

DOI: <https://doi.org/10.34069/AI/2022.54.06.5>

How to Cite:

Prytuliak, V., Hofman, O., Verba, O., Shcherbak, S., Leshchenko, O. (2022). Protection of individual rights in enforcement proceedings under martial law. *Amazonia Investiga*, 11(54), 50-56. <https://doi.org/10.34069/AI/2022.54.06.5>

## Protection of individual rights in enforcement proceedings under martial law

### Захист прав особи у виконавчому провадженні в умовах воєнного стану

Received: June 20, 2022

Accepted: July 20, 2022

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#### Abstract

The invasion of the Russian Federation on the territory of Ukraine changed both the world order and the state of protection of the rights of individuals on the territory of Ukraine. The introduction of martial law on the territory of Ukraine introduced many restrictions, including those regarding enforcement proceedings. Therefore, it is essential to examine the specifics of the security of individual rights in enforcement proceedings under martial law. The purpose of the work is to study the peculiarities of the safeness of individual rights in enforcement proceedings, caused by the state of war in the territory of Ukraine. The research methods are: dialectical, formal-legal, logical methods, historical method, analytical method, comparative-legal method. Thanks to the conducted research, it was analyzed, the features of enforcement proceedings under martial law were analyzed, and special attention was paid to the possibilities of protecting the rights of the debtor and debt collector during martial law. It is also examined how the state of operation of the automated system of enforcement proceedings affects the protection of the rights of the parties

#### Анотація

Вторгнення Російської Федерації на територію України змінило як світовий порядок, так і стан захисту прав осіб на території України. Введення воєнного стану на території України запровадило чимало обмежень, в тому числі щодо виконавчого провадження. Тому важливо проаналізувати особливості захисту прав особи у виконавчому провадженні в умовах воєнного положення. Метою роботи є дослідження особливостей захисту прав особи у виконавчому провадженні, зумовлених воєнним станом на території України. Методів дослідження включають: діалектичний, формально-юридичний, логічний методи, історичний метод, аналітичний метод, порівняльно-правовий метод. Завдяки проведеному дослідженню проаналізовано особливості виконавчого провадження в умовах воєнного стану, а також особливу увагу звернено на можливості захисту прав боржника та стягувача під час воєнного стану. Також проаналізовано, як стан роботи автоматизованої системи виконавчого провадження впливає на захист прав сторін виконавчого провадження, можливості для

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to the enforcement proceedings, opportunities for activities in controlled territories, and private executors. Based on the studied materials, it was concluded that there are currently several significant restrictions in place to protect the rights of individuals in enforcement proceedings, but such restrictions are justified, taking into account the need to ensure national security against malicious actions and unauthorized hacking of state services.

**Keywords:** enforcement proceedings, martial law, protection of rights, state executor, private executor.

## Introduction

In Ukraine, it is determined that everyone has the right to protect their rights and legitimate interests in court. The procedure for enforcement of decisions is not an exception to the general rule. Ensuring individual rights in enforcement proceedings plays an important role, taking into account the provisions of the Constitution of Ukraine, norms of international law, and general standards for ensuring human rights.

Article 129-1 of the Constitution of Ukraine guarantees the enforcement of a court decision in the manner prescribed by law, and control over the execution of a court decision is carried out by the court (Law No. 254к/96-ВР, 1996).

Moreover, the court decisions enforcement is a vital stage of judicial proceedings in accordance with Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, which provides for the right to a fair trial. Thus, the European Court of Human Rights in its decisions has repeatedly noted that non-execution of a court decision leads to violation of the basic principle of the rule of law, and negatively affects undisputed authority of legislative, enforcement, and judicial authorities, since in this case the ultimate goal of justice is comprehensive protection of interests of citizens and real restoration of their violated rights.

Due to the Russian barbaric full-scale attack on Ukraine, martial law has been introduced in Ukraine (Decree No. 64/2022, 2022).

Following the provisions of Art. 1 of the Law "On the Legal Regime of Martial Law", martial law provides for the granting to the relevant bodies of state power, military command, military administrations, and local self-government bodies of the powers necessary to avert the threat, repulse armed aggression and

діяльності на підконтрольних територіях та для приватних виконавців. З огляду на проаналізовані матеріали зроблено висновок, що на даний час діє ряд суттєвих обмежень для захисту прав осіб у виконавчому провадженні, однак такі обмеження є виправдані, враховуючи необхідність забезпечення національної безпеки від зловмисних дій та несанкціонованого злому державних сервісів.

**Ключові слова:** виконавче провадження, воєнний стан, захист прав, державний виконавець, приватний виконавець.

ensure national security, eliminate the threat of danger to the state independence of Ukraine, its territorial integrity, as well as a temporary restriction of the constitutional rights and freedoms of a person and a citizen, as well as the rights and legal interests of legal entities, with an indication of the period of validity of these restrictions (Law of Ukraine No. 1404-VIII, 2016) due to a threat.

According to Art. 12-2 of the Law of Ukraine "On the Legal Regime of Martial Law", the powers of courts, bodies, and institutions of the justice system, provided for by the Constitution of Ukraine, cannot be limited under the conditions of the legal regime of martial law (Law of Ukraine No. 1404-VIII, 2016).

As a result of the introduction of military proceedings, enforcement proceedings as the final stage of the judicial process have undergone significant changes. At the same time, on the other hand, it is extremely important to ensure proper protection of the rights of the participants in enforcement proceedings. In the conditions of war, such protection of the rights of participants in enforcement proceedings, taking into account additional restrictions and risks caused by the introduction of martial law, should be investigated at the theoretical level and strengthened at the level of law enforcement.

## Theoretical Framework or Literature Review

Thus, Avtorgov (2022) considered the innovations and risks of draft law No. 7312 in his work. The author drew attention to the fact that the authors of the draft law have absolutely no noble goal – the destruction of the independence of the institute of private executors and the "manual management" of enforcement proceedings that they have. The author argues

that the current legislation defines that the state executor and private executor are independent during their professional activities, guided by the principle of the rule of law, and act exclusively following the law. It is prohibited to interfere with state bodies, authorities, local self-government, their officials, political parties, public associations, and other persons in the activities of the state executor, private executor for enforcement of decisions. Instead, the draft law allows for the possibility of unjustified and arbitrary interference in the enforcement proceedings of a private executor by officials of the Ministry of Justice of Ukraine by canceling resolutions or other procedural documents (in particular, resolutions on the seizure of funds and property) by a resolution of the head of the state enforcement body at the request of not only the party of the enforcement proceedings but also any person who has nothing to do with this proceeding. The author also draws attention to the fact that the main scientific and expert department of Verkhovna Rada in its opinion on the above-mentioned draft law, in particular, states: "...the proposed procedure for monitoring the execution of enforcement documents by an official of the state enforcement service also contains corruption risks and may lead to the violation of rights parties to enforcement proceedings" and fully agrees with this statement and believes that the draft Law "On Amendments to Certain Laws of Ukraine Regarding Enforcement of Court Decisions, Decisions of Other Bodies (Officials) During Martial Law" No. 7317 dated 26.04. 2022 should be rejected or substantially revised.

In his work, Demchenko (2010) considered the issue of the effectiveness of the execution of decisions and the effectiveness of the enforcement mechanism.

Features of enforcement proceedings during martial law were analyzed by Kovalsky (2022). Manoilenko and Myronov (2022) analyzed the problematic issues of enforcement proceedings during martial law. Researchers noted the peculiarities of the suspension of enforcement proceedings, the operation of the automated system of enforcement proceedings, and other changes.

Legislative regulation of enforcement proceedings under martial law became the object of Martynenko's (2022) research. The researcher concluded that the changes to the procedure of enforcement are temporary and due to the introduction of martial law in the country. At the same time, such changes are necessary in view of

the need to adapt all spheres of social life in order to defeat the invaders.

Myroshnichenko (2022) also investigated the peculiarities of enforcement proceedings during military proceedings. The author drew attention to the peculiarities of a lawyer's work in the current situation, including that, even under martial law, registers must work, alimony must be collected, and court decisions must be executed.

Morozov (2022) considered the procedural rights of a person in enforcement proceedings, including concerning a statement of challenge, using the example of court practice.

The impact of martial law on the activities of private contractors and control over their activities under martial law was considered by Lyapin (2022) in his article.

Sivavna (2022) considered the peculiarities of the execution of court decisions under martial law. The author noted that the legislator tries to think about the average citizen of Ukraine and place the emphasis as correctly as possible, focusing on the rights of citizens and protecting critical infrastructure, and this results in a more vulnerable position for debt collectors compared to debtors.

Finally, Shelever (2016) analyzed the problematic issues of enforcement proceedings in Ukraine and ways to solve them.

So, the specifics of the enforcement proceedings in the conditions of martial law are of great interest among scientists and lawyers, however, the specifics of personal protection in enforcement proceedings under martial law are not yet sufficiently researched and require attention.

### Methodology

During the study of the peculiarities of personal protection in enforcement proceedings under martial law in Ukraine, the dialectical method was used to consider the researched problems and determine the main directions for improving the institute of enforcement proceedings under the Ukrainian legislation.

The historical method was used to study the issue of the transformation of personal protection tools in enforcement proceedings and the development of enforcement proceedings in general, including under martial law. Thus, this method made it

possible to trace the chronology of the development of legislation regarding enforcement proceedings under martial law, its changes, and the factors that influenced its development were investigated using the historical-legal method. In general, the use of the historical method made it possible to trace the evolution of legal regulation, as well as to investigate scientific views on the protection of a person in enforcement proceedings under martial law.

The formal-legal method was used for the purpose of analyzing legal norms, including a detailed review of legal acts of domestic and foreign legislation regulating the specifics of enforcement proceedings under martial law. Logical techniques were used in the interpretation of legal norms.

Summarization of the research materials and information in general about the possibilities for the protection of a person in enforcement proceedings under martial law in the conducted research took place thanks to the use of the analytical method.

A comparative legal method was used in the comparative analysis of the features of personal protection in enforcement proceedings under martial law and under normal conditions in Ukraine. In addition, the comparative legal method was used to identify the general and special aspects of enforcement proceedings under the Ukrainian and foreign legislation, to understand the international experience on the researched issue, as well as for the comprehensiveness of the conducted research.

## Results and Discussion

Russia's military aggression against Ukraine necessitated the adoption of special legislation to regulate all spheres of social life in the changed conditions. Changes directly related to enforcement proceedings and affecting the protection of the rights of a person in enforcement proceedings are specified in the Law of Ukraine "On Enforcement Proceedings". According to Art. 1 of the Law of Ukraine "On Enforcement Proceedings", enforcement proceedings as the final stage of court proceedings and enforcement of court decisions and decisions of other bodies is a set of actions of bodies and persons defined in this Law, aimed at enforcement of decisions and carried out on the grounds, within powers and in the manner determined by the Constitution of Ukraine, this Law, other laws and regulatory acts adopted

following this Law, as well as decisions that are subject to enforcement under this Law (Law No. 1404-VIII, 2016).

The specificity of the regulation of enforcement proceedings led to the adoption of several normative legal acts by the Verkhovna Rada of Ukraine during martial law. But before analyzing how the changes that were adopted during the military procedure affected the protection of the rights and interests of the parties to the enforcement proceedings, let's consider what changes took place.

Among them, the enforcement was stopped, the replacement of debt collectors in enforcement actions, and the debt collectors for which are the Russian Federation or persons connected with the aggressor state, were prohibited (the list of such persons, their characteristics, and exclusions are given in the norm). Also, during the martial law on the territory of Ukraine, natural persons can use funds from accounts that have been seized by state and private executors, if the debt does not exceed UAH 100,000, and legal entities-debtors can carry out spending operations from seized accounts exclusively for the fulfillment salary obligations to their employees, as well as to make mandatory payments to the state. The enforcement of the debtor's salary, pension, stipend, and other income (except for alimony recovery decisions and decisions for which debtors are citizens of the Russian Federation) has been suspended. And of course, it was forbidden to carry out executive proceedings on the territories of Ukraine temporarily occupied by the aggressor country.

Since the beginning of full-scale aggression the ASVP and the Unified Register of Debtors have been blocked. And already on April 4, 2022, the Order of the Ministry of Justice of Ukraine No. 1310/5 "On some issues of access to the ASVP and the Unified Register of private executors of Ukraine during the period of martial law" was adopted, which provided for equal opportunities to restore access to the ASVP for both state and private executors, which in turn was supposed to unblock the activities of state enforcement service bodies and private executors. Paragraph 2, Clause 2 of Order No. 1320/5 determined that for the entire duration of martial law on the territory of Ukraine, private executors/assistants of private executors have access to the automated system of enforcement proceedings terminated and restored by the administrator of the automated system of enforcement proceedings based on written notification to the Department of State

Enforcement Service of the Ministry of Justice of Ukraine, which is prepared based on a written request of a private executor (Order No. 1310/5, 2022). However, during April-May 2022, private executors sent appropriate appeals to the Department of the State Enforcement Service of the Ministry of Justice of Ukraine, but as of the time of publication of this article, none of them have been considered and none of the private executors of Ukraine has received access to the ASVP system.

Instead, on May 24, 2022, amendments were adopted to the Order of the Ministry of Internal Affairs No. 1320/5, which a certain way complicated the procedure for restoring access to the ASVP system for private executors and provided that the notification of the Department of the State Enforcement Service of the Ministry of Internal Affairs, based on which access to the ASVP system is restored sent only after the private executor passes a check regarding the compliance with the requirements of the current legislation of the office in which the private executor conducts activities, the existence of a valid civil liability insurance contract, the absence of debt for the use of ASVP (Order No. 2068/5, 2022).

In accordance with the law, which provides for the status of bodies and persons carrying out the enforcement of court decisions in Ukraine, a private executor is a person authorized by the state to carry out enforcement activities under the procedure established by law. A private executor is a subject of independent professional activity. According to Article 34 of the Law of Ukraine "On Bodies and Persons Enforcing Court Decisions and Decisions of Other Bodies", the Ministry of Justice of Ukraine is the controlling body and exercises control over the activities of private contractors in the form of scheduled and unscheduled inspections. The Law does not provide for other forms of control; however, the Order nevertheless establishes new forms of control that will limit the rights of private executors (Law No. 1403-VIII, 2016). At the same time, state contractors who are located in the territories controlled by Ukraine and where hostilities are not taking place, work almost as usual, but with restrictions, which will be discussed a little later.

Regarding the peculiarities of ensuring the rights of participants in executive proceedings during martial law, we should note the following:

1. Access to materials of enforcement proceedings. The parties, as before, can use

the number of the enforcement proceedings and the access identifier to enter the ASVP, that is, they are not deprived of the opportunity to obtain information and copies of documents on the enforcement proceedings.

2. Alimony. During the period of martial law on the territory of Ukraine, certain changes appeared in the collection of alimony: state executors can freely transfer funds to debt collectors that have been deposited into the accounts of state enforcement service bodies. If the subject transferring alimony does not have the details of the creditor, he can transfer the amount to the account of the executive service or a private executor, respectively.
3. Enforcement of court decisions in territories temporarily occupied by the aggressor country is prohibited.
4. Depreciation. It is not prohibited to charge and collect a penalty for late payment of alimony, so the creditor can protect his rights by applying to the court for the collection of a penalty.
5. Debt collection for housing and communal services is prohibited (Haichenko, 2022).

From the above, it can be seen that the peculiarities of the enforcement during martial law affected not only the parties to the enforcement proceedings but first of all the activities of private executors as subjects of the enforcement process - initially due to the suspension of access of private executors to the Automated System of Enforcement Proceedings and subsequently – failure to connect them to this system, which completely blocked the activities of private contractors, led to the actual loss of work and income, the possibility of material support in times of significant price growth. Accordingly, the rights of the parties to those enforcement proceedings, which at the time of the full-scale invasion of the aggressor country were being executed by private executors, turned out to be generally unprotected, especially in this context, attention should be paid to significant limitations in the debtors' procedural rights. Thus, debt collectors as a party to enforcement proceedings were deprived of the opportunity to receive money already collected in their favor, which in the conditions of martial law, when citizens became temporarily displaced persons or were forced to leave Ukraine, could support their standard of living. As for debtors, even if the requirements of the enforcement document are met, the seizure cannot be removed from the debtor's property, which does not give the debtor the right to dispose of the property belonging to



him, and also does not give the right to be excluded from the Unified register of debtors, because the existing procedure for removing the seizure from the debtor's property does not allow this to be done either through the "DIIA" application or in any other way. Due to the desire to leave the places of active hostilities for the period of martial law, such male debtors, if they fall under certain categories of persons who are allowed to leave the country, are forced to separate from their wives and children due to the existing imperfect mechanisms for regulating issues execution of court decisions.

Therefore, in the modern conditions of prolonged martial law, the gradual restoration of the work of courts and the Unified Register of Court Decisions, which is marked by the issuance of enforcement documents that require enforcement, to restore the rights of the parties to enforcement proceedings, it is urgent to resolve the issue of resuming the work of private executors, because ensuring the alternative performance granted to a potential debt collector by law is subject to implementation.

### Conclusions

As a result of the conducted study of the peculiarities of personal protection in enforcement proceedings under martial law, the following conclusions were made:

1. The ultimate goal of the court's activity, which provides for the real protection of the rights and freedoms of the parties, is the implementation of a legal court decision, adopted as a result of a comprehensive, objective, and timely review.
2. Guarantees of the rights of participants in enforcement proceedings are inseparable from legal guarantees of legality.
3. The changes related to the enforcement proceedings are aimed at ensuring the protection of national interests, the livelihood of the population, as well as calculations with the population and the budget, which are fully justified. At the same time, the application of restrictions in enforcement proceedings, for which the Russian Federation or persons connected with the aggressor state are the debtors, will be complicated or impossible at all, because the legislator has vaguely formulated the relevant restrictions, and they can have many interpretations both temporally and substantively.
4. Limiting the activities of private executors has the effect of limiting the rights of

persons whose enforcement proceedings are being executed by private executors and essentially does not provide an opportunity for alternative execution provided to a potential debt collector by law.

Regarding further scientific research, it is important to analyze the foreign experience of setting restrictions on enforcement proceedings caused by various factors: military aggression, system failures of information support, and the consequences of such restrictions for ensuring the rights of individuals in enforcement proceedings.

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