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**EXECUTION OF A JUDGMENT BY A RECOVERER FOR A DEBTOR
IN ENFORCEMENT PROCEEDINGS**

Dissertation Summary for the purpose of obtaining
academic degree Doctor of Philosophy in Law

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Doctor of Science in Law, Professor
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Moscow, 2023

The thesis was completed at the Department of International Law of the Faculty of Law of the National Research University «Higher School of Economics»

The text of the thesis can be found on the HSE website:

<https://www.hse.ru/sci/diss/>

5.1.3 – Private law (civilistic) sciences

GENERAL DESCRIPTION OF PhD THESIS

Relevance of the research topic.

The resolution of the dispute by the court and the entry into force of the court decision do not always entail the restoration of the violated right. As rightly noted, “even an ideal civil rights judicial mechanism will remain a “thing in itself” without an enforcement procedure”¹.

According to official statistics, the execution rate for all categories of enforcement proceedings initiated on the basis of judicial acts is about 47%². But this is an indicator for enforcement proceedings of property nature (for example, collection of salary arrears, credit obligations, payment of housing and communal services, etc.)³. Even more difficult is the situation with the efficiency of enforcement the requirements against the debtor to perform certain actions (for example, to perform work, to provide services, to transfer individually defined things), which are indicated in chapter 13 of the Federal Law “On Enforcement Proceedings” № 229-FZ of October 2, 2007 (hereinafter referred to as the Law on Enforcement Proceedings). For certain types of enforcement proceedings of this category the percentage of actual execution is on average only 20%⁴.

In practice, many court decisions containing requirements against the debtor to perform certain actions are not being fulfilled for a long time. Often the non-

¹ Isaenkova O.V. Problems of Enforcement Law in Civil Jurisdiction: Thesis ... Doctor of Science in Law. Saratov, 2003, P. 36.

² Final report on the results of the activities of the FSSP of Russia in 2021 // Official website of the FSSP of Russia [Electronic resource]. URL: <https://fssp.gov.ru/2765741/> (date of access: 29.01.2023); Final report on the results of the activities of the FSSP of Russia in 2020 // Official website of the FSSP of Russia [Electronic resource]. URL: <https://fssp.gov.ru/2718866/> (date of access: 29.01.2023).

³ Departmental statistical reporting for January – November 2022 (Form № 1-1. Section 2), for 2021 (Form № 1-1. Section 2), for 2020 (Form № 1-1. Section 5), for 2019 (Form № 1-1. Section 5) // Official website of the FSSP of Russia [Electronic resource]. URL: <https://fssp.gov.ru/statistics/> (date of access: 29.01.2023).

⁴ Departmental statistical reporting for 2020 (Form № 1-1. Section 5 – 6), for 2019 (Form № 1-1. Section 5 – 6) // Official website of the FSSP of Russia [Electronic resource]. URL: <https://fssp.gov.ru/statistics/> (date of access: 29.01.2023).

enforcement of such judgments reaches 3-7 years from the date of their entry into force, and many of them remain unfulfilled⁵.

One of the reasons for this is the limitation of legal mechanisms provided for by the Law on Enforcement Proceedings for the enforcement of such requirements.

The low rates of actual execution of non-property claims in general and the problems associated with the enforcement of claims against the debtor to perform certain actions have been repeatedly noted in the legal literature and for a long time have been the subject of scientific discussion⁶.

The solution to this problem with enforceability of judicial acts that contain the requirements to perform certain actions could be an expansion of the possibilities for their execution by the recoverer for the debtor at the stage of enforcement proceedings.

For example, works, services and other actions which the debtor evades to perform, can be performed by the recoverer himself (if he is ready to take the initiative here, without relying on the debtor or the enforcement authorities) or on his behalf by a third party and subsequently replaced by the recovery of execution costs from the debtor.

By the execution of a judgment by the recoverer for the debtor we mean the performance of certain actions specified in the executive document by the recoverer himself or by a third party attracted by him and the imposition of costs on the defaulting debtor if the performance is objectively can be committed without personal participation of the debtor.

Execution of a judgment by the recoverer for the debtor can increase the efficiency of enforcement proceedings by creating an additional method for the actual execution of the requirements contained in enforcement documents.

⁵ See, for example: Ruling of the Supreme Court of the Russian Federation of October 17, 2017 № 305-ЭС17-14601 on the case № А40-152425/2010; Ruling of the Supreme Court of the Russian Federation of July 30, 2018 № 304-ЭС18-9959 on the case № А81-1310/2012 // Legal research system "ConsultantPlus".

⁶ The procedure of execution of a non-property requirements contained in executive documents: problematic issues and ways to solve them: collection of materials of the 7th International Scientific and Practical Conference, June 9 – 11, 2016, Ufa, Republic of Bashkortostan / D.B. Abushenko, A.D. Avdeev, Z.M. ogly Alizade and others; ex. ed. D.V. Aristov, V.A. Gureev. M., 2017. // Legal research system "ConsultantPlus".

The current legislation, however, does not provide unambiguous guidance about the order of executing judgment by the recoverer for the debtor. Such enforcement is not regulated by procedural legislation and is often carried out bypassing the enforcement procedure. Therefore, in practice there are many contradictions and contentious situations related to the execution of a judgment by the recoverer for the debtor.

In some cases, courts consider the actions of the recoverer to enforce the judgment for the debtor lawful in the context of self-defense of the right⁷, in others they recognize such actions of the recoverer unlawful and bring him to the civil liability⁸. In some cases, the execution of a judgment by the recoverer for the debtor bypassing the enforcement procedure by a bailiff is the basis for bringing the recoverer to administrative and even criminal liability for arbitrariness⁹.

In the civilistic doctrine the impact of the recoverer on the debtor's property in order to enforce the court decision, without resorting to the help of a bailiff, is proposed to consider as exceeding the limits of self-defense of the right and as arbitrariness¹⁰.

Creditors' attempts to use the available procedural mechanisms to authorize a sanction for the execution of a judgement for the debtor (for example, through the institution of changing the method of execution of a judicial act) are also complicated because of the lack of the unified approach on this issue. Some courts refuse to change the method of execution, noting that it's impossible because of the absence of an optional method of execution in the original court decision and

⁷ See, for example: Cassation ruling of the Eighth Cassation Court of General Jurisdiction of August 19, 2020 № 88A-13317/2020; Resolution of the Thirteenth Arbitration Court of Appeal of August 23, 2017 on the case № A56-4853/2017 // Legal research system "ConsultantPlus".

⁸ See, for example: Appellate ruling of the Nizhny Novgorod Regional Court of June 9, 2020 № 2-5703/2019 // Legal research system "ConsultantPlus".

⁹ See, for example: Decision of the Vyborg City Court of the Leningrad Region of March 14, 2019 on the case № 2A-1085/2019; Decision of the Soviet District Court of the city of Tomsk of October 2, 2017 № 12-242/2017 // Legal research system "ConsultantPlus".

¹⁰ Basic provisions of civil law: article-by-article commentary on articles 1–16.1 of the Civil Code of the Russian Federation [Electronic edition. Edition 1.0] / A.V. Asoskov, V.V. Baibak, R.S. Bevzenko [and others]; resp. ed. A.G. Karapetov. M.: M-Logos, 2020. P. 1176–1178 (author of the comment to article 14 of the Civil Code of the Russian Federation – A.A. Gromov).

will in fact constitute a new claim¹¹. Other courts due to ensure the real restoration of the recoverer's violated rights recognize the execution of a judgment by the recoverer for the defaulting debtor acceptable through the mechanism of changing the method of execution of the judicial act¹².

In the civil and procedural doctrine there is no consensus on the issue of the admissibility and conditions for the legality of the execution of a judgment by the recoverer for the debtor in enforcement proceedings.

Execution by the recoverer of a court decision for the debtor without recourse to the enforcement procedure is covered by some institutions of private substantive law (for example, self-defense of the right). At the same time the enforcement of a judgement by the recoverer for the debtor, bypassing the enforcement procedure, is limited by norms of public substantive law about arbitrariness. Execution of a court decision by a recoverer for a debtor in some cases is possible through the mechanisms provided by procedural law.

Thus, the problem of enforcement of a judgment by a recoverer for a debtor in enforcement proceedings is clearly interdisciplinary in the nature, being at the intersection of substantive and procedural law, as well as at the intersection of private and public law. This causes the complexity of legal qualification of the actions of a recoverer concerning the execution of a judgment for a debtor. That's why a comprehensive study on this issue is necessary.

Execution of a court decision by a recoverer for a debtor in enforcement proceedings also involves an active disposal by a recoverer of the possibilities he has to protect his rights. Therefore, the search for ways to enforce a judgment by a recoverer for a debtor is associated with a more general doctrinal, political and legal problem of the activity of the recoverer in enforcement proceedings.

Currently in the doctrine of enforcement proceedings, there is no consensus on such questions as whether the recoverer should be active in the process of

¹¹ See, for example: Resolution of the Central District Arbitration Court of July 31, 2020 on the case № A14-12473/2017; Resolution of the Fourteenth Arbitration Court of Appeal of September 3, 2019 on the case № A05-9616/2018 // Legal research system "ConsultantPlus".

¹² See, for example: Ruling of the Supreme Court of the Russian Federation of July 30, 2018 № 304-ЭС18-9959 on the case № A81-1310/2012; Resolution of the Nineteenth Arbitration Court of Appeal of August 2, 2019 on the case № A14-6074/2017 // Legal research system "ConsultantPlus".

enforcement or it is the prerogative of the bailiff, what is the legal nature of recoverer's activity, whether the activity of the recoverer is the principle of enforcement proceedings, or the right or the duty of the recoverer, what are legal consequences of the recoverer's refusal to be active in enforcement proceedings.

The absence in Russian legislation, law enforcement practice and doctrine of an unambiguous procedure for the enforcement of a judgment by a recoverer for a debtor does not contribute to legal certainty, stability and predictability of civil circulation and carries the risk of violating the balance of interests between a debtor and a recoverer in enforcement proceedings.

This confirms the relevance of the topic of the dissertation and the study itself.

The degree of scientific development of the research topic.

Theoretical and practical aspects of the execution of judicial acts have been studied in domestic procedural literature over the past century and a half.

The procedure for the execution of judicial acts within the framework of works on civil procedure was studied by such well-known pre-revolutionary jurists as E.V. Vaskovsky, K. Malyshev, E.A. Nefediev, I.E. Engelman, T.M. Yablochkov and others.

In the Soviet period the general order of enforcement proceedings, the procedural status of its participants, including the recoverer, and the problems of enforcement proceedings were studied by M.G. Avdyukov, L.N. Zavadskaya, A.F. Kleinman, A.K. Sergun, M.K. Yukov and others.

A detailed analysis of the development and formation of enforcement proceedings as a branch of Russian law, as well as an analysis of the methods and principles functioning within the framework of enforcement law, is given in the doctoral dissertation of O.V. Isaenkova "Problems of Enforcement Law in Civil Jurisdiction" (2003).

The essence of enforcement proceedings and the main components of the enforcement proceedings system are studied in detail in the doctoral dissertation of

V.F. Kuznetsov “System of Enforcement Proceedings: Issues of Theory and Practice” (2004).

Doctrinal understanding of the right to execute judicial acts in the mechanism of legal protection and its study as a complex legal category is covered in the doctoral dissertation of E.N. Kuznetsov “The right to enforce judicial acts in the Russian Federation” (2022).

The study of the principles of enforcement proceedings and manifestation of the principles of civil procedure in enforcement proceedings are the subject of research by V.F. Taranenko, G.D. Ulyotova.

Issues of the legal status of participants in enforcement proceedings, including its parties, are reflected in the works of M.A. Vikut, D.Kh. Valeev, Yu.V. Gepp, I.B. Morozova, V.V. Khudenko.

Separate procedural guarantees of participants in enforcement proceedings, among other problems, were also considered by S.A. Antonova, O.V. Isaenkova, V.F. Kuznetsov and other authors.

General issues of procedural guarantees of participants in modern enforcement proceedings, including the recoverer, are considered in the doctoral dissertation of D.Kh. Valeev “The system of procedural guarantees of the rights of citizens and organizations in enforcement proceedings” (2009). The particular importance of this work for the purposes of this study lies in the fact that it examines in detail the issues of the use of civil legal means in enforcement proceedings and the limits of the exercise of civil rights in enforcement proceedings.

The problem of the correlation of private and public law in the field of enforcement proceedings and the influence of this ratio on the rights and obligations of the subjects of enforcement proceedings is comprehensively considered in the Ph.D. thesis of A.Kh. Ageev “Private and public law principles in enforcement proceedings” (2004).

Liability in enforcement proceedings, including the application of civil liability in enforcement proceedings, are studied in detail in the doctoral

dissertations of M.L. Galperin “Responsibility in enforcement proceedings” (2019) and M.R. Zagidullin “Legal responsibility in the civil process: theoretical problems” (2022).

The study of enforcement of judicial acts and acts of other bodies in foreign legal orders is covered in the Ph.D. dissertations of E.N. Kuznetsov (France) and V.A. Podeiko (Germany).

Despite an impressive list of studies on enforcement proceedings and its various institutions, the problem of the recoverer's role in enforcement proceedings has not been fully developed in the procedural literature. The problem of execution by the recoverer of the court decision for the debtor in the procedural aspect is not developed at all.

The procedural position of the recoverer in modern enforcement proceedings is considered in the PhD thesis of A.A. Mamaev “The legal status of the recoverer in enforcement proceedings” (2020). However, this work is mainly aimed at reviewing and classifying the rights available to the recoverer in enforcement proceedings, as well as at studying the procedures for the enforcement of a court decision by a third party that regulated by the Law on Enforcement Proceedings (for example, execution by banks and other credit institutions, issuers and professional participants in the securities market, persons paying periodic payments to a debtor-citizen). Issues of self-realization of the right to perform the executive document by the recoverer outside the framework of procedures regulated by articles 8–9 of the Law on Enforcement Proceedings, as well as the problems associated with the execution of a judgment by a recoverer for a debtor are not considered in the work of A.A. Mamaev.

The purposes of the research are:

(a) to develop a model of the optimal behavior of the recoverer in enforcement proceedings based on his inherent procedural status;

(b) to resolve the issue of the possibility of execution of a judgment by a recoverer for a debtor in the framework of enforcement proceedings and propose procedural mechanisms for such execution;

(c) to formulate the conditions for the admissibility of the enforcement of a judgment by a recoverer for a debtor, bypassing the enforcement procedure.

To achieve the above goals, the following objectives are set:

– to explore the role of the recoverer at the previous stages of development of domestic enforcement proceedings (pre-revolutionary, Soviet and post-Soviet periods) to identify the prerequisites for the formation of the procedural status of the recoverer in its modern form and possible ways to improve this status;

– to analyze the action in the enforcement proceedings of the functional principles of the civil process, which may effect on the behavior of the recoverer in enforcement proceedings;

– to qualify the actions of the recoverer for the independent execution of the court decision for the debtor from the point of view of self-defense of the right (necessary defense, extreme necessity), as well as from the point of view of arbitrariness prohibited by law;

– to explore the question of what mechanisms provided by law can be used to protect the interests of the recoverer when the debtor evades execution, or the bailiff fails to act;

– formulate proposals for improving procedural legislation, legislation on enforcement proceedings.

The object of the thesis is the social relations that develop in the process of execution of a judgment by a recoverer for a debtor at the stage of enforcement proceedings.

The subject of the thesis is the civil, civil procedural and arbitration procedural legislation, legislation on enforcement proceedings, as well as the practice of the Constitutional Court of the Russian Federation, courts of general jurisdiction and arbitration courts, doctrinal sources.

Methodology of the research.

This research relies on the methodology of both general scientific research methods (analysis and synthesis, induction and deduction, modeling, comparison

and analogy, formal logical method) and special scientific research methods (historical legal method, formal legal method and method of legal modeling).

General scientific methods of analysis, synthesis, induction, deduction and formal logic made it possible to formulate the main definitions, to substantiate the proposed definitions and their applicability in the study of the questions posed.

The formal legal method made it possible to determine the legal nature of the activity of a recoverer in enforcement proceedings and to identify the substantive and procedural law basis for the execution of a judgment by a recoverer for a debtor in enforcement proceedings.

Using the special scientific historical legal method, as well as general scientific methods of comparison and analogy, the possibilities available to the recoverer to enforce the judgment for the debtor were demonstrated within the framework of the previous stages of development of domestic enforcement proceedings (pre-revolutionary, Soviet, post-Soviet) and their comparison with the similar possibilities of the recoverer under the current legislation was conducted.

Based on the general scientific method of modeling and the special scientific method of legal modeling, the possibility of using in specific situations various methods of execution of a judgment by the recoverer for the debtor is argued and proposals for a possible reform of procedural legislation are made.

The theoretical basis of this PhD thesis, considering the intersectoral nature of the analyzed legal relations, consists of researches of legal scholars who are representatives of various branch legal sciences, including S.S. Alekseev, K.N. Annenkov, O.V. Baulin, D.Kh. Valeev, E.V. Vaskovsky, A.M. Vinaver, M.L. Galperin, V.M. Gordon, V.P. Griбанov, D.D. Grimm, A.A. Gromov, M.A. Gurvich, M.R. Zagidullin, N.B. Zeider, O.S. Ioffe, O.V. Isaenkova, A.G. Karapetov, A.F. Kleinman, E.A. Krasheninnikov, V.F. Kuznetsov, K.I. Malyshev, D.I. Meyer, V.D. Menshagin, E.Ya. Motovilovker, N.A. Neklyudov, I.B. Novitsky, G.L. Osokina, I.A. Pokrovsky, D.I. Polumordvinov, I.V. Reshetnikova, V.I. Sinaisky, G.Ya. Stoyakin, Yu.K. Tolstoy, A.N. Trainin, I.Ya. Foinitsky, N.A. Chechina, M.D. Shargorodsky,

G.O. Shatunovsky, M.Z. Schwartz, I.E. Engelman, T.M. Yablochkov, V.V. Yarkov and other scientists.

The empirical basis of the research includes materials from judicial and other law enforcement practice (including the Soviet and pre-revolutionary periods), data from the official statistical reporting of the Federal Bailiffs Service of Russia.

Novelty of the research lies in the fact that for the first time in the domestic legal literature, on the basis of a comprehensive intersectoral study of enforcement of a court decision by a recoverer for a debtor in enforcement proceedings procedural mechanisms for protecting the interests of a recoverer when the debtor evades the execution or bailiff is inactive are substantiated and proposed.

The research reveals the legal nature of the activity of the recoverer in enforcement proceedings, substantiates the conclusion about the burden of activity that lying on the recoverer in enforcement proceedings and discloses the content of this burden. In addition, for the first time the substantive law basis for the execution of a judgment by a recoverer for a debtor at the stage of enforcement proceedings is determined, the ideas that available in the domestic doctrine of enforcement proceedings about the possible forms of the activity of the recoverer are expanded.

In this study for the first time a universal procedural mechanism for the execution of a judgment by a recoverer for a debtor at the stage of enforcement proceedings with recovery in a simplified manner of the corresponding expenses of the recoverer from the debtor is proposed.

The dissertation is the first scientific work where the problem of enforcement of a judgment by a recoverer for a debtor at the stage of enforcement proceedings is considered in a broad historical and legal context, the essential relationships of the procedural and substantive law foundations of such enforcement are identified, and with a help of them the legal forms, conditions and limits of such enforcement in the modern legal system are determined.

Key research findings and statements submitted for defense:

1. Execution of a judgment by a recoverer for a debtor is proposed to better understand the performance of certain actions indicated in the executive document, by the recoverer himself or by a third party involved by him, acting on behalf of the recoverer, in the conditions of the debtor's evasion from execution if, based on the nature of the actions performed, these actions can objectively be committed without the personal participation of the debtor. Procedural possibility of execution by the recoverer for the debtor with the imposition of costs associated with the execution, on the latter, is conditioned by the principles of enforcement proceedings, and is a measure of the permitted behavior of the recoverer.

2. The analysis of historical models of domestic enforcement proceedings (pre-revolutionary, Soviet and modern) revealed a direct relationship between the amount of procedural possibilities of a recoverer to enforce the judgment for a debtor and the provisions of substantive law governing the self-defense of the right and defining the range of acts recognized as arbitrariness.

At the same time in all analyzed historical periods there was no unconditional prohibition on the execution of a judgment by a recoverer for a debtor.

Execution of a court decision by a recoverer for a debtor, in one form or another is allowed in the modern law of most civil and common law countries (including France, Germany, Austria, Poland, Greece and Great Britain).

3. The uncertainty remaining in modern Russian Law regarding the admissibility of enforcement of a judgment by the recoverer for the debtor at the stage of enforcement proceedings, and, as a result, the lack of sufficient procedural possibilities for the recoverer for such execution is due to outdated approaches of the Soviet period (including those affecting the perception of some general categories of public law, first of all the limits of necessary defense).

4. Execution of the court decision by a recoverer for a debtor in enforcement proceedings from the point of view of substantive law follows from the provisions of articles 12, 14 of the Civil Code of the Russian Federation on the right to self-defense and article 397 of the Civil Code of the Russian Federation on the

fulfillment of an obligation at the expense of the debtor, which allow the independent use by the creditor, including the stage of enforcement proceedings, of civil law remedies for protecting his subjective right.

Execution by the recoverer for the debtor should be recognized as lawful in case of the absence of violence against the identity of the debtor, observance of requirements on good faith, reasonableness of behavior and inadmissibility of abuse of the right by the recoverer and (or) by persons that acting on his behalf, as well as observance the criteria for the admissibility of self-defense of the right (in the event of an impact on the debtor's property).

5. The ratio of the powers of enforcement bodies and the procedural possibilities of the recoverer requires a revision in the direction of a significant expansion of the latter. The recoverer must be given real procedural opportunities to enforce the judgment at the expense of the faulty debtor. The work simulates a universal procedural mechanism for the execution of a judgment by a recoverer for a debtor, which allows recoverers in a simplified form to recover the costs incurred for the actions indicated in executive document.

6. The possibility of the recoverer's petitions for the commission of any executive actions and enforcement measures in cases where the application of specific measures are not prescribed by the executive document itself or by the law should be fixed, as well as the obligatory announcement by the bailiff of the search for the debtor and his property at the request of the recoverer in any cases with the attribution of the costs of the search to the account of the recoverer should be provided.

Theoretical and practical implications.

The provisions set forth in the thesis affect the perception of some key categories of procedural and substantive law (including the principles of competitiveness and discretion, the method of enforcement of a judgment, self-defense of the right, the limits of its implementation, arbitrariness, the activity of the recoverer in enforcement proceedings, the responsibility of the state in the field of enforcement proceedings) and can serve as a basis for developing a unified

approach to the problems associated with the use of ways to protect a violated right in enforcement proceedings, rethinking the legal status of the recoverer in enforcement proceedings. This approach, in turn, can be used to improve the practice of applying norms of the current procedural legislation and legislation on enforcement proceedings to increase its efficiency, to ensure respect for the law and the court, predictability and security of economic relations.

Approbation of the research results.

The thesis was completed at the Department of International Law of the Faculty of Law of the National Research University Higher School of Economics, where it was discussed.

The findings and conclusions of the dissertation research are reflected in scientific articles published in scientific journals included in the List of peer-reviewed scientific publications of the Higher Attestation Commission under the Ministry of Education and Science of the Russian Federation, recommended by HSE University (List D).

The research materials were used by the author in speeches at the VII All-Russian scientific and practical conference “Actual problems of the humanities and social sciences” (Penza, September 22, 2021), as well as at the II International Scientific and Practical Conference “Legal Week of Practitioners at the Financial University” (Moscow, April 21, 2021).

Certain findings of the research were used in the teaching activities of the author in the framework of educational programs of the Law Faculty of the National Research University Higher School of Economics in the framework of the course “Enforcement Proceedings”.

The structure of the dissertation.

The thesis consists of an introduction, three chapters containing nine paragraphs, a conclusion and references section.

THE MAIN CONTENT OF THE THESIS

The **Introduction** focuses on the relevance of the dissertation research, the degree of its scientific development, the goals and objectives, the object and subject of the research, the research methodology, the scientific novelty, the research findings, the theoretical and practical implications, the approbation of the research results.

Chapter 1 “Execution of a court decision by a recoverer for a debtor: at the intersection of substantive and procedural law” analyses the legal nature of the activity of a recoverer in enforcement proceedings. It identifies new forms of the activity of a recoverer, and procedural and substantive law foundations for the execution of a judgment by a recoverer for a debtor.

Paragraph 1.1 “Execution by the recoverer for the debtor: doctrinal prerequisites and world experience” the foundations and the terminology of the institute of the execution of a judgement by the recoverer for the debtor studied in the dissertation are formulated, the modern experience of foreign civil and common law countries in the field of the execution of a judgement by the recoverer for the debtor (including France, Germany, Austria, Poland, Greece, Great Britain) is considered.

In *Paragraph 1.2* “The burden of the recoverer's activity – a prerequisite for the execution of a judgement for the debtor” the main doctrinal views on the nature and content of the recoverer’s activity in executive production are considered.

Based on the identification of the functional principles of the civil process in enforcement proceedings, defining the rights and obligations of the subjects of enforcement proceedings and the justification that the recoverer has a legally significant interest in the outcome of enforcement proceedings, it is proved that in the enforcement of claims against the debtor to perform certain actions, for the execution of which the participation of the debtor is not necessary, the recoverer bears the burden of activity, the realization of which should be possible through the execution of a judgement for the debtor in enforcement proceedings.

It has been established that the enforcement of a judgment by a recoverer for a debtor in enforcement proceedings should be an opportunity available to a

recoverer, the refusal to use which, however, should not entail any additional negative consequences for the recoverer, except for the loss of actual performance.

Paragraph 1.3 “Procedural basis for the execution of a judgment by the recoverer for the debtor” aims to show the procedural status of the recoverer in enforcement proceedings under the current legislation. The author concludes that the recoverer does not have sufficient procedural opportunities to implement the burden of activity imposed on him and to enforce the judgment for the debtor.

It is confirmed that the norms of the current procedural legislation do not contain a special procedural form of realization in enforcement proceedings of the ability of the recoverer to execute the judgment for the debtor in order to protect his right to the actual execution of a court decision. The problems associated with the use of some existing procedural institutions for the indicated purposes are considered (part 1 article 37, parts 8 and 9 article 107 of the Law on Enforcement Proceedings, part 3 article 174, article 324 of Arbitration Procedure Code of the Russian Federation, article 203, part 1 article 206, article 434 of Civil Procedure Code of the Russian Federation).

In *Paragraph 1.4* “Material and legal basis for the execution of a judgment by a recoverer for a debtor” private substantive law basis for the execution of a judicial act by the recoverer on his own or with the involvement of a third party at the expense of a faulty debtor is determined (articles 12, 14, 397 of the Civil Code of the Russian Federation), the possibility of using the indicated civil law remedies for the protection of subjective rights at the stage of enforcement proceedings is proved.

The paragraph also identifies formulated by law enforcement practice and civil law doctrine restrictions of lawful influence of one private person on the property of another person in the framework of self-defense of the right that can hinder the implementation of the activity of the recoverer (necessary defense and extreme necessity). Also, the general norms of public substantive law, which allow qualifying the independent execution of a judgment by the recoverer for the debtor as an arbitrariness, are identified.

Chapter 2 “Execution of a court decision by a recoverer for a debtor: historical models of regulation” in order to verify the adequacy and find out the reasons why the current restrictions on the execution of a judgment by a recoverer for a debtor are fixed in the norms of procedural and substantive law, a comprehensive historical, legal and cross-sectoral analysis of the existing opportunities for the execution of a court decision for the debtor in the previous stages of development of domestic enforcement proceedings (pre-revolutionary, Soviet and post-Soviet stages) is conducted.

The author reveals the essential interrelationships between the norms of procedural and substantive law by determining the volume of the procedural possibilities of the recoverer to execute the judgment for the debtor at the stage of enforcement proceedings in different historical periods of domestic law development.

Paragraph 2.1 “Execution of a judgement by a recoverer for a debtor in the pre-revolutionary period” describes the procedure for the enforcement of a court decision and the participation of a recoverer in this procedure according to the norms of the Statute of Civil Procedure of 1864 (hereinafter referred to as the UGS).

It has been established that in accordance with the norms of the UGS the recoverer was given the right to choose the specific property of the debtor for foreclosure, could determine the order of foreclosure, had the opportunity to choose alternative ways of enforcing a judicial act, had the right to perform a number of enforcement actions and, in some cases, could predetermine the enforcement actions performed by bailiff. Also, the legislation of the pre-revolutionary period included for a special procedural mechanism for exercising the right of the recoverer to independently fulfill the requirements of the judicial act at the expense of the defaulting debtor (article 934 of the UGS).

Such a breadth of the procedural status of the recoverer in enforcement proceedings was interconnected with the qualification of arbitrariness according to the legislation, judicial practice and doctrine of the pre-revolutionary period as an

offense against a person with the use of violence, as well as with a deep doctrinal development of ways of self-defense of the right (taking into account the norms of Roman law and the provisions of foreign legal orders), embodied in the norms of the draft of the Civil Code of the Russian Empire.

Paragraph 2.2 “Execution of a judgement by a recoverer for a debtor in the Soviet period” describes the procedure for the enforcement of a court decision and the participation of a recoverer in it according to the norms of the Civil Procedure Code of the Russian Soviet Federative Socialist Republic of 1923 and Civil Procedure Code of the Russian Soviet Federative Socialist Republic of 1964 (hereinafter referred to as Civil Procedure Code of the RSFSR 1964).

The author reveals a significant decrease in the procedural possibilities of the recoverer to participate in the execution of the judgment in comparison with the pre-revolutionary period. Soviet procedural legislation left the recoverer several basic powers that did not allow him to influence the movement of enforcement proceedings significantly. Nevertheless, the procedure for granting the recoverer the right to execute himself a judgement obliging the debtor to perform certain actions in case of debtor’s evasion from execution was regulated separately (article 406 of Civil Procedure Code of the RSFSR 1964).

The transformation of the procedural status of the recoverer was due to the changes in the field of substantive law that took place during the Soviet period, associated with the establishment in the civil legislation state's monopoly on the protection of rights and the determination as an object of arbitrariness the public relations related to an order of public administration.

Paragraph 2.3 “Execution of a court decision by a recoverer for a debtor in the post-Soviet and modern period” describes the procedure for the enforcement of a judgement and the participation of a recoverer in it according to the norms of the Federal Law “On Enforcement Proceedings” № 119-FZ of July 21, 1997 (hereinafter referred to as the Law on Enforcement Proceedings 1997).

The paragraph reveals the expansion of the procedural role of the recoverer in comparison with the Soviet period. However, the procedural status of the

recoverer according to the Law on Enforcement Proceedings 1997 seems to be insufficiently developed against the backdrop of the reforms in the field of substantive law that took place in the post-Soviet period, which secured the possibility of self-defense of civil rights. A significant omission in the procedural legislation of the post-Soviet and modern period is the lack of procedural form of realization of the recoverer's right to enforce the judgment for the debtor in case of his evasion from execution. The conservation in the current legislation of all the main defects of the Law on Enforcement Proceedings 1997 related to the participation of the recoverer in the execution of a judgment is noticed.

Chapter 3 “Procedural and non-procedural forms of execution of a judgement by a recoverer for a debtor in the modern legal system: the model of an “active” recoverer” defines the legal forms, conditions and limits of execution of a judgment by a recoverer for a debtor in the modern legal system, based on the conclusions made in the previous chapters.

Paragraph 3.1 “Conditions for the lawful execution of a judgment by a recoverer for a debtor, based on the provisions of substantive law” proves the possibility of the execution of a judgment by a recoverer for a debtor at the stage of enforcement proceedings in modern socio-economic realities based on the provisions of articles 12, 14 or 397 of the Civil Code of the Russian Federation. Also, specific conditions for the legitimacy of such an execution (absence of violence against the personality of the debtor, compliance with the general rules of good faith, reasonableness and inadmissibility of abuse of the right, compliance with the criteria for the admissibility of self-defense of the right when affecting the debtor's property) are formulated.

In *Paragraph 3.2* “Procedural forms of realization of the recoverer's right to execute the judgment for the debtor” the necessity of establishing a universal procedural mechanism for the execution of a judgment by a recoverer for a debtor at the stage of enforcement proceedings is proved. This procedural mechanism should also provide the compensation to the recoverer in a simplified manner of

the corresponding costs of the recoverer at the expense of the debtor. A detailed description of that specified procedural mechanism is given.

The author formulates the concrete proposals to further extension of the procedural capabilities of the recoverer in enforcement proceedings and makes a conclusion that the limits of the state's property liability to the recoverer in case of the loss of the possibility of actual execution may be narrowed if the procedural role of the recoverer would be increased.

The **Conclusion** presents the main results of the dissertation research, recommendations and prospects for further development of the topic.

MAIN PUBLICATIONS ON THE TOPIC DISSERTATION RESEARCH

Research papers with a total volume of 3.45 printed pages were published on the research topic.

Articles in periodicals included in the list of HSE recommended journals:

1. Olenin D.A. The English Model of Enforcement Proceedings // *Arbitrazh and Civil Procedure*. 2021. № 3. P. 53–57.
2. Olenin D.A. Should execution creditors take active position in enforcement proceedings? // *Legislation*. 2022. № 3. P. 51–60.
3. Olenin D.A. Execution of judgement on demolition or dismantling of buildings (structures) by recoverer for debtor // *Legislation*. 2022. № 8. P. 75–81.
4. Olenin D.A. Is It Possible to Grant the Recoverer an Opportunity to Execute Judgment by Himself, If the Debtor Avoids Performance? // *Herald of Civil Procedure*. 2021. Vol. 11. №. 3. P. 316–334.

REFERENCES

1. Normative legal acts

1. Arbitration Procedure Code of the Russian Federation dated July 24, 2002 № 95-FZ // SZ RF. 2002. № 30. Art. 3012.
2. Civil Code of the Russian Federation (part one) dated November 30, 1994 № 51-FZ // SZ RF. 1994. № 32. Art. 3301.
3. Civil Procedure Code of the Russian Federation dated November 14, 2002 № 138-FZ // SZ RF. 2002. № 46. Art. 4532.
4. Federal Law of October 2, 2007 № 229-FZ “On Enforcement Proceedings” // SZ RF. 2007. № 41. Art. 4849.

2. Invalid normative legal acts

5. Civil Procedure Code of the Russian Soviet Federative Socialist Republic dated June 11, 1964 (repealed) // Bulletin of the Supreme Soviet of the RSFSR. 1964. № 24. Art. 407.
6. Decree of the All-Russian Central Executive Committee of July 10, 1923 “On the Entry into Force of the Civil Procedure Code of the R.S.F.S.R.” (together with the Civil Procedure Code of the R.S.F.S.R.) (repealed) // SU RSFSR. 1923. № 46–47. Art. 478.
7. Statute of Civil Procedure of 1864 // Judicial Charters November 20, 1864, outlining the reasoning on which they are based: Part 1 / Ed. State Chancellery. 2nd edition, enlarged. St. Petersburg: in the printing house of the 2nd department of the Own E. I. V. Chancellery, 1867. Access mode: URL: <https://www.prlib.ru/item/372592> (date of access: 04.02.2023).
8. Federal Law of July 21, 1997 № 119-FZ “On Enforcement Proceedings” (repealed) // SZ RF. 1997. № 30. Art. 3591.

3. Materials of judicial practice

9. Ruling of the Supreme Court of the Russian Federation of July 30, 2018 № 304-ЭС18-9959 on the case № А81-1310/2012 // Legal research system “ConsultantPlus”.

10. Ruling of the Supreme Court of the Russian Federation of October 17, 2017 № 305-ЭС17-14601 on the case № А40-152425/2010 // Legal research system “ConsultantPlus”.

11. Cassation ruling of the Eighth Cassation Court of General Jurisdiction of August 19, 2020 № 88А-13317/2020 // Legal research system “ConsultantPlus”.

12. Resolution of the Central District Arbitration Court of July 31, 2020 on the case № А14-12473/2017 // Legal research system “ConsultantPlus”.

13. Resolution of the Nineteenth Arbitration Court of Appeal of August 2, 2019 on the case № А14-6074/2017 // Legal research system “ConsultantPlus”.

14. Resolution of the Thirteenth Arbitration Court of Appeal of August 23, 2017 on the case № А56-4853/2017 // Legal research system “ConsultantPlus”.

15. Resolution of the Fourteenth Arbitration Court of Appeal of September 3, 2019 on the case № А05-9616/2018 // Legal research system “ConsultantPlus”.

16. Appellate ruling of the Nizhny Novgorod Regional Court of June 9, 2020 № 2-5703/2019 // Legal research system “ConsultantPlus”.

17. Decision of the Vyborg City Court of the Leningrad Region of March 14, 2019 on the case № 2А-1085/2019 // Legal research system “ConsultantPlus”.

18. Decision of the Soviet District Court of the city of Tomsk of October 2, 2017 № 12-242/2017 // Legal research system “ConsultantPlus”.

4. Other documents

19. Departmental statistical reporting for January – November 2022 (Form № 1-1. Section 2), for 2021 (Form № 1-1. Section 2), for 2020 (Form № 1-1. Section 5), for 2019 (Form № 1-1. Section 5) // Official website of the

FSSP of Russia [Electronic resource]. URL: <https://fssp.gov.ru/statistics/> (date of access: 29.01.2023).

20. Final report on the results of the activities of the FSSP of Russia in 2021 // Official website of the FSSP of Russia [Electronic resource]. URL: <https://fssp.gov.ru/2765741/> (date of access: 29.01.2023).

21. Final report on the results of the activities of the FSSP of Russia in 2020 // Official website of the FSSP of Russia [Electronic resource]. URL: <https://fssp.gov.ru/2718866/> (date of access: 29.01.2023).

5. Scientific and educational literature

22. Basic provisions of civil law: article-by-article commentary on articles 1–16.1 of the Civil Code of the Russian Federation [Electronic edition. Edition 1.0] / A.V. Asoskov, V.V. Baibak, R.S. Bevzenko [and others]; resp. ed. A.G. Karapetov. M.: M-Logos, 2020. 1469 p.

6. Articles in scientific journals and collections

23. The procedure of execution of a non-property requirements contained in executive documents: problematic issues and ways to solve them: collection of materials of the 7th International Scientific and Practical Conference, June 9 – 11, 2016, Ufa, Republic of Bashkortostan / D.B. Abushenko, A.D. Avdeev, Z.M. ogly Alizade and others; ex. ed. D.V. Aristov, V.A. Gureev. M., 2017 // Legal research system “ConsultantPlus”.

7. Dissertations and abstracts of dissertations

24. Ageev A.Kh. Private and public law principles in enforcement proceedings: Thesis ... Doctor of Philosophy in Law. Ekaterinburg, 2004. 178 p.

25. Valeev D.Kh. The system of procedural guarantees of the rights of citizens and organizations in enforcement proceedings: Thesis ... Doctor of Science in Law. Kazan, 2009. 474 p.

26. Galperin M.L. Responsibility in enforcement proceedings: Thesis ... Doctor of Science in Law. M., 2019. 464 p.
27. Zagidullin M.R. Legal responsibility in the civil process: theoretical problems: Thesis ... Doctor of Science in Law. Ekaterinburg, 2022. 373 p.
28. Isaenkova O.V. Problems of Enforcement Law in Civil Jurisdiction: Thesis ... Doctor of Science in Law. Saratov, 2003. 380 p.
29. Kuznetsov V.F. System of Enforcement Proceedings: Issues of Theory and Practice: Thesis ... Doctor of Science in Law. Chelyabinsk, 2004. 333 p.
30. Kuznetsov E.N. The right to enforce judicial acts in the Russian Federation: Thesis ... Doctor of Science in Law. Ekaterinburg, 2022. 440 p.
31. Mamaev A.A. The legal status of the recoverer in enforcement proceedings: Thesis ... Doctor of Philosophy in Law. Ekaterinburg, 2020. 201 p.