

Entwicklung des Vollstreckungssystems: Nationale und ausländische Erfahrungen

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Zusammenfassung: Dieser Artikel untersucht das Funktionieren des Rechtsvollstreckungssystems in Usbekistan als staatliches System, die Grundlage für seine Bildung, die Rechtsdokumente, die die Grundlage für die Entwicklung von Vollstreckungsverfahren bilden, die auf der ganzen Welt etablierten Strafverfolgungsbehörden sowie Gerichtsentscheidungen und verbindliche Ausführungsmodelle der Entscheidungen anderer Gesetzgebungen auf der ganzen Welt, ihre Vor- und Nachteile. Diskussionen und Behauptungen von Wissenschaftlern und Praktikern zu den bestehenden Modellen werden diskutiert, auf deren Grundlage die Autorin ihre eigene Schlussfolgerung zieht.

Schlüsselwörter: Geschichte, obligatorisches Vollzugssystem, Kontrolle, Vollzugsmodelle, privates System, öffentliches System, gemischtes System, Vorteile, Nachteile.

Development of the Enforcement System: National and Foreign Experience

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Abstract: This article examines the functioning of the legal enforcement system in Uzbekistan as a state system, the basis for its formation, the legal documents that are the basis for the development of enforcement proceedings, law enforcement agencies established around the world, besides court decisions and mandatory execution models of the decisions of other legislations around the world, their advantages and disadvantages. Discussions and claims of scientists and practitioners on the existing models are discussed, on the basis of which the author drew her own conclusion.

Keywords: history, mandatory enforcement system, control, enforcement models, private system, public system, mixed system, advantages, disadvantages.

Introduction: As the head of our state Sh.M.Mirziyoev noted: “We consider the in-depth study and implementation of best practices in the world as one of the important steps for the successful implementation of the wide-ranging tasks ahead of us” [1].

In this regard, we analyzed them in order to identify the advantages and disadvantages of existing models of enforcement in foreign countries. The order of execution of court documents in each state is formed on the basis of their history, and the system of enforcement of court decisions and decisions of other bodies around the world consists of three models: public, private and mixed (private and public).

In particular, when studying the written sources on the execution of court documents and documents of other bodies on the basis of analysis, we could witness

that the history of the execution of court documents in the territory of Uzbekistan dates back to the Movarounahr statehood.

It is widely known that the Samanid state appeared on the stage of history as the first centralized state, despite the fact that various states were formed in the territory of Movarounahr at that time.

For the first time in the IX-X centuries in our history there appeared an official person who ensured the execution of court decisions. The officials who carried out all the orders of the Emir were called as the "Amiri-horis". Nizamulmulk's literary work "Siyosatnoma" ("Policy") also mentions about this responsible person. In particular, it was noted that he had all the necessary items for his living conditions and had all the respect for him from the whole nationality [3].

Scholar I. Bekmirzaev who studies Islamic religion also wrote about the historical activities of bailiffs during the XI-XII centuries in his dissertation paper named "«Burhanuddin Mahmud al-Bukhari's work "Al-Muhit" and its place in the court of Transoxiana » (the novel of "Al-Muhit" written by Al-Bukhariy and its role in the formation of judiciary system of Movarounahr". According to this scientific work, the "oath" in the judiciary is tasked with the transfer and distribution of property to the appropriate person after the judge has considered and resolved the claim. [4]

Proof of our words is also reflected in the report given by Sh. Aminov. In particular, according to him, in the states formed in the Central Asian region, for centuries and even millennia, the implementation of their decisions has been ensured by the state. Until the end of the 19th century, police officers were involved in the execution of court decisions. [5]

However, this was not their main task, as their objectives also included monitoring compliance according to the law in the country, investigating crimes and resolving disputes between the different people.

In his study of the implementation of dividing to zones policy in Central Asia, O. Normatov noted that "until 1926, a single administrative division was introduced in the territory of Uzbekistan: division into oblast (oblast), uyezd, volost and village councils" [6].

According to the document called Turkestan Provincial Regulations, the volost governor was responsible for enforcing court and government decisions besides their other tasks [7].

On April 26, 1890, in accordance with the Decree of the Ministry of Justice No. 1315 B on changing the order of execution of court decisions in the Turkestan region, amendments and additions were made to the Statute by the Decree of the Russian Emperor Alexander II. According to the amendments, the post of bailiff has been established in Tashkent under the Syrdarya regional court.

According to the regulations, bailiffs were responsible for enforcing decisions of regional courts and arbitration courts. At the same time, special attention was paid to the issues of incentives for bailiffs and penalties for shortcomings committed by them during their work. For example, we can see that the issues of annual salaries, bonuses, and the amount of money to be paid in case of damage due to errors and

omissions as well as the prosecution were covered by bailiffs and they were punished at some cases [8].

In other parts of the Turkestan region, the execution of court decisions was carried out in the following order: the claimant appealed to the head of the district on the execution document, which was to be executed by the debtor, not executed within the voluntary period established by the court. Based on this petition, the head of the county appealed to the volost governor to enforce the decision, informing him that the decision had been made by the court but that the debtor was not voluntarily executing the court decision.

As for the order of execution of court documents during the Soviet era, in 1924 the USSR was formed in connection with the transfer of national state borders in Central Asia.

In the USSR, the following judicial systems were initially established: the Nation's Court, the Regional Court and the Supreme Court. Due to the lack of a new regulation in the USSR, the courts were to operate in accordance with the Regulation on the Judicial Structure of the RSFSR, adopted on October 31, 1922 [9].

Furthermore, on May 6, 1925, the Charter of the Nation's Commissariat of Justice of the Presidium of the Central Executive Committee of the Council of Uzbekistan was approved, according to which one of the main powers of the Nation's Commissariat of Justice was to organize the activities of bailiffs.

During the study of archival documents, it became clear that before the formation of the Uzbek SSR in the field of enforcement of court documents and decisions of other bodies, there was no legal basis governing the rules of execution besides the normative documents. Only the Code of Civil Procedure of the USSR of 1927 established the procedure for execution of court documents.

According to him, there were bailiffs in the regional courts and people's courts, and the bailiffs carried out their activities under the direct supervision and supervision of the courts. In addition, it is stipulated that the implementation of the decisions of the land commission may be entrusted to the police and district executive committees.

During the Soviet era, bailiffs were appointed and dismissed by district (provincial) courts [10].

What was really interesting, if the debtor appeared in court in person or through his representative, the writ of execution was sent to the debtor's place of residence written in his job documents within a month, regardless of whether the debtor resided there or not [11].

Also, at that time, the court could set a voluntary period for the execution of the court document. If such a period was not established by a court decision, the bailiff could give the debtor an optional period of not more than seven days at the time of delivery or delivery of the writ of execution [11, p-277].

In addition, on December 8, 1936, the MIC and the ICC of the USSR approved the Regulations on the People's Commissariat of Justice, according to which the former Union People's Commissariat of Justice was entrusted with the organization and management of the judiciary. All prosecutors and investigators have been

removed from the People's Commissariat of Justice. At the same time, this Regulation defines the management and control of the activities of bailiffs of the People's Commissariat of Justice.

One of the documents that served as the basis for the development of enforcement proceedings during the Soviet era was the Manual of the People's Commissariat of Justice which was established on September 28, 1939 was called "On the execution of court decisions."

In particular, the execution of court decisions has become particularly important as "an important tool in strengthening socialist legislation, the prevention and elimination of offenses and educating citizens in the spirit of compliance with the laws of the Union" [12].

On March 23, 1959, in order to strengthen control over the activities of regional and people's courts, the Presidium of the Supreme Soviet of the USSR entrusted the Supreme Court of the USSR with the right to inspect the work of regional and people's courts. In 1961–1964, the Soviet Union systematized its civil procedure legislation [13].

The legal basis for enforcement is reflected in the Civil Procedure Code of the RSFSR of 1963 and the Instruction of the Ministry of Justice of the former Soviet Union of November 15, 1985. According to him, the management of the activities of bailiffs is the responsibility of the chairmen of district (city) people's courts and people's judges [14].

The executive system in the territory of the former Soviet Union was based on the above-mentioned documents until the end of the twentieth century.

In the early years of Uzbekistan's independence, there were bailiffs in the courts to enforce court decisions. When there were two or more bailiffs in the court, one of them was considered a senior bailiff [15].

Initially, there was no legislation on the activities of bailiffs, but bailiffs conducted enforcement proceedings on the basis of the Instruction on Enforcement, approved by the Order of the Minister of Justice of the Republic of Uzbekistan dated December 28, 1993 No. 57-p.

According to it, the management of the activities of the bailiff is entrusted to the chairman and judge of the district (city) court. At the same time, the chairmen and judges of district (city) courts inspected the activities of bailiffs on a monthly basis, drew up an act and reported it to the Department of Justice.

At the same time, the adoption on August 29, 2001 at the initiative of the first President IA Karimov of the Law "On Enforcement of Judicial and Other Acts" which was regulating legal relations in the field of enforcement of executive documents led to a new stage of reforms in this area. In connection with the adoption of this law, under the Resolution of the Cabinet of Ministers of the Republic of Uzbekistan dated September 22, 2001 No 383 "On measures to further improve the activities of courts of the Republic of Uzbekistan" - The Ministry of Justice of the Republic of Uzbekistan has established a specially authorized legislating system - the Department of Enforcement of Court Decisions, Logistics and Financial Support of Courts.

A new version of the Law "On Courts" was adopted by the government in order to ensure the timely and quality execution of court decisions and the consistent implementation of the constitutional principle of separation of powers. This allowed the courts to significantly get rid of their non-specific responsibilities and to focus all their attention on their main task - the administration of justice [16]. This made it possible to free the judiciary from the control and influence of the executive system of the government.

According to the Decree of the President of the Republic of Uzbekistan Sh.M.Mirziyoev dated May 29, 2017 no. PF-5059, there were provided for the termination of the Judicial Department under the Ministry of Justice of the Republic of Uzbekistan and the Law of the Republic of Uzbekistan "On Execution of Judicial and Other legislation's documentation system" tasks, functions and powers were transferred to the Bureau of Enforcement under the Prosecutor General's Office [17].

In the territory of the Republic of Uzbekistan, in contrast to the member states of the Commonwealth of Independent States, the compulsory execution of court documents and documents of other bodies is organized under the Prosecutor's Office.

In the CIS member states, enforcement agencies are established under various competent authorities in accordance with the national legislation and traditions of their territory. In particular, in the Republics of Azerbaijan [18], Armenia [19], the Republic of Belarus [20] and the Russian Federation [21] the legislation organizations for the execution of judicial and other documents has been established under the Ministry of Justice where In the territories of these countries, the Ministry of Justice develops measures aimed at improving the activities of executive organizations, coordinates and monitors their activities.

It also performs other duties included in its competence by law in accordance with the rules of applicability.

At the same time, in the **Russian Federation**, some enforcement actions were carried out on the basis of court sanctions and are controlled by state courts on the basis of applications submitted by interested parties [5, p-312].

The Bailiffs Service under the Supreme Court is responsible for ensuring the full and timely execution of court documents and documents of other bodies that have entered into force in the territory of the **Kyrgyz Republic**. Bailiffs Service - coordinates and monitors the activities of the Bailiffs and Bailiffs Executors Service.

In contrast to the executive bodies on the territory of the above-mentioned states, the execution of court documents and documents of other bodies in the Republic of Tajikistan is carried out by the Executive Service under the Government. The Decree of the President of the **Republic of Tajikistan** dated April 5, 2018 is the basis for the organization of executive proceedings under the Government, and significant institutional changes have been made in this direction.

We believe that this has led to a further increase in the prestige and level of responsibility of the Executive Service, as the Prime Minister of the Republic of Tajikistan is the President. The Executive Service under the Government of the Republic of Tajikistan is the executive body of state power in the field of

enforcement proceedings. The executive branch is headed by a chief, who is appointed and dismissed by the head of government [22].

The state model of the enforcement system can also be found in Western European countries.

In particular, in the **Federal Republic of Germany**, bailiffs are part of not only the executive system but also the judiciary, particularly the justice system [5, p-52.]

The Institute of State Bailiffs was founded in 1877 which foregrounds the following provisions: the service and employment relations of officials (executors) who perform duties and execute court decisions in connection with the summons are determined by the Federal Supreme Court and the Minister of Justice of the German state, and in the courts of federal lands - by the justice departments of federal lands.

Because Germany is a federal state, the administration of the courts is included in the powers of the federal lands, and the state executors are the civil servants of the separate federal lands. This means that there is no single service of bailiffs in Germany, and that each of the 16 federal lands can develop and implement an organizational structure for its service. In order to ensure that the activities of the services do not differ from each other, 60 years ago a single Code of Bailiffs was approved, which covered the main organizational issues and regulated the service and legal relations of bailiffs.

In Germany, a bailiff is an official person of a judicial department who receives a portion from the amount of money paid by the bailiff for the performance of his duties during juridical processes. It is worth mentioning here about the system of compulsory execution in Uzbekistan.

In particular, according to the Resolution of the President of the Republic of Uzbekistan dated 15.06.2017 No PP-3060 "On the organization of the Fund for the Development of the Bureau of Enforcement", for the Penalties imposed and levied by the staff of the Bureau, as well as for non-execution of the executive document on the recovery of funds 80% of the fines imposed and levied on banks or other credit institutions form the Bureau's savings and are used to finance the part of the Bureau's salary fund that is not financed from the State budget, as well as financial incentives and social protection of the Bureau's staff.

From the countries of Northern Europe we can see that the Republic of Finland and the Kingdom of Sweden also have a state system of bailiffs [21].

Yu. Toukola describes the executive system of the Finnish state as a law enforcement body based on the Finnish Constitution, which states that the task of substantial exercise of state power cannot be delegated to parties other than state bodies [5, p-250].

In the United States, the Marshals Service is considered as a federal executive body within the Department of Justice. The American Marshals Service was formed under the Judiciary Act of 1789 and is the oldest federal executive organization.

Because U.S. state laws vary from state to state, 50 states have enforcement systems such as territorial courts that differ from each other, and there is no single normative document in the execution of enforcement actions.

The Marshals Service is also part of the executive branch and is the executive organization of the federal courts. Marshals are appointed by the President of the United States for a four-year term in each federal district court. Marshals are also responsible for the protection of judicial staff and the effective functioning of the judiciary.

Marshals have traditionally had great powers; they were enforcing legal orders and instructions issued on behalf of the United States. Enforcement is a state system in which enforcement is not carried out by a single body, but by marshals and sheriffs.

The above-mentioned comments on the U.S. enforcement proceedings have also been confirmed by scientific research conducted by foreign scholars.

In particular, associate professor of juridical studies T.M. Tsepkova and S.A. Fillipov said that "In the United States, the enforcement system is not run by a single service, but by several services, The duties of bailiffs are entrusted to the service of sheriffs (citizens are very proud of them) and the service of marshals. The Marshals Service is responsible for performing the duties of a bailiff at the federal level [23]" .

Sheriffs have the power to enforce court decisions on private claims, enforcement of minor claims, and imposition of fines for parking and violation of environmental regulations, enforcement of unpaid taxes, alimony for under eighteens, eviction, and confiscation of property [24].

It can be said that state executive systems operate under the Ministry of Justice, the judiciary, the judiciary or law enforcement agencies, and their activities are monitored and coordinated by these state bodies. Therefore, the role of these bodies plays an important role in the executive system.

In order to ensure the implementation of the order of the President of the Republic of Kazakhstan in 2018 under the name of "100 concrete steps to implement five institutional reforms" A program for the development of the institute of private bailiffs for 2018-2025 has been developed, according to which the state bailiffs will gradually transfer enforcement proceedings to private bailiffs [25].

At present, the absolute powers of private bailiffs in the Republic of Kazakhstan have been expanded to include the enforcement of enforcement documents in almost all categories, including recovery in favor of the state.

It also operates in countries with a mixed system of bailiffs, such as the Republic of Kazakhstan (Bulgaria, Canada).

The private enforcement system is usually based on a license issued by the government (Belgium, Hungary, Italy, Latvia, the Netherlands, Romania, France, Estonia, Lithuania, and Poland).

In the French legal system, a judicial officer is a government official who works as a freelance entrepreneur, as a manager of a company with a large staff of qualified employees [5, p-275], the bailiff acts on behalf of his client and in his interests, exercising his powers within the limits established by law [26].

At the same time, enforcement proceedings in France are carried out not only by bailiffs, but also by Attorney Generals, public prosecutors, commanders and

officers of the police forces. However, the main executors are the bailiffs. Their legal status combines elements of independent practitioner and civil servant status.

As for the sight of disciplinary bailiffs report directly to public prosecutors [14, p-169]. Here, the profession of a bailiff is similar to that of a notary, lawyer, court administrator, or other court representative, i.e., the profession of a bailiff refers to a profession regulated by law [5, p-201]. In addition, it should be noted that the damage is compensated through the Insurance Offices under the National Chambers of Bailiffs. Insurance cash desks are financed by insurance money paid by each bailiff.

In the Estonian state, enforcement proceedings are carried out independently by bailiffs. The bailiff is appointed by the Minister of Justice for an indefinite period.

During the reforms in this area in the Estonian state since 2001, the bailiff has been working on his own behalf and independently under his responsibility as a state-legal bailiff. Here the state executor is described as follows:

- 1) high interest in the results of the work, because the salary is directly related to it, the main source of income of the bailiff is the fee for these enforcement actions, the state does not pay him a salary;
- 2) personal liability for own actions, thereby making the bailiff liable for damages caused by his actions;
- 3) Independence in the implementation of activities. Bailiffs receive instructions on the merits of their activities only from the courts through their decisions;
- 4) Higher education. One of the conditions for becoming a bailiff is a higher juridical education [5, p-201]

Enforcement proceedings in the Republic of Poland are part of the civil process, and enforcement functions are performed by bailiffs who do not represent the administrative authorities. At the same time, in accordance with the provisions of the Law of 29.08.1997 "On Bailiffs and Enforcement of Decisions", the bailiff is a free professional in the execution of court decisions, the imposition of penalties on enforcement documents [5, p-201]. District courts exercise control over enforcement proceedings (Articles 758-759 of the Code of Civil Procedure) [29].

Each system (whether it is private or public system) operates in accordance with the traditions of each state. At the same time, there is no doubt that the unity of the tasks facing the enforcement agencies in all countries unites them.

It should be noted that in countries with a private enforcement system, the bailiff is also responsible for confirming legal facts. Such tasks make up almost half of the performers' activities. This means that the number of enforcement documents that come to the executors on their own is small [30].

There are also various debates among legal scholars as to whether enforcement should be in the state enforcement system or whether it should be "privatized".

In this regard, V.V. Yarkov notes that the degree of "privatization" of enforcement depends on the territorial traditions of the country. When comparing the private and public enforcement agencies, private (extra-budgetary) enforcement systems impose that they are not funded by the state, but are self-financing and have full property responsibility [31].

E.Abaydeldinov also said that an important feature of the institute of private enforcement is its self-sufficiency; the income of the bailiff consists only of interest on the amounts collected. At the same time, the world experience (Netherlands, France, and Latvia) recognizes that the effective functioning of the private enforcement system has been proven [32].

V.A. Gureev substantiates the advantages of the private system with the following arguments: activation of initiative among executors associated with the emergence of motivation for effective work based on the incentive system, the emergence of a more specialized and prestigious profession, independence, which guarantees high efficiency.

However, the scientist also highlighted the disadvantages of the private system. Including, according to him:

- A more sophisticated mechanism for collecting information on the performance of private executors, which reduces the ability to objectively assess the effectiveness of the private system as a whole, the costs of enforcement proceedings will inevitably increase, law enforcement agencies are reluctant to increase cooperation with private executors [33].

Following by the views of V.A. Gureev, A.H. Ageev said that the privatization of compulsory execution is due to a reduction in budget costs to the executive system, reduced risk of damage caused by illegal actions (inaction) of the executor, increased personal responsibility for the execution of enforcement actions. Stressed that decision-making may increase efficiency.

Speaking about the "privatization" process of enforcement, studying the experience of the French Republic, E.N. Kuznetsov argues that the bailiffs should be paid by the parties to the enforcement proceedings, and the whole process of enforcement should be funded by them too [26, p-7].

G.D. Uletova denied this idea, saying that the privatization of enforcement can lead to the abuse of power by bailiffs, as they want to get as much profit as possible for their activities, as well as she also expressed the view that legal access to information about the debtor (debtor's solvency) could lead to criminalization of legal actions [35].

E.G. Streltsova also mentioned similar of the views of G.D. Uletova, noting that the activities of criminal groups can be legalized if a special element is included in the enforcement process [36].

O.V. Isaenkova believes that the number of violations in this regard does not depend on whether the executor works in a private or public system, a person prone to offenses can work in both private and other systems [5, p-312].

As Mark Schmitts rightly points out, an independent bailiff will be market-oriented, "but the service of justice is not concerned with profit and wealth, the service of justice is just justice and efficiency" [5, p-31].

Based on the above, it can be concluded that the formation of compulsory enforcement in our country as a state system was based on its historical aspects. It should be noted that one of the important features of the state executive system is the enforcement of court decisions and decisions of other bodies by authorized officials.

Further to this claim, the state executor will have the same motivation in collecting large debts as well as in collecting social fines. This is an element that separates them from the private system of enforcement.

It should be noted that no matter how independent the private system is, the goal is often to achieve high returns, which in turn leads to an increase in the costs of the parties to the enforcement proceedings.

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