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THE NECESSITY AND PROSPECTS OF IMPROVING COMPULSORY ENFORCEMENT MEASURES

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Abstract: This article examines the issues of the necessity and prospects for improving compulsory enforcement measures from both theoretical and practical perspectives. The author emphasizes that the effectiveness of the enforcement of judicial decisions primarily depends on the timely application of enforcement measures without any doubt by state bailiffs. The author also highlights the need to address existing issues to enhance the effectiveness of compulsory enforcement, including through alternative institutions, convenient mechanisms for fulfilling obligations, as well as improving the level of legal culture and fostering public confidence that judicial decisions, once they have entered into legal force, must be executed obligatorily and unconditionally.

Key words: judicial document, compulsory enforcement, debtor, monetary funds, deadline, enforcement document, respondent, creditor.

INTRODUCTION

The expiration of the period established by the state bailiff for voluntary execution is the basis for the application of compulsory enforcement measures against a debtor who has not fulfilled his obligations under the enforcement document.

Compulsory enforcement measures must be applied by the state bailiff in a timely manner; otherwise, the possibility of fulfilling the requirements of the enforcement document will be lost, which in turn may lead to a violation of the rights and legitimate interests of the collector.

During the analytical study of just one example, in the case of Mirabad district, since the beginning of the year, 30% of 2,223 cases worth 30.5 billion soums were collected voluntarily, and 70% of 4,165 cases worth 129.2 billion soums were collected compulsorily. This shows that, at present, compulsory enforcement measures remain a priority in the execution of decisions of courts and other bodies.

Our national legislation provides for the following types of compulsory enforcement measures:

- directing collection to the debtor's money and other property;
- directing collection to the debtor's money and other property held by other persons;
- directing collection to the debtor's receivables, including funds belonging to him under the enforcement document in which the debtor participates as a collector;
- directing collection to separate property rights belonging to the debtor;
- directing collection to the debtor's salary, scholarship, pension, and other types of income;
- taking certain items specified in the enforcement document from the debtor and transferring them to the collector;
- other measures taken in accordance with the laws ensuring the execution of the enforcement document.

As E.V. Vaskovsky noted, the general rules for the compulsory execution of court decisions have the property of changing and improving in accordance with certain methods or measures of execution in line with legislation.

Depending on their purpose, these measures are divided into two types:

measures directed at the person of the defendant (debtor) – aimed at ensuring the execution of the decision;

measures directed at the defendant's (debtor's) property – consisting of actions aimed at achieving the desired economic result or an economic result corresponding to the claim, directly and immediately satisfying the claim.

Measures directed against the defendant's person are called personal enforcement actions or indirect enforcement, since they do not directly satisfy the plaintiff's claim but compel the defendant to do so.

Measures directed against the defendant's property are called actual enforcement or direct enforcement, since they directly satisfy the plaintiff's claim [1].

REVIEW OF LITERATURE ON THE SUBJECT

Russian researcher D.R. Gilmanov emphasizes that the application of compulsory enforcement measures should be based on such principles as respect for the honor and dignity of citizens, preservation of the inviolability of property necessary for the life of the debtor-citizen and his family members, and the correspondence between the claimant's requirements and the volume of compulsory enforcement measures [2].

All compulsory enforcement measures can be divided into property and non-property types depending on the nature of the enforcement document. Non-property enforcement actions are actions that impose on the debtor the obligation to perform certain actions in favor of the collector or to refrain from performing such actions, with the exception of actions related to the transfer of property. Property enforcement actions involve not only the demand for monetary funds but also the transfer of all types of property, including property rights, to the ownership, use, and disposal of the collector [3].

The effectiveness of the execution of court decisions, first of all, undoubtedly depends on the timely application of compulsory enforcement measures by state enforcement officers. Secondly, in order to increase the effectiveness of compulsory enforcement, it is extremely important to develop alternative institutions for solving existing problems, convenient mechanisms for fulfilling obligations, as well as to increase the level of legal culture and form a general belief in society that court decisions that have entered into legal force are necessarily and unconditionally executed [4].

As a result of his monographic research, Yu.M. Khodzhev came to the conclusion that, although the legal relations arising in the process of executing court decisions have certain specific features, they do not differ significantly from civil procedural legal relations. Therefore, the relations arising in the course of execution proceedings do not constitute an independent subject of legal regulation and cannot justify the emergence of an independent branch of enforcement law. Enforcement of court decisions is the final stage of civil proceedings, in which the enforcement decisions issued by the courts are implemented [5].

Doctor of Law, Associate Professor A.O. Khamidov emphasizes that the views of Yu.M. Khodzhev and other scholars are based on the fact that the object of enforcement proceedings is civil relations between the parties, regardless of whether they are property or non-property in nature. It is also observed that, in most cases, instead of submitting enforcement documents to the state bailiff at the place of residence of the debtor for compulsory enforcement upon receipt of the enforcement document, the executor applies to the state bailiff after several years have passed. He concludes that, despite all the administrative and criminal procedural actions of the state bailiff aimed at compulsory collection of alimony under this enforcement document, in most cases the amount of alimony is significantly larger than the economic situation of the debtor, and in some cases it may not be fully collected, which may result in harm to the interests of the minor.

Associate Professor A.O. Khamidov, according to Article 45 of the Law, states that the expiration of the term established by the state bailiff for voluntary execution is the basis for the application of compulsory enforcement measures. The seizure of the debtor's property before the expiration of the voluntary term may lead to a violation of the inviolability of private property and, as a result, to a violation of the rights of the individual guaranteed by the Constitution. Accordingly, in order to eliminate misunderstandings related to the practical application of this norm and to introduce a unified practice, it is proposed to eliminate the norm stated in paragraph 5 of Article 23 of the current Law, which provides that "The state bailiff, upon the application of the collector or on his own initiative, at the same time as issuing a decision to initiate enforcement proceedings on property recovery, shall register the debtor's property and confiscate it, indicating this in this decision," and to establish that the issue of confiscation of private property in order to secure the claim shall be resolved only by the courts. It is concluded that these amendments will eliminate contradictions between the current Law and the norms of the Code of Civil Procedure and the Code of Criminal Procedure [6].

In our opinion, this proposal by Associate Professor A.O. Khamidov, based on a detailed analysis of both material and procedural aspects of ensuring the execution of court decisions, unlike other researchers, not only strengthens the debtor's right to voluntarily fulfill the requirements of the enforcement document within the prescribed period but also eliminates cases of property alienation by defendants after the case is dismissed, which are often encountered in judicial practice before the court decision enters into legal force and becomes subject to compulsory execution. This has a positive impact on ensuring the execution of court documents. The main and most widely used method of compulsory execution of enforcement documents is directing execution to the debtor's property. This includes registration, seizure, and compulsory sale of the debtor's property. This measure is applied to all debtors, both individuals and legal entities [7].

RESEARCH METHODOLOGY

The research employs a comparative-legal analysis of compulsory enforcement measures in national and international practice. It uses both doctrinal and empirical methods to assess the effectiveness of enforcement procedures. Case studies of court decisions are analyzed to identify key challenges and best practices. The study also incorporates a normative approach to propose practical improvements and alternative mechanisms for enforcement.

ANALYSIS AND RESULTS

The amount of funds to be seized in the event of seizure of the debtor's funds and other property must be sufficient to cover:

- the principal debt under the enforcement document, including enforcement documents consolidated into a consolidated enforcement case;
- the amount of enforcement fees applied under the enforcement document, including enforcement documents consolidated into a consolidated enforcement case;
- fines imposed on the debtor;
- enforcement costs.

In this case, the act of seizure of property shall indicate the estimated value of the property being seized.

Recovery may be directed to the debtor's share in personal or common property.

At least two witnesses must participate in the execution of enforcement actions related to the opening of the debtor's premises and warehouses, inspection of property, seizure, and transfer.

As witnesses, any adult natural persons who are not interested in carrying out enforcement actions and are not related to each other or to the participants in the enforcement proceedings, who are not subordinate to each other and do not control each other, may be invited.

Third parties may claim ownership of property seized by the state bailiff (mainly pets, household items, household appliances, etc.). In this case, the state bailiff shall indicate in the act of seizure of property that third parties have objections and shall explain to them their right to apply to the court with a claim to remove the property from seizure.

The fact that third parties do not declare their rights to the property during the seizure and that objections are not indicated in the act, as well as the fact that the disputed property has been taken away or sold, does not deprive them of the right to file a claim for the removal of the property from seizure.

The seized property may be left with the debtor, with a warning about criminal liability for its disposal (Article 233 of the Civil Code of the Republic of Uzbekistan), transferred to a custodial organization, or the state bailiff may assume responsibility for the storage of this property.

If it is clearly evident that the seized property may be disposed of or destroyed by the debtor, it is not allowed to leave the seized property in the debtor's custody.

The debtor has the right to indicate the types of property or objects to which recovery should be directed first.

Before initiating actions to seize property, the bailiff must explain to the debtor or his representative the right to indicate the types of property or objects to which recovery should be directed first.

If the debtor or his representative indicates such types of property or objects, the request shall be reflected in the seizure act.

However, such a request is not considered a binding basis for the bailiff to direct recovery specifically to that type of property or object. The bailiff shall consider the request and decide based on the liquidity of the proposed property or asset.

As noted above, many scholars have different approaches to the content of compulsory enforcement measures. In a general sense, compulsory enforcement measures are a means of compulsory implementation of a legal norm and serve the purpose of practically executing judicial acts and acts of other bodies. Therefore, compulsory enforcement measures cannot be considered liability measures, otherwise they may impose additional property liability on the debtor.

Ensuring the enforcement of a substantive legal norm is aimed at the compulsory execution of documents of courts and other bodies. In this regard, it is reasonable to agree with P.P. Zavorotko that compulsory enforcement measures are a form (means) of implementing the sanctions of civil law norms in the process of executing court decisions and documents of other bodies.

The above-mentioned compulsory enforcement measures relate only to the sphere of the debtor's property relations. Previous theoretical studies on enforcement proceedings note that it is generally impossible to apply compulsory measures directed at the debtor's person.

Currently, however, the issue of expanding the scope of compulsory enforcement measures, including those directed at the debtor's person, is being actively discussed in the literature.

For example, I.V. Reshetnikova believes that it is necessary to introduce measures such as imposing public works on dishonest debtors and requiring them to pay fines to the state budget in the amount owed to the collector under the enforcement document. She also does not exclude the possibility of imposing imprisonment on the debtor and proposes the establishment of private prisons in Russia [8].

Some of these proposals appear justified. In particular, introducing a mechanism requiring the debtor to pay an amount equal to the debt into the state budget, in addition to fulfilling the obligation to the collector, could create a dual burden. This, in turn, would encourage debtors to fulfill the requirements of enforcement documents even during the voluntary execution period.

Today, in some countries, compulsory enforcement is carried out by state bodies, while in others it is carried out by individuals operating under special authorization and empowered to act on behalf of the state. Examples include countries of the European Union, such as France, Italy, Poland, Hungary, Belgium, and the Baltic states. In these countries, the selection and activities of private executors are regulated by special laws [9].

CONCLUSION AND SUGGESTIONS

Bailiffs engaged in private practice are not considered entrepreneurs or representatives of the authorities. In some ways, such bailiffs can be compared to notaries engaged in private practice. The state does not pay them a monthly salary, and the state does not incur any expenses during the compulsory enforcement process. Private bailiffs receive income from fees collected from debtors under enforcement documents. At the same time, their decisions can be appealed, and they are liable for their decisions and actions. In order to effectively resolve the issue of financial liability that arises in this case, bailiffs are subject to compulsory insurance.

In some countries, in particular in the CIS countries, state and private bailiffs operate simultaneously. For example, in accordance with Article 103-1 of the Law of the neighboring Republic of Kazakhstan "On Enforcement Proceedings and the Status of Bailiffs", private bailiffs operate simultaneously with state bailiffs. A private bailiff is required to have a license issued by the Ministry of Justice of the Republic of Kazakhstan and to be a member of the Republican Board of Private Bailiffs. Public bailiffs and private bailiffs have the same legal rights and obligations. Private bailiffs finance their activities through fees collected from debtors [10].

In our opinion, the introduction of the institution of private (or mixed) enforcement officers—based on the experience of France (*huissier de justice*), Bulgaria, Kazakhstan, and Latvia—would be appropriate to establish the activities of private enforcement officers alongside state enforcement officers. In this case, transferring the enforcement of certain categories of commercial disputes (for example, excluding state revenue collection and alimony) to the private sector will foster competition and reduce the workload of the employees of the Bureau of Compulsory Enforcement (BCE).

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