



Examination of the Judicial Acts against the RA Compulsory Enforcement Service

SUMMARY



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The Protection of Rights without Borders NGO (hereinafter as the Organization) has implemented the Project “Public Administration System Reforms: Is Armenia Creating a New Reality” (The Project) within the period of March 01 of 2020 to March 31 of 2021, with the financial assistance of the National Democratic Endowment (NED).

In the scope of the Project, 89 decisions¹ out of 93 decisions filed to the RA Administrative Court against the RA Compulsory Enforcement Service² within the period of 2019 and 2020 respectively, as well as, 58 decisions out of 135 cases on the suspension of the proceeding (overall 147 cases) until June 30 of 2020 have been examined.

Before summarizing the outcomes of the monitoring, the Organization held meetings with the representatives of the RA Compulsory Enforcement Service. During the meeting with the representatives of the Service on April 07 of 2021, the raised problems and recommendations for their solutions were presented and discussed. The approach of the Service will also be presented in the given report.

The monitored cases mainly related to application of illegal seizure on the property or the illegal elimination of the applied seizure, /problems related to the institution of the proceedings to ensure the enforcement of the judicial acts or to the public legal monetary requirements/, selling of the property through compulsory electronic auction, procedural violations to carry out enforcement proceedings, legality of eviction, issues related to the impossibility to execute judicial acts.

In the outcomes of the examination, similar systematic problems were detected, in regard to which the RA Administrative Court already has an established approach.

The Main Violations of Rights:

Taking into account the nature of the cases, in the context of human rights protection, the problems of the following rights were raised: proper administration, including the right to be heard,

¹ The differences between the number of the cases taken through Datalex judicial information system and actually examined cases can be conditioned by the big number of cases, as well as by the circumstance, that the latter were examined by the Organization during another examination conducted in 2019-2020.

² Taking into account the chronology of the examination of the cases, the following abbreviations and versions of the name of the Respondant body, that is the Compulsory Enforcement Service, shall herein be used in the document: CES, Service.

right to get acquainted to the adopted decision to the documents, legality and certainty principals, as well as, the right to ownership, right to judicial protection, etc.

The right to judicial protection was particularly highlighted in terms of appealing the decisions on the property seizure on the ground, that the judicial act was presented to execution or to partially unappealable administrative act or the act, which has not yet entered into force.

The appeals against the eviction of the applicants were separated in another case groups. The majority of these cases are rejected by the Court with the statement that there is an available judicial act entered into force and the Compulsory Service is simply carrying out that function.

It should be mentioned, that by a concrete group of cases both the applicant and the respondent have an emphasized approach, for example: by 8 applicants on the issue of the execution of the administrative act, which is still unappealable and by 7 cases the respondent Compulsory Enforcement Service were not present at the judicial sittings, the respondent party did not present any observations, by which their practice would be justified in regard to the administration carried out towards the execution of the unappealable judicial act. The judicial application by these cases have been satisfied.

Since, during the appealing process of the activities of the enforcement officer, the applicants are released from the obligation to pay state duty, the judges of the RA Administrative Court consider that the issue of paying state duty fee by the majority of satisfied appeals is solved. However, the judges had different approaches in regard to 10 cases. Taking into account, that in a line with part “8” of Article 22 of the RA Law on “State Duty”, only the plaintiffs are released from the obligation to pay state duty fee and the appeal is a subject to satisfaction, the Court stated, that state duty payment is a subject to confiscation from the respondent in favour of the RA state budget.

As shown by the examination, while instituting a performance proceeding, the Compulsory Enforcement Service based on the application of the given administration body, in order to ensure the execution of the administrative act and putting a ban on the property of citizens did not properly examine the circumstance, whether there are grounded requirements for subjecting an administrative act to compulsory enforcement or not, that are: the entry of the administrative act into legal force, proper notification of the addressee about the judicial act or handing it to the addressee or notifying in other proper means.

In other cases, the compulsory enforcement proceeding is instituted ignoring the circumstance, that the decision being adopted by the Compulsory Enforcement Service, is immediately disputed in superior or in judicial order and there is no final legal act solving the issue, also ignoring the

fact, that in case of judicial dispute of the administrative act, the implementation of the latter is ceased.

It was recorded, that the Compulsory Enforcement Service does not always ensure the legislative requirement, that the note attached to the performance act is signed and approved by the competent official.

The compulsory enforcement officer carried out the enforcement proceedings without the attached documents confirming the legal entry into force prescribed by Article 283 of the RA Law on Administrative Offences. Therefore, under such conditions the enforcement officer was obliged to return the documents to the relevant administrative body.

The institution of the performance proceeding was recognized illegal in all the cases, when the administrative act was presented to execution after the prescribed three-month deadline: in the given case, the Court stated, that there is a necessity to recognize the absence of the legal relation of the public legal monetary demand.

Though, the violation of the main administration of these cases is carried out by the Compulsory Enforcement Service, which, while instituting a proceeding does not properly examine the above mentioned conditions, the administrative bodies are on the other side of the problem (the RA Road Police, Yerevan Municipality, State Revenue Committee) which also do not carry out proper administration missing the execution deadlines or failing to notify the addressees in a given order or failing to wait until the end of the two-month deadline to make the administrative act unappealable.

By the judicial cases, while ensuring the enforcement of the judicial acts, by instituting a proceeding on the ground of writ of execution, the enforcement officer did not examine or did not take into account the circumstances on the proper notification of the judicial act and the failure to enter the judicial act into force.

The non-uniform approach of the Court was recorded, particularly, in one case, the Court detected that under the conditions of the failure to notify about the appointment of the expertise and the initial price of the lot presented to the auction, the applicant was actually deprived from exercising his right to challenge the expert under the suspicious circumstances questioning the impartiality of the expert, meanwhile, by the monitored other cases, the application was rejected stating that in case of the evaluation of the lot by electronic auction, as stated by part 5 of Article 35.1 of the RA Law on “Public Auctions”, Part 3 of Article 30 of the RA Law on “Public Auctions” is not applicable in case of the evaluation of the lot exercise by compulsory electronic auction.

In the scope of the satisfied cases there were cases, by which essential issues were raised and confirmed by the Court, therefore, the recorded problems are presented below:

➤ Problem related to the ensuring of the concrete succession of the activities in the scope of the performance proceeding: a number of problems were highlighted, when the compulsory servant without detecting whether the immovable property is a subject to limitation, rights of other citizens or not and if no the latter takes measure for their implementation activities

➤ The restart of the performance proceeding with the violation of the law: some cases were highlighted, when the compulsory servant restarted the performance proceeding in case, when the grounds prescribed by the law were missing

➤ A case was recorded, when a person was declared wanted by Compulsory Enforcement Service in case the address of the citizen was known

➤ A case was recorded, when the two-month deadline of the performance activities was violated and the Compulsory Enforcement Service showed inaction in this regard failing to ensure the execution of the judicial act, which was confirmed by the Court.

➤ A case was detected despite the restriction of putting a ban on the mutual property

➤ Similarly, a case was detected when a confiscation was put on a citizen's pension, when the latter possesses other property by ownership rights.

The Compulsory Enforcement Service, through conducting proper administration, can prevent the inefficient use of the administrative body, particularly through preventing frequently repeated problems. Though, the judicial acts adopted by the RA Administrative Court do not have precedent nature, it is obvious, that the Court has a concrete approach in regard to certain cases, therefore it is possible to not repeat the administration related problems, which are already confirmed by Court decisions through saving both the human and financial resources,

It should be mentioned, that the Organization conducted examination of the cases filed against the Compulsory Enforcement Service during the previous years too, so we can conclude, that the majority of the problems raised by the applications filed during 2017-2018 are still repeated.
