



Vladimir Yarkov,
Doctor of Law, Professor,
Head of Civil Procedure, Arbitration and Enforcement
Department
Ural State Law University
Yekaterinburg, Russia

The Various European Systems of Enforcement

1. To begin with, I would like to say, that the topic of this conference is rather relevant. I believe, that there is no need to prove the importance of real execution of judgments. Firstly, an effective system of enforcement provides practical realization of the rule of law in society's everyday life and ensures activity of main legal institutions. Effective and timely execution of judgments and other enforceable documents guarantees operating of judiciary and implementation of its responsibilities in the legal system of every state.

That's why the right to enforcement of judgments and executive documents is an integral part of the right to judicial protection, which is guaranteed by the Article Six of the Convention for the Protection of Human Rights and Fundamental Freedoms.

Secondly, effective system of enforcement is important not only for an increase of judiciary's authority. Such a system promotes economic development, because it can preventively affect the behavior of civil turnover participants. Moreover it regulates economic processes in the society and makes lawful behavior profitable.

Effective system of enforcement is especially meaningful for those states, where an idea, concerning the rule of law and obligation of judgment's execution, is not fully reflected in social conscience.

All above-mentioned shows, that a judicial officer is a guarantor of legal security in the society and economy of every state. Bearing in mind the processes of legal and economic globalization and people's active movement all around the planet, we can conclude, that a judicial officer's activity is gaining the global significance.

2. There are several main systems of organization of enforcement process in Europe and in our planet in the whole. From the one hand, we can see an increase of cooperation between national enforcement systems. A purpose of this cooperation is to provide general standards of work and to develop the profession at national and global levels. From the other hand, differentiation of organization among many legal professions continues to exist. Such a differentiation is determined by national specificities, historical and cultural traditions, special features of concrete legal system.

It is undoubtedly important to compare the models of building and operating of

enforcement systems in different countries for various pragmatic reasons, which are originating from economy and a need for effective legal regulation and promoting the development of economic life. We can also observe a situation in our planet, when the states, which are creating better conditions for business, investor's protection and settlement of disputes and judgment's execution, finally attract more capitals and people.

3. What are the main world systems of organization of the profession of judicial officer or a person who is authorized to enforce judgments? I'm going to use the term judicial officer. However we all know, that in many states very different people are authorized to implement responsibilities, concerning enforcement proceedings.

Classification of the enforcement systems can be made on the ground of various criteria. Professor Hess (Germany), for example, has classified the systems of enforcement as centralized and decentralized, according to the number of bodies, which implement the powers. He has also divided these bodies into the following systems. A system, which is focused on the enforcement by the means of judicial officer, then a judicial-focused system, then a combined system and finally an administrative system.¹ Professor A.Uselach (Croatia) has created the following systems of enforcement: a judicial system of enforcement, enforcement bodies as a part of executive branch and a private system of enforcement.²

4. Based on the above-mentioned, and taking into account a contact with a court and degree of involvement of private law (extra-budgetary) component in the enforcement process, the following classification could be proposed. **According to special relations with the court**, we could underline the enforcement systems within the competence of executive branch and within the competence of judicial branch. Inclusion of the profession of judicial officer in judicial sphere reflects historical link between judiciary and its final result – a judgment. The activity of the judicial officer within bodies of executive branch outlines its stand-alone character and more indirect relations with judiciary.

For example, in Austria, Spain and Denmark persons, who execute judgments, work within courts,³ being their officers. Such system until recently existed in Khazahstan, where judicial officers were included into the system of the Supreme court, until a new system of extra-budgetary enforcement was created. In many states judicial officers are involved into the system of ministres of justice, in other words into the system of executive branch.⁴

According to degree of extra-budgetary organization the systems of

¹ Hess B. Comparative analysis of the national reports // Enforcement Agency. Practice in Europe. London, 2005. P.31-36; Хесс Б. Системы принудительного исполнения // Исполнительное производство: традиции и реформы. Перевод с английского. Под редакцией Р. Ван Рее, А.Узелач, В.О.Аболонина, В.В.Яркова. М. Инфотропик Медиа. 2011. С.57-62.

² Uzelac A. The role played by bailiffs in the proper and efficient functioning of the judicial system – an overview with special consideration of the issues faced by countries in transition // The role, organization, status and training of bailiffs. Multilateral seminar. Varna, 2002. P.8.

³ Hess B. Comparative analysis of the national reports // Enforcement Agency. Practice in Europe. London, 2005. P. 34, 35.

⁴ Есть примеры и другого рода. Так, в Швеции должные лица, выполняющие функции исполнения, входят в систему Министерства финансов. См.: Hess B. Comparative analysis of the national reports // Enforcement Agency. Practice in Europe. London, 2005. P.36.

enforcement are divided into public, private and combined (mixed), when a public status is remained, but at the same time some of the functions are implemented on the private law ground.⁵

Public system of enforcement proceedings is characterized by the legal status of judicial officer as a public servant and also by participation in enforcement proceedings only representatives of the states. This system, for example, existed in Russia during the Soviet period.

Extra-budgetary (private) system of organization of enforcement proceedings is characterized by the following. The judicial officer is a free stand-alone professional, organizing his work on his own and bearing full property liability for the results of his work. Such organization of enforcement exists in France, Belgium, Luxembourg, Netherlands, Greece and in a lot of other states, which accepted French system of organization of legal professions.

Combined (mixed) model of enforcement is characterized by the following. Within public organization of the profession of judicial officer institutions with different law ground are allowed in the enforcement process, in particular specializing on investigation of the debtors and their property, on assessment, storage and sale of the debtor's property. At the same time degree of "privatisation" of enforcement proceedings differs from state to state.

For example, Russian system of enforcement can be considered as a combined model. The Federal Bailiff Service in Russia is a public authority and bailiffs are the officers of the state. However assessment, storage and sale of the attached property are implemented by organizations, which can have any form of property.

Another variant of the combined system is an existence in one state at the same time of two systems of enforcement – public and private. This situation takes place in many states, for example in Khasahstan. Apart from that, not monopoly control of the judicial officer's responsibilities is also possible, when in some countries we can see separate systems of enforcement against public institutions. In particular, it is special staff members of the Ministry of Economics and financial Affairs in France and the Federal Treasure authorities in Russia. It should also be mentioned, that the last report of CEPEJ 2014 has outlined an increase of number of private and combined systems of enforcement. It proves, that this way to develop the profession of judicial officer is more prospective and promising.

5. It is important to highlight, that regardless of different forms of organization of the profession, the legal status of the judicial officer is similar in many aspects. Firstly, the profession of judicial officer exists in every state irrespective of character of state authority and political system. Enforcement of judgments is an inseparable element of any legal system, because, as Jacques Isnard has rightly noted: "There is no law without court and there is no judgment without judicial officer".

Secondly, the judicial officer within any organization of his profession bears public service, he receives powers and acts on behalf of the State and Law. From this point

⁵ Yarkov V. Principaux modèles d'exécution forcée: le problème de choix dans les pays de l'ex-URSS // Droit et procédure. La revue des huissiers de justice. 2007. N 5. P.13-15.

of view the judicial officer helps implementation of responsibilities by judiciary bodies to be successful.

Thirdly, the profession of judicial officer is regulated. That's why an access to the profession, procedure for its performing, including the questions of liability, are defined in law and characterized by the high standards.

Fourthly, procedures of enforcement, its important steps and rules are regulated. The judicial officer provides enforcement of the right, that's why legality of his activity is under high control. Such control is provided by states, as usual, by the means of ministries of justice and in private organisation of enforcement in addition by the judicial officer's chambers.

6. As it known, the profession of judicial officer began actively to develop in the last quarter of the century, when in Europe a model of private status of judicial officer started its dissemination. This system was accepted by many states of East Europe, Baltic States and to a certain extent Kazakhstan.

For that reason the need for documents of general nature has arisen. In such documents according to universal status of the judicial officer as a person, bearing public service, the main provisions of his status with a purpose of harmonization of national legislations are defined. The purpose of this harmonization is streamlining of law implementation in the sphere of enforcement proceedings in order to provide legal security in the society and economy.

UIHJ as international organization plays an important role in development of general standards. It actively promotes the profession of judicial officer all over the world. Moreover, other international organizations also have an important significance. In our case it is Council of Europe, which has developed Guide Lines on Enforcement CEPEJ 2009 with active participation of UIHJ.⁶

7. Guide Lines on Enforcement CEPEJ 2009 is the first experience of a real “soft” codification of rules of enforcement, aimed to identify general principles and basics of enforcement. The need for preparing of such document appeared a long time ago and was connected with tendencies of harmonization of enforcement proceedings and with search of various ways to develop general approaches to realization of enforcement measures.⁷

Several steps of preparing of Guide Lines could be considered. The question about harmonization of national systems of enforcement was raised at the twenty fourth conference of ministers of justice on the 4-5 October in Moscow. In particular, the minister of justice of Russia U.B.Chaika proposed to create European Code of Enforcement and Code of Conduct of Judicial Officers. According to the results of this conference, the idea of creation of minimal standards of enforcement was supported. These standards are based on providing access to enforcement system, minimal guarantees of rights of parties, which allow to protect creditor's and debtor's rights. In 2003 Recommendation Three of Committee of Ministers of Council of

⁶ Les Ligne directrices de la CEPEJ sur l'exécution: Un modèle pour le monde? Paris, Juris-Union // Institut Jacques Isnard. 2011. N 5.

⁷ Kennett W. Enforcement: General Report // Procedural Law in Europe. Towards Harmonisation. Antwerp-Apeldoorn, 2003. P. 81-111.

Europe About Enforcement Proceedings was adopted together with Guiding Principles of enforcement.

8. Guide Lines 2009 are much more detailed and clearly structured document, containing the main standards of enforcement proceedings, organization of enforcement and the profession of the judicial officer, regardless of his legal status. Apart from that, the Dictionary of main terms which are used in the systems of enforcement in different states is attached. That allows to simplify the process of searching of general language for specialists from different countries.

Together with a project of Global Code of enforcement, created by UIHJ, Guide Lines give a possibility to understand and to look at the main tendencies of development of international enforcement proceedings, ways of its harmonization and possible further improvement of the profession of judicial officer and system of enforcement. The last general report CEPEJ 2014 is a wonderful review of main legal professions in big Europe, including the profession of judicial officer. The report reflects the main tendencies of development of the profession of judicial officer in Europe. It is based on a large scope of facts and is very interesting for the evaluation of current condition and perspectives of development of our profession.

9. Significance of Guide Lines for the legal systems of member-states of Council of Europe in contemporary step of development is extremely big. It is connected with several reasons.

Firstly, as it was already mentioned, it is universality of the profession of judicial officer, which is necessary for any country and as a result of this need it exists in one or another form in every state.

Secondly, technical similarity in the judicial officer's responsibilities, in main sorts of activity and legal acts, which with certain excludes are exercised by them during enforcement process. That's why universality of the judicial officer's competence defines a possibility of creation of general standards of access to profession, professional training and also development of new competences of judicial officers. In particular, in Guide Lines 2009 and in Report CEPEJ 2014 more attention is paid to these new competences.

Thirdly, implementing of judicial reforms and increasing of legal status of judiciary bodies in many countries of East Europe, countries of ex-USSR defines needs for wider international cooperation.

Fourthly, significance of the profession of judicial officer for modern economical and social operating became much higher. First of all, nowadays we can observe further "legalization" of relations between people. That gives rise to a potential increase of the number of conflicts in the society. Moreover, free movement of debtors and their assets all around the planet also stimulates development of general standards of activity and cooperation not only at national, but also at transnational level.

Thereby we can conclude, that the general principles and provisions of Guide Lines 2009 because of universality of the judicial officer's profession and universality of approaches in this document are applicable not only to member-states of Council of Europe, but also to other states of our planet. That's why further improvement of

these universal conceptions Guide Lines 2009 and their implementation in national legislations and international treaties will serve the objectives to provide the rule of law and develop the profession of judicial officer. And all this means ensuring of legal security in Europe and in our Planet.