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Analysis

of the court practice of applying the institution of model cases in administrative proceedings as a measure to reduce the duration of court proceedings

Executive summary

May 2021, Kyiv

At the request of the Ukrainian authorities, the Council of Europe Project "Further support for the execution by Ukraine of judgments in respect of Article 6 of the European Convention on Human Rights" (hereinafter referred to as the Project) provides support to the Working Group of the Supreme Court on resolving the issue of the excessive length of court proceedings, as found by the European Court of Human Rights in the *Svetlana Naumenko v. Ukraine* and *Merit v. Ukraine* cases. The Project is funded by the Human Rights Trust Fund and implemented by the Department for the Implementation of Human Rights, Justice and Legal Co-operation Standards. During its implementation period, the Project helps the Working Group of the Supreme Court to identify the true state of the specified issue and proposes the most relevant ways for Ukraine to solve it.

An important area of activity for the Working Group of the Supreme Court is to study the changes in judicial practice that occurred after the introduction of amendments to the procedural codes in 2017 in the context of compliance with the "reasonable time" requirement in court proceedings. Relevant information will allow us to assess the current state of affairs and summarise the impact of the legislative changes on resolving the problem of the excessive length of court proceedings.

One of the updates to the Code of Administrative Procedure of Ukraine was the introduction of the institution of a model case aimed at accelerating the consideration of cases and the unification of case law. It was agreed at the latest meeting of the Working Group of the Supreme Court, within the framework of the Project, to carry out expert analysis of case law on the application of model cases. To accomplish this task, the Project invited Roman Kuybida, a national expert, PhD in Law, and deputy chairman of the board for the Centre for Political and Legal Reforms to participate.

This request is based on the interim resolution of the Committee of Ministers of the Council of Europe of 1 October 2020, on the implementation by Ukraine of the European Court of Human Rights judgments in the *Svetlana Naumenko / Merit* group of cases, in which the Committee of Ministers of the Council of Europe called on the Ukrainian authorities "to submit by 1 July 2021, a detailed action plan to reduce the duration of proceedings, including information on ... notable trends to assess the impact of judicial reforms implemented to date."¹

Accordingly, the objectives of this analysis are:

- to assess the impact of the institution of model cases introduced into the practice of administrative proceedings from 15 December 2017, on the duration of proceedings;
- to draw conclusions about the efficiency of this institution as a measure to reduce the excessive length of proceedings;
- to develop recommendations for improving this institution and the introduction of other similar measures necessary to resolve the issue of the excessive length of court proceedings.

Overall Findings

- The institution of the model case involves the judgment of the Supreme Court (on the recommendation of the local court) on one of the standard administrative cases as a model one, followed by the impact of the final decision in this model case on deciding other

¹ Interim Resolution of the CMCE (CM/ResDH (2020) 208) on the implementation of European Court of Human Rights judgments in the *Svetlana Naumenko v. Ukraine* and *Merit v. Ukraine* cases: <https://rm.coe.int/native/09000016809fcd88>.

standard cases in lower-level courts. This institution makes it possible to achieve a state of legal certainty in cases based on the same legal issue with more speed than before.

- It has been established that the judicial statistics of the Supreme Court reflect the consideration of model cases in the Supreme Court; however, judicial statistics maintained by the State Judicial Administration of Ukraine do not include these data, nor do they contain data on the consideration of standard cases by lower-level courts. It should be noted that the Law of Ukraine "On the Judicial System and the Status of Judges" entrusts the State Judicial Administration of Ukraine with the authority to organise work on the judicial statistics at the national level.
- The Supreme Court of Ukraine adopted 24 judgments in model cases from 2018-2020 (7-9 cases per year). Consideration of model cases in the Supreme Court takes place at the initiative (request) of the local court, which identifies cases of the same type. However, only one out of every 5 such requests to consider the case as a model one achieved its goal; others were rejected by the Supreme Court of Ukraine. Therefore, the Court of Appeal of the Supreme Court of Ukraine considered 117 submissions, the overwhelming majority (79%) of them were refused as a model case or the submissions were returned without consideration. The largest number of submissions (59%) are received and model cases resolved (83%) in social disputes.
- The Supreme Court's website contains a special section for model cases, but it does not reflect current information, in particular, not all of the adopted model decisions are posted, there is no information on the results of the revision with the texts of the relevant decisions, and the dates of entry into force of court decisions are not indicated.
- The data from the Unified State Register of Court Decisions (as of 25 April 2021) showed that references to model cases resolved during 2018-2020, after the entry into force of the model decision, contained 139,255 decisions from local courts in administrative cases. The decisions of the Supreme Court in model cases affect the decision of almost every fourth case at first instance.
- It was revealed that the duration of standard case consideration could be no more than 13 months on average (if the court stops the proceedings while the model case is being considered in the Supreme Court), or about 2 months if at the time of consideration of the case there is already a valid model decision.

It has been found that the institution of model cases accelerates the proceedings in standard cases by at least 2.5 times as compared to the duration of the consideration period for other administrative cases, since (according to the estimates made within the framework of this analysis) from the moment proceedings begin on a "normal" administrative case to the final decision, it takes 34-35 months on average (such data are obtained from the analysis of a sample of 100 judgments in administrative cases finally decided by the Supreme Court and are not standard/model).

Thus, the unconditional advantage of the institution of model cases is a significant acceleration in the consideration of standard cases and ensuring consistent legal enforcement in them. The efficiency of this institution has been confirmed based on analysis of the case law and judicial statistics on administrative cases carried out within the framework of this study.

The following **recommendations** were developed based on these findings:

- 1) The statistical tools should be improved by the State Judicial Administration of Ukraine to track the efficiency of the institution of model cases, in particular by:
 - Introducing the calculation of the duration of consideration of both standard cases (including model ones) and other cases.
 - Recording various parameters of standard cases (the number of suspended / resumed proceedings, the number of standard cases resolved on the basis of the model decision, the number, grounds, results of appealing against court decisions in standard cases, etc.).
 - Including the Supreme Court statistics, particularly on resolving model cases, in judicial statistics.
- 2) The Model Cases section on the Supreme Court of Ukraine's website should be updated by the latter, in particular, by supplementing it with information on the status of review of model decisions on appeal and their entry into force.
- 3) The Supreme Court should investigate the reasons for the rejection of most first instance court applications to consider a standard case as a model one (this study may prompt the need for additional clarifications or training for judges or even a broadening of the scope of application of model cases due to the expansion of the features of a standard case through amendments to legislation).
- 4) The judiciary and legislature should investigate the feasibility of introducing the institution of model cases in other types of legal proceedings, taking into account the advantages that it has created for administrative proceedings.