

Legal regulation of social protection of persons enforcing decisions in Ukraine

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Abstract. The professional activities of qualified personnel are essential to ensure the full enforcement of judgments at the proper level. Therefore, the issue of studying and improving the social security of bailiffs always remains relevant. The study aims to determine the current legal regulation of social protection of persons ensuring the enforcement of judgments in Ukraine. The basis of scientific cognition was the formal legal method, with the help of which several legislative acts regulating the social security of public and private bailiffs were studied. The study identified the main legal provisions governing the social protection of persons engaged in the enforcement of decisions, identified the main shortcomings of the social security mechanism for public and private bailiffs, identified gaps and conflicts contained in the legislation on social security of civil servants, and analysed the legal provisions governing the remuneration of public and private bailiffs, their pension and social security in case of disability. After reviewing several legislative acts, the author conducted a comparative analysis of the social protection of public and private bailiffs and determined their legal status and peculiarities of legal regulation of social security of public bailiffs in the system of social protection of civil servants. The several ways to improve the legislation and specific practical steps to ensure that social guarantees for public and private bailiffs are at the appropriate level are undefined. The practical significance of the study is that through a detailed

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study of the current legislation in the field of social protection of persons ensuring the enforcement of decisions, it is possible to identify positive and negative aspects in the mechanism of social protection and further significantly improve the social guarantees of public and private bailiffs at the legislative level

Keywords: social guarantees; court decision; pension insurance; enforcement proceedings; remuneration of the executor

Introduction

The issue of social security of the population is one of the most important functions of the state, so the problems of social protection are discussed by many scholars from different countries. Particular attention should be paid to the social protection of civil servants since it is the proper financial security and social guarantees that can motivate public sector employees to effectively exercise their powers and implement the functions of the state. One of the most important categories of civil servants is public and private bailiffs (not civil servants), who enforce decisions following the powers vested in them by law. When studying the issue of social security of civil servants, it should be noted that the issue of social security of private and public bailiffs often remains outside the scope of scientific research and out of the legislator's attention. Therefore, the study of legal norms that enshrine social guarantees for persons who ensure the enforcement of decisions is extremely important and relevant today. After all, it is the improvement of legal regulation in the field of social protection of bailiffs that will indirectly contribute to more efficient enforcement proceedings and increase the prestige of the profession and trust in the actions of public officials.

The problem of the study is that the legislator when defining the status of public and private bailiffs, did not pay due attention to the social protection of this category of persons. In the context of martial law, when the process of enforcement is even more complicated and time-consuming, inadequate legal regulation of social protection of this category of civil servants leads to a significant decrease in the level of professionalism and personal motivation of persons ensuring the enforcement of decisions (Adamenko, 2022).

Some Ukrainian scholars have studied this issue. As such, K. Hryshchenko (2019) devoted her dissertation to the topic of legal regulation of social protection of public and private enforcement officers. In their research, the authors established the peculiarities of the legal status of bailiffs in the social security system, the author identified the areas and scope of legal regulation of social protection of public and private bailiffs and outlined some areas for improving legislation in the field of social security of bailiffs. P. Maksushev (2020) studied the issue of the formation of the State Enforcement Service in Ukraine at the legislative level. The author analyses the problems of improving the administrative and legal regulation of this service and examines the legal guarantees of the activities of state bailiffs and the procedure for bringing them to justice. In addition, the author examines the foreign experience of legal regulation of the activities of state and private bailiffs.

T. Minka (2022) also examined the shortcomings and ways to improve the administrative and legal regulation of the enforcement of court decisions. The author identified the actual reasons for the non-enforcement of court decisions related to the organisation of enforcement of decisions and the shortcomings of the allocation of budgetary funds for the enforcement of decisions. In his scientific article, S. Karpiuk (2020) analysed the mechanism of state and legal

support of the executive service bodies. The author examines the positive and negative aspects of the transition of enforcement proceedings to a mixed system, and studies in detail the legal status of public and private enforcement officers.

H. Parfonov (2022) devoted his research to the problem of enforcement of court decisions under martial law. The author analyses the legislative changes that have taken place in the procedure for the enforcement of judgments in connection with the introduction of martial law. In general, as a result of the study, the author concludes that the procedure for enforcement of judgments during martial law is unchanged, except that persons in difficult circumstances are provided with certain additional opportunities. In their works, scholars have examined in detail the problematic aspects of the system of executive bodies and the problems of administrative and legal regulation, but the issue of social protection and legal status as subjects of social security law of these persons has not been given due attention. There has been no legal analysis of the social guarantees provided by the State to private or public bailiffs.

The study aimed to review the legal provisions that enshrine basic social guarantees and provide social protection for persons engaged in the enforcement of decisions.

Materials and methods

Such scientometric databases as Google Scholar and Scopus were used to search for information on this study. For a complete and comprehensive study of the topic of the article, several scientific articles by both Ukrainian and foreign authors published in international journals and collections related to the issue of social protection of civil servants were used. To determine the peculiarities of legal regulation of social security of public and private enforcers, several legislative acts in this area were studied, such as Law of Ukraine "On Enforcement Proceedings" (2016), Law of Ukraine "On Bodies and Persons Ensuring Enforcement of Court Decisions and Decisions of Other Bodies" (2016), Law of Ukraine "On Civil Service" (2015), Law of Ukraine "On Civil Service" (1993), Law of Ukraine "On Obligatory State Social Insurance for Unemployment" (2000), Law of Ukraine "On Compulsory State Social Insurance" (1999), Law of Ukraine "On Compulsory State Pension Insurance" (2003), Law of Ukraine "On Pension Provision" (1991) and certain bylaws.

To carry out this research some general theoretical methods of scientific cognition were used. Using the formal logical method, a consistent study of legal provisions in the field of social protection of public and private bailiffs was carried out and several legislative acts regulating the issues of social security of persons engaged in the enforcement of decisions were examined. Using the method of analysis, the main features of legal regulation of social guarantees for bailiffs and identifies the positive and negative aspects of such regulation were identified. In addition, some ways to improve the legal regulation of social protection of public and private bailiffs to promote the professional development and motivation of employees of the State Enforcement

Service or private bailiffs were outlined. Using synthesis, various legal provisions regulating social security were examined and a single mechanism for the social protection of persons engaged in the enforcement of decisions was identified. Employing induction, certain legislative provisions and determined the general position of public and private bailiffs in the system of social protection of persons were studied; having studied specific problems of the activities of executive bodies, general issues inherent in the legal regulation of social protection of this category of persons were formulated.

Using the deduction method, the overall features of legal regulation of social security of civil servants were studied and the regularities of legal regulation which are specific to social guarantees of persons who enforce court decisions were identified. Comparative analysis was used to examine the legal regulation of social security of two categories of persons who enforce court decisions, namely, public, and private bailiffs, and to identify common and distinctive aspects in the legal status and specific features of the mechanism for providing social guarantees for both public and private bailiffs. Using the method of specification, certain areas of social security for enforcement officers, in particular, pensions and remuneration, were examined in detail, and certain legal provisions governing the procedure for providing social security in these areas were studied. Using the method of generalisation, certain peculiarities and shortcomings of legal regulation of the social sphere for executive bodies were identified and the ways to improve and increase social guarantees for this category of persons were concluded.

Results

Social protection, as a set of measures aimed at providing the population with material security in case of social risks, is one of the most important functions and tasks of a democratic state. Today, especially in the context of martial law, the issue of social protection is very acute, affecting absolutely all categories of citizens. Of particular importance is the social security of civil servants, since only proper financial incentives and social guarantees can be sufficient motivation for employees to perform the functions of the

state professionally and effectively. Enforcement officers in Ukraine are no exception. According to the Law of Ukraine “On Bodies and Persons Ensuring Enforcement of Court Decisions and Decisions of Other Bodies” (2016), such persons include public and private bailiffs (Manzhak, 2023).

The enforcement of court decisions is one of the most important stages of the judicial process, without which the court decision itself will only be declarative. In addition, the proper implementation of enforcement actions is a guarantee that the state will ensure the legitimate rights and interests of citizens. On its way to European integration and in compliance with the requirements of the European Union (EU) to reform the judicial process, Ukraine has been operating a mixed system of enforcement of court decisions and decisions of other bodies since the adoption of the Law of Ukraine “On Bodies and Persons Ensuring Enforcement of Court Decisions and Decisions of Other Bodies” (2016). Given the importance of this stage for the administration of justice and the restoration of violated rights, it is obvious that high motivation, professionalism, and stress resistance are required to carry out enforcement actions (Azevedo, 2023). Appropriate financial incentives are one of the factors in retaining qualified personnel in this area. However, the issue of social protection of public or private bailiffs has long been outside the scope of attention of both the legislator and scientific research. Today, in the context of martial law, the issue of social protection is even more acute.

The social protection of employees of the State Enforcement Service and private bailiffs should be understood as a set of legal, economic, and organisational measures taken by the state to ensure an adequate level of existence and eliminate certain social risks (Hryshchenko, 2019). One of the most important components of the social security system for enforcement officers is remuneration. In this case, wages perform a social function, as they ensure social equality and should meet the basic living needs of these persons. In addition, social guarantees for executors include social payments in case of unemployment, disability, and other insured events, if they occur (Bezusi, 2019). Table 1 summarises the legal provisions governing remuneration for public and private bailiffs.

Table 1. Legal regulation of remuneration of public and private enforcement officers

Legal regulation of remuneration	State bailiffs	Private contractors
Law of Ukraine “On Civil Service” (1993; 2015)	The components of the remuneration of a state bailiff are an official salary, an allowance for the rank of civil servant and a bonus.	No provisions are in place as private enforcement officers are not classified as civil servants
Law of Ukraine “On Bodies and Persons Ensuring Enforcement of Court Decisions and Decisions of Other Bodies” (2016)	The salary of an employee of a state executive service body consists of an official salary, a bonus, a rank supplement and a longevity supplement, remuneration, and other allowances following the law	Basic and additional remuneration

Source: compiled by the authors

Thus, the legal regulation of social security of persons engaged in the enforcement of decisions consists of several levels and is quite complex. The first level consists of legislative acts that set out the basic principles of the State Enforcement Service and private enforcement officers. The main legislative document that defines the legal status and principles of activity of public and private bailiffs is the Law of Ukraine “On Bodies and Persons Ensuring Enforcement

of Court Decisions and Decisions of Other Bodies” (2016). The Law of Ukraine “On Enforcement Proceedings” (2016) regulates the principles and procedure of enforcement proceedings. Despite the unified regulatory framework, the legislator separates the powers of public and private enforcement officers, and their status as social security entities is also fundamentally different. The most important difference in the legal status of persons engaged in the enforcement of

decisions is that state bailiffs and other employees of the state enforcement service have the status of civil servants. Thus, the obligation to provide appropriate social benefits and social guarantees in the event of an insured event for state bailiffs is imposed on the employer and the Social Insurance Fund. Since a private bailiff is a subject of independent professional activity, as well as a lawyer or a private notary, the obligation to provide social security in cases provided for by law is imposed on the bailiff (Shapovalova, 2021).

Since the source of funding for public and private bailiffs is different, the mechanism for implementing social security for this category of persons is also different. As of today, Article 13 of the Law of Ukraine “On Bodies and Persons Ensuring Enforcement of Court Decisions and Decisions of Other Bodies” (2016) is fully consistent with Article 50 of the Law of Ukraine “On Civil Service” (2015) and there are no legal conflicts in the remuneration of bailiffs. The basic remuneration of a private enforcement officer consists of a fixed amount, in case of enforcement of a non-property decision, or is determined as a percentage of the amount recovered. The amount of the basic remuneration is determined by the Cabinet of Ministers of Ukraine. To ensure that the private enforcement officer makes a profit, the Law of Ukraine “On Bodies and Persons Ensuring Enforcement of Court Decisions and Decisions of Other Bodies” (2016) contains a provision stipulating that the basic remuneration in percentage terms is collected from the debtor together with the amount of the writ of execution, and the fixed basic remuneration is collected after the decision is fully enforced. A private enforcement officer may enter into an agreement with the creditor to receive additional remuneration.

In addition to the laws that set out the basic provisions on remuneration of executive bodies, several bylaws specifically set out the amount of remuneration of public and private enforcement officers. The Resolution of the Cabinet of Ministers of Ukraine No. 126 “On Approval of the Procedure for Payment and Amount of Remuneration to the State Enforcement Officer” (2015) remains in force. This resolution states that if a state enforcement officer has fully enforced a property writ of execution, an official receives remuneration of 5% of the amount recovered, but not more than 250 tax-free minimum incomes. In the case of enforcement of a non-property writ of execution, the bailiff receives twenty tax-free minimum incomes if the debtor is an individual and forty tax-free minimum incomes if the debtor is a legal entity.

In addition, there is also Resolution of the Cabinet of Ministers of Ukraine No. 643 “On Approval of the Procedure for Payment of Remuneration to State Enforcement Officers and Their Amounts and the Amount of the Basic Remuneration of a Private Enforcement Officer” (2016), which sets out the rebound rates for calculating remuneration to a state employee for partial or full actual execution of an enforcement document. It also stipulates that the basic remuneration of a private enforcement officer is set at 10% of the amount collected in the case of enforcement of a writ of execution of a property nature. If the enforcement is of a non-property nature, the basic remuneration of the private enforcement officer will be four times the minimum subsistence level of income if the debtor is an individual, and eight times the minimum subsistence level if the debtor is a legal entity. Thus, the two documents are equal in legal force, but they set different amounts of remuneration and use different equivalent values to calculate the remuneration of

employees (Amelicheva & Lavreniuk, 2023). Given this, a significant number of scholars who have studied the problems of financial support for public and private enforcement officers emphasise the need to repeal the Resolution of the Cabinet of Ministers of Ukraine No. 126 (2015) to avoid the possibility of erroneous calculation of remuneration for enforcement officers (Bondarenko, 2021).

Since state bailiffs are classified as civil servants, some peculiarities of their pension provisions are enshrined in legislation. The Law of Ukraine “On Civil Service” (1993), which has lost its force, except for Article 37, defines the right of a person to a civil servant pension. According to Article 37, men who have reached the age of 62 and women who have reached the retirement age, provided they have the insurance period required for the minimum retirement pension, including at least 10 years of civil service, and who have worked as civil servants at the time of reaching the specified age, as well as persons who have at least 20 years of service in positions classified as civil servants, regardless of the place of work at the time of reaching the specified age, are entitled to receive a civil servant pension. Civil servants are paid a pension equal to 60% of their salary, from which a single contribution to the obligatory state social insurance is paid (Yaroshenko *et al.*, 2021).

Social protection issues, which include both state and private contractors, are also regulated by several laws in the field of social security. In particular, the Law of Ukraine “On Obligatory State Social Insurance for Unemployment” (2000); the Law of Ukraine “On Compulsory State Social Insurance” (1999); the Law of Ukraine “On Compulsory State Pension Insurance” (2003); the Law of Ukraine “On Pension Provision” (1991). However, the laws do not enshrine any special social guarantees for public or private bailiffs. The Law of Ukraine “On Bodies and Persons Ensuring Enforcement of Court Decisions and Decisions of Other Bodies” (2016) also does not address the issue of social protection, as there are no provisions on the regulation of social guarantees for a certain category of persons. Given that other participants in the judicial process, such as judges, have extremely broad social guarantees and their social protection is regulated at the legislative level, the absence of a specific legal definition of social security for public and private bailiffs is a significant drawback for the current legislation.

Currently, the legal regulation of social protection of persons engaged in the enforcement of decisions is complex and multi-level. There are inaccuracies and legal conflicts in many social issues. Since during martial law, very little attention is paid to the legal status and state guarantees of executive bodies, the legal norms that establish the mechanism of financial support for public or private enforcement officers are outdated and insufficient to ensure the proper functioning of the enforcement institution (Khavariivka, 2023). Low official salaries and the absence of special provisions in the social security legislation do not contribute to raising the level of professionalism among bailiffs, do not motivate employees to properly perform their duties and do not create additional guarantees for employees of the state enforcement service. The combination of such negative aspects leads to a global problem of improper enforcement of court decisions, which completely discredits the entire judicial system (Fitri *et al.*, 2023). Therefore, to improve the legal regulation of social security for state or private bailiffs, it is necessary, first of all, to repeal bylaws that have lost their

relevance, to increase the salaries of state bailiffs to ensure their remuneration at the appropriate level, and it would be advisable to add a separate section to the relevant Law “On Bodies and Persons Enforcing Court Judgments and Decisions of Other Bodies” that would enshrine specific social guarantees for state and private bailiffs.

Discussion

For a complete and objective study of the problem of legal regulation of social protection of public and private bailiffs, several scientific works in this area were studied. After reviewing the works of foreign authors, it is possible to state that scholars from different countries have studied social guarantees and the system of social protection of civil servants in general, including persons engaged in the enforcement of decisions. For example, Turkish scholar K.G. Öktem (2022) conducted a comprehensive study of social security for the elderly, examines the social security system, the criteria for including or excluding certain guarantees in the existing social security system, and analyses the chronological order of development of the social security system for the elderly. M. Draniceru (2022) examined the international legal standards for the protection of civil servants in the performance of state functions. The author conducts a comparative analysis of the legislative norms regulating guarantees for civil servants of both international institutions and the norms of some countries, which are illustrative examples for others.

Yu. Kharazishvili *et al.* (2020) chose the topic of social security of society in developing countries for their research. Their study defines the general level of social development and the criteria that affect social sustainability and develops strategies for sustainable development of the social sphere that are universal for any country or category of people. F. Gerard *et al.* (2020) analysed new risks and challenges for the social protection system in the wake of the COVID-19 pandemic. The authors reviewed the policies of developed countries on social protection in difficult and crisis circumstances, which could become a social protection strategy in low- and middle-income countries. The researchers propose specific strategies for expanding the social protection system to improve the financial situation of citizens of developing countries.

S.E. Kristiawan and L. Karjoko (2023) considered the problem of legal certainty in the issue of social guarantees for civil servants who have already reached retirement age but are subject to corruption-related legal proceedings. The study examines the legal framework that would help to define one approach to the procedure for the dismissal of such persons from the civil service and identifies the need to consolidate social guarantees for civil servants in such cases to avoid the use of different approaches to social protection for this category of persons. F. Beaucreux (2023) examined the problem of social protection of civil servants in the medical sphere and studied the peculiarities of health insurance. The researcher studied in detail the peculiarities of mutual insurance companies for civil servants and their place in the social protection system. The paper reveals the paradoxes of the trajectory of tax social protection for civil servants. A. Ananta *et al.* (2021) studied the advantages and disadvantages of different pension systems for civil servants in Indonesia. The authors carried out a comparative analysis of the pay-as-you-go and funded pension insurance systems and identified their positive and negative aspects for

further reforming the pension system and ensuring an adequate standard of living for civil servants.

T. Christensen *et al.* (2019) in their study considered the problem of finding a balance between individual rights and the social security of society as a whole. They analysed a social survey among civil servants on the priority of individual or collective rights of citizens. The textbook by K.M. Anderson (2015) examines various social protection systems in the EU countries. The book examines in detail the legal and regulatory documents that enshrine social guarantees for citizens of different states, analyses different approaches to social security for different categories of citizens, and explores different areas of social protection from health insurance to pensions. In addition, the strategies for the development of the social sphere in the EU and ways to improve legislation at the supranational level are considered. E. Schuring and M. Loewe (2021) devoted their research to the study of various social security systems. The book examines the basic concepts related to social protection, the main instruments of social security and the effect of applying these instruments in practice. It also discusses strategies for improving social protection systems and their positive impact on the material well-being of citizens.

Examining the scientific publications of foreign authors, it is possible to note that all studies of foreign scholars in the field of social protection are quite broad and relate either to the social security of the population as a whole or to the problems of social protection of civil servants (Aryn *et al.*, 2021). The issue of social guarantees for persons engaged in the enforcement of decisions is included in the social protection of civil servants and is not considered separately as an object of scientific research (Dragos & Przybytniowski, 2022). The commonality between this study and the works of foreign researchers is that the legal framework regulating the grounds and procedure for the implementation of social protection of certain categories of persons, such as civil servants, was studied. Given that the legal status of public and private enforcers has some peculiarities under Ukrainian law compared to other civil servants, this study was devoted to the legal regulation of social protection of executive bodies and individuals. In most cases, research is devoted to the legal regulation of social guarantees for civil servants, but there is no research on social guarantees for persons performing state functions on a private basis. The absence of research in this area leads to ambiguities and legal gaps, which do not contribute to the development of the institute of private enforcement officers.

Agreeing with the opinion of the majority of authors dealing with the issue of social protection of civil servants, it should be noted that one of the priority areas of the state's activity is to ensure an adequate standard of living for persons who ensure the performance of state functions. The development and well-being of the entire society depend on the level of protection and motivation of public servants (Bocheliuk *et al.*, 2022). The same statement applies to both public and private enforcement officers, as the process of enforcement is perhaps the most important stage of the judicial process and the enforcement of citizens' rights.

The limitations of this study are that the legal norms related to the social security of state and private enforcement officers were considered. The main laws and regulations governing remuneration and pension provisions for civil servants were considered. However, the procedure for

providing social benefits and other social guarantees in case of disability or unemployment was not considered in detail, since such social guarantees are provided to public and private bailiffs on a general basis, depending on their legal status. The study did not cover the procedure for providing social benefits and other social guarantees in case of disability or unemployment. In analysing the current legislation, the study did not assess the current legal regulation but only identified some ways to improve the legal regulation in the field of social protection of persons engaged in the enforcement of court decisions.

Conclusions

The study determined that Ukraine currently has a rather complicated and multi-level system of legal regulation of social protection of persons engaged in the enforcement of decisions. The main and specialised law in this area is the Law of Ukraine “On Bodies and Persons Enforcing Court Decisions and Decisions of Other Bodies”, which establishes the legal status of public and private enforcement officers and the principles of their activities. As a result of the reforms, Ukraine has a mixed system of enforcement, and the legal regulation of the legal status and social security of public and private bailiffs is somewhat different. Remuneration of labour as the main social guarantee and pension provision for state enforcement officers is established by the Law of Ukraine “On Civil Service”, but pension provision for private enforcement

officers is carried out on a general basis and has no other legal peculiarities. Having analysed the legislative norms in the field of social security of these persons, it should be noted that the legal status of persons carrying out enforcement of decisions as subjects of the right to social security does not have a separate legislative regulation. Despite the importance of the enforcement institution and the complexity of enforcement actions, both public and private bailiffs currently lack adequate social protection, which may explain the low quantitative and qualitative indicators of court decision enforcement. Even after the reform of the system of executive service bodies, social guarantees remained unaddressed by the legislator and were not enshrined in the relevant law.

The prospect of further research is to study international experience in the field of legal regulation of social protection of public and private enforcement officers to determine a strategy for improving the system of social guarantees for these persons. The study achieved its objectives, in particular, by examining the main legal acts regulating the social security of persons engaged in the enforcement of decisions and analysing the positive and negative aspects of these norms.

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Conflict of interest

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Правове регулювання соціального захисту осіб, які здійснюють примусове виконання рішень в Україні

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Анотація. Для забезпечення повноцінного примусового виконання рішень на належному рівні важливе значення має професійна робота кваліфікованих кадрів. Тому питання вивчення та удосконалення соціального забезпечення виконавців завжди залишається актуальним. Мета дослідження – визначити чинне правове регулювання соціального захисту осіб, що забезпечують примусове виконання рішень в Україні. В основу наукового пізнання покладено формально-правовий метод, за допомогою якого вивчено низку законодавчих актів, що регулюють питання соціального забезпечення державних та приватних виконавців. У результаті дослідження визначено основні правові норми, що регулюють соціальний захист осіб, які здійснюють примусове виконання рішень, було визначено основні недоліки механізму соціального забезпечення для державних та приватних виконавців, виявлено прогалини та колізії, які містяться в законодавстві про соціальне забезпечення державних службовців, проаналізовано правові норми, які регламентують оплату праці державних та приватних виконавців, їхнє пенсійне та соціальне забезпечення в разі втрати працездатності. На матеріалі законодавчих актів проведено порівняльний аналіз соціального захисту державних та приватних виконавців, визначено їхній правовий статус та особливості правового регулювання соціального забезпечення державних виконавців у системі соціального захисту державних службовців. Установлено кілька шляхів удосконалення законодавства та визначено конкретні практичні кроки задля забезпечення соціальних гарантій для державних та приватних виконавців на належному рівні. Практичне значення дослідження полягає в тому, що за допомогою детального вивчення чинного законодавства у сфері соціального захисту осіб, що забезпечують примусове виконання рішень, можна визначити позитивні та негативні аспекти в механізмі здійснення соціального захисту та в подальшому суттєво покращити соціальні гарантії державних та приватних виконавців на законодавчому рівні.

Ключові слова: соціальні гарантії; судові рішення; пенсійне страхування; виконавче провадження; винагорода виконавця