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LIABILITY IN ENFORCEMENT PROCEEDING

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The relevance of the subject of the thesis research is conditioned by the necessity to understand the place of legal liability in the mechanism of enforcement proceedings, to improve the effectiveness of compulsory enforcement in general.

In 2018, in the subdivisions of the Federal Bailiff Service of Russia, were being executed 87.6 million enforcement documents in the amount of more than 10 trillion rubles[1] or 140 billion euros, the uncollected balance at the end of 2018 made over 5.7 trillion rubles.[2] This amount is comparable not only to the amount of all the expenditures of the federal budget, but also to the gross domestic product of Russia.[3] However we may see not just the permanent growth of the number of the execution documents as well as of the amount to be collected in the enforcement proceedings, but also the permanently low percentage of the factual enforcement of the relevant debts (63,7 % - in 2011, 45,4 % - in 2012, 41,4 % - in 2013, 40, 1 % - in 2014, 38,6 % - in 2015, 41,3 % - in 2016, 46,5 % - in 2017, 34 % - in 2018).[4] The rate of factual enforcement *of the judicial acts* is lower than the general rate. In 2017 this rate constituted just about 28 %, in 2018 – only 25%. In 2018 under the decisions of arbitrazh (commercial) courts about 3,19 trillion rubles ought to be collected, from which only 113,2 billion rubles were actually taken (4 %, in 2017 - 5,6%, in 2016 – 6,4%).[5]

Thus, the question of effectiveness of compulsory enforcement is not only of legal importance, it is a question of macroeconomic indicators of the country's development, which determine, among others, the amount of interest rates on loans to the population and businesses, assessment of financial risks on the part of domestic and foreign investors, payback period of business projects, filling of the budget for implementation of social and other public obligations, level of bankruptcy of enterprises, overall prospects of growth of the national economy.

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[1] http://fssprus.ru/statistics/.
[2] Ibid.
[3] According to Rosstat data of 2017 – 92.082 trillion rbl. See: http://www.gks.ru/free_doc/new_site/vvp/vvp-god/tab1.htm
[4] http://fssprus.ru/indicators/. In 2018 the relevant indicator was not disclosed by the FBS and has been calculated by the author himself on the basis of the official statistic data for the year 2018.
[5] https://www.kommersant.ru/doc/3566103/.

Effectiveness of work of compulsory enforcement authorities is influenced by a range of factors: quality of legislative regulation of enforcement proceedings, general social and economic situation, culture of financial and credit relations, level of legal nihilism in the society, condition of the material and procedural law. It is practically impossible to calculate mathematically the impact of various legal, economic and social factors on specific indicators of compulsory enforcement. But it is possible to assess the impact of certain legal enforcement measures, including liability measures, on the level of actual enforcement.

For example, in 2018 the territorial bodies of the Federal Bailiff Service of Russia initiated 52.3 thousand criminal cases in relation to the persons non-complying without any reasonable grounds with judicial orders or notarized agreements on alimony payments. Totally in the said year 59.1 thousand criminal cases were under proceedings, 51.8 th. criminal cases were finished with investigation, among them over 51,3 th. were sent to court with the indictment. However, the impact of the administrative and criminal liability measures on the level of factual enforcement is still very low. According to the Federal Bailiff Service of Russia as a result of application of criminal enforcement in the reporting period were only recovered about 430 million rubles (600 million rubles in 2017), i.e. 0.01% of the total amount of the uncollected balance on enforcement documents in respected period.[6] For example, initiation in 2016 of 59 thousand cases of administrative violations under Cl. 5.35.1 of the Administrative Code in respect of alimony debtors, and of 2.7 thousand criminal cases on the grounds of elements essential to offences under Cl. 157 of the Criminal Code, resulted in the additional recovery for children's support of about 64.3 million rubles, i.e. only 0.04 % of the total amount of alimony debts in 2016 (over 176 billion rubles).[7]

During 2018 the territorial bodies of the Federal Bailiff Service of Russia issued about 5.7 mln. of orders on temporary restriction of exit of the debtors outside the

[6] http://fssprus.ru/files/fssp/db/files/02018/itogovyj_doklad_za_2017_god_2018361451.pdf. With respect of total number of crimes registered in the country, in 2017 the relevant category reached 3%. https://genproc.gov.ru/upload/iblock/aab/Ежемесячный%20сборник%20декабрь%202017.pdf.

[7] http://fssprus.ru/statistics/. According to other data, during a year after introduction of article 5.35.1 of the Administrative Code, as a result of application to the debtors of respective administrative measures they paid debts of alimony in the amount of over 34 million rbl. See: http://sozd.parlament.gov.ru/bill/104973-7. The figures are the same in both cases.

Russian Federation. As a result, some 7,5 million of such orders were placed in the Boarder Control Body of the Russian Federal Security Service in 2018. However as a result of issuance of 3,4 million orders in 2017 the debtors partially or fully performed the debt in the amount of 67.1 billion rubles (including partially) (of the total amount of debt on the relevant enforcement proceedings of 1.8 trillion rubles)[8] Thus, the proportion of debt recovered as a result of this measure, made in 2017 in total 4 % *of the total amount of debt under the enforcement proceedings which have established such restriction*.

As a result of application against the debtor of a new coercive measure - restriction of special rights,[9] bailiffs in 2017 collected about 1.9 billion rubles (0,03 % of total amount of the uncollected debt), including 1.3 billion rubles of alimony payments (0.7 %), 300 million rubles of administrative fines (0.1 %), 192.6 million rubles of compensation of property damage caused by crimes (0.1 %).[10] Despite the fact that in the next 2018 7,9 billion rubles, including 3,7 billion rubles of alimony payments, were collected, the percentage of factual enforcement in the relevant categories of debts is still low (regarding alimony payments – less than 4% in 2018).

The debt on payment of the enforcement fee (which, according to the force of Clause 112 of the Enforcement Law, on its own terms represents monetary penalty for non-compliance with the requirements of the executive document) is continuing to grow. In 2018 the uncollected amount of the enforcement fee exceeded 95 billion rbl., compared to 70 billion rbl. in 2016.[11] In 2018 were recovered totally over 17 billion rubles of the enforcement fee (about 4% of the amount subject to collection).

Based on statistics, it can be concluded that application of a range of enforcement measures in relation to debtors in enforcement proceedings (including measures of legal liability), despite the increase in quantitative indicators, does not result in increase of effectiveness of recovery, qualitative changes in the structure of debts on enforcement proceedings, it is even unable to restrain growth of annual balance of debt on

[8] http://fssprus.ru/files/fssp/db/files/02018/itogovyj_doklad_za_2017_god_2018361451.pdf, http://fssprus.ru/statistics/.
[9] Federal Law of 28.11.2015 No. 340-FZ "On amendments to the Federal Enforcement Law" and certain legislative acts of the Russian Federation".
[10] http://fssprus.ru/files/fssp/db/files/02018/itogovyj_doklad_za_2017_god_2018361451.pdf.
[11] http://fssprus.ru/statistics/.

enforcement documents. Note that these trends are typical for most types of enforcement documents, primarily for judicial acts, the enforcement of which is a constitutional duty of the state.

Despite the above said indicators, the main legislative way to improve effectiveness of enforcement proceedings remains escalation of measures of compulsion against debtors, expansion of restrictions of their property and non-property rights either in relation to the circle of persons with limited rights, or to the range of possible restrictions.[12] Taking into account the current low level of actual enforcement, new and more substantial enforcement measures against debtors are being introduced into the legislation and law enforcement practice, new measures of responsibility are being applied, and those existing tend to tightening. That is why the issue of finding a constitutional balance between the rights of the debtor and the claimant, determination of limits of application of various coercive measures to the debtor, limits of legal impact on him, including in the absence of the debtor's liquid property and sufficient income for the performance of his obligations, is becoming increasingly important in the legal science.

Reinforcement of compulsory measures against the debtor cannot be arbitrary. As any other legal institution, limitation of rights and coercive measures should be assessed from the point of view of observance of constitutional principles, the scope of application. Introduction of new coercive measures should be preceded by a thorough analysis of causes of ineffectiveness of the existing measures. It is impossible to increase infinitely the coercive pressure on the debtor in enforcement proceedings, constantly applying to him/her new measures of legal responsibility. Both the legislator and the law enforcement officer will inevitably face the general constitutional and even international legal limits of application of the state coercion. Notwithstanding that such limits in relation to coercion of enforcement proceedings, as well as the general principles of enforcement proceedings, are still being developed and understood (first of all by evolving approaches to the legal doctrine, practice of supreme courts), it can not

[12] A. O. Parfenchikov. Restriction of the debtor's rights: novelties of legislation and practice of application// Collection of materials of the international scientific and practical conference/ Resp. editor A. O. Parfenchikov, V.A. Gureev. M., 2016. P. 21-23.

be stated that there are no such limits at all, and the constitutionally significant goals of enforcement proceedings justify introduction of any coercive measures against debtors.

In view of the above said, measures of responsibility in enforcement proceedings require systematization and differentiation. To solve this problem, it is necessary to build a structured, theoretically based system of coercion in enforcement proceedings, to determine the role of legal responsibility in that system, taking into account the goals of enforcement proceedings.

In any regulatory industry, the issues of responsibility are always among key elements. Responsibility is the most essential component of the legal regime. Historically, in enforcement proceedings a special importance is given to the liability of the debtor in relation to the failure to comply with the requirement contained in the enforcement document. But other subjects involved in compulsory enforcement, including the state, which is responsible for actions (omission of actions) of enforcement bodies, also bear responsibility.

Thus, improvement of the system of legal liability in enforcement proceedings can improve effectiveness of the enforcement mechanism as a whole, to ensure its functioning in cooperation with other legal mechanisms, first of all, with court proceedings, which proves the relevance of the subject of the work.

Degree of scientific readiness of the subject of the research. In the Russian legal literature, general issues of liability in enforcement proceedings have never been a subject of independent scientific researches, they are normally considered among other theoretical issues of enforcement proceedings, for example, in the doctorate theses of O. V. Isaenkova and V. F. Kuznetsov presented for defense almost fifteen years ago, before entry into force of the current Federal Enforcement Law. During the same period were prepared Ph.D. theses dedicated to certain types of responsibility in enforcement proceedings: civil law (M. R. Zagidullin) and administrative law (A.N. Komarov). Issues of liability in enforcement proceedings were also raised among other issues by V.V. Yarkov, D.H. Valeev, V.A. Gureev, V.V. Gushchin, S.F. Afanasyev, Y.A. Svirin. Enforcement fee as a measure of responsibility was analyzed in the works of L.V. Belousov, V. A. Khokhlov, A.V. Ilyin, M. A. Rozhkova. Issues of responsibility of the

state in enforcement proceedings were investigated by M.A. Erokhova, T. K. Andreeva, Y.N. Andreev. Legal qualification of measures of responsibility in the general system of coercion in enforcement proceedings was performed by M. Z. Schwartz, A. A. Parfenchikova. Issues of responsibility in the civil sphere in general were reflected in the works of N.A. Chechina, A.V. Yudin, V. V. Butnev, A. G. Stolyarov, T.T. Aliyev.

General theoretical issues of responsibility in enforcement proceedings, as a rule, are considered in the context of substantiation of the author's position on independence of enforcement proceedings as a branch of law, based on the doctrine of the subject and method. Besides, the analysis of issues of legal responsibility is often performed as consideration of certain types or measures of responsibility without identifying their common features, trends of development of the system of responsibility, determination of the legal nature of offences in enforcement proceedings, their composition. The above said determines a necessity of a comprehensive study of liability in enforcement proceedings.

The subject of the study is legal relations arising in connection with the illegal behavior of the subjects of enforcement proceedings and holding them liable.

The subject of the study is legislation on enforcement proceedings, bailiffs, civil procedural legislation, civil, criminal, administrative laws in terms of sanctions against the subjects of enforcement proceedings, practice of Russian and international courts, foreign legislation and judicial practice in these areas.

Purposes and objectives of the study. The purpose of the thesis work is a systematic analysis of implementation of legal responsibility in the modern Russian enforcement proceedings, identification of links between the mechanism of responsibility and other elements of the legal regime of enforcement proceedings, including goals, objectives and principles of enforcement proceedings, study of the place of responsibility in the general structure of enforcement proceedings, influence of the institute of responsibility on effectiveness of enforcement proceedings, formulation of proposals on improvement of laws regulating enforcement proceedings, and the relevant compliance practice.

The described purpose of the study determined the specific objectives of the work:

- assessment, based on objective data, of the effectiveness of the enforcement system in modern enforcement proceedings, of the degree of influence of responsibility measures on implementation of purposes of legal regulation in the area of enforcement proceedings;

- separation of measures of responsibility from other coercive measures in enforcement proceedings, development of a legal standard for application of responsibility measures in enforcement proceedings, in view of the provisions of the Constitution of the Russian Federation, international law, Russian procedural and substantive law;

- study of elements of the responsibility mechanism in enforcement proceedings (basis, measures, order and conditions of application) in terms of the legal regime of enforcement proceedings, its purposes, objectives, principles;

- simulation of the most efficient system of legal liability in enforcement proceedings based on the results of the analysis of doctrinal views, norms of the current Russian legislation, judicial practice, foreign legislation and judicial practice;

- formulation of the main doctrinal provisions of the liability theory in enforcement proceedings, establishment of application limits for the Institute of responsibility in enforcement proceedings;

- study of the existing categories and institutions of enforcement proceedings from the point of view of the developed provisions of the liability theory in enforcement proceedings;

- analysis of application of certain types of liability in enforcement proceedings: civil, administrative, criminal, procedural.

Methodological basis of the study includes general scientific methods - system, analysis, synthesis, induction and others. Private law methods were also used: comparative-legal, historical-legal, legal simulation.

Theoretical basis of the study were in particular works on the general theory of law by S. S. Alekseev, M. I. Baitin, D. E. Petrov, A. V. Polyakov, V. D. Sorokin, L. S. Yavich, V.F. Yakovlev, P. Prodi.

Theoretical issues of legal liability were analyzed using works of B.T. Bazylev, S. N. Bratus', G. N. Vetrova, N.V. Vitruk, O.A. Denisov, O. S. Ioffe, O. A. Kozhevnikov, V.V. Kozhevnikov, M.A. Krasnov, O.E. Leist, D. A. Lipinsky, O.G. Pivovarova, T.N. Rad'ko, I.S. Samoshchenko, P. P. Serkov, M.H. Farukshin, R. R. Khasnutdinov, E. V. Chernykh, M. D. Shargorodsky.

The study was based on works on civil procedure and enforcement proceedings by D.B. Abushenko, T.K. Andreeva, S. F. Afanasyev, Y.Y. Afonina, V. N. Barsukova , L. V. Belousov, A. T. Bonner, K. L. Branovitsky, V. V. Butnev, D. H. Valeev, E. V. Vas'kovsky, A. P. Vershinin, M. A. Vicut, M. Golichenko, L.A. Gros', M. A. Gurvich, V. A. Gureev, V.V. Gushchin, N.A. Zhiltsova, V.V. Zakharova, A.V. Ilyin, O.V. Isaenkova, A.F. Kleinman, N.M. Korshunov, V.F. Kuznetsov, S.V. Kuznetsov, D.Ya. Maleshin, K.A. Malyushin, D.A. Mardanov, I.B. Morozova, Y.G. Nasonov, D.G. Nokhrin, G.L. Osokina, A.O. Parfenchikov, A.A. Parfenchikova, I.V. Pogodina, Z.V. Popova, I.V. Reshetnikova, T.V. Sakhnova, Y.A. Svirin, S.I. Semenova, A.A. Solovyov, A.G. Stolyarov, E.G. Streltsova, A.M. Treushnikov, M.A. Filatova, V.A. Khokhlova, M.Y. Chelysheva, N.A. Chechina, M.S. Shakaryan, M.Z. Schwartz, N.A. Sheyafetdinova, A.V. Yudin, M.K. Yukov, V.V. Yarkov, Kevin Browne, Daniel Friedmann, Richard L. Hasen, Terence Ingman, John O'Hare.

The author has used developments in other sectoral legal sciences by D. N. Bakhrakh, E. V. Bogdanov, E.E. Bogdanova, D.E. Bogdanov, V.A. Vaipan, K.N. Vaskevich, D.A. Voronov, N.I. Gazetdinov, D.M. Genkin, V.P. Gribanov, A.A. Gromov, G.A. Esakov, P. S. Efimichev, M.R. Zagidullin, A.A. Ivanov, L.V. Ivanova, A.G. Karapetov, A.N. Kozyrin, A.V. Konovalov, E.S. Lutsenko, I.V. Maximov, A.V. Milkov, K.Y. Molodyko, V.G. Nestoliya, D.V. Osintsev, V.V. Pitetsky, N.A. Rezina, M.A. Rozhkova, B.V. Rossinsky, A.Y. Ryzhenkov, A.A. Salov, S.V. Sarbash, K.I. Sklovsky, I.A. Havanova, G.F. Shershenevich.

Empirical base of the study includes acts of Russian and foreign courts, materials of law enforcement practice of the Federal Bailiff Service of the Russian Federation and other authorities; personal practice of the dissertator at the Ministry of Justice of the Russian Federation in application of enforcement proceedings legislation and implementation of activities for the preparation of draft laws and regulations.

Scientific novelty is determined by the purpose and objectives of the work and includes a comprehensive study based on the theory of legal regimes, in view of modern legislation and law enforcement practice, as well as foreign experience in issues of legal liability in enforcement proceedings and its place in the legal system, substantiation of new theoretical approaches to solution of improvement of the liability mechanism in enforcement proceedings, analysis of the place of liability in the system of coercive measures in enforcement proceedings. The proposed conclusions result in reinterpretation of some fundamental categories of enforcement proceedings: goals, objectives, principles, subjects of enforcement proceedings, allow updating the legal position of the claimant and debtor in the modern enforcement proceedings.

The thesis is the first scientific work dedicated to a systematic study of liability in enforcement proceedings is conducted, where directions of development of the said institute are outlined, and the study of liability issues of is carried out by means of the analysis of elements of the liability mechanism in enforcement proceedings: grounds (object, objective side, subject and subjective side), as well as individual liability measures in enforcement proceedings.

The work solves the fundamental scientific issue of determination of role of the legal liability institution (in its procedural and material law understanding) in the mechanism of compulsory enforcement and substantiates the author's classification and differentiation of coercive measures against the debtor in the enforcement proceedings - based on the purpose of the latter in the legal system, reveals the new content of the category of wrongfulness in the enforcement proceedings, establishes general constitutionally conditioned limits of application of legal coercion against the debtor.

The main conclusions demonstrating the scientific novelty of the research are reflected in the following **provisions presented to defense**:

1. Liability in enforcement proceedings is a cross-sectoral phenomenon covering all types of legal liability measures applied to the debtor and other subjects of enforcement proceedings in connection with the compulsory execution of the requirements of enforcement documents. Liability in enforcement proceedings is designed to provide a solution of a single specific task of the enforcement proceedings – the accurate and timely execution of the enforcement document to achieve the objectives of the sector of legal regulation, the norms of which gave rise to the liability, confirmed or established it (for example, civil, administrative, financial, criminal law etc.).

2. Liability measures in enforcement proceedings are differentiated depending on the subject of their application: the debtor or other subjects of enforcement proceedings. Since initiation of enforcement proceedings is in itself a consequence of the wrongful behaviour of the faulty debtor, his avoidance of the voluntary execution of the requirements of the enforcement document in the initiated enforcement proceedings does not constitute any special (additional) wrongfulness. Therefore, liability measures in the enforcement proceedings applied to the debtor should rather perspectively encourage execution of the requirements of the enforcement document by a specific debtor instead of a retrospective punishment for the wrongful act (like responsibility in other areas of regulation). Liability measures applied to the subjects of enforcement proceedings, other than the debtor, do not and should not have any significant features in relation to those general legal regimes in which they are applied (civil, administrative, criminal, civil procedural etc.).

3. Public liability measures against the debtor are applied in the enforcement proceedings primarily as indirect coercive measures, so they can be applied repeatedly. As a consequence, the practice of application of such measures (including criminal liability measures) demonstrates departure from the rule of necessity to ascertain every time the guilt of the offender in subjective aspect (as a mental attitude to non-fulfilment of the requirement), characteristic of public legal liability, and involves the assessment of guilt in objective aspect (he had to fulfill the requirement but did not take all the measures of fulfilment), appropriate of the civil law liability.

4. Application of a liability measure should not prevent the performance of the main obligation of the debtor, which gave rise to the enforcement proceedings, for example, imposition to the delinquent debtor of a fine in favour of the state, should not impede the execution of the monetary demand of the claimant. Therefore, liability measures in the enforcement proceedings should be applied along with other coercive measures which should also be reflected in the order of distribution of the money recovered from the debtor.

5. In modern enforcement proceedings, in addition to the measures clearly qualified as liability measures (for example, an administrative fine) there is a range of coercive measures restricting personal rights of the debtor (prohibition to travel abroad, to drive vehicles, placement of the debtor's personal information in the public domain), which are not recognized by legislation and law enforcement practice as measures of liability, however, based on the revealed signs of liability (restriction of the legal status of the addressee, negative assessment of his/her behavior, inducement to perform actions against his/her will, absence of direct connection with the subject of the basic requirement) must be recognized as such, which requires revision of the order and conditions of their application.

6. It is theoretically substantiated to distinguish the following principles of the enforcement proceedings, characterizing the specificity of the relevant liability mechanism as well as the legal regime of enforcement proceedings in general:

procedural formalism;

procedural equality of the parties;

procedural management of the enforcement proceeding by a bailiff;

adequacy of enforcement actions;

prevalence of the material impact over the impact on personality of the debtor;

priority of execution of the enforcement document demands in an intact form;

interest (encouragement of activity) of the claimant.

7. The problem of the effective execution of demands of the claimants cannot be solved by using only legal instruments of enforcement proceedings. Enforceability of demands should be ensured by improvement of the remedies provided by the material

law, mechanisms of their selection, as well as modification and confirmation in the proceedings.

8. Compulsory enforcement as an evolving process should ensure a gradual growing pressure to the debtor for the purposes of implementation of the purpose of the enforcement proceedings, including by gradual reduction of the level of legal guarantees provided to the debtor. At the same time, the impact measures applied against the debtor should be differentiated depending on the reasons for non-performance, the content of the debtor's liability, its social significance, and should be limited by general limits of use of coercive measures in a constitutional state.

9. The state can not apply the same coercive measures either to a responsible or to an unscrupulous person, despite the intrinsic difficulties in establishing the intent. Only an unfair non-performance by the debtor of the demands of the enforcement document, that is non-performance in the presence of an actual possibility of execution at this specific debtor should be recognized as the offense resulting in application of measures of public liability in enforcement proceedings.

10. The enforcement proceeding legal instruments are not intended for effective enforcement of the obligations, where a debtor actually is not able to pay the debt, including for such reasons as the lack of enough assets and revenues, or a debtor intentionally digress the obligation or (and) proactively resists the debt collection. Taking into account the limits of state coercion used on the debtor in the interests of the creditor, the bailiff service, as a general rule, should limits its activity by the considering if the debtor is fair or not, and by implementing enforcement measures, which could be used without disproportionate coercion, and not affect dramatically rights and legal interests of other persons (including debtor’s creditors, contractors and members of the debtor’s family). Thus, in relation to unfair debtors criminal or administrative, and first of all, liability measures, should be applied. In respect of a responsible debtor, who is not able to pay. the enforcement proceedings should be closed and the debt collection should be carried out, in availability of grounds, under the insolvency (bankruptcy) procedure.

11. Establishment of the debtor's bad faith in the enforcement proceedings entails an unfair debtor withdrawal from the actions of the general principle of prevalence of the material impact over the impact to the debtor's personality. He may be subject to measures of a personal nature, respecting the principle of proportionality.

Unscrupulousness of the debtor also deprives him of the guarantees implied by the general principle of the priority of execution of the demands of the enforcement document in an unchanged form. Taking into account that the relevant principle protects the interests of the claimant and the responsible debtor, the establishment of the latter's bad faith allows, for implementation of enforcement proceedings, to deprive the debtor, under the claimant's application, of the opportunity to fulfill the demand in accordance with the original method of execution.

12. Before being brought to responsibility for unfair non-performance, the debtor should be given an opportunity to confirm his good faith (refutation of bad faith presumption). The confirmation procedure may be preceded by a request from the debtor of information on his ownership of property when all the efforts of enforcement agencies and the claimant to search for and foreclose on the property of the debtor turned out to be unsuccessful. Failure to appear without a reasonable excuse before the bailiff, provision of knowingly false information about the property status, avoidance of its provision may be regarded as the debtor's unfair behavior and may result in the application of measures of public liability.

13. In enforcement proceedings the claimant may not demand from the state to ensure the full actual execution, but only the execution of all the legal enforcement actions and the timely reaction of a bailiff to the claimant's petition on implementation of certain enforcement actions and compulsory enforcement measures against the debtor and his property.

Therefore the amount of damage caused to the claimant by illegal actions (inactions) of a bailiff may not be calculated on the basis of the full amount of debt under the enforcement document. Otherwise, the monetary compensation paid by the state to the claimant does not seem to be a compensation for damage caused in the

enforcement proceedings , but a guarantee provided by the state of performance by one private individual of his obligations before another private individual.

14. Notwithstanding the accepted in the doctrine and judicial practice concept of the enforcement fee as a liability measure, from the point of view of its purpose in the legal regime of the enforcement proceedings, it should be qualified as a pre-determined compensation of the state's expenses for arrangement of compulsory enforcement, which entails a reinterpretation of the model of its application. More specifically, for the purposes of the enforcement fee recovery the debtor's unscrupulousness should not be subject to ascertainment and, thus, the grounds for release from payment or decrease in the amount of the fee should not be conditioned by the presence or absence of the debtor's guilt in non-fulfilment of the requirements of the enforcement document.

Theoretical significance of the thesis research includes elaboration and scientific substantiation of main provisions of the legal liability theory in enforcement proceedings, formulation of a system of goals, objectives and principles of enforcement proceedings, determination of theoretical models of development of coercive measures in the modern enforcement proceedings.

Comprehensive analysis of certain types of liability applied in the enforcement proceedings performed in the study brought to the conclusion that liability in the enforcement proceedings has inter-sectoral nature, it is not homogeneous as well as the enforcement proceeding itself and the requirements of the enforcement documents executed in the relevant legal regime. The conclusion disproves the still dominating in the legal science theoretical statements on exclusively sectoral nature of types of legal liability.

Enforcement proceedings can be defined as a "synthetic" rather than a complex sector of legal regulation. In enforcement proceedings the institutions (including those of penalties), borrowed from various specialized legal regimes (including civil procedural, civil, administrative), not only coexist and interact with each other, they undergo modification according to the purpose and goal of the enforcement proceedings, they change their purpose taking into account that in the universal mechanism of the enforcement proceedings should be implemented demands of various

legal nature. The "synthetic" nature of the enforcement proceedings is based on the very ideology of the legal system structure, implying inevitability of the embodiment in the legal regime of the enforcement proceedings of various procedural instruments, inherent in various types of jurisdictional (first of all, judicial) activities.

Further development of theoretical positions is also promoted by the conclusions made in the thesis on the legal nature, purpose and specificity of liability in the enforcement proceedings, the proportion of liability measures and other measures of state coercion; signs of their differentiation; limits of coercion in the enforcement proceedings, conditioned not only by general constitutionally legal or internationally legal frameworks of coercion, but by the very purpose of the enforcement proceedings; exclusion of such coercive measures which in a particular case impede the implementation of the purpose of the enforcement proceedings; ensuring the necessary balance of interests of the parties of the enforcement proceedings and the state; mandatory taking into account of the debtor's personality and inconsistency of the reduced level of his legal protection guarantee in the enforcement proceedings in application of the measures "borrowed" from other legal regimes.

The thesis confirms the independent theoretical value of a feature of legal liability such as disapproval of the offender, negative assessment of his behaviour, which allowed explaining the legal nature of personal restrictions applied to the debtor in the enforcement proceedings as liability measures. Besides, there was made a conclusion that in the coercive system the absence of direct correlation between the objective side of an act and the content of the state's response to it is only possible with application of measures of legal liability but not of interim, protective or other similar measures, which entails theoretical reinterpretation of the criteria of the coercive measures classification, including in the enforcement proceedings. In addition, by the example of enforcement proceedings the work demonstrates a possibility of a qualitative transition of coercive measures, their transfer from interim measures to legal liability measures.

Referring to the consideration of the offense in enforcement proceedings, the author of the thesis concludes that such offense, common to civil procedural cases, as contempt of court, being the basis of civil procedural liability, can not include the

offense in enforcement proceedings. This is due to the fact that the principle of judicial management of the process is extremely limited in the sphere of enforcement proceedings, where the judicial bailiff performs ordinary activities of an official, which is not justice, and the most part of enforcement documents are not judicial at all. The work makes a theoretical conclusion that in the enforcement proceedings there is no general procedural obligation of the debtor to fulfill the requirements of the enforcement document (different from the initial obligation of the debtor to be subject to the legal force of a judicial act on the basis of which the enforcement document was issued), which excludes the extension of the general grounds of civil procedural liability to the enforcement proceedings.

The thesis performs a critical analysis of still prevailing opinions in the legal doctrine regarding the importance of the sectoral subject and method of regulation for the classification of branches of law, as well as types of legal liability, and states methodological inconsistency of the sectoral approach to the classification of legal liability, the definition of the actual features of specific coercive measures. In this regard, new theoretical concepts are used in the study of enforcement proceedings, finding its place in the legal system, based on the theory of legal regimes. The developed approaches enable to transfer the long-term scientific discussion on the sectoral "independence" of the enforcement proceedings and its individual institutions, including legal liability, to a qualitatively different, more productive theoretical basis.

Thus, the thesis is a complete study of a complex of scientific problems in the fields of civil procedure, enforcement proceedings, legal coercion and legal liability theory.

The practical value of the research is that conclusions and provisions substantiated in the work may be used for improvement of the legislation, generalization and arrangement of judicial and other law-enforcement practice, in preparation of program documents in the sphere of improvement of enforcement proceedings and organization of the agencies of compulsory enforcement.

Provisions and materials of the thesis research can constitute an integral part of the training course on "Civil procedure", the basis of the training course on "Enforcement proceedings".

Approbation of the research results. The author has used the research materials for preparation of programs, teaching packages, practical trainings on the subjects of "Enforcement proceedings" and "Enforcement proceedings as a complex procedural and administrative law institution ", taught by the author at the faculty of law of the National Research University "Higher School of Economics" since 2010 till present; in the activity of a dissertationist a civil servant in the Ministry of Justice of the Russian Federation in development of the draft of the Long-Term Program of Improvement of Efficiency and Execution of Judgments (2011-2020), as a member of the Scientific Advisory Board at the Federal Bailiff Service, as a member of the task group of the Supreme Court of the Russian Federation for preparation of the draft of the resolution of the Plenum of the Supreme Court of the Russian Federation "On application of laws by courts in the course of consideration of issues arising during the enforcement proceedings" (2015), in presentations at scientific and research-to-practice conferences: The V St. Petersburg International Legal Forum (2015, St. Petersburg), VI St. Petersburg International Legal Forum (2016, St. Petersburg), XVII April International Scientific Conference of the Higher School of Economics on development of economy and society (2016 Moscow), International Research-to-Practice Conference "Modern civil law of obligation and its application in civil proceedings" (2017, Moscow). The dissertation was discussed by the Department of Judicial Power of the Department of Public Law Disciplines of the Faculty of Law of the Federal State Autonomous Educational Institution of Higher Education "National Research University "Higher School of Economics" and by the Chair of Civil Procedure of the Faculty of Law of the Federal State Budgetary Educational Institution of Higher Education "Saint Petersburg State University".

Materials of the work have been used in preparation of the author's textbook on enforcement proceedings for bachelor's and master's degree programs, which has passed four editions, as well as for the workshop.

23 scientific works, 18 articles have been published on the thesis research's subject in the magazines included into the list of recommended publications of NRU HSE. Total volume of the author's publications on the subject of the thesis research is over 81 a.p.

The structure of the work is determined by the purposes of the research and the need for a comprehensive study of issues of responsibility in enforcement proceedings.

The thesis includes introduction, five chapters, containing fourteen paragraphs, conclusion, bibliography.

Main contents of the work.

The first chapter of the thesis "**Responsibility in the enforcement proceedings: searching for a place in the legal system**", includes, firstly, a detailed analysis of opinions on the essence of legal responsibility in general and in enforcement proceedings in particular, existing in the legal literature and secondly, scientific issues to be solved upon results of the work. The paragraph "**The issue of effectiveness of coercion in enforcement proceedings**" provides statistical data that allow to assess objectively the state of modern enforcement proceedings, their role in the legal system, as well as in the system of social and economic relations, to illustrate by specific examples the relevance of the problem of improving the effectiveness of coercion, including legal liability, in the field of compulsory enforcement.

Notwithstanding the objective data demonstrating consistently low indicators of actual execution and weak impact of the existing legal liability measures on the effectiveness of enforcement proceedings, the main legislative way to improve the effectiveness of enforcement proceedings remains escalation of coercive measures against debtors, further limitation of their property and non-property rights either in relation to the circle of persons with limited rights, or to the range of possible limitations. For example, the Federal Law of 28.11.2015 No. 340-FZ "On amendments to the Federal Enforcement Law" and certain legislative acts of the Russian Federation" have introduced the institution of temporary limitation of the debtor's exercise of a special right (the right to drive a vehicle). According to the explanatory notes to the

relevant draft, in the course of introduction of the relevant measures it is necessary for the drafters to be "inspired" by application of restrictions on exit of the debtor from the Russian Federation stipulated in 2007 by Clause 67 of the Enforcement Law. The authors of the explanatory note particularly indicate that application of temporary restrictions on travelling outside the Russian Federation, "obviously indicates the effectiveness of the institution of temporary restriction of personal rights of the debtor for the purposes of correct and timely execution of the demands of judicial acts."[13] However, judging by the statistics "effectiveness" proceeds only from absolute, not relative, indicators. As substantiation of the necessity of expansion of the list of restrictions of the debtors' personal rights the drafters indicated that not all the debtors exercise their right to travel outside the Russian Federation, therefore, restriction of this right can only be an effective coercive measure of execution of requirements of enforcement documents in relation to a small population. Amendments to the Russian legislation establishing a possibility of limitation of the debtor's right to drive a vehicle and (or) a vessel, according to the developers of the draft law, were to become a preventive measure motivating debtors to voluntarily fulfill the requirements of the enforcement documents. In the explanatory note it was predicted the application of the introduced temporary restriction of the debtor's right to drive a vehicle in respect of about 450 thousand debtors. At the same time, application of this new restriction to 174 thousand enforcement proceedings in 2017 allowed to recover only about 2 billion rubles, i.e. less than 4% of the amount of the indebtedness on enforcement proceedings to which this measure was applied.

Adoption of the law introducing temporary restrictions of special rights is obviously not the last step on the way of gradual increasing of coercive influence on the debtor in enforcement proceedings. The following "package" of legislative restrictions, in particular, provides the bailiffs with the authority to prohibit the debtor from performing legally significant actions (registration, reception and extension of public permits and licenses and other actions, which performance by the debtor entails the

[13] See: the explanatory note to the draft Federal Enforcement Law "On amendments to the Federal Enforcement Law" and certain legislative acts of the Russian Federation " // http://asozd.duma.gov.ru/main.nsf/(Spravka)?OpenAgent&RN=661379-6.

incurrence, change and termination of the debtor's rights and obligations). One of the draft laws is aimed to establishment of a possibility of refusal in provision of public services to the debtor. It is supposed that refusal in provision of public services will not be based on a special resolution of the bailiff (as in case with already provided by the legislation restrictions of the special rights of the debtor and restriction of the right to travel outside the Russian Federation), at each specific application of the debtor for a state service the decision on such refusal will be made by a corresponding public authority upon condition of presence of the debtor's information in the debtors' database.[14]The ideas of the subjects of the legislative initiative on limitation of the debtors' rights in enforcement proceedings are not only related to the rights, exercise which includes application to public authorities. Some time ago, it was proposed to make provision for the right of the claimant and the bailiff in enforcement proceedings to seek in a court the invalidation of the debtor's transactions and return of the property previously alienated by the debtor (by analogy with the insolvency (bankruptcy) procedure.[15]

At the same time, the practice of constitutional justice demonstrates somewhat different trends. For example, ten years ago the practice of the Constitutional Court of the Russian Federation was based on the main principles of enforcement proceedings identified as preferential protection of the interests of the claimant, restriction of equality of participants in the enforcement proceedings with due consideration of the necessity to limit the rights of the debtor, which enabled some scientists to express the opinion that the constitutional balance of interests of the claimant and the debtor on private penalties is first of all in provision to the latter of a minimum level of existence that would hold him within the social life. [16] But in 2016 the resolutions of the Constitutional Court started to mention inadmissibility of overriding collisions of legal

[14] A. O. Parfenchikov. Restriction of the debtor's rights: novelties of legislation and practice of application// Collection of materials of the international scientific and practical conference/ Resp. editor A. O. Parfenchikov, V.A. Gureev. M., 2016. P. 21-23.

[15] Draft law No. 711269-6 "On amendments to the Federal Enforcement Law // http://asozd.duma.gov.ru/main.nsf/(Spravka)?OpenAgent&RN=711269-6.

[16]See: V.V. Yarkov. Certain principles of civil enforcement law (in connection with Decree of the Constitutional Court of Russia of 12.07.2007 No. 10-P and the new Federal Enforcement Law) // Enforcement proceedings: procedural nature and civilised bases : collection of materials of the all-Russian research and practice conference / resp. ed. D.H. Valeev, M.Y. Chelyshev. M., 2016. P. 21-23.

interests of the debtor and the claimant by way of granting defense to some rights in violation of others, breach of the main contents of constitutional rights of the debtor, impermissibility of a long-term continuance of the debtor's state of uncertainty with regard to his legal status, dispositivity in procedural relations in enforcement proceedings, proportional distribution of economical risks related to potential difficulties in sale of the distrained property between the debtor and the claimant, the principle of legal justice and even that of solidarism involving mutual assistance of the debtor and the claimant for achievement of liability goals, consideration of rights and legal interests of each other.[17]

At the same time, as evidenced by the trend of the legislation development, it would be incorrect to speak about its general "liberalization", reinforcement of protection of the debtor's rights. On the contrary, given the current low level of actual enforcement, new and more substantial enforcement measures against debtors are being introduced into the legislation and law enforcement practice, new measures of liability are being applied, and those existing tend to tighten.

Paragraph "**Discussion of the legal nature of liability in enforcement proceedings**" identifies features that allow describing the legal liability institution, including in enforcement proceedings. Besides, it qualifies the attempts of some researchers to consider the legal liability as an element of an "independent" branch - executive law. Based on the analyzed scientific opinions, it has become clear that the main discussion of liability in enforcement proceedings comes round its qualitative identity in the law system in relation to other, already recognized, "independent" types of liability. At the same time, the legal science has not generated a unified opinion on the "canonical list" of independent types of liability so far. The author assumes that lists of "independent" types of liability, normally referred to in scientific works, testify to the fact that law professionals have not yet managed to define objective criteria of classification of legal liability according to its types. Uncertain conclusions at liability classification result from unworkable initial theoretical assumptions used as a

[17]Resolution of the Constitutional Court of 10.03.2016 No. 7-P "On the case of inspection of constitutionality of Part 1 of Clause 21, Part 2 of Clause 22 and Part 4 of Clause 46 of the Federal Enforcement Law in connection with the complaint of a citizen, M.L. Rostovtsev".

foundation for a "building" of logical reasoning, but their weakness may lead to collapse of the whole carefully erected notional structure. And one of such theoretical assumptions is so called "sectoral approach", intending a formal connection of liability types with a list of law branches (sectors) classified on the basis of the doctrine of the subject and method of regulation.

Unproductivity of the "sectoral approach", serious methodological issues of legal liability classification (as well as other legal institutions), faced by the Russian legal science can also be demonstrated by the fact that a type of legal liability is substantiated on the basis of a certain mechanical amount of researches on the relevant subjects instead of scientifically based criteria.

Concluding the general criticism of the sectoral approach to legal liability classification, the author comes to the point that in classification of legal institutions (including that of legal liability) especially important should be the relevant legal regimes (according to terminology of S.S. Alekseev) instead of the subject and method of a relevant branch, and even further, not inclusion of liability provisions to a specific regulatory act. Studying the issue of legal liability through the prism of "legal regimes", we can conclude that the "sectoral" classification of legal liability in itself has no value. While classification of liability types according to legal regimes is designed to solve the applied problems. Having defined the legal regime which a liability measure refers to, we will be able to find out which other provisions and principles should be considered for efficient application of the legal liability mechanism.

Transferring general conclusions on the problems of differentiation of the legal subject to the sphere of enforcement proceedings, the author notes that the ongoing discussion on "independence" of enforcement proceedings is based, first of all, on the sectoral approach, it is related to definition of the subject and the method of "executive law" which does not allow to solve in full the problems facing the science of enforcement proceedings. The work states that even the approximate list of relations governed by the enforcement proceedings legislation clearly demonstrates that its subject, from the point of view of the regulated relations, is inhomogeneous. Some relations are procedural in nature, others are material. Some relations represent clearly

expressed power relations, others are characterized by formal equality of subjects. What is more important, is that many relations regulated by the enforcement proceedings legislation arise and exist not only in the sphere of enforcement proceedings, but also outside it. For such relations enforcement proceedings is just one of many stages of implementation.

Finding the place of enforcement proceedings in the legal system, it should be recognized that enforcement proceedings have secondary character for other sectors of law, through execution of relevant judicial or other acts they ensure implementation by using state coercion of the relevant legal relations. For civil, administrative, tax, budgetary, labour, family, housing, social and other branches of legislation, enforcement proceedings is a mechanism of compulsory execution of legal acts adopted in accordance with their norms, establishing or confirming rights of the subjects of the relevant legal relations (by way of granting to such acts of the status of enforcement documents). Such interrelation of enforcement proceedings with other branches of legal regulation also stipulates inhomogeneous legal regime of enforcement proceedings, when the legal mechanism of compulsory enforcement of specific acts is adjusted to the requirements of the branch standards, on the basis of which they were adopted.

The branch approach to classification of legal liability is not only deprived of independent cognitive and methodological meaning but has also demonstrated its insolvency as a basis for formation and development of the system of legal liability (including in enforcement proceedings). We live in conditions of "mixed" (according to S.S. Alekseev's terminology) legal regimes, complex branches of legislation, compound methods and techniques of legal regulation, functioning of which is directly related to specific purposes of legal policy in a particular sphere. The general specific task of enforcement proceedings (which is sentenced to always remain a "mixed" legal regime due to heterogeneous nature of enforcement documents), as an element of a relevant legal regime, is the correct and timely compulsory execution of the requirements of enforcement documents. The general task determines the principles of regulation, impacts the formation of specific enforcement measures aimed to the subjects of the relevant relations, including planning and application of legal liability measures. The

author proposes the message that the institution of enforcement proceedings liability could be recognized as cross-sectoral, it covers all types of the sectoral legal liability applied in connection with the compulsory execution of the requirements of enforcement documents.

The paragraph "**Liability measures and other coercive measures: the problem of correlation**" covers differentiation, in view of the opinions existing in the legal literature, between liability measures and other coercive measures, including pre-trial restrictions and provisional measures. Considering general features of legal liability, allowing to distinguish it from other measures of legal pressure, the author, taking into account the opinions existing in the literature in relation to the essence of legal liability, proceeds from the fact that common features of legal liability are, firstly, its application in response to a committed offence (failure to fulfill legal obligations), secondly, compulsory (against or regardless of the will of the offender) imposition on the offender of additional legal liabilities or other unfavorable change of the initial legal status in comparison to the status he used before holding liable, and, thirdly, conviction of the offender as a result of prosecution expressed in a negative evaluation of his actions. Compulsoriness of liability is not manifested through its application by a power authority (although this is often the case). Compulsoriness of legal liability is manifested first of all by the fact that imposition of additional liability to the offender, change of his status as a consequence of the offence is performed against or regardless of the will of the offender, that freedom of his actions is restricted and that he becomes forced to act against his intentions or desires.

In various areas of regulation, certain features of liability manifest themselves more or less clearly, have their own particular characteristics depending on the legal regime, the element of which is the relevant mechanism of liability. For example, public law (criminal, administrative liability) evidently shows a sign of conviction of the offender, such conviction is not just stipulated by law, but, as a rule, is specifically recorded by the legal act of the state body or official on prosecution. In imposition of civil liability, the sign of conviction is less pronounced externally, but still present.

The author concludes that the very purpose, the focus of legal liability may vary in different areas of regulation. In any type of legal liability we can reveal common features, functions, basic elements forming the mechanism of legal liability, which, however, collectively are aimed at implementation of specific, independent objectives of liability in a particular regulatory regime.

The final paragraph of the first Chapter "**Problem of the qualification of coercive measures in the enforcement proceedings**", for the purposes of determination of the subject boundaries of the study, analyzes the main coercive measures in the enforcement proceedings, exactly distinguishes the measures of legal liability in view of its features. This action is of practical importance as qualification of the relevant measures as legal liability measures allows to assess them from the point of view of correspondence to standards of development and application of liability measures existing in the legal system, level of legal guarantees for the recipients of such measures, general assurance of constitutional balance of rights and interests of various subjects which allows to achieve the objectives of the study.

The author notes that the compulsory enforcement measures specified in part 3 of Clause 68 of the Enforcement Law are the measures attributed by E.V. Vas'kovsky to measures of real enforcement (direct coercion). Indirect coercive measures aimed at the personality of the debtor in order to encourage him to fulfill by his own the requirements of the enforcement document (although against his will) are contained in Clause 64 of the Enforcement Law, which establishes a list of enforcement actions. Compulsory enforcement measures do not overlap the methods of protection of subjective rights (including those provided by Clause 12 of the Civil Code). One compulsory enforcement measure may "serve" a few remedies, as well as enforcement of one remedy may require the application of multiple measures of compulsory enforcement.

Methods of protection of rights vary in their legal content (conditions of application, the grounds for occurrence of the relevant obligations, the prerequisites for the application of a particular method of protection by the court, etc.) rather than in their actual nature (the nature of actions committed by the subjects of liability). For example,

such remedies as compensation for losses, charge of penalties or reparation of damages are identical in terms of actual content (transfer of money from the debtor to the creditor), but different in their legal content. The legal content of a remedy is of great importance in the selection of the appropriate method of remedy both for the claimant in formulation of the claim and for the court in making a decision on the claim. In turn, compulsory enforcement measures differ first of all in actual, rather than legal, content. Each compulsory enforcement measure is a special set of actions performed by the bailiff and other subjects of enforcement proceedings.

Assessing some measures that the legislation on enforcement proceedings qualifies as enforcement actions, but which are not just actions of the bailiff and other officials, but legal restrictions (first of all of a personal nature) for the debtor, imposing additional obligations on him, i.e. correspond to the signs of liability measures, the dissertator concludes that the restriction of the debtor's travel outside the Russian Federation, according to its original legislative purpose, is a provisional remedy, but in law enforcement practice, the restriction of travelling abroad, instead of the action aimed at creating conditions for application of enforcement measures, at prevention of the debtor's avoidance of participation in the corresponding procedural actions, turned into a fully-featured measure of compulsion of the debtor to independent execution (against his will) of the requirements of the enforcement documents to the extent of indirect personal coercion.

Along with the restriction to the debtor's departure abroad, restriction to special rights represents a measure similar to liability measures, both from the point of view of the volume of restrictions of rights and orientation to psychological, punitive influence to the debtor, compulsion of the debtor own execution of the requirements of the enforcement document, is a "surrogate" of compulsory enforcement measures (according to terminology of M.Z. Schwartz). Limitation of special rights cannot be considered as a provisional measure, given the fact that it intrinsically is not related to the liability, the execution of which is provided by its application.

Thus, the work states that in enforcement proceedings, in addition to measures recognized by the legislator and the legal doctrine as clear liability measures (for

example, the administrative fine provided by Clause 17.15 of the Administrative Code), there is a range of coercive measures representing restriction of the personal rights of the debtor (to travel abroad, drive a vehicle), publication in public domain of the debtor's personal information, which formally are not recognized as liability measures, but, on proceeding from the characteristics of liability (a negative change in legal status of a person, existence of an element of the conviction), the practice of their application can be recognized as such. The relevant measures are the measures of indirect coercion, i.e. they are aimed at forcing the debtor himself to fulfill the requirement of the enforcement document. The above said should not entail a drastic reduction in the level of legal guarantees for the addressee of coercive measures. It seems that such guarantees in general should be consistent with the guarantees granted to persons involved in measures of public legal liability, under the model of which the corresponding enforcement actions are designed.

The trend of coercive measures development (first of all, of enforcement actions) in enforcement proceedings represents the increase in impact on the personality of the debtor not only under the demands of enforcement documents, which objectively can not be executed without participation of the debtor himself (non-property demands), but also ordinary money claims (for example, Part 2 Clause 67.1 of the Enforcement Law). Moreover, the contents of such coercive measures are not related to the subject matter of enforcement, which brings them closer to liability measures rather than provisional measures. The relevant enforcement actions, impacting on the mentality of the debtor, forcing him to personally perform certain actions, in law enforcement practice, replace coercive actions performed by the bailiff, as *a priori* they are supposed to be more effective than foreclosure on the property of the debtor without his direct participation which is usual for enforcement proceedings. As demonstrated by statistical data, the effectiveness of such measures is not always proved in practice.

On the basis of the pre-revolutionary lawyers positions, it is concluded that the departure, in the second half of the 19th century, in European (including Russian) legislation, from direct pressure on debtor, restrictions of his personal rights, freedom in enforcement proceedings was associated not so much with the general humanization of

legislation and law enforcement and the development of the concept of human rights (particularly, fundamental human rights include not only the right to the personal integrity of the debtor, but also the right of the claimant to justice), as with the revealed inefficiency of applying such measures in most cases.

As it became clear from the historical experience of applying personal detention to debtors, that the key problem of the applicability of the appropriate measure is the problem of determination of guilt (unfairness, malignance) of the respective debtor. Personal restrictions are effective only in relation to those debtors, who possess the necessary property (having the opportunity to comply with the requirement of the enforcement documents), but for various reasons intentionally avoid execution. For those debtors, who objectively cannot comply with the requirement of the enforcement document, personal limitations cannot be applied (especially, if they are of an indefinite nature, such as restrictions to travel abroad and restrictions on special rights). Such restrictions are ineffective, do not induce the debtor to comply with the requirement, but excite him a sense of injustice of current circumstances, decrease the level of confidence in law and justice. Historical experience clearly indicates the need for a differentiated application of enforcement measures in respect of conscientious and unconscientious debtors, provision of a balance of interests of the debtor and creditor. Besides, researchers of pre-revolutionary law noted the similarity of some measures of indirect coercion in enforcement proceedings with full-fledged penalties for crimes, stated in criminal law.

Adequate legal guarantees must accompany not only the application of measures of responsibility, but other measures of coercion, especially if they are associated with a negative change in the legal status of the respective person, restriction of his capacity, personal freedom, the right to privacy, public condemnation of his behavior. The need of assessment of person's conscientiousness, reasons for his failure to fulfill his duty, determination of a proportionate measure, the period of application of restrictions should guarantee the balance of interests of the debtor, the claimant and the state in enforcement proceedings.

In furtherance of the general conclusions, made in the first chapter, the second chapter of the thesis **“Responsibility - is an element of the legal regime of enforcement proceedings”** is devoted to identifying the general principles of enforcement proceedings that characterize the respective legal regime, influencing the mechanism of responsibility. In the paragraph **“Legal regime of enforcement proceedings: basic elements**" the author exposes the goals and objectives of enforcement proceedings and notes, that the tasks of enforcement proceedings, regarding the execution of judicial acts are an organic continuation of the tasks of legal proceedings (primarily, civil), aimed at the realization of a common goal - the protection of violated rights, freedoms and legitimate interests of citizens and organizations, public subjects. But, notwithstanding that in general the Enforcement Law establishes the general procedural mechanisms of enforcement proceedings, regardless of the material and legal nature of the executed claim (for example, the general procedure for initiation and completion of enforcement proceedings, terms in enforcement proceedings, the list of enforcement actions, etc.), in the course of determination of the conditions and limits of coercive measures application to the debtor, it is unacceptable to "depersonalize" the demands of the enforcement document, ignore the legal nature, the specificity of the law itself protected in enforcement proceedings.

The legal regime of enforcement proceedings in modern conditions is very heterogeneous, it has a complex character, thus, there is no need to include all the objectives of legal regulation in Clause 2 of the Enforcement Law, because in that case the legislator would have to "collect" them from all the sectoral regulatory legal acts, which is absolutely senseless. But the enforcement proceedings have a single specific task, which distinguishes it from other types of actions of public authorities or officials. This is the task of a correct and timely compulsory execution of enforcement documents to ensure implementation of objectives of those branches of legal regulation, on the basis of which norms they were issued. Thus, enforcement proceedings may have a lot of objectives, at least proportionally to the number of branches of legal regulation, in accordance with which rules the enforcement proceedings specified in Clause 12 of the

Enforcement Law are issued, but all these objectives are achieved in enforcement proceedings by performing a single task.

Moving on in the next paragraph "**Principles of enforcement proceedings** " to evaluation of regulatory principles of enforcement proceedings, the author comes to a conclusion, that Clause 4 of the Enforcement Law does not contain any valid principles of enforcement proceedings, and provisions referred to as principles therein can not be considered as such. It is proposed to overcome the gap between the doctrinal and normative principles of enforcement proceedings on the one hand, and its real social and economic basis, on the other, to take a pragmatic look at the enforcement proceedings as a legal mechanism. In the absence of principles of enforcement proceedings that can really influence the development of legislation and law enforcement, compulsory enforcement as an area in which millions of people are involved on daily basis, is exposed to the risk of becoming, in the eyes of society and business, an example of a catastrophic gap between the text of the law and the practice of its application.

The legal literature contains opinions on the action in the enforcement proceedings of the principles of encouragement of voluntary execution, dispositivity and other principles.[18] But the relevant principles, first-, are not always universal, that is, can only be applied to execution of certain enforcement documents, for example, writs of execution on the civil courts orders, second-, in fact, are not procedural principles of enforcement proceedings as an activity but the principles of branches of law, under the rules of which the enforcement documents are issued.

When formulating the principles of enforcement proceedings the dissertator proposes to proceed from the forecast of continuous growth of enforcement proceedings and the overall amount of debt to be recovered, including by enforcement proceedings. Like in many European countries, these circumstances in Russia are caused by various factors, both social-economic and cultural, for example, growth of consumption outrunning real incomes and savings, increasingly tolerant attitude of the society to living on credit, involvement in the crediting system of new layers of population,

[18] See, eg.: K. A. Malyushin System of principles of the civil executive law of the Russian Federation / / Arbitration and civil procedure. 2008. No. 12. P. 32-35.

including unemployed young people, elder people who render financial support to their relatives, expansion of practice of part-time and temporary employment. Moreover, general level of financial literacy remains low against the background of "aggressive" methods of promotion of consumer crediting services without proper verification of the borrower's paying capacity. On the whole, the appearance of modern economy, behavioral stereotypes of the civil turnover participants are changing. For quite some time now non-fulfillment or incomplete fulfillment of liabilities is none of anything extraordinary, while welfare of even ordinary citizens-borrowers is influenced by macroeconomic factors, volatile currency rates, global prices for raw materials etc. In a number of innovative business areas, failure to return money to the investor who funds a "startup project" is deemed to be usual and expected both by the lender, and the debtor and the non-returned income of the investor is compensated by other successful projects.

Until the enforcement proceedings from the point of view of legislative regulation remain officially "creditor-backed", the claimant does not have to take any active actions, he should just present the enforcement order to the bailiff service and wait for the recovered money to be received to his account. At the same time, law enforcement practice clearly demonstrates that active actions of the claimant serve as a key factor of success of enforcement proceedings. He can not any longer rely on doctrinal principals of preferential protection of his rights in prejudice to the rights of the debtor. Successful attempts to fully impose on the state all the risks of the claimant of non-receipt of the assets awarded to him in the enforcement proceedings are also in the past. Enforcement proceedings is just one stage of implementation of subjective right in relation to the debtor containing all the economic risks, which a reasonable creditor should consider prior to entering into the obligation.

In view of the above, the work proposes the following principles of enforcement proceedings, including those that have an impact on the formation of the mechanism of liability: principle of procedural formalism; principle of procedural equality of the parties; principle of procedural management of the enforcement proceedings by the bailiff; principle of proportionality of enforcement actions; principle of priority of

property impact before the impact on the personality of the debtor; principle of priority of execution of requirements of the executive document in the unchanged form; principle of involvement (encouragement of activity) of the claimant.

Principle of procedural equality of the parties. Notwithstanding that the corresponding principle exists both in civil and in criminal processes, it is also characteristic of the enforcement proceedings. By virtue of this principle, both the claimant and the debtor have, in accordance with the law, formally equal procedural rights, as well as opportunities for their implementation in enforcement proceedings. The principle of equality is universal for enforcement proceedings, it is applied to actions for execution of all types of enforcement documents, does not imply exceptions, even when the parties to enforcement proceedings are the Russian Federation and other public entities.

The author predicts the emergence in the sphere of enforcement proceedings of the provisions aimed at promotion of cooperation between the parties. Such provisions should be conditioned not only by the desire to ensure the necessary level of protection of human and civil rights and freedoms in enforcement proceedings, but also by an honest focus on the execution process itself as a procedure of interaction between the debtor and the claimant rather than the "isolated" relations of each party with the bailiff. Compulsory impact on the debtor increasing in the course of the enforcement proceedings, the "ladder" of indirect coercive measures will only be able to become "drivers" of the effective execution when the claimant will also have legal incentives to be active in enforcement proceedings, which allows to raise an issue of not only the principle of procedural equality but also of the *principle of involvement (encouragement of activity) of the claimant* in enforcement proceedings.

As of today, it is the claimant in enforcement proceedings who has a wider, as compared to the debtor, range of procedural rights and, consequently, opportunities. *Principle of involvement of the claimant* already manifests itself in the provisions of the law by the fact that it, as a general rule, "launches" the entire process of enforcement proceedings, presenting the enforcement documents to the enforcement body, it possesses the right to apply for a change of the method and order of enforcement in

presence of the circumstances impeding its execution, right to refusal of collection, has other rights and opportunities.

The said principle, in view of the experience of some foreign legal orders, can be further implemented, for example, in the rules of advance payment by the claimant of expenses in enforcement proceedings (except for socially significant penalties), on the debt threshold for initiation of fully-featured enforcement proceedings, the necessity for the claimant to provide all the information about the assets of the debtor known to him, in legal mechanisms of debt restructuring in enforcement proceedings, in provisions of the law prescribing to close the unsuccessful enforcement proceedings after expiration of a certain period, etc. In case of approaching the constitutional "threshold" of restrictions of personal rights of the debtors, at permanence of a difficult situation with regard to the actual execution, it is inevitable to appeal to the status of the other party – the claimant. It is important to assess the adequacy of his legal status regulation, the extent of rightfulness of distribution of the risks of failure to comply with the requirements of the enforcement document between the debtor, the claimant and the state.

For the majority of debtors not fulfilling their obligations, the enforcement proceeding should become a "temporary shelter" instead of the eternal "purgatory". Those, who really unable to perform their obligations due to reasonable circumstances of personal or property nature, should be transferred to the insolvency procedure and be relieved from the debt. Intentionally unscrupulous debtors should evidently be transferred to the category of the accused of committing a deliberate crime not only against the claimant, but also against the state, the relevant acts can be qualified as theft of third parties property. In determining effective coercive measures against the debtors, they should be clearly divided into those unable to satisfy the claims (bankrupt debtors) and the debtors who evade the execution of enforcement documents, while having the opportunity to fulfill them. The classical "ordinary" mechanism of the enforcement proceeding mechanism is not intended for full counteraction to an obviously unfair debtor, it has reasonable limits of effectiveness.

The next principle of enforcement proceedings specified in the work is the *principle of procedural formalism.* The ideological source of this principle is the procedural formalism of the civil process, which some scientists denote as a distinctive feature, the basis of civil court proceedings.

In practical terms, the principle of procedural formalism in enforcement proceedings means, first of all, that the procedural actions of the bailiff as an official should be guided by the rule "it is only permitted what is expressly prescribed", and in respect of both parties to enforcement proceedings - "it is only permitted what is expressly permitted". In enforcement proceedings, none of the subjects may perform actions not stipulated by the Enforcement Law. For each action, the law establishes the subjects, procedure, timing of the action, as well as the procedural consequences of its performance or refusal to perform. The principle of procedural formalism allows to distinguish the enforcement proceedings from many other activities of public authorities and officials.

Another principle of enforcement proceedings having a prototype in civil proceedings is the *principle of procedural management of enforcement proceedings by the bailiff.* A bailiff is an independent entity at all stages of enforcement proceedings from the moment when he is sent (given) of the enforcement document.

The principle of proportionality of enforcement actions should be recognized the principle of enforcement proceedings. By virtue of the said principle, in the course of enforcement actions, selection of a specific enforcement action, the bailiff, in order to save the repression, ensure the rights and legitimate interests of the debtor and other persons and at the same time to execute the enforcement document in a correct and timely manner, must take into account the totality of the circumstances of enforcement proceedings, including behavior of the debtor, his good faith, family and property status, nature of the demands of the enforcement document, objective possibility of execution of the enforcement document within the prescribed period, specific reasons for non-fulfillment of its requirements by the debtor, and other circumstances. In this case it involves exactly proportionality of enforcement actions rather than coercive measures since the latter are already prescribed by the law and the enforcement

documents, their selection is outside the powers of the bailiff, his discretion. The work suggests distinguishing between "correlation" (the term is taken from Clause 4 of the Enforcement Law) and "proportionality". "Correlation" determines quantitative thresholds of the impact (penalty) on the debtor in the compulsory enforcement, while" proportionality" determines those qualitative.

The following principle - *the principle of priority of execution of requirements of the enforcement documents in unchanged form* means inadmissibility of alteration of the contents of the enforcement documents, subject of the claim, specified method and order of execution, other than in cases and in order established by the law. The said principle guarantees the constitutional meaning of enforcement proceedings, it is directly related to the purpose of enforcement proceedings. Arbitrary change of the enforcement document at the stage of compulsory enforcement devaluates all the jurisdictional actions of public authorities, discredits the legal force of the judgment, makes unattainable the goals of the civil procedure and other branches of law, according to which the enforcement documents are issued. However, the principle of priority of execution of the requirements of the enforcement documents in an unchanged form should not be understood absolutely, as the need to fulfill the requirements of the enforcement document "by all means". This principle can only be implemented in view of the need to ensure the enforceability of the requirements of the enforcement documents and of the act by virtue of which it was issued (first of all, a judicial order). Enforcement proceedings should not be an involuntary hostage of the impossibility of execution of the enforcement document, trying to fulfill the relevant requirement in an unchanged form, despite the real circumstances and unfair behavior of the debtor.

Breaking out the said principle, the author analyzes the foreign experience of selection and implementation of protection of rights. For example, in the English legal system such remedy as the compulsion to fulfill obligations under the agreement in nature (*specific performance*) is an exceptional measure potentially ordered by the court. In this case, the general method of protection is the recovery of losses, taking into account the fact that it is much easier to recover money in enforcement proceedings than to find a particular thing and force the debtor to transfer it to the claimant. The work

also analyzes the conditions developed in the foreign practice under which the court can not satisfy the demand of fulfilment of an obligation in kind (when the rights of the claimant can be efficiently ensured by the recovery of losses, when execution of the judgment will require permanent supervision of the debtor by the state, when the obligation only includes personal performance of work or provision of services etc.).

The thesis notes that departure from the general rule of compulsion to perform obligations in kind is inevitable and that approach is related to the objective difficulties in execution of the relevant requirements in the enforcement proceedings. Check of enforceability of a decision should, as a general rule, be carried out neither in enforcement proceedings, nor by the bailiff, who does not and cannot have the powers to resolve a dispute about the right and evaluation of evidence, but by the court itself when delivering a judgment on application of an appropriate remedy. For that purpose both judicial practice and legislation should have clear limits of application of such remedy as a coercion to perform the obligations in kind.

Application of procedural coercion against the debtor, including legal liability measures, is permissible only when the requirement set forth in the enforcement document is really enforceable. Substantive law regulations, judicial decisions or requirements of the bailiff are insufficient to "heap" in a moment on the debtor the entire range of enforcement actions in order to induce him to fulfill the requirement "at any price", regardless of the sacrifice. At the same time, the burden of establishing such enforceability, modification under certain conditions of the originally unenforceable remedy lies also on the claimant (creditor) himself.

The third Chapter "**Ground of liability in enforcement proceedings**", on the basis of an attempt of the separation of liability from other coercive measures taken in the first Chapter and the main elements of the legal regime of enforcement proceedings identified in the second Chapter, consistently analyzes the elements of the offence in the field of enforcement proceedings as the ground of the relevant liability.

In the paragraph "**Object of offence in enforcement proceedings**" the dissertator concludes that the primary object of violations in the sphere of enforcement proceedings is the satisfaction of interests of the claimant (creditor), actual compulsory

implementation of his subjective property rights against the debtor. Unhindered exercise by the enforcement authorities of their powers in enforcement proceedings, while compliance with the established procedure of collection is a secondary object. The primary object of offence is differentiated in the same way as the purposes of enforcement proceedings which reflect various purposes of regulation of those legal regimes in which arise the subjective rights liable for compulsory execution in enforcement proceedings (e.g. tax, labour, civil law etc.).

In view of the above, the purpose of liability in the enforcement proceedings should be connected with ensuring of implementation of the purpose and objectives of enforcement proceedings. Thus, punitive function of liability in enforcement proceedings is aimed first of all at the execution of a specific duty that has not been executed by the subject of responsibility (if there is still an objective possibility and the need for its execution). Liability in enforcement proceedings should rather encourage a long-term lawful behavior instead of a retrospective punishment for the wrongful act (like responsibility in many other areas of regulation). That is why the liability measures *against* the debtor in the enforcement proceedings as a general rule can be applied repeatedly.

Function of liability in enforcement proceedings is manifested in forcing the debtor to perform legal obligations before the claimant. However, it is important for the liability measure as an additional burden on the offender not to prevent him from performance of his main obligation, which was the ground for the enforcement proceedings. That is why liability measures in enforcement proceedings can and should be applied not independently, but along with other coercive measures against the debtor for the purposes of correct and timely execution of the requirements of the enforcement documents, including acting as measures of indirect coercion.

In the paragraph "**Objective aspect of the offence in enforcement proceedings**" the dissertator sets the question of an obligation the failure to perform of which represents an offence in enforcement proceedings. Is there a general procedural obligation of the debtor, the failure of which is the objective aspect of the universal procedural violations in enforcement proceedings, other than substantive obligation of

the debtor, which is the basis of the enforcement document itself and which is exclusively characteristic of the sphere of enforcement proceedings? According to the results of the analysis, the work substantiates the conclusion that the enforcement proceedings as a whole are not a punishment of the debtor for non-performance of obligations, but the stage, the procedure of its implementation, the process of compulsory execution of the subjective right of the claimant against the debtor. In view of the above said, it should be recognized that there is no specific "sectoral" wrongfulness in enforcement proceedings. It should be recognized that it is also impossible to reveal a "unified" degree of public danger of offences in enforcement proceedings, which will allow distinguishing them from, for example, civil injuries, other administrative or criminal offences, to unite all the offenses in the enforcement proceedings in a single "independent" "enforcement-legal" offence.

Danger, harmfulness, social significance of non-fulfillment of the requirements of enforcement documents depends, first of all, neither on the amount of the demand, nor on judicial or non-judicial nature of the enforcement document (although these factors are also important), but on its substantive content, the legal nature of the obligation not performed by the debtor. From the point of view of legal policy in enforcement proceedings, the requirement to pay alimony or compensation for damage to life and health is more important than a "usual" property claim. From the perspective of hierarchy of constitutional values, avoidance of transfer of a child in accordance with the judicial order on determination of his place of living is also more dangerous than refusal to demolish an illegally erected fence (although both requirements will be enforced through application of the same sanction stipulated by article 17.15 of the Administrative Code).

Differentiation of behavior of the debtor for the purposes of application to him, in the enforcement proceedings, of compulsory measures (including liability measures) must be carried out not on the basis of a noetic public danger, but depending on the content and social significance of the non-performed obligations. Special features of such a duty are not leveled off with its transition to the stage of compulsory

enforcement. Moreover, the limits of pressure on the debtor in enforcement proceedings are precisely due to the social significance of such a duty.

In the paragraph «**Subject of offence in enforcement proceedings**» it is suggested to classify the subjects of enforcement proceedings into the following types: 1) authority or official, that issued the enforcement document; 2) the court; 3) enforcement authorities; 4) persons, who, on the basis of the powers, granted by the law, directly comply with the requirements of the enforcement document (including those, specified in Articles 8 - 9 of the Enforcement Law); 5) persons, involved in enforcement proceedings (parties; persons acting in enforcement proceedings on their own behalf, but in another's interest (for example, the prosecutor), persons, whose rights and duties may be affected by enforcement proceedings (for example, the person who owns debtor's property, debtor's debtors, etc.) 6) persons, assisting enforcement proceedings. The relevant classification, first -of all, is based on the traditional classification of subjects of civil procedural relations, which, secondly,- considers two main criteria: the presence of special public authorities to enforce compulsory enforcement and presence of a legally significant interest in enforcement proceedings.

Since enforcement proceedings are only one of the stages of development of legal relations, that have arisen in accordance with the norms of various branches of law, the legal capacity of the bailiff and the debtor are not determined by special rules in accordance with the Enforcement Law, but in accordance with the norms of those federal laws, on the basis of which the relevant enforcement document was issued. The bailiff in the enforcement proceedings for execution of the requirements of the enforcement writ can be the one who, according to the procedural legislation, can be the plaintiff (applicant) in court (has civil procedural legal capacity), the bailiff, according to the requirements of the certificate, issued by the labour disputes commission, according to the Labour Code of the Russian Federation, etc.

Considering the analysis of each category of subjects in the enforcement proceedings, it is concluded, that it is impossible to suggest any special delictual dispositive capacity of the enforcement proceedings subjects. Legal liability in the area of compulsory enforcement is carried out by persons, who do not have a special

procedural status, stipulated by law in enforcement proceedings (for example, a bank, that receives a bailiff's request for the debtor's accounts). Bringing enforcement proceedings subjects to legal liability has, as its prerequisite, their delictual dispositive capacity in accordance with the provisions of, for example, administrative, criminal, civil, civil procedural law, depending on the type of responsibility.

However, it is possible to identify certain features of the legal status of the debtor in the enforcement proceedings, primarily in terms of the set of coercive measures (including liability measures), that are applied to him in order to induce the compliance with the requirements of the enforcement document and establish his guilt of failure to comply.

A special place in the third chapter and in the dissertation research as a whole is taken by the paragraph **"The subjective side of the offense in the enforcement proceedings".** It analyzes the approaches to determining the debtor's guilt in the legislation and law enforcement practice, during his prosecution at the stage of compulsory enforcement. The author concludes that the legislation on enforcement proceedings uses rather civil law approach to determining the debtor's guilt during his prosecution, as well as using other coercive measures, despite the fact, that the relevant measures are public law in nature. Such an approach is characterized, firstly, by the lack of legal significance of the motive and purpose of non-compliance with the requirement of the enforcement document by the debtor, secondly, the presumption of the debtor's guilt, and thirdly, the establishment of guilt exclusively in an objective understanding, by assessing the behavior of a particular debtor, according to a certain standard of proper behavior. It is noteworthy, that in bringing the debtor to administrative liability in enforcement proceedings, it is not a subjective approach to establishing guilt as a mental attitude to the offense inherent in public law liability is used (article 2.2 of the Administrative Offenses Code of the Russian Federation), but the same objective approach, described above, accompanied by presumption of guilt not only in respect of legal entities-debtors (Part 2 of Article 2.1 of the Administrative Offenses Code of the Russian Federation), but also in respect of debtors-individuals.

Prevailing in law enforcement approaches to the imposition of measures of responsibility in the enforcement proceedings in accordance with the norms of the Administrative Code of the Russian Federation and, peculiarly, Enforcement Law, clearly demonstrate a departure from the establishment of guilt in a subjective aspect, characteristic of public law, which confirms the use of such measures, particularly, not as proper measures of responsibility, but as measures of indirect coercion in relation to the debtor, but with a significantly lower standard of assessment of the offender's guilt, compared to general approach to establishing guilt at bringing to administrative liability.

Similar approaches to the subjective component in determination of elements of offence can be found in the debtor's criminal prosecution, which traditionally involves the highest standard of evaluation of the offender's guilt among all the types of legal liability. Numerous examples of the application of Clause 157 of the Criminal Code clearly demonstrate that both the preliminary investigation bodies and the courts establish guilt of the debtor, primarily in the objective aspect, they assess his/her behavior in terms of the requirements of the enforcement legislation rather than the actual disposition of the relevant article of the Criminal Code.

In view of a huge number of enforcement documents received by the Federal Bailiff Service of Russia, a significant number of unscrupulous debtors, a high level of legal nihilism, an approach, actually ignoring the fault of the debtor in failure to comply with the requirements of the enforcement document, seems to be the simplest and the cheapest for the state. But as long as the debtor's good faith has no real importance in enforcement proceedings, it will be impossible not only to differentiate debtors and the coercive measures applied to them, but also to develop a clear and consistent legal policy in the field of enforcement proceedings, to outline ways of elimination of multimillion remainders of enforcement proceedings, passing from year to year.

Accounting of the debtor's fault in enforcement proceedings can also enhance legitimacy of the applied coercive measures in the public opinion, restore the constitutional balance of rights and interests of the debtor and the claimant in enforcement proceedings, consider the claimant's guilt in non-performance of the obligations, when he failed to show sufficient activity in the enforcement proceedings or

initially acted unreasonably when entering into a relationship with a definitely unreliable counterparty, but in the enforcement proceedings required from the state "by all means" to recover in his favour on actually inexecutable enforcement document.

Completing consideration of the elements of offence as a whole, the author admits that the offence in enforcement proceedings, which may result in application of public sanctions, should be recognized only unfair (guilty) failure by the debtor to comply with the requirements of the enforcement documents, that is, a particular debtor's failure to fulfill obligations in the presence of an objective possibility to do so.

The fourth Chapter "**Certain types of liability in enforcement proceedings**" analyzes the specific measures applied in the field of enforcement proceedings, measures of various sectoral orientation, qualified by the legislation as measures of legal liability.

It is stated in the paragraph "**Civil liability in enforcement proceedings**" that the subject of civil liability in enforcement proceedings may be not only the debtor, but also other subjects of enforcement proceedings (including the claimant and persons facilitating enforcement proceedings), as well as the state (responsible for unlawful actions of the bailiff). In view of the above said, civil liability in enforcement proceedings is diverse in terms of the grounds for application and it is multidirectional from the point of view of the subjects. The paragraph also considers the most typical cases of application of civil liability measures in enforcement proceedings: of the debtor before the claimant; the state before the claimant; the state before the debtor and other entities of the enforcement proceedings. The paragraph "**Public liability in enforcement proceedings**" considers specific elements of administrative and criminal liability in the sphere of enforcement proceedings. Analysis of elements of crimes, the subject of which is a faulty debtor in the enforcement proceedings, allows us to state that in the Russian criminal law there is no general corpus delicti, allowing to bring to criminal responsibility any person avoiding to fulfill the requirements of the enforcement document. Criminal liability of the debtor today is limited either by the nature of the claim (Clause 157, Part 1 of Clause 315 of the Criminal Code), or by the amount of recovery (Clause 177 of the Criminal Code), or by the circle of special

subjects of the crime (Part 2 of Clause 315 of the Criminal Code). It seems that such a legislative decision is not related to ignoring the public danger of deliberate failure to comply with the requirements of enforcement documents, but to the significant prevalence of the relevant offences. At this stage in the case of criminalization of any intentional failure to comply with the requirements of the enforcement document hundreds of thousands of citizens would have to be brought to criminal liability, which the state can not allow.

In general, the analysis of the sectoral types of liability used in enforcement proceedings confirms the conclusion that measures of public liability in the sphere of enforcement proceedings acquire the character of indirect coercive measures against the faulty debtor. Measures of civil liability (including those applied to the state) in the field of enforcement proceedings do not have and should not have specific features, they are the consequences of an "ordinary" delict.

The final fifth Chapter of the dissertation research "**Liability model in enforcement proceedings: looking into the future**", based on the conclusions made in the study, generates the mechanism of responsibility in enforcement proceedings taking into account its goals and objectives, modern social and economic conditions, doctrinal foundations of enforcement proceedings, its principles and the legal regime of enforcement proceedings in general.

The paragraph "**Liability mechanism in enforcement proceedings**" concludes that in bringing to responsibility the presumption of guilt of the debtor corresponds to the basic principles of enforcement proceedings. Similar to the civil law, in enforcement proceedings the question of guilt of the offender is associated with the question of validity of the reasons that prevent him from performance of his legal obligations as well as of the reasonableness of the offender in taking measures to comply with legal obligations. In that case, if the person manages to prove the respectfulness of the reasons of his failure to perform his obligations, he is declared not guilty. It is obvious that the debtor himself is best aware of the reasons for non-fulfillment of the requirements of the enforcement document, and only he can provide written or material evidences of respectfulness of the reasons for such behavior. Besides, the offender

himself is the most interested in the objective consideration of imposition of penalties (in case he considers himself to be innocent). That is why the imposition onto the debtor of the burden of proving his innocence will make the procedure of bringing to procedural liability quick and effective.

When modeling the process of bringing the debtor to responsibility, it is proposed to proceed from the fact that the universal requirement of saving repression involves a gradual increase in coercive measures. Modern enforcement proceedings should be a process of gradual intensification of the impact on the debtor, restriction of more and more important and valuable rights and opportunities (including transition from property to personal pressure), incremental reduction of the level of legal guarantees provided to him for the purposes of compulsion to the correct and timely execution of the obligations assigned to the debtor, implementation of the task of enforcement proceedings. Movement on such "stairway" of impact can be performed at different speed, and some "steps" can even be "skipped", depending on the debtor's behavior and the legal nature, social significance of the obligation not fulfilled by him.

The following can be used as procedures for establishing a bad faith of the debtor in modern enforcement proceedings: in respect of monetary penalties - the procedure of consideration by the court of an application for deferral or installment of execution of the requirements of the enforcement document, and in respect of other requirements (first of all, of non-property nature) - of change of the method and order of execution.

A change in the method of execution without consent of the debtor constitutes a significant limitation of his rights. Moreover, as a matter of fact, with modification of the method of execution, the method of remedy, originally selected in the claim and confirmed by the judicial order that has entered into legal force, is modified. Negative consequences for the debtor, presumed to be unscrupulous, in this case consist in application to him of reduced (in relation to the provided in full-fledged lawsuit) opportunities for protection against the claim of the claimant (creditor, plaintiff), taking into account the fact that the relevant application is considered in a simplified judicial procedure at the stage of enforcement proceedings. It is the bad faith of the debtor

established by the court that allows departing from the general principle of inadmissibility of change of the originally selected method of execution.

Introduction of the general procedure of decision on good (bad) faith of the debtor will allow to avoid making the decision of his guilt in each case of application of public legal liability or other coercive measure requiring now, from the point of view of the legal language, determination of all elements of offence every single time, including the subjective side (e.g., administrative fine in accordance with Clause 17.15 of the Procedural Code, restriction of special rights of the debtor, the right to travel abroad, enforcement fee etc.). In the said case the standard of evaluation of the debtor's behavior will be unified and all the proper guarantees of application against the debtor of public liability measures, including the judicial procedure of determination of the debtor's bad faith, the right to appeal the relevant act, the opportunity to present own arguments and evidences, will be guaranteed. In this case, the level of the relevant procedural guarantees for the debtor as a whole will increase without prejudice to implementation of the purpose of the enforcement proceedings. Measures of public liability should only be applied after exhaustion of all other options of execution of the requirement of the enforcement document by using the "ordinary" tools of compulsory enforcement, when the debtor itself in the judicial procedure of granting a delay or installments, change of the method and the order of execution failed to prove his good faith, impossibility to fulfill the requirements of the enforcement document on the reasons outside of his control. The relevant mechanism will also contribute to realization of the principle of encouraging the activity of the claimant in enforcement proceedings.

A unified procedure for establishing bad faith of the debtor will exclude from the Administrative Code the debtor's liability for non-compliance with non-property requirements in the form of administrative fines. The said fines can be returned to the Enforcement Law and applied without necessity to re-establish the composition of the offense, if the behavior of the debtor is considered unfair. Such an approach will allow strengthening the meaning of the respective fines precisely as measures of indirect coercion in the legal regime of enforcement proceedings instead of classical measures of administrative responsibility. The general procedure for establishing the debtor’s bad

faith is not applicable to criminal and civil liability measures that are to be applied in accordance with the requirements and standards, established respectively by criminal and civil legislation.

Analyzing the question of application to the debtor of an enforcement fee, the dissertator concludes, that now the enforcement fee is an example of a mixed legal regime, combining elements of private legal (civil) and public legal (administrative, procedural) liability regimes. However, according to the author, the enforcement fee, from the point of view of application in the mechanism of enforcement proceedings should not be qualified as a measure of liability and (or) a measure of indirect coercion, but as a predetermined compensation of state expenses for arrangement of compulsory enforcement.

Qualification of the enforcement fee not as a measure of liability, but as a mechanism for compensating expenses in enforcement proceedings implies reinterpretation of the model of its application. For example, in such a case, the debtor's bad faith (fault in non-execution, presence or absence of valid reasons for non-execution) is not subject to identification for the purposes of the enforcement fee, it should be collected in any case at the first stage of enforcement proceedings, as soon as the debtor becomes aware of the relevant procedure initiated against him and of the actions taken by the enforcement authorities for recovery. Thus, the grounds for exemption or reduction of the fee should not be related to the debtor's fault in failure to comply with the requirements of the enforcement document. Such grounds may be similar to those currently existing for release from the payment of state fees at application to the court or to a notary public.

In view of the conclusions made in the work on the "immersion" of liability measures in the system of coercive measures in the enforcement proceedings, ensuring the balance of interests of the state, the debtor and the claimant, encouraging of the activity of the latter in enforcement proceedings, the thesis suggests the following order of distribution of funds recovered from the debtor:

First, to be recovered the enforcement fee, to be compensated the expenses incurred in the enforcement proceedings by the executive bodies and the claimant;

Second, to be satisfied the demands of the claimant stipulated by the enforcement document (in execution of the property demands) or requests of the claimant of recovery of sanctions imposed on the debtor due to his avoidance to perform the non-property requirements containing in the enforcement document, including the astreinte provided by Cl. 308.3 of the Civil Code of the Russian Federation (in execution of non-property requirements);

Third, to be paid administrative fines imposed on the debtor by the bailiff in the course of the enforcement proceedings.

The paragraph **“Liability limits in enforcement proceedings**" considers the limits of application of coercive measures (including liability measures) to the debtor, proceeding from, firstly, the duration of the compulsion, secondly, the intensity (proportionality) of such compulsion.

Time limits for application of coercive measures in enforcement proceedings may be related to both the expiration of a certain objective period and the commission (non-commission) of certain actions by the debtor and (or) the creditor. From the point of view of legal policy, it would be justified to introduce a general objective period for the compulsory enforcement of an obligation, which could be starting on the day of coming into force of a relevant act, on the basis of which the enforcement document is issued or which, in itself, is the executive document. Such general term would cover both the date of submission of the executive document and the deadline for the enforcement proceedings. Both for property and non-property claims, the said period may be, for example, three years (similar to the statute of limitations for submission of the executive document), unless otherwise provided by the enforcement document (e.g. when collecting periodic payments). It does not include periods of delay of execution, but suspension of the enforcement proceedings does not affect the specified period. Upon expiration of the period, the enforcement proceedings could be terminated without the possibility of renewal. After the specified deadline, public liability measures (including personal restrictions and fines) cannot be imposed on the debtor either.

Introduction of a general objective period of compulsory execution will also stimulate the efforts of the bailiff. A range of potential actions of the bailiff during the

objective period of enforcement is not limited only to presentation of the enforcement document for execution, but also includes the appeal of lack of action of the bailiff. He can and must provide the compulsory enforcement authority with the information about the debtor's property, his location, and make efforts to regulate the relationships with the debtor.

In evaluation of limits of intensity (proportionality) of compulsory measures it is proposed to proceed from the fact that in the sphere of compulsory enforcement the debtor is not opposed to the state represented by the enforcement authorities but to the claimant. Thus, all the compulsory measures are applied not in abstract interests of public significance but, as a rule, in the interests of another individual, even though the latter has an enforcement document issued in his favour. Besides, application of coercive measures to the debtor in enforcement proceedings can engage interests of other individuals whose interests are of no less significance than those of the claimant (other creditors, contractors, members of the debtor's family etc.).

Considering that, for example, in contractual relations the creditor has the opportunity to select a contractor, he should bear bigger economic risks of non-performance of obligations by the debtor. Thus, in compulsory execution of contractual obligations, application of personal restrictions to the debtor is less reasonable in the view of the legal regime of the enforcement proceedings, than in execution of those non-contractual, where the claimant is to the full extent a "hostage" of the illegal behaviour of the debtor, which he reasonably could neither foresee nor avert the harmful consequences for himself.

Discussing the model of enforcement proceedings, its limits, we must not forget that opportunities of the enforcement proceeding itself are not unlimited. Thus, with regard to the numerous administrative and criminal fines in general, the need for their infinite charging through the enforcement procedure is questionable. In this case the purpose of the state is by all means to collect money from the offender and not to punish him. Thus, the institution of replacement of punishment by more severe in case of evasion from a milder one upon completion of the relevant enforcement proceedings should be used in full (as well as at entry into legal force of the judge of conviction

against the debtor for deliberate non-fulfillment of the requirement of the enforcement document). "Unloading" of the enforcement proceedings from unnatural functions, a pragmatic view of the possibilities of the relevant mechanism and its place in the legal system, ensuring a fair balance of interests of the parties of the enforcement proceedings and the state is a condition of development of the compulsory enforcement system, its relevance and effectiveness.

The **Conclusion** contains brief theoretical and practical conclusions on the results of the performed study, states the opinion of the dissertator on further development of the liability system in the modern enforcement proceedings.

Forecasting the ways of development of the liability system in enforcement proceedings, the author distinguishes two main possible models.

The first model includes the further use of legal liability measures in enforcement proceedings as measures of indirect coercion. In such a model all the coercive measures should be immersed in the regime of enforcement proceedings, should be applied in the established order (not all at once, but gradually, with an increasing impact on the faulty debtor). Completion of the enforcement proceedings should also entail the termination of all liability measures of the debtor applied as measures of indirect coercion. But the debtor, even after the end of enforcement proceedings, may be held criminally liable in case the failure is qualified as a criminal theft of another persons' property.

In the second (alternative) model, the legal liability in enforcement proceedings should be applied in its "classical" form, without its transformation into measures of indirect coercion of the debtor. Measures of indirect coercion and protective measures in enforcement proceedings may not coincide with liability measures, therefore, they should be directly related to the subject of enforcement. In such a case, for example, restrictions on special rights may be applied exclusively as a liability measure (e.g. administrative). All measures of responsibility in enforcement proceedings should be applied in separate procedures with the establishment in each case of the full (and not "contracted") set of elements of the offense stipulated by the sectoral legal regime (for example, criminal law or administrative law). Liability measures can be applied

regardless of the course and completion of the enforcement proceedings. In both proposed models, only the debtor's liability has a certain specificity.

As it has been repeatedly noted in the work, all the elements of the legal regime should act in harmony with the goals and objectives of regulation in the relevant field. That is exactly why the author proceeds from the fact that the first model of the debtor's liability in enforcement proceedings should be developed. But even in this model the legal liability measures and other coercive measures cannot be unlimited, disproportionate to the nature of the executed claim, can not avoid taking into account the good faith of the debtor, can not replace the activities of the claimant and the enforcement agencies, unreasonably redistribute the risks of default. Only then it will be possible to speak about really effective enforcement proceedings, occupying a rightful place in the legal system of the country.

List of the author's publications reflecting the main scientific results of the dissertation research.

M.L.Galperin Liability in the mechanism of enforcement proceedings: monograph. - M.: Yurait Publishing, 2019. - p. 313 — - (Series: Actual monographs) - 22.75 p.s –

M.L.Galperin Enforcement proceedings: textbook for bachelor's and master's programs — 4th ed., rev. and enlarg.: - M.: Yurait Publishing, 2018. - 498 p. - 35 p.s.

Publications in periodicals contained in the list of magazines recommended by NRU HSE.

1. *M.L. Galperin* What is the purpose of the enforcement fee? Comment on Definition of the Judicial Board for Economic Disputes of the SC of the Russian Federation of 25.07.2018 No. 305-КГ17-23457. // Bulletin of economic justice of the Russian Federation. 2018. № 10. P. 4-11. – 0.48 p.s.

2. *M.L. Galperin* Is there any limit of the debtor's liability in enforcement proceedings? // Law. 2018. No. 8. P. 53-61. – 0.75 p.s.

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4. *M.L. Galperin* Can the debtor's failure to perform the requirements of the enforcement document be deemed a specific offense? // Bulletin of civil procedure. 2018. V. 8. No. 3. P. 40-54. – 0.93 p.s.

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6. *M.L. Galperin* On illegality in enforcement proceedings // Arbitration and civil proceedings. 2018. No. 2. P. 34-40. – 0.60 p.s.

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8. *M.L. Galperin* Principles of enforcement proceedings. Version 2.0 // Law. 2017. No. 10. P. 90-109. – 1.28 p.s.

9. *M.L. Galperin* Impossibility of execution of the enforcement document demands in an intact form: is it an issue of procedural or substantive law? // Law. 2017. No. 7. P. 27-40. – 1.48 p.s.

10. *M.L. Galperin* Is it allowed to deprive the debtor of a driver's license, or Who should write the laws? // Law. 2015. No. 2. P. 123-136. – 1.43 p.s.

11. *M.L. Galperin* About "autonomous" liability in enforcement proceedings? // Law. Journal of the Higher School of Economics. 2015. No. 2. P. 202-225. – 2.08 p.s.

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13. *M.L. Galperin* Foreclosure on the debtor's only living space: is there a regulatory solution? // Law. 2013. No. 10. P. 111-124. – 1.50 p.s.

14. *M.L. Galperin* Problem of differentiation of the civil procedure and the effectiveness of judicial protection of rights in enforcement proceedings // Law. 2012. No. 9. P. 105-116. – 1.28 p.s.

15. *M.L. Galperin* Transnational enforcement proceedings: looking into the future / / Law. 2012. No. 5. P. 140-146. – 0.63 p.s.

16. *M.L. Galperin* Future of enforcement proceedings: problems of interaction of substantive and procedural law // Law. 2012. No. 4. P. 40-57. – 1.95 p.s.

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