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# Legal regulation of the automation of judicial enforcement proceedings: International experience

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## Abstract

The purpose of the article was to offer ways to improve the legislation regulating the field of automation of judicial enforcement proceedings, in order to guarantee the rights of the executing entities. The research methodology is based on the application of the following methods of scientific cognition: analytical, comparative, legal, hermeneutic and synthesis. Gaps in the legal regulation of automation of court enforcement proceedings in Ukraine were identified and ways to eliminate them were suggested. The authors have offered amendments to legislative acts with respect to: granting the right to the parties to enforcement proceedings to apply through the enforcement officer to the State Enterprise “National Information Systems” to further solve problems of removing obstacles to access to the Automated System of Court Enforcement Proceedings. It is concluded that, it can be stated that the automation of court enforcement proceedings is a significant achievement of the national system of court enforcement proceedings. However, in order to improve the legislation on the automation of judicial enforcement procedures and the practice of its implementation, a set of institutional reforms must be carried out.

**Keywords:** judicial enforcement procedure; compulsory enforcement of judgments; automated system of judicial enforcement procedure; private executor; information.

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## Regulación legal de la automatización de los procedimientos judiciales de ejecución: Experiencia internacional

### Resumen

El objeto del artículo fue ofrecer las vías para mejorar la legislación que regula el ámbito de la automatización de los procedimientos judiciales de ejecución, con el fin de garantizar los derechos de las entidades ejecutoras. La metodología de la investigación se basa en la aplicación de los siguientes métodos de cognición científica: analítico, comparativo, jurídico, hermenéutico y de síntesis. Se identificaron lagunas en la regulación legal de la automatización de los procedimientos judiciales de ejecución en Ucrania y se sugirieron formas de eliminarlas. Los autores han ofrecido enmiendas a los actos legislativos con respecto a: otorgar el derecho a las partes en los procedimientos de ejecución a solicitar a través del oficial de ejecución a la Empresa Estatal «Sistemas Nacionales de Información» para resolver además problemas de eliminación de obstáculos para el acceso al Sistema Automatizado de Corte Procedimientos de Ejecución. Se concluye que, cabe afirmar que la automatización de los procedimientos judiciales de ejecución es un logro significativo del sistema nacional de procedimientos de ejecución judicial. Sin embargo, con el fin de mejorar la legislación sobre la automatización de los procedimientos de ejecución judicial y la práctica de su aplicación, hay que realizar un conjunto de reformas institucionales.

**Palabras clave:** procedimiento judicial de ejecución; ejecución forzosa de resoluciones; sistema automatizado de procedimiento judicial de ejecución; ejecutor privado; información.

### Introduction

Access to reliable and objective information and the existence of an effective system of protection and counteraction to unauthorized distribution, use and violation of the integrity of information with limited access in accordance with the Information Security Strategy are components of information security of Ukraine (Decree of the President of Ukraine No. 685/2021, 2021). Since, it is information security that is responsible for the protection of the citizens and state interests in the information sphere from threats of various nature, both real or virtual threats (Novytskyi, 2022).

Directive of the European Parliament and the Council (EU) 2016/1148 of 6 July 2016 on measures for a high common level of security of network and information systems on the territory of the Union (Directive (EU) No. 2016/1148, 2016) plays an important role in the legal regulation of

information security sector in the EU. This directive establishes tools for achieving a high level of security of network and information systems within the EU.

The Network and Information Security (NIS) Directive, which was published in July 2016, requires EU Member States to adopt a national strategy for the security of network and information systems also known as NCSS (National Cyber Security Strategy), as set out in the Articles 1 and 7 (Sarrì *et al.*, 2020). We believe that the specified documents can be a guideline for the implementation of effective measures in the field of ensuring information security in Ukraine.

Compulsory enforcement of court decisions in Ukraine and other agencies and officials is carried out within enforcement proceedings. Registration of enforcement documents, documents of enforcement proceedings, recording of enforcement actions is carried out in the automated system of court enforcement proceedings (hereinafter – ASCEP) in accordance with Part 1 of the Art. 8 of the Law of Ukraine “On Court Enforcement Proceedings” (Law of Ukraine “On Court Enforcement Proceedings”).

L. V. Krupnova notes that the Unified State Register of Court Enforcement Proceedings no longer exists due to the introduction of the ASCEP in accordance with the Order of the Ministry of Justice of Ukraine dated from August 5, 2016 No. 2432/5 (Krupnova, 2018). But we do not agree with this statement, because in accordance with c. 2 of the Section I of the Regulations on the Automated System of Court Enforcement Proceedings approved by the Order of the Ministry of Justice of Ukraine on August 5, 2016 No. 2432/5 (hereinafter – the Regulations on the ASCEP), the Unified State Register of Court Enforcement Proceedings is an archival component of the Automated System of Court Enforcement Proceedings and contains data on enforcement proceedings that were registered before the implementation of the Automated System of Court Enforcement Proceedings (Regulations on the Automated System of Court Enforcement Proceedings, 2016). Therefore, the Unified State Register of Court Enforcement Proceedings exists, but already as a component of the ASCEP.

The functioning of the ASCEP as a single electronic data system on enforcement proceedings is a significant achievement of Ukraine in the field of digitization of administrative activities. For example, Bulgaria does not have an automated system for managing enforcement proceedings; document flow of enforcement proceedings is carried out in paper form. However, bailiffs can receive data from electronic registers, use programs with databases to send electronic documents (Belikova and Popova, 2017). Similar situation is in Poland: an enforcement officer has access to state electronic registers, bank account databases, car owner’s database, social insurance fund database, provides identification of the debtor’s employer (as a payer of social contributions) (Plokhuta, 2022).

The Money Restrictions Information System (PLAIS) functions in Lithuania, which sends the enforcement officer's decision to seize the debtor's funds to all banks and financial institutions in the country. The system debits funds in the required amount and transfers them to the enforcement officer taking into account sequence and proportionality (Avtorgov, 2021). The use of such a system is a significant achievement of Lithuania in automating compulsory enforcement of decisions. However, the Money Restrictions Information System (PLAIS) performs different functions than the ASCEP. Besides, the Lithuanian system of automating all enforcement proceedings does not contain monetary restrictions.

Analysis of the Regulations on the ASCEP allows us to generalize that it contains a large amount of information with limited access. Therefore, the issues of legal provision for entering data into the ASCEP, access to them, and their security are urgent. Therefore, the authors of this article offer own vision of the ways to improve the legislation regulating the field of automation of enforcement proceedings in order to ensure the rights of enforcement proceedings entities.

### **1. Methodology of the study**

The methodological basis of this scientific article is based on the use of various methods of scientific cognition. Due to the application of the analytical method of scientific cognition, the problem of the divergence of the content of law norms regarding the entry of data into the ASCEP during the registration of an enforcement document in the ASCEP and the actions of an enforcement officer in case if an enforcement document does not contain all the details provided by law – on the one hand, and judicial practice regarding interpretation and application of such legal norms – on the other hand.

The comparative and legal method of scientific cognition made it possible to compare the norms of Ukrainian legislation and the norms of the legislation of certain foreign countries in the field of automation of court enforcement proceedings. The generalization that the use of ASCEP is a significant achievement of the domestic system of compulsory enforcement of decisions has been given on the basis of the application of this method.

The hermeneutic method of scientific cognition was used to establish the content of law norms regulating the field of automation of court executive proceedings in Ukraine, namely: entering data into the ASCEP and accessing them, the security of data contained in the ASCEP, as well as current judicial practice on the issues highlighted in this research study. The synthesis method made it possible to generalize considerations regarding the issues of the topic of the scientific article and to develop

specific suggestions for improving the legislation regulating the field of automation of court executive proceedings in order to ensure the rights of court enforcement proceedings entities.

## **2. Results and Discussion**

### **2.1. Entering data into the Automated System of Court Enforcement Proceedings and access to them**

The Sections II and IV of the Regulations on the Automated System of Court Enforcement Proceedings define the data that must be entered into the Automated System of Court Enforcement Proceedings when registering an enforcement document and when conducting enforcement proceedings (Regulations on the Automated System of Court Enforcement Proceedings, 2016). Certain problems occur, if an enforcement document needs to be registered in the ASCEP and it does not contain all the data that must be entered in the ASCEP when registering such an enforcement document.

Thus, in addition to other data, the date, month, year of birth, registration number of a taxpayer's registration card or series and passport number of the debtor-individual are entered into the ASCEP when registering an enforcement document, in accordance with c. 2 of the Section II of the Regulations on the ASCEP (Regulations on the Automated System of Court Enforcement Proceedings, 2016). In accordance with paragraphs 3, 4, Part 1 of the Art. 4 of the Law of Ukraine "On Enforcement Proceedings", this personal data of the debtor-individual must be contained in the enforcement document.

In accordance with paragraph 6, Part 4 of the Art. 4 of the Law of Ukraine "On Court Enforcement Proceedings", if an enforcement document does not meet the requirements stipulated in this Article, it is returned to the execution creditor by the state executive service agency, a private enforcement officer without acceptance for execution (Law of Ukraine "On Court Enforcement Proceedings").

Therefore, if an enforcement document is presented for compulsory enforcement and does not contain the date of birth of the debtor-individual, his registration number of the taxpayer's registration card or series and passport number, then such an enforcement document must be returned to the execution creditor without acceptance for execution.

However, the Decision of the Supreme Court dated from August 22, 2018 in case No. 471/283/17ts states that the absence of information on the date of birth of the debtor, the registration number of the taxpayer's registration card and his passport data in an enforcement letter is not a

reason for returning enforcement documents by the state enforcement officer without acceptance to be done.

To substantiate the above, the Supreme Court referred to paragraph 3, Part 3 of the Art. 18 of the Law of Ukraine “On Enforcement Proceedings”, which provides the right of an enforcement officer during the implementation of enforcement proceedings to receive explanations necessary for carrying out enforcement actions, certificates and other information, including confidential information, free of charge, from state authorities, enterprises, institutions, organizations regardless of the form of ownership, officials, parties and other participants in enforcement proceedings (The Decision of The Supreme Court at case No. 471/283/17ts, 2018). Similar conclusion is given in the Decision of the Supreme Court of 14 December 2022 in case No. 504/3238/16-ts (The Decision of the Supreme Court in case No. 504/3238/16-ts, 2022).

The authors of this study disagree with the above on the basis on the following. The interpretation of paragraph 3, Part 3 of the Art. 18 of the Law of Ukraine “On Enforcement Proceedings” indicates that an enforcement officer has the right to receive the information he needs to carry out enforcement actions, precisely during the implementation of enforcement proceedings. In order to carry out enforcement proceedings, it should be first initiated, and before that – one should register the enforcement document in the ASCEP.

That is, before initiating enforcement proceedings an enforcement officer cannot exercise the right to receive data in accordance with Part 3 of the Art. 18 of the Law of Ukraine “On Enforcement Proceedings”. Therefore, in order to register enforcement proceedings and the initiation, it is necessary to fill out the form of the enforcement document in the “Parties” tab of the ASCEP, specifying the date of birth of the debtor, if the subtype of the debtor is an individual or an individual-entrepreneur (Dragan, 2017).

Therefore, all the data required by law to be entered in the ASCEP while presenting an enforcement document for compulsory enforcement must be entered when registering an enforcement document in the ASCEP. The agency or official who issued the enforcement document is responsible for the accuracy and completeness of the data contained there.

When receiving an enforcement document that does not meet the requirements of the law (for example, it does not contain data on the date of birth of the debtor-individual, the registration number of the taxpayer’s registration card or passport data), an enforcement officer must act in accordance with the requirements of the law – to return such an enforcement document to the execution creditor without acceptance for execution.

The access of the parties to the ASCEP information is ensured by using the identifier for accessing information about the enforcement proceedings

in accordance with paragraph 2, c. 2 of the Section VII of the Provisions on the ASCEP. Such an access identifier is indicated in the report on registration of the enforcement document and the resolution on initiating enforcement proceedings. In accordance with c. 3 of the Section I of the Regulations on the ASCEP, the registrars of the ASCEP are responsible persons of the state executive service agency, state enforcement officers of the state executive service agencies, private enforcement officers, assistants of private enforcement officers, responsible persons of private enforcement officers, heads of state executive service agencies and their deputies (Regulations on the Automated System of Court Enforcement Proceedings, 2016).

However, the identifier of the access to information about enforcement proceedings is formed by other persons. Thus, the court in case No. 2-620/10, which was reviewed by the Kropyvnytskyi Court of Appeal, concluded in its decision dated from February 7, 2019 that the state enforcement officer does not have the legal grounds and technical ability to produce additional identifiers for the access to information about enforcement proceedings, since this identifier is provided to the ASCEP automatically upon initiating enforcement proceedings and according to the Regulations on the ASCEP, the state enforcement officer does not have access to its formation (The Ruling of Kropyvnytskyi Court of Appeal in case No. 2-620/10, 2019).

In accordance with clauses 1, 3 of the Section XIV of the Regulations on the ASCEP, the Administrator of the ASCEP is responsible for the quality of providing services for technical and technological support of the ASCEP. And in accordance with c. 2 of the Section I of the Regulations on the ASCEP, the Administrator of the ASCEP is the state enterprise “National Information Systems” (hereinafter – the State Enterprise “NAIS”) (Regulations on the Automated System of Court Enforcement Proceedings, 2016).

But the legislation does not provide legal regulation of procedural interaction within the framework of enforcement proceedings between its parties and the Administrator of the ASCEP. The possibility of the parties to enforcement proceedings to have access to the ASCEP corresponds to their right to be informed about the progress of the enforcement proceedings, the procedural documents issued in it.

Therefore, we consider it expedient to supplement the Section VII of the Regulations on the ASCEP with the clause four of the following content: “In case if the parties to the enforcement proceedings do not have access to the System for reasons beyond their control, but which can be eliminated by the Administrator of the System within his competence, the parties have the right to apply to the enforcement officer with a request to remove obstacles to access to the System, which the enforcement officer forwards to the Administrator of the System within two days and informs the person who submitted such a request about the results of the consideration of the request”.

## **2.2 Security of data contained in the Automated System of Court Enforcement Proceedings**

The State Enterprise “NAIS” as the Administrator of the ASCEP is entrusted with the function of taking a set of programmatic, technological and organizational measures to protect the information contained in the ASCEP from unauthorized access and the responsibility for preserving information contained in the Automated System of Court Enforcement Proceedings in accordance with clauses 1 and 2 of the Section XIV of the Regulations on the ASCEP (Regulations on the Automated System of Court Enforcement Proceedings, 2016).

In order to ensure the integrity of information and to prevent unauthorized access to information contained in state information resources, users access to all systems and registers (including the ASCEP) has been blocked since the declaration of the martial law on the territory of Ukraine on February 24, 2022. It was carried out by the State Enterprise “NAIS” within the framework of its legally defined duties as the Administrator of the ASCEP (The answer of the State Enterprise “National Information Systems”, 2022).

Registrars of the ASCEP (including state and private enforcement officers) were temporarily terminated access to the ASCEP in accordance with c. 1 of the Order of the Ministry of Justice of Ukraine dated from April 4, 2022 No. 1310/5 “Some issues of access to the automated system of court enforcement proceedings and the Unified Register of private enforcement officers of Ukraine during the period of the martial law” (Order of the Ministry of Justice of Ukraine No. 1310/5, 2022).

Gradually, such access to the ASCEP is being restored. In order to restore access to the ASCEP, the State Enterprise “NAIS” must receive a written notification from the Department of the State Executive Service of the Ministry of Justice of Ukraine about restoring the access of a specific enforcement officer (specific enforcement officers) to the ASCEP. Only after that notification the State Enterprise “NAIS” will restore such an access. By the end of 2022, 253 private enforcement officers have access to the ASCEP, or it is 89% of the total number of those operating in Ukraine (Chepurnyi, 2023).

However, at the same time, the Ministry of Justice of Ukraine does not keep track of the correspondence in terms of the number of requests from private enforcement officers regarding the restoration of their access to the ASCEP, which have been received by the Ministry since February 24, 2022 (The answer of the Ministry of Justice of Ukraine, 2023).

The order of the Ministry of Justice of Ukraine dated from April 4, 2022 No. 1310/5 “Some issues of access to the automated system of enforcement proceedings and the Unified Register of private enforcement officers of

Ukraine during the period of the martial law” does not contain deadlines for the preparation of written notices on the restoration of access to specific private enforcement officers to the ASCEP by the Department of the State Executive Service of the Ministry of Justice of Ukraine and addressing such notices to the State Enterprise “NAIS”.

There are already court cases based on claims of private enforcement officers to the Ministry of Justice of Ukraine regarding the recognition of illegal omission of the Ministry of Justice of Ukraine, which consists in not restoring access to the ASCEP of private enforcement officers. The courts have already made a decision in some cases, some are still being considered in courts. As an example, we can cite the Decision of Kharkiv District Administrative Court of 13 December 2022 in case No. 520/5223/22 (the case at the stage of appellate review) (The Decision of Kharkiv District Administrative Court in case No. 520/5223/22, 2022).

According to the authors of this study, the termination of access to the ASCEP due to the declaration of the martial law in Ukraine on February 24, 2022 is a justified measure aimed at securing the data of the ASCEP from possible illegal actions. But the restoration of access of private enforcement officers to the ASCEP should take place in accordance with the legislation as soon as possible, so that they can continue to perform their functions – full, impartial and timely enforcement of decisions.

Therefore, we consider it appropriate to supplement c. 2 of the Order of the Ministry of Justice of Ukraine No. 1310/5 dated from April 4, 2022 with the c. 15 of the following content (after the words “... is not under temporary occupation as a result of the military aggression of the Russian Federation”): “Notice on restoration of access of a private enforcement officer to the automated system of court enforcement proceedings is prepared by the Department of the State Executive Service of the Ministry of Justice of Ukraine no later than three days after confirming the conditions, the fulfillment of which is mandatory for the restoration of such an access, and within three days is transferred by the Department of the State Executive Service of the Ministry of Justice of Ukraine to the Administrator of the automated system of court enforcement proceedings”.

## **Conclusion**

Having analyzed the state of legal regulation of the automation of compulsory enforcement of court decisions, other agencies and officials, it is worth stating that the use of the ACCEP is a significant achievement of the domestic system of court enforcement proceedings. However, in order to improve the legislation on the automation of court enforcement proceedings and the practice of its application, the following is expedient.

1. When registering an enforcement document in the ASCEP, all data required by law to be entered in the ASCEP when presenting an enforcement document for compulsory enforcement must be entered. The agency / official who issued it is responsible for the accuracy and completeness of the data contained in an enforcement document. When receiving an enforcement document that does not meet the requirements of the law (in particular, it does not contain data on the date of birth of the debtor-individual, his registration number of the taxpayer's registration card or passport data), an enforcement officer must act in strict accordance with the requirements of the law – return such an enforcement document to an execution creditor without acceptance for execution.
2. We offer to supplement Section VII of the Regulations on the ASCEP with the fourth paragraph of the following content: “If the parties to court enforcement proceedings do not have access to the System for reasons beyond their control, but which can be eliminated by the System Administrator within the scope of his competence, the parties have the right to apply to an enforcement officer with a request to remove obstacles to access to the System, which the enforcement officer forwards to the System Administrator within two days and informs the person who submitted such a request about the results of the consideration of the request”.
3. Clause 2 of the Order of the Ministry of Justice of Ukraine dated from April 4, 2022 No. 1310/5 should be supplemented with paragraph 15 of the following content (after the words “...is not under temporary occupation due to the military aggression of the Russian Federation”): “Notice on restoring access of a private enforcement officer to the automated system of court enforcement proceedings is being prepared by the Department of the State Executive Service of the Ministry of Justice of Ukraine no later than three days after confirming the conditions, the fulfillment of which is mandatory for the restoration of such access, and within three days is transferred by the Department of the State Executive Service of the Ministry of Justice of Ukraine to the Administrator of the automated system of court enforcement proceedings”.

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