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THE PATH TO THE INTRODUCTION OF AUTOMATED FUNDS SEIZURE IN UKRAINE: INTERNATIONAL EXPERIENCE AND PROSPECTS FOR ITS IMPLEMENTATION[1]

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Abstract. This article addresses the procedure of the automated seizure of a debtor's funds in Ukraine in the process of enforcement of judgements of all categories. Similar mechanisms provided for in European countries are also studied for the sake of comparison and with a view to using the best international practices to improve Ukrainian law. One of the core drawbacks of the existing mechanism is considered to be the lack of a consolidated register of individuals' bank accounts. This hinders the effective detection of the debtor's account and may lead to the duplication of funds seizure whenever a person holds two or more accounts in different financial institutions. The legal framework for the procedure is aimed at striking a balance between the interests of the creditors and the debtor. In this vein, there are several ways to safeguard the debtor from disproportionate burden. According to existing rules, some of categories of income cannot be seized. However, it might be more effective to set a minimum amount of funds that must be safe from seizure. The other flaw in the operation of the system is the lack of instant communication between enforcement officers and banking institutions.

Keywords: foreclosure on the debtor's non-cash funds, identification of the debtor's bank accounts, automated seizure of funds, forced write-off of funds, an executor.

Introduction

On 27 February 2015, Ukraine, by concluding the Memorandum of Economic and Financial Policies (hereinafter – Memorandum; 2015) with the International Monetary Fund, undertook to introduce automated seizure of funds in bank accounts. The main purpose of this requirement was to improve the existing procedure for debt collection and improve the level of enforcement of court judgments in general by enshrining these procedures in special laws.

In pursuance of the Memorandum, the Ministry of Justice of Ukraine together with the Administration of the President of Ukraine drafted a Bill of Ukraine on Amendments to Certain Legislative Acts of Ukraine on Introduction of Automated Seizure of Funds in Civil and Commercial Proceedings (Law of Ukraine No. 3768, 2016), but despite the positive conclusions of the relevant committees of the Verkhovna Rada of Ukraine the Bill was withdrawn from consideration. All subsequent attempts to regulate this procedure at the level of a special law were also unsuccessful.

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At the same time, this requirement is currently being implemented at the level of subordinate legislation (Resolution of the Board No. 163, 2022), which establishes the relevant procedure for automated seizure of funds. Therefore, this article introduces new approaches to encumbering bank accounts as one of the defining conditions for reforming the enforcement system, together with a detailed analysis of the achievements and problems in the implementation of this mechanism as of today, and for meeting the requirements of the collector at their expense and ensuring actual execution of the judgments of property nature.

The objectives of this article are to identify the drawbacks in the legal framework that hinder the efficacy and expeditiousness of the automated seizure of funds in Ukraine; to outline best practices developed in international jurisdictions; and, on the basis of comparative analysis, to offer solutions that would improve legal regulation of the procedure in Ukraine.

In order to achieve the objectives, in particular we evaluate the results of the pilot project on the introduction of automated fund seizure in enforcement proceedings for alimony recovery and highlight its achievements (based on the results of two years of application). These achievements give reason to believe that extending the procedure onto the enforcement of judgements of other categories might prove apposite.

In carrying out this study, a comparative method was used to compare the provisions of the legislation and the corresponding draft laws at various stages of the introduction of automated seizure of funds in Ukraine in the context of revisions of previous special acts in the field of executive proceedings. This method of analysis was used in studying the international experience of the functioning of similar systems in other leading countries, as well as the dialectical, systemic-structural, normative-logical methods of scientific knowledge.

1. The Development of Mechanisms for the Functioning of Automated Funds Seizure based on International Experience and Conditions for its Launching

During this time, the representatives of the Ministry of Justice of Ukraine and the state executive service as well as the community of private executors continued to work on developing the mechanisms for automated seizure of funds and setting up procedural algorithms by actively studying various similar systems in other advanced countries. This also included the tools and innovative technologies used by them, including their results and other performance indicators of the implementation thereof.

For instance, the leading Croatian financial intermediation company – the Financial Agency of Croatia (FINA), through which electronic seizure of debtors' bank accounts began on 1 January 2011 – has become one example of developing a Ukrainian mechanism. Due to this fact, just a few years after the introduction of electronic seizure of funds in the World Bank's Doing Business 2017 ranking, Croatia rose from 52nd to 7th place (Oliynyk, 2018), confirming the effectiveness and usefulness of such mechanisms.

FINA has information on all accounts of both legal entities and individuals, which is updated daily and guarantees the implementation of funds blocking in bank accounts within the amount of penalty within minutes (Oliynyk, 2018).

In Ukraine, on the other hand, the State Tax Service of Ukraine receives data on opening accounts only for legal entities and individuals-entrepreneurs, and provides them to executors in electronic form through the automated system of enforcement proceedings (hereinafter – ASEP) (Order No. 2483/5/436, 2020), but no systematization in another form is envisaged. However, the accounts of individuals are still not accounted at all, *which is recognized by experts as the main obstacle to application of such practices in Ukraine*.

Portugal's experience in borrowing the best mechanisms for collecting funds from debtors' accounts in electronic form was also taken into account. It is established that today in Portugal the whole process is reduced to three stages: 1) periodic filling by commercial banks of the database of all accounts of individuals and legal entities held by the Central Bank of Portugal; 2) communication of executors with the Central Bank representatives to obtain information on debtors' accounts; and 3) communication of executors with commercial banks in which debtors' accounts are opened for the write-off of funds from them (Oliynyk, 2018).

In general, the whole process of funds write-off in Portugal takes 5–7 days, and the amount required to execute a court judgment on the debtor's account is blocked for 2–3 days upon the date of the executor's request to the Central Bank, which guarantees its further write-off in favour of the collector (Oliynyk, 2018).
In Ukraine, this process takes much longer, because detecting accounts by sending paper inquiries to banks by mail can take several weeks or more. Contrary to the general rules of the Law of Ukraine on Enforcement Proceeding (Law No. 1404-VIII, 2016), the resolution to seize the property (funds) of the debtor is delivered by the executor not later than the next business day after the identification of the property. Some ingenious executors have forwarded seizure resolutions to all Ukrainian banks immediately after the commencement of an enforcement proceeding. This could therefore lead both to encumbrance of the same amount under the same enforcement document simultaneously in several banking institutions and the violation of the principle of proportionality of enforcement measures and scope of demands according to the decisions. Therefore, this is a manifestation of encroachment on the right to ownership and peaceful possession of property. According to the constitutional principles, no one can be unlawfully deprived of the right to property. The right to private property is inviolable. Therefore, the analysis of this situation confirms the need to introduce a register of accounts of individuals for their exact identification and the prevention of such negative consequences.

Taking into consideration these difficulties, executors have often tried to apply in person to a particular bank to seize non-cash funds in order to ensure their prompt blocking, and sometimes to accelerate achievement of such results they are even forced to use fast and expensive means of transportation – for example, when the main branch of the bank is located in another executive district. In this regard, it is necessary to emphasize the justification of changes which already allow these documents to be delivered to the bank in addition to the executor, and the private executor's assistant or another representative. This will allow the executor to focus on more serious aspects of execution of the decision and not pay attention to the organizational aspects of these activities (Resolution of the National Bank No. 22, 2004; Resolution of the Board No. 163, 2022).

However, executors should not abuse the right to seize funds in bank accounts and should adhere to the principle of proportionality of enforcement measures and the scope of claims. After all, whether all funds or only a part of them is to be seized depends on how the document on seizure of funds is executed. Thus, if the executor has indicated the amount and there are enough funds in the account, only this amount will be seized. If the funds are insufficient or the executor failed to specify the exact amount to be seized, the funds may be seized in all accounts of the debtor (Ministry of Justice of Ukraine, 2021), which is allowed by banking law (Resolution of the Board No. 163, 2022). Therefore, such approaches should be reviewed, and the experience of colleagues in bringing executors to disciplinary responsibility in similar cases should be a deterrent for them to issue seizure resolutions without specifying the amount of the encumbrance. Moreover, the lack of accounting of the accounts of individuals leads to the consequences of the seizure of accounts in several banks, and thus a violation of the corresponding principle.

Thus, the defining condition for the effective operation of the automated seizure system is to *create a register of open bank accounts for all entities in order to avoid unnecessary communication by the executor with all banks in different ways at the stage of identifying property to ensure interaction directly with the place of location of the debtor's accounts.* Otherwise, the emergence of an automated system will simply be reduced to the transfer of information exchange with banks in the electronic plane, which of course is also a step forward for Ukraine. This is because until recently cooperation with banks in this way has only been declared at the level of resolutions of the National Bank of Ukraine (Resolution of the National Bank No. 22, 2004; Resolution of the Board No. 163, 2022) and has not actually been implemented. This, in turn, slowed down the execution of decisions and, conversely, assisted the debtor in withdrawing funds while the executor was trying to identify their property in this way.

At present, such a format is the basis for the development of the normative legal base that initiates the electronic seizure of funds in Ukraine, which is essentially incomplete as it still involves the need to apply to each bank separately. Albeit, this is accomplished with the help of ASEP online without sending inquiries by mail to establish the existence of the debtor's open accounts (primarily the accounts of individuals) instead of receiving such information from the sole source (such as in the case of accounts of legal entities and other business entities).

Nevertheless, even such changes within our jurisdiction deserve positive assessment and support, and demonstrate promising forecasts for improving the domestic model of seizure of funds and its adaptation to international counterparts, taking into account the best global examples.

2. The Commencement of Automated Seizure of Debtors' Funds in Ukraine and its Procedural Aspects

As a pilot project, Order No. 1203/5 of the Ministry of Justice of Ukraine of 16 April 2019 approved the Procedure for automated seizure of debtors' funds in bank accounts within enforcement proceedings for alimony recovery.

The approved Procedure determined the procedure for automated seizure of debtors' funds in bank accounts within enforcement proceedings for alimony recovery with the help of the ASEP through information interaction between public or private executors and banks.

Automated seizure of debtors' funds in bank accounts within enforcement proceedings for alimony recovery provides for the imposition/removal of seizure by the executor from the funds by issuing resolutions on seizure or lifting seizure of debtor's funds in the form of an electronic document using a qualified electronic signature and their implementation by banks. At the same time, the Resolutions on seizure of funds were available for download by banks on the day of their formation and signing in the ASEP.

The information system of banks (hereinafter – the ISB), with the help of the application's software interface, makes a request once per hour during working hours with regard to the availability of the resolution of an executor on seizure of funds for its enforcement.

Upon receipt of the resolution on seizure of funds by the ISB, a notification on adoption of the resolution on seizure of funds for enforcement by the bank is immediately formed and sent to the ASEP. The responsible person of the bank must execute the resolutions on seizure of funds in the order of their receipt and notify the executor of the result of their implementation.

However, during the validity period of this Resolution, only around seven banking institutions registered in our country joined with executors in this way, but this procedure proved its effectiveness and efficiency, which served as a basis for extending this practice to other categories of cases.

The legal basis for this was the amendments of 23 March 2021 to the abovementioned Order of the Ministry of Justice of Ukraine, which is now entitled "On Approval of the Procedure for Automated Seizure of Debtors' Funds in Bank Accounts" (Order No. 1203/5, 2019).

Currently, it stipulates that the executor, with the help of the ASEP, also creates a requirement to obtain information on the availability and status of the debtor's accounts (hereinafter – requirement), which must meet the requirements established by the current legislation. It should be noted that these innovations have significantly improved the interaction between banks and executors in terms of obtaining this information. Moreover, these innovations were previously included in the Rules for storage, protection, use and disclosure of banking secrecy, which provides information on the availability and/or status of the debtor's accounts, the numbers of the accounts opened by the debtor in the bank, as well as the amounts of funds available on such accounts, and actually removed the problem of evasion by banks from disclosing such data at the executors' requests (Resolution of the Board No. 267, 2006).

Thus, upon receipt of the request in the ISB, the relevant notification is formed after no more than one hour of working time, and such a notification provides information on availability and status of the debtor's accounts, which is immediately sent to the ASEP. The executor then, with the help of the ASEP, issues a resolution on seizure of funds and puts a qualified electronic signature to it. Banks also use the application software interface once per hour during business hours to request the availability of the executor's resolution on seizure of funds for its execution. In turn, the responsible person of the bank executes the resolution on seizure of funds in the order of their receipt. On the result of the execution of such a resolution and the availability/absence of funds on the debtor's account for its execution, the relevant notification is formed in the ISB, which then is sent to the ASEP.

The new procedure is reduced to acceptance by banks of the requirements of the state executive service/private executors to obtain information on the availability and status of the debtor's accounts and the executor's resolutions on seizure of funds in electronic form. Meanwhile, the further actions of the executor to write off the funds are outside the electronic plane and are in fact still carried out "manually" in paper form with the prior approval by the executor of the payment request in their bank in accordance with the current legislation. This is because this procedure was at the stage of completion, which delayed the entry into force of the Order of the Ministry of Justice of Ukraine with updated content.

3. Problematic Aspects of Automated Seizure and Write-Off of Funds and Ways to Solve Them

Pursuant to Part 3 of Art. 13 of the current Law of Ukraine on Enforcement Proceeding (Law No. 1404-VIII, 2016), payment requests for forced write-off of funds are sent no later than the next business day after seizure and no later than the next business day from the date of receipt of the information on the accounts. To do this, the executor submits the payment request to the bank, serving it together with two copies of the register of payment claims in the appropriate form.

The payment service provider of the payer accepts for execution the payment instruction in paper form, which is delivered by the debt collector themselves (by a representative/attorney, assistant of a private executor, representative of the supervisory authority) or which arrives by registered letter, the sender of which is the debt collector (Resolution of the National Bank No. 22, 2004). Therefore, this process is not automated today and is again carried out in documentary form, which slows down achievement of the final result.

The purpose of the introduction of automated seizure of funds is to start the process of online transfer of the entire cycle of recovery of the debtor's non-cash funds, including the next de facto final stage of this procedure – write-off of funds. Therefore, interaction with banks should be transferred to the electronic mode not only to obtain information about the debtor's accounts and their seizure, but also for the further write-off of non-cash funds found in them.

The new Order of the Ministry of Justice of Ukraine, which is analysed in this study, defines the procedure for automated seizure as a separate stage of proceeding to recover the debtor's property and can be used in the execution of decisions to secure the claim by seizing the debtor's accounts as a separate procedure. Its provisions should be extended to subsequent enforcement actions to write off the funds that are actually used to enforce a decision of property nature.

In addition, despite the progressive changes, there are still a number of issues that need to be resolved to ensure full and proper functioning of automated seizure of funds in Ukraine.

First of all, as already mentioned, this concerns the need to introduce accounting of all accounts opened in banks, including individuals, because the lack of systematic information creates the need for the executor to contact all banks to obtain information on open accounts, including individuals, in one or another bank.

Of course, interaction of executors with banks on these issues will be faster than when the executors could only send such inquiries by mail or deliver them to the branch in person. Cases when the executor sends seizure resolutions to all banks at once in order to speed up the process of finding accounts should be minimized, as it takes a long time to send relevant inquiries in paper form. However, if there is an account in a particular bank, the funds are immediately encumbered without prior notice to the executor of the availability of accounts and their status, and since the debtor could have accounts in several banks, such accounts were blocked at the same time at the request of the executor in the abovementioned way. As we have already noted, this violates the principle of proportionality; therefore, the stage of accounts identification is very informative and plays an important role. This is the defining stage of enforcement proceeding for the recovery of any type of property or its seizure as security and must be a priority because, as a general rule, seizure of property is imposed only after its identification.

Therefore, given the described consequences, the transfer of the exchange of such documents between executors and banks in the electronic plane will ensure the efficiency of these enforcement actions and the protection of the rights of the parties. In particular, it will prevent bank employees from abusing their clients' notifications of the receipt of such requests and thus withdrawing funds from debtors to respond to them.

Moreover, this is a significant boon even for debtors, because the amount determined by the executor in the resolution will be encumbered by the amount of debt once in one place, and not in parallel in other banks where they are served. In addition, it will be much easier and faster for them now to lift the seizure imposed by the executor in case of its write-off.

As I. Izarova (2016, p. 57) aptly points out, the idea of introducing a simplified and effective system of automated seizure of funds should be implemented through a perfect mechanism that takes into account the interests of both the applicant and the debtor and ensures achievement of the purpose for which it is created and serves, rather than creating additional mechanisms for the abuse of procedural rights.

The fact that today in Ukraine only 18 out of 68 (Chepurnyi, 2022) registered banks have joined the cooperation with executors in this form hinders the implementation of these innovations, but still there is no doubt about the requirement to bring online all banking institutions in terms of enforcement of seizures and payment. Meanwhile, during the transition period, debtors are tempted to move to banks that have not yet had time to switch to a new format and thus continue to evade obligations, taking into account all the above negative factors of paperwork. Therefore, given such risks, it is necessary to speed up the process of joining the other banks to interact with the executors through the ASEP. Moreover, banks themselves should be interested in establishing such cooperation, as they not only provide for the seizure and forced write-off of funds, but also often act as debt collectors, who also seek full and timely implementation of the decision.

The last Bill on Enforcement of Judgements No. 5660 of 14 June 2021 submitted to the Verkhovna Rada of Ukraine (Draft of Law No. 5660, 2021), and which has already been taken as a basis, contains the provisions of Part 2 of Art. 99, according to which the recovery of debtors' funds in bank accounts is carried out using an automated system of enforcement proceedings through information interaction between executors and banks in the order prescribed by the Ministry of Justice of Ukraine. This justifiably has a separate reservation that the involvement and participation of banks to (in) the information interaction(s) provided for in this article is mandatory.

Also unresolved at the legislative level is the risk of blocking accounts intended for crediting salaries, pensions, scholarships or other social benefits in the presence of restrictions on the amount of their recovery and the list of funds in Art. 73 of the Law of Ukraine on Enforcement Proceeding (Law No. 1404-VIII, 2016), which cannot be levied at all.

Thus, according to Part 2 of Art. 70 of the Law of Ukraine on Enforcement Proceeding (Law No. 1404-VIII, 2016), 50 percent may be charged from the salary of the debtor on the basis of enforcement documents until full repayment of debts in case of recovery of alimony, compensation for injury, other damage to health or death due to loss of a breadwinner, property and/or moral damage caused by a criminal offense or other socially dangerous act, and 20 percent may be charged for other types of penalties, unless otherwise provided for by the law. Moreover, such recoveries are made through the employer by deductions in the appropriate amount from salaries directly to the accounts of law enforcement bodies. However, as the Law does not contain separate prohibitions on seizure of such accounts and does not assign the need to verify the purpose of the debtor's accounts opened with banks to the competence of the executor, and the latter in turn does not identify them independently, such accounts may be subject to encumbrance.

Pursuant to para. 2 of Part 2 of Article 59 of the Law of Ukraine on Enforcement Proceeding (Law No. 1404-VIII, 2016), the executor is obliged to lift seizure of funds on the debtor's account no later than the next business day from the date of receipt from the bank of documents confirming that the funds on the account are prohibited from being seized.

However, since in this case there is no specific prohibition, as a result, the debtor usually has to act independently to unblock them, relying on established litigation in such cases, including the Supreme Court's position that notifying a private executor of non-seizure accounts is the task of the bank and the debtor (Resolution of the Supreme Court No. 905/361/19, 2020).

The Supreme Court, as part of the Administrative Court of Cassation in the Resolution of 17 January 2020 in case No. 340/1018/19, noted that "Accounts provided for payment of salaries and taxes, fees and mandatory payments to the State Budget of Ukraine are accounts with a special regime, which the executive service in accordance with the law is not seized, and the separation of such accounts belongs to authority executive service".

However, the recent vision of the higher instance is the most optimal, because the cancellation of such orders on seizure is not motivated by the presence of prohibitions or the special status of such funds, but by the existing restrictions on the amount of their recovery (Resolution of the Supreme Court, 2022). A further justification can be indicated in the specific procedure of their deduction directly by the employer when paying wages, and not by collection through the bank.

Today, this problem has partially receded into the background, because in martial law a ban was introduced on recovery of salaries, pensions, scholarships and other income of the debtor (except for decisions to recover alimony) (Resolution of the Supreme Court No. 340/1018/19, 2020). However, the identification of accounts from which such funds come, when their detection is still not carried out, continues, and therefore situations with their seizure may occur; hence, this issue remains open and needs to be resolved.

Therefore, it is positively assessed to resolve this problem in Bill No. 5660 on Enforcement of Judgements of 14 June 2021 (Draft of Law, 2021) by establishing a direct ban on seizure of funds in the accounts of the debtor – an individual – for crediting salaries, pensions, scholarships and other funds, the recovery of which is prohibited in accordance with this Law. This also includes funds in other accounts of the debtor, seizure and/or recovery prohibited by law and imposition on the bank, other financial institution, or central executive body implementing state policy in the field of treasury service of budget funds. In case of receipt of the executor's decision on seizure of funds in such accounts, the obligation exists to notify the executor of the intended purpose of the account and return the decision of the executor without execution in terms of seizure of funds in such accounts, justifying the reason for return.

In addition, a justified innovation of this bill is the ban on seizure of funds in the amount of the minimum protected amount (one minimum wage set by the Law of Ukraine on the State Budget of Ukraine for the year) within a calendar month necessary to ensure the debtor's livelihood. Whether such an amount is fair and provides the debtor's basic needs is difficult to answer unambiguously in all cases.

In many European countries there is now the institution of "protected amount" that is untouched for seizure and write-off of the amount of funds in bank accounts of debtors. In Finland, seizure can be imposed on only 1/6 of income, in Malta this cannot be levied on wages and benefits less than €700, and in Estonia the amount of the minimum wage is protected (Panasiuk, 2021). The experience of leading European countries is worth taking into account in domestic legislation.

Nonetheless, the proposal to introduce a minimum amount of funds can be an alternative solution to the problem concerning seizure of salary accounts, because when setting a limit on recovery, a debtor will have a certain amount of funds as a guarantee of proper living conditions every month, which the enforcer will not be able to use for debt repayment. At the same time, the possibility of partial enforcement of the decision in favour of the debt collector remains.

Similar restrictions are also being introduced today in connection with the imposition of martial law on the territory of Ukraine. Thus, if the amount of recovery under the executive document for such a person does not exceed 100,000 hryvnias, individuals may carry out expenditure transactions from accounts whose funds have been seized (Law No. 2129-IX, 2022). However, this approach is criticized for the large amount of funds under immunity and it is preferable to introduce a minimum protected amount that is not recoverable and will guarantee the debtor the right to live on a monthly basis within this amount, but the decision remains enforceable in favour

of the collector. However, it is precisely in the conditions of martial law that there is a need to increase such an amount with the proposed one minimum wage to three in order to strengthen the support of debtors in a difficult situation, and the corresponding suggestion has already been submitted to the legislative body.

4. The Procedure for Automated Seizure and Write-Off of Funds Abroad: Effective Examples to be Borrowed in Order to Improve the Domestic Model

Even in the form in which there is now automated seizure of debtors in Ukraine, its functionality is quite remotely distant from international counterparts. After all, in some countries the mechanism of seizure of funds is as automated as possible in order to eliminate the human factor.

PLAIS, the Lithuanian enforcement system which helps to automate recoveries, is considered to be the most innovative example of such a system in the world.

The system can determine for itself whether the debtor has a bank account or not. The decision to seize the PLAIS debtor's funds can be sent to all banks in the country, as well as other financial institutions (credit unions, electronic payment systems). This then debits funds and transfers them to the bailiff's accounts in the required amount, and ensures proportionality with the distribution of the amount of enforcement between the various bank accounts of the debtor. If the funds in one of the debtor's accounts are enough to satisfy the claimant's claims, the seizure is automatically removed from the remaining accounts. There is an option to prevent the opening of new accounts or the outflow of funds and to protect a limited amount of social security from enforcement (Vitkauskas, 2020; Avtorgov, 2020). Thus, if the debtor has funds in the accounts in the banks, PLAIS allows the executor to execute a court judgment in one day, while all public and private executors are forced to overcome bureaucratic obstacles in finding funds and seizing them within a reasonable time.

It is also worth analysing the situation in our jurisdiction when, during the validity of the seizure document, the bank receives other documents on seizure of funds during the transaction day. Unlike the procedure described above, in this case they are executed in the order of receipt, because funds seized on the client's account are prohibited from being used under the enforcement document, for execution of which the seizure was imposed. The bank then returns the settlement document without execution, if it was received by the bank under another enforcement document than the one for the execution of which the seizure was imposed, and there are no other (except seized) funds in this account. Therefore, blocking the same account to meet the requirements of different debt collectors should be carried out in view of the order of receipt of seizure resolutions issued in the execution of their enforcement documents. That is, funds may be written off in full from one account of the debtor under the first document on seizure received by the bank, depending on the amount available, and subsequent decisions will be executed within the balance of the funds on it – or, in case of their absence, will be kept for further enforcement after replenishment of the account. Despite the fact that such an approach violates the priority of satisfaction of claimants' claims set forth in Article 46 of the Law of Ukraine on Enforcement Proceeding (Law No. 1404-VIII, 2016), in case of insufficiency of the collected amount to satisfy the claimants' claims, the Supreme Court confirms this position in Resolution No. 904/7326/17 of 5 December 2018. This is because the rules for distribution of the funds collected from the debtor and the order of satisfaction of debtors' claims envisaged by Art. 45, 46 of the Law of Ukraine on Enforcement Proceeding (Law No. 1404-VIII, 2016) are subject to application within one specific enforcement proceeding, and not in general to all enforcement proceedings against the debtor.

However, there is currently a problem in communicating with banks to bring information to the executor about the receipt of new funds in the accounts to complete seizure of funds in the amount specified in the seizure resolution for its full enforcement. After all, the Law of Ukraine on Enforcement Proceeding does not specify the methods of obtaining such information, and according to the Instruction of the Resolution of the Board of the National Bank of Ukraine (Resolution of the Board No. 163, 2022), banks should inform only about the insufficiency or lack of funds after receiving the seizure resolution – the obligation to notify the executors of further new receipts of the funds on the debtor's account is not imposed on them, and they do not do it. Therefore, in this case, the executor is forced to perform repeated actions and send inquiries again to a specific bank or immediately proceed to seizure resolutions. However, the previous inquiry is in fact still valid, after deducting the partially paid amount, and some even send a payment request to speed up the forced write-off of funds. Given

this, it is appropriate to specify in this instruction the need for banks to notify the executors and on receipt of the funds by the debtor, if before that only a part of the amount determined by the resolution was written off or there were no funds on the account at all (Maliarchuk, 2019, p. 143), and of course to also ensure implementation of such provisions electronically.

Therefore, in order to quickly and efficiently enforce court judgments, a similar system of automated seizure and write-off of debtor's funds as described above must be fully operational in the country. Such perspectives are aimed at aligning with the European Union's policy in this area, in particular the European procedure for seizure of funds in a bank account set out in Regulation (EU) No. 655/2014 of 15 May 2014. This introduced the procedure for issuing a European order for securing claims to facilitate the collection of debts in civil and commercial cases of a cross-border nature, which is carried out in accordance with the unified European procedure for imposing security on bank accounts established by it. Such rules apply in cross-border cases when the court that would consider the application for the issuance of the Order is located in one Member State and the bank account is in another, or when the creditor resides in one Member State and the court and the bank account to which they have superimposed security are located in another. As a result of the introduction of a free trade zone between Ukraine and the European Union, Ukraine should potentially be ready for the introduction of this type of automated seizure of funds, both technically and at the level of legislative regulation of this type of issue primarily within its jurisdiction, and should have relevant experience. This is because the use of this method is aimed at supporting the proper functioning of the European market and will contribute to the effective protection of the rights of its participants, and therefore similar procedures and additional guidelines in such an area (Recommendation Rec(2003)17; European Commission for the Efficiency of Justice, 2015) should already be studied, and their characteristic features should be implemented.

The current international practice of seizing bank accounts shows that without prompt blocking of funds there can be no question of proper enforcement. Without the automation of individual stages of enforcement proceedings, it is impossible to ensure effective and timely execution of the decision, because it depends primarily on how fast and effective interaction is between the executor and the bank where the debtor's accounts are opened – when funds are detected, seized and enforced from them.

Thus, in order to approach this goal, the leadership of the Department of Justice and National Security of the Ministry of Justice of Ukraine successfully formed a concept which consisted of the following steps:

1) the creation of a single database of accounts of individuals and legal entities (as is known, the database on legal entities and business entities is currently maintained by the State Tax Service);

2) the improvement of electronic interaction between the holder of such a database and the executors on the one hand, and the creation of such communication between the executors and commercial and state banks (Oliynyk, 2018).

However, today the creation of a register of accounts of individuals is not a priority, due to the cost of this project and the high cost of its maintenance (Oliynyk, 2021). Instead, other means to identify the accounts of individual debtors have been covertly offered, namely:

– the obligation of banks on the day of opening/closing accounts of an individual entered in the Unified Register of Debtors to notify the body of the state executive service or private executor specified in the Unified Register of Debtors (part 3 of Article 9 of the Law of Ukraine "On Enforcement Proceedings");

– the executor's obligation no later than the next business day from the date of receipt of notification from banks on the availability of debtors' accounts to decide on the seizure of funds on the debtor's bank accounts (part three of Article 9 of the Law of Ukraine on Enforcement Proceeding) (Law No. 1404-VIII, 2016).

Establishing such rules to provide information on the availability of accounts of individuals does not guarantee its timely receipt and is not always an effective way to detect these accounts. This is because, firstly, not all banks comply with these requirements and report such facts to executors in a timely manner. Secondly, the question of how to find accounts if the debtor became a client of the bank before commencement of the enforcement

proceeding remains open. Finally, what is the purpose of the notice of closing the account if this possibility exists, and is not postponed until contacting the relevant executor, to block such accounts; or why does the movement of funds in them not stop at least (Maliarchuk, 2019, p. 143)?

In addition, private executors emphasize the need to consolidate information on open accounts in one source, and in general the digitalization of the seizure system emphasizes another negative aspect of its current state – namely time and labour costs, including the decision to seize the debtor's funds in ASEP. This can range from a few minutes to several hours and, after receiving information from banks, this figure should be multiplied by the number of responses, as each must be registered in the ASEP, scanned and uploaded to the system. All this time, the private contractor pays out of pocket in the form of salary to the assistant, or experiences inefficient use of their own time, if they carry out such work themselves. Significant costs are also expended on compensation for postal requests and resolutions on seizure of funds/payment claims for their write-off (Skalskyi, 2020). The performed calculations testify to the justification of transforming the document flow between executors and banks into electronic form.

All of this indicates the imperfection of such innovations and the problem of the lack of ability to automatically detect the debtor's existing bank accounts and find out the amount of funds in them. This issue still exists and work to overcome it is needed – in particular, the best option is to create a single medium for debtors by one subject.

Another important point mentioned above is the transfer of debiting funds in automated mode. For this purpose, the Ministry of Justice is developing the Draft of the Order of the Ministry of Justice of Ukraine; the Ministry of Finance of Ukraine on approval of the Procedure for information interaction of bodies and persons enforcing court judgments and decisions of other bodies; and the State Treasury Service of Ukraine for banks in electronic payment. This should provide for the introduction of a mechanism for the creation, transfer and verification of payment claims for the forced write-off of funds during the enforcement of court judgments in electronic form. Adoption of the relevant order will introduce information interaction between the state executive service (private executors), Treasury and banks in the process of transferring payment claims in electronic form, which is an important final step to automate and speed up the process of recovery of non-cash funds of the debtor.

Conclusions

One of the priority tasks for Ukraine is to enhance the effectiveness of enforcement measures. As the European Court of Human Rights put it in the case of *Globa v. Ukraine* (2012), the State is obliged to organize a system of enforcement of court judgments that will be effective both in law and in practice. This includes, in particular, improving the collection procedure with regard to non-cash funds. The conducted research allows us to offer the following suggestions that would improve the efficacy and expeditiousness of the existing procedures with regards to non-cash funds. First, setting up the system of electronic-only interaction between the banking system and enforcement bodies (without the need for bank employee's physical intervention) would allow violations of rights to be avoided and would increase the efficiency of the enforcement procedure. This will become possible only if the full cycle of automated seizure of funds is introduced in Ukraine and all banks are required to connect to the system and interact with enforcement bodies regarding the identification of funds, their seizure and their write-off exclusively in electronic form. Second, a minimum amount of funds protected from seizure shall be established in order to safeguard the debtor's livelihood. Third, an electronic register of individuals' bank accounts shall be established. This would provide quick access to them, simplify the identification of accounts and make it impossible to encumber several accounts of the debtor in different banks at the same time.

The measures offered are vital for guaranteeing the right to judicial protection and the right to a fair trial declared by the European Convention on Human Rights. This is because, as the European Court of Human Rights often reiterates, putting the courts' decisions into life is an integral part of the right to fair trial, without which the latter would be devoid of any practical meaning.

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