



RESPONSIBILITY FOR NON-ENFORCEMENT OF COURT DOCUMENTS AND ITS CONSEQUENCES: EXPERIENCE OF FOREIGN COUNTRIES

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Annotation

In this article, the author analyzed responsibility for non-execution of court decisions in the Republic of Uzbekistan, responsibility for non-execution of court decisions in the Republic of Uzbekistan, its consequences and reasons; the legal nature of executive actions was determined; requirements for executive actions are defined; features of implementation of executive actions in foreign countries were considered, problems and shortcomings in the field, ways to eliminate them were discussed. A number of proposals and recommendations have also been developed.

Keywords: court decisions, liability for non-execution of court decisions, order of collections, compulsory enforcement measures, scope of work of state enforcement officers.

СУД ҲУЖЖАТЛАРИНИ ИЖРО ЭТМАСЛИК УЧУН ЖАВОБГАРЛИК ВА УНИНГ ОҚИБАТЛАРИ: ХОРИЖИЙ ДАВЛАТЛАР ТАЖРИБАСИ

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Аннотация

Ушбу мақолада муаллиф томонидан Ўзбекистон Республикасида суд қарорларини ижро этмаслик учун жавобгарлик, Ўзбекистон Республикасида суд қарорларини ижро этмаслик учун жавобгарлик, унинг оқибатлари ва сабаблари таҳлил қилинди; ижро этувчи ҳаракатларнинг ҳуқуқий табиати аниқланди; ижро этувчи ҳаракатларга қўйиладиган талаблар аниқланди; хорижий давлатларда ижро этувчи ҳаракатларни амалга ошириш хусусиятлари кўриб чиқилди соҳадаги муаммо ва камчиликлар, уларни бартараф қилиш йўллари хусусида сўз юритилган. Шунингдек, бир қанча таклиф ва тавсиялар ҳам ишлаб чиқилган.





Калит сўзлар: суд қарорлари, суд қарорларини ижро этмаслик учун жавобгарлик, ундирувлар навбати, мажбурий ижро этиш чоралари, давлат ижрочиларининг иш ҳажми.

In the complex of wide-ranging reforms that have been implemented in our country in recent years, judicial reforms, in particular, the work being carried out on raising the legal culture and legal consciousness of citizens, occupy a particularly important place. After all, the well-being of society and the priority of democracy are primarily related to the rule of order in society, and in this process, not only the perfection of existing laws in society, their implementation and control, but also the recognition of existing procedures and laws by people and citizens, and their awareness of them. Being a direct active participant in the process of compliance, obedience, and execution is also one of the decisive factors.

Article 44 of the Constitution of the Republic of Uzbekistan stipulates that every person has the right to protect his rights and freedoms through the courts, to appeal to the court against the illegal actions of state bodies, officials, and public associations. Also, Article 114 states that the documents issued by the judicial authorities are binding for all state bodies, public associations, enterprises, institutions, organizations, officials and citizens.

At the same time, Article 43 of our General Encyclopedia stipulates that the state shall ensure the rights and freedoms of citizens established in the Constitution and laws.

In order to fully realize these norms in practice, not only an independent, impartial and fair court, but also competent bodies to ensure the full execution of court decisions and legal mechanisms for the implementation of court decisions should be clearly defined.

Because, if the mechanisms of execution of court decisions do not work fully in practice, it will be meaningless to apply to justice.

For several centuries, no state has been able to freely enforce judicial documents without the use of coercion, because voluntary giving of money or property to repay existing debts or fulfill obligations has not yet become an integral part of the legal culture of citizens.

This position is reflected in a number of decisions of the European Court of Human Rights, in which we can see that "if the legal system of the state allowed the annulment of a court decision against one party, the right to access to justice would be illusory." Enforcement of judicial documents in our country a number of consistent measures are being implemented for the rapid development of development activities.



In particular, the Department of Justice under the Ministry of Justice was abolished, the Office of Compulsory Enforcement was established under the General Prosecutor's Office of the Republic of Uzbekistan, and a number of decrees and decisions of the head of state aimed at improving the sector were adopted.

Also, wide implementation of modern information and communication technologies was carried out in the field.

Improvement of legislative documents in the field was ensured.

In addition to the work done, there are some problems that need to be solved in the field. In particular:

First and foremost, the current legal documents do not describe in detail the mechanisms of enforcement of court documents, focusing on property rights, and state enforcement officers do not have sufficient knowledge and skills in this field.

This, in turn, creates some problems and difficulties in ensuring full enforcement in some cases by focusing the collection on long-term real estate lease rights, rights to land plots, property rights to intellectual property objects, etc.

In particular, the Law of the Republic of Uzbekistan "On execution of court documents and documents of other bodies".

Pursuant to Article 484, enforcement of executive documents shall include property rights belonging to the debtor, in particular, the right to long-term lease of real estate, the right to a plot of land, the exclusive right to objects of intellectual property, and the use of the results of intellectual activity and means of personalization belonging to the debtor as a licensee on the basis of a simple non-exclusive license. It is determined that the rights can be focused on.

Also, in this article, it is specified that the enforcement of property rights against other persons belonging to the debtor shall be directed in accordance with the provisions established in the Civil Code of the Republic of Uzbekistan.

However, due to the fact that this issue is not clearly covered in the Civil Code, there are various misunderstandings in the application of these norms by state executives.

Secondly, in the Law of the Republic of Uzbekistan "On the execution of court documents and documents of other bodies", the order of collections is defined by putting the interests of the state above the interests of our citizens. In most cases, this is the reason why our citizens' money remains uncollected and their many reasonable appeals increase. Also, these mechanisms will not fail to have a negative impact on the principles of state guarantee of the rights of our citizens.

In particular, Article 80 of the Law of the Republic of Uzbekistan "On the Execution of Court Documents and Documents of Other Bodies" specifies the sequence of collections, and in accordance with it, the following:





First of all: requests for payments to the budget and state trust funds; requirements arising from labor relations; alimony claims; requirements for payment of fees under copyright agreements; claims for compensation for damage to life or health; requests for payment of legal aid fees provided by lawyers are satisfied.

Second: social security requirements; claims for compensation for damage caused to the property of individuals and legal entities as a result of a crime or administrative offense are satisfied.

In the third place, the requirements of compulsory insurance bodies are satisfied.

Fourthly, the demands of creditors secured by property are satisfied.

In the fifth place, unsecured claims of creditors are satisfied.

In the sixth order, all other requirements are satisfied.

Enforcement fees charged to the debtor for several demands (execution documents) shall be collected in accordance with the sequence designed to satisfy the relevant demand specified in the first-sixth parts of this article. In this case, the enforcement fees imposed on the debtor under non-property execution documents, as well as the property not realized within the period specified by the law, are equal to the first priority requirements in cases where the property is transferred to the receiver under the execution documents of a property nature.

However, in Article 2 of our Constitution, the state expresses the will of the people and serves its interests, and state bodies and officials are responsible to society and citizens.

Also, on June 20, 2022, during the meeting of the President of the Republic of Uzbekistan Shavkat Mirziyoev with the members of the Constitutional Commission, "The renewed Constitution should create a solid legal basis and a reliable guarantee for the long-term development strategies of our country, in general, for the future prosperous life of our country and people.

In a word, it is necessary to deeply integrate the idea of "For human dignity" and the main principle of our current reforms, "Man-society-state" approach into the essence of our Constitution, and turn it into a main value in our practical life. That is, human dignity, honor and pride should be in the first place in all spheres from now on." he emphasized.

In addition, the President of the Republic of Uzbekistan The 14th goal of the development strategy of New Uzbekistan for 2022-2026, approved by Decree No. 60 of January 28, 2022, provides for ensuring the rule of law and constitutional legitimacy and defining human dignity as the main criterion of this process.

When studying the experiences of foreign countries in this field, we can see that in most countries, the interests of the people are in the first place in the order of recovery.





For example, Article 111 of the Law of the Russian Federation "On Conducting Executive Affairs" stipulates the following.

1. If the amount of money collected from the debtor is not enough to fully satisfy the requirements in the enforcement documents, the specified amount will be distributed among the collectors who submitted the enforcement documents on the day of distribution of the relevant documents. amount of money, in the following order:
 - 1) first of all, claims for recovery of alimony, compensation for damage to health, compensation for damage related to the death of a breadwinner, compensation for damage caused by a crime, as well as compensation for moral damage;
 - 2) in the second place, claims for severance pay and remuneration for the labor of persons working (worked) under the employment contract, as well as remuneration for the authors of the results of intellectual activity will be satisfied;
 - 3) thirdly, requirements for compulsory payments to the budget and extra-budgetary funds are satisfied;
 - 4) fourth, all other requirements are satisfied.

Article 145 of the Executive Code of the Republic of Moldova of December 24, 2004 provides for the order of collections, which consists of 3 categories, and it is specified that collections to the state budget are in the 2nd order.

These queues, i.e. the priority of human interests during the recovery can be seen in other countries, in particular, in the legislation of the Republic of Kazakhstan, Ukraine, Belarus, Kyrgyzstan, Turkmenistan, Azerbaijan and other countries.

thirdly, executive proceedings are logically the last stage of court proceedings, and the rights and legal interests of a person should be restored as soon as the court decision enters into legal force. If, due to the lack of improvement of the existing legal system, legal entities or individuals cannot restore their rights due to the law, this will lead to a decrease in the confidence of citizens in the judicial system and the state in general. Therefore, confidence in the effectiveness of the judicial system and state bodies directly depends on the execution of the decisions of the court and other bodies.

One of the only solutions to ensure full and timely execution of court decisions by state enforcement officers is to optimize their workload. Currently, due to the high workload of government officials, its efficiency is not satisfactory.

For information, the workload of bailiffs is calculated based on STANDARDS (March 10, 2011, list number 2207).

In our view, it is a difficult task to find a complete solution to the issue of expanding the state unit of the Bureau of Enforcement under the General Prosecutor's Office of the Republic of Uzbekistan. Therefore, it is appropriate to implement the institute of private executors, which is considered a novelty for this field.





We can see the following experience of foreign countries in this field.

In particular, it was not so long ago that the institution of private bailiffs was introduced into the legislation of the Republic of Kazakhstan. Norms related to private bailiffs were included in the Law of the Republic of Kazakhstan "On Enforcement and the Status of the Bailiff" on April 2, 2010. Based on it, the Law includes the procedure for licensing the activities of private bailiffs, requirements for private bailiffs, issues of their legal status, rights, obligations and responsibilities, the procedure for their attestation, and other organizational and legal issues of control and regulation of their activities. Norms were also introduced for the private bailiff's assistant, the Chamber of private bailiffs, the financing of private bailiffs' activities, the payment of fees for their activities, the rules for determining the private bailiff's salary, and the procedure for covering the private bailiff's expenses. As a result, in 2013, the number of private bailiffs was 400, and by 2017, their number exceeded 1,500. In 2013, private court bailiffs accepted 6 percent of all enforcement documents, and in 2017, 17 percent. Therefore, the demand and confidence in private bailiffs is increasing year by year. On the other hand, we can see that the efficiency of execution of court documents is increasing. In 2007, the execution of court documents was 64 percent, in 2010 it was 72 percent, and by 2017 this indicator is 79 percent. So, the experience of Kazakhstan shows that this institution has been successfully implemented.

In 2015, the enforcement sector in Ukraine was in a very difficult situation. According to statistics, in 2015, only 22 percent of executive documents were executed. As a result, since 2016, the processes of fundamental reform of the executive branch have been started, and a private executive institute has been introduced into the legislation in order to improve the efficiency of the executive branch. As a result, the execution of court decisions and decisions of other bodies increased by 16% in two years and amounted to 37.8% in the first half of 2018. In Ukraine, on June 3, 2016, the Law "On Bodies and Persons Carrying Out Enforcement Activities of Court Decisions and Decisions of Other Bodies" was adopted, in which it was determined that enforcement activities can be carried out by private enforcement agencies in addition to state enforcement agencies. This law establishes the legal basis, main principles, tasks, legal protection and guarantees of the activities of private executors, except for the state executive service bodies. However, in Article 5 of the Law of Ukraine "On Execution" the documents that cannot be executed by a private executor are specified separately:

- 1) take away the child and give it to one of the parents, meet with the child;
- 2) by decision, state bodies, the National Bank of Ukraine, local state administration bodies, their officials, state organizations, enterprises and institutions, legal entities with a state share in the charter capital of more than 25 percent are debtors;





- 3) if the state bodies are collecting on the decision;
- 4) administrative court decisions and decisions of the European Court of Human Rights;
- 5) decisions on moving individuals from the house and entering the house;
- 6) decisions on confiscation of property. Also, the decisions of the criminal courts and the decisions that are entrusted with the execution of the law only to the state executive bodies are not executed by private executors. The law stipulates the right of the private executor to refuse the execution of the enforcement document, according to which the private executor must notify the debt collector in writing. In general, if we analyze the legislation of Ukraine, we can see that the legal status of private executors is equal to state executors. This is paying off.

It should also be noted that in many European countries, the authority to execute court decisions and decisions of other bodies is given to private companies. For example, in France, Italy, Belgium and other European countries, enforcement activities are carried out by independent organizations based on a license. However, they usually only have the authority to enforce decisions of civil courts.

Based on the above, in order to reduce the workload of state bailiffs and ensure the timely execution of court decisions, it is proposed to introduce private bailiffs who have received a certificate under the supervision of the Ministry of Justice in certain areas.

Fourthly, the fact that there are no structural structures aimed at studying and eliminating existing problems in the field of executive work and their solution, the volume of work of employees active in the field is 3-4 times more than the established standard, prevents the improvement of the field by constantly studying the problems in this direction.

As a result, there is an obstacle to improving the field by constantly analyzing the existing problems in the field. Therefore, it will be necessary to establish a scientific research center aimed at studying existing problems in this field, unifying practices and improving existing documents in the field.

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