

Ліліан ЛУЧІН

ОРГАНІЗАЦІЯ ТА ПЛАНУВАННЯ ПРОЦЕСУ РОЗСЛІДУВАННЯ ДОРОЖНЬО ТРАНСПОРТНИХ ПРИГОД В РЕСПУБЛІЦІ МОЛДОВА

Анотація. Завдання даного дослідження визначаються суспільними відносинами, які виникають у зв'язку з виконанням спеціалізованими органами розслідування дорожньо-транспортних пригод. Таким чином, загальним об'єктом дослідження є національна та міжнародна доктрина у кримінально-процесуальному та криміналістичному аспекті розслідування дорожньо-транспортних пригод та особливо організації та планування цих процесів.

Ключові слова: розслідування, ДТП, відповідальність, соціальні відносини, організація, планування, транспортний засіб

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LEGISLATIVE SUPPORT ENFORCEMENT OF COURT JUDGMENTS IN UKRAINE

Abstract. The article is devoted to the study of normative – legal support of enforcement of court decisions through the prism of law enforcement practice.

Emphasis is placed on the elements of a developing democratic society, which is open to change, implementation and enforcement of court decisions used by citizens, where an important role is given to the legislation on the implementation of the rules of enforcement proceedings.

The changes taking place in Ukrainian society arouse high activity and the

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desire of people to take a direct part in solving problems that concern their common interests, including the use of the right to peaceful assembly. However, despite the importance of this type of political rights, the constitutional provisions on the protection of citizens' rights to a fair trial and enforcement of a court decision, which are still not properly specified in current legislation, are often limited or even violated.

The need to amend procedural legislation taking into account the latest advances in science; the presence of different positions of scientists on the understanding of the essence and content of legal relations at the stage of implementation of the decision; negative practice of execution of judicial acts in Ukraine, which leads to the appeal of Ukrainian citizens to the European Court of Human Rights.

The main innovation of the adopted laws and the basis of the concept of reform, which is laid down, is the introduction of the institution of private executors, which operates alongside the state executive service and performs the functions of enforcement of courts and other bodies.

Keywords: *execution of a court decision, enforcement proceedings, execution of decisions, normative legal acts*

Introduction. At the same time, it should be noted that despite the increased level of activity of citizens in exercising the right to protection of their rights in the judiciary, which is a manifestation of democracy in our country, domestic legislation only partially regulates the protection of citizens' rights in case of inaction. Persons in execution of a court decision. Nevertheless, for countries with established democratic traditions, it is common practice to determine the basis for ensuring the right to guarantees of trial and enforcement in each case through the involvement of justice mechanisms. However, in Ukraine at present there is a steady trend of unpreparedness of the judiciary for prompt and impartial decision-making and enforcement by applying the rules of both national and international law, taking into account the mechanisms of interaction of law enforcement agencies, resulting in citizens all more often seek protection from the European Court of Human Rights. Therefore, the author emphasizes the importance of legal regulation of the mechanism of effective execution of a court decision, as this issue has become traditional throughout the period of independence.

Ensuring the enforcement of court decisions should be one of the priorities of public policy, and therefore requires comprehensive research and improvement.

Legal provision, given the variety of scientific and theoretical definitions, is characterized by the mandatory presence of purposeful influence without which it seems impossible to regulate social relations. Equally important is the mandatory use of a certain set of public remedies, as the main subject of the use of force on subordinate objects is the state. Finally, the effectiveness of legal support depends

entirely on the system of normative and individual legal acts that make it up and determine the legal requirements that give the sphere of normative influence signs of order.

In general, legal support can be represented as a system of legal norms established and maintained by the state, aimed through legal prescriptions and a set of legal means to regulate public relations, their legal consolidation, protection, protection, implementation and development.

At the same time, today, according to the results of statistics on the execution of court decisions and real indicators of enforcement of court decisions by state executors and private executors who are authorized to enforce court decisions in accordance with the law, illustrate the picture of insufficiently developed mechanisms and tools related to the possibility of enforcement of a court decision and protection of the rights of citizens.

As evidenced by the need to finalize the legislation and adopt corrective articles, acts, etc.

The basis of normative (legal) enforcement of court decisions and the application of enforcement of court decisions is the formation and streamlining of its regulatory framework as a legal means of achieving real order of the system of relevant means and their effectiveness. It is the regulatory framework is a kind of organizational and functional image of the management system, expressed in legal language, which corresponds to its purpose.

In general, this system of legal prescriptions, rules, norms and standards can also be called “legislation”, and this term received a normative official interpretation in one of the decisions of the Constitutional Court of Ukraine, which states that it is used in part three of Art. 21 of the Labor Code of Ukraine (Code of Labor Laws of Ukraine dated 10.12.1971 no. 322-VIII) on defining the scope of the contract as a special form of employment contract, and covers the laws of Ukraine, current international agreements of Ukraine, binding consent of the Verkhovna Rada of Ukraine, as well as resolutions of the Verkhovna Rada of Ukraine, Presidential decrees Of Ukraine, decrees and resolutions of the Cabinet of Ministers of Ukraine, adopted within their powers and in accordance with the Constitution of Ukraine and laws of Ukraine.

At the same time, the outlined list seems incomplete, because, in our opinion, it should be supplemented by regulations of central and local executive bodies, local governments, etc.

The above legal acts of different legal force and purpose can be considered as fundamental sources that create the basis for all other, less legal, but no less important regulations in the field of enforcement of court decisions.

We would like to focus on the fact that the legal basis for the functioning of the judicial system, the system of bodies authorized to enforce court decisions and the possibility of enforcement of court decisions are the Constitution of Ukraine of June 28, 1996, the Law of Ukraine persons who carry out

enforcement of court decisions and decisions of other bodies".

Formulation of the main material. The Constitution of Ukraine in any legal field is a fundamental legal act, which contains a specific list of fundamental rights and freedoms of man and citizen, functions and powers of all branches of government in Ukraine, and notes the features of justice in Ukraine.

A separate block of normative legal support consists of normative legal acts of national legislation that regulate the procedure and special procedures for enforcement of court decisions, features of liability of officials and the administration of justice in general. Such legal acts include the Law of Ukraine "On State Executive Service" (On the State Executive Service: Law of Ukraine of March 24, 1998 no. 202/98-VR). The peculiarity of this legal act is that it specifies the main criteria for ensuring the enforcement of court decisions. It is also noted that the obligation to monitor compliance with enforcement of court decisions rests with the State Enforcement Service.

The Law of Ukraine "On Enforcement Proceedings" (On Enforcement Proceedings: Law of Ukraine of 02.06.2016 no. 1404-VIII) contains the main provisions on the basic requirements for the execution of court decisions, as well as on persons who are required by law to enforce such decisions and persons who have the authority to monitor the execution of such judgments, and in case of non-compliance to apply appropriate sanctions.

Law of Ukraine "On bodies and persons carrying out enforcement of court decisions and decisions of other bodies" (On bodies and persons who carry out enforcement of court decisions and decisions of other bodies: Law of Ukraine of 02.06.2016 № 1403-VIII). This law states the obligation of the State Executive Service of Ukraine to control and ensure the enforcement of court decisions by a person. The main tasks and functions of the State Executive Service of Ukraine, as well as the basic requirements for candidates for this position are indicated.

It should be noted that each of the above documents is important not only in the aggregate, but also in its own way, because each of them provides a particular area of legal relations, which must comply with current international law. It is obvious that the introduction of positive practice of internationally accepted legislation not only affects the level of social security of the population in the country, but also the legitimacy of a state that adheres to current international law.

Law of Ukraine "On the implementation of decisions and application of the case law of the European Court of Human Rights" (On the execution of decisions and application of the case law of the European Court of Human Rights: Law of Ukraine of February 23, 2006). This law is very important for national law, because the application of the case law of the European Court of Human Rights (hereinafter – the ECtHR) is a necessary condition for the administration of justice, because decisions taken at the ECtHR level are binding

in each country. Of the European Union. The Constitution of Ukraine takes into account the main provisions of this law, namely the basic principles of application of the case law of the European Court of Human Rights in human rights cases, which is a positive aspect of the adaptation of current national legislation to international standards.

Given the importance of the above regulations, a necessary condition for improving the efficiency of the institution of enforcement of court decisions is to amend not only the current national legislation, but also to develop effective recommendations to ensure the proper functioning of this legal institution. The creation of the Unified Register of Enforcement of Judgments is one of the methods to improve the functioning of the enforcement mechanism, as a systematized information system can not only facilitate the daily work of authorized persons who monitor enforcement, but also increase the efficiency of such enforcement.

In addition, practice shows that court decisions are often subject to appeal by the persons against whom the relevant decisions are made, so the creation of a Unified Register of Persons Appealing Enforcement in the ECtHR can serve as a kind of clue as to why such decisions can be appealed.

First of all, these are laws that are normative legal acts of the highest legislative body, which is the Verkhovna Rada of Ukraine, which regulate the most important public relations, including law enforcement, express the will and interests of the majority of the population, embody basic human rights, other universal values and have the highest legal force over all other legal norms.

The most important in terms of importance and place in the system of legislation is the Constitution of Ukraine (Basic Law), adopted on June 28, 1996 (Constitution of Ukraine: Law of Ukraine of June 28, 1996), the rules of which regulate the system of economic, political, social, spiritual and organizational relations in the state. The importance of this legal act in maintaining the legal regime of legality in the activities of patrol police units should not be underestimated, which is due to the enshrinement in Article 8 of the principles of the rule of law, according to which, having the highest legal force, the Constitution of Ukraine is a guideline other normative legal acts, organization of judicial proceedings, protection of human and civil rights and freedoms, guaranteeing the security of a person and legitimate performance of functional duties to persons authorized to execute court decisions. Therefore, its relevant norms are the legal basis for all activities of the judiciary, current legislation and lawmaking on issues of enforcement of court decisions.

The Laws of Ukraine “On Civil Service” are among the laws that regulate specific issues of guarantees of judicial proceedings for the enforcement of court decisions through the authorized activity of persons entitled to such competence.

The Law of Ukraine “On Civil Service” (On civil service: Law of Ukraine of 10.12.2015 no. 889-VIII), which contains a definition of civil service, states the

basic principles of civil service in Ukraine, defines different categories of persons who belong to civil servants. In addition, this law contains the basic rules of selection, or rather the competition, according to which the selection for the position of civil servant, as well as the procedure and conditions of civil service in Ukraine.

Special attention should be paid to codified regulations, in particular, the Code of Administrative Offenses of Ukraine and the Code of Administrative Procedure. Most of the rules on enforcement of judgments contained in the Code of Administrative Offenses apply to members of the National Police, which only strengthens their responsibilities for enforcing judgments.

Regarding the Code of Administrative Procedure, it should be noted that this code specifies not only the main stages and mechanisms of administrative proceedings, but also regulates the timing of enforcement proceedings, the procedure and features of such enforcement proceedings, the procedure for appealing court decisions, and rules that relate to exactly how the enforcement of court decisions should take place.

The legal basis is also bylaws of the competent authorities, issued on the basis of laws and for their implementation. One of the main types of such regulations of state bodies are resolutions of the Verkhovna Rada of Ukraine and the Cabinet of Ministers of Ukraine. Such documents include, in particular, the Order of the Ministry of Justice of Ukraine dated 02.04.2012 №512 / 5 “On approval of the Instruction on the organization of enforcement of court decisions”, the Order of the Ministry of Justice of Ukraine dated 22.10.2018 № 3284/5 “On approval of the Procedure for inspections activities of state executive service bodies, private executors”.

Order of the Ministry of Justice of Ukraine dated 02.04.2012 №512 / 5 “On approval of the Instruction on the organization of enforcement of court decisions” (On approval of the Procedure for conducting inspections of the activities of state executive service bodies, private executors: Order of the Ministry of Justice of Ukraine dated 22.10.2018 no. 3284/5). This order regulates clearly defined issues of judicial proceedings and enforcement of court decisions through authorized persons who have specific rights and responsibilities in the course of their official activities.

This Order also defines the basic concepts related to the enforcement of court decisions, namely, the status of private and public executors, the National Police, as well as other authorized persons who exercise control over the enforcement of court decisions.

Another Order “On Approval of the Procedure for Inspections of the Bodies of the State Enforcement Service, Private Enforcement Agents” regulates the activities of bodies and authorized persons who inspect persons and institutions that control the enforcement of court decisions. This order provides specific regulations for the legal status of state executors, private executors, national police bodies and other authorized bodies.

Quite important place in the legal regulation of enforcement of court

decisions, maintaining in its work a strict awareness of the importance of compliance with the principle of legality by each employee also occupy departmental legal acts of the Ministry of Internal Affairs of Ukraine (National Police of Ukraine). fulfillment of the tasks and responsibilities assigned to it during their involvement in the enforcement of court decisions. Such documents include the Law of Ukraine “On State Protection of Court and Law Enforcement Officials” (On state protection of employees of courts and law enforcement agencies: Law of Ukraine of December 23, 1993), the Law of Ukraine “On Administrative Supervision of Persons Released from Prisons” (UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984, no. 13, art. 108).

The main task entrusted to law enforcement agencies is to ensure the fundamental rights and freedoms of citizens. Thanks to the above-mentioned normative legal acts, the police acquire powers to ensure the legal status of citizens not only in the field of administrative proceedings, but also in the enforcement of court decisions.

Regarding the Law of Ukraine “On State Protection of Court and Law Enforcement Officials” (On state protection of employees of courts and law enforcement agencies: Law of Ukraine of December 23, 1993), it clearly states that judges of all parts of the judiciary, as well as law enforcement officers must be protected from illegal influence on the exercise of their powers, as well as from encroachment. For the life and health of them and their family members. This law establishes the types of protection of such persons, which are guaranteed at the state level and must be provided by it.

It should be noted that the above legal acts require the involvement of a large number of personnel to implement the rules provided by these laws. Unfortunately, the lack of personnel in the law enforcement sphere has a negative impact on the exercise of police powers in the field of enforcement of court decisions, as well as in ensuring the legal rights and freedoms of citizens, in particular judges or other law enforcement officers.

Characteristics of regulatory and legal support from the standpoint of the legal force of legal acts, which achieve the principles outlined in the legislation, does not give a complete picture of the status, types and features of regulations and their impact on relevant social relations.

It follows with certainty that the legal basis for enforcement of court decisions is a set of laws and regulations, including international ones, which already have positive experience in ensuring enforcement of court decisions.

Judicial reforms in Ukraine are often focused on European and international standards in the field of justice. The main disadvantage of the judicial system in Ukraine is that judges elect judges, which significantly affects the level of public confidence in the judiciary. The model of establishing judicial administrative institutions was widespread in the mid-2000s, and most of its

members were judges elected by judges. Many Central and Eastern European countries have introduced the standard “Judges elected by judges” for their judiciary. What are the European and international standards in the field of justice? If the judiciary is deprived of political influence and the institutions are independent, then the entire judiciary will be independent. After all, this is how the judiciary works in Western Europe. At the same time, the president or parliament cannot significantly interfere in the administration of the judiciary, nor can they put pressure on judges or “pull” the people concerned. Judges can hear cases against senior officials or their interests without worrying about losing their positions (On approval of the Procedure for conducting inspections of the activities of state executive service bodies, private executors: Order of the Ministry of Justice of Ukraine dated 22.10.2018 no. 3284/5, p. 154).

Conclusions. As a result, it should be noted that high-quality legislative support and regulation of the judicial system of Ukraine and the institution of enforcement of decisions depends not only on the constant reform of national legislation. International standards are of great importance, which aim not only to ensure the efficiency of the judicial system, but also to increase the percentage of public confidence in the performance of judges’ main tasks.

Also noteworthy is not only the introduction of international standards, but also their appropriate practical implementation, which, unfortunately, at the level of national legislation does not work to a sufficient extent. Therefore, in order to achieve the effectiveness of the implementation of these international acts, it is necessary to fully reform the current national legislation, highlight the main shortcomings, and eliminate them by applying the rules of international law in the field of enforcement of court decisions.

Conflict of Interest and other Ethics Statements

The author declare no conflict of interest.

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Віта МОРОЗ

ЗАКОНОДАВЧЕ ЗАБЕЗПЕЧЕННЯ ВИКОНАННЯ СУДОВОГО РІШЕННЯ В УКРАЇНІ

Abstract. Стаття присвячена дослідженню нормативно-правового забезпечення виконання судових рішень крізь призму правозастосовчої практики.

Акцентовано на елементах демократичного суспільства, що розвивається, виконання судових рішень, які використовуються громадянами, де важлива роль відводиться законодавству щодо реалізації правил виконавчого провадження.

Зміни, що відбуваються в українському суспільстві, викликають високу активність та бажання людей брати безпосередню участь у вирішенні проблем, які стосуються їх спільних інтересів, зокрема використання права на мирні зібрання. Проте, незважаючи на важливість цього виду політичних прав, конституційні положення щодо захисту прав громадян на справедливий суд і виконання судового рішення, які й досі належним чином не конкретизовані в чинному законодавстві, часто обмежуються або навіть порушуються.

Необхідність внесення змін до процесуального законодавства з урахуванням останніх досягнень науки; наявність різних позицій науковців щодо розуміння сутності та змісту правовідносин на етапі виконання рішення; негативна практика виконання судових актів в Україні, що призводить до звернення громадян України до Європейського суду з прав людини.

Основним нововведенням прийнятих законів та основою концепції реформування, що закладається, є запровадження інституту приватних виконавців, що функціонує поряд з державною виконавчою службою та виконує функції примусового виконання судів та інших органів.

Ключові слова: виконання судового рішення, виконавче провадження, виконання рішень, нормативно-правові акти

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