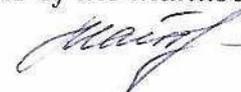


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**ENFORCEMENT OF COURT DECISIONS OF A NON-PROPERTY
NATURE**

Specialty 5.1.3 Private Law (Civil) Sciences

Abstract of the Thesis for an Academic Degree
of Candidate of Legal Sciences

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Relevance of the dissertation research topic. In contemporary legal doctrine it is universally recognized that a violated substantive right is deemed restored not at the moment a court decision is rendered, but only from the moment it is actually implemented—whether voluntarily or through compulsory enforcement. Consequently, the legal institution of enforcement proceedings performs a key function in ensuring the effectiveness of justice, acting as the final link in the mechanism of judicial protection of the rights and lawful interests of citizens and organizations. Thus, the problem of the effectiveness of enforcement proceedings is in a direct cause-and-effect relationship with the exercise of the constitutional right to judicial protection.

In today's legal environment, a significant increase is observed in the share of non-property claims within the overall array of judicial acts subject to compulsory enforcement. However, the existing legal mechanism for the compulsory implementation of such claims demonstrates its insufficiency, giving rise to numerous law-enforcement problems. The specificity of compulsory enforcement procedures and the coercive measures chosen is determined by the legal nature of non-property claims itself, which lies in the absence of a direct connection with the transfer of property or money. At the same time, depending on the nature of the substantive claim, the actions ordered by the court may be performed either exclusively personally by the debtor or by any other subject on the debtor's behalf.

The current state of academic knowledge is characterized by insufficient development of issues relating to the compulsory enforcement of enforcement documents containing requirements to perform actions not connected with the transfer of property. The lack of a unified doctrinal approach leads to non-uniform law-enforcement practice both on the part of enforcement authorities and the courts.

An analysis of current legislation and judicial practice makes it possible to identify the specifics of the institution of voluntary compliance as applied to non-property claims. This, in turn, brings into focus the question of the legal nature of the period granted for voluntary compliance. Whether voluntary compliance is

qualified as a right or an obligation of the debtor, as well as determining its relationship with the substantive obligation to comply with the judicial act, predetermines the nature of sanctions for failure to comply within the established time period.

Among such sanctions, the legislator includes the collection of an enforcement fee and the initiation of compulsory enforcement, within which the debtor may be brought to administrative liability under Article 17.15 of the Code of Administrative Offences of the Russian Federation (hereinafter - CAO RF). At the same time, the interpretation in judicial practice of the enforcement fee as an administrative punitive sanction, together with the possibility of imposing administrative liability, creates a problem of conflating sectoral concepts and categories. A study of the legal relations that develop between the bailiff-enforcement officer and the debtor calls into question the legitimacy of bringing the latter to administrative liability for the actual non-compliance with the requirements of the enforcement document, which in essence is a continuation of non-performance of a civil-law obligation.

An empirical analysis of judicial practice shows that the implementation of the general features of non-property recoveries, depending on the nature of the substantive claim, generates special features of enforcement that are immanently inherent only in such requirements.

The specifics of enforcing non-property recoveries must be taken into account during the compulsory implementation of judicial acts. The features of specific types of non-property requirements directly affect the effectiveness of the enforcement procedure applied to them. The current mechanism of compulsory enforcement of non-property requirements in its present form does not fully account for all the specifics of such requirements and therefore appears insufficiently relevant to guarantee their real and timely enforcement.

An analysis of contemporary academic studies devoted to enforcement proceedings allows one to state that the issues of enforcing decisions of a non-property nature, despite their practical significance, remain largely peripheral within

general works on enforcement law, including those by researchers such as M.L. Galperin. At the same time, practice shows that it is precisely in this category of recoveries that the sharpest gap exists between legislative regulation and the real enforceability of judicial acts. Existing specialized studies by authors such as D.A. Olenin focus on certain aspects of the problem; however, a comprehensive analysis of the compulsory enforcement procedure distinguishing universal and special rules for two key groups of requirements - those requiring and those not requiring the debtor's personal participation - has not yet been conducted in doctrine.

Goals and objectives of the study. The purpose of the dissertation research is to develop scholarly theoretical propositions on civil procedural means for increasing the effectiveness of compulsory enforcement of non-property requirements contained in enforcement documents, on the basis of which it becomes possible to develop recommendations for improving these means.

To achieve the purpose of the study, the following tasks are set:

- 1) to determine the legal nature and specifics of non-property requirements contained in enforcement documents;
- 2) to provide a classification of non-property requirements contained in enforcement documents;
- 3) to determine the legal nature and essence of voluntary compliance with non-property requirements contained in enforcement documents;
- 4) to determine the legal nature of the enforcement fee as a consequence of the expiration of the period for voluntary compliance with non-property requirements contained in enforcement documents;
- 5) to analyze the mechanism whereby the claimant performs the non-property requirement of the enforcement document in place of the debtor;
- 6) to analyze coercive enforcement measures applied when enforcing requirements inseparably connected with the debtor's personality;
- 7) to develop practical recommendations aimed at increasing the effectiveness of compulsory enforcement of non-property requirements contained in enforcement documents.

The object of the study is the totality of legal relations that arise in the process of compulsory enforcement of judicial acts of a non-property nature.

The subject of the study includes the rules of civil-law substantive and procedural legislation; academic works of scholars on the issues under study; the practice of the Constitutional Court of the Russian Federation; law-enforcement practice of commercial (arbitrazh) courts and courts of general jurisdiction; and materials of enforcement proceedings regarding judicial acts of a non-property nature.

Methodological framework of the study. The methodological basis of the dissertation research consists of a set of general scientific and specific scientific methods. The use of methods of analysis and synthesis made it possible to identify the structural elements of the mechanism of compulsory enforcement of non-property requirements, and their subsequent integration made it possible to formulate holistic proposals for its improvement. The systemic approach made it possible to consider enforcement proceedings as a dynamic system in which a change in one element (for example, a coercive measure) entails consequences for the entire system. The formal-legal method was used for a dogmatic analysis of the existing provisions of the Law on Enforcement Proceedings, the Civil Procedure Code of the Russian Federation (GPK RF), and the Commercial Procedure Code of the Russian Federation (APK RF).

At the same time, in order to overcome the narrow framework of the existing legal regulation and to develop conceptual proposals, a key role in the study was assigned to historical-legal and comparative-law methods, the application of which made it possible to go beyond exclusively domestic issues and obtain the following scholarly results:

1. The application of the historical-legal method was not limited to an excursus into pre-revolutionary or Soviet law, but made it possible to identify persistent, recurring problems that have remained unresolved over a long period of time.

Historical analysis made it possible to establish that the modern conflict between the need for coercion and respect for the debtor's personal will has deep

roots. This proves that a simple tightening of punitive sanctions (the approach dominating today) is a dead end, because it neither solved the problem in the past nor solves it now, requiring the search for more flexible, incentive-based mechanisms.

2. The comparative-law method was aimed not at a mechanical description of foreign legislation, but at identifying alternative models for solving similar problems in legal orders with a developed judicial system. A comparative analysis of the institution of **contempt of court** in common-law countries (using England and Wales as an example) and the mechanisms for compulsory enforcement of non-property requirements in Germany and France revealed a fundamentally different approach.

Thus, the real, not merely declarative, application of historical-legal and comparative-law methods made it possible to:

- 1) deepen the diagnosis of problems by showing their systemic and historically persistent character;
- 2) expand the arsenal of possible solutions beyond the framework of the current Law on Enforcement Proceedings;
- 3) substantiate the scholarly novelty of the dissertation, which consists not only in identifying gaps but also in proposing conceptually different mechanisms that have proven effective in other legal systems.

Theoretical basis of the study. The theoretical basis of the study comprises works by Russian scholars in the field of civil procedure and enforcement proceedings devoted to issues of enforcing judicial acts. In particular, the works of K.S. Yudelson, V.N. Argunov, M.A. Fokina, V.M. Sherstyuk, and other authors were studied; these works address general issues of the theory of enforcement proceedings, principles of enforcement proceedings, the essence and content of enforcement proceedings as a stage of civil procedure aimed at real restoration of violated rights and lawful interests, as well as peculiarities of enforcement of various categories of enforcement documents.

To date, there is no single generally accepted and thoroughly developed doctrine on the classification of non-property requirements in the context of enforcement proceedings. This is due to the fact that emphasis is usually placed on the general regulation of enforcement of decisions, while the specifics of non-property requirements are often treated as an “aspect of enforcing certain types of obligations.” Nevertheless, works by authors who addressed issues of classifying obligations in general and certain types of non-property requirements were studied, and these works determined the formation of the theoretical foundation of this research. In the works of authors such as M.I. Braginsky, V.V. Vitryansky, I.B. Novitsky, and L.A. Lunts, the foundations of the doctrine of obligations and their classification by various criteria were laid. Works by A.A. Vlasov (on the enforcement of decisions on reinstatement at work) and V.A. Belov (on enforcement of judicial acts protecting honor, dignity, and business reputation) are devoted to the enforcement of specific non-property requirements contained in enforcement documents.

Special attention in the dissertation is given to studying works devoted to the specifics of enforcing non-property requirements contained in enforcement documents and to identifying problems arising in this field of law enforcement. In particular, studies by A.K. Sergun devoted to problems of enforcement proceedings in Soviet civil procedure—including enforcement of non-property requirements and the role of the bailiff-enforcement officer in organizing compulsory enforcement—were analyzed; works by V.V. Yarkov on increasing the effectiveness of enforcement proceedings; works by V.A. Gureev concerning issues of protecting debtors’ rights in enforcement proceedings; and works by other authors—S.S. Alekseev, E.N. Berendts, D.Kh. Valeev, E.V. Vaskovsky, M.A. Vikut, P.M. Gaudemet, R.E. Gukasyan, M.A. Gurvich, P.F. Eliseikin, N.B. Zeider, O.V. Isaenkova, P.I. Kononova, E.A. Krashennnikov, V.A. Lebedev, A.E. Lunev, D.Ya. Maleshin, K.I. Malyshev, G.L. Osokina, D.I. Polumordvinov, L.L. Popov, T.V. Sakhnova, A.K. Sergun, E.G. Streltsova, M.K. Treushnikov, G.D. Uletova, M.Kh. Khutyz, N.A. Chechina, V.N. Shcheglov, M.S. Shakaryan, M.I. Shtefan, A.V.

Yudin, T.M. Yablochkov, and I.I. Yanzhul. Issues of the mechanism whereby the claimant performs actions in place of the debtor were analyzed in detail by D.A. Olenin.

At the same time, the analysis conducted showed that in contemporary scholarship there is no unified, systemic concept of compulsory enforcement specifically of non-property requirements. Debates on the legal nature of the enforcement fee, the qualification of coercive measures, and the role of the claimant in the enforcement process are conducted predominantly in relation to property recoveries or without taking into account the classification proposed in this study. Thus, this work is intended to fill this gap by proposing a coherent model of enforcement based on differentiating requirements according to the criterion of their connection with the debtor's personality.

Scholarly novelty of the study. The scholarly novelty of the study consists in the development of a new model for compulsory enforcement of enforcement documents of a non-property nature, which includes features common to all non-property requirements, as well as special rules inherent in such requirements depending on the presence or absence of an inextricable connection with the debtor's personality.

In accordance with the stated purpose and objectives, the following propositions are submitted for defense:

1. As a result of the study, an author's definition of the system of non-property requirements was formulated, based on a complex criterion that includes not only the possibility of substituting the debtor in enforcement (as in Clause 7, Part 3, Article 68 of the Law on Enforcement Proceedings), but also the nature of the protected interest (intangible, or proprietary but realized through a non-property requirement) and the specifics of the coercive enforcement measures applied. This approach makes it possible to overcome the formal division in the law and to build more effective models of compulsory enforcement.

The proposition submitted for defense corresponds to items 2, 8, 9, 28 of the passport of scientific specialty 5.1.3 "Private-Law (Civil-Law) Sciences."

2. A detailed classification of non-property requirements contained in enforcement documents is substantiated and presented; it is based on differentiation by the degree of connection with the debtor's personality and the resulting fundamental possibility of ***substitutio in solution*** (substitution of performance). It is proven that for requirements whose performance is possible without the debtor's participation (for example, demolition of an unauthorized construction), the priority coercive measure should be organization of the factual execution by the bailiff-enforcement officer or by the claimant at the debtor's expense, whereas for requirements inseparably connected with the debtor's personality (for example, refutation of defamatory information), the main instrument remains indirect coercion, including through punitive sanctions.

The proposition submitted for defense corresponds to items 9, 12, 26, 28 of the passport of scientific specialty 5.1.3 "Private-Law (Civil-Law) Sciences."

3. The dual legal nature of the period for voluntary compliance is identified and argued. It is proven that, on the one hand, granting it is an unconditional procedural duty of the bailiff-enforcement officer arising from the principles of ensuring the debtor's rights and the effectiveness of enforcement proceedings (Articles 4, 12 of the Law on Enforcement Proceedings), and on the other hand, it represents a state-guaranteed right of the debtor to unimpeded fulfillment of its substantive obligation prior to the application of coercive measures. Distinguishing these aspects makes it possible to resolve the conflict between the substantive obligation and the procedural right.

The proposition submitted for defense corresponds to items 9, 28 of the passport of scientific specialty 5.1.3 "Private-Law (Civil-Law) Sciences."

4. On the basis of a retrospective analysis of judicial practice and positions of the Constitutional Court of the Russian Federation, the established qualification of the enforcement fee as an administrative punitive sanction is refuted. A concept of the enforcement fee as a mandatory compensatory payment, functionally and economically analogous to a state duty charged for the performance of legally significant actions for compulsory enforcement, is substantiated. A specific ***de*

lege ferenda** proposal is made to fix this legal nature in the Tax Code of the Russian Federation and the Law on Enforcement Proceedings.

The proposition submitted for defense corresponds to items 3, 12, 28 of the passport of scientific specialty 5.1.3 "Private-Law (Civil-Law) Sciences."

5. It is established that the substitution in law-enforcement practice of organizing execution of requirements not requiring the debtor's personal participation by repeatedly bringing the debtor to administrative liability under Article 17.15 CAO RF is ineffective and leads to violation of reasonable time limits for enforcement proceedings. As an alternative, an imperative procedural model is proposed obliging the bailiff-enforcement officer to proceed to the coercive measure of organizing the performance of the relevant actions at the debtor's expense immediately after collection of the enforcement fee.

The proposition submitted for defense corresponds to items 2, 9, 28 of the passport of scientific specialty 5.1.3 "Private-Law (Civil-Law) Sciences."

6. It is proven that the performance by the claimant of actions specified in the enforcement document in place of the debtor within initiated enforcement proceedings is not a change in the method and procedure of enforcement (an institution within the exclusive competence of the court), but one of the forms of implementation of a coercive enforcement measure organized by the bailiff-enforcement officer on the basis of Clause 7, Part 3, Article 68 of the Law on Enforcement Proceedings. This conclusion makes it possible to optimize the procedure and avoid excessive judicial intervention.

The proposition submitted for defense corresponds to items 2, 9, 28 of the passport of scientific specialty 5.1.3 "Private-Law (Civil-Law) Sciences."

Theoretical significance of the research results. The theoretical significance of the research results lies in the fact that the conclusions obtained deepen and systematize knowledge about the mechanism of compulsory enforcement of judicial decisions of a non-property nature. These results improve the theory of civil procedure and may be useful in studying specific institutions and categories of civil procedural law related to intangible requirements.

The scholarly propositions presented in the dissertation may serve as a basis for developing the conceptual apparatus used in the context of enforcing non-property requirements, as well as for developing new applied research in this area.

Practical significance of the research results. The practical significance of the research results lies in the possibility of applying the findings in legislative and law-enforcement activities and in teaching civil procedural law. The recommendations and conclusions can be used in teaching the specialized course “Enforcement Proceedings,” as well as in curricula when preparing lecture materials, seminars, and practical classes.

In the context of improving legislation, the conclusions about the advisability of introducing a special mechanism for compulsory enforcement of non-property requirements contained in enforcement documents will be relevant.

Bailiff-enforcement officers will be able to implement the methods and practices proposed by the author to increase the effectiveness of their work in the field of enforcing non-property requirements. In law-enforcement practice, specific provisions concerning the procedure of enforcement may be used, based on the proposal to apply specific coercive enforcement measures for each type of non-property recovery.

Degree of reliability of the research results. During the research an extensive base of scholarly and practical legal literature in the field of civil law, civil procedure, as well as legislation on enforcement proceedings was used. An analysis of judicial practice related to non-property requirements, as well as enforcement practice, was conducted. The reliability of the results obtained is also confirmed by the breadth of the empirical base of the work; the use of relevant research methods; the completeness and internal consistency of scholarly judgments; the approbation of research results; and the publication of the main results of the study in scholarly publications on the topic.

Approbation of the dissertation results. The dissertation was prepared at the Department of Legal Support of the Market Economy of the Institute of Public

Administration and Civil Service of the Russian Presidential Academy of National Economy and Public Administration, where it was discussed.

The main provisions of the dissertation research were set forth in published scholarly articles: “Enforceability of a Court Decision in the Works of Mark Arkadievich Gurvich,” “Enforceability of a Court Decision,” “Time Limit for Voluntary Compliance with Non-Property Requirements,” “Specifics of Compulsory Enforcement of Non-Property Requirements,” “On the Principles of Enforcement Law”—in journals included in the list of the Higher Attestation Commission (VAK) of the Ministry of Education and Science recommended for publication of results of doctoral and candidate dissertations, and were also used by the dissertation author in conducting practical classes in civil procedure, commercial procedure, and enforcement proceedings.

List of the author’s publications on the dissertation topic.

The applicant has more than 3 scholarly works on the dissertation topic that fully correspond to the subject of the dissertation research and disclose its main provisions, including articles in publications included in the list of leading peer-reviewed journals and publications in legal sciences recommended by the Higher Attestation Commission (VAK) under the Ministry of Science and Higher Education of the Russian Federation:

1. Mantashyan A.O. On the Principles of Enforcement Law // **Modern Law**. 2011. No. 7. Pp. 157–160.
2. Mantashyan A.O. Enforceability of a Court Decision // **Modern Law**. 2015. No. 11. Pp. 89–93.
3. Mantashyan A.O. Enforceability of a Court Decision // **Bulletin of the O.E. Kutafin University**. 2015. No. 9(13). Pp. 133–139.
4. Mantashyan A.O. Specifics of Compulsory Enforcement of Non-Property Requirements // **Bulletin of Enforcement Proceedings**. 2017. No. 2. Pp. 33–40.
5. Mantashyan A.O. Time Limit for Voluntary Compliance with Non-Property Requirements // **Actual Problems of Russian Law**. 2016. No. 4. Pp. 123–130.

Structure of the work. The dissertation research consists of an introduction, two chapters six sections, a conclusion, a list of references, and Appendix No. 1.