ЦИВІЛЬНИЙ ПРОЦЕС, ГОСПОДАРСЬКИЙ ПРОЦЕС

UDC 347.95:347.991(477)

R. M. Minchenko
Doctor of Juridical Sciences, Professor, Honoured Lawyer of Ukraine
Legislation Institute of the Verkhovna Rada of Ukraine,
The Ukrainian School of Lawmaking, Director
Nestorivskiy lane, 4, Kyiv, 04053, Ukraine

THE GROUNDS FOR REVIEW OF JUDGMENTS ON CIVIL CASES BY THE SUPREME COURT OF UKRAINE

The article is devoted to the questions of legal regulation of the grounds for review of the judgments in civil cases by the Supreme Court of Ukraine, whereas the analysis of the novels of civil procedure legislation of Ukraine has been made, particularly the Law of Ukraine «On Ensuring of the Right to a Fair Trial», relevant provisions of the Civil Procedure Code of Ukraine, existent judicial practice on mentioned questions, and theoretical discussions of scholars and leading specialists in the field of jurisprudence have been studied.

Key words: judgment, grounds for review of judgments, Supreme Court of Ukraine, civil cases, judicial practice.

Problem statement. According to article 355 of the Civil Procedure Code of Ukraine (hereinafter — the CPC of Ukraine), with amendments to the CPC, made by the Law of Ukraine «On Ensuring of the Right to a Fair Trial» of 12.02.2015 № 192-VIII, an application for review of judgments in civil cases may be filed only on the following grounds: 1) unequal application of the same provisions of substantive law by court (courts) of cassation, which resulted in making of judgments different in content in similar legal relations; 2) unequal application of the same provisions of procedural law by the court of cassation — in appealing the judgment which prevents further proceedings in case, or which was made with violation of rules on jurisdiction or with violation of competence of courts on civil cases; 3) when international judicial institution has established the violation of international obligations by Ukraine in considering the case by court; 4) inconsistency of judgment of the court of cassation with legal opinion on application of provisions of substantive law in similar legal relations laid down in the resolution of the Supreme Court of Ukraine.

The most important and effective mechanism of influence of the Supreme Court of Ukraine on judicial practice in civil proceedings is its realisation of powers on review of judgments on the grounds of unequal application of the same provision of substantive law in similar legal relations in the manner prescribed by procedural law by the court (courts) of cassation.

The presence of unequal application of the same rule of substantive law in similar legal relationships by the court (courts) of cassation can be proved if: the court (courts) of cassation unequally applied the same provision of substantive law in considering two or more cases; cases concern the disputes arising from similar legal relations; there are judgments different on content made by the court (courts) of cassation.

Due to the rather complicated hypothesis of legal provision the questions raise in practice as to whether unequal application of provision of law also involves the non-application of provision of law that was applicable in contentious legal relations (as a result, whether the relations in such case will be similar, which is a prerequisite for review).

Analysis of researches and publications. One should mention K. V. Gusarov, O. S. Tkachuk, Y. Romaniuk, I. Beitsun among authors, who pays attention to the issues of legal regulation of the grounds for review of the judgments in civil cases by the Supreme Court of Ukraine.

Paper purpose. Thus, the paper purpose is to study questions of legal regulation of the grounds for review of the judgments in civil cases by the Supreme Court of Ukraine making the analysis of the novels of civil procedure legislation of Ukraine.

Paper main body. The term «similarity of legal relations» has important legal significance because, as we know, the operation of the provision of law, which was applied by the court (or not applied by the court, but had to be applied) influences the relations. It is known that the doctrine of theory of state and law contains a separation of legal relations into sectorial, absolute, incremental, general, and specific, etc. As to such legal term as «similar legal relations», the specified term is not used in legal theory. In this regard, the question arises as to compliance with legal technique in drafting the law, which defines the basic methods and rules in formation of legal acts.

Apart from the abovementioned, there are also certain questions as to the term «judgments different in content», particularly, whether it means a reference to the provisions of procedural law governing the content of the judgment of the court of cassation (articles 345, 346 of the CPC), or in fact this term means only the difference in substantive law results of the court proceedings, and this is what was meant by the legislator [1, p. 111].

Unequal application of the same provision of substantive law in similar legal relations by the court (courts) indicates the incorrect application of this provision at least in one case of such application, but previously not known in what exactly. With that, the incorrect application of provision can exist as in all cases, as in some of them.

The unequal application of the same provisions of substantive law consists, in particular: in different interpretation of the content and essence of legal

provisions by the courts, which led to different conclusions on existence or absence of subjective rights and obligations of participants of corresponding legal relations; in different application of rules of competition of legal provisions in resolving collisions between them with regard to legal force of mentioned legal provisions, as well as their temporal, geographical and personal scope, i.e. different non-application of law that had to be applied; in different determination of the subject of regulation of legal provisions, particularly in application of different legal provisions for regulation of the same legal relations, or the extension of operation of provision on certain legal relations in one cases, and non-application of the same provision to analogous relations in other cases, that is a different application of the law, which did not have to be applied; in different application of the rules of analogy of law in similar legal relations (Par.6 of the Resolution of Plenum of the High Specialised Court of Ukraine for Civil and Criminal Cases of 30 September 2011 № 11 «On Judicial Practice of Application of Articles 353–360 of the Civil Procedure Code of Ukraine»).

Meanwhile, analysing the provision of Par. 2 of Art. 309 of the CPC, according to which the provisions of substantive law are considered to be violated or incorrectly applied, if there was an application of law, which does not apply to these legal relations, or there was no application of law, which had to be applied, it can be argued that the non-application by court of the provision of law that applies to relevant legal relations should be considered as its improper application.

Judgments in similar legal relations are those where the cause of action, the grounds for the claim, the content of claim and the factual circumstances established by the court are identical, as well as where there is the same substantive law regulation of contentious legal relations. The content of legal relations with aim to determine their similarity in various judgments of the court (courts) of cassation is to be determined by the circumstances of each case.

It is necessary to support the position of the judge from Ukraine of the European Court on Human Rights G. Y. Yudkivska about the fact that the role of the Supreme Court cannot be reduced only to the role of the court of the third or fourth instance, access to which should get every citizen. The society is not interested in the Supreme Court that accepts tens of thousands of judgments a year, which are impossible to analyse in depth due to the lack of time. The more such judgments, the easier is to get confused with them, and the courts of lower instances cannot apply its recommendations, explanations, and instructions. That is why the Supreme Court should be able to decide which cases it can take for proceedings with regard to its leading role in legal system and formation of legal culture [2, p. 18–19].

Thus, in legal literature until recently there have been active debates as to the need to expand the powers of the Supreme Court of Ukraine to review judgments in civil cases, particularly giving the right to the Supreme Court of Ukraine to review judgments on grounds of unequal application of provisions of procedural law [3, p. 342].

Often, the errors in applying the provisions of procedural laws by courts lead to non-correct resolution of the case, which may not always be corrected by the court of cassation. Entitlement of the Supreme Court of Ukraine in accordance with the Law of Ukraine «On Ensuring the Right to a Fair Trial» with the right of judicial review on the grounds of unequal application by the court (courts) of cassation of the same provisions of procedural law provides the Supreme Court of Ukraine with the opportunity to thoroughly check the legality of judgments and ensure the unity of judicial practice not only in the application of provisions of substantive law, but also of provisions of procedural law.

The absence of the power of the Supreme Court of Ukraine to ensure the uniform application of procedural law by the courts was an important aspect of the problem of ensuring uniformity of judicial practice. Instead, most violations of the right to a fair trial (Article 6 of the European Convention on Human Rights) concern the application of procedural rules. Furthermore, the unity of judicial practice and, accordingly, the principle of legal certainty must be provided both in the sphere of substantive law and equally in the sphere of application of procedural rules.

Unfortunately, over extended periods the Supreme Court of Ukraine was deprived of the right to review the judgments in case of unequal application of the provisions of procedural law by courts of cassation, even if it was a part of substantive law that led to a significant number of violations of the law remained uncorrected. Thus, refusing the application for review of judgment on the grounds of unequal application of the same provisions of substantive law by the court of cassation, particularly Article 82 of the Law of Ukraine of April 21, 1999 № 606-XIV «On Enforcement Proceedings», which has caused the making of judgments different in content in similar legal relations, the Supreme Court of Ukraine noted that «content-wise a specified provision is procedural in nature, as it provides for procedure for appealing the judgments, actions or inactions of officers of state executive service» [4].

In accordance with the practice of the Supreme Court of Ukraine the acts of the court of cassation, which particularly concern the determination of jurisdiction of court cases (i.e. on differentiation of civil and administrative cases), can be defined as those that evidence the unequal application of the provisions of procedural law by the court, and thus were not subject to review by the Supreme Court of Ukraine [5].

In view of the above, Y. M. Romaniuk [6, p. 10] proposes to introduce in Ukraine a so-called institute of prejudicial inquiry provided in certain European states. Thus, in France the court that hears the case on the merits may make an application on interpretation of the law to the highest judicial authority if the relevant legal question is new, quite complex, and arises in many cases [7, p. 30]. Legal opinions on the application of legal acts of the EU under prejudicial inquiries by domestic courts are also rendered by the Court of Justice of the European Union.

Introduction of the institute of prejudicial inquiry in Ukraine would provide the lower-level courts with opportunity to seek appropriate legal opin-

ions from the Supreme Court of Ukraine in case if the uncertainty in the application of the provision of law arises during court proceedings. It should be noted that the present state of legislation contains numerous unclear and contradictory provisions, and determines the thousands of analogous claims in the courts. In this regard, with the assistance of the institute of prejudicial inquiry it could be possible to resolve the issue of the application of the relevant provisions at the level of the courts of first instance without waiting until the case will get to the Supreme Court of Ukraine.

All of the above indicates the absolute reasonableness of amending the Law of Ukraine «On Ensuring the Right to a Fair Trial» fixing there the powers of the Supreme Court of Ukraine on review of judgments on grounds of unequal application of the same provisions of procedural law by the court of cassation — at the appeal of the judgment, which prevents further proceedings in case, or which was made in violation of the rules of jurisdiction or rules on competence of the courts to consider civil cases.

Another ground for review of judgments by the Supreme Court of Ukraine is the establishment of violation by Ukraine of its international obligations in deciding court cases, established by international judicial institution, whose jurisdiction is recognised by Ukraine. Typically, it is a decision against Ukraine by the European Court of Human Rights (hereinafter — the ECHR).

The important and complex problem in matters of application of ECHR practice by Ukrainian courts is relevant procedures and legal basis. The mechanism of this application consists of two methods: 1) direct application of the practice of the ECHR, which is limited to the provisions of the Convention and decisions of the ECHR on Ukraine; 2) use of legal positions of the ECHR in judicial practice of Ukrainian courts.

The special role in this mechanism belongs to the Supreme Court of Ukraine, which not only has to apply the practice of the ECHR (as the rest of the national courts), but also directly participates in the procedure of enforcement of judgments of the ECHR [8, p. 5].

The judgment of the European Court of Human Rights takes on real meaning for the person-applicant (recipient) only when the State-defendant, which violated the rights and fundamental freedoms, implements the directions of the ECHR, that is authorised state bodies make real actions to address those violations, pointed out by the European Court of Human Rights in its judgment. Different branches of state power may be involved in the process of implementation of such judgments.

According to Par. 1 of Art. 46 of the European Convention on Human Rights, the High Contracting Parties undertake to abide by final judgment of the Court in any case, to which they are parties. The enforcement procedure for these decisions in Ukraine is determined by the Law of Ukraine of 23.02.2006 № 3477-IV «On Execution of Judgments and Application of Practice of the European Court of Human Rights». As was rightly pointed out by G. Y. Yudkivska «the Supreme Court is entrusted with the greatest responsibility — to be the guarantor of the rights and freedoms of a person. The effectiveness of implementation of the Convention and of practice of the

European Court of Human Rights into national practice will depend on what the Supreme Court will signal to the courts of the first and second instances.

By changing the judgments of the lower courts, the Supreme Court not only fixes the errors and restores justice in a particular case, but also sets a precedent for future cases. The ECHR practice becomes a tool for uniform interpretation of provisions of national legislation by supreme courts in the light of the requirements of the Convention [2, p. 18].

Thus, the resolutions of the Supreme Court of Ukraine adopted on the results of review by the Supreme Court of Ukraine of judgments on the ground of violation by Ukraine of its international obligations in deciding the case, established by international judicial institution, whose jurisdiction is recognised by Ukraine, should be considered not only as the acts of individual legal regulation, by which the Supreme Court of Ukraine restores the violated right of applicant, but also, the Resolutions should be the acts of general impact on judicial practice, by which the Supreme Court indicates how the rules of the Convention shall apply to specific legal relations in view of the relevant decision of the European Court of Human Rights.

It seems that the precedency of the judgments of the European Court of Human Rights should not be seen only in terms of actually precedent character, that is, its qualification as precedents, but also in terms of general binding character. Generally binding character is a more significant feature of the European Court of Human Rights. For the practice of application of the ECHR judgments, precisely this aspect is more important and reflects the need for application of the ECHR judgments different in character. In addition, there is an obvious fact that in the modern legal doctrine, which reflects the actual state of legal practice in the states of Romano-Germanic legal family, the concept of well-established judicial practice is quite common. According to this concept, a number of judgments can be regarded as convincing proof of the correct interpretation of legal provision. A prerequisite of mentioned is the systematic practical application of legal provisions, which were formulated and used by the courts. This concept became a certain equivalent to Anglo-Saxon doctrine of operation of case law in Romano-Germanic legal family, and with the assistance of the mentioned concept the case law is applied in European countries [9, p. 286].

Based on the above it can be argued that the review of judgments in civil case on the ground of violation by Ukraine of its international obligations in deciding the case, established by international judicial organisation, whose jurisdiction is recognised by Ukraine, constitutes a realisation of the person's right to judicial protection of his rights and freedoms in civil proceedings, which are enshrined in international instruments; is a special case of fulfilment by Ukraine of its international obligations in the area of human rights and fundamental freedoms; is a method of taking additional measures of individual character to enforce the judgment of international judicial institution (recovery as much as possible of the previous status, which the person had before violation of the Convention (restitutio in integrum), is a realisation by the Supreme Court of Ukraine of function of directing Ukrainian judicial practice in matters

of application of the provisions of the European Convention on Human Rights and practice of the European Court of Human Rights when considering the cases in civil proceedings, and is a means of bringing the judicial practice in civil cases in line with international and European standards of justice.

The last ground for review of judgments by the Supreme Court of Ukraine is the inconsistency of judgment of cassation court with legal opinion on application of provisions of substantive law in the same legal relations set out in the Resolution of the Supreme Court of Ukraine.

Even before the adoption of the Law of Ukraine «On Ensuring the Right to a Fair Trial» Y. M. Romaniuk has expressed his concern that mandatory character of the resolutions of the Supreme Court of Ukraine has a declarative nature, since the inconsistency of judgment with legal opinion of the Supreme Court of Ukraine is not a ground for appeal. The author has proposed to provide for the possibility to appeal the court decision on the ground of its inconsistency with legal opinion of the Supreme Court of Ukraine. With that, according to Y. M. Romaniuk, it had to be established that the right to appeal might occur in cases where the decision was taken after the formulation of the legal opinion of the Supreme Court of Ukraine, and also if the legal opinion has been formulated immediately after judgment was made. For this, as pointed out by Y. M. Romaniuk, it is considered appropriate to add such ground to the list of grounds for review of judgments under the new circumstances [10, p. 9].

Conclusions. According to Par.4 of Art. 355 of the CPC the inconsistency of judgment of court of cassation with legal opinion on application of provisions of substantive law in the same legal relations set out in the resolution of the Supreme Court of Ukraine is currently defined as a separate independent ground for review of judgment by the Supreme Court of Ukraine.

References

1. Ткачук О. С. Перегляд судових рішень Верховним Судом України: проблемні питання правозастосування / О. С. Ткачук // Часопис цивільного і кримінального судочинства. — 2013. — № 2 (11). — С. 108–117.
2. Юдківська Г. Роль Верховного Суду у механізмі виконання зобов'язань держави у сфері захисту прав людини / Г. Юдківська // Вісник Верховного Суду України. — 2011. — № 10 (134). — С. 16–23.
3. Гусаров К. В. Інстанційний перегляд судових рішень у цивільному судочинстві [Текст] : дис. … докт. юрид. наук: 12.00.03 «Цивільне право і цивільний процес; сімейне право; міжнародне приватне право» / К. В. Гусаров. — Х., 2011. — 431 с.
4. Постанова судової палати у цивільних справах Верховного Суду України від 17.10.2012 р. у справі № 6–84цс12 [Електронний ресурс]. — Режим доступу: http://document.ua/proviznannja-nepravomirnoyu-ta-skasuvannja-postanovi-golovn-doc119832.html. — Назва з екрана.
5. Постанова судової палати у цивільних справах Верховного Суду України від 28.02.2011 р. у справі № 6–1цс11 [Електронний ресурс]. — Режим доступу: http://document.ua/propozachergove-zabezpechennja-pracivnika-prokuraturi-zhitl-doc72149.html. — Назва з екрана.
6. Романюк Ю. М. Роль Верховного Суду України в забезпеченні принципу правової визначеності / Ю. М. Романюк // Слово Національної школи суддів України. — 2013. — № 3 (4). — С. 6–13.

7. Молинье Ф. Проблемы проверки судебных актов Кассационным судом Франции / Ф. Молинье // Проблемы пересмотра судебных актов в гражданском и арбитражном процессах : сб. науч. статей. — М., 2008. — С. 30–32.
8. Онопенко В. В. Механізм захисту прав людини в Україні потребує істотного вдосконалення / В. В. Онопенко // Вісник Верховного Суду України. — 2011. — № 7 (131). — С. 4–7.
9. Минченко Р. Н. Влияние решений Европейского Суда по правам человека на гражданское судопроизводство Украины / Р. Н. Минченко // Правове забезпечення ефективного виконання рішень і застосування практики Верховного Суду з прав людини : матер. 2-ї міжнар. наук.-практ. конф. (Одеса, 20–21.09.2013) / за ред. д. ю. н., проф., академіка С. В. Ківалова; Націон. ун-т «Одеська юридична академія». — Одеса : Фенікс, 2013. — С. 283–292.
10. Романюк Ю., Бейцун І. Правова природа обов'язковості рішень Верховного Суду України та вдосконалення механізму забезпечення єдності судової практики / Ю. Романюк, І. Бейцун // Право України. — 2012. — № 11–12. — С. 122–136.

Р. М. Мінченко
Інститут законодавства Верховної Ради України,
Українська школа законотворчості
Несторівський провулок, 4, Київ 04053, Україна

ПІДСТАВИ ПЕРЕГЛЯДУ РІШЕНЬ З ЦИВІЛЬНИХ СПРАВ ВЕРХОВНИМ СУДОМ УКРАЇНИ

Резюме

Стаття присвячена питанням правового регулювання підстав для перегляду рішень з цивільних справ Верховним Судом України, в зв'язку з чим здійснюється аналіз новел цивільно-процесуального законодавства України, зокрема Закону України «Про забезпечення права на справедливий суд», відповідних положень Цивільного процесуального кодексу України, існуючої з зазначених питань судової практики та теоретичної дискусії науковців та провідних фахівців в галузі юриспруденції.

Ключові слова: рішення суду, підстави перегляду рішень, Верховний Суд України, цивільні справи, судова практика.

Р. Н. Минченко
Институт законодательства Верховной Рады Украины,
Украинская школа законотворчества
Несторовский пер., 4, Киев, 04053, Украина

ОСНОВАНИЯ ДЛЯ ПЕРЕСМОТРА РЕШЕНИЙ ПО ГРАЖДАНСКИМ ДЕЛАМ ВЕРХОВНЫМ СУДОМ УКРАИНЫ

Резюме

Статья посвящена вопросам правового регулирования оснований для пересмотра решений по гражданским делам Верховным Судом Украины, в связи с чем осуществляется анализ положений гражданско-процессуального законодательства Украины, в частности Закона Украины «Об обеспечении права на справедливый суд», соответствующих статей Гражданского процессуального кодекса Украины, существующей по данным вопросам судебной практики и теоретической дискуссии ученых и ведущих специалистов в сфере юриспруденции.

Ключевые слова: решения суда, основания пересмотра решений, Верховный Суд Украины, гражданские дела, судебная практика.