УДК 94:35(477)

Olga Badalova Deputy Chief of Mykolayiv City Department of Justice, PhD student of Public

Policy and Management Department
Petro Mohyla Black Sea State University

STATE EXECUTIVE SERVICE AT THE TIME OF KIEVAN RUS

The paper is dedicated to the study of historical origin and formation executive service on the terri-tory of Kievan Rus state. This problem has a particular importance in terms of present public executive service reforming process in Ukraine. The author paid attention to the historical documents: "Russian Truth" ("Russkaya Pravda"), Volodymyr Monomakh's Ustav, Trial Documents ("Sudebnik"), Code of 1649 ("Ulozhenie") and the others. Stages of a court usher institute forming are developed. The author concludes that the system of judgment enforcement is essential part of public power on all stages of histori-cal evolution, and the executive service in general is one of the main mechanisms of the state formation.

Keywords: *executive service, debtor, creditor, court usher, creditor judgments, the executive authority, enforcement.*

Бадалова О.С. Державна виконавча служба за часів Київської Русі

Стаття присвячена впливу виконавчої служби в цілому як правового механізму – одним із основних важелів державотворення. Автор акцентує увагу на стадію ранньо-феодального рефор-мування примусової діяльності.

Ключові слова: *виконавча служба, боржник, стягувач, пристав, кредитор, судові рішення, виконавчий орган, примусове виконання.*

Бадалова О.С. Государственная исполнительная служба в часы Киевской Руси

Статья посвящена влиянию исполнительной службы в целом как правового механизма – одно-го из основных рычагов создания государства. Автор акцентирует внимание на стадию ранне-феодального реформирование принудительной деятельности.

Ключевые слова: *исполнительная служба, должник, взыскатель, пристав, кредитор, судебные решения, исполнительный орган, принудительное выполнение.*

Introduction

As a state could not exist without laws so laws could not operate without the state. Profound examining of these concepts can lead to the conclusion that the existence of these concepts operated due to a mechanism which remained in the shadow of the state and law theory. It is the executive body that appeared to be the engine of public education and law enforcement. The urgency of it cannot be put into question not only today but the next day. That is why the reformation of state executive service is closely connected with the past, with those very important from scientific point of view studies of the origin and history of the executive service formation in the state of Kievan Rus.

Analysis of recent research

The influence of early-feudal period on the reformation of the state executive service in Kievan Rus was paid a lot of attention. Recently this problem has been addressed to by both home and foreign scientists and public administrators: Butler W.E. [1], Guz A.M. [4], Martysevych I.D. [5], Onischuk M. V.[7], Pashchuk A.I.[8], S. Shcherbak S. V.[11], Yakovliv A.I. [12] and others.

Statement of research objectives

To research the executive service activities at an early stage of their development in ancient Ukraine under the influence of customs and traditions.

Results

In order justice overcomes not only in court records, court decisions should be implemented. The execution of judgments is the most important area of legal practice that reflects the efficiency of the whole mechanism of legal regulation. The law cannot be considered active if the orders of law are not implemented in legal entities. Lack of legal framework, regulatory implementation, including enforcement, negates the protection of rights reduces the credibility and effectiveness of law

enforcement as a legal decision that has no real legal effect and that's why it is not implemented.

The European Court of Human Rights determined that enforcement of the judgments of any court should be considered as an integral part of the trial. Such an approach emphasizes the level of society civilization that is different from the society of those times when claims were exercised by the own forces and means of the injured, and often even without any kind of prior validation of the claim.

As for the debtor he could be submitted as a slave to the creditor, forced to work out, his property could be captured without any involvement of public authorities he could be kept in a home detention prison and even murdered by the debtor for possession of his property.

Analyzing the way of origin and development of the state executive service in Kievan Rus it is evident that the system of enforcement decisions is an integral part of legal system public authority at all stages of its development and operation. The
Institution for the enforcement of court decisions is often related to the implementation and execution of outstanding debt recovery usually implemented to the lower strata of society [7, p.111].

In Russia in ancient times tribal and community association took part in the execution of the sentence and responsibility for its members was involved.The offended and his family had to deal not only with the abuser, but also with his family and therefore it guaranteed that they would revange not only of the offender, but the whole community. Every Rodovich (THE HEAD OF THE TRIBE) belonged to a famous family that lived their lives, so everybody had a natural defense of interests , feelings, and customs. In a case of common danger they were prompted to hurry to the rescue in right or wrong methods and ways.

However, with the development of community the ties of blood and family unity were becoming less important and the need and willingness to stand for the other members disappeared. Arbitrariness began with the introduction of limited preliminary, often, judicial recognition of the right to compensation for the victim's loss. The state gradually limited «offended» to the requirement to present his claim to the prior review and the implementation of executive functions was completely transferred to the state.

In Kievan Rus self-realization of rights existed almost up to the thirteenth century. The establishment of a centralized imperial state has not led to a unified system of enforcement. According to «The Law by Ivan III of 1497» the execution of court decisions has been prepared by bailiffs, nadolschykamys, and sometimes by the plaintiff, as the «Law» provided a way to recover judgments as seize of the debtor's property [10].

Subsequently, « The Code of 1649» involved a comprehensive system of ways to enforce judgments, the sale of movable and immovable property, lending the debtor to the creditor to work out debt, deductions from salary, which only applied to illitary persons (shooters) or police performance , who led enforcement actions under the governors.

During the reign of Peter the enforcement judgments authorities (ushers) become the king's officials, and enforcement began to stand out in a separate step process. In the eighteenth century on the territory of Ukraine the executive functions has often been executed by the Feasible Court, which acted on behalf of the court by its ruling. Court messenger arrived to the place where he was to enforce a judgment to recover assets of the debtor in the presence of at least three nobles, who invited the person in whose favor the decision was carried out. If the debtor resisted, they sent two messengers and invited five nobles and thus the debtor was submitted to more forceful intervention.

The process of establishing the institution of enforcement decisions according to the regulation level of bailiffs and codification of the law can be divided into several stages: Yabednyakivskyy (X-XIcent.), Mechnikivskyy (XII century), Prystavskyy (XIII-XV centuries), Magdeburg (fifteenth and early eighteenth century), Captain Ispravskyy (XVIII - early nineteenth centuries), Forensic prystavskyy (the second half of the nineteenth century - 1917), Soviet (1917- 1991) and the period of Ukrainian independence (from 1991)

The process of emergence and development of the institution of enforcement decisions in modern Ukraine should begin with an analysis of «Russkaya Pravda», which became the greatest collection of Russian laws. «Russkaya Pravda» was concluded in the XI-XII centuries and it is based on the norms of contemporary customary law. This document exists in three editions: Brief (Shorten)Pravda , large or wide (Prostrannaya) Pravda and Abridged Pravda . Each revision reflects not only a period of Ukrainian history but also the prevailing principles of justice.

Comparing «Russkaya Pravda» with similar collections of West European collections of laws, it should be noted that « Russkaya Pravda» has no distinction between criminal and civil laws, there is no division into the fields of law. Thus public law was not separated from the private [12].

The period of «Brief (Briefen)Pravda» is connected with the time of Princess Olga. The main contribution of this revision was a gradual transition from the custom of blood revenge to monetary penalties and the introduction of public service representatives – obetnykys or yabednykys. «Russkaya Pravda» indicates a gradual movement towards the feudal law. The protection of bailiffs - yabednykys and other representatives of the counsel for the plaintiff during the execution of judgments was introduced.

By this provision a collector often forced the debtor to fulfill his duty. It was the evidence of «slavery emergency", that was envisaged in «Russian Pravda». In addition, the creditor was entitled to take into his bondage, not only the debtor, but also all his family, if the debt was significant. It is interesting to know that the enslavement of merchants exempted only if the debt was due to «unfortunate» circumstances. In this case merchants have the right to delay. In general, the most common collectors were the rich, the nobles and the debtors - impoverished tradesmen and farmers.

Subsequently extended version of «Pravda», which became a source of «Brif Pravda « and «Charter of Vladimir Monomakh», introduced a new type of an executor - «tyvun boyaresk» besides yabednyk and swordsman.It completely changed the status of bailiff from military to public officials [4 , p.53].

In the second half of the twelfth century there was the third edition of «Russian Pravda» - «Brief Pravda». From the texts of Novgorod and Pskov Judicial Charter it was seen that the creditor received the right to claim the movable and immovable property of the debtor, and even the identity of the debtor [11, p. 34]. Thus, in the Pskov Judicial Charterit it was said that the debtor may be submitted to death penalty, if creditor did not object to this. However, most debtors were punished by imprisonment [5].

Since the sixteenth century in Moscovya court decisions were carried out by bailiffs. If the debtor failed to fulfill the court's decision, he became a victim of severe corporal punishment. Daily the debtor was whipped, there was a so-called «pravizh» until he fulfilled the decision. If within a year the guilty was unable to collect the required amount he had to sell his wife and children and to repay [1, p. 53-54].

The first executors of court decisions in ancient Rus were ushers who were first mentioned in The Treaty of the Great Novgorod Grand Prince Yaroslav in 1270. Ushers were officers and were intended to serve the prince. In addition to enforcement of judgments they also had to detaine the creditors at the request of the debtor and to ensure the attendance of persons who were involved to the court.

The word «usher» is seen as an ancient one and in its history there have been two executive systems that existed before 1857 and after the adoption of the Statute in 1864.

In Moscow period the significance of bailiffs was gradually falling and in the eighteenth century the post of a bailiff was finally abolished and all executive power was taken over by a joint police. The combination in one body of police and executive functions presented a lot of inconvenience and the issue of replacing the joint police body was put on the queue until the reform of 1864. Judicial Reform Institute restored bailiffs and it was an organization similar to the French.

The word «bailiff» before the XIV - XV centuries did not mean one particular position but it expressed the execution of duty, and preferably put someone on bail. Those officers on bail were called by various names: boys, Swordsman, neurs according to «Russkaya Pravda» the nobles, pozovnykys, Podvoiskys, Hodaks and later - nedilschykys (as bailiff duties were performed for a week). For different executions they kept pravedchykys, dovodchykys and then vyrnykys and throwers, sneaks, and other officials.

As we have indicated, the notion of bailiff has already come into use in the thirteenth century, mainly in treaty ratifications of the princes of Novgorod, which was an integral part of each judge, sign of his autonomy and independence from any other judges. Princes, protecting the independence of its courts, tried to protect their destinies from the entrance to their lands bailiffs from another prince. Even the great prince, sharing the fate of his principality among his children, bequeathed to his children: «... do not send a bailiff your brother's destiny.»

Each prince, patriarch, all metropolitans, bishops, communities had their nobles, closers that served as police officers and defended his area.

By the end of the fifteenth century and in the XVI - XVII centuries, in the process of strengthening the national government, it became a common custom to give monasteries and communities special police officers under the name of bailiffs who were forbidden to ride in someone's fiefdom or to allow another police officer, but a palace or royal. Although bailiffs were constantly forbidden to take money out on bail, but the arrival of an accomplice or the customer was difficult for farmers. He had to be fed, he should be paid «revenues.» That is why charters limited the number of bailiffs and closers. They were not allowed to stay long in one place, «where the closer sleeps, then he does not eat, and where he dines - then he does not sleep.»

The basis for actions was Bailiffs Memorial containing the imperative to bail the defendant or the accused. It began like this: «Memorial to a bailiff. Give him on probation so and so. «It was necessary that Memorial was signed by a clerk that it was referred to the amount of the claim and that this amount was not lower than the pay for ride, and that the clerk did not sign it without a nedilschyk. During a trip with a bailiff nedilschyk received the payment duty the amount of which depended on the number of miles. «

With the increasing of state power the national institute of bailiffs became better organized. Since the publishing of the Code of Law (Sudebnik) (1497 and 1550) a new period in the history of the enforcement proceedings began. In Sudebnik bailiffs were called nedilschyks as they carried out the duty to go and give bail weekly.

In the first Code of Law nedilschyks were still having both state and property-owning features - they went and gave bail themselves or sent their nephews and their people, they were forbidden to send extraneous people. According to the second Sudebnik they were not allowed to send their people with credentials , who had the right to send a so-called yizdtsi, or zmovnyky, scilicet those people entered into an agreement with to act as bailiffs together and under his supervision. Every nedilschyk was entitled to keep no more than seven such yizdets . A nedilschyk was responsible for all damages caused by illegal actions of his yizdets. Several extraneous people vouched for a nedilschyk when he got to the post. Sureties were fined if a nedilschyk breached his obligations.

There were the following features of a police officer in the Code of Law issued in 1497. The case began with the complaint of the plaintiff, «petition» which expressed the subject of the case, and as a rule, was verbal. Then the court appointed the bailiff and issued the credential, which indicated the price of the claim and its grounds. Besides an «urgent» charter was given. The nedilschyk was obliged to hand it to both parties or personally deliver the defendant to the court or vouch for the attendance of the defendant [10].

The forms of bailiff's activity were very diverse. To find the «brave» people and their sympathizers' capitation judicial investigations were organized. The capitation judicial investigation was also used to determine the reputation of the defendant, which was carried out not among all the people who knew him, but only among honest and disclosed ones. The capitation judicial investigation was conducted by officials in the presence of the accused.

Interrogations and torture were used in the judicial investigation as well. These types of coercion were mainly used to identify a slander and expose the crimes of others. As a rule «nedilschyks «committed tortures. If there was a slander during tortures a confrontment with a slanderer and the person who suffered from it was prescribed. If the slanderer did not confirm his testimony, he was tortured again, and the capitation judicial investigation was organized towards the person who suffered from the slander.

During the judicial investigation «nedilschyks» and other judicial officials in the presence of the «best people» inspected the scene. An operative search was used for the most serious types of crimes, particularly at political cases.

The «Decree about the Yizdets ,» which contained the description of a trip by tax duties police officers to different parts of Rus and the «Decree on nedilschyks» were included in the Code of Law.

Since 1497 the Code of Law we can say about the formation of a state court in Rus as justice institutions in Rus that clearly defined the process - the issuance to a police officer. The issuance to a police officer was the complete deprivation of liberty of the accused under the supervision and responsibility of the police officer. They were sitting in the yard or in the house of nedilschyk or in a trail.

The issuance to a police officer was a necessary containment measure for the society, which still had no the general prisons, which satisfied with the resources of individuals who were entrusted the incarceration of the accused. The prisons

foundation expressed an improvement of social development and governmental forces.

The Conciliar Code (1649) determined that the main officials during taking into custody of the accused and incarceration them were headmen (starostas), voevodas and sleuths. The executors of their instructions were a variety of individuals: first of all nedilschyky or bailiffs, but also their responsibilities of taking into custody and incarceration were carried out by officials of various ranks as well as individuals (podyachyis, tsiluvalnyks, stryapchyis, striltsis, sotnytsks, landowners and others). If a private person wanted to nab someone in flagrante delict , he could bring the police officer and witnesses, but also he could act without them.

After the Decree of 20 October 1653, many defendants, who was under the issuance to a police officer were unable to pay a special fee: pozheliznoe(iron tax) and prokorm(food tax), as a result police officers did not release them after the verdict of the release (pozheliznoe - a duty for chains and pads, which were used by police). The same law granted the right to bear the costs of their incarceration to those who wished.

The Law of the seventeenth century had several regulations on the fees, which were received by ushers for the offenders under their supervision: pozheliznoye - 3hroshes a day, prokorm - 4hroshes a day. The Decree of 1653 also mentioned prohodzheni and poverstni(for walking and riding) , when the usher took part in taking into custody and bringing to the court the accused.

All these duties should be paid by the accused if it was proved that he was guilty, or the plaintiff and the prosecutor, whose claim asserted that the accused was guilty , if the claim or allegations proved unfounded. Prokorm and pozheliznoe(food and iron) fees were extremely burdensome for the defendants.They were deprived of their liberty, and at the same time were obliged to pay a high fee for their incarceration, which was much worse for the most than to be in prison with no payment required for pozheliznoye fee .They were fed by means of alms, they collected following their guards in irons in crowded places of the city. It was necessary to represent the circulation record (from the court) not later than on the third day after its implementation, but if he did not represent it, the police officer were ordered to beat the accused «mercilessly with whips».

Ushers were responsible for the escape of the accused, who were assigned to keep the accused during the investigation and trial. In case of the escape they were given out on bail themselves in terms that they would find the runaway, otherwise they and guarantors had to repay the claims. According to the law those intended to release the accused were punished with whips and imprisonment.

If the defendant was hiding from the police officer, the police officer was obliged to «watch him in the yard during a day, and two days, and three days.» If the seized defendant escaped from the bailiff , «defenders of the people «-archers, gunners were sent with the bailiff, it was mentioned in the law.

Since March 1, 1658 instead of collecting money from convicts ushers began to get salary from the state judgment order.

During the XV - XVII centuries on the territory of Ukraine there also acted the Lithuanian statutes and the Magdeburg Law. It is necessary to mention the articles of March 1654, although they did not contain provisions of being directly related to the enforcement of judgments, but exactly this document led to the entry of Hetman state as an autonomy into Russia. Consequently in Hetmanship there was enshrined a legal system that prevailed during the National Liberation

War of 1648-1654 and was a combination of the Lithuanian Statute standards, the Magdeburg law, the regulations Hetman's authority and customary law [11, p. 142].

For a long time before the Cossack movement in Ukraine there were church-spiritual courts, which acted under the principle: «Where there are three Cossacks the third is judged by the two.» The first attempt of constitutional recognition of the inviolability of the three components of a legal society - namely, the unity and cooperation of the legislative power(elected General Council), executive power (Hetman, general officers and elected representatives from each regiment) and the judiciary, the principles of which in the history of Ukrainian state are connected with " The Constitution of Human liberties of Cossack Army «(« The Pacts and Constitutions of Laws and Freedoms of the Cossack Army «on April 5, 1710 by hetman Philip Orlik [3] Undtr the time of P. Orlik there was particularly common collecting the land used by people. It was carried by Cossack officers and the urban elite, who in cases of non-payment of debts by middle-class and poor Cossacks, took possession of more and more plots of land.

On the way of inquisitorial proceedings Ukraine has passed at the end of the seventeenth century. At that time Poland was dismembered and much of its territory was included to Russia. The Hetmanship was destroyed the Sich, the Crimea, southern and south-western lands of Ukraine were joined to Russian Empire. In Ukraine there were established some institutions similar to Russian ones and in each province there were created criminal and civil chambers (district courts) instead of city and county courts.

Judicial decisions, taken orally were written in a special book, called " a rough book». Court decisions were performed by the judicial officers. In the magistrates and town hall they were called voznys.

Conclusions

Thus, the influence of early-feudal period on reforming of the state executive service in Kievan Rus is a curious thing for the number of reasons. First of all, the formation of the modern state executive service, which is in constant development and reforming, includes new elements of the democratic process. However, putting new laws into practice a legislator must always consider the mentality and the current status of our population in order good laws do not remain only on paper.

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