

Enforcement of Court Decisions as a Social Guarantee of Protection of Citizens Rights and Freedoms

The relevance of research is due to transformational changes in the enforcement of court decisions, the need to build fast and efficient enforcement processes, and simplification of access to the profession of public and private executors, which ultimately aims to implement social guarantees to protect the rights and freedoms of citizens. The purpose of the article is to, based on the analysis of current legislation, research, generalization of law enforcement practice, domestic and foreign experience to investigate the situation and identify problematic aspects that affect the provision of social guarantees for the protection of civil rights and freedoms. The methodological basis of this problem is the use of general and special methods of cognition of legal phenomena and processes. The article presents the results of research on problematic issues of execution of court decisions in Ukraine and the world; shortcomings in the activities of the State Executive Service of Ukraine were revealed; the reasons for non-execution of court decisions concerning the provision of social guarantees of the state in terms of protection of the rights and freedoms of citizens are revealed; proposals have been developed to increase the effectiveness and efficiency of the execution of court decisions. The provisions set out in the article are of practical value for researchers and practitioners dealing with the enforcement of court decisions, for teachers of higher education institutions in the training of highly qualified personnel, as well as for other stakeholders who are to some extent related to this sphere.

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1. Introduction

In Art. 3, 21, 22 of the Constitution of Ukraine stipulate that „a person is the highest social value in Ukraine; human rights and freedoms and their guarantees determine the content and direction of the state, the establishment and protection of human rights and freedoms is the main duty of the state; human rights and freedoms are inalienable and inviolable, and their content and scope cannot be narrowed when adopting new laws or making changes to them”¹. In pursuance of these legal norms, public authorities approve social standards, which means „established by laws, other regulations, social norms, and standards or their

1 Verkhovna Rada of Ukraine, *Constitution of Ukraine*. <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>. [accessed: 28.06.1996].

complex, on the basis of which the levels of basic state social guarantees are determined”. In turn, “state social guarantees are statutory minimum wages, incomes, pensions, social assistance, other types of social benefits, established by laws and other regulations that ensure a standard of living not lower than the subsistence level”².

It is not always possible to receive state social guarantees in full, without a dispute, for example, arrears of wages, alimony, etc. The resolution of such disputes can be implemented through administrative proceedings, which can be considered the main social guarantee of protection of the rights and interests of individuals and legal entities. Prospects for improving administrative justice in Ukraine are closely linked to the prospects for improving its principles and procedural form, which contributes to the introduction of additional guarantees for individuals and legal entities to a fair trial; overcoming the disunity of the judiciary; ensuring the optimization and unification of procedures for the administration of justice by general and specialized courts at all stages and in all instances in accordance with European standards³. That is why Ukraine’s readiness for membership in the European Union is conditioned by the inevitable updating of standards of administration of justice, including the improvement of the effectiveness of enforcement proceedings. Today, the inconsistency of the work of the State Executive Service of Ukraine (hereinafter – ICE) with European standards forces further reforms in this area.

In Ukraine, the procedure for enforcement proceedings as the final stage of enforcement of court decisions and decisions of other bodies (officials) is regulated by the Laws of Ukraine „On Enforcement Proceedings” of June 2, 2016 No. 1404-VIII⁴ and „On bodies and persons who carry out enforcement of court decisions and decisions of other bodies”⁵. One of the priority areas in the activities of state bodies, in particular, the Ministry of Justice of Ukraine is the further development of the system of execution of court

2 Ministry of Social Policy of Ukraine, *State Social Standards*. <https://www.msp.gov.ua/content/socialni-standarti.html>. [accessed: 23.08.2021].

3 Nataliia Lytvyn, Anna Yarosh, „Administrative Proceedings as the Main Means of Protecting the Rights and Interests of Individuals and Legal Entities in the Field of Public Relations” *Our Right*, 1 (2020): 23.

4 Verkhovna Rada of Ukraine, *Law of Ukraine „On Enforcement Proceedings”*. <https://zakon.rada.gov.ua/laws/show/1404-19#Text>. [accessed: 2.06.2016].

5 Verkhovna Rada of Ukraine, *Law of Ukraine „On Bodies and Persons who Carry Out Enforcement of Court Decisions and Decisions of other Bodies”*. <https://zakon.rada.gov.ua/laws/show/1403-19#Text>. [accessed: 2.06.2016].

decisions and decisions of other bodies, construction of fast and efficient enforcement processes, simplification of access to the profession of public and private executors. The above, first of all, is aimed at the implementation of social guarantees of the state to protect the rights and freedoms of citizens.

Enforcement of court decisions is one of the hallmarks of a social and „rule of law” state governed by the rule of law. In the case of improper execution or non-execution of court decisions, the right to a fair and public trial within a reasonable time is violated. In addition, individuals and legal entities, having spent a long period of time on trial and not properly enforced by the debtors voluntarily or by the enforcement service, cease to trust the judiciary, which is unacceptable in a state governed by the rule of law⁶. Therefore, in order to eliminate the problems related to improper execution or non-execution of court decisions, it is expedient to identify shortcomings that lead to the inefficiency of the system of enforcement of court decisions and the loss of public confidence in it.

Regarding the enforcement of court decisions, these issues are quite relevant today among the scientific community. In particular, L.V. Krupnova⁷ singles out a number of problems of theoretical and practical significance regarding the application of administrative procedures of enforcement proceedings, including: „inefficiency of public administration and unprofessionalism of the government; imperfection of measures and methods to ensure the implementation of decisions of courts and other public authorities; corruption of power; the impossibility of carrying out executive actions in settlements on the territory of which public authorities temporarily do not exercise their powers, as well as in territories located on the line of contact; underdeveloped relations with international institutions in the field of enforcement of court decisions and decisions of other bodies”.

In turn, A. Pyatnytsky⁸ to these problems adds problems related to the presence of „legislative factors that at the regulatory level make it impossible to implement certain categories of decisions and reduce the effectiveness of enforcement in general and the problem of prompt receipt of relevant information about debtors, their property status, sources of income by direct

6 Olena Alekseeva, „Problematic Aspects of Enforcement of Court Decisions and Decisions of Other Bodies (Officials) Regarding Debtors, to which Personal Special Economic and Other Restrictive Measures (Sanctions) are Applied” *Current Issues of State and Law*, 82 (2019): 11.

7 Lyubov Krupnova, *System of Executive Proceedings in Ukraine: Theoretical-legal and Praxeological Aspects* (Kyiv: Dnipropetrovsk State University of Internal Affairs, 2018), 124.

8 Andrew Pyatnytsky, *Some Aspects of the State System of Enforcement of Decisions in a Competitive Environment with Private Performers*. [accessed: 15.12.2017].

access of the executor to the relevant registers containing information, including the rights of the registrar, in order to encumber the identified property or property rights to ensure the actual implementation of the decision and prevent the possibility of alienation of such property by the debtor”. It is worth noting the study conducted by a group of experts of the Razumkov Center on the root causes of non-enforcement of court decisions in Ukraine carried out in the framework of the Council of Europe project „Support to Ukraine’s implementation of the European Court of Human Rights”. The implementation of the project made it possible to identify the main root causes of non-enforcement of court decisions in three categories (social disputes, labor disputes and decisions on legal entities for which the state is responsible, or on the state itself), as well as other problems related to statistics and court register. decisions”. In particular, to the above list of problems it is advisable to add:

- „lack of adequate funding from the state (lack of budget allocations), which led to non-fulfillment by state organizations, enterprises and institutions of their obligations to employees; improper performance of powers by bodies state power, its enterprises and institutions (delay in accrued but unpaid wages, delay in due payments to the employee, non-payment of »sick leave« during pregnancy and childbirth, etc.); shortcomings of normative regulation of labor relations (for example, untimely adoption of by-laws on the financial support of ATO participants); providing a significant number of benefits to certain groups of citizens (in particular, members of the ATO) without laying in the state budget funds at a sufficient level; defects of court decisions that complicate their enforcement (for example, failure of judges to determine the specific amount of recovery in the effective part of the court decision, insufficient level of motivation of the analyzed decisions, etc.);
- - in the actions of state executors of court decisions there are signs of »assistance« to debtors in hiding financial resources and property from recovery on the basis of a court decision. In addition, there are many cases of illegal return of the writ of execution to the claimant due to the impossibility of establishing the location of the legal entity - the defendant. This prevents the plaintiffs from exercising the right to apply the mechanism provided by the Law “On State Guarantees for the Execution of Judgments”⁹.

9 Razumkov Center, *Round table „The Root Causes of Non-compliance with Decisions of National Courts in Ukraine and Ways to Solve this Problem”*. <https://razumkov.org.ua/novyny/kruglyi-stil-pershopyrychyny-nyvkonannia-rishen-natsionalnykh-sudiv-v-ukraini-i-shliakhy-vyrishennia-tsiiei-problemy>. [accessed: 12.09.2019].

Approved by the order of the Cabinet of Ministers of Ukraine „National strategy for solving the problem of non-compliance with court decisions, the debtors of which are a state body or state enterprise, institution, organization, for the period up to 2022” from September 30, 2020 No. 1218-r (hereinafter – the Strategy) also identifies problems of non-compliance with court decisions and relevant recommendations of the Committee of Ministers of the Council of Europe and the conclusions of the European Court of Human Rights, in particular:

- legislative:
 - inconsistency between the number of social benefits provided by various laws, and the schedule of state budget allocations for them;
 - the existence of moratoriums that impede the enforcement of court decisions;
 - insufficient level of automation of the enforcement proceedings;
 - gaps in the legal regulation of the bankruptcy procedure of state-owned enterprises;
 - imperfect mechanism for judicial control over the implementation of court decisions on debt collection;
 - reasons related to the collection of information:
 - the lack of a unified system of electronic interaction between the registers of court decisions and the automated system of enforcement proceedings, documents to ensure the analysis and collection of information on the execution of court decisions;
- financial reason:
 - lack of funds to ensure the payment of debts by court decisions;
 - the reason due to lack of legal remedies;
 - lack of legal remedies in connection with non-execution and prolonged execution of court decisions¹⁰.

Thus, the identified shortcomings in the system of enforcement of court decisions negatively affect the implementation of social guarantees of the state to protect the rights and freedoms of citizens.

2. Methodological Framework

In the process of writing the article used general and special methods of research of legal phenomena and processes, due to a systematic approach, which made it possible to explore the problems of social guarantees of

10 Cabinet of Ministers of Ukraine, *Order No. 1218-r „National Strategy for Solving the Problem of Non-execution of Court Decisions, the Debtors of which are a State Body or State Enterprise, Institution, Organization, for the Period up to 2022”*. <https://zakon.rada.gov.ua/laws/show/1218-2020-%D1%80#Text>. [accessed: 30.09.2020].

protection of rights and freedoms of citizens during the execution of court decisions. The sociological method made it possible to find out the opinions of legal practitioners on problematic issues of enforcement of court decisions. Using the methods of empirical research (observation, generalization, comparison, survey, study of documents, etc.) obtained the most accurate data in the enforcement of court decisions on debtors for alimony, repayment of wage arrears and more. The comparative legal method was used to analyze the positive foreign experience of enforcement of court decisions, which allowed us to conclude that all the positives are aimed at ensuring the highest social value, which is inherent in all democracies - man and his rights and freedoms. Methods of generalization and forecasting are used in the process of formulating conclusions and in developing areas for improving the implementation of court decisions.

For a clear presentation of statistical material on the dynamics of execution of court decisions on the number of actually executed proceedings by the State Enforcement Service, the amount of penalties on the results of actually executed proceedings, data on the number of selected court decisions, and amounts of debt in 2018-2020.

The research analyzes the indicators:

- Report of the State Executive Service on the results of work in the first half of 2019¹¹.
- Report of the State Executive Service on the results of work in the first half of 2018¹².
- Results of the work of the state executive service for the first half of 2020¹³.

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- 11 Ministry of Justice of Ukraine, *Report of the State Executive Service on the Results of Work in the First Half of 2019*. https://minjust.gov.ua/news/ministry/derjavna-vikonavcha-slujba-prezentovala-rezultati-roboti-upershomu-pivrichchi-2019-roku?fbclid=IwAR1mPy64AvNHQZoLb9_RG0km4EMrdbKvGL744wGG6jCRKvwsJYweKjJF9fY. [accessed: 13.08.2019].
 - 12 Ministry of Justice of Ukraine, *Report of the State Executive Service on the Results of Work in the First Half of 2018*. <https://minjust.gov.ua/news/ministry/derjavna-vikonavcha-slujba-vidzvituvala-pro-rezultati-roboti-u-i-pivrichchi-2018>. [accessed: 5.07.2018].
 - 13 Ministry of Justice of Ukraine, *Results of the Work of the State Executive Service for the First Half of 2020*. <https://kyivobljust.gov.ua/news/direction/rezultati-roboti-derjavnoi-vikonavchoi-slujbi-za-pershe-pivrichchya-2020-roku>. [accessed: 7.07.2020].

- Annual report and statistics of the European Court of Human Rights for 2019¹⁴.

The study of the issue was conducted in three stages:

- the first stage of the research is devoted to theoretical and methodological aspects of identifying shortcomings in the system of execution of court decisions that negatively affect the implementation of social guarantees of the state to protect the rights and freedoms of citizens, as well as the purpose and selected research methods.
- the second stage analyzes the statistics of the State Enforcement Service of Ukraine on the recovery of alimony, which shows that the decrease is due to problems primarily related to illegal employment, which complicates or even prevents the recovery of alimony. It has been established that the reduction in the amount of wage arrears from previous periods is due to the fact that the state is in an economic crisis, which entails specific consequences that require the state to impose tougher sanctions for late payment of wages to employees.

The issue of positive experience of developed foreign countries, which should be implemented in the national system of execution of court decisions, is studied. It was found that the effective implementation of effective mechanisms for the implementation of court decisions is currently a priority for the state, which, above all, should be comprehensive. The implementation of this task will strengthen the organizational and legal structure of the State Executive Service of Ukraine and provide guarantees for the protection of the rights and freedoms of both individuals and legal entities in the process of enforcement proceedings. Accordingly, the number of lawsuits to international courts, including the European Court of Human Rights, due to non-enforcement / prolonged enforcement of court decisions will be significantly reduced. In turn, the level of public confidence in state institutions will grow.

- at the third stage the results of the conducted research are summed up, conclusions are formed; the received results are generalized and systematized.

3. Results and Discussion

3.1. Analysis of the execution of decisions for 2018-2020

Having identified the problems of executing judgments, it is advisable to analyze the execution of decisions on an annual basis compared to

14 European Court of Human Rights, *Annual Report and Statistics of the European Court of Human Rights for 2019*. <https://hudoc.echr.coe.int/eng-press#%22fulltext%22:%22statistic%22>}. [accessed: 20.01.2020].

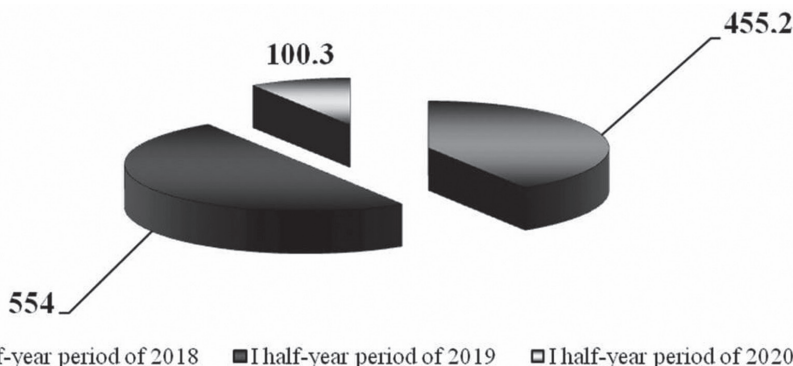
the same period. In particular, the bailiffs collected almost UAH 2 billion of alimony according to the results of the work in the first half of 2018 for the implementation of the government program „No Ukrainian Child Left Behind”. For comparison, UAH 2.4 billion was collected over the whole past year. 180,000 people have been entered in the Register of alimony debtors, 115,000 resolutions have been issued by state bailiffs restricting debtors’ right to travel abroad, drive a car, hunt, and use weapons, 1,200 people are already working in community, where the payment is transferred to satisfy debts to their own children. UAH 225.3 million repaid wage debts.

Due to that activity, 17.5 thousand employees received the money they earned. The agencies of the SBSU actually performed 425.2 thousand proceedings during the reporting period, which is 37.8% of those actually completed. Last year, this indicator was 30.6%. At the same time, UAH 6.3 billion was collected, including UAH 360.5 million of executive fee. UAH 290 million was collected by private bailiffs and 1004 documents were actually executed, which was 59.4% of the completed. In addition, if last year private bailiffs had about 3,000 documents, then since the beginning of this year they have received more than 10,000 documents, which indicates the increasing trust in private bailiffs¹⁵.

According to the results of the work of the bailiffs in the first half of 2019, they actually executed 544 thousand executive documents, which is 47.9%, amounting to UAH 7.8 billion. At the same time, a total of UAH 10.9 billion was collected. In general, the number of actually executed documents increased by 23.3% compared to the same period in 2018. Private bailiffs had 58,453 executive documents in the amount of UAH 33.1 billion in the reporting period; they executed 3,416 executive documents in the amount of UAH 1.1 billion. Due to the laws of „No Ukrainian Child Left Behind”, UAH 3.9 billion was collected in favor of children, which is UAH 1.4 billion, or 55.8% more than for the same period in 2018¹⁶. Thus, having analyzed and compared the above statistics of the SBSU, it is worth noting that the number of actually executed proceedings increased during 2018–2019 (Fig. 1). At the same time, the number of penalties also increased (Fig. 2).

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- 15 Ministry of Justice of Ukraine, *Report of the State Executive Service on the Results of Work in the First Half of 2018*. <https://minjust.gov.ua/news/ministry/derjavna-vikonavcha-služba-vidzvituvala-pro-rezultati-roboti-u-i-pivrichchi-2018>. [accessed: 5.07.2018].
- 16 Ministry of Justice of Ukraine, *Report of the State Executive Service on the Results of Work in the First Half of 2019*. https://minjust.gov.ua/news/ministry/derjavna-vikonavcha-služba-prezentuvala-rezultati-roboti-u-pershomu-pivrichchi-2019-roku?fbclid=IwAR1mPy64AvNHQZoLb9_RG0km4EMrdbKvGL744wGG6jCRKvwsJYweKjJF9fY. [accessed: 13.08.2019].

Figure 1. Number of actually executed proceedings by the agencies of the State Bailiffs' Service, MG

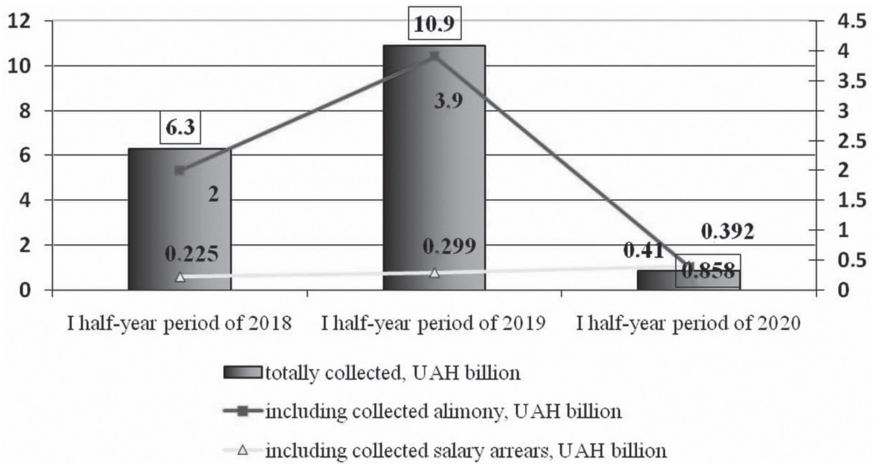


Source: compiled based on the reports of the SBSU¹⁷¹⁸¹⁹

However, the number of actually executed court enforcement proceedings decreased significantly in the first half of 2020, according to the results on the activities of the SBSU, and amounted to 100.3 thousand enforcement documents worth over UAH 858 million, in particular, the amount of collected alimony was over UAH 392 million²⁰ (Fig. 2). The decrease in the indicators in the reporting period is explained by the problems primarily related to illegal employment, which complicates or even makes it impossible to collect alimony.

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- 17 Ministry of Justice of Ukraine, *Report of the State Executive Service on the Results of Work in the First Half of 2018*. <https://minjust.gov.ua/news/ministry/derjavna-vikonavcha-sljuba-vidzvituvala-pro-rezultati-roboti-u-i-pivrichchi-2018>. [5.07.2018].
- 18 Ministry of Justice of Ukraine, *Report of the State Executive Service on the Results of Work in the First Half of 2019*. https://minjust.gov.ua/news/ministry/derjavna-vikonavcha-sljuba-prezentuvala-rezultati-roboti-u-pershomu-pivrichchi-2019-roku?fbclid=IwAR1mPy64AvNHQZoLb9_RG0km4EMrdbKvGL744wGG6jCRKvwsJYweKjJF9fY. [accessed: 13.08.2019].
- 19 Ministry of Justice of Ukraine, *Results of the Work of the State Executive Service for the First Half of 2020*. <https://kyivobljust.gov.ua/news/direction/rezultati-roboti-derjavnoi-vikonavchoi-sljubi-za-pershe-pivrichchya-2020-roku>. [7.07.2020].
- 20 Ministry of Justice of Ukraine, *Results of the work of the State Executive Service for the First Half of 2020*. <https://kyivobljust.gov.ua/news/direction/rezultati-roboti-derjavnoi-vikonavchoi-sljubi-za-pershe-pivrichchya-2020-roku>. [accessed: 7.07.2020].

Figure 2. Amounts of penalties based on the results of actually performed proceedings carried out by the agencies of the State Bailiffs' Service, UAH billion



Source: compiled based on the reports of the SBSU²¹²²²³

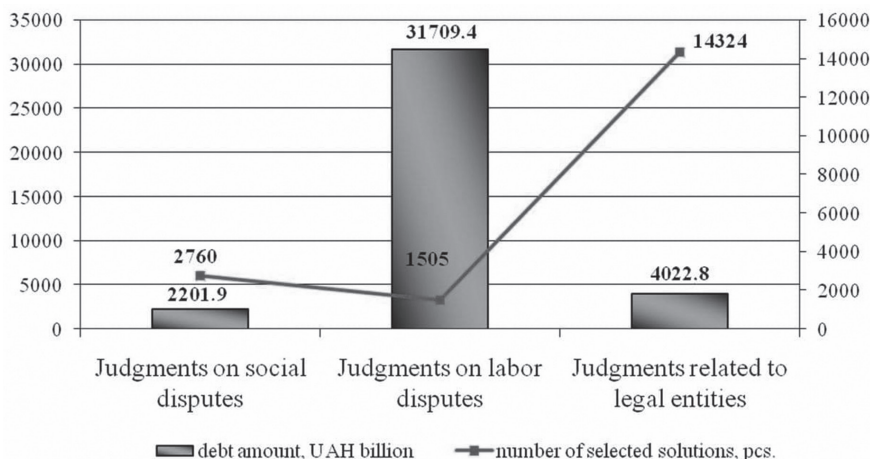
Besides, there has been a significant amount of salary arrears to employees for a long period, which was partially eliminated in 2018-2020. Thus, the debt was repaid for over UAH 225 million in the first half of 2018, according to the reporting data, and 17.5 thousand employees received earned funds; UAH 298.8 million in the first half of 2019 (the debt was fully repaid about more than 36 thousand employees); 41 million UAH of wages were repaid in the first half of 2020 (Fig. 2). The decrease in the amount of debt of salary arrears in the first half of 2020 compared to previous reporting periods is due to the fact that the state undergoes an economic crisis, which entails

- 21 Ministry of Justice of Ukraine, *Report of the State Executive Service on the Results of Work in the First Half of 2018*. <https://minjust.gov.ua/news/ministry/derjavna-vikonavcha-slujba-vidzvituvala-pro-rezultati-roboti-u-i-pivrichchi-2018>. [accessed: 5.07.2018].
- 22 Ministry of Justice of Ukraine, *Report of the State Executive Service on the Results of Work in the First Half of 2019*. https://minjust.gov.ua/news/ministry/derjavna-vikonavcha-slujba-prezentuvala-rezultati-roboti-u-pershomu-pivrichchi-2019-roku?fbclid=IwAR1mPy64AvNHQZoLb9_RG0km4EMrdbKvGL744wGG6jCRKvwsJYweKjJF9fY. [accessed: 13.08.2019].
- 23 Ministry of Justice of Ukraine, *Results of the Work of the State Executive Service for the First Half of 2020*. <https://kyivobljust.gov.ua/news/direction/rezultati-roboti-derjavnoi-vikonavchoi-slujbi-za-pershe-pivrichchya-2020-roku>. [accessed: 7.07.2020].

certain consequences. In particular, it is either the reduction of jobs, or the reduction in wage costs, or the bankruptcy of enterprises, etc. Surely, this cannot be an excuse for employers, since any work must be paid in time. Therefore, it is advisable to introduce more strict sanctions for late payment of wages to employees in this case.

In general, it can be concluded that the mentioned statistical data does not provide complete information on the execution of judgments. Moreover, indicated statistics cover only positive activities, with no information on non-execution of judgments. Thus, there were cases of non-execution of judgments and significant amounts of debt on them in 2019 in Ukraine (Fig. 3).

Figure 3. Data on the number of judgments selected for examination and the amount of debt according to them to be paid to the state budget in 2019



Source: compiled based on the reports of the SBSU²⁴²⁵²⁶

24 Ministry of Justice of Ukraine, *Report of the State Executive Service on the Results of Work in the First Half of 2018*. <https://minjust.gov.ua/news/ministry/derjavna-vikonavcha-slujba-vidzvituvala-pro-rezultati-roboti-u-i-pivrichchi-2018>. [accessed: 5.07.2018].

25 Ministry of Justice of Ukraine, *Report of the State Executive Service on the Results of Work in the First Half of 2019*. https://minjust.gov.ua/news/ministry/derjavna-vikonavcha-slujba-prezentovala-rezultati-roboti-u-pershomu-pivrichchi-2019-roku?fbclid=IwAR1mPy64AvNHQZoLb9_RG0km4EMrdbKvGL744wGG6jCRKvwsJYweKjJF9fY. [accessed: 13.08.2019].

26 Ministry of Justice of Ukraine, *Results of the Work of the State Executive Service for the First Half of 2020*. <https://kyivobljust.gov.ua/news/>

According to the research data of the Razumkov Center in the reporting year one can observe that there were 2,760 judgments in social disputes selected for examination, where 2,254 judgments were identified in the Unified State Register of Judgments. The amount of debt under this category of judgments was more than UAH 2,201,870. According to the results of the analysis of judgments in labor disputes as of the late 2019, the total amount of debt in this category was more than UAH 31,709. The number of unexecuted judgments was 1,505, where 1,465 judgments were registered in the Unified State Register of Judgments. At the same time, they analyzed data on the execution of judgments on legal entities, where the responsibility was on the state, or directly related to the state. It was revealed that the total amount of state debt in 2019 was more than 4,022,844 UAH according to the above category of cases²⁷.

Thus, we see that the amount of debt of unfulfilled court decisions remains quite large, and therefore the question arises: „What measures should be implemented to make the implementation of social guarantees of the state more effective and efficient in protecting the rights and freedoms of citizens?”

3.2. Further steps towards reforming the enforcement system

It should be noted that the Ministry of Justice of Ukraine and the State Bailiffs' Service of Ukraine, in particular, have taken many steps to eliminate the above-mentioned issues. One of such steps is the Strategy approved by the order of the Cabinet of Ministers of Ukraine, which provides appropriate measures that need to be implemented in accordance with such strategic areas as:

- elimination of regulatory barriers that impede the execution of judgments;
- strengthening the institutional capacity of the agencies and persons who carry out compulsory execution of judgments and decisions of other agencies;
- effective interaction of electronic court systems and electronic executive documents for search, collection, storage, accounting of information on the execution of judgments;
- proper financing of debt repayment costs according to judgments;

direction/rezultati-roboti-derjavnoi-vikonavchoi-službi-za-pershe-piv-richchya-2020-roku. [accessed: 7.07.2020].

27 Razumkov Center, *Round table „The Root Causes of Non-compliance with Decisions of National Courts in Ukraine and Ways to Solve this Problem”*. <https://razumkov.org.ua/novyny/kruglyi-stil-pershopyrychyn-nyvykonannia-rishen-natsionalnykh-sudiv-v-ukraini-i-shliakhy-vyrishennia-tsiiei-problemy>. [accessed: 12.09.2019].

- introduction of effective legal protection means in connection with non-execution and prolonged execution of judgments²⁸.
- If we talk about the achievements of the SBSU, then we have currently implemented:
 - access to the profession of private bailiff and created the system of monitoring and control over the activities of private bailiffs;
 - creation of a professional organization of „Association of Private Bailiffs of Ukraine” (APBU);
 - creation of an integrated information system within the executive process (ASEP);
 - Unified Register of Debtors;
 - ensuring access of the parties to the enforcement proceedings to the information of the ASEP and improving the electronic exchange of information about the debtor and his property between the bailiffs and state agencies;
 - mechanism of motivation of state bailiffs – receiving rewards²⁹.

In addition, the Working Plan of the Ministry of Justice of Ukraine for 2020, approved by the Order of the Ministry of Justice dated from May 21, 2020 No. 1738/5 amended from August 6, 2020 No. 2660/5 defines the tasks aimed at improving the activities of the SBSU, in particular:

- elaboration of a draft regulatory act on the automation of remuneration;
- analysis of existing registers and databases, access to which is necessary for bailiffs to organize the compulsory execution of judgments or their interaction needs to be improved;
- ensuring access of bailiffs to registers that contain information about the debtor, his property and funds (in case of technical feasibility of the agencies that are holders of these registers³⁰).

28 Cabinet of Ministers of Ukraine, *Order No. 1218-r „National Strategy for Solving the Problem of Non-execution of Court Decisions, the Debtors of which are a State Body or State Enterprise, Institution, Organization, for the Period up to 2022”*. <https://zakon.rada.gov.ua/laws/show/1218-2020-%D1%80#Text>. [accessed: 30.09.2020].

29 Andrew Avtorhov, *The Way of Reforming the System of Execution of Court Decisions is Passed*. https://jurliga.ligazakon.net/ua/analitics/189227_vikonannya-sudovikh-rshen-shlyakhi-reformuvannya-zakonodavstva-ta-nstitutsy. [accessed: 12.09.2019].

30 Ministry of Justice of Ukraine, *Work Plan of the Ministry of Justice of Ukraine for 2020*. <https://minjust.gov.ua/files/general/2020/08/17/20200817144226-53.pdf>. [accessed: 6.08.2020].

However, despite these positive steps to improve the activities of the SBSU, there are still issues that affect the non-execution of judgments, namely:

- state and private bailiffs have direct access only to the State Register of Real Estate Rights and the State Register of Encumbrances on Movable Property. Electronic exchange between the Pension Fund of Ukraine, the State Tax Service, the State Border Guard Service, the Ministry of Internal Affairs and bailiffs is limited to certain types of requests, when it is not always possible to obtain all information that can help to identify the debtor's accounts or property. And the informativeness of the registers leaves a great deal to be desired;
- there is no Register of Debtors' Accounts, who are individuals. Automated seizure of funds has not been introduced, there is not even an electronic document flow between bailiffs and banking institutions;
- the search for vehicles that have been seized by the bailiffs and that are wanted is not actually carried out by the police;
- responsibility for non-execution of a judgment and obstruction of its execution is declarative – it exists only on paper;
- there are 11 moratoriums that prohibit the execution of decisions against certain categories of debtors. Public authorities continue to comply with the judgment only after the initiation of court enforcement proceedings, or even refuse to comply with them at all;
- access to the profession of a private bailiff is complicated and non-transparent. Private bailiffs have created a professional organization with mandatory membership and contributions, but it has never become an organization that would protect their rights and interests. Formally, the participation of this organization and its approval in the adoption of by-laws regulating the activities of private bailiffs is enshrined at the level of law, but actually the regulator represented by the Ministry of Justice of Ukraine makes all decisions individually and independently;
- scandals related to remuneration of state bailiffs have not been forgotten, but „control and monitoring” over private bailiffs' activities has actually been reduced to pressure and massacres of independent members of the profession;
- efforts of the Ministry of Justice of Ukraine are spent on checking the compliance of state and private bailiffs with the archaic rules of record keeping. Besides, state bailiffs are clearly overburdened with excessive reporting and participation in mass educational PR events, to the detriment of the performance of basic duties;

- the disciplinary commission of private bailiffs at the Ministry of Justice has 30% of decisions revoked by courts, which is quite predictable, given its interference in the procedural activities of private bailiffs³¹.

3.3. Positive foreign experience in enforcing court decisions

Ukraine is among the leaders according to the number of complaints to the European Court of Human Rights (hereinafter – ECHR) – as of December 31, 2019, most of them were filed against the Russian Federation (25.2%), Turkey (15.5%), Ukraine (14, 8%), Romania (13.2%) and Italy (5.1%) (Ministry of Justice of Ukraine, 2020a). As of December 31, 2019, the ECHR is expected to consider 8,833 cases against Ukraine³². The Committee of Ministers of the Council of Europe (hereinafter – CM of the CE), which monitors the implementation of the ECHR judgments under Article 46 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – the Convention), stated at its last meeting on Ukraine that the judicial system reform was started in 2014, but serious systemic problems affecting the rule of law and access to justice have not disappeared. Indicative are the pilot decisions of the ECHR (decisions that are typical for a significant number of similar cases arising from the systemic problem of the functioning of justice) in the cases of „Burmych and Others v. Ukraine”³³, „Zhovner v. Ukraine”³⁴, „Yuriy Nikolayevich Ivanov v. Ukraine”³⁵. As of January 8, 2020, there are 90.7 thousand non-executed judgments of national

31 Andrew Avtorhov, *The Way of Reforming the System of Execution of Court Decisions is Passed*. https://jurliga.ligazakon.net/ua/analytys/189227_vikonannya-sudovikh-rshen-shlyakhi-reformuvannya-zakonodavstva-ta-nstitutsy. [accessed: 12.09.2019].

32 Igor Kolesnikov, *Non-execution of a Court Decision as a Means of Discrediting the Judicial System of Ukraine*. <https://unba.org.ua/news/5895-nevikonannya-posadovimi-osobami-rishen-sudiv-pidrivae-avtoritet-vsiei-sudovoi-sistemi--igor-kolesnikov.html>. [accessed: 25.09.2020].

33 ECHR, *Case of „Burmych and Others v. Ukraine”, Applications no. 46852/13*. <https://helsinki.org.ua/en/articles/case-burmych-and-others-v-ukraine-uhhru-provides-comments-on-the-enforcement-of-ecthr-judgment-to-members-of-the-committee-of-ministers-of-the-council-of-europe/>. [accessed: 8.06.2018].

34 ECHR, *Case of „Zhovner v. Ukraine”, Applications no. 56848/00*. https://zakon.rada.gov.ua/laws/show/980_221#Text. [accessed: 29.06.2004].

35 ECHR, *Case of „Yuriy Nikolayevich Ivanov v. Ukraine”, Applications no.40450/04*. <https://taxlink.ua/ua/print/court/3307/>. [accessed: 15.10.2009].

courts, including pilot ones³⁶. Undoubtedly this state of affairs determines the implementation of further reforms in this area.

It should be noted that „the functions of implementing the decision of the European Court of Human Rights are mainly entrusted to the Ministry of Justice of Ukraine: The Government Commissioner for the European Court of Human Rights and the State Bailiffs’ Service of Ukraine. The preparation of a significant number of internal procedural documents of enforcement proceedings complicates and delays the process of execution of the decision, which may lead to delays in the payment of compensation and payment of fines. The practice of the studied countries demonstrates that many state agencies of different branches of power are involved in the execution of the ECHR decision, these are The Constitutional Court, the Supreme Court, the Supreme Administrative Court, the Ombudsman Office, and the Prosecutor General’s Office. In contrast, state agencies of various branches of power in Ukraine take certain measures to execute the ECHR decision only within the submitted proposition, the appeal of the Cabinet of Ministers of Ukraine, or the Government Commissioner for the European Court of Human Rights³⁷.

Currently, there is a common belief that the successful, fair and effective execution of judgments both against individuals in commercial transactions and against state authorities or officials, is crucial for the development of the rules of Legal culture and independence of judges. There is also a growing volume of international jurisprudence that requires countries to enforce fair and effective execution of judgments and to uphold the independence of the judicial power in accordance with their international and regional human rights treaties and their own constitutions³⁸.

The EU integration determines such public administration reforms as development and implementation of deeper structural reforms; determination of effective forms of public administration organization; solving the problem of structural weakness and inefficiency of the public administration system; reforming the civil service system; improving interdepartmental coordination; strengthening territorial decentralization; increasing the role of local

36 Commissioner for the European Court of Human Rights, *Letter from the Commissioner for the European Court of Human Rights*. [http://hudoc.exec.coe.int/ENG?i=DH-DD\(2020\)54E](http://hudoc.exec.coe.int/ENG?i=DH-DD(2020)54E). [accessed: 21.01.2020].

37 Council of Europe, *Department for the Execution of Judgments of the ECtHR. No Information Related to Payment or Received Information Incomplete. Aucune information relative au paiement ou information reçue incomplète*. <http://www.coe.int/t/dghl/monitoring/execution/Source/Documents/PAY1.pdf>. [accessed: 15.06.2016].

38 International Foundation for Electoral Systems. <https://www.ifes.org/>. [accessed: 2.12.2021].

self-government agencies; increasing the openness and transparency of decision-making procedures for public participation in the management process³⁹. Since these steps to improve public administration is also related to the improvement of the SBSU, it is advisable to consider the positive international experience of developed countries for its implementation into national legislation.

Having analyzed the system of compulsory execution of decisions in France, we have defined the positive measures that can be implemented into the activities of the SBSU, in particular:

- introduction of such an effective means of forcing the debtor to comply with a judgment, as providing information about the debtor to the Credit Data Agency, whose responsibilities include collecting information about citizens as potential unreliable creditors, who are in publicly available rating; in our case, it could be implemented by the National Bank of Ukraine as a central executive agency that implements the policy in the monetary sphere of the state; introduction of a temporary ban on issuing licenses, permits to the debtor, as well as suspension of licenses and permits issued earlier, etc.⁴⁰;
- granting the collector, the right to choose coercive measures against the debtor's property, as well as to choose the bailiff; harmoniously combine procedural opportunities and restrictions in the activities of the bailiff, which minimizes corruption risks and cases of violation of the law⁴¹.

With regard to the introduction of the positive experience of Sweden, then it would be appropriate for the independence of agencies for compulsory execution of judgments, to create an executive agency that is not subordinated to the judicial power and is an independent executive agency. This model of functioning of the agency for compulsory execution of judgments has virtually no analogs in Europe⁴². The experience of Israel seems to be interesting for Ukraine, where the maximum execution of judgments is achieved by the introduction of such a stimulating measure of influence on the debtor as the

39 Viktor Pylypyshyn, „Influence of Integration Processes on National Systems of Public Administration” *Law Forum*, 3 (2011): 610.

40 Roman Myronyuk, „Foreign Experience of Enforcement of Decisions of Courts and other Bodies of Public Administration (on the Example of the French Republic) and the Possibility of its Implementation in Ukraine” *Scientific Bulletin of Dnipropetrovsk State University of Internal Affairs*, 2 (2019): 58.

41 Lyubov Krupnova, *System of Executive Proceedings in Ukraine: Theoretical-legal and Praxeological Aspects* (Kyiv: Dnipropetrovsk State University of Internal Affairs, 2018), 69.

42 Vitaliy Zaika, „Problems of Efficiency of Execution of Court Decisions in Ukraine” *Legal Scientific Electronic Journal*, 3 (2020): 102.

formalization of the possibility of the debtor's imprisonment for malicious non-compliance with the debt collector and the state⁴³.

Law enforcement in the Republic of Slovenia is uniformly regulated by the Law on Execution and Enforcement of Civil Claims (Zakon o izvršbi in zavarovanju). Enforcement means the compulsory execution of a judgment order to enforce a claim (provide, execute, terminate or allow). Recovery of a monetary claim is also allowed on the basis of this document. In exceptional cases, enforcement in family matters may include compliance with the requirements in regard to the relationship⁴⁴.

It is worth paying attention to the system of compulsory execution of judgments in Germany, in particular, the state executor himself can provide a deferral to the debtor for a long time. This opportunity stimulates the debtor to quickly repay the debt, saves money related to the procedure of property sale. In Scotland, the sheriff must bring charges against the other party before enforcing the decision to pay the money. The purpose of the charge is to give the other party one last chance to pay the sum of money determined by the court. In addition, payment is required: within two weeks, if the other party is in the United Kingdom; within four weeks after the other party is outside the United Kingdom; within four weeks, if the other party's address is unknown. If the sum of money is still not paid after the deadline, the sheriff enforces the decision⁴⁵.

Italy's experience also has its positive aspects in regard to the compulsory execution of judgments, which means that "judgments are executed by bailiffs, but the executive judge plays a significant role at the stage of execution, who has the right to decide disputes that arise during the execution or during the creation of obstacles to the execution, considers requests for postponement or installment of the execution and resolves a number of other issues. Promissory notes and securities are also executive documents, except judgments". In general, an applicant in EU countries may directly apply to the executive authorities of another EU country for compulsory execution of a judgment in another EU country. For example, if a person owns the money, the

43 Valeriy Prytuliak, *Prospects for the Use of Foreign Experience in the Application of Incentives During the Enforcement of Court decisions in civil cases*. <http://dspace.onua.edu.ua/bitstream/handle/11300/5833/Prituliak.pdf?sequence=1>. [accessed: 26.09.2015].

44 European Judicial Network, *Procedures for Enforcing a Judgment – Slovenia*. https://e-justice.europa.eu/content_procedures_for_enforcing_a_judgment-52-si-en.do?member=1. [accessed: 11.12.2020].

45 Scottish Courts and Tribunals. <https://www.scotcourts.gov.uk/>. [accessed: 2.12.2021].

judgment can be recognized and executed in the country, where the debtor has assets, without any intermediate procedure⁴⁶.

At the same time, it should be noted that during the period of its existence, the internal affairs bodies of Ukraine have turned into a corruption-bureaucratic system. One of the steps to overcome this negative phenomenon is the introduction of private performers. Thus, the experience of foreign countries, where court decisions are enforced by private executors, such as France, Italy, Belgium, Luxembourg, the Netherlands, the Czech Republic, Greece, Bulgaria, Hungary, Slovenia, Romania, has already been adopted by some post-Soviet countries. include Latvia, Lithuania, Estonia, where freelancers work, as well as Asian countries, where there is a mixed system of enforcement of court decisions (Georgia, Kazakhstan). Analysis of the work of private performers in these countries showed that they work much more efficiently and are not involved.

In our opinion, the introduction of positive experience of foreign countries in the full implementation of court decisions through the activities of private enforcement agents will lead to significant positive changes in the judicial system of Ukraine, including increasing the efficiency of proceedings by reducing the burden on the state enforcement agent. the relevant terms of such proceedings. Unfortunately, today state executors are often unable to enforce court decisions efficiently and quickly due to their excessive workload and inadequate financial and material support. In turn, the performance of the relevant functions by a private executor will increase the recovery rate due to his personal interest in the fastest and highest quality performance of their duties. In addition, it is becoming clear that the transfer of functions from state executors to private executors for the execution of court decisions, due to the reduction of the staff of civil servants will lead to budget savings. It is not advisable to forget about the corruption component developed in the state bodies of the executive system, which will certainly be reduced.

Thus, considering the positive experience of some developed countries with an effective system of compulsory execution of judgments, it should be concluded that all the above positive aspects are of interest for implementation in the national system. But before implementing them, it is necessary to consider the specific features inherent in our country.

4. Conclusion

Based on the above, we can conclude that in Ukraine there is a need to find law enforcement and legislative areas to ensure the implementation of court decisions as a social guarantee to protect the rights and freedoms

46 Website of the EU, *Mutual Recognition of Judgments*. https://ec.europa.eu/info/law/cross-border-cases/judicial-cooperation/types-judicial-cooperation/mutual-recognition-judgments_en. [accessed: 27.07.2019].

of citizens. This is evidenced by the reporting on the level of enforcement of court decisions in Ukraine in the period 2019-2020, which are in the range from 18% to 40% (for comparison – in the EU 60% -80%). It should be noted that in the state there is no proper provision of effective control by state bodies in the execution of court decisions, a transparent mechanism for their execution.

However, the court does not have effective means of monitoring the implementation of its decision. In general, today there are other shortcomings in the system of execution of court decisions in Ukraine, which significantly affect their quality and efficiency, negatively affect the implementation of social guarantees of the state to protect the rights and freedoms of citizens. corruption of public authorities; imperfection of measures and methods to ensure the implementation of decisions of courts and other public authorities; the impossibility of carrying out executive actions in settlements on the territory of which public authorities temporarily do not exercise their powers, as well as in territories located on the line of contact; underdeveloped relations with international judicial bodies in this area.

It is in administrative proceedings, based on its principles and tasks, that the enforcement of court decisions is important to ensure proper protection of the interests, rights and freedoms of citizens and legal entities. Proper and timely execution of a court decision by an offender depends to some extent on judicial review by administrative courts, which in turn contributes to the implementation of the constitutional principle of the enforcement of a court decision. The analysis of foreign experience has shown that for Ukraine the French model of activity of the system of execution of court decisions is an example for application. Private executors in this system have a monopoly position, without state intervention in the execution of court decisions. In turn, the judge who makes decisions monitors the implementation of court decisions and their work.

Thus, taking into account all the shortcomings in the ICE and the positive foreign experience of some developed countries, the enforcement system will receive a clear mechanism of judicial control over the legality of enforcement, which will not allow the bailiff to go beyond procedural limits, effective electronic document management in enforcement proceedings. an effective system of interaction between the judiciary and the executive, which are organizationally located in different systems of government, etc.

Thus, the implementation of effective mechanisms aimed at implementing social guarantees of the state to protect the rights and freedoms of citizens in the implementation of court decisions is currently a priority for the state in the near future, and, above all, should be comprehensive. The implementation of this task will strengthen the organizational and legal structure of the ICE and provide guarantees for the protection of the rights, freedoms, and interests of citizens and legal entities, which are protected by law during

enforcement proceedings. Accordingly, the number of lawsuits to international courts, including the European Court of Human Rights, for violation of their rights in the long-term execution or non-execution of court decisions will decrease and the level of public confidence in state institutions will increase.

5. Recommendations

Given the above, it is obvious that for the effective implementation of court decisions it is necessary to resolve many pressing issues, including the introduction of measures aimed at improving the efficiency of public administration and professionalism of government; improving measures and methods to ensure the implementation of decisions of courts and other public authorities; prevention of government corruption; creation of conditions for carrying out executive actions in settlements on the territory of which public authorities temporarily do not exercise their powers, as well as on territories located on the demarcation line; development of relations with international judicial bodies in this area. The materials of this article can be useful for scholars and practitioners dealing with the implementation of court decisions, for teachers of higher education institutions in the training of highly qualified personnel, as well as for other stakeholders.

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