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FEATURES OF FUNCTIONING OF THE EXECUTIVE SERVICE OF UKRAINE IN CONDITIONS OF TRANSFORMATION CHANGE

Abstract. The article substantiates the peculiarities of the functioning of the executive service in Ukraine in view of the implementation of judicial and legal reform. The purpose of the current reform of the state executive service is to find innovative forms and methods for managing the system of execution of judicial and other decisions, improving the organizational and legal principles of its functioning and greater efficiency in the practice of compulsory execution of decisions.

Particular attention is paid to the development of the institution of private performers, whose activities are possible due to the gradual establishment of a system of self-government, the mechanism of admission to the profession; the introduction of a system of control over the activities of private performers and the permission to exercise their professional activities in violation of the law.

Keywords: public administration, judicial-legal reform, state executive service, enforcement proceedings, state and private executors.

ОСОБЛИВОСТІ ФУНКЦІОНУВАННЯ ВИКОНАВЧОЇ СЛУЖБИ УКРАЇНИ В УМОВАХ ТРАНСФОРМАЦІЙНИХ ЗМІН

Анотація. У статті обґрунтовано особливості функціонування виконавчої служби в Україні з огляду на здійснення судово-правової реформи. Метою сучасного реформування державної виконавчої служби є пошук інноваційних форм та методів управління системою виконання судових та інших рішень, удосконалення організаційно-правових засад її функціонування та більшої ефективності у практичній діяльності з примусового виконання рішень. Особлива увага приділена розвитку інституту приватних виконавців, діяльність яких можлива завдяки поступовому створенню системи самоврядування, механізму допуску до професії; впровадженню системи контролю за діяльністю приватних виконавців та позбавлення дозволу на здійснення ними професійної діяльності при порушенні законодавства.

Ключові слова: публічне управління, судово-правова реформа, державна виконавча служба, виконавче провадження, державні та приватні виконавці.

ОСОБЕННОСТИ ФУНКЦИОНИРОВАНИЯ ИСПОЛНИТЕЛЬНОЙ СЛУЖБЫ УКРАИНЫ В УСЛОВИЯХ ТРАНСФОРМАЦИОННЫХ ИЗМЕНЕНИЙ

Аннотация. В статье обоснованы особенности функционирования исполнительной службы в Украине с учетом осуществления судебно-правовой реформы. Целью современного реформирования государственной исполнительной службы является поиск инновационных форм и методов управления системой исполнения судебных и иных решений, совершенствование организационно-правовых основ ее функционирования и большей эффек-

тивности в практической деятельности по принудительному исполнению решений. Особое внимание уделено развитию института частных исполнителей, деятельность которых возможна благодаря постепенному созданию системы самоуправления, механизма допуска к профессии; внедрению системы контроля за деятельностью частных исполнителей и лишения разрешения на осуществление ими профессиональной деятельности при нарушении законодательства.

Ключевые слова: публичное управление, судебная правовая реформа, государственная исполнительная служба, исполнительное производство, государственные и частные исполнители.

Formulation of the problem. Effective public administration in Ukraine is impossible without improving the activity of the authorities and local self-government, finding new forms and methods of management in various fields of public life. This important area of public administration is the executive service, until recently – the State Executive Service.

It has to be determined that the issues in the system of the state executive service have not been specifically studied until today, in the existing scientific works these issues were investigated fragmentarily without a corresponding integrated approach.

In Ukraine, there is a paradoxical situation where it is almost impossible to provide for the compulsory renewal of property rights of a citizen after a court decision. This was due to the imperfect regulatory framework, the weak responsibility of state executives, corruption at almost all levels of enforcement, and so on.

Therefore, the problem of reforming the executive service becomes especially relevant in the context of the implementation of legal and judicial reform in Ukraine.

Analysis of recent research and publications. It should be noted that a significant influence on the research of the problems of executive proceedings has been made by scientists, mainly lawyers, such as: O. Andryko, O. Banderka A. Vasiliev, I. Golosnichenko, E. Dodin, R. Kalyuzhny, N. Nyzhnik, O. Petryshyn, A. Selivanov, V. Stefanyuk, Y. Shamshuchenko, S. Shcherbak and others.

To a greater or lesser extent, the problem of reforming public administration, reforming the executive service, executive authorities, and improving the mechanisms of legal regulation of public power was investigated in the works of V. Averyanov, V. Bordenyuk, V. Golub, S. Dubenko, B. Melnichenko, V. Rekbalo, V. Shapoval and others.

One of the reasons for such a state of research in the field of enforcement proceedings could be also the lack of attention of scientists and practitioners to the problems of enforcement of court decisions. One can state that in recent times only E. Gryshko's thesis "The State Administration for the enforcement of court decisions and other bodies in Ukraine" (2016) was defended, which became a definite breakthrough

in solving this important and urgent problem.

Therefore, modern analysis of executive proceedings is extremely important and relevant, since it summarizes the activities of state executives in the process of new approaches to the practice of public administration in Ukraine.

The purpose of the paper is to substantiate the essence and peculiarities of public administration of executive proceedings in Ukraine and provide practical recommendations for its reformation.

Presentation of the main material. One of the priority reforms in Ukraine is the reform of the judicial system, which is impossible without reforming the executive service.

At different stages of the development of the statehood of Ukraine, the bodies that carried out the functions of compulsory collection of debts appeared, developed and changed. Without going into a detailed analysis of historical sources (which is understandable, given the small amount of the article), it can be argued that the formation of the system of bodies of forced execution is inextricably linked with the development of the judicial system, in which the persons who were assigned duties of execution judicial decisions. Upon obtaining independence, the system of forced execution showed its inadequacy with the realities of life and changes in the social development of the state and the legal system. The modern stage of development of the country requires the introduction of an effective innovative institute of forced enforcement in the legal field, the first steps for which have already been made

in the context of administrative and legal reform of Ukraine.

The present development of Ukraine confirms significant changes in the system of state executive service, the task of which is the timely, complete and unbiased enforcement of decisions envisaged by law. The purpose of the current reform of the state executive service is to find innovative forms and methods for managing the system of execution of judicial and other decisions, improving the organizational and legal principles of its functioning and greater efficiency in practical activities.

It's a pity but we must admit that Ukraine is one of the leaders in the number of appeals to the European Court of Human Rights. Over the past year (2016), the European Court of Human Rights (ECHR) received 18150 applications from Ukrainians. Of these, 65 % relate to non-enforcement of decisions of national courts, while the European Court considers only one-twentieth of all appeals. Ukrainians in the ECtHR claim for the truth about the actions or inaction of state bodies or officials. But even having the final decision of the European Court on their hands, they can not achieve its implementation – domestic authorities are trying to evade or delay this process in every possible way. Naturally, the decision is directed to enforcement in the organs of the state executive service (ICE). This mechanism even more burdens the already overburdened by the work of a separate state executor – today each of them accounts for several thousand productions.

The analysis of the current state of justice in Ukraine contained in the Strategy for the reforming of the ju-

dicial system, justice and related legal institutes for 2015–2020, approved by the Decree of the President of Ukraine dated May 20, 2015, № 276, also indicates that there are substantial judgments in the system of execution of judgments problems, in particular:

- a very low percentage of actual enforcement of court decisions;
- Lack of effective system of motivation for state executives;
- systemic deficiencies in the interaction of state executives with other state and non-state institutions [1, p. 33].

You can confidently state that at the present time activity of the state executive service in executing court decisions and other organs is extremely low and ineffective.

Therefore, in order to optimize the functioning of central bodies of executive power of the justice system, rational use of budget funds and in pursuance of clause 9 of Section III “Final Provisions” of the Law of Ukraine of December 28, 2014, № 76-VIII “On Amendments and Recognition as Lost the validity of legislative acts of Ukraine” on the reduction of the number of employees of state bodies by 20 per cent. On January 21, 2015, the Cabinet of Ministers of Ukraine adopted Resolution № 17 [2], which:

- 1) liquidated the State Executive Service of Ukraine by placing at the Ministries Justice of the tasks and functions of the implementation of state policy in the sphere of enforcement of court decisions and other bodies (officials);
- 3) established that the Ministry of Justice is the legal successor of the State Executive Service. All this became a positive signal for the beginning of

comprehensive reform of the executive service.

At the same time, the essential problem remains the lack of an effective mechanism for executing decisions on collection of funds from the state and budget institutions, as well as the creation of a Unified State Register of executive actions, which would allow the free access of any person to information about the property transferred to realization. The procedure for the sale of debtors’ property arrested during the execution of proceedings is still incomplete and complicated. The state executor is actually deprived of control of this stage. As a result, the realization of the arrested property is often carried out in violation of the requirements of the law, which delays the execution time, property is revalued, its market value is reduced. The resolution of the issue of increasing liability for non-enforcement of judicial decisions, by introducing appropriate amendments to the Criminal Code of Ukraine, is finally needed. Indeed, as it is known, the various facts of physical resistance to representatives of the state executive service, illegal actions in respect of property, which is subject to arrest, numerous evasion from the payment of alimony for the maintenance of children or disabled parents [3, p. 5–9].

It is impossible not to touch another innovative decision on the implementation into practice of public administration of the Institute of private performers. The Law “On Bodies and Persons providing for the Enforcement of Judgments and Decisions of Other Bodies” [4] defines the basis for the organization and activities for the enforcement of decisions by state and

private performers, their tasks and legal status. The enforcement of court decisions and decisions of other organs now relies on the organs of the state executive service and, in cases determined by the Law on Enforcement, [5], on private performers. Among the positive aspects of the implementation of private performers, one can determine the following:

- private performers are interested in the speed and full implementation of the court decision, their reward will depend on it;

- Private performers are professionals, selected in a tough competition, who have undergone training and probation;

- private executives will be endowed with the same powers as the executors of the state, but for a preventive purpose (to prevent abuse), they will not be entrusted with all types of decisions (exceptions will be, for example, property decisions in family matters, decisions on forced entry/eviction from residential premises, etc.);

- the work of private executives is not only conducted on an extrabudgetary basis, but also has to bring profits to the state – taxes [6].

It should be especially emphasized that the success of the Institute of Private Executors is possible, in particular, due to the gradual establishment of a system of self-government, the mechanism of admission to the profession; the introduction of a system of control over the activities of private performers and deprivation of permission to exercise their professional activities in violation of the law, as well as the introduction of insurance professional civil liability of private performers.

An important means of effective executive implementation should be providing equal competition between public and private enforcement of court decisions; compliance with the balance of powers of private and public executives, achieving a fair balance of interests between the protection of the rights of collectors and debtors, including through providing executors with practical access to the debtors' assets while guaranteeing protection against abuse, introducing effective incentives for voluntary execution of court decisions, measures of influence on debtors.

However, some scholars and practitioners see some threats to ease of doing business, or to improve the investment climate in the country, in the implementation of the Institute of Private Entrepreneurs.

It's no secret that because of the low level of execution of court decisions, potential investors are afraid to invest in our economy. If we raise the level of execution of court decisions, we will have opportunities for investment. If there is more investment – more jobs will be created, our economy will grow even faster, and the country will be able to advance higher in the DoingBusiness rating. We must admit that thanks to the introduction of economic reforms, Ukraine, according to DoingBusiness, has risen in the ranking of ease of doing business, has risen and is approaching best practices.

Compared to 2016, Ukraine has improved its position by indicators:

- registration of the company – from the 30th to the 20th place;
- connection to the power grids – from 137th to 130th place;
- taxation – from 107th to 84th place.

According to the Government Priority Action Plan for 2016, the Cabinet of Ministers intends to implement the necessary legislative initiatives by the end of this year that will allow Ukraine to improve its position in Doing Business and enter the first 50 best countries in 2017 and 20 in 2018.

Ukraine for 2015 has risen from 87th to 83rd in the Doing Business-2016 ranking. With an average World Bank expert count, one point in the Doing Business rating brings the state about \$ 500–600 mln. Investments. [7]

It is necessary to emphasize another important feature in the reform of the executive service. In accordance with the order of the Cabinet of Ministers of Ukraine, dated April 1, 2014, 332-r [8], in some regions of Ukraine, the system of realization of the arrested property was introduced through conducting electronic auctions. It is necessary to determine the likelihood of this step, moreover, these changes will make it possible for the formation of a single information space for the enforcement of decisions, which will lead to:

- implementation of electronic document circulation in the bodies of the state executive service;

- electronic enforcement proceedings with the automation of managerial processes, in particular the creation of an automated workstation of a state executor;

- electronic interaction of authorities and organizations with the information necessary for enforcement proceedings;

- transparent access of citizens and organizations to the executive actions opened in relation to them, absence/availability of arrears;

- provision of electronic services to citizens and organizations by the bodies of the state executive service;

- introduction of modern forms of payment of debts through electronic payment systems, with the help of mobile phones; the introduction of electronic executive letters [9, p. 194–195].

Conclusions and perspectives of further research. Proposed measures to upgrade the functioning of the executive service in Ukraine:

- ensure comprehensive protection of the rights of citizens and organizations;

- will contribute to improving the efficiency of public administration;

- reduction of corruption in the system of executive proceedings;

- reduction of paper document circulation;

- increase of salaries for state executives.

Moreover, the introduction of a system of private performers, which will compete with state executives and among themselves, will be another guarantee of effective reform of the public administration system in Ukraine and the executive service itself.

Prospects for further research should be a systematic analysis of the methods of operation of the updated executive service, the study of European experience, further improvement of the innovative forms of management activity of the executive service in Ukraine.

REFERENCES

1. *President* of Ukraine (2015), “Decree of the President of Ukraine” “On the Strategy for the Reform of the Judiciary, the Judiciary and Related Legal

- Institutions for 2015–2020”, available at: <http://zakon2.rada.gov.ua/laws/show/276/2015> (Accessed 20 October 2017).
2. *Cabinet of Ministers of Ukraine* (2016), “Resolution of the Cabinet of Ministers of Ukraine “The issue of optimizing the activity of central executive authorities of the justice system”, available at: <http://zakon5.rada.gov.ua/laws/show/17-2015-%D0%BF> (Accessed 20 October 2017).
 3. *Stadnik G. V.* (2015) “ICE: new status and legislative innovations”, *Bulleten Ministerstva usticii Ukrainu*, vol. 3, p. 5–9.
 4. *The Verkhovna Rada of Ukraine* (2016), The Law of Ukraine “On the bodies and persons who execute the enforcement of court decisions and decisions of other bodies”, available at: <http://zakon2.rada.gov.ua/laws/show/1403-19> (Accessed 20 October 2017).
 5. *The Verkhovna Rada of Ukraine* (2016), The Law of Ukraine “About execution proceedings”, available at: <http://zakon2.rada.gov.ua/laws/show/1404-19> (Accessed 20 October 2017).
 6. *The official site of Law Association “Themis”* (2015), “Features of legislative regulation of private performers”, available at: <http://femida-zakon.com.ua/publications/osoblivosti-zakonodavchogo-regulyuvannya-diyalnosti-privatnih-vikonavtsiv/> (Accessed 4 October 2017).
 7. *The official site of Economic truth* (2016), “Ukraine has risen to three points in the rating “available at: <http://www.epravda.com.ua/rus/news/2016/10/25/608951/> (Accessed 4 October 2017).
 8. *Cabinet of Ministers of Ukraine* (2014) “Resolution of the Cabinet of Ministers of Ukraine “On conducting an experiment on the introduction of a new system for the implementation of arrested property by conducting electronic auctions”, available at: <http://zakon.rada.gov.ua/laws/show/332-2014-%D1%80> (Accessed 4 October 2017).
 9. *Grishko E. M.* (2015), “On the issue of implementation of e-government tools in the area of enforcement of decisions of courts and other bodies”, *Materialy shchorichnoyi naukovo-praktychnoyi konferentsiyi za mizhnarodnoyu uchastyu* [Materials of the annual scientific-practical conference on international participation], *naukovo-praktychna konferentsiya za mizhnarodnoyu uchastyu* [Annual scientific-practical conference on international participation], p. 37–51.

СПИСОК ВИКОРИСТАНИХ ДЖЕРЕЛ

1. “*Про Стратецію* реформування судустрою, судочинства та суміжних правових інститутів на 2015–2020 роки”, Указ Президента України від 20 травня 2015 р. № 276/2015 // Офіц. вісн. Президента України від 03.06.2015. — № 13. — С. 33. — Ст. 864.
2. *Питання* оптимізації діяльності центральних органів виконавчої влади системи юстиції: постанова Кабінету Міністрів України від 21.01. 2015 р. № 17. [Електронний ресурс]. — Режим доступу: <http://zakon5.rada.gov.ua/laws/show/17-2015-%D0%BF>
3. *Стаднік Г. В.* ДВС: новий статус та законодавчі новації / Г. В. Стаднік // *Бюлетень Міністерства юстиції України*. — 2015. — № 3. — С. 5–9.
4. *Про органи* та осіб, які здійснюють примусове виконання судових рішень і рішень інших органів; Верховна Рада України; Закон від 02.06.2016 р. № 1403-VIII [Електронний ресурс]. — Режим доступу: <http://zakon2.rada.gov.ua/laws/show/1403-19>

5. *Про виконавче* провадження; Верховна Рада України; Закон від 02.06.2016 № 1404-VIII [Електронний ресурс]. – Режим доступу <http://zakon2.rada.gov.ua/laws/show/1404-19>.
6. Федорович А. Особливості законодавчого регулювання діяльності приватних виконавців / А. Федорович [Електронний ресурс]. – Режим доступу <http://femida-zakon.com.ua/publications/osoblivosti-zakonodavchogo-regulyuvannya-diyalnosti-privatnih-vikonavtsiv/>
7. *Україна* піднялася на три пункти у рейтингу (Doing Business-2017) [Електронний ресурс]. – Режим доступу <https://www.epravda.com.ua/rus/news/2016/10/25/608951/>
8. *Про проведення* експерименту із запровадження нової системи реалізації арештованого майна шляхом проведення електронних торгів: Розпорядження Кабінету Міністрів України від 1 квітня 2014 р. № 332-р [Електронний ресурс]. – Режим доступу: <http://zakon.rada.gov.ua/laws/show/332-2014-%D1%80>
9. Гришко Є. М. До питання впровадження інструментів електронного урядування в сфері примусового виконання рішень судів та інших органів / Є. М. Гришко // Інформаційне суспільство в Україні: стан, проблеми, перспективи: Матеріали щорічної наук.-практ. конф. за міжнар. участю “Дні інформаційного суспільства-2015”, Київ, 19–20 травня 2015 р. / упоряд.: М. Малюга; за заг. ред. д-ра держ. упр., проф. Н. В. Грицяк. – К.: Тезис, 2015 – 226 с.