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PROSPECTS OF THE INSTITUTE OF PRIVATE BAILIFFS IN THE RUSSIAN FEDERATION

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Abstract

It is well known that the ultimate goal of judicial protection is achieved only when the jurisdictional act is fully implemented by the obligated person. Enforcement proceedings are the final stage, ensuring the real restoration and protection of violated or contested rights. However, in recent years it has not been an effective way to protect the violated or contested rights of interested parties, which is due, to an increase in the number of executive documents submitted for execution to the Federal Service of bailiffs of the Russian Federation. Despite the fact that at present the Federal Court Bailiffs Service of the Russian Federation is an independent body of state power, it is rather difficult to talk about the effectiveness of its activities. The purpose of this work is to determine the prospects for introducing the institution of private bailiffs into the system of compulsory execution of the Russian Federation. The following tasks are set: studying the features of the development of the system of compulsory execution of Russia; analysis of existing systems of private bailiffs in foreign countries; development of theoretical and practical recommendations. The main methods used in this study were the comparative legal method and the system analysis method, which allowed determining the prospects for the development of a private enforcement system in the Russian Federation. Based on the results of the work, it is concluded that it is necessary and advisable to introduce a private element into the system of compulsory execution of the Russian Federation.

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1. Introduction

It is well known that enforcement proceedings are the final stage in the restoration and protection of violated rights. Currently, the judicial system of the Russian Federation is undergoing significant changes in the direction of ensuring real protection of the rights of interested parties in the courts. The modernization of the judicial system and procedural legislation is aimed at simplifying legal proceedings in civil cases. At the same time, the simplification of production, which is one of the main areas of development for the civil process (Sakhnova, 2020), for enforcement proceedings does not meet modern realities. The issue of complicating enforcement proceedings by introducing a private element is on the agenda.

The system of enforcement of the Russian Federation is in constant development and improvement in order to increase the efficiency of enforcement proceedings and ensure real protection and restoration of the rights of stakeholders. Despite the long history of the formation (over 150 years) of the system of compulsory enforcement of the Russian Federation (Maleshin, 2014), statistics show a rather low performance of bailiffs. So, according to the site <https://enforce.spb.ru>, in 2019, the FBS of the Russian Federation executed 62,297,919 enforcement proceedings initiated on the basis of decisions of courts of general jurisdiction and arbitration courts, as well as acts of other bodies. At the same time, the number of industries that ended in actual execution is 25,249,848, which is 40.5% of the total.

A detailed analysis of legal regulation in foreign countries allows studying national experience and evaluating it from the perspective of international practice from a different angle, in a new aspect with a great understanding of the essence of the problem (Stepanov & Pechegin, 2018).

In July 2010, at the first international conference organized by the Federal Bailiff Service together with St. Petersburg State University, a significant separating motive for the enforcement system in the speeches of representatives of various states was the organization of enforcement in the framework of private (Italy, France, Czech Republic, etc.) or the state (Russia, Finland, Germany, Israel, etc.) enforcement system, as well as a combination of public and private principles (Belgium, Bulgaria, Canada, etc.) in the enforcement system (Parfenchikov & Valeev, 2011). In 2015, this topic was also raised by scientists and practitioners as part of the Symposium "Civil process 2.0: reform and the current state " held by the Faculty of Law of the Kazan Volga Federal University (Maleshin et al., 2016). The Ninth International Conference on the Enforcement of Judicial Acts and Acts of Other Authorized Bodies in September 2018 was already specifically devoted to the topic "Public and Private Enforcement Systems: A Comparative Analysis and Best Practices" (the authors of this article took part in these events as invited scholars in Executive Law Specialists). On the opening day of the Conference, the Director of the FBS of Russia Aristov (2019) noted that each of the executive systems (both public and private) has its strengths and weaknesses, emphasizing that a comparative assessment of enforcement systems is the main goal of the conference.

Achieving the goals of enforcement proceedings is one of the priority areas for the development of the rule of law, and therefore there is a need to improve the system of enforcement.

2. Problem Statement

As it is known, the main task of enforcement proceedings is the correct and timely execution of enforcement documents. Therefore, the supreme goal of a researcher in the sphere of modern executive legal relations of a particular country will be to develop a perfect model of the executive law system for this country, under which the executive documents issued by the authorities of this country will be executed correctly, timely and efficiently (i.e., with the lowest cost of implementing state resources without prejudice to correctness and timeliness).

First of all, it is necessary to solve a number of problems, among which are the following: to determine the fundamentals (principles) of such a model of enforcement proceedings:

- study of the development of the enforcement system of Russia;
- analysis of existing systems of private bailiffs in foreign countries;
- development of theoretical and practical recommendations based on the experience of foreign countries, taking into account the peculiarities of the Russian state and law, aimed at the optimal implementation of a private element in the executive production of a specific country, in our case, the Russian Federation.

3. Research Questions

As reflected on the official website <http://fssprus.ru/>, in cooperation with the Ministry of Justice of the Russian Federation, the FBS of Russia continues to work to improve legislation aimed at modernizing the enforcement system. In particular, the approach to the formation of the personnel of the bailiff service was changed, amendments were made to certain industry legislative acts (for example, criminal liability for persons maliciously evading execution was toughened), the interagency interaction with government agencies such as the Federal Tax Service was optimized. The Department of Road Traffic Safety, the Ministry of Internal Affairs of Russia, etc., are actively implementing information technologies that are designed both to collect information about debtors and to repay debts on executive documents. The listed areas of modernization of the enforcement system are not exhaustive.

The continuous development of public relations requires the modernization of the system of enforcement proceedings in the Russian Federation, one of the directions of which is the introduction of elements of private execution. According to the Chief Bailiff of the Russian Federation Aristov (2019): “the most optimal model can be the model in which state institutions and elements of private execution are integrated into the execution system” (p. 21).

It should be noted that the idea of introducing a private element in Russian enforcement proceedings has been in the scientific and legal community for much longer than its official recognition, namely, about twenty years, but it has not still acquired clear practical outlines in the form of legislative material accepted for consideration by legislative bodies. The Draft Federal Law of the Russian Federation “On the Executive Activities of Private Bailiffs” that appeared in 2005 under the authorship of Uletova (2006) is characterized by the fact that its explanatory note states (contrary to the established tradition of justification in the explanatory notes to draft laws of relevance and the need to adopt the relevant norms as mandatory rules of

conduct) many negative consequences, in particular “abuse by bailiffs”. In the same explanatory note, she also cited a more interesting argument

One cannot ignore that the transition to an independent profession of a bailiff can lead to a significant increase in the income of bailiffs in comparison with the income of other representatives of the legal professions ... and this may entail the decline in the prestige of the profession of a judge. (Uletova, 2006, p. 31)

We believe that the increase in income of some public servants compared to others does not affect the prestige of the latter, as respect for one scientist in the scientific community cannot decrease because another scientist will be paid more.

So, at the beginning of our century, the transition to a private organization of a system of enforcement bodies was proposed (or was not excluded) as the most radical turn in Russian enforcement proceedings. As an example, notary offices and notaries engaged in private practice were cited as a rule (Yarkov, 2007).

The main arguments of the opponents of the “private” element even today can be reduced to the possibility of abuse by the “private” enforcement bodies or to their inability (disinterest) in certain moments of enforcement proceedings, such as the execution of minor penalties, IT solutions and their development). At the same time, the positive experience of Lithuania, in which the enforcement system, similar, according to Nekroshyus (2003) to the “Latin notary”, was introduced and successfully operates since January 1, 2003, after the so-called “privatization” of the bailiff system, it shows that despite halving the number of bailiffs, the volume of work is being done, and there are practically no complaints from the recoverers regarding the inaction of bailiffs who flooded the Ministry of Justice of Lithuania before (Nekroshius, 2003). Practice has shown that the number of violations of the law does not depend on whether a private or public notary performs the corresponding action. A person prone to committing an offense can work both in the state and in another sphere, while the offender even seeks certain state support, taking up a responsible position (whether it is a notary public or bailiff) will only increase awareness of their own impunity. There are no guarantees against abuse by individual officials of enforcement agencies (Kozlova et al., 2019).

One cannot ignore the negative experience of delaying enforcement proceedings in states with private enforcement proceedings, for example, in Italy in 2010, decisions were enforced on average in 413 days (Malinaro, 2013).

4. Purpose of the Study

The purpose of this work is to determine the main prospects for the introduction of private bailiffs in the already formed system of enforcement of the Russian Federation. This need is due to the fact that the official recognition of the consideration of the possibility of introducing a private element in the Russian executive law has its own history, although not very long.

More than a year ago, the increased interest of representatives of the Federal Bailiff Service of our state to the “best practices”, including private enforcement systems, became apparent. We can note that the reports of the participants of the designated conference, most of which were senior officials responsible for

the enforcement of services of 38 states and international unions, were published in Russian and English by the Statut Publishing House in 2019 in a collection that can be safely recommended as excellent material based on experience in organizing enforcement proceedings in many countries. The official discussion on March 16, 2020 in Moscow at the Committee on Constitutional Legislation and State Building of the Council of the Federation of the Federal Assembly of the Russian Federation on the Concept of introducing alternative enforcement by non-state bailiffs in the Russian Federation showed a high degree of relevance of this issue to stabilize social, economic and social relations in our country. Considering that the law “On the Activities of Non-State Bailiffs on Alternative Compulsory Enforcement in the Russian Federation” exists only in a little-known draft version, Russian lawyers have time to analyze the possible effectiveness and feasibility of introducing a private element in the proposed legal forms into Russian executive law, and this time must certainly be used with advantage.

5. Research Methods

Let us note that the comparative legal method and the system analysis method were used as the main ones to determine the prospects of the institution of private bailiffs in the Russian Federation. In particular, the comparative legal method allowed identifying global trends in the implementation and functioning of the system of private bailiffs and recommending them for implementation in the system of compulsory execution of the Russian Federation, taking into account the specifics of the development of economic, political, social and legal relations in Russia.

The comparative legal method was used in conjunction with the comparative analysis method, through which the prospects for the development of a private enforcement system are defined as elements of the development of the entire enforcement system of the Russian Federation.

6. Findings

Despite all the suggestions coming from scientists and practitioners, the introduction of private bailiffs to date remains only ideas. As you know, the Russian state, like many post-Soviet states, is characterized by a pure state organization of the enforcement system (Reshetnikova, 2000) - direct execution is carried out by bodies and officials of the Federal Bailiff Service, and the Ministry of Justice of the Russian Federation constantly monitors their activities, certain executive actions are authorized by the court, as well as controlled by state courts on the basis of applications from interested parties in accordance with Chapter 22 of the Code of Administrative Procedure of the Russian Federation. Thus, the division of enforcement bodies into bailiffs as state officials and private bailiffs following the example of notaries is really interesting. At the same time, the introduction of a private element in enforcement proceedings does not mean removing the state from control over enforcement proceedings, and control can be exercised by the justice authorities, including within the framework of licensing (licensing) activities, without causing, as in the Czech Republic, the need for the Bailiffs Association representatives to appeal to the president of the International Union of Bailiffs with the problem of “unreasonable pressure from the Minister of Justice” (Plashil, 2016).

The interesting idea of the French civil process, in which the institution of a specialized judge in enforcement proceedings operates, should also be supported. However, the definition of the competence of a judge (to be more correct, from our point of view, is the specialization of judges, although the term “specialization”, used both in procedural theory and in judicial practice, and not yet formally fixed (Terekhova, 2014) is not included in the subject of executive law, although it is significant, affecting the effectiveness of protecting the rights of participants in enforcement proceedings.

7. Conclusion

Currently, only a few reminders about the possibility of introducing a private element into the enforcement system are contained in the Federal Law dated 03.07.2016 No. 230-FL “On the Protection of the Rights and Legal Interests of Individuals in Carrying Out Activities on the Return of Overdue Debts and on Amendments to the Federal Law “On microfinance activities and microfinance organizations”, which regulates the activities of collectors - professional enforcement officers. The results of the implementation of this law showed the effectiveness of debt collection under executive documents without the participation of bailiffs, which is reflected on the official website of the National Association of Professional Collection Agencies: <https://www.napca.ru/>. In this regard, it seems possible and necessary to include private bailiffs in the system of enforcement bodies of Russia.

At the same time, approaching the development of the concept of denationalization of execution in order to increase the effectiveness of the enforcement of judicial acts and other jurisdictional acts should be done very carefully and only if the judicial and licensing control over the activities of private bailiffs is guaranteed, with the public principles having an unconditional priority over private ones. It is the priority, and not the “strict observance of the balance of public and private interests”, as is currently proposed for the main institutions of Russian civil proceedings (Isaenkova & Solovieva, 2018).

In addition, detailed legislative regulation of the activities of private bailiffs is required, fixing the scope of activities of these entities, the basic principles of their activities, the extent of the authority exercised, measures of responsibility for dishonest performance of duties, as well as categories of cases that can be attributed to the competence of private bailiffs.

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