Actual problems of enforcement proceedings

Authors: Bakhytzhan Saparov, Kamshat Raiymbergenova1  11. Mai 2017

Abstract: This article describes the status of the enforcement proceedings of RK today, explores issues of theoretical and practical application of the laws governing the enforcement proceedings.

Enforcement proceedings is one of the civil process steps aimed at the enforcement of normative legal acts or acts of other legal agencies.

In recent years were passed a number of laws to strengthen the independence of the courts and appropriate modern requirements. Clearly, this makes it possible to resolve many accumulated problems in court cases. The first legislation adopted in the light of the formation of the country’s independence has used up its capacity as a legal act of the transition period for the country.

In order to regain the trust of the people of the judiciary must be the full and timely implementation of court decisions. Therefore, improving the timely and obligatory enforcement of judicial acts requires governmental decision making. In this regard, on September 1, 2000 it was adopted the Presidential Decree "on measures for increasing independence of the judiciary in Kazakhstan" [1].

According to this decree, to improve the timely and obligatory enforcement of judicial acts next to the Supreme Court of the Republic of Kazakhstan was established the Committee on Court Administration, after which the judiciary has been completely freed from the influence of the executive.

Without a doubt, the reputation of the judicial system is directly related to its execution. Exactly prompt timely execution of court decrees is one of the most important principles of implementation of the court decisions and the establishment of its significance. In this case, it can be argued that the organization of a sustainable system of execution of court decisions is an integral part of establishing the judiciary. Head of State Nursultan in his address to the people of Kazakhstan Nazarbayev noted about the need of improving the enforcement of judicial decrees [4].

Execution of judicial acts is one of the most pressing issues on which we should seriously consider. In recent years in Kazakhstan, much attention is paid to the execution of court and other legal acts,  

1 Bakhytzhan Saparov, senior teachers Chair of Civil Law and Civil Procedure, Labour Law, Al-Farabi Kazakh National University; Kamshat Raiymbergenova, Master rights of Al-Farabi Kazakh National University.
improvement of laws regarding their executive functions, improvement of material and technical conditions for bailiffs - all this facilitated the work of bailiffs, and has given a positive result.

However, still not fully resolved problems of proper performance of their duties the executive service, including:

On today imperfect material reward and low qualification of judicial executors create a number of difficulties. At the same time, the bulk of the bailiffs, after reaching the required level of professionalism, change their jobs. As a consequence of this lack of personnel and continuous updating of their impact on the quality of the executive system. Also, prosecutors are working under conditions of high stress, which also leads to the untimely execution of judicial decisions. A salary of public bailiffs is very low. This fact leads to the incorrect execution of judicial decisions [2]. If we take into account the experience of foreign countries, in France, Germany, Poland, Slovakia, the Baltic states, Armenia, Azerbaijan, Belarus, Moldova State runtime bailiff addition to a fixed salary receive a bonus from the charged amount from the debtor for every work done. This debt payment scheme has enabled Germany to achieve one hundred percent performance in the period and no bailiff has not been brought to justice.

Hiding debtors of their property in the course of the trial. During enforcement proceedings bailiff turns out that on the debtor's name is not registered property.

Another problem - even if the publisher of the law uses the term "enforcement measures", no article does not give an explanation of the concept of measures of enforcement and its species. This "gap" in the law leads to negative consequences in practice.

For service bailiffs are monitoring as to and its territorial authority. In fact, this is not enough. This deficiency leads to a number of negative consequences. We believe that the competence of bailiffs should be separated from the Ministry of Justice and, as before, go for Supreme Court justice.

At the same time, in Article 68, paragraph 1 of the Law "On the conduct of the executive affairs and the status of judicial executors" the debtor's property assessment is carried out bailiff in accordance with its market value, taking into account the period of its deterioration. In this connection, it may take into account the agreement between the debtor and the claimer on coordinated assessment. And if you have any difficulty evaluating every single thing or creditor or the debtor will be the appointment of a bailiff assessment, the bailiff determines the expert to determine the value of the property. From a theoretical point of view, this article does not cause too many questions. But in practice this leads to many difficulties: that is, as has been said, if the debtor or the creditor does not agree with the assessment of the bailiff, the expert appointed by the individual. Since property valuation refers to the types of commercial services, this service requires payment. In this regard, the question arises as to who will pay for these services. In paragraph 24 of the above-mentioned article
states that the cost of attracting foreign professionals related to the implementation costs of the executive functions. That is, these costs are covered by the debtor.

At the same time, the allocation of money collected from the debtor bailiff primarily charged his fines. After that, costs are charged by the executive work and the remaining amount is given to the claimant. In my opinion, in the first order, not to be charged penalties, and on the work of executive spending. Because, for example, specialists before proceeding to carry out their work, will be asked to make a payment.

Thus, in order to make up for all of the above spaces, we propose to introduce the theory and practice of the executive production of the following recommendations:

- On the basis of understanding of international best practices you need to implement a system of material incentives for the work of bailiffs. That is, the right to approve the law, bailiffs to receive 5% of the premium charged on the amount;

- Separate the competence of bailiffs, ensure the implementation of judicial decisions, the responsibility of the Ministry of Justice, and return them to the Supreme Court's order;

- To introduce the following amendments to Article 229 of AIC of Kazakhstan: in the court decision on charging a sum of money should be spelled out: "In the case of lack of money from the debtor for the implementation of the court decision, according to the rules specified in the law on the implementation of the executive proceedings, seized another property of the debtor" [3];

- To develop and introduce the possibility of paying benefits to persons who have suffered loss from the crimes convicts or payer of alimony for the period of their inability to compensate for the damage extended. In this case, you must recover the money spent by the state on the debtors in the form of regression;

- Given the successful foreign experience of enforcement, it is necessary to target the use of indirect measures of enforcement of the law on the conduct of the executive affairs of the Republic of Kazakhstan, which extend the ability to conduct enforcement proceedings, and changing the way enforcement by the debtor of his duties. To do this, you must enter the Institute astrenta (constantly increasing penalties), which will conduct a fair trial and to enhance the benefit of protection of the rights of subjects of executive affairs;

- Consideration of legislative measures of social protection of bailiffs. Take steps to ensure bailiffs logistics, in particular, an official car.

Thus, the implementation of these measures will create conditions for improving the quality of the executive production and development of a fair trial. The timely execution of court decisions can
have a positive impact on the prevention of crime and the establishment of a certain level of law and order in the country.

References:

1. Decree of the President of the Republic of Kazakhstan of 1 September 2000 "On measures to strengthen the independence of the judicial system of the Republic of Kazakhstan".

