

## **The role of judges in the enforcement of judicial decisions, in their relationships with other state functions and/or other actors**

### **Questionnaire**

#### **A) IN CIVIL AND ADMINISTRATIVE MATTERS**

1. In the Constitution of Ukraine it is specified that judgments are obligatory for execution in all territory of Ukraine (item 124 of the Constitution of Ukraine). But responsibility for execution of decisions is assigned to the State executive service. It is specified in the Law of Ukraine «On the enforcement proceedings» (item 1 the Law of Ukraine «On the enforcement proceedings»).

2. What are the competences of the judge in the enforcement procedure?

The judge is responsible for enforcement.

No, there are no direct instructions that the judge bears responsibility for the enforcement. In civil cases the role of the judge in the enforcement proceedings is reduced to give out the court order and to control over the enforcement by means of consideration of complaints from participants of proceedings (item 368 the Civil Procedural Code).

In administrative cases the judge can oblige the authority to provide decision execution (item 257 the Code of administrative legal proceedings).

The judge has other competences as regards enforcement

Yes. The judge can admit immediate execution of decisions (item 367 the Civil Procedural Code, item 256 Code of administrative legal proceedings), solves a question on a deferral, installment, change or a choice of a way and an order of execution of the decision (item 373 the Civil Procedural Code, item 263 the Code of administrative legal proceedings), and also other procedural questions connected with execution of the decision (the decision about the announcement of search the debtor or the child, about compulsory penetration into premises, about party replacement in legal proceedings, definition of a part of debtor 's property which he owns together with other persons, , etc.) These positions are specified in Section 6 the Civil Procedural Code, Section 5 the Code of administrative legal proceedings).

3. No.

4. Yes, on each judgment which has come into force, behind the application of the person in which advantage the decision is passed, one court order (4.1 item 368 the Civil Procedural Code, p.1 item 258 the Code of administrative legal proceedings) stands out. If the civil case was considered in the form of order a court order (p.3 item 95 the Civil Procedural Code) stands out.

5. No, a new application is end with a court order (item 368 the Civil Procedural Code), in the form of order a court order stands out. In administrative legal proceedings the court order also stands out. Item 268 the Code of administrative legal proceedings).

6. Yes. First of all, the judge co-operates with the State executive service. It, basically, is expressed in powers of the judge to supervise observance of an order of enforcement proceedings (Section 7 the Civil Procedural Code, chapter 10 of the Law of Ukraine «On the enforcement proceedings»). Executive documents on collecting of a legal cost also are sent to local bodies of tax service (4.3 item 368 the Code of civil legal proceedings). In administrative legal proceedings the State executive service according to the Law of Ukraine «On the enforcement proceedings» (item 259 the Code of administrative legal proceedings) is engaged.

7. When a judge is working with other actors in the enforcement procedure, what are the exact competences of the judge?

He starts the procedure?

No. The court turns the decision to execution by a court order issue (item 368 the Civil Procedural Code, 258 the Code of administrative legal proceedings). The state executor opens the enforcement procedure (item 18 the Law of Ukraine «On the enforcement proceedings»).

He controls and supervises the procedure (e.g. timeframes) and the work done by other actors?

Yes, the judge in certain cases supervises the enforcement procedure, Section 7 the Civil Procedural Code under the name «the Judicial control over execution of judgments» is devoted to it.

Powers of the judge include consideration of complaints of participants of enforcement procedure, on actions or inactivity of the state executor or other person of executive service (item 384 the Civil Procedural Code).

In administrative legal proceedings the judge can oblige the authority to submit a report on decision execution. By results of consideration such report or in case when the official wouldn't submit a report the court can impose a fine on the guilty person at the rate from 100 to 300 minimum salaries (item 267 the Code of administrative legal proceedings).

Also in the course of enforcement procedure a judge can solve a question about rejection of the state executor as revision of the decision of the chief of corresponding body of executive service on this point in question (item 17 the Law of Ukraine «On the enforcement proceedings»).

8. Requirements for the appointment to the post of the state executor: the citizen of Ukraine who lives on territory of Ukraine not less than 5 years, the higher law education and the experience of legal work not less than 3 years (item 8 the Law of Ukraine «On the enforcement proceedings»).

9. No. If the parties consider that their rights are broken, they have the right to make the complaint against actions or inactivity of the state executor (item 85 the Law of Ukraine «On the enforcement proceedings», item 383 the Civil Procedural Code). Sanctions are not provided.

Parties of enforcement procedure have the right to make the complaint against actions or inactivity of the state executor (item 181 the Code of administrative legal proceedings).

10. The court can admit immediate execution of the decision in some categories of cases (item 367 the Civil Procedural Code, item 256 the Code of administrative legal proceedings).

11. In civil legal proceedings there are no definite powers of the judge to force the enforcement. In administrative legal proceedings the judge has the right to impose a fine on the authority in case of failure to carry out the enforcement (item 267 the Code of administrative legal proceedings).

12. The judge considers complaints of parties of enforcement procedure (Section 7 the Civil Procedural Code, item 181, 267 the Code of administrative legal proceedings, item 86 the Law of Ukraine «On the enforcement proceedings»).

13. The basic problems of enforcement proceedings in Ukraine are the insufficient toolkit of Public service of Ukraine. So, there are cases of concealment from the

state executors of money resources on bank accounts of debtors the information about which is inaccessible to state executor because of a blank in the legislation.

The Law of Ukraine «On the enforcement proceedings» does not provide the possibility of an interdiction to the debtor to open new accounts in banks after arrest imposing on money of the debtor for its bank accounts. The greatest problem for creditors-foreigners in Ukraine is the currency of execution of decisions. In practice state executors, collecting a debt in foreign currency, calculate an equivalent in hryvna. The date on which state the executor should convert an amount of debt defined in currency is not specified. Therefore quite often the amount of debt decreases because of currency fluctuations.

Last years the number of cases of failure to carry out the enforcement on so-called to "social affairs» about an underpay of pensions are increased. The reason of occurrence of such difficulties is sudden acceptance of laws, without support of the state budget.

14. First the procedures connected with enforcement have to be improved. It has to be measures directed on strengthen the judicial control over enforcement by carrying out the consideration of complaints of debtors on decisions, action and inactivity of the state executors to the exclusive competence of court.

Secondly, it is necessary to order powers of the state executors, on the one hand, to avoid abusing during enforcement, and on the other hand, to increase its efficiency. It is for this purpose expedient to limit powers of the state executors which realization tightens execution of judgments, and also to provide an access of the state executors to debtor's property during the enforcement procedure.

Thirdly, it is necessary to codify standards which regulate enforcement. The uniform document like the Code of enforcement proceedings can facilitate work as to employees of executive service, and representatives of the parties at judicial dispute.

It is expedient to establish the non-state executive service. It will allow creditors to choose independently the person who will carry out restoration of their broken rights after passing a corresponding judgment. Certainly, it is necessary to establish the rigid control (probably, by licensing) behind activity of jury executors.

15. Yes, procedures are similar, as they are carried out by one body – the State executive service. The basic difference that in administrative cases is that the debtor is the authority whom the court can oblige to submit the report on enforcement and in certain cases to impose a fine (item 267 the Code of administrative legal proceedings).

#### B) IN CRIMINAL MATTERS

16. Yes, failure to carry out the enforcement involves the responsibility provided by the law (item 400-25 of the Criminal Procedural Code). The sentence, definition, resolution which have entered in force, are obligatory for all state and public enterprises, organizations, officials and citizens, are subject to execution in all territory of Ukraine (item 403 the Criminal Procedural Code).

17. The judge is responsible for the enforcement?

Yes, the timely reference to execution of a sentence which has entered in force, is included into duties of the judge or the chairman of corresponding court who passed the sentence (item 404 the Criminal Procedural Code).

The judge has other competences as regards enforcement?

Yes. The court solves a question on punishment or punishment mitigation (item 405-1 the Criminal Procedural Code), about suspended sentence, replacement of part of punishment (item 407 the Criminal Procedural Code), on release by other reasons (item 408-409 the Criminal Procedural Code). The court also solves any contradictions which arise in the course of sentence execution: distribution of legal costs, specification of term of serving the sentence, reduction in conformity with the new law (item 411 the Criminal Procedural Code).

18. The judge who pronounced sentence, bears responsibility for timely reference of a sentence to execution (item 404 the Criminal Procedural Code).

19. The court with the order about sentence enforcement sends a sentence copy to that body to which it is assigned a duty to execute a sentence. On occasion the sentence copy also is sent to the enterprise, organization, to a place of work of sentenced, a juvenile service, commanders of bodies (item 404 the Criminal Procedural Code).

In case of application the measures of compulsory treatment, to the sentenced, he is departure to the corresponding medical institution (item 411-1 the Criminal Procedural Code).

The enforcement official bodies are: The State department of penalty execution and its territorial bodies; establishments of penalty execution ; criminal executive inspections; the State executive service and its territorial bodies; commanders of bodies, a guardroom, a disciplinary battalion.

20. Yes, the judge turns a sentence to execution (item 403 the Criminal Procedural Code).

The direct control over sentence execution is carried out by the public prosecutor (item 415 the Criminal Procedural Code).

The judge solves the contradictions, arising in the course of sentence execution if it is not connected with the main human rights infringement (item 411 the Criminal Procedural Code).

21. The court considers complaints of sentenced, but the direct control is carried out by the public prosecutor (item 416 the Criminal Procedural Code).

22. Except imprisonment such kinds of punishments are provided: the penalty, deprivation of a military, special rank, a qualifying class, deprivation of a right to occupy certain posts or to be engaged in certain activity, public works, corrective works, property confiscation, arrest, freedom restriction, keeping in a disciplinary battalion for servicemen (item 52 The Criminal Code of Ukraine).

23. The court on grounds provided by law can release from punishment or commute the punishment (item 405 the Criminal Procedural Code), apply conditional release from punishment, replace left part of punishment with less severe punishment (item 407 the Criminal Procedural Code), release pregnant women and women who have children aged till 3 years from serving the sentence (item 407-1 the Criminal Procedural Code), release on the grounds of illness (item 408 the Criminal Procedural Code), appoint punishment with a trial period.

24. Compulsory collecting of the penalty from the condemned is carried out by the State executive service on the basis of the court order which is given out by the court which passed the sentence. In case of impossibility to pay the full size of the penalty the court can replace an outstanding sum of the penalty with

punishment in the form of public or corrective works (item 26 the Criminal executive code of Ukraine).

25. Heavy financial situation of establishments of execution of punishments, despite presence of their own powerful technological infrastructure. The main reason of the named problem is imperfection of the criminal, criminal executive, criminal procedural legislation. Today conditions of the maintenance of the persons condemned to imprisonment, and also those who are in places of remand imprisonment, in solitary confinements, in receivers-distributors, do not correspond to the minimal requirements necessary for maintenance of health of prisoners.

26. Condemned not only can, but also should appeal against unfair from their point of view decision of administration of criminal executive establishments. Practice testifies that the most effective and fast way of the permission of such questions is a reference to the public prosecution office. All correspondence sent by condemned to the public prosecution office is sealed by them personally and is not a subject to examination. In the same order the correspondence goes to the Representative of the Supreme body of Ukraine under human rights, to the European Court under human rights and a number of other organizations. Apparently, the spectrum of instances where condemned can address, wide enough, therefore all conversations about impossibility to appeal against the actions of administration are only gamble, the estimation to which will be given by time. The other question is insufficient reaction for such complaints.

Equal conditions of the maintenance condemned to life imprisonment of men and women, though the difference in the maintenance of these categories condemned is essential. The condemned women serve the sentence in colonies of an average level of safety, and men in maximum level colonies and consequently the difference should correspond to level of safety of a corresponding colony.

The corrective centres are created on the basis of colonies-settlements; therefore they have actually kept all signs of corrective colonies.

27. Existence and action of special divisions. The law of Ukraine «About the State criminal executive service in Ukraine» provides that the State department of Ukraine is concerning to have militarized formations. However laws do not regulate possibility of intervention by, so-called, groups of fast reaction.

Calculation of term of serving the sentence. The court doesn't not specify an exact date when serving of sentence should start and the date of its termination; therefore in practice quite often there are some misunderstandings on these questions.

Maintenance of the right on legal aid. The Criminal executive code of Ukraine declares for condemned the possibility to use legal aid. However in practice there is a set of ways of preventing condemned in realization of their rights.

28. The majority of the specified shortcoming grows out of system and purposeful activity of corresponding bodies and establishments. Therefore, turning point in the decision of problems are corresponding personnel changes both as a part of the Department's staff, and in concrete criminal executive establishments.

Following action which certainly should take place is modification of the criminal executive legislation.

It is necessary to adjust a system of the effective public and international control over activity of criminal executive establishments. Independence of public control of power state structures is important.