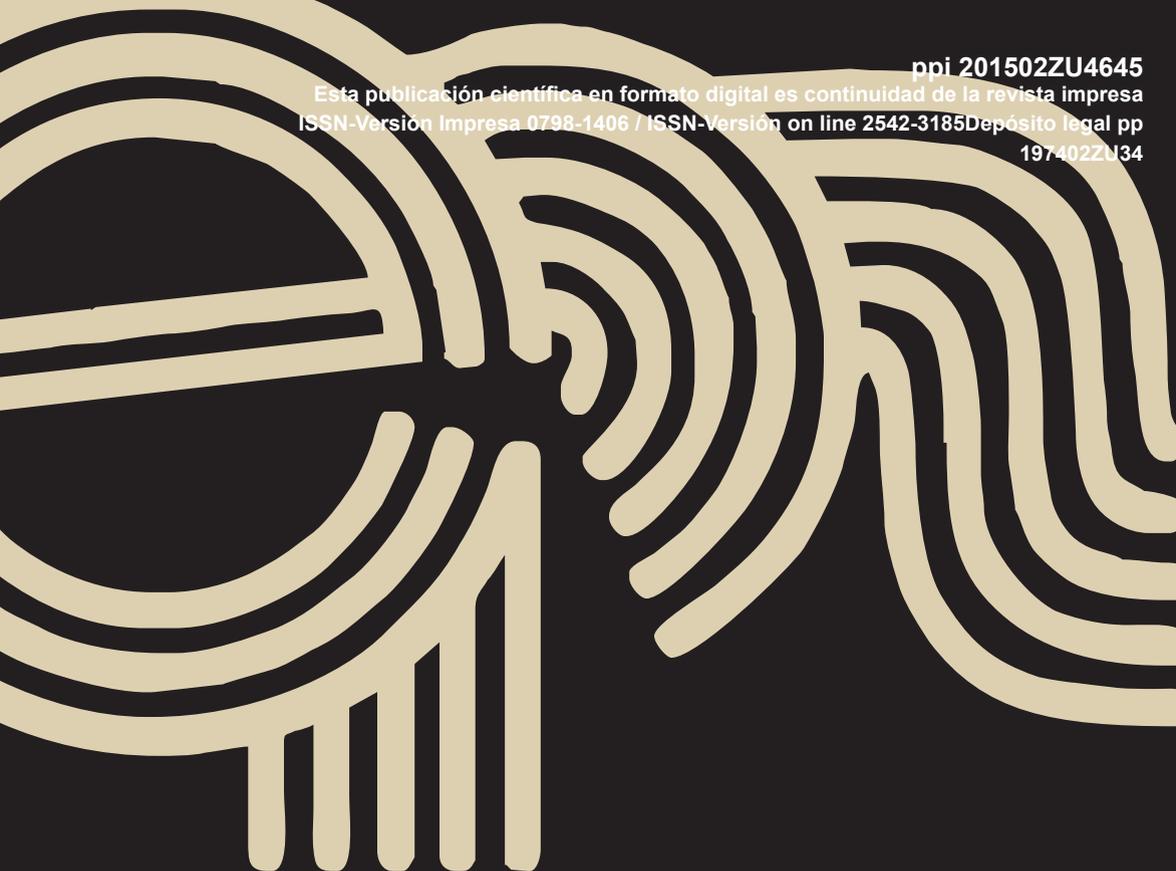


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Automated system of court enforcement proceedings as element of information provision for compulsory enforcement of decisions

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Abstract

The aim of the article was to suggest ways to improve the legislation regulating the scope of operation of the automated system of judicial enforcement proceedings, in order to increase the effectiveness of enforced execution of decisions while respecting human rights. The methodology of the article was based on the application of the following methods of scientific cognition: analytical, deductive, hermeneutic, comparative and synthesis. In addition, the authors analyze the legal regulation of the operation of the automated system of execution of court judgments, as an element of information provision for the forced execution of resolutions and, at the same time, have revealed the gaps in its legal regulation and, consequently, have suggested the ways to eliminate them. It was definitely established that there was no need to amend the legislation concerning the distribution of enforcement documents among private enforcement officers within their districts of jurisdiction. In the conclusions it was offered to improve certain provisions of the Ukrainian legislation regulating the provision of information on compulsory enforcement of decisions, in particular, to give the prosecutor access to information on judicial enforcement proceedings on an equal footing with the parties.

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Keywords: judicial enforcement proceedings; compulsory enforcement of a decision; automated system of judicial enforcement proceedings; provision of information; compulsory decisions.

Sistema automatizado de procedimientos judiciales de ejecución como elemento de suministro de información para la realización obligatoria de resoluciones

Resumen

El objetivo del artículo fue sugerir vías para mejorar la legislación que regula el ámbito de funcionamiento del sistema automatizado de los procedimientos judiciales de ejecución, para aumentar la eficacia de la ejecución forzosa de las decisiones respetando los derechos humanos. La metodología del artículo se basó en la aplicación de los siguientes métodos de cognición científica: analítico, deductivo, hermenéutico, comparativo y de síntesis. Además, los autores analizan la regulación legal del funcionamiento del sistema automatizado de ejecución de sentencias judiciales, como elemento de provisión de información para la ejecución forzosa de resoluciones y, al mismo tiempo, han revelado los vacíos de su regulación legal y, en consecuencia, han sugerido las vías para eliminarlos. Definitivamente se estableció que no había necesidad de enmendar la legislación relativa a la distribución de documentos de ejecución entre los funcionarios privados de ejecución dentro de sus distritos de jurisdicción. En las conclusiones se ofreció mejorar ciertas disposiciones de la legislación ucraniana que regulan el suministro de información sobre la ejecución obligatoria de decisiones, en particular, para dar al fiscal acceso a la información sobre los procedimientos judiciales de ejecución en igualdad de condiciones con las partes.

Palabras clave: procedimiento judicial de ejecución; ejecución forzosa de una resolución; sistema automatizado de procedimiento judicial de ejecución; suministro de información; resoluciones obligatorias.

Introduction

Information provision of enforcement proceedings plays an important role for its effectiveness, because the set of compulsory enforcement measures is closely related to the availability of the subject, who is authorized to compulsory enforcement of decisions, complete and reliable information necessary for execution of enforcement actions.

The study of theoretical and legal problems of information provision of court enforcement proceedings deserves scientific understanding and critical analysis, because it will contribute to the identification of gaps in its legal regulation, to the development of suggestions to eliminate its shortcomings and, as a result, to the increase of the effectiveness of compulsory enforcement of decisions.

The information systems of the Ministry of Justice of Ukraine in the direction of court enforcement proceedings include: Unified Register of Private Enforcement Officers of Ukraine; Unified Register of Debtors; Automated system of court enforcement proceedings (hereinafter – the ASCEP). Their difference is that:

1) the concept of the ASCEP is revealed by the legislation through the category of computer software that ensures the collection, storage, accounting, search, generalization, provision of information about enforcement proceedings, formation of the Unified register of debtors and protection against unauthorized access (Regulations on the Automated System of Court Enforcement Proceedings, 2016: paragraph 2, Section I (hereinafter referred to as the Regulations on the ASCEP)).

The charter of the State Enterprise “National Information Systems”, which is the administrator of the ASCEP, determines that the purpose of the activity of this enterprise is: “... performing economic activities in the sphere of creation, development, support, accompaniment, improvement, modernization and technical support of Unified and State registers, automated systems, databases and other information systems” (The Chapter of State Enterprise “National Information Systems”, 2019 : paragraph 2.1). That is, the legislator distinguishes such concepts as Unified registers, State registers, automated systems;

2) some registers / unified state registers are defined by the legislator as components of the ASCEP, in particular:

- Unified state register of court enforcement proceedings – it is a separate special section that is an archival component of the ASCEP and contains information on enforcement proceedings registered before the introduction of the ASCEP;
- Unified register of debtors is the systematized database of debtors, which is a component of the ASCEP;
- Register of decisions, the implementation of which is guaranteed by the state, is an integral part of the ASCEP, where the accounting of decisions, the execution of which is guaranteed by the state, the inventory of debts due to these decisions and their transfer to the Treasury body, is carried out.

The ASCEP in accordance with the legislation, ensures the solution of a number of tasks, each of them is of great importance for the informational provision of compulsory enforcement of decisions (Law of Ukraine “On Enforcement Proceedings”: Part 2, Art. 8).

The authors of this article have studied certain areas that are provided by the ASCEP, namely: the distribution of enforcement documents between state enforcement officers, provision of information about enforcement proceedings to the parties to the court enforcement proceedings, and the display of debtor’s personal data in free access.

The purpose of the article is to suggest the ways to improve the legislation regulating the sphere of functioning of the ASCEP, in order to increase the effectiveness of compulsory enforcement of decisions while respecting human rights.

1. Methodology of the study

The methodology of this scientific article is based on the use of various methods of scientific research. The application of the analytical method contributed to the determination of the specifics of legal regulation of certain aspects of the functioning of the ASCEP. Due to the application of the deductive method, it was possible to determine the subject matter of scientific research.

The synthesis method made it possible to generalize the factors that affect the distribution of enforcement documents between state enforcement officers; this method was used in the formation of generalizations of proposals for improving legal regulation of the functioning of certain aspects of the ASCEP as an element of information provision of enforcement proceedings.

The hermeneutic method was used to clarify the content of law norms regulating the functioning of certain aspects of the ASCEP, namely: the distribution of enforcement documents between state enforcement officers, the provision of information about enforcement proceedings to the parties to court enforcement proceedings, as well as regulatory legal acts on the protection of personal data.

The method of comparison was used to compare law norms regulating the functioning of certain areas of the ASCEP, in particular, in regard to the distribution of personal data about the debtor-individual on the resources of free 24-hour access, to compare the judicial practice in cases relevant in terms of subject matter to the topic of this scientific article.

2. Results and Discussion

2.1. Distribution of enforcement documents between state enforcement officers

The ASCEP ensures the objective and impartial distribution of enforcement documents between state enforcement officials. It corresponds to the principles of enforcement proceedings and the principles of state executive service agencies' activities, such as fairness, impartiality, objectivity and openness.

The distribution of enforcement documents between state enforcement officials is carried out in accordance with Chapter III of the Provisions on the ASCEP (see Table 1). Such distribution is carried out in an arbitrary order by observing the order of priority, by the established coefficient and the number of enforcement proceedings that are being executed by the state enforcement official.

Table 1. Distribution of enforcement documents between state enforcement officials.

Factors affecting the distribution of enforcement documents between state enforcement officials				
1. Arbitrary order of distribution.			Exceptions: - execution of decisions of the European Court of Human Rights, decisions on confiscation within the case of violation of customs rules is carried out exclusively by state enforcement officials assigned by the head of the state executive service agency. Information about state enforcement officials who are entrusted with the execution of such decisions is entered into the ASCEP by the head of the state executive service agency; - according to the decision of the head of the state executive service agency, other enforcement documents may be distributed to state enforcement officials who execute the decision of the European Court of Human Rights, the decision on confiscation within the case of violation of customs rules.	
2. Observance of order.				
3. Considering the established coefficient:				
Coefficient's title	Coefficient's essence	Notes		
Full coefficient	Distribution of enforcement documents is carried out without restrictions			
Average coefficient	Distribution of enforcement documents is carried out at the level of 1/2 of the full coefficient		Average, low or zero coefficient is used for the deputy head of the state executive service agency	
Low coefficient	Distribution of enforcement documents is carried out at the level of 1/3 of the full coefficient	Low or zero coefficient is used for the head of the state executive service agency		
Zero coefficient	Distribution of enforcement documents is not carried out			

Source: compiled by the authors.

The legislation provides the regulation of the distribution of enforcement documents between state enforcement officials. The law does not provide the relevant procedure for the distribution of enforcement documents between private enforcement officials.

There are proposals in the literature regarding the need to add the list of already existing tasks of the ASCEP with the following ones: “ensuring the distribution of enforcement documents between private enforcement officials within the framework of the jurisdiction districts, where they carry out their activities” (Krupnova, 2017: 127); introduction of the mechanism for fair proportional distribution of enforcement proceedings between private enforcement officials, both that involve a significant reward and those that are socially significant but not profitable (Verba-Sydor and Vorobel’, 2016 : 90).

The stated position is controversial, because:

- A private enforcement official initiates enforcement proceedings with compulsory execution of the enforcement document if there are the following conditions: a) there are no grounds for returning the enforcement document to the execution creditor without acceptance for execution; b) a private enforcement official did not exercise the right to return the enforcement document to the execution creditor without acceptance for execution; c) a private enforcement official is authorized to compulsory execution of the decision according to the relevant enforcement document; d) the enforcement document presented for compulsory execution to a private enforcement official in accordance with the Art. 24 of the Law of Ukraine “On Enforcement Proceedings”.
- The implementation of the proposal regarding the distribution of enforcement documents between private enforcement officials within their jurisdiction districts may lead to a violation of the principle of discretion as one of the principles of enforcement proceedings. Has reasonably noted that “dispositiveness is inherent in all stages of enforcement proceedings. Thus, enforcement proceedings are initiated on the basis of the execution creditor’s application about compulsory enforcement of the decision” (Zolotarenko, 2016: 39).

As an interim conclusion we should note that the distribution of enforcement documents between state enforcement officials is carried out by the ASCEP taking into account the factors clearly defined by law and ensures the objectivity and impartiality of such a distribution. It is not considered appropriate to amend the legislation in regard of the ASCEP distributing enforcement documents among private enforcement officials within their jurisdiction districts.

2.2. Provision of information about enforcement proceedings to the parties of court enforcement proceedings

The ASCEP is computer software, with the help of which the parties to enforcement proceedings can access data about enforcement proceedings. It is special computer software that makes it possible for legal entities and individuals to obtain access to state and territorial information systems of state authorities and local self-government agencies (Lata *et al*, 2022). Therefore, the ASCEP is an element of public information service.

Access to the information of the ASCEP to the parties of enforcement proceedings is provided by using: 1) means of electronic identification with a high level of trust through: the web portal of the Ministry of Justice of Ukraine; Unified state web portal of electronic services in the manner determined by the contract concluded between the holder of the ASCEP and the holder of the Unified state web portal of electronic services; 2) the identifier for accessing information about enforcement proceedings, which is specified in the certificate of registration of the enforcement document and the resolution on the initiation of enforcement proceedings, through the official website of the Ministry of Justice of Ukraine.

Snidevych rightly draws attention to the fact that the parties to enforcement proceedings do not see this information in the ASCEP, despite the fact that the following must be included in the ASCEP: information on the implementation of all enforcement actions and the adoption of all procedural decisions within enforcement proceedings; information on all documents received at the request of the state enforcement official; statements of the parties to enforcement proceedings, responses to them and their scanned copies.

The ASCEP only provides the parties with the opportunity to familiarize with certain resolutions adopted by enforcement official within enforcement proceedings, which is incorrect (Snidevych, 2019). We consider it expedient that such familiarization should be carried out remotely during the Coronavirus pandemic and the war in Ukraine, taking into account the capabilities of the ASCEP. Therefore, we support the conclusions of Snidevych.

The literal interpretation of the provisions of the current Ukrainian legislation makes it possible to conclude that the prosecutor as a participant in enforcement proceedings does not have the same access to the ASCEP as parties to enforcement proceedings (Law of Ukraine “On Enforcement Proceedings”: paragraph 2, Part 2; Regulations on the ASCEP: Art. 8, paragraph 2 of Chapter VII).

However, the prosecutor is a separate participant in enforcement proceedings having the right to familiarize himself with the materials of

enforcement proceedings, and upon his application (in case of representing the interests of a citizen or the state in court), the enforcement official may begin compulsory enforcement of the decision (Law of Ukraine “On Enforcement Proceedings”: Part 1, Art. 14, Part 1, Art. 19, paragraph 2, Part 1, Art. 26).

Therefore, it is expedient that the prosecutor, as a participant in enforcement proceedings, should be provided with information about enforcement proceedings through the access to the ASCEP on an equal basis with the parties to enforcement proceedings. For this purpose, amendments should be made to paragraph 2, Part 2, Art. 8 of the Law of Ukraine “On Enforcement Proceedings”, paragraph 2, Chapter VII of the Regulations on the Automated System of Court Enforcement Proceedings by supplementing with the words “prosecutor as a participant in enforcement proceedings” after the words “parties of enforcement proceedings”.

2.3. Displaying personal data of debtors in free access

The Ministry of Justice of Ukraine provides free and non-repayable access to the information of the ASCEP in the Internet on its official website with the possibility of viewing, searching, copying and printing information. Such information includes data on the date, month and year of birth of the debtor-individual.

According to the British Data Protection Act, personal data is defined as any information relating to an identified or identifiable individuals (Data Protection Act, 2018). The concept of personal data in the General Data Protection Regulation (EU) No 2016/679 is defined in much the same way, and there are factors that are specific to physical, physiological, genetic, mental, economic, cultural and social identity of such an individual among the identifiers, which assist to identify an individual (GDPR, 2016: Art. 4). Therefore, the date of birth of an individual should be related to the factors identifying such a person and therefore, should be related to personal data.

It has been concluded in the Law of Ukraine “On Information” (second sentence of Part 2 of the Art. 11), as well as the Decision of the Constitutional Court of Ukraine of 30 October 1997 No. 5-zp (the case of K.H. Ustimenko) that the date of birth is classified as confidential information (The Decision of The Constitutional Court of Ukraine No. 2-rts/2012 1-9/2012, 2012). Therefore, we conclude that the ASCEP contains personal data, including confidential information about individuals.

The Constitution of Ukraine provides the prohibition of collecting, storing, using and distributing confidential information about a person without his / her consent, except cases specified by law, and only in the interests of national security, economic well-being and human rights (Constitution of Ukraine, 1996: Part 2, Art. 32). The Law of Ukraine “On

Information” contains a similar provision (first sentence, Part 2, Art. 11). However, the date of birth of the debtor-individual is displayed on the website of the Ministry of Justice of Ukraine in the free access to the information of the ASCEP in the Internet.

According to the General Data Protection Regulation (EU) No. 2016/679, one of the principles of processing personal data is that such processing of personal data must be carried out in a way that ensures its adequate security, in particular the protection of personal data against unauthorized or illegal processing (GDPR, 2016: paragraph f, P. 1, Art. 5). In this regard, it is rightly noted in the literature that the entity collecting and processing data is fully responsible for implementing security measures that must be commensurate with the risks of certain data entities (Didenko *et al.*, 2022).

There is a question: if the date of birth of a debtor-individual is displayed in the free access to the information of the ASCEP in the Internet on the website of the Ministry of Justice of Ukraine, how can such data be protected from unauthorized / illegal processing?

This problem becomes especially urgent in terms of the war in Ukraine, because the enemy may use the collection of personal data of individuals for their illegal activities. Therefore, some scholars rightly point to a cyberattack as one of the main tools of hybrid warfare. A specific feature of cyberattacks is the difficulty in proving the involvement of states in them. Thus, cyber warfare and cyber espionage are ideal weapons of hybrid warfare (Rekotov *et al.*, 2022).

We agree with those researchers who point to the overwhelming latency of destructive information activities in the Internet, which is associated with the effort to hide the interest and involvement of the initiating subject in the implementation of such activities (Chernysh *et al.*, 2022). Therefore, the conditions of the war exacerbated the problem of the validity of the distribution of personal data in the Internet.

Part 2 of the Art. 11 of the Law of Ukraine “On Information” contains the following wording: “... except for cases specified by law...”. That is, we are talking about exceptions to the general rule of preventing the collection, storage, use and distribution of confidential information about a person without his / her consent. In this context: “Horpyniuk notes that “access to private information and its use without a person’s consent is possible in cases directly defined by the laws of Ukraine, and only in the interests of national security, economic well-being and human rights” (Horpyniuk, 2014: 42).

Therefore, the Regulation on the ASCEP is a secondary legal act and cannot replace the law of Ukraine, the norms of which sanction the possibility of distribution of confidential data about a person without his / her consent, such as data about his date of birth.

Therefore, it is advisable to supplement paragraph 2, Part 1 of the Art. 8 of the Law of Ukraine “On Enforcement Proceedings” with the second sentence of the following content: “Free and non-payable access is provided to the following data: - last name, first name, middle name (if available), date, month, year of birth of the debtor-individual and last name, first name, middle name (if available) of the execution creditor-individual; – name, identification code in the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Organizations for the legal entity-debtor and the execution creditor-legal entity; – number, date of initiating and status of enforcement proceedings; – the name and identification code in the Unified State Register of Legal Entities, Individual- Entrepreneurs and Public Organizations of the State Executive Service, or the last name, first name, and middle name (if available) of the private enforcement official who has (had) enforcement proceedings; – the number of the communication mean, the e-mail address of the state executive service agency (private enforcement official); - details of the account of the state executive service agency (private enforcement official) for paying debt due to enforcement proceedings”.

Thus, the provisions of the Law of Ukraine “On Enforcement Proceedings”, the Regulation on the ASCEP and the actual state of affairs regarding the free display of data about the date of birth of the debtor-individual in the ASCEP will be corresponded. With regard to the protection and preservation of the ASCEP data, in accordance with paragraphs 1 and 2 of Chapter XIV of the Regulation on the ASCEP, the Administrator of the ASCEP, which is the State Enterprise “National Information Systems”, implements a set of programmatic, technological and organizational measures to protect information contained in the ASCEP from unauthorized access, and the Administrator is also responsible for preserving information contained in the ASCEP.

The situation is different regarding the display of data about the date of birth of the debtor-individual in the Unified Register of Debtors. We should note that the data about the date of birth of the debtor-individual must be contained in the Unified Register of Debtors (Law of Ukraine “On Enforcement Proceedings”, 2016: paragraph 1, Part 6 of the Art. 9).

At the same time, information about debtors included in the Unified Register of Debtors is open and is placed on the official website of the Ministry of Justice of Ukraine (Law of Ukraine “On Enforcement Proceedings”, 2016: paragraph 2, Part 1 of the Art. 9).

We will give two examples from judicial practice regarding the distribution of confidential information about a person. Thus, the court came to the conclusion in the decision of the Sixth Administrative Court of Appeal dated from July 9, 2020 in the case No. 640/3859/19 that neither the decision of the Constitutional Court of Ukraine dated from January 20,

2012 in the case No. 1-9/2012, nor the Constitution of Ukraine, nor the Laws of Ukraine: “On the Access to Public Information” and “On Information” include last names, first names, middle names of persons to the confidential information (The Decision of The Six Administrative Court of Appeal at case No 640/3859/19, 2020).

And the ruling of the same court dated from July 8, 2020, in the case No. 826/13619/18, states that the last name, first name and middle name are information about a certain individual who is identified or can be identified, and therefore this information is covered by the concepts of “information about individuals” and “personal data”, which are protected by law (The Decision of The Six Administrative Court of Appeal at case No 826/13619/18, 2020).

The cited court decisions are interesting because similar disputes were heard by the same court with a difference of one day. However, the court provided radically different interpretations to the same regulatory legal acts.

The ruling of the Supreme Court as part of the Panel of Judges of the Cassation Administrative Court dated from April 16, 2020 in the case No. 804/4069/17 stated that the co-defendant violated the Art. 32 of the Constitution of Ukraine, the Laws of Ukraine “On Information” and “On Protection of Personal Data”. According to the court, it happened due to the fact that the co-defendant indicated information about the personal data of the plaintiff, namely: address and date of birth in the request that was sent to the hospital institutions (The Decision of The Supreme Court at case No 804/4069/17, 2020).

The court in the ruling of the Supreme Court as part of the Panel of Judges of the First Judicial Chamber of the Civil Court of Cassation dated from June 7, 2022 in the case No. 761/20750/13-ts summarized that the absence of information about the date of birth of the debtor in the executive letter, if there is data about his last name, first name, registration number of the taxpayer’s registration card and the residence address does not give rise to reasonable doubts about the identification of the debtor for the purpose of compulsory enforcement of the court decision (The Decision of The Supreme Court at case No 761/20750/13-ц, 2022). This ruling of the Supreme Court is very important for understanding the purpose of using personal data, in particular data about the date of birth of the debtor-individual.

Part 2 of the Art. 6 of the Law of Ukraine “On Access to Public Information” deals with restrictions on access to information. Some scholars rightly point out various components in the issue of restricting access to information, including the “protection of other people’s rights”, primarily the right to non-interference in personal and family life (the right to privacy). In this

case, we are talking about a conflict between two fundamental rights – the right to privacy and the right to information (Holovenko *et al.*, 2012).

The Constitutional Court of Ukraine in its decision dated from January 20, 2012 in the case No. 1-9/2012 paid attention to the systemic relationship between the provisions of Part 1 of the Art. 32 and Part 3 of the Art. 34 of the Constitution of Ukraine regarding the inadmissibility of violating human right to inviolability of personal and family life and on the realization of the right to free collection, storage, use and dissemination of information by a person (The Decision of The Constitutional Court of Ukraine at case No. 1-9/2012, 2012). Therefore, there is a problem of adequately balancing on the realization of various human rights, which has to be effectively resolved.

Conclusion

Given the purpose of this research, the following conclusions should be made. The ASCEP distributes enforcement documents among state enforcement officials, taking into account the factors clearly defined by law, which ensures the objectivity and impartiality of such distribution. It is not appropriate to amend the legislation so that the ASCEP distributes enforcement documents among private enforcement officials within their jurisdiction districts.

We consider it expedient for the prosecutor as a participant in court enforcement proceedings to provide information about enforcement proceedings through the access to the ASCEP, as well as to the parties to enforcement proceedings. For this purpose, we suggest that paragraph 2, Part 2, Art. 8 of the Law of Ukraine “On Enforcement Proceedings”, as well as paragraph 2 of Chapter VII of the Regulations on the ASCEP after the words “parties of court enforcement proceedings” should be supplemented with the words “prosecutor as a participant in court enforcement proceedings”.

The ASCEP suggested amendments to the Art. 8 of the Law of Ukraine “On Enforcement Proceedings” in order to correspond the provisions of the Law of Ukraine “On Enforcement Proceedings”, the Regulations on the ASCEP with the factual state of affairs in regard to the free display of data on the date of birth of debtor-individuals.

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