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СУЧАСНА МОДЕЛЬ ДЕРЖАВНОЇ ВИКОНАВЧОЇ СЛУЖБИ В СИСТЕМІ ОРГАНІВ ДЕРЖАВНОЇ ВЛАДИ УКРАЇНИ

Анотація. *Актуальність досліджуваної проблеми зумовлена необхідністю теоретичного обґрунтування місця виконавчого провадження у сучасній правовій системі України та функцій державної виконавчої служби щодо захисту прав громадян і юридичних осіб, а також інтересів країни. Метою статті є розробка сучасної моделі адміністративної діяльності органів державної виконавчої служби. Провідним методом дослідження зазначеної проблеми є моделювання, що дозволяє розглядати цю проблему як цілеспрямований та інформований процес реформування наявної системи виконавчого провадження в Україні. У статті розглянуто основні причини проблемних ситуацій у виконавчому провадженні та запропоновано вичерпні шляхи їх вирішення на основі структури сучасної державної виконавчої служби, створення теоретичних основ виконавчого провадження та внесення конкретних змін до чинного законодавства. Стаття з'ясує принципи, функції та повноваження державної виконавчої служби в Україні, а також визначає функціональні особливості адміністративної діяльності органів державної виконавчої служби та розкриває зміст адміністративно-правового статусу державного виконавця у змішаній системі примусового виконання рішень. В Україні ще не проведено комплексних досліджень державної виконавчої служби в Україні у змішаній системі прийняття рішень, з акцентом на особливостях її реформування у наш час та формулюванні Концепції. Це визначає актуальність цього дослідження, його наукову та практичну цінність*

Ключові слова: *виконавча процедура, державний орган, права і свободи, адміністративне право*

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CURRENT MODEL OF THE STATE EXECUTIVE SERVICE IN THE SYSTEM OF PUBLIC AUTHORITIES OF UKRAINE

Abstract. *The relevance of the problem under study is due to the need for theoretical justification of the place of executive proceedings in the modern legal system of Ukraine and the functions of the state executive service to protect the rights of citizens and legal entities, as well as the interests of the country. The purpose of the article is to develop a modern model of administrative activity of state executive service bodies. The leading research method for this problem is modeling, which allows us to consider this problem as a focused and informed process of reforming the existing system of executive proceedings in Ukraine. The article presents the main causes of problem situations in executive proceedings and offers comprehensive ways to solve them, based on the structure of the modern state executive service, creating the theoretical foundations of executive proceedings and making specific amendments to the current legislation. The article clarifies the principles, functions and powers of the state executive service in Ukraine, as well as defines the functional features of the administrative activities of the state executive service bodies and discloses the contents of the administrative-legal status of the state executor in a mixed decision enforcement system. In Ukraine is not yet comprehensive research on state executive service in Ukraine in a mixed system of decision-making, with emphasis on the peculiarities of its reform in the present period and the formulation of the Concept. This determines the relevance of this study, its scientific and practical value*

Keywords: executive procedure, state body, rights and freedoms, administrative law

INTRODUCTION

The hallmark of a democratic society and the rule of law is: the free and effective exercise by a person of his/her rights and freedoms. Today, this statement is the axiom of modern civilized progress [1]. Administrative law has a decisive role to play in securing such a change. After all, administrative law is a prerequisite and a means of functioning of public power to ensure the rights and freedoms of the individual and citizen through the execution of laws and other legal acts of the country [2]. Ukraine as a legal state is characterized not only by prevention of the violation of legislation, human rights and freedoms, but also by making of appropriate guarantees for the restoration of these rights. Implementation of values of the western law tradition into the national system of law and law education reforming is crucial for the Ukrainian law science [3-4]. The burden of

making conditions for a sense of security for every citizen rests with the judiciary. However, the decisions made by the court without guarantees of their precise and timely fulfillment, as well as the decisions of other state bodies, lose all sense of the very existence and activity of the courts and bodies producing the decisions [5]. The efficiency of functioning and effectiveness of decisions of all branches of state power, of course, depends on the full and timely fulfillment of its decisions [6]. As S.O. Yakimchuk [7] notes, the ability of the authorities to close the gap between the proclaimed and the accomplished is not only the shortest way to win the respect of their own people, but also a powerful argument for bringing about proper law and order in the country. The above has prompted the legislator to adopt the Law on State Executive Service (1998)¹.

1. Law of Ukraine No. 376-XIV "On State Executive Service". (1998, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/202/98-%D0%B2%D1%80#Text>.

Until now, in Ukraine the executive of court decisions has been entrusted to executive agents. The Law of Ukraine “On State Executive Service” (1998)¹ marked the beginning of a new stage of development of national executive proceedings: the Institute of Executive was liquidated and a new state service was created instead, giving it organizational, financial and procedural autonomy – the state executive service. Complementing the legal status of this service was the provisions of the Law of Ukraine “On Executive Proceedings” (2016)². Today, the State Executive Service is a structured, state-owned, law enforcement organization that is part of the Ministry of Justice (2012)³ and is designed to ensure the implementation of state policy in the field of enforcement of decisions. Based on the fact that the state executive service is an integral part of executive bodies, the activity carried out by it is, by its nature, by-law. Accordingly, the state executive service is a specific element of the state, which enforces decisions, ensures the protection of human and citizens’ rights, and is of great social importance for Ukrainian society. The actors of the executive procedure in Ukraine are the SES bodies, state and private executive agents, parties, representatives of the parties, the prosecutor, expert, specialist, translator, actors of the evaluation activity, who are endowed with procedural personality and carry out their activity in order to enforce the decisions. The stages of the executive procedure are certain interrelated but relatively independent parts of the executive procedure, separated from each other by procedural decisions that unite a set of procedural actions aimed at achieving the closest procedural goal. To improve the regulation of the state executive service in Ukraine, we propose amendments to current legislation.

1. MATERIALS AND METHODS

Philosophical, general scientific and special methods were used in the research process. The dialectical method was used in writing the entire study, and its application made it possible to comprehensively analyze enforcement proceedings as an objectively existing phenomenon and identify its specifics and features. The historical-legal method provided an opportunity to identify the patterns of the social phenomenon of the state executive service and its evolution, as well as the stages and current state of research of this activity in the doctrine of administrative law. With the help of formal-logical methods (analysis, synthesis, generalization, abstraction, etc.) the definitions of definitions of the state executive service are formulated, the norms of the current legislation in this sphere are investigated, and the necessity of making appropriate changes to the legislation of Ukraine on administrative responsibility is substantiated.

The comparative legal method allowed to study the norms of domestic legislation aimed at regulating public relations in the field of enforcement proceedings and compare them with the relevant legislation of other countries in order to take into account this experience in improving the current legislation of Ukraine and identify determinant characteristics of state policy. The application of the structural-system method allowed to single out a group of subjects of executive proceedings in the general system of subjects of this state activity, as well as administrative offenses in this area in the structure of committed illegal acts. Statistical and sociological methods are used to analyze and summarize empirical information related to the research topic. The intersectoral nature of the study led to the use of other scientific approaches: the organic unity of theory and practice, methods of classification and grouping, as well as forms and methods of enforcement proceedings, modeling methods (to develop proposals for improving enforcement proceedings), and hermeneutic method. The rule of law as a principle of the State Execution Service activity determined application of the axiological approach, in particular, taking into account the provision that “The human being, his/her fundamental rights and freedoms are recognized as the fundamental values in a civilized society” [8] and the implicit nature of human rights, that are constantly being developed [9].

2. RESULTS AND DISCUSSION

There is a historical pattern characteristic of the Ukrainian model of the SES regarding the change of its legal status as an independent public administration body to the structural part of the system of bodies of the Ministry of Justice of Ukraine. During the period of independent Ukraine, the transformation occurred several times. At the present stage of its evolution, SES in Ukraine is in the status of part of the system of bodies of the Ministry of Justice of Ukraine, characterized by the definition of its legal status, mainly at the level of by-laws, not laws of Ukraine. The SES in Ukraine is defined as a vertically subordinated system of state bodies in the status of departments, administrations and divisions that are part of bodies of the Ministry of Justice of Ukraine (2012)⁴, which is part of the state apparatus, which directly and on behalf of the state performs its tasks and functions, exercising state-governmental powers in the field of enforcement of decisions.

Features of the national model of the state executive service. The performance of the national executive service is in contrast and far behind the performance of judgments in Western Europe, accounting for 85% of the executive of judgments and other jurisdictional decisions. Similar

1. Law of Ukraine No. 376-XIV “On State Executive Service”. (1998, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/202/98-%D0%B2%D1%80#Text>.

2. Law of Ukraine No. 1404-VIII “On Executive Proceedings”. (2016, June). Retrieved from http://search.ligazakon.ua/l_doc2.nsf/link1/T161404.html.

3. Order of the Ministry of Justice of Ukraine No. 512/5 “Instruction on the Organization of Enforcement of Decisions”. (2012, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/z0489-12>.

4. *Ibidem*, 2012.

indicators in Ukraine, as we noted, are in the volume of executed documents from 50 to 65%, and the amounts to be recovered: from 18% to 40%. According to the figures, the level of executive proceedings remains low. This circumstance, as well as the inadequate level of regulatory support for the activity of the State Executive Service of Ukraine, make it necessary to scientifically develop problems of executive proceedings. In Ukraine, the fulfillment of court decisions is vested by law in the state executive service. The main task of the State Executive Service is to determine timely, complete and impartial enforcement of court decisions provided by law. However, it can be seen from the above that the statistical analysis of the current situation with enforcement of court decisions by the state executive service, suggests only disappointing conclusions and confirms the urgent need to reform the system of enforcement of decisions taking into account the realities of the current Ukrainian society and the effective experience of foreign partners abroad. This state of affairs with the enforcement of decisions not only worsens domestic legal foundations, but also damages Ukraine's international reputation. Implementation of decisions of the European Court of Human Rights (2011) [10] notes the existence of major systemic shortcomings which give rise to a number of repeated findings regarding violations of the Convention for the Protection of Human Rights and Fundamental Freedoms¹ that seriously undermine the rule of law. Concerning Ukraine, these problems are related, in particular, to the chronic nonfulfillment of national courts' decisions.

The right to enforce a judgment is an integral part of the right of access to a court provided for in Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms². All previous reforms of the executive system were cursory and did not produce the desired results, as evidenced by statistics. Therefore, the ongoing reform of the introduction of a mixed executive system in Ukraine should be the historic stage in the development of the executive system of judgments and decisions of other bodies, which will dramatically change the situation in this area for the better. The new Law of Ukraine "On Bodies and Persons Enforcing Judgments and Decisions of Other Bodies" (2016)³ defines the principles of activity of the state executive service, enhances legal protection and guarantees of the performance of the activity of state executive agents, determines the legal status of private executive agents, regulates the procedures for acquiring and suspending the right to implementation of activities by private executors, establishes peculiarities of financial support for the activities of private executors, procedures for substitution of private executors, introduction and maintaining the Unified Register of private executors of Ukraine. Therefore, the issues of effective

legal protection and real restoration of violated rights and legitimate interests at the present stage of state formation of Ukraine are of primary, if not paramount importance. Due to this special status, the court or other judicial body renews the violated law by satisfying the requirements of the interested party. To date, the overwhelming majority of these requirements are met through special administrative executive measures applied by the State Executive Service of Ukraine.

In order to describe the administrative and legal status of the state executive service, the content of a more general concept – "state body", is of fundamental importance, since the executive service is an executive state body. And only the disclosure of the common features inherent in all, without exception, state bodies, allows analyzing the peculiarities of the state executive service activity, in view of its specificity. In the scientific and educational literature different conceptions about the content of this concept are covered. Adhering to the position of O.H. Predmestnikov [11], a state body is a certain organized group of people, acting in the relevant field, within the scope of its competence and taking part in the exercising of certain state functions. O.O. Olefir [12] defined state body as having its own structure and organized by the state or directly by the people a collective of civil servants, which is endowed with state powers, has a peculiar structure to it, and performs state-organizational, administrative, judicial and other functions, according to its purpose. There are other approaches to defining the concept of a state body, either emphasize the close relationship of this concept with the concept of state apparatus, or reveal specific features of a body of state.

It is fundamental that the public authorities, executing functions and tasks of the state, act on its behalf and in its interests. Hence, there is a need to give these bodies state power authorities, the presence of which allows them to perform qualitatively appropriate activities. But we cannot argue that only state bodies have power in one form or another. As N.S. Horban [13] rightly pointed out, power is not just a state concept. It must exist within any organized group. Another sign of public authority is the appropriate legal means of ensuring the implementation of acts adopted by the State through the use on its behalf of appropriate measures of education, persuasion and encouragement. Such measures are widely used by public organizations, but they differ in the level of importance and social value, which are not peculiar to those applied by public organizations (for example, awarding orders, medals, conferring the honorary title of Ukraine, etc.). An important feature of state-governmental authority is also the presence of the right of the state body to protect against violations acts issued by them on behalf and in the interests of the state. In order to prevent and detect violations of

1. Convention for the Protection of Human Rights and Fundamental Freedoms. (1950). Retrieved from https://www.echr.coe.int/Documents/Convention_RUS.pdf.

2. *Ibidem*, 1950.

3. Law of Ukraine No. 1798-VIII "On Bodies and Persons Enforcing Judgments and Decisions of Other Bodies". (2016, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/1403-19#Text>.

the issued act, the state body performs supervisory and control activities for the fulfillment of the requirements of the legal act. All the above actions of state authorities are obligatory in nature and are secured by its authority and power. Thus, the most basic and special features of a body of the state is its belonging to state apparatus and the realization on behalf of the state of its functions. It is for this purpose that it is vested with state-power authorities. Taking into account all the considered special features of a state body, we can say that it is part of the state apparatus, which directly and on behalf of the state performs its tasks and functions, exercising state-power in the relevant field of state activity. We believe that such a definition of a public authority allows it to be distinguished from other organizations and to reflect its specificity.

The essence of the legal regime of executive proceedings and guarantees of human rights respect. The Constitution of Ukraine (1996)¹ defines relevant areas for bodies of the state. It means that certain types of state power, within which these bodies perform functions of legislative, executive and judicial activity. Functional definition of executive power implies the separation of not only purely executive activity, but also the functions of governance and political leadership. The Conception of Administrative Reform in Ukraine (1998)² enshrines the concept of executive power as one of the three branches of state power, which, according to the constitutional principle of separation of state power, is designed to develop and implement state policy to enforce laws, manage public life, primarily the public sector of economy. Thus, the issue of specifying the content of the legal status of a state body needs further solution. Having analyzed the general theoretical provisions of the functioning of the state executive bodies, we consider it possible and expedient to proceed to the analysis of the specifics of the activity of the State Executive Service, to which the Law of Ukraine “On Executive Proceedings” (1999)³ mandates the enforcement of decisions of the court and other jurisdictions. According to the Law of Ukraine “On Executive Proceedings” (1999)⁴ executive proceedings were defined as the final stage of judicial proceedings and

enforcement of decisions of other bodies (officials) is a set of actions of bodies and officials defined in this Law aimed at enforcement of decisions of courts and other bodies (officials) carried out on the grounds, within the powers and in the manner determined by this Law, other normative legal acts adopted in accordance with this Law, other laws, as well as decisions subject to compulsory executive under this Law. According to the Law of Ukraine “On Executive Proceedings” (2016)⁵ executive proceedings as the final stage of judicial proceedings and enforcement of judgments and decisions of other bodies (officials) are defined as the set of actions provided for in this Law of bodies and persons aimed at enforcement of decisions and are carried out on the grounds, within the powers and in the manner determined by the Constitution of Ukraine (1996)⁶, this Law, other laws and regulations adopted in accordance with this Law and decisions that according to this law are subject to be enforced. Comparing the above two definitions, we notice the main difference between them, namely the definition of the Law of Ukraine “On Executive Proceedings” (1999)⁷ – a set of actions of bodies and officials, and in the Law of Ukraine “On Executive Proceedings” (2016)⁸, is the set of actions bodies and persons defined in this Law.

The peculiarity of the current legal status of the state executive service is that it is enshrined in several normative acts of different legal force, some of which contradict each other. Such normative legal acts are the Laws of Ukraine “On Bodies and Persons Enforcing Judgments and Decisions of Other Bodies” (2016)⁹, “On Executive Proceedings” (2016)¹⁰, where the organizational and legal foundations of the activity of the State Executive Service of Ukraine have been formed. The Cabinet of Ministers of Ukraine (2014)¹¹ has approved the regulation on state executive service as part of the Ministry of Justice of Ukraine. The status of the state executive service as a body of executive power is also enshrined in the Presidential Decree of April 6, 2011, which approved the Regulation on the State Executive Service of Ukraine¹². This Regulation (2011)¹³ defines that the State Executive Service of Ukraine is the central executive body, whose activity is directed

1. Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254к/96-бп#Text>.

2. Decree of the President of Ukraine “On measures to implement the Concept of Administrative Reform in Ukraine”. (1998, September). Retrieved from <https://zakon.rada.gov.ua/laws/show/810/98#Text>.

3. Law of Ukraine No. 783-XIV “On Executive Proceedings”. (1999, June). Retrieved from https://zakononline.com.ua/documents/show/206001__562902.

4. *Ibidem*, 1999.

5. Law of Ukraine No. 1404-VIII “On Executive Proceedings”. (2016, June). Retrieved from http://search.ligazakon.ua/1_doc2.nsf/link1/T161404.html.

6. Constitution of Ukraine, op. cit.

7. Law of Ukraine No. 783-XIV “On Executive Proceedings”, op. cit.

8. Law of Ukraine No. 1404-VIII “On Executive Proceedings”, op. cit.

9. Law of Ukraine No. 1798-VIII “On Bodies and Persons Enforcing Judgments and Decisions of Other Bodies”. (2016, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/1403-19#Text>.

10. *Ibidem*, 2016.

11. Resolution of the Cabinet of Ministers of Ukraine No. 442 “On the Optimization of the System of Central Executive Bodies”. (2014, September). Retrieved from <https://zakon.rada.gov.ua/laws/show/442-2014-%D0%BF#Text>.

12. Decree of the President of Ukraine No. 385/2011 “Regulations on the State Executive Service of Ukraine”. (2011, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/385/2011#Text>

13. *Ibidem*, 2011.

and coordinated by the Cabinet of Ministers of Ukraine through the Minister of Justice (2012)¹ of Ukraine, is part of the system of executive authorities and provides for the implementation of state policy in the field of enforcement of decisions of courts and other bodies. The main tasks of the SES of Ukraine according to this regulatory act are:

- 1) implementation of state policy in the field of organization of enforcement of decisions;
- 2) making proposals on the formation of state policy in the field of fulfillment of decisions;
- 3) ensuring timely, complete and impartial fulfillment of decisions according to the procedure established by law;
- 4) exercising educational work concerning fulfillment of decisions.

According to paragraph 1 of the Model Regulation on administrations of the State Executive Service of the Main Territorial Departments of Justice of the Ministry of Justice of Ukraine the Autonomous Republic of Crimea, in the regions, in the cities of Kyiv and Sevastopol (2016)², the Office of the State Executive Service of the Main Territorial Departments of Justice of the Ministry of Justice of Ukraine in the Autonomous Republic of Crimea, in the cities of Kyiv and Sevastopol are bodies of state executive service, which is part of the system of bodies of the Ministry of Justice of Ukraine, reports to the Department of state executive service of the Ministry of Justice of Ukraine (2016) and is a subdivision of the main territorial departments of the Ministry of Justice of Ukraine in the Autonomous Republic of Crimea, in the regions, in the cities of Kyiv and Sevastopol. According to Art. 8 “Legal Status of Employees of State Executives Service Bodies” of the Law of Ukraine “On Bodies and Persons Enforcing Judgments and Decisions of Other Bodies” (2016)³ state executors, heads and specialists of bodies of the state executive service are civil servants. The characteristics of the Ukrainian model of the state executive service as a public authority will be influenced by the peculiarities of the national model of the civil service. According to Ye.V. Grainer [1], one of the main criteria that influence the peculiarities of the formation of the civil service model is the specificity of the historical development of the country concerned. This includes the development of national science and practice of state-building, as well as the experience of borrowing or influencing other states in public administration. There is no doubt that historical, political, social, economic and cultural events are different in each country. This forms a unique society that also influences the activities of government officials – civil servants.

Another aspect, stresses Ye.V. Greyner [1], who defines the peculiarities of the civil service model, is the specificity of the legal system. Taking into account the rather significant difference in the conceptual issues of different legal systems, this accordingly influences the nature of the institution building of the civil service, and especially its normative and legal regulation. And finally, this scholar concludes, the last important factor characterizing the peculiarities of the model of the civil service is the specificity of the state structure of a certain country.

The above features should be reflected in the legal regulation of the civil service. It makes sense to develop a general legal act that would combine the provisions of constitutional, administrative, labor, pension, financial, international and other law with the existing legal framework on civil service. Such an act may be the Civil Service Code of Ukraine⁴. It should be a comprehensive codification act that integrates the rules of the abovementioned areas of law. The structure of the Civil Service Code should be divided into two parts: general and special. In general, it is proposed to reveal the following provisions: the concept of public service; goals, objectives, functions and principles of the civil service; types of public service; the concept of “civil servant”, “position”, “official”; classification of positions; rights, obligations and restrictions on the civil servant’s rights, general principles of formation, implementation and termination of public-service relations; ethics of behavior (code); guarantees for a civil servant; management of the civil service; basic principles of financing; general principles for assessing the professional achievements of civil servants; responsibility of civil servants. In the special part of the Civil Service Code⁵, a number of laws of the appropriate types of public service should be placed, each according to the following scheme: peculiarities of formation, implementation and termination of public-service relations; peculiarities of assignment of class ranks, grades etc.; sources of financing; principles, technologies, procedures for evaluating the professional achievements of civil servants.

Considering the proposed scheme of placement of legal norms defining the legal status of the civil service and considering that the SES in Ukraine is a type of public service, we consider it possible to propose to supplement the Law of Ukraine “On Bodies and Persons Enforcing Judgments and Decisions of Other Bodies” (2016)⁶ with a separate section of the SES, in accordance with the appropriate layout scheme. In view of the above, the Ukrainian model of state executive service in the public authority system will be defined by the following criteria: specificity

1. Order of the Ministry of Justice of Ukraine No. 512/5 “Instruction on the Organization of Enforcement of Decisions”. (2012, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/z0489-12>.

2. Order of the Ministry of Justice of Ukraine No. 1183/5 “On Approval of Typical Provision on Department of State Executive Service of the Principal Territorial Administrations of Justice of Ukraine in the Autonomous Republic of Crimea, in regions, cities of Kyiv and Sevastopol”. (2016, April). Retrieved from <http://zakon2.rada.gov.ua/laws/show/z0617-16/paran9#n9>.

3. Law of Ukraine No. 1798-VIII “On Bodies and Persons Enforcing Judgments and Decisions of Other Bodies”. (2016, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/1403-19#Text>.

4. Civil Code of Ukraine. (2003, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/435-15#Text>.

5. *Ibidem*, 2003.

6. Law of Ukraine No. 1798-VIII “On Bodies and Persons Enforcing Judgments and Decisions of Other Bodies”, op. cit.

of the historical development of Ukraine, namely the development of national science and practices of state formation, experience of borrowing or influence of other states in the course of public administration; specifics of the legal system; specifics of the state order. Taking into account scientific conclusions by Ye.V. Greyner [1] and the current legal framework for the activity of the state executive service we can describe its modern national model as a traditional bureaucratic (career or closed) model, since it is based on legislation developed on the basis of the Constitution of Ukraine (1996)¹ in the light of national traditions, practice of state-building, modern reforming the economic and political system, material and financial capabilities.

However, today, with the development and reform of the Institute of Enforcement of Judicial Authorities by leading scientists and practitioners who have paid attention to issues of executive proceedings, its definition and content, it is considered that the national model of the state executive service and executive proceedings defined by law no longer corresponds to their practical nature, due to modern problems of their inefficiency. The laws being currently in force do not contain a definition of the state executive service, which has a negative impact on the definition of the legal status of the state executive service. Taking into account the new historical conceptual stage of the development of the legislation on executive proceedings and the practices of its implementation, in our view there is a need for capital regulation of it at the level of a codified act, namely the Criminal and Executive Code. In the Criminal and Executive Code, in Chapter 3 “General Provisions on Bodies and Persons Enforcing Judgments and Decisions of Other Bodies” (2016)², the first chapter proposes to include the chapter on state executive service, in which the concept of the state executive service will be enshrined. Prior to the adoption of the Executive Code, we propose to accumulate and systematize at the legislative level the rules governing SES activities in a separate section of SES in the Law of Ukraine “On Bodies and Persons Enforcing Judgments and Decisions of Other Bodies” (2016)³. The wording of the rules under the subdivision should be taken into account that the SES can now be defined as a state body that is part of the system of the Ministry of Justice of Ukraine appointed to enforce decisions of courts and other bodies under the legislation of Ukraine.

One of the key terms in the formulation of the concept of state executive service is the term “service”. Today, the State Executive Service uses the term “service” with sufficient conviction. In our view it can be justified by the following: first, the service, as a social concept, is used in the State Executive Service to determine the nature

and type of people’s activities, reflecting the fact of social division of labor; secondly, the service is sometimes referred to as structural units (Department of State Executive Service of the Ministry of Justice of Ukraine (2016), which includes the department of enforcement of decisions; administrations of the state executive service of the main territorial departments of justice of the Ministry of Justice of Ukraine in the Autonomous Republic of Crimea, regions, cities of Kyiv and Sevastopol consisting of departments of enforcement of decisions; district, district in cities, urban (cities of regional level), city-district, inter-district departments of state executive services of the relevant territorial departments of justice) (Ministry of Justice of Ukraine, 2012)⁴; thirdly, by the term “service” we mean an independent agency (unit).

Legal entity of the state executive service as a participant of executive proceedings. One of the most meaningful activities of people, as well as society, is service. This is confirmed by the conclusions of the scholar P.Ya. Stelmashchuk [5], who noted that the concept of “service” is used differently: as a type of human activity, as a social-legal institute, as a system of special bodies of the state, as a spiritual activity. The service consists in the management, implementation of state activities, ensuring of governance, social and cultural service to people. A special type of service is the public service. In the context of the State Executive Service, the concept of “service” reveals the essence of the system of special bodies of the state, which are intended to execute decisions of courts and other bodies, as well as – the type of activity of state executors aimed at executing the relevant decisions. The above points out that the state executive service implements one of the most important types of state activity in forming a professional nucleus in order to fulfill the state’s tasks in the implementation of the function of protection of human rights and freedoms and to ensure timely, complete and impartial enforcement of decisions provided by law. Therefore, when characterizing the public executive service, we should keep in mind that it provides socially useful activity, which, in our opinion, should be regarded as intellectual and aimed at the objective realization of rights, freedoms and legitimate interests as a human being, and society as a whole. An important aspect of this service is that it is a public administration body within the Ministry of Justice of Ukraine (2012)⁵, which has to do with the implementation of a single state policy in the field of enforcement of decisions.

Considering the content of the Regulation on the State Executive Service of Ukraine (2011)⁶, it is necessary to pay attention to the tasks facing the SES, namely:

1. Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254к/96-бп#Text>.

2. Criminal and Executive Code of Ukraine. (2016, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/1129-15/ru/ed20170407#Text>.

3. *Ibidem*, 2016.

4. Order of the Ministry of Justice of Ukraine No. 512/5 “Instruction on the Organization of Enforcement of Decisions”. (2012, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/z0489-12>.

5. *Ibidem*, 2012.

6. Decree of the President of Ukraine No. 385/2011 “Regulations on the State Executive Service of Ukraine”. (2011, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/385/2011#Text>.

1) implementation of state policy in the field of organization of executive of decisions;

2) making proposals on the formation of state policy in the area of executions of decisions;

3) ensuring timely, complete and impartial implementation of decisions in accordance with the procedure established by law;

4) implementation of educational work on executions of decisions.

The purpose of the activity of the State Executive Service is to ensure the activity of fulfillment the decisions of the courts and other bodies in accordance with the laws of Ukraine. This means that it provides for tasks of a particularly significant nature, that is, characterizing the state executive service, in our opinion, it is necessary to proceed from the place occupied by the professional activity of state executors in solving the tasks that lie before them. According to the current legislation, the general principles of the activity of the state executive service and private executors are defined equally. Thus, according to Art. 3 of the Law of Ukraine “On Bodies and Persons Enforcing Judgments and Decisions of Other Bodies” (2016)¹ the task of the state executive service bodies and private executive agents is timely, complete and impartial enforcement of decisions, the execution of which is provided by law. According to Art. 4 “Principles of activity of bodies of state executive service and private executors”² activity of bodies of state executive service and private executors is carried out in compliance with the principles: 1) rule of law; 2) legality; 3) independence; 4) fairness, impartiality and objectivity; 5) the obligation to execute decisions; 6) dispositiveness; 7) publicity and openness of executive proceedings and their fixation by technical devices; 8) the reasonableness of the terms of executive proceedings; 9) the proportionality of measures of enforcement of decisions and the volume of requirements for decisions. There is no consolidated legal rule at the level of the law, which would collect all the legal acts defining the legal status of the SES, this service rights. Being aimed at fulfilling an important function in the mechanism of the state, the activity of employees of the state executive service should receive decent legal regulation at the level of the law, and taking into account the accumulation of a critical mass of legal rules governing executive proceedings at the level of

the codified law – the Criminal and Executive Executive Code³. The above points to the conclusion that SES is a state organization that must ensure the proper protection of citizens’ rights. It is possible to enroll it in the law enforcement forces of Ukraine. The State Executive Service, being part of the Ministry of Justice system, is also part of the country’s executive branch.

CONCLUSIONS

Human rights implementation provides for the courts activity efficiency, including the necessity of the court’s decision execution. Courts’ decisions execution is the guarantee of the human rights implementation. The State Executive Service fulfills this task in Ukraine. Taking into consideration that the State Executive Service is the body of the State Executive Power and should act only within the scope and in manner provided for the law, the national legislation on the executive proceeding stands in need for the improvement through its codification. The Executive Code of Ukraine, including suggested provisions mentioned above, should be adopted. To improve the regulation of the state executive service in Ukraine, we propose amendments to current legislation, namely:

1) to adopt of the Concept of development of the state executive service in Ukraine, which would define the goals, objectives, methods of achieving them and prospects of organizational and legal support of the state executive service, as well as amendments to the Law of Ukraine “On Bodies and Persons Enforcing Judgments and Decisions of Other Bodies” (2016) by supplementing it with a separate section “State Executive Service”, the rules of which will define goals, objectives, functions, rights and responsibilities of the state executive service in Ukraine;

2) to adopt of the Executive Code of Ukraine, which should provide a section “General provisions on bodies and persons executing court decisions and other bodies decisions”, the first chapter of which we propose to define the chapter on state executive service in Ukraine to which it is proposed to move the above rules that determine the legal status of the state executive service in Ukraine. It is the state executive service, while restoring the violated rights and freedoms that should ensure the inevitability of property and other legal responsibility of dishonest debtors in civil and economic circulation.

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