

SINGLE STATE REGISTER OF EXECUTIVE DOCUMENTS: PERSPECTIVES OF IMPLEMENTATION IN UKRAINE AND EXPERIENCE OF SIMILAR FOREIGN REGISTRIES

REGISTRO ESTADUAL ÚNICO DE DOCUMENTOS EXECUTIVOS: PERSPECTIVAS DE IMPLEMENTAÇÃO NA UCRÂNIA E EXPERIÊNCIA DE REGISTROS ESTRANGEIROS SEMELHANTES

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Abstract: The purpose of the article is to analyze legal regulation of the functioning of the Single State Register of Executive Documents, international experience in this area in order to offer legislative amendments regulating this area in Ukraine. Analytical, hermeneutic, systematic, comparative and legal methods and the method of generalizations have been used in the article. The authors have proved the necessity: to determine the administrator of the Single State Register of Executive Documents and the basis of information interaction between state registers; joint decision-making by the holders of the Single State Register of Executive Documents and the Automated System of Enforcement Proceedings in regard to the interaction of these registers; digitalization of notifying the subjects of enforcement proceedings about procedural documents of enforcement proceedings, its progress, as well as the transition to the use of electronic forms of executive documents (except for those created before the start of operation of the Single State Register of Executive Documents); amending Ukrainian legislation.

Keywords: State Register. Executive document. Single State Register of Executive Documents. Automated System of Enforcement Proceedings.

Resumo: O objetivo do artigo é analisar a regulamentação legal do funcionamento do Registro Único do Estado de Documentos Executivos, experiência internacional nesta área, a fim de oferecer alterações legislativas que regulam esta área na Ucrânia. Métodos analíticos, hermenêuticos, sistemáticos, comparativos, jurídicos e o método das generalizações foram utilizados no artigo. Os autores comprovaram a necessidade: determinar o administrador do Cadastro Único Estadual de Documentos Executivos e a base de interação das informações entre os cadastros estaduais; decisão conjunta dos titulares do Cadastro Único Estadual de Documentos Executivos e do Sistema Automatizado de Execução quanto à interação desses cadastros; digitalização da notificação dos

sujeitos do processo de execução sobre os atos do processo de execução, seu andamento, bem como a transição para o uso de formulários eletrônicos de atos executivos (exceto aqueles criados antes do início da operação do Registro Único Estadual de Documentos Executivos); que altera a legislação ucraniana.

Palavras-chave: Cadastro Estadual. Documento executivo. Cadastro Único Estadual de Documentos Executivos. Sistema Automatizado de Processos de Execução.

1. Introduction

The use of electronic resources is currently typical for all areas of management activity. Digitalization of the process of compulsory enforcement of decisions is defined as one of the goals and objectives of the reform of enforcement proceedings. The main result of the reform should be the creation of an integrated information system in the enforcement process (Reforming of the system of execution of court decisions). We believe that measures of digitalization of organizational and informational aspects of enforcement proceedings should occupy a prominent place among the measures of digitalization of enforcement proceedings, namely, ensuring the integration of enforcement proceedings with the processes that precede it (in particular, the issuance of executive documents and their presentation for compulsory enforcement) and run in parallel with it (in particular, solving issues related to the legal fate of executive documents – for example, correcting mistakes made during their execution or issuance, recognizing executive documents as unenforceable, etc.). One of the important steps towards digitalization of enforcement proceedings is the start of the operation of the Single State Register of Executive Documents (hereinafter referred to as the SSRED).

V. Chepurnyi rightly notes that the community of private executors is optimistically waiting for the implementation of the Single State Register of Executive Documents as the first step towards real, not fake, digitalization of enforcement proceedings (Chepurnyi, 2023).

The need to start the functioning of the SSRED has been actual for a long time. In particular, the provisions regarding electronic executive documents have been stipulated in the procedural codes for a long time, but courts continue to issue executive documents in a paper form, since the SSRED is not functioning yet. The Draft Law of Ukraine “On Compulsory Enforcement of Decisions” (registration number 5660), which was adopted by the Verkhovna Rada of Ukraine in the first reading on July 14, 2021, contains a number of provisions regarding the SSRED (The Draft Law of Ukraine “On compulsory enforcement of decisions”).

2. Problem Statement

Compulsory enforcement of court decisions, decisions of other agencies and officials is an important component of the comprehensive protection of human rights. Digitalization of the process of such enforcement occupies a prominent place in the effectiveness of compulsory enforcement of courts decisions, decisions of other agencies and officials. An important milestone of such digitalization is the introduction of the functioning of the SSRED. Scholars in the field of law have paid relatively little attention to the issues of scientific understanding of the perspectives for the introduction of the SSRED in Ukraine and the analysis of the experience of similar foreign registers. Thus, V. Chepurnyi noted the significant importance of the implementation of the SSRED as a long-awaited step towards the real digitalization of enforcement proceedings (Chepurnyi, 2023). A. Avtorgov paid attention to the fact that the introduction of the SSRED will contribute to the fight against forgery of executive documents (Avtorgov, 2021). M. Savchyn, A. Zavydniak and V. Olashyn noted the need to integrate various state registers, in particular: the State Register of Debtors, the Automated System of Enforcement Proceedings and the Single State Register of Court Decisions, which should ensure the transparency of the process of monitoring the execution of court decisions (Savchyn, Zavydniak, Olashyn, 2022, p. 151). Yu. Bilousov noted the practical difficulty of applying for the enforcement and enforcement of executive documents issued before the start of operation of the SSRED, when this Register will actually be operational (Bilousov, 2017, p. 101). Ye. Plokhuta and O. Vorobyov paid attention to the research of international experience in the organization of enforcement proceedings, in particular aspects of its digitalization (Plokhuta, 2022, p. 465; Vorobyov, 2017).

Based on the scientific works of the specified and other scholars, regulatory and other sources, the authors of the article have analyzed legal regulation of the introduction of the SSRED in Ukraine, as well as the experience of certain foreign countries in a similar field; and on this basis have offered amendments and alterations to the Ukrainian legislation in regard to the improvement of the functioning of the SSRED.

3. The Purpose and Methodology of the Research

The purpose of this scientific article is to analyze the perspectives for the introduction of the SSRED in Ukraine from the point of view of legal regulation of the operation of this Register, as well as the experience of certain foreign countries in a similar field and on this basis to offer amendments and alterations to the legislation for improving the functioning of the SSRED in Ukraine.

The research of the topic of this scientific article was carried out by using various methods of scientific cognition. The main ones are the following: analytical, hermeneutic, systematic, comparative and legal, and the method of generalizations. The analytical method was applied to find out the main problems of introducing the SSRED in Ukraine, as well as the experience of certain foreign states in a similar field. The hermeneutic method was used to clarify the content of regulatory legal acts that regulate the functioning of the SSRED in Ukraine. The application of the systematic method of scientific research made it possible to determine the relationships of legal norms that directly or indirectly regulate the functioning of the SSRED. The comparative and legal method was used while comparing the use of digital resources in Ukraine and in some foreign countries in the field of enforcement proceedings in general, and executive documents in particular. The method of generalizations was used to form the main conclusions of the scientific article, in particular, specific suggestions in order to make amendments and alterations to the Ukrainian legislation on improving the functioning of the SSRED in Ukraine.

4. Results and Discussion

Regulations on the Single State Register of Executive Documents.

The procedural codes of Ukraine have contained regulations on the electronic form of executive documents for more than five years (Civil Procedural Code of Ukraine, Article 431; Commercial Procedural Code of Ukraine, Article 327; Code of Administrative Judgment of Ukraine, Article 373). But executive documents are still issued by courts in a paper form, because there is currently no actual possibility of performing any actions provided by the procedural codes of Ukraine with the usage of the subsystems (modules) of the Unified Judicial Information and Telecommunication System. Besides, it corresponds to the Regulations on the Unified

Judicial Information and Telecommunication System and the provisions determining the procedure for the functioning of its certain subsystems (modules) (Civil Procedural Code of Ukraine, Transitional Provisions, subparagraph 15.15 of the paragraph 1; Commercial Procedural Code of Ukraine, Transitional Provisions, subparagraph 17.15 of the paragraph 1; Code of Administrative Judgment of Ukraine, Transitional Provisions, subparagraph 15.16 of the paragraph 1).

The executive document can be presented to the state agency of enforcement service or a private executor by the debt collector personally. Applications on the initiation of enforcement proceedings and executive documents can be also sent to these entities by mail. Unfortunately, postal items sometimes take a long time or get lost altogether. Sending these documents to the state agency of enforcement service or a private executor by letter with a description of the attachment entails monetary costs and loss of time for the debt collector. However, the specified problems can be solved by introducing the electronic form of the executive document (Kozhevnikova, 2022, p. 238).

Besides, the introduction of the SSRED will contribute to the fight against forgery of executive documents, since there will be no need to submit an executive document on paper to a private executor or the state agency of enforcement service, and accordingly, swindlers will no longer have anything to forge (Avtorgov, 2021).

The Regulations on the Single State Register of Executive Documents (hereinafter – Regulations on the SSRED) was approved by the joint Order of the State Judicial Administration of Ukraine and the Ministry of Justice of Ukraine dated from June 14, 2022 No. 177/2370/5 (Regulation on the Single State Register of Executive Documents, 2022). The specified regulatory act became the basis for the introduction of the functioning of the SSRED. However, as of May 2023, the SSRED has actually not become operational yet.

According to paragraph 2 of the Section I of the Regulations on the SSRED (taking into account the amendments that were made in accordance with the joint Order of the State Judicial Administration of Ukraine and the Ministry of Justice of Ukraine dated from August 4, 2022 No. 267/3278/5), the administrator of the SSRED is the administrator of the Unified Judicial Information and Telecommunications System (hereinafter – UJITS) of the State Judicial Administration of Ukraine (Regulations on the Single State Register of Executive Documents, 2022; amendments dated from August 4, 2022. No. 267/3278/5 to the joint Order of the State Judicial Administration of Ukraine, the Ministry of Justice of Ukraine dated from June 14, 2022, No. 177/2370/5. Also, see the request to obtain public data, dated from March 1, 2023).

However, the UJITS has not fully operational yet; certain subsystems of the UJITS are functioning. The Regulations on the procedure of the operation of certain subsystems (modules) of the Unified Judicial Information and Telecommunication System, approved by the Decision of the High Council of Justice of 17 August 2021 No. 1845/0/15-21, define the procedure for the operation of certain subsystems (modules) of the UJITS in courts and judicial system agencies, in particular such subsystems as “Electronic Office”, “Electronic Court” and video conferencing subsystems (Regulations on the procedure for the functioning of certain subsystems of the Unified Judicial Information and Telecommunication System, 2021). Paragraph 1 of the Order of the State Judicial Administration of Ukraine dated from October 26, 2021 No. 362 defines the State enterprise “Center of Judicial Services” as the administrator of the subsystems “Electronic Court”, “Electronic Office” and video conferencing subsystems (The answer of the State Judicial Administration of Ukraine dated from March 8, 2023, No. ikor/C293-23-303/23).

There is currently no data on the definition of the administrator of the SSRED.

Paragraph 2 of the Section I of the Regulations on the SSRED states that the SSRED functions as part of the UJITS. Therefore, there is an obvious need to define the legal, technical, technological and other aspects of the interaction between the SSRED and the Automated System of Court Enforcement Proceedings (hereinafter – ASCEP). Herewith, the registration of executive documents that have reached the compulsory enforcement is carried out in the ASCEP (Regulations on the Automated System of Court Enforcement Proceedings, 2016, paragraph 1, Section II).

The State Judicial Administration of Ukraine is the holder of the SSRED (Regulations on the Single State Register of Executive Documents, 2022, paragraph 5, Section I), but the administrator has not been determined yet. The holder in ASCEP is the Ministry of Justice of Ukraine, the administrator is the State Enterprise “National Information Systems” (Regulations on the Automated System of Court Enforcement Proceedings, 2016, paragraph 2, Section I).

The procedure of information interaction and proceedings of such interaction between the SSRED and the ASCEP are determined by the joint decision of the holders of the SSRED and the ASCEP (Regulations on the Single State Register of Executive Documents, 2022, clause 4, paragraph 7, Section VIII). That is, they should be joint decisions of the State Judicial Administration of Ukraine and the Ministry of Justice of Ukraine. The request for the provision of public administration, which is the main author of this Article and addressed to the State Judicial Administration, contained the question: “Have the decisions regulating the interaction of

the Single State Register of Executive Documents and the Automated System of Court Enforcement Proceedings been made?” (The request to obtain public data, dated from March 1, 2023). The answer in response to that request was received that the State Judicial Administration does not have and has not recorded the requested information (The answer of the State Judicial Administration of Ukraine dated from March 2, 2023, No. inf/c270-23-283/23).

We believe that the adoption of joint decisions, which regulate the interaction of the Single State Register of Executive Documents and the Automated System of Court Enforcement Proceedings by the holders of the SSRED and ASCEP is one of the first priority steps to be taken by the State Judicial Administration of Ukraine and the Ministry of Justice of Ukraine for the actual digitalization of the form of executive documents and their presentation for enforcement. It is also important to define the administrator of the SSRED.

M. Savchyn, A. Zavydniak and V. Olashyn indicate the need for integration of the State Register of Debtors, ASCEP and the Unified State Register of Court Decisions to ensure a transparent process of monitoring over the execution of court decisions (Savchyn, Zavydniak, Olashyn, 2022, p. 151). Agreeing with this opinion, we would like to add that there should be a regulatory, technical and technological basis for information interaction between the State Register of Debtors, the ASCEP, the Unified State Register of Court Decisions and the SSRED. And in the future with other state and unified registers in order to ensure the effectiveness of protecting human rights. The above requires active actions on the part of the holders of these registers, namely: the adoption of joint regulatory legal acts that would regulate the issues of integration of these registers, their technical and technological integration, training of users of these registers on their integrated use, etc. The indicated measures are important, given that the interoperability of registers is one of the principles of activity in the field of public electronic registers, in accordance with paragraph 5, Part 3 of the Art. 3 of the Law of Ukraine “On Public Electronic Registers” (Law of Ukraine “On Public Electronic Registers”).

The Regulations on the SSRED stipulates that, in accordance with the decision of the European Court of Human Rights (hereinafter referred to as the ECHR) the executive document in cases against Ukraine is the original text and translation of the resolution part of the final decision of the ECHR in cases against Ukraine entered into the SSRED (Regulations on the Single State Register of Executive Documents, 2022, paragraph 2, Section I). However, the Law of Ukraine “On the Execution of Decisions and Application of the Practice of the European Court of Human Rights” does not contain norms that would require the creation of an electronic executive document for compulsory enforcement of the ECHR decision. The Article 7 of the

specified Law provides the execution of appeal by the representative agency, that is, the Ministry of Justice of Ukraine, of the ECHR decision to implement the payment of compensation (Law of Ukraine “On the Execution of Decisions and Application of the Practice of the European Court of Human Rights”). At the same time, the legislator refers to clause 2 of the Procedure for ensuring the representation of Ukraine while hearing cases at the European Court of Human Rights (Resolution of the Cabinet of Ministers of Ukraine dated from April 29, 2004 No. 553). Sending the package of documents to the state enforcement service for further resolution of the issue of initiating enforcement proceedings is among the measures of such an appeal.

The Law of Ukraine “On the Implementation of Decisions and Application of the Practice of the European Court of Human Rights” does not provide the possibility and / or necessity of digitalization of materials that must be sent to the state enforcement service for its decision on the initiating enforcement proceedings for the compulsory enforcement of ECHR decisions. Therefore, we consider it expedient to supplement Part 1 of the Art. 7 of the specified Law with paragraph 5 of the following wording: “Sending of the documents provided in clause “b” of Part 1 of this Article to the state enforcement service from the beginning of the operation of the Single State Register of Executive Documents shall be preceded by the entry of such documents into the Single State Register of Executive Documents”.

Paragraph 1 of the Section II of the Regulations on the SSRED specifies the list of executive documents that are submitted to the SSRED (Regulations on the Single State Register of Executive Documents, 2022). If we compare this list with the list of executive documents provided in Part 1 of the Art. 3 of the Law of Ukraine “On Enforcement Proceedings” (Law of Ukraine “On Enforcement Proceedings”), it becomes obvious that decisions of the Audit Public Oversight Body or the Audit Chamber of Ukraine, which are recognized by law as executive documents, are executive documents that can be the basis for initiating enforcement proceedings. However, the current version of the Regulations on the SSRED does not provide the possibility to submit such executive documents to the SSRED. The comprehensiveness of the list of executive documents is provided as a component of compulsory enforcement procedure by the Recommendation Rec (2003) 17 of the Committee of Ministers of the Council of Europe to Member States regarding compulsory enforcement (Recommendation Rec (2003), European and international standards in the sphere of judiciary, 2015, p. 482).

We believe that all executive documents should be submitted to the SSRED. Therefore, clause 1 of the Section II of the Regulations on the SSRED we offer to supplement with clause 12 with the following content: “decisions of the Audit Public Oversight Body or the Audit

Chamber of Ukraine, which are recognized by law as executive documents”. Yu. V. Bilousov points out the following in regard to the problems of the functioning of the SSRED: in practice, there are difficulties with the appeal and execution of those executive documents that were issued before the start of the operation of this Register (Bilousov, 2017, p. 101). The Regulations on the SSRED do not contain transitional provisions regarding the executive documents issued before this document entered into force, as well as those executive documents that were issued after the entry into force of this regulatory legal act, but before the actual start of the operation of the SSRED. Therefore, we believe it expedient to supplement the Section III of the Regulations on the SSRED with paragraph 13 of the following wording: “Executive documents issued in a paper form before the entry into force of the Regulations, as well as executive documents issued after the entry into force of the Regulations, but before the start of the operation of the Single State Register of Executive Documents, are not entered into the Register and submitted for enforcement in a paper form”.

Foreign experience of registers of executive documents and digitalization of enforcement proceedings.

A significant level of digitalization of enforcement proceedings can be observed in Georgia. It is advisable to highlight the following advantages in the Georgian system of enforcement of decisions, in particular: free access of the staff of the National Bureau of Enforcement (hereinafter – the NBE) to a special computer system that covers record keeping, the production of procedural documents and the register of enforcement proceedings, and provides access to all electronic registers of Georgia (Plokhuta, 2022, p. 465). The NBE of Georgia uses the electronic program of business correspondence, which is used to exchange information between departments that are under the jurisdiction of the Ministry of Justice of Georgia (National Bureau of Enforcement. Electronic program of business correspondence). The NBE of Georgia has been conducting an electronic enforcement proceeding program since January 2011 (National Bureau of Enforcement. Program for Enforcement Proceeding). A similar experience has been already implemented in Ukraine, in particular through the functioning of the ASCEP, electronic document circulation in the agencies of compulsory enforcement of decisions, and it can become significantly more effective with the start of the operation of the SSRED.

Sending of procedural documents and notices to the parties to enforcement proceedings occurs automatically in Georgia. The NBE employee forms the text of the message or

procedural document, indicates the addressees, signs the document with a digital signature through the electronic system and sends it directly to the Post Office of Georgia through the program in electronic form, which independently performs the conversion, dispatch and delivery of correspondence (Vorobyov, 2017).

Such an advanced functionality for notifying subjects of enforcement proceedings about procedural documents and sending them messages does not exist in Ukraine yet, but the first steps have already been taken for the convenience and fast notification of the presence of an executive document. Thus, paragraph 2, clause 4 of the Section III of the Regulations on the SSRED states that the web address of an executive document in the SSRED is sent immediately after its registration to the electronic account of the debt collector, the debtor (their representatives) and the registrar (if there is a registered electronic account) (Regulations on the Single State Register of Executive Documents, 2022).

We believe that it is possible to adopt in the future the experience of digitalization of notifying the subjects of enforcement proceedings about procedural documents issued in enforcement proceedings and about the progress of enforcement proceedings. It is not possible to formulate specific suggestions regarding the above yet, because there is still no regulatory basis for the interaction of the SSRED and the ASCEP.

Amendments to the Civil Procedural Code of Lithuania entered into force on July 1, 2020, which provided a wider application of electronic notification of enforcement proceedings documents. The bailiff sends only the original procedural document by registered mail while collecting debts up to 1,000 euros. The debtor is informed about the start of forced collection of the debt and court costs, and is also informed about the delivery of further procedural documents in the electronic form – through the information system of bailiffs. Procedural documents in order to collect other debts will be submitted electronically only after the delivery of any document sent by registered mail (Judicial Officers of Lithuania).

Debt collection in Lithuania can be also carried out on the basis of an electronic executive document, which has the same legal force as an ordinary executive document. The electronic services portal has been used in Lithuanian courts since July 1, 2013, which allows bailiffs to provide and receive procedural documents through the electronic system. Electronic documents must be provided in the “adoc” format, which is recognized by all Lithuanian institutions (Bailiffs Brigita Palavinskiene office. Electronic enforcement documents).

We believe that executive documents with the beginning of the operation of the SSRED must be formed and presented for enforcement in electronic form, except for cases when they

are formed and presented for enforcement before the start of the operation of the SSRED – only in this case the paper form of executive documents is allowed.

Taking into account the analysis of international experience on the researched topic, it is expedient to digitize the notification of the subjects of enforcement proceedings about the procedural documents issued within enforcement proceedings and about the progress of enforcement proceedings; transition to the use of electronic form of executive documents. An exception may be the application of executive documents formed before the beginning of the operation of the SSRED.

5. Conclusions

The analysis of legal regulation of the application of the SSRED in Ukraine, as well as the experience of certain foreign countries in a similar field, allows us to generalize the feasibility of implementing the following measures:

1. Operational determination of the administrator of the SSRED, as well as the adoption of joint decisions by the holders of the SSRED (that is, the State Judicial Administration of Ukraine) and the ASCEP (that is, the Ministry of Justice of Ukraine) regarding the regulation of the interaction of the SSRED and the ASCEP for ensuring the actual digitalization of the form of executive documents and their submission for enforcement.

2. Determination of the regulatory, technical and technological basis of information interaction between the State Register of Debtors, the ASCEP, the Unified State Register of Court Decisions, the SSRED. And in the future – other state and unified registers to ensure the effectiveness of the protection of human rights.

3. Digitalization of notifying the subjects of enforcement proceedings about procedural documents issued within enforcement proceedings and about the progress of enforcement proceedings; transition to the use of the electronic form of executive documents (exception: the use of executive documents created before the start of the operation of the SSRED).

4. Making alterations to regulatory legal acts, in particular:

1) to supplement Part 1 of the Art. 7 of the Law of Ukraine “On the Execution of Decisions and Application of the Practice of the European Court of Human Rights” with paragraph 5 of the following content: “The entry of such documents into the Unified State

Register of Executive Documents precedes the sending of the documents provided in clause “b” of Part 1 of this Article to the state executive service from the beginning of the operation of the Single State Register of Executive Documents”;

2) to supplement paragraph 1 of Section II of the Regulations on the SSRED with sub-paragraph 12 of the following content: “decisions of the Audit Public Oversight Body or the Audit Chamber of Ukraine, which are recognized by law as executive documents”;

3) to supplement the Section III of the Regulations on the SSRED with the following content: “Executive documents issued in a paper form before the entry into force of the Regulations, as well as executive documents issued after the entry into force of the Regulations, but before the start of the operation of the Single State Register of Executive Documents, are not entered into the Register and presented for execution in a paper form”.

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