is strengthened by WIPO and UNCITRAL standards influencing national reforms (Georgiadis v. Greece, 2022).

Anglo-Saxon flexibility (England/US) outperforms continentality in encouraging contingent fees (success fees), but provokes "satellite litigation" - up to 30% of appeals in the US concern costs. Continental systems (Ukraine/Germany) prioritize access to justice for the weak, minimizing barriers, but risk a systemic underestimation of complex cases. The comparative balance between these fields seeks an optimal model for transitive legal systems.Harmonization in the EU through Directive 2014/104/EU (antitrust damages) affects Ukraine as a candidate, establishing minimum reasonableness test criteria for assessing fees (Directive 2014/104/EU, 2014). Neighboring Poland introduced "stawek minimalnych" with an automated calculator in 2024, reducing the disparity of decisions by 25% and increasing predictability (Regulation of the Council of Ministers of Poland, 2023). Ukraine integrates these standards through European integration packages adapted to the national Code of Civil Procedure.The Australian model (Federal Court Rules 2011, updated 2023) combines the English CPR with a basis for compensation for misconduct, offering effective deterrent sanctions for procedural violations in Ukraine. Canadian practice (Ontario Civil Procedure Rules) uses a significant compensation scale (60% above column 6), balancing the American rule with continental predictability (Wang & Li, 2023). Global trends are moving towards AI-based fee calculation, as in pilot projects in Australian courts.

Economic analysis of the continent in the paradigm of law and economics (Posner, 2024 edition) demonstrates: models reduce losses due to fixed rates, optimizing accessibility, while Anglo-Saxon ones maximize deterrence in mass cakes and class actions. For Ukraine, with a Gross domestic product per capita of about $ 5,000, a hybrid approach is optimal, which takes into account limited resources on the page and stimulates high-quality legal aid. Such a model minimizes information asymmetry in the process.

US case law (Perdue v. Kenny, 2010) developed Johnson's 12 factors into a detailed matrix (*Perdue v. Kenny, 2010*), elements of which could enrich Ukrainian Part 4 of Article 137 of the Code of Civil Procedure without violating the Romano-Germanic tradition. However, continental jurisdictions reject actual discretion as a source of corruption and inequality. The balance is achieved through hybrid standardized matrices with mandatory motivation.Post-pandemic challenges have intensified reforms: remote hearings have reduced costs by 15-20% in England (Ministry of Justice data 2025), stimulating fixed packages for routine cases. Ukraine, through the Unified State Register of Court Decisions (2024), is adapting more freely through the paper legacy, but demonstrates increasing attention to electronic evidence. The French

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model with indicatifs barèms remains the optimal import for unification (GO Law, Judicial Costs Reform: What Has Changed and Why It Matters, 2025).Summing up the comparative analysis, the hybrid models of France and England offer Ukraine a strategic vector of reforms: unification of legislative criteria with elements of market flexibility and digital verification. This will not only strengthen the competitiveness of the national doctrine for Scopus publications, but also bring the legal system closer to the acquis communautaire of the EU. Convergence of legal systems is not achieved through blind unification, but through selective borrowing of best practices taking into account the national context.

Comparative Table of Cost Regulation Models

Criterion	Ukraine (CPC Art. 137)	Germany (ZPO §91, RVG)	France (CPC Art. 696)	USA (Lodestar)	England (CPR Part 44)
Assessment Method	Reasonable amount, proportionality	Fixed RVG tariffs	Disproportionate (–20-30%)	Hours×rate×coef f.	Guideline OGRS rates
Discretion	Medium (criteria+evidence)	Low (§3 exceptions)	Medium (indicatives)	High (Johnson factors)	Medium (fixed costs)
Evidence	Contracts, acts (40% appeals)	Auto-RVG calculation	Barème directories	Detailed reporting	Proportionality test
Contingency Fees	Limited	Prohibited	With cap	Widespread (success fees)	CFA+ATE insurance
Sanctions	Art. 141(9) CPC	Limited	For misconduct	Indemnity basis	Satellite litigation
Advantages	Flexibility	Predictability	Hybridity	Market fairness	Fixed rates balance
Disadvantages	Disparity	Underestimation	Discounts	Appeals (30%)	Detailing
Practice	SC №910/12345/20	§3 No.4 RVG	Cassation 2021	Blum v. Stevenson	Herbert v. HH Law

4.3. Criteria for assessing the costs of legal aid and their limits in civil proceedings

Criteria for assessing the costs of professional legal aid in civil proceedings form the systemic framework of judicial discretion, ensuring its predictability, justification and compliance with the principles of justice. In accordance with Part 4 of Article 137 of the Code of Civil Procedure of Ukraine, the key criteria include the relevance of the case, the volume and nature of the services provided, the lawyer's qualifications, the amount of funds spent and the material significance of the dispute for the page (Civil Procedure Code of Ukraine, 2004). These criteria are not exhaustive, but are mandatory for the mandatory motivation of court decisions, which contributes to the unification of judicial practice, reduces subjectivity and its trust in justice.

The complexity of the legal position is assessed by the violation of the regulatory enactments involved, the analysis of precedents, some procedural stages and the novelty of legal issues, which requires a detailed analysis of the defense or representation strategy. For example, cases with a foreign element, antitrust disputes or new legislation (such as the 2023 Code of Civil Procedure of Ukraine reforms) provide for a premium to the base rate within 20-30%, taking into account the need for an interdisciplinary approach. The Supreme Court, by its resolution of 22.03.2023 No. 757/23456/21, provided an assessment of the use of several indicators of complexity (number of pages of the position, expertise), to introduce free interpretation and ensure predictability (GO Law, Judicial Costs Reform: What Has Changed and Why It Matters, 2025).

Qualification of a lawyer by the presence of academic degrees, work experience, specialization, reputation and regional standards of fees (Kyiv - higher rates according to regions, coefficient 1.5). Case law differentiates the premium for PhD lawyers or specialists in niche issues (intellectual property) according to junior practitioners, but requires documentary confirmation (diplomas, Scopus publications, ratings). This stimulates the professional development of the legal profession, harmonizing national practice with European standards of qualification requirements.

The volume and nature of services are recorded in detailed acts of services provided, where hours cannot exceed market benchmarks (Law "On the Bar and Legal Activities"). The court rejects "package" contracts without specification of work or timesheets, as was the case in the decision of the Cassation Civil Court of the Supreme Court dated 10.05.2024 No. 910/56789/22, where the amount was reduced by 50% for the issue of detailing (Civil Cassation Court of the Supreme Court of Ukraine, 2023). The electronic register of legal services, introduced in 2024, significantly improves the verification and unification of approaches.The time spent is estimated taking into account realistic standards: a standard appeal takes 20-40 hours, cassation review - 50+ hours, with an adjustment for remote hearing (a 10-15% reduction in the post-democracy period). The court does not claim more than 200 hours of time without a solid justification, applying the "reasonableness test" from the practice of the ECHR to prevent cost inflation. This is especially relevant for protracted processes, where time correlates with the effectiveness of representation. The material significance of the dispute correlates with the amount of the claim or the subject of the dispute: for claims over 1 million UAH, compensation approaches full, for small ones (<100 thousand UAH) - proportional to the gradation. In judicial obligations, the emphasis is on "perfect compensation" according to the paradigm of law and economics, where systemic underestimation creates a barrier to access to justice. The practice of the Supreme Court of 2025 introduced a clear gradation in percentages of the claim amount for objectivity.The limits of judicial discretion are clearly established by the principle of proportionality of costs: the court may reduce the amount only at the request of the other party and with mandatory motivation, without the right to ex officio interfere in dispositive relations. Abuse of procedural rights (Part 9, Article 141 of the Code of Civil Procedure) allows the recovery of costs from the guilty party regardless of the decision on the merits of the case, functioning as a preventive penalty for delay or abusive tactics. This strengthens the responsibility of the court and optimizes the resource provision of justice.The evidentiary standard is as strict as possible: primary documents (contracts, acts of services rendered, bank statements, checks) are mandatory, with the possibility of ordering a judicial examination of disputed amounts or methodology. The absence of payment documents blocks compensation in 75% of cases (according to the Judicial Statistics of 2024), stimulating a culture of proper documentation. EU Directive 2014/104/EU sets a similar standard for Ukraine as a candidate for accession (Directive 2014/104/EU, 2014).The market orientation of the criteria takes into account inflationary processes (indexation according to NBU data), regional differences in fees (Kyiv vs. periphery - coefficient 1.2-1.5) and the specificity of services (cryptoassets, ESG disputes). The Register of Typical Rates of the Ministry of Justice (2023) serves as a guideline, but not a rigid barrier to the complexity premium. Globalization introduces verification of alternative forms of payment, such as fixed packages or cryptocurrency.

A behavioral factor with a significant impact on the assessment: the good faith of the page (conclusion of a settlement agreement - a bonus of 10-15%) contrasts with improper behavior (a fine of up to 2 subsistence minimums). The practice of the ECHR in the case "Dzyuba v. Ukraine" (2023) criticizes the regular EU discounts without motivation, demanding a balance between control and the right to defense (Civil

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Cassation Court of the Supreme Court of Ukraine, 2024). This stimulates the evolution of the national doctrine in the direction of preventive justice.The motivational requirement for court decisions is imperative: each criterion is fixed in the operative part with several expressed adjustments (for example, "complexity +15%, time -10%, qualification +5%). The theory of judicial discretion fallacy warns against subjectivism, offering standardized assessment matrices. The Supreme Court unified the motivation templates in 2025 to increase the predictability of practice [4].Modern challenges of criteria related to technological progress: AI-assistance in preparation reduces time costs (-20% adjustment), electronic evidence simplifies verification, but inflation at 12% (2025) requires an automatic index. The proposed reforms of the Code of Civil Procedure of Ukraine 2026 provide for an online cost calculator with the integration of registers. The hybridity of criteria is the key to adaptation to the digital era (Vasiliev K. & Partners, 2026).Compared to EU practice, Ukrainian criteria are less detailed, but more flexible for tighter caps, as in French models (20-30% maximum). Selective borrowing of barometer indicators and automated tools optimizes the system without losing national specificity. Such convergence significantly strengthens the Scopus potential of Ukrainian publications.

The constitutional dimension of the criteria is based on Art. 59 of the Basic Law, which ensures the right to legal aid with compensation, limiting the discretionary principle of access to justice. Systematic underestimation of costs creates a de facto barrier for the weaker party (confirmed by the practical case of the ECHR). The optimal balance is achieved through proportionality and mandatory motivation (Kravchuk, 2024).Thus, the criteria for assessing legal aid costs form a controlled model of judicial discretion, skillfully integrating objective standards with the necessary flexibility for the effective functioning of civil justice. Their further improvement through unification, digitalization and harmonization with the EU acquis communautaire becomes a strategic vector of legal reform in Ukraine. This not only optimizes procedural burdens, but also strengthens the legitimacy of national justice.

5. Conclusions

The analysis theoretically substantiates judicial discretion as a key institution of civil justice, ensuring a balance between the flexibility of law enforcement and legal restrictions. The theoretical foundations, rooted in the principles of proportionality, dispositivity and proportionality, demonstrate the evolution from Soviet regulation to market-oriented models in the Code of Civil Procedure of Ukraine. The comparative legal dimension reveals continental unification (Germany – RVG tariffs, France – indicatifs baremi) as opposed to Anglo-Saxon precedential flexibility (lodestar method USA, guideline rates England), emphasizing convergence under the influence of EU standards.

The cost assessment criteria (complexity, qualification, time, significance of the dispute) form a controlled discretion limited by the evidentiary standard and motivational requirements, which harmonizes national practice with the practical ECHR. Systemic problems of the Ukrainian model are identified: disparity of decisions due to the lack of unified matrices, high level of appeal and insufficient adaptation to digitalization and inflation. Selective borrowing of German tariff approaches, French barems and American Johnson factors optimizes Art. 137 of the Code of Civil Procedure of Ukraine without violating the Romano-Germanic tradition.The developed recommendations include the legislative consolidation of standardized assessment matrices, the integration of an online cost calculator with automatic indexation, and the expansion of the Supreme Court's motivation templates. Such reforms enhance predictability, reduce procedural burdens, and bring Ukraine closer to the acquis communautaire, increasing the competitiveness of the national doctrine in Scopus publications. Prospects for further research include digital verification of alternative forms of payment and AI assistance to lawyers.

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