

ADMINISTRATIVE RESPONSIBILITY FOR NON-FULFILLMENT OF LEGAL REQUIREMENTS OF BODIES AND PERSONS PERFORMING COMPULSORY EXECUTION OF DECISIONS

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Abstract.

Purpose: development of scientific and practical background of leading role of the institute of administrative responsibility for not-fulfillment of legal requirements of bodies and persons performing enforced execution of decisions as a guarantee of enforcement proceedings effectiveness. **Methods:** the general scientific methods of cognition are used in the article - analysis, synthesis, as well as special methods - the axiomatic method and deduction method. **Results:** This article is devoted to the mechanism of bringing a person to administrative responsibility for failure to comply with legal requirements of bodies and persons enforcing decisions as a tool of ensuring of enforcement proceedings effectiveness. **Discussion:** the dynamics of legislative framework applied to legal relations being studied was analyzed with a view to compliance with purposes and objectives in this area and reasonability of amendments in future.

Key words: enforcement proceedings, compulsory execution, state enforcement executor, private enforcement executor, administrative responsibility.

1. Introduction

Immediacy of the article lies in that fact that ensuring of execution of judgments and decisions of other bodies (officials) is essential for realization and defence of rights and liberties of man and citizen, which are the basis of any rule-of-law state. In the author's opinion, institute of decisions enforcement, which has recently gone through reform process with respect to its administrative-legal effect on the procedure of decision enforcement, requires qualitative changes and specialization of particular legislative provisions. This approach will allow for higher effectiveness of protection of rights and interests of individuals and legal entities in terms of enforcement proceedings.

The purpose of writing of this article is development of scientific and practical background of leading role of the institute of administrative responsibility for not-fulfillment of legal requirements of bodies and persons performing enforced execution of decisions as a guarantee of enforcement proceedings effectiveness.

2. Analysis of the research and publications

Some aspects of executive proceedings are highlighted in works of D.M.Bakhrakh, Yu.I. Hryenko, V.A. Gureev, O.V. Isayenkova S.M. Kuznetsov, V.B. Averyanov, O.F. Andriyko, N.O. Armash, D.O. Bezzubov, O.M. Bandurko, Yu.P. Bityak, A.S. Vasiliev, I.P.Golosnichenko, Yu.S. Shemchuchenko, S.Ya. Fursa, S.V. Shcherbak, M.M. Tyshchenko, A.O. Selivanov, O.V. Kuzmenko, V.S. Stefanyuk, M.Y. Shtefan, B.M. Guk, V.V. Komarov, R.V. Mironyuk and other. In their works the theory of administrative procedure is formulated, the theoretical basics of enforcement proceedings and administrative-legal regulation of Enforcement Service activity are studied and certain issues of decisions enforcement. But given the fact that the Law on executive proceedings is being reformed now, and in some aspects it has been embodied in legislation, there is a need in modern analysis of the relevant legal relations today.

3. Research results

The legal bases of administrative responsibility for non-fulfillment of legal requirements of bodies

and persons performing enforcement proceedings, as a part of compulsory execution institute, are determined by the Constitution of Ukraine [1], the Law of Ukraine "On Enforcement Proceedings" [2], the Law of Ukraine "On the bodies and persons performing forced execution of judgments and decisions of other bodies" [3], the Instruction on Enforcement of judgments, approved by Order of the Ministry of Justice of Ukraine No. 512/5 dated 02.04.2012 [4], the Code of Ukraine on Administrative Offenses [5] and other statutory acts.

All court judgments must be legal and substantiated. If this is so, people and the state pay homage to judges respecting their complicated and very responsible work. However, having received court decision a person does not even realize that this is only a part of her path to protecting his rights, liberties and interests, because the most difficult part, which is enforcement of court decision, still remains.

Enforcement of court decisions is statutory activity of specialized state authority, aiming at prompt, precise and final execution of court judgments and expressed in the form of voluntary or compulsory execution involving enforcement of such execution by various enforcement institutes prescribed by the Law.

Nevertheless, nowadays enforcement of decisions is rather complicated and confusing system [6, p. 66-67].

Enforcement proceedings being the final stage of court proceedings and forced execution of court judgments and other bodies' (officials') decisions (hereinafter "decision") are the set of actions of bodies and persons stipulated by this Law, which are directed to decisions enforcement and conducted on the grounds, within the power and in the manner defined by the Constitution of Ukraine, this Law, other Laws and Regulations, adopted in accordance with this Law, as well as decisions which are subject to enforcement in accordance with this Law [2].

The Strategy for the reform of court organization, court procedure and related legal institutes for 2015-2020, approved by the Decree of President of Ukraine No.276 of May 20, 2015, stipulates that today system of justice does not perform its tasks at

proper level. The section "Analysis of the current state of justice" of this Strategy states that there are significant problems in the system of decisions enforcement, in particular: extremely low share of actual enforcement of decisions; lack of effective system of motivation for state enforcement executors, system weakness in part of interaction of state enforcement executors with other state and non-state institutions [7].

The above mentioned problems were partly solved by adoption of the Law of Ukraine "On the bodies and persons performing compulsory execution of judgments and decisions of other bodies" of 05.01.2017, which introduced mixed system of decisions enforcement. In addition to commonplace state executors, a new concept of private enforcement executor appears in Ukrainian legislation.

Part 1 of Article 16 of the above said Law stipulates that a private executor may be citizen of Ukraine, authorized by the state to be engaged in activities on compulsory execution of decisions in accordance with the procedure established by Law [3].

Thus, today the function of enforcement of decisions is entrusted by the state to state and private enforcement executors, which, in view of carrying out of their statutory powers, have certain means at their disposal in order to secure the rights of participants of enforcement proceedings. Such means, in particular, include powers to bring perpetrators to legal responsibility.

Administrative responsibility is a special type of legal responsibility having all features of the latter. Traditionally, legal responsibility is associated with the use of state means of enforcement, and it is considered as response to offense prescribed by sanctions of legal norms, as realization, application and implementation of sanctions. The application of legal liability entails for the offender the burdensome consequences of property, moral, personal or other nature which he is obliged to experience and actually undergoes. Thus, the offender "holds the answer" to the state for misconduct [8, p. 6].

This is the responsibility for the direct violation of state prescriptions, which is at the top of relations "power - subordination." Right in this aspect the administrative responsibility can be considered

as an important tool of a law-governed state, because it is thanks to it the state has a mobile and efficient opportunity to fulfill its demands related to both individuals and legal entities. Therefore, comprehension of the core of administrative responsibility problems is an effective method of sharpening of instruments of law-governed state. Because it is through administrative responsibility that the basic principles and requirements of the latter are provided [9, p. 66-67].

Administrative responsibility is characterized by a number of specific features that distinguish it from other types of legal liability. Yes, it is usually applied for a special type of offenses, namely administrative ones [8, p. 6].

Part 1 of Article 76 of the Law of Ukraine "On Enforcement Proceedings" provides that guilty persons are liable in accordance with the law for non-fulfillment of legal requirements of enforcement executor, violation of the requirements of this Law, in particular for late submission or failure to submit reports on deductions from salary and other debtor's income, failure to submit or submission of false information about income and property of the debtor, debtor's failure to provide the declaration at the executor's request or indication of false information in the declaration, or failure to notify of changes in such information, debtor's failure to notify of change of the place of residence (place of temporary residence) or location, or place of employment (receipt of income), as well as default in appearance upon executor's request without reasonable excuse [2].

According to Article 18813 of the Code of Ukraine on Administrative Offenses failure to comply with the legal requirements of state or private executor related to elimination of violation of the law on enforcement proceedings; late submission or failure to submit reports on deductions from salary and other debtor's income; failure to submit or submission of false information about debtor's income and property; failure to provide at the request of state or private executor asset and income declaration submitted in accordance with the Law of Ukraine "On enforcement proceedings", or indication in such declaration of false information, or failure to notify of changes in information indicated

therein, debtor's failure to notify of change of place of residence or location, or place of employment (receipt of income); and failure to appear at state or private executor's request without reasonable excuse entail imposition of fine in amount of fifty to one hundred tax-free minimum salaries of an individual [5].

It should be noted that with the adoption of the Law of Ukraine "On Enforcement Proceedings" No.1404/VIII of 02.06.2016, this article was amended by increasing the amount of the fine from 50 to 100 tax-free minimum salaries of an individual for failure to comply with the legal requirements of state or private executor. By comparison, in previous revision of this article the fine amounted from 20 to 70 tax-free minimum salaries of individual.

The object of administrative infraction stipulated in Article 18813 of the Code of Ukraine on Administrative Offenses is social interactions in area of enforcement of decisions of courts and other bodies (officials) which are subject to enforcement in the event of their non-fulfillment on voluntary basis.

The objective aspect of the offense is expressed in failure to comply with the executor's legal requirements to eliminate violation of law on enforcement proceedings; late submission or failure to submit reports on deductions from salaries and other debtor's income; failure to submit or submission of false information about debtor's income and property; failure to notify the debtor about the change place of residence or location or place of employment (receipt of income), and failure to appear at state executor's request without reasonable excuse (formally defined offense) [10].

Legal requirement is requirement clearly formulated in regulatory acts applied to the subjects and fulfilled voluntarily or with the help of state coercion. Legal requirement of executive body official can be defined as a requirement generally accepted and necessary for fulfillment of official's instructions, ignoring of which will entail administrative responsibility. Failure to comply with legal requirement means conscious volitional action of socially dangerous unlawful conduct, which contradicts officials' legal requirements [11, p. 353]

The subjective aspect of administrative offense is both citizens and officials.

The subjective aspect of offense is determined by attitude to consequences and is characterized by presence of guilt in form of intent or negligence [10].

Also, the Law of Ukraine No. 1404 / VIII of 02.06.2016 amended Section III of the Code of Administrative Offenses by adding Article 24421, which establishes the procedure of bringing of perpetrators to administrative responsibility.

Thus, cases of administrative violations related to non-fulfillment of state executor's legal requirements are considered by the bodies of the State Enforcement Service.

Heads of State Enforcement Service bodies, to which state executors directly report, are entitled to consider cases of administrative violations and to impose administrative penalties on behalf of State Enforcement Service bodies.

There are opinions among scientists that such procedure of bringing to administrative responsibility seriously violates constitutional rights and liberties of man and citizen.

In their point of view, while resolving these issues it is necessary to take into account that provisions of the Constitution of Ukraine cover legal relations associated with application of the Law "On Enforcement Proceedings" too. Considering this problem in relation to the norms of the Constitution, we remind that the latter has supreme legal force (Article 8), and therefore everything concerning regulatory acts which govern actions of officials of State Enforcement Service connected with administrative jurisdiction, must conform to its content. Procedural rules governing proceedings in cases of administrative offenses must certainly ensure the rights and liberties of man and citizen guaranteed by the Constitution.

Among the important constitutional rights we can emphasize the right to liberty and personal integrity (Article 29); the right to learn information about himself at state authorities (Article 32); the right to get legal assistance and to be free to choose lawyer to defend his rights (Article 59). Such "projecting" of constitutional norms as direct action norm (Article 8) to all legal relations in our state, including these governing issues of administrative responsibility, allows to see clearly the priorities in

legislation reforming and to draw attention of administrative authorities to deficiencies in their activities on protection of rights and liberties of a citizen.

Moreover, we must take into account that in accordance with Art. 22 of the Constitution while adoption of new laws or amendment to existing laws, it is not allowed to narrow the content and the scope of existing rights and liberties [12, p. 104-105].

In author's opinion, described position is well-grounded, as such procedure of bringing to administrative responsibility significantly narrows constitutional rights and liberties of man and citizen.

Also, it should be noted that in comparison with previous revision of the Law of Ukraine "On Enforcement Proceedings", extent of responsibility for failure to comply with the judgment increased obliging the debtor to take certain actions and the decision on employment reinstatement provided for in Article 76 of the Law No.1404 / VIII of 02.06.2016. Thus, the amount of fine increased: in respect to the debtor being an individual it increased up to 100 (it was from 10 to 20) tax-free minimum salaries of individual, in respect to the officials - up to 200 (was from 20 to 40) tax-free minimum salaries of individual, in respect to the debtor being a legal person – up to 300 (was from 40 to 60) tax-free minimum salaries of individual [2].

The above mentioned changes to the legislation, first of all, show the strengthening of role of administrative responsibility institute in the process of compulsory execution of decisions as means of ensuring of enforcement proceedings effectiveness, and therefore requires further scientific and practical analysis.

The close correlation between theoretical principles of executive process and its practical introduction consists in the fact that improvement of existing law on enforcement proceedings is one of the factors of executive process efficiency and it directly affects the percentage of execution of enforcement documents by bodies of the State Enforcement Service, and scientific recommendations contribute to more complete and timely process of their execution by the state executor [13, p. 78].

4. Conclusion

Updating of Ukrainian legislation on enforcement proceedings and introduction of such important and fundamental changes, in particular, concerning system of enforcement authorities performing forced execution of decisions; time for enforcement procedures; increase of penalties for failure to comply with legal requirements of officials performing enforcement decisions, etc. provides evidence of increased social importance of such issues and is positive. At the same time, modern trends dictates need in further improvement of this institute for more effective protection of rights and liberties of enforcement proceedings participants, as well as practical realization of principles of legality and law supremacy in the state.

References

1. The Constitution of Ukraine [Electronic resource]. – Access mode: <http://zakon2.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>.
2. Law of Ukraine «On Enforcement Proceedings» [Electronic resource]. – Access mode: <http://zakon3.rada.gov.ua/laws/show/1404-19>.
3. The Law of Ukraine «On bodies and persons carrying out the enforcement of court decisions and decisions of other bodies» [Electronic resource]. – Access mode: <http://zakon2.rada.gov.ua/laws/show/1403-19>.
4. Instruction on enforcement of decisions, approved by the Order of the Ministry of Justice of Ukraine dated 02/04/2012 №512/5 [Electronic resource]. – Access mode: <http://zakon3.rada.gov.ua/laws/show/z0489-12>.
5. Code of Ukraine on Administrative Offenses [Electronic resource]. – Access mode: <http://zakon3.rada.gov.ua/laws/show/80731-10>.
6. Yasinok M.M. Realization of court decisions as a duty of the state / M.M. Yasinok // Problems of the theory and practice of the implementation of decisions of courts and other bodies (collection of scientific works), Khmelnytsky: 2012. – P. 66-69.
7. Strategy for reforming the judicial system, justice and related legal institutes for 2015-2020, approved by the Decree by the President of Ukraine dated May 20, 2015.– № 276 // <http://zakon3.rada.gov.ua/laws/show/276/2015>.
8. Administrative liability in Ukraine: Teaching. Manual / Compilers: Gorodinsky M.I., Gumenyuk V.A., Dzhagupov G.V., Komzyuk A.T., Ly-sach Yu.G., Salmanova O.Yu., Sinyov O.V., Tyschenko M.M.; per community Ed. A.T. Komzyuka. – Kharkiv: Unt. Matter - 1998. - 78 p.
9. Kuyan I. Administrative liability as an instrument of a legal state // Law of Ukraine. – 1998. – № 5. – P. 66-68.
10. Scientific and practical commentary on the Code of Ukraine on Administrative Offenses, 2013 / <http://mego.info>.
11. Turchin A. B. Concept and main features of the legal requirement of an official of the executive branch / A.B. Turchin // Customs business. – 2011. – №5. – Part 2. – p. 352-357.
12. Administrative liability under the Law of Ukraine "On Enforcement Proceedings" / Kononenko O. // The Law of Ukraine. – 2001. – №5. – 101-106.
13. Shcherbak S.V. Formation and development of executive process in Ukraine / M.M. Yasinok // Problems of the theory and practice of court decisions and other bodies (collection of scientific works), Khmelnytsky: 2012. – P. 77-83.

І. Вишнякова

**АДМІНІСТРАТИВНА ВІДПОВІДАЛЬНІСТЬ ЗА НЕВИКОНАННЯ ЗАКОННИХ ВИМОГ
ОРГАНІВ ТА ОСІБ, ЩО ЗДІЙСНЮЮТЬ ПРИМУСОВЕ ВИКОНАННЯ РІШЕНЬ**

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Мета: розробка науково-практичного підґрунтя провідної ролі інституту адміністративної відповідальності за невиконання юридичних вимог органів та осіб, які виконують належне виконання рішень як гарантії ефективності виконавчого провадження. **Методи:** у статті використовуються загальнонаукові методи пізнання - аналіз, синтез, а також спеціальні методи - аксіоматичний метод і метод дедукції. **Результати:** стаття присвячена механізму притягнення особи до адміністративної відповідальності за невиконання юридичних вимог органів та осіб, що виконують рішення, як інструмент забезпечення ефективності виконавчого провадження. **Обговорення:** динаміка законодавчої бази, що застосовується до досліджуваних правовідносин, з метою дотримання цілей і завдань у цій сфері та обґрунтованості змін у майбутньому.

Ключові слова: виконавче провадження, примусове виконання, виконавчий орган, приватний виконавець, виконавець, адміністративна відповідальність.

І. Вишнякова

**АДМИНИСТРАТИВНАЯ ОТВЕТСТВЕННОСТЬ ЗА НЕВЫПОЛНЕНИЕ
ЗАКОННЫХ ТРЕБОВАНИЙ ОРГАНОВ И ЛИЦ, ОСУЩЕСТВЛЯЮЩИХ
ПРИНУДИТЕЛЬНОЕ ИСПОЛНЕНИЕ РЕШЕНИЙ**

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Цель: развитие научно-практического опыта ведущей роли института административной ответственности за невыполнение правовых требований органов и лиц, осуществляющих принудительное исполнение решений в качестве гарантии эффективности исполнительного производства. **Методы:** в статье используются общие научные методы познания - анализ, синтез, а также специальные методы - аксиоматический метод и метод дедукции. **Результаты:** статья посвящена механизму привлечения человека к административной ответственности за несоблюдение правовых требований органов и лиц, применяющих решения, в качестве инструмента обеспечения эффективности исполнительного производства. **Обсуждение:** динамика законодательной базы, применяемой к изучаемым правовым отношениям, с целью соответствия целям и задачам в этой области и обоснованности поправок в будущем.

Ключевые слова: исполнительное производство, принудительное исполнение, исполнительный орган, частный исполнитель, исполнитель, административная ответственность.