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ON SOME ASPECTS OF EXECUTION PROCEEDING

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Аннотация

В статье исследована сущность исполнительного производства, его содержание, признаки, черты и место в деятельности органов государственной исполнительной службы. Проведена характеристика законодательства об исполнительном производстве, как совокупности правовых норм, которые входят в систему административно-процессуального права и являются предметом регулирования, которыми являются общественные отношения, возникающие в процессе деятельности органов государственной исполнительной службы Украины. Предложено считать, что правовые отношения в исполнительном производстве характеризуются специфическими свойствами метода их правового регулирования, а исполнительное производство обеспечивает режим законности в правовых отношениях граждан и юридических лиц.

Ключевые слова: исполнительное производство, содержание исполнительного производства, признаки исполнительного производства, черты исполнительного производства, значение исполнительного производства.

Summary

The paper studies essence of enforcement proceedings, its content, attributes, traits and in activities of state executive service. Spend characteristics of legislation on enforcement proceedings, as a body of law that are part of a system of administrative procedural law and are subject to regulation, which are public relations arising in course of activities of state executive service of Ukraine. It is proposed to assume that legal relations in final process is characterized by specific properties of method of legal regulation and enforcement regime ensures rule of law in legal relations of citizens and legal persons.

Key words: execution proceeding, content of execution proceeding, features of execution proceeding, characteristics of execution proceeding, importance of execution proceeding.

Introduction. Development of Ukrainian legal state sphere and direction of Ukraine policy of XXI century to entering into European (EU) world community (ILO) greatly exacerbate issues of domestic harmony of powers branches interaction, for example, executive and juridical, concerning administrative and legal control of court decision enforcement regulation, and with it effective activity of state enforcement service bodies of Ukraine with respect to real defense of rights and interests of natural and legal persons in compliance with principles of humanity, legalness and justise.

Execution proceeding as final stage of court proceeding and enforcement of other bodies decisions is a set of bodies and officials actions determined by Law of Ukraine which are aimed at enforcement execution of courts and other bodies that are carried out on basis and within limits of powers in a manner determined by Law «On execution proceeding», other regulatory legal acts adopted in compliance with specified Law and other laws, and also

decisions which in accordance to above mentioned law come within compulsory execution [3].

Execution proceeding legislations is aggregate of legal norms which are part of Administrative Procedure Law system and subject of regulation of which are public relations arising in course of state executive service bodies of Ukraine activity aimed at enforcement of judgments, definitions, and decisions of judicial and non-judicial agencies in cases provided by law. Such execution proceeding legal relations establish administrative and procedural order of decisions of judicial and non-judicial agencies performance [8, p. 83]. This order is determined by system of procedural actions performed by state enforcement officer, persons involved in enforcement proceedings, the participants of enforcement proceedings (parties, their representatives, experts, specialists, translators) as well as persons who are involved in carrying out enforcement procedures (witnesses, internal affairs authorities, representatives of custody and guardianship agencies, other



bodies and institutions in cases provided for in a law). In addition, order determined by content, form and conditions of proceedings performance, system of procedural rights and obligations of subjects of administrative and procedural executive legal proceedings that determine their contents, procedural rights implementation guarantees, obligations and legal proceedings [2].

Theoretical basis for studying of ontological essence of execution proceeding are publications of leading scientists: V.B. Averianov, A.F. Andreiko, A.N. Bandurka, D.M. Bakhrakh, Yu.P. Bitiak, A.S. Vasilev, I.P. Golosnichenko, E.V. Dodin, R.A. Kaliuzhniy, S.V. Kivalov, A.V. Pertrishin, A.A. Selivanov, V.S. Stefaniuk, S.Ya. Fursa, Yu.S. Shemshuchenko and other researchers.

Formulation of problem. The aim of this article is research of some ontological aspects of execution proceeding which, despite large number of available studies, continues to maintain its relevance.

Research results. To perform constitutional provisions that provide for solution of tasks for rights of natives, juridical entities and state, legal proceedings designed to ensure both correct and timely consideration and settlement of cases under its jurisdiction, and implementation of decisions made by it. This goal is achieved by procedural order of their enforcement, forming independent and final stage, execution proceeding. Implementation eliminates violations of property and individual non-property rights using procedural means and methods of compulsion to persons who refused to meet their obligations voluntarily [6, p. 120].

Article 1 of Law of Ukraine «On execution proceeding» it is defined as completing stage of court proceeding and enforcement of other bodies (officials) decisions. Execution proceeding is series of steps of bodies and officials aimed at enforcement of decisions of courts and other bodies (officials), performed on basis, in manner and within powers defined by law and other regulatory legal acts, as well as decisions to be enforceable. Therefore, the execution proceedings can be viewed in two ways:

- firstly, as final stage of cognizance, result of which is issuance of relevant decision and within which executory legal relations between subjects of execution proceedings are appeared and realized;
- secondly, as a procedural activities of persons defined by law, carried out through implementation of their incumbent powers.

In process of compulsory execution proceedings may arise not only administrative procedural executive, but also arbitration and procedural legal relations between body of state executive service and court, arbitration court. In accordance with Art. 28 of the Law «On Execution Proceeding», if operative part of decision contained in executive document, is not clear, State Executive has right to apply to a court or other authority (to officials) that issued enforcement document, with application concerning explaining of relevant decision or document content [4, p. 341]. Such application shall be considered within ten days from date of its receipt.

Procedural and legal procedure for explaining decision of Civil Law Court, provided by Art. 215 of Civil Procedure Code. In accordance with requirements of this Article in case if decision is not clear, court considering case at request of persons involved in it, as well as body of execution of court judgment shall be entitled to explain its decision without changing content. Filling application for clarification of decision is allowed if it is not satisfied or its submission to enforcement term has not expired. This application is considered by court with call of parties, but their absence is not an obstacle to regarding of issue concerning decision clarifying. Ruling of court for clarification of decision can be appealed.

Legal relations in execution proceeding is characterized by specific properties of method of legal regulation. Method of legal regulation of execution proceeding is determined by properties of subject of its regulation, social functions, which are executed by legislation on execution proceeding, its connection with jurisdictional activities of judicial and non-judicial bodies to protect civil and other property and personal non-property rights and legally protected interests. By their nature, method of execution proceeding regulation is of imperative and discretionary nature and is determined by regulatory criteria, which include:

- grounds for emergence, development and discontinuance of administrative procedural and executive legal relations;
- nature of legal bonds between subjects of these legal relations;
- procedural and legal status of state executive service, persons who take part in execution proceeding, and persons involved in executive actions performance;

- content, form and order of procedural actions performance in execution proceeding;

- guarantees of powers implementation by state executive service bodies, rights and obligations of compulsory execution proceeding participants.

Imperative method of influencing behavior of subjects of executive-procedural legal relations fixed in law provisions, establishing duty (duty of specific proactive behavior, in particular, state enforcement officer is obliged to take measures of compulsory decisions execution, Art. 5 of this Law); proscription (prohibition of certain actions or omissions of acts – state enforcement officer, expert, specialist, interpreter can not participate if there are circumstances established in Art. 17 of this Law, indicate their interest in enforcement of court judgment and duty to seek self-disqualification); compulsion (application of enforcement measures to ensure norms of execution proceeding – Art. 11 of Law «On State Executive Service» provides that state enforcement officers are subject to disciplinary responsibility in accordance with established Law, Art. 87 of the Law «On Execution Proceeding» – responsibility for non-fulfillment of legal requirement of state enforcement officer and violation of this Law, etc.)

Provisional method is defined by rights of subjects of execution proceeding and characterized by a resolution of active behavior within limits determined by norms of legislation on execution proceeding [1, p. 156]. For example, state enforcement officer has right to stop execution proceeding (Art. 35 of Law «On Execution Proceedings»), to use non-residential premises by agreements of owner (Art. 35), parties and other participants of execution proceeding have right to examine materials of execution proceeding, to make extracts form them, make copies, present petitions (Art. 29). Provisional method is widespread in norms of execution proceeding, determining legal status of judgment creditors and their representatives. The legal position of witnesses, specialists, experts and translators is defined by mandatory method (Articles 14–16).

The above provisions of legislation provide an opportunity to draw conclusion that execution proceeding is characterized by following features:

- its legal basis is Constitution of Ukraine, Laws of Ukraine «On State



Executive Service», «On Execution Proceeding», other laws and subordinate acts adopted in compliance with it, in particular, Instruction «On Carrying Out Enforcement Procedures», approved by Order Ministry of Justice of Ukraine on December 15, 1999, № 74/5;

– according to Article. 2 of Law «On Execution Proceeding», enforcement of judgments, rulings, decisions of judicial and non-judicial authorities in cases provided by law remains with state executive service, which is included in system of Ministry of Justice of Ukraine Bodies, as well as (in accordance with Art. 9 of Law) to other bodies;

– the activity of state executive service is performed on basis, in a manner and within authorities established by legislation on execution proceeding, and is aimed at timely, full and impartial enforcement of judgments, orders of judicial and non-judicial bodies (Articles 3 and 5 of Law «On Execution Proceeding»);

– established set of procedural rights and obligations, which allow and oblige parties and persons involved in performance, focus its activities to achieving objective of compulsory execution of decisions excepted in protection of property and personal non-property rights and interests protected by law, government and public interests [11, p. 75];

– guarantees to protect rights and protected by law interests of other persons, disturbed during enforcement procedures (Articles 85, 86 of Law «On Execution Proceeding»);

– guarantees of legalness of actions performance in execution proceeding by establishment of responsibility of state enforcement officers (Art. 11 of Law «On State Executive Service»), debtor (Articles 46, 87), keeper of property (Art. 58), citizens and officials (Art. 88) for violation and non-fulfillment of their duties to commit necessary procedural actions in execution proceeding.

In accordance with Art. 18 of Law of Ukraine «On Execution Proceeding» state enforcement officer opens execution proceeding on basis of enforcement document:

- at request of execution creditor or his representative on enforcement of decision;
- at request of public prosecutor in cases of representation of interests of native or state in court;
- in other cases provided by law.

This law does not establish requirements regarding form and content of this application. However, application should reflect a request for enforcement of judgment in favor of applicant's decision [2, p. 71]. As for the bodies (officials), law provides for additional requirements for their actions regarding addressing to execution of decisions. So, from the content of Articles 307, 308 of Administrative Offence Code of Ukraine may be concluded that duties of these bodies (officials) are to give violator time for payment of fine. Failure to perform such obligation will not allow official to send legally enforcement document for further enforcement in manner prescribed by law.

Therefore, a prerequisite for starting of execution proceeding is addressing of these individuals with statements to state executive service bodies [5, p. 128; 9, p. 67]. However, implementation e rights or obligations on addressing to state executive service bodies by these individuals for purpose of enforcement of decision is impossible without providing to corresponding statement properly issued enforcement document. The value of enforcement document is ability to implement on its basis a procedure for protection of violated, contested or imperfect rights. In presence of enforcement document, state enforcement officers is obliged to take it to execution, develop execution proceeding and take measures of enforcement execution, fairly, timely, and fully perform enforcement procedures. Requirements for its design and content are enshrined in Art. 19 of Law of Ukraine «On Execution Proceeding».

Execution proceeding as a procedural activity is characterized by fact that its implementation combines imperative and provisional methods. Mandatory nature in actions of these individuals is compulsory indication on obligation to perform a specific action or to refrain from its performance [9, p. 51]. Optionality is usually inherent only to parties of execution proceeding [10, p. 9]. Consequently, there are grounds to determine as a subject of activities of state executive service bodies enforcement documents specified in Art. 3 of Law of Ukraine «On Execution Proceeding», which include:

- order of enforcement issued by courts, and orders of economic courts, including on basis of decisions of arbitration court;
- determinations, decisions of courts

in civil, commercial, administrative and criminal matters in e cases provided by law;

- orders of court;
- executory endorsements of notary officers;
- certificates of labour disputes commissions issued based on relevant decisions of these commissions;
- resolutions of bodies (officials) authorized to consider cases on administrative offenses in cases provided by law;
- decisions of public authorities taken on issues of possession and use of places of worship and property;
- judgments of state enforcement officer on collection of executive fee, costs of enforcement procedures performance and fines imposing;
- decision of other public authorities in cases when, according law, their execution is entrusted to service;
- decision of European Court of Human Rights taking into account peculiarities stipulated by Law of Ukraine «On implementation of decisions and application of European Court of Human Rights practice» from February 23, 2006.

Conclusions. Therefore, our understanding is that execution proceeding is very important: it is defined by law, administrative procedural and legal measure that allows enforcement of decisions of judicial and non-judicial authorities and thus implements protection of rights of natives and organizations. They eliminate violations of property and individual non-property rights through use of procedural means and methods of coercion to persons who did not comply with their obligations voluntarily. Execution proceeding provides a state of legalness in legal relations of natives and legal entities prevents violation of a right or of a law and implements disciplinary impact on natives, officials and officers concerning understanding of need for adequate, timely and full compliance with laws of Ukraine.

Non-fulfilment or improper fulfilment of court decisions is reason of dissatisfaction with activity of judicial power as a whole on part of natives and legal entities who come to court to protect their legitimate rights and interests. It also leads to undermining of authority of judiciary and does not allow state to make judicial protection of rights, freedoms and interests of natives universal. This situation is worrying and requires reforming of now existing mechanism of execution of court decisions, which have entered into legal force.



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ДЕЯТЕЛЬНОСТЬ АВСТРИЙСКИХ ОРГАНОВ ИСПОЛНИТЕЛЬНОЙ ВЛАСТИ В АГРАРНОЙ СФЕРЕ В ГАЛИЧИНЕ (1772–1918 Г.Г.)

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Summary

The article is dedicated to disclose an essence and a content of activity of Austrian executive bodies in agrarian sphere in Galicia (1772–1918). The activities of Austrian Parliament, Ministry of Agriculture, Ministry of Finance, Boundary Land Commission in Lviv, Galician commission, IX Galician Department in Austria and Austria-Hungary are analysed. The conclusion is made about important role in agrarian sphere of Galicia in researched period such specialized institutes as Tabula, Boundary Commission of agrarian taxes. The Krayova Commission of land and taxes, Tsarsarsko Royal Commission of agrarian affairs.

Key words: executive bodies, agrarian sphere, legal regulation, land relationships, Galicia.

Аннотация

Статья посвящена раскрытию сущности и содержания деятельности австрийских органов исполнительной власти в аграрной сфере в Галичине (1772–1918 г.г.). Проанализирована деятельность австрийского парламента, Министерства сельского хозяйства, Министерства финансов, Краевой земельной комиссии во Львове, Галицкой комиссии, IX департамента Галицкого наместничества по урегулированию земельных правоотношений в Австрии и Австро-Венгрии, в Галиции. Сделан вывод, что важную роль в аграрной сфере Галичины в исследуемый период сыграли такие профильные институты, как: Крайова Табула, Крайова комиссия по делам выкупа и урегулирования земельных налогов. Крайова земельно-налоговая комиссия, цисарско-королевская Краевая аграрная комиссия и другие.

Ключевые слова: органы исполнительной власти, аграрная сфера, правовое регулирование, земельные правоотношения, Галичина.

Постановка проблемы. Реформирование земельных правоотношений в современной Украине требует, среди прочего, объективного научного изучения и использования в качестве международного и национального правового опыта. Это позволит осуществить организационно-правовые и экономические меры по реализации различных форм хозяйствования на земле, направленных на наиболее эффективное использование, воспроизведение и защиту почв, особенно на землях сельскохозяйственного назначения и тому подобное.

Большой научно-практический интерес в этом аспекте представляет изучение истории правового регулирования земельных отношений в Галиции в составе Австрии и Австро-Венгрии (1772–1918 г.г.), а также того, кто будет способствовать пониманию и освещению основ исторического развития правового регулирования земельных отношений в Украине. Исследование и обобщение этой историко-правовой

проблемы даст возможность использовать приобретенные знания и правовой опыт для выяснения истоков демократических традиций национального земельного законодательства. Изучение этой историко-правовой проблемы будет способствовать более глубокому пониманию защиты права собственности и особенности его правового регулирования, повышению эффективности функционирования института права собственности на современном этапе утверждения Украинского государства. Актуальность этой темы определяется также тем, что в основе правового регулирования земельных отношений указанного периода были заимствованы тогдашние европейские образцы рационального использования и охраны земель. Важность осуществления этого историко-правового исследования заключается в доказательности непрерывности развития правового регулирования земельных отношений в Украине.