

EUROPEAN STANDARDS OF COERCIVE ENFORCEMENT AND ENFORCEMENT PROCESS OF UKRAINE

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INTRODUCTION

The intensification of the European integration process, the desire to approximate national legislation with the European one, necessitates the improvement of the existing domestic procedural mechanisms, which are used in the civil process and are aimed at protecting, defense and restoring of the violated subjective rights of individuals.

The important aspect shall be the awareness of the main trends in the development of European enforcement procedure, enforcement standards, which must ensure effective enforcement procedures, guarantee the competence of public and private enforcers, whose status in society should gradually increase, and the attitude towards the profession of public or private enforcer to be changed, a high level of their qualifications, competitiveness and, most importantly, focus on applying only legitimate ways of enforcement of decisions shall promote all the above mentioned.

Ukraine has taken an active and determined foreign policy position, which is clearly confirmed by numerous international treaties, including the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and its Member States, on the other hand. In paragraph e) of P. 2 of Art. 1 of this Agreement the aim is determined as “enhancing the cooperation in the field of justice, freedom and security with a goal of ensuring the rule of law and respect for human rights and fundamental freedoms”¹. It will not be possible to achieve this goal if court decisions are not enforced both in Ukraine and in all EU countries.

Therefore, one of the first tasks aimed at implementing of this Agreement should be to harmonize the legislation and adapt the Ukrainian enforcement process to the experience of the EU countries. Ukraine will not be able to join the European integration processes without the establishment of an effective legal system that effectively guarantees the protection of rights and freedoms.

¹ Association Agreement between Ukraine, of the one part, and the European Union, the European Atomic Energy Community and their Member States, of the other. URL: https://zakon.rada.gov.ua/laws/show/984_011

At the same time, adaptation is a lasting and dynamic process, a defined sequence of interrelated actions regarding the change of existing law order, each link of which is logically linked to the other elements that together form the program of self-development of the legal system². At the same time, the processes of adaptation are a manifestation of the evolutionary dimension of state law and in fact determine the path of its development.

In the context of the adaptation of national legislation on the enforcement procedure to EU legislation, one can point out specific ways of alignment of such, which have already taken place at national level.

Based on the analysis of the experience of cooperation of third countries with the EU, V.I. Muravyov³ outlines the following basic ways to approximate their national law with EU law:

- 1) the adoption of national legal acts which take into account to some extent the provisions of EU law;
- 2) the accession of an EU Non-Member State to international treaties that are binding for the EU and its Member States;
- 3) incorporation of EU legal acts into national law;
- 4) mutual recognition by the parties of the standards of all parties;
- 5) parallel adoption by countries of normative acts which are identical or similar in content to those of the EU.

Extrapolating the above classification on the ways of the adaptation process in Ukraine, it should be noted about the implementation of some ways, including the updated creation of provisions of enforcement procedure within the national legislation, the adoption of the Law of Ukraine “On the Enforcement of Judgments and Application of the Practice of the European Court of Human Rights” dated 23.02.2006, taking into account Recommendation Rec (2003) of the 17 Committee of Ministers of the Council of Europe “On Obligatory Enforcement”, together with the Guidelines on Enforcement and the Council of Europe Recommendations on enforcement: application guide (Guidelines on Enforcement CEPEJ 2009) etc.

The first steps have been taken in the Ukrainian enforcement process to harmonize existing legislation and bring it into line with international legal standards, were first and foremost these were: introduction of the rule of law principle into the enforcement process, which poses new challenges

² Yakovyuk I.V. Adaptation and harmonization of legislation in the context of integration: the problem of correlation. *Bulletin of the Academy of Legal Sciences of Ukraine*. 2012. № 4. P. 29–42.

³ Muravyov V.I. Legal basics of regulation of economic relations of European Union with third parties : dis. ... Of the d-r of jur. sciences : 12.00.11. K., 2003. P. 242.

to the state, society and, first of all, to the subjects of law enforcement, since the essence of the rule of law remains of a secretive nature and not yet sufficiently clear for domestic legal practice.

In the context of this article, we will focus on the theoretical, most general provisions of the enforcement process that deserve attention in the context of harmonization process of enforcement procedural legislation at the national level.

1. Model of enforcement and regulatory regulation of the enforcement process

When reviewing the current state of legislation on enforcement procedure, it is worth mentioning that within the framework of judicial reform significant substantive transformation of both the model of enforcement in Ukraine (from the state-legal model to the mixed one, which was accompanied by the emergence of a new legal profession – a private enforcer) and transformation of the regulatory regime of the enforcement process, which had both institutional and procedural characteristics, has taken place.

In order to develop and construct a new Ukrainian model of enforcement, the world experience of enforcement systems of court decisions (mainly of European countries) was considered, thus the emphasis was placed on the French model of enforcement.

When introducing a non-state (private) form of enforcement organization it was important to take into account own historical and legal context of the country's development and legal traditions in this area, including the Soviet past of domestic system of enforcement, the experience of exclusively state organization and the activity of enforcement bodies. The Ukrainian legal system is substantially different from the legal systems of European countries, especially in the field of enforcement of decisions, where not only court decisions, but also decisions of other bodies (officials) are executed by public or private enforcers, which testifies not only the multidimensionality of modern enforcement, but also reflects separation of the activities of enforcement bodies and individuals who perform enforcement from the judiciary system.

A systematic analysis of the provisions of legislation on the enforcement procedure, indicates on the applying of imperfect legal and technical approaches and methods of legal techniques in the structural construction of both profile laws governing the process of enforcement of decisions and the system of enforcement bodies.

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

It's about keeping preserving in the middle position article 1 The Law of Ukraine "On Enforcement Procedure" methodologically incorrect provision of the previous Law as to recognition enforcement procedure "as a completed stage of legal procedure" of which it consists erroneous impression as to understanding by the legislator enforcement procedure as part of the judiciary⁴.

At this moment we can talking about completely formed science enforcement process of Ukraine as a young branch, which folder not at the initial phase but quickly coming unwound, improving, accumulating foreign experience in executing decisions. So application of modern approaches are no longer allowed to base oneself on the socialist doctrine by the codification period civil procedural law of the 60s of the last century where the enforcement of the court decision was regarded as the final stage of the civil process and the legal relationship that appeared during the execution of the court decisions such as a civil procedural relationship.

Modernized state of Ukrainian society demand dynamical regulation social relations by means of sound legal norms that meet the objective needs of civil society, so version article 1 The Law of Ukraine "On Enforcement Procedure" should be brought into conformity with modern lines state of the enforcement process and decisions of other legislative authorities.

Rather unsuccessful should be recognized and legislative approach to drafting the Law of Ukraine "On legislation authorities and people who implement coercive enforcement court decision and decisions of other legislative authorities" that constructed in such a way that the vast majority of its regulations relate to the statute a private enforcer, sequence of its receipt, the requirements for persons who intend to be a private enforcer, executive bodies private enforcers, prosecution etc. The impression is that of a state enforcer as well as the State Enforcement Service "forgot", limiting the scope of their legal regulation to a minimum. This leads to an unjustified

⁴ Shcherbak S.V. Procedural activity of enforcers as a subject of the science of the enforcement process: the challenges of today. *Current problems of the enforcement process of Ukraine: theory and practice* : IV International Scientific and Practical Conference December 06, 2019, Kyiv. Collection of scientific articles / edited by Prof. Fursa S.Y. Kyiv : Publisher Pozdnishev, 2019. P. 42–45

hierarchy and necessitates by-law regulation of rather significant issues which should be resolved not less than the legislative level.

One obvious disadvantage of both profile laws at the same time is the tautological formulation of the principles of enforcement procedure.

It's noteworthy that the legislative consolidation of the enforcement procedures occurred at once in two branch of law and in determining the method of legislative fixing, the legislator went by setting out a list of principles, allowing them to be duplicated and naming the same principles at the same time as the principles of enforcement procedure (Article 2 The Law of Ukraine "On Enforcement Procedure") and principles of activity of bodies of the State Enforcement Service and private enforces (Article 4 The Law of Ukraine "On legislation authorities and people who implement coercive enforcement court decision and decisions of other legislative authorities").

At the same time, it's the principles of the enforcement process that should determine the direction of legal regulation of activity in the field of enforcement of judgments and decisions of other bodies determine the interest of society and the state in the importance of the enforcement process and increase its efficiency.

There is no doubt that the relevant laws need to be revised and substantially reformatted in order to eliminate all unnecessary information, doubling it and reconcile positions that regulate the enforcement procedure with the organization of its enforcement. So, it deserves all the support of S. Ya. Fursi⁵ on the promise of reforming the enforcement procedure on the projected positive results both in the near and long term for certain categories of entities as well as for the interests of the state.

2. Fundamentality of the right to enforcement in the context of the draft Global Code of Coercive Enforcement

The international legal scientific literature describes two main approaches, according to which the term "soft law" is used to denote two different phenomena:

1) soft law as a special type of international law (this group includes treaty (framework) rules that do not create specific rights and obligations);

1) soft law as non-legal, so-called morally and politically, international rules (those contained in non-legal acts: joint statements, communiqués, resolutions, recommendations, etc.).

⁵ Fursa S.Ya. Theoretical bases of reformation of enforcement proceedings in Ukraine. *Current problems of the enforcement process of Ukraine: theory and practice*. IV International Scientific and Practical Conference December 06, 2019, Kyiv. Collection of scientific articles / edited by Prof. Fursa S.Ya. Kyiv : Publisher Pozdnishev, 2019. P. 76–81.

The most common definition of “soft law” is its definition as a set of two types of rules: treaty rules and those contained in acts of recommendatory character. The qualitative characteristic of treaty norms is that, despite their legal nature, such norms do not establish explicit rights and obligations for States and carry no legal weight⁶.

Within the scope of the development of the so-called soft law and unification of relevant legal relations, let us analyze the principles of enforcement procedure in accordance with the draft Global Code of Coercive Enforcement, which has long been under development by the Scientific Council of the International Union of Judicial Officers (UIHJ).

UIHJ, founded in 1952, aims to develop ideas, projects and initiatives intended to promote the independent status of Judicial Officers. UIHJ is a member of the United Nations Economic and Social Council and a permanent observer member of the Council of Europe’s European Commission for the Efficiency of Justice (CEPEJ). Every three years, the UIHJ convenes a World Congress that explores development issues and features.

The UIHJ made the first steps towards improving the settlement of the execution of judgments, hampered by a foreign element, in Washington D.C., 2006 when the XIX World Congress of the Union explored the issue of harmonization of enforcement procedures in the field of justice without borders. In the opinion of Yarkov V.V.⁷, the draft Global Code of Coercive Enforcement developed by the Institute, together with the explanatory note to it, is one of the most important achievements of its activities in the last decade. The idea of the code is to develop and implement joint world standards of enforcement procedures, which are equally applicable in States of different legal systems and do not depend on the way the system of enforcement authorities is organized. In this regard, the project is mainly a model legal act (soft law) that each interested State can use, including for purposes of improving national legislation on enforcement procedures.

Issues of enforcement procedure were discussed at the 19th International Congress in Washington (USA), at the 20th International Congress in Marseille (France) and the 21st International Congress in Cape Town (South Africa)⁸. During the preparation of the draft Code, a wide array

⁶ Mavromati A.E. Sources of “soft law” in the Council of Europe law system. *Current issues of state and law*. 2011. Issue 62. P. 558

⁷ Yarkov V.V.O. About the Draft Global Code of Coercive Enforcement. *Arbitration and civil proceedings*. 2013. № 12. P. 55.

⁸ Menul B.A. World Code of Enforcement. *The Harmonization of Enforcement Procedures in an Area of Justice with No Boundary*. Annals of the Washington International Congress 26–28 April. 2006. Paris, 2007. F/21–75.

of information was processed. The problems that arise in the systems of judgment enforcement in different countries and different legal systems are analyzed. Each member of the Scientific Council of the UIHJ was required to investigate the system of judgment enforcement⁹.

The results of this work were presented in July 2015 at the 22nd International Congress of the UIHJ under the title “Global Code of Enforcement”. V.V. Yarkov refers to this act as an example of “soft law”, which combines the most general and fundamental provisions in the field of enforcement procedure, specific for national systems of coercive enforcement of individual countries¹⁰.

Although the rules of the Global Code of Enforcement are recommendatory and such rules difficult to call a source of law in the classic sense of the term, it is still impossible to underestimate its importance for the adoption of internal laws of states and the exchange of experience regarding coercive enforcement of judgments. That’s why it is necessary to investigate the key provisions of the Global Code of Enforcement as such, which can be implemented in the legislation of Ukraine and, of course, should be the subject of public discussion by Ukrainian scientists.

The Global Code of Enforcement aims at modernizing the structures of coercive enforcement and adapting them to modern economic and social relations. It describes the harmonization of differences, the reduction level of difficulties, and the preservation of the “multicultural character of the coercive enforcement”. At the same time, the Global Code of Enforcement reflects the positions of leading experts and scientists in the field of the enforcement process from around the world, so content requires a solid constructive-critical scientific analysis. However, in the Ukrainian legal literature, publications devoting to the analysis of its provisions have not appeared. Therefore, the traditional adherence of Ukraine to an already established international act without significant remarks may be likely options for the development of international relations, although Ukrainian scientists are even now able to express their opinions and remarks about content, to make provisions more weighting, and the consequences of the introduction into international law favorable.

The Global Code of Enforcement consists of the following chapters:

1st Chapter: Fundamental principles

⁹ The Global Code of Enforcement / trans. from English. and A.A. Perfenchikova’s comment. M.: Charter, 2016. P. 26.

¹⁰ Yarkov V.V. The Global Code of Enforcement as the Basis for Harmonization of Enforcement Proceedings. *Law*. 2017. № 7. P. 41–48.

2nd Chapter: Officers of justice and enforcement agents

3rd Chapter: Judicial authorities

4th Chapter: Common principles to enforcement measures

5th Chapter: Common principles applicable to provisional measures

Used in the titles of chapters (parts) of the Global Code of Enforcement, a special term “principles” designed to separate the content of its rules from the formal regulation, specific legal aspects of enforcement procedure. At the same time, the content used the term “Article”, which means “article”. In the Ukrainian legal system, articles are associated with specific rules of law, just as the term “code” has a specific meaning – the “set of rules”. Therefore, by literally interpreting the title “Global Code of Enforcement”, a specialist will expect to find in it specific rules of law, not principles. However, contrary to the generally accepted standards of normative acts, the Global Code of Enforcement sets out only principles, not specific rules of law, which should regulate legal relations. Accordingly, the content of the Code should also reflect principles, not articles. We agree with O.O. Parfenchikov¹¹, who states: “Now, in our opinion, it is too early to say that it is possible to complete the work on the Code and to fully implement such provisions in the legislation of the states. Ahead, much needs to be analyzed in part of enforcement practices and based on results to formulate proposals”. The researcher emphasizes that, in the Code, the international aspects of the enforcement of judgments are not sufficiently substantiated, go against complaining title of the act.

1st Part of the Global Code, in contrast to similar codes of Ukrainian law, commonly referred to as the “General provisions”, has the title “Fundamental Principles”. Such a title provides a clear statement of theses that the authors consider to be uniquely correct and necessary for the quality of the enforcement, but such clarity is neither in the content of 1st Part nor in the order of its presentation.

So, the primary basis of the Section should serve the quintessence of enforcement procedure – the conclusiveness of the judgment enforcement, and all the rules in this Section should bear witness to this, both in their content and in the sequence of location. In this case, the third rule should be the rule on enforcement of judgments, which should list the measures aimed at timely and complete judgments enforcement. Contrary to this aim, the extraterritoriality norm is located at the end of this Section, and it is preceded by the reestablishing debtor’s solvency rule.

¹¹ Parfenchikov O.O. Foreword to the book “The Global Code of Enforcement”. URL: http://zhso.kz/assets/data/Global_Code_enforcement.pdf

1st Article of the Code “Fundamental right to enforcement” has the following meaning: “Any claimant who has a judicial or other enforcement document is entitled to effective access to coercive enforcement against the unscrupulous debtor in strict accordance with the law and subject to the availability of immunity from enforcement under national and international law.

The right granted is guaranteed to everyone without any discrimination, and regardless of the amount of the claim”¹².

We emphasize that the right to enforcement is positioned in the Global Code of Enforcement as fundamental, which requires an additional scientific understanding of the meaning of the right to enforce the enforcement document. In doing so, the structural principles of enforcement must guarantee the satisfaction of the claimant, while protecting the fundamental rights of the debtor, which creates a new balance between the interests of the claimant and the protection of the fundamental rights of the debtor.

In this context, the enforcement under the fundamentality of law means that the enforcement of implementation document for all countries should be qualified as such, which relates to a fundamental human rights, taking into account its close relationship with such rights as property right and right to receive compensation for damage, defense of which is explicitly stated under Convention for the Protection of Human Rights and Fundamental Freedoms and Constitutions of many countries.

The corresponding approaches determine the need of providing a legislative framework for the right to enforcement as fundamental in domestic legislation, but also in the international acts. The right to enforcement is considered by the European Union as an essential element of the state functioning, based on the supremacy of law. As stated in the dissenting opinion of a judge Zupancic (judges Panthur and Turmon also supported this point of view) in the case Nuutinen v. Finland as of June 27, 2000, ‘enforcement of court decisions, in its turn is considered to be the central issue in ensuring the supremacy of law. The supremacy of law involves the replacement of the individual power, in particular, the overcoming of passive resistance from the ‘happily possessing’ public authorities. The enforcement of court decisions, in other words, can be interpreted as an essential and constant element of the supremacy of law.

The further development of the supremacy of law ideas in Ukraine is also intended in the gradual enforcement in the enforcement process.

¹² The Global Code of Enforcement. URL: http://zhso.kz/assets/data/Global_Code_enforcement.pdf

The providing a legislative framework for the supremacy of law in the sectoral legislation, particularly in the Law of Ukraine “On enforcement proceedings” involves also the approximation of the domestic legislation in accordance with the European standards of enforcement.

It is also reasonable to make some remarks regarding the content specification of the Article 1 of the Code. Thus, in the title of the article, the right to enforcement is set as the absolute right, but completely other characteristic features can be traced from the content of the norm. Namely, instead of the unconditional execution, the right to the effective access to the coercive enforcement is settled in this norm, but this is not considered to be the right to enforcement.

However, we consider that the right of enforcement is multidimensional and should not include only the opportunity of the potential recoverer’s appeal to the bodies of the state executive service or private executor with the relevant statement/claim, but also the whole scope of the procedural measures under the legislation on the enforcement procedure, namely the enforcement of an effective and qualitative enforcement process according to the present enforcement document¹³.

In addition, such appeal should be applied against the unscrupulous debtor, so the notion “unscrupulous debtor” further restricts the rights of the recoverer, as the recoverer will have to prove the “unscrupulousness” of the debtor. For instance, in case of enforced collection against a certain state will interpret this state to be “unscrupulous”. It is quite obvious that the Code compilers in the first norm tried to single out those debtors, against whom makes no sense to open the enforcement procedure due to the occurred objective conditions and due to the fact of their impossibility to meet their own debt obligations. Such an interpretation of the “fundamental right to enforcement” significantly abridges the right¹⁴.

Enforced on the execution of a judgment should be implemented in strict compliance with the conditions, established by law and in accordance with the existence of exemption from the coercive enforcement, established by the domestic and international law. This provision restricts the recoverer’s rights of the unconditional enforcement again.

¹³ Scherbak S.V. Fundamentality of right to enforcement as the future requirement in the enforcement process of Ukraine. *Legal system reforming in the context of European integration processes*. Materials of International Scientific and Practical Conference. c. Sumy, May 18–19, 2018. Sumy : Sumy State University, 2018. P. 363–365.

¹⁴ Malsky M.M. *International Enforcement Process: Theory and Practice : A Monograph*. Drohobych Kolo, 2019. P. 268.

Let us compare the last provision with the provision of Article 3 of the Constitution of Ukraine, under which the human rights and freedoms and their guarantees determine the role and orientation of the government actions. Approval and assurance of human rights and freedoms is the 'main duty of the state'. Therefore, from this provision we may conclude that the state is obliged to comply with duties under the court decision and without any additional conditions to enforce instead of the debtor, who is discharged from the liability under the exemption. Only under such regulation, the right to enforcement may become a fundamental one, but in the given text of Article 1 of the Code the law is conditional.

Establishing the exemptions against the coercive enforcement, the state discriminates the recoverer's right to claim in relation to the debtor's rights. It takes no effort to establish the guarantee to everyone for the execution regardless the amount of the claim, but to fulfill the implementation of this provision in practice is very complicated and not always justified. Let us assume that economically unprofitable for private executor will be the recovery of a sum in the amount of 100 UAH or even 1 000 UAH and it is unlikely that he will deal with it. So, under such a guarantee, the state should commit a compensation of expenses on executors, which is likely to be disproportionate to the amount of the sum of recovery, etc.

The Code compilers substantiate the applied principle in the following way: 'this section enshrines the right to enforcement of court decisions as a fundamental right (Art. 1). If the principle of the supremacy of law provides that all people involved in the case should be confident in the judiciary, so the coercive enforcement system must be effective and fair'¹⁵. In the quotation mentioned above, the supremacy of law was not applied properly, as it cannot 'predict', but may be used by the individuals to protect their rights when the norms of the legislation do not correspond to natural human rights or are recognized to be such under the Constitutional Court of Ukraine. The very statement assumes that every state is required to create the accomplished (perfect) legal system, the basic elements of which should adjudicate and enforce the court decisions. Thus, the enforcement of court decisions must be guaranteed not only by the account of accomplished legislation, lawful judge's activity, but also by the executor's enforcement inevitability under the court decision.

Therefore, all the unnecessary conditions should be removed from the content of Article 1 of the Code and transferred to the other norms

¹⁵ Global Code of Enforcement / Trans. from English. and comment by A.A. Parfenchikova. M. : Statute, 2016. P. 36.

of the Code, in particular, to Article 2, which defines the debtor's obligations, his/her exemption etc. If everything remained unchanged, the recoverer's right to the enforcement, cannot be interpreted as a fundamental one.

3. Standards of justice in the enforcement process

Substantial filling on the court decisions enforcement sphere is not limited by bodies and person power exercising, who enforces the court decisions and decisions of other bodies in the procedural method, but also covers the issue regarding mechanism functioning, which is capable to ensure the viability and accessibility of the enforcement system in general.

Standards recognized by the international community in the court decision enforcement sphere – principles, recommendations, rules, the criteria are included in the different documents and possess different levels – worldwide or European, can be both mandatory and non-mandatory for Ukraine.

In the broad sense, the standard is an example, pattern, model, which is initial in comparison with the other similar objects.

The development of common European standards of coercive enforcement is primarily directed at improving the existing situation in the area of execution of court decisions.

Along with the concept of general standards of coercive enforcement, which at this stage of development of the theory of the enforcement process have been identified, but have not yet been researched, the new term “standards of equity in enforcement procedures” is also applied.

Attracts attention that when the Law of Ukraine “On Enforcement Procedure” of 02.06.2016 was adopted, justice was embodied in Article 4 as one of the foundations of enforcement procedure, but without any definition of its content.

Fair implementation standards should be understood as a combination of model requirements designed to ensure the proper and effective implementation of the enforcement process by the government executive or a private enforcer.

The standards for equity in the enforcement process are a further integration of the supremacy of the law into the enforcement process, which are analyzed through the prism of a civilized process, considering the time sequence and the course of the civil process.

There are two aspects to justice in the context of legal procedure: 1) material (substantive) justice, which is that every court decision must be equitable in substance (i.e. the rights and obligations of those who have gone to court or justice should be restored through the court decision).

2) processual (procedural) justice, which provides for the consideration of the case in accordance with certain judicial procedures¹⁶.

The European Court of Human Rights provides the following interpretation of Article 6 § 1 in regard to the meaning of the term “just” in Article 6 § 1 of the Convention for the Protection of Rights and Fundamental Freedoms, in particular “justice”, which is a requirement of Article 6 § 1 and is not “basic” (an idea that is partly legal, partly ethical, and is only used by a jury), but “procedural” justice. Article 6 § 1 guarantees only procedural justice, which in practice is understood as a competitive proceeding, in which the parties’ arguments are heard on an equal footing (Ctar Cate Epilekta Gevmata and Others v. Greece). The fairness of proceedings is always judged by their consideration in general so that a single error does not violate the fairness of the whole proceedings (Miroslubov and Others v. Latvia § 103)¹⁷.

The standards of justice of the enforcement process are not immanent standards of justice in the legal proceedings, they are a special instrument of "sectoral" purpose and are characterized by a radically opposite manifestation of the rule of law when executing judgments and decisions of other bodies. First of all, this is seen in the absence of the possibility to detect substantive justice in the enforcement process, as the judgment is enforceable in the manner and order prescribed in the executive document and the current legislation; in the absence of the powers by the executor, which are commissioned to the court when considering a civil case concerning the application of decisions of the European Court of Human Rights, that allows to determine only the procedural standards of justice of the enforcement process¹⁸.

The standards of justice of the enforcement process can be considered procedural principles, the duration of enforcement procedures and individual procedural actions, procedural guarantees of the enforcement process.

The rules and regulations of the enforcement process must be sufficiently detailed to ensure that the enforcement process is characterized by legal

¹⁶ Morshchakova T. Constitutional protection of rights and freedoms of citizens by courts of the Russian Federation (in Russian). *Comparison of the constitutional review*. 2004. № 4 (49). P. 125–126.

¹⁷ Handbook on Article 6 Right to a fair trial (civilian part). Council of Europe Conceil de Europe, 2013. P. 76

¹⁸ Shcherbak S.V. Justice Standards in Ukraine's Enforcement Process. Reforming the Legal System in the Context of European Integration Processes. Materials of the International Scientific and Practical Conference. Sumy, May 23–24, 2019. Sumy: Sumy State University, 2019. P. 363–365

foreseeability and transparency, predictability and efficiency. Herewith all enforcement proceedings should be conducted in accordance with the fundamental rights and freedoms recognized by the ECHR and other international documents. It is essential to ensure access to the enforcement and to achieve the quality of enforcement, as well as to maintain the balance of interests of the collector and the debtor, that is, due consideration of the interests of both the debtor and the collector, and in certain cases, the interests of other persons whose rights are affected by the enforcement process. Among standards of enforcement justice requirements for ethics and behavior of public and private enforcers play important role. While hiring to the State Enforcement Service, the moral qualities of the candidates, their knowledge and training in the field of enforcement of court decisions and decisions of other bodies should be considered. In the performance of their duties state enforcers (private enforcers - in the enforcement process) must be just and competent and act in accordance with professional and ethical standards.

CONCLUSIONS

Achieving the efficiency of the enforcement process in Ukraine requires conceptual improvement of current legislation governing the enforcement of judicial acts and decisions of other bodies, as the effectiveness of the enforcement process is the effectiveness of the state-selected model of enforcement, which includes the achievement of the goals and objectives of the enforcement process in the most effective ways. Introduction of modern standards of European enforcement and studies of new technologies of enforcement are also promising, and therefore the process of adaptation of Ukrainian enforcement legislation to EU law must continue.

Ensuring the protection of the rights and interests of the collector in the enforcement process of Ukraine requires the use of effective, thorough mechanisms and procedural instruments capable of ensuring the observance of their procedural rights in the enforcement process at a proper level. The right to effective enforcement of enforcement documents is considered by the European Union on a larger scale than at the national level, in particular as a factor in the development of a socially responsible economy and as a key tool for economic development.

Modern Ukraine still faces relevant evolutionary challenges, which now require a detailed study of the implementation of the main provisions of the enforcement process of European countries, but there is no doubt that the right to recognize the enforcement document is fundamental in both

Ukrainian society and national law. It is not only a matter of achieving the level of debtor's sense of justice as it is in European countries, in this context it is necessary to take into account the national traditions, the psychology of citizens and the positive (instead of negative) attitude of the society towards the debtor, when in difficult economic conditions society sympathizes with the debtor, and most citizens see themselves more as a debtor than a collector¹⁹.

Equally important is to ensure the right to comprehensive and thorough protection of the rights of subjects of enforcement procedural relations in the course of the enforcement process, to create a new balance between the interests of the collector and the protection of fundamental rights of the debtor, the observance of their rights by state or private enforcer.

SUMMARY

The article explores the problematic issues of harmonization of the legislation on the enforcement of Ukraine at the national level in the context of integration. For this purpose, the most important general provisions related to the adaptation of national legislation governing the process of enforcement of judgments and decisions of other bodies to European standards of enforcement have been formulated and highlighted. These include three aspects – the enforcement model and the regulatory framework for the enforcement process, the fundamental right of enforcement in the context of the draft Global Code of Enforcement, and the standards of justice in the enforcement process, as well as their analysis. Critical comments were made on the current state of the legislation on enforcement proceedings and its compliance with European standards on the quality of its presentation and the challenges of today, and suggestions were made to improve it. The ways of further development of the Ukrainian enforcement process were suggested, considering the European harmonization processes and conditions of active discussion of the Global Compulsory Enforcement Code draft, proposals to improve its principles (provisions) were made. The own vision of the new term “the enforcement process justice standards” is outlined, its content and essence are defined. The conclusion is made about the need for further development of the process of adaptation of Ukrainian enforcement legislation to the EU legislation.

¹⁹ Shcherbak S.V. Enforcement procedural relations: an ideological aspect. *Eurasian Academic Rese.* 2018. No. 7 (25). P. 47–52.

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3. Association Agreement between Ukraine, of the one part, and the European Union, the European Atomic Energy Community and their Member States, of the other. URL: https://zakon.rada.gov.ua/laws/show/984_011
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