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Judicial Reform: New Role of the Supreme Court Case Law

On 8 February 2020, the changes to the procedural codes became effective, significantly increasing the role of the Supreme Court case law in the reconsideration of court decisions in Ukraine.

What's new?

Previously, the decision on merits could be challenged with the Supreme Court in the event of breach of substantive or procedural law.

Now, in addition to that, when filing the cassation complaint the claimant shall also prove one of the following:

- the lower court when rendering a challenged decision failed to take into account the relevant position of the Supreme Court on the application of substantive law
- although the lower court took into account the relevant position of the Supreme Court as explained above, there is a need to depart from such position of the Supreme Court
- there is no relevant position of the Supreme Court on the application of substantive law

Failure to prove the above shall prevent the cassation proceedings.

Impact

The new regulations set a higher threshold for challenging the decisions with the Supreme Court, which in many cases shall reduce the review of the court decisions to the appellate stage only. This may also have positive impact on the time and quality of consideration of pending cassation complaints.

Overall, the existence of the relevant opinion of the Supreme Court shall make the consideration of the case by the lower courts more predictable.

Additional notes

This LEGAL ALERT is issued to inform Baker McKenzie clients and other interested parties of legal developments that may affect or otherwise be of interest to them. The comments above do not constitute legal or other advice and should not be regarded as a substitute for specific advice in individual cases.

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