EUROPEAN STANDARDS OF THE RIGHTS OF THE PARTIES TO THE CASE IN THE APPLICATION OF CIVIL ACTION ENFORCEMENT MEASURES AND THEIR IMPLEMENTATION IN UKRAINE

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Abstract: The article deals with the problems of applying in practice the civil procedural institution of securing a claim, the possibility of its extension to a wide range of circumstances. The grounds for interim measures satisfied by the court, as well as the issues of proving the need for their application in Ukraine and the EU countries, are highlighted. It is shown that although the institution of securing a claim contributes to the creation of optimal conditions for the real protection of the rights and legitimate interests of persons in civil proceedings, and namely the institution of securing a claim acts as a guarantee of the execution of a court decision, one cannot consider the meaning and essence of the definition of "interim measures" separately from such a fundamental concept as "a measure (form) of state coercion", and the proportionality of the type of security is aimed mainly at protecting the rights of persons against whom measures are taken to secure a claim. The powers of the court to secure a claim in the civil process of Ukraine and the EU are considered, the current doctrinal provisions regarding the grounds and procedural order for securing a claim are analyzed, attention is focused on the essence of the discretionary powers of the court when taking measures to secure a claim. It is concluded that the application of measures to secure a claim should take place if there are grounds for this and justifications for the specified circumstances, taking into account the judicial practice of the EU countries as part of the need for judicial reform in Ukraine in the direction of ensuring its compliance with EU standards for potential member states.

Keywords: securing claims; interim measures; standards of justice; enforcement.

1 Introduction

One of the means of protecting the violated right is the institution of interim measures. This institution is applicable not only in civil procedural law, but practicing lawyers compare it in terms of the frequency of application of norms only with the provision of obligations in contract law. The quality of justice depends not only on how deeply studied in theoretical science and precisely enshrined in law, but also on how accurately the interpretation of rules, procedures, provisions on legal proceedings in law enforcement is carried out, as well as on the procedural consideration and resolution of issues that require a scientific approach to legal understanding, legal formalization and practical implementation in the existing reality.

Securing a claim is a system of rules that provide for the possibility for the court to take measures in cases established by law aimed at fulfilling property or other claims of the plaintiff against the defendant. By filing a lawsuit in court (whether local, economic, or administrative one), the plaintiff often wants to stop the violation of his rights and interests already before a decision is made on the merits of the dispute. To do this, he asks the court to take certain measures to secure the claim. Full provision of the rights and legitimate interests of persons applying to the court, bringing to the end the execution of court decisions, storage of property of material value, which are the subject of a dispute, goals and actions aimed at participation in the full composition of the participants in the process in the consideration of cases in a court session are carried out through institute for securing a claim in civil procedural law.

Securing a claim means that the court imposes obligations on the defendant, according to which he must refrain from taking actions that further make it impossible to enforce the court decision. Many believe that securing a claim is an effective tool in property cases.

Based on the analysis of judicial practice in civil cases, it is possible to single out several general conditions that guide judges when issuing a ruling on the adoption of interim measures, namely: proportionality of interim measures to the stated requirement and relatedness to it. For example, the seizure of funds on the current account of a legal entity in a bank should not exceed the amount of the debt several times. In case of exceeding the amount of the debt, it is proportionate to request the arrest of funds in the bank account in the amount of the debt. The measures must not infringe on the interests of third parties or the debtor [3]. Thus, the seizure of funds should not lead to non-payment of wage arrears, credit, utility, and other payments of the debtor. The measure should ensure the actual implementation of the objectives of interim measures. When filing a petition for securing a claim, the applicant must clearly formulate the requirements, determine the interim measure that the court would like to ask to apply in a civil case. After all, it depends on a well-written application whether it is possible to carry out the practical implementation of measures in the future [46].

However, in the science of civil procedural law, the issue of applying interim measures to other types of legal proceedings does not have an unambiguous solution. Opinions that exist at the present time are directly opposite. The first opinion is that the securing of a claim is allowed at any stage of the civil process and within the framework of any type of civil proceedings. The second implies that each type of civil proceedings has its own, special, specificity, which is reflected by a separate set of norms.

At the same time, there are a number of practical difficulties. In particular, interim measures taken by the court, consisting in the restrictions specified in the definition, are a guarantee of the proper execution of the court decision in the future and are aimed at limiting the rights to dispose of the disputed object. Civil legislation allows the replacement of some security measures by others [1; 2]. The replacement of some measures to secure a claim by others occurs when the previously established measure of securing a claim does not protect the rights of the plaintiff and cannot guarantee the execution of the decision in full or in one part or another, or when this measure unjustifiably infringes on the rights of the defendant or he may suffer losses, which can be avoided, it is allowed to replace one type of securing a claim with another. Given that the defendant in the application for the replacement of interim measures actually raised the question of their cancellation in part, however, no evidence was presented that such a replacement would not affect the possibility of enforcing the court decision in the future.

Based on this provision, it can be concluded that without proper evidence that an interim measure already taken does not fully protect the plaintiff or infringes on the rights of the defendant, it is difficult to replace the interim measure [4]. When refusing to satisfy the request for replacement, the court is based on the case materials and its inner conviction, and this suggests that the refusal to replace may not always be objective and legal. In judicial practice, various situations in specific cases are possible. Thus, it is common for a court of first instance to satisfy a petition for the replacement of interim measures, and the appellate court annuls the earlier ruling.

Currently, many jurists and practicing lawyers are debating about the good faith nature of the application of measures to ensure requirements stated in the claim. And one of the most important criteria for such good faith is the proportionality of interim measures. Obviously, this is an evaluation category, it cannot be strictly regulated by the legislator, and this is what leads to the need to turn to judicial practice [6; 7]. However, unlike the United States, where such challenges are resolved on the basis of the application of case law, in European countries

(both in the EU countries and those still outside the Commonwealth - an example of which is Ukraine), this often causes procedural difficulties. In this regard, consideration of the European standards of the rights of participants in the case when applying measures to secure a civil claim and the possibilities of their implementation in Ukraine seems to be a highly relevant task.

2 Method

To solve the identified task, general scientific research methods were used in the work: the dialectical method of scientific knowledge, generalization, the logical method, as well as special legal research methods - comparative legal, formal legal and system analysis were also used.

The theoretical basis of the study consisted of the scientific works of the authors on civil and arbitration proceedings in Ukraine and EU, civil law, jurisprudence, history and theory of state and law, revealing aspects related to securing claims in civil proceedings.

3 Results and Discussion

The issue of the legal status of interim measures in civil proceedings has always been a highly controversial topic of discussion. This is due, firstly, to the fact that securing a claim during a trial carries additional guarantees for the execution of a court decision and thereby protects the rights of the claimant to enforce the court decision, if a decision is positive for the plaintiff. This aspect is clearly a positive factor in the establishment and implementation of the legitimate rights and interests of one of the parties to the civil process. Secondly, when studying the object under study, it can also be stated that the practical implementation of interim measures causes a number of debatable provisions that cause active controversy among scientists and law enforcement agencies.

The subject of discussion is to determine the adequacy of interim measures, since, when securing a claim, the court must be guided by the principles of proportionality, rationality, adequacy, which, in turn, are expressed not only in guaranteeing the enforcement of a court decision, but also in protecting and preventing unreasonable and irrational restrictions on defendant' rights [11-13]. Namely the above factors necessitate the search for possible solutions to improve the effectiveness of the application of security measures in civil proceedings, their expediency, reasonableness, adequacy, and appropriateness.

Securing a claim is of paramount importance during the entire civil proceedings, but especially at the initial stage, since the plaintiff, in the course of filing claims, primarily aims to receive those material or property compensations and indemnifications that, from his point of view, compensate for the damage caused to him. In this aspect, a procedural and documented court decision is important for the plaintiff only to the extent that this court decision will allow receiving material compensation for the violated right. In this regard, the party interested in the execution of the decision wishes to exclude any attempts by the defendant to sell the property in various ways, from which in the future, in the course of enforcement proceedings, that amount of money or property benefits will be recovered which the court will satisfy in a court order as a result of the decision [16-18]. The defendant, as a rule, disagreeing with the court decision and not wanting to voluntarily part with his property in favor of the claimant, makes various attempts that make it difficult to actually enforce the court decision, often trying in various ways to alienate (sell, donate, destroy, etc.) his property before the commencement of enforcement proceedings. In practice, when the court satisfies the claims of the plaintiff in full, the actual execution of the decision is not always possible due to the lack of material wealth or an asset, which would have to compensate for material damage. This is one of the most basic problems of the institution of securing claims.

The institution of securing a claim is of particular importance for achieving the objectives of civil proceedings, which, according to Art. 1 of the Civil Procedure Code of Ukraine [5] consist in a fair, impartial, and timely consideration and resolution of civil cases in order to protect violated, unrecognized, or disputed rights, freedoms, interests of individuals, rights and interests of legal entities, interests of the state [48]. This institution contributes to the creation of optimal conditions for the real protection of the rights and legitimate interests of persons in civil proceedings. Namely the institution of securing a claim acts as a guarantee of the execution of a court decision.

According to Part 1 of Art. 151 of the Code of Civil Procedure of Ukraine, the court, at the request of the persons participating in the case, may take the measures provided for by law to secure the claim. The applicant in the application for securing the claim must indicate: the reasons for which it is necessary to secure the claim; the type of security for the claim to be applied, with justification for its necessity; other information necessary to resolve the issue of securing a claim.

It follows from this that the application of measures to secure a claim is carried out within the discretionary powers of the court. In order to properly protect the rights and legitimate interests of both the plaintiff and the defendant, it is necessary to determine the conditions that the court must take into account when deciding whether to secure a claim.

Part 2 of Art. 151 of the Code of Civil Procedure of Ukraine establishes an exhaustive list of grounds for securing a claim. Firstly, the securing of the claim is applied if the failure to take appropriate measures may complicate the execution of the court decision and, secondly, if failure to take measures to secure the claim may make enforcement of the court decision impossible.

Due to the fact that the grounds for securing a claim are set out in the form of evaluative concepts, this may lead to an erroneous conviction of the court about the need to apply measures to secure a claim or, conversely, the absence of such. The problem of the rulings issued by the courts is also their lack of motivation, and, consequently, inconsistency with the requirements of the Code of Civil Procedure of Ukraine regarding the form and content of the rulings (part 5, article 153, article 210 of the Code of Civil Procedure of Ukraine).

The vagueness of the content of the grounds for securing a claim leads to the fact that in some decisions the courts indicate only the need to secure a claim without any justification, or note the expediency of securing a claim in a particular case.

Meanwhile, when deciding to secure a claim, the court must take into account that it is expedient and possible if there is a sufficiently reasonable assumption, and that non-acceptance will lead to adverse consequences, as mentioned by the Code of Civil Procedure of Ukraine. Security measures are taken precisely in order to make this goal realistic, namely, to ensure the execution of a court decision. However, it should be noted that when the court decides on taking measures to secure the claim, the decision as such does not yet exist. The court takes measures to make real the execution of the court decision that will be issued in the future, i.e., after consideration of the case on the merits.

The Code of Civil Procedure of Ukraine does not provide for conditions obliging the court to secure a claim - in particular, it does not put forward a condition for securing a claim that it is justified by the evidence provided. However, not all scholars take this position. In particular, Pogoretskiy et al. specify that the courts should not take interim measures if the applicant did not substantiate the reasons for filing an application for securing a claim with specific circumstances confirming the need for interim measures, and did not provide evidence to support his arguments [32].

The decision of the Plenum of the Supreme Court of Ukraine "On the practice of applying civil procedural legislation by courts when considering applications for securing a claim" states that, when considering an application for securing a claim, the court must, taking into account the evidence provided by the plaintiff in support of his claims, make sure that a dispute really arose between the parties and there is a real threat of non-

execution or difficulty in enforcing a possible court decision to satisfy the claim; it is also stated as necessary to find out the scope of claims, data on the identity of the defendant, as well as the compliance of the type of security for the claim, which the person who filed such a statement asks to apply, claims [49].

In a civil process, which is conducted in local courts, in accordance with Art. 152 of the Civil Procedure Code of Ukraine, a claim can be secured in the following ways [31; 49]:

- Imposition of attachment on property or funds belonging to the defendant and being with him or with other persons;
- Prohibition to perform certain actions;
- Establishing an obligation to perform certain actions;
- Prohibition of other persons to make payments or transfer property to the defendant or to fulfill other obligations in relation to him;
- Suspension of the sale of seized property, if a claim is filed to exclude it from under arrest;
- Suspension of recovery under the executive document, appealed by the debtor in court;
- Transfer of things that are the subject of a dispute for storage to other persons.

This list of measures to secure a claim is not exhaustive. The court may, on its own initiative, apply both other measures to secure the claim, and simultaneously several measures listed above [20-22]. At the same time, such a measure to secure a claim as the seizure of wages, pensions, stipends, and other compensation and social payments due to the defendant is not allowed. In addition, perishable items cannot be seized.

The adoption of measures to secure the claim is possible at any stage of the civil process, if the failure to take them may complicate the execution of the court decision or make it impossible, and is carried out on the basis of the plaintiff's application. According to Art. 151 of the Code of Civil Procedure, the application must indicate: the name of the plaintiff and the defendant, the reasons why the plaintiff asks the court to take measures to secure the claim, the type of measure to secure the claim, and other additional information necessary to secure the claim.

An application for securing a claim can be filed: before filing a claim (in the event that the claim concerns infringement of intellectual property rights), together with the claim, as well as at any stage of the judicial process until the decision on the case is made [30]. In the event that an application for securing a claim is filed before filing a statement of claim, the claim itself must be filed no later than 10 days from the date the court issued a ruling on securing the claim.

As a rule, the application is considered by the court on the day of its receipt without notifying the plaintiff and the defendant. When deciding to secure a claim, the court may require the plaintiff to post bail in order to prevent “abuse of the right to secure a claim” for the plaintiff. In this case, the amount of the bail (which is paid on the deposit of the court) should not exceed the amount of the claim [34-36]. Based on the results of consideration of the application, the court issues a ruling indicating the type of security for the claim and the grounds for its choosing, the amount of security for the claim (in full or in part), the procedure for the execution of the measures taken to secure the claim, as well as the amount of the required security (if such is appointed by the court). This determination is subject to immediate execution by the bodies of the state executive service. The court may also by its ruling refuse to take measures to secure the claim. Then the plaintiff has the right to appeal this ruling, and, like the defendant can appeal the ruling on taking measures to secure the claim in an appeal, and then (if necessary) in a cassation procedure.

It is possible that a situation may arise when the court, at the request of one of the parties, can replace the method of securing the claim. Moreover, if the defendant is the initiator of such a replacement, he must obtain the prior consent of the plaintiff. Also, by its ruling, the court has the right to cancel the measures introduced to secure the claim.

The procedure for applying measures to secure a claim in civil proceedings raises many other questions, including: the ability of the court to independently, without a statement from the persons participating in the case, apply the securing of a claim, how to notify the defendant about the consideration of an application for taking the measures in question, problematic aspects of the cancellation of the court definition on the appointment of interim measures, etc [25-27]. It is noteworthy that the resolution of the above problems is situational in nature. Courts, taking into account the practice of individual regions and the analysis of the actual circumstances of the case, themselves overcome the inconsistency and understatement of the current civil procedural legislation.

Ukrainian lawyers emphasize that securing a claim is one of the key procedural tools designed to guarantee the execution of court decisions. Short deadlines for considering an application, absence of the need to call the parties, the ability to suspend the contested decision and block the actions of opponents - this is not a complete list of the advantages of interim measures. Moreover, sometimes the purpose of initiating a lawsuit is not to resolve litigation on the merits, but namely to secure a claim [19].

In the new Code of Civil Procedure, the legislator somewhat changed the approach to the institution of securing a claim, paying much more attention to it than in previous editions of the procedural law, and significantly expanding the powers of the court in matters of both ensuring the execution of a future decision and countering the abuse of rights by participants in the trial.

An incomplete list of possible measures to secure a claim is given in Article 150 of the Code and includes:

- Seizure of property and (or) funds belonging to or subject to transfer or payment to the defendant and held by him or other persons;
- Prohibition to perform certain actions;
- Establishing an obligation to perform certain actions;
- Prohibition of other persons to take actions regarding the subject of the dispute or to exercise payments or transfer of property to the defendant or fulfill other obligations in relation to him;
- Stopping the sale of seized property, if a claim is filed to recognize the ownership of this property and to remove the seizure from it;
- Suspension of recovery on the basis of a writ of execution, disputed by the debtor in court;
- Transfer of a thing that is the subject of a dispute for storage to other persons who have no interest as a result of resolving the dispute;
- Stop of the customs clearance of goods or items;
- Arrest of a sea vessel carried out to secure a maritime claim.

This list is incomplete because the legislator has provided for the possibility of applying other measures that, at the discretion of the court, will be able to fully fulfill the functions assigned to the institution [37; 38]. If necessary, as it was mentioned above, the court may apply several interim measures simultaneously.

Measures for securing a claim may be applied by the court that is considering the dispute or will consider it, if the application for securing the claim is filed before filing the statement of claim. The old version of the Code provided for only one category of disputes in which it was possible to secure a claim before it was filed: in matters of protection of intellectual property rights [41]. Now such a condition has been excluded, in connection with which it has become possible to secure a claim before it is filed in all categories of disputes, which should ensure their timely application by the court and proper protection of the rights and interests of the plaintiff.

Such a transformation is due to the tightening of requirements for a claim: now, in order to properly file a claim with a court, it is necessary to collect almost all the evidence and form a clear legal position, which takes some time [44]. At the same time, immediately after a violation of the plaintiff's right is discovered, he can apply to the court for the application of measures to secure the claim, which will make it possible to prepare a claim and file it without undue haste - qualitatively and in balanced manner, with the knowledge that the execution of a possible decision in the case has already been secured and further deterioration of the position of the plaintiff is impossible.

The year 2020 was marked by the entry into force of the Law of Ukraine "On Amendments to the Economic Procedural Code of Ukraine, the Civil Procedure Code of Ukraine, the Code of Administrative Procedure of Ukraine regarding the improvement of the procedure for considering court cases" No. 460-IX (Law).

In addition to introducing the sensational "cassation filters", the Law changed the rules for securing a claim. Thus, in all types of legal proceedings, the possibility of securing a claim by establishing an obligation to perform actions is excluded. Let us note that the exception was the civil process: it allows securing a claim by establishing such an obligation, but only if the dispute arose from family legal relations.

Moreover, the Law significantly limited the list of possible interim measures in economic and civil proceedings. Thus, earlier the codes allowed securing a claim by other measures not directly provided for by them, if such measures are necessary to ensure effective protection or restoration of violated or contested rights and interests [45]. However, after the entry into force of the Law, interim measures not established by the Economic and Civil Procedure Codes are allowed only in cases expressly provided for by laws and international treaties that are part of national legislation.

In general, the Law has significantly limited the list of possible interim measures, for which it has been criticized more than once. After all, the above restrictions in practice can lead to leveling the very purpose of interim measures: to prevent complication or to prevent the impossibility of enforcing a court decision or effectively protecting or restoring the violated or contested rights of the plaintiff.

In judicial practice, in terms of the application of interim measures, one can note the continuation of the trend of previous years. The legal position of the Supreme Court (SC) is well-established that the plaintiff's statements alone about the potential possibility of the defendant evading the execution of the court decision are not sufficient grounds to satisfy the application for securing the claim. Courts in their practice often rely on this position [23; 33].

Considering the positions of the courts, it should be noted that securing a claim is more likely if the assumptions that the defendant may act in bad faith are substantiated, that is, confirmed by appropriate evidence.

In addition, it is important to take into account the limitations on the application of measures to secure a claim. Thus, in the decision of October 1, 2020, the Supreme Court in case No. 524/188/18 drew attention to the fact that it is unacceptable to secure a claim by suspending the execution of court decisions that have entered into force.

It is also interesting to note that if the exercise of the right to claim was unlawful, that is, it was filed only with the aim of causing harm to the defendant, then such a defendant will be able to further recover the damage caused as a result of securing the claim [47]. At the same time, despite the fact that the procedural actions themselves are carried out by the court (it imposes arrest, prohibits certain actions, etc.), the person on whose initiative the court committed such actions is held liable. Therefore, in order to avoid negative consequences, the parties are obliged to prevent the abuse of procedural rights and obligations.

In general, the legislative innovations of 2020 force the participants in the process and their representatives to be resourceful and find legal grounds for applying effective interim measures aimed at maintaining the existing situation before considering the case on the merits, to think over the arguments. They also protect conscientious participants in legal relations from abuse of rights, including procedural ones, by opponents.

Speaking about the EU law in this field, one should note that in most member states with a civil law heritage, a code serves as the primary source of enforcement law; but, in some, special legislation serves as the primary source of enforcement law instead of a code. In certain member nations, the law in this area is more complex and spread out among several separate legal documents. The main legal basis for enforcement proceedings, particularly in Austria, is the "Exekutionsordnung" (Enforcement Regulation - Enforcement Code, EO). In Belgium, the civil enforcement process is governed by the Belgian Judicial Code, which was established by law on October 10, 1967. The Bulgarian legal system is governed by the Civil Procedure Code. The main source of Croatian enforcement law is the Enforcement Act, which is not a code as could be assumed but rather a separate piece of legislation. In Estonia, the procedure for enforcing enforceable titles is governed by the Code of Enforcement Procedure. It is the Finnish Enforcement Code from January 2008, which has gone through a lot of amendments since then. The legislative and regulatory components of civil enforcement in France are currently governed by certain portions of the Civil Enforcement Procedures Code. Numerous clauses pertaining to enforcement are also found throughout the Code of Civil Procedure. The German Code of Civil Procedure (ZPO) governs enforcement. The basis for enforcement in Greece is the Code of Civil Procedure. The Legislative Decree 30 May 2002, n. 113 unified text of justice costs, which is the third volume of the Code of Civil Procedure in Italy, contains the majority of the provisions governing enforcement. The Civil Code, the Code of Civil Procedure, and the Law on Judicial Officers form the basis for enforcement in Lithuania. The "Nouveau code de procédure civile" of Luxembourg governs this circumstance. The four different codes that control various legal transactions in Malta are the Civil Code, Criminal Code, Commercial Code, and Code of Organization and Civil Procedure. The fundamental laws governing civil enforcement in that nation are the Dutch Civil Procedure Code (book 2) and the Civil Code. Romanian enforcement is based on the New Civil Code, New Civil Procedure Code, Romanian Commercial Code, and Law No. 188/2000 on Judicial Personnel. The enforcement procedure in Slovakia is governed by Act No. 233/1995 Coll. on Judicial Officers and Enforcement Proceedings and on the Amendment of Other Acts, as Amended (the Enforcement Code). The primary enforcement statute in Slovenia is the Enforcement and Securing of Civil Claims Act (ESCCA) of 1998, as amended (a single act, not a code). With the adoption of Act No. 120/2001 Coll. on Judicial Officers and the Enforcement Activity (hereafter the Enforcement Code) and the revisions that followed, the Czech Republic stands out as an example of a significant reform in 2001. It appears that before 2001, most creditor rights were not upheld and court judgments were essentially unenforceable. The institution of the judicial officer was established in 2001 by the Enforcement Code, which was founded on the idea that any judicial officer action begins once court proceedings have concluded. The lack of a code in Cyprus is made less significant by the existence of special laws such the Law on Enforcement Procedure, Cap. 6, and (ii) the Civil Procedure Rules issued by the Supreme Court and safeguarding measures, Orders 40-47 of the CPR. Despite not being a code in the traditional sense, this special law appears to be generating a legal environment similar to that of a code [28].

Poland has a relatively complicated legal system, with provisions dispersed throughout codes like the Civil Code, Labor Code, and Code of Civil Procedure, as well as in a variety of other special laws, such those on banking and bankruptcy. More than a hundred legal documents, including Laws, Decrees, Ordinances, and Minister's Decrees, among others, make up Portugal's comprehensive law that governs the enforcement

process, and these documents go through several revisions and adjustments throughout time. The Debtors (Scotland) Act 1987, the Debt Arrangement and Attachment (Scotland) Act 2002, and the Bankruptcy and Diligence etc. (Scotland) Act 2007 are only a few examples of the different instruments that make up Scottish enforcement law. Spanish law covers a wide range of topics that have an impact on civil enforcement. The Spanish Procedural Act is the primary piece of legislation, however additional acts contain specific guidelines for particular situations. The Service Act, the Enforcement Code, the Enforcement Regulation, the Service Regulation, the Swedish Code of Judicial Procedure, and the statute on Demand for Payment and Enforcement Assistance are among the key pieces of Swedish legislation that are relevant to the enforcement procedure [28].

The legal foundation for giving the authority to enforce a claim and for conducting enforcement actions is an enforcement title. Even if there are certain general categories that may be mentioned, enforceable titles vary across the EU. In nearly all civil law jurisdictions, court judgments, arbitral awards, notarial deeds, and administrative decisions are directly enforceable, whereas in common law systems, court judgments and arbitral awards are the definitive enforcement titles.

Other foreign non-EU foreign enforceable titles may also be enforceable, either on the basis of bilateral conventions or on the basis of the national law of the country of enforcement. Enforceable titles originating from other EU member states are also enforceable on the basis of the applicable EU regulation at the time. In most jurisdictions, a mediated settlement agreement can be enforced after governmental participation and the granting of enforcement effect, albeit additional conditions must also be completed.

“Special enforcement titles exist in some jurisdictions, like: an extract from Special Pledges Registry for registered collateral and for initiation of execution; a pledge agreement or mortgage deed under Art. 160 and Art. 173, para. 3 of the Obligations and Contracts Act; an act establishing private dues to municipality or the state in case enforcement is subject to the civil procedure; promissory note, bill of exchange or other securities of a warrant, as well as a bond or coupons thereon, all of them in the case of Bulgaria” [9]. There is a difference between trustworthy documents (vjerodostojne isprave) and immediately enforceable titles (ovrne isprave) in the case of Croatia. They differ significantly in terms of who is authorized to issue the enforcement order, what it contains, whether an appeal may be filed against it, and whether or not it has a suspensory or non-suspensory effect.

In German civil procedural law, there are several ways to challenge judicial acts on preliminary protection of rights. The choice of the method of appeal depends on the type of ruling issued by the court and on the procedure for considering an application for taking measures of preliminary protection of rights. If the application is considered in a court session in accordance with paragraph 1 of § 922 of the Code, the decision to take measures of preliminary protection of rights can be appealed against on appeal.

If an application for taking measures of preliminary protection of rights is considered without a court hearing, in accordance with paragraph 1 of § 922 of the Code of Civil Procedure of the Federal Republic of Germany, the court ruling can be appealed by filing an objection (*Widerspruch*). In this case, the court sets the date for the court session, at which a court decision is made on the issue of taking measures for the preliminary protection of rights. This court decision can also be appealed on appeal in accordance with § 924 and 925 of the Code of Civil Procedure of the Federal Republic of Germany.

If the court issues a ruling on the refusal to take measures of preliminary protection of rights, then the applicant, in accordance with paragraph 1 of § 567 of the Code of Civil Procedure of the Federal Republic of Germany, has the right to appeal against it by filing a private complaint.

In German civil procedural law, in addition to appeal, there are other ways to protect the rights of a person against whom an application for taking measures to secure a claim was directed. In particular, at the request of the defendant or at the initiative of the court, the securing of the claim may be canceled by the same judge or court; at the request of the defendant, it is allowed to replace some measures to secure a claim with others [14].

According to paragraph 1 of § 927 of the Code of Civil Procedure of the FRG, the defendant has the right to apply for the cancellation of the arrest or temporary order on the grounds that there has been a change in circumstances. A change in circumstances is recognized, for example, when the threat of difficulty or the impossibility of enforcing a judgment ceases to exist.

In German civil proceedings, the defendant's proposal to deposit the amount of the applicant's claims into the deposit account of the court is considered by paragraph 1 of § 927 of the Code of Civil Procedure of the Federal Republic of Germany as a change in the circumstances that caused the seizure. The defendant can thus prevent the execution of the ruling on the adoption of measures of preliminary protection of rights. If the seizure has already been imposed by the time when the debtor has deposited into the deposit account of the court the amount established in the judicial act on the seizure, then the court, in accordance with paragraph 1 of § 934 of the Code of Civil Procedure of the Federal Republic of Germany, cancels this act.

In addition, the Code of Civil Procedure of the Federal Republic of Germany, providing in paragraph 1 of § 926 the possibility of filing an application for the adoption of measures of preliminary protection of rights before filing a claim, also protects the rights of the person in respect of whom these measures were taken. In this case, such a person may apply for the court to set a time limit for filing a claim with the court by the applicant. If the applicant does not file a claim with the court within the established period, the person in respect of whom measures of preliminary protection of rights have been taken has the right to apply to the court with an application for the cancellation of these measures.

Since measures to secure the claim are taken by the court even before the case is considered on the merits, there is always a risk of causing losses to the defendant due to the fact that both the claim and the security measures may turn out to be unfounded. According to § 945 of the Code of Civil Procedure of the Federal Republic of Germany, the defendant has the right, after the entry into force of the decision by which the claim was dismissed, to file a claim against the plaintiff for damages caused to him by securing the claim.

The judicial practice of Germany knows a way to protect the rights of the defendant, which allows him to file a so-called protective document with the court even before submitting an application for taking measures of preliminary protection of rights. To file a protective document, it is sufficient for the defendant to assume that the plaintiff may require the said measures to be taken.

The protective document contains the debtor's petition to refuse to take measures of preliminary protection of rights or to consider by the court an application for taking such measures without fail at the court session, if it is presented.

It should be noted that the possibility of filing a protective document is not provided for in the law. This method of protecting the rights of the defendant was originally developed by the courts in the course of proceedings in cases of unfair competition, and today it is a recognized method of protecting the interests of the defendant when taking measures to secure a claim. According to a number of German authors, the court should take into account the protective document on the basis of the guaranteed by paragraph 1 of Art. 103 of the Basic Law of Germany the right of every person to be heard by the court [29].

In German legal literature, the question is debated as to whether the court can refuse to take measures of preliminary protection of rights only on the grounds that a protective document has been declared. Some authors believe that the court is obliged in this case to provide the person applying for measures of preliminary protection of rights with the opportunity to respond to this document, or a court session should be held [39].

As a rule, the court determines the date of the hearing, which guarantees the right of the person applying for a measure of preliminary protection of rights to be heard by the court. The following option is also allowed: the court sends a defense document to the applicant to present his opinion. In the future, the issue of taking these measures is resolved within the framework of written proceedings [40].

It seems that the implementation of such a method of protecting the rights of the defendant when taking measures to secure a claim in the civil process of Ukraine, as giving him the right to file a protective document before filing an application for securing a claim, would ensure a balance of interests of the parties to the dispute. Firstly, granting such a right to the defendant would significantly reduce the risk of taking unreasonable measures against him on securing a claim, since in a protective document the defendant can reasonably state his position to the court, if necessary, supporting it with evidence. Secondly, this would not violate the rights of the applicant (plaintiff): he would have the opportunity to present to the court his reasoned objections to the protective document. At the same time, the introduction of this method of protecting the rights of the defendant into Ukrainian civil procedural law, in our opinion, should be carried out with some restrictions that meet the goals and objectives of civil proceedings, as well as the needs of law enforcement practice. In particular, granting the defendant the right to present a protective document in court should not contradict such an important characteristic of measures to secure a claim as their urgent nature. Therefore, if the defendant presented a document of protection to the court, and later the plaintiff petitioned for securing the claim, but the court left such a petition without progress and invited the plaintiff to present his opinion on the document of protection, the defendant should not be notified of the filing of an application for securing the claim until the plaintiff exercises his right to present objections to the defense document to the court.

The EU has national and actually “federal” (represented by procedural regulations and directives) procedural law, but there are no special courts for the application of the latter. As a result, the courts of the participating states simultaneously play the role of both “national” and “European” justice bodies [8]. In this regard, there is a need for an additional principle of “mutual trust”, which is not proclaimed in the United States, since relations there are built on imperative principles and the federal government, by virtue of subordination, makes the prevailing decisions. In the EU, additional guarantees are needed that the court of another state will implement exactly the “federal”, and not the intra-national norm. In other words, the principle of mutual trust is necessary to legitimize the national court as a pan-European [9]. It guarantees that it is an act of common European justice that is passed, subordinating the national judiciary to common European standards.

Another difference, for example, from the United States is that in the United States, either state or federal law is applied in each specific case, but not both at once. In the EU, even if the situation is “federal”, many of the supranational norms contain references to the internal law of the member states. From our point of view, this indicates a somewhat different distribution of competence, in particular, the assignment of almost all issues of legal proceedings and enforcement to the jurisdiction of national law. This is quite explicable by the fact that there are no “federal courts” in the EU, and it is easier and more efficient for national courts to act in accordance with existing procedures, while relying on supranationally unified norms only when the situation requires it.

Summarizing the above, we can establish that the European civil law has a dual nature. In its own (narrow) sense of the word, this is the federal procedural law of the EU, applicable due to the nature of the distribution of competence to cross-border relations of an intra-community nature. In a broader sense, it is also a set of those rules, norms, and principles of the administration of justice that the EU, as a federal center, adopts for both the federal and national levels of the judiciary in order to ensure the unity of the justice space. Ideally, the European justice area should be an integral, unified, and internally consistent system. The reality, however, is far from this, since there are many problems, both of legal and political nature, that impede the implementation of the ideas conceived.

The only judicial mechanism for the protection of violated rights within the EU is the activity of the Court of Justice of the European Union, whose practice laid the foundation for the development of the concept of protecting human rights within the new European legal system.

The concept of the EU Court of Justice on the judicial protection of the rights of individuals in national courts aims to achieve certain results, leaving it to the discretion of the courts to choose the procedures and ways in which this result should be achieved, with full institutional and procedural autonomy of the Member States.

In the Butter-buying cruises case [24], the ECJ pointed out that Union law does not aim to create new remedies, but there must be a real possibility of using national remedies to ensure compliance with EU law. However, it is now obvious that national procedures and methods of protection alone may not be enough to effectively protect the rights of individuals, then it becomes necessary to change existing national norms to ensure full and effective protection of the communitarian rights of individuals [24]. Community rights are the rights and freedoms that arise for individuals by virtue of EU law, which are of an economic and social nature, necessary for the effective functioning of a single space.

Below we present examples of the most notable cases heard by the EU Court of Justice in the field of enforcement. Thus, for example, in the decision in the case of San Giorgio [15], the EU Court ruled that individuals are entitled to a refund of taxes and duties paid in violation of EU law. The presented method of protection follows from EU law, which prohibits the discriminatory application of taxes.

In accordance with the decision of the EU Court of Justice in the case of Von Colson [15], damages reimbursement must be adequate to the damage caused. In the Marshall II decision [15], the ECJ extended the position expressed earlier, noting that adequate damages meant full damages, including the award of interest.

It follows from the decision in the Factortame I case [14] that an individual has the right to take measures to secure a claim, including against the state, despite the violation of national constitutional law.

The European Court of Human Rights is by far the most important body for the protection of human rights (including for citizens of Ukraine). However, practice shows that the Charter of Fundamental Rights of the EU can subsequently “displace” the European Convention on Human Rights as the main document that establishes rights and freedoms, and the EU Court of Justice will take the role of the main court for human rights in the European Union [19].

However, it is impossible to consider the meaning and essence of the definition of “security measures” separately from such a fundamental concept as “a measure (form) of state coercion”. In the theory of law, the authors of scientific literature paid sufficient attention to this concept. Let us dwell only on some of the definitions proposed in the theory of law. Storskrubb argues that the legal form of state coercion is united by a commonality of goals, grounds, legal consequences, and procedures for the

application of specifically isolated groups of coercive measures that can be distinguished from each other, that is, classified [40]. Halberstam [14] believes that the substantive basis of various legal forms of state coercion consists of the specifics of particular coercive measures, goals, grounds, and consequences of application. Other authors believe that the definition of measures of state coercion is based on the functional purpose of general and special goals and objectives, taking into account the significance of measures and their role in law. Let us dwell separately on the definition of a measure (form) of state coercion, which is given by Stehlik: "A measure (form) of state coercion is a separate group of coercive means that have a specific purpose, legal and factual basis and a specific application procedure, which determines the method of coercive influence and legal consequences characteristic of this group of measures or their absence" [39; 42].

In general, practicing lawyers, speaking of securing a claim, mean: an independent institution of procedural law; means of protecting the right and legally protected interest in court; an important guarantee that ensures the actual execution of a future judgment; procedural actions for the application by the court of the measures provided for by law; measures of civil procedural restraint aimed at preventing possible difficulties in the execution of a court decision.

Undoubtedly, the development of the civil procedural legislation of Ukraine entailed a significant modification of such an institution as securing a claim. At the same time, the changes that have been made to this institution, as well as those novelties that are not in the current Code of Civil Procedure of Ukraine, actually indicate that the draft law essentially refers to a completely new procedural institution - interim measures. This is confirmed by the fact that, according to the current procedural code, the concept of "securing a claim" and "types of securing a claim" are regulated within this institution as a claim and are placed in section III of the Code "Claim proceedings". But in the draft Code of Civil Procedure of Ukraine, this procedural institution is removed from the section "Action proceedings" and placed in the section "General Provisions".

The need to create an essentially new procedural institution is connected with the desire of the author of the draft law to introduce new concepts, along with measures (types) of securing a claim, such as previous interim measures that are widely and successfully used in foreign countries, as well as provide for the possibility of counter security. In addition, for the first time, it provides for the possibility of taking measures to secure a claim at the request of a party to the case, only referred to international commercial arbitration, an arbitration court (part 3 of article 150 of the draft Code of Civil Procedure of Ukraine), while today this is provided only in relation to an already adopted decision of foreign court, including international arbitration - Part 1 of Art. 394 Code of Civil Procedure of Ukraine), but only at the request of the person filing a petition for permission to enforce the decision of a foreign court, and not of any party to the case and without an arbitration court. The procedure for taking previous interim measures has also changed significantly. So, while part 4 of Art. 151 of the current Code of Civil Procedure of Ukraine provides for securing a claim prior to its submission only in respect of claims arising in order to prevent violation of intellectual property rights, then Part 2 of Art. 150 of the draft already provides for the possibility of securing any claim before it is filed. This is also a significant novelty of the draft law, which aims to ensure that a person whose rights have been violated or contested has the opportunity to apply for judicial protection immediately after learning about such a violation, in an accelerated procedure, that is, before filing a claim, while the defendant is still did not hide his property, and so that judicial protection as a whole would be effective, and the right to justice would be realized. In addition, in fact, this is an incentive for reconciliation of the parties. Such events have been operating in European countries for a long time, therefore, in this case, the unification of procedural norms with international norms is achieved. For example, in France (*saisie*), in Germany (*Arrest*), in Italy (*sequestro*) - with the help of arrest, in England (*Mareva injunction*) - the prohibition of the Ghost, according to the name of one of the parties to the case in which this measure was first applied, etc. The European Court of Human Rights recognizes interim measures as an element of the exercise of the right to a court (Lock plc v. Beswick (1989)).

Yet, the biggest novelty of the draft Code of Civil Procedure of Ukraine is the detailed regulation of the procedure for mutual security, while in the current code only one part 4 of Art. 153 (deposit) is devoted to it, which does not contain any procedural regulation and that was not mandatory, and therefore, in fact, was not applied by the courts.

Counter security is essentially a guarantee of compensation for possible losses for the defendant. This institution of civil procedure is an unconditional progress for the entire system of interim measures. It aims to ensure a certain balance of the parties and neutralize the possible negative consequences that may arise as a result of the application of interim measures by the court. So, according to part 1 of Art. 155 of the draft Code of Civil Procedure of Ukraine, the purpose of this institution is to ensure compensation for the defendant's losses, which may be caused by securing a claim.

In contrast to securing a claim, the purpose of which is to protect the interests of the plaintiff, the counter-security is aimed primarily at protecting the interests of the defendant. In addition, in fact, this is the preservation of the existing status quo between the parties until the final decision of the court is made.

The draft law does not provide an exhaustive list of counter security measures. So, in part 4 of Art. 155, the draft Code of Civil Procedure of Ukraine notes that the counter security, as a rule, is carried out by depositing funds into the deposit account of the court in the amount determined by the court.

As the demand for foreign travel grows, the method of restricting a bad faith debtor (and often a good faith debtor, and sometimes not a debtor at all) in the right to travel abroad becomes increasingly more popular. Courts of different instances in all regions of Ukraine are considering a huge number of relevant applications. But, unfortunately, they are also solved in different ways, and, as a result, judicial practice is full of diametrically opposed decisions. Moreover, applications are considered at different stages - both before the filing of a statement of claim, and at the stage of trial, and at the stage of enforcement proceedings. The procedural form of applying to the court in the first two stages above is an application for securing a claim, in the third - the presentation of a state executor.

The direct subject of the appeal is the person participating in the case. The types of securing a claim are listed in Article 152 of the Code of Civil Procedure of Ukraine, but among them there is no "restriction on the right to travel abroad". At the same time, a prohibition to carry out certain actions is provided; in addition, if necessary, the court may apply other types of securing the claim. This, as a rule, is the explanation provided by courts for their decisions that satisfy the applications.

On the other hand, the courts refusing to provide such security justify this by the fact that the existence of an unfulfilled obligation by the debtor in itself is not an unconditional basis for restricting the right, or that Law No. 3857-XII does not provide restriction on travel abroad by court order in order to secure the stated claim, and in some cases it was found that the courts are not at all the body authorized to consider the issue of restriction of exit.

It seemed that the Supreme Court of Ukraine (SCU) brought clarity on this issue in its decision of June 1, 2011 in case No. 6-49067sv10. The Supreme Court of Ukraine came to the conclusion that the courts of previous instances went beyond their powers by satisfying the application to restrict the debtor from traveling abroad, since this type of security is not provided for by Article 152 of the Code of Civil Procedure of Ukraine,

and there is no provision in the Code itself that would give the court the authority to secure the claim in this way [5; 10].

Meanwhile, according to many lawyers and advocates, the restriction of the debtor's right to leave in order to secure a claim is unacceptable [43]. The Supreme Court of Ukraine, in its ruling dated June 1, 2011, having considered the issue of the legality of the travel prohibition as a security for claims, found that such security is contrary to the requirements of the law. After analyzing in a systematic connection the provisions of Article 33 of the Constitution of Ukraine (the right of everyone to freely leave the territory of Ukraine can only be limited by law), Article 6 of the Law of Ukraine "On the procedure for exit from Ukraine and entry into Ukraine of citizens of Ukraine" (grounds for temporary restrictions on the right of exit of citizens of Ukraine abroad), articles 151-153 of the Civil Procedure Code of Ukraine (grounds for securing a claim, types of securing a claim, consideration of a statement of claim, execution of a ruling on securing a claim), the Supreme Court of Ukraine determined that the courts do not have procedural authority to apply interim measures to the debtor in the form of a prohibition on travel abroad.

Such a decision of the Supreme Court can be considered absolutely fair. However, the question of the illegality of court rulings to secure a claim in the form of a prohibition on travel abroad is beyond the exclusive procedural powers of the court.

The right of everyone to freely leave the territory of Ukraine, guaranteed by the Constitution, is unshakable. And any restrictions on this right are unacceptable. Banks' claims about security measures such as travel bans are not only absurd in terms of the application of laws, but also contradict formal logic.

We believe it fair to consider the need to pay attention to the nature of the penalty, the state and location of the things in dispute, the financial situation of the defendant, the grounds for filing a claim and other circumstances that make it possible to foresee the defendant's opposition to the execution of the future judgment.

The court, choosing the type of securing the claim, must choose the method that is most aimed at securing the subject of the dispute. At the same time, it should be taken into account that the court chooses those types that are indicated in the application for securing the claim. The types of securing the claim or their combinations must be commensurate with the stated requirements of the plaintiff.

This condition, when formulated as "proportionality of the type of security", is mainly aimed at protecting the rights of persons against whom measures are taken to secure the claim. The rules for securing a claim are aimed at creating conditions for the effective protection of the applicant's rights through the implementation of interim measures, the adoption of which should not lead to unreasonable infringement of the rights of the opposite party or to its economic collapse. Proportionality in this case should mean the compliance of a certain type of security, measure, and material means with the size or volume of a substantive claim [42].

The requirement of proportionality is an assessment category for the court, gives it a margin of appreciation and, in turn, requires it to give a certain reasoning for its decision. Therefore, taking into account what has been said, the court must consider the 'ratio' of the type and size of the security of the claim to the stated claims. At the same time, the court must proceed from the principles of fairness and reasonableness, and also take into account the correlation of the type and amount of securing the claim with the interests of the defendant. It is important that when the court considers the issue of securing a claim, the balance of all participants in the disputed legal relationship is maintained.

Another condition for securing a claim is compliance of the size of the claim and the proportionality of the type of security to the consequences that its acceptance may have for the opposite party. If the provision of a claim will cause disproportionate losses to another person, then the adoption of protective measures without any additional conditions should not be carried out [14].

Derogation from the requirements of proportionality without any additional conditions is possible only if, on the one hand, the property in respect of which the rights of the opposite party are limited is, according to the applicant, the only material asset that can be levied in the future, and, on the other hand, when the law does not require the mandatory provision of security for losses from the adoption of protective measures [28].

The implementation of the private law principles of the European Union in Ukrainian legislation and the implementation of judicial reform are today one of the most important tasks for the judiciary and the country as a whole. Judicial reform is the main requirement that Ukraine must fulfill in order to become a full member of the European Union. Legal experts rightly point out that the establishment of human rights is the main way to develop a democratic state. "In all areas of government and public life, we need to get rid of the burden of the Soviet legacy, which slows down the path forward. It is especially important to destroy the negative manifestations of socialist and communist legal understanding in the field of interpretation and application of legal norms in the activities of the courts and the administration of justice" [23].

At the national level, it is necessary to form approaches to writing court decisions taking into account the leading international standards, which, in turn, should correspond and be applied in the course of training future lawyers in educational institutions. Only in this way, the real rooting of European standards and practices of observance of the rights of the parties to the case in the application of civil action enforcement measures is possible.

First of all, it is necessary to change the approach to the formation of judicial practice. One cannot but agree with the opinion that "it is not normal when the decisions of the Supreme Court contradict each other. The lower courts have nothing to rely on in this sense. They have a very wide field of decisions of the Supreme Court, so they can take virtually any legal position. Such a variety of legal positions in relation to similar disputable legal relations is unacceptable and leads to chaos" [32].

It is irrefutable that the decisions of the European Court are a new source of law, primarily from a law enforcement point of view. Therefore, the Supreme Administrative Court of Ukraine expects to apply to the National School of Judges of Ukraine with a proposal to include in the curricula the required number of hours devoted to the study of the content and analysis of the decisions of the European Court, their adaptation to the needs of administrative proceedings, to ensure the organization of measures to improve qualifications of judges and employees of the apparatus of administrative courts.

In order to avoid errors that occur in court decisions regarding the protection of human rights and freedoms, in order to reduce the number of cases of unjustified refusals of citizens to satisfy claims and, accordingly, appeals to the European Court, the Supreme Administrative Court of Ukraine takes measures to ensure the same approach of administrative courts to the application of the Convention on protection of human rights and fundamental freedoms.

Therefore, an article-by-article analysis of the compliance of Ukrainian legislation with the relevant act of law of the European Union (EU acquis) is necessary and a correspondence table should be prepared. In the event that, based on the results of the article-by-article analysis, inconsistencies between the legislation of Ukraine and the provisions of the act of law of the European Union (EU acquis) are revealed, the measures should be taken to implement the acts of law of the European Union (EU acquis) (development of the necessary draft regulatory legal acts), deadlines and stages of implementation of each measure and its co-executors should be determined.

The protection of civil rights is one of the most pressing issues at the present time, since the complication of social relations and the strengthening of their material basis contributes to an increase in the number of disputes about the violation of the rights of some in view of the exercise of rights by others. All this gives rise to a dispute and, as a result, an appeal to the court with the aim of resolving it by the competent authority, however, despite this, a person whose rights have been violated cannot be completely sure of the restoration of his or her rights, and not because the decision was rendered not in his/her favor, but due to the fact that it turned out to be virtually unenforceable. In view of this, the institution of securing a claim, as a way of protecting rights in such a case, does not lose its significance, and the effectiveness of justice in civil cases largely depends on the realization by a person of the right to secure his claims.

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