

PROTECTION OF CHILDREN'S RIGHTS DURING IMPLEMENTATION OF GUARANTEES IN EXECUTIVE PROCEEDINGS: THEORETICAL AND LEGAL STUDY

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Abstract. The article delves into the theoretical and legal dimensions of safeguarding children's rights within the framework of enforcement proceedings guarantees. It presents the guarantee system as comprising various elements, such as procedural oversight, appeals mechanisms against executor actions, measures for holding violators accountable, involvement of relevant professionals, and the normative regulation of rights and obligations for all participants. Through legislative analysis and practical examination, the article asserts that safeguarding children's rights in enforcement proceedings unfolds in two primary facets: protection of property rights and protection of personal non-property rights. In the realm of property rights, emphasis is placed on securing child support payments from debtor parents to foster the child's well-rounded development. Additionally, it addresses preventing the eviction of a minor from mortgaged housing in cases involving parents-mortgagors. For the protection of non-property rights, measures include child removal, establishment of visitation rights, and removal of obstacles to visitation. The article underscores the importance of sound reasoning and evidence when considering temporary child placement and ensures debtors receive copies of enforcement proceedings decisions during searches. It advocates for petitioning the court to amend or clarify visitation-related decisions. Special attention is given to the involvement of professionals such as doctors, teachers, and psychologists in enforcement proceedings to safeguard minors' rights, ensuring their mental and physical well-being and preventing potential abuse by involved parties

Keywords: protection, child rights, enforcement proceedings, guarantees of enforcement proceedings.

INTRODUCTION

Following the stipulations of Article 1 of the United Nations Convention on the Rights of the Child (The United Nations Convention on the Rights of the Child, 1989) and Article 1 of the Law of Ukraine „On Child Protection” (The Verkhovna Rada of Ukraine, 2001), an individual is considered a child until reaching the age of eighteen, unless legally deemed an adult at an earlier age under the law applicable to that individual. Children represent one of the most vulnerable and socially unadapted demographic groups, necessitating the state's legal consciousness to be fundamentally rooted in the concept of child rights protection. This encompasses safeguarding the child as a unique individual undergoing distinct physical and psychological development. This

principle imposes an obligation on the state to provide children with the necessary protection for their welfare, which includes implementing suitable legislative and administrative measures.

During their maturation process, children frequently engage as subjects in a variety of social relations that influence their personal development. Among these are the social relations arising during execution proceedings, where the child often stands as the most vulnerable party needing effective rights protection. This highlights the importance of addressing both theoretical and practical aspects of protecting children's rights in the context of executing procedural guarantees. Specific legal challenges related to the protection of children's rights within these proceedings have been the focus of research by scholars such as T.O. Bordyug, Z.V. Makovetsky, Y.D. Khanovich, and others. However, despite the substantial theoretical contribution of these works to the scholarly exploration of the issue, many problematic aspects remain unresolved, warranting further investigation. The objective of this article is to elucidate the theoretical and legal aspects of child rights protection during the implementation of guarantees in execution proceedings.

MATERIALS AND METHODS

In conducting this theoretical and legal study on the protection of children's rights during the implementation of guarantees in executive proceedings, a comprehensive methodological framework was employed. The research primarily utilized a doctrinal legal method, involving a systematic review and critical analysis of pertinent legal texts, including international conventions, national legislation, and judicial decisions. Key among these were the United Nations Convention on the Rights of the Child and the Law of Ukraine „On Child Protection,” which provided foundational legal standards and definitions. To deepen the understanding of the issue, the study also integrated a comparative legal analysis.

This approach involved examining and contrasting the legal frameworks and practices concerning child rights protection in executive proceedings across different jurisdictions. Such a comparison was instrumental in identifying best practices and highlighting potential areas for reform in the Ukrainian context. Additionally, the research methodology included an analysis of secondary sources, such as scholarly articles, legal commentaries, and case studies. These sources offered critical insights into the theoretical underpinnings of child rights protection and helped contextualize the legal issues within broader social and psychological frameworks. Empirical data, although not the primary focus of this study, were also considered to provide a more practical perspective on the implementation of legal protections for children. This included data from governmental reports, non-governmental organizations, and international bodies that monitor and evaluate the effectiveness of child rights protections in legal proceedings.

The materials and methods chosen for this study were aimed at achieving a holistic understanding of the complex interplay between legal theory and practice in the area of child rights protection, particularly within the realm of executive proceedings. The ultimate goal was to contribute not only to the academic discourse but also to offer practical

recommendations for legal practitioners, policymakers, and child advocacy groups.

RESULTS

Based on the research conducted, it can be concluded that children often participate in executive proceedings, the outcome of which affirms their property and personal non-property rights. Ukrainian legislation in the field of executive proceedings has established a series of guarantees, the implementation of which allows for the execution of corresponding court decisions, thereby protecting children's rights and ensuring a standard of living sufficient for their physical, intellectual, moral, cultural, spiritual, and social development. However, there are certain problematic aspects regarding the protection of children's rights during the implementation of guarantees in executive proceedings, which will be the subject of further scientific explorations.

Expanding on this conclusion, it is evident that the role of children in executive proceedings is not merely passive but rather integral to the realization of their legal entitlements. The legislative framework, while robust in its intent to safeguard children's rights, necessitates continuous evaluation and improvement to address the evolving challenges in this domain (Karadzhev et al., 2023). The effectiveness of these legal provisions is a critical factor in ensuring that the needs and rights of children are adequately met. It involves not only the enforcement of court decisions but also the comprehensive application of legal measures that cater to the diverse and dynamic nature of children's developmental requirements.

Despite the established legal framework, the practical application of these guarantees often reveals gaps and inefficiencies. These challenges range from bureaucratic hurdles to delays in execution, which can significantly impact the welfare of the child. Therefore, future scholarly inquiries must focus on identifying these gaps and proposing solutions that streamline the execution process while prioritizing the best interests of the child.

In conclusion, while the current legislative measures provide a foundational basis for the protection of children's rights in executive proceedings, there is a pressing need for continuous scholarly assessment and legal refinement. Future research should aim at enhancing the efficacy of these legal guarantees, ensuring that they are not only theoretically sound but also practically effective in promoting the holistic development of children within the legal system.

Within the constitutional framework of the judiciary system, the principle of the mandatory enforcement of judicial decisions holds fundamental significance. This principle epitomizes the effectiveness of judicial power and guarantees access to justice. It is interpreted by scholars as „the obligatory execution of a judicial decision, which concludes the case consideration and is issued in the name of Ukraine, by all state authorities, local self-government bodies, their officials and officers, as well as by physical and legal entities and their associations throughout the territory of Ukraine” (Kaplya, 2017).

Additionally, other executive documents are also subject to mandatory enforcement. These documents protect violated or disputed subjective material rights or legally protected interests. They include executive inscriptions by notaries, resolutions by bodies (officials) authorized to consider cases of administrative offenses as provided by law, decisions of other state bodies, and decisions of the National Bank of Ukraine, which are recognized as

executive documents by law (The Verkhovna Rada of Ukraine, 2016).

The timely and complete execution of these acts within the framework of executive proceedings allows for the enforced restoration of violated or disputed subjective material rights or legally protected interests. This, in turn, reinstates social justice and affirms the rule of law in the state.

The coercive nature of executive proceedings necessitates the prevention of violations and the protection of citizens' rights during their execution. In light of this, current relevant legislation contains a system of guarantees for executive proceedings. These include procedural forms for supervising and controlling the legality of the execution process, appealing the actions of state or private executors, measures of accountability for those guilty of violating the legislation on executive proceedings, involving representatives, experts, specialists, valuation entities, witnesses, and a normatively regulated system of rights and obligations of executors, parties, and other participants in executive proceedings. These guarantees enable the protection of the rights of participants in executive proceedings, including minors.

In the system of constitutional principles of the judiciary, the mandatory enforcement of judicial decisions is of fundamental importance. This principle signifies the effectiveness of judicial authority and ensures access to justice. It is interpreted by scholars as the obligation to execute a judicial decision that concludes the examination of a case and is pronounced in the name of Ukraine, by all state authorities, local self-government bodies, their officials and personnel, as well as by individuals and legal entities and their associations throughout Ukraine (Kaplya, 2017).

Mandatory enforcement also applies to other executive documents that protect violated or disputed subjective material rights or legally protected interests. These include executive inscriptions by notaries, resolutions by authorities (officials) authorized to consider administrative offense cases as provided by law, decisions of other state bodies, and decisions of the National Bank of Ukraine recognized as executive documents by law (The Verkhovna Rada of Ukraine, 2016).

The timely and complete execution of these acts within the framework of executive proceedings allows for the enforced restoration of violated or disputed subjective material rights or legally protected interests. This restoration reestablishes social justice and affirms the rule of law in the state (Moreno Cordero, 2023).

The coercive nature of executive proceedings necessitates safeguarding citizens' rights, particularly during their execution. Consequently, current relevant legislation contains a system of guarantees for executive proceedings. These include procedural forms for supervision and control over the legality of the execution process, challenging the actions of state or private executors, accountability measures for those violating the legislation on executive proceedings, and involving representatives, experts, specialists, valuation entities, witnesses, and a normatively regulated system of rights and obligations for executors, parties, and other participants in executive proceedings (Koning & van Wilsem, 2023). These guarantees enable the protection of participants' rights in executive proceedings, including minors.

Child property rights protection within executive proceedings is primarily associated with

the enforcement of parents' child support obligations. Current family legislation mandates parents to provide child support regardless of marital status or cohabitation. However, many parents fail to fulfill this obligation, resulting in corresponding disputes and executive proceedings (Meng et al., 2023)

The simplest way to collect child support is from debtors officially employed by an enterprise, institution, organization, individual, or individual entrepreneur, or those officially receiving other types of income. These entities deduct payments from the debtor's salary, pension, scholarship, or other income and transfer them to the claimant within the deadlines set for such payments to the debtor. However, according to Article 70(3) of the Law of Ukraine „On Executive Proceedings,” the total amount of all deductions during each payment of salary and other incomes of the debtor cannot exceed 50 percent of the salary to be paid to the employee, including in cases of multiple executive documents. This limitation does not apply to deductions from salary in cases of the debtor undergoing correctional labor and child support for minors. In such cases, the amount of deductions from salary cannot exceed 70 percent (The Verkhovna Rada of Ukraine, 2016).

However, as rightly pointed out by Y.D. Khanovich, „Increasingly, there are cases where the alimony payer is not officially employed. When calculating arrears, the amount of alimony is determined based on the average salary of an employee of the respective qualification or an unskilled worker for the locality. This leads to a situation where the state executor must calculate an arrearage that he is unable to collect. Accumulating significant arrears only worsens the situation for both the debtor and the claimant, as the payer loses the desire to find work and will seek unofficial sources of existence” (The Verkhovna Rada of Ukraine, 2001).

Therefore, the provisions of Article 71 of the relevant act are of significant importance for the protection of children's rights during the execution of executive proceedings. Specifically, it is stipulated that the executor must collect the amount of alimony established in the executive document, but not less than the minimum guaranteed size prescribed by the Family Code of Ukraine (The Verkhovna Rada of Ukraine, 2016). Moreover, to ensure the harmonious development of the child, the legislator has mandated the executor to index the amount of alimony annually, starting from the second year of its establishment.

Furthermore, the legislation provides for the possibility of applying sanctions against the debtor within the framework of executive proceedings to protect the rights of the child, namely:

- In cases of non-payment of alimony for three months, enforcement is levied on the debtor's property;
- In cases of non-payment of alimony for four months, temporary restrictions are imposed on the debtor's right to travel abroad, drive vehicles, use firearms, hunting, pneumatic, and deactivated weapons, domestic devices for shooting cartridges equipped with rubber or similar non-lethal projectiles, as well as hunting (The Verkhovna Rada of Ukraine, 2016)

DISCUSSION

In the context of executive proceedings, children's property rights regarding mortgage relations are also protected. Article 39 of the Law of Ukraine „On Mortgage” stipulates that

concurrently with the decision to enforce a mortgage, the court, upon the application of the mortgage holder, issues a decision to evict residents if there are grounds provided by law if the subject of the mortgage is a residential house or premises (The Verkhovna Rada of Ukraine, 2003). However, there are numerous cases where a minor resides in the mortgaged property. Thus, paragraph 30 of Section VIII „Procedure for enforcing a debtor’s property” of the Instructions for the organization of compulsory execution of decisions, approved by the order of the Ministry of Justice of Ukraine on April 2, 2012, No. 512/5, stipulates that in case of the transfer for sale of real estate, the ownership or right to use of which belongs to children, prior permission from the guardianship and custodianship authorities is required, as provided by law. If such permission is not granted, the executor continues to execute the decision at the expense of other property of the debtor, and in the absence of such property, returns the executive document to the claimant (Ministry of Justice of Ukraine, 2012). As rightly pointed out by Z.V. Makovetsky, „In almost all cases, guardianship and custodianship authorities do not grant such permission, protecting the rights of children. This position is entirely understandable, but it must be justified by the norms of legislation, not merely the function performed by these bodies. In practice, there are often situations where debtors abuse their rights and register in property under mortgage, children, even those of others, to prevent the execution of the decision on the enforcement of property” (Makovetskyi, Z.V., 2019, p. 65). This subsequently leads to new legal claims challenging the actions of the executors.

Concurring with the views of T.O. Bordyug, it is noted that „in cases of conflict between the interests of the child and the creditor, priority should be given to the interests of the children, as they are the most vulnerable category of society. Creditors, on the other hand, usually have advantages over debtors, dictating their terms and choosing different ways to protect their rights. In considering banks as creditors, they often have many different assets, and thus prioritizing the interests of children does not significantly impact their profits and position – as they say, they will not suffer, but children need protection” (Bordiug, T.O., 2020, pp. 82-86). Based on this, it is considered that if children reside in mortgaged property, the creditor’s method of protection should not be the immediate seizure of the mortgaged property but, for instance, deducting the corresponding amount from the parents’ salaries or establishing annual interest installment/deferment of payments, considering the debtor’s circumstances. In other words, enforcement of a child’s residence should be a last resort if the parent-debtors fail to fulfill their obligations and settle with creditors in another manner. However, if the parent-debtors are unable to make payments under the credit agreement and the disputed property is the only residence where the child has the right to live (for example, there are no other close relatives or own housing), postponing enforcement until the child reaches adulthood is possible.

As previously noted, the protection of a child’s non-property rights is also implemented within executive proceedings through child retrieval, establishing visitation rights, and removing obstacles to visiting the child (Rumiarta et al., 2023).

Article 9 of the United Nations Convention on the Rights of the Child stipulates that a child shall not be separated from parents against their will, except when competent authorities determine such separation is necessary for the best interests of the child. Such determination

may be necessary in various cases, for instance, when parents mistreat or neglect the child, or when parents live separately and a decision regarding the child's residence must be made (The United Nations Convention on the Rights of the Child, 1989).

The specifics of executing a decision regarding child retrieval are delineated in Article 64 of the Law of Ukraine „On Executive Proceedings.” It is specifically mandated that during the execution process, the person to whom the child is to be entrusted for upbringing, as well as a representative from the guardianship and custodianship authority, must be involved. Additionally, if necessary, the state executor may approach the court with a submission regarding the temporary placement of the child in a childcare or medical institution (The Verkhovna Rada of Ukraine, 2016). It is pertinent to note that, as evidenced by judicial practice, courts often deny such submissions due to the lack of proven necessity. For example, the decision of the Avtozavodsky District Court of Kremenchuk on January 13, 2023, in case № 524/8936/19, refused the submission of the chief state executor of the Department of Compulsory Execution of Decisions in the Poltava Region of the North-Eastern Interregional Department of the Ministry of Justice (Sumy) for the temporary placement of the child in a childcare or medical institution. This was because the materials provided did not allow the court to assess whether the temporary placement of the minor in such an institution best served the child's interests, considering no conclusions regarding the necessity of such placement were provided by the guardianship and custodianship body. Moreover, the chief state executor did not specify how the placement of the minor in such an institution would facilitate the execution of the decision to retrieve the child from the father and transfer her to the mother, as no executive actions in the proceedings had been conducted (Resolution of the Kremenchuk Automotive District Court, 2023).

According to Article 36 of the Law of Ukraine „On Executive Proceedings,” if the state executor lacks information on the whereabouts of the debtor and the child, they are required to submit to the court for a ruling on the search for the debtor or child. The execution of the latter is entrusted to the internal affairs agencies (The Verkhovna Rada of Ukraine, 2016). Unlike the aforementioned submission, submissions for the search of the debtor and/or child are mostly satisfied by the courts. However, in such cases, it is crucial to adhere to the requirement of the debtor receiving a copy of the resolution on the initiation of executive proceedings; otherwise, the submission will not be granted.

Regarding the specifics of executing decisions related to establishing visitation with a child and removing obstacles to such visitation, these are also normatively established in Article 64-1 of the Law of Ukraine „On Executive Proceedings.” Specifically, this article dictates that the execution of these decisions involves ensuring that the debtor facilitates visitation between the claimant and the child at the time and place determined by the court decision. These powers of the state executor appear contentious and problematic in execution, as the child is often occupied with homework or attending a sports club during court-appointed times, leading to disputes between parents. To avoid such conflicts, it is deemed advisable, in the absence of relevant information in the court decision, to approach the court with a request to supplement or clarify the order of its execution.

In cases of violations in the execution of these decisions, the executor imposes a fine of 100 non-taxable minimum incomes of citizens, and the debtor is warned about criminal liability.

If there is a repeated failure to execute, the fine amount is doubled, and the executor also sends a notification about the debtor's criminal offense to law enforcement agencies and takes measures to temporarily restrict the right to leave Ukraine, the right to drive vehicles, etc. (The Verkhovna Rada of Ukraine, 2016).

Characterizing the specifics of protecting the personal non-property rights of children during the implementation of guarantees in executive proceedings, it is important to note the necessity of involving not only the subjects representing the parties but also a doctor, educator, psychologist, and other specialists in the process. In our opinion, the need for the participation of these participants is related to the fact that the executive proceedings concern the protection of minors' rights and it is necessary not only to protect the child legally but also to safeguard their mental and physical well-being, prevent manipulations, psychological violence, and other abuses by the parties in the executive proceedings

CONCLUSIONS

The research presented in this article highlights the integral role of Ukrainian legislation in safeguarding children's rights in executive proceedings. It highlights the complexity of effectively implementing these legal frameworks and the gaps that exist between their theoretical construct and practical application. The findings point to the need for a more nuanced and responsive legal system that can adequately address the diverse and evolving needs of children, particularly in cases of property rights, maintenance enforcement and personal non-property rights. This part of the Conclusions highlights the importance of bridging these gaps to ensure that the legal guarantees provided are not only theoretically robust but also practically effective in protecting children's rights.

The analysis also highlights the crucial role of guardianship authorities, legal representatives and social services in the implementation of these legal frameworks. The effectiveness of these bodies is often challenged by systemic limitations and lack of coordination, which affects the overall welfare of children in legal disputes. This part of the Conclusions highlights the importance of strengthening inter-agency cooperation and improving the capacity and responsiveness of these bodies to better protect and promote children's rights in the executive process.

Building on the challenges identified for guardianship authorities, legal representatives and social services, there is a need for further in-depth research. This research should explore more effective inter-agency cooperation mechanisms and strategies to enhance the capacity of these agencies. Focusing on the practical aspects of the legal framework, future studies should examine the real-world effectiveness of current practices in safeguarding children's rights. This research is crucial to identifying gaps, proposing innovative solutions and ensuring the adaptability of the legal system to the evolving needs of children in enforcement proceedings.

Building on the challenges identified above, this section of the Conclusions proposes specific legal reforms. These include revising child support enforcement mechanisms to ensure timely and efficient collection, implementing mandatory training programmes for guardianship authorities and legal representatives on children's welfare and rights, and establishing a specialised legal framework for cases involving children's rights. It also

proposes the creation of a centralised database for tracking and monitoring cases involving children to enhance transparency and accountability. These proposed changes aim to directly address the systemic problems and improve the overall effectiveness of the legal system in protecting children's rights in executive proceedings.

In conclusion, it is imperative to emphasise the importance of aligning Ukrainian legal standards with international norms and practices. This alignment, particularly in the area of children's rights in enforcement proceedings, will not only strengthen Ukraine's commitment to global child welfare standards, but also enrich its legal system with proven and effective child protection mechanisms from around the world. The adoption of such international standards will ensure a more holistic and universally acceptable approach to child protection within Ukraine's legal framework, thereby enhancing both the credibility and effectiveness of its efforts to protect children's rights.

In addition, the Conclusions emphasise that it's crucial to incorporate international standards and practices into Ukrainian legislation on children's rights in enforcement proceedings. This approach would ensure that the Ukrainian legal system is not only aligned with global standards, but also benefits from the knowledge and experience of other jurisdictions. This integration is necessary for a legal framework that is both dynamic and responsive to the evolving landscape of children's rights and welfare. The detailed argument for this perspective is based on the premise that global best practices offer valuable lessons and innovative strategies for improving child protection mechanisms. This perspective advocates for a legal system that is adaptable, informed by international experience, and capable of addressing the unique challenges faced by children in enforcement proceedings.

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