

IMPROVEMENT OF THE ADMINISTRATIVE AND LEGAL REGULATION OF ACTIVITIES OF THE STATE EXECUTIVE SERVICE IN UKRAINE

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INTRODUCTION

Modern dynamic changes in domestic legislation testify to the global national processes of reforming the bodies of public administration. For the State Executive Service in Ukraine (hereinafter – SES) in Ukraine and government executives, the 2016 reform, which introduced a mixed system of enforcement, created a new legal framework for their functioning and set the need for adaptation to competition in the enforcement of decisions. The recent radical changes in the legal regulation of the functioning of the system of enforcement of decisions in Ukraine were conditioned by a multi-year demonstration of the ineffectiveness of SES's activities in Ukraine in this area. Domestic statistics over the past five years have witnessed the implementation of executive documents only in the range of 50 % to 65 %, and for the amounts to be recovered – from 18 % to 40 %. In 2016, this tendency has continued. Thus, out of 4 967 425 documents, which were executed by SES, for the total amount of 684 958 627 661 UAH. 848,714 were executed for the total amount of UAH 271,918,169,296, which was 18.1 % of the total number of executive documents and 39.69 % of the planned amounts. Such performance indicators are far behind the indicators of Western European countries. The situation with a low level of implementation of decisions has led to the formation of a negative image of state executives among the Ukrainian population. Thus, 43.6 % of the polled citizens noted that they do not have confidence in state executives. The current state of work conditions in the system of internal affairs agencies in Ukraine, the level of material security and social security of public executives also does not contribute to the popularity of this service. 57 % of the polled state executives were dissatisfied with their work, they indicated that they did not consider their profession prestigious.

Taking into account the aforementioned, in the context of the formation of an independent branch of executive power, the drafting of the Executive Code by the scientific community is an urgent need to formulate new, adapted to the conditions of a mixed system of implementation of decisions, the conceptual foundations of the SES in Ukraine, the basis of which should be the Concept of development of the SES.

1. Contemporary Concept of the Development of the State Executive Service in Ukraine

According to the Civil Service Reform Strategy and the service in local self-government bodies in Ukraine for the period up to 2017, the civil service in the SES has problems inherent in the civil service in general at this historic period, namely: prevention of corruption among civil servants; open competitive selection for all civil service positions; advancement in the service of civil servants taking into account professional competence and honest performance of their official duties; definition of requirements for civil service positions; a clear and transparent mechanism of responsibility of civil servants for violating the requirements of the legislation, non-fulfillment or improper performance of their duties; social protection of the state; improvement of the system of remuneration of civil servants; compliance of the system of State bodies with the functions that they perform; institutional capacity of the civil service and service in local self-government bodies; radical updating of the content of the personnel services of state bodies, strengthening their role in the management of the personnel of the relevant body; improvement of the system of training, retraining and advanced training of civil servants; establishing a close relationship of scientific research with the practical needs of state bodies and local self-government bodies; the prestige of the civil service.

In the opinion of the legislator, the activity of the SES in accordance with the Strategy for the reform of the judiciary, the judiciary and related legal institutes for the years 2015–2020 determines the existence of significant problems in the system of execution of court decisions, in particular: the extremely low proportion of actual enforcement of court decisions; absence of an effective system of motivation of state executors; systemic deficiencies in the interaction of state executives with other state and non-state institutions.

The surveyed SES employees in Ukraine identified the circumstances that most affected their dissatisfaction with the service (with no more than three answers): low wages and remuneration (67.9 %); ineffective legislation (47.4 %); a significant amount of documentation, bureaucracy (46.3 %); constant organizational changes (36.1 %); low level of public confidence (35.7 %); inadequate information provision of work (34.2 %); nervous overload (14,1 %); lack of career opportunities (9.1 %); poor system of retraining, training, training (8.4 %); bad relations with the management and colleagues (1.5 %), etc.

The state of social and legal protection of executive service officers nowadays in general does not ensure the attraction of worthy citizens to the service, not the desire of those already working to develop their own professional skills.

The results of the survey indicate a low level of social protection for state executives, lack of material incentives in their work. Under these conditions, it can be assumed that the units of the executive service are those who do not find themselves in civilian structures and are satisfied with the minimum of stability of the available official position, or those who have long linked their lives to the service and do not risk to change this attachment or tends to use a mercenary career. This is a crisis of social and legal protection of the personnel of the executive service. Today movement from it in the direction of increasing social protection of workers is necessary and relevant, it is directly related to the selection of citizens to work in the executive service. It is important that for the service of this component of the executive power of the state involved persons who are not important social and legal protection in themselves, but also the awareness of social fertility and the importance of this activity. Also the motivation of labor is an affirmative and relevant to the investigated civil service – the desire to realize itself in the career of a state executor.

The above-mentioned revolutionary changes have led to imbalances and unresolved issues in all areas of the SES. The reflection of such a situation in the field of regulation of SES affects its employees. So, the results of our survey reflect the pessimistic mood of the state executives regarding the results of the 2016 reform. So, if the reform of the implementation of a mixed system of decision-making in Ukraine was effective, the opinions shared almost equally: 43.1 % answered that it

would not be effective, 35.7 % shared the initiative of legislators and do not expect the effectiveness of such a reform, 21.2 % hesitated to answer. Similar tendencies are also observed during the study of the opinion of public executives on the effectiveness of implementing the institution of private executives: 46.1 % of respondents believe that the state of implementation of the decisions will not change, 17.9 % consider that they will deteriorate, 13 % consider that they will improve. The last question was answered by the citizens: 35.5 % of them believe that the implementation of the institution of a private executor will improve the state of execution of decisions, 33.1 % – that the situation will not change, 20.9 % consider that they will deteriorate, 10.5 % will hesitate answer. Compared to the answers of citizens and state executives to the question of the impact on the effectiveness of the implementation of decisions in Ukraine, the introduction of the institution of private performers is followed by a more positive mood, namely from citizens, which may be due to feelings of competition from state performers to private performers.

The introduction of a private enforcement institution that will exist along with Government enforcement and will significantly increase the prestige of the court enforcement without any state expense will be a positive step. However, it should be understood that the implementation of the private enforcement institution itself will not solve all the problems of enforcement proceedings. At the same time, the issues of material and organizational support of the activities of state executors should be addressed, while the increase of their responsibility, elimination of gaps in the current legislation, aimed at unconditional compliance with the provisions of the Constitution.

That is why, in our opinion, the reform of the modern executive system, including through the introduction of the institution of private litigants, is not only expedient but also vital. After all, the person who filed a lawsuit is aimed not only at obtaining a positive court decision, but also in real protection of his violated right or interest by implementing such a decision. That is, in fact, the purpose of the appeal to the court.

Nevertheless, it should be noted that the introduction of the private-sector institutions is rather complicated and requires careful decision-making and step-by-step in their implementation. At the initial stage of the activity of private organizations in executing court decisions is

considered by a legislator only in parallel with the existence of the current internal affairs bodies. However, given the tendency to give priority to the legal regulation of the activities of private performers in the content of the Law of Ukraine “On bodies and persons who enforce the enforcement of court decisions and decisions of other bodies” and the transfer of legal norms regulating the activity of internal affairs agencies into subordinate acts, we can speak about some discrimination of legal regulation of the activities of state executives compared with private performers. Therefore, we can predict that in the future everything will depend on a general analysis of the indicators of executed court decisions by private enforcement agencies and the SES. In the conditions of constant reduction of budget expenses for the maintenance of the state apparatus gradually, private executives may crowd out state executives from the enforcement system in Ukraine.

The state of chaotic placement of legal norms in subordinate acts regulating the activity of internal affairs agencies, the effect of regulations based on already obsolete laws, the absence of appropriate new analogues, the growth of legal incidents in the area of implementation of decisions is a temporary phenomenon that should be completed by the construction of a new balanced mixed system of execution of decisions with the definition of the place in it the SES. At the same time, such a state of imbalance in the system of legal regulation of the SES activities can last for a long time and not lead to an increase in the prestige of service in the SES and increase the performance of its work, if there is no clear plan for adjusting the system in this area. In order to streamline the legal norms governing the SES in Ukraine in the conditions of the destruction of the centralized model of the system and the establishment of a mixed decision-making system in Ukraine, we have developed the Concept for the development of the SES, which is designed for the period up to 2020.

We defined the following main problems of the conceptual content in the field of legal regulation of the Statute of the SES: 1) the absence of a normative definition of the concepts at the level of the law: the SES, SES body, Department of Internal Affairs of the Ministry of Justice of Ukraine, state executor, employee of the SES, the state serviceregime in the SES; 2) uncertainty in the legislation of the notion of the mechanism of execution of decisions, the system of execution of decisions, enforcement proceedings, the regime and mechanism of enforcement

proceedings, the executive process, the stage of enforcement proceedings and the stage of the executive process, subjects of the executive process, enforcement of decisions, executive affairs, executive action, etc.; 3) the lack of development of the principles of regulation of the interaction of the SES, public executives with private performers and their self-government bodies, public and private law subjects, as well as the principles of control over the activity of the SES.

In our opinion, the legal regulation of the activity of the SES has the following problems: 1) the lack of systematization of the relevant legal norms in one normative legal act; 2) the transfer of all legal norms regulating the administrative activity and administration of the system of the SES bodies in the by-laws; 3) the absence of the ethical code of the SES; 4) the absence of a disciplinary statute of the SES; 5) absence of the concept of information provision of the SES, the concept of informatization of the activity of the SES, a single normative legal act or a system of legal norms that would determine the basis of information provision for the activities of state enforcement agencies and the SES bodies; 6) the absence of provisions on the rules for the circulation of information with restricted access in the work of the SES bodies; 7) the absence of a provision on the procedure for the publication of public information about the activity of SES.

The purpose of the Concept for the development of the SES in Ukraine is to develop the SES as a system of public administration bodies with law enforcement functions, capable, in conjunction with other entities of public and private law, to ensure timely, complete and impartial enforcement of decisions enforced by law.

2. Areas of Increase of Efficiency of Organization of Activity of the State Executive Service

Areas of increasing the effectiveness of the organization of the SES are due to the disadvantages of organizational support for the activities of the SES bodies and areas identified by practical workers. So, to the question that the most troublesome in daily work for SES employees, they answered: the work “on statistics” – 39.2 %; a large number of indicators of activity – 29.8 %; lack of time for some tasks – 16.5 %; significant workload – 15.4 %; bad working conditions (conditions of premises, equipment) – 14.7 %; lack of operational stability (permanent organizational changes) – 11.9 %; the need to make a large number of

documents – 9.0 %; insufficient level of information exchange between employees of the SES departments – 8.6 %; incomprehensible service instructions – 6.9 %; the need to adhere to strict discipline – 4.3 %.

The employees of the SES in Ukraine, interviewed about the directions of their work, which require priority improvement, set priorities in the following way: increase of wages and remuneration of the state executor – 56 %; increase of interaction with other subjects – 46.5 %; provision of transport – 36.1 %; information and technical equipment and software of the workplace of state executors – 30.9 %; organization of access to databases – 28.7 %; introduction of social security measures for state executives – 28.3 %; unimpeded and uninterrupted use of the Internet – 24.4 %; provision of communication means – 20.9 %; introduction to the system of internal affairs the SES agencies in Ukraine of the power unit – 15.8 %; creation of a unit for psychological and legal security of SES employees in Ukraine – 11.6 %, etc.

One of the priority issues to be solved is to increase the material stimulation of SES employees. Another Decree of the President of Ukraine of July 22, 1998 “On Measures for the Implementation of the Concept of Administrative Reform in Ukraine” identified the importance of material incentives for public executives¹. Thus, this document states that it is necessary to reform the system of remuneration of civil servants in order to ensure the competitiveness of the civil service in the labor market, to reduce the departmental and local influence, to prevent corruption, to radically increase the interest of the personnel in productive and qualitative, initiative and effective, conscientious and responsible work, civil service and further career advancement. This can be achieved by establishing higher average wages in the civil service than in the economic sectors, and no less than in the private sector. The structure of wages must be improved, its fairness and transparency ensured. It is necessary to significantly increase the share of official salary in the total wage, significantly increase the role of the rank of a civil servant in material incentives (for example, in the case of raising the rank wages should increase by at least 10 percent). It is imperative to

¹ Про заходи щодо впровадження Концепції адміністративної реформи в країні: Указ Президента України від 22.07.1998 р. № 810/98. *Офіційний вісник України*. 1999. № 21. Ст. 32.

increase the official differentiation of salaries, taking into account the level of responsibility, ensuring its rapid growth at the beginning of the career, as well as reducing interagency and local differences in wages².

In order to stimulate the abandonment of the most trained personnel in the SES, in our opinion, transparent criteria for promotion need to be introduced, in order to create plans for personal growth for the most professional SES employees. According to SES employees, such criteria should be: the number of enforcement proceedings closed in connection with the full and actual execution of enforcement proceedings (45 %); the amount of the imposed executive fee in the state budget revenues (29 %); the number of completed executive proceedings (23.1 %); the number of documents for which the expiry date has been set by law (22.9 %); the number of executive documents is executed in the accounts of enterprises, institutions, organizations (17.9 %); the number of outstanding executive documents at the end (13.0 %); actual load on the state executor per month (8.0 %); the number of suspended enforcement of executive documents (4.9 %), etc. In our view, this list of criteria should be standardized in the provision on remuneration of the SES employees and their promotion.

In addition to the above, it is also necessary to create decent working conditions for civil service personnel, including the provision of appropriate facilities, organizational, technical, informational and auxiliary staffing support.

Important issues of improving the work organization of the SES agencies are the information sphere. Analysis of the results of application of informatization systems in judicial and law enforcement agencies allows to determine the following positive trends in optimizing their work: 1) improving control over the execution of documents; 2) conducting a constant operational observation of the efficiency of the work of all performers with the subsequent detection of late checks; 3) the emergence of the ability to quickly generate a variety of reports and certificates, etc. Thus, the most important positive aspect of informatization is the reduction of the costs of ensuring the functioning and management of the State Executive Service of Ukraine at the

² Калінін Р. С. Про місце виконавчого провадження у системі права України. *Науковий вісник Міжнародного гуманітарного університету*. 2014. № 9–1. С. 73–76. С. 73.

expense of rationalization and unification of organizational, technological, financial and economic schemes and work processes of the SES of Ukraine, streamlining and unification of information flows.

Given this positive experience, we propose to develop and approve the Concept of the Automated Information and Analytical System of Support of Activities of the Bodies of the SES of Ukraine in order to ensure the further development of the state of information in the bodies of the SES of Ukraine.

It is clear that the strategy of introducing a single information space into the activities of the SES of Ukraine should have its own system of tasks, goals and principles that we will disclose. The purpose of this Concept is to: identify inefficient processes and procedures whose technology can be changed in order to reduce the time spent on work; establishment of reliable e-mail communication between all bodies of the SES in order to shorten the period of delivery of correspondence, exchange of information; improving control over compliance with procedural deadlines at all stages of enforcement proceedings; implementation of automation in the most labor-intensive and routine processes of the SES (document circulation, statistical reporting, planning, personnel issues, etc.).

Accordingly, the objectives of this Concept can be: creation of a single information space of the SES system and its integration into the information space of Ukraine; further computerization of work processes of the SES, use of modern communication and telecommunication facilities; increasing the efficiency, completeness, reliability and objectivity of accounting and control over the collection and distribution of finance; increasing the validity of managerial decisions through the use of settlement-analytical and optimization methods and models, the creation of an integrated and information-analytical system; increase the level of reference and information services of the agencies of the SES and the subjects of enforcement proceedings; reducing labor complexity, preparing, collecting and processing data from enforcement proceedings³.

1. Construction of an Automated Information and Analytical System for Supporting the Activities of the Bodies of the SES of

³ Макушев П. В., Негодченко О. В. Щодо питання інформатизації державної виконавчої служби України. *Право України*. 2015. № 3. С. 87–92. С. 90.

Ukraine should be carried out in accordance with the following principles: centralization, which provides for the establishment of a central data base including the State Register of Real Property Rights for Real Estate, the Unified Register of Exclusion Bans the Real Property, the State Register of Mortgages, the State Register of Encumbrances on Movable Property⁴, the Register of Property Rights to Real Estate^{5 6}, the Unified State Register of Enforcement Proceedings, the Unified Register of Debtors and the Register of Decisions, the Execution of Which is Guaranteed by the State; the Unified Register of Private Performers, recommended executive practice, statistical reporting, the ability to use the resources of the system by users, depending on the granted rights of access; standardization: the introduction of the reference system, ensuring the possibility of interaction with other information systems; decentralization: provision of sufficient functional capacity of local public servants' jobs for situations in which the connection to the central database is unreliable or lost, as well as the ability to work with the regional level of the central database; minimizing the number of transactions by introducing a one-time information system, using directories and classifiers, establishing interrelationships between documents; magnitude – taking into account the necessity of work in conditions of different numbers of users, the ability to withstand peak load in the reporting period⁷.

At present, the current legislation governing enforcement proceedings provides for the following elements of the information support system for the SES activities: 1) the Automated Enforcement System, which includes: the United State Register of Execution

⁴ Про затвердження Порядку використання даних Реєстру прав власності на нерухоме майно, Єдиного реєстру заборон відчуження об'єктів нерухомого майна, Державного реєстру іпотек та Державного реєстру обтяжень рухомого майна: наказ Міністерства юстиції України 14.12.2012 № 1844/5. URL: <http://zakon3.rada.gov.ua/laws/show/z2102-12#n23>.

⁵ Про державну реєстрацію речових прав на нерухоме майно та їх обтяжень: Постанова Кабінету Міністрів України від 25 грудня 2015 р. № 1127. URL: <http://zakon2.rada.gov.ua/laws/show/1127-2015-%D0%BF>.

⁶ Порядок доступу до Державного реєстру речових прав на нерухоме майно: Постанова Кабінету Міністрів України від 25 грудня 2015 р. № 1127. URL: <http://zakon2.rada.gov.ua/laws/show/1127-2015-%D0%BF/paran326#n326>.

⁷ Макушев П. В., Богатирьов І. Г. Актуальні проблеми інформатизації діяльності Державної виконавчої служби України. *Публічне право*. 2012. № 3 (7). С. 178–183. С. 179.

Proceedings, the Uniform Register of Debtors and the Register of Decisions, the Execution of Which is Guaranteed by the State; 2) the Unified Register of Private Performers⁸. Also, part of the information support system for state executives is the Electronic Trading System.

Vertically, the functional structure of the Automated Information and Analytical System for Supporting the Activities of the Bodies of the State Executive Service of Ukraine should include three levels: district – district (city) departments of the SES; regional – departments of the SES of the Main Department of Justice of the Ministry of Justice of Ukraine in the Crimea Autonomous Republic, of the regional, Kyiv and Sevastopol city departments of justice; and the central one is the Department of the State Executive Service of Ukraine, the Ministry of Justice. At each of these levels, you need to create a local data processing system that includes security and functional subsystems.

Any citizen who has access to the Internet using the web browser can be a public user. Registration is not required in the system of public users, they can work with the system anonymously. Through the website of the SES of Ukraine, the public user can: to get the information about the SES of Ukraine in general and its individual structural units, in particular contact information, reception time, sample documents, etc.; access to examples of executive practice, etc.

Thus, we have defined the main provisions of the Concept of the Automated Information and Analytical System for Supporting the Activities of the Bodies of the State Executive Service of Ukraine, although this issue needs further elaboration. At the same time, I would like to note that, in order to solve the problems of informatization as an important component of the further development of the SES of Ukraine, in general, there is a need for a great organizational and educational work not only for the specialists of information services, but also for the heads of the SES of Ukraine of all levels. Without a complex solution of the listed tasks, the return on expended efforts and means for the introduction of new information technologies will be insignificant.

There is also an urgent need to revise the list of information that may be attributed to the SES's business information. The rules for

⁸ Про затвердження Порядку формування і ведення Єдиного реєстру приватних виконавців України : наказ Міністерства юстиції України 05.08.2016. № 2431/5. *Офіційний вісник України*. 2016. № 64. С. 450. Ст. 2181, код акта 82814/2016.

handling official information and its carriers by SES employees by developing and adopting instructions on how to ensure access to public information in SESs, a list of information that compiles official information in the activity of the SES and instructions on how to work with official information that will take into account the specifics enforcement proceedings and SES activities requirement to regulate. Similar measures should be taken to create a mechanism for the protection of personal data in the work of the SES bodies.

3. Prospects for Improving the Regulatory and Legal Regulation of the State Executive Service

The reform of the system of compulsory execution of judicial and other decisions is a rather complex problem today, and its solution requires a considerable amount of time and the search for various variants of its reformation. And in this direction, the key point should be the legislative definition of the legal status of the SES not only at the national level, but also at the regional level⁹. The complexity of solving this issue at the local level is due to the special place of the state executive service in the system of state bodies, which acts as the leading state body in the implementation of state policy in the sphere of enforcement of judicial and other decisions with the corresponding administrative procedural powers. Therefore, it is worthwhile regulating at the legislative level the issues of the legal status of the territorial bodies of the SES on the basis of the general principles of reforming the central executive authorities and the formation of the State Executive Service as the central body of the executive service.

Requirement of introduction into the domestic legislation of international principles of enforcement proceedings, namely: compulsory execution should be determined and regulated by clear legal rules that establish the powers, rights and obligations of the parties and third parties (enforcement is to be exercised by the relevant law and judicial decisions, the procedure for enforced execution must be regulated in detail in the legislation in order to be authentic and

⁹ Адміністративне право України : словник термінів / за заг. ред. Т.О. Коломоець, В. К. Колпакова; Державний вищий навчальний заклад «Запорізький національний університет». Київ: Ін Юре, 2014. С. 187.

transparent, as well as to the extent possible predictable and effective; to cooperate in a coercive manner during compulsory execution, etc.)¹⁰.

The enforcement procedure must: be clearly defined and easily enforceable by the employees responsible for enforcing it; have an exhaustive definition and listing of coercive acts and mechanisms for their entry into force; to clearly define the rights and obligations of defendants, plaintiffs and third parties, and for the last two categories of persons, their ranking and rights to recovered funds distributed among the plaintiffs; to provide the most effective and appropriate means of service of documents (for example, personal service by employees responsible for their compulsory enforcement, electronic funds, mail); to provide measures for preventing and preventing procedural misconduct; to foresee the right of the parties to petition for suspension of the enforcement procedure in order to ensure the protection of the rights and interests of the parties; to provide, in cases of necessity, the right to appeal judicial and non-judicial decisions taken during the conduct of the enforcement procedure¹¹.

Also, in the national legislation governing enforcement proceedings, the following principles should be introduced: 1) the payment of enforcement costs must be within reasonable limits, provided by law and a prior informed party; 2) attempts to execute the enforcement procedure must be appropriate to the claim, the amount of the claim and the interests of the defendant; 3) the obligation to pay for enforcement is usually relied upon by the defendant, although in the case of abuse by other parties during the execution of the enforcement procedure, the obligation to cover costs may be imposed on those parties; 4) searches and confiscation of the property of defendants should be carried out as effectively as possible, taking into account relevant human rights and provisions on the protection of information; 5) the collection of the necessary information about the defendant's property must be made quickly and efficiently with access to registers and other sources, in addition, the defendant may file a declaration of his property status; 6) the property should be sold quickly, but at the same time it is

¹⁰ Береза Н. Виконавче провадження по-новому: новели, переваги та недоліки.
URL: <http://dspace.tneu.edu.ua/bitstream/316497/18117/1/%D0%91%D0%B5%D1%80%D0%B5%D0%B7%D0%B0%20%D0%9D..pdf>

¹¹ Клименко О. С., Макушев П. В. Адміністративно-правове регулювання державної виконавчої служби щодо примусового виконання рішень майнового характеру : монографія. Дніпропетровськ, 2012. 130 с.

necessary to try to sell it at the highest market price, avoiding expensive and excessive underestimation¹².

Improving the performance of state executives in accordance with the strategy for reforming the judiciary, judicial system and related legal institutes for the period 2015–2020 involves reorganization of the system of execution of court decisions and increase of efficiency of executive proceedings; creation of a single mechanism for the functioning of the system of enforcement authorities; the development of the institution of private performers, in particular, due to the gradual establishment of a system of self-government, the mechanism of admission to the profession; introduction of a system of control over the activity of private performers and deprivation of permission to carry out their professional activity, as well as introduction of insurance of professional civil liability of private performers; ensuring equal competition between state and private executors of court decisions; compliance with the balance of powers of private and public executives; review of the mechanism for determining the remuneration of performers in order to stimulate the growth of the level of real enforcement of court decisions; introduction of a quality system of continuous training and advanced training of performers in accordance with well-defined and properly systematized goals and objectives, review of requirements for performers; improvement of ethical and disciplinary rules on performers; reduction of formalization, optimization of stages of executive proceedings and terms of execution of executive actions; achievement of a fair balance of interests between the protection of the rights of collectors and debtors, including through providing executors with practical access to the debtors' assets, while providing guarantees against abuse, introducing effective incentives for the voluntary execution of court decisions, measures of influence on debtors; strengthening the management of information systems for better provision of electronic justice services by executives.

Implementation of the provisions of the Concept for the development of SES in Ukraine is proposed to be implemented through the introduction of amendments to the current legislation in three stages.

At the first stage, it is proposed to adopt the Concept of the development of SES in Ukraine, which defined the goals, tasks, methods

¹² Кушакова-Костицька Н. В. Електронне правосуддя: українські реалії та зарубіжний досвід. *Юридичний часопис Національної академії внутрішніх справ*. 2013. № 1. С. 103–109. URL: http://nbuv.gov.ua/UJRN/aymvs_2013_1_20.

of their achievement and the prospects of organizational, legal support for the activity of SES, as well as amendments to the Law of Ukraine “On bodies and persons performing enforcement of court decisions and decisions of other bodies” by supplementing it with a separate section “SES”, the rules of which will determine the goals, tasks, functions, rights and responsibilities of SES in Ukraine; principles of interaction between the SES in Ukraine and other subjects; the peculiarities of legal status of all divisions of SES in Ukraine and all levels of positions of these divisions; the fundamentals of the information support system for the SES in Ukraine; the grounds and procedure for exercising control over the activities of the SES in Ukraine, disciplinary liability, social guarantees of the activities of state executives, etc.

At the second stage, it is proposed to amend the Law of Ukraine “On Enforcement Proceedings”, namely, the replacement of its name with “On the Enforcement Proceedings”, an addition to Art. 1 of this Law definitions of the concepts of “executive process”, “executive proceedings”, “executive action”, “stage of the executive process”, “subject of the executive process”, “enforcement of decisions”, “executive”, “mode of execution of decisions”, “Mechanism of execution of decisions”, etc.

At the third stage, it is proposed to adopt the Executive Code of Ukraine. We propose the following structure of the Executive Code: Section I “General Provisions”, containing the following chapters: 1 “Key Provisions”, 2 “Executive Jurisdiction”, 3 “Competence of Bodies of the State Executive’ Service, Private Executors”; 4 “Executive groups, withdrawals”; Section II “General Provisions of Enforcement Proceedings” includes chapters 1: “Participants in the enforcement proceedings”, 2 “Persons involved in the case”, 3 “Other participants”, 4 “Evidence”, 5 “Executive documents”, 6 “Parties in the executive Proceedings”, 7 “Executive calls and messages”; Section III “General Provisions on Bodies and Persons Enforcing Enforcement of Judgments and Decisions of Other Bodies” contains the following chapters: 1 “State Executive Service”, 2 “Private Bidders”, 3 “Interaction of State and Private Bidders with Other Public Bodies” ; Section IV “General Conditions and Procedures for Enforcement Proceedings” – chapters: 1 “Measures to ensure implementation of decisions”; 2 “Measures of enforcement of decisions”; 3 “Voluntary execution of the decision”, 4 “Information provision and information openness of the executive process”; Section V “Financing of enforcement proceedings”:

1 “Expenditures of enforcement proceedings”, 2 “Accounting and reporting on amounts on accounts of the State Executive Service bodies and private executors”, 3 “Distribution of debts from the debtor of monetary amounts”; Section V of the “Stage of the executive process” contains the following chapters: 1 “Preparatory stage”, 2 “Statement of the application”, 3 “Opening proceedings”, 4 “Conducting proceedings”, 5 “Stop and close proceedings”, 6 “Removing the application without consideration”; Section V “Separate proceedings”: 1 “Procedure for the recovery of the debtor’s property”, 2 “Implementation of decisions of non-property character”, 3 “Recovery of wages, pensions, scholarship and other debtors’ income”, 4 “Conclusion of a settlement agreement”, 5 “Implementation of decisions regarding foreigners, stateless persons and foreign legal entities. Implementation of decisions of foreign courts”; Section VI “Control and supervision of enforcement proceedings: 1 “Procedure for conducting checks on the legality of enforcement proceedings”, 2 “Appeal against decisions, actions or inactivity of executors and officials of the bodies of the State Executive Service”, 3 “Restoration of lost executive proceedings or materials of executive proceedings”; Section VII “Responsibility in the enforcement proceedings”; Section VIII “Final and Transitional Provisions”.

Thus, in Chapter III of the “General Provisions on the Bodies and Persons Enforcing the Enforcement of Judgments and Decisions of Other Bodies”, the Executive Code proposes to place a Chapter 1: “State Executive’ Service”, to which it is proposed to transfer the aforementioned norms defining the legal status of the SES in Ukraine.

The reform of the State Executive Service and enforcement proceedings in our state requires increased attention to the issues of morality in the activities of state executives and private performers. A state and private executor, regardless of their work experience, age and position, should understand that their attitude towards citizens, their colleagues, their appearance and language form their personal authority and authority throughout the executive service. The purpose, to which every state executor must strive, to become devotion to the case, compliance with service etiquette and discipline. Knowledge, skills and abilities of applying the Code of Professional conduct of state and private performers will ensure the effectiveness of the professional activities of the state and private executors, as well as promote the development of the SES, forming its positive image among the population as a body of executive power.

CONCLUSIONS

The implementation of the Concept for the development of SES should ensure that the conditions of the work of state executives are brought into line with international and European standards; to increase the efficiency of the SES in Ukraine and the prestige of the work of state executives; to improve the quality of executive proceedings; to increase the level of citizens' trust in the SES in Ukraine. The directions of improving the activity of the SES in Ukraine at the organizational level should be: the creation of a single mechanism for the functioning of the system of enforcement authorities; ensuring equal competition between state and private performers; compliance with the balance of powers of private and public executives; review of the mechanism for determining remuneration to performers in order to stimulate an increase in the level of real enforcement of court decisions; introduction of a quality system of continuous training and advanced training of performers in accordance with well-defined and properly systematized goals and objectives; review of requirements for performers; improvement of ethical and disciplinary rules on performers; reduction of formalization, optimization of stages of executive proceedings and terms of execution of executive actions; achievement of a fair balance of interests of payers and debtors, including through providing executors with practical access to debtors' assets and, at the same time, securing guarantees against abuses; introduction of effective incentives for voluntary enforcement of judgments, measures of influence over debtors; strengthening the management of information systems for better provision of electronic justice services by executives.

SUMMARY

The article is devoted to the comprehensive study of the State Executive Service in Ukraine. The historical and social determinants of the State Executive Service in Ukraine, the main stages of formation of legal principles of its activity were established and characterized. The features of the national model of the State Executive Service in Ukraine in the system of public authority were defined and characterized in the historical retrospective. The place, role and basic principles of enforcement of decisions in the activity of the State Executive Service in Ukraine were determined. The peculiarities of foreign experience of legal regulation of the activities of representatives of government bodies

in the enforcement proceedings were researched. The system and structure of the state executive service in the historical retrospective and in the modern period were outlined. The principles, functions and powers of the State Executive Service in Ukraine were determined. The functional features of the implementation of management activities of the bodies of the State Executive Service in Ukraine were defined. The content of the administrative and legal status of a state executor in the conditions of a mixed system of execution of decisions was revealed. The content and features of information support of the activity of the State Executive Service in Ukraine were studied. The legal principles of interaction between the State Executive Service in Ukraine and the subjects of public and private law were determined. The theoretical and legal approaches to the definition of the essence of control over the activities of bodies of the State Executive Service in Ukraine and its employees were allocated.

REFERENCES

1. Адміністративне право України : словник термінів / за заг. ред. Т. О. Коломоєць, В. К. Колпакова; Державний вищий навчальний заклад «Запорізький національний університет». Київ: Ін Юре, 2014. 520 с.
2. Береза Н. Виконавче провадження по-новому: новели, переваги та недоліки. URL: <http://dspace.tneu.edu.ua/bitstream/316497/18117/1/%:D0%91%D0%B5%D1%80%D0%B5%D0%B7%D0%B0%20%D0%9D.pdf>.
3. Калінін Р. С. Про місце виконавчого провадження у системі права України. *Науковий вісник Міжнародного гуманітарного університету*. 2014. № 9–1. С. 73–76.
4. Клименко О. С., Макушев П. В. Адміністративно-правове регулювання державної виконавчої служби щодо примусового виконання рішень майнового характеру : монографія. Дніпропетровськ, 2012. 130 с.
5. Кушакова-Костицька Н. В. Електронне правосуддя: українські реалії та зарубіжний досвід. *Юридичний часопис Національної академії внутрішніх справ*. 2013. № 1. С. 103–109. URL: http://nbuv.gov.ua/UJRN/aymvs_2013_1_20.
6. Макушев П. В., Богатирьов І. Г. Актуальні проблеми інформатизації діяльності Державної виконавчої служби України. *Публічне право*. 2012. № 3(7). С. 178–183.

7. Макушев П. В., Негодченко О. В. Щодо питання інформатизації державної виконавчої служби України. *Право України*. 2015. № 3. С. 87–92.

8. Порядок доступу до Державного реєстру речових прав на нерухоме майно: Постанова Кабінету Міністрів України від 25 грудня 2015 р. № 1127. URL: <http://zakon2.rada.gov.ua/laws/show/1127-2015-%D0%BF/paran326#n326>.

9. Про державну реєстрацію речових прав на нерухоме майно та їх обтяжень: Постанова Кабінету Міністрів України від 25 грудня 2015 р. № 1127. URL: <http://zakon2.rada.gov.ua/laws/show/1127-2015-%D0%BF>.

10. Про заходи щодо впровадження Концепції адміністративної реформи в країні: Указ Президента України від 22.07.1998 р. № 810/98. *Офіційний вісник України*. 1999. № 21. Ст. 32.

11. Про затвердження Порядку використання даних Реєстру прав власності на нерухоме майно, Єдиного реєстру заборон відчуження об'єктів нерухомого майна, Державного реєстру іпотек та Державного реєстру обтяжень рухомого майна: наказ Міністерства юстиції України 14.12.2012 № 1844/5. URL: <http://zakon3.rada.gov.ua/laws/show/z2102-12#n23>.

12. Про затвердження Порядку формування і ведення Єдиного реєстру приватних виконавців України : наказ Міністерства юстиції України 05.08.2016. № 2431/5. *Офіційний вісник України*. 2016. № 64. С. 450. Ст. 2181, код акта 82814/2016.

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