



LEGAL FRAMEWORK FOR THE DEVELOPMENT OF AN EFFECTIVE SYSTEM OF ENFORCEMENT IN UKRAINE

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Annotation. The aim of the work is a study of the legal framework for the development of an effective system of enforcement in Ukraine.

The methodological basis of the study is international and national legal acts, court decisions, statistical and analytical materials, and scientific works of scholars in the field of constitutional law, administrative law, criminal law, theory of state and law, and other branches of legal science on the constitutional and legal framework for ensuring the binding nature of court decisions in Ukraine.

The article examines the legal aspects for the further development of an effective system of judgment enforcement in Ukraine. The author analyzes the existing legal context for improving legislation and practical mechanisms to ensure greater efficiency and transparency in the enforcement of court decisions. The key aspects of the enforcement system aimed at strengthening the rule of law, ensuring compliance with court decisions and implementing justice sector reforms to ensure a higher level of public confidence in the judicial system are revealed. The author examines the measures of enforcement of judgments and proves that they are regulated by the rules of executive procedural law. Particular attention is paid to the analysis of the current legislation governing the enforcement of court decisions in Ukraine. The author analyzes the performance of private bailiffs in comparison with public bailiffs and demonstrates that private bailiffs are effective. It is proved that the introduction of the institute of private bailiffs has generally had a positive impact on the enforcement of court decisions. The author analyzes the problems of organizing cooperation between private and public bailiffs in the course of enforcement of judgments against one debtor.

In summary, it is proved that Ukraine still has a systemic problem of non-enforcement of court decisions. The introduction of a mixed public-private model of judgment enforcement has brought some positive results, but has not solved the overall problem.

Key words: enforcement proceedings, system, state enforcement officer, private enforcement officer, enforcement of decisions, recovery of funds.

1. Introduction.

Ukraine is currently reforming the system of enforcement of court decisions, and in connection with this, a number of regulatory acts have been adopted to regulate legal relations in this area. It is worth noting that a number of changes in this area will contribute to the development of an effective system of enforcement.

Enforcement of court decisions and other jurisdictional bodies is one of the main criteria by which civil society assesses the capacity, efficiency and integrity of the government. Ensuring the actual implementation of such decisions is an absolute task of the state, which must be carried out without compromise. Without the implementation of a lawful decision, the meaning of the front-line activities of public administration bodies authorized to ensure human rights is lost. Failure to enforce such

decisions negatively affects the authority of the state authorities, since in this case the purpose of justice is not achieved – ensuring effective restoration of rights. Enforcement proceedings are the end result of jurisdictional activities within which enforcement of court decisions and other bodies is carried out [1].

2. Analysis of scientific publications.

Problematic issues of legal regulation of the enforcement of court decisions, the issue of an effective system of bodies and persons engaged in the enforcement of decisions have been studied to varying degrees by such well-known scholars as O. Verba-Sydor, Y. Hryshko, I. Kovbas, N. Kosyak, I. Kuzmina, L. Nalyvaiko, D. Prymachenko, O. Snidevych, A. Solonar, Y. Yurkevych and others.

3. The aim of the work is to study the legal framework for the development of an effective system of enforcement of judgments in Ukraine.

4. Review and discussion.

The current legislation on enforcement proceedings has actually reoriented the work of the bodies responsible for enforcing decisions, making it more transparent by introducing an automated enforcement system and introducing the institute of private enforcement officers.

In a general sense, a law is a normative legal act of the highest representative body of state power, the legislature or the people themselves, which regulates the most important social relations, expresses the will and interests of the majority of the population, embodies fundamental human rights and other universal values and has the highest legal force in relation to other normative legal acts [13, p.127]. Among the ordinary laws of Ukraine, the norms of which are aimed at regulating legal relations to ensure the implementation of measures for the enforcement of court decisions, the following should be mentioned first of all: The Law of Ukraine “On Enforcement Proceedings” dated 02.06.2016 [8], which defined the basic principles of enforcement proceedings in Ukraine. The document establishes that enforcement proceedings as the final stage of court proceedings and enforcement of court decisions and decisions of other bodies (officials) is a set of actions of the bodies and persons specified in this Law aimed at enforcement of decisions and conducted on the grounds, within the powers and in the manner determined by the Constitution of Ukraine, this Law, other laws and regulations adopted in accordance with this Law, as well as decisions that are subject to enforcement in accordance with this Law [8].

With the outbreak of hostilities in Ukraine, the activities of many private and public enterprises, institutions, and organizations were suspended in the occupied territories and in the territories where active hostilities are taking place. In addition, there was a need to regulate certain aspects of enforcement proceedings. To this end, the legislator amended the current legislation. In particular, the Law of Ukraine “On Amendments to Section XIII “Final and Transitional Provisions” of the Law of Ukraine “On Enforcement Proceedings” was adopted on March 15, 2022, which entered into force on March 26, 2022 [9]. This Law has supplemented Section XIII “Final and Transitional Provisions” of the Law of Ukraine “On Enforcement Proceedings” with paragraph 10-2 of the following content: “10-2. Until the law on the settlement of relations involving persons associated with the aggressor state enters into force, enforcement actions are suspended, and it is prohibited to replace the claimants in enforcement actions where the claimants are the Russian Federation or the following persons: citizens of the Russian Federation; legal entities established and registered in accordance with the laws of the Russian Federation; legal entities established and registered in accordance with legislation other than the legislation of Ukraine, among the ultimate beneficial owners, members or participants (shareholders) of which are the Russian Federation, a citizen of the Russian Federation or a legal entity established and registered in accordance with the legislation of the Russian Federation” [9].

In addition, it is prohibited to initiate enforcement proceedings and take measures to enforce decisions on the territory of administrative-territorial units temporarily occupied as a result of the military aggression of the Russian Federation during such occupation. It should be noted that the amendments in this Law are quite clear and do not require any special explanation. However, there is a peculiarity regarding the effect of this Law in time. Some of the amendments are valid until the law on the settlement of relations involving persons associated with the aggressor state comes into force, and other amendments are valid until the termination or abolition of martial law on the territory of Ukraine.

It was a logical step of the legislator to adopt the Law of Ukraine "On Bodies and Persons Enforcing Court Decisions and Decisions of Other Bodies" of June 2, 2016 [10]. Art. 4 of this Law defines the principles of activity of the state enforcement service and private enforcement officers: 1) the rule of law; 2) legality; 3) independence; 4) fairness, impartiality and objectivity; 5) mandatory execution of decisions; 6) discretion; 7) publicity and openness of enforcement proceedings and their recording by technical means; 8) reasonableness of the terms of enforcement proceedings; 9) proportionality of enforcement measures and the scope of claims under decisions. Their analysis shows that they actually reflect the basic principles of enforcement proceedings set forth in Article 2 of the Law of Ukraine "On Enforcement Proceedings" [8]. In this regard, it is advisable to agree with M. Kulava, who emphasizes that the principles of activity of the executive system of Ukraine and private bailiffs play an important role as the theoretical basis, the foundation of the activities of public and private bailiffs, and determine the efficiency and effectiveness of this system. At the same time, there is an unequal list of principles in "related" regulations, and even the use of different terms, namely "principles" and "principles" [6, p.78]. The question also arises as to whether they should be separately identified in different legislative acts. In our opinion, these general principles (rule of law; legality; binding nature of decisions; discretion; publicity and openness of enforcement proceedings and their recording by technical means) should be reflected in the Law of Ukraine "On Enforcement Proceedings", while the Law of Ukraine "On Bodies and Persons Enforcing Judgments and Decisions of Other Bodies" should only refer to them. At the same time, it is advisable to distinguish special principles arising from the peculiarities of the organization and activities of the state enforcement service and private enforcement officers.

According to E. Hryshko, enforcement of decisions of courts and other bodies is a separate public administration function, which consists in the implementation of public administration tasks related to social relations arising in connection with enforcement activities to protect the rights and interests of property, personal and non-property nature [3, p. 73].

It follows that enforcement proceedings are intended to ensure the enforcement of a decision made by an authorized body. Thus, Article 10 of the Law of Ukraine "On Enforcement Proceedings" of June 02, 2016 provides for the following measures of enforcement of decisions, namely:

- 1) foreclosure on funds, securities, other property (property rights), corporate rights, intellectual property rights, intellectual and creative property, other property (property rights) of the debtor, including if they are held by other persons or belong to the debtor from other persons, or the debtor owns them jointly with other persons;
- 2) levy of execution on the debtor's salary, pension, scholarship and other income;
- 3) seizure from the debtor and transfer to the creditor of the items specified in the decision;
- 4) prohibiting the debtor from disposing of and/or using property owned by the debtor, including funds, or imposing an obligation on the debtor to use such property on the terms and conditions determined by the enforcement officer;
- 5) other enforcement measures provided for by this Law [8].

The use of coercive measures in the enforcement of judgments is a necessary necessity, carried out in order to foster lawfulness and maintain stability in society by unconditionally observing a certain order in social relations. Enforcement measures are intended to ensure strict observance of the constitutional rights of man and citizen, as well as the interests of the parties to the enforcement

proceedings. One of the shortcomings of the legislation on enforcement proceedings is the absence of a defined system of administrative coercion measures that a public or private enforcement officer has the right to apply in the performance of their tasks [4].

An analysis of the legislation on enforcement proceedings shows that the state enforcement service and private enforcement officers, when enforcing a court decision in accordance with the current legislation, do not have any information about the financial and material condition of the debtor, which in many cases significantly complicates the process of property recovery or makes recovery impossible. Y. Hryshko argues that it would be advisable for the court to receive information from the debtor about the property owned by the debtor before issuing an enforcement document, determine the debtor's property that cannot be enforced in the course of enforcement, and then issue an enforcement document specifying the property to be enforced. In addition, in the operative part of the judgment, the court would have to indicate the value of the property to be recovered in its absence. The scientist also emphasizes the need to establish the debtor's liability in case of failure to provide the court with information about the property belonging to him or in case of evasion of appearance in court to provide such information [3].

In view of the above, we believe that enforcement measures are special procedures (procedures) regulated by the rules of executive procedural law for enforcement of certain categories of decisions within the framework of the executive procedural form, which are determined by the system of interrelated executive procedural rights and obligations and procedural actions of the participants to the enforcement proceedings. In our opinion, the proposed understanding of enforcement measures is of theoretical and practical importance. It is not difficult to see that the list of enforcement measures in Article 10 of the Law is quite narrow, and the Law itself does not provide for models of enforcement of certain decisions or regulates them rather superficially. Therefore, the task of the science of enforcement proceedings and the legislator is to build separate measures of enforcement of decisions as procedural procedures, models of enforcement of decisions of certain categories, within which procedural actions should be taken by each of the participants in the enforcement process. Moreover, the criterion for the correct construction of such procedures should be the effectiveness of procedural actions taken in practice, the actual execution of the decision [12].

The Law of Ukraine "On Bodies and Persons Enforcing Judgments and Decisions of Other Bodies" of June 2, 2016 [10] assigns equally important functions and tasks to private enforcement officers. According to Art. 16 of this Law, a private enforcement officer may be a citizen of Ukraine authorized by the state to carry out enforcement activities in accordance with the procedure established by law, on the basis of independent professional activity [8]. This Law also defines the legal status of private enforcement officers, regulates the procedures for acquiring and suspending the right to carry out activities by private enforcement officers, defines the peculiarities of financial support for their activities, as well as the possibilities for appealing decisions and bringing private enforcement officers to justice. It should be noted that the introduction of the institute of private bailiffs has generally had a positive impact on the enforcement of court decisions. Thus, in August 2017, the first private bailiffs actually started operating in Ukraine. Quantitatively, there were only 79 private bailiffs in Ukraine at the end of 2017, 129 at the end of 2018, 209 at the end of 2019, 240 at the end of 2020, 285 at the end of 2021, and 256 at the end of 2022. According to O. Syvokozov, the effectiveness of the enforcement mechanism in 2017 was only 6%. With the activities of the first private enforcement officers, the share of enforced decisions in 2018 reached 18%. In 2018, private bailiffs returned UAH 795 million to debt collectors, and in the first half of 2019 – UAH 1.3 billion [2, p. 37; 11]. A study of the assessment of the effectiveness of the institute of private bailiffs in Ukraine, conducted by Eric Svanidze, acting head of the EU Project Pravo-Justice, indicates that in 2020, 259 private bailiffs recovered UAH 4.3 billion, while 4411 state bailiffs recovered UAH 19.2 billion. According to the Association of Private Enforcement Officers of Ukraine, in the first half of 2021, 285 private enforcement officers sold seized property worth UAH 1 billion. 189 million UAH. For comparison, during the same period, the state enforcement service, which employs more than 4134 people, sold property worth only UAH 712 million. On average, one private enforcement officer sold property worth 25 times more than his state counterpart – UAH 4 million 170 thousand versus UAH 170 thousand [7].

Even despite the war, in 2022, on average, one private enforcement officer returned UAH 11.9 million to debt collectors, while his public counterpart returned only UAH 1.9 million. At the same time, last year the State Enforcement Service employed 3,798 people, while private bailiffs employed 256 people. These data show that Ukraine continues to have a systemic problem of non-enforcement of court decisions, and the full-scale war only worsens the situation. Of the total amount of debts of UAH 644.6 billion in Ukraine in 2022, only 1.6% was collected in favor of the plaintiffs [7].

The Chairman of the Association of Private Enforcement Officers of Ukraine (hereinafter – APEO) V. Chepurnyi noted that enforcement in Ukraine remains catastrophically low from year to year, while the corresponding figure in the EU countries is 50-70% [15].

The above data indicate the effective activity of private enforcement officers.

An analysis of the Law of Ukraine “On Bodies and Persons Enforcing Court Decisions and Decisions of Other Bodies” [10] indicates that private bailiffs have virtually the same powers as state bailiffs in the enforcement of court decisions. However, private bailiffs are restricted in their right to accept and enforce certain “sensitive to society” categories of cases: decisions on the removal and transfer of a child, establishing visitation with a child or removing obstacles to visitation with a child; decisions under which the state or state bodies are the claimants; decisions of administrative courts and decisions of the European Court of Human Rights; decisions that provide for actions with respect to state and municipal property; decisions on confiscation of property, etc.

Unlike public bailiffs, private bailiffs are more efficient, as they are not burdened by any formal procedures (for example, in certain procedural matters, a public bailiff must coordinate his actions with the head of the department to which he is subordinate). In addition, a private enforcement officer is motivated exclusively by successful recovery because his fee is a certain percentage of the amount recovered under the enforcement documents. Currently, private bailiffs operate on the same principles as state bailiffs, but they finance their work independently, pay for their office and assistants.

The creation of the institute of a private enforcement officer does not mean that the state withdraws itself from the sphere of enforcement, since it is the state that exercises control and regulation through licensing, insurance, and certification [14].

The foregoing indicates that there are still a number of issues regarding the proper enforcement of court decisions. First of all, the effectiveness of the enforcement of court decisions as an important element of ensuring the rights, freedoms and interests of individuals depends on the quality of legal regulation of this process. The complexity of this issue lies primarily in the fact that the legislation governing the organization and enforcement of court decisions contains legal norms of various industries. Accordingly, the issue of the effectiveness of legal regulation of the enforcement of court decisions requires a comprehensive analysis of the sectoral legislation of Ukraine.

Under current Ukrainian legislation, a fairly wide range of entities (the head of state, parliament, government and other executive authorities, judges, public and private bailiffs, etc.) are responsible for the proper enforcement of court decisions. Judges, prosecutors, public and private bailiffs bear special responsibility in this area. In accordance with the current legislation of Ukraine, they are the ones who directly take measures to ensure fair satisfaction and restore the previous legal status. The effectiveness of their activities depends on many factors: the availability of the necessary legal acts and their coordination, the availability of appropriate funds for payments under court decisions, timely documentation, and proper qualifications of officials [5, p. 291].

5. Conclusions.

Based on the analysis, it can be concluded that the process of enforcement of a court judgment is clearly regulated by national law. Depending on the case under consideration, the enforcement of a court judgment is based on the rules of the relevant branch of law. However, despite the sectoral peculiarities of regulating the process of court judgment enforcement, its main purpose is to protect and restore the violated rights, freedoms and legitimate interests of individuals, legal entities and the state.

Since the entry into force of the Law of Ukraine “On Enforcement Proceedings” of June 2, 2016, Ukraine has been in the process of establishing a combined (mixed) model of enforcement of decisions of jurisdictional bodies, which provides for a combination of activities of the State Enforcement Service and private enforcement officers. It is proved that the introduction of the institute of private bailiffs has generally had a positive impact on the enforcement of court decisions. In other words, the development of an effective system of enforcement of judgments in Ukraine is a key task for ensuring law and order and guaranteeing the rights and interests of citizens and businesses.

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