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EXECUTIVE PROCESS: ESTABLISHMENT AND PROSPECTS OF DEVELOPMENT

Shcherbak S. V.

INTRODUCTION

During the thirty years of Ukraine's independence, the perception of executive proceedings (compared to its Soviet vision) has undergone significant changes. With the passage of time, it should be noted that the term "executive proceedings" used by the domestic legislator in the title of the relevant law adopted in 1999[1] has lost its original legal and legal meaning and turned out to be outdated, given the incorrectness and inconsistency of the theory of procedural law, as well as the application as a result the so-called terminological inertia. The modern understanding of this term is quite far from its interpretation, which developed mainly within the framework of the socialist doctrine of the period of codification of civil procedural legislation in the 60s of the last century, which gives grounds for replacing the scientific category "executive proceedings" with a more relevant one – "executive process". In the system of legal sciences, the executive process should be considered as an independent procedural branch of legal science, in turn, in the legal system, the executive process as a community of law increasingly acquires the characteristics of a corresponding autonomous branch of law. The emergence of the science of the executive process took place in the context of rethinking approaches to the legal system, liberation from the statist understanding of law, and the implementation of universal and European legal values into the national legal system. Globalization and integration processes taking place in modern legal life also encourage to overcome purely national approaches during its study.

Scientific interpretations of the modern executive process are multidisciplinary, and the textbooks and manuals devoted to this issue differ in terms of titles, conceptual apparatus, as well as conclusions and proposals. So, S. Y. Fursa and S. V. Shcherbak in one of the first books "Executive Proceedings in Ukraine" in 2002 initiated a scientific approach to solving the problems of enforcement of decision[2], which over time was transformed immanently by the challenges of time and the development of executive

[1] Про виконавче провадження : Закон України № 606-XIV від 21.04.1999 року https://zakon.rada.gov.ua/laws/show/606-14#Text

[2] Фурса С. В., Щербак С. В. Виконавче провадження в Україні : навчальний посібник. Київ : Атіка, 2002. 480 с.

procedural legal relations, but until recently, a generally recognized doctrine about the executive process had not yet been created. The last significant reform of the sphere of execution of court decisions and decisions of other bodies laid the multifaceted changes of an institutional and procedural (normative) nature expected by society, but did not touch the fundamental provisions that should determine the nature of legal relations that are formed during the implementation of executive proceedings and their further development.

In the philosophy of science, the statement of the British physicist, winner of the Nobel Prize in Chemistry, Ernest Rutherford, regarding the stages of knowing the truth is considered almost classic: the first is "it's absurd", the second – "there is something in it", the third – "it's common knowledge". New ideas are usually received quite skeptically by the scientific community and are often denied. Only over time are they implemented and distributed.

The lack of unified theoretical approaches to the understanding of executive proceedings is caused, first of all, by legal regulation, the current state of which does not meet the requirements of today and is logically contradictory. Thus, in accordance with the legislation, on the one hand, executive proceedings are carried out by the bodies of the state executive service and private executors, the first of which are structurally included in the system of executive authorities, and state executors are civil servants, while private executors are persons engaged in independent professional activity , on the other hand, at the same time is the final stage of court proceedings.

The implementation of the principle of the rule of law in the executive process is not limited to the establishment of executive procedures and clear rules for the implementation of the executive process in normative acts, but also consists in the quality of executive procedural legislation as a whole and the reflection in it of modern trends in the development of social life, since the current legislation should not be separated from life.

Retention among the provisions of Article 1 of the Law of Ukraine "On Executive Proceedings" of the methodologically incorrect provision of the previous Law regarding the definition of executive proceedings "as the final stage of court proceedings" leads to the fact that an outside observer – a person familiar with its norms – gets the wrong impression about the legislator's understanding of executive proceedings as a component of judicial proceedings.

The Draft Law "On Enforced Execution of Decisions" No. 5660[3], when defining the term "enforcement proceedings" proposed in Article 1, corrects

[3] Проєкт Закону України № 5660. «Про примусове виконання рішень». URL: https://itd.rada.gov.ua/billInfo/Bills/Card/27003

this deficiency, defining the enforcement proceedings as "a set of actions of the entities defined in this Law, which carry out the enforcement of decisions, which are aimed at the enforcement of decisions and are carried out on the grounds, within the limits of authority and in the manner determined by the Constitution of Ukraine, this Law, other laws and regulatory acts adopted in accordance with this Law, as well as decisions that are subject to enforcement in accordance with this Law performance".

At the same time, within the framework of the theory of executive process, the term "executive proceeding" cannot be avoided, which should be understood as a proceeding (case) for the execution of a specific executive act, for example, an executive proceeding for the recovery of alimony, which is held by a state or private executor, opened under by his decision.

If we consider executive proceedings as the final stage of court proceedings, as the law states, then the organization of the system of enforcement of decisions in Ukraine should be an integral part of justice, which should lead to a logical conclusion about the need for structural subordination of bodies of enforcement of decisions to the judiciary. A conceptual issue is the uncertainty of the organizational subordination of decision enforcement agencies, which in the global measure leads to constant organizational fluctuations depending on the subjective views of the representatives of the authorities responsible for the formation and implementation of legal policy in the field of execution of court decisions and decisions of other bodies [4]. The change of the execution model from state-legal to mixed with the introduction of private executors, who organizationally do not belong to state structures at all, raises even more questions in this regard and determines new ways of solving them.

We note that the failure of this approach to the organization (structure) of the execution of decisions, the belonging of the state executive service to the executive power directs researchers of the enforcement of court decisions and decisions of other bodies to the field of administrative law. Thus, in 2016–2018, 3 dissertations for obtaining the scientific degree of Doctor of Legal Sciences were defended in Ukraine on the analyzed issue[5]. At the same time, all dissertation students reached a position on the administrative-legal nature

[4] Соломко О.В Напрямки розвитку системи примусового виконання рішень в Україні: концептуальні перспективи. Реформа виконавчого провадження: сьогодення та перспективи: матеріали міжнародної науково-практичної конференції (Київ, 30 березня 2018 року). Київ : Видавець «Юстон», 2018. С. 166-171.

[5] Чумак О. О. Адміністративно-правові засади діяльності державної виконавчої служби в Україні в умовах реформування органів виконавчої влади. 2016; Макушев П. В. Державна виконавча служба в Україні: адміністративно-правове дослідження. 2017; Крупнова Л. В. Система виконавчого провадження в Україні: теоретико-правові та праксеологічні аспекти. 2018.

of legal relations that arise during the forced execution of court decisions and decisions of other bodies, taking as a basis the legal relations from the organization of the activities of the state executive service, which are derived from the legal relations that arise during the procedural activities of the state or private performer.

And here it is difficult to disagree with the opinion of S. Y. Fursy and E. I. Fursy[6] that a certain state function also determines the name of the industry, since the function of a certain body is primary in relation to its organization and will determine the most optimal structure for the purpose of the best implementation of its functions by this body.

The prospects of expanding the powers of private executors, increasing their number and popularizing a new profession in society give hope of achieving the goal of introducing a non-state form of execution in the executive process, which also consisted in optimizing (reducing the number of) state executors, which will not require an extensive system of enforcement bodies.

Moreover, at this stage of increasing gravitation of modern organizational foundations of the executive process to the private model of execution and discussion of the prospect of a full transition to a non-state form of execution, the problem of the existence of managerial legal relations of the state executive service in the executive process will potentially disappear.

After the full-scale invasion of the Russian Federation into Ukraine on February 24, 2022, it became obvious that the bodies and persons who carry out the enforcement of court decisions and decisions of other bodies are not "bodies and institutions of the justice system" and this was explicitly stated by the Ministry of Justice of Ukraine when deciding the issue regarding the connection of private executors to the Automated System of Executive Proceedings. It is the field of enforcement of decisions of courts and other bodies under martial law that has suffered the most restrictions from the regulator, both procedurally and purely technically, through amendments to special legislation[7].

As emphasized by M. V. Zvik[8], "in legal literature, especially in branch sciences, there continues to be a positivist approach to law, which is characterized by reduction of law to law, lack of analysis of the deep content of law." But, as the author rightly noted, the basis of legal regulation is not the

[6] Фурса С. Я., Фурса Є. І. Теорія виконавчого процесу та її понятійний апарат. *Вісник Ужгородського Національного університету. Серія Право.* 2021. Вип. 4. С. 346–351.

[7] Бондар І., Малярчук Л. Хроніка примусового виконання рішень в період воєнного стану: актуальні пиатння та шляхи їхнього вирішення. *Вісник Київського Національного університету імені Тараса Шевченка*. 2022. № 2 (121). С. 10–15.

[8] Цвік М. В. Про сучасне праворозуміння. *Вісник Академії правових наук України.* 2001. № 4 (27). С. 3–13.

will of the state embodied in legislation, but the nature of social relations, which are objectively formed on the basis of the interaction of individual subjects and their associations and are supported and protected by the state.

Since the science of the executive process clearly precedes the current legislation, as well as the formation of the executive process as a branch of law, it is the rule of law that should follow theoretical ideas and views, and not vice versa – building a theory around a legal rule.

The lack of systematicity in the norms of the Law of Ukraine "On Executive Proceedings" and the presence of gaps that cannot be eliminated by law enforcement, cause the need for a scientific approach to the structuring of legislative norms, etc.

1. Science of the executive process: concept, prerequisites for its occurrence, subject

The recognition of the executive process as a branch of legal science is a natural reaction of scientists to the accumulation of a huge amount of information in the field of enforcement of court decisions and decisions of other bodies, that significant array of normative and legal acts that appeared during the long-term reform of the executive process, judicial practice and the practice of executors etc.

The science of the executive process is a system of ideas, concepts, theories, fundamental doctrinal principles on which it is based, about the executive process as a social phenomenon, its historical development and operation in modern conditions. which are based on the legislation of Ukraine, the experience of foreign countries regarding the enforcement of decisions of jurisdictional bodies from the point of view of the patterns of their occurrence, content, functioning, interaction, development and areas of improvement.

The concepts of "object" and "subject" of the science of the executive process should not be equated, because the object of science is the subject of scientific study, that is, the executive process as a phenomenon, the knowledge of which is necessary for substantiating and arguing the truth of conclusions, provisions, categories, concepts, laws executive process sciences.

Regarding the cognitive capabilities of the science of the executive process, the empirical and theoretical levels of science are subject to delineation. If we are talking about the empirical level of the science of the executive process, then a certain part of the knowledge that makes up the subject of the executive process is the practical experience of law enforcement activities of state and private executives, which is the first approach to actual scientific knowledge, requires awareness and is a practical basis for scientific research . It covers phenomena in all their diversity and contradictions, but

does not reflect these phenomena in the concepts and categories of science. The next level of knowledge about the executive process is systematized and generalized in the form of scientific research concepts about executive procedural norms, executive procedural legal relations and institutions of the executive process, order and conditions of execution of executive actions (theoretical level of the science of the executive process).

The structure of the executive process as a field of legal science is determined by the object of science, based on which the following components of the science of the executive process are subject to designation: the theory of the executive process and the organization of the execution of court decisions and decisions of other bodies (officials). The integration of the process of enforcement of decisions and the bodies and persons implementing it is the most relevant at this stage of the development of the executive process in order to overcome the significant gap between them. The change of the existing state model of the execution of court decisions and decisions of other bodies from the state model to a mixed or combined model of the execution of decisions and the introduction of a private (non-state) form of execution at the same time indicates the new needs of society and, accordingly, allows us to conclude that these legal relations are inextricably linked , which in the course of execution of executive actions and implementation of executive proceedings are so closely intertwined and interact that they become integral parts of one whole.

The theory of the executive process is the most important part of the science of the executive process and represents a system of objective knowledge that most fully and consistently (without logical contradictions) reflects the subject and system of the science of the executive process, its methodology, sources, functions, and the conceptual apparatus of science. The definition of regularities as a subject of the science of the executive process allows us to assert that concepts (categories, definitions) are subject to knowledge and justification also within the framework of the theory of the executive process.

In addition, the object of the science of executive process is also the international executive process, because scientific knowledge on the enforcement of decisions complicated by a foreign element, the study of foreign experience in this area, as well as the appropriate reflection of issues of enforcement in international treaties concluded by Ukraine, have of great importance for the executive process of Ukraine.

It is no secret that the vocation of the field of enforcement of decisions is increasingly oriented by domestic scientists both to the needs of practice and to the need for theoretical and legal provision of high-quality law enforcement.

The process of execution of court decisions and decisions of other bodies has recently acquired a new meaning, and the problems of executive proceedings are so topical in society that they have become known to every average citizen. Therefore, there is an urgent need to summarize the accumulated information on the executive process at the legislative and scientific level, to provide a new vision of the essence of the executive process in order to improve the current relevant legislation and ensure the rights and interests of the subjects of the executive process.

The formation and development of any science is preceded by its emergence, and therefore the prerequisites for the emergence of the science of the executive process are subject to research.

After the collapse of the USSR, Ukraine inherited a Soviet-style court decision enforcement system, when bailiffs continued to work at courts of general jurisdiction and were attached to the judge who made the court decision.

Taking into account the fact that the reorganization of the judicial power took place within the framework of the first judicial reform of 1992, the constitutional understanding of law at that time also defined a new main goal of justice – the adoption of judicial decisions, transferring the jurisdictional function of their implementation to the bodies of the state executive service.

Let's also pay attention to the fact that subsequent judicial and constitutional reforms were distinguished by their consistency on this issue, agreeing with the originally established constitutional principles do not represent the enforcement of a decision with justice. adopting legislation regarding the status of judges, the judiciary exclusively in the framework of justice and the judiciary and not mentioning the enforcement of court decisions and decisions of other bodies and public or private executors. And although currently the corresponding approach has been criticized and the term "unfinished justice"[9] should not be forgotten about the various state functions of the court and the bodies and persons who carry out the enforcement of court decisions and decisions of other bodies, as well as the significant array of non-judicial executive documents that are subject to execution in the general manner determined by the relevant legislation.

With the adoption of the relevant legislation in 1998–1999, when the Law of Ukraine "On Executive Proceedings" became the basic normative act of the executive process, and the state executive as its mandatory subject was no

[9] Селіванов А.О. «Незавершене правосуддя» в контексті виконання судових рішень як один із важливих напрямків судової реформи. *Актуальні проблеми виконавчого процесу України: теорія і практика* : IV Міжнародна науково-практична конференція. 6 грудня 2019 року. м. Київ. / за заг. ред. д.ю.н., проф. Фурси С. Я. Збірник наукових статей. Київ : Видавець Позднишев, 2019. С. 7-8.

longer subject to the court and was assigned to the bodies of the executive rather than the judicial branch authorities, an impetus was given to a new scientific direction of knowledge, which was affected by the transgression of the totality of knowledge regarding the execution of court decisions and decisions of other bodies into an independent branch of procedural science, when the science of executive process began to separate from the science of civil procedural law, with which it is genetically connected.

This led to the rapid development of scientific research aimed at studying the executive process, bodies implementing court decisions and decisions of other bodies, etc. In particular, in the 2000s, the majority of protected candidate theses on the issues of executive proceedings and legal regulation of the activities of the state executive service, the appearance of the first educational and scientific works devoted to executive proceedings (teaching manuals and scientific and practical commentaries on the Laws of Ukraine "On Executive Proceedings" and "On the State Executive Service").

The presence of one's own subject, i.e. not the phenomena and processes of the objective world per se, which are investigated and studied by one or another system of knowledge, but the results of theoretical reasoning that allow to distinguish those regular connections and relations of the object being studied, is one of the necessary conditions for its assignment to the class of independent sciences. Among the existing scientific views on the subject of science, we believe that the term "regularity" is the most appropriate for delineating the subject field of the science of the executive process, which gives grounds to understand the subject of the science of the executive process as regularity as an objective, logically justified repetition of interconnected facts in the process of execution of court decisions and decisions of other bodies.

It is the specificity of the subject, i.e. the regularities that exist in the execution of court decisions and decisions of other bodies, which is studied (researched) by this or that science, along with the methodological toolkit, that characterizes science. This is reflected in the fact that science cannot have a double, dualistic subject – two laws at once – (those that exist when decisions are made by the court and those that exist when the decision is enforced by the executor), as the doctrine of civil procedure continues to position, i.e. it is about two different sciences with two different subjects. The subject of the science of executive process should not be equated with the subject of the science of civil procedure, because any science can have only one subject. And the civil process, as well as legal sciences in general, is no exception. The dualism of subjects denies the unity of science and, as a result, raises doubts

about the inclusion of a certain set of knowledge (even reliable ones) in the class of a separate science[10].

The presence of a separate subject of scientific knowledge becomes an objective basis for the formation of one or another branch of legal science, but only as a possibility. In order for the totality of knowledge regarding the relevant field of legal practice or legal science to be able to claim the status of a field of science and be subsequently recognized as such, it must meet three additional criteria – the need to know the regularities of a separate field of legal activity, the presence of specialists capable of analyzing this field at the appropriate scientific level and the creation of a logically coherent theory of the executive process. The field of legal science is formed only when there are constant scientific and practical needs to learn the regularities of a separate field of legal activity.

The actualization of the practical component of the executive process consisted in low rates of execution of decisions (up to 5 %), caused by such factors as an extremely large number of unexecuted decisions of courts and other bodies, violation of the terms of executive proceedings, excessive workload of executors (up to 4,000 proceedings per year), low salaries fees; lack of employee motivation to conscientiously perform their duties; ineffective organizational structure, lack of effective control mechanisms, distrust of citizens, etc.

Due to the peculiarities of its status, a private executor is a subject of independent professional activity, that is, a person of a free profession, and in fact provides services for the enforcement of decisions, therefore these issues require appropriate regulation and scientific analysis, etc. For example, can a private executor act as a factor and buy the right of claim against the debtor from the client in accordance with the provisions of Article 1077 of the Civil Code of Ukraine, because this issue will arise in the future. For example, in the USA, law firms buy out the right of claim and bring the process to real execution.

In the conditions of martial law, the issue of granting a private executor additional powers that are not related to the enforcement of court decisions and decisions of other bodies arose – this is a certificate of facts, in particular, the recording of damages caused by the aggressor state, which has not yet been implemented at the legislative level , however, has broad prospects in the post-war period as well.

The next prerequisite for the emergence of the science of the executive process is the presence of specialists capable of analyzing a separate area of

[10] Конституційне право : підручник. За загальною редакцією М. І. Козюбри / Ю. Г. Барабаш, О. М. Бориславська, В.М. Венгер, М. І. Козюбра, А. А. Мелешевич Київ : Ваіте, 2021. С. 40.

legal activity at an appropriate scientific level and ensuring the formation of a coherent, logically consistent system of knowledge.

Doctor of legal sciences, professor of Kyiv National University named after Taras Shevchenko and Fursa Svitlana Yaroslavivna, under whose scientific guidance a number of candidate and doctoral dissertations on the problems of the executive process[11] were defended and a scientific school was created. Since 2011, at Taras Shevchenko Kyiv National University. the country's only department of notarial and executive process and advocacy functions.

A system of knowledge can be recognized by the scientific community as an independent branch of legal science only after the specifics of its subject have been substantiated, some or another part of the laws that make up this subject, the structure of the field, and its core is created at the level of a logically coherent, complete and substantiated theory.

Moving on to a more thorough coverage of the subject of the science of the executive process, special attention should be paid to the fact that legal laws in any science occupy a special place and are considered at the level of a scientific category according to their content.

The category of legal regularities constitutes the deepest and, at the same time, underdeveloped theoretical layer of legal science, which is explained by the complex fundamental nature of the problem itself, its philosophically determined content, as well as the epistemological underdevelopment of the categorical apparatus[12].

In legal science of the Soviet and modern periods, legal theorists S. S. Alekseev, V. K. Babaev, M. Y. Baytin, B. D. Bondarenko, Yu. Yu. Vetyutnev, M. M. Voplenko, S. M. Ovchinnikov, P. M. Rabinovych, V. M. Raw/ The problem of regularities turned out to be undeservedly "forgotten" in our time, in turn, not remaining unchanged, the regularities

[11] Щербак С. В. Адміністративно-правове регулювання виконавчого провадження в Україні. 2002; Євтушенко О. І. Особливості визнання та виконання рішень іноземних судів. 2005; Ляшенко Р. О. Приведення судових рішень у цивільних справах до примусового виконання. 2013;, Вінцславська М. В. Суб'єкти виконавчого процесу. 2014; Дерій О. О. Аліментні зобов'язанні у цивілістичному процесі», Сергієнко Н. А. Взаємодія судів з органами державної виконавчої служби при виконанні судових рішень у цивільних справах в Україні. 2015; Зеленкова І. І. Процедура звернення стягнення на майно боржника у виконавчому процесі. 2017; Кармаза О. О. Концепції охорони та захисту житлових прав в цивілістичному процесі. 2014; Кучер Т. М. Теорія доведення в цивілістичному процесі. 2017; Мальський М. М. Теоретичні основи міжнародного виконавчого процесу. 2020; Бондар І. В. Теоретичні основи особистих немайнових правовідносин. 2020 р.

[12] Вопленко Н. Н. О понятии государственно-правовых закономерностей. *Государственно-правовые закономерности: теория, практика, техника* : сборник статей по материалам Международной научно-практической конференции (г. Н. Новгород, 23–24 мая 2013 года): в 2 т. / под общ. ред. В. А. Толстика. Н. Новгород : Нижегородская академия МВД России, 2013. Т. 1. С. 229–239.

have a dynamic character, they progress with the development of society and general theoretical jurisprudence, reflecting the disappearance from the plane of their research of the political and ideological coloring of the Soviet past with the dominant state, the modernization of actions law taking into account European and international standards, orientation of legal doctrine towards the formation of the science of the general theory of law. Each science, including the executive process, is characterized by the construction of its own, so to speak, "internal" regularities.

Clarifying the regularities of the science of the executive process is connected not only with issues of a formal and legal nature, but also with the need to learn more abstract provisions – regarding the ratio of possible and valid, real and proper, subjective and objective, natural and accidental.

Legal regularity is a category that has sufficient grounds to occupy one of the leading places in legal science. At the same time, the cognitive possibilities of legal regularities, the difficulties in studying which have arisen since Soviet times, remain undiscovered until now, and recently even come under critical review. Thus, in the context of characterizing the postmodern (postclassical) model of science, one of its most essential features is M. I. Kozyubra[13] defines "the tendency of a number of representatives of postmodern ideas about science to replace the concept of truth with concepts such as reliability, usefulness, etc., and as a result – to deny or doubt the ability of science to reveal and formulate certain regularities", and among the methodological innovations of post-classical science – "broad use of ideas and methods of synergy, in particular bringing to the fore its concepts such as uncertainty, randomness, nonlinearity, contradiction, bifurcation, fluctuation, etc., which reflect the complexity of modern unstable natural and social systems that are self-developing." Such a skeptical attitude towards legal regularities demonstrates the existing non-compliance of the scientific development of the field of legal regularities with the real role played by regularities in jurisprudence.

So, what is considered legal regularity in modern legal science and what is their manifestation and significance in the executive process? An even more difficult question is the following: how the presence of legal regularities as a classical theoretical category and the executive process as an applied science, the empirical base of which significantly exceeds the achievements of science, are reconciled.

The regularities of the executive process are objectively determined, constant, necessary, cause-and-effect relationships that ensure knowledge of

[13] Козюбра М. І. Правознавство, наука, методологія: еволюція підходів до їхніх взаємозв'язків. Наукові записки НаУКМА. *Юридичні науки*. 2018. Т. 1. С. 3–8.

the process execution of court decisions and decisions of other bodies as a legal phenomenon, and also reflect its deep, essential properties[14].

Among the regularities of the executive process, the regularities of emergence (genetic) that determine the birth and appearance of a certain legal phenomenon should be singled out (for example, the regularities of the formation of the executive process); regularities of development, which determine the process of qualitative change of the object, its transition to another state (regularities of changes in the enforcement model); regularities of functioning, relating to the state and behavior of the phenomenon in such a way that it has developed, in a relatively stable form (regularities of the application of measures of influence on the debtor).

The realities of today are the following logical connection spread in social networks – "state executors are sued by debt collectors, and private debtors are sued", because in the first case, the debt collector is dissatisfied with the non-performance of enforcement actions or the delay of enforcement proceedings, and in the second, on the contrary, the debtor does not agree with an executed decision, contesting the actions of a private executor.

Laws are dynamic, they change under the influence of the development of society and modern technologies, and new laws may emerge, because even a few years ago, no one could have imagined that a private executor would be able to search for a debtor's property by using a drone, as well as video recording a residential building and a plot of land of the debtor, to which there is no access, that it is possible to foreclose on the funds that are in the bank box, or to foreclose on unharvested crops, etc.

According to the apt expression of private executor Dmytro Hnenny[15], the modern archetype of enforcement proceedings is associated "with a drone and a tow truck", and manifestations of overcoming legal nihilism in the enforcement process are ideologies that "live" in Ukrainian society, as if "debts drag to the bottom" or " the domestic executive proceedings are terrible not because of the penalty, but because of the proceedings".

At the current stage of the development of the science of the executive process (taking into account the lack of special research, the underdevelopment of the conceptual and categorical apparatus, as well as the provisions of the general theory of scientific knowledge), it can be concluded that the subject of the science of the executive process is the regularities that exist in the execution of court decisions and decisions of other bodies.

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[14] Щербак С. В. Закономірності як предмет науки виконавчого процесу. *Вісник Київського Національного університету імені Тараса Шевченка. Юридичні науки.* 2021. № 119. С. 116–122.

[15] Гненний Д. Чисельність виконавців має регулюватися ринком, а не підганятися під штучні цифри. *Femida.ua*. 2021. №. 3. С. 12–16. URL: https://femida.ua/wp-content/uploads/2021/05/Jurnal_Femida_3_2021_Small_all.pdf (access date 07/25/2021.

Such a general definition provides for the specification of the specified subject by indicating that the subject of the science of the executive process includes legal connections and relationships relating to:

1) creation, implementation and improvement of legislation regulating the process of execution of court decisions and decisions of other bodies;

2) practices of application of executive procedural norms (including rules of law enforcement in typical situations, overcoming gaps);

3) use of historical experience in the execution of court decisions and decisions of other bodies;

4) use of foreign experience in enforcement of decisions of jurisdictional bodies;

5) taking into account the provisions of international legal acts regarding enforcement (feasibility of harmonization and implementation, which will require changes to national legislation);

6) methodological problems of the science of executive process.

The subject of the science of the executive process still needs to be clarified and specified and cannot claim to be comprehensive, because it covers laws that relate to a wide range of phenomena and processes.

The study of the factors affecting its evolution, trends and patterns of development, i.e. science's knowledge of the executive process of "itself" is one of the important conditions for its progressive development.

2. Executive process as a branch of law: place in the national legal system

The modern legal system has a complex structure: it is polystructural and multi-level. Polystructurality[16] means that the legal system cannot be studied from only one point of view; legal norms form several autonomous structures. For the domestic legal system, as well as for many other systems (especially continental Europe), the division into public and private, substantive and procedural, regulatory and protective law, as well as into different branches of law, is important. Multilevel means that some structures have several levels. This is most clearly visible in the sectoral structure of law.

As a catalyst during the formation of the field of law, political or social transformations that take place in a specific state, heterogeneous in nature, can act. As for the factors that are decisive for the implementation of processes of transformation of the legal system, they include the traditions of normative regulation of social relations in a specific state, the level of legal culture that has developed within a certain social formation, as well as globalization processes.

[16] Загальна теорія права: Підручник. за заг. ред. М. І. Козюбри. Київ : Ваіте, 2015. С. 143.

In the domestic procedural doctrine, arguments have already been heard in favor of the formation of such a new field of national law as the executive process of Ukraine [17], the theoretical foundations of executive procedural legal relations[18] as a subject of legal regulation of the executive process have been develope, method of legal regulation, principles of the executive process[19] and inter-branch connections of the executive process with other branches of law[20].

The separation of the executive process as an autonomous branch of national law is caused primarily by the growing importance of executive proceedings for the functioning of a modern state governed by the rule of law and a conscious civil society, the complication of legal regulation and the structured system of sources of the executive process, a significant expansion of the scope of executive procedural legal relations and their subjects, the normative outline of the principles of executive process

Thus, the systematic non-implementation of decisions of courts and other bodies over the past decades has turned into a significant socio-economic problem for the country.

According to the official statistics of the Ministry of Justice, for example, for 2020, the amount of debt collected during this period amounted to only UAH 20.7 billion. At the same time, debt in the total amount of 770 billion hryvnias remained uncollected. The total amount of debt unpaid by court decisions is more than one fourth of Ukraine's annual GDP. It also shows that the actual level of implementation in Ukraine is 2.6 %. Most of the total amount of debt unpaid by court decisions in the amount of UAH 796.8 billion is the debt of the public sector, including state-owned enterprises[21].

However, according to H. P. Kurdyuk[22], the evolution of the features of the field of law is determined not only by the objective processes of changing

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[17] Щербак С. В. Исполнительный процесс как отрасль права. *Цивилистическая процессуальная мысль* : Международный сборник научных статей / под редакцией Фурсы С. Я. Киев, 2014. Вып. 3. Исполнительный процесс. С. 71–78; Мальський М. М. Міжнародний виконавчий процес: теорія і практика : монографія. Дрогобич, 2019. 470 с.

[18] Фурса С. Я. Формування теоретичних основ виконавчих процесуальних правовідносин: сутність, система, ознаки та класифікація. *Вісник Київського Національного університету імені Тараса Шевченка. Юридичні науки.* 2013. Вип. 95. С. 12–16; Фурса С. Я., Щербак С. В. Виконавче провадження в Україні : навчальний посібник. Київ : Атіка, 2002. 480 с.

[19] Щербак С. В. Принципи виконавчого процесу України сучасний стан, генеза та перспективи розвитку. *Eurasian Academic Rese*. 2017. №. 12. С. 110–116.

[20] Сергієнко Н. А. Міжгалузеві зв'язки виконавчого та цивільного права України. *Вісник НТУУ "КПІ. Політологія. Соціоргія. Право».* 2021. №. 1 (49). С. 55–59.

[21] Пояснювальна записка до Проєкту Закону України «Про примусове виконання рішень» № 5660. URL: https://itd.rada.gov.ua/billInfo/Bills/Card/27003.

[22] Курдюк Г. П. Отрасль права как элемент системы права (теоретикоправовое исследование) : автореф. дисс. … канд. юрид. наук / Г. П. Курдюк. Краснодар, 2004. 18 с.

the very content of social relations. The field of law as part of a whole (system) is characterized by a certain social orientation, and one that has a more specific and deeper meaning and expression. From these positions, the author notes, the field of law is distinguished by its internal potential, its creative beginning, its internal energy, which testify to the state of the existing legal reality.

New vectors of scientific research aimed at establishing the principle of the rule of law create the need for theoretical understanding and correct definition of the range of legal relations that form the subject of the executive process, as well as the direction of the regulatory influence of executive procedural norms. The modernizing state of Ukrainian society requires dynamic regulation of social relations, with the help of scientifically based legal norms that meet the objective needs of civil society. At the same time, its development, among other things, is closely interconnected with the role played by legal ideology in state legal regulation.

Like every branch of law, executive process has its own subject and method of legal regulation. The subject of legal regulation of the executive process is executive procedural legal relations, which should be understood as social relations regulated by the norms of executive procedural legislation that arise in the process of enforcement of jurisdictional bodies between bodies and persons who perform executive actions and other subjects of the executive process (parties of the executive process, by other persons who assist the executor in the execution of the decision). Executive procedural legal relations were formed as a completely separate group of relations with their own qualitative characteristics, which requires the formulation and development of rules specially designed to regulate this specific group of social relations and phenomena of the socio-legal environment. Executive procedural legal relations are in a state the process of appropriate structural development and acquire the features of a social system that has its own elements, which, interacting with each other, thereby give the system signs of integrity.

Through executive procedural legal relations, the rights and obligations of their subjects are exercised and, in general, the development of the executive process is ensured, they are dynamic and transform under the influence of socio-political and economic factors and, in fact, express the patterns of social development.

The branch of executive process "grew" out of the branch of civil process and became an autonomous branch of law. A good reason for separating the system of norms governing executive procedural legal relations from civil procedural norms is the qualitative uniformity of relations arising in connection with the enforcement of court decisions and decisions of other bodies. Executive procedural legal relations have a legal nature, which is determined both by the legislation on the state executive service and executive

proceedings, and by other normative (by-laws) that are directly applicable to the enforcement of decisions, and the mandatory subject of these legal relations is a state or private performer. which are empowered by the state.

In the context of the polystructuring of the national legal system, the position regarding the futility of artificially "maintaining" new normative formations within the field of law on the rights of its sub-branches, institutes, etc., is quite convincing, which is clearly observed on the example of the current legal regulation of the executive process.

Traditional approaches to the construction of the structure of law according to the principle of a "Russian matryoshka doll" – a "supra-branch" that integrates adjacent branches, which are also divided into sub-branches and sub-institutes, which contain a number of simple institutions consisting of legal norms, are methodologically outdated and are not legally are working They do not take into account the growing dynamism of modern social, in particular, political life and the significant changes caused by it in the spheres, scope and content of legal regulation and processes of polystructuring of the national legal system[23].

The branch of executive process is characterized not only by the qualitatively homogeneous sphere of social relations that it regulates, but also by the specificity of the method of their regulation and the high degree of internal organization of the enforcement of court decisions and decisions of other bodies, even in spite of its lack of codification. However, there are countries in which there is a codified legal act dedicated to the enforcement of decisions of jurisdictional bodies. For example, in the Republic of Moldova, the Executive Code has been in effect since 2004.

In this context, a significant role for the development of the executive process should be played by strong arguments regarding the presence of two new codified acts in the field of enforcement of decisions that have recently appeared in the countries of the European Union, which are uniform for all EU countries – this is the Global Code of Enforcement 2015 and the Global Code of Digital Performance 2021./

Isolation of the set of legal institutions inherent in the executive process and their single branch affiliation (this refers, in particular, to such institutions as the institute of executive documents, parties to the executive process, representation, evidence, procedural terms, and others), a special subject unity of executive procedural norms, united by a single characteristic feature – the enforcement of court decisions and decisions of other bodies, gives grounds

[23] Конституційне право: підручник. За загальною редакцією М. І. Козюбри / Ю. Г. Барабаш, О. М. Бориславська, В. М. Венгер, М. І. Козюбра, А. А. Мелешевич Київ : Ваіте, 2021. С. 55.

to state that the executive process is characterized by features of the field of law.

The specific weight of legal norms in its content acts as a kind of guide of state coercion in executive proceedings through the consolidation in sanctions (in some cases in dispositions) of legal norms of means of influencing the subjects of executive proceedings, with the help of which the subject of executive proceedings is ensured the fulfillment of the obligations assigned to him independently from his manifestation of will or create obstacles in the exercise of the rights of the subject to ensure the normal movement of executive proceedings[24].

Under such circumstances, it is more about the method of the executive process as a branch of law, which is sanctioned coercion, where sanction should be understood as permission, legitimization, etc. The state clearly defined the procedure, the means of enforcement of decisions, regulated the procedure for applying and the grounds for the application of state coercion and, thus, sanctioned the potential possibility of coercion to the obliged person within the clear limits of the executive process, and on the other hand, the debt collector, turning to the executor with by a statement on the opening of enforcement proceedings, authorizes compulsory collection against a specific debtor, and, as a result, the latter's failure to fulfill his duty in a voluntary manner.

Note that the method of legal regulation in the executive process is much more distinct when compared with the methods of some other branches, as is typical of the procedural branches of law.

In the context of the division of law into public and private and the determination of which of the branches of public or private law it should be attributed to, it should be noted the possibility of identifying both public and private elements in the legal regulation of executive procedural legal relations, the presence of both private and public interest in the executive process, the combination of private and public nature of legal relations arising during the implementation of the executive process[25].

Determining the place of the branch of the executive process among the material and procedural branches of law, the position here is unambiguous – the executive process should be attributed to the procedural branches, because the activity of a state or private executor is procedural, subject to the rules of

[24] Гетманцев О.В. Окремі питання підвищення ефективності виконання судових рішень. *Реформа виконавчого провадження: сьогодення та перспективи* : матеріали міжнародної науково-практичної конференції (Київ, 30 березня 2018 року). Київ : Юстон, 2018. С. 13–16.

[25] Щербак С. В. Публічні та приватні засади у правовому регулюванні виконавчих процесуальних правовідносин. *Цивілістична процесуальна думка.* 2018. № 1. С. 64–67.

the process, the procedural actions of the executor are characterized by consistency and stagedness.

3. Application of the recoverer oriented approach in the executive process

The genesis of the enforcement process, which took place during the period of Ukraine's independence, along with other factors, consists in the permanent, but gradual formation of an approach focused on the recoverer as the side of the enforcement process as the most balanced and accepted by society. The above mentioned can be traced back to several waves of reforming the national enforcement process, which at the same time became a reflection of the directionality vector of enforcement.

1) The first wave – judicial and constitutional reforms.

After Ukraine gained independence, our state inherited a Soviet-style enforcement system with bailiffs in the structure of the courts, which continued from 1991 to 1999. Legislative regulation (and this was Chapter V of the Civil Code of 1963 "Execution of court decisions") did not give priority to any of the parties to the enforcement proceedings, and it is unlikely that these issues were actualized, because in this context it should also be mentioned that in the times of the USSR, when there was criminal liability for waste, almost all debtors were working individuals, and privately owned enterprises, except for cooperatives, were absent. However, it was in 1992 that the first Ukrainian judicial reform became the basis for changing the perception of executive proceedings.

2) The second wave – 1998–1999. was marked by the adoption of the first relevant laws – the Law of Ukraine "On Executive Proceedings" and "On the State Executive Service" and a number of secondary legal acts.

The post-Soviet legislation on enforcement proceedings, adopted with obvious delay, did not correspond to the realities of life or the development of market relations, and, in fact, created an imbalance in the status of the parties, because the main place in the enforcement proceedings was not assigned to the recoverer, but to the debtor. The material sphere of the debtor during the implementation of the executive process was so protected that the actual restoration of the debt collectors' rights did not take place, but procedural guarantees of the debtor in the execution of court decisions and decisions of other bodies prevailed compared to the protection of the rights and interests of the debt collector. This allowed the debtor to not comply with court decisions for years, while the legal regulation of the enforcement process for a long period of time did not contain the proper mechanisms that would allow the bodies of the state executive service to carry out effective and timely enforcement.

The obvious falsity of this approach became the basis for another reformation and the search for ways to overcome the debtor's avoidance of fulfilling the requirements of the executive document.

3) The third wave is a new profile legislation on enforcement proceedings of 2016–2018, which not only changed the ideological dimension of the enforcement process, but also radically directed the vector of the enforcement process from the priority of the debtor's interests to the interests of the recoverer.

4) The fourth wave – the evolution of the enforcement process these days – is a continuation of the recoverer oriented approach laid down in draft law No. 5660 "On the enforcement of decisions".

The development of the national enforcement process in the context of recoverer oriented approach practices was carried out in such areas as strengthening the levers of the debtor's obligation to execute the decision, expanding measures of influence on the debtor, the influence of the enforcement model on the role of the recoverer in the enforcement process and the growth of the status of the debtor, increasing public trust in private executors, as well as expanding the limits of the recoverer right to access to execution and digitalization of the enforcement process.

The obligation of the debtor to comply with the court decision and the decision of another body was enshrined at the legislative level when defining the concept of debtor in Article 15 of the Law of Ukraine "On Enforcement Proceedings". This obligation should be defined as the key obligation of the party to the enforcement process, which consists in the obligation to fulfill the requirements of the executive document by the debtor, the immanent direction of execution against the will of the debtor the debtor It is precisely in connection with its non-fulfillment that the entire process of enforcement is actualized, and all norms of executive procedural legislation are functionally oriented towards forcing the debtor to fulfill his duty.

The enforcement process becomes closer to the implementation of the subjective material right of the recoverer, which for one reason or another was not restored before the opening of enforcement proceedings, the role of civil law institutions and its autonomous subjects is strengthened, the activities of the debt collectors are subject to civil principles, and the legal relationship between the recoverer and a private executor have all the characteristics of a contract.

Meaningful characteristics of the implementation of a whole system of measures aimed at the execution of the decision should be defined as the introduction of the Unified register of debtors, the binding of the debtor's property without alternative at the same time as the opening of enforcement proceedings, the access of executors to electronic databases and registers to

identify the debtor's property, as well as other procedural measures of influence to the debtor.

With the introduction of the institution of a private executor, there was a rejection of the state monopoly on the execution of court decisions and decisions of other bodies, officials with the transfer of relevant powers to private individuals, and the model of execution in Ukraine was modernized from a state-legal model to a mixed one, combining both state and non-state forms of organization of execution , where enforcement of decisions can be carried out by both state and private executors. Private executors have become generators of new ideas aimed at improving the execution process, introducing innovations in the execution process.

Therefore, the development of a unified approach, focused on the recoverer in the executive process during the period of independent Ukraine took place in the context of the evolution of the executive process in general. It is the ecoverer oriented approach that should be a further guideline for improving the process of execution of court decisions and decisions of other bodies, because it indicates a fundamentally new quality of the executive process, where the reflection of the interests of the recoverer is given important importance. At the current stage of the development of the science of the executive process, the mentioned approach is still insufficiently formed, and we are only standing on the path of focusing the enforcement of decisions on ensuring the rights of the debt collector. For its continuation, it is necessary to minimize the ways that allow the debtor to avoid fulfilling his key duty in the executive process – the duty to execute the decision regardless of the status of the debtor, his wealth or other criteria.

During the transformation of the executive process of Ukraine, which took place during the period of martial law, the vector of enforcement of decisions was again directed towards the debtor, especially the debtor-individual, which makes the position of the recoverer more vulnerable compared to the debtor.

Starting from February 24, 2022, certain trends in the transformation of the enforcement of decisions are chronologically followed – the first wave of changes, dated March 2022, affected recoverers of the aggressor country, a wide range of domestic debtors (both individuals and legal entities) in enforcement proceedings of a property nature, prohibition of enforcement proceedings in the temporarily occupied territories of Ukraine, the second wave of changes – in July 2022, concerned the prohibition of execution of certain categories of enforcement documents and the suspension of enforcement actions in enforcement proceedings against debtors of individual enterprises.

Among the forced steps taken to meet the debtor, and aimed at ensuring the protection of the debtor's material sphere, in the enforcement process during the martial law, the following can be outlined:

1) those relating to certain categories of debtors (for example, debtors-individuals, enterprises of the defense-industrial complex). They are the definition of the minimum protected amount, the protection of the debtor's rights to wages, the reduction of the financial burden of debtors regarding the collection of housing and communal services in the areas of hostilities, the protection of enterprises of the defense-industrial complex.

2) those related to the forced execution of certain categories of executive documents (for example, the prohibition of execution of executive inscriptions by notaries, stopping of foreclosure on mortgaged property, etc.

However, despite significant restrictions on the executive process, they do not prevent the collection of debt due to executive documents and do not stop executive proceedings at the time of war with the Russian Federation (except for the exceptions provided by law), but determine the specifics of the executive process for the period of martial law. Even if the debtor is subject to the limitations defined by law, the debt obligation under the executive document during the war does not dissolve and does not disappear, and in the event of the end of the martial law, execution of executive actions will be feasible. As the practice of public and private executors shows, it is possible to collect debt due to executive documents during the war, but this should be done without undue financial burden on the debtors.

4. Digitalization of the executive process

The era of digital technologies requires the integration of electronic digital tools into the activities of bodies and persons who carry out enforcement of court decisions and decisions of other bodies, the scope and capabilities of which do not stand still. Over the past 10 years, Ukraine has made significant progress in the field of digitization and automation of processes, including the creation of electronic registers – the Automated System of Enforcement Proceedings, the Unified Register of Debtors, the Unified Register of Court Decisions, the "Action" service, and the "Electronic Court" portal. The use of information technologies in the executive process is gradually expanding, starting from individual technical modernizations to the improvement of procedural norms of specialized legislation.

Process automation makes it necessary to master modern technologies in the process of implementing decisions, and also leads to the inevitable replacement of the "human" factor with a machine one, which is largely acceptable for the activities of public or private contractors. In today's conditions, it is quite possible that the execution process can take place within

a few hours after the opening of the execution proceedings in electronic mode, while the executor can carry it out without even leaving his office or study room. This directly affects the effectiveness of execution, because the execution of decisions is no longer associated with certain risks for the executor, who is at the epicenter of the conflict, and sometimes for the persons present at the execution of executive actions.

Depending on the content and the user, digitization in the execution process can be classified into several types:

1) internal digitalization is a type of digitalization inherent in the executive process itself, which concerns the automated system of executive proceedings, electronic document management, automated seizure of funds, electronic trading. In this case, the use of online resources is carried out directly by the public or private contractor;

2) external digitalization is a type of digitalization that is inherent in legal relations that occur around the executive process and in one way or another relate to the executive process. This type of digitization is characterized by the use of electronic technologies by the parties to the executive process and other subjects of the executive process, as well as by a wider, unlimited circle of persons associated with the decision execution process[26].

The impetus for the development of external digitization was the introduction of a non-state form of execution or, in other words, private execution, which began functioning in Ukraine in 2016. Renunciation of the state monopoly on the execution of court decisions and decisions of other bodies and the transition to a mixed (combined) model of the executive process stimulated competition between private executors and the state executive service, which was simultaneously accompanied by the creation of a competitive environment within the private sector itself.There are two alternative registers as online resources where a potential debt collector can find a private executor: the first is the Unified Register of Private Executors of Ukraine, the holder of which is the Ministry of Justice of Ukraine, and the software is maintained by the state enterprise "National Information Systems", and the second – Register of private performers of Ukraine, developed by the Association of Private Performers of Ukraine and posted on the website of this Association.

The register of private executors of Ukraine has been operational since August 4, 2021, in which private executors are placed by executive districts according to the interactive map of Ukraine, where each private executor can place your photo, and the debt collector – get to know him online, even before a personal appeal, in the city In Kyiv, you can find a private executor without

[26] Щербак С. В., Кожевнікова А. В. Інформаційні технології та виконавчий процес. *Юридичний електронний науковий журнал*. 2022. №. 1. С. 117–121.

knowing his last name, which saves the time of the participants in the enforcement process.

The initial changes in the possibility of remote access of the parties to enforcement proceedings began in 2003 with the appearance of the electronic register of enforcement proceedings, the administrator of which was the state enterprise "Information Center" of the Ministry of Justice of Ukraine.

The direct access of the debt collector to the specified register appeared in 2008 with the provision of an identifier for accessing the information of the register, which was specified in the resolution on the opening of enforcement proceedings, but only information about enforcement proceedings was entered into the register, which in the practical activity of state bailiffs led to inconveniences both for debt collectors and state executors, because it was the debt collectors (especially for enforcement proceedings on the collection of alimony) on certain appointment days that created long queues to the office of the state bailiff, and the state bailiff was forced to conduct the reception of parties instead of carrying out his activity of executing court orders decisions and decisions of other bodies. With the introduction of the Automated System of Enforcement Proceedings in 2016, the debt collector gained more extensive access to enforcement proceedings with the help of electronic technologies, which allows him to follow the progress of the enforcement process without visiting the executor, which is especially relevant when the debt collector is located territorially in another part of Ukraine. In particular, from the part of the enforcement proceedings system, which contains the section on the access of parties to enforcement proceedings to the data of enforcement proceedings, you can find out information about who opened the enforcement proceedings and which body of the State Enforcement Service (state bailiff) or private bailiff conducts the enforcement proceedings, information about actions of the state (private) executor, information about the state of the executive proceedings, which resolutions were issued by the executor.

New opportunities for obtaining information about the existence of enforcement proceedings and familiarization with them by the parties also opened up with the introduction, starting from October 2020, of the "execution proceedings" service in the public services application "Diya", with the help of which citizens can receive information about enforcement proceedings, and debtors pay existing debt online.

This is especially appropriate for the debtor, who can find out about the enforcement proceedings available against him from the bank's information about the seizure of his accounts long before receiving the decision to open enforcement proceedings. If the enforcement proceedings will be carried out by a private executor whose executive district is territorially located in another part of Ukraine, this will make it impossible for the debtor or his representative

to quickly familiarize himself with the materials of the enforcement proceedings in the office of the private executor in order to respond to possible violations of his rights due to the illegal actions of the debt collector or other persons or acts against the debtor of a criminal offense, etc.

If access to the general section of the ASVP does not require compliance with any conditions, then in order to use the access section, you need to know the number of the executive proceeding and the identifier of access to the executive proceeding (it has a 12-digit code, using letters and numbers.), because this section contains all information about enforcement proceedings.

With the appearance of the "execution proceedings" service in the "Diya" application, the parties to the enforcement proceedings can also use the specified online resource as an alternative, which allows you to access this service without entering the ASVP and also see the documents of the enforcement proceedings, familiarize yourself with them, and download them to your resource and print the necessary amount of materials, including for the possible provision of legal assistance.

One more of the innovations of the information technologies of the executive process should be called the executive document in electronic form, which is characterized by complex regulation both in the procedural codes and in the relevant legislation. Unlike the paper original of the executive document, the electronic executive document cannot be lost or damaged, because it is created in electronic form by the Unified Judicial Information and Telecommunication System or another body (person), and is signed with the electronic digital signature of a judge or an authorized official. We would like to remind you that the Law of Ukraine dated 03.10.2017, under which the procedural codes were unified, the Law of Ukraine "On Executive Proceedings" was supplemented with a new article 3–1 "Unified State Register of Executive Documents", which defines the EDRVD as a system (not a static set data), which is automatic (that is, it does not involve a paper form of existence), which required the development of the Regulation on the Unified State Register of Executive Documents, but until now this issue has not been resolved.

In the course of the procedural activities of the state executive service and private executors, hundreds of kilograms of paper are spent every day for the production of resolutions on the seizure of funds and other materials of executive proceedings. In turn, in the offices of private executors, thousands of executive proceedings are also in paper form, which requires constant sorting in alphabetical order. A similar situation of paper document exchange was observed in the communication of a state or private executive with bank institutions. The very collection of debts in the execution of court decisions and decisions of other bodies is associated with the establishment of electronic

interaction with bodies that are holders of registers and databases that contain information about the debtor and to which the executors did not have access.

The block of executive documents related to debt collection occupies a fairly significant layer of the total number of executive documents that are being executed, therefore the digitalization of the executive process in terms of debt collection is aimed simultaneously at minimizing the time and costs of processing requests and resolutions of executors in paper form and forwarding their means of postal communication, providing feedback between the executor and the bank through the use of an electronic platform, which will contribute to the preservation of funds in the debtor's accounts in the enforcement proceedings for their forced write-off and, thus, will allow to achieve higher performance indicators.

The introduction of digitalization of debt collection is expected to bring the executive process to another level of its efficiency as a manifestation of meeting the needs of all subjects involved in the executive process, since the automation of the executive process should lead to proper communication between state, private executors and banks, faster execution of the executive order proceedings, more accelerated receipt of awarded funds by debt collectors.

The opportunity for debtors to wake up with a "minus" on their accounts was the result of the Ministry of Justice of Ukraine updating the order "On Approval of the Procedure for the Automated Seizure of Debtors' Funds in Bank Accounts for Enforcement Proceedings on the Recovery of Alimony" dated March 23, 2021 No. 1061/5 with a change in its name, which in the context of the scope of enforcement proceedings means the extension of the order of automated seizure of the debtor's funds not only to enforcement proceedings for the collection of alimony, but also to all other categories of enforcement proceedings, and with regard to information technologies in the enforcement process – the introduction of automation of the process of obtaining information by executors about the debtor's bank accounts and the amount of funds for them.

For individual debtors under executive proceedings (those who are in the Unified Register of Debtors), the introduction of innovations meant the possibility of state and private executors imposing a seizure on the debtor's accounts in bank institutions online, including card and so-called "salary" accounts accounts, with the possibility of further compulsory debiting of funds not only according to executive documents on the collection of alimony, but also in the case of collection of utility payments, fines for traffic violations and others, which previously could not be performed due to the lack of access to such information from bodies and persons who execute decisions of courts and other bodies. We will remind that the executor received information about

the funds held in the debtor's accounts in banks or other financial institutions in the automated system of enforcement proceedings by sending a request to the State Fiscal Service of Ukraine. At the same time, the State Fiscal Service of Ukraine provides information only about existing accounts of debtors – legal entities and/or natural persons – entrepreneurs.

That is, the executor could obtain information about existing accounts from debtors – natural persons only by sending requests for obtaining relevant information to all banking institutions of the country, since there is no centralized accounting of such accounts, however, banks, considering the requirements of state executors to provide information about the availability and/or condition the debtor's account, instead of providing information about the numbers of the debtor's bank accounts and the remaining funds on them, it was reported that the account is available or the account is available, the funds are insufficient.

The use of digital technologies for debt collection in the enforcement process should also be considered as a certain means of forcing the debtor to comply with the court decision, without waiting for the enforcement of the decision, because in the future, the seizure of accounts by a state or private executor will create undesirable consequences for him and obstacles in the disposal of the debtor's money funds.

One of the sources of international enforcement, which is a component of the science of enforcement, is the Global Code of Digital Enforcement presented by the International Union of Bailiffs (UIHJ) at the 24th International Congress in Dubai in November 2021.

For Ukraine, the provisions of the Global Code of Digital Enforcement need to be studied, because it provides not only for the dematerialization of enforcement procedures, but also for the use of methods and methods of enforcement in relation to digital assets, including the mechanisms of enforcement against debtors' cryptocurrency. At the same time, it should be noted that the national legislation already provides for some mechanisms used during the enforcement of decisions, such as automated seizure of the debtor's funds, electronic auctions, etc.

The Code also contains best practices to be applied in the enforcement process, such as the use of artificial intelligence or blockchain technology.

Thus, artificial intelligence should help public and private executors evaluate the proposed algorithm or sequence of executive actions for a certain type of executive document or executive proceeding and enforcement measures against the debtor. It is also planned to establish a procedure for passing resolutions on a step-by-step basis in the ACVP. ASVP will prompt the procedure for issuing resolutions, prohibit the issuance of those resolutions that are procedurally prohibited. In certain categories of penalty, it will be

prohibited to issue resolutions that are not procedurally provided for by such category. The use of blockchain technology is also key for both public enforcement agencies and private enforcement agencies, as well as for the debt collector and debtor, to set up an automated enforcement process, especially when payments are made in cryptocurrency. Even more recent is the seizure of crypto-assets, the search for access to them, and the procedure for the seizure of crypto-assets.

CONCLUSIONS

Summarizing what has been said, it should be noted that in the postmodern era, the perception of executive proceedings, its importance in civil society and through the prism of the principle of the rule of law, which is carried out taking into account social changes and globalization processes, is radically changing. In the domestic legal doctrine, the first textbooks devoted exclusively to the problems of executive proceedings appear, thereby overcoming the monistic understanding of the execution of court decisions as a component of the rule of law.

In the context of the development of the categorical apparatus of the new science, another, more relevant term is proposed to denote the enforcement of court decisions and decisions of other bodies, which is "executive process", the theory of the executive process is developed as its core, conceptual apparatus, the subject of science is formed and outlined, namely regularities as an objective, logically justified repetition of interconnected facts in the process of executing court decisions and decisions of other bodies. The science of the executive process in its scope is a much broader concept than the branch of law corresponding to it, which is gradually forming, therefore, not only the cognitive, but above all the prognostic function of science acquires decisive importance. The theory of the executive process and, especially, the subject of the science of the executive process are still to be understood, after all the importance of regularities is also achieved by the fact that they have methodological significance for the executive process as a young branch of legal science, because it is on the basis of regularities that basic scientific provisions are developed, long-term forecasts are made and strategic decisions are made, which becomes especially relevant when new branches of legal science emerge and develop.

Active growth of the role of electronic technologies in the executive process and their impact on executive procedures is seen as the most promising direction in the development of the executive process.

The latest digital technologies are aimed at improving executive procedures and increasing the efficiency of execution, contactlessness and social orientation, which are currently the challenges of the time. At the same

time, their application must be carried out in compliance with the guarantees of human rights in the executive process, as well as in compliance with the "ethical principles of the use of digital technologies", such as respect for human dignity, non-discrimination and respect for personal data.

Prospects for further modernization of the executive process in the field of information technologies should be determined taking into account development trends European enforcement standards, the adaptation to which may affect the domestic executive process, because digitization as a global phenomenon cannot but transform executive procedures at a time when the right to execute executive documents is recognized worldwide as a factor in the development of a social and sustainable economy and a guarantee of legal security.

SUMMARY

The article carried out a theoretical and legal analysis of the scientific category "executive process", revealed the essence of the science of the executive process and proposed its concept as a system of ideas, concepts, theories, fundamental doctrinal foundations on which it is based, about the executive process as a social phenomenon, its historical development and action in modern conditions. which are based on the legislation of Ukraine, the experience of foreign countries regarding the enforcement of decisions of jurisdictional bodies from the point of view of the patterns of their occurrence, content, functioning, interaction, development and areas of improvement. The place of the executive process in the domestic legal doctrine is defined. In the system of legal sciences, it is proposed to consider the executive process as a branch of legal science.

The prerequisites for the emergence of the science of the executive process were studied, its object, subject, and components were outlined. It is proposed to define the regularities of the executive process as objectively determined, permanent, necessary, cause-and-effect relationships that provide knowledge of the process of execution of court decisions and decisions of other bodies as a legal phenomenon, and also reflect its deep, essential properties.

The author's point of view regarding the definition of the theoretical foundations of the executive process as an autonomous branch of law is offered, its subject and method of legal regulation are disclosed.

A critical and constructive analysis of the current state of specialized legislation in the field of executive process was carried out.

In the context of the methodological tools of the science of the executive process, the manifestation of the "collector-originated" approach in the process of enforcement of court decisions and decisions of other bodies is considered.

Key words: science of the executive process, theory of the executive process, branch of the executive process, executive procedural legal relations, electronic technologies in the executive process.

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Information about the autor:
Shcherbak Svitlana Volodymyrivna,
Candidate of Law Sciences,
Associate Professor at the Department
of Law and Methods of Teaching Jurisprudence
Sumy State Pedagogical University named after A. S. Makarenko
87, Romenska str., Sumy, 40002, Ukraine