



THE ROLE OF THE STATE EXECUTIVE IN THE EXECUTIVE IN THE EXECUTION PROCESSES

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Received: 1 st January 2024 Accepted: 1 st March 2024	The author examines the main problems of enforcement proceedings, primarily due to the high social significance of enforcement proceedings, its place and role in the Russian legal system, which has recently been subjected to radical reform. The issues of improving legislation on enforcement proceedings have been and are under the close attention of legislative, executive, judicial bodies, the scientific community and persons engaged in law enforcement activities.

Keywords: State executive, execution processes

INTRODUCTION

The formation of Russian statehood is characterized by the most important importance of the institution of enforcement proceedings in it in every historical period of Russia. Despite the fact that enforcement proceedings are only a consequence of the execution of judicial and other acts of state coercion, it should be noted that it is this mechanism that finally restores the violated legality, rights and interests of various subjects.

At all times of the existence of the institution of compulsory enforcement of judicial and other The issues of improving legislation on enforcement proceedings (and currently in particular) have been and are under the close attention of legislative, executive, judicial bodies, the scientific community and persons engaged in law enforcement activities.

It can be said that the state, represented by enforcement agencies, is in daily contact with the population, and their public perception by the population extends to the entire state. Today, there is an urgent issue of interaction and mutual enrichment of science and practice of enforcement proceedings in a common cause - improvement in the Russian Federation procedures for the execution of acts of jurisdictional bodies.

The study shows that enforcement proceedings have undergone a long evolutionary process in their historical period. The reform of this sphere in the 90s of the last century (the adoption of Federal Laws No. 119-FZ dated July 21, 1997 "On Enforcement Proceedings" (expired) and No. 118-FZ dated July 21, 1997 "On Bailiffs"), as well as entry into force on February 1, 2008 Federal Law No. 229-FZ dated October 02, 2007 "On Enforcement Proceedings" led to the fact that the powers to execute executive orders The documents were handed over to the executive power. However, the

court, having significantly lost its position, has not lost the possibility of influencing the process of execution of court decisions. Further reform was and is rather complex in nature and affects the branches of civil law bordering on enforcement proceedings procedural, arbitration procedural law, etc.

To date, the legislator has refused to codify executive legislation, although such proposals have been received from representatives of practice and the scientific community. Having adopted the next version of the federal law "On Enforcement Proceedings", the legislator amended other normative legal acts, but did not codify enforcement proceedings, thereby indicating that there is still something to work on in this area. After the reform of enforcement proceedings, the question of its independent nature, of its allocation as a separate kind of legal the process has acquired a new sound in this regard.

The correlation of the principles of the legal process with enforcement proceedings shows that their content can be extrapolated to the sphere of enforcement. This was a confirmation of the thesis about the procedural nature of enforcement proceedings. In addition, it is possible to identify a number of principles inherent only in enforcement proceedings: the timeliness of enforcement actions and the application of enforcement measures; the inviolability of the minimum property necessary for the existence of the debtor-citizen and his family members; the correlation between the volume of the claimant's claims and enforcement measures. The practical significance of these principles is that with their help it is possible to determine what the procedure of enforcement proceedings should be in order to meet the goals of correct and effective execution of jurisdictional acts, to ensure the protection of the rights and interests of participants in enforcement proceedings.



It should be noted that in the field of enforcement proceedings, the principle of combining imperativeness and dispositivity applies, which is due to the specifics of the subject and method of legal regulation of this type of relationship.

As a general feature of the legal process, which extends to all its types and, in this regard, is also characteristic of enforcement proceedings, it is necessary to highlight the feature of stage-by-stage. Since enforcement proceedings belong to a type of law enforcement process, the stages that are within its framework. They stand out and are characteristic of enforcement proceedings.

Sources of law regulating relations in the area under consideration are important for characterizing the legal nature of enforcement proceedings. In addition to Federal Law "On Enforcement Proceedings", this is the Constitution of the Russian Federation, the Civil Code of the Russian Federation, the Civil Procedure Code of the Russian Federation, Family Code of the Russian Federation, Arbitration Code of the Russian Federations and other federal laws governing certain aspects of the procedure executive proceedings, decrees of the President of the Russian Federation, resolutions of the Government of the Russian Federation, they should also include orders, instructions from ministries of the Russian Federation and federal services, resolutions, rulings, decisions of judicial authorities.

In order to ensure the most effective legal regulation of relations in the field of enforcement, it seems advisable, first of all, to reform the entire system of legislation in the field of enforcement proceedings and to do this in a complex in order to eliminate the conflicts and identify gaps in it. The logical result of such work should be the codification of the legal norms governing relations in the process of enforcement proceedings, that is, the adoption of The Executive Code of the Russian Federation. The current federal law "On Enforcement Proceedings" has only partially overcome the problems that participants in enforcement proceedings have to face in the process of implementing enforcement actions, thanks to a more detailed consideration of the main points, as well as a reduction in the number of reference norms.

In order to ensure timely execution of legally significant actions (executive actions), it is necessary to establish reasonable deadlines for fulfilling the requirements contained in the executive documents. Timeliness, however, should not be confused with efficiency, excessive haste can negatively affect the legal results of operations conducted in enforcement proceedings, including the quality of procedures performed. This, in turn, may cause violation of the rights and legally protected interests of the participants enforcement proceedings. In particular, the

manifestation of artificial shortening of the term is seen as dangerous.

According to the general rule provided for by the Federal Law of October 02, 200 No. 229-FZ "On Enforcement Proceedings", the requirements contained in the enforcement document must be executed by a bailiff within two months from the date of initiation of enforcement proceedings, with the exception of the requirements provided for in parts 2-6.1 of Article 36 of this Federal Law. Due to the requirements of current legislation, the specified period is not curtailed, that is, there is no possibility of extending such a period. In practice, it turns out that in case of non-fulfillment of the requirements of the enforcement document within a two-month period, enforcement actions continue until the end, termination or suspension of enforcement proceedings.

Taking into account the workload of the bailiff and the complex multi-stage procedure for fulfilling the requirements of individual enforcement documents, the two-month period is extremely short and not always possible, therefore, as a rule, in such cases, the bailiff violates the two-month period established by Federal Law No. 229-FZ dated October 02, 2007 "On Enforcement Proceedings", despite for the meaningful work done. Thus, it seems advisable to legislatively establish a period of enforcement proceedings – 2 months, with the possibility of its extension a bailiff of a subject of the Russian Federation, including for the purpose of monitoring the activities of a bailiff.

It is clear that the reform of domestic production for the sale of performing services by authorized bodies should continue. But due to the low efficiency of the execution of judicial acts and acts and other legal bodies, which not only violates the rights of citizens and organizations, but also generates a number of other negative phenomena, further reform of the system is necessary.[5]

Russian lawyers have to seriously think about what needs to be done in order for the level of actual effectiveness in the work of bailiffs to become higher, and the level of negative phenomena in the sphere of their activities tended to zero.

At the same time, it is impossible to exclude the problems that are possible when switching to an alternative model of organizing enforcement proceedings, the biggest of which is the abuse of authority by private bailiffs and consists in obtaining maximum profit, in the possibility of obtaining additional information about the debtor's activities and his solvency for selfish purposes. It is possible to assume that without very strict state control mechanisms, the transition to private or hybrid models. The organization of enforcement proceedings may increase the criminalization of the activities of this sector. Also, "private" bailiffs can lead to a decrease in the prestige



of some professions, since their actions will require a strong increase in income compared to many officials, including judges. In addition, the applicant is often unable to pay for the services of searching for the debtor and his property, respectively, will not be able to get the desired result.

But there are also many positive aspects, which, in addition to the above, include: promotion of a bailiff; exemption of the state mechanism from the burden of financial assistance to enforcement agencies (for example, a person remains a debtor, and the results of payment for the functioning of a bailiff are not carried out at the expense of the federal budget, but depend on from the results of his activities), etc.

In addition to changing the organization of the enforcement proceedings system itself, in Russian enforcement proceedings, many measures used in foreign enforcement practice can also be used, for example: the debtor's liability for contempt of court, since non-execution of judicial acts is a direct manifestation of disrespect for a court decision; the use of intersectoral sanctions for non-execution of judicial acts (deprivation of a license giving the right to conduct professional activities of debtors in cases of alimony recovery).

Consequently, the private law model of the organization of the enforcement system, despite all its pros and cons, certainly deserves the closest attention and research, but in order to avoid various kinds of abuses, enforcement should be the prerogative of state bodies. In addition, in Russia, where the income level of the majority of the population leaves much to be desired, most claimants simply will not be able to afford to use the services of a private bailiff. Another area of reform of enforcement agencies may be there may be a revival of the institution of bailiffs at the court, however, even here you can find more minuses than pluses, since this will require organizing the execution of acts issued by other jurisdictional bodies, resolving issues with the burden on bailiffs, since it is unlikely to decrease due to such a rearrangement.

Therefore, another option seems more acceptable, which involves the revival of the relevant structures in the courts while maintaining the current functioning system of organization of compulsory enforcement. A number of domestic processualists point to the likelihood of using the institution of mediation in enforcement proceedings. The conclusion of a settlement agreement, reconciliation agreement, approved by the court, before the end of enforcement proceedings between the recoverer and the debtor, is provided for in article 50 of the Federal Law of 02 October 2007 No. 229-FZ "On Enforcement proceedings". At the same time, it is necessary to clearly distinguish between a mediation agreement and a settlement agreement concluded according to the

norms of the Civil Procedure Code of the Russian Federation, even with the participation of a mediator.

Undoubtedly, the approved settlement agreement, in case of its non-fulfillment, is supported by the coercive force of the state, which is not and cannot be by the nature of things in relation to a mediation agreement. In turn, in accordance with Federal Law No. 193-FZ dated July 27, 2010 "On Alternative Dispute Settlement Procedure with the participation of an intermediary (Mediation Procedure)" mediation procedure is used to settle disputes about law. In view of the above-mentioned indisputability of the executive procedural legal relations, a conflict arises legal norms. Also, Russian legislation has not provided for a mechanism that forces an unscrupulous party to fulfill a mediation agreement, which is obviously a disadvantage. In order for the institute of mediation to begin to function at least somehow normally in enforcement proceedings, it is necessary to make appropriate changes to the legislation on enforcement proceedings on alternative dispute resolution.

The above allows us to conclude that it is necessary to consider the possibility of recreating the institution of bailiffs at the courts and its consolidation at the legislative and organizational level. At the same time, there is no need to change the current model of organizing enforcement proceedings (by retaining the institution of the federal bailiff service and only redistributing powers within the service). That is, to create in Russia a judicial and administrative model for organizing the enforcement of judicial acts and other documents of a mixed type.

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