

IMMEDIATE EXECUTION OF COURT JUDGMENTS: SPECIFIC ASPECTS

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Annotation. For the administration of justice, an important role in the judicial process is played not only by the court hearing itself and the issuance of a court decision but also by its timely, high-quality, and effective enforcement. This is especially relevant in cases where a person's rights and legal interests require immediate restoration and protection, as delays can lead to even greater violations of those rights and interests. Therefore, legislation provides for the institute of immediate enforcement of court decisions, which is aimed at ensuring an accelerated process of protecting the claimant's rights without unnecessary procedural delays.

The article comprehensively discusses the legal foundations and peculiarities of applying the mechanism of immediate enforcement, analyzes the normative legal acts regulating this sphere, and examines the main issues faced by courts, parties to the process, and enforcement authorities in implementing this institute in practice. Particular attention is given to issues arising even at the stage of judicial review of cases subject to immediate enforcement, including procedural complexities, criteria for applying such enforcement, and risks associated with maintaining a balance between the expediency of enforcement and adherence to fundamental principles of legality, justice, and individual rights.

The authors identify existing gaps in current legislation and judicial practice, which sometimes complicate the effective application of the institute of immediate enforcement, and propose specific recommendations for improving legal regulation and practical mechanisms. Overall, the research emphasizes that the swift and high-quality enforcement of court decisions not only ensures prompt legal protection but also contributes to the stability of legal relations in society. It enhances the efficiency of the judicial system, demonstrating its ability to respond to citizens' needs. Moreover, timely enforcement of decisions strengthens trust in state institutions and supports the rule of law.

Key words: enforcement proceedings, immediate enforcement, court decision, claimant.

1. Introduction.

Enforcement of court decisions is the final stage of proceedings in civil justice, aimed at ensuring the proper implementation of judicial directives in practice. Typically, court decisions are enforced after they acquire legal force; however, for certain categories of cases where the period from the moment of their announcement to their entry into force can critically and negatively affect the rights of the individual, there exists a legislative possibility of immediate enforcement of court decisions.

Nevertheless, both in the case of enforcement through the usual procedure and in the case of immediate enforcement, there are a number of practical problems that complicate the process and lead to new court disputes. This applies not only to the enforcement stage but also to the stage of judicial review and the issuance of a court decision. This is evidenced by the large number of cases falling under part 1 of Article 430 of the Civil Procedure Code, such as reinstatement at work, establishing the fact of birth or death of a person on territories where a martial or emergency state is in effect, or on temporarily occupied territories of Ukraine, issuing or extending restrictive measures, involuntary hospitalization, and others.

2. Analysis of scientific publications.

Legal scholars such as Pryadko M.Yu., Moiseienko D.M., Avtargov A.M., Ryabchenko O.P., Korotka N.O., Korchevna L.O., and others have already examined aspects of immediate enforcement of court decisions in their works, noting both the positive nature of such enforcement and the existence of several problems. Specifically, Pryadko M. Yu. and Moiseienko D.M., in their research, pointed out that the mechanism of immediate enforcement of court decisions ensures the restoration of violated rights of workers without delay, providing them with quick access to employment and compensation for lost time. This approach actively contributes to legal justice and the effective resolution of labor disputes [7; 2].

However, considering the relatively small number of works dedicated to this topic, its relevance remains high and warrants further scientific and legal discussion, especially since the procedure for immediate enforcement of court decisions, just like the usual enforcement procedure after decisions acquire legal force, has its drawbacks and a tendency toward the non-enforcement of court decisions overall.

In this context, it is worth agreeing with L. O. Korchevna, who believes that an important component of the right to a fair trial—enshrined in many international and national legal acts in the field of human rights—is the right to enforce a court decision as the only means of restoring violated rights. However, at the current stage of Ukraine's legal system development, this component still causes the most problems and requires a systematic approach not only from the legislator but also from society and political elites, because it is unacceptable in a European country for the main subject of non-enforcement of court decisions to remain the state itself [8; 83-84].

3. The aim of the work.

Based on the legislative framework, scientific-practical comments, and research by various authors, the aim of this article is to investigate and summarize, in addition to the general aspects of the issue, all currently identified pitfalls related to the judicial review of cases subject to immediate enforcement, as well as the process of immediate enforcement of such decisions.

4. Review and discussion.

In general, analyzing the legislation regarding the enforcement of court decisions, it can be determined that decisions that have acquired legal force are subject to mandatory enforcement by all state authorities, local government bodies, their officials and employees, individuals, legal entities, and associations across the entire territory of Ukraine, in accordance with Part 2 of Article 13 of the Law of Ukraine "On the Judiciary and the Status of Judges." Enforcement of court decisions can be either voluntary or coercive, in cases where the debtor evades voluntary compliance with the court decision. Coercive enforcement of a court judgment, according to points 1-3 of part 1 of Article 15 and Article 5 of the Law of Ukraine "On Enforcement Proceedings," is carried out based on enforcement documents: court orders, writs of execution, and orders issued by courts in cases provided for by law, based on court decisions, arbitration tribunal decisions, decisions of international commercial arbitration, decisions of foreign courts, and on other grounds determined by law or Ukraine's international treaties, rulings, and court decisions in civil, commercial, administrative cases, cases of administrative offenses, criminal proceedings, by state or private executors.

Such documents, according to Article 12 of the Law of Ukraine "On Enforcement Proceedings," may be presented within 3 years, and enforcement documents for which the claimant is the state or a state body are valid for 3 months. After that, the state or private bailiff, no later than the next working day from the date of receipt of the enforcement document, issues a decision to open enforcement proceedings, then performs enforcement actions and makes decisions by issuing resolutions, warnings, submissions, acts, protocols, issuing orders, instructions, demands, submitting inquiries, statements, notifications, or other procedural documents. Everything culminates in the bailiff issuing a decision to terminate enforcement proceedings and, accordingly, exclude the debtor from the Single Register of Debtors with subsequent

cancellation of enforcement measures related to the execution of the decision, in accordance with Articles 13, 26, 39, 40 of the Law of Ukraine “On Enforcement Proceedings.”

However, these are general details about coercive enforcement proceedings. We will return to the relevant provisions of the Law of Ukraine “On the Judiciary and the Status of Judges,” since an important exception is contained in Article 430 of the Civil Procedure Code, namely that a court decision does not necessarily have to be enforced after it acquires legal force, but also when the decision falls under immediate enforcement, which will be the main focus of further discussion.

Immediate enforcement of court decisions refers to the enforcement of decisions that have not yet acquired legal force. This procedure applies to cases where the fastest possible restoration of violated rights is necessary to prevent negative consequences. The differences between immediate enforcement and coercive enforcement in the ordinary manner are as follows:

- The deadlines for enforcing court decisions in the ordinary procedure are set from the day after they acquire legal force or after postponement or rescheduling of enforcement; in the case of immediate enforcement, the deadlines are set from the day after the decision is directly adopted (Part 2 of Article 12 of the Law of Ukraine “On Enforcement Proceedings”).
- For non-monetary decisions, the bailiff in the decision to open enforcement proceedings indicates the need for the debtor to comply with the decision within 10 working days, after which the enforcement of the decision is checked, except for decisions subject to immediate enforcement with a deadline of 3 days, according to Part 6 of Article 26 and Part 1, 2 of Article 63 of the Law of Ukraine “On Enforcement Proceedings.”
- For coercive enforcement of most court decisions (with some exceptions), a enforcement fee is charged; for decisions in cases subject to immediate enforcement, this fee is not applicable, according to Part 5 of Article 27 of the Law of Ukraine “On Enforcement Proceedings.”
- Enforcement proceedings are suspended if the court reinstates the deadline for submitting an appeal against the decision for which an enforcement document was issued, except for enforcement documents subject to immediate enforcement, according to Part 1 of Article 38 of the Law of Ukraine “On Enforcement Proceedings.”

The legislator has listed such cases in Article 430 of the Civil Procedure Code (CPC), namely: collection of alimony—within the amount of a single month’s payment; awarding an employee the payment of wages, but not exceeding one month; compensation for damage caused by injury, other harm to health, or death of an individual—within the amount of a single month’s collection; reinstatement of an illegally dismissed or transferred employee; removal of a child and return to the person with whom the child resided; disclosure of bank information containing banking secrecy regarding legal and natural persons; disclosure of information that constitutes a professional secret on capital markets and organized commodities markets concerning a legal or natural person by a person specified in points 1-3 of part one of Article 134 of the Law of Ukraine “On Capital Markets and Organized Commodity Markets” (professional market participants, third parties during activities related to capital markets, and those who provide services or perform works under contracts), as well as the provision of psychiatric assistance to a person involuntarily, issuance or extension of a restraining order, and establishing the fact of birth or death of a person in a territory where martial law or a state of emergency has been introduced, or on temporarily occupied territories of Ukraine, as defined by law; and providing psychiatric assistance involuntarily.

As we see, cases of immediate enforcement are not uncommon, given the quite extensive list of cases where such procedures can be applied. Of course, there are problems in some of these categories.

For example, cases concerning the reinstatement of an illegally dismissed or transferred employee. In practice, employers are reluctant to reinstate an employee in their previous position, especially when enforcement occurs voluntarily, not due to delays on their part, but because of formal refusals to reinstate: the absence of the position where the employee was reinstated, failure to specify in the court decision that immediate enforcement is allowed, or the employee not indicating the previously vacated position. Another example is the reduction of the staff by the employer, including the position to which the illegally dismissed employee is to be reinstated. However, in some cases, the issue is not about refusals—when

reinstating an illegally dismissed employee, the new employee occupying the previous position must be dismissed or offered another job or position with severance pay, as provided in points 6 of part 1 of Article 40, parts 2 of Article 40, and Article 44 of the Labor Code of Ukraine.

Particularly sensitive cases involve taking another person into the position from which the employee is to be reinstated, especially when such persons cannot be dismissed due to additional state guarantees. Examples include pregnant women, women with children under three years of age, single mothers with a child under 14 years or a child with a disability, or individuals raising minors without a mother, according to Part 3 of Article 184 of the Labor Code of Ukraine. Such persons can only be dismissed in the case of full liquidation of the enterprise, institution, or organization, with a mandatory requirement for re-employment upon dismissal.

Based on this, there are several ways for the employer to resolve the issue of reinstatement: to offer the protected person another position or workplace, to agree on dismissal based on point 1 of Article 36 of the Labor Code (mutual agreement), or Article 38 of the Labor Code (at the employee's own will), or to introduce a similar position into the staff schedule.

The same applies to mobilized employees. For example, if a person is taken into the position from which the employee was unlawfully dismissed or transferred, and then this person is mobilized within a few days, fulfilling the court decision to reinstate the employee becomes equally problematic, if not impossible. According to Part 3 of Article 119 of the Labor Code, during mobilization and the period of special measures, the workplace and position are preserved until actual dismissal. In such cases, the employer can only dismiss the employee at the initiative of the mobilized person or by mutual agreement, according to Article 38 of the Labor Code and point 1 of Article 36.

Handling the dismissal of minors during immediate enforcement of a reinstatement decision is also complicated because, according to Article 198 of the Labor Code, dismissal of employees under 18 years old on the grounds of reinstatement of an employee who previously performed that work is not permitted without employment services.

However, problems arise not only during the enforcement of court decisions that are subject to immediate execution but also at the stage of judicial review of cases from which such decisions originate. For example, a simple violation of deadlines. For instance, cases concerning involuntary hospitalization to a tuberculosis hospital or the extension of the period of involuntary hospitalization, paragraph 7 of part 1 of Article 430 of the Civil Procedure Code (CPC), are to be reviewed no later than 24 hours after the opening of proceedings in the case, according to part 1 of Article 345 of the CPC. The legislator establishes such a deadline to ensure the case is considered as quickly as possible and a decision is made, since a patient with an infectious form of tuberculosis poses a danger to those around them. At the same time, there are cases of gross violations of the review deadlines for these types of cases by courts.

Cases concerning the establishment of the fact of birth or death of a person in a territory where martial law or a state of emergency has been introduced, or in the temporarily occupied territory of Ukraine, have been accompanied by proof difficulties, according to paragraph 8 of part 1 of Article 430 of the CPC. One of the first challenges related to the acceptance and evaluation of evidence in the judicial practice of these local courts was that applicants in such cases provided birth/death certificates that were certified with signatures of doctors and stamps featuring double-headed eagles from medical institutions, or they submitted birth/death certificates issued by "so-called local authorities" located in the occupied territory. At the same time, other evidence was absent [9]. During the early formation of judicial practice, there were frequent cases where courts left such applications without motion and suggested applicants, where possible, to submit additional evidence, since Ukrainian judges, when reviewing such cases with a lack of other evidence, had to ensure on the one hand that the fact indeed occurred, and on the other hand, not to recognize documents issued by the occupation authorities [9].

5. Conclusions.

As we can see, the issue of immediate enforcement of court decisions remains актуальним, given that cases subject to such enforcement procedures are quite frequent, challenging to resolve, and, of course, the rights of participants in such cases require the fastest and fairest restoration. This has led



to a significant number of problems encountered at the stage of resolving and immediately enforcing such cases. Generally, these problems arise due to employer refusals, complications of the process by legislative guarantees for certain persons (pregnant women, women with children under three years old, single mothers with a child under 14 years or a child with a disability, persons raising minors without a mother, minors, and mobilized persons), violations of deadlines, and others.

Therefore, this topic requires further study to find solutions to the issues described in this article, as well as those that this article was unable to cover.

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