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# Prerequisites for a Supreme Court to Overrule its Binding Legal Opinions

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ABSTRACT

The paper aims at developing recommendations for improving procedural laws and guiding case law related to reasons for a supreme court to overrule its universally binding legal opinions with a particular emphasis on relevant Ukrainian legal context as a perfectly illustrative example. This research purpose prompts the reliance on a set of appropriate scientific methods of descriptive and comparative law research including the comparative analysis itself as a fundamental instrument for review of relevant legal material, as well as the structural, analytical and law-in-context scientific methods. The paper covers, in particular, a) Ukrainian statutory framework and case law regulating of the Supreme Court of Ukraine's departure from its legal opinions; b) concepts of overruling precedents of the highest courts of the most developed countries with common law legal system; c) current views of scientific community and prospects of development of the relevant case law on Supreme Court of Ukraine overruling its legal opinions. The authors maintain that it is extremely important to substantiate compelling reasons for a supreme court to review its vision of the correct application of the Law, exposing the reasons for considering the previous one defective, to the extent that it leads to fundamental negative consequences.

KEY WORDS: Administration of justice, case law, comparative law, modern law, supreme courts.

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# Requisitos previos para que una Corte Suprema anule sus opiniones jurídicas vinculantes

RESUMEN

El artículo tiene como objetivo desarrollar recomendaciones para mejorar las leyes procesales y guiar la jurisprudencia relacionada con las razones por las que un Tribunal Supremo anula sus opiniones jurídicas universalmente vinculantes, con especial énfasis en el contexto legal ucraniano relevante como un ejemplo perfectamente ilustrativo. Este propósito de investigación impulsa la dependencia de un conjunto de métodos científicos apropiados de investigación de Derecho descriptivo y comparado, incluido el análisis comparativo en sí como instrumento fundamental para la revisión del material jurídico relevante, así como los métodos científicos estructurales, analíticos y del Derecho en contexto. El artículo cubre, en particular: a) el marco legal ucraniano y la jurisprudencia que regula la desviación del Tribunal Supremo de Ucrania de sus opiniones jurídicas; b) conceptos de anulación de precedentes de los tribunales más altos de los países más desarrollados con sistema legal de derecho consuetudinario; c) las opiniones actuales de la comunidad científica y las perspectivas de desarrollo de la jurisprudencia pertinente sobre la anulación de sus opiniones jurídicas por parte del Tribunal Supremo de Ucrania. Los autores sostienen que es de suma importancia fundamentar razones de peso para que un tribunal supremo revise su visión de la correcta aplicación del Derecho, exponiendo las razones para considerar defectuosa la anterior, en la medida que conduce a consecuencias negativas fundamentales.

PALABRAS CLAVE: Administración de justicia, Jurisprudencia, Derecho comparado, Derecho moderno, Tribunales supremos.

## Introduction

Having assessed the rules and regulations determining prerequisites for the Supreme Court of Ukraine to overrule its own legal opinions we could notice that the legislation of Ukraine, as well as domestic legislation of almost all countries, does not establish solid grounds for alteration by the highest court of the vision of a correct way to apply law which is legally and universally binding. Instead, some fundamental aspects related to the essence of this phenomenon and its impact on legal relations are regulated at the level of the legal opinions of the highest courts themselves. This gives these institutions the opportunity to determine for themselves the grounds, limits and manner of exercising its power to depart from its legal opinions. Moreover, the vision of how this instrument works that is followed by the highest courts of many countries, is clearly suboptimal, as it is incompatible with some

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legal principles and does not correspond to the best foreign experience and doctrinal recommendations. In view of this, there is an urgent need to develop recommendations for improving procedural laws and guiding case law in the relevant part, which constitutes the purpose of this research. It prompts the reliance on a set of appropriate scientific methods of descriptive and comparative law research including the comparative analysis itself as a fundamental instrument for review of relevant legal material, as well as the structural, analytical and law-in-context scientific methods.

## 1. Literature review

Research papers covering the prerequisites for a supreme judicial institution to overrule it's universally binding legal opinions include studies of Asian, American and European scientists showing rules, regulations and case law on this issue in the country whose scientific community the scientist represents. The conclusions of Ukrainian scholars from among the judges of the Supreme Court of Ukraine are also crucial for a thorough and comprehensive scientific study of key aspects of this issue, especially given that the Ukrainian national legal context is analyzed as an example. An equally important source of scientific concepts and practical solutions, the implementation of which is substantiated in this article, are studies that address issues related to the subject of this study, but may be the ideological and scientific basis for its results (Bilous and Liutikov: 141; Lipynskyi et al: 75; Pyvovar et al: 369; Pryimachenko et al: 410).

## 2. Ukrainian statutory framework and case law regarding Supreme Court of Ukraine's departure from its legal opinions

Having considered a legal framework concerning prerequisites for the Supreme Court of Ukraine to overrule its opinions on the application of law, referring to provisions of the Code of Administrative Proceedings of Ukraine (CAS), first of all, it is to be noted that pursuant to Art. 328 § 4 of the CAS provides that an appeal against court decisions could be lodged to court of cassation on the grounds of incorrect application of substantive law or violation of procedural law, if the complainant justified the need to depart from the opinion on the application of law in similar legal relations, set out in the Supreme Court decision and applied by the contested court decision. Distributing powers between the structural units of

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the Supreme Court of Ukraine, the procedural law establishes that court of cassation reviewing the case:

– being a panel of judges, refers the case to the chamber, which includes such a panel, if this panel deems it necessary to depart from the opinion on the application of law in similar legal relations, set out in a previously adopted decision of panel of judges of this chamber or the relevant chamber of the Supreme Court;

– being a panel of judges or a chamber, refers the case to the joint chamber if that panel or chamber deems it necessary to depart from the opinion set out in a previously adopted decision of a panel of judges of another chamber or of another chamber or of a joint chamber of the Supreme Court;

– being a panel of judges, a chamber or joint chamber, refers the case to the Grand Chamber if that panel (chamber, joint chamber) deems it necessary to depart from the opinion set out in a previously adopted decision of a panel of judges (chamber, joint chamber) of another court of cassation of the Supreme Court;

– being a panel of judges, chamber or joint chamber, refers the case to the Grand Chamber of the Supreme Court, if that panel (chamber, joint chamber) deems it necessary to depart from the opinion set out in the previously adopted decision of the Grand Chamber (Art. 346 of the CAS).

In light of the foregoing, the Ukrainian law confines the regulation of the Supreme Court of Ukraine's departure from its opinions on the application of the law to determining its authorized structural unit to decide on this. At the same time, as a result of the interpretation and application of these legislative provisions, the Supreme Court has made detailed and coherent guidelines concerning nuances of overruling its legal opinions.

So beginning with an analysis of scientific conclusions and recommendations on the grounds for overruling of opinions on the application of the law of the Supreme Court of Ukraine, it is to be highlighted that this supreme court is of the view that the lack of clarity of legal rules and regulations (in particular, due to their frequent change, repeal or declaring unlawful) could have detrimental impact on guaranteeing their uniform application and protecting the addressees of these rules and regulations from arbitrariness. This also concerns those situations where the source of that non-foreseeability of law are courts adjudicating disputes. Nevertheless, the stability and uniformity of case law is as crucial, as

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the opportunity of the highest court to depart from its previous legal opinions only on compelling reasons (*Anonymous v. Office of the Security Service of Ukraine in Ternopil region*, 2021).

The Supreme Court of Ukraine has repeatedly emphasized that the fact of a shift in case law cannot be considered a violation of legal certainty as an element of the rule of law (*Anonymous v. Khersonregiongaz Limited Liability Company*, 2021). The principle of uniformity of case law is not absolute and by procedural law the Grand Chamber of the Supreme Court of Ukraine, its joint chambers and chambers have the extraordinary power to depart from the previously formed legal opinion, provided that otherwise it would mean be the inability of the highest court to correct its own premature or outdated approach, caused, for example, by its vagueness, which led to non-uniform interpretation of law, or would exclude the possibility of dynamic development in certain circumstances. The overruling of the Supreme Courts' legal opinions is consistent with the already established concept approach, according to which 'truth or stability – truth is preferable' (in competition between true (correct, fair) and stable priority should be given to the former). It is well-established in the case law of the Supreme Court of Ukraine that reasonable grounds for it to depart from its legal opinion are, in particular: a) alteration of law (there are cases where shifts in statutory instruments do not allow the court to unequivocally conclude that change in case law is possible without formally departing from previous legal opinion); b) adoption of a decision by the Constitutional Court of Ukraine; c) vagueness of the legal opinion itself (inconsistency of the criterion of 'quality of law'), which led to discrepancies in interpretation of law by domestic courts; d) the judgment of the ECtHR, the conclusions of which must be taken into account by domestic courts; e) changes in the understanding of law due to: expansion of the meaning or scope of application of a certain principle of law; shift in doctrinal approaches to solving complex legal issues in certain areas of public administration; the presence of a threat to national security; changes in the financial capabilities of the state (*Expert LLC v Malinovsky Market PJSC, 2021)*. Therefore, the reasons for withdrawal may be defects of the previous legal opinions (their inefficiency, ambiguity, inconsistency, unreasonableness, inadequacy in terms of proper reflection of facts and law or striking balance between conflicting values); shifts in the social context. However, with a view to ensure the uniformity and consistency of jurisprudence, the court must have compelling reasons for departing from the previous legal opinion of the Supreme Court: previous decisions must be erroneous, ineffective or the

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approach used in these decisions has to become obsolete (*Kolos Chyhyrynshchyny Private Enterprise v. Chyhyryn District State Administration of Cherkasy region*, 2018).

## 3. Concepts of overruling precedents of the highest courts of countries with common law legal system

Comparing the above considerations with the relevant guiding concepts of the highest courts of the most developed countries with common law legal system as well as with the outcomes of fundamental research materials of Ukrainian and foreign scientists, we conclude that they are largely consistent.

With recourse to American scientific and legal sources covering the circumstances under which the precedents of the US Supreme Court may be overruled, Goncharov (2013) noted that department from a former legal opinion may occur as a result of dynamic interpretation, which is aimed at correcting errors and inconsistencies in the official understanding of law as well as at evolutionary development of law and at ensuring the functional stability of the basic law or other statutory instrument. The reasons for the dynamic interpretation in the practice of the US Supreme Court are: defects of a previous decision or group of decisions (their ineffectiveness, ambiguity, inconsistency, groundlessness); changes in the social context (changes in the public life of the country, the development of state legislation, etc.). Systemic changes in the economy, the development of ideas about the proper organization of society and the evolution of human rights standards were reasons adduced by the US Supreme Court to explain the need to depart from its opinion. These arguments laid the foundation for overruling precedents regarding the predominance of freedom of contract over the minimum wage and working hours and upholding racial segregation in municipal schools and some other public places on the principle of 'equal but divided' (Murrill: 17-18).

An equally illustrative example of the US Supreme Court's consideration of changes in social context is its overruling of its precedent in *South Dakota v. Wayfair, Inc., et al*, in which the court ruled that the economy had changed drastically, with a marked increase in the prevalence and power of Internet access and concomitant increases in retailers selling goods remotely to consumers. As a result, states faced an increased "revenue shortfall" estimated at up to $ 33 billion per year in sales tax revenue, allegedly traceable to the Court's prior

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decisions. These drastic changes in the economy required the court to overturn two of its precedents that had prevented states from taxing such sales. It also should be noted that the current members of the US Supreme Court, according to Schulz's (2021) observations are inclined to believe that constitutional precedent is merely a matter of court policy or discretion and precedents based on constitutional grounds deserve less respect than those in which the court interprets statutes or laws and may be rejected on less compelling grounds and with less robust justification than the precedent enshrining proper application of a statutory instrument. Beginning with the Rehnquist court, justices have become more willing to reject precedents they think were badly reasoned, simply wrong, or inconsistent with their own senses of the constitutional framers' intentions.

Of particular scientific interest is the generalization of factors taken into account by the US Supreme Court in determining the need to review its precedent and change its approach to application of law. These factors are set out in the pages of Walker's (2016) research and the most prominent of them are the effectiveness of precedent, its actual efficiency and the weight of the legitimate expectations associated with the precedent. Outlining the factors in details, Walker states that assessing the effectiveness and actual efficiency of a precedent decision, the court determines whether the legal principle or rule of conduct enshrined in the precedent is prone to create discrepancies in case law, ambiguity or lack of certainty in law or for other reasons is inconvenient or detrimental for application of law. The criterion of effectiveness is related to the purpose of precedents to be an instrument of saving time through eliminating the need for judges to conduct a thorough legal analysis of the issue in search of its best solution. The U.S. Supreme Court does not feel bound by precedent which, due to its vagueness and uncertainty of its content, does not help this instrument to meet its purpose. They do not indicate the need to leave the precedent in force due to its perception as a doctrinal anachronism that has lagged behind social development and tends to be overlooked as a remnant of antiquity.

In addition, the fate of the precedent is also determined giving due weight to the legitimate expectations of private persons and public entities, which in their activities rely on the retention and proper operation of the precedent. In particular, according to Walker (2016), the court attaches importance to interests of the parties to the case, within which rises the issue of reviewing the precedent, and is not inclined to overrule precedents, without

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which much of society will bear an unjustifiable burden, which along with unfavorable review of law to be applied to disputed rights and duties will add an even greater injustice to the price of rejecting the former precedent. It is believed that individuals and legal entities invest time, effort and money placing their reliance on precedents. The more often the court breaks this link, especially when reviewing precedents on property and civil obligations, the more risky private investment will be. At the same time, the calculation of individuals to apply certain procedural rules in their cases is deemed to be much less important. As noted by U.S. Supreme Court Justice Bork, so many statutes, regulations, governmental institutions, private expectations, and so forth have been built up around that broad interpretation of the some clause that it would be too late, even if a justice or judge became certain that broad interpretation is wrong as a matter of original intent, to tear it up and overturn it. Agreeing with these statements, Murill (2018: 20-23) stressed that the decision could last for several decades, during which, using it as a legal foundation, financial mechanisms, organizational structures and other important social institutions were being built, and despite the fact that the precedent was criticized for deviating from primary understanding of the rule of law to which it relates, it was adopted by political groups of influence to the extent that there was no organized political resistance to its functioning, which could be objectified by legislative initiatives or overcoming of the precedent by parliament adopting new rules and regulations to replace it.

For instance, the highest judicial institution of the United States takes notice of the active use of precedents on public law issues. The most illustrative example of this observation is that the US Supreme Court, recognizing that its decision in the *Miranda* case was based on a misunderstanding of the constitution, refused to reconsider the precedent in the *Miranda* case, primarily because the informing of the rights of the arrested had been rooted in police protocols and timely warnings about the negative consequences of certain legally significant actions had already become part of the national culture (*Charles Thomas Dickerson v. United States*, 2000). In addition to law enforcement agencies, it is customary to take into account the dependence of the legitimacy of administrative practices of executive authorities on the precedent on the basis of which they were developed. The reliance of the state on precedent in its economic relations with individuals, as noted by Murill (2018: 21), is taken

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into account by the US Supreme Court as an important factor in favor of retaining a precedent.

In addition to the afore-mentioned observations, it is worth mentioning that according to the American scientific community, their highest judicial institution when deciding the issue of retaining or overruling a precedent is motivated not only by legal considerations, but also takes into account the political context. In particular, following a study of political and legal preconditions and factors that determine the likelihood of the US Supreme Court overturning its precedent or retaining it, Spriggs and Hansford (2001: 1094-1096) suggested the following hypothetical trends and patterns:

– the greater the ideological disparity between a precedent and a subsequent US Supreme Court, the more likely the precedent will be overruled;

– A precedent is less likely to be overruled if it was based on statutory, rather than constitutional interpretation;

– the more often the US Supreme Court has treated a precedent positively (i.e., expressly followed the precedent), the less likely the precedent will be overruled and the more often the US Supreme Court has treated a precedent negatively (e.g., by distinguishing or limiting it), the more likely the precedent will be overruled;

– the closer ideologically the prevailing political environment is to the precedent, the less likely the precedent will be overruled.

In view of the above, it should be noted that as stated in the well-established approach of the US Supreme Court the grounds for it to overrule its precedents include, in particular, failure of a precedent to fulfill its primary purpose due to excessive ambiguity of its content, which unacceptably complicates its application; the need to correct errors in the literal meaning of the precedent or clarify its legal justification; formation of preconditions for the evolutionary interpretation of legal norms, which may be associated with systemic changes in the economy, the development of ideas about the proper political organization of society and the development of human rights standards. Conversely, a deterrent to overruling precedents for the US Supreme Court is the weight of legitimate expectations connected with a particular precedent, as well as it serving a legal foundation for a system of regulations, institutions and other phenomena, depriving legal grounds for which imposes unjustifiable

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burden for both precedent-relying party to the case in context of which overruling issue arises and society at large, including public administration.

Continuing the comparative analysis, it is worth mentioning that similar to the Supreme Court of the United States, the highest court in the United Kingdom reserves the right to depart from a previous decision when it appears right to do so (House of Lords Practice Statement of 26 July 1966). This power is considered discretionary, and its use depends on the particular circumstances of the case. However, there is no well-established list of specific circumstances under which departing from a precedent is the optimal solution. Theoretical and legal considerations of judges of the Supreme Court of the United Kingdom discourage attempts to mechanically use objectified formulas, but it is considered that recourse to this power is acceptable only in special cases. An analysis of the experience of exercising this power shows that the precedent has been revised on grounds that it no longer agrees with modern principles of public affairs management or causes uncertainty in law enforcement (*Murphy v Brentwood District Council*, 1990). Likewise, in England and Wales, the High Court is bound to follow its own decisions, unless one of the following criteria could is met: 1) the court is entitled and bound to decide which of two conflicting decisions of its own it will follow; 2) the court is bound to refuse to follow a decision on its own which, though not expressly overruled, cannot, in its opinion, stand with a decision of the House of Lords (now the UK Supreme Court); 3) the court is not bound to follow a decision of its own if it is satisfied that the decision was given per incuriam, e.g., where a statute or a rule having statutory effect which would have affected the decision was not brought to the attention of the earlier court (Ministry of Justice of United Kingdom, 2020).

In the Republic of Ireland it is believed according to Steiner (2015) that the primary concern of judges must be to do justice. Ensuring that the case is resolved fairly and that public proceedings are to the required extent public and open, the judge must take into account the long-term consequences of his or her decision, including its impact on other parties and the development of the law. The court is expected to develop a 'politically valid and socially acceptable' model of application of law along with a fair settlement of the rights and obligations of the parties.

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4. Overruling legal opinions of the Supreme Court of Ukraine: current views of scientific community and prospects of development of the relevant case law

The above-mentioned concepts of the highest courts of the most developed countries of common law legal system are largely reproduced and supported in scientific works. Particular emphasis in theoretical and legal sources is placed on the acceptability of revision of mandatory legal opinions of supreme courts only under exceptional circumstances and with proper legal justification.

In particular, as maintained by members of the Grand Chamber of the Supreme Court of Ukraine Bakulina et al (2018) in one of their separate opinions in order to ensure the uniformity and consistency of the guiding case law, the Grand Chamber of the Supreme Court of Ukraine must have compelling reasons for departing from its previously stated legal opinions: these opinions should be erroneous or obsolete due to the development of social relations in a certain sphere or their legal regulation. Likewise, the Supreme Court of Ukraine judge Bernazyuk (2020) is of the opinion that with a view to harmonize the principle of legal certainty and the concept of 'living law', the decisions of the European Court of Human Rights and the Grand Chamber of the Supreme Court of Ukraine have set out a consistent approach, according to which department from guiding legal opinion is acceptable exclusively if it is substantiated by compelling reasons and real basis, ie the court should not overrule its legal opinions in the absence of a proper reason; the purpose of the derogation may be to correct only those inconsistencies (errors) that have substantial impact on law and its development. As the Supreme Court of Ukraine judge Luspenyk (2018) noted in this regard, the supreme judicial institution must ensure that the very essence of access to justice is not eroded. The purpose of the Supreme Court is to develop a legal tradition according to which an unreasonable, groundless department from its own legal opinion is impossible; this will ensure the stability of guiding case law, sustain the authority of the Supreme Court and, consequently, of the judiciary in general. Of paramount importance is a thorough and convincing argumentation of the need to change the direction of application of law, as pointed out by Shumylo (2020), noting that the self-correction by a supreme court is perceived by the legal community as quite painful, but this possibility is not denied. The point is that in order to better legitimize the department, it is necessary to properly justify it. Of course, admitting one's mistakes or highlighting previous shortcomings is unpleasant

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and devastating for the authority of the court in general and each judge in particular, but it is better than having willful blindness towards such an inadequacy as such a flawed legal opinion will affect the fate of citizens. Therefore, self-correction is not just a political act of a supreme court – it should be a court decision, where the arguments must be so convincing that this extreme necessity would be accepted by the whole legal community or at least the majority. And if the derogation of the Supreme Court from its legal opinions in cases of jurisdiction provokes discussion in the legal environment, but does not have a significant impact on the merits, at the same time changing the legal opinion on the merits has the most direct and drastic impact on cases already pending. In other words, the reason for departing from the guiding legal opinion cannot be only the presence in the Grand Chamber of the Supreme Court of another approach to solving a certain legal matter, but the imperfection of the previous solution, its obsolescence or other exceptional circumstances. Therefore, in its decision the supreme court should not only justify the more advanced nature of a new legal opinion, but also to refute the previous one, pointing out its fundamental shortcomings with detrimental effects on law and its efficiency (Non-Governmental Organization Lviv School of Law, 2021).

All things considered, it should be noted that there is no doubt that a reason for updating a pattern of application of law determined by the highest court is this pattern being unlawful or ill-founded, as well as the inability of legal opinion to ensure correct or uniform application of law due to its incomprehensibility, lack of specificity or it's another internal major defect that was detected to be made during the formation and issuance of the legal opinion. Equally acceptable reason for a positive decision to the issue of department from the legal opinion may be its ineffectiveness or actual non-efficiency caused by its inconsistency with the realities of life that have changed since its publication. In particular, there may be changes in the understanding of law due to the expansion of the scope of a certain principle of law or a change in doctrinal approaches to solving complex legal issues in certain areas of public administration, and so on. However, this concept is not perfect and needs large-scale refinement, taking into account the best practices and propositions made by scientific community in their research materials.

First of all, it is of utmost importance to thoroughly and persuasively substantiate compelling reasons for a supreme court to review its vision of proper application of law,

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stating the reasons to consider the previous legal opinion ill-founded, outdated, insufficiently specific or clear to the extent that leads to fundamental negative consequences for the legal system. Also, it is evidently positive practice to attach weight as a deterrent to its overruling to legitimate expectations related to a certain precedent, as well as to the appearance around it of a well-established system of regulations, institutions, administrative acts and other phenomena, with loss of legal grounds for which, along with the party, relying on precedent, much of society, including public administration with its coherent administrative practices bears an unjustifiable burden.

Moreover, the analysis of the concept of compelling reasons for departing from guidance in application of law set out in legal opinions of a supreme judicial institution, showed that the current case law of the Supreme Court of Ukraine representing its understanding of compelling reasons for overruling its legal opinions needs to be refined. For instance, it seems devoid of legal foundation to believe that a change in the positive law which does not allow the first-instance or appellate court to reach an unequivocal conclusion is not sufficient to deviate from legal opinion of the Supreme Court of Ukraine before it itself declares its legal position inapplicable in light of legislative innovations.

In this connection, first of all, it seems appropriate to recall that the Supreme Court of Ukraine is of the opinion that the term 'opinion on the application of law' indicates that such an opinion is derived from a law and cannot be binding after amendments to the relevant law that significantly change its content were made or after its abolition (*Ukraine v. Anonymous*, 2021). The views on this issue prevailing in common law counties are similar. In particular, according to Agrawal (2020) in the case of *ICICI Bank v. Municipal Corporation of Greater Bombay* the Supreme Court of India stated that the decision given by the apex court must be read in accordance with the context of the statutory provisions which have been interpreted by the competent court. It has been stated that no judgment can be read if it is a statue. Therefore, a supreme court's ruling on the application of law becomes invalid if law interpreted or serving a basis for this ruling has been amended or repealed, without the need for a supreme court to expressly depart from such a legal opinion. At the same time, if there was a change in the legal basis, which only indirectly affected the content of the legal opinion, which only calls into question its relevance in the new legal context (revision of the legislative definition of a legal principle that had ideological and value impact on the legal opinion, etc.) the court

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called on to use or abandon this legal opinion, taking into account the observations of interested persons and in compliance with the balance of public and private interests, must independently under its responsibility decide on the applicability of such a legal opinion.

Furthermore, the opinion of the Supreme Court of Ukraine on the decision of the Constitutional Court of Ukraine and the judgment of the ECtHR as grounds for departing from its legal opinions should be clarified. Reflecting on this issue, it should be borne in mind that in accordance with Art. 151-2 of the Constitution of Ukraine, decisions and conclusions adopted by the Constitutional Court of Ukraine are binding, final and cannot be appealed. Similarly, Art. 17 § 1 of the Law of Ukraine 'On Enforcement of Judgments and Application of the Case Law of the European Court of Human Rights' stipulates that courts apply the Convention and the case law of the European Court of Human Rights as a source of law. It is apparent that the Ukrainian law in line with national law of European countries establishes the need for direct application of these legal acts, a condition for which under no circumstances can be incompatible with the legal opinion of the Supreme Court. However, if there may be discrepancies between these legal acts and the legal opinion, not related to the literally established rules of conduct or framework for legal assessment, but lie in the philosophical dimension, the court taking into account the observations of stakeholders and striking the balance of public and private interests must independently decide on the applicability of such a legal opinion.

## Conclusion

Summing up the outcomes of the scientific study of reasons for the highest court to overrule its binding legal opinions it should be noted that that a reason for this institution to update a pattern of application of law determined by it is this pattern being unlawful or ill-founded, as well as the inability of legal opinion to ensure correct or uniform application of law due to its incomprehensibility, lack of specificity or it's another internal major defect that was detected to be made during the formation and issuance of the legal opinion. Equally acceptable reason for departing from legal opinion is its ineffectiveness or actual non-efficiency caused by its inconsistency with the realities of life that have changed since its publication. In particular, there may be changes in the understanding of law due to the

expansion of the scope of a certain principle of law or a change in doctrinal approaches to solving complex legal issues in certain areas law and so on.

However, it is of utmost importance to thoroughly and persuasively substantiate compelling reasons for a supreme court to review its vision of proper application of law, stating the reasons to consider the previous legal opinion ill-founded, outdated, insufficiently specific or clear to the extent that leads to fundamental negative consequences for the legal system. Also, it is evidently positive practice to attach weight as a deterrent to its overruling to legitimate expectations related to a certain precedent, as well as to the appearance around it of a well-established system of regulations, institutions, administrative acts and other phenomena, with loss of legal grounds for which, along with the party, relying on precedent, much of society, including public administration with its coherent administrative practices bears an unjustifiable burden.

Another crucial conclusion is that a supreme court's ruling on the proper application of law becomes invalid if law interpreted or serving a basis for this ruling has been amended or repealed, without the need for a supreme court to expressly depart from such a legal opinion. Likewise, decisions of constitutional courts and the judgment of the ECtHR, which are meant for direct application, prevail over legal opinions, even though the highest judicial institution has not expressly departed from such legal opinions. However, if there are such discrepancies between these legal acts and a legal opinion that not related to the literally established rules of conduct or framework for legal assessment, but rather lie in the philosophical dimension, the court taking into account the observations of parties and striking the balance of public and private interests must independently decide on the applicability of such a legal opinion.

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