

BODIES OF STATE EXECUTIVE SERVICE AS PARTICIPANTS OF ENFORCEMENT PROCEEDINGS

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INTRODUCTION

The set of accumulated scientific concepts, practical recommendations and proposals for regulatory acts governing enforcement proceedings led to the reform of 2016, which became the starting point for the formation of a mixed system of enforcement in Ukraine. The fundamental reform of the system of enforcement of judgements in Ukraine consists in the following major changes: enforcement of judgements rests with public and private executors; introduced a Unified Register of Debtors and a Unified Register of Private Performers; the debtor is obliged to pay a down payment for acceptance of the enforcement document for enforcement; when opening enforcement proceedings, no time is given for the debtor's independent (voluntary) execution of the decision; the executor, when opening the enforcement proceedings, is obliged to immediately seize the debtor's property (funds); upon the opening of enforcement proceedings, the executor obliges the debtor to file a declaration of income and property; the determination of the value of the property of the debtor should be made by mutual agreement of the debtor and the debtor, if such agreement is not reached, then the valuation entity – the entity is involved for the valuation of the property; realization of debtor's property is carried out at electronic auctions; the terms of committing significant enforcement actions have been changed; the Law on Enforcement Proceedings excludes the provisions on control over the legality of enforcement proceedings by the governing bodies of the State Executive Service (hereinafter – SES); The Law of Ukraine “On Bodies and Persons Exercising Enforcement of Judgments and Decisions of Other Bodies”, unlike the Law of Ukraine “On State Executive Service”, which has lost its validity, does not contain a number of rules that determine the structure of SES bodies, competence of bodies. on the organization of its activities, the requirements for the heads of the structural bodies of the SES, and the order of appointment and dismissal of employees of the SES bodies in fact narrowed to a primitive reference to the Law of Ukraine "On Civil Service". These amendments should provide an effective mechanism for swift and complete

implementation of judgements, including through the unloading of SES bodies, as well as affect the modern understanding of the enforcement procedure and the enforcement process.

1. The essence of the legal regime of enforcement proceedings and guarantees of human rights observance

To find out the essence of the legal regime of enforcement proceedings and the enforcement process, let us consider scientific concepts for understanding the term "regime". The Explanatory Dictionary provides a general understanding of the term "regime", namely: 1) government, mode of government; 2) accurately established routine of life, work, rest, etc.; 3) a system of rules, laws, introduced to achieve the goal; 4) conditions of activity, existence¹.

In the field of administrative law, this concept of administrative and legal regime is specified by various scholars. The peculiarity of the administrative-legal regime is manifested in the special order of the emergence and formation of the content of the rights and obligations of participants in administrative-legal relations and their implementation, the presence of specific sanctions, special means of their implementation, as well as in the operation of uniform principles, general provisions, which apply to the relevant set of legal rules.

The definitions of the administrative-legal regime provided by different scholars distinguish its various features, which can be summarized as follows: 1) determined by special rules of law of the behavior of individuals and legal entities; 2) forced detailed regulation of the activity of government bodies and public organizations; 3) introducing additional rules or removing them from binding legal rules; 4) establishment of special control over the proper observance of the rule of law in the area of the special regime and establishment of some restrictive measures²; 5) the goal is to establish optimal relations in a specific area that ensures the security of the individual, society and the state; 6) the legal entities are legally unequal in their status; 7) consists of a mechanism of autonomous, interconnected and interacting elements; 8) provides dynamics of administrative and legal relations.

¹ Великий тлумачний словник сучасної української мови / уклад, і голов. ред. В.Т. Бусел. Київ : Перун, 2003. 1440 с. С. 1021.

² Авторгов А. Державна виконавча служба – псевдореформа та реформа. Юридична газета. 2005. № 23(59). С. 195.

The main elements of the administrative-legal regime include:

- 1) a method of legal regulation, which in administrative law is based on a centralized means and an imperative type of regulation and is expressed in the legal inequality of legal entities;
- 2) specific administrative and legal means of establishing and forms of the emergence of rights and obligations, methods of legal influence, protection of rights, procedural and procedural forms, etc., which include acts, complaints, official or functional subordination, control or supervision, administrative coercion, protocols, resolutions, petitions, administrative responsibility, etc.;
- 3) principles, general provisions of administrative law, such as participation of citizens in the management of public affairs, protection and protection of human rights and freedoms, interests of the state; exercise of powers by the authorities within the limits established by the Constitution and in accordance with the laws of Ukraine; accountability, control, accountability of the executive authorities and their officials to the society for their activities, etc.;
- 4) the peculiarity of administrative legislation, which is characterized by the presence of a large number of legal norms regulating a considerable volume of various social relations related to public administration;
- 5) establishment along with the general legal regime of intra-branch legal regimes: secrecy regime, customs regime, state border regime, free economic zones regime, mode of carrying out certain types of business activities, passport regime, etc.³

In our view, the enforcement procedure and the enforcement process cannot be fully characterized as administrative-legal regimes, since there are enough indications of a dispositive method of regulating relations in this area.

Considering our own conclusions, we consider it possible to identify the following features of the legal regime of the enforcement procedure:

- 1) it is established and provided by the state for the purpose of realization of public and private interests;
- 2) predominantly enshrined in the rules of administrative law and procedural branches of law;
- 3) provides an objectively necessary and public interest model of functioning and development of administrative and legal relations in the area of enforcement of the authorized bodies' decisions;
- 4) is fixed, maintained and ensured by a combination of administrative, organizational and

³ Адміністративне право України : підручник / Ю.П. Битяк, В.М. Парашук, О.В. Дьяченко та ін. ; за ред. Ю.П. Битяка. Київ : Юрінком Інтер, 2005. 544 с. С. 269–270.

logistical means as defined by the law on enforcement proceedings; 5) the obliged entities are the debtor, the debtor, the SES in the person of the public executor or the private executor. The legal regime of enforcement proceedings as part of the enforcement process is endowed with similar features, but differs in scope of implementation.

Elements of the regime of the executive process, in our opinion can be considered: 1) the purpose of the installation – timely, complete and impartial fulfillment of decisions; 2) the object of regulation is the public relations that arise in the process of fulfillment of decisions; 3) the mechanism of legal influence, consisting of both legal (norms of law, legal facts, acts of implementation, etc.) and non-legal (legal consciousness, legal culture, legal precedents, principles, etc.) means; 4) a special legal toolkit for ensuring the administrative and legal regime. In our view, executive proceedings, being part of the executive process, have similar elements in their structure, but with regard to adjusting the purpose, which is narrowed down to timely, complete and impartial fulfillment of decision in a particular executive case.

We consider it possible to define the legal regime of the enforcement process as the legal form of functioning of public relations in the area of fulfillment of decisions with obligatory participation of the collector, debtor, state or private executors, which are ensured by a set of methods and methods of regulation of activity of the respective entities, thus creating an appropriate level dynamics of these relationships in space and time and timely, complete and impartial fulfillment of decisions is achieved.

Considering the logic of the interconnection of the enforcement process and enforcement proceedings, we propose to define the mode of enforcement proceedings as a legal form of functioning of public relations in the area of fulfillment of decisions in a particular case with the participation of certain collector, debtor, public or private executors, who are provided with a set of methods and methods these subjects, thus creating an appropriate level of dynamics of these relationships in space and time, aimed at timely, complete and impartial execution of specific decisions.

The legal regime of executive law can be defined as the legal form of functioning of relations, which are formed in the sphere of the executive process, which are provided by a special combination of legal methods, types and methods of legal regulation, which create the appropriate level of dynamics of these relations and with the aim of timely, complete and impartial fulfillment of decisions.

In the explanatory dictionary the term "mechanism" is defined as: 1) the internal structure, the system of something, 2) the set of states and processes that make up a certain phenomenon. In administrative scientific concepts, the legal mechanism is most often explored. Ya.V. Gretza, studying the legal mechanism for the realization and protection of the rights and legitimate interests of the subjects of tax relations, insists that it is a set of legal means by which each subject exercises its legal capabilities, eliminates those negative conditions that may cause harm practical implementation of the possibilities, the legal position is restored in case of violation of subjective law⁴.

To identify the static and dynamic characteristics of the concept of "mechanism", it is necessary to listen to the point of view of V.V. Konoplyov, who compares the mechanism of control and control itself, states that the difference between them is that the control mechanism characterizes the basic principles of the control system, in particular its purpose, principles, tasks, functions and methods, i.e. control in statics, then the control process characterizes its dynamics, namely its system of stages⁵. At the same time O.V. Negodchenko pays attention to the fact that the mechanism of organizational and legal support is defined as a dynamic system of legal forms, means and measures whose action and interaction are aimed at preventing or restoring human rights violations, which includes three elements: 1) protection of rights; 2) protection of rights; 3) legal assistance to the person⁶.

Taking into account scientific theories and concepts regarding the concept, content and elements of mechanisms of different legal phenomena and institutions, we consider it possible to generalize the following features of the mechanism of fulfillment of decisions: 1) its content is constituted by legal means of influence; 2) the object of influence is the behavior of the collector, the debtor, the public or private

⁴ Грета Я.В. Правовий механізм реалізації та захисту прав і законних інтересів суб'єктів податкових правовідносин : автореф. дис. на здобуття наукового ступ. канд. юрид. наук: 12.00.07; Ін-т законодавства Верховної Ради України. Київ, 2006. 20 с. С. 9.

⁵ Конопльов В.В. Організаційно-правовий механізм підготовки та прийняття управлінських рішень в адміністративній діяльності органів внутрішніх справ : автореф. дис... д-ра юрид. наук: 12.00.07; Харківськ. нац. ун-т внутр. справ. Харків, 2006. 32 с. С. 13.

⁶ Негодченко О.В. Забезпечення прав і свобод людини органами внутрішніх справ : організаційно-правові засади : автореф. дис. ... д-ра юрид. наук : 12.00.07 ; Нац. ун-т внутр. справ. Харків, 2004. 39 с. С. 17.

executors, other participants in the enforcement proceedings and other entities with which they interact, which is determined by the complex of their rights and duties; 3) the field of implementation is the social relations that are formed in the execution of authorized bodies decisions; 4) purpose – timely, complete and impartial execution of specific decisions; 5) has manifestations of a static set of elements of the system and dynamic implementation of their content; 6) its main elements are legal rules; legal facts; information environment; purpose and tasks; principles; subjects entering into the relationship, their subjective rights and legal obligations; objects that are subject to enforcement actions; executive cases, executive documents.

The mechanism of enforcement of decisions and the mechanism of enforcement proceedings whose implementation is aimed at timely, complete and impartial execution of specific decisions must, first of all, determine the guarantees of human rights in enforcement proceedings. In practice, the problems of implementing the above-mentioned guarantees of respect for human rights are identified. This is confirmed by the results of the questionnaire of citizens. Thus, while finding out the reasons for dissatisfaction of citizens with the actions of state executors, it was found that 76.7% of those who expressed a negative assessment mentioned the following reasons: unresolved issue (27%), partial resolution (30.4%), fact blatant reluctance to help or being rude on the part of the state executor (6.9%), unprofessionalism of the state executor (10.1%). 44% of the surveyed citizens found the DIA of Ukraine ineffective at the present stage, 36.9% satisfactory, and only 19.1% effective.

The results of the questionnaire indicate problems with the quality of communication with citizens and the performance of professional duties by public officials, as well as with respect for human rights in enforcement proceedings. The procedural mechanism for the realization and protection of the rights of citizens and organizations in enforcement proceedings characterizes the nature and nature of enforcement proceedings, and therefore the practice of implementing its elements needs improvement first.

2. Elements of enforcement proceedings and their implementation by the state executive service

The specificity of the legislation governing enforcement proceedings in Ukraine is that the Law of Ukraine on Enforcement Proceedings not only regulates issues related to the enforcement of judgements, but also establishes grounds for enforcement of other bodies' decision. According

to Art. 3 of this Law, in addition to judicial acts, the bodies of the state executive service may also be compulsorily executed by executive notaries, certificates of labor disputes commissions, resolutions of bodies (officials) authorized to hear cases of administrative offenses, decisions of public authorities, decisions of state authorities. use of religious buildings and property, decree of the state executor on recovery of the executive fee, costs of enforcement actions and imposition of a fine, decision of the European Court Human Rights with the specifications provided by the Law of Ukraine "On the Fulfillment of Decisions and Application of Practice of the European Court of Human Rights" and so on. Thus, the Law of Ukraine "On Enforcement Proceedings" is applied not only in the execution of court decisions but also in the fulfillment of decisions of other bodies, which makes it possible to conclude that the enforcement proceedings are aimed not only at the implementation of judicial acts as acts of justice, but also is a legal instrument for the ultimate implementation of decisions of other bodies, a universal mechanism for the exercise of state powers by the state, aimed not only at the exercise of judicial functions, but also at the protection of the rights and freedoms of the individual and the citizen in the broader context.

The Law of Ukraine "On Enforcement Proceedings" contains a set of universal procedures that are applied both in the execution of court decisions and decisions of other bodies. Most of the procedural mechanisms applied by the enforcement agent in the execution of court decisions are also applied in the fulfillment of decisions of other bodies. The system of enforcement procedures is thus independent in nature and cannot be regarded as part of civil procedural relations. The Law of Ukraine "On Enforcement Proceedings" has been amended several times since its adoption, enforcement proceedings have been improved, and today they are more effective than they were originally.

The study of the essence of the elements of enforcement proceedings in Ukraine will not be complete without defining the principles, (in particular, the principles of enforcement proceedings), that is, the basic principles of such activity. It should be noted that the enforcement process always consists of a sequence of actions of the state executor from the opening of the enforcement proceedings to its completion.

Opening of enforcement proceedings is a stage which involves actions of the state executor aimed at determining the grounds for initiating enforcement proceedings. The state executor shall, no later than the next working day from the day of receipt of the enforcement

document, issue a resolution opening the enforcement proceedings (Article 26 “Commencement of Compulsory Enforcement of the Decision” of the Law of Ukraine “On Enforcement Proceedings”). The executor shall start enforcement of the judgement on the basis of the executive document referred to in Article 3 of the Law of Ukraine “On Enforcement Proceedings”: 1) upon the claimant's application for enforcement of the decision; 2) at the request of the prosecutor in case of representation of interests of the citizen or the state in court; 3) if the enforcement document came from the court in the cases provided for by law; 4) if the enforcement document came from a court on the basis of a decision on the enforcement of a judgement of a foreign court (court of a foreign state, other competent authorities of a foreign state, which has jurisdiction over civil or commercial matters, foreign or international arbitration) in accordance with the procedure the law; 5) if the executive document was received from the National Agency of Ukraine for the detection, search and management of assets obtained from corruption and other crimes. The novelty of the current Law of Ukraine “On Enforcement Proceedings” is the payment of an advance payment.

Enforcement is the implementation by a state enforcement agent of measures to implement a prescription of a court act in the manner prescribed by law, with the payment of the debtor to the enforcement fee and the costs associated with carrying out enforcement actions. The enforcement of specific enforcement actions is influenced by the nature of the obligation itself, which is the subject of the enforcement. According to the results of the questionnaire of state executives, it was found that more often the enforcement of decisions is applied to such entities as: individuals – 40%, enterprises of private ownership – 12.5%, state enterprises – 11.0%, community companies, unions – 9.1%, officials – 6.1%, public utilities – 5.2% and others.

Depending on the type of obligation, the following enforcement measures may be applied: 1) monetary obligations – recovery of the debtor's property; requesting the collection of wages and income of the debtor – an individual; 2) material obligations – removal from the debtor and transfer to the collector of certain items specified in the judgement; 3) personal obligations – selection of the child; 4) the obligation of the debtor to perform certain actions (other than transfer of property or money) or to refrain from their implementation).

State executives testify that most often in their work they apply the following measures of enforcement of decisions: recovery of funds,

securities, other property (property rights), corporate rights, property rights of intellectual property, objects of intellectual, creative activity, other property (property rights) of the debtor, including if they are in other persons or belong to the debtor from other persons, or the debtor owns them jointly with other persons – 55,8%; requesting collection of salaries, pensions, scholarships and other income of the debtor – 22,9%; obliges the debtor to take certain actions or refrain from committing them – 20,9%; withdrawal from the debtor and transfer to the collector of the items specified in the judgement – 13,4%; prohibition of the debtor to dispose and / or use the property belonging to him on the property right, including the funds, or imposing the debtor's obligation to use such property on the terms determined by the executor – 8.0%; evictions and evictions of individuals – 6.5%; compulsory seizure and transfer of a child, making a date with her or eliminating obstacles in a date with a child – 5.2%; other coercive measures – 7.8%.

As a rule, the obligatory sign of the stage of enforcement of the judgement is its payment, which is assigned to the debtor as a person, who is obliged to perform certain act or refrain from executing it under the executive document. The costs of enforcement proceedings are the expenses of the SES bodies in organizing and executing enforcement actions to enforce enforcement of decisions. This concept has more financial and budgetary than procedural content, which confirms the provision that the costs of enforcement proceedings include the funds of the State Budget of Ukraine and the funds of enforcement proceedings, which are used in the manner established by the Cabinet of Ministers of Ukraine.

According to the results of the questionnaire of the state executors, it was found that the most common complications during the enforcement proceedings are: delay of the enforcement actions – 31.0%; return of the executive document to the court or other body (official), which issued it – 24,2%; termination of enforcement proceedings – 14.1%; clarification of enforceable decisions – 13.4%; deferral or installment, setting or change of method and procedure of execution of the judgement – 5.2%; wanted listings – 7.8%; etc.

From the practice of conducting enforcement proceedings, state executives have also identified a category of complications not defined by the Law of Ukraine “On enforcement proceedings”. Thus, according to the interviewed state executors, the most frequent circumstances and cases that complicate or exclude the execution of the decision: obstruction of individuals or legal entities in the execution of enforcement actions –

19.9%; late submission or non-submission of information at the request of the state executor – 17,9%; the absence of the property of the debtor, which by the judgement should be transferred to the collector – 16,2%; lack of sources of income and income by the debtor – 14,3%; debtor's difficult financial position – 10,1%; absence of the debtor at the place of registration and residence, not being able to establish his place of residence – 8.6%; temporary occupation of the territories of Ukraine where the debtor's property is – 4.1%; the illness of the debtor or his family – 3.7%; natural disasters, other emergencies – 3.4%, etc.

The termination of enforcement proceedings is the action of a state executor, which consists in the completion of enforcement actions in a particular enforcement proceedings, according to a specific enforcement document. The grounds for the termination of enforcement proceedings are defined in Art. 39 of the Law of Ukraine "On enforcement proceedings". By the end of the enforcement proceedings, they are divided into two groups. The first is the grounds for the seizure of the debtor's property, the other enforcement actions taken by the state executor, and other actions necessary in connection with the completion of the enforcement proceedings. The second group includes the grounds without these consequences.

In general, according to Art. 39 "Termination of enforcement proceedings" of the Law of Ukraine "On enforcement proceedings" enforcement proceedings shall be terminated in the following cases: 1) the court recognizes the refusal of the enforcer to enforce the court decision; 2) approval (recognition) by a court of a peace agreement concluded by the parties in the process of executing the decision; 3) termination of the legal entity – the parties to the enforcement proceedings, if the performance of its duties or requirements in the enforcement proceedings does not allow the succession, death, declaring of the deceased or the recognition of the debtor or the debtor unknowingly; 4) adoption by the National Bank of Ukraine of the decision on revocation of the banking license and liquidation of the debtor bank; 5) cancellation of the decision on the basis of which the executive document was issued, or the court's recognition of the executive document as non-enforceable; 6) the written refusal of the collector to receive the items withdrawn from the debtor during the execution of the judgement to transfer them to the debtor or the destruction of the thing to be handed to the debtor in kind or free of charge; 7) the expiry of the period provided by law for the respective type of recovery, unless there is a debt for recovery of the corresponding

payments; 8) recognition of the debtor bankrupt; 9) actual implementation of the full decision in accordance with the executive document; 10) return of the executive document without execution at the request of the court or other body (official), which issued the executive document, etc.⁷

The last stage of the enforcement proceedings is the final one. At this stage, the enforcement proceedings is being closed, the enforcement proceedings are terminated and the enforcement document is returned to the collector. At the final stage, the executor decides whether to close or terminate the enforcement proceedings, depending on the circumstances of the case.

Resolution on the termination of enforcement proceedings on the grounds provided for in part one of Art. 39 of the Law of Ukraine "On Enforcement Proceedings" shall be rendered on the day of the occurrence of the relevant circumstances or on the day the executor became aware of such circumstances. In the cases provided for in paragraphs 1-3, 5-7, 9-12, 14, 15 of the first part of this Article, the enforcement document shall be sent together with the decision on the completion of the enforcement proceedings to the court or other body (official) which issued it. The resolution on the termination of the enforcement proceedings on the grounds provided for in paragraph 4 of part one of this Article, together with the executive document, shall be sent to the authorized person of the Deposit Guarantee Fund of individuals. The resolution on the termination of the enforcement proceedings on the grounds provided for in paragraph 8 of part one of this Article, together with the executive document, shall be sent to the economic court, which adopted the judgement on recognition of the debtor bankrupt and the opening of liquidation procedure.

According to Art. 40. "Consequences of termination of enforcement proceedings, return of enforcement document" in case of termination of enforcement proceedings (except for the official announcement of the bankruptcy notice of the debtor and the initiation of liquidation proceedings, termination of enforcement proceedings under a court order made in order to secure a claim or take precautionary measures, and except in the case of non-collection of enforcement fees or costs of enforcement proceedings, non-collection of basic remuneration by a private contractor), return of executive documents mint to the court that issued it, arrest, imposed on the property (funds) of the debtor, is

⁷ Про виконавче провадження : Закон України від 2 червня 2016 року № 1404-VIII. Урядовий кур'єр від 20.07.2016. № 134.

withdrawn, information about the debtor is excluded from the Unified Register of Debtors, other measures taken by the executor to enforce the judgement are canceled, as well as other necessary actions are taken in connection with the expiration enforcement proceedings.

3. Legal personality of the State Executive Service as a participant in enforcement proceedings

The study of the administrative and legal personality of the state executive service in the implementation of tasks of enforcement proceedings in the domestic legal doctrine is important for clarifying its legal nature, prerequisites for the emergence and directions of development in the context of the general development of domestic administrative legal science and the genesis of legislative regulation of compulsory fulfillment of decisions of courts and other bodies.

It should be noted that legal relations in the field of enforcement proceedings are the subject of scientific research in various fields of law, in particular: civil, economic, procedural and administrative, which allows to speak about the complex nature of such legal relations and the complex (multiple) nature of the relevant legal rules, but dominant there are administrative and procedural rules, which allows to consider the enforcement proceedings as an institution of administrative law.

The activity of the state executive service, as a realization of its administrative and legal status, is characterized by a diversity of relations. These relations have different directions, first of all, relations between employees of the state executive service and state bodies of executive power, as well as state bodies of other branches of power; secondly, between law enforcement officials and other law enforcement officials; thirdly, between executive service employees and various non-governmental organizations; fourthly, between employees of the state executive service and employees of local self-government bodies; the fifth between public executives and citizens.

The above mentioned groups of relations, to which state executives are currently involved, have some tension, which is manifested by the population's lack of confidence in the state executive service. Thus, according to the results of the questionnaire conducted by the author, it was found that in the process of interaction with SES employees, the citizens were mostly not satisfied completely – 46.7% of the respondents answered, 30% were not satisfied, and only 23.3% were completely satisfied with the interaction with the employees of the state executive

service. When finding out the reason for dissatisfaction with the actions of state executives, it was found that among 76.7% of those who had a negative assessment, its reasons were: unresolved issue in 27%, resolving the issue partially in 30.4%, fact of the open a reluctance to help or rudeness by a state executive in 6.9%, not by professionalism of a state executive in 10.1%. At present, 44% of the polled found it ineffective, 36.9% satisfactory and only 19.1% effective regarding the effectiveness of SES activities.

The results of the questionnaire indicate problems with the quality of communication with citizens and the fulfillment of professional duties by public officials. The prestige of the staff of the executive service is also significantly diminished, due to the fact that it is not possible to execute the court or officials' decisions in due time, but also to protect the citizen's right. So according to the results of the questioning of citizens on the question: whose profession is a state executive prestigious? 48.1% of those surveyed said no, 24.9% had difficulty answering, and only 27% found the profession prestigious. A similar trend was found in the survey of SES employees themselves. For example, 36.4% of the surveyed public executives called their prestigious profession, 6.6% questioned this fact, and 57% of those questioned denied the prestige of the profession of state performer.

Based on the features of the state executive service and elements of its administrative and legal status, we propose our own formulation of the concept of the State Executive Service of Ukraine, namely, a state, structured, law enforcement body, which is part of the system of bodies of the Ministry of Justice of Ukraine and enforces decisions on the application of legal measures influence, in strict accordance with the law and in strict compliance with the order established by it.

As a participant in the SES enforcement proceedings, it is empowered to carry out enforcement actions, however, as we have noted in Section 1.3, the domestic legislator does not define them. Instead, foreign experience testifies to other legislation of the Russian Federation that resolves this issue in Art. 64 of the Federal Law of the Russian Federation "On Executive Proceedings" of October 2, 2007 № 229-FZ, there is an article entitled "Executive actions", which provides a list of enforcement actions. Thus, the Russian bailiff has the right: 1) to summon the parties to the enforcement proceedings (their representatives), other persons in cases provided for by the legislation of the Russian Federation; 2) to request the necessary information, including personal data, from

individuals, organizations and bodies located in the territory of the Russian Federation, as well as in the territories of foreign states, in the manner prescribed by the international treaty of the Russian Federation, to receive from them explanations, information, help; 3) carry out an audit, including verification of financial documents, on the execution of executive documents; 4) to give individuals and legal entities instructions on the fulfillment of the requirements contained in the executive documents; 5) enter into non-residential premises occupied by the debtor or other persons or belonging to the debtor or other persons for the purpose of executing executive documents; 6) with the permission of the senior bailiff in writing (and in the case of execution of the executive document on the eviction of the debtor or eviction of the debtor – without the said permission) to enter the premises occupied by the debtor without the consent of the debtor; 7) to seize the property, including cash and securities, to seize the said property, to transfer the seized and seized property for safekeeping; 8) to carry out property valuation in the manner and within the limits established by this Law; 9) involve for assessment of property of specialists who meet the requirements of the legislation of the Russian Federation on valuation activity; 10) to search the debtor, his property, to search the child independently or with the involvement of law enforcement agencies; 11) to ask the parties to the enforcement proceedings the necessary information; 12) consider applications and motions of the parties to the enforcement proceedings and other persons involved in the enforcement proceedings; 13) collect executive fees; 14) apply to the body that performs state registration of property rights and transactions with him, for registration in the name of the debtor of the property belonging to him in the cases and the procedure established by this Law, etc.⁸

The current legal status of SES bodies is determined by the Laws of Ukraine “On Enforcement Proceedings” of June 2, 2016 No. 1404-VIII, “On Bodies and Persons who carry out coercive enforcement of Judgments and Decisions of Other Bodies” of June 2, 2016, No. 1403-VIII, “On state guarantees concerning the enforcement of judgements⁹”; “On the enforcement of judgments and the application of the case law

⁸ Об исполнительном производстве : Закон Российской Федерации от 02.10.2007 г., № 229-ФЗ. URL.: <http://www.fssprus.ru/law7>.

⁹ Про гарантії держави щодо виконання судових рішень : Закон України від 5 червня 2012 року № 4901-VI. Голос України від 27.06.2012. № 117.

of the European Court of Human Rights¹⁰”; “On the introduction of a moratorium on the forced sale of property¹¹”. The resolutions of the Cabinet of Ministers of Ukraine of July 2, 2014 No. 228 “On approval of the Regulation on the Ministry of Justice of Ukraine¹²”, “On approval of the Regulation on the procedure of auctions (public auctions) for the sale of pledged property¹³” and decrees of the President of Ukraine, for example, “On Approval of the Regulation on the State Executive Service of Ukraine” of April 6, 2011 No. 385/2011¹⁴ also play an important role in the legislation governing enforcement proceedings.

A special place in the system of legal regulation of the activity of the state executive service belongs to the Orders of the Ministry of Justice of Ukraine: On approval of the Model Regulation on the management of the state executive service of the main territorial departments of the Ministry of Justice of Ukraine in the Autonomous Republic of Crimea, in the regions, cities of Kyiv and Sevastopol of executive service of the main territorial departments of justice of the Ministry of Justice of Ukraine in the Autonomous Republic of Crimea, in the regions, cities of Ki Eve and Sevastopol; On approval of the Procedure of interaction of the Ministry of Justice of Ukraine with the central bodies of executive power, whose activities are directed and coordinated by the Cabinet of Ministers of Ukraine through the Minister of Justice of Ukraine; On approval of the Procedure for exercising control over the activity of employees of state executive service bodies, private executors; On approval of the Procedure for sale of seized property; «On approval of the Instruction on the organization of enforcement of decisions» from 02.04.2012 № 512/5; “On Approval of the Procedure for the Sale of Arrested Property” dated 29.09.2016 No. 2831/5; On approval of the Order of information interaction between the Unified State Register of Legal Entities,

¹⁰ Про заходи щодо реалізації Закону України «Про виконання рішень та застосування практики Європейського суду з прав людини» : Постанова Кабінету Міністрів України від 31.05.2006 р. Офіційний вісник України. 2006. № 22.

¹¹ Про введення мораторію на примусову реалізацію майна : Закон України від 29 листопада 2001 року № 2864-III. URL.: <http://zakon3.rada.gov.ua/laws/show/2864-14>.

¹² Про затвердження Положення про Міністерство юстиції України : Постанова Кабінету Міністрів України від 2 липня 2014 р. № 228. Урядовий кур’єр від 11.07.2014. № 123.

¹³ Про затвердження Положення про порядок проведення аукціонів (публічних торгів) з реалізації заставленого майна : Постанова Кабінету Міністрів України від 22 грудня 1997 р. № 1448. URL.: <http://zakon4.rada.gov.ua/laws/show/1448-97-%D0%BF>.

¹⁴ Про затвердження Положення про Державну виконавчу службу України : Указ Президента України від 6 квітня 2011 року № 385/2011. URL.: <http://www.president.gov.ua/documents/13356.html>.

Individuals – Entrepreneurs and Public Formations and the Automated System of Enforcement Proceedings of 24.01.2017 No. 173/5; On approval of the Regulation on the automated system of enforcement proceedings No. 2432/5 of 05.08.2016; On approval of the Special requirements for the level of professional competence of state executives and heads of bodies of state executive service of October 21, 2016 No. 3005/5.

The clarifications of the Ministry of Justice of Ukraine, such as on enforcement of administrative offenses, play an important role; methodological recommendations in the field of enforcement proceedings: Methodical recommendations on state registration of ownership of real estate objects based on court decisions; Guidelines for entities entitled to obtain information from the Register of Real Estate Ownership; Guidelines on the definition of immovable property located on land plots, the ownership of which is subject to state registration; Explanation of the SES Department: on enforcement of decisions on recovery from debtor banks in case of appointment of temporary administration dated 19.05.2008 № 25-32/5; on the transfer of deducted amounts from 15.06.2008 № 5804-0-26-09-25; on the execution of writs of execution of compensation for losses caused by crime of April 16, 2009 No. 3308-0-26-09-25; on the establishment of a moratorium on the alienation of premises and property of mass media offices of 10.03.2009 No. 2115-0-4-09-25; on involvement of the witnesses in the enforcement actions dated 23.02.2009 № 25-32/175; on Budget Classification Codes 28.01.2009 № 25-32/121; on the transfer of penalties of January 29, 2009 No. 14666-0-32-08-25; on the sale of property by specialized organizations 26.02.2009 № 25-32/188, etc.

The above extensive system of normative legal acts regulating the activity of the state executive service shows that these normative acts are disparate in nature and deprive not only the specialist but also the professional to have a complete understanding of the process of implementation of decisions. We consider it necessary to codify the existing legislation governing enforcement proceedings and to implement the Code of Enforcement Proceedings, which provides for a separate section on the regulation of the legal status of the state executive service. The legal history we consider, the progressive international legal experience testify to a new leak in the history of domestic legislation governing enforcement proceedings, the formation of a mixed system of enforcement of decisions and the formation of a new concept of reform of the state executive service in Ukraine.

CONCLUSIONS

Elements of the execution procedure mode are: the purpose of the establishment is timely, complete and impartial fulfillment of decisions; the object of regulation – the social relations that arise in the process of fulfillment of decisions; the mechanism of legal influence, which consists of both legal (norms of law, legal facts, acts of implementation, etc.) and non-legal (legal consciousness, legal culture, legal precedents, principles, etc.) means; a special legal toolkit for ensuring the administrative and legal regime. In our view, executive proceedings, being part of the executive process, have similar elements in their structure, however, taking into account the adjustment of the purpose, which is narrowed down to timely, complete and impartial fulfillment of decisions in a particular executive case. Signs of the mechanism of enforcement of decisions are: its content are legal means of influence; the object of influence is the conduct of the collector, the debtor, the public or private executor, other participants in the enforcement proceedings and other entities with which they interact, which is determined by the complex of their rights and responsibilities; the sphere of implementation is the public relations that are formed in the fulfillment of decisions of the authorized bodies; purpose – timely, complete and impartial implementation of specific decisions; has manifestations of static on a set of elements of system and dynamic realization of their content; its main elements are legal rules; legal facts; information environment; purpose and tasks; principles; subjects entering into the relationship, their subjective rights and legal obligations; objects that are subject to enforcement actions; enforcement cases, enforcement documents; means of enforcement. The civil service regime in SES bodies is a type of administrative and legal regime of public service in Ukraine and has certain features: it is regulated by the rules of both administrative and labor law; the bureaucrats are state enforcers; contains increased demands on the intellectual, moral, cultural, professional and business qualities of the subjects of the regime.

SUMMARY

The article deals with theoretical substantiation of the place of enforcement proceedings in the modern system of law of Ukraine and the functions of the State Executive Service for the protection of rights of citizens and legal entities, as well as the interests of the country. The author has revealed causes of problem situations in executive proceedings and has proposed complex ways of their solution, which are

based on the structure of the modern State Executive Service, creation of theoretical bases of executive proceedings and introduction of appropriate amendments in the current legislation. 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 clarified. Functional peculiarities of administrative activity of bodies of state executive service have been established. The content of the administrative and legal status of the state executor in the conditions of the mixed system of execution of judgements has been revealed. The content and peculiarities of information support of the activity of the state executive service in Ukraine have been studied. The legal bases of interaction of the State Executive Service in Ukraine with participants of public and private law have been defined. Theoretical approaches to determining the essence of control over the activity of state executive service bodies in Ukraine and its employees have been highlighted.

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