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Kulava Mariia Konstantinivna,

a student of the Department of Public Administration of the Interregional Academy of Personnel Management, lecturer of the Department of Law of the Danube Branch of the Private Joint-Stock Company "Higher Educational Institution" Interregional Academy of Personnel Management", 68600, Izmail, Str. Klushyna, 3-a, tel.: 048-41-7-79-02, e-mail: mkulava80@ukr.net

ORCID: 0000-0001-8081-0211

Кулава Марія Костянтинівна,

здобувач кафедри публічного адміністрування Міжрегіональної Академії управління персоналом, викладач кафедри права Придунайської філії Приватного акціонерного товариства "Вищий навчальний заклад "Міжрегіональна Академія управління персоналом", 68600, м. Ізмаїл, вул. Клушина, 3-а, тел.: 048-41-7-79-02, e-mail: mkulava80@ukr.net

ORCID: 0000-0001-8081-0211

Кулава Мария Константиновна,

соискатель кафедры публичного администрирования Межрегиональной Академии управления персоналом, преподаватель кафедры права Межрегиональной Академии управления персоналом, 68600, г. Измаил, ул. Клушина, 3-а, тел.: 048-41-7-79-02, e-mail: mkulava80@ukr.net

ORCID: 0000-0001-8081-0211

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STATE-LEVEL MANAGEMENT OF INTERACTION OF BODIES OF STATE EXECUTIVE SERVICE AND PRIVATE BAILIFFS: THE INTERNATIONAL EXPERIENCE

Abstract. In the framework of the article, taking into account the existing developments of scientists in the field of law and public administration, it is determined what is the process of state management of the interaction of bodies of the State Executive Service and private bailiffs, the classification of the system of compulsory enforcement of decisions depending on the number of institutions performing the functions of enforcement. The features of functioning and state management of compulsory enforcement in some states are analyzed. Features

and positive aspects of functioning of the centralized (state), decentralized, mixed (combined) system of compulsory execution of decisions are defined.

Particular attention is paid to countries where there is a mixed (combined) system of enforcement (France, Georgia, USA), and which is introduced in Ukraine. The positive aspects that could be helpful in the national model forced performance of the decisions were identified.

The opinion on expediency of the direction of public administration of compulsory execution on stimulation of participants of production of voluntary execution or application of Institute of mediation, introduction of the quota principle of attraction of bailiffs was expressed, as well as on free access of bailiffs to all electronic registers of Ukraine, possibility of record keeping in the sphere of compulsory execution in electronic form, accession to system of bodies of compulsory execution of decisions of such institutions as: fiscal authorities, law enforcement agencies, banks is expressed.

It is noted that the only purpose of all the proposed changes should be to protect and restore the violated rights of individuals and legal entities. It seems that the introduction of a mixed system of enforcement should improve the situation with the execution of court decisions and decisions of other bodies (officials).

Keywords: international experience, public administration, enforcement, mixed system.

ДЕРЖАВНЕ УПРАВЛІННЯ ВЗАЄМОДІЄЮ ОРГАНІВ ДЕРЖАВНОЇ ВИКОНАВЧОЇ СЛУЖБИ ТА ПРИВАТНИХ ВИКОНАВЦІВ: МІЖНАРОДНИЙ ДОСВІД

Анотація. Ґрунтуючись на існуючих доробках науковців в галузі права та державного управління, визначено що являє собою процес державного управління взаємодією органів державної виконавчої служби та приватних виконавців, представлена класифікація системи примусового виконання рішень залежно від кількості інституцій, які здійснюють функції примусового виконання. Проаналізовано особливості функціонування та державного управління примусовим виконанням в окремих державах. Визначено особливості та позитивні аспекти функціонування централізованої (державної), децентралізованої, змішаної (комбінованої) систем примусового виконання рішень.

Особливу увагу приділено країнам, в яких функціонує змішана (комбінована) система примусового виконання (Франція, Грузія, США), та яку запроваджено в Україні. Визначено ті позитивні аспекти, які доцільно було б запровадити у національну модель примусового виконання рішень.

Висловлено думку про доцільність спрямування державного управління примусовим виконанням саме на стимулювання учасників провадження до добровільного виконання або застосування інституту медіації, запровадження квотового принципу залучення виконавців; вільного доступу виконавців до всіх електронних реєстрів України, можливості ведення діловодства у сфері примусового виконання в електронній формі; приєднання до системи

органів примусового виконання рішень таких інституції, як: фіскальні органи, правоохоронні органи, банки.

Зауважується, що єдиною метою всіх запропонованих перетворень має бути захист і відновлення порушених прав фізичних і юридичних осіб. Доведено, що впровадження змішаної системи примусового виконання має покращити ситуацію з виконанням рішень суду та рішень інших органів (посадових осіб).

Ключові слова: міжнародний досвід, державне управління, примусове виконання, змішана система.

ГОСУДАРСТВЕННОЕ УПРАВЛЕНИЕ ВЗАИМОДЕЙСТВИЕМ ОРГАНОВ ГОСУДАРСТВЕННОЙ ИСПОЛНИТЕЛЬНОЙ СЛУЖБЫ И ЧАСТНЫХ ИСПОЛНИТЕЛЕЙ: МЕЖДУНАРОДНЫЙ ОПЫТ

Аннотация. Основываясь на существующих наработках ученых в области права и государственного управления, определено что представляет собой процесс государственного управления взаимодействием органов государственной исполнительной службы и частных исполнителей, представлена классификация системы принудительного исполнения решений в зависимости от количества институций, осуществляющих функции принудительного исполнения. Проанализированы особенности функционирования и государственного управления принудительным исполнением в отдельных государствах. Определены особенности и положительные аспекты функционирования централизованной (государственной), децентрализованной, смешанной (комбинированной) систем принудительного исполнения решений.

Особое внимание уделено странам, в которых функционирует смешанная (комбинированная) система принудительного исполнения (Франция, Грузия, США), и которая введена в Украине. Определены те положительные аспекты, которые целесообразно было бы ввести в национальную модель принудительного исполнения решений.

Высказана точка зрения о целесообразности направления государственного управления принудительным исполнением именно на стимулирование участников производства к добровольному исполнению или применению института медиации, введению квотового принципа привлечения исполнителей; свободного доступа исполнителей ко всем электронным реестрам Украины, возможности ведения делопроизводства в сфере принудительного исполнения в электронной форме; вовлечения в систему органов принудительного исполнения решений таких институтов, как: фискальные органы, правоохранительные органы, банки.

Отмечается, что целью всех предлагаемых преобразований должна стать защита и восстановление нарушенных прав физических и юридических лиц. Доказано, что внедрение смешанной системы принудительного исполнения должно улучшить ситуацию с исполнением решений судов и решений других органов (должностных лиц).

Ключевые слова: международный опыт, государственное управление, принудительное исполнение, смешанная система.

Problem statement. Reform of the sphere of enforcement of decisions, as well as mechanisms of state management of interaction of the Executive system has to focus on the experience and achievements of foreign countries. The correct interpretation of this experience will allow to identify the factors that reduce the effectiveness of public administration of the system of enforcement of decisions in Ukraine, and to identify ways to address these shortcomings, and the benefits to introduce into national practice.

Analysis of recent research and publications. The study of international systems of compulsory execution of decisions is the topic of the works of legal scholars: A. Avtorhov, F. Bortniak, Ye. Maltseva, N. Shelever, etc. and scientists in the field of public administration: E. Hryshko, S. Shandruk and others.

The purpose of the article is to study the international experience of public administration interaction of Public Executive Service and private bailiffs, to identify the most effective aspects that can be used in the national system, taking into account socio-economic, geographical, ideological and other factors of our country.

Presentation of the main material. Studying the international experience of public administration interaction of Public Executive Service and private bailiffs we will give, first of all, the definition of this concept.

I. Pysmennyi points out that it is the participation in joint activity of subjects of management in the process of achievement of socially necessary goals. In the process of social interaction there is mutual influence and interdependence of individual social phenomena, as a result of which they change, complement each other and form a single integrated social system [3, p. 82]. Yu. Kravchenko understands this phenomenon as a form of connection of system elements, with the help of which they, mutually complementing each other, create conditions for the successful functioning of the whole system [7, p. 500]. On the basis of the above definitions, we understand the interaction of the State Executive Service bodies (state bailiffs) and private bailiffs under the state management as a relationship with respect to independent entities, in the process of which they complement each other, they create conditions for the timely, full and unbiased execution of decisions, the enforcement of which is provided by law, thereby ensuring the successful functioning of the whole system.

Enforcement systems can be classified according to various criteria. If the criterion of classification is the number of institutions that carry out the functions of enforcement, we can distinguish three systems:

– centralized (state-owned or public) operates in such countries as Belarus, Sweden, Finland, Spain, Germany, Denmark etc.;

– decentralized system – in Lithuania, Belgium, the Netherlands, Luxembourg, etc.;

– mixed (combined) system – in such states as Kazakhstan, Poland, Great Britain and Northern Ireland, USA, Bulgaria, France, Czech Republic, Canada, Greece, Hungary, Georgia, etc.

The transition from a public to a combined system of public administration is also observed in Ukraine. We emphasize that the presented classification is somewhat conditional and outdated, in its pure form, enforcement systems are almost non-existent.

Thus, centralized systems of state administration of compulsory enforcement are characterized, as V. A. Seleznev points out, by the presence of a single state body of compulsory enforcement; the presence of a mechanism of legal regulation of the process of execution of judicial acts and acts of other bodies established by law [6, p. 112]. Persons who are engaged in the enforcement of that pattern, have the status of civil servant with relevant rights, duties and guarantees. And it is not necessary that this body belongs to the system of Executive authorities, like in Sweden the National Executive Agency, which ensures the implementation of judicial and other decisions, belongs to the system of Executive authorities (under the supervision of the Ministry of Finance), in Austria, Spain and Denmark, for example, for example, the courts deal with enforcement proceedings. A positive fact, in our opinion, is the presence in Sweden of a special act that regulates the procedure of enforcement proceedings, namely, the Executive Code. In Belarus, these

are two structures: bailiffs of General courts (they have dual subordination to courts and indirectly to the Ministry of justice of Belarus through territorial administrations) and the service of bailiffs of economic courts, which is subordinate to the court.

An interesting experience is the experience of state management of enforcement proceedings in Germany, which is regulated by the Civil procedure code of Germany. Implementation of decisions is carried out at the level of the court in whose territory it is necessary to carry out executive actions and is a state function. That is, Germany has a centralized system of enforcement of decisions. Enforcement proceedings are exercised by the registrars of the court (civil servants, while the constituent entities of independent professional activity, which act for its own account and are personally liable). The activity is legal in the presence of a special certificate (“license”).

Bailiffs have the opportunity to arrest the debtor’s property for subsequent sale at auction; to arrest accounts; at the claim of the debtor to delay the implementation of the arrested property for a year, if the debtor agrees to pay the debt within this period. It is interesting that the court’s decision to recover the debt in Germany is valid for years.

Positive experience: mutual trust between the bailiffs and the participants of enforcement proceedings, the ability of the bailiff to provide a deferral to the debtor, to make the recovery in parts; bailiffs being under the protection of court, which significantly increases their credibility and provides more tools to perform duties; quota principle of attracting bailiffs.

The existence of decentralized governance systems implies that the state delegates enforcement powers to non-governmental organizations and individuals. Thus, in the Netherlands, Belgium, the powers are delegated to private bailiffs, carrying out professional independent activities, competing with each other. In Lithuania, private bailiffs execute court and other decisions. Among the additional mechanisms of influence on the debtor in Lithuania criminal liability, as well as a system of fines can be identified.

Even more “private” is the system of compulsory enforcement of Estonia. In this state, the bailiff is an independent person who acts on his own behalf and is personally liable. It is not a private entrepreneur or a public servant [1, p. 11]. The Ministry of Justice of Estonia, as a body of the state administration, provides only organizational guidance and coordination of the activities of bailiffs.

Consequently, under this system, bailiffs are not civil servants, and operate under a license. At the same time, the private system of execution of decisions also provides for state regulation of professional activities of private bailiffs, in particular, regarding access to the profession, the definition of competence, the establishment of rules of activity and the like, but the volume and content of control is significantly limited.

The combined system of execution of decisions is a combination in different variations of the features of the two previous types of enforcement systems.

Of course, the experience of countries that have moved to a combined system of public administration of en-

forcement, with an emphasis on reforms in Ukraine, requires more detailed study and reflection.

Let's start with the French model of management of enforcement bodies, it originates from the XIX century and is significantly different from other systems. In France, the system of execution of decisions is represented by: the Ministry of Justice of France, state bailiffs who are engaged in collecting tax obligations, carry out the decision in favor of the state, acts that are taken by administrative courts; judicial bailiffs who act at the level of local courts are private self-employed persons and exercise their powers on the basis of a license [8, p. 250]. The legal status of the latter combines the features of a state (Ministerial) employee (public-legal nature), a private entrepreneur and a legal specialist.

A bailiff of France should have: the conclusion about professional suitability, which is prepared by the prosecutors of the corresponding regional districts and Department (regional) chamber. The main function of the Department (regional) chamber is to ensure the representation of bailiffs in public authorities and administration, organization of professional training, organization of the annual organization of the Congress of compulsory enforcement officers, etc.

Bailiffs are appointed by order of the Minister of Justice of France, and are subject to disciplinary prosecutors of the Republic [9, p. 31]. The number of bailiffs is limited and regulated by the French Ministry of Justice.

The bailiff of France is authorized to perform the following actions: to present judicial and non-judicial documents to the persons concerned;

to execute the judgments on behalf of the state, using the state's coercion; to draft documents, protocols on various issues of proceedings with the status of evidence; to provide legal advice; the ability in some cases to manage the debtor's property; to establish the facts, which in the future will not need proffs in court, in exercising its powers, to act personally or in association [8, p. 250]. The bailiff may be brought to criminal, civil, disciplinary responsibility for the legal consequences of his/her actions. Payment for the work of the bailiff is carried out not by the state, but by the interested person.

Positive experience: the remuneration of the bailiff is carried out not by the state, but by the interested person, and these are the prerequisites for the bailiff's interest, competitive interaction, continuous improvement of professionalism, professional ethics of bailiffs; quite rarely measures of compulsory enforcement of the court against the debtors are applied due to the process of mediation, unwillingness to public disclosure; the state sets tariffs for the services of bailiffs, and this minimizes cases of abuse by the latter.

The reform of the system of compulsory enforcement of Georgia is more similar to the national one. In 2000, the Department of enforcement was established within the Ministry of Justice of Georgia. Bailiffs, that worked at the courts, were transferred to it. In 2008, this Department was reorganized into an independent body, which was called "National Bureau of enforcement" (NBE) (by analogy with the Department of State Executive Service of Ukraine). Next year in Georgia there

was a reorganization of the executive power and the institution of private enforcement was introduced.

Thus, the system of public administration bodies of compulsory enforcement is represented by: the Ministry of justice of Georgia; NBE — a legal entity of public law, which is founded by the Ministry of justice of Georgia, controlled by the Ministry of justice and the judicial authorities. At the same time, NBE is autonomous in matters of logistics, personnel management, operational activities. NBE operates within the Tbilisi Bureau of enforcement and 8 territorial Executive bureaus. NBE also includes the Executive Police Department.

Private bailiffs, by analogy with France, are both bailiffs and legal consultants. The activities of private enforcement officers are monitored by the Ministry of justice of Georgia, which includes the General Inspectorate for enforcement of decisions.

Positive experience: free access of the NBE personnel to a special computer system, which covers record keeping, production of procedural documents and the register of enforcement proceedings and provides access to all electronic registers of Georgia. In this state, there is a register of socially vulnerable persons who have a low level of income. In the presence of the debtor in this register the executive production concerning it stops; creation on the basis of NBE of police of performance; accession to the system of enforcement bodies of institutions that have an extremely effective impact on the outcome of the proceedings: the National Bank of Georgia; record-keeping in the field of enforcement exclusively in elec-

tronic form [2]; the use of mediation in all possible cases; the performance of many enforcement actions without obtaining court permission.

It is interesting that a private bailiff in Georgia has the right to combine its activities with any other paid work or entrepreneurial activity.

Despite the effective work of both private and public bailiffs, as evidenced by the millions of US dollars entering the country's budget, Georgia continues to further reform the system and the adoption of the Executive code of Georgia in the future.

The system of state administration of compulsory enforcement in Latvia is considered to be mixed.

The state administration of the interaction of the institutions of enforcement in this country is as follows: the implementation of decisions in the state is carried out by sworn bailiffs, who are subordinate to the Council of sworn bailiffs, which operates within the Ministry of justice. This body performs the executive and supervisory functions of the jury bailiffs. However, sworn bailiffs are persons who are members of the judiciary and are subject only to the law. Remuneration of bailiffs shall be approved by the Cabinet of Ministers of Latvia, agreed by the Minister of justice. Consequently, control over the activities of the jury judicial bailiffs is carried out both judicial and executive power and, in our opinion, it's a positive experience.

The bailiff in Latvia is equal to public officials, therefore the incomes of such persons are subject to declaration. The bailiffs are checked by the Tax Inspectorate, the Anti-corruption Department.

Among the "standard" measures of enforcement (foreclosure on the debtor's property (movable and immovable), foreclosure on the debtor's income (wages, deposits, etc.); execution of the court decision in kind), in addition, the bailiffs are authorized to initiate the procedure of bringing the debtor to justice. In Latvia, on weekends and holidays, enforcement actions are carried out in urgent cases. Enforcement is suspended from 24 to 6 a.m., which is positive, from the review of the constitutional rights and freedoms of citizens.

Positive experience: the state has established tariffs for the services of bailiffs; bailiffs are both a under the protection of the court and executive authorities; quota principle of attracting bailiffs.

In the United States, there is no single system of government enforcement. The order of enforcement of decisions of courts and other bodies in the United States is regulated at the Federal level — the Federal rules of civil procedure. However, each particular state has its own rules of civil proceedings, so the question of recognition and enforcement of the decision of another state in the territory of the state is made in a lawsuit [4].

Enforcement of decisions of courts and other bodies in the United States can be carried out by bodies such as the Federal Marshal service, which is the coordinator of marshals in federal entities (performs particularly complex and important decisions). It is interesting that this service is an influential law enforcement agency of the state within the Ministry of justice. The marshals and their assistants enforce primarily decisions of the courts or the federal

level (on behalf of the court) for other particularly difficult and important decisions; the office of the Sheriffs performs a forced enforcement of the decisions of state courts. The Sheriff is a civil servant, an elected official, whose main function is to maintain public order in the territory of a certain community, road patrol, detention of offenders, conducting operational investigative activities and so on, that is, purely the function of the police. The Sheriff is elected for a limited term, with the right of re-election, has a staff of his own assistants [5].

In addition, in some states, enforcement may be carried out by: 1) constables – staff members of the court, subordinate to judges and bailiffs; 2) the service of bailiffs of the District Judicial Council, which performs mainly administrative functions and performs certain categories of decisions, for example, the decision on non-discrimination on grounds of sex; 3) law enforcement agencies – non-state agencies that exercise informal pressure on debtors. The main means of making a certain pressure on the debtor – a written appeal to the latter regarding the beginning of legal action against the debtor. Such agencies operate on the basis of a license and often involve not only lawyers but also private detectives. Since the practice of such agencies has often been abused in the past, Federal legislation and government agencies are now closely monitoring their activities. Almost 75 % of the decisions of the courts is performed by damages insurance companies [8, p. 255].

Sheriffs and their deputies, bailiffs, as well as private law agencies carry out

a larger array of proceedings. Public authorities responsible for enforcement are used where there is a risk of physical conflict or disorder. So, the Marshals Institute, the Marshal service, is an influential law enforcement Agency of the system of state institutions.

Positive experience: the practice of compensation of losses by insurance companies; close cooperation with law enforcement agencies.

Summary. So, experience, which, in our opinion, could be implemented in the national system:

- to stimulate the participants in the production of voluntary compliance or, alternatively, the use of mediation that will be cost effective and will reduce the time for conducting enforcement actions;

- to introduce in Ukraine the quota principle of attraction of bailiffs;

- to set tariffs for the services of bailiffs in order to minimize cases of abuse by the latter;

- to introduce free access to a first state, in the future, private actors of all electronic registers of Ukraine;

- to attract to the system of enforcement bodies the institutions that have a very effective impact on the outcome of the proceedings, in particular: fiscal authorities, police response (Georgia), banks;

- to conduct paperwork the sphere of compulsory execution in electronic form would be very effective.

It is clear that this should be done taking into account the socio-economic, geographical, demographic, ideological, educational, cultural and other factors inherent in our country. At the same time, the only purpose of all these changes in the sphere of public admini-

nistration of the interaction of bodies of the State Executive Service and private bailiffs should be the protection of the violated rights of individuals and legal entities. International experience proves (France, Latvia) that private bailiffs work much more effectively than public ones. Therefore, we believe that the introduction of a mixed system of enforcement will gradually improve the situation with the implementation of court decisions and decisions of other bodies (officials).

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