

ENFORCEMENT OF COURT DOCUMENTS IN CIVIL CASES: ON THE EXAMPLE OF THE LEGISLATION OF THE REPUBLIC OF UZBEKISTAN

Written by Esanova Zamira Normurotovna

Professor of Tashkent State Law University

Abstract

The article deals with the Institute of Judicial Documents in Civil Procedure Law of the Republic of Uzbekistan, procedural issues of general and immediate execution of court documents, voluntary and compulsory execution of court documents in civil cases, the order and methods of execution, the main and important types of court documents as a decision, requirements to it, components of the decision, features of its execution, some measures in the field of enforcement of court documents mmolar and opinions on their solution.

Introduction

It is natural that the level of indebtedness will increase as individuals and legal entities fail to fulfill their obligations on time or at all, as economic indicators increase, entrepreneurship develops, civil law structures increase, and the practice of concluding contracts and agreements grows. In this regard, the number of appeals to the courts (civil, economic, as well as arbitration courts, etc.) is growing. As a general rule, enforcement of documents issued by courts and other bodies is completed through enforcement proceedings.

In world practice, each country has its own organizational and legal form, mechanism and method of conducting enforcement proceedings and improving this area. These include the Bureau of Enforcement, the Federal Bailiff Service, the Marshall Service, the Territorial and National Chambers, the Agency, the Department, and others. In the experience of foreign countries, there are state and non-state bailiffs, bailiffs in Germany, bailiffs in Israel, Marshals

in the United States, law enforcement agencies in France, Belgium, Luxembourg and so on. private individuals (performers) with a special license.

In France, the Netherlands, Luxembourg, Slovenia, Italy, Poland, Romania, Slovakia, Estonia, Latvia, Lithuania, enforcement is not carried out by civil servants, but by private executors under a license issued by the competent authority (justice). are subordinated to the territorial and national chambers to which the governing authority is delegated.

In China, this activity is carried out by bailiffs, enforcement actions are regulated by the Chinese Code of Civil Procedure (Section 3. Enforcement Proceedings (Chapter 21, Articles 217-231)).

In Russia, the Federal Bailiff Service is run by bailiffs. In Kazakhstan, on April 2, 2010, the Law "On Enforcement Proceedings and the Status of Bailiffs" was adopted, which contains special provisions in Article 131 "Requirements for public bailiffs" and Article 140 "Private bailiffs in the Republic of Kazakhstan."

In Armenia, the Enforcement Service under the Ministry of Justice has been established and enforcement actions are carried out by bailiffs.

Of course, the above information provides an opportunity to compare the experience of national and foreign countries and to comment on the reforms in the field of justice and enforcement in Uzbekistan, to inform the public about it, to create new scientific developments.

It is no secret that Uzbekistan is currently undergoing comprehensive reforms in the field of enforcement. It is no exaggeration to say that over the years, the enforcement agency has been able to successfully carry out enforcement proceedings, regardless of the body under which it is located, in particular, the Ministry of Justice, the Supreme Court and the Prosecutor's Office. Because the analysis from practice shows that,

It should be noted that in recent years, in the framework of judicial and legal reforms in our country, special attention has been paid to the system of enforcement of decisions of courts and

other bodies. Over the years, a number of legal documents regulating the enforcement system have been adopted. In particular, the Resolution of the President of the Republic of Uzbekistan dated May 30, 2017 "On the organization of the Bureau of Enforcement under the Prosecutor General's Office of the Republic of Uzbekistan", the President of the Republic of Uzbekistan dated March 12, 2019 "On measures to further increase the efficiency of judicial and other bodies" The organizational structure of the Bureau of Enforcement was radically renewed, and later some enforcement actions and deadlines were simplified.

Currently, the activities of the Bureau of Enforcement are focused on the implementation of decisions of economic, civil, criminal, administrative courts and notaries, commissions on labor disputes, decisions of arbitration courts, some decisions of the prosecutor and other bodies. The object of this study is devoted to court documents in civil cases and their execution. During the coverage of the topic, the issuance of court decisions in civil courts, analysis of theoretical and practical aspects of its implementation and reaching scientific conclusions, as well as, most importantly, Article 6 of the newly adopted Code of Civil Procedure of the Republic of Uzbekistan "Judicial Documents" It is important to interpret the norms of Chapter 23 "Decision" and Section 5 "Execution of court documents" in a new perspective.

Theoretical rules. Article 6 of the Code of Civil Procedure provides an explanation of court documents, according to which the court adopts a decision, ruling, decision and order on the issue under consideration and pending.

It is fair to say that it directly corresponds to the name and content of the Law of the Republic of Uzbekistan dated August 29, 2001 "On the execution of judicial acts and documents of other bodies."

Chapter 23 (Articles 249-270) of the Code of Civil Procedure deals with the decision of the court and refers to the decision of the court of first instance, which decides the case on the merits. According to the content and form of decision decisions are divided into: general, additional, externally resolved decisions, according to the method and duration of execution: simple (according to the general rule) and immediate decisions.

The court of first instance shall render a decision as the final result of the case after considering the content of the case in the court session. According to Article 249 of the Code of Civil Procedure, the decision of the court of first instance, which decides the case on the merits, is issued in the form of a decision.

The judge hearing the case is empowered to make a decision and announce it in the final part of the court session.

The court shall issue a decision on behalf of the Republic of Uzbekistan. This requirement is the most responsible and serious requirement for a judicial act. The sentence "On behalf of the Republic of Uzbekistan" shall be applied to the verdict and decision in the procedural documents

In addition, Article 249 of the Code of Civil Procedure states that "the court shall make a decision on behalf of the Republic of Uzbekistan."

The decision of the court on behalf of the Republic of Uzbekistan can be explained by the fact that the decision is firm, binding, irrefutable, and in accordance with theoretical and scientific rules, the decisions, rulings, decisions of the court must be lawful, reasonable and fair. .

The court's decision is made immediately after the case is heard. This requirement is aimed at protecting the procedural interests of the judge and the participants in the proceedings, strict adherence to the procedural order, not to miss the deadlines for appealing and protesting against the decision of the parties to the case. Usually, the phrase "immediately" implies that it is prepared at the same time, on the same day, announced with a separate consultation, and that this in turn means that the decision is made and announced without delay, without postponing it to the next day. In some cases, the preparation of a reasoned decision on a very complex case may be delayed by a maximum of five days, but the final part of the decision must be announced by the court at the end of the hearing. At the same time, the court shall announce when the persons involved in the case may get acquainted with the reasoned decision. The announced concluding part of the decision shall be signed by the judge (judges) and attached to the case file.

Article 250 of the CPC guarantees the secrecy of judicial proceedings in a separate room (consultation) during the decision-making process. The presence of other persons (no one other than the judge, even the clerk of the court) at the time of the decision is not allowed. In addition, scientific research has shown that a judge (judges) may not communicate with other persons on the matter by telephone or other means of communication when making a decision in a separate room (consultation).

As noted in the legal literature, decisions are enforced on a general basis and immediately, depending on the method and timing of execution.

Enforcement on general grounds means enforcement after the entry into force of the procedural legislation. In the case of immediate enforcement, in cases where the decision is subject to immediate execution in accordance with the law, or if the court has allowed the immediate execution of the decision, this shall be indicated in the substantiating and concluding part of the decision. The need for immediate enforcement of the judgment at the request of the court must be justified by the fact that the delay in the execution of the judgment may cause great harm to the claimant or may not be enforceable (for example, loss or alienation of the claimed property to the plaintiff).

If necessary, the court may, with the consent of the plaintiff, take measures to ensure its reversal when the court's decision is overturned. The court may consider the issue of immediate execution of the decision at a court session, even after its adoption, with notification of the persons involved in the case. However, their absence does not preclude the resolution of this issue. The ruling on immediate execution of the decision is issued in the consultation and attached to the case.

Looking at the analysis of case law materials, 11 per cent of the total number of court documents reviewed were listed as enforceable, of which the highest, 9.3 per cent, were court orders, and the rest corresponded to court decisions set by law. Of particular importance are the decisions that can be enforced immediately with the consent of the plaintiff and the

defendant. In such cases, the issue is resolved on the basis of the application of the parties and included in the minutes of the court session.

Article 264 of the Code of Civil Procedure stipulates that a court decision shall enter into force after the expiration of the period for filing an appeal (protest), unless it has been appealed (protested). In the event of an appeal (protest) against the decision, the decision shall enter into force after consideration of the case by a higher court, if it has not been annulled.

According to Article 265 of the Code of Civil Procedure, a court decision is enforced after its entry into force, except in cases of immediate enforcement.

Article 266 of the Code of Civil Procedure specifies the decisions to be enforced immediately, according to which the recovery of alimony; on recovery of the employee's salary not exceeding three months; on recovery of compensation for damage caused by disability or other damage to health, as well as the death of a breadwinner; on reinstatement of an employee whose employment contract has been illegally terminated or an employee who has been illegally transferred to another job, as well as on changing the definition of the grounds for termination of an employment contract; Immediate execution of decisions on involuntary admission of a person with an infectious form of tuberculosis to a specialized unit of a tuberculosis institution or extension of his stay in this institution, based on full or partial satisfaction of the claim, are given.

The law takes into account the protection of the rights and interests of citizens, taking into account their family and material conditions, the nature of the usefulness of civil work for the state and society, the socio-political significance of civil work in determining the decisions that must be implemented immediately.

The concluding part of the decision shall indicate the immediate execution of that decision.

The advantages of immediate enforcement of court decisions are as follows:

1. Increases the speed of enforcement of the decision;

2. Takes into account the family and financial capabilities of the parties (especially the collector);
3. Prevents damages that may result from delays, deferrals or suspensions of execution, or cases where execution cannot be performed;
4. Strengthens the protection of the rights and interests of citizens, prevents repeated violations of procedural rights and obligations in court;
5. Leads to a positive outcome of justice.

In some scientific studies, the legitimate question arises as to whether the immediate execution period can be considered a reasonable period. According to the analysis, a reasonable period of time is a shortened period that analyzes the situation, takes into account the interests of the subjects, has the ability to perform quickly. The legislation divides the cases (civil cases), which must be executed immediately and can be executed immediately, taking into account the objective and subjective circumstances.

Article 267 of the Code of Civil Procedure stipulates the right of the court to allow immediate execution of the decision, according to which the court may allow the following decisions in whole or in part: the plaintiff and the defendant agree with the decision and its immediate execution in cases where; the decision to charge the author for the use of the results of intellectual activity; in all other cases where the delay in the execution of the decision as a result of exceptional circumstances may cause great harm to the claimant or may not be enforceable.

According to the content of the above article, the court has the right to allow the immediate execution of the decision. Based on the above grounds, their applications and consent will be the basis for immediate execution in terms of the rights and interests of the plaintiff and the defendant.

In case of immediate execution on the grounds specified in the Procedural Code, the consent of the parties shall be entered in the minutes of the court session and signed by the parties. If the consent of the parties is expressed in written applications addressed to the court, these

applications shall be attached to the case, which shall be indicated in the minutes of the court session.

In the event of immediate enforcement of the decision on the grounds specified in the law, the court may require the plaintiff to ensure the return of the collected items in the event of annulment of the court decision.

The issue of allowing the immediate execution of the decision within the period for filing an appeal and protest after the decision is made shall be considered in a court session with the notification of the persons involved in the case. However, the absence of these individuals does not preclude immediate resolution of the enforcement issue.

A private appeal or private protest may be lodged against a court ruling on the immediate execution of a decision. A private complaint or protest against the ruling on the immediate execution of the decision shall not suspend the execution of this ruling.

Article 268 of the Code of Civil Procedure stipulates that immediate execution of a decision is not allowed. These requirements, in essence, deny immediate execution, and immediate execution leads to a change in the subject of the claim and is aimed at protecting the rights and interests of citizens.

In particular, immediate execution of the decision is not allowed in the following cases:

1. it is impossible or very difficult to restore the property to its previous state in the event of a change in the status of the property as a result of immediate execution and the annulment of the decision;
2. in the case of evacuation of citizens from the building.

The judge shall issue a ruling on the issue of immediate execution of the decision. Immediate execution of the decision belongs to the category of rulings that must be issued in the form of a separate procedural document.

Chapter 18 (Articles 170-181) of the Code of Civil Procedure is devoted to the institution of a court order and is a court document issued without a trial on uncontested claims. The court order has the force of a writ of execution. Recovery by court order is carried out after the expiration of ten days after the issuance of the order and in the manner prescribed for the execution of court documents. Court orders to collect alimony and pay the employee no more than three months' wages must be enforced immediately. The court order shall enter into force ten days after its issuance. This court document is issued on the basis of the evidence presented by the claimant (plaintiff) on the basis of the submitted evidence on the basis of the presented evidence and is allowed to be executed immediately.

This type of civil proceedings was introduced into the practice of civil courts and the Code of Civil Procedure of the Republic of Uzbekistan by the law of December 12, 2003. During this period, the list of grounds for issuing a court order was only five, and to date, this practice has justified itself, with the grounds increased to nine more. This simplified procedure of consideration of requirements not only provides relief to citizens, but also serves to reduce the workload of judges. In court practice, there are many cases of court orders to collect debts from citizens on taxes and other obligatory payments, debts on utility or communication services, alimony for minors.

During the trial of civil cases in the court of first instance, the judge is allowed to issue another procedural document, including rulings. This is stated in Chapter 24 (Articles 271-275) of the Code of Civil Procedure and in the decision of the Plenum of the Supreme Court of the Republic of Uzbekistan dated October 25, 2019 No 19 "On rulings of the court of first instance on civil cases, regulates the course of the case. The court ruling shall be enforced immediately, unless otherwise provided by law or by a court. Decisions of the court of first instance are divided into private rulings, private appeals and private protests, and other types, which are issued on the spot and in a separate room.

For example, there are about 40 categories of rulings, such as dismissal of an application, return of an application, termination of proceedings, termination of proceedings, appointment of an expert, appointment of a claim, provision of evidence, involvement of a specialist, approval of a settlement agreement, application of procedural coercive measures. Or Article 275 of the

Code of Civil Procedure states that the court has the right to issue a special ruling (decision), regardless of their participation in the case, in the event of a violation of the law in the activities of a state body or other body, organization, official or citizen. In general, the institution of rulings facilitates the issuance of a decision on the case (satisfactory or or denial) and helps to formalize the activities of the court (judge) and protects against possible procedural errors.

Problems in the field. The analysis shows that in the process of ensuring the immediate execution of court decisions, there are some problems: the defendant (debtor) has changed his place of residence or the defendant does not live at the given place of residence; it is not clear from which debtor (legal entity) or its branch (branch) the recovery is, in most cases the court from which the writ of execution came is asked for an explanation, and others prevent the immediate execution of court decisions.

At the same time, insolvency, repeated termination of enforcement proceedings on the basis of complaints, lack of legal awareness and culture of the population, non-fulfillment of civic obligations, non-compliance with payment discipline will have a negative impact on the enforcement process.

Suggestions and recommendations

First, Article 179 of the Code of Civil Procedure stipulates that court orders to collect alimony and to pay an employee no more than three months' wages must be executed immediately. The list of urgent decisions specified in Article 266 of the Code of Civil Procedure includes the provisions of paragraphs 1 and 2 of the first part of this article "on the recovery of alimony and the payment of wages to the employee not exceeding three months' salary." However, these two categories of court orders are not a type of decision, but are themselves enshrined in Article 6 of the Code of Civil Procedure as an independent judicial document. Taking into account some of the above differences, in order to eliminate them, it is appropriate to rename Article 266 of the Code of Civil Procedure as "Judicial decisions that must be enforced immediately." At the same time, in order to comply with Article 6 of the Code of Civil Procedure, it could be referred to as "judicial documents that must be executed immediately." However, "court

documents” are a very broad concept, which includes all court documents (subpoenas, court records, etc.) that decide and do not resolve the case in substance

Conclusions

Judicial decisions are court decisions (decisions, rulings, decisions and orders) that are issued only at the end of the case and have the power to resolve the case on the merits.

Second, the issue of “... resolutions, in whole or in part, which may be enforced immediately,” specified in the first part of Article 267 of the Code of Civil Procedure, raises some problems and misunderstandings in the practice of enforcement. This situation is reflected in the enforcement of court decisions on disputes related to family law, labor relations, "in cases where the plaintiff and the defendant agree with the decision and its immediate execution" under paragraph 1 of part 1 of Article 267. Therefore, it is appropriate to give the first part of this article as "Immediate execution of decisions may be allowed."

References

1. Code of Civil Procedure of the Republic of Uzbekistan. - Tashkent: Adolat, 2018.
2. Law of the Republic of Uzbekistan dated August 29, 2001 "On execution of judicial and other documents".
3. Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan dated May 24, 2019 No. 12 "On the decision of the court".
4. Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan dated May 19, 2018 No 14 "On some issues of application of the rules of civil procedure by the court of first instance."
5. Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan dated October 25, 2019 No 19 "On rulings of the court of first instance on civil cases"

6. Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan No. 4 of February 3, 2006 "On some issues of application of the law governing the proceedings in the order of order."
7. Execution of court decisions (on civil cases). / Authors: Z.Esanova, D.Khabibullaev, G.Mamaraimova. Scientific and practical guide. - Tashkent: TSU, 2019. - 170 p.
8. Avezov Q.S. Enforcement of decisions of economic courts (theory and practice). Scientific and practical guide. - Tashkent: TSU, 2019. - 68 p.
9. Artikov D. Issues of execution of administrative court documents. Scientific pamphlet. - Tashkent: TSU, 2019. - 49 p.
10. Civil procedural law. Textbook. / Authors: Z.Esanova, D.Khabibullaev. - Tashkent. TDYuU, 2019. - 250 p.
11. Enforcement of court decisions: on the example of decisions of civil and economic courts. Authors: Z.Esanova, D.Khabibullaev, K.Avezov. Monograph. Tashkent, 2019. - 188 p.