

Modernization of the Russian law: a review of the laws on enforcement proceedings

Damir Khamitovich Valeev¹, Valeriy Gennadiyevich Golubtzov²

¹Kazan (Volga region) Federal University, Kremlevskaya str., 18, Kazan, 420008, Russia

²Perm State University, Bukireva str., 15, Perm, 614990, Russia

Abstract. Modernization of Russian law covers many spheres including enforcement proceedings. The existing legislation on the enforcement proceedings, which has been reformed for last 15 years, serves as basis of modernization. The scientific doctrine and system of enforcement proceedings in Russia have gradually been developed; it includes such fundamental documents as the Constitution of the Russian Federation, international treaties, both substantive and procedural law of the Russian Federation in the area of enforcement proceedings and also court decisions. Furthermore, the importance of the European Court of Human Rights in relation to enforcement proceedings increases in Russia.

[Valeev D.K., Golubtzov V.G. **Modernization of the Russian law: a review of the laws on enforcement proceedings.** *Life Sci J* 2014;11(8s):234-238] (ISSN:1097-8135). <http://www.lifesciencesite.com>. 50

Keywords: modernization of Russian law, the laws on enforcement, the bailiff, the Constitution, international treaty, substantive and procedural law, judicial practice

Introduction

Russian law is in constant development. New laws are adopted every year; modernization covers more and more spheres: civil, tax, administrative, civil procedural law and other areas. One of the examples of the dynamic development of Russian legislation is the enforcement proceeding, which has been reformed for last 15 years.

After the collapse of the Soviet Union in 1991, the regulatory framework on enforcement proceedings has changed in connection with the adoption of two Federal laws from July 21, 1997 - "On Court Bailiffs" and "On Enforcement Proceedings". Further, the law on enforcement proceedings strengthened with the adoption of the new Federal Law "On Enforcement proceedings" in October 2, 2007. This fact affected the conduct active research and the formation of the doctrine of enforcement proceedings in the main scientific centers of Russia - Moscow, St. Petersburg, Kazan, Yekaterinburg, Saratov and other cities [1,2, 3,4, 5, 6].

Since then, law on enforcement proceedings has become quite extensive and includes more than a dozen major sources [7].

Legislative system of enforcement proceedings laws

In accordance with Article 3 of the Federal Law "On Enforcement Proceedings" Russian law of enforcement proceedings based on the Constitution of the Russian Federation and consist of the Federal Law "On Bailiffs" and other federal laws governing the conditions and procedure for the enforcement of judicial acts, acts of other bodies and officials.

Norms of the federal laws concerning the regulations of conditions and procedure for the enforcement of judicial acts, acts of other bodies and officials must be in compliance with the Federal Law "On Enforcement Proceedings". Consequently, the system of legislation on enforcement proceedings includes itself both laws and regulations, which contain general and specific rules governing procedural activity in the enforcement proceedings. With respect to the meaning of Article 3 of the Federal Law "On Enforcement Proceedings" in enforcement proceedings lawmaking is the responsibility of the federal authorities.

Constitution of the Russian federation as a source of enforcement proceedings

In contrast to Article 2 of the Federal Law "On Enforcement Proceedings" (1997) in Article 3 of the new Federal Law "On Enforcement Proceedings" directly states that Russian law on enforcement proceedings based on the Constitution of the Russian Federation. It means that the obligation of States to recognize, respect and protect human rights and freedoms was established, inter alia, in enforcement proceedings.

International treaties in the enforcement proceedings

There are some international documents which has significant value to the enforcement proceedings: the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) [8], the Hague Convention on Civil Procedure (The Hague, 1954) [9], the Convention on the resolution civil legal disputes arising from the relations of economic and scientific - technical

cooperation by arbitration (Moscow, 1972) [10], CIS Agreement of 20 March 1992 "On the procedure for resolving disputes relating to the implementation of economic activity"[11]; CIS Convention "On legal assistance and legal relations in civil, family and criminal matters" (Minsk, 1993) [12]. Except the above-mentioned multilateral international acts, Russian Federation is a party of several bilateral treaties on mutual legal assistance, some of which provides for the mutual recognition and enforcement of judgments [13].

The bilateral treaties on mutual legal assistance in civil and criminal cases concluded by the Russian Federation (and earlier – the USSR) with foreign countries provide for mutual recognition and execution of court decisions in civil and family courts of one state on the territory of another. In this case term “court” means only state (rather than arbitration) courts, which are entitled to make decisions that receive the force of law and be enforceable in the territory of the State, i.e. courts of general jurisdiction and “arbitrazh” (commercial) courts (hereinafter referred as referred as the – “arbitrazh”).

Substantive and procedural law as sources of enforcement proceedings

As it had been already noted federal laws “On Enforcement Proceedings” and “Court Bailiffs”, as well as other federal laws defining the conditions and procedure of enforcement regulate the enforcement proceeding. Among them there are such ones, which regulated procedural relations, as well as laws governing substantive relations. For instance, the Code of Civil Procedure, the Code of “Arbitrazh” Procedure, the Civil Code, the Family Code, the Labor Code, the Code of Administrative Offences, etc.

The Code of Civil Procedure of the Russian Federation (hereinafter referred as - Code of Civil Procedure or CCP), which entered into force on February 1, 2003, include itself two groups of norm concerning the enforcement proceedings. So, there is a special section devoted entirely to enforcement proceedings - Section VII. It consists of 19 articles (Article 428-446).

The second part (other articles of the Code) of the norm in the Code of Civil Procedure which are relevant for enforcement proceedings governs following questions: explanation of the decision, enforceable (Article 202 CCP), deferral or installment execution, change the method and order of execution of the judgment (Article 203 CCP), determination of the order and the period of execution of the judgment, to ensure its execution (Article 204 CCP) , especially court decisions on awarding the property or its value (Article 205 CPC)

requiring the debtor to perform certain actions (Article 206 CCP) in favor of several plaintiffs or against several defendants (Article 207 CCP), the decisions to be immediately enforceable (Article 211 CCP).

The former civil procedural law contains the special group of norms that were established in the annex to the CCP of Russian: the annex # 1 "List of types of property of citizens, who cannot be foreclosed by the executive documents"; the annex # 2 "Recovery of lost or judicial enforcement proceedings". Now the Code of Civil Procedure of Russian federation acts without any annexes.

In the Code of “Arbitrazh” Procedure of the Russian Federation (hereinafter referred as - CAP) of July 24, 2002 also include certain provisions relating to enforcement proceedings. Section VII of the Code is devoted to general issues on enforcement of judicial decisions rendered by “Arbitrazh” courts. Many of the rules contained in Sec. IV of the CAP complement the provisions of the Federal Law on Enforcement Proceedings. This approach should be regarded as correct, because appropriate procedure codes must contain only special procedural rules for the issuing of writs and addressing some of the procedural issues related to enforcement proceedings (explaining the content of the executive document, changing the order and method of execution, etc.) [14]. Special laws, in particular the Law on Enforcement Proceedings, should govern other special issues of enforcement.

Other federal laws governing the various "substantive" relationships also refer to the sources of enforcement proceedings. For example, in the Civil Code there are provisions on representation, the procedure for issuing the power of attorney (Ch. 10), liability for breach of obligations (Ch. 25) due to the tort (Ch. 59), the procedure for tendering (Article 447-449) and some other norms.

The Family Code of the Russian Federation of December 29, 1995 resolved the order of execution of court decisions on disputes related to the upbringing of children (Article 79), and the procedure for the payment and collection of child support (Ch. 17).

The Labor Code of the Russian Federation of December 30, 2001 fixed the most important issues related to the order of protection of labor rights and the resolution of labor disputes (Section XIII). In particular, specify the methods of protection of workers' rights (Article 352), the powers of the federal labor inspectorate (Article 356), the competence of the labor dispute committee (Article 385), the order of execution of the commission on labor disputes (Article 389), rules of execution for reinstatement (Article 396). Also one of the most

important rules is the rule on the restriction of the reverse recovery of sums paid by the decision of the organs considering individual labor disputes (Article 397). This position plays important role in the question of turning the execution of the labor dispute.

According to part 3 of the Article 3 of the Federal Law "On Enforcement Proceedings" Russian government may adopt normative legal acts on issues of enforcement proceedings on bases of the law and in order to its execution. Consequently, the normative legal acts also can be considered as a source of enforcement proceedings. The number of such sources of enforcement proceedings gradually increases. The most significant of them are the followings: the Governmental regulation of July 7, 1998 # 723 "On Approval of the Procedure and conditions of storage of seized and confiscated property" (as amended in December 30, 2005) [15], the Governmental regulation of 27 May 1998 # 516 "On additional measures to improve the procedures for foreclosure organizations" [16], the Governmental regulation of August 12, 1998 # 934 "On approval of the seizure of securities" [17], etc.

Judicial practice in enforcement proceedings

The judiciary has the great value for any field of law enforcement. It plays an important role in the formation of the constitutional state in the Russian Federation [18].

Litigation in this case is one of the most effective ways of resolving legal conflicts [19]. Therefore judgments, if it meets certain conditions, may be named as the source of law and at the same time as judicial practice. If the judgment has universal character and applies to an unspecified group of people, it can be attributed to the sources of law. Judicial decisions that have the individual character can be considered only as judicial practice.

In the area of enforcement proceedings there are some contestable matters that were the subject of proceedings in the Constitutional Court of the Russian Federation, in particular, there were rules on executive documents, enforcement fees and rotation of the collection and some other issues. The fundamental importance concerning these issues have the following: the decision of the Constitutional Court of July 6, 2001 # 150 -O " The refusal to consider an inquiry of the October District Court of Izhevsk to examine the constitutionality of para. 2 of the Article 339 of the CCP, para. 13 of Article 35, Article 89 and 93 the "Foundations of the Russian Federation legislation on notaries" [20], the decision of the Constitutional Court of the Russian Federation of July 30, 2001 # 13 -P "In the case on the constitutionality of the provisions of subparagraph 7 of para. 1 of Article 7, para. 1 of Article 77 and para.

1 of Article 81 of the Federal law "On Enforcement proceedings" in connection with requests of the "Arbitrazh" Court of Voronezh district, "Arbitrazh" Court of Saratov District and the complaint of the public company "Razrez" Izykhsky" [21], etc.

As an independent group of sources of enforcement proceedings can also be considered a generalization of the judicial practices and other law enforcement in the form of decisions [22] of the Plenum of the Higher Arbitrazh Court of the Russian Federation. For example, the decision of the Supreme Court of April 23, 1985 # 5 "On the practice of the courts of the Russian Federation cases on the release of property from seizure (exclusion from the inventory)" (edition of 21 December 1993, amended in 25 October 1996) [23], the decision of the Plenum of the Supreme "Arbitrazh" Court of March 3, 1999 # 4 "On some issues related to the foreclosure of the shares" [24] and other regulations can be applied in the work of the courts and bailiffs. All of them are judicial acts, but at the same time, they should take into account not only by the courts in dealing with certain procedural issues, but also, if it is necessary, by the bailiffs.

Separately, it can be selected such group of judicial acts as disclosure letters of Supreme "Arbitrazh" Court of the Russian Federation and reviews of legislation and judicial practices of the Supreme Court. Thus, in a disclosure letter of the Supreme "Arbitrazh" Court of the Russian Federation of August 25, 2006 # S1-7/OMP-886 [25] the important questions were solved. Among them was the issue about theory of recovery the funds of the budget of the Russian Federation from the organizations, which were located on the territory of the Republic of Belarus on the basis of the decisions of the "arbitrazh" courts of the Russian Federation.

In the executive proceedings the judicial decisions have the supervisory function. It means that the ability to commit certain proceedings appears only if there are sanctions of the court ("arbitrazh" court). Moreover, the supervisory function deems the duty of the court to consider complaints of the actions of a bailiff and claims arising out of relations on enforcement.

Taking into account the increasing role of international law and human rights not only above mentioned international instruments have particular importance, but also the practice of the European Court of Human Rights. For example, the cases on the right of access to justice in civil proceedings: Kovalev v. Russia, Dunayev v. Russia, Glushakova v. Russia, Prokopenko v. Russia, Sergey Petrov v. Russia and Sobelin and others v. Russia; the cases on protection of property rights: Tuleshov and others v. Russia and Viktor Kononov v. Russia [26].

Moreover, in accordance with the established practice of the European Court of Human Rights the judgment given by any court must be regarded as part of the "trial" within the meaning of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms [27] (see judgment of the European Court for "Hornsby against Greece" of March 19, 1997 [28], "Burdov v. Russia" of May 7, 2002 [29]).

Speaking from the perspective of international legal doctrine and practice the Russian mechanism of legal regulation in the sphere of enforcement proceedings is far from perfect, as long as it currently does not provide effective realization of the right to a fair trial. Recommendations of the Committee of Ministers of the Council of Europe to Member States of September 9, 2003 # Rec (2003)17 "On Enforcement" provides that enforcement should reasonably correlate the interests of both the creditor and the debtor, and in some cases it is also necessary to take into account interests of third parties. In this regard, it is very important to optimize the practices of enforcement and other participants in the enforcement proceedings.

Due to the imbalance of the Russian legislation several special legal acts were adopted. For example, the pilot judgment of the European Court of Human Rights in the case "Burdov v. Russia" (15 January 2009) and the Federal Law of April 30, 2010 # 68-FZ "On compensation for breach of the right to trial within a reasonable time or right to execution of judgment within a reasonable time" [30].

Meanwhile, if we evaluate the situation as a whole, in recent years it has changed little: the rights of participants of enforcement proceedings are still guaranteed extremely weak. We note that, in accordance with the judgment of the European Court of Human Rights in the case "Burdov v. Russia" the respondent State must be set up an effective domestic remedy or set of agents that would ensure prompt and adequate remedy, including reparation for the failure or delay in the execution of judgment within six months from the date on which the present judgment becomes final one. These recommendations have been implemented with long delay.

However, in April 17, 2012, the European Court of Human Rights announced the Resolutions on "Ilyushkin and Others v. Russia» (complaint number 5734/08, etc.) and "Kalinkin and Others v. Russia» (complaint number 16967/10, etc.), which expressly acknowledged that the Federal law of April 30, 2010 # 68-FZ "On compensation for breach of the right to trial within a reasonable time or right to execution of judgment within a reasonable time" has not met all the expectations imposed on it".

Conclusion

Thus, the legislative regulation of foreclosure by executive documents should be established on the balanced regulation of the rights and legitimate interests of all participants in the enforcement proceedings. At the same time the limits of the possible penalties should be legally established. On the one hand, the limits must not violate the basic rights of the debtor, on the other hand, they must serve the interests of protecting the rights of the creditor in order to prevent or reduce the size of the negative consequences of default by the debtor. This situation cannot be adequately implemented without specifying the rights of citizens and organizations in the current legislation on enforcement proceedings. Therefore, we can assume that the reform and modernization of legislation on enforcement proceedings just beginning.

Corresponding Author:

Dr. Valeev Damir Khamitovich
Kazan (Volga region) Federal University
Kremlevskaya str., 18, Kazan, 420008, Russia

References

1. Sherstuk, V.M., 1998. Executive production (Ispolnitel'noe proizvodstvo) (in Russian). *Zakonodatelstvo*, 7: 55-59.
2. Belousov, L.V., 1998. Executive production: first results (Ispolnitel'noe proizvodstvo: pervye itogi) (in Russian). *Journal Zakonodatelstvo*, 11: 50-57.
3. Yarkov, V.V., 2000. Handbook of bailiff: Reference handbook (Nastol'naya kniga sudebnogo pristava: Spravochno-metodicheskoe posobie) (in Russian). Moscow: BEK, pp: 768.
4. Reshetnikova, I.V., 2000. Benefit enforcement proceedings for bailiffs. (Posobie po ispolnitel'nomu proizvodstvu dlya sudebnyx pristavov-ispolnitelej) (in Russian) Moscow: Statut / Ed. IV Reshetnikova, M. Statute, 2000, pp: 304.
5. Valeev, D.Kh., 2001. Enforcement proceedings in the legal system of the Russian Federation (Ispolnitel'noe proizvodstvo v sisteme prava Rossijskoj Federacii) (in Russian). *Pravovedenie*, 5: 169-178.
6. Isaenkova, O.V., 2001. Problems of executive law in civil jurisdiction (Problemy ispolnitel'nogo prava v grazhdanskoj yurisdikcii) (in Russian). Moscow: Yurist, pp: 254.

7. Stuart, S., 2013. A practical approach to Civil Procedure. Oxford University press, pp: 539-548.
8. Bulletin of the Supreme Arbitrazh Court of the Russian Federation. 1993. Number 8.
9. Bulletin of the Supreme Arbitrazh Court of the Russian Federation. 1996. Number 12.
10. Bulletin of the Supreme Soviet of the USSR. 1973. Number 18. St. 227.
11. Bulletin of the Supreme Arbitration Court of the Russian Federation. 1992. Number 1.
12. Collection of Laws of the Russian Federation. 1995. Number 17. St. 1472.
13. List of existing agreements on legal assistance in civil, family and criminal cases (as of May 10, 1995) (annex to the letter from the Ministry of Justice of Russia May 30, 1995 # 03-07-19-95).
14. Joseph, W.G., 2013. Civil Procedure. New York, NY: Aspen Publishers, pp: 258.
15. Collection of Laws of the Russian Federation. 1998. Number 28. Article 3362, 2006. Number 3. Article 297.
16. Collection of Laws of the Russian Federation. 1998. Number 22. Article 2472.
17. Collection of Laws of the Russian Federation. 1998. Number 33. Article 4035.
18. Degtyarev, S.L., 2008. The implementation of the judiciary in civil proceedings (theoretical and practical problems). (Realizaciya sudebnoj vlasti v grazhdanskom sudoproizvodstve (teoretiko-prikladnye problemy)), PhD thesis, USLU, Ekaterinburg., pp: 144.
19. van Rhee, C.H. (ed), 2005. European Traditions in Civil Procedure. New York, NY: Intersentia Antwerpen - Oxford, pp: 190.
20. Bulletin of the Constitutional Court of the Russian Federation. 2002. Number 2.
21. Collection of Laws of the Russian Federation. 2001. Number 32. St. 3412.
22. Cafagi, F. (ed), 2012. Enforcement of Transnational Regulation, Ensuring Compliance in a Global World. UK, Glos: Edward Elgar Publishing Limited, pp: 333.
23. Bulletin of the Supreme Court. 1988. Number 7 (Bulletin of the Supreme Court. 1994. # 3, 1997. # 1).
24. Bulletin of the Supreme Arbitrazh Court of the Russian Federation. 1999. Number 4.
25. Supplement to the newspaper, "Accounting. Taxes. Law "-" Official Documents ". 2006. Nov 28. Number 46.
26. Overview of judgments and decisions of the European Court of Human Rights in May 2007 (prepared by the lawyers of the International Protection and Center "Demos») / / www.demos-center.ru.
27. Convention for the Protection of Human Rights and Fundamental Freedoms, ETS # 005 (Rome, November 4, 1950) (with amendments of September 21, 1970 December 20, 1971, January 1, 1990, November 6, 1990, May 11, 1994) // NW. 2001. Number 2. St. 163
28. The European Court of Human Rights. Selected solutions: In two volumes, Moscow, 2000.
29. Rossiyskaya Gazeta. 2002. July 4.
30. Collection of Laws of the Russian Federation. 2010. Number 18. Article 2144.

5/18/2014