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## Legal challenges and innovations in executive proceedings in Ukraine and the world: A comparative aspect

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■ **Abstract.** The relevance of the study is due to some changes at both the global and national levels that significantly affect the process of exercising the rights and freedoms of individuals, rendering a fair judgment and its enforcement. Such changes include the introduction of martial law in Ukraine and the digitalization of several legal processes. In view of this, the purpose of the research work is to analyse the main problems in the field of enforcement of decisions that impede the enforcement of court decisions and ensure the principle of justice and the rule of law in Ukraine and in the world. The following methods were used in the study: historical, statistical, comparative, formal and logical. The results of the study showed that enforcement proceedings in Ukraine are regulated by a mixed system that includes both public and private enforcement officers. The study highlights the fact that Russia's full-scale invasion of Ukraine has had a significant impact on the enforcement of court decisions. This has led to the need for legislative changes and practical challenges for the enforcement system. The experience of other countries, including the United States and China, demonstrates that the introduction of digital technologies to automate judicial, and enforcement procedures can be effective in further reforming this system in Ukraine. Despite some progress in implementing the reform in Ukraine, there are still problems with the efficiency and accessibility of enforcement proceedings, especially under martial law. To overcome them, it is necessary to use the best practices of the EU countries, in particular, in terms of digitalization of the process, introduction of alternative methods and ensuring equality between private and public executors, as well as to create a transparent control system. The results of the study contribute to the doctrine of the institute of enforcement proceedings and create an effective theoretical basis for the practical implementation of methods to improve the enforcement of decisions

■ **Keywords:** reformation; digitalization; martial law; fair judgment; management

### ■ Introduction

The relevance of the study is determined by several current trends. The aggravation of geopolitical conflicts and the rise of authoritarian tendencies pose threats to the fundamental civil rights of people. Another important component of relevance is the rapid development of digital technologies. This process creates new challenges for the protection of citizens' rights and freedoms, in particular in the area of privacy and information security. In addition, migration

crises are another significant reason that makes the study relevant. In Ukraine, the problems associated with the proper enforcement of court decisions are exacerbated by the ongoing war.

The specifics of the enforcement proceedings were studied by I.L. Bulyk (2021). Thus, the author points out that enforcement proceedings should not be equated exclusively with court decisions, as the nature of this process is that it is a combination of

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both civil and judicial proceedings, the purpose of which is the parties' common desire to protect and restore violated rights and obligations. The researcher also points out that enforcement proceedings should be considered as another final stage of judicial proceedings, and therefore, it should be based on general legal principles of legality, equality, and justice.

Regarding the current problems of enforcement of court decisions, it is worth paying attention to the work of O. Vorobiov (2022). The researcher notes that, in general, Ukraine's transition to a private-public system of enforcement proceedings was a positive step that significantly improved the enforcement processes, however, the structure of the general system of enforcement bodies, which turned out to be too complicated and requires significant funding from the state, without showing the expected efficiency, still remains a problem.

The tasks and legal essence of the enforcement proceedings were studied by N.A. Serhiienko (2019), who believes that the enforcement proceedings are a system consisting of various elements that interact with each other. This system has an internal structure and integrity, in particular, this connection is manifested in the fact that although the subjects of the enforcement proceedings are different, they are united by a common goal – the enforcement of the decision, and their activities must comply with the principles of timeliness, impartiality, independence, and completeness.

The relationship between enforcement proceedings and court decisions is outlined in the work of N.M. Grabar (2023). Thus, according to the author, such a feature of a legitimate court decision as binding nature necessitates its enforcement; in order for a certain connection to arise between the two objects, an element of unlawfulness is required, which consists in failure to comply with the requirements of the court decision, i.e. refusal to voluntarily comply by the party to which such an obligation is imposed. The researcher also points out that the initiation of enforcement proceedings does not always mean achieving the original goal, which is to return the property to the claimant.

The issue of shortcomings in the field of enforcement of decisions is discussed in the study by M. Stefanchuk (2019). In general, the author points to a systematic problem of non-enforcement of court decisions, which was also highlighted by the European Court of Human Rights (ECHR), which stated that the lack of effectiveness and binding nature of a court decision violates fundamental human rights and freedoms and requires a comprehensive solution. The article emphasizes the need to strengthen the role of private enforcement officers in the enforcement system, in particular, based on the experience of Lithuania, where private enforcement officers have completely

replaced state enforcement officers, which has led to an increase in the timeliness and efficiency of court judgments due to, first, the competitive element and, second, the financial motivational element.

The legal regulation of the enforcement of judgments in the jurisdictions of various European countries was also studied by M.M. Malskyy (2022). The author emphasizes the need to improve the enforcement process by studying the experience of EU countries and gradually introducing procedures aimed at simplifying the process of enforcement of foreign judgments rendered in EU Member States. The article also highlights the problems in the area of recognition and enforcement of judgments, such as insufficient regulation and lack of clarification on the procedure for resolving relevant cases.

In turn, M.S. Ferro (2019) reviews the legal status quo in the European Union regarding the binding nature of decisions of state enforcement authorities in subsequent competition law cases. The article discusses various aspects, including decisions on anti-trust infringements, commitment decisions, and decisions on merger control and state aid infringements. M.S. Ferro (2019) argues that case law already provides answers to many of the questions that may arise, thanks to the systematic and consistent interpretation of general principles of EU law as explained by the Court.

It is worth noting that the issue of enforcement proceedings has been widely covered in academic works, but researchers have not yet addressed the peculiarities of the process of enforcement of decisions during martial law, as well as the analysis of the innovative component in this process. Thus, given the respective shortcomings of these works, the purpose of this research is to identify the main problematic aspects of the functioning of the enforcement proceedings in Ukraine during the period of the full-scale invasion of the Russian Federation, as well as its changes in view of global trends in digitalization and the introduction of electronic services.

## ■ Materials and Methods

To achieve this goal, the study used a number of special legal and general scientific methods. The historical method helped to clarify the processes of development of the institute of enforcement proceedings. The comparative legal method was useful in studying the distinctive features of the activities of public and private enforcement officers, which include financial, motivational, and legal aspects. This method was also used to study the peculiarities and positive decisions in the field of enforcement proceedings abroad, in particular in the EU countries.

The quantitative method was used to determine the performance of private and state enforcement officers, based on a comparison of the number of cases,

their actual resolution, closure, and the amount of money recovered. The sources used to research and present relevant statistical data are the statistical reports of the Agency for the Enforcement of Decisions (2022) and eu-LISA Consolidated Annual Activity Report 2022 (eu-LISA, 2023).

It is also worth noting the use of the method of legal hermeneutics, which was used to study the main legal acts related to the enforcement of decisions, its methods, peculiarities of the proceedings, and persons with relevant powers. The objects of study, according to this method, are: Law of Ukraine "On Executive Proceedings"<sup>1</sup>, Law of Ukraine "On Bodies and Persons Enforcing Enforcement of Court Decisions and Decisions of Other Bodies"<sup>2</sup>, Draft Law on Amendments to Certain Laws of Ukraine on Digitalization of Executive Proceedings<sup>3</sup>, and Regulation No. 1215/2012 of the European Parliament and of the Council "On jurisdiction and the recognition and enforcement of judgments in civil and commercial matters"<sup>4</sup>. Based on the results of using this method, the author interpreted the concepts of enforcement proceedings, enforcement authorities, private enforcement officers, and state enforcement officers. A more in-depth study of the subjects of enforcement proceedings was made possible by the use of a systemic and structural approach.

Analytical methods made it possible to identify issues related to the main legal challenges and obstacles, characteristics of the institution, legal nature and peculiarities that currently exist in the field of enforcement proceedings. In particular, the impact of martial law on the territory of Ukraine was analysed in order to identify those powers of bailiffs that were restricted. The method also helped to identify the problems of innovation in this area of justice, the effectiveness of bailiffs' activities in times of war and the impact of the suspension of the reform of the enforcement proceedings. It should be added that the use of the analysis method additionally allowed studying foreign experience in reforming and improving the field of enforcement proceedings, introducing innovative technologies, and automating the activities of bailiffs.

Taking into account the relevant data obtained using the above methods of scientific knowledge, the forecasting method made it possible to identify ways to improve and increase the efficiency and

effectiveness of private and public bailiffs, to observe the principle of fairness of a court decision and its binding nature as a guarantee of enforcement of a court decision or a decision of other authorities, and also helped to identify a list of specific steps that will lead to positive changes, given the global digitalization and state challenges.

## ■ Results

Enforcement proceedings are a set of actions aimed at enforcing court decisions, which in general is an important element of the legal system of Ukraine. It ensures the enforcement of court decisions and decisions of other bodies (officials), which is a guarantee of protection of the rights and interests of citizens and legal entities (Aldyan & Negi, 2022). This institution has a number of general legal functions, which include ensuring the enforcement of court decisions, which exercises the right to judicial protection and a fair court decision; protecting the rights and interests of citizens; establishing the regime of legality and the rule of law; and encouraging individuals to comply with the provisions of legal acts and obligations imposed on a person in accordance with a specific court decision.

Enforcement proceedings in Ukraine are regulated by the Law of Ukraine "On Executive Proceedings"<sup>5</sup>. Referring to the provisions of this regulatory act, it is important to add that the activities of bailiffs are aimed not only at the enforcement of judicial decisions, but also at the executive inscriptions of notaries, certificates of the commission in resolving labour disputes, decisions of the National Bank of Ukraine that are recognized as enforceable, as well as decisions of the ECHR. Another characteristic of enforcement proceedings is that they are not unique to one branch of law. Thus, this activity takes place in commercial, administrative, criminal and civil proceedings.

Enforcement proceedings are initiated under certain conditions, the first of which is the debtor's refusal to voluntarily comply with a court decision or a decision of other authorities, and the second is the existence of an enforcement document, which is issued at the request of either the claimant or the prosecutor, or through the receipt of such a document from the court. In this case, it is necessary to

<sup>1</sup> Law of Ukraine No. 1404-VIII "On Executive Proceedings". (2016, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/1404-19#Text>.

<sup>2</sup> Law of Ukraine No. 1403-VIII "On Bodies and Persons Enforcing Enforcement of Court Decisions and Decisions of Other Bodies". (2016, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/en/1403-19#Text>.

<sup>3</sup> Draft Law of Ukraine No. 9363 "On Amendments to Certain Laws of Ukraine on Digitalization of Executive Proceedings". (2023, June). Retrieved from <https://itd.rada.gov.ua/billInfo/Bills/Card/42073>.

<sup>4</sup> Regulation of the European Parliament and of the Council No. 1215/2012 "On Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters". (2012, December). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32012R1215>.

<sup>5</sup> Law of Ukraine No. 1404-VIII "On Executive Proceedings". (2016, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/1404-19#Text>.

identify the authorized persons to perform actions to enforce the debtor's obligations in favour of the creditor. Article 1 of the Law of Ukraine "On Executive Proceedings"<sup>1</sup> clearly states that such activities are entrusted to the state executive service, i.e., state enforcement officers, and in cases provided for by the Law of Ukraine "On Bodies and Persons Enforcing Enforcement of Court Decisions and Decisions of Other Bodies"<sup>2</sup>, to private enforcement officers. Thus, it can be stated that Ukraine has a mixed system of enforcement proceedings, which is a public-private form.

It is advisable to dwell on a more detailed analysis of the issue of a private enforcement officer in enforcement proceedings, as this is a fairly new institution that creates new challenges for legal regulation and the system as a whole. In accordance with the Law of Ukraine "On Bodies and Persons Enforcing Enforcement of Court Decisions and Decisions of Other Bodies"<sup>3</sup>, a private enforcement officer may be a person at least 25 years of age with a higher legal education, who speaks the state language, has experience in the field of law and has passed the relevant qualification examination. The training of such a person is carried out by the Ministry of Justice of Ukraine. Upon receipt of the relevant certificate, information about the private enforcement officer is entered into the Unified Register of Private Enforcement Officers, which allows him or her to exercise powers directly and legally. A special feature is that the legislator defines a certain list of cases that cannot be submitted to a private enforcement officer for enforcement. These include, in particular, cases related to decisions on deprivation of a child, decisions in which the state or government officials are the debtor, decisions of administrative courts, the ECHR, decisions on eviction and accommodation of individuals, and decisions on confiscation of property. Also, the activities of public and private enforcement officers differ in the source of funding for the enforcement process, since while the costs of the public enforcement officer are covered by the state budget, the costs of the private enforcement officer are covered by the advance payment of the creditor, as well as from the funds collected from the debtor for the costs of the enforcement proceedings (Cualain & Tawiah, 2023).

Instead, enforcement proceedings in the EU are regulated by Regulation No. 1215/2012 of the European Parliament and of the Council "On juris-

diction and the recognition and enforcement of judgments in civil and commercial matters"<sup>4</sup>. This regulation establishes general rules for the recognition and enforcement of judgments between EU Member States (Article 36). These general rules apply to all judgments rendered by the courts of EU Member States in civil and commercial matters. In order for a judgement to be recognized and enforced in another EU Member State, it must meet certain requirements. One of the main requirements is that the judgement must be rendered by a court having territorial jurisdiction over the case. Other requirements are that the decision must be final, made in accordance with the law of the issuing country, and not contradict the rule of law (Wurmnest & Gömann, 2022).

In EU countries, enforcement proceedings have a number of common features that are due to the common legal framework. For example, in all EU countries, enforcement proceedings are aimed at enforcing court decisions, as well as decisions of other bodies with enforcement power. However, there are also certain differences in the regulation of enforcement proceedings in the EU countries. In some EU countries, enforcement proceedings are carried out exclusively by state authorities, while in other EU countries, private enforcement officers are allowed to participate. The main problems in the enforcement process in the EU include the following: the enforcement process is often lengthy and expensive, and does not guarantee the enforcement of a court decision; the enforcement process is often non-transparent for the parties, which makes it difficult to understand and control; the enforcement process is often not accessible to all who need it.

To address this problem, various innovations are being introduced in EU countries, such as automation of the enforcement process, the use of digital technologies and alternative methods of enforcement. For example, Germany has implemented an electronic enforcement system that automates many of the enforcement procedures. France and Spain are actively using digital technologies to increase the transparency of the enforcement process. Sweden and Denmark have introduced alternative methods of enforcement, such as negotiation and mediation (Nagy, 2022). It is expected that further digital transformation and the development of alternative methods of enforcement will help to increase the efficiency and fairness of the enforcement process in EU countries. Despite certain

<sup>1</sup> Law of Ukraine No. 1404-VIII "On Executive Proceedings". (2016, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/1404-19#Text>.

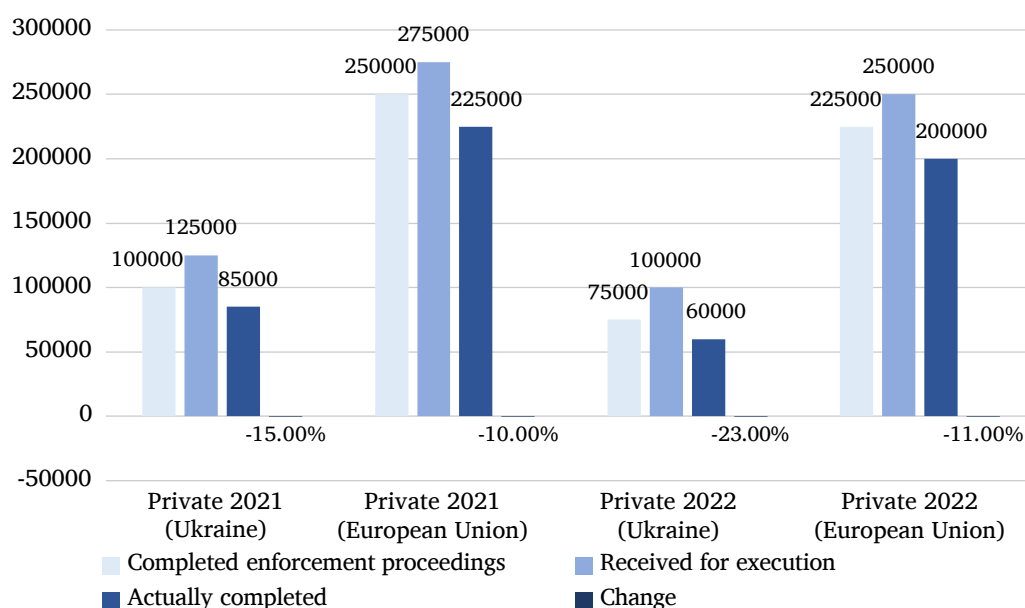
<sup>2</sup> Law of Ukraine No. 1403-VIII "On Bodies and Persons Enforcing Enforcement of Court Decisions and Decisions of Other Bodies". (2016, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/en/1403-19#Text>.

<sup>3</sup> Ibidem, 2016.

<sup>4</sup> Regulation of the European Parliament and of the Council No. 1215/2012 "On Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters". (2012, December). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32012R1215>.

limitations on the range of cases that can be handled by a private enforcement officer, it is worth noting

that this institution has already shown some positive results since its launch (Fig. 1).



**Figure 1.** Results of the activities of private performers during 2021-2022

**Source:** Agency for the execution of decisions (2022) and eu -LISA (2023)

It should also be added that the total amount recovered in proceedings in 2021 in Ukraine is UAH 6.6 billion. At the same time, this amount is 3.2% of the total amount of proceedings, and as for the performance of state enforcement officers, they recovered only 2.4% of the total amount of open proceedings, which indicates that the efficiency of private enforcement officers was higher, which is especially significant given that there are significantly fewer private enforcement officers (276) than state enforcement officers (4134) (Opendatabot, 2021; Agency for the execution..., 2022). In general, the introduction of private bailiffs should be considered a reform of the entire enforcement system, but due to the circumstances caused by the full-scale invasion of the Russian Federation, this reform was suspended.

With the onset of the full-scale invasion, the activities of private bailiffs were suspended for a while, and therefore, debt collectors applied only to state representatives of the enforcement service, which led to a decrease in the number of enforcement proceedings received by private bailiffs by almost three times compared to the number of enforcement proceedings. The actual amount recovered in enforcement proceedings is also indicative, amounting to UAH 3.0455 billion. However, even this amount is 30% of the total amount of opened proceedings, as opposed to 70% of the total amount to be recovered in proceedings opened by state enforcement officers (Agency for the execution..., 2022).

The legal challenges that need to be addressed to effectively change the system of court decision enforcement include several aspects: equalization of rights between state and private bailiffs, creation of either a separate body to cover and monitor the activities of private bailiffs or a unit within the Ministry of Justice (Temirova, 2022). Equalization of rights is necessary, first, and foremost, to increase the effectiveness of the enforcement of court decisions related to the state and state bodies by providing access to them not only to the state but also to private bailiffs, who are independent in their activities and have greater motivation given their funding, which does not depend on state budget expenditures. Also, the issue of monitoring the activities of private bailiffs and reporting the exact results of their activities remains quite problematic, as there is no specialized body with the appropriate authority to do so, which creates a significant bias towards state bailiffs (Kononets, 2020).

One of the priority areas for the development of the judicial system in Ukraine is the reform of the system of enforcement of court decisions. The reform aims to improve the efficiency and transparency of the enforcement process and ensure that justice is accessible to every citizen. The plan allows the reform to be implemented in stages. From 2016 to 2020, a mixed system of enforcement of court decisions was introduced, which included private and state bailiffs. In the second phase, which began in 2021, the enforcement process is being transformed

into a digital one. The transformation involves the introduction of electronic registers of enforcement proceedings, automation of enforcement procedures and the creation of the unified information and analytical system for enforcement proceedings.

The reform of the judgement enforcement system is carried out in accordance with the following legislation: Law of Ukraine “On Enforcement Proceedings”<sup>1</sup>, Law of Ukraine “On Bodies and Persons Enforcing Enforcement of Court Decisions and Decisions of Other Bodies”<sup>2</sup> and Decree of the President of Ukraine “On the Strategy for the Development of the Justice System and Constitutional Justice for 2021-2023”<sup>3</sup>. The main provisions of the reform of the court decision enforcement system are as follows:

- introduction of a mixed system of enforcement of court decisions, which involves the participation of both public and private enforcement officers;
- digital transformation of the enforcement process, which involves the introduction of electronic registers of enforcement proceedings, automation of enforcement procedures, and the creation of the unified information and analytical system of enforcement proceedings;
- strengthening control over the enforcement of court decisions, in particular through the introduction of an electronic monitoring system for enforcement proceedings;
- ensuring access to justice for all citizens, in particular by introducing the procedure of an authorized body representing the interests of persons who are unable to protect their rights in enforcement proceedings on their own.

The full-scale invasion not only halted the process of reforming the enforcement system, but also significantly limited and modified the general and usual activities of both public and private enforcement officers. In other words, in general, it had a direct impact on the element of the obligation to enforce court decisions, as well as on the right of individuals to obtain a fair decision in a legal dispute. In particular, for the period of martial law in Ukraine, individuals who are debtors and whose funds have been seized are allowed by the legislative changes to use funds from their accounts, but the amount cannot exceed two minimum wages per month. Legal

entities are also allowed to use the seized funds to pay salaries, but the total amount cannot exceed five minimum wages per month per employee. Another important amendment is the prohibition on enforcement actions in proceedings involving defence and industrial enterprises, military units, military educational institutions, and units of the Armed Forces of Ukraine<sup>4</sup>. This ensures that these enterprises are supported during martial law, allowing them to focus more on their direct responsibilities in the field of defence provision (Prytyka *et al.*, 2022).

The impact of martial law in Ukraine on the execution of court proceedings is multifaceted and includes both legislative changes and practical challenges. On the one hand, there have been amendments<sup>5</sup> to the Law of Ukraine “On Enforcement Proceedings”<sup>6</sup>, which include the transfer of enforcement proceedings to other courts located outside the martial law area and the exemption of private enforcement officers from liability for violation of the deadlines for enforcement of decisions due to martial law. These amendments are aimed at ensuring the protection of citizens’ rights and facilitating the enforcement of court decisions during wartime.

On the other hand, there are practical challenges associated with martial law, such as lower incomes, which makes debt collection more difficult, restricted access to information about debtors, and a reduced level of security, which affects the work of private enforcement officers. These problems require additional measures, including raising incomes, developing new mechanisms for accessing information about debtors, and ensuring the safety of private enforcement officers (Zhukevich, 2022). In general, martial law has significantly affected the enforcement of court proceedings in Ukraine, creating new challenges and requiring adaptation in both legislative and practical aspects. It is important that the measures taken ensure the protection of the rights and interests of citizens during this difficult period, and help to maintain the fairness and efficiency of the judicial system.

It is important to note that in the digital era, innovations are being used as an auxiliary tool for a number of processes, including those regulated by the state (Kuenzler, 2019). Technologies in the field of enforcement proceedings should be linked to the

<sup>1</sup> Law of Ukraine No. 1404-VIII “On Executive Proceedings”. (2016, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/1404-19#Text>.

<sup>2</sup> Law of Ukraine No. 1403-VIII “On Bodies and Persons Enforcing Enforcement of Court Decisions and Decisions of Other Bodies”. (2016, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/en/1403-19#Text>.

<sup>3</sup> Decree of the President of Ukraine No. 231/2021 “On the Strategy for the Development of the Justice System and Constitutional Justice for 2021-2023”. (2021, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/231/2021#Text>.

<sup>4</sup> Law of Ukraine No. 1404-VIII “On Executive Proceedings”. (2016, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/1404-19#Text>.

<sup>5</sup> Law of Ukraine No. 2455-XI “On Amendments to Certain Laws of Ukraine Regarding the Activities of Private Enforcement Officers and the Enforcement of Court Decisions and Decisions of Other Bodies (Officials) During the Period of Martial Law”. (2022, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/2455-20#Text>.

<sup>6</sup> Law of Ukraine No. 1404-VIII “On Enforcement Proceedings”. (2016, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/1404-19#Text>.

electronic seizure of debtor's funds, but the system is currently not fully operational, for example, private bailiffs have access only to the exchange of information between the bank regarding the seizure of funds or other property values; such information is exchanged through the Automated System of Enforcement Proceedings (Marković-Bajalović, 2020). This process is not fully automated and is dependent on human intervention, which in turn requires more resources and time, which again does not solve the issue of the efficiency of electronic arrest through automatic debiting; another problem is the lack of comprehensive connection of Ukrainian banks to this system, which creates conditions for debtors to continue to ignore payment requests.

Concerning reforming the enforcement system in Ukraine, it is worth paying attention to foreign experience, including the experience of the United States. The peculiarity of enforcement proceedings in this country is that the number of private enforcement officers exceeds the number of state enforcement officers and deals with a larger number of cases, while state enforcement officers are involved in the process of enforcement of decisions in cases of increased complexity (Norris, 2022). Another means of influencing debtors is a reputational warning, which is a notification by a credit reporting agency of the fact of debt, which affects credit opportunities, a person's rating, and also plays a significant role when applying for a loan, obtaining a travel permit or employment (Stones, 2019). For example, Lithuania also has a successful automated system of writing off and seizure of funds, similar to the Ukrainian one, but the difference is that, at the electronic request of the executor, the system sends notifications to banks, which automatically seize the debtor's property; the notification can apply not only to banking companies but also to other financial institutions (Prytyka & Maliarchuk, 2022). Once the funds are seized and the bailiff's demands are met, all restrictions are automatically lifted. A decentralized system of enforcement proceedings has also developed in France, i.e. enforcement of decisions is provided by private individuals who, on the one hand, have the functions of administering justice in the country, which gives them a monopoly on certain actions and a wide range of powers, and, on the other hand, are independent in their activities (Luchtman, 2020).

Given this experience, it should be added that it is now necessary to equalize the rights and obligations between private and public bailiffs to ensure equality and decentralization of enforcement processes; it is also important to ensure timely and efficient enforcement of decisions by bailiffs under martial law, in particular through the introduction

of wider technological capabilities, i.e. to automate routine processes as much as possible, including submission of documents, requests, and the involvement of artificial intelligence in enforcement processes. Blockchain systems can be useful for creating transparency in the area of automatic debiting of funds to reduce corruption risks and fraud.

It is worth noting that some of these provisions are contained in the Draft Law "On Amendments to Certain Laws of Ukraine on Digitalization of Executive Proceedings"<sup>1</sup>, among which the introduction of the obligation for Ukrainian banks to connect to the automated seizure system, and the automation of the removal of a person's data from the Unified Register of Debtors after the claims of the executor are satisfied, in particular after the automatic debit of funds, are among the important provisions. These provisions demonstrate the real intention of the Ukrainian authorities, firstly, to optimize enforcement processes, ensure their efficiency and timeliness, as well as transparency, which is also necessary in the process of European integration and harmonization of legislation in line with European standards. However, legislators should also pay special attention to decentralization of enforcement, in particular by making private enforcement officers equal in rights to state enforcement officers, which will create the necessary conditions for the development of private enforcement proceedings, which are currently proving to be more effective than state enforcement officers.

One of the most progressive examples of digitalization and automation in the field of court decision enforcement is the experience of the United States of America. The United States has implemented an electronic court system that allows litigants to access information on the status of cases, submit documents and perform other procedural actions electronically (Kryvosheina *et al.*, 2022). Another example of successful digitalization and automation in the field of court decision enforcement is the experience of the United Kingdom. The UK has implemented an electronic enforcement system that allows court decision enforcers to obtain information about debtors and their assets electronically (Onțanu, 2022).

## ■ Discussion

In order to form a general vision and understanding of the institution of enforcement proceedings, it is worth analysing some works on the relevant topic. For example, A. Patta (2023) investigated the correlation between a sufficient level of competence of the subjects of enforcement proceedings and the efficiency of justice. The work identifies the main trends in the development of European criminal and civil procedure in terms of digitalization. The author points

<sup>1</sup> Draft Law of Ukraine No. 9363 "On Amendments to Certain Laws of Ukraine on Digitalization of Executive Proceedings". (2023, June). Retrieved from <https://itd.rada.gov.ua/billInfo/Bills/Card/42073>.

out that both procedural and enforcement issues require an appropriate level of awareness and understanding of the specifics of the field, and it is precisely because of this need that the researcher analyses the EU-funded training project for court officials and bailiffs; the project aims to train approximately 500 court officials and bailiffs through interactive and practical legal training in civil and criminal law.

It is worth noting that the launch of a similar programme in Ukraine will bring the process of European integration one step closer, and improving the knowledge and skills of both private and public bailiffs will help guarantee the enforcement of judgments and their binding nature. In particular, this project will be important in the context of martial law in Ukraine as another legal challenge for the bailiffs' field, and the training will help to navigate the proper rights and obligations, limitations and optimization of the work of both private and public bailiffs in view of the obstacles that have arisen due to the full-scale invasion. It is important to understand that such a curriculum should include several opportunities to get involved: remotely or physically. Thus, a project can play an important role in the process of improving the quality of justice.

Issues related to the role of private enforcement officers in the process of ensuring the implementation of legislative requirements and decisions of authorized bodies are outlined in the work of A.P. Komninos (2021). The author argues that private enforcement is important for the effective implementation of the requirements of the EU Digital Markets Act (DMA)<sup>1</sup>. Thus, victims of violations of the relevant law will have a wider range of opportunities to obtain appropriate compensation under a lawsuit filed with the court, and this process will be faster and more efficient due to the equal distribution of cases between private and public enforcement officers. The researcher also proposes to improve the sphere of private enforcement, in particular by expanding the scope of powers of bailiffs, which will optimize and ensure a wider range of rights of persons independent of the state, and reduce corruption risks.

The author's findings partially coincide with the results of this paper, in particular, with regard to the need to expand the rights of private enforcement officers. In Ukraine, the institute of private enforcement is relatively new and is still under development, but the activities of private enforcement officers are considered to be more efficient and motivated, as well as more effective than those of persons authorized by the state. In view of this, the issue of

equating private and public bailiffs in rights is fair and natural, and therefore needs to be addressed in the process of further reforming the enforcement system in general.

The shortcomings of the American system of private enforcement are disclosed in the article by D.L. Noll & L.P. Norris (2023). The authors argue that the federal rules of enforcement in civil proceedings are not adapted to the modern times, in particular, due to the complex form of opening enforcement proceedings. Thus, the article proposes to reform this system in such a way as to reduce the existing number of requirements that must be met in order to initiate enforcement proceedings, since they are too formalized and impede the efficient and prompt operation of bailiffs. The state lacks clear and up-to-date rules for their activities, which leads to the conclusion that the sphere of private enforcement of judgments of judicial and other authorities both abroad and in Ukraine is underdeveloped and requires significant improvements.

It is also worth paying attention to the Bulgarian experience of introducing the legal profession of a private enforcement officer. As noted by D. Yordanov (2021), private enforcement was introduced in Bulgaria in 2005 as part of a broad judicial reform aimed at making the judicial system more efficient and effective, as well as reducing the burden on public courts. Private bailiffs are responsible for the enforcement of court decisions in civil cases, such as the payment of debts or the vacating of premises, and the delivery of legal documents. The author argues that the introduction of this institution is also intended to increase the chances of debt collectors to recover their money. The researcher also draws attention to the problems faced by private bailiffs, including a lack of awareness of private enforcement among the public, as well as a lack of sufficient regulation of the rights and obligations of private bailiffs.

It is worth noting certain similarities between the Bulgarian and Ukrainian experience of introducing a new institution in the field of enforcement, which manifests itself in the lack of precise regulation of the main provisions relating to the relevant institution. In general, the issues of introducing innovations in this area also need to be developed, since most countries choose a more traditional and conservative approach to enforcement proceedings. However, in the context of technological development of enforcement proceedings, it is advisable to pay attention to the experience of Bulgaria, where most debt collection

<sup>1</sup> Regulation (EU) of the European Parliament and of the Council No. 2022/1925 "On Contestable and Fair Markets in the Digital Sector and Amending Directives (EU) No. 2019/1937 and (EU) No. 2020/1828 (Digital Markets Act)". (2022, September). Retrieved from [https://eur-lex.europa.eu/legal-content/EN/TXT/?toc=OJ%3AL%3A2022%3A265%3ATOC&uri=uriserv%3AOJ.L\\_.2022.265.01.0001.01.ENG](https://eur-lex.europa.eu/legal-content/EN/TXT/?toc=OJ%3AL%3A2022%3A265%3ATOC&uri=uriserv%3AOJ.L_.2022.265.01.0001.01.ENG).

cases are considered electronically, i.e., the need for personal presence of the parties to the enforcement proceedings is eliminated. Applications for enforcement and seizure of funds are also submitted online through the relevant service (Terziev *et al.*, 2021).

It is worth paying attention to the article by J. Malinauskaite (2020), which discusses the issue of private enforcement in Central and Eastern Europe. The author notes that most countries had little or no experience with private enforcement before joining the EU in 2004 and 2007. However, as a condition of accession, the CEE countries had to implement the EU directive on damages, which provides a common set of rules for private actions for damages for infringements of competition law. The author points out that enforcement proceedings in this context play an important role in the process of enforcement of competition law, helping to ensure the effective implementation of decisions made by the relevant authorities within their binding powers.

It is worth noting that enforcement proceedings are generally an effective tool for ensuring that a court or other decision or order is understood to be binding. It is the executive authorities that are the main component of guaranteeing justice, the rule of law and the restoration of violated rights and obligations of debt collectors. In the context of competition issues, as pointed out by J. Malinauskaite (2020), the executive service can ensure the collection of debts and fines from enterprises and institutions that do not comply with the regulations established by law. However, it is worth noting that in some cases, the use of the resources of the state enforcement service alone may be insufficient or ineffective due to, for example, low motivation of the executors; in this regard, it is advisable to pay attention to independent private executors who have both more resources and more motivation in certain cases.

## ■ Conclusions

The data provided by the author allowed for a deeper analysis and identification of important elements of the institute of enforcement proceedings, its effectiveness and impact on the efficiency and binding nature of court decisions. The author identifies the concept of enforcement proceedings and its main

features, attributes, and principles in this area. The author examines the special legal acts regulating this institution and defining the principles of activity of persons authorized to enforce decisions of both courts and other authorities. The author shows that such persons may be both private and public bailiffs.

The introduction of private enforcement officers has already brought positive results in terms of the efficiency of recovery, but further improvements are needed. The Russian aggression in Ukraine has had a significant impact on the enforcement of court decisions, leading to legislative changes and challenges for the enforcement system. To further develop the institution of private enforcement officers, it is necessary to grant them equal rights with state enforcement officers and introduce technological innovations to automate the enforcement process. The draft law on the digitalization of enforcement proceedings contains important provisions in this regard. The experience of other countries, such as the United States and China, shows the effectiveness of digital technologies in automating judicial and enforcement procedures, which may be useful for further reforms in Ukraine. EU countries also face challenges in the area of enforcement proceedings, and to address them, they are introducing innovative approaches, such as automation and alternative methods of enforcement. Despite the progress made, it is important for Ukraine to further improve its enforcement system, especially in the context of the conflict, and to adopt best practices from EU countries to increase the efficiency and transparency of the process.

For further research on related topics, it is proposed to investigate the following issues: the problem of systematic non-enforcement of ECHR judgments: ways to overcome it, automation of the bailiff's activities in the context of digitalization: opportunities and prospects, comparative analysis of foreign experience in introducing the institute of a private bailiff, mediation in the field of enforcement.

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## ■ Conflict of Interest

None.

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## Правові виклики та інновації у виконавчому провадженні в Україні та світі: порівняльний аспект

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■ **Анотація.** Актуальність дослідження зумовлена низкою змін як на світовому, так і державному рівні, що безпосередньо впливають на процес реалізації прав і свобод осіб, винесення справедливого рішення та його виконання. Такі зміни полягають у введенні воєнного стану на території України, а також цифровізації низки юридичних процесів. З огляду на це, метою науково-дослідної роботи є аналіз основних проблем у сфері примусового виконання рішень, які перешкоджають виконанню судових рішень і забезпечення принципу справедливості й верховенства права в Україні та світі. У роботі було використано такі методи: історичний, статистичний, порівняльний, формально-логічний. Результати дослідження засвідчили, що виконавче провадження в Україні регулюється змішаною системою, яка охоплює як державних, так і приватних виконавців. Дослідження висвітлює той факт, що повномасштабне вторгнення Росії в Україну суттєво вплинуло на виконання судових рішень. Це зумовило необхідність внесення законодавчих змін і виникнення практичних викликів для системи виконавчого провадження. Досвід інших країн, зокрема США та Китаю, демонструє, що впровадження цифрових технологій для автоматизації судових і виконавчих процедур може бути ефективним для подальшого реформування цієї системи в Україні. Попри певний прогрес у реалізації реформи в Україні, залишаються проблеми, пов'язані з ефективністю та доступністю виконавчого провадження, передусім в умовах воєнного стану. Для їх подолання доцільно використовувати найкращий досвід країн Європейського Союзу, зокрема щодо цифровізації процесу, упровадження альтернативних методів і забезпечення рівності між приватними й державними виконавцями, а також створити прозору систему контролю. Результати дослідження роблять внесок у доктрину інституту виконавчого провадження і формування ефективного теоретичного підґрунтя для практичної реалізації методів удосконалення сфери примусового виконання рішень

■ **Ключові слова:** реформування; цифровізація; воєнний стан; справедливе судове рішення; управління