

## **STATE EXECUTIVE SERVICE AS ADMINISTRATIVE LAW ACTOR**

**Makushev P. V., Dobkowski Ja.**

### **INTRODUCTION**

The most important feature of a democratic society and a rule of law is: the free and effective exercise of human rights and freedoms. Today, this statement is an axiom of modern civilized progress. The decisive role in the legal protection of such a change belongs to administrative law. Indeed, it is administrative law that is a necessary condition and means of functioning of public authority for ensuring the rights and freedoms of man and citizen by enforcing laws and other legal acts of the state. Ukraine as a rule-of-law state is characterized not only by the prevention of violations of legislation, human rights and freedoms, but also by the creation of appropriate safeguards for the restoration of these rights.

However, the decisions made by the court without guarantees of a clear and timely implementation of them, as well as decisions of other state bodies, loses every sense of the very existence and activity of courts and bodies producing decisions. Effectiveness of the functioning and efficiency of decisions of all branches of state power, of course, depends on the full and timely implementation of its decisions. This prompted the legislator to adopt in 1998 the Law of Ukraine “On State Executive Service”. By this time, enforcement of court decisions in Ukraine was entrusted to bailiffs. The Law of Ukraine “On State Executive Service” marked the beginning of a new stage in the development of domestic enforcement proceedings: the institute of bailiffs was liquidated, and instead a new civil service was created, with the provision of an appropriate autonomy to it – the state executive service. Supplemented the legal status of this service with the rules of the Law of Ukraine “On Enforcement Proceedings”.

It is the state executive service, restoring the violated rights and freedoms, to ensure the inevitability of property and other legal responsibility of bad debtors in civil and economic circulation. The issue of effective legal protection and the actual restoration of violated rights and legitimate interests at the present stage of the state-building of Ukraine acquire a basic, if not paramount importance. In this regard, the special status is restored by a court or other jurisdictional body of the

violated right by satisfying the requirements of the person concerned. To date, the overwhelming majority of such requirements are met through special administrative coercive measures applied by the State Executive Service of Ukraine.

### **1. Ukrainian model of the state executive service in the system of public authority**

In order to characterize the administrative and legal status of the state executive service, the meaning of a more general notion, the “state body”, is of fundamental importance, since the executive service is the executive body of the state. And only the disclosure of common features, inherent to all without exception to the state authorities, allows to analyze the peculiarities of the activity of the state executive service, taking into account its specifics.

The sign of state authority is the appropriate legal means to ensure the implementation of acts adopted by the state through the use on its behalf of appropriate measures of education, persuasion and encouragement. It is clear that such measures are widely used by non-governmental organizations, however, they differ in importance and social importance, which are not inherent to those applied by public organizations (for example, the awarding of orders, medals, the awarding of the honorary title of Ukraine, etc.). An important feature of state power authorities is the presence of the right of a state body to protect against acts of violation issued on behalf and in the interests of the state through the use of measures of state coercion. In order to prevent and detect violations of the issued act, the state body carries out supervisory and control activities in compliance with the requirements of the legal act. All of the above-mentioned actions of the state bodies are obligatory and secured by its authority and force. It is entirely natural that their obligation to citizens and public organizations is related only to the issuance of normative legal acts.

In the Concept of Administrative Reform in Ukraine, the notion of executive power as one of the three branches of state power is assigned, which, in accordance with the constitutional principle of separation of state power, is designed to develop and implement a state policy to ensure the implementation of laws, governance of public life, primarily the state sector of the economy<sup>1</sup>. In the above definitions attention is drawn to the existence

---

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

of the actual unity of executive and administrative (managerial) qualities of executive power, which are difficult to separate from each other.

Thus, the question of specifying the content of the legal status of a state body needs further resolution. Clarification of the content of the legal status of the executive authority is possible provided that analysis of the features of legal relations in the field of its functioning is carried out, because these features determine the content of subjective rights and legal obligations as the basis of legal status.

After analyzing the general theoretical provisions of the functioning of state bodies of executive power, we consider it possible and expedient to proceed to the analysis of the specifics of the activity of the State Bailiff Service, which the Law of Ukraine “On Enforcement Proceedings” imposes on the enforcement of court decisions and other jurisdictional bodies. In accordance with the Law of Ukraine “On Enforcement Proceedings” of April 21, 1999, No. 606-XIV, enforcement proceedings were defined as the final stage of judicial proceedings and the enforcement of decisions of other bodies (officials) – a set of actions of the authorities and officials specified in this Law, which are directed on the enforcement of decisions of courts and other bodies (officials), which are conducted on the grounds, within the limits of authority and in the manner specified by this Law, other normative legal acts adopted in accordance with this Law and other laws, as well as decisions that are subject to enforcement in accordance with this Law. In accordance with the Law of Ukraine “On Enforcement Proceedings” of June 2, 2016, No. 1404-VIII, enforcement proceedings as the final stage of judicial proceedings and the enforcement of court decisions and decisions of other bodies (officials) are defined as a set of actions provided for in this Law bodies and persons, which are aimed at enforcement of decisions and are conducted on the grounds, within the limits of authority and in the manner defined by the Constitution of Ukraine, this Law, other laws and regulations adopted in accordance with this Law And decisions that according to this law enforceable<sup>2</sup>. By contrasting these two definitions, we notice the main difference in them, namely, the definition in the Law of Ukraine “On Enforcement Proceedings” in 1999 is a set of actions of bodies and officials, and in the Law of Ukraine “On Enforcement Proceedings”, 2016, it is a set of actions defined in this Law bodies and

---

<sup>2</sup> Про виконавче провадження: Закон України від 2 червня 2016 року № 1404-VIII. *Урядовий кур’єр* від 20.07.2016. № 134.

individuals. Thus, the range of subjects implementing enforcement proceedings has expanded at the expense of non-executives who, in accordance with the new concept of a mixed system of decision-makers, are private executors.

The status of the state executive service as a body of executive power is also fixed by the Decree of the President of Ukraine dated April 6, 2011, which approved the Provision on the State Bailiffs Service of Ukraine. This Regulation stipulates that the State Bailiffs' Service of Ukraine is a central executive body whose activities are directed and coordinated by the Cabinet of Ministers of Ukraine through the Minister of Justice of Ukraine, is included in the system of executive power bodies and ensures implementation of state policy in the sphere of the organization of enforcement of decisions of courts and other bodies respectively to the laws. The main tasks of the ICE of Ukraine in accordance with this legal act are: 1) implementation of state policy in the field of compulsory execution of decisions; 2) making suggestions on the formation of state policy in the field of implementation of decisions; 3) ensuring timely, complete and impartial performance of decisions in accordance with the procedure established by law; 4) implementation of educational and explanatory work on issues of implementation of decisions<sup>3</sup>.

In accordance with clause 1 of the Model Regulations on the management of the state executive service of the main territorial departments of justice of the Ministry of Justice of Ukraine in the Autonomous Republic of Crimea, in the oblasts, cities of Kyiv and Sevastopol, the administration of the state executive service of the main territorial departments of justice of the Ministry of Justice of Ukraine in the Autonomous Republic of Crimea, , the cities of Kyiv and Sevastopol are the body of the state executive service, which is part of the system of bodies of the Ministry of Justice of Ukraine, is subordinated to the Department of state executive service of the Ministry of Justice of Ukraine and is a subdivision of the main territorial departments of the Ministry of Justice of Ukraine in the Crimea, in the cities of Kyiv and Sevastopol<sup>4</sup>.

---

<sup>3</sup> Про затвердження Положення про Державну виконавчу службу України : Указ Президента України від 6 квітня 2011 р. № 385/2011. URL.: <http://president.gov.ua/documents/12584.html>.

<sup>4</sup> Про затвердження Типового положення про управління державної виконавчої служби головних територіальних управлінь юстиції Міністерства юстиції України в Автономній Республіці Крим, в областях, містах Києві та Севастополі: Наказ Міністерства юстиції України 20.04.2016 № 1183/5. URL.: <http://zakon2.rada.gov.ua/laws/show/z0617-16/paran9#n9>.

At present there is no provision that would define the concept of the Department of State Bailiffs' Service (hereinafter – ICE) of the Ministry of Justice of Ukraine and its legal status. Taking into account, unlike the relevant departments and departments of ICE. Taking into account the above, it is suggested to develop and adopt the provisions on the Department of Internal Affairs of the Ministry of Justice of Ukraine and to consolidate the definition we propose: The Department of Internal Affairs of the Ministry of Justice of Ukraine is a body of the State Bailiffs' Service, which is part of the system of bodies of the Ministry of Justice of Ukraine, is its structural subdivision and is subject to it.

According to Art. 8, “Legal status of employees of the bodies of the state executive service” of the Law of Ukraine “On bodies and persons engaged in enforcement of court decisions and decisions of other bodies”, state executives, managers and specialists of the bodies of the state executive service are civil servants. The characteristics of the Ukrainian model of the state executive service as a subject of public power will be influenced by the peculiarities of the national model of the public service.

Approaching the model of the state executive service in Ukraine as a law enforcement agency, it should be emphasized that the concept of the majority of law enforcement bodies is enshrined in the relevant laws, for example: The National Police of Ukraine is a central executive authority that serves the society through ensuring the protection of rights and human freedoms, counteraction to crime, maintenance of public safety and order; The Security Service of Ukraine is a special purpose state law enforcement agency that ensures state security of Ukraine; The Prosecutor's Office of Ukraine is a unified system, which, in the manner prescribed by the Law, implements the functions established by the Constitution of Ukraine in order to protect human rights and freedoms, the general interests of society and the state. At the same time, the current laws do not contain the definition of the state executive service, which has a negative effect on the definition of the legal status of the state executive service. Taking into account the new historical conceptual stage of the development of legislation on enforcement proceedings and the practice of its implementation, in our opinion, there is a need for a capital regulatory regulation at the level of the codified act, namely, the Executive Code. In the Executive Code, in Chapter 3, “General Provisions on Bodies and Persons Enforcing Enforcement of Judgments and Decisions of Other Bodies”, the first chapter proposes to

envisage the chapter on the state executive service, in which the concept of the state executive service will be affixed.

Thus, one of the most important types of purposeful activity of people, as well as society, is the service. The State Bailiffs Service implements one of the most important types of state-owned activity in forming a professional core in order to fulfill the state's tasks regarding the implementation of the function of protecting human rights and freedoms and ensuring timely, complete and impartial enforcement of decisions stipulated by law.

According to the tasks assigned to it, in accordance with the provisions of this service, the IDU of Ukraine exercises the following functional competences: 1) organizes, within the scope of its powers, the implementation of the Constitution and laws of Ukraine, acts of the President of Ukraine, the Cabinet of Ministers of Ukraine, observance of human and civil rights and freedoms, carries out control over their realization; 2) generalizes the practice of applying legislation on matters within its competence, develops proposals for the improvement of legislative acts, acts of the President of Ukraine, the Cabinet of Ministers of Ukraine, normative legal acts of ministries and, in the prescribed manner, submits them to the Minister of Justice of Ukraine; 3) ensures the enforcement by state executors of the enforcement of decisions envisaged by laws; 4) provides the access of state executives to databases and registers, including electronic ones, containing information on debtors, their property and funds; 5) ensure the maintenance of the Unified State Register of Execution Proceedings; 6) exercise state supervision and control over observance of the law on enforcement, correctness, timeliness and completeness of execution of executive acts by state executors; 7) provides analytical, informational and methodological support to the work of structural subdivisions of territorial bodies of the Ministry of Justice of Ukraine, which ensure the implementation of the powers of the ICE of Ukraine, and others like that.

The purpose of the State Executive Service is to ensure the implementation of the implementation of the decisions of the courts and other bodies in accordance with the laws of Ukraine. This means that it provides a particularly important task, that is, characterizing the state executive service, in our opinion, it is necessary to proceed from the place occupied by the professional activities of state executives in solving the problems that are facing them.

For the effective staffing and organizational provision of its work, the State Bailiffs' Service, in accordance with the Regulation on the State Bailiffs Service of Ukraine, may carry out the following: (1) organizes the work of state executors, checks their activities and takes measures to improve it, manages, controls and checks the organization of work structural subdivisions of territorial bodies of the Ministry of Justice of Ukraine, which ensure implementation of the powers of the ICE of Ukraine; 2) ensure, within the limits of the authority, the implementation of measures for the prevention of corruption and control over their implementation in the apparatus of the Ministry of Internal Affairs of Ukraine and structural subdivisions of the territorial bodies of the Ministry of Justice of Ukraine, which ensure the implementation of the powers of the ICE of Ukraine; 3) carries out the selection of personnel in the apparatus of the internal affairs of Ukraine and in managerial positions in the structural units of the territorial bodies of the Ministry of Justice of Ukraine, which ensure the implementation of the powers of the ICE of Ukraine, forms a staffing reserve for the respective positions, takes part in the organization of work on training, retraining and professional development of employees the apparatus of the Ministry of Internal Affairs of Ukraine and the structural subdivisions of the territorial bodies of the Ministry of Justice of Ukraine, which ensure the implementation of the powers of the ICE of Ukraine; 4) organizes planning and financial work in the internal affairs department of Ukraine, exercises control over the use of financial and material resources, ensures the organization and improvement of accounting in the manner prescribed by law; 5) within the limits of authority, together with the relevant central executive authorities, control over the use of state funds provided for implementation of projects, implementation of programs, including international ones, etc.

These provisions, defining the goals, tasks, rights, functional and organizational powers of ICE, in our opinion, should be updated taking into account the current changes in the legal regulation of enforcement proceedings, supplemented by a list of duties and made in the Law of Ukraine "On bodies and persons who carry out enforcement of court decisions and decisions of other bodies", and in the future they should find their place in the Executive Code of Ukraine.

Thus, the State Bailiffs' Service is a structured, state and law enforcement organization that is part of the Ministry of Justice and is called upon to ensure implementation of state policy in the sphere of enforcement of decisions. Proceeding from the fact that the state

executive service is an integral part of executive bodies, the activity carried out by it, in its essence, is subordinate. Accordingly, the state executive service is a specific element of the state, which enforces enforcement, protects human rights and citizen, and has a great social significance for Ukrainian society.

## **2. Enforcement of decisions in the activities of the state executive service**

The Constitution of Ukraine states the legal nature of the activities of state bodies, by defining in the first article the meaning of the activities of state bodies as the “legal state”. Ukraine is perceived in the world as a democratic state, and this requires the observance of the basic principles of democracy, which are primarily in the distribution, and not in the absolutism of power. The most common in all legal countries, the scheme of construction of the state system has three branches: legislative, executive and judicial. The process of establishing the legal system of Ukraine with the classical distribution of state institutions in the branches of power continued for a long time and continues today. Prior to the adoption of the Law of Ukraine “On State Bailiffship” of March 24, 1998, the judiciary had signs not only of the court but also of executive power. The separation of the state executive service from the direct authority of the court and judges began the period of a new model of the implementation of the state function regarding the implementation of legal acts, including in a forced order. At the present stage, there is a need for a comprehensive systemic rethinking of the administrative and legal status of the state executive service, its legal analysis places in the system of implementation of decisions of mixed type and peculiarities of activity on compulsory execution of decisions.

Both physical and mental influence in the activity of ICE is aimed at obtaining a volitional result: the development of a proper, deliberately-voluntary behavior of the debtor. We believe that psychic influence precedes the physical as a stage of coercion, but they can be vice versa (physical to mental) or simultaneously (complex). Yes, according to Art. 28 of the Law of Ukraine “On Enforcement Proceedings”, the state executor, after the opening of enforcement proceedings, exercises psychological influence by sending a copy of the decision to open the proceedings to the debtor. After the debtor does not volunteer, the state executor turns to physical influence – arrest and seizure of property.



In Art. 1 of the Law of Ukraine “On Enforcement Proceedings” states that the enforcement proceedings as the final stage of judicial proceedings and the enforcement of court decisions and decisions of other bodies (officials) are a set of actions of bodies and persons determined in this Law, aimed at enforcing decisions and conducted on the grounds, within the limits of authority and in the manner defined by the Constitution of Ukraine, this Law, other laws and regulations, adopted in accordance with this Law, as well as decisions according to this law are enforceable. Consequently, enforcement proceedings can be understood in two respects: firstly, as the final stage of judicial review of cases, which has the result of a corresponding decision (the final stage of the adoption by a specific official of a ruling), within which the executive relationship between the sub- the objects of enforcement proceedings, that is, between a person on whom the obligation to enforce the decisions constituting the subject of its activity – the state executor – has been imposed on both parties and other parties, has executed what the proceedings (experts, specialists, translators); and secondly, as procedural activities of the persons designated by the law, which they carry out through the exercise of their powers, that is, by implementing a set of actions aimed at enforcing the decisions of courts and other bodies (officials). As a stage of enforcement proceedings has its own specifics, which is the existence of certain prerequisites for its start and implementation. A prerequisite is the execution of a court decision in accordance with the requirements of procedural law and to execute the procedure for solving a decision before its further execution. For the latter, it is necessary to prepare, on the basis of this judgment, the court’s statutory executive instrument, namely, an executive order, order, decree, etc. The possibilities of other bodies and officials to implement decisions taken by them through forced execution are also related to the necessity of adhering to the procedure for the issuance of documents and requesting them to be further executed. The process of implementation of a decision can not be initiated without a two-way expression of will, that is, the executor of these decisions must formulate his expression of will. Depending on the entity, the implementation of the decision is voluntary or coercive. The latter is typical for the execution of the decisions of the authorities (officials) concerning the restoration of violated rights stipulated by law (courts, bodies of the Ministry of Internal Affairs, the State Tax Service, administrative commissions in executive committees, etc.). The procedure for expressing the will of authorized agents should be based on the

grounds provided for by the procedural law and which determine their right to violate enforcement proceedings and timely decisions enforcement.

We propose executing proceedings to be understood as part of the enforcement process consisting of a combination of actions of the internal affairs agencies of Ukraine, public and private enforcement agencies in a particular enforcement case, which are aimed at enforcing the decisions and are conducted on the grounds, within the limits of authority and in the manner prescribed by the legislation of Ukraine, and subject to enforcement.

In our view, the provisions of Art. 1 of the Law of Ukraine “On Enforcement Proceedings” demonstrate that the legislative definition of the concept of “enforcement proceedings” is rather narrow and does not already reflect the whole complexity of the process of enforcement of decisions that went beyond the above concept. We believe that the executive process consists of a set of implemented proceedings, the realization of which leads to the emergence of procedural legal relationships.

Modern domestic legislation, like the Ukrainian SSR legislation, does not contain the notion of “executive power”, the legislator also does not formulate a concentrated list of executive acts in the past either now. Instead, RF legislation resolves this issue. Yes, in Art. 64 of the Federal Law of the Russian Federation “On Enforcement Proceedings” of October 02, 2007 No. 229-FZ, there is an article entitled “Executive actions”, which lists the executive acts. Another example of normative ordering of the list of executive acts is Art. 63 “Executive actions” of the Law of the Republic of Belarus “On Enforcement Proceedings” No. 439-3 dated October 24, 2016. As can be seen from the list below, the legislator of the Republic of Belarus also did not completely separate executive actions from the rights of the bailiff, since, in their legal nature, these concepts are closely linked. In our opinion, such a generalization of executive actions, collected in one article of the law improves the system perception of the rules of executive law. The examples presented indicate the need for introduction of the article “Executive actions” and the Law of Ukraine “On Enforcement Proceedings”, and in the future and in the Executive Code. Prior to the consolidation of such a list, the definition of executive actions should be set forth in Article 1 of the Law of Ukraine “On Enforcement Proceedings” at the level of the concepts of “enforcement proceedings, executive process, enforcement proceedings, the stage of enforcement proceedings, and executive affairs”.

The Law of Ukraine “On Enforcement Proceedings”, which had already expired, contained Article 11, which defined the duties and rights of state executors and indirectly through them it was possible to determine the executive actions performed by the executors. The legislator continued the same logic of teaching legal norms that regulate the legal status of performers by combining in one article their rights and responsibilities, but not singling out a list of executive acts.

In the current Law of Ukraine “On Enforcement Proceedings” in the 18th century. “Duties and rights of performers, binding requirements of performers” contains a list of duties and rights of the state executor. The implementation of executive actions, combined by proceedings, which in turn are compiled into the executive process in accordance with the procedural, is carried out in stages according to a certain stage algorithm. The executive process involves certain stages, forming a sequence of executive actions, reflecting the progress of the execution of the requirements of the executive document, and separating the logically related stages.

At present, at the legislative level, enforcement activities are not divided at the stage, but among scholars who are investigating the enforcement proceedings, the question of its stage is not in doubt.

### **3. Foreign experience of legal regulation of the activities of representatives of state bodies in the enforcement proceedings**

The experience of foreign countries in the field of execution of judicial acts and acts of other bodies has a significant impact on the development of approaches to improving the domestic model of enforcement proceedings and is relevant in the implementation of legal regulation of enforcement proceedings in Ukraine. Recently, the State Border Guard Service of Ukraine has been systematically subject to reform, which negatively affects the quality of the service at all through periodic changes in its system and structure. The scientific substantiation of the issue of the status and place of the State Bailiffs Service of Ukraine in the system of law, legislation and state bodies will help to stabilize and improve the functioning of the State Bailiff Service. The stated goal is to be achieved through the implementation of a comparative analysis of the organization of the activities of the bodies for the enforcement of decisions of the jurisdictional bodies of foreign countries<sup>5</sup>.

---

<sup>5</sup> Макушев П. В. Міжнародний досвід правового регулювання діяльності представників державних органів у виконавчому провадженні. *Альманах міжнародного права*. 2014. № 6. С. 33-41. С. 35.

For decentralized systems of executive proceedings inherent in the delegation of state powers in the field of civil enforcement proceedings to non-governmental organizations and individuals. The experience of the Russian Federation is close to the state of the domestic legal regulation of the executive process and the legal status of ICE. The process of formation and the history of the development of compulsory execution of the decisions of our countries was parallel, had a significant fusion of each other. It can be argued, as evidenced by the study of the historical stages of the formation of executive proceedings in Ukraine in the first section of this section, that for much of the historical period, Ukraine and Russia had almost a common history of the formation of the system of executive proceedings, and for some time there was a tendency for Ukraine to copy Russian legal acts.

Investigating the tendency of decentralization of the system of executive proceedings in the Republic of Kazakhstan is changing towards the formation of a mixed model. In accordance with the adopted new concept of enforcement, functions for the execution of judicial acts and acts of other bodies may be performed by state and private enforcement agents. In October 2010, the Law of the Republic of Kazakhstan “On Enforcement Proceedings and the Status of Bailiffs” came into force, which introduced the concept of state and private enforcement agents and defined their legal status. State and private enforcement agents are granted equal rights and obligations with the exceptions provided for by this law<sup>6</sup>.

In countries such as the post-Soviet period, Lithuania and Estonia introduced the institution of private enforcement agents. For example, in Lithuania, instead of civil servants, private clerks work, the emergence of which was caused by the low level of performance of public executives<sup>7</sup>.

Forced execution of judicial or other acts in the Federal Republic of Germany is a public function, which, in accordance with the law, is implemented by civil servants – bailiffs. They are appointed by the chairman of the higher regional court and the head of the district court.

---

<sup>6</sup> Мальцева Є. В. Порівняльний аналіз систем виконавчого провадження в Україні та зарубіжних державах : порівняльний аналіз систем виконавчого провадження. *Ученые записки Таврического национального университета им. В. И. Вернадского Серия «Юридические науки»*. Том 26 (65). 2013. № 1. С. 44–48. С. 45–46.

<sup>7</sup> Салашний П. Державна виконавча служба : ефект присутності. *Правове видання. Юридичний журнал*. 2008. № 6 (72). С. 22–24. С. 23.

A court executor carries out his or her professional activity independently, at his own expense and under his responsibility, while having the state power and authority of a civil servant.

In the UK, the mixed principle is used, that is, there are also bailiffs – civil servants and those working on the basis of a license. Thus, the collector has the right to choose to apply to a public or private executor. In England and Wales, enforcement proceedings in courts are carried out by bailiffs who are part of the judicial system. Their work is supervised by supervised bailiffs. Management of activities on many issues is held by a senior clerk of the county court, to which the bailiffs are attached. In turn, the court registrar is responsible for the bailiffs' acts. In general, the Lord Chancellor is responsible for the activities of the executives.

In Scotland, there is a distinction between the sheriff and the bailiff. Sheriff officers perform a state function and are appointed chief sheriff within a certain area. A Sheriff officer is associated with a district civil court. Scotland is divided into six sheriff counties and forty nine local district courts of the sheriff. A Sheriff Officer may act within the area in which he received the appointment, but may also execute a court order for compensation in the whole of Scotland by a decision of the court to which he is assigned.

The system of forced execution of the United States of America is fundamentally different from the institutions we are considering enforcing the decisions of the jurisdictional bodies. Based on the research by S. Shcherbak, it can be noted that in the United States, the regulation of enforcement proceedings is carried out at the state level, therefore, a court decision made in one state must be legalized in another state. In some states, such legalization is carried out by filing a lawsuit, while others are through the registration procedure. The basis for enforcement is an executive letter issued by a clerk in court or by an authorized sheriff in other states. In the United States, enforcement powers are entrusted to the Federal Marshal Service, which is a central marshal apparatus and acts as a member of the Ministry of Justice. Direct enforcement proceedings are carried out by civil servants of the Marshall Service – Sheriffs and their deputies, as well as private legal agencies<sup>8</sup>.

The French system for enforcing judgments was established in the nineteenth century. and is significantly different from other systems.

---

<sup>8</sup> Щербак С. Небезучастная исполнительная служба. *Юридична практика*. .2006. № 5 (423). С. 16-17. С. 16.

For two centuries, the rules for the execution of court acts did not change much and adapted to the requirements of the socio-economic and political situation. It is the stable, somewhat conservative and at the same time flexible nature of the rules of enforcement, adaptation to the socio-economic conditions of the life of French society, demonstrating the viability and effectiveness of legal norms, institutions and the whole field of executive law.

In Belgium and Luxembourg, the Institute for the enforcement of decisions by jurisdictional bodies works on a private basis. Thus, in the specified European countries, the bailiffs are not in the civil service, but perform their duties of enforcement of decisions on the basis of a license. In order to regulate and manage their activities, regional and national chambers of bailiffs who have the status of self-government bodies have been established. Thus, in these countries (as in France) litigation officers belong to the free professions who work under a license. The legal status of a bailiff brings together elements of an independent practitioner and civil servant, and the management of the system of bailiffs is carried out by regional or national chambers, which function as bodies of self-government. Accordingly, the Domestic reform of the system of executive proceedings in 2016, which introduced the institution of private performers and redirected it to a mixed form, brought the domestic sphere of implementation closer to the classic French model, which is so widespread in the world. Thus, for example, the principles of self-government of private performers are defined in Art. 46 Principles of self-government of private executives of the Law of Ukraine “On bodies and persons engaged in enforcing judicial decisions and other bodies’ decisions”<sup>9</sup>.

In the Netherlands, bailiffs combine in their functional responsibilities the features of a state and private person. They have the right to engage in private debt recovery by mutual consent of the parties, providing legal advice, being tried in court, and building their own activities on the basis of an approved business plan. The existence of such a plan is a mandatory requirement.

The execution of judicial decisions in the Czech Republic is carried out in two ways: by the courts themselves and by the forces of the executors (executors). Moreover, the second method is more widespread.

---

<sup>9</sup> Про органи та осіб, які здійснюють примусове виконання судових рішень і рішень інших органів : Закон України від 2 червня 2016 р. № 1403-VIII. *Урядовий кур’єр* від 27.07.2016. № 139.

It is used to solve economic and civil disputes. The difference between the forces of the courts and the trial prosecutors lies in the fact that the remuneration of the examiner, if successful, was paid by the debtor. In the case of unsuccessful execution, the examiner, in contrast to the court, has the right to issue confirmation of impossibility of collection, according to which the default can be attributed to the expenses of the enterprise. The Ministry of Justice (in the Czech Republic – the Ministry of Justice) is responsible for supervision of the activities of the executor. The executive body of the executors is the Executive chamber of the Czech Republic [96], which carries out the organizational activities of the examiners.

In Canada, there is no single legislative regulation of enforcement proceedings. The competence includes the development of rules of civil justice, and in accordance with the system of general law, courts can independently regulate the organization of the activities of courts and establish procedural procedures to the extent not inconsistent with applicable law. Functions of forced execution are performed by civil servants (sheriffs) or licensed private attorneys<sup>10</sup>.

In Ireland, the case of enforcement proceedings involving the Irish party may take place in another territory. A foreign court will settle all issues related to the payment of costs, which lie on the lender, for filing an action against the debtor (resident of Ireland) to a foreign court. So, this question can become one of the points in the Executive Letter and thus be successful. An appeal to the High Court of Ireland regarding an enforcement order may be filed without the knowledge of the other party.

On the territory of Slovenia, the enforcement of the compulsory proceeding is assigned to the district (district) court. Court officers – persons who directly carry out coercive actions. Parents are appointed by the Minister of Justice within the territory of their district (territorial) courts. In special cases, tribes are appointed by a court order, just as the lender has the right to choose a specific bailiff himself.

In Greece, the main enforcement authorities are the executor and the notary, whose jurisdiction is the enforcement of court orders for the recovery of funds.

As a result of consideration of the systems of bodies of forced execution of foreign states, it can be concluded that the systems of

---

<sup>10</sup> Макушев П. В. Юридична відповідальність державного виконавця як складова його адміністративно-правового статусу. *Право України*. 2014. № 1. С. 258–265. С. 260.

enforcement bodies are formed in a particular state under the influence of factors of national and state nature. Taking into account the considered examples of implementation of decisions, we consider that there are three types of system of execution of decisions in general: state, private, combined or mixed.

Given the foregoing, it should be noted that, in almost all States, bodies and officials in charge of enforcing the decisions of the jurisdictional bodies, in one way or another, work in the justice system of the country concerned. In Russia, Israel, as in Ukraine, the institution of enforcement of decisions of the jurisdictional bodies was removed from subordination to courts and included in the system of justice bodies. However, the purpose and the essence of all types and forms of institutions for the enforcement of decisions of different states is one single common – the implementation of state policy on the enforcement of decisions of the jurisdictional bodies and as a consequence of the protection and restoration of violated rights of individuals and legal entities. Therefore, in the absence of voluntary enforcement of decisions, and in the absence of a state mechanism and a system of enforcement bodies, a situation is created in which the decision of any jurisdictional state body remains abstract, fixed only on paper, which undermines the state's authority.

## **CONCLUSIONS**

Thus, the factors influencing the peculiarities of the formation of the Ukrainian State Executive Service (SES) model are: historical preconditions, the specifics of the state system and the system of state apparatus, the conditions of public administration, the features of the legal field, the experience of borrowing or the influence of other states in the process of public administration. The national model of the state executive service and enforcement proceedings existing until 2016 does not reflect their practical purpose, which is due to the current problems of their inefficiency. Simple legal documents in the form of separate treaties and decrees governing the process of implementation of decisions as a result of the evolution of enforcement institutions were transformed into codes. That is, the process of codification of legislation in the field of executive proceedings is naturally legal. Accordingly, a new stage in the evolution of legal norms defining executive proceedings in modern Ukraine is the development and adoption of an executive code of modern Ukraine. The proper place and detailed legal regulation in this



document should get the legal status of the SES. Today's laws do not contain the definition of SES, which adversely affects the definition of the legal status of a state executive service that needs legislative regulation. The SES is a structured, state, law enforcement organization that is part of the Ministry of Justice of Ukraine and is intended to ensure the implementation of state policy in the area of enforcement of decisions. Forced enforcement of decisions by SES bodies is a systematic, purposeful, regulatory, organizational and regulatory, law enforcement activity of state executives, aimed at timely, complete and impartial enforcement of decisions of judicial and other jurisdictional authorities in order to restore property and other rights and interests of the collector. Forced enforcement of decisions by SES bodies is a systematic, purposeful, regulatory, organizational and regulatory, law enforcement activity of state executives, aimed at timely, complete and impartial enforcement of decisions of judicial and other jurisdictional authorities in order to restore property and other rights and the collector's interests.

## **SUMMARY**

The article deals with comprehensive study of the state executive service in Ukraine. The place, role and basic principles of enforcement of decisions in the activity of the state executive service in Ukraine have been determined. The peculiarities of foreign experience of legal regulation of the activities of representatives of state bodies in the enforcement proceedings have been researched. The system and structure of the state executive service have been outlined. The principles, functions and powers of the state executive service in Ukraine have been determined. The functional features of the implementation of management activities by the bodies of the state executive service in Ukraine have been established. The content of the administrative and legal status of a state executor in the conditions of a mixed system of execution of decisions has been revealed. The content and features of information support of the activity of the state executive service in Ukraine have been studied. The legal principles of interaction of the state executive service in Ukraine with the subjects of public and private law have been determined. The theoretical approaches to the definition of the essence of control over the activity of the bodies of the state executive service in Ukraine and its employees have been allocated. The essence of the modern legal regime of executive

proceedings and guarantees of observance of human rights has been theoretically substantiated. The elements of enforcement proceedings and their implementation of the state executive service in Ukraine have been described.

## REFERENCES

1. Бернатович К. В. Питання реформування органів державної виконавчої служби України. *Вісник Донецьк. нац. ун-ту. Серія В. : Економіка і право*. 2010. Вип. 2. Т. 2. С. 569–576.

2. Макушев П. В. Міжнародний досвід правового регулювання діяльності представників державних органів у виконавчому провадженні. *Альманах міжнародного права*. 2014. № 6. С. 33–41.

3. Макушев П. В. Юридична відповідальність державного виконавця як складова його адміністративно-правового статусу. *Право України*. 2014. № 1. С. 258–265.

4. Мальцева Є. В. Порівняльний аналіз систем виконавчого провадження в Україні та зарубіжних державах : порівняльний аналіз систем виконавчого провадження. *Ученые записки Таврического национального университета им. В.И. Вернадского Серія «Юридические науки»*. Том 26 (65). 2013. № 1. С. 44–48.

5. Про виконавче провадження: Закон України від 2 червня 2016 року № 1404-VIII. *Урядовий кур'єр від 20.07.2016*. № 134.

6. Про затвердження Положення про Державну виконавчу службу України : Указ Президента України від 6 квітня 2011 р. № 385/2011. URL: <http://president.gov.ua/documents/12584.html>.

7. Про затвердження Типового положення про управління державної виконавчої служби головних територіальних управлінь юстиції Міністерства юстиції України в Автономній Республіці Крим, в областях, містах Києві та Севастополі: Наказ Міністерства юстиції України 20.04.2016 № 1183/5. URL: <http://zakon2.rada.gov.ua/laws/show/z0617-16/paran9#n9>.

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

9. Про органи та осіб, які здійснюють примусове виконання судових рішень і рішень інших органів : Закон України від 2 червня 2016 р. № 1403-VIII. *Урядовий кур'єр від 27.07.2016*. № 139.

10. Салашний П. Державна виконавча служба : ефект присутності. *Правове видання. Юридичний журнал*. 2008. № 6 (72). С. 22–24.

11. Щербак С. Небезучастная исполнительная служба. *Юридична практика*. 2006. № 5 (423). С. 16–17.

**Information about the authors:**

**Makushev P. V.**

Doctor of Law, Professor, Dean of the Law Faculty,  
Dnipro Humanitarian University  
35, Yermolovoi str., Dnipro, 49033, Ukraine

**Dobkowski Ja.**

PhD hab. (Law), Professor, Head of the Department  
of Administrative Law and Science of Administration,  
Faculty of Law and Administration,  
Warmian-Masurian University in Olsztyn  
Olsztyn, Republic of Poland