AJEE
ACCESS TO JUSTICE IN EASTERN EUROPE
Peer-reviewed Journal

Access to Justice in Eastern Europe
ISSN 2663-0575 (Print)
ISSN 2663-0583 (Online)
Journal homepage http://ajee-journal.com

Case Note

WHO IS THE OWNER? NEWLY DISCOVERED CIRCUMSTANCES AND THE PRINCIPLE OF LEGAL CERTAINTY IN A SINGLE CASE STUDY

Urazova Ganna*[1]
ganna_urazova@nlu.edu.ua
https://orcid.org/0000-0003-3588-518X

Yanyshen Victor *[2]
v.p.yanyshen@nlu.edu.ua
https://orcid.org/0000-0002-1495-613X

Baranova Liudmyla*[3]
l.m.baranova@nlu.edu.ua
https://orcid.org/0000-0001-9206-5503

1 Cand. of Science of Law (Equiv. Ph.D.), Assist. Prof. at Civil Law Department, Yaroslav Mudryi National Law University, Kharkiv, Ukraine. ganna_urazova@nlu.edu.ua https://orcid.org/0000-0003-3588-518X
Corresponding author, responsible for submission, text writing and study preparing, responsible for ensuring that the descriptions and the manuscript are accurate and agreed by all authors.
Competing interests: Any competing interests were announced.
Disclaimer: The author declares that her opinion and views expressed in this manuscript are free of any impact of any organizations.

2 Cand. of Science of Law (Equiv. Ph.D.), Associate Professor at Civil Law Department, Yaroslav Mudryi National Law University, Kharkiv, Ukraine. v.p.yanyshen@nlu.edu.ua https://orcid.org/0000-0002-1495-613X
Co-author, responsible for data collection and writing.
Competing interests: Any competing interests were announced.
Disclaimer: The author declares that his opinion and views expressed in this manuscript are free of any impact of any organizations.

3 Cand. of Science of Law (Equiv. Ph.D.), Associate Professor at the Department of Law, Lutsk National Technical University, Lutsk, Ukraine. Filiuk.alexandra@ltnu.ua https://orcid.org/0000-0003-1717-3146
Co-author, responsible for data collection and writing.
Competing interests: Any competing interests were announced.
Disclaimer: The author declares that her opinion and views expressed in this manuscript are free of any impact of any organizations.

The content of this article was translated with the participation of third parties under the authors' responsibility.
Managing editor – Dr. Serhii Kravtsov. **English Editor** – Dr. Sarah White.

How to cite: Urazova G, Yanyshen V, Baranova L 'Who is the Owner? Newly Discovered Circumstances and the Principle of Legal Certainty in a Single Case Study' (2022) 1(13) Access to Justice in Eastern Europe 193-202. DOI: https://doi.org/10.33327/AJEE-18-5.1-n000105
Published: 01 Feb 2022 (https://doi.org/10.33327/AJEE-18-5.1-n000105)

AJEE
ACCESS TO JUSTICE IN EASTERN EUROPE
Peer-reviewed Journal

Access to Justice in Eastern Europe
ISSN 2663-0575 (Print) ISSN 2663-0583 (Online)
Journal homepage http://ajee-journal.com

Submitted on 09 Dec 2021 / Revised 21 Dec 2021 / Approved 21 Jan 2021
Published: 01 Feb 2022

ABSTRACT

Background: *The protection of property rights is one of the cornerstones of legal order. If we were uncertain whether ownership would be protected from claims or whether contract obligations would be executed properly, we could not regulate relations effectively. Courts play a crucial role in this mechanism of protecting the owner's rights, giving parties possibilities for defence.*

This note is related to one of the last judgments of the European Court of Human Rights (ECtHR), the focus of which is on newly discovered circumstances and the principle of legal certainty. The facts of this case arose from a property sale contract with a condition, the validity of which led to the consideration of multiple cases by different Ukrainian courts.

Methods: *In light of the above, an analysis of this ECtHR judgment, as well as the final and interim decisions of Ukrainian courts, with regard to Ukrainian legislation and case law was prepared. The main challenge was the absence of the oldest decisions of national courts in the state register of court decisions, which contains only decisions from 2011. Even so, the facts of this case were described in detail in the latest courts decisions.*

Results and Conclusions: *The following analysis provides an argument against reopening procedure without proper grounds, which lead to the violation of the right to a fair trial in civil procedure in Ukraine.*

Keywords: *newly discovered circumstances; civil proceedings; principle of legal certainty; right to a fair trial; Ukrainian law.*

1 INTRODUCTION

The protection of property rights is one of the cornerstones of legal order. The certainty of every owner that their ownership is protected from any claims and that their contractual obligations will be executed properly is necessary if we are to regulate relations effectively. Courts play a crucial role in this mechanism of protecting owners' rights, giving the parties possibilities for defence.

This note is related to one of the last judgments of the European Court of Human Rights (ECtHR) in the case of *Mitsopoulos v. Ukraine* (App. no. 62006/09),[4] the focus of which was on newly discovered circumstances and the principle of legal certainty. The facts of this case concerned a property sale contract with a condition, the validity of which led to more than eight cases considered by different Ukrainian courts.

Logically, after the ECtHR judgment issued on 9 December 2021, this case may come back to Ukrainian courts. This note will discuss who the owner might be and when the title of ownership might become fully binding. The study will conclude with reflections about the principle of legal certainty and its impact on the protection of property rights in light of the right to a fair trial.

4 *Mitsopoulos v Ukraine* App no 62006/09 <https://hudoc.echr.coe.int/eng?i=001-214389> accessed 20 December 2021.

2 CASE FACTS

These case facts are contained not only in the ECtHR judgment but in several national court decisions. Ukraine retains a single state register of court decisions,[5] which contains only decisions from 2011 onward. Therefore, for discovering more facts of this case we have found the latest courts decisions, in which the details were found and described.

It was noted in the ECtHR judgment that 'on 23 September 2002 the applicant bought a house from a private individual' (p. 5). We would like to add an important point – this contract was concluded with a condition,[6] and the condition was of particular significance – this was a title of ownership of the land under the house.[7]

According to Ukrainian law, the right of ownership of a building does not always include the land plot under the building. When this case was under consideration, the law was very strict.

After several amendments, the provisions of Art. 377 of the Civil Code of Ukraine[8] made transferring the right to the land plot in cases of the right of the owner to the building placed on that plot an essential condition of the sale contract for a property.

The condition in this case was that the owner would receive official permission and the title to this land plot under the building. As far as the vendor was not able to get this permission, the buyer claims on the contract and terminate it.[9]

As was stated in the ECtHR judgment, civil proceedings were instituted by individuals challenging the validity of the sale contract (pp. 6-8). We would like to add some circumstances that played an important role in this case.

The court of first instance terminated the disputed contract in May 2003, and this decision was appealed to the appeal court of Kyiv. The decision of the appeal court in October 2003 upheld this decision, which came into force or became binding and enforceable. 'Coming into force', according to Ukrainian legislation, refers to the validity of the decision to be enforced and be binding.[10] In this case, it gave the first owner the possibility to sell the disputed ownership for a second time. Therefore, another party appeared – the second owner's title claimant.

Interestingly, the second round of challenging the sale contract challenging in 2007 was on the side of the side the first buyer – he won the original proceedings before the court of

5 Law of Ukraine On access to the judicial decisions <https://reyestr.court.gov.ua https://zakon.rada.gov.ua/laws/show/3262-15#Text> accessed 20 December 2021.

6 Resolution of the panel of judges of the Judicial Chamber of the Supreme Court of Ukraine on 27 April 2016 <https://reyestr.court.gov.ua/Review/57463339> accessed 20 December 2021.

7 It worth noting that the land relations in Ukraine regulates this in a specific manner. See OV Dzera, 'Institute of property law in new civil legislation and European standards of property rights protection' (2005) 1-2(13-14) University's Notes 69-75 <http://old.univer.km.ua/visnyk/730.pdf> accessed 20 December 2021.
Only in October 2021 was the Law of Ukraine on changes of some legislative acts of Ukraine concerning the uniform legal share of the land plot and the building placed on it adopted <https://zakon.rada.gov.ua/laws/show/1174-20#Text> accessed 20 December 2021.

8 Civil Code of Ukraine <https://zakon.rada.gov.ua/laws/show/435-15#Text> accessed 20 December 2021.

9 Decision of the Panel of Judges of the Civil Chamber of the Supreme Specialized Court of Ukraine for Civil and Criminal Cases on 27 April 2016 <https://reyestr.court.gov.ua/Review/57463339> accessed 20 December 2021.

10 See K Gusarov, V Terekhov 'Finality of Judgments in Civil Cases and Related Considerations: The Experience of Ukraine and Lithuania' (2019) 4(5) Access to Justice in Eastern Europe 6-29 <http://ajee-journal.com/upload/attaches/att_1577085580.pdf> accessed 20 December 2021.

Access to Justice in Eastern Europe
ISSN 2663-0575 (Print) ISSN 2663-0583 (Online)
Journal homepage http://ajee-journal.com

first instance, the validity of the contract for the first sale was recognised, and the second sale contract was terminated. In the meantime, during these few years, the building was renovated and amended, but there was no claim from the second owner about this during the original proceedings before the court.

As was stated in the ECtHR judgment, on 7 November 2007, the Supreme Court upheld the judgment and, accordingly, it became binding and enforceable on that date (p. 9). The following disputes happened in 2009 and were related to challenging the legal certainty and right of a party to appeal the decision on the basis of newly discovered circumstances.

2.1 THE UKRAINIAN COURT'S POSITION

In our opinion, as was clearly stated in part two of this note, the most important thing in this case was the condition of the sale contract. According to the provisions of law in force at the time of this case, the contract may be recognized as valid in case of parties make this validity depends on some circumstances. If this circumstance was more beneficial for one party, it would make no sense for that party to challenge the contract on those grounds. In addition, we should note that the last payment for this contract was made on the deposit of notary, due to the avoiding of receiving this payment buy the vendor.

According to the law in force at the time of this case, the vendor was able to receive such permission, but she did not do this and later used this as a ground for making a claim in court. The Ukrainian courts rightly voided this particular provision of the sale contract without any substantial consequences for the buyer.

Even though the first vendor sold this building for a second time, a year after the first sale contract was signed.

The Ukrainian court's general position was that ownership of the disputed house arose from the moment of the notarisation of the sale contract concluded between the vendor and the buyer on 23 September 2002. Therefore, the last person should be recognized as the owner even though his right was not recognised and was challenged by the defendants in the case.

Regardless, the courts allowed the procedure to be reopened based on the disputed house renovation, which was later considered groundless.

2.2 THE ECTHR'S POSITION

According to the ECtHR's judgment in April 2009, an application for review of the judgment 'in light of newly discovered circumstances' was submitted (pp. 10-13). The ground for that was that the house had been renovated to such an extent that it could no longer be regarded as the object of the disputed contract of sale. According to the position of the applicant who challenged that application, during the proceedings, the disputed house had been in the possession and under the control of the claimant, who, consequently, had been aware of the renovation. The issue of time limits also arose since an application for review of the judgment of 22 January 2007 had been lodged outside the legal period (p. 11).

According to the court decision issued in May 2009, the court 'having examined the material of the case and having heard the parties, it considered that the application could be allowed', with no further explanation in that regard, and it reopened the procedure. Reopening proceedings caused several reconsiderations on the merits. Finally, the first buyer's rights to the building were upheld by the highest instance court seven years later.

3 NEWLY DISCOVERED CIRCUMSTANCES IN UKRAINIAN LEGISLATION AND DOCTRINE

The CPC of Ukraine provides a right to *review a court decision in case of newly discovered or exceptional circumstances* (Arts. 423-429). This is a proceeding according to which a decision of the court, which was final after the case consideration and has become binding and enforceable, may be revised according to *newly discovered or exceptional circumstances* specified in the law (Art. 423 of the CPC Code of Ukraine).

The finality of the decision, which may be challenged in this procedure, is essential in the Ukrainian legal doctrine.[11]

This proceeding of newly *discovered or exceptional circumstances* is also called 'out of instance', since the appealed court decision is reviewed by the court that ruled it, in contrast to the general rule for reviewing a court decision by a court of highest instance.

The procedure of newly discovered circumstances was introduced in civil proceedings in the middle of the last century to solve problems with decisions that were adopted on the basis of incomplete circumstances of the case, which were essential for its consideration. After the expiration of a certain time, these circumstances became known to the participants of the case, who applied respectively for revision of the decision. A classic example of such a newly discovered circumstance is a will that came to light after a case had been settled in a court and a decision had come into force. We should mention that the time run up from the middle of the last century make very rarely meet the obstacles in a case consideration, or circumstances which were not and could not be known at the time of case consideration. In the case of our classic example, wills are included in the register of the wills and inheritance cases.[12] Therefore, the situation of an undiscovered will is now difficult to imagine.

The essential difference between the procedure for newly discovered circumstances and general appeals of a court decision is the different basis for initiating it. The main focus of this procedure should be not the violation of the procedural or substantiative rules but circumstances that were not known and could not be known by the participants in the case and the court.[13]

During the period of Ukraine's independence, such grounds as the establishment by an international judicial body, whose jurisdiction is recognised by Ukraine, of a violation by Ukraine of international obligations in resolving a case by a court have also been added to the category of newly discovered and exceptional circumstances. This made it possible to change the decision that became the subject of criticism of the ECtHR.[14]

The newly discovered circumstances in the CPC include the following:

11 Kurs of Civil Procedure, ed by V Komarov (Pravo 2011); IO Izarova, Ryu Khanyk-Pospolitak, Civil procedure of Ukraine (VD 'Dakor' 2019).

12 Regulation on the Unified Register of Wills and Inheritance <https://nais.gov.ua/m/str_31> accessed 20 December 2021.

13 This is the most general view on the procedure in Ukrainian sources. See I Izarova, 'Problems of realization of the principle of collegial consideration of civil cases in proceedings in connection with newly discovered circumstances' in *Almanac of Law. Fundamental principles of law as its value dimensions. Scientific and practical legal journal.* Vip. 3 (V.M. Koretsky Inst. of State and Law NAS of Ukraine 2012) 332-336.

14 See IO Izarova, 'Grounds for review of court decisions due to newly discovered circumstances' (2012) 3 Scientific Bulletin of NULS 36-39; IO Izarova, 'Idea and novelty of newly discovered circumstances in civil proceedings' (2011) 3(22) Bulletin of the Bar Association of Ukraine 57-61.

Access to Justice in Eastern Europe
ISSN 2663-0575 (Print) ISSN 2663-0583 (Online)
Journal homepage http://ajee-journal.com

1) circumstances that are essential to the case (significant circumstances) that were not established by the court and were not and could not be known to the person submitting the application at the time of the consideration of the case (which were not and could not have been known, at the time when the case was being considered, to the person applying for such reconsideration);

2) circumstances established by a judgment or ruling on the closure of criminal proceedings and the release of a person from the legal liability of giving a knowingly incorrect expert opinion, knowingly false testimony of a witness, knowingly wrong translation, falsification of written, material, or electronic evidence that led to the adoption of an illegal decision in this case (the intentionally false testimony of a witness, intentionally incorrect expert conclusions, intentionally incorrect translations, or forged documentary or material evidence leading to the adoption of an unlawful or unsubstantiated judgment, as established by a final judgment in a criminal case);

3) the cancellation of the court decision, which became the basis for the adoption of a judicial decision that is subject to review[15] (the quashing of a judicial decision on which the judgment or ruling in issue was based);

4) a decision of the Constitutional Court declaring unconstitutional a law or another normative act or a part thereof, which had been applied by the court when deciding on the case, if its judgment had not already been enforced.

Reassessment of the evidence assessed by the court during the trial, as well as evidence not assessed by the court regarding the circumstances established by the court, *is no reason to review a court decision for newly discovered circumstances.*[16]

Our case study is particularly interesting because, in her appeal, the applicant claimed the fact that the house renovation happened under her representative supervision (see p. 10 of the ECtHR judgment). As far as was noted in para. 1 of Part 2 of Art. 423, the grounds for reopening and reconsidering a case should be circumstances that 1) are essential to the case, 2) were not established by the court, and 3) were not and could not be known to the applicant at the time of the consideration of the case.

As we can see from the above, the disputed house was in the possession of the vendor, who sold the disputed house for the second time in 2003. The second buyer limited or hindered the first buyer's right to possess this house. The fact of the supervision of the renovation was stated by the court and the appellant in this case. It is difficult to imagine that the proofs of these circumstances were not examined by the court when the case was considered. For

15 Civil Procedure Code of Ukraine No 2147-VIII wording of 3 October 2017 <http://zakon3.rada.gov.ua/laws/show/1618-15/print> accessed 20 December 2021.

16 Despite the widely known grounds for reopening the procedure with newly discovered evidence, in Ukraine, the doctrine and the law maintain the notion of 'newly discovered circumstances'. See RD Markovits, 'Federal Civil Procedure – Newly Discovered Evidence – Diligence Required in Order to Obtain New Trial' (1968) 44(2) North Dakota Law Review Article 7; Penny J White, 'Newly Available, Not Newly Discovered' (2000) 2 J. App. Prac. & Process 7 <https://lawrepository.ualr.edu/appellatepracticeprocess/vol2/iss1/3> accessed 20 December 2021; Mary Ellen Brennan, 'Interpreting the Phrase "Newly Discovered Evidence": May Previously Unavailable Exculpatory Testimony Serve as the Basis for a Motion for a New Trial Under Rule 33?' (2008) 77 Fordham L. Rev. 1095 <https://ir.lawnet.fordham.edu/flr/vol77/iss3/4> accessed 20 December 2021. Ukrainian tradition goes back to the Soviet past, where the institution of newly discovered circumstances were introduced first. See V Komarov (n 11); IO Izarova, Ryu Khanyk-Pospolitak (n 11); VV Komarov, DD Luspenik (eds), *Legal positions of the Supreme Court in civil, commercial and administrative cases* (2019).

instance, in another case, the Supreme Court noted that the Court of Appeal did not take into account that the newly discovered circumstances, as a legal fact relevant to the case and referred to in her application was not and could not have been known to the applicant at the time of the appealed judgment – the fact of invalidity of the insurance certificate 'Green Card', which existed at the time of the case and the court's decision and which the applicant requested to review, and not the documents themselves, which established the circumstances of invalidity of such an insurance certificate.[17]

In addition, we should be aware that in this case, the circumstances that were claimed as essential to this case were related to the transformation of the object– the house renovation, which may not be directly related to the contract obligations and condition assessment performed a few years earlier.

The newly discovered circumstances drew the attention of the highest courts of Ukraine at this time and prompted a generalisation and the Resolution of the High Specialized Court of Ukraine on Civil and Criminal Cases.[18] This document is very important for the definitions of 'newly discovered circumstances' and 'new circumstances' in a case. According to this Resolution, newly discovered circumstances are legal facts that are essential for the consideration of the case and existed at the time of the hearing but were not and could not be known to the applicant, as well as circumstances that arose after the court decision came into force and are classified by law as newly discovered circumstances.

We would like to highlight two very essential issues in the above-mentioned Resolution. The first thing is that newly discovered circumstances must be confirmed by factual data (evidence), which disprove the facts underlying the court decision in the prescribed manner. In our case, this renovation was considered an essential change of the disputed house to such an extent that it could no longer be considered an object of this case.

The second and very important thing is that the court has the right to overturn a court decision on the grounds of newly discovered circumstances only if these circumstances might affect the legal assessment of the circumstances made by the court in the court decision under review. This means that the renovation of the disputed house might affect the legal assessment of the decision on the validity of the sale contract, in other words.

As the ECtHR noted, the very essence of the procedure on newly discovered circumstances 'does not appear to be in itself incompatible with the requirements of a fair hearing' (p. 21). The ECtHR has found valid grounds for the requested review of this decision, with the further explanation that this should be added to the court decision to reopen the case.

We can only state that according to the register of court decisions in Ukraine, the tradition of reopening a case on vague grounds is widespread. The main problem we have found, as is evident in this case, is the mechanism of the court decision in issuing the application for reopening a case. According to Art. 427 of the CPC of Ukraine, initiation of proceedings on newly discovered or exceptional circumstances includes two stages. In the first stage, an application for such a review of a court decision on newly discovered circumstances must be submitted to a court, when the automatically a judge or a panel of judges determined in accordance with the law. In the second stage, a judge or a judge-rapporteur shall verify its compliance with the requirements of Art. 426 of the CPC within five days of the receipt of

17 The Supreme Court of Cassation clarified the grounds and conditions for reviewing the court decision based on newly discovered circumstances <https://supreme.court.gov.ua/supreme/pres-centr/news/1022658/> accessed 20 December 2021.

18 Resolution of the High Specialized Court of Ukraine on Civil and Criminal Cases on 30 March 2012 on the application of the civil procedure legislation within the review of the court decision on the ground of newly discovered circumstances <https://zakon.rada.gov.ua/laws/show/v0004740-12#Text> accessed 20 December 2021.

Access to Justice in Eastern Europe
ISSN 2663-0575 (Print) ISSN 2663-0583 (Online)
Journal homepage http://ajee-journal.com

the application by a court and decide on the opening of proceedings on newly discovered or exceptional circumstances.

Therefore, according to the above-mentioned provision, a judge should decide whether valid grounds for reopening a particular case exist, without any response from the opposite parties, without equal representation, and without other arguments against the claim.

In the above-mentioned resolution, an important note was made:

> The question of what circumstances may be considered material is evaluative and is decided by the court in each case, taking into account whether these circumstances could refute the facts underlying the judgment and influence the conclusions of the court during its adoption in such a way that if this circumstance was known to the persons involved in the case, the content of the court decision would be different (para. 2 part 7).

This means that a judge should be aware of both parties' positions not when the questions of the case initiating was already answered.

This is the real basis for the violation of the principle of legal certainty embodied in Art. 6 § 1 of the Convention and cannot lead to the discovery of 'circumstances of a substantial and compelling character'.

Further consideration of an application in a court session within thirty days from the date of opening proceedings for newly discovered circumstances by the court according to the rules of this court, and in the court of first instance, within a simplified proceeding with notification of the participants of the case. Therefore, the opposite parties may be heard by the court when the procedure has already been opened and challenged.

The ECtHR considers this an extraordinary procedure for appealing a final and enforceable decision – therefore, more attention should be paid to the validation of grounds for its reopening.

Keeping in mind that *in its decision, according to the results of review,* the court may refuse to accept the application for review of a court judgment in newly discovered circumstances and leave a corresponding judicial decision in force; *or* satisfy the application for review of a court decision in newly discovered circumstances, cancel the relevant court decision, and make a new decision or change the decision; *or* cancel the court decision and close the proceedings in the case or leave the claim without consideration; upon review of the court decision in newly discovered circumstances, the Supreme Court may also cancel the court decision (court decisions) in full or in part and refer the case for a fresh consideration to the court of first or appellate instance; issue or send a judicial decision to the participants of the case in accordance with the established procedure, provided by the CPC; approve the coming of a new court decision into force or the loss of the legal force of all other court decisions of other courts in this case.[19]

Though continuing the idea of the wrong first stage of the initiating of the newly discovered procedure we argues, that even the power to refuse of accepting the application for review of a court judgment in newly discovered circumstances and leave a corresponding judicial decision in force, challenging the legal certainty of the decision binding and enforceable is difficult due to the fact of opening the very procedure – to some extend the court recognised the valid grounds for open the procedure, therefore, more grounds for refusing the application should be discovered.

19 Civil Procedure Code of Ukraine No 2147-VIII wording of 3 October 2017 <http://zakon3.rada.gov.ua/laws/show/1618-15/print> accessed 20 December 2021.

In this case, after the case was reopened, it was sent to another court in Kyiv due to jurisdiction.

The vendor changed the grounds and subject of the claim. It is worth noting that this is now impossible according to the existing CPC because changing the grounds and the merit of the claim leads to another case. A few rounds of considering this case occurred from 2009-2016 until the High Specialized Court for civil and commercial matters put an end to it.

In addition, attention should be drawn to the timing of this application. The law restricts the timing of the application for such a review – it must be within thirty days from the day when the person learned or could learn about the circumstances that became the basis for the review of the court decision, but no later than three years from the date of entry into force of such a court decision (and no later than 10 years without the right to renew the term) (Art. 424 of the CPC).

4 CONCLUDING REMARKS

In its conclusion, the Court logically found that in this case, reopening the case on the grounds of newly discovered circumstances was a violation of Art. 6 § 1 of the Convention and Art. 1 of Protocol No. 1.

However, in this case, the ECtHR noted that the very essence of the procedure on newly discovered circumstances 'does not appear to be in itself incompatible with the requirements of a fair hearing' (p. 21). Therefore, the reopening of a case may be fair and benefit the general goals of justice.

In the meantime, this procedure of reopening the case on the grounds of the newly discovered circumstances plays an essential role in case of a serious judicial mistake or a miscarriage of justice. In Ukrainian legislation, there is the condition of essentiality of a circumstance for the case. In case law, the tradition of reopening a case without valid grounds according to the view of ECtHR is widely shared, unfortunately.

In other words, we should reconsider the procedure for validating the application for reopening a case in Ukrainian law in light of ECtHR practice and the right to a fair trial. The valid grounds of newly discovered circumstances should be given a further explanation and added to the court decision on reopening the case.

REFERENCES

1. *Mitsopoulos v Ukraine* App no 62006/09 <https://hudoc.echr.coe.int/eng?i=001-214389> accessed 20 December 2021.
2. Law of Ukraine On access to the judicial decisions <https://reyestr.court.gov.ua https://zakon.rada.gov.ua/laws/show/3262-15#Text> accessed 20 December 2021.
3. Resolution of the panel of judges of the Judicial Chamber of the Supreme Court of Ukraine on 27 April 2016 <https://reyestr.court.gov.ua/Review/57463339> accessed 20 December 2021.
4. Dzera OV, 'Institute of property law in new civil legislation and European standards of property rights protection' (2005) 1-2(13-14) University's Notes 69-75 <http://old.univer.km.ua/visnyk/730.pdf> accessed 20 December 2021.
5. Civil Code of Ukraine <https://zakon.rada.gov.ua/laws/show/435-15#Text> accessed 20 December 2021.

6. Decision of the Panel of Judges of the Civil Chamber of the Supreme Specialized Court of Ukraine for Civil and Criminal Cases on 27 April 2016 <https://reyestr.court.gov.ua/Review/57463339> accessed 20 December 2021.
7. Gusarov K, Terekhov V, 'Finality of Judgments in Civil Cases and Related Considerations: The Experience of Ukraine and Lithuania' (2019) 4(5) Access to Justice in Eastern Europe 6-29 <http://ajee-journal.com/upload/attaches/att_1577085580.pdf> accessed 20 December 2021.
8. Komarov V, *Kurs of Civil Procedure* (Pravo 2011).
9. Izarova IO, Khanyk-Pospolitak RYu, *Civil procedure of Ukraine* (VD 'Dakor' 2019).
10. Regulation on the Unified Register of Wills and Inheritance <https://nais.gov.ua/m/str_31> accessed 20 December 2021.
11. Izarova I, 'Problems of realization of the principle of collegial consideration of civil cases in proceedings in connection with newly discovered circumstances' in *Almanac of Law. Fundamental principles of law as its value dimensions. Scientific and practical legal journal.* Vip. 3 (V.M. Koretsky Inst. of State and Law NAS of Ukraine 2012) 332-336.
12. Izarova IO, 'Idea and novelty of newly discovered circumstances in civil proceedings' (2011) 3(22) Bulletin of the Bar Association of Ukraine 57-61.
13. Civil Procedure Code of Ukraine No 2147-VIII wording of 3 October 2017 <http://zakon3.rada.gov.ua/laws/show/1618-15/print> accessed 20 December 2021.
14. Markovits RD, 'Federal Civil Procedure – Newly Discovered Evidence – Diligence Required in Order to Obtain New Trial' (1968) 44(2) North Dakota Law Review Article 7.
15. White PJ, 'Newly Available, Not Newly Discovered' (2000) 2 J. App. Prac. & Process 7 <https://lawrepository.ualr.edu/appellatepracticeprocess/vol2/iss1/3> accessed 20 December 2021.
16. Brennan ME, 'Interpreting the Phrase "Newly Discovered Evidence": May Previously Unavailable Exculpatory Testimony Serve as the Basis for a Motion for a New Trial Under Rule 33?' (2008) 77 Fordham L. Rev. 1095 <https://ir.lawnet.fordham.edu/flr/vol77/iss3/4> accessed 20 December 2021.
17. Komarov VV, Luspenik DD (eds), *Legal positions of the Supreme Court in civil, commercial and administrative cases* (2019).
18. Resolution of the High Specialized Court of Ukraine on Civil and Criminal Cases on 30 March 2012 on the application of the civil procedure legislation within the review of the court decision on the ground of newly discovered circumstances <https://zakon.rada.gov.ua/laws/show/v0004740-12#Text> accessed 20 December 2021.