ABSTRACT

The article describes one of the most common problems of family and marital relations – the determination of the common property of the spouses and its division, which occurs in the event of a divorce. It is characterized that the division of joint property of spouses (former spouses) means, as a rule, the termination of their joint property, including joint property, which in some cases may become part of the impossibility of dividing property in kind). The division of joint property entails the allocation of a specific property or part of it to each of the spouses (former spouses), and sometimes the recovery of the difference in the value of the allocated property from one of them in favor of the other, if the division was not carried out in accordance with fate or is not of equal value. The legal norms regulating the procedure for creation and division of joint property of spouses in the marriage and family legislation of Ukraine have been studied. An analysis of some examples from the judicial practice of determining the shares of spouses in their common joint property was carried out. It was determined that the most common problem of modern times, unfortunately, is the division of property of the spouses, which in turn arises in the event of a divorce. Property division problems can be avoided thanks to the timely conclusion of a marriage contract, in which the division of property will be carried out with the conditions prescribed in the marriage contract, that is, this procedure will be carried out on the basis of a voluntary agreement. However, the conclusion of a marriage contract has ceased to be a common practice among married couples, who treat this procedure as an insult to feelings, thus making a gross mistake and complicating the procedure for the division of property in the event of termination of marital relations, since disputes regarding the division of property almost always accompany the dissolution of marriage.

Keywords: *marriage, spouse, family law, divorce, movable and immovable property, division of property.*

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PROBLEMATIC ISSUES AND PROPOSALS FOR IMPROVING THE INSTITUTION OF JUDGMENTS REVISION TO NEWLY DISCOVERED OR EXCEPTIONAL CIRCUMSTANCES

Олег Журавель. ПРОБЛЕМНІ ПИТАННЯ ТА ПРОПОЗИЦІЇ ЩОДО ВДОСКОНАЛЕННЯ ІНСТИТУТУ ПЕРЕГЛЯДУ СУДОВИХ РІШЕНЬ ЗА НОВОВИЯВЛЕНИМИ АБО ВИНЯТКОВИМИ ОБСТАВИНАМИ. Процес удосконалення законодавства складний і тривалий. Формулювання нових правових норм, а також внесення змін і доповнень до чинних нормативно-правових актів, як правило, базується на глибоких теоретичних дослідженнях питань і зроблених на їх основі аргументованих висновках. Результатом такого багатоетапного процесу, до якого поряд із законодавцями залучаються науковці та фахівці відповідних галузей права, є прийняття нормативно-правових актів, які відповідають не тільки вимогам нормотворчої техніки, але, перш за все, потребі демократичної та правової держави. Наведені міркування набувають важливого значення при перенесенні їх на процес удосконалення цивільного процесуального законодавства, яке регулює конкретну сферу суспільних відносин, що потребує максимально продуманого прийняття законодавчих рішень за результатами досліджень вчених-процесуалістів, які беруть участь у нормотворчій діяльності. процес.

Незважаючи на високий рівень розвитку цивільно-процесуальної науки, багато проблемних питань не отримали свого однозначного вирішення. Серед останніх привертає увагу питання теоретичного осмислення стадії провадження у справах за нововиявленими обставинами, зокрема проблема визначення ключового терміну стадії цивільного процесу «Провадження у цивільних справах у зв'язку з нововиявленими обставинами» відповідно до законодавства України – поняття нововиявлених обставин.

Справа в тому, що незважаючи на значну роль цього терміна в характеристиці стадії провадження у цивільних справах за нововиявленими обставинами, у цивільному процесуальному законодавстві його визначення відсутнє. Крім того, у науковій, навчальній та навчальній літературі

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даному питанню не приділяється належної уваги, досі немає єдиної думки щодо змісту поняття «нововиявлені обставини». Для достатнього аналізу та дослідження даної теми необхідно звернути значну увагу на розвиток інституту перегляду судових рішень за нововиявленими обставинами, а саме відповідно до вимог Конвенції про захист прав людини та основоположних свобод та практика Європейського суду з прав людини щодо права на справедливий розгляд цивільних справ.

Ключові слова: *випадково виявлені обставини, надзвичайні обставини, цивільний процес, право на позов, судочинство в цивільному порядку.*

Relevance of the study. In the legislation of foreign countries, the practice of reviewing court decisions based on newly discovered circumstances in civil cases operates at a sufficient level, as a separate type of review of court decisions that have entered into force. The current civil procedural legislation of Ukraine also distinguishes between the review of court decisions based on newly discovered and exceptional circumstances, unlike the previous version of the Code of Criminal Procedure. After analyzing the changes made to the Civil Procedure Code of Ukraine, I concluded that in the field of reviewing court decisions on newly discovered or exceptional circumstances, on the one hand, the institution of reviewing judicial decisions on newly discovered or exceptional circumstances has been improved, and on the other hand, new issues of a theoretical and practical nature have arisen that are subject to thorough research and solution, therefore, reforming the system for reviewing judicial decisions requires detailed study and elaboration by analyzing and comparing legal norms with international standards of law.

Recent publications review. Many scientists had paid attention to the study of the problems of reviewing court decisions based on newly discovered circumstances in civil proceedings, namely: K. Pochynok, S. Senyk, V. Tertyshnikov, L. Nikolenko, D. Menyuk, A. Sultanov and others.

The article's objective is to study the concept, signs and grounds of reviewing court decisions under newly discovered or exceptional circumstances, as well as formulating a proposal for improving the institution of reviewing court decisions under newly discovered or exceptional circumstances.

Discussion. An important guarantee of the protection of human rights and freedoms in the field of civil justice is the right to review court decisions in the appeal, cassation procedure, as well as review court decisions based on newly discovered circumstances. Review of court decisions that have entered into force is an additional way to ensure the justice of a court decision, it is a backup mechanism for the protection of rights and legal interests and must fulfill its purpose when all other means of procedural and legal protection are impossible. Such types of review include the institution of review of court decisions based on newly discovered circumstances.

The current legislation provides that any court decision made by the court at the appropriate stage of civil proceedings may be subject to review under newly discovered circumstances after it has entered into force. This provision of the law is aimed at protecting the rights, freedoms and interests of private individuals, the rights and interests of legal entities in the field of public-law relations, as well as ensuring fair and effective justice. Any court decision due to the effect of the dispositive principles of civil proceedings and constitutional guarantees for judicial protection can be appealed in the appeal, cassation procedure, and in the presence of grounds established by law – in newly discovered circumstances [4, p. 90].

At the same time, the legislation, including the Code of Civil Procedure of Ukraine, does not contain a definition of the concept of "newly discovered circumstances". Therefore, this issue causes discussions in science and has different interpretations in practical activities. By newly discovered circumstances, scientists understand legal facts which have significant importance for the resolution of the case on its merits, but which were not known to either the parties during the consideration of the case in court, or to the court itself when issuing a court decision, as well as circumstances, that are equated by the legislator, to the newly discovered [5].

Newly discovered circumstances are circumstances essential to the case, which objectively existed at the time the case was considered by the court, but were not and could not be known to the applicant, as well as to the court, at the time of the consideration of such a case [2, p. 112]. In essence, this definition of newly discovered circumstances is the formulation of the first basis for reviewing a court decision based on newly discovered circumstances, which is specified by the Civil Code of Ukraine. And scientists agree that the first circumstance, namely the circumstances essential to the case, which were not and could not be known to the person who makes the application at the time of consideration of the case, is formulated quite flexibly, in fact, as a definition of a newly discovered circumstance. For example, this circumstance covers

the failure of the court to take measures to involve a person, whose rights, freedoms, interests or obligations were affected by the court decision, to participate in the administrative case, if the court did not know and could not know about the interest of such a person, and this person did not know on consideration of this case (this can be a basis for review only at the initiative of this person). In the same way, the establishment by the Constitutional Court of Ukraine of the constitutionality of a provision of a legal act erroneously not applied by the court in an administrative case can be brought under this circumstance, if the decision in it has not yet been implemented [6, p. 68].

Grounds for reviewing the court decision based on newly discovered circumstances are:

1) circumstances essential to the case, that were not established by the court and were not and could not be known to the person making the application at the time of the case consideration;

2) established by a sentence or resolution on closing criminal proceedings and releasing a person from criminal responsibility, which have entered into force, the fact of providing a knowingly incorrect expert opinion, knowingly false testimony of a witness, knowingly incorrect translation, falsity of written, physical or electronic evidence that led to the adoption of an illegal decision in this case;

3) annulment of the court decision, which became the basis for the adoption of the court decision subject to revision [12].

Grounds for reviewing court decisions due to exceptional circumstances are:

1) the unconstitutionality (constitutionality) of the law, other legal act or their separate provision, applied (not applied) by the court when deciding the case, if the court decision has not yet been implemented, established by the Constitutional Court of Ukraine;

2) determination by an international judicial institution, the jurisdiction of which is recognized by Ukraine, of Ukraine's violation of international obligations when resolving this case by the court;

3) establishment of the judge's guilt in the commission of a criminal offense by a court verdict, which has entered into force, as a result of which a court decision was passed [13].

Revision of court decisions in connection with newly discovered circumstances is not a supplement to appeal and (or) cassation methods and a type of their verification. This is an independent type of verification of the legality and validity of judicial acts. This difference lies in the nature of the grounds for revision, the objects and subjects of the latter, the competence of the court and the procedural and legal position of the persons participating in the case, the deadlines for submitting an application for revision.

According to O. Butska, the task of the proceedings based on the newly discovered circumstances is:

1) to renew the violated rights, freedoms and interests of a person in the field of public-legal relations, when the possibilities have been exhausted or mechanisms of other types of revisions cannot be applied;

2) to carry out a full thorough and objective review of the newly discovered circumstances through the implementation of the principles of the rule of law, legal certainty, dispositiveness, official clarification of all the circumstances of the case;

3) cancel an illegal and unreasonable court decision in connection with the establishment of newly discovered circumstances, excluding at the same time the possibility of canceling a resolution or a court decision that has entered into force without sufficient grounds [8].

If we consider in more detail the place and significance of the proceedings in connection with the newly discovered circumstances, we should pay attention to its specific tasks, which boil down to the following:

1) to give the court an opportunity to resolve the civil case in full accordance with the truth in the case, taking into account the fact that the circumstances that are of essential importance for the case, for reasons independent of the court, were not known to it and the act of justice has already acquired legal force;

2) at the same time ensure the establishment of these circumstances through a comprehensive in-depth study of them with the participation of interested persons; guarantee the annulment of judicial acts that raise doubts about their legality, reasonableness, compliance with the truth in the case in connection with newly discovered circumstances, at the same time eliminate the annulment of judicial acts that have entered into legal force without sufficient grounds for that.

At the stage of consideration of the application for review of the judicial act, the court

does not establish the illegality or groundlessness of the decision, but only records the presence of newly discovered circumstances, verifies the validity and timeliness of the applicant's appeal to the court for the review of the civil case in connection with the newly discovered circumstances. However, the court is obliged to establish why the judicial act was adopted without taking into account the newly discovered circumstances. A final conclusion on whether the annulled decision was illegal and unreasonable can only be made after a full investigation and consideration of the case.

The essence of the institute under investigation is to establish facts essential to the case, which were not known to the court and the applicant at the time of the adoption of the judicial act under review, for reasons independent of them, and which, as a result, raise doubts about the legality, reasonableness and veracity of this act, with the aim of cancellation of the latter with subsequent adoption of a new decision in its place, taking into account all the circumstances of the case. The essence of consideration of civil cases in connection with the newly discovered circumstances cannot be considered in full, unless the place of this type of review in the system of civil procedure, and the institution that regulates it – in the system of civil procedural law, is shown.

The location of the research institute is determined primarily by the fact that it can review judicial acts issued at any stage of civil proceedings. The correct determination of the place of review of judicial acts in connection with newly discovered circumstances in the system of civil procedure and its mediated institution in the system of civil procedural law has not only theoretical, but also great practical importance, in particular when regulating this proceeding. Only on this basis is it possible to further improve the legislation regulating the consideration of civil cases in connection with newly discovered circumstances.

So, we understand that newly discovered circumstances are legal facts that have a new significance for the consideration of the case, these facts existed from the very beginning, but were not known to the applicant, as well as circumstances that arose after the court decision entered into force and are classified by law as newly discovered circumstances. The main purpose of the proceedings under the newly discovered circumstances is to restore the violated right and cancel the illegal court decision, etc.

Proceedings based on newly discovered circumstances are an exceptional (extraordinary) type of court proceedings for the review of court decisions in connection with the discovery after they have entered into force of such circumstances, which, if they had been known to the court in a timely manner, would obviously have led to the adoption of a completely different decision by the court. Similar proceedings take place in the legal processes of Germany, France (fr. pourvoi ep revision), the USA (eng. writ of coram nobis) and others [1].

The procedural legislation of Ukraine also provides for the possibility of reviewing court decisions after they have entered into legal force. The main type of such review is a proceeding in the court of cassation instance, to which the interested participants in the proceedings have the right to address the relevant cassation complaints. At the same time, the Civil Procedural Code of Ukraine defines the right of interested parties to review a court decision that has entered into legal force in connection with newly discovered or exceptional circumstances, the list of which is defined in the legislation [10].

Revision of court decisions that have entered into legal force is possible in the presence of newly discovered or exceptional circumstances provided for by current legislation. Analysis of these circumstances shows that they are characterized by the following features:

1) were unknown to the court for reasons beyond its control;
2) essential in the case;
3) existed before the court decision in objective reality;
4) they could not be taken into account when considering the case and making a decision due to the unknown nature of the court and interested parties.

As the analysis shows, the implementation of the proceedings under the newly discovered circumstances is provided for not only by the provisions of the Code of Criminal Procedure of Ukraine. Thus, this proceeding is provided for by the Universal Declaration of Human Rights of 1948 (Articles 7, 8, 10), the International Covenant on Civil and Political Rights of 1966 (Article 14), the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention) (Article 6) of 1950, Protocol No. 7 to this Convention (Article 4). As you know, these international acts play an important role in the legal regulation of human rights, establishing their priority.

One of the international treaties that is important as a source of civil procedural law of

Ukraine is the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 (hereinafter referred to as the Convention for the Protection of Human Rights and Fundamental Freedoms), to which Ukraine joined in 1997. The peculiarity of this treaty is that the Convention is subject to application together with the decisions of the European Court of Human Rights, which contain the interpretation of its provisions.

The main attention should be paid to clause 1 of Art. 6 of the Criminal Code, which states that everyone has the right to a fair and public hearing of his case within a reasonable time by an independent and impartial court established by law, which will resolve a dispute regarding his rights and obligations of a civil nature. The analysis of this convention provision and the practice of the ECtHR regarding the interpretation of the relevant article allows us to conclude that the main components of the right to a fair trial are: a) access to a judicial institution unencumbered by legal and economic obstacles; b) proper judicial procedure; c) public trial; d) reasonable term of court proceedings; e) consideration of the case by an independent and impartial court established by law [7].

The Law of Ukraine "On the Implementation of Decisions and Application of the Practice of the European Court of Human Rights" dated February 23, 2006 (hereinafter – the ECHR) indicates the obligation of the state to implement the decisions of the ECHR in cases against Ukraine, with the need to eliminate the causes of Ukraine's violation of the ECHR and Protocols to it, with the introduction of European human rights standards to the Ukrainian judiciary and administrative practice, with the creation of prerequisites for reducing the number of applications to the ECtHR against Ukraine. In Art. 17 of this Law enshrines the duty of courts to apply the Criminal Procedure Code and the practice of the ECtHR as a source of law in considering cases [3].

Based on the above, we consider it necessary to draw attention to the special importance of the provisions enshrined in Art. 4 of Protocol No. 7 to the 1950 Convention. Thus, it is determined that "No one may be brought to court or punished a second time in proceedings under the jurisdiction of one and the same state for an offense for which he has already been finally acquitted or convicted in accordance with the law and procedure of this state" (clause 1); "The provisions of the previous paragraph do not prevent the resumption of the proceedings in accordance with the law and procedure of the relevant state in the presence of new or newly discovered facts or in the event of the discovery of significant deficiencies in the preliminary court proceedings that could affect the results of the proceedings" (clause 2) [11].

Comparative analysis of the content of the Civil Code of Ukraine and Art. 4 of Protocol No. 7 to the Convention of 1950 indicates that the list of circumstances defined by the CPC, under which it is possible to review court decisions that have entered into force, does not correspond to that defined by Art. 4 of Protocol No. 7 to the Convention of 1950. After all, Art. 459 of the Criminal Procedure Code of Ukraine mentions only "newly discovered or exceptional circumstances", while Art. 4 of Protocol No. 7, in addition to "newly discovered facts", also indicates "new facts", as well as "significant deficiencies in the preliminary trial, which could affect the results of the case".

Based on this, as well as the provisions of the Civil Procedure Code of Ukraine, the Law of Ukraine "On the Implementation of Decisions and Application of the Practice of the European Court of Human Rights" dated February 23, 2006, it can be considered indisputable that interested persons in civil proceedings have the right to apply to the court with a statement of opening of proceedings, and courts are obliged to open such proceedings not only in newly discovered or exceptional circumstances, but also in those that are of a new nature or in case of discovery of significant deficiencies in the previous court proceedings that could affect the results of the proceedings.

Unfortunately, as evidenced by the judicial practice in Ukraine, virtually all interested persons apply to the court with applications for review of court decisions only in connection with newly discovered or exceptional circumstances provided for by the Code of Criminal Procedure of Ukraine. This shows that the provisions of clause 2 of Art. 4 of Protocol No. 7 are not actually used by Ukrainian lawyers or other persons who have the right to submit such a statement, whether due to ignorance of this European norm or for other reasons. Such a situation practically nullifies this European norm, significantly narrows the rights of interested persons regarding the possibility of reviewing court decisions that have entered into legal force [9].

Based on the above, as well as with the aim of eliminating this legal gap in Ukrainian procedural legislation, we consider it necessary to introduce in it the possibility of reviewing court decisions that have entered into legal force, not only in newly discovered or exceptional

circumstances, but also in those that provided by Art. 4 of Protocol No. 7 to the Convention of 1950. Of course, this will not be possible unless appropriate changes and additions are made to the Civil Code of Ukraine.

Conclusions. Review of court decisions, resolutions and resolutions that have entered into legal force in connection with newly discovered circumstances is one of the independent types of their verification, verification of legality and reasonableness in civil cases.

Revision of court decisions in connection with newly discovered circumstances is not an addition to appellate and (or) cassation methods and types of their review. This is an independent type of verification of the legality and validity of judicial acts. This difference lies in the nature of the grounds for consideration, the objects and subjects of the latter, the competence of the court and the procedural legal status of the persons participating in the case, the deadlines for submitting an application for consideration.

Newly discovered circumstances are understood as legal facts of significant importance for the case, which existed at the time of the decision, but were not and could not be known to either the applicant or the court, which fulfilled all the requirements of the law regarding the collection of evidence and the establishment of the objective truth.

To resolve the issue of annulment of a decision or resolution in connection with newly discovered circumstances, it is not necessary to check the correctness of the court's application of substantive law, the implementation of certain procedural actions, the correctness of the evaluation of evidence, but it is important to establish the presence or absence of newly discovered circumstances.

When reviewing decisions in connection with the incorrect application of the norms of substantive law or a significant violation of the norms of civil procedural law, the verification activity in the court prevails. During the review in connection with the newly discovered circumstances, the materials on the circumstances already present in the case and submitted additionally are checked and evaluated.

The necessity of this institution in civil proceedings is explained by the fact that sometimes, due to the fault of one of the parties or for other reasons beyond its control, the court fails to discover the necessary facts related to the given case. Thus, the main task of reviewing court decisions based on newly discovered circumstances is to assess their justice in order to effectively restore the violated rights of individuals. The constitutional right to judicial protection is not subject to any restrictions, and the competence of the court extends to all cases of protection of rights, freedoms and interests protected by law, without exception.

During the development of the mentioned topic, the author discovered a gap where it becomes clear that the provisions of clause 2 of Art. 4 of Protocol No. 7 to the Convention on the Protection of Human Rights and Fundamental Freedoms is not taken into account and is not used by Ukrainian lawyers or other persons who have the right to submit an application for consideration of the case under newly discovered circumstances. Such a situation practically nullifies this European norm and significantly narrows the rights of interested persons regarding the possibility of reviewing court decisions that have entered into legal force.

Therefore, in order to eliminate such a shortcoming, the author proposes to make appropriate changes and additions to the Civil Code of Ukraine and to introduce the possibility of reviewing court decisions that have entered into legal force, not only under newly discovered or exceptional circumstances, but also under those provided for in Art. 4 of Protocol No. 7 to the Convention on the Protection of Human Rights and Fundamental Freedoms of 1950.

Conflict of Interest and other Ethics Statements
The author declares no conflict of interest.

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ABSTRACT

The article pays attention to the issue of theoretical understanding of the stage of proceedings in cases on newly discovered circumstances, in particular the problem of definition and the key term of the stage of civil process "Proceeding in civil cases in connection with newly discovered circumstances" in accordance with the legislation of Ukraine – the concept of newly discovered circumstances.

The fact is that despite the significant role of this term in characterizing the stages of civil proceedings on newly discovered circumstances, its definition is absent in civil procedural legislation. In

addition, in the scientific, educational and methodological literature this issue is not given the necessary attention, there is still no consensus on the content of the concept of “newly revealed circumstances”. For sufficient analysis and study of this topic, we paid considerable attention to the study of the institute for the review of judicial decisions on newly discovered circumstances, in accordance with the requirements of the Convention for the Protection of Human Rights and Fundamental Freedoms and the practice of the European Court of Human Rights regarding the right to a fair hearing in civil cases.

Keywords: *newly discovered circumstances, exceptional circumstances, civil process, right to a fair trial, civil proceeding.*

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PROBLEMS OF LEGAL REGULATION OF ECONOMIC ACTIVITIES IN UKRAINE

Наталія Протопопова, Бісваджит Дас. ПРОБЛЕМИ ПРАВОВОГО РЕГУЛЮВАННЯ ГОСПОДАРСЬКОЇ ДІЯЛЬНОСТІ В УКРАЇНІ. У контексті динамічного розвитку господарських відносин виникає ряд питань, які взагалі не можна розглядати і вирішувати у рамках протистояння окремих правових шкіл – господарників з одного боку, цивілістів та адміністративістів – з іншого.

Час усвідомити, що жодна галузь законодавства (права) не може бути монополістом у регулюванні суспільних відносин у певній сфері. Прикладом тому є земельне, водне, екологічне, сімейне та інші галузі законодавства, що регулюють особисті немайнові та майнові відносини, які мають певні особливості, що зумовлюють їх самостійний характер і відмінність від цивільних відносин. Кінцеве завдання полягає не в тому, щоб скасувати врешті Господарський кодекс України чи домогтися поступового вихолощення сутності господарського права. Сьогодні на законодавчому рівні за участю вчених та за допомогою національної правової доктрини необхідно забезпечити насамперед високу якість регулювання відносин, які становлять основу розвитку країни, в тому числі й у царині економіки, бізнес-середовища. В іншому разі наука стикається з проблемою заперечення природного стану розвитку речей, упорядкованого ще з часів появи права як такого. Складно заперечувати відому істину, – право є регулятором суспільних відносин, відтак, воно у своїй природі обумовлене потребами людини, суспільства, видозмінюється відповідно до потреб людства. Це вказує на об’єктивну обумовленість належного правового регулювання у тій чи іншій сфері, у тому числі й у сфері господарювання, робить його залежним від середовища.

Ключові слова: *правове регулювання, господарська діяльність, актуальні проблеми правового регулювання, перспективи реформування господарської діяльності, класифікація актуальних проблем, правове забезпечення державного регулювання.*

Relevance of the study. Economic activity is essentially a very special type of employment that covers all spheres of social life and acts as a driving force for the creative activity of citizens and, of course, is subject to significant influence and control from the state, from taxation to pricing. So, legal regulation creates the environment in which entrepreneurs operate, ensuring the protection of property rights, the fulfillment of contractual obligations, which are essential for the activities of entrepreneurs.

However, now, under the influence of global economic transformations, war in Ukraine

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