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## Enforcement Actions and Their Suspension: The Concept and Legal Regulation in Ukraine, Georgia, Kazakhstan, Armenia

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**Abstract** *The purpose of this research paper is to study the concept and legal regulation of enforcement actions and their suspension in Ukraine, Georgia, Kazakhstan, Armenia. The methodology of this article is based on the application of various methods of scientific knowledge, including analytical method, deductive method, synthesis method, hermeneutic*

*method, comparative method, modeling method. The results of scientific research presented in this article contain the author's definitions of "enforcement actions", "suspension of enforcement actions", generalization of legal regulation of enforcement actions and their suspension under the laws of Ukraine, Georgia, Kazakhstan, Armenia. The practical significance of the results presented in the article lies in the possibility of taking them into account both by legal theorists, in particular those working on the subject of enforcement proceedings, and legal practitioners, in particular those involved in the enforcement of various jurisdictional decisions.*

**Keywords** Enforcement Proceedings, Legal Certainty, Executive Law, Enforcing the Decision, Enforcement Measures

## 1. Introduction

The effectiveness of the protection of violated rights seems to be one of the key elements in the human rights protection system. The enforcement of decisions of jurisdictional bodies plays not the least role in this system, which indirectly resolve a dispute or other issue in the aspect of protection of human rights. Meanwhile, the effectiveness of human rights protection should not yield to the legitimacy of such a measure<sup>1</sup>. Accordingly, we should talk about the proper legal regulation of the enforcement of decisions of jurisdictional bodies, as well as its effectiveness. The actual implementation of the decisions of jurisdictional bodies can hardly be imagined without enforcement actions - the main "bricks" that make the implementation of decisions actual in their system and, therefore, real protection of human rights<sup>2</sup>. Thus, the need for scientific understanding of the

<sup>1</sup> I. I. Zelenkova, *Procedure for Recovery of the Debtor's Property in the Enforcement Process* (Kyiv: Kyiv University of Law of the National Academy of Sciences of Ukraine, Ivano-Frankivsk University of Law named after King Danylo Halytsky, 2017).

<sup>2</sup> S.Ya. Fursa and E.I. Fursa, "Theory of Executive Process and Its Conceptual Apparatus," *Scientific Bulletin of Uzhhorod National University. Law Series* 64, (2021): 346-351.

concept and legal regulation of enforcement actions is quite logical. Incidentally, the enforcement process itself is characterized by phasing, and it can have complications associated with the action of various circumstances, which will lead to the need to stop enforcement actions<sup>3,4</sup> Therefore, in the perspective of the need for effective restoration of human rights, carried out in accordance with the procedure established by law, requires a scientific understanding of the concept and legal regulation of the suspension of enforcement actions.

It seems that the study of the concept of enforcement actions, their suspension and their legal regulation should be carried out through the prism of the legislation of several states to be able to compare them and to achieve broader generalization<sup>5</sup>. The study of the concept and legal regulation of enforcement actions and their suspension in this research paper is carried out through the prism of the legislation of Ukraine, Georgia, Kazakhstan, Armenia. The selection of these states is not random and explained as follows:

- 1) on the one hand, they existed for a long time within one state common to their peoples, respectively, their legislation (and legislation in the field of enforcement of decisions) was influenced by the same factors (compliance with Union law governing sphere of enforcement of decisions)<sup>6</sup>;
- 2) on the other hand, each of these states, after gaining (restoring) their independence began to choose the path of its development, given that in these

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<sup>3</sup> S.V. Scherbak, "Subjects of the Executive Process," *Bulletin of the Ukrainian Academy of Banking* 6, (2012): 35-38.

<sup>4</sup> B.M. Holovkin, O.V. Tavolzhanskyi, and O.V. Lysodyed, "Corruption as a Cybersecurity Threat in the New World Order," *Connections: The Quarterly Journal* 20, No.2 (2021): 75-87.

<sup>5</sup> V.V. Bogatyr, *Scientific and Practical Commentary on the "Civil Procedure Code of Ukraine" as of 01.01.2012*, (Kyiv: Publishing House "Professional", 2012).

<sup>6</sup> P.V. Makushev, "On the Terms and Conditions of Enforcement Proceedings," *Legal Scientific Electronic Journal* 1, (2015): 122-126.

states there was a reform of legislative regulation of various spheres of public relations, including enforcement of decisions of jurisdictional bodies (officials).

Each of the states mentioned in the title of the research paper has chosen its own path of development, and the development of legislation in particular. Therefore, it is even more interesting to analyze the legislative provisions of sectoral legislation on the enforcement of decisions of jurisdictional bodies in Ukraine, Georgia, Kazakhstan, Armenia in a comparative perspective.

The main aim of this research paper is to study the concept and legal regulation of enforcement actions and their suspension in Ukraine, Georgia, Kazakhstan, and Armenia; to propose the author's definition of the terms "enforcement actions", and "suspension of enforcement actions". Given the logic of the study from the singular to the general, first of all, attention is paid to the concept of enforcement actions and their subjects, and then to the concept of suspension of enforcement actions. The study of legal regulation both in the amount of the essence of enforcement actions and in terms of their suspension is carried out jointly during the consideration of relevant issues.

## 2. Method

The methodology of this article is based on the application of various methods of scientific knowledge. The analytical method of scientific knowledge allowed us to explore the approaches of various legal scholars to clarify the essence of the concept of "enforcement action". The deductive method of scientific cognition allowed the logic of research to be built. In particular, to first focus on the study of the essence of the concept of "enforcement action", and then move on to study the essence of the concept of "suspension of enforcement action". The method of synthesis allowed the most typical scientific approaches to the concept

of enforcement actions and their suspension to be generalized. In the article, the hermeneutic method of scientific knowledge has been widely applied. This method was used in the interpretation of the texts of regulations governing enforcement actions and their suspension in Ukraine, Georgia, Kazakhstan, Armenia.

The comparative method of scientific knowledge was used in comparing the provisions of regulations governing the enforcement actions and their suspension in Ukraine, Georgia, Kazakhstan, Armenia. In general, the application of the comparative method of scientific research is characterized by this article, based on its topic. The method of modelling allowed the author's recognition of the concepts that are basic for the topic of this scientific article to be formed: enforcement actions, suspension of enforcement actions. This selection of research methods allowed the problems set to be solved and the goal of study to be achieved.

### **3. Result & Discussion**

#### **A. The Concept of Enforcement Action**

Although in the legislation governing the enforcement process both in Ukraine and in some foreign countries (in particular, in Georgia, Kazakhstan, Armenia) the concept of "enforcement action" is quite common, neither the definition nor content of this concept is not disclosed by the legislator. S.V. Scherbak<sup>7</sup> notes that enforcement action should be understood as a procedural action of a state executor aimed at the application of enforcement measures or organizational action, which is determined by a separate content and is part of the proceedings (e.g., property inventory, arrest of property, seizure, etc.). It is

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<sup>7</sup> S.V. Scherbak, "The Content of the Executive Process," *Legal Bulletin of the Ukrainian Academy of Banking* 2, No.5 (2011): 15-19.

necessary to agree with the mentioned lawyer that enforcement actions are performed by the executor. The provisions of Part 1 of Art. 29 of the Law of Ukraine "On Enforcement Proceedings"<sup>8</sup>. Similar conclusions are found in the works of S.Ya. Fursa<sup>9</sup>, M.V. Kovaliv<sup>10</sup> and a number of other scholars.

Given the above, it is impossible to agree with the wording of E.A. Yatchenko<sup>11</sup> on the possibility of bodies, institutions, organizations and officials to carry out certain enforcement actions at the request or on behalf of the state executor (tax authorities, banks and other financial institutions, bodies of the State Treasury of Ukraine, etc.), although they are not enforcement. It seems that the following should be articulated regarding the last wording. There may be cases when, within the framework of open enforcement proceedings, the executor interacts with other entities - banks, entities that have information about the debtor's property, etc., to ensure the effectiveness of the decision.

However, in this case, it is a question of interaction of the executor with the corresponding subjects, instead of substitution of performance by them of enforcement actions for the executor. Enforcement actions are performed by the executor, and the subjects with whom they interact in the performance of such

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<sup>8</sup> "Law of Ukraine No. 1404-VIII "On Enforcement Proceedings," Verkhovna Rada of Ukraine, 2016. <https://zakon.rada.gov.ua/laws/show/1404-19#Text>

<sup>9</sup> S.Ya. Fursa *Laws of Ukraine "On State Enforcement Service", "On Enforcement Proceedings", "On Enforcement of Decisions and Application of the Practice of the European Court of Human Rights": Scientific and Practical Commentary*, (Kyiv: Publisher Fursa S.Ya., KNT, 2008).

<sup>10</sup> M.V. Kovaliv, "Features and Procedure for Enforcement Proceedings," *Bulletin of the Alfred Nobel University of Dnepropetrovsk. Legal Sciences Series 1*, no.4 (2013): 10-14.

<sup>11</sup> E.A. Yatchenko, "Classification of Subjects of Executive Relations," *State and Law. Legal Sciences* 56, (2012): 234-240.

enforcement actions, assist them in performing<sup>12</sup>. For example, the executor performs an executive action upon entering the housing for the eviction of the debtor, the police representatives present are ensuring public order, but they do not take the enforcement action, they contribute to it. Here it is worth agreeing with S.V. Scherbak<sup>13</sup> on the fact that the state executor, being the main subject of the enforcement process, directly conducts enforcement actions.

According to S.Ya. Fursa and E.I. Fursa<sup>14</sup>, enforcement action is the action of the executor or persons involved in enforcement proceedings, aimed at enforcing the decision or which should facilitate or ensure the execution of the decision. From the above generalization, it can be seen that the above legal scholars determine the executor and the persons involved in the enforcement proceedings as the subjects of enforcement actions. In this perspective, it is advisable to refer to the provisions of Art. 24 of the Law of Ukraine "On Enforcement Proceedings", in particular, Part 1: Enforcement actions are carried out by the state executor, Part 4: The executor has the right to conduct enforcement actions<sup>15</sup>. Accordingly, the subject of enforcement actions, the above legislative requirements determine the executor. In addition, in paragraph 2 item 7 of section II of the Instruction on the organization of enforcement of decisions<sup>16</sup>, it is stated that the executor controls the commission of actions by the persons involved. This seems to be another

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<sup>12</sup> A.V. Rusnak, O.V. Pulianovych, Y.H. Kozak, A. Gribincea and N.Y. Lytvyn, "Innovative priorities of Ukraine in the context of global economic trends," *Journal of Advanced Research in Law and Economics* 11, No.4 (2020): 1376-1387.

<sup>13</sup> S.V. Scherbak, "Subjects of The Executive Process," 37.

<sup>14</sup> S.Ya. Fursa and E.I. Fursa, "Theory of Executive Process and Its Conceptual Apparatus," 348.

<sup>15</sup> Verkhovna Rada of Ukraine, "Law of Ukraine No. 1404-VIII "On Enforcement Proceedings."

<sup>16</sup> "Instruction On the Organization of Enforcement of Decisions: Order of The Ministry of Justice of Ukraine Dated 02.04.2012 No. 512/5 (As Amended By the order of the Ministry of Justice of Ukraine 29.09.2016 No. 2832/5)," Ministry of Justice of Ukraine, 2012. <https://zakon.rada.gov.ua/laws/show/z0489-12#Text>

argument in favor of the fact that the perpetrator should be determined solely by the perpetrator.

The conclusion that the subject of enforcement actions is the executor, can be reached by analyzing certain provisions of Georgian law on enforcement proceedings. In particular, the provisions of the Law of Georgia "On Enforcement Proceedings" testify in favor of this. Part 4 and Part 12 of Art. 17: The executor while conducting enforcement actions has the right to enter the home of the debtor. The executor has the right to take enforcement actions at any time, including during non-working hours and holidays, if necessary, based on the circumstances of a particular enforcement proceedings<sup>17</sup>.

The Law of the Republic of Kazakhstan "On Enforcement Proceedings and the Status of Bailiffs" uses both the concept of "enforcement actions" and "enforcement measures". In accordance with Part 1 of Art. 7 of the above normative legal act, the application of enforcement measures for enforcement documents listed in Article 9 of this Law is entrusted to bailiffs<sup>18</sup>. Also, the Law of the Republic of Kazakhstan "On Enforcement Proceedings and the Status of Bailiffs" states that bailiff was obliged to take measures to ensure the enforcement documents (Part 1 of Article 32). If necessary certain enforcement actions and (or) application of certain enforcement measures in the territory not covered by the powers of the state bailiff, they have the right to instruct the relevant state bailiff to conduct certain enforcement actions and (or) apply certain enforcement measures (Part 1

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<sup>17</sup> "Law of Georgia No. 1908 "On Enforcement Proceedings," Parliament of Georgia, 1999. <https://matsne.gov.ge/ru/document/view/18442?publication=104>

<sup>18</sup> "Law of the Republic of Kazakhstan No. IV "On Enforcement Proceedings and the Status of Bailiffs," Parliament of the Republic of Kazakhstan, 2010. [https://online.zakon.kz/Document/?doc\\_id=30617206&doc\\_id2=30617206#pos=2;-98&pos2=310;-68](https://online.zakon.kz/Document/?doc_id=30617206&doc_id2=30617206#pos=2;-98&pos2=310;-68)



Article 32)<sup>19</sup>. From the above it can be generalized that the subject of enforcement actions, the application of enforcement measures under the laws of the Republic of Kazakhstan is a bailiff. The Law of the Republic of Armenia “On Enforcement of Judicial Acts” also stipulates that the subject of enforcement actions is a bailiff (in particular, see Article 34 of the above-mentioned legal act: Bailiff must conduct enforcement actions)<sup>20</sup>.

However, the law may provide for cases of execution of decisions by other bodies and institutions (Article 6 of the Law of Ukraine “On Enforcement Proceedings”<sup>21</sup>, i.e., different from the executor). Article 6 of the Law of Ukraine “On Enforcement Proceedings” are not enforcement bodies, and their execution of decisions takes place not within the enforcement proceedings, but in completely different processes. For instance, the money recovery from state and local budgets is in accordance with the Procedure for the execution of decisions on the collection of funds from state and local budgets or debtors<sup>22</sup> exclusively by the Treasury. This is not an enforcement process, enforcement proceedings are not opened, the executor does not appear as a subject. Accordingly, when it comes to the implementation of decisions outside the enforcement process, it is impossible to talk about enforcement actions, because the latter are carried out within the enforcement proceedings. In this context, P.V. Makushev<sup>23</sup> points out that until the

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<sup>19</sup> Parliament of the Republic of Kazakhstan, “Law of the Republic of Kazakhstan No. IV “On Enforcement Proceedings and the Status of Bailiffs.”

<sup>20</sup> “Law of the Republic of Armenia “On Enforcement of Judicial Acts,” RA National Assembly, 1998. <https://www.arlis.am/documentview.aspx?docid=62800>

<sup>21</sup> Verkhovna Rada of Ukraine, “Law of Ukraine No. 1404-VIII “On Enforcement Proceedings.”

<sup>22</sup> “Procedure for execution of decisions on recovery of state and local budgets or debtors: Resolution of the Cabinet of Ministers of Ukraine of August 3, 2011 No. 845 (as amended by the Cabinet of Ministers of Ukraine of January 30, 2013 No. 45),” Cabinet of Ministers of Ukraine, 2011. <https://zakon.rada.gov.ua/laws/show/845-2011-п/conv/print>

<sup>23</sup> P.V. Makushev, “On the Terms and Conditions of Enforcement Proceedings,” 123.

enforcement proceedings are initiated, no enforcement action can be taken to enforce the decision, which guarantees the parties to the enforcement proceedings only within the framework of the process provided by law. Therefore, executive actions take place in the executive process and are conducted by the executor. There are no prescriptions similar to, or at least substantially similar to the prescriptions of Art. 6 of the Law of Ukraine "On Enforcement Proceedings" (enforcement of decisions by other bodies and institutions) legislation on enforcement proceedings in Georgia, Kazakhstan, Armenia.

Judicial practice is interesting in terms of enforcement actions. Thus, in the decision of the Supreme Economic Court of Ukraine of 12.01.2016 in case No. 20/49<sup>24</sup>, it states that the enforcement fee is levied on the basis of the decision of the state executor, if the debtor within the prescribed period of the decision is not voluntarily executed, and the state executor took actions aimed at enforcement (a similar legal position set out by the Supreme Court of Ukraine 28.01.2015 in case No. 924/205/13-d). According to the provisions of Article 32 of the Law (meaning the Law of Ukraine "On Enforcement Proceedings" as amended at the time of the case), measures to enforce decisions are recovery of funds and other property (property rights) of the debtor, including if they belong to the debtor; application for recovery of wages (earnings), income, pension, scholarship of the debtor; seizure from the debtor and transfer to the debt collector of certain items specified in the decision; other measures provided by the decision. As established by the courts of previous instances, from the moment of the impugned decision of 20.10.2011 on the recovery of the debtor's enforcement fee until the date of repayment of the debtor's debt in the amount of UAH 33,768,481.51 in full, actions

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<sup>24</sup> "Resolution of the Supreme Economic Court of Ukraine in Case No. 20/49," Supreme Economic Court of Ukraine, 2016. <http://www.reyestr.court.gov.ua/Review/54885040>

aimed at enforcing the court decision provided for in Article 32 of the Law were not taken by the state executor. Thus, the court of cassation identified actions aimed at enforcement of the court decision and enforcement measures.

There is also no consensus in the science of the enforcement process on a clear delineation of the concepts of enforcement measures and enforcement actions. For example, I.I. Zelenkova<sup>25</sup> defines as enforcement measures the powers of the executor to enforce the decision provided by law, as well as measures to influence the debtor, which should encourage them to execute the decision and not create obstacles to its execution. But O. Vrublevskyy<sup>26</sup> defines the list of possible or obligatory ways of activity of the state executor with the participation of necessary persons (parties, experts, translator, specialist) aimed at impartial, timely and complete execution of the decision as enforcement actions. It seems that enforcement measures are a broader concept than enforcement actions, as the former set the vector and purpose of the latter. Within the relevant measure of enforcement of the decision, depending on its content, the executor conducts the appropriate range of enforcement actions by creating conditions for full, impartial, timely enforcement of the decision.

## **B. Suspension of Enforcement Actions**

The European Court of Human Rights has noted in its case law that, in principle, the system of suspension of the execution of judgments is not criticized

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<sup>25</sup> Zelenkova, *Procedure for Recovery of The Debtor's Property in The Enforcement Process*, 87.

<sup>26</sup> O. Vrublevskyy, *You Won the Lawsuit: What's Next? A Practical Guide to Questions and Answers*, (Kyiv: "Lesta", 2007), 66.

as such<sup>27</sup>. Y.V. Bilousov<sup>28</sup> points out that the terms of enforcement proceedings are the terms of the existence of rights, obligations and exercise of powers of the subjects of power in relation to enforcement proceedings. And if the Ukrainian legislation on enforcement proceedings does not contain general deadlines for enforcement of decisions, but contains deadlines for specific enforcement actions, the legislation on enforcement proceedings of some foreign countries provides for such general deadlines. For example, Art. 39 of the Law of the Republic of Kazakhstan "On Enforcement Proceedings and the Status of Bailiffs" provides that enforcement documents by the bailiff must be completed no later than two months from the date of initiation of enforcement proceedings, except for enforcement documents on periodic penalties and when other deadlines are established by legislative acts. According to the executive documents related to the demolition of buildings, the implementation of technological operations, as well as executive documents on foreclosures that require property appraisal with the involvement of specialists, examination, sale, search of the debtor's property, execution must be completed no later than within four months. Other deadlines not provided for in this Law may be stipulated in writing between the claimant and the private bailiff, and may not exceed six months<sup>29</sup>. The prescriptions of Art. 34 of the Law of the Republic of Armenia "On Enforcement of Judicial Acts" provides for a relatively short total period of enforcement of the decision that is two months (the bailiff

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<sup>27</sup> "Judgment of the European Court of Human Rights of 24 June 2004 in the Case of Zhovner v. Ukraine (application no. 56848/00)," ECtHR, 2004. [https://zakon.rada.gov.ua/laws/show/980\\_221?find=1&text=зупин#w12](https://zakon.rada.gov.ua/laws/show/980_221?find=1&text=зупин#w12)

<sup>28</sup> Y.V. Bilousov, "The Concept, Purpose and Classification of Terms in Enforcement Proceedings," *University Scientific Notes*, 57 (2016): 64-79.

<sup>29</sup> Parliament of the Republic of Kazakhstan, "Law of the Republic of Kazakhstan No. IV "On Enforcement Proceedings and the Status of Bailiffs."

must take enforcement action within two months from the date of receipt of the writ of execution, except when the law provides for its immediate execution)<sup>30</sup>.

In this perspective, the suspension of enforcement actions under the legislation on enforcement proceedings in Ukraine is a particularly interesting phenomenon, because it is not about stopping the enforcement process as a whole, but about stopping the enforcement actions. The grounds for suspension of enforcement actions are given in Art. 34 of the Law of Ukraine "On Enforcement Proceedings"<sup>31</sup>. Interestingly, the legislation on enforcement proceedings in Georgia provides for the possibility of suspending a specific enforcement action. In particular, the Chairman of the National Enforcement Bureau is entitled to suspend the impugned enforcement action on their own initiative or at the request of a party to the enforcement proceedings (interested person) (Part 1 of Article 18-3 of the Law of Georgia "On Enforcement Proceedings"). It is also of scientific and practical interest that under Georgian law, the court may, at the request of the debtor, temporarily suspend one or another enforcement measure for a period not exceeding 3 months, if after 6 months the circumstances related to with an emergency situation at the place of execution (illness, death of the debtor or a member of his family or other special circumstance), in which the continuation of the relevant actions contradicts generally accepted principles and norms of morality (Part 1-2 of Article 31 of the Law of Georgia "On Enforcement Proceedings")<sup>32</sup>.

If the enforcement actions are suspended, it should be noted that the rights and obligations, powers of the subjects of legal relations that occur in the enforcement of the decision exist, but the implementation / execution of some of

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<sup>30</sup> RA National Assembly, "Law of the Republic of Armenia "On Enforcement of Judicial Acts."

<sup>31</sup> Verkhovna Rada of Ukraine, "Law of Ukraine No. 1404-VIII "On Enforcement Proceedings."

<sup>32</sup> Parliament of Georgia, "Law of Georgia No. 1908 "On Enforcement Proceedings."

them by the executor is not carried out or is carried out with certain features. For example, during the period of suspension of enforcement actions, the executor has the right to apply to the court in the manner prescribed by the Law of Ukraine "On Enforcement Proceedings", as well as take measures to search for the debtor (their property) or inspect their property. Here it would be more accurate to say that the executor does not "have the right" to conduct certain executive, but can exercise such a right, despite the fact that the enforcement of actions is suspended. It also follows from the above that the suspension of enforcement actions will correspond to the peculiarities of the executor because, as mentioned above, it is not the enforcement process that stops, but enforcement actions, and enforcement actions (as stated above) are taken by the executor.

The fact that the legislation on the executive process of Ukraine provides for the possibility of suspension not the whole enforcement process, but conducting of enforcement actions (and not all), significantly distinguishes it from a similar institution that exists in civil procedural law - suspension of proceedings. Suspension of proceedings can be understood as the temporary suspension of proceedings for an indefinite period, when certain objective circumstances specified in the law occur<sup>33</sup>; procedural action, which has the effect of suspending of all procedural actions until the resumption of proceedings<sup>34</sup>; a break in the trial for an indefinite period in cases expressly provided by law<sup>35</sup>.

At the same time, the legislation on enforcement proceedings in Armenia and Kazakhstan provides grounds for suspending enforcement proceedings (rather

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<sup>33</sup> S.Ya. Fursa, *Civil Procedure Code of Ukraine: Scientific and Practical Commentary. Procedural Sciences Series*, (Kyiv: Publisher Fursa S.Ya., 2010).

<sup>34</sup> V.V. Bogatyr, "Scientific and Practical Commentary on the "Civil Procedure Code of Ukraine" as of 01.01.2012," 57.

<sup>35</sup> V.V. Komarov, *Course of Civil Process: Textbook*, (Kharkiv: Pravo, 2011).

than enforcement actions) - Art. 37-39 of the Law of the Republic of Armenia "On Enforcement of Judicial Acts"<sup>36</sup>, Art. 42, 44 of the Law of the Republic of Kazakhstan "On Enforcement Proceedings and the Status of Bailiffs"<sup>37</sup>. The Georgian law on enforcement proceedings provides grounds for suspending enforcement (see Article 36 of the Georgian Law on Enforcement Proceedings)<sup>38</sup>. It seems that the suspension of enforcement actions and the suspension of enforcement proceedings / suspension of enforcement do not coincide in content - at least in these phenomena. In the first case, it is a question of suspension of executive actions (what the executor does<sup>39</sup>), and not the whole executive process; and in the case of suspension of enforcement proceedings / suspension of enforcement, the enforcement process is suspended for a certain period of time - the process of enforcement of a certain decision of the jurisdiction within the framework of open (initiated) enforcement proceedings.

Given the above, the suspension of enforcement actions can be understood as temporary non-performance by the executor of actions provided by law on enforcement proceedings (except in cases directly established by law) aimed at implementing certain enforcement measures by creating conditions for full, impartial, timely enforcement decisions in connection with the circumstances directly determined by law (grounds for suspension of enforcement actions).

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<sup>36</sup> RA National Assembly, "Law of the Republic of Armenia "On Enforcement of Judicial Acts."

<sup>37</sup> Parliament of the Republic of Kazakhstan, "Law of the Republic of Kazakhstan No. IV "On Enforcement Proceedings and the Status of Bailiffs."

<sup>38</sup> Parliament of Georgia, "Law of Georgia No. 1908 "On Enforcement Proceedings."

<sup>39</sup> S. Kozlovskiy, A. Butyrskiy, B. Poliakov, A. Bobkova, R. Lavrov and N. Ivanyuta, "Management and comprehensive assessment of the probability of bankruptcy of Ukrainian enterprises based on the methods of fuzzy sets theory," *Problems and Perspectives in Management* 17, No.3 (2019): 370-381.

Suspension of enforcement actions significantly affects the dynamics of the enforcement process, because although the law does not provide a general period of enforcement of the decision, and the grounds for suspension of enforcement actions are clearly provided by law, suspension of enforcement actions prolongs the actual execution of the decision, freedoms, interests of individuals<sup>40</sup>. On the other hand, the application of suspension of enforcement actions is necessary to ensure clarity and continuity of the enforcement process. For example, one of the grounds for suspension of enforcement actions is to apply to the court to replace the retired party with a successor - without resolving the issue of replacing the enforcement party of the proceedings, it is not clear at all from whom or in whose favor to take the execution of the decision, and whether to conduct it at all. It may turn out that the successor is absent, so the enforcement proceedings should be terminated.

The existence of the terms of execution of a court decision in the legislation of some countries is connected with the observance of the principle of legal certainty, one of the requirements of which is the finality of the court decision and the obligation to enforce it. Certainty in the legal status of the parties, the dispute between which has already been resolved by the court, is achieved through the actual implementation of the decision and the restoration of rights and freedoms that have been violated. In the case law of the European Court of Human Rights, in particular in the case of *Petukhov v. Ukraine*, the lack of effective judicial protection, which includes the actual execution of a court decision, even if there are objective grounds, is considered a violation of legal certainty. Based on Art. 6

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<sup>40</sup> L. Johns, "The Design of Enforcement: Collective Action and The Enforcement of International Law," *Journal of Theoretical Politics* 31, No.4 (2019): 543-567.



of the Convention, the state is obliged to guarantee the execution of a court decision.

In the context of the situation with quarantine restrictions (due to COVID-19), it should be noted that the introduction of quarantine is not a ground for non-enforcement of a court decision / decision of another body (official) by the debtor. Prescriptions of Art. 34 of the Law of Ukraine "On Enforcement Proceedings" provide an exhaustive list of grounds for suspension of enforcement actions, including extraordinary circumstances due to which it is currently impossible to enforce the decision (in particular, due to quarantine restrictions) are not defined. Such extraordinary circumstances are not defined as grounds for suspension of enforcement proceedings and under the legislation on enforcement proceedings of Armenia, Kazakhstan.

It seems that in such circumstances it would be appropriate to apply to the court to resolve the issue of postponing the execution of a court decision, changing the method and procedure of execution of a court decision (Article 435 of the CPC of Ukraine, 331 of the CPC of Ukraine). However, the above instructions refer to the possibility of postponing or deferring the execution, changing the method and procedure of execution of the court decision. At the request of the claimant, the executor may postpone the execution of the decision (except for the court decision), in the circumstances provided for in Part 1 of Art. 33 of the Law of Ukraine "On Enforcement Proceedings", which makes a decision. However, it is a question of existence of the corresponding statement of the collector. And what should the debtor do who cannot execute the decision of the non-judicial jurisdiction / official (for example, the executive inscription of the notary) in the absence of the statement of the collector? The question remains open. For the period of consideration by the court of the application for postponement of execution, change or establishment of the method and procedure of execution of

the court decision is not suspended (there is no such basis in the provisions of Article 34 of the Law of Ukraine "On Enforcement Proceedings"). Although in view of the actual time limits for consideration of cases in domestic courts, this would be appropriate.

By the way, for the period of consideration by the court of the application for postponement of execution, change or establishment of the method and procedure of execution of the court decision, the suspension of enforcement proceedings is not provided, according to the provisions of Art. 37-39 of the Law of the Republic of Armenia "On Enforcement of Judicial Acts"<sup>41</sup>, Art. 42, 44 of the Law of the Republic of Kazakhstan "On Enforcement Proceedings and the Status of Bailiffs"<sup>42</sup>.

### **C. Enforcement actions within the scientific discussion**

The issue of enforcement actions and their suspension have been the subject of study by many legal scholars. P.V. Makushev<sup>43</sup> drew attention to the time when enforcement actions are possible - after the opening of enforcement proceedings. In particular, the scholar notes that until enforcement proceedings are instituted, no enforcement action can be taken to enforce the decision. This is an important scientific remark, because here we can trace the correlation of scientific categories of the executive process, in particular, it is clear that the executive action, being a category of the executive process, should take place within the executive process, not after it. The correlation of the categories of the respective jurisdictional process seems to characterize its versatility, structure and integrity.

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<sup>41</sup> RA National Assembly, "Law of the Republic of Armenia "On Enforcement of Judicial Acts."

<sup>42</sup> Parliament of the Republic of Kazakhstan, "Law of the Republic of Kazakhstan No. IV "On Enforcement Proceedings and the Status of Bailiffs."

<sup>43</sup> P.V. Makushev, "On the Terms and Conditions of Enforcement Proceedings," 124.

S.V. Scherbak<sup>44</sup> very accurately and precisely identified the subject of enforcement actions that the state executor is. In particular, they note that the state executor, being the main subject of the enforcement process, directly takes enforcement actions. However, given the time when the relevant scientific developments of the scholar were made, this statement could have been accepted without appeal. Meanwhile, given the realities of today - according to current legislation on the organization and enforcement of decisions of jurisdictional bodies, the subjects of direct enforcement are both public and private executors. Given the above, it is impossible to unequivocally agree with the wording of S.Ya. Fursa and E.I. Fursa<sup>45</sup> that the subjects of enforcement actions are the executor and the persons involved in the enforcement proceedings (such a conclusion can be deduced from the statement of the above legal scholars that the enforcement action is the action of the executor or persons involved in the enforcement proceedings which should facilitate or ensure the implementation of the decision<sup>46</sup>).

For the same reason, one cannot unequivocally agree with E.A. Yatchenko<sup>47</sup> on the possibility of bodies, institutions, organizations and officials to take certain enforcement actions at the request or on behalf of the state executor (tax authorities, banks and other financial institutions, bodies of the State Treasury of Ukraine, etc.), although they are not enforcement bodies. The approach to the

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<sup>44</sup> S.V. Scherbak, "Subjects of the Executive Process," 37.

<sup>45</sup> S.Ya. Fursa and E.I. Fursa, "Theory of Executive Process and Its Conceptual Apparatus," 350.

<sup>46</sup> M.O. Ovcharenko, O.V. Tavolzhanskyi, T.M. Radchenko, K.D. Kulyk and N.V. Smetanina, "Combating Illegal Drugs Trafficking Using the Internet by Means of the Profiling Method," *Journal of Advanced Research in Law and Economics* 11, No.4 (2020): 1296-1304.

<sup>47</sup> E.A. Yatchenko, "Classification of Subjects of Executive Relations," 236.

vision of the subjects of enforcement actions may be different<sup>48</sup>. A variety of scientific approaches and points of view enriches legal science, and in particular, the science of executive law; and the most valuable, according to the authors of this scientific article, is the justification of such approaches and tolerance for the existence of opposing points of view. In view of this, the vision of the authors of the subjects of executive actions is a scientific discussion - the arguments in favor of the author's vision, and disagreement with the views of other scholars expressed in respect for such lawyers, their arguments and scientific schools.

The analysis of the legislation of different states, in particular, Ukraine, Georgia, Kazakhstan, Armenia in the regulation of enforcement actions, the subjects of their commission and the order of suspension is carried out in respect for the legal tradition and legislation of the state. According to the authors of this research paper, the main purpose of such analysis is to study the experience of different countries in the relevant field of legal relations for the possibility of adopting the positive aspects of such experience in Ukraine. Suspension of enforcement actions is an important tool to ensure a balance between the rights of its participants, the parties in particular. Thus, if it is in the interests of the claimant to enforce the decision as soon as possible through enforcement actions, it does not mean that the rights of the debt collector have priority over the debtor's rights (in particular, the lawfulness of enforcement proceedings circumstances - grounds for suspension of enforcement actions).

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<sup>48</sup> O.M. Yaroshenko, N.M. Vapnyarchuk, S.V. Lozovoi, G.O. Yakovleva and O. A. Yakovlyev, "General-compulsory Medical Insurance: World Experience," *Journal of Advanced Research in Law and Economics* 9, No.5 (2018): 1829-1838.

In this context, the point of Y.V. Bilousov<sup>49</sup> deserves particular attention: the terms of enforcement proceedings are defined by the rules of enforcement proceedings, obligations and exercise of powers of subjects in relation to enforcement proceedings, because within the terms of enforcement proceedings, enforcement actions are taken, and if provided by law grounds – they are suspended. The issue of enforcement decisions terms is given considerable attention in the legislation of Ukraine, Georgia, Kazakhstan and Armenia in the field of organization and implementation of enforcement of decisions of various jurisdictions and officials, and the subject of terms in executive proceedings is directly correlated with the terms of executive actions and their suspension. It is impossible not to pay attention to the fact that depending on the jurisdiction, the categorical apparatus is also different.

In particular, according to the Ukrainian legislation on enforcement proceedings, enforcement actions may be suspended; Georgian legislation provides for the possibility of suspending a particular specific enforcement action, suspending enforcement; the legislation of Armenia and Kazakhstan contains grounds for suspending enforcement proceedings. The study of legislative requirements of different states in terms of enforcement of decisions is particularly valuable, including studying approaches to the categorical apparatus of executive law, because such approaches cannot only be studied from a scientific point of view, but also be borrowed for implementation in domestic regulations, acts regulating the sphere of organization and enforcement of decisions of jurisdictional bodies and officials.

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<sup>49</sup> Y.V. Bilousov, "The Concept, Purpose and Classification of Terms in Enforcement Proceedings," 69.

## 4. Conclusion

Given the purpose and objectives of this scientific article, it is worth summarizing the following. The concept of enforcement actions can be defined as follows: these are the actions of the executor provided by the legislation on enforcement proceedings, aimed at implementing certain measures of enforcement of the decision by creating conditions for full, impartial, timely enforcement of the decision. The concept of suspension of enforcement actions can be defined as temporary non-performance by the executor of actions provided by the law on enforcement proceedings (except for cases directly established by law) aimed at implementing certain enforcement measures by creating conditions for full, impartial, timely enforcement. in connection with the circumstances directly determined by law (grounds for suspension of enforcement actions). Given that the law of different states is the entity authorized to directly enforce decisions that is called differently - the executor, bailiff, etc., for the purpose of applying the above concepts, the entity authorized to directly enforce decisions should be understood under the "executor", regardless of what it is called in a particular state. Legislation in enforcement proceedings may provide for suspension of enforcement actions (in particular, the legislation of Ukraine on enforcement proceedings), may provide for suspension of enforcement proceedings (in particular, legislation on enforcement proceedings of the Republic of Kazakhstan, the Republic of Armenia), and may provide for suspension of enforcement (in particular, legislation on enforcement proceedings of Georgia). It is not identical because the amount of the suspension is different (in particular, the suspension of enforcement actions is the suspension of enforcement actions i.e., what is done by the executor) and not all of them. In case of suspension of enforcement proceedings / suspension of enforcement, it is a question of stopping the dynamics of all

enforcement of the decision within the framework of certain enforcement proceedings.

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The authors state that there is no conflict of interest in the publication of this article.

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## 7. References

- Bilousov, Y.V. "The Concept, Purpose and Classification of Terms in Enforcement Proceedings." *University Scientific Notes* 57, (2016): 64-79.
- Bogatyry, V.V. *Scientific and Practical Commentary on the "Civil Procedure Code of Ukraine" as of 01.01.2012*. Kyiv: Publishing House "Professional", 2012.
- Cabinet of Ministers of Ukraine. "Procedure for Execution of Decisions on Recovery of State and Local Budgets or Debtors: Resolution of The Cabinet of Ministers of Ukraine of August 3, 2011 No. 845 (as Amended by The Cabinet of Ministers of Ukraine of January 30, 2013 No. 45)," 2011. Retrieved from <<https://zakon.rada.gov.ua/laws/show/845-2011-п/conv/print>>
- ECtHR. "Judgment of the European Court of Human Rights of 24 June 2004 in the CASE of Zhovner v. Ukraine (Application No. 56848/00)," 2004. Retrieved from <[https://zakon.rada.gov.ua/laws/show/980\\_221?find=1&text=зупин#w12](https://zakon.rada.gov.ua/laws/show/980_221?find=1&text=зупин#w12)>
- Fursa, S.Ya. and Fursa, E.I. "Theory of Executive Process and Its Conceptual Apparatus." *Scientific Bulletin of Uzhhorod National University. Law Series* 64, (2021): 346-351.
- Fursa, S.Ya. *Civil Procedure Code of Ukraine: Scientific and Practical Commentary*.

- Procedural Sciences Series*. Kyiv: Publisher Fursa S.Ya., 2010.
- Fursa, S.Ya. *Laws of Ukraine "On State Enforcement Service", "On Enforcement Proceedings", "On Enforcement of Decisions and Application of the Practice of the European Court of Human Rights": scientific and practical commentary*. Kyiv: Publisher Fursa S.Ya., KNT, 2008.
- Holovkin, B.M., Tavolzhanskyi, O.V. and Lysodyed, O.V. "Corruption as a Cybersecurity Threat in the New World Order," *Connections: The Quarterly Journal* 20, No.2 (2021): 75-87.
- Johns, L. "The Design of Enforcement: Collective Action and The Enforcement of International Law," *Journal of Theoretical Politics* 31, No.4 (2019): 543-567.
- Komarov, V.V. *Course of Civil Process: Textbook*. Kharkiv: Pravo, 2011.
- Kovaliv, M.V. "Features and Procedure For Enforcement Proceedings." *Bulletin of the Alfred Nobel University of Dnepropetrovsk. Legal Sciences Series* 1, No.4 (2013): 10-14.
- Kozlovskyi, S., Butyrskyi, A., Poliakov, B., Bobkova, A., Lavrov, R. and Ivanyuta, N. "Management and comprehensive assessment of the probability of bankruptcy of Ukrainian enterprises based on the methods of fuzzy sets theory," *Problems and Perspectives in Management* 17, No.3 (2019): 370-381.
- Makushev, P.V. "On the Terms and Conditions of Enforcement Proceedings." *Legal Scientific Electronic Journal* 1, (2015): 122-126.
- Ministry of Justice of Ukraine. "Instruction on the Organization of Enforcement of Decisions: Order of the Ministry of Justice of Ukraine Dated 02.04.2012 No. 512/5 (as Amended by the Order of the Ministry of Justice of Ukraine 29.09.2016 No. 2832/5)," 2012. Retrieved from <<https://zakon.rada.gov.ua/laws/show/z0489-12#Text>>
- Ovcharenko, M.O., Tavolzhanskyi, O.V., Radchenko, T.M., Kulyk K.D. and Smetanina, N.V. "Combating Illegal Drugs Trafficking Using the Internet by Means of the Profiling Method," *Journal of Advanced Research in Law and Economics* 11, No.4 (2020): 1296-1304.
- Parliament of Georgia. "Law of Georgia No. 1908 "On Enforcement Proceedings," 1999. Retrieved from



- <<https://matsne.gov.ge/ru/document/view/18442?publication=104>>  
Parliament of the Republic of Kazakhstan. "Law of the Republic of Kazakhstan No. IV "On Enforcement Proceedings and the Status of Bailiffs," 2010. Retrieved from <[https://online.zakon.kz/Document/?doc\\_id=30617206&doc\\_id2=30617206#pos=2;-98&pos2=310;-68](https://online.zakon.kz/Document/?doc_id=30617206&doc_id2=30617206#pos=2;-98&pos2=310;-68)>
- RA National Assembly. "Law of the Republic of Armenia "On Enforcement of Judicial Acts," 1998. Retrieved from <<https://www.arlis.am/documentview.aspx?docid=62800>>
- Rusnak, A.V., Pulianovych, O.V., Kozak, Y.H., Gribincea A. and Lytvyn, N.Y. "Innovative priorities of Ukraine in the context of global economic trends," *Journal of Advanced Research in Law and Economics* 11, No.4 (2020): 1376-1387.
- Scherbak, S.V. "Subjects of the Executive Process." *Bulletin of the Ukrainian Academy of Banking* 6, (2012): 35-38.
- Scherbak, S.V. "The Content of the Executive Process." *Legal Bulletin of the Ukrainian Academy of Banking* 2, No.5 (2011): 15-19.
- Supreme Economic Court of Ukraine. "Resolution of the Supreme Economic Court of Ukraine in case No. 20/49." 2016. <http://www.reyestr.court.gov.ua/Review/54885040>
- Verkhovna Rada of Ukraine. "Law of Ukraine No. 1404-VIII "On Enforcement Proceedings," 2016. Retrieved from <<https://zakon.rada.gov.ua/laws/show/1404-19#Text>>
- Vrublevskyy, O. *You Won the Lawsuit: What's Next? A Practical Guide to Questions and Answers*. Kyiv: "Lesta", 2007.
- Yaroshenko, O.M., Vapnyarchuk, N.M., Lozovoi, S.V., Yakovleva, G.O. and Yakovlyev, O. A. "General-compulsory Medical Insurance: World Experience," *Journal of Advanced Research in Law and Economics* 9, No.5 (2018): 1829-1838.
- Yatchenko, E.A. "Classification of Subjects of Executive Relations." *State and Law. Legal Sciences* 56, (2012): 234-240.
- Zelenkova, I.I. *Procedure for Recovery of the Debtor's Property in the Enforcement*

*Process*. Kyiv: Kyiv University of Law of the National Academy of Sciences of Ukraine, Ivano-Frankivsk University of Law named after King Danylo Halytsky, 2017.

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*Every society gets the kind of criminal it deserves. What is equally true is that every community gets the kind of law enforcement it insists on.*

**Robert Kennedy**

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