

***JUDICIAL CONTROL AS A MEANS OF
ENFORCEMENT OF JUDICIAL DECISIONS
IN MODEL CASES: STATE AND
PROSPECTS IN UKRAINE***

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Abstract.

The purpose of the article is to find out the status and tendencies of the development of the institute of model case in Ukraine and to check its compliance with international legal requirements, as well as to determine the effectiveness of enforcement of judicial decisions in model cases. It is emphasized that the mechanism of the institute of model cases in Ukraine is gradually gaining a set of characteristics of a judicial precedent and is becoming a model for lower courts, attorneys and citizens. In the existing state-legal mechanism for ensuring the enforcement of judicial decisions in model cases, judicial control is considered to be effective, which in the conditions of political competition of state executive bodies is able to act as an external authoritative and recognized instrument of state influence on the activity of these bodies, turning their way to recognition and respect of a human and a citizen, ensuring human-centricity and the rule of law in Ukraine. It is considered appropriate for the courts to use this method as a daily tool, to increase its frequency of application, in particular in the cases of the obligation of the authorities to submit a report on the enforcement of the judicial decision, especially in model cases. It is established that the existing process of enforcement of decisions in model cases in Ukraine only partially meets the requirements of the Consultative Council of European Judges.

Keywords: administrative legal proceedings, enforcement of judicial decisions, judicial control, judicial precedent, model case, typical administrative cases.

INTRODUCTION

Scientific, practical problems.

The Code of Administrative Proceedings of Ukraine, amended by the Law of Ukraine of October 3, 2017 No. 2147-VIII (CAP), in contrast with other codes of judicial practice (Civil Procedure, Economic Procedure, Criminal Procedure) for the first time enshrined, in particular, such new legal categories as “typical case” and “model case” as well as peculiarities of proceedings in typical and model cases. The analysis of the legal norms for the mentioned categories of cases shows that a typical case can only be considered after a model case has been resolved.

At the same time, existence of only a judicial decision is not enough to achieve the purpose for which individuals turn to the justice system – the protection of violated rights, freedoms and interests. Therefore, the enforcement of court decision naturally becomes the main and the most important indicator of the real and proper protection of the violated rights, freedoms and interests of an individual and an integral part of the right to a fair trial.

As the European Court of Human Rights has repeatedly stated in its decisions, the enforcement of a decision given by any court should be regarded as an integral part of the “legal process” for the

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implementation of Article 6 of the European Convention on Human Rights, which provides the enforcement of judicial decisions in the states, respecting the rule of law cannot remain unfulfilled (CE).

The Code of Administrative Proceedings of Ukraine contains a Section IV, which is entitled and devoted to “Procedural issues related to the enforcement of judicial decisions in administrative cases”. However, neither this section of the CAP of Ukraine, nor its other legal provisions, as well as in general normative legal acts (in particular, the Law of Ukraine On Enforcement Proceedings (LEP) do not contain the peculiarities of enforcement of judicial decisions in model cases. That is, there is no specific legal mechanism.

At the same time, establishing mechanisms for the effective enforcement of judicial decisions is an important step towards building a rule of law and democracy state, in which respect for the law and citizens’ rights should prevail.

Choosing a course of European integration and signing the Association Agreement between Ukraine and the European Union obliges Ukraine to reform the field of justice and bring its initiatives and legislation in line with European ones. The European integration vector means, inter alia, that the EU *acquis communautaire* is the horizon Ukraine is seeking to approach. Therefore, to change approaches to the formation and exercising political, executive and judicial power, the standards recognized by the progressive international community should be taken into account. In particular, in the field of justice, standards are manifested in the principles, recommendations, rules, criteria, which are enshrined in various legal

acts and can be both binding and advisory for Ukraine. Taking into account the transition period of Ukraine's membership in the European Union, when the state and Ukrainian society is taking a test of legal maturity and readiness to coexist equally in the European Community, "optional" acts and directives become valuable and important in this process, because they accomplish interpreting and clarifying the standards enshrined in obligatory international documents adopted according to the results of information collection and study of long-standing case law on specific matters in legal systems of different countries, which accumulate their experience in various areas, and contain conclusions, evaluated processes analysis and practical recommendations for implementation of certain principles. Such documents include, inter alia, the findings of the Consultative Council of European Judges to attention of the Committee of Ministers of the Council of Europe (CCEJ). The key to justice is recognized – Opinion of the Consultative Council of European Judges (CCEJ) No13 on the role of judges in the enforcement of judicial decisions (Strasbourg, November 19, 2010), which states that the effective enforcement of a binding judicial decision is a fundamental element of the rule of law. It emphasizes that the independence of the judiciary and the right to a fair trial are futile if the decision is not enforced. In addition, by this international act are defined the criteria for assessing the effectiveness of the process of enforcement of judicial decisions, towards which, in turn, should be directed Member States, in particular points "g", 11, 12, 13, 17, 18, 31.

Literature Review.

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Certainly, in such a short period of existence in Ukraine, the institute of model case is getting a scientific maturity in the theory of administrative law. However, the vast majority of available scientific work concerns the issues of expediency of implementing the institute of model cases, examining the experience of the European Court of Human Rights in using this institute, or exploring the nature and differences of model and typical cases. Thus, Tetiana Podorozhna, examining model and typical cases as a new mechanism of administrative justice in Ukraine, positively assesses it, pointing that a great number of legal controversies can be summarized by its means and integrated by systematic approaches to solving them.²⁷⁰

The researcher Vasyl Ilkov substantiates her position that model cases in administrative legal proceedings will facilitate the resolution of problems of numerous conflicts of laws in administrative legislation,²⁷¹ and court decisions in such cases are judicial precedents, which are obligatory for administrative courts to apply in resolving such issues in public-law disputes.²⁷² Aliona Oksiuta also points out the positive prospects for establishing the institute of model cases in Ukraine, and herewith warns of possible delays in the procedures for examining model cases.²⁷³ Paranytsia and K.M. Tyshchenko, in determining the nature of an model and typical case and the mechanism of their legal

²⁷⁰ Podorozhna, T., 2018.

²⁷¹ Ilkov, V., 2017, p. 16.

²⁷² *Ibid.*, p. 19.

²⁷³ Oksiuta, A., 2018.

regulation in Ukraine, conclude that there is a large number of risks associated with their implementation. Researchers have noted, in particular, that problems may arise during the identification of cases as typical for their further consideration by the model proceedings procedure.²⁷⁴ At the same time, at the initial stage of implementation of the institute of model cases in Ukraine, some scientists express doubts about facilitating model proceedings for the speedy consideration of a large number of similar cases,²⁷⁵ and some criticize this judicial institute and assert that the institute of model administrative cases does not meet the principles of continental law, according to which is built the legal system in Ukraine.²⁷⁶

At the same time, such an important area as the state and prospects of the implementation of court decisions in model cases has remained almost without the attention of legal scholars. The judicial and administrative reforms that are currently underway in Ukraine also add urgency to this issue.

Purpose of the Paper.

In view of the above mentioned, *the purpose of the article* is to find out the status and tendencies of the development of the institute of model case in Ukraine and to check its compliance with international legal requirements, as well as to determine the effectiveness of enforcement of judicial decisions in model cases. To this end, a number

²⁷⁴ Paranytsia, S.P. & Tyschenko, K.M., 2018.

²⁷⁵ Kucheruk, N., 2017.

²⁷⁶ Nehanov, V., 2017.

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of tasks should be consistently accomplished, in particular: to investigate the state of development of the institute of model cases in ukraine; to establish and characterize the criterion of efficiency of the institute of model cases; to check the criterion of unity of law enforcement practice of courts and bodies of executive power while enforcing judicial decisions in model cases.

Research Methods and Materials of the Research.

A complex of scientific methods was used in the research to accomplish the set tasks. In particular, by means of the historical and legal method, the prerequisites for the introduction of the Institute of Model Cases in Ukraine were identified. The statistical evaluations and generalizations contributed to the identification of court model cases over a period of 2017-2019. Methods of classification, systematization and quantitative assessment have contributed to the division of judicial model cases into categories of administrative cases. Methods of qualitative and quantitative evaluation of the practical experience of appellate review of court decisions in model cases helped to identify the negative tendencies of this court procedure and to identify their certain causes. A technical method allowed to identify and point out the abuse of state executive bodies in the process of enforcement of judicial decisions in model cases. The methodological basis of the research was the critical analysis approach. The substantive grounds of the research were the decisions of the CAP within the Supreme Court in model cases, official letters and reports of executive authorities according to the enforcement of judicial decisions, statistical and analytical

information of the Supreme Court, as well as international and national legal acts on the subject of research.

THE FIRST TOPIC

THE STATE OF DEVELOPMENT OF THE INSTITUTE OF “MODEL CASE” IN UKRAINE

The term “model administrative case” is a novel of the CAP of Ukraine. It is important that the Supreme Court considers such a category of cases in the status of the court of the first instance by filing of one or more administrative courts, in which there are typical administrative cases, the number of which determines the expediency of making a model decision (part 1 of Article 290 the CAP). Only the Grand Chamber of the Supreme Court (part 11 of Article 290 of the CAP) can review judicial decisions of such cases on appeal.

The law identifies several characteristics that give grounds to classify a case as a model one, in particular: a) one and the same power entity (its separate structural unit); b) the dispute arose on similar grounds; c) relations are regulated by the same rules of law; d) the plaintiffs have made similar claims.

The review of the practice of the Administrative Cassation Court within the Supreme Court (ACC/SC) indicates that Ukraine has already acquired experience in using the institute of “model cases”, namely, examining exemplary model cases, adopting model decisions and their executing.

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According to the official data of the Supreme Court for the period from 15 december 2017 to 5 december 2019 the Administrative Cassation Court received 82 *cases (records)* for consideration according to the rules of proceedings in model cases²⁷⁷, in particular: in 2017 – 2 , in 2018 – 58, in 2019 – 22 (Web site of the SC). However, it should be noted that not all materials have been classified as model one.

Table 1. Statistics of Records over 2017 – 2019

Reach ACC SC for concide-ration (number of records)	Declined in opening a model proceeding (number of records)	Opened model proceedings (number of records)	No judicial decision yet (number of records)
82	60	20	2

Source: Authors, based on Web site of the SC, 2017-2019 database

Also the statistics shows little of records, judicial decisions of which entered into force.

Table 2. Results of consideration of records according to the rules of model proceedings

Examined	among them:
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²⁷⁷ “proceedings in model cases” hereinafter – “model proceedings”

cases according to the rules of model proceedings (number of records)	entered into force without appeal (number of records)	entered into force after appeal (number of records)	reversed judicial decisions (number of records)	Undergo appeal proceedings at the present time (number of records)
15	1	6	2	6

Source: Authors, based on Web site of the SC, 2017-2019 database

As a result of the analysis and synthesis of case law, in order to determine the reasons of refusing to open model proceedings, we have established the following.

As a general rule, the court refuses to open proceedings if the administrative case does not meet the characteristics of the model one: 1) the defendants are different power entities; 2) different grounds for a dispute; 3) excellent statutory regulation; 4) various claims.

As it was established, the largest category of cases that cannot be considered as model ones, is related to disputes concerning the referral of case by the court of the first instance, similar to those, in which the positions of the Supreme Court and the previous courts of cassation are defined. For example, the judicial decisions of April 2, 2018 in the Case No 826/20408/16²⁷⁸; 29 March 2018 in the Case No 806/855/18²⁷⁹; May

²⁷⁸ Decision of the Supreme Court of the Ukraine, 826/20408/16, Kyiv, 2.4.2018.

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2, 2018 in the Case No 818/1076/18²⁸⁰; May 4, 2018 in the Case No 802/544/18-a²⁸¹; May 8, 2018 in the Case No 820/1148/18²⁸²; May 15, 2018 in the Case No 810/1431/18²⁸³; May 21, 2018 in the Case No 816/1159/18²⁸⁴; June 11, 2018 in the Cases No 812/965/18²⁸⁵, No 820/2589/18²⁸⁶, No 825/1922/18²⁸⁷; June 13, 2018 in the Case No 812/1094/18²⁸⁸; July 6, 2018 in the Case No 363/591/18²⁸⁹; August 31, 2018 in the Case No 823/2417/18²⁹⁰; September 3, 2018 in the Case No 810/1750/18²⁹¹; November 2, 2018 in the Case No 0640/4409/18²⁹²; November 28, 2018 in the Case No 2340/2681/18²⁹³ etc.

²⁷⁹ Decision of the Supreme Court of the Ukraine, 806/855/18, Kyiv, 29.3.2018.

²⁸⁰ Decision of the Supreme Court of the Ukraine, 818/1076/18, Kyiv, 2.5.2018.

²⁸¹ Decision of the Supreme Court of the Ukraine, 802/544/18-a, Kyiv, 4.5.2018.

²⁸² Decision of the Supreme Court of the Ukraine, 820/1148/18, Kyiv, 8.5.2018.

²⁸³ Decision of the Supreme Court of the Ukraine, 810/1431/18, Kyiv, 15.5.2018.

²⁸⁴ Decision of the Supreme Court of the Ukraine, 816/1159/18, Kyiv, 21.5.2018.

²⁸⁵ Decision of the Supreme Court of the Ukraine, 812/965/18, Kyiv, 11.6.2018.

²⁸⁶ Decision of the Supreme Court of the Ukraine, 820/2589/18, Kyiv, 11.6.2018.

²⁸⁷ Decision of the Supreme Court of the Ukraine, 825/1922/18, Kyiv, 11.6.2018.

²⁸⁸ Decision of the Supreme Court of the Ukraine, 812/1094/18, Kyiv, 13.6.2018.

²⁸⁹ Decision of the Supreme Court of the Ukraine, 363/591/18, Kyiv, 6.7.2018.

²⁹⁰ Decision of the Supreme Court of the Ukraine, 823/2417/18, Kyiv, 31.8.2018.

²⁹¹ Decision of the Supreme Court of the Ukraine, 810/1750/18, Kyiv, 3.9.2018.

²⁹² Decision of the Supreme Court of the Ukraine, 0640/4409/18, Kyiv, 2.11.2018.

²⁹³ Decision of the Supreme Court of the Ukraine, 2340/2681/18, Kyiv, 29.11.2018.

The quantitative criterion for denial to commence proceedings on the model case is the second largest category. It is a small number of typical cases (3–12) in such legal relations, which does not make it feasible to consider them as model ones by the Supreme Court. In particular, the judicial decisions of January 29, 2018 in the Case No 825/4/18 (concerning 4 cases)²⁹⁴; February 26, 2018 in the Case No 820/617/18 (concerning 3 cases)²⁹⁵; April 19, 2018 in the Case No 816/103/18 (concerning 4 unconsidered cases, others were considered)²⁹⁶; June 11, 2018 in the Case No 822/1335/18 (concerning 1 unconsidered case, others already considered)²⁹⁷; June 19, 2018 in the Case No 815/2529/18 (concerning 12 cases)²⁹⁸; October 24, 2018 in the Case No 0640/4481/18 (concerning 6 cases)²⁹⁹.

At the same time, adherence to only a quantitative criterion is not sufficient to consider an administrative case essentially as a model one. First of all, the criterion of typical nature is a subject to legal assessment. The case has no typical characteristics under conditions, when there is no dispute concerning the correct application of the substantive law rule; or when in the case of a court ruling on the merits

²⁹⁴ Decision of the Supreme Court of the Ukraine, 825/4/18, Kyiv, 29.1.2018.

²⁹⁵ Decision of the Supreme Court of the Ukraine, 820/617/18, Kyiv, 26.2.2018.

²⁹⁶ Decision of the Supreme Court of the Ukraine, 816/103/18, Kyiv, 19.4.2018.

²⁹⁷ Decision of the Supreme Court of the Ukraine, 822/1335/18, Kyiv, 11.6.2018.

²⁹⁸ Decision of the Supreme Court of the Ukraine, 815/2529/18, Kyiv, 19.6.2018.

²⁹⁹ Decision of the Supreme Court of the Ukraine, 0640/4481/18, Kyiv, 24.10.2018.

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plaintiff's claim will be resolved the dispute between a plaintiff and a defendant in a particular case.

For example, in the judicial decisions of August 22, 2018, in the Case No 826/3783/18³⁰⁰ the court resolved that adjudication on the merits of a claim for recognition of a normative act (a government decree) will resolve the dispute in a particular case and exhaust the controversy of the ruling.

Cases, in which the subject matter of the dispute is exclusively individual and cannot be supposed as a typical one, cannot be considered. In specific cases, the difference of circumstances depends on the circumstances of the case (enrollment of privileged length of service to a pensioner, payment of fees for participation in the ATO, etc.). Thus, in the judicial decisions of September 20, 2018 it is established: “(T)he issues of payment of remuneration for direct participation in the ATO are resolved by the court individually in each case based on the availability of the grounds (conditions) provided by the legislation. The similarity (unity) of the subject-matter of the claim and the identity of the parties of the dispute, under the condition of availability uia other essential circumstances, which are subject to establishing in the course of a judicial proceeding, do not indicate a typical nature of such cases and, accordingly, the possibility of their equal resolution. The Supreme Court has no grounds to deviate from the aforementioned legal position, and therefore concludes that the opening of proceedings <...>

³⁰⁰ Decision of the Supreme Court of the Ukraine, 826/3783/18, Kyiv, 22.8.2018.

on consideration of Administrative Case No 812/1786/18³⁰¹ as a model one should be rejected”.

THE SECOND TOPIC

THE EFFICIENCY OF THE INSTITUTE OF “MODEL CASE”

In general, the state institute of “model case” is the procedural instrument and the legal means by which the litigation is accelerated, in particular by reducing the number of passing court instances by a case (which frequently lasts at least one year from the moment of filing a lawsuit to the court of the first instance to the state of enforcement of judicial decisions rendered by the Supreme Court).

The positive need for such “reduction of instances” of the legal process is obvious and predetermined, first of all, by the fact that there is no need for appeal and cassation against decisions that will be made by the courts of first instance on the consequences of consideration of typical cases, taken into account in the legal opinions, set in the decision of the Supreme Court, adopted on the basis of a model case (generally hearing of a large number of typical cases will be significantly accelerated as it takes less time for the courts to make judgement); second, by simplifying the procedure for appealing the similar cases.

³⁰¹ Decision of the Supreme Court of the Ukraine, 812/1786/18, Kyiv, 20.9.2018.
Retrieved from <http://www.reyestr.court.gov.ua/Review/76614289>

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Effectiveness as a characteristic and criterion of conformity of model cases is indicated in particular by the *procedural consequences* that come after the decision in the model case becomes valid, namely:

typical cases (administrative cases, the defendant of which is the same power entity or his separate structural unit, the dispute arose on similar grounds, in relations governed by the same rules of law, and in which the plaintiffs file similar claims) *have the status of cases of minor complexity* (Articles 4 and 12) and, accordingly, *are not subject to cassation appeal* (Article 328);

in such cases the dispute with the participation of a judge is not allowed (Article 184).

Moreover, it should be noted that despite the fact that the enforcement of judgments in a model case is carried out in the context of a typical case considered by the Supreme Court as a court of first instance, at the same time, the procedural tools applied by the court can be used in other typical cases.

Thus, administrative procedural legislation stipulates that, if necessary, the manner, terms and procedure of enforcement of a court decision may be determined in the court decision itself (part 1 of Article 372 of the CAP). Also part 1 of Article 371 of the CAP outlines the categories of cases in which decisions are allowed to be immediately enforced or subject to such enforcement prior to their entry into force, that is, immediately after their adoption; and part 2 of Article 372 of the CAP provides that a judicial decision, which has entered into force or is to be enforced immediately is the basis for its enforcement.

An efficiency is further indicated by the rule of procedural law, which vest a court, which made the decision, with authority at the request of the participants of a case *or on its own initiative*, to make a *decision* in written procedure or mention it in the decision to appeal to the immediate enforcement of a judgment in the case of recovery of the whole judgment in awarding pension payments, other periodic payments from the State Budget of Ukraine or extrabudgetary state funds – within the amount of one month's exaction and awarding payment of wages or other allowance in the relations of public service – within the amount of penalty for one month (par. 2 of Article 371 of the CAP).

Thus, in model case No 805/402/18 concerning the suspension of age pension payments for an internally displaced person, the Administrative Court of Cassation within the Supreme Court within the limits of the claims regarding the award of a pension payment within the amount of one month's exaction in accordance with paragraph 1, part 1 of Article 371 of the CAP is a subject to immediate enforcement.

However, it should be noted that the procedure for simplified appeals of “typical cases” within the limits of a model one can lead to both “delaying the time” of the lawsuit and to “freezing of movement” of a number of administrative lawsuits brought to the courts of various instances. In particular, when a typical case is heard and the Supreme Court make public notice of the initiation of proceedings in the relevant model case, the court of the first instance or appellate court has a right to suspend the appropriate judicial proceedings in the case at the

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request of a party to the case or on his own initiative. Such a break (delay) continues until the date of entering into force the Supreme Court's decision in the model case. However, the procedural legislation provides for additional risks of the possibility of delaying the deadline – delay in the entry into force of the decision due to the appeal to the Grand Chamber of the Supreme Court against the decision in the model case of the Administrative Cassation Court. Such a legal fact contributes to the delay for another 30 days from the date of the full judicial decision and the procedure for joining the complaint. In the case of an appeal, only the decision, which was not revoked after the appeal was returned, as a result of the refusal to open or close the appeal proceedings or the adoption of a resolution by the Court of Appeal following the consequences of the appeal review, becomes valid.

The analysis and generalization of the practical experience of appeal review of decisions in model cases, unfortunately, indicates the negative tendency of this procedural procedure and, accordingly, the “delay” of the judicial process as a whole.

Table 3. *Status and duration of appeal review of decisions in model cases*

Model case	Appeal review	Status and duration of appeal review of decisions in model cases
The decision of ACC/SC of 12.3.2018	Resolution of GC/SC	completed (9 months)

in the Case No 802/2196/17-a over the failure to draw up a new certificate on the amount of cash collateral for pension recounts	of 12.12.2018	
The decision of ACC/SC of 26.3.2018 in the Case No 806/3265/17 over the form of preparation of the passport of the citizen of Ukraine	Resolution of GC/SC of 19.09.2018	completed (6 months)
The decision of ACC/SC of 30.3.2018 in the Case No 812/292/18 over cancellation of decision on punitive sanctions and penalties for non-payment or late payment of a social security tax	Resolution of GC/SC of 06.12.2018	completed (9 months)
The decision of ACC/SC		in process

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of 16.4.2018 in the Case No 825/506/18 over refusal of the prosecutor's office to issue salary certificates for pensions recounts		(over 9 months)
The decision of ACC/SC of 4.4.2018 in the Case No 825/506/18 over the transfer from a disability pension to a civil servant's pension	Resolution of GC/SC of 13.02.2019	completed (10 months)
The decision of ACC/SC of 3.5.2018 in the Case No 805/402/18 over termination of the retirement pension for an internally displaced person	Resolution of GC/SC of 04. 09.2018	completed (4 months)

Source: Authors, based on Web site of the SC, 2018 database

THE THIRD TOPIC

**THE UNITY OF LAW ENFORCEMENT PRACTICE OF
COURTS AND EXECUTIVE AUTHORITIES WHILE
ENFORCING DECISIONS IN MODEL CASES**

An integral part of the right to a judicial defence is the enforcement of a judicial decision as the final stage of court proceedings. The importance of this stage is evidenced in the constitutional principles of the legal proceeding, in particular: "... 9) the bindingness of a judicial decision (Article 129), the court makes a decision in the name of Ukraine. The legal judgment is binding. The state shall enforce the judgment in the manner prescribed by law. The control over the enforcement of the judicial decision is exercised by the court (Article 129-1)" (Constitution of Ukraine).

It should be noted that the mentioned norms of the Constitution of Ukraine were reflected in the administrative procedural legislation of Ukraine. Thus, Article 14 of the CAP stipulates that the court decision, which ends the case in the administrative court, is made in the name of Ukraine. Effective court decisions are binding on all state authorities, local self-government bodies, their officials and officers, individuals and legal entities, and their associations throughout Ukraine. And failure to comply with a legal judgment entails liability imposed by law (the CAP).

A certain disclaimer and a method of legal safeguard have been established by an administrative procedural law for making decisions on typical cases that meet the characteristics set out in the Supreme Court's decision on the results of the consideration of the relevant

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model case. In such proceedings, the court must take into account the legal conclusions of the Supreme Court set out in the decision on the results of consideration of the model case (part 3 of Article 291 of the CAP).

As a result of the historical and legal comparison of the new and previous mechanisms of “precedent-setting” judicial activity in Ukraine, we have established the following. In the previous edition of the CAP, the decisions of the Supreme Court of Ukraine influenced the decisions of the lower courts, formed the case law and de-facto became a judicial precedent-setting. However, it could take a year and a half by the time the case was brought to the Supreme Court of Ukraine (as the court of the fourth instance). During this time, the courts of the first instance could hear hundreds or even thousands of similar cases with very different results. In particular, the conclusions of the Supreme Court of Ukraine concerned specific cases, which were mainly related to the unequal application of substantive and procedural law, that is, had a rather specific character and envisaged eliminating unequal application, overcoming legal conflicts. At the same time, in the new mechanism, the conclusions of model cases are of a *general nature*, reflecting the generalization of typical approaches to solving such cases.

Consequently, the conclusions of the model cases are directed more towards the discharge of the courts, the simplification of the hearing of cases, rather than the resolution of complex legal issues. From this point of view, of course, this institution should be evaluated positively, since a considerable part of legal cases can be summarized and combined with

systematic approaches to their resolution, and further their effective implementation can be ensured.

**THE FOURTH TOPIC: THE MECHANISM OF ENFORCEMENT
OF JUDICIAL DECISIONS IN MODEL CASES**

Turning to the coverage of the issue of the enforcement of judicial decisions, we would additionally emphasize that according to part 5 of Article 13 of the Law of Ukraine On the Judiciary and Status of Judges (LJSJ), the conclusions on the application of the rules of law, set out in the rulings of the Supreme Court, are binding on all authorities that apply a regulatory legal act containing the relevant rule of law in their activities.

In order to put this legal rule into practice, and in connection with being informed of the legal conclusions drawn from the results of the model cases, to prevent human rights abuse, the Supreme Court shall send such conclusions to the relevant authorities in the form of letters. In doing so, the Supreme Court “asks” such authorities to report on the measures taken. For example, in 2018, the Litigation Chamber for consideration of cases on the protection of social rights of the ACC sent legal conclusions stated in the resolutions of the Supreme Court in 4 model cases to the authorities (to the Ministry of Internal Affairs of Ukraine (1 letter), the Pension Fund of Ukraine (3 letters)). However, the case law analysis revealed only one case (namely, model case No 820/6514/17) when a report was received only from the Pension Fund of Ukraine about the organization of a series of measures and control over their implementation.

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It is also important to note that a decision in a model case is generally concerned with an unlimited number of persons, and therefore ensuring *complete enforcement of the decision in that case and similar cases is, in fact, outside the competence of the specific defendant in the case (for example, a territorial body of the Pension Fund of Ukraine)*.

Examining model cases allows not only to consider all the typical cases of the respective category faster, but also it gives the possibility of *resolving such conflict situations out of court in the future* to the appropriate authority, usually the defendant in the case.

In addition, having a legal conclusion based on the results of a model case enables the public authority *to eliminate the violations committed in the exercise of power in a particular legal situation (for example, to recount pension)*.

As mentioned above, the case law indicates evasion of the enforcement of judicial decisions by the authorities, which is perceived negatively by the state and society. This issue is particularly relevant in the context of administrative proceedings, since in such cases a public authority is always one of the parties to the dispute.

To eliminate such a shameful public relations practice of non-compliance with judicial decisions, the legislator resorts to various rulemaking methods. One of these was the introduction by law of the institute of judicial control (the CAP) into the administrative proceedings. The function of monitoring the enforcement of judicial decisions helps to ensure the effective protection of the interests of the

subject that is not vested with powers, that is, citizens and legal entities under private law within the framework of administrative proceedings

With the entry into force of the new edition of the CAP, the normative regulation of judicial control over the enforcement of judicial decisions in administrative cases has partially changed. However, the changes were not significant, namely – to replace Art.267 of the CAP, Articles 382, 383 of the CAP were adopted in the new edition, which separated different ways of judicial control, namely: Article 382 of CAP contains the obligation to report on the enforcement of judicial decisions and the imposition of a fine for failure to fulfill the mentioned obligation; and Article 383 of the CAP defines the procedure for declaring unlawful decisions, acts or omissions made by the power entity – a defendant for the enforcement of a judicial decision.

We consider that the rules in the Constitution of Ukraine and the procedural legislation on judicial control over the enforcement of judicial decisions can also be applied in model cases.

At present, the practice of establishing judicial control over the enforcement of judicial decisions in model and typical cases already exists in administrative cassation proceedings. For example, in model case No 805/402/18 (ACC SC decision of May 3, 2018) regarding the termination of the pension for an internally displaced person, one of the methods of judicial control was applied – the obligation to submit a report on the enforcement of judicial decisions by the time specified by the court. Thus, the regulatory part of the decision stated: “...considering that the enforcement of judicial decisions in the present case is of considerable public interest and requires the defendant to

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take certain actions, namely the resumption of pension payment to the plaintiff, the Court in order to protect the plaintiff's rights and the proper enforcement of judicial decisions considers it necessary to oblige the defendant to submit a report on the enforcement of judicial decisions within one month from the date of entry into force of the decision ..." (No 805/402/18). On October 8, 2018, the Supreme Court received a report on the enforcement of the Supreme Court's decision of May 3, 2018 No 8961/01 from the PFU Office. The said report states that for the enforcement of the judicial decision of the Supreme Court of May 3, 2018, the Office of the Pension Fund of Ukraine:

"... the retirement pension has been renewed for the period from April 1, 2017;

according to the protocol of the appointment of the pension of May 25, 2018, the said decision of the Supreme Court was enforced in the part of payment of the pension within the amount of the penalty for one month;

payment of the current amount of the pension was made in July, August, September 2018 on the 11th day of each month to the account opened at the JSC "Oshchadbank", which is confirmed by the relevant information;

payment of the pension for October 2018 will be made on October 11, 2018 – on the set date of payment of the pension;

arrears for the period from April 1, 2017 to May 31, 2018 in the amount of 24 141,02 UAH. will be paid on October 4, 2018".

The analysis of this report clearly shows that the court's decision was *not fully enforced*. In response to such a report, the Supreme Court within the Board of Judges of the Administrative Cassation Court, guided by part 1, 2 of Art. 382 of the CAP of Ukraine, adopted an additional new decision, which set a new deadline for submission of the report regarding the payment of pension arrears for the period from April 1, 2017 to May 31, 2018. In this way, the Court extended the term of the enforcement of the judicial decision and accordingly obliged the Bakhmut Joint Directorate of the Pension Fund of Ukraine of Donetsk region to file a report on the enforcement of the judicial decision within a new fifteen-day period from the date of receipt of a copy of this decision (ACC/SC Resolution of October 6, 2018 in the Case No 805/402/18). It is noteworthy that the following report from the PFU Office to the Supreme Court already contained information on the full enforcement of the judicial decision.

Thus, the example above demonstrates that the method used by the courts to exercise their supervisory powers in adopting a decision in a model case has been sufficiently tested and put into practice and has had effective results. And most importantly – it had a positive impact on the practice of enforcement of judicial decisions, because with its help a real restoration of the violated social law and interests of the plaintiff (retired citizen) took place.

At the same time, unfortunately, the proportion of decisions to which the Court's supervisory powers are enforced remains small. Therefore, it is considered appropriate for the courts to use this method as a daily tool, to increase its frequency of application, in particular in the cases of

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the obligation of the authorities to submit a report on the enforcement of the judicial decision, especially in model cases.

THE FIFTH TOPIC: THE ROLE OF RETROACTIVE LEGISLATION IN THE MECHANISM OF ENFORCEMENT OF JUDICIAL DECISIONS

While the European Court of Human Rights has ambiguous attitude towards retroactive legislation, the position of the court in the case “*Dimopoulos v. Turkey*” should be taken into account, in which the court considers that retroactive legislation may undermine the fairness of proceedings, the right to equality of parties and undoubtedly affect the outcome of the dispute (paragraph 38)³⁰².

In the national justice, the existence (appearance) of retroactive legislation only confirms its negative role in the enforcement of judicial decisions. An example is the following case.

In the model case No 820/6514/17 on the recomputation of pensions of servicemen, the results of its consideration, on the one hand, achieved an ideal mechanism for cooperation with the Government, which proposed general measures aimed at overcoming the structural problem (non-recomputation and non-payment of pensions). These measures were reflected in the Resolution of the Cabinet of Ministers of Ukraine of February 21, 2018 No 103 “On transfer of pensions to persons who have been dismissed from military service and to some other categories of persons”. Thus, it could be considered that this case

³⁰² Decision of the European Court of Human Rights, [*«Dimopoulos v. Turkey»*](#), 2.7.2019.

has become a model one in its essence and in the manner of enforcement.

However, as a result of the legal analysis of the provisions of this Cabinet of Ministers of Ukraine Resolution No 103, in particular paragraph 3, it can be concluded that, on the one hand, the Government had a new procedure for payment of the amount of the recalculated pension increase that had to be recalculated and paid from 1.1.2016 to 24.2.2018; on the other hand, *the new legal mechanism actually led, firstly, to a 50 percent reduction in payments, and secondly, to the introduction and application by the State of such a long-term payment installment mechanism (during years 2018-2020).*

Therefore, it follows, firstly, that paragraph 3 of the Cabinet of Ministers of Ukraine Resolution No 103 establishes a new procedure for payment of the recalculated pension amounts, which provides for the payment of *reduced payments, and the payment of the difference in the amount of the recalculated pension is spread over a long period*; secondly, as a consequence of the adoption of the said new order – on the doubtfulness of the lawfulness of the application of the said provisions to the past legal relations, from 1.1.2016 to 24.2.2018 (effective date of the Cabinet of Ministers of Ukraine Resolution No 103 of 21.2.2018), especially taking into account the Provisions of Article 58 of the Constitution of Ukraine and the Decision of the Constitutional Court of

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Ukraine of 9.2.1999 No 1-rp/99³⁰³, and the Cabinet of Ministers of Ukraine Resolution No 103³⁰⁴.

From the legal situation mentioned above, it can be stated that, on the one hand, the decision of the Armed Forces of February 15, 2018 in the model case No 820/6514/17, in which the citizen's claim to the Main Department of the Pension Fund of Ukraine in Kharkiv region on the recognition of illegal inaction and obligation to take certain actions in a typical case was satisfied, encourages the state to develop a mechanism for enforcement of this decision; on the other hand, the rules adopted at the request of the court to settle the relevant procedure (recalculation and payment of pensions), by their nature, were retroactive and did not facilitate the full implementation of the following typical administrative cases and were in fact intended to change enforcement the alleged decision in the case.

CONCLUSION

To sum up, model (typical) cases proceedings are a valuable and progressive novel of the new CAP of Ukraine, which potentially has a significant positive impact on ensuring effective justice, including promptness, uniformity of case law and law enforcement in general. The mechanism of the institute of model cases in Ukraine is gradually

³⁰³ Retrieved from <https://zakon.rada.gov.ua/laws/show/v001p710-99>

³⁰⁴ Retrieved from <https://zakon.rada.gov.ua/laws/show/103-2018-%D0%BF>

gaining a set of characteristics of a judicial precedent and is becoming a model for lower courts, attorneys and citizens.

At the same time, as practical experience has shown, there are many risks in Ukraine related to model cases proceedings and enforcement – from “delaying” the legal process to public authorities interference with the judicial decision-making process, including through rulemaking.

The current state of the practice of administrative proceedings demonstrates the existing inconsistency as well as opposition of judicial and executive branches of power in the enforcement of judicial decisions in model cases, which is manifested in the efforts of the courts to act in accordance with the current legislation in restoration of violated rights of citizens on the one hand, and the enforcement of various forms of lawmaking by executive bodies, including retroactive nature (decrees, instructions, orders, etc.), alternative to the ones revoked by courts with the aim of minimizing deviation from the public policy selected for the implementation in the relevant fields (especially in the social sphere).

At present, in the existing state-legal mechanism for ensuring the enforcement of judicial decisions in model cases, judicial control is considered to be effective, which in the conditions of political competition of state executive bodies is able to act as an external authoritative and recognized instrument of state influence on the activity of these bodies, turning their way to recognition and respect of a human and a citizen, ensuring human-centricity and the rule of law in Ukraine.

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Therefore, it should be noted that the courts' use of their supervisory powers in adopting a decision in a model case was tested and put into practice, and had effective results that had a positive impact on the practice of enforcement of judicial decisions, since the violated rights and interests of the plaintiff were actually restored. Unfortunately, the proportion of decisions to which such supervisory powers apply remains small. Therefore, it is considered appropriate for the courts to use this method as a daily tool, to increase its frequency of application, in particular in the cases of the obligation of the authorities to submit a report on the enforcement of the judicial decision, especially in model cases.

With regard to establishing the conformity of the existing process of enforcement of decisions in model cases in Ukraine with the modern requirements of the Consultative Council of European Judges, the following should be noted:

firstly, in Ukraine enforcement of most of decisions in model case is not rapid, efficient and proportionate;

secondly, the current state of enforcement of judicial decisions in model cases indicates that public entities, in particular the executive branch, do not respect judicial decisions properly, admitting facts of refusal to enforce a court decision, which generally undermines the concept of primacy of the law in Ukraine;

thirdly, there is the practice of undermining the process of enforcement of judicial decisions by the executive and legislative bodies by imposing retroactive legislation;

fourthly, in model cases proceedings, the Ukrainian administrative court demonstrates conformity with the concept of “independent court”, which is ensured by the absence of explicit interference by other branches of state power in the judicial decision-making process;

fifthly, the Ukrainian judiciary still has the practice of delaying the enforcement of the decision, mainly due to the lack of sufficient budgetary funds to make timely state social payments to the recoverers under court decisions;

sixthly, there is no practice in Ukraine to provide for accelerated or urgent enforcement of decisions where delay may lead to irreparable wrong, again due to the lack of adequate financial support for the decisions enforcement process;

seventhly, in order for judges to fulfil their tasks, the judiciary should be entrusted with the task of enforcing decisions, which would require that at the final stage the judge should use all possible means to ensure enforcement, including through an effective judicial control institution.

To bring the institute of model cases in Ukraine closer to European standards, a the study of foreign experience, in particular the one of Germany and the European Union in the enforcement of judicial decisions in model (typical) cases is a promising and urgent task for scientists and practitioners in the near future.

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