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Mistakes in Establishment of the Actual Circumstances of a Case as Grounds of an Appeal in The Criminal Procedure of Ukraine

1. Introduction

The changes and transformations taking place in the state and public life of Ukraine require the reform of its criminal procedure legislation. In this direction, an active scientific search is underway, aimed at creating an optimal and effective mechanism for identifying, correcting and preventing the shortcomings of judicial activity. Such a mechanism provides for a complex and multifaceted activity of the courts of appeal, which contains clear grounds for alteration or cancellation court decisions. One of such grounds is the incompleteness of the trial (art. 410 of the Criminal Procedure Code of Ukraine) and the inconsistency of the court's conclusions with the actual circumstances of the criminal proceedings (art. 411 of the Criminal Procedure Code of Ukraine)³.

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³ Criminal Procedure Code of Ukraine: Law of Ukraine of April 13, 2012 № 4651-VI. Retrieved from: <https://zakon.rada.gov.ua/laws/show/4651-17#Text>

In the procedural literature, the issue of incompleteness of the trial and inconsistency of the court's conclusions with the actual circumstances of the criminal proceedings attracted the attention of scholars both in their study of the whole range of issues related to alteration or cancellation of court decisions and in purely this area. At the same time, some issues have not been sufficiently developed in the legal literature, some of which are still debatable. Among them – the essence of these grounds, the consequences of establishing the incompleteness of the trial, the correspondence of the name of the ground enshrined in art. 411 of the Criminal Procedure Code of Ukraine, its content.

The analysis of the criminal procedure legislation revealed a number of shortcomings in the legal regulation of the incompleteness of the trial and the inconsistency of the court's conclusions with the actual circumstances of the criminal proceedings. This may have a negative impact on the practice of courts in criminal proceedings. A study of case law shows that in some cases the courts of appeal leave in force unjust court decisions or, conversely, overturn lawful, reasonable and fair court decisions.

In view of the above, there is a need for a comprehensive analysis of the problematic issues related to the application of the incompleteness of the trial and the inconsistency of the court's conclusions with the facts of the criminal proceedings.

The purpose of the article is to study the theoretical and applied problems of both factual procedural grounds for review of court decisions in the criminal proceedings of Ukraine. To achieve this goal, the following tasks are set: to characterize the legal nature of the incompleteness of the trial and the inconsistency of the court's conclusions with the actual circumstances of the criminal proceedings; analyze the manifestations of these grounds; to find out the consequences of identifying signs of incompleteness of the trial and the inconsistency of the court's conclusions with the actual circumstances of the criminal proceedings.

The methodological basis of the article is a dialectical approach to scientific knowledge of social phenomena. General scientific and special-legal methods of cognition were also used in writing the article: analysis (used to distinguish incompleteness of court proceedings and inconsistency of court's conclusions with actual circumstances of criminal proceedings from other grounds of appeal); synthesis (made it possible to

characterize the manifestations of incompleteness of the trial and the inconsistency of the conclusions of the court with the actual circumstances of the criminal proceedings); generalization (used to form new scientific approaches to understanding the incompleteness of the trial and the inconsistency of the court's conclusions with the actual circumstances of the criminal proceedings); structural and functional method (made it possible to clarify the essence of the incompleteness of the trial and the inconsistency of the court's conclusions with the actual circumstances of the criminal proceedings, to establish links between the elements that fill them); hermeneutic method (used to interpret the essence and content of the rules governing the incompleteness of the trial and the inconsistency of the court's conclusions with the actual circumstances of the criminal proceedings); dogmatic or special-legal method (used in studying the peculiarities of the incompleteness of the trial and the inconsistency of the court's conclusions with the actual circumstances of the criminal proceedings); comparative legal method (allowed to compare the regulation of the incompleteness of the trial and the inconsistency of the court's conclusions with the actual circumstances of the criminal proceedings in the criminal procedure legislation of Ukraine and other states).

In order to achieve these goals and objectives, the first section of the article is devoted to the disclosure of the legal nature and manifestations of incompleteness of the trial. The second section describes the essence and cases of inconsistency of the court's conclusions with the actual circumstances of the criminal proceedings. The article answers the question of how effective it is to regulate the incompleteness of the trial and the inconsistency of court's conclusions with the actual circumstances of criminal proceedings in the criminal procedure legislation of Ukraine, whether it meets the needs of law enforcement, which doctrinal positions, which are the main areas of improvement of regulatory regulation of these grounds for alteration or cancellation court decisions.

2. Incompleteness of a trial

This ground covers the court mistakes in determining both as an object (there were not adequately clarified or got unclear all the circumstances

relevant to the criminal proceedings during a trial) and the limits (there wasn't involved a number of evidence that would allow with a sufficient depth to establish every fact which is relevant to the criminal proceedings during a trial) of proving. In other words, incompleteness including not only the circumstances is to be clarified, but the evidence by which they are clarified too. Transforming the high mentioned into the dimension of the proving process it is allowed to stress that the incompleteness of a trial covers the mistakes associated with the collection and examination of the evidence.

By the way, according to clause 1 of § 338 of the Criminal Procedure Code of the Republic of Estonia, one of the grounds for alteration or cancellation of a court decision on appeal is recognized as one-sided or incomplete judicial investigation⁴.

Even in the Criminal Procedure Code of those states in which the list of grounds for alteration or cancellation court decisions is not defined by law, the science of criminal justice among the criteria for reviewing court decisions on appeal highlights the incompleteness of the facts of the case⁵.

According to art. 410 of the Criminal Procedure Code of Ukraine a court trial recognizes to be uncompleted in case of presence a number of remained unexplored circumstances, which may be significant for making a lawful, reasonable and fair court decision. This formulation focuses only on the results – do not research of the circumstances, but not for the reasons of such breach. Part 2 of the high mentioned article includes such reasons and a legislator points to the lack of the procedure actions, during which the evidence are collected, reviewed and evaluated and such actions are directed on determination of the circumstances relevant to the criminal proceedings⁶. It follows that a court

⁴ Kriminaalmenetluse seadustik (KrMS). Retrieved from: <https://www.riigiteataja.ee/akt/782861>.

⁵ Čentěš J. a kol. (2012), *Trestné právo procesné*. Všeobecná a osobitná časť. 2 vydanie. Šamorín: Heuréka, s. 623; Jaroslav I. a kol. (2010), *Trestné právo procesné*. Druhé, doplnené a prepracované vydanie. Bratislava: Iura Edition, S. 717; Jelínek J. a kol. (2011), *Trestní právo procesní*. 2 vydání podle novelizované právní úpravy účinné od 1. 9. 2011. Praha: Leges, s. 599–600.

⁶ Criminal Procedure Code of Ukraine: Law of Ukraine of April 13, 2012 № 4651-VI. Retrieved from: <https://zakon.rada.gov.ua/laws/show/4651-17#Text>.

trial incompleteness arises from the fact that in the gaps of the evidence material (insufficiency of the evidence) not all the circumstances which are relevant to the criminal proceedings are examined enough (the circumstances that must be proved, the auxiliary and intermediate facts), or some of them are not found out deep enough (for example, it is revealed during the court trial that a defendant is responsible for the values that are missing, but it is not clear whether it was he who had done their theft), there were done neither all possible actions aimed to verify the versions of the parties, nor all the facts that are important in establishing the reliability of evidence used by a court of first instance were found.

That means that all possible means of proof weren't used; there is a number of evidence that were not verified by another evidence, aimed to provide a correct court decision. At the same time not only the incompleteness of a trial conducted by a court of first instance is taken into account, but an investigating judge as well.

More than that not any incompleteness forms this reason, only those that calls into question legality of a decision approved by a court. Art. 410 of Criminal Procedure Code of Ukraine contains a provision concerning non-investigation of the circumstances «which are to be investigated for making a lawful, reasonable and fair court decision»⁷. We are talking about such gaps that affect on the adoption of a final judgment, give some doubts on its legality and affect on the outcome of the criminal proceedings. Essentiality of this or those circumstances, their non-research during a court trial, depend on the nature, social danger of a criminal offense, the personality of an accused person, and other features of criminal proceedings. Therefore, during a court decision verification due to art. 410 of the Criminal Procedure Code of Ukraine, a court of appeal each time takes into account the value of any circumstances in assessing the evidence in its entirety and decides an impact that may be done by a certain unexplored circumstance on adoption of a legal, reasonable and fair judgment.

A similar approach dominates in Polish procedure doctrine⁸.

⁷ Ibid.

⁸ Hofmański P., Sadzik E., Zgryzek K. (2011), *Kodeks postępowania karnego*. Tom II. Komentarz do artykułów 297–467. 4. wydanie. Warszawa: Wydawnictwo C.H. BECK, S. 806; Grzegorzczuk T., Tylman J. (2011) *Polskie postępowanie karne*. Wydanie 8.

Art. 410 of the Criminal Procedure Code of Ukraine doesn't contain a provision on the lacks that always influence on the correctness of the court judgment essentially. Exclusively conditional character of the described violations is observed within its content. This is due to the fact that the criminal procedure law can not foresee all cases showing the features of research incompleteness. Contingent cases for court judgments review because of incompleteness of the trial, though caused procedure sanctions use by a court of appeal, however, their nature is estimated (non-research of the circumstances relevant to the criminal proceedings referred to part 4 of art. 3, art. 69, part 1 of art. 84, 85, part 2 of art. 91, part 1 of art. 95, part 3 of art. 102, part 1 of art. 134, part 1 of art. 317 of the Criminal Procedure Code of Ukraine)⁹. The range of such cases depends on the specific features of a certain criminal proceedings.

The most common manifestations of the trial incompleteness in a court practice include the following: not reclaiming of the documents, that are important to a case; obtainment of information about the facts from the sources not provided by a law; failure to conduct an inspection of a version that explains the event that is considered; non-fixing of all the persons involved in the commission of a criminal offence, absence of role specification for each of them in it; a personality of a person accused wasn't clarified with sufficient depth (his/her age, health, sanity, past criminal record); information about a victim, his/her relationship with the accused were not clarified; directional intent wasn't clarified with sufficient depth, as well as motive of criminal offence commitment; information that a defendant had forced the witnesses to give false testimony and wasn't clarified enough; information on the presence of the causal connection between the persons actions and consequences of such act are still unexplored.

However, there may be unconditional breach due to art. 410 of the Criminal procedure code of Ukraine. These breaches include the fol-

Warszawa: Wydawnictwo Lexis Nexis Polska, S. 253; Świda Z., Skorupka J., Ponikowski R., Posnow W. (2011), *Postępowanie karne. Część szczególna*. Warszawa: Wydawnictwo Wolters Kluwer Polska, S. 253.

⁹ Criminal Procedure Code of Ukraine: Law of Ukraine of April 13, 2012 № 4651-VI. Retrieved from: <https://zakon.rada.gov.ua/laws/show/4651-17#Text>

lowing: non-exploration or inappropriate research of the circumstances, which are to be proved (art. 91, 485, 505 of the Criminal Procedure Code of Ukraine)¹⁰. Foreseen by the law significance of unexplored evidence is the criterion of demarcation between the two groups.

The lack when a court had rejected a request of the trial participants to interrogate the certain individuals, evidence research or conduction of any other proceedings for the confirmation or refutation of the circumstances, which may be essential for the adoption of legal, reasonable and fair judgment are recognized by the criminal procedure law to be the first case of incomplete trial (part 1 of art. 410 of the Criminal Procedure Code of Ukraine)¹¹. Comprehensive and fully establishing of the circumstances of the subject cognition involves enlisting of necessary and sufficient totality of evidence into the criminal proceedings, its verification and evaluation. Failure to do so leads to unjustified narrowing of the limits of proof, resulting in the evidence, which will operate with a court at the time of the judicial decision-making, will be insufficient to resolve the issues facing the court. Therefore, the particular circumstances that are of great importance for the criminal proceedings will remain unexplored because of the lacks in the evidence material. With this in mind, a lawmaker in paragraph 1 of art. 410 of the Criminal Procedure Code of Ukraine provides a list of the insufficient evidence proving of one-sided and incompleteness research. Within the meaning of the law all the evidence, this can illuminate the circumstances that are important for the criminal proceedings, are recognized as insufficient evidence. At the same time, the trial is incompleted not only when not all the persons, whose evidence are of great value, are interrogated in criminal proceedings, but also in the case when they were interrogated incompletely (e.g., when a witness was interrogated for not all matters necessary for establishing the certain circumstances).

The type of evidence that forms incompleteness of a research depends on the content of this information, which they contain, its importance for the criminal proceedings. Therefore, the law entitles a court of appeal to decide the issue on the significance of these evidence, which

¹⁰ Ibid.

¹¹ Ibid.

means that the designation of significant lack of evidence is estimated rather than absolute in nature and occurs on the basis of general provisions of art. 410 of the Criminal Procedure Code of Ukraine.

It is necessary to point out that part 1 of art. 410 of the Criminal Procedure Code of Ukraine contains a provision according to which violation of criminal procedure law means neither inaction of a court of first instance in the form of failure of interrogation, nor research of the evidence or nor committing of other proceedings aimed to establishing the circumstances relevant to the criminal proceedings, but failure to comply with requirements of the Criminal Procedure Code of Ukraine on assistance and providing an assist to the parties to clarify all the circumstances of the criminal proceedings (part 1 of art. 321 of the Criminal procedure code of Ukraine)¹². That means that procedure sanctions may occur not at the passivity of a trial court while establishing the circumstances of the criminal proceedings and verification of the evidence, but only for its unjustified refusal to provide clarification of all elements of subject matter to the parties. In fact it means the limitations of procedure guarantees to the participants of the proceedings.

The second case of the manifestation of the trial incompleteness takes place when the necessity of this or that ground research based on the new information, set in a court of appeal (part 2 of art. 410 of the Criminal Procedure Code of Ukraine)¹³. First of all, it is necessarily to pay attention to the admitted inaccuracy of the above editorial position – «the necessity of this or that ground research». Obviously, this is not a ground, but a circumstance is to be established.

New evidence which were suing to the court of appeal or requested by it at the request of the participants at the trial called the new data in the context of the new provision. In theory of criminal process it is recognized that due to the new evidence the lacks are discovered and filled, the mistakes are reformed, source of information about the facts are hunted up, and possibilities for their reception are established. New evidence for a court of appeal, along with the materials of the criminal proceedings, is the means of verification legality of a court's decision.

¹² Ibid.

¹³ Ibid.

With this in mind, these provisions can hardly be considered as a kind of incompleteness. New evidence is neither a kind of specific violations committed in criminal proceedings, but the way, a means of its reveal; nor a separate ground for alteration or cancellation of judgments, but the proof of presence of its features.

Owning a self expression, the analyzed ground may generate the other violations of criminal procedure law. Thus, in each case, determination of incompleteness of the findings at a trial court about the circumstances of the criminal proceedings does not meet investigated during the trial evidence. The fact that the partial clarification of the circumstances of the criminal proceedings, collection and examination of evidence will inevitably lead to biased assessment of such evidence. This is confirmed by relationship with philosophical categories of «cause-effect». On the other hand, the incompleteness of the trial may be the result of significant violation of the criminal procedure law (art. 412 of the Criminal Procedure Code of Ukraine)¹⁴. In fact, this case referred to part 1 of art. 410 of the Criminal Procedure Code of Ukraine.

3. Inconsistency between the court's conclusions and the actual circumstances

This is the second actual procedure ground for cancellation or alteration of a judgment in order of appeal. It relates by the disadvantages in the evaluation of evidence by a court (for example, to provide the evidence by the predetermined force in any way; justify a conviction based only on the testimony of the accused, who admitted his/her guilt, the lack of an explanation for the disagreement with the expert's opinion), and with the lack of motivation or improper motivation of a judgment (a court unmotivated rejected the evidence of one party and had based evidence presented by another hand, the contradiction between the reasoning and the operative part of a judgment). Moreover both a court decision or resolution of a court of first instance and a resolution of an investigative judge may contradict the actual circumstance of the criminal proceedings.

¹⁴ Ibid.

Inconsistency in the court's conclusions and the actual circumstance of the criminal proceedings as an independent ground for cancellation or alteration of the judgments is applied if the circumstances relevant to the criminal proceedings were comprehensively and completely established, there had been no significant violations of the criminal procedure law – proving was made with the means foreseen by the criminal procedure law (evidence and methods of evidence information obtainment), and only admissible evidence were used in process of court decision-making, but false information about the circumstances relevant to the criminal proceedings were put into the base of a court decision, the judgment put not all the evidence assessed by the court in accordance with established rules, there are no reasons in a court's decision to explain the conclusions reached by the court, or motivation available in it is unconvincing one.

Having a separate manifestation, inconsistency of the court's conclusions and the actual circumstances of the criminal proceedings can cause the presence of other grounds for alteration or cancellation of the court's decisions. Thus, the error of court decisions made on the basis of research of the evidence, often causing a miscarriage of justice in the form of incorrect application of the law of Ukraine on criminal responsibility (art. 413 of the Criminal Procedure Code of Ukraine) and inconsistency between the sentence and severity of a criminal offense and the person accused (art. 414 of the Criminal Procedure Code of Ukraine)¹⁵.

Clarification of the terms «court's conclusions» and «actual circumstances of the criminal proceedings» are very important in the context of art. 411 of the Criminal Procedure Code of Ukraine. The logical conclusions, which a court reached while the evaluation of evidence, are the court's conclusions. Instead, the circumstances supported by the evidence relevant to the criminal proceedings are the actual circumstances of the criminal proceedings.

However the content of art. 411 of the Criminal Procedure Code of Ukraine doesn't mean that a group of procedure violations reduced to the inconsistency of court's conclusions at first instance and the circumstances relevant to the criminal proceedings as the presence or ab-

¹⁵ Ibid.

sence of the last one are to be established at a trial. From the literal understanding of a name of this ground you can reach the erroneous conclusion that it includes the mistakes of a court of first instance in a legal assessing of an action and determining the means of criminal legal influence for its commitment. However delineated in part 1 of art. 411 of the Criminal Procedure Code of Ukraine cases of non-compliance referred to court's conclusions to the number of gathered and examined evidence used to research the presence or absence of the circumstances relevant to the criminal proceedings. That's why the title of art. 411 of the Criminal Procedure Code of Ukraine does not correspond to its content. The essence of this ground is not inconsistency between the court's conclusions and the real facts of objective reality, but the inconsistency between the court's conclusions and evidence investigated during the proceedings. Thus art. 411 of the Criminal Procedure Code of Ukraine should be called «Inconsistency in the court's conclusions and the researched evidences» and use this term in its content.

The criminal procedure law does not define inconsistency in the court's conclusions at first instance and the actual circumstances of the criminal proceedings, as is was done due to the incompleteness of the trial (part 1 of art. 410 of the Criminal Procedure Code of Ukraine), however, it provides the typical cases of its manifestation.

The first case deals with the situation when the court's conclusions are not supported by the evidence examined during the court proceedings (clause 1 of part 1 of art. 411 of the Criminal Procedure Code of Ukraine)¹⁶. Clause 1 of part 1 of art. 411 of the Criminal Procedure Code of Ukraine fixed a violation in the form of court's decision groundless, court decisions are based on the assumptions, speculation, that are not supported by evidence, research during the court proceedings. The findings contradict the evidence verified by a court and are not logical. The evidence that would allow a court to reach those conclusions, which he did, are absent in the materials of the criminal proceedings. This also applies to the case when the aggregate of collected and examined during the trial evidence is not sufficient for the guilt of the accused establishing; this is a ground for only a probabilistic conclusion. However, we are

¹⁶ Ibid.

not talking about lack of evidence to justify the court's conclusions, because the gaps in the evidentiary material are covered by another reason for alteration or cancellation of judgments and it is the incompleteness of the trial (art. 410 of the Criminal Procedure Code of Ukraine). On the contrary, the circumstances relevant to the criminal proceedings, which are investigated by the clarified during the trial evidence, but the evidence gives reason for other conclusions.

The next manifestation of the inconsistency of the court's findings at first instance and the examined evidence occurs when a court didn't take into account the evidence that could significantly affect on its conclusions (clause 1 of part 1 of art. 411 of the Criminal Procedure Code of Ukraine)¹⁷. This type of inconsistency of the court's conclusions at first instance and the examined evidence covers the situations when the conclusions concerning presence or absence of a criminal offence (socially dangerous acts), that are done in the court's decision or court's resolution, it's commitment by a defendant, presence or absence of the features that influence on the criminal legal qualification of an act, presence or absence of the circumstances that are taking into consideration while determining the type and amount of punishment, application of some form of the compulsory measures of educational or medical nature and their amount, etc., are not derived from all materials available in the criminal case and evidence investigated by a court with participation of the participants of a trial. Some of them stayed out of sight of a court, being ignored. That means that a court laid the basis for its findings only from a part of the evidence examined during the trial. Therefore, it is not enough to make a legal court decision. In fact, there is a one-sided approach of a court while justifying of their conclusions on the significant matters in criminal proceedings.

Within context of clause 2 of part 1 of art. 411 of the Criminal Procedure Code of Ukraine the "evidence that could significantly affect on the court's conclusions" means information about the facts that establish the circumstances are to be proved in criminal proceedings, as well as those that also affect on the proper resolution of a court its decision and resolution.

¹⁷ Ibid.

The third case of inconsistency between the court's conclusions and the investigated evidence reflected in the fact that in case if there is a conflicting evidence that have a significant influence on the court's conclusions, a court's decision doesn't stated a reason why it took into account some evidence and rejected another one (clause 3 of part 1 of art. 411 of the Criminal Procedure Code of Ukraine)¹⁸. This expression is associated with lack of motive or improper motivation of a court's decision. Based on the content of part 4 of art. 370 of the Criminal Procedure Code of Ukraine, a court is obliged to motive its decision. In furtherance of this provision the provisions of clause 2 of part 2 of art. 372 and clause 2 of part 2 of art. 374 of the Criminal Procedure Code of Ukraine require to give reasons for some evidence neglect by a court¹⁹. A court in its decision in accordance with the following provisions of the law shall indicate why some evidence was found credible by it and others – not.

The last manifestation of inconsistency between the court's findings and the investigated evidence is that the court's conclusions set out in the judgment, contain significant contradictions (clause 4 of part 1 of art. 411 of the Criminal Procedure Code of Ukraine)²⁰. This violation is also associated with improper motivation of a judgment. It is important that the investigated evidence must correspond to the court's findings as well as all the conclusions under a court's decision. Therefore, the detection of the significant inconsistency between the conclusions made in a court's decision, they can not be considered as conclusive and correct conclusions. This contradiction must be substantial in nature, that means that in their absence a court could radically differently decide on whether or not the event is a criminal offense, is a person guilty or not, the application of a this or that law of Ukraine on criminal liability, determine a type and amount of punishment, to resolve a civil claim and its amount, to determine the fate of evidence, to distribute the procedure costs, etc.

The nature of a particular issue has no value if there are the significant contradictions in the conclusions of the court's findings. It is im-

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Ibid.

portant that they should influence on the legality of a court's decision.

It should be noted that in the Polish procedure theory and court practice, this manifestation of inconsistency between the court's findings and the actual circumstances of the criminal proceedings is considered to be a kind of the violations of the criminal procedure law (*error in iudicando*²¹).

Part 1 of art. 407, part 1 of art. 415 of the Criminal Procedure Code of Ukraine foreseen that appeal court, finding the features of the incompleteness of legal proceedings (art. 410 of the Criminal Procedure Code of Ukraine) and discrepancy between the findings of the trial court and the investigated evidence (art. 411 of the Criminal Procedure Code of Ukraine) is entitled to cancel a verdict (ruling) and enact a new sentence (ruling), cancel a verdict (ruling) and close the criminal proceedings or to alter a verdict (ruling)²². However analysis of court practice demonstrate the imperfection of the named legislative provisions of the law in case of absence of petitions put by the participants of the proceedings concerning the investigation of the new evidence or re-examination of existing evidence in a court of appeal, as well as in case when a decision-making is connected to violation of the rule on inadmissibility of aggravation of the accused situation than a court of appeal is forced to cancel a judgment and order a new trial in a court of first instance also.

This is to certify that part 1 of art. 415 of the Criminal Procedure Code of Ukraine in its current edition is imperfect, and it is worth to foreseen the cases of cancellation of a court's decision and order a new trial in a court of first instance not only because of revealed significant violations of the criminal procedure law, but in case of reveal of the features of trial incompleteness and inconsistency between the court's conclusions and the investigated evidence.

²¹ Izydorczyk J. (2010), *Granice orzekania sądu odwoławczego w polskiej procedurze karnej*. Łódź: Wydawnictwo Uniwersytetu Łódzkiego, S. 248–249; Grzegorzczak T., Tylman J. (2011), *Polskie postępowanie karne*. Wydanie 8. Warszawa: Wydawnictwo Lexis Nexis Polska, s. 869.

²² Criminal Procedure Code of Ukraine: Law of Ukraine of April 13, 2012 № 4651-VI. Retrieved from: <https://zakon.rada.gov.ua/laws/show/4651-17#Text>.

4. Conclusions

Incompleteness of a trial and inconsistency between the court's conclusions and the actual circumstances of the criminal proceedings are ordinary classic appeal grounds. They play a key role in the providing a control direction of the appeal proceedings. In their absence such powers of an appeal court as an opportunity of direct research of the existing in the materials of the criminal proceedings and new evidence, a new verdict or resolution, deterioration of the accused situation in the higher mentioned conditions would lose their value.

Incompleteness of a trial covers violations related to the collection and examination of evidence. The inconsistency of the conclusions of the court of first instance with the actual circumstances of the criminal proceedings is due to shortcomings in the court's assessment of the evidence, as well as the lack of motivation or improper motivation of the court decision. At the same time, not only the verdict or decision of the court of first instance, but also the decision of the investigating judge may not correspond to the factual circumstances of the criminal proceedings.

The procedural consequences of establishing signs of incompleteness of the trial and inconsistency of the conclusions of the court of first instance with the actual circumstances of the criminal proceedings are both a change of the court decision and its cancellation with the closure of the criminal proceedings or the appointment of a new trial.

Among the problems of the topic discussed in the article, the scientific interest is the analysis of the causes of law enforcement errors related to the incompleteness of the trial and the inconsistency of the court's conclusions with the facts of the criminal proceedings. It is also important to distinguish between three criminal procedural grounds for review of court decisions – incompleteness of the trial, inconsistency of court's conclusions with the actual circumstances of the criminal proceedings and significant violation of the requirements of the criminal procedure law.

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Summary

The article is devoted to research the actual procedural grounds for appellate review of court decisions in criminal proceedings of Ukraine. As a result of the study of these criteria for appellate review of court decisions, the authors concluded that the domestic legislator rightly singles out such grounds, as they cover violations related to evidence in criminal proceedings. The legal nature of the incompleteness of the trial and the inconsistency of the court's conclusions with the actual circumstances of the criminal proceedings are given. Emphasis is placed on the fact that the incompleteness of the trial covers violations related to the shortcomings of criminal procedure in the collection and verification of evidence. Instead, the inconsistency of the court's conclusions with

the actual circumstances of the criminal proceedings concerns judicial errors in the assessment of evidence and improper motivation of court decisions. The manifestations of these factual procedural grounds for appellate review of court decisions are analyzed. The procedural consequences of establishing signs of incompleteness of the trial and inconsistency of the court's conclusions with the actual circumstances of the criminal proceedings are singled out. Analyzing the relevant norms of the Criminal Procedure Code of Ukraine, the Criminal Procedure Code of other states, as well as the views of researchers, the authors present their vision of the issues included in the subject of research. The necessity of improving the criminal procedure legislation of Ukraine, which regulates the incompleteness of the trial and the inconsistency of the court's conclusions with the actual circumstances of the criminal proceedings, is substantiated.

Keywords: review of court decisions, criteria for court's decision review, incompleteness of a trial, inconsistency between the court's conclusions and the actual circumstances of the criminal proceedings, alteration or cancellation of the court's decisions