CLASSIFICATION OF THE MEASURES OF LEGAL RESPONSIBILITY IN THE ENFORCEMENT PROCEEDINGS

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Abstract. In this paper, we disclose and investigate the main types of legal liability measures used in the enforcement proceedings. Art.113 of the Federal Law "On Enforcement Proceedings" identifies two types of legal liability in case of violation of the legislation of the Russian Federation on enforcement proceedings - criminal and administrative. At the same time, the issue of legal liability classification, including in the enforcement proceedings, is also multifaceted, as is the very concept of legal liability. We concluded that the following classification should be used as the most optimal classification of legal liability measures in the enforcement proceedings:

1) substantive liability:
   - criminal liability (Art. 157, Art. 177, Art. 312, Art. 315 of the Criminal Code of the Russian Federation, etc.)
   - administrative (P. 1 of Art. 17.14, Art. 17.15, Art. 5.35.1 of the Administrative Code of the Russian Federation, etc.)
   - civil liability, including under Art. 16 of the Civil Code of the Russian Federation
   - disciplinary liability, which is applied to bailiffs/enforcement officers as civil servants

2) procedural liability, which in turn is divided into:
   - penalty;
   - in the form of an enforcement fee;
   - compensatory;
   - in the form of other adverse procedural consequences.

Key words: legal liability, enforcement proceedings, procedural liability, classification

1. INTRODUCTION

To date, taking into account the prevailing economic situation, it is difficult to overestimate the role of enforcement proceedings, not only in the legal system of the country, but also in the life of society as a whole. For example, according to the Interim Report on Implementation of the Public Declaration of the Goals and Objectives of the Federal Service for Social Security (FSSS) of Russia for 2016, the number of judicial acts, acts of other bodies and officials whose demands have been fully executed increased by 23.2% (4 mln.). Thus, 21.6 mln. enforcement proceedings was over by the actual execution (17.6 mln. - for 9 months in 2015) and the amount collected in favor of citizens and organizations amounted to 396.3 bln. roubles (67.5 bln. roubles more than in the same period in 2015) in the reporting period. This is the tremendous results in a difficult economic situation.

It is also difficult to overestimate the role of the legal liability institution in the modern legal system. The legal responsibility plays an important role in the system of enforcement proceedings, whose tasks are the correct and timely execution of judicial acts, acts of other bodies and officials (in cases stipulated by the legislation of the Russian Federation - execution of other documents) in order to protect the violated rights, freedoms and legitimate interests of citizens and organizations, as well as to ensure the fulfillment of obligations under the international treaties of the Russian Federation (Art. 2 of the Federal Law No. 229-FZ dated October 2, 2007 "On Enforcement Proceedings"). Thus, as can be seen from this rule, the remark of scientists that the executive law is a branch-sanction in the system of law in itself (Isayenkov, Balashov, & Balashova, 2008) is very fair, therefore a clear regulation of legal liability seems to be critical for the functioning of the entire system of the enforcement proceedings.

2. MATERIALS AND METHODS

This article is written on the basis of studying the norms of civil procedural, arbitration procedural law and enforcement proceedings of the Russian Federation, as well as the norms of civil, administrative and criminal law regulating the grounds and measures of legal liability for the violations committed by bailiffs/enforcement officers and other subjects of enforcement proceedings. We also studied the modern views of scientists regarding legal responsibility in the enforcement proceedings. The empirical basis of this work is presented by the materials of judicial practice related to the application of legal liability measures in the enforcement proceedings.

3. RESULTS AND DISCUSSION

Despite the fact that there are many definitions of the term "legal liability" in legal literature today, one cannot disagree with M.N. Marchenko (2016) that "domestic and foreign authors agree that legal liability, unlike other kinds of liability, is always connected with state coercion, with practical application of the sanctions established by law to the offender". Considering this, the following definition of legal liability seems rather classical: "legal liability is a special type of state coercion, consisting in the subject's undergoing of unprofitable consequences provided by the sanction of the violated rule and carried out in the form of a protective legal relationship" (Radko, Lazarev & Morozova, 2016). According to the scientists, the same situation is in the executive law, as the liability essence "consists in the obligation of the subject of enforcement proceedings to suffer adverse consequences in case of violating the mandatory rules by this subject governing the enforcement proceedings in the Russian Federation".

Art.113 of the Federal Law "On Enforcement Proceedings" identifies two types of legal liability in case of violation of the legislation of the Russian Federation on enforcement proceedings - criminal and administrative. At the same time, the issue of legal liability classification, including in the enforcement proceedings, is also multifaceted, as is the very concept of legal liability. Having studied the opinions of scientists on this matter, it seems reasonable to use the classification given by Professor Valeev D.K. for a broader discussion of the issue. So, in his opinion, the liability measures for violating the law on enforcement proceedings can be divided into substantive and procedural (Valeev, Sitdikov & Novikov, 2016). In turn, the substantive liability measures are stipulated by the norms of civil, labor, criminal, administrative law and some other branches of law, while procedural liability measures are represented by the rules of enforcement proceedings. We will try to consider at least a few examples of each type of legal liability in the enforcement proceedings.

The application of criminal liability measures in the enforcement proceedings is not uncommon. So, the territorial bodies of the FSSS of Russia initiated
77,8 ths. criminal cases (74,8 ths. of them - in respect of persons who maliciously avoided payment of funds for the maintenance of children or disabled parents), and investigated 74.4 ths. criminal cases in 2015.

The criminal liability for violating the legislation on enforcement proceedings is stipulated, among other things, by Art. 157 of the Criminal Code of the Russian Federation - failure to pay for the maintenance of children or disabled parents; in turn, the possibility of criminal liability for malicious avoidance from paying the alimony is stipulated by P. 6 of Art. 102 of the Federal Law "On Enforcement Proceedings". According to Art. 157 of the Criminal Code of the Russian Federation, the persons can be brought to criminal liability: 1) for non-payment of funds for the maintenance of underage children, as well as disabled children who have reached the age of eighteen by the parent without valid reasons in violation of a court decision or a notarized agreement; 2) for non-payment of funds for the maintenance of disabled parents - if such an act is committed repeatedly - by adult able-bodied children without valid reasons in violation of a court decision or a notarized agreement. According to the report of the Director of the FSSP of Russia on the work results of the territorial bodies of the FSSP of Russia on the requirement execution of the executive documents on alimony recovery for 9 months in 2016, the minutes of the meeting, 40.4 ths. criminal cases were initiated under Art. 157 of the Criminal Code of the Russian Federation for 9 months in 2016 (58.9 ths. - for 9 months in 2015) (FSSP of Russia, 2016). But this article has undergone significant changes in July 2016 and the FSSP of Russia notes a decrease in the number of criminal cases initiated. So now, bringing to the criminal liability under this article is possible only after bringing to the administrative liability, which will be considered by us later.

Art. 177 of the Criminal Code of the Russian Federation, which stipulates criminal liability for malicious avoidance from paying off large amounts of accounts payable or from paying for securities after an entry into force of the relevant judicial act by the head of an organization or a citizen is very relevant in the enforcement proceedings.

Art. 312 of the Criminal Code of the Russian Federation stipulated also the liability for unlawful acts in respect of property subject to inventory or seizure or subject to confiscation, namely: misappropriation, concealment or illegal transfer of property subjected to inventory or arrest, committed by a person to whom this property is entrusted, as well as a performance of banking transaction with money (deposits) arrested by employees of the credit organization, and concealment or appropriation of property subject to confiscation on the court verdict, as well as other evasion from the court verdict execution on property confiscation that has entered into legal force.

According to Art. 315 of the Criminal Code of the Russian Federation, malicious default by a public officer, civil servant, municipal employee, as well as employees of a state or municipal institution, commercial or other organization of a court verdict, court decision or other judicial act that has entered into force, as well as obstruction of their execution entails criminal liability (P. 18 of Art. 30 of the Federal Law "On Enforcement Proceedings"). And this article of the Criminal Code of the Russian Federation "works" very successfully - according to the FSSS of Russia, the bodies of inquiry of the FSSS of Russia initiated 1,994 criminal cases on the constituent element of offense under Art. 315 of the Criminal Code of the Russian Federation in 2014, which is 266 cases or 15.4% more than in 2013 (1,728 cases).

The administrative liability is also widely applied for violation of the legislation on enforcement proceedings. In particular, according to P. 1 of Art. 17.14 of the Code of Administrative Offenses of the Russian Federation, violation of the legislation on enforcement proceedings by the debtor, expressed in the failure to comply with the lawful requirements of the bailiff/enforcement officer, submission of false information about his rights to property, non-notification of dismissal from work, new place of work, study, place of pension receipt, other income receipt or place of residence shall be punishable by an administrative fine (with the exception of the violation stipulated by Art. 17.17 of this Code). Violation of legislation on enforcement proceedings by a person who is not a debtor, expressed in: non-fulfillment of legal requirements of the bailiff/enforcement officer, refusal to receive confiscated property, submission of false information about the property status of the debtor, loss of the executive document, late submission of the executive document, failure to comply with the requirements of the executive document, including the document received from the recoverer, shall also entail the imposition of an administrative fine (P. 3 of Art. 17.14 of the Code
of Administrative Offenses of the Russian Federation).

Also, the administrative liability is stipulated for the non-compliance with non-property requirements contained in the executive document - Art. 17.15 of the Code of Administrative Offenses of the Russian Federation.

In November 2015, the Code of Administrative Offenses of the Russian Federation has been supplemented with Art. 17.17, which entails liability for the violation of temporary restriction on the use of special right established in accordance with legislation on enforcement proceedings, and not in the form of an administrative fine, as in the articles previously reviewed, but in the form of compulsory works for up to fifty hours or deprivation of special rights for up to one year. Let us recall that P. 1 of Art. 67.1. of the Federal Law "On Enforcement Proceedings" defines a temporary restriction on the use of a special right by the debtor as a suspension of the special right granted to the debtor in accordance with the legislation of the Russian Federation in the form of the right to drive vehicles before the requirement execution of the executive document in full or until the grounds for the cancellation of such restriction arise.

There are the following measures of civil liability: 1) recovery of expenses for execution at the expense of one of the parties (usually a debtor) and the possibility of increasing them in some cases; 2) direct measures of civil liability (recovery of losses, penalties, interest for using other people's money, etc.). (Zagidullin, 2003)

So, let us consider such a civil liability measure as compensation for damages. At the same time, let us recall that the losses include real damages and lost profits according to Art. 15, 393 of the Civil Code of the Russian Federation.

Thus, according to P. 2 of Art. 119 of the Federal Law "On Enforcement Proceedings", the interested parties have the right to apply to the court for compensation of damages caused by the execution of enforcement actions and (or) enforcement measures. At the same time, Art. 16 of the Civil Code establishes the procedure for compensation of damages caused by the state bodies and local self-government bodies. Similar provisions can be seen in para. 2 and 3 of Art. 19 of the Federal Law No. 118-FZ dated July 21, 1997 "On Bailiffs/Enforcement Officers" according to which the damage caused by bailiff/enforcement officer to the citizens and organizations is subject to compensation in the manner stipulated by the civil legislation of the Russian Federation. In its turn, in accordance with Art. 1069 of the Civil Code of the Russian Federation, a damage caused to a citizen or a legal entity as a result of illegal actions (inaction) of the state bodies, local self-government bodies or officials of these bodies, including as a result of publication of the act of state body or local government body not complying with the law or other legal act, is subject to compensation - at the expense of the treasury of the Russian Federation, the treasury of a subject of the Russian Federation or the treasury of a municipal unit.

The next Art. 120 of the Federal Law "On Enforcement Proceedings" deals again with the compensation of damage, namely: in the case of failure to comply with the demand contained in the executive document for the restoration of an illegally dismissed or transferred employee at work; the damage caused to the organization by the payment of money to the specified employee may be recovered from the head or other employee of this organization being guilty of failure to comply with the executive document.

Disciplinary liability in the enforcement proceedings comes in connection with the commission of a disciplinary offense by the bailiff/enforcement officer. The types of disciplinary penalties that can be applied to a civil servant for committing a disciplinary offense are listed in Art. 57 of the Federal Law No. 79-FZ dated July 27, 2004 "On the State Civil Service of the Russian Federation" include: reprimand, warning of incomplete job compliance, dismissal from the civil service on the grounds established by para. 2, subparas. "a" - "d" of para. 3, paras. 5 and 6 of P. 1 of Art. 37 of the said Federal Law. A disciplinary offense within the framework of this article is understood as the non-performance or improper performance by civil servants of the duties assigned to him due to his fault. This understanding is most often in science (Valeev, Sitdikov, Sitdikova, & Gabidullina, 2016). In turn, the duties of bailiffs/enforcement officers are indicated in para. 1 of Art. 12 of the Federal Law "On Bailiffs/Enforcement Officers". According to the statistics of the FSSS of Russia, 270 officials of the FSSS of Russia were brought to disciplinary liability in the first quarter of 2015, including: 11 heads of departments of the inquiry organization and their deputies, 86 head of departments - senior
bailiffs, 25 deputy heads of departments - deputy senior bailiffs, 148 investigators.

Valeev D.K. singles out the following types of procedural liability in the enforcement proceedings: penalty and liability in the form of adverse procedural consequences of illegal activities. (Maleshin, Silvestri, Sitgikov & Valeev, 2016) We can also see a singling out of these types of legal liability in the enforcement proceedings in other scientists in principle. So, there are four main types depending on the liability measure established by the rule of executive law: 1) penalty; 2) in the form of an enforcement fee; 3) compensation; 4) in the form of other adverse consequences” (Chelyshev, Tufetulov, & Valeev, 2016).

The procedural liability in the form of a fine may include, in particular, bringing a bank or other credit organization to liability for failure to comply with the executive document in accordance with Art. 114 of the Federal Law "On Enforcement Proceedings". In turn, already on the basis of this article, the bailiff/enforcement officer drafts a protocol on the administrative offense in the manner established by Art. 28.2 of the Code of Administrative Offenses of the Russian Federation, but subject to the following conditions: non-execution of an executive document containing demands on recovering money from the debtor in accordance with the Federal Law "On Enforcement Proceedings" and the availability of funds on the said accounts. After the protocol is issued, the bailiff/enforcement officer sends an application to bring the bank or other credit institution to administrative liability to the arbitration court, where indicates the requirement to bring a bank or other credit institution to administrative liability under P. 2 of Art. 17.14 of the Administrative Code of the Russian Federation). P. 2 of Art. 17.14 of the Code of Administrative Offenses of the Russian Federation stipulates the liability for failure by a bank or other credit organization to comply with the requirement on funds collection from the debtor in the form of an administrative fine in the amount of half of the amount of money to be recovered from the debtor, but not more than 1,000,000 roubles.

The liability in the form of adverse procedural consequences of illegal activities is quite often in the enforcement proceedings. According to some scientists, this type of liability "is aimed at: a) suppression of procedural violations; b) restoration of the civil form; c) execution of the relevant procedural duties" (Valeev, & Baranov, 2014). A fairly effective example of this type of liability is the enforcement fee in the enforcement proceedings. According to Art. 112 of the Federal Law "On Enforcement Proceedings", the enforcement fee is established by the bailiff/enforcement officer after expiration of the period established for voluntary execution of the executive document (if the executive document is subject to immediate enforcement - within 24 hours from the moment of receiving a copy of the decision of bailiff/enforcement officer on the initiation of enforcement proceedings). The enforcement fee is a monetary penalty in the amount of 7% of the recoverable amount or the value of recovered property (but not less than 1,000 roubles from the debtor-citizen or the debtor-individual entrepreneur and 10,000 roubles from the debtor-organization). In case of non-performance of the executive document of non-property nature, the enforcement fee from the debtor-citizen or the debtor-individual entrepreneur is set at the amount of 5,000 roubles, from the debtor-organization - 50,000 roubles.

The liability in the form of adverse consequences includes also the reimbursement of expenses for the performance of executive actions at the debtor's expense under Article 117 of the Federal Law "On Enforcement Proceedings". In particular, such expenses, according to Art. 116 of the Federal Law "On Enforcement Proceedings", include the money spent on: 1) transportation, storage and sale of the debtor's property; 2) remuneration for the work of translators, specialists and other persons involved in the established procedure for the organization and conduct of executive actions, and compensation for the costs incurred by them, as well as witnesses; 3) transfer of funds to the recoverer; 4) search for a debtor, his property, search for a child; 5) state registration of the debtor's rights; 6) performance of other actions necessary in the process of execution of the executive document.

In both of the above cases it is quite clear that the voluntary performance of the executive document by the debtor will exclude the indicated adverse consequences expressed in the monetary terms.

4. CONCLUSIONS

Thus, based on the foregoing, we can make the following conclusions.
Classification of legal liability measures is still determined at large and incompletely both in the civil process in general and in enforcement proceedings in particular at the legislative level, and there is still no consensus in science.

We offer to use the following classification of legal liability measures applied in the enforcement proceedings:

3) material liability:

- criminal liability (Art. 157, Art. 177, Art. 312, Art. 315 of the Criminal Code of the Russian Federation, etc.)
- administrative (P. 1 of Art. 17.14, Art. 17.15, Art. 5.35.1 of the Administrative Code of the Russian Federation, etc.)
- civil liability, including under Art. 16 of the Civil Code of the Russian Federation
- disciplinary liability, which is applied to bailiffs/enforcement officers as civil servants

4) procedural liability, which in turn is divided into:

- penalty;
- in the form of an enforcement fee;
- compensatory;
- in the form of other adverse procedural consequences.

5. SUMMARY

In this article we have not considered all the manifestations of legal liability in the enforcement proceedings, as this is a very complex and voluminous issue, and certain problems are regularly discussed by both practitioners and theoreticians in this sphere. But, summarizing the material studied, it can be noted that the legislation regulating legal liability in the enforcement proceedings is actively developing, which in our opinion will have a positive effect on its application in practice in the future.

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