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LEGAL REGULATIONS OF ENFORCEMENT PROCEDURE IN SELECTED FOREIGN JURISDICTIONS

Abstract

This article provides a brief comparative analysis of the peculiarities of the enforcement procedures in selected foreign countries and jurisdictions with various legal systems, including France, the United Kingdom, Belarus, Kazakhstan, the Baltic countries, as well as research into the organizational structure of their enforcement agencies. The article also provides an analysis of the diverse procedures applied in EU countries for enforcement of decisions of courts and other authorities in civil and commercial cases, including the European Enforcement Order, European Order for Payment, European Small Claims Procedure, as well as the procedure under the Recast Brussels I Regulation. The author's objective is to consider the procedures of enforcement of Ukrainian court decisions in these countries, as well as to raise the issue of the possible application of these procedures in the relevant legislation of Ukraine and to provide material for further research and analysis of these options.

Keywords

international enforcement process – coercive enforcement – recognition and enforcement – foreign court decisions

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INTRODUCTION

The impact of experience of the world's leading countries on the development of the enforcement process with a foreign element (international enforcement process) in Ukraine is rather difficult to determine, as today this issue remains understudied. It is important to research foreign experience in the field to find the most efficient and appropriate ways of reforming and improving Ukrainian legislation on the international enforcement process. Comparative studies of the organizational structure of enforcement agencies in developed countries would be the first step on this path. However, it is important to understand that the legal systems of different countries still need unification in this field: the development of generally accepted criteria, which was attempted by the authors of the Global Code of Enforcement – an example of a “soft law” source for international enforcement process, which was created by the International Union of Judicial Officers (UIHJ) and presents the key principles and features of the enforcement procedure, based on the research of the legislation of the developed countries.

In addition, foreign legislation and the activity of foreign enforcement agents with regard to the enforcement of the decisions of the Ukrainian courts are becoming an international element and therefore need to be further researched.

The adoption of the institute of private enforcers by Ukraine, which corresponds to the trends of other post-Soviet countries serves as evidence of the impact of foreign experience on the legal system of Ukraine. In particular, in the Baltic states this process was accompanied by widespread attention in the media.¹

This step in reforming the structure of coercive enforcement agencies in Ukraine was rather controversial, and before the actual adoption of the institute of private enforcers, this option should have been analysed and the possible consequences of such an important step determined. As follows from the research and stated by scholars as

¹ V. Nekroshius, “Reform of the civil procedure in Lithuania”, *Russian yearbook of civil and arbitral process*, 2002-2003, Issue 2, p. 189-191; I. Rosenberg, “Reform of the institute of court enforcers in Latvia”, *Reform of the civil process in the court of first instance in states of Baltic Sea and Central Europe regions*, Vilnius, 2005, p. 260-266.

S. Scherbak,² R. Ihonin,³ O. Horbach, and L. Shevchenko,⁴ such a step was unpredictable and unexpected, not to mention that the legal systems of the Baltic states, that have smaller area and population, differ significantly from the Ukrainian.

I. CLASSIFICATION OF ENFORCEMENT SYSTEMS

Post-Soviet scholars, who have been studying models of coercive enforcement in different countries for years, have developed a classification system mainly based on distinguishing the ways of organization of the enforcer's profession (bailiff, *huissiers de justice* – there are many name options), as well as the opportunities and limits of participation of non-governmental organizations in the enforcement process. Historically, according to this criterion, there are several main models of enforcement proceedings: state (public), non-budget (private), and mixed model – public with the admission of private initiative in diverse proportions.⁵

A study based on this classification has shown that in countries such as Belarus, Germany, Denmark, Israel, the United States, Finland, and Sweden the system of enforcement belongs to the state model. At the same time, in Russia, the United States and Finland enforcement agencies are a part of the executive branch, and in the Republic of Belarus, Germany, Israel and the Republic of Kazakhstan, enforcement is entrusted to court officials. In Belgium, Hungary, Italy, Latvia, Lithuania,

² S. Scherbak, "Administrative legal regulations of the enforcement process in Ukraine: Abstract of Thesis for a Candidate Degree in Legal Science", *12:00:07 Theory of administration: administrative law and process; financial law*, National Academy of Science of Ukraine, Koretsky Institute of State and Law, Kyiv, 2002, p. 19.

³ R. Ihonin, "Organizational legal principles of the enforcement procedure: Abstract of Thesis for a Candidate Degree", *12.00.07 Theory of administration: administrative law and process; financial law, banking law*, National University of the Tax Service of Ukraine, Irpin, 2007, p. 20.

⁴ O. Horbach, L. Shevchenko, "Institute of private enforcers: issues of theory and practice", *State and regions. Series: Law*, 2017, Issue 1, p. 51-55.

⁵ V. Iarkov, S. Ustiaev, "Concept of the development of the system of enforcement legislation of the Federal Bailiffs Service of the Russian Federation", *Arbitral and civil process*, 2001, Issue 8, p. 29-40.

Luxembourg, the Netherlands, Romania, Slovakia, Slovenia, France, and Estonia enforcers are private individuals who work under licence. Such enforcers are supervised by regional and national chambers which are self-governing bodies. The mixed enforcement system is typical for: Belgium, Bulgaria, Great Britain (England, Wales, Scotland), Kazakhstan, and Canada.⁶

It is rather obvious that the Federal Bailiffs Service of the Russian Federation that provided such classification made several mistakes when it attributed the enforcement agencies of the Republic of Kazakhstan to both the state system of enforcement and mixed, and classified Belgian enforcers as both individuals and part of the mixed system of enforcement.

Based on the world-renowned models of enforcement systems, enforcement of decisions in Ukraine (by its organization) should be classified as a mixed model, as in our country enforcement proceedings are carried out by both state and private enforcement agents. But before introducing the institute of private enforcers into the legal system of Ukraine, it was necessary to study and weigh the advantages and disadvantages of all the models, to publicly discuss the consequences of the transition from one model to another, and only then introduce legislative changes in the organization of coercive enforcement agencies.

In our opinion, noteworthy is the experience of Greece, where the main authorities in the field of enforcement proceedings include, not only enforcers, but also notaries, one of the functions of whom is the enforcement of judicial acts on the recovery of funds.⁷ The organizational structure of enforcement agencies in the Republic of Belarus also differs. There is currently no single system: there are two parallel enforcement systems – the Supreme Court and the Supreme Economic Court of the Republic of Belarus.⁸ The experience of Kazakhstan is also interesting, since in this country court bailiffs form an independent service, work in courts and maintain public order there, protect courts and

⁶ Federal Bailiffs Service of Russian Federation, *Systems of coercive enforcement of foreign countries*, available at: http://fssprus.ru/inter_razdel11 [last accessed 11.12.2020].

⁷ A. Vlasov, A. Maksurov, *Civil enforcement law: textbook*, A. Vlasov (ed.), Moscow, Examen, 2004, p. 352.

⁸ T. Belova, I. Koliadko, N. Iurkevych (eds.), *Civil process. Special part: textbook*, Minsk, Amalfea, 2002, p. 337.

judges, assist the court in carrying out procedural actions, monitor the enforcement of non-custodial sentences, and assist enforcers in enforcement of relevant documents issued by courts and other bodies. Organizational and methodological management of the enforcement service is carried out by the judicial authorities of the Republic of Kazakhstan. Enforcers are a part of the judicial system, subordinate to the Committee on Judicial Administration in the Supreme Court of the Republic of Kazakhstan, belong to the relevant courts, and exercise their authority to enforce rulings of courts and other bodies.⁹

Thus, in many countries, despite current trends, there is still a state enforcement system, which should be taken into account, not only when enforcing decisions in such countries, but also in comprehensive comparative studies – to warn of a possible negative impact on, or the decline of enforcement process in Ukraine. To quote Dr. Wendy Kennett, “In 1968, the Brussels Convention set minimum standards, but later, particularly since the decision of the Court of Justice of the European Communities No. 120/78 (which established that a product lawfully marketable in one Member State should be freely marketable in another Member State) was issued, the trend towards harmonization began to prevail”.¹⁰ Ukrainian specialists need to take into account the trends inherent in modern enforcement proceedings in the EU, and meticulously analyse the publications of European¹¹ and American¹² specialists. In certain post-Soviet countries, the transition to and introduction of the institute of private enforcers was preceded by a comparative analysis of the experience of leading countries.¹³

⁹ Z. Baimoldina, *Civil procedure law of the Republic of Kazakhstan: in 2 p. Part 2*, Almaty, KazHIA, 2001, p. 416.

¹⁰ W. Kennett, *Enforcement: General Report. Procedural Laws in Europe. Towards Harmonisation*, Antwerp-Apeldoorn, Maklu, 2003, p. 81-111.

¹¹ K. Tsvaigert, H. Ketz, *Introduction to the comparative law in the field of private law: in 2 p. P.2, transl. from German*, Moscow, International Relations, 2000, p. 205-210; V. Schreder, *Recovery of secret funds. Recovery of property. Investigation of the debtor's property: seminar materials*, Samara-Moscow, 1999, p. 42-52.

¹² D. Brown, *Coercive enforcement of decisions in USA. Recovery of property. Investigation of the debtor's property: seminar materials*, Samara-Moscow, 1999, p. 32-42.

¹³ V. Iarkov, *Leading world's trends of coercive enforcement*, available at: <https://wise-lawyer.ru/poleznoe/34292-osnovnye-mirovye-sistemy-prinuditelnogo-ispolneniya> [last accessed 5.11.2021]; N. Eliseev, *Civil procedure law of foreign countries: textbook*, Moscow State

The peculiarities of the development of the enforcement system in Bulgaria are vividly illustrated by the quotation, provided in the earlier mentioned analysis by the Federal Bailiffs Service: “All state bodies, officials, and organizations should assist private enforcers in performing their functions”. The institute of private enforcers in Bulgaria operates quite efficiently, as evidenced by the fact that the vast majority of enforcement documents are processed by private, not state enforcers. This is primarily facilitated by the wide range of powers granted to private enforcers by law and the establishment of reasonable fees for their services, which encourage private enforcers to work more efficiently. In addition to state and private enforcers in Bulgaria, recovery is carried out by so-called “public enforcers”, who are responsible for the collection of tax arrears, fines, and other penalties payable to the state.¹⁴ This leads us to believe that in Bulgaria state enforcers will gradually be replaced by public ones. This trend will inevitably lead to the disappearance of enforcers in depressed regions with low economic activity.

II. THE METHODS OF ENFORCEMENT IN THE EU

It is important to note that issues of recognition and enforcement of foreign judgments under EU law are consistently attracting the attention of Ukrainian scholars. In particular, V. Kiselychnyk and O. Kyivets studied the peculiarities of EU legislation in the procedure for determining jurisdiction in the context of the harmonization process of the collision

Institute of International Relations (university) of Ministry of Foreign Affairs of Russian Federation, Moscow, Prospect, T.K. Wellby, 2nd ed., 2004, p. 602; U. Bernem, I. Reshetnikova, “Enforcement proceedings in USA”, *Court reform: problems of civil jurisdiction*, Ekaterinburg, Humanitarian university Publishing, 1996, p. 139-148; E. Kuznetsov, “Enforcement proceedings in France: Abstract of Thesis for a Candidate degree in Legal Science”, 12.00.15, Ekaterinburg, 2004, p. 460; V. Tolkunov, “Institute of private court enforcers: experience of European countries and perspectives in Russia”, *Law*, 2007, Issue 5, p. 219-223; I. Medvedev, “Modern problems of the civil justice in France”, *Russian yearbook of civil and arbitral process*, Issue 1, 2001, p. 189-214; I. Reshetnikova, V. Iarkov, *Civil law and civil process in modern Russia*, Moscow, Norma, 1999, p. 197-199.

¹⁴ Federal Bailiffs Service, *supra* note 6.

law of EU member states.¹⁵ H. Tsirat studied the stages of development of the regulation principles of procedures for recognition and enforcement of judgments in civil and commercial cases within the EU.¹⁶ M. Kozeletska studied the legal nature of the institute of recognition and enforcement of court decisions in civil and commercial cases in the EU.¹⁷

Analysing the procedures for recognition and enforcement of foreign judgments within the EU, we can distinguish the following categories of cases, which are subject to separate regulation at the EU level: civil and commercial cases, cases of marriage, paternity, inheritance and succession, bankruptcy and liquidation of insolvent companies, etc. However, we would like to focus on the enforcement of decisions in civil and commercial cases.

Enforcement of decisions in civil and commercial cases, depending on the dispute and the amount of recovery, can be carried out in different ways. If the claim is uncontested, the following enforcement methods can be applied:

- European Enforcement Order;
- European Order for Payment;
- European Small Claims Procedure.

The EEO and EOP are simplified procedures for applying for the enforcement of a decision rendered in civil and commercial cases for uncontested claims.

The European Enforcement Order (EEO) was introduced by Regulation No. 805/2004 of the European Parliament and of the Council as of 21 April 2004 creating the European Enforcement Order for the uncontested claims.¹⁸ It is applied in cases when it is necessary to enforce

¹⁵ V. Kyselychnyk, O. Kyivets, "EU Regulations on jurisdiction, recognition and enforcement of the court decisions in civil and commercial cases (in the context of harmonization of the private EU law)", *Bulletin of the National Academy of Prosecution of Ukraine*, 2014, Issue 2, p. 5-10.

¹⁶ H. Tsirat, "Peculiarities of the regulation of the procedures of recognition and enforcement of court decisions in the EU", *European perspectives*, 2012, Issue 4, p. 195-200.

¹⁷ M. Kozeletska, "Recognition and enforcement of court decisions in civil and commercial cases in the European Union: Abstract of Thesis for a Candidate Degree in Legal Science", *12.00.03 Civil law and civil procedure; family law; international private law*, General Prosecution Office of Ukraine, National Academy of Prosecution of Ukraine, Kyiv, 2015, p. 15.

¹⁸ Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims, avail-

a court decision, an amicable agreement approved by a court, or a so-called authentic instrument (authentic instrument – a document confirming the legal effect or authenticity of the fact confirmed by a public authority), provided that the claim is uncontested. The EEO is a standard form certificate that is attached to a court decision or other specified document that must be complied with. This certificate is issued by the court hearing the case.

The European Order for Payment was introduced by Regulation No. 1896/2006 creating a European Order for Payment.¹⁹ Like the EEO, the European Order for Payment (EOP) is applied to uncontested claims in civil and commercial cases. However, the key difference between these procedures is that the EEO follows the trial, i.e. the EEO certificate is obtained after the court has made a decision, approved an amicable agreement, or recognised the authentic instrument, while the procedure for obtaining the EOP does not require a trial, is more standardised and mostly involves filling out the forms provided by Regulation 1896/2006 and submitting them to the competent court.

Thus, the claimant who filled out this form in accordance with all requirements, i.e. provided all the necessary information about the claimant and defendant, the merits, facts, and circumstances that confirm them, as well as the monetary amount of their claim, receives the EOP. The court does not review the information provided and does not check the evidence, but only whether the form is completed correctly. Upon receiving the EOP, the defendant has 30 days to file an objection. If no objection is filed, the court issues a certificate of entry into force of the EOP.

Both EEO and EOP can be obtained provided that the subject of the claim is a payment currently due; the claim is uncontested; the case is civil or commercial, and is not related to payment of income, duties, or administrative disputes, as well as the responsibility of the state for actions or omissions of public authorities (public law); property rights derived from marriage, inheritance or succession; bankruptcy or liquidation of insolvent companies or other legal entities and similar proce-

able at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV%3A133190> [last accessed 3.3.2021].

¹⁹ Regulation (EC) No 1896/2006 creating a European order for payment, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32006R1896> [last accessed 5.11.2021].

dures; or social security. EEO also cannot be applied in disputes related to arbitration and EOP cannot be applied in disputes related to non-contractual obligations, except when such obligations were the subject of an agreement of the parties, or there was a recognition of debt, or when such obligations arose from a recognised debt based on joint ownership of property (Article 2 of Regulation No. 1896/2006).²⁰

Therefore, the EEO and the EOP that have entered into force can be transferred for enforcement to any EU country (except Denmark). The recognition procedure of such enforcement document is not required. The claimant wishing for enforcement must send the document with its translation (if necessary), and in case of the EEO, also the copy of the court decision, to the appropriate authority in the Country of enforcement. The enforcement of such documents may only be denied if it contradicts a court decision previously rendered on the same subject matter and between the same parties.²¹

Depending on the amount of the actual dispute, either the European Small Claims Procedure (when the amount does not exceed EUR 5,000), or the Recast Brussels I Regulation can be applied (with no reference to the amount). The European Small Claims Procedure is applied if there is an actual dispute. However, the largest number of disputes is still handled in accordance with the Recast Brussels I Regulation.²²

The European Small Claims Procedure was introduced by Regulation No. 861/2007 on the European Small Claims Procedure²³ and provided a simplified way of resolving cross-border disputes to an amount of up to EUR 5,000, excluding interest, costs, and other charges. The

²⁰ Practice Guide for the Application of the Regulation on the European Enforcement Order, European Commission, 2008, available at: https://e-justice.europa.eu/content_european_enforcement_order-54-en.do [last accessed 11.12.2020].

²¹ Practice Guide for the application of the Regulation on the European Order for Payment, European Commission, 2011, available at: https://e-justice.europa.eu/content_order_for_payment_procedures-41-en.do [last accessed 11.12.2020].

²² D. Sydorenko, "Enforcement of court decisions: from theory to practice", *Legal newspaper online: Ukrainian weekly professional legal issue*, 2018, available at: <http://yur-gazeta.com/publications/events/vikonannya-sudovih-rishen-iz-teoriyi-v-praktiku.html> [last accessed 11.12.2020].

²³ Regulation (EC) No 861/2007 establishing a European Small Claims Procedure, available at: <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32007R0861> [last accessed 3.3.2021].

claimant initiates the proceedings by filling out standard forms and submitting them to the competent court. The trial proceedings in this case are usually completely carried out in writing (without an oral hearing). In this case, modern means of remote communication, such as e-mail, are considered equivalent to postal mail. And in exceptional cases, if oral hearings are required, they can be held with the help of the means of video communication.

Upon reviewing the case the court makes a decision that can be enforced in any EU country (except Denmark) without applying for the recognition procedure. It is necessary to obtain a decision certificate in accordance with the European Small Claims Procedure and to submit it to the competent court of the country of enforcement with its translation and a copy of the judgment.

Enforcement can only be denied in exceptional cases. In particular, enforcement can be denied if the decision contradicted a valid court decision rendered earlier in relation to the subject and between the same parties. At the same time, under no circumstances can a decision rendered under the Small Claims Procedure be reviewed on its merits in the country of enforcement (Article 22 of Regulation No. 861/2007).

Enforcement of judgments under the Recast Brussels I, introduced by Regulation No. 1215/2012 of the European Parliament and of the Council as of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters regulates, *inter alia*, the relationship between the recognition and enforcement of judgments in cross-border cases²⁴. The *exequatur* procedure was cancelled, i.e. in order for a foreign court decision to be recognised, it is no longer necessary to obtain a declaration of enforcement, which was required by the previous version of the Brussels I Regulation. The Recast Brussels I Regulation entered into force on 10 January 2015 and is implemented in all 28 EU Member States.²⁵

²⁴ *Ibid.*

²⁵ Regulation (EU) No1215/2012of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, available at: <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32012R1215//> [last accessed 11.12.2020].

According to Art. 45 of the Rules of the Recast Brussels I Procedure, the recognition of a court decision may be denied if requested by the defendant and only in the following cases:

- recognition of the decision is grossly contrary to public order in the country of enforcement;
- the judgment was rendered in absentia and the defendant was not duly notified of the initiation of the trial within a reasonable time and in a manner that would enable the defendant to prepare for the defense, unless the defendant did not appeal the decision, provided he had such opportunity;
- the judgment contradicts another judgment in a case between the same parties in the country of enforcement;
- the judgment is inconsistent with another judgment previously issued in another EU Member State or third country on the same subject matter and between the same parties, provided that the earlier judgment meets the requirements necessary for its recognition in the Country of enforcement;
- the court decision contradicts: a) the requirements of sections 3, 4, 5 of section II, in cases where the owner of the insurance policy, the insured, the beneficiary of the insurance contract, the insured party, the consumer, or the employee acted as a defendant; b) the requirements of section 6 of section II.

Despite the fact that the enforcement procedure of a foreign court decision is determined by the national legislation of that country, the Regulation prohibits refusal to enforce the decision on grounds other than those listed above (Article 41 of the Regulations). Also, in no circumstances may the court in the country of enforcement review the case on its merits (Article 52 of the Rules of Procedure).

III. THE PECULIARITIES OF THE ENFORCEMENT PROCESS IN THE FOREIGN COUNTRIES

At the same time, until there is a multilateral treaty, or enforcement regimes like in the EU, it is necessary to rely on the experience of foreign countries in relations with countries they do not have legal aid agreements with. The system of recognition and enforcement of for-

foreign judgments in Ukraine must be flexible and take into account foreign experience.

Realising the vast amount of information on the foreign experience in the field of enforcement process, we will limit ourselves to a brief analysis of certain features of the enforcement processes in different countries and related issues. However, we must pay attention to the fact that without in-depth research of different legal systems of enforcement process in the comparative aspect, it would be impossible to significantly and systematically improve domestic enforcement proceedings and to cooperate with other foreign countries. The reasoning behind this is based on the fact that by borrowing certain rules or fragmentarily improving the relevant legislation, the law would grow unbalanced, which would further lead to the same chaotic steps in its development in the future.

In order to further substantiate this conclusion, we turn to the legislation on enforcement process in foreign countries. Thus, Art. 68 p. 3 of the Law of the Russian Federation “On Enforcement Procedure” identifies the following enforcement measures:

- 1) recovery of the debtor’s property, in particular, cash and securities;
- 2) recovery of periodic payments the debtor receives on the basis of labour, civil, or social relations;
- 3) recovery of the debtor’s property rights, in particular, the right to receive payments for enforcement proceedings in which he acts as a creditor, the right to receive payments from rent, lease, as well as the exclusive rights to intellectual property and means of individualization, the right to the claim provided in agreements on alienation or use of the exclusive right to the result of intellectual activity and means of individualization, the right to use the result of intellectual activity or means of individualization belonging to the debtor as a licensee;
- 4) seizure of the debtor’s property awarded to the creditor;
- 5) seizure of the debtor’s property held by the debtor or third parties, execution of a court act on seizure of property;
- 6) appeal to the registration authority for registration of the transfer of ownership of property, in particular, securities, from the debt-

or to the creditor in the cases and in the manner prescribed by the Law “On Enforcement Procedure”;

- 7) carrying out actions on behalf of and at the expense of the debtor as specified in the enforcement document, if this action can be carried out without the personal participation of the debtor;
- 8) forced settlement of the creditor in housing;
- 9) forced eviction of the debtor from housing;
- 10) vacation of non-residential premises, storage facilities of the debtor, and their property;
- 11) other actions provided by the federal law or the enforcement document.²⁶

Therefore, if a foreign decision is enforced in a particular country, at the same time the issue of applicable measures for its enforcement must be raised. Accordingly, such measures also need improvement and unification. In particular, there was a paradoxical situation, described by Ukrainian experts Perepelinska and Drug, when a foreign bank pleaded the Holosiivskyi District Court of Kyiv to only recognise the decision and not to enforce it in Ukraine, although the Bank filed claims against the defendants in connection with their involvement in illegal misappropriation of the Bank’s funds in excess of USD 295 million throughout the year 2008. The Bank referred to the fact that the decision had already been recognised in Austria, Latvia, Lithuania, Luxembourg, the Netherlands, Switzerland, Saint Vincent, and the Grenadines.²⁷ The paradox of this situation lies in the fact that it is not sufficient to only recognise court decisions which contain a requirement to recover funds from the debtor and disregard the enforcement part, since in this way the legal meaning of such a decision and, consequently, the meaning of its recognition will be lost.

Enforcement measures are even more complex in England and Wales, differing in both formal and substantive nature. As stated by

²⁶ Z. Zagalaeva, “Arts of coercive enforcement measures in enforcement proceedings. Stages of enforcement proceedings”, *Eurasian scientific journal*, 2016 Issue 7, available at: <http://journalpro.ru/articles/vidy-mer-prinuditelnogo-ispolneniya-v-ispolnitelnom-proizvodstve-stadii-ispolnitelnogo-proizvodstva/> [last accessed 5.2.2021].

²⁷ E. Perepelinska, A. Drug, *Ukrainian-English reciprocity in recognition of court decisions*, available at: https://jurliga.ligazakon.net/analitics/71405_ukrainsko-angliyskaya-vzaimnost-v-priznanii-sudebnykh-resheniy [last accessed 2.2.2022].

the scholar Dernova, English law contains a procedure called “sequestration”, which involves the following: the court instructs four or more persons to seize from the debtor all movable and personal property, and keep it until the debtor complies with the court decision. Sequestration is most often used when the debtor is a corporation. In such cases, the sequestration notice may be applied to the property of any director or other official of the corporation.²⁸ However, several decades have passed since the publication of this work, and scholars now define sequestration differently.

The sequestrator shall be involved in managing the property of a person accused of contempt of court for as long as such accusation stands. The funds shall not be withdrawn and will remain the property of the contemnor. Sequestration prohibits the debtor from using and managing property and thus encourages him to comply with a court decision. Sometimes the court orders the debtor to transfer the payments intended for recovery directly to the sequestrators?²⁹

It should be noted that contempt of court in the sense of the term “sequestration” means non-compliance with its decision, if the relevant conditions are met.

However, sequestration can be used as an alternative to the debtor’s arrest or as a supplement to it. The debtor’s arrest and imprisonment for non-payment of debts are applied in cases pending before the Chancery, the Queen’s Bench and the Family Division of the High Court. In this case, the arrest may be imposed on a person who was proved to have assisted the debtor in their non-compliance with the court decision. Instead of arrest, the court may impose a fine on a person guilty of contempt of court or require them to post bail in case of their good behavior.³⁰

It is noteworthy that the remedy of debtor’s arrest of a debtor in England is very similar to bringing a person to criminal responsibility in Ukraine if they intentionally do not comply with a court decision. But

²⁸ D. Dernova, “Enforcement proceedings in English civil process”, *Jurisprudence*, 1975, Issue 5, p.132-137.

²⁹ S. Hladyshch, *Enforcement proceedings in England*, Moscow, Lex Book, 2002, p. 142.

³⁰ V. Iarkov, *supra* note 13.

the English special feature of such an arrest lies in the fact that charges of contempt of court are brought by the creditor, not the enforcer, it is sent to the court, not to law enforcement agencies, and it comes down to proving the fault of intentional non-compliance with the decision if the debtor had the opportunity to do it. The issue of sequestration needs to be studied in Ukraine both in order to clarify the peculiarities of the enforcement procedure in England, and to predict the procedure of enforcement of Ukrainian court decisions that may be accompanied by sequestration in England.

Both in Ukraine,³¹ and in the Russian Federation,³² the French experience of the use of *astreinte* in enforcement procedure has been widely researched. “The *astreinte* is the debtor’s obligation to pay, in addition to the amount of the principal debt, also a penalty, the amount of which increases every day until the fulfilment of obligations imposed on the debtor (consistently increasing penalty)”. According to I. Zelenkova, such a measure should stimulate the fastest enforcement.³³ Indeed, the expanding list of means for coercive enforcement of decisions is a positive phenomenon that should encourage the debtor to quick and full compliance with the decision. But we should not forget about the well-known method of “carrot and stick”: the “stick” should be used and have an additional margin for reinforcement, but only for those who deliberately do not comply with the decision. The same persons who are unable to comply with the court decision for valid reasons, should be given a “carrot” to encourage them to fulfil their obligations.

CONCLUSIONS

Thus, a huge layer of information about the experience of foreign countries on enforcement of decisions should be explored gradually and used as an important source of the international enforcement process,

³¹ I. Zelenkova, “Procedure of recovery of the debtor’s property in the enforcement process: Abstract of Thesis for a Candidate Degree in Legal Science”, *12.00.03 Civil law and civil process: family law, international private law*, Ivano-Frankivsk, 2017, p. 16.

³² E. Kuznetsov, “Astreinte as a mean for coercion of the debtor in enforcement proceedings of France”, *Russian yearbook of civil and arbitral process*, 2004, Issue 2, p. 430–445.

³³ I. Zelenkova, *supra* note 31, p. 16.

as well as an element of implementation of the experience of EU countries into the legal system of Ukraine.

At the same time, analysing solely the separate issues, for example the legal status of enforcers is not enough, because the system of enforcement process should also include assistance of those individuals who would facilitate the implementation of enforcement proceedings, for example, search for property – in foreign countries this function is performed by private detectives; persons who would store and transport the property, as well as manage the property, etc. Foreign enforcers have much more experience in these matters, and therefore such experience should be of interest to Ukrainian experts, because, while improving enforcement proceedings, it is crucial to also improve the process of search for property, its evaluation, organization of auctions for its sale, and more.

After analysing the instruments of enforcement of judgments under EU law, we conclude that the process of enforcement of foreign judgments within the EU is becoming easier. The abolition of any recognition procedures and the introduction of standardised forms of paperwork facilitate access to justice.

It follows from the research that EU regulations on the recognition and enforcement of foreign judgments constitute a type of regulation that can be described as intermediate between national and international law. On the one hand, EU regulations are increasingly bringing together the essence and meaning of foreign and national judgments, namely: elimination of the procedure of exequatur of foreign judgments, limitation of grounds for refusal of recognition and enforcement, and provision of the same enforcement procedure for both foreign and for national judgments. However, on the other hand, compared to a national court decision, a foreign court decision can still be appealed against on additional grounds, for example, in connection with a violation of public order. And this, in turn, creates an additional step on the path of access to enforcement, which can sometimes not only delay the execution of a court decision, but also terminate it. In general, problems in the field of recognition and enforcement are the result of insufficient regulation and lack of clarification on the procedure for resolving the relevant category of cases and enforcement of decisions in such cases, limitation of powers of enforcers and lack of special enforcement proce-

dures, as well as the excessively long and complicated procedure of recognition and enforcement of relevant decisions.

Therefore, given the European integration course chosen by Ukraine as recently supported by all EU member-states, the legislation of Ukraine should gradually introduce procedures aimed at the simplification of the process of enforcement of foreign judgments rendered in EU member states by the abolition of recognition procedures and, instead, the introduction of standardised forms of document circulation that promote significantly better access to justice.