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THE CONSOLIDATION OF THE BAILIFF'S STATUS IN THE REPUBLIC OF MOLDOVA

Specialty 553.03 – CIVIL PROCEDURAL LAW

Summary of the PhD thesis in law

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CONTENT:

I. CONCEPTUAL LANDMARKS OF THE RESEARCH

Actuality and importance of the topic addressed. The modern evolution of the civil process is indispensably correlated with the notion of a fair trial. This evolution was determined and shaped by the jurisprudence of the European Court of Human Rights and has as its first point the Golder v. Great Britain case of February 21, 1975.

Twenty-two years later, another decision of the High Court of crucial importance for the modern concept of the civil process came – the decision on the Hornsby v. Greece case of March 19, 1997. This decision clearly states that the guarantees provided by Art. 6 § 1 of the Convention apply in all stages of judicial proceedings in which it is decided on "contestations regarding rights and obligations of a civil nature" without excluding the steps subsequent to the judgments on the merits.

In other words, executing a sentence or judgment, regardless of the degree of jurisdiction, must be considered an integral part of the "trial."

These two judgments of the European Court of Human Rights marked the coordinates of the notion of civil process, substantiating its modern meaning, which, as stated above, is closely related to the notion of fair process. After the pronouncement of these two representative judgments, we can discuss a Europeanized civil process composed of two phases: trial and enforcement. Both stages of a fair trial are equally important and are governed by the same principles and guarantees.

Thus, since 1997, ECtHR jurisprudence, national policy documents, politicians and lawyers, doctrinaires and litigants, as well as the mass media, speak in very categorical and persuasive terms about the importance of ensuring an effective and well-organized enforcement system, and the quotes from the well-known case Hornsby v. Greece have become a commonplace and an element sine qua non in any communication, report, motivational note or scientific article dedicated to enforcement.

Subsequently, the ECtHR jurisprudence has repeatedly reiterated that enforced execution represents the last phase of the civil process, and the importance of this stage of the civil process is currently unanimously recognized, being indisputable the understanding that efficient, prompt and uniform execution is an indispensable condition of the rule of law.

However, there have not been, at least in the national legal space, works dedicated to a deep and exclusive study of the functioning of the execution system and the organization of the activity of those who ensure forced execution - the bailiffs.

On the other hand, although it is an old profession whose existence has its origins in the first forms of what we call law, the job of bailiff was and continues to be located in a gray area of doctrinal study; the works centered on studying the organization of the respective profession and the status of the professionals in charge of enforcement being very few, in most countries of the world.

Is this due to some marginalization of the job of bailiff in the line of legal professions, which was particularly pronounced in specific periods but which still has echoes today, or is this due to an erroneous perception such as that the activity of enforcement is one lacking depth and legal intricacies, we can only assume.

In any case, we propose to remedy, at least in part, this situation through the respective work and to valorify on the history, the organization of this profession, but also to shed light on the shortcomings of its operation and regulation.

In this sense, the post-2000 concerns of several foreign and national researchers served as a good starting point for our research approach, the authors who elucidated relevant aspects for the research object being Belei Elena, Gârbulet Ioan, Hurubă Eugen, Leș Ioan, Păun Lucian, Stoica Adrian, Talmaci Roman, Yarcov Vladimir, and others.

The scientific problem proposed for solution through this paper consists of analyzing and evaluating the defining aspects of the bailiff profession to better regulate and organize it by supplementing the doctrine in this field and analytically synthesizing the challenges and opportunities for its development.

The purpose of the work consists of the complex examination of the professional status of the bailiff and the formulation of recommendations to optimize the regulation of some aspects of the functioning of the profession to strengthen its functioning.

The research objectives that we have proposed can be summarized as follows:

- analysis of the opinions of national and foreign authors regarding how to define the activity of the bailiff and its status;
- carrying out a comparative study of the leading models of organization of the bailiff profession;
- analysis of the origins and evolution of the bailiff profession, the demands on it, and the skills offered to these professionals;
- specifying the defining characteristics of the bailiff profession as a liberal legal profession;
- evaluation of the current state of affairs and the prospects of digitization of the bailiff profession;
- studying the criteria and procedures for joining the profession of bailiff in the Republic of Moldova and other states;
- the comparative and perspective approach to the competence of the bailiff;
- analysis of the impact of international instruments intended to unify the status of the bailiff on the regulation of the profession;
- the delimitation and analysis of the primary forms of control of the bailiff's activity;
- the formulation of some *legislative proposals* to eliminate the detected deficiencies and/or improve the regulation method.

The research hypothesis of the present work resides in the idea that strengthening the professional status of the bailiff is a complex action that must be synchronously carried out on several levels, targeting regulatory and status vulnerabilities. Starting from personal convictions formed by the doctrine studied but also by the practice of interaction with the respective profession, we considered that the focus should be placed on three components – admission to the profession, functional competence, and control of the activity; these define the status of a professional. The research will focus on these three aspects - they are approached from the profession's historical, current, and future perspectives.

Synthesis of research methodology and justification of chosen research methods. The present paper was developed by combining several scientific research methods, among which: the historical method (helpful in elucidating the evolutionary aspects of the bailiff profession); the comparative-legal method (applied for the comparative analysis of the regulation of some aspects of the functioning of the bailiff profession in other countries or for contrasting the regulation of the same aspect of the organization of the

profession in the work of bailiff and that of notary/lawyer, etc.); the statistical method (the use of which provided us with tangible arguments for substantiating some conclusions); the analytical method (which allowed us to dissect some important aspects of regulation and control of the profession); the synthetic method (applied to bring together information and conclusions on separate aspects into general conclusions of the work; to deduce specific trends in the development of the profession), etc.

Implementation of the scientific results - the research results will be fully implemented in the didactic and scientific process carried out within the MSU in the disciplines "Organization of legal professions" and "Civil enforcement law", but also in the administrative activity carried out by the author within the NUEO Moldova.

They could also be a support point for the initial training of trainee bailiffs, organized by the National Institute of Justice.

The carried-out research forms methodological elements for future scientific investigations. At the same time, the thesis can be proposed as a bibliographic source in the didactic process in higher legal education institutions. In this sense, the work can be consulted when studying some university courses in the bachelor's and master's cycle, etc.

The applicative value of the work lies in the fact that it offers the possibility of using the results of the study to evaluate the functioning of the national enforcement system and adjust it to some European standards. Thus, the study carried out could be helpful to:

1. *Ministry of Justice*: for the promotion of better regulations of the organization of the bailiff profession, in particular, but also of other liberal legal professions; for modeling better professional standards applicable to enforcement professionals; for extending the application of the benefits of digitization of some activities of bailiffs, which would increase their transparency and the perception of the profession (online auctions), for the promotion of solutions aimed at reducing the vulnerabilities of bailiffs, etc.

2. *The National Union of Enforcement Officers* - for a better organization of the activities of the Disciplinary Board by applying some tools to standardize its practices and professionalize the members of the Board; for outlining audit benchmarks of professional standards; for the conceptualization and promotion of more rigorous criteria and procedures for accessing the profession, etc.

3. *The scientific, didactic, and academic environment*: using systematized information in the didactic activity when teaching courses for students of the Faculty of Law, the National Institute of Justice audience, bailiffs, and trainee bailiffs.

Regarding the **implementation of the scientific results**, we will mention that some of them have already been taken over by some amendments to the Law on bailiffs (adopted on 23.12.23), which are to be implemented when developing the normative framework provided by Law no.367 of 21.12.23 and implemented by the Ministry of Justice and NUEO according to the final provisions of this Law, including the development of professional standards, the organization of audit procedures for the implementation of professional standards, the regulation by the professional body of the way of publishing job announcements sale of goods.

Also, some aspects revealed in the paper vis-à-vis the possibility of digitization of the forced sale of goods will be promoted by NUEO when carrying out the action provided for in p.3.3.7 letter a) of the Action Plan for the implementation of the Strategy regarding ensuring independence and integrity of the justice sector for the years 2022–2025 https://www.legis.md/cautare/getResults?doc_id=129241&lang=ro

The research results were materialized by contributing to the elaboration of three specialized papers, six publications in the form of articles in scientific journals, six publications in the collections of documents of scientific conferences, presented both in national and international scientific conferences.

Structure of the work: the work is structured in 4 chapters, preceded by the introduction. The paper ends with the recommendations and conclusions formulated by the author. The bibliography used as doctrinal support for the elaboration of the paper is presented at the end of the paper. The summary content of the work is presented in the annotation, written in Romanian, Russian, and English. The work comprises a total of 195 pages, 181 pages of basic text, and a bibliography with 167 titles.

Keywords: bailiff; professional standards; vulnerabilities of the profession; professional status: professional control; disciplinary control; procedural control; access to the profession; enforcement; international standards;

II. THESIS CONTENT

Chapter 1 „**Doctrinal analysis of the status of the bailiff**". Persists in society, but also in the few doctrinal works devoted to the subject, a dichotomy of the perception of the bailiff, which provides essential conceptual benchmarks for establishing the statutory identity of the bailiff. Two elements defining the status of the bailiff, which apparently are mutually exclusive, are most often used to define the professional status of the bailiff - that of "representative of the creditor" and that of "representative of the state authority." The existence of these two perceptions - located at the extremes of the evaluation of the powers of the bailiff - we explain by the different forms of organization of the bailiff profession, existing in different states, and even in the same state - at different periods or simultaneously co-existing.

Unraveling this dualistic approach would solve many problematic aspects in the regulation and functioning of the bailiff profession, which is why this aspect was targeted in the study, including the analysis through the prism of this dichotomy of national regulations. To outline the status of the bailiff, we considered it necessary to define the terms "enforcement" and "bailiff" to establish the concept and the meanings they can have. The analysis of several definitions offered by national and Romanian doctrinaires allowed the synthesis of some elements common to them.

We note that by definition provided by Art. 2 of the Law on bailiffs from the Republic of Moldova, the legislator does not limit the activity of the bailiff strictly to activities related to the execution of enforcement documents. What's more, the legal text does not even define the bailiff by the identifier of "person in charge of the forced execution.", as we see in most of the doctrinal texts. Previously, the legislator considered the "enforcement" element to be inseparable from the definition of the status of the bailiff. Thus, we notice that from 2006 to 2010, there was a substantial revision of the area of competence of the bailiff and the very concept of this profession. This conclusion is also confirmed by the provisions of a series of articles from the Enforcement Code, which charge the bailiff with activities different from the enforcement itself. Such an understanding of the status of the bailiff is in line with the most progressive European practices and recommendations.

Continuing the analysis of the legal framework, we will establish that letter a) of art. 8 of the Law on bailiffs, as the first obligation of the bailiff, indicated that the bailiff is obliged to play an **active role** during the entire enforcement process, **making an effort** to achieve by legal means the obligation provided for in the enforcement document, respecting the rights of the parties in execution procedure and other interested persons. All the elements highlighted in this legal text converge towards the appreciation of the bailiff as a representative of the state power, with the obligation to act even against the will of the creditor if the legal limits allow or impose it, ensuring equal respect for the rights of the creditor, as well as the debtor.

A very special "bailiff-creditor" relationship appears when the state is the creditor of the enforcement procedure. Or, in this situation, apparently, the dichotomy we were talking about above fades until it disappears, the bailiff being the exponent of the state power that enforces for the benefit of the state.

The opinion that we rely on is that the bailiff is still primarily an exponent of the state - or the creditor's will alone is not sufficient to trigger the activity of the bailiff, it (the will) becoming mandatory from the moment of possession of an enforceable document - which is derived from state power. However, the bailiff's obligation to act in the interest of the creditor, set forth in the enforcement document, obliges him to specific actions on his behalf, apparently assimilating him to a representative of the creditor. Summing up the above, we consider that *the bailiff is the representative of the public power, charged with carrying out some duties of public interest, including those related to the imposition of the execution of obligations stipulated by the enforcement documents, acting within the limits of the Law and the request of the interested person.*

The definition we proposed above, we believe, places the two elements discussed above in a correct relationship, identifying the bailiff with a representative of the state force, and the will and interest of the creditor (the interested person) appear as determinants of "activism" of the bailiff, he not being able to exceed the limit of the requests of the person in whose interest he exercises his activity.

Another criterion according to which some researchers define the way of organizing the bailiff profession relates to **the degree of its closeness/subordination to the executive or judicial power** [10]. This approach derives from the principle of separating the three powers in the state and the need to frame the enforcement activity in one of them [21].

In this sense, there are two opposing visions of understanding the place and role of the bailiff - as part of the administrative/executive system or as part of the judicial power - and a conciliatory one, which states that the bailiff combines both values.

The first opinion, the one that considers the enforcement activity as an **administrative activity**, is based on the idea that judging cases is the expression of the state's jurisdictional function, and enforcement - belongs to the state's executive function. In the view of the partisans of this idea, exercising the function of jurisdiction only means judging and pronouncing the court decision (*ius dicere*). It does not include the part of carrying out the court orders [8].

The second opinion (dominant, by the way), which sees **enforced execution as an activity with an implicit jurisdictional character**, has as a benchmark the following considerations:

- the form of organization of the majority of forced execution activities is specific to the civil process, with similar guarantees and principles - we refer here to the form that the bailiff's documents take (orders, protocols, etc.), the principles of the procedure (equality, legality, etc.)
- enforcement, throughout its entire course, is carried out under the jurisdiction of judicial control at the request of the parties or ex officio by virtue of its obligation. So, even if, with the pronouncement of the judgment, the court divests itself, enforcement, as a phase of the civil process, remains under the court's potential (or mandatory, in some cases) control.
- the court, in continuation of its jurisdictional function, resolves any procedural incident arising during enforcement and, in some situations, exercises ex-officio control of the legality of enforcement actions.
- there are enforcement activities that can only be carried out with the competition/authorization or under the control of the court
- the treatment of enforced execution as part of the right to a fair trial, enshrined in the broad jurisprudence of the ECHR
- enforced execution represents the "product", the concrete implementation of the court decision, the purpose of enforced execution being identical to that of justice - restoring a person's rights and the rule of law.

In support of the above opinion, a Romanian author, Professor Graţian Porumb, stated that enforcement does not constitute a different institution from the civil action but appears as a successive phase of the civil process to obtain the final decision. To consider forced execution as an institution distinct from civil action means to empty the content of the civil action from the concrete means of effective realization of recognized rights [17].

Other Romanian authors [16] point to the fact that the same public interest served by the professions of lawyer or notary is exercised differently by the bailiff, i.e., his activity "takes place in the context of the civil process, through which the jurisdictional activity of the court is carried out". The additional arguments brought by them highlight the procedural similarities of the activity of the bailiff and the magistrate - such as the fact that neither one nor the other starts their activity on their initiative, but only upon notification/request, their activity is subject to their coordination and supervision from some public authorities, they can be challenged, and their acts have procedural effects and are subject to appeal.

However, the term "assistants of justice" was rejected by many doctrinaires [19] for the reason that it carries a connotation of subordination (which is foreign to the profession and contrary to the principle of the independence of the bailiff's activity), being more readily accepted the term of "partners of justice" (a term that includes lawyers, bailiffs, notaries, etc.)

According to the doctrinaires in the field of law [5], to whom we align, the bailiff exercises in the second phase of the civil process the role that the judge has in the first phase of the process, even if their attributions differ essentially. However, enforcement is of particular importance for the creditor, as it is the last way to exercise the right, in case of opposition from the debtor, and the bailiff is the only person authorized to carry out the activity of enforcement [2].

Another difficulty in capturing the legal nature of the bailiff profession and implicitly defining its status is related to the lack of a clear vision of the specific work of this profession. Indeed, we cannot fit the activity of the bailiff into classic labor relations. The researcher Nicolae Sadovei framed the activity of freelancers in atypical work relationships (corporatist work relationships) [18]. The same author considers that the legal professional-corporate labor relations are established between the self-employed and the

associative professional body. We could accept this opinion for some aspects of this report (the control exercised by the professional body, the establishment of rules for exercising the profession, etc.) but not for all (or the work is not performed for the benefit of the professional body and neither remunerated by it, nor it is not provided on behalf of the professional body, but in its name; the infrastructure necessary for work is also the expense of the freelancer, etc.). The given subject is open to discussion and will remain the same until the legislator clearly outlines specific aspects of the operation of the liberal professions.

As the same author mentions, more confusion is generated by the fact that liberal professions, not being commercial activities, are nevertheless "contaminated" by aspects specific to commerce - or, "liberal professions are governed by the same laws of the market economy that are usually stronger and more influential than positive laws, "produced" by state authorities."

Chapter 2 „Statute of the bailiff - from origins to modernity", includes several aspects of research. The chapter begins by synthesizing information on the history of the development and institutionalization of forced execution and the appearance of the first professionals in this field. The foray into the profession's history contributed to the crystallization of a core of the profession, unchanged over time, which constitutes its essence, but also detected trends in its organization and how they influence the status of the bailiff.

At first appearance, the forms of enforced execution did not involve the participation of a professional and were carried out directly by the creditor. The legal institution of forced execution, moreover, has been known since the era of the earliest forms of human organization. In its embryonic stages, forced execution had as its object the physical coercion of the debtor (*in personam*) and did not target the assets owned by the debtor (*in rem*); it constituted a severe and defamatory sanction on the debtor [20]. The origins of forced execution are attributed to Romanian law, having at that time a criminal and extrajudicial character.

The *distractio bonorum* procedure (which assumes that the creditor seizes all the debtor's assets but sells only the goods necessary to cover the pursued claim) represents a form closer to the essence of today's foreclosure. This is also remarkable in that it is precisely in it that public enforcement bodies, called curator bonis distrahendis, appear for the first time. This moment is a crucial one in the evolution of forced execution, marking some essential aspects specific to modern forced execution. These are: giving up private foreclosure by institutionalizing foreclosure; the appearance of a professional dedicated to enforcement (curator bonis distrahendis, which was a public body similar to today's bailiff); renouncing the extrajudicial character of the execution; establishing the proportionality of the enforcement of the debtor's assets. However, despite these significant developments, corporal coercion as a method of forced execution of civil debts has been maintained in some countries, such as England, France, Germany, and Austria, until the modern era [8].

In Romanian law, the oldest forms of enforced execution remain vaguely outlined. The first more precise regulation in the matter of forced execution can be found in Ipsilante's Pravelniceasca Condică from 1780 in Wallachia and Alexandru Mavrocordat's Sobornicescul Hristov in Moldova from 1875.

The status of **„porters" or court agents** is for the first time sufficiently clearly regulated by the Judicial Organization Law of July 9, 1865, which establishes court bailiffs appointed as bailiffs at each court, with "good behavior and some education" as conditions of admissibility.

After the Great Union of 1918, the provisions of the Romanian Code of Civil Procedure of September 9, 1865, became applicable on the territory of Bessarabia, which regulated the execution of the court decision after the investiture with an executory formula. At that time, ***porters*** **were considered magistrates. They were part of the judicial order, along with circuit judges, members of any rank of the county courts and Courts, members of any level of the public ministry, and trainee magistrates**.

After the **entry of Bessarabia into the composition of the Union of Soviet Socialist Republics**, forced execution and the organization of the profession of bailiff in the Bessarabian area was under the auspices of the legal regulations in the USSR area. During the Soviet period, the enforcement procedure was regarded as the last part of the civil process, a fact that decisively determined its institutional development and the doctrinal approach to enforcement from that period.

Special attention was paid to the strengthening of the forced execution system in the post-war period, when, for objective reasons, substantial difficulties arose in the execution of court decisions. During that period, the role of the Prosecutor's Office in executing court decisions was particularly emphasized. The prosecutors exercised control over the legality of the bailiff's actions. The Prosecutor General of the USSR and those of the Union Republics had the right to suspend the execution. However, the prosecutor could not unilaterally annul the act of the bailiff, but he had the right to contest any of his acts.

The proclamation of the independence of the Republic of Moldova on August 27, 1991, started a new stage of development of the state and national Law. The judicial organization remained unchanged in the first years after the Declaration of Independence, operating under slightly adjusted Soviet regulations. Only later will the Republic of Moldova assert its independence and sovereignty by adopting its legislative-procedural framework.

Another stage with particular values in the development of the enforcement system is the one whose beginning dates back to 2002 - when an autonomous structure was established, incorporating all the judicial executors in the Republic. The special significance of this stage resides in the definitive exit of the bailiffs from the status of the court's administrative staff. By Government Decision No. 34 of 15.01.2001, the Enforcement Department was created to organize and administer the enforcement activity [6]. This was a public structure subordinated to the Ministry of Justice, which dealt with the execution of judgments, decisions, conclusions, and sentences issued by the courts regarding civil, contraventional, and non-privacy criminal cases and other decisions provided by Law.

As a first step in reforming the bailiff profession, the defining legal framework for enforcement activity was adopted - the Law on bailiffs, entered into force on 23.07.2010 (voted on 17.06.2010) and the new version of the Enforcement Code adopted by Parliament on 02.07.2010 and entered into force on 07.09.2010. These two legislative acts conceptually redefine the status and organization of enforcement activity.

Referring to *the competence offered to bailiffs*, seen through the lens of the analysis of the evolution of the profession, we were convinced that the core of the professional concerns of the bailiff remained constant over time (the duties of tracking and forcible collection of assets; communication of documents; collection of taxes to the state - are what constitute the core of the professional activity of the bailiff), but other non-coercive attributions were added to him. This trend is current even now.

Another conclusion from the historical analysis was that *the bailiff's standard of professional training (requirements regarding the necessary studies)* experienced spectacular fluctuations over time -

from the title of doctor of law to "some education" or four graduated classes. From the analysis, we deduced that there is no correlation between the decrease in the training census and the reduction of attributions, but rather, it is a result of external factors - such as the economic-social situation of the era.

A valuable conclusion, deduced from the historical analysis of the requirements for exercising the profession of bailiff, was the fact that from ancient times, those who practiced it were required to provide proof of solvency and/or good reputation (either in the form of amounts deposited as and guarantee and kept intact during the exercise of the profession, either in the form of eliminatory criteria, if in the past the person had been the subject of bankruptcy procedures, etc.).

Going beyond the stage of the evolutionary study of the organization of the bailiff profession, in **paragraph 2 of chapter II**, we conducted a **comparative analysis of the models of conceptualization and organization of the bailiff profession in the modern era.** The existing models of the enforcement system **organization can be classified into three groups: state system, private (liberal) system, and mixed system**. Professor A. Uzelac identified, depending on the incorporation or lack of power, the following forms of organization of the enforcement system: judicial enforcement system; execution system - part of the executive power; private enforcement system (liberal) [32]. Professor B. Hess classified enforcement systems, starting from the criterion of the number of bodies that perform these functions, and categorized them as centralized and decentralized. The same professor classified enforcement bodies, depending on the role of the bailiff in them: systems oriented towards enforcement through the bailiff, oriented judicial systems, mixed systems, and administrative systems [31]. Professor V. Yarcov offered similar classifications - according to the criterion of proximity to the judicial power - enforcement systems can be part of the judicial system or part of the administrative system and according to the criterion of the presence of the private element - he classified them into state, mixed or non-budgetary/private systems [29].

As a percentage representation, according to the data available on the web page of the UIHJ, the countries that have chosen to organize their enforcement system in a liberal status predominate, constituting more than 65% of the total (by way of example we mention: Estonia, France, Hungary, Portugal, Lithuania, Belgium, Romania), 18, 37% of countries have the profession organized in public status (Italy, Russia, Norway, Sweden) and mixed-status – 16.32% (Kazakhstan, Bulgaria) [23].

Also, in this chapter, **in paragraph 3**, we placed the profession of bailiff in the patterns of a liberal legal profession. We outlined *the defining features that imprint the status of the bailiff on adherence to this organizational model*. The essential elements of a liberal profession mainly relate to the following:

- the independent and non-interference way in which a liberal profession should be exercised;

- the existence of deontological/professional ethics codes, of organizational and functioning statutes;

- the specialized control of the state and/or a professional body regarding the legal exercise of a liberal profession;

- membership of a professional order with regulatory duties of the profession - this last aspect being intensively discussed by both doctrinaires [13, 14] and professionals [7, 23].

The analysis of the operational requirements of the bailiff profession, as well as the liberal profession, not only outlined the statutory profile of the self-employed bailiff but also allowed us to compare it with the status of other self-employed professionals in the field of justice. The most significant conclusion

of this analysis is that even if there are certain standards specific to the organization of all liberal legal professions, the degree of "liberalization" is different for these professions. Unsurprisingly, the profession endowed with coercive duties - such as the bailiff, is the least liberal of the liberal ones. This fact gives the profession certain versatile statutory characteristics, oscillating between those specific to the public office and those specific to the liberal profession.

Noticing the lack in the national normative framework of any regulations regarding the concept of "self-employed" or "liberal profession", we believe it is necessary to develop a framework law that would establish rules of operation, demands, and guarantees common to all these professions, supported justice. These regulations would create a genuinely fair and predictable competitive operating framework for these professions. They would discourage the tendencies of each profession or some politicians-representatives of the professions to establish regulations that favor one profession at the expense of another. This regulation could possibly also facilitate the possibility of moving from one profession to another for people with the necessary qualifications and would de-casteize the guilds.

Chapter 3 of the work **"Access to the profession of bailiff and its exercise in the Republic of Moldova**" begins with an analysis of the procedures for joining the profession of the bailiff. The criteria for promotion to the position of bailiffs constitute a defining condition to ensure an independent, responsible, and professional system. According to the provisions of art. 4 of Law no. 113 of 17.06.2010 on bailiffs, a bailiff can be a person who meets several conditions. Thus, among them are listed some general requirements such as being a citizen of the Republic of Moldova, possessing the state language, not reaching the age limit of 65 years, and meeting the medical requirements for exercising the function. [11] At the same time, Law no. 113 of 17.06.2010 imposes the following requirements for the future bailiff: "he is not subject to a judicial protection measure in the form of guardianship; […] is licensed in law; completed the internship under the conditions of this law; has an impeccable reputation; passed the competition for admission to the profession of bailiff." [11] The respective criteria were analyzed, particularly the irreproachable reputation criterion, which has recently been modified and is becoming more restrictive.

We believe that the admission stage to the profession could be improved by including a psychological evaluation of the candidate and introducing elements to evaluate his managerial skills. Even if the profession of a bailiff is a legal one, the two aspects of assessing candidates, which we propose, are not alien to it at all. However, the profession of bailiff involves a constant situation of the bailiff **in the middle of a foreign conflict**. This conflict, even if it is resolved by a court solution, is still ongoing for the parties. So it takes, at a minimum, (1) mental stability to withstand these stresses, (2) conflict management skills, and (3) high concentration capacity to work under stress and tension. Another aspect, no less critical - is that the bailiff, in his activity, **has foreign funds in custody**, often massive amounts. When he lacks managerial skills and cannot properly organize and manage his office, there could be temptations to maintain the office, "borrowing" money from creditors. We therefore believe that testing these skills should be part of the admission procedures as a bailiff.

In support of this idea, we will mention that in Lithuania, the competition committee for admission as a bailiff must necessarily include a person with higher education in psychology and a person with higher education in economics [27].

Moreover, there are countries (the Netherlands, for example) where access to the profession of a bailiff is conditional on the presentation of a plausible plan for maintaining the office (business plan), which is analyzed by the rank-and-file examination committee with knowledge and personality candidates [9]. Although this requirement could be treated as a discriminatory criterion, which conditions access to the

profession on the existence of start-up capital, we consider it partially justified for the reason that the solvency and good managerial qualities of a bailiff shelter (relatively) the money of creditors who they are entrusted to him.

To outline the specifics of entering the profession of bailiff, we also analyzed the requirements imposed by the legal framework for other liberal professions, as well as those applicable to bailiffs from different states, outlining specific suggestions for improving the requirements and formulating them in the Law.

Paragraph 2 of Chapter III deals with the powers of the bailiff, which constitute a substantial component of the professional status. Referring to the competence of the bailiff, we will discuss two aspects: its material competence and territorial competence. Professor I. Leș asserted that bailiffs have complete competence in enforced execution [12]. Indeed, in the most general terms, the competence of the bailiff is the forced execution of the enforceable documents, or, in terms of the Enforcement Code, it boils down to "contributing to the realization of the creditors' rights recognized by an enforceable document presented for enforcement, in the manner established by law" [2] which is carried out only by the bailiff, a fact also reconfirmed in the provisions of art. 2 of Law no. 113 of 17.06.2010 on bailiffs.

From how the norms cited above are formulated, the idea emerges that the bailiff would have the exclusive competence to forcibly execute the enforceable documents. In reality, things are not quite like that. This competence also rests with other authorities – at least for some enforceable documents. Thus, according to p.14) of art. 129 Fiscal Code, the forced execution of the fiscal obligation is defined as "actions undertaken by the State Fiscal Service for the forced collection of the arrears". Similarly, the Customs Code provides in art. 129 that "Forcible enforcement of the customs debt is carried out by the Customs Service." [4]

Thus, the provisions of the two codes mentioned above - the Fiscal Code and the Customs Code - contradict the rules of the Law on bailiffs regarding the exclusive possession of the power of forced execution. This inconsistency of the legislator is harmful on two dimensions - first, it creates confusion and legal collisions - the bailiffs refusing to receive the enforceable documents which, according to the cited norms, belong to the competence of the tax or customs body, and the employees of these authorities challenge them in the courts, and the second - on the financial side, the resources of the national public budget could be more rationally used, than for court hearings, references and evidence, due to the non-elimination of these overlaps of powers.

Regarding the **territorial competence** of the bailiffs in the Republic of Moldova, it is regulated in a particular way compared to other states with a similarly organized enforcement system. The territorial competence of bailiffs, as regulated by the national legislator, has three levels of extension.

The evolution of the bailiff profession indicates specific areas of **competence formed over time.** Among them, we note the following:

- enforced execution of court decisions,

- enforced execution of other (extrajudicial) acts that impose an obligation and lend themselves to enforced execution;

- the communication of documents (we see it present in the Romanian space since the Middle Ages);

- the (forced) sale of goods

These are the coordinates of the bailiff's activity consolidated for centuries. They constitute the essence of this profession and are indispensably related to this activity, regardless of the status of the professional exercising them - state employee or self-employed. However, over time, some of these activities break away from the monopoly status of the bailiff profession and migrate to other professions. On the other hand, some of the activities that were the prerogative of different occupations are appropriated by the bailiff profession. We are witnessing an expansion of the skills of some professions, often beyond the scope of other professions. The trends that we have detected through this study relate to **the development of the area of competencies, the fading of the exclusive coercive nature of the activity of the bailiff**, to give - directly or veiled - new valences to the profession of bailiff sometimes inappropriate to its activity.

European good practices in the matter of organizing the bailiff profession predictably influence the national regulations of this activity, which is why **in paragraph 3 of chapter III, the main international regulatory instruments aimed at unifying the status of bailiffs** were also analyzed. We referred primarily to Recommendation No. 16, regarding the execution of sanctions applied in the community, adopted by the Committee of Ministers on October 19, 1992, and Recommendation No. 17, on the execution of court decisions, adopted by the Committee of Ministers on September 9, 2003. The first concerns the execution of sanctions and criminal/contravention measures, while the second is focused on the execution of court decisions in civil matters.

In December 2015, CEPEJ developed a *Good practice guide on the enforcement of judicial decisions* [9]. This guide is structured in 4 compartments that refer to:

- Tasking bailiffs with execution processes.
- Ensuring that the parties fully understand the process of enforcing court orders.
- Ensuring the quality of the procedures for executing court decisions and promoting the use of common legal terminology in executing court decisions.

For this paper's purposes, the recommendations in the first section of the guide are of interest.

In June 2015, in Madrid, Spain, during the proceedings of the XXII International Congress of Bailiffs with the generic title "The Bailiff: The Connection between Law and Economy, A New Approach to Enforcement", the Global Code of Enforcement was approved [26].

The purpose of the Global Code of Enforcement is to adopt a set of principles capable of harmonizing national enforcement laws. It comprises some 34 articles, five parts dedicated to fundamental principles, enforcement agents, judicial authorities, general rules on enforcement measures, and general provisions on enforcement measures [30].

We share Professor Leș's idea that adopting The Global Code of Enforcement represents a particularly useful legal and scientific approach for harmonizing national legislation concerning enforcement. That code corresponds to a significant social and economic interest, facilitating international cooperation and the circuit of material values without border limits [28]. At the same time, it represents an effort to synthesize the most important principles of enforcement, recognizing the existence of a genuine right of enforcement.

Also, in this chapter, we referred to the prospects of digitalizing the execution activity. We followed the winding course of implementing an electronic work tool intended to record and manage execution files. We set out to see how the increase in technology involvement influenced the quality of work of the enforcement system as a whole by comparing the indicators of the execution rate for the first semester of 2019 compared to the same period of 2020. The statistical indicators indicate that the rate of document executions executed in 6 months of 2020 is decreasing (slightly) compared to the similar period of 2019.

Thus, it seems that enforcement efficiency is not directly dependent on the automation of work processes. We derive from this the idea, of which we are convinced followers, that forced execution includes an inter-human communicative component, which directly determines the efficiency of the execution.

The expansion of information technologies and artificial intelligence in the field of justice eminently raises ethical and moral issues, which the European Ethical Charter for the use of artificial intelligence in judicial systems, developed by CEPEJ and adopted at the 31st plenary meeting (Strasbourg, 3-4 December 2018). This document sets out principles to guide policymakers, lawyers, and justice professionals in managing artificial intelligence's rapid development and application. This Charter establishes five fundamental principles that will guide the processes of developing and implementing artificial intelligence in justice, on which we stopped with a brief analysis.

We appreciated that digitization would still offer numerous advantages to the enforcement activity in the Republic of Moldova, in particular on the following aspects:

- **automating the execution of enforceable documents**
- **automation of communication between bailiffs and banking institutions**
- **communication with the parties to the enforcement procedure**
- **automating the work processes of the enforcement office**
- **depersonalization and digitization of forced sale procedures** - foreclosure proceedings are among the most sensitive and vulnerable aspects of enforcement proceedings. The sale of goods is the method of execution that arouses - and not infrequently justified - the most suspicions and complaints. Implementing e-auctions would be the best solution to remove doubts and accusations of corruption.

Many EU states already apply this method of sale in enforcement proceedings: Austria, Croatia (for enforcement proceedings relating to immovable property), Estonia, Finland, Hungary, Italy, Latvia (for enforcement proceedings pertaining to immovable property), Portugal, Spain, the Netherlands (for enforcement proceedings relating to real estate), but also ex-USSR countries such as Ukraine and Kazakhstan.

We dedicated a compartment of the research (paragraph 4 of chapter III) to the detection of the vulnerabilities of the status of the bailiff and the opportunities for its consolidation, considering that they are closely related - the opportunities for consolidation being a response to the vulnerabilities. We have classified the detected vulnerabilities into social, procedural, financial, image, and perception vulnerabilities, vulnerabilities associated with the lack of instant and constant control of the activity, and vulnerabilities of psycho-moral overload.

When analyzing these vulnerabilities, we took into account both the social, economic, and legal aspects that have an impact on the profession and formulated suggestions to remedy or reduce the vulnerabilities (for example, by clearly defining the social security status of bailiffs, imposing restrictions on the share of a creditor in the work portfolio of a bailiff, to reduce the professional's dependence on a single client; adjusting to the rate of inflation the amount of fees for enforcement actions and the costs of the

enforcement procedure; inclusion in the content of the Law on bailiffs courts as grounds for termination of the activity of the bailiff of the inability to maintain the office, etc.)

Chapter IV "Control of the activity of the bailiff in the Republic of Moldova". The activity of the bailiff is carried out as a freelancer. The free qualifier in the phrase "freelancer" induces - for the uninitiated - the idea of a profession out of control. But let's not confuse a liberal profession with a libertine one. We believe liberal professions are subject to more complex control than lawyers - civil servants. And the sources of this situation are explainable, even if apparently the conclusion would be paradoxical.

Moreover, considering that in the case of bailiffs, not only the activity carried out by them is of public interest, but also their statutory quality is identified with a part of the state's coercive force, the control standards and requirements regarding liability for possible slippages are higher [15].

The analysis of the national legislation requires the following classification of the types of control of the bailiff's activity: professional control - which aims at the way of organizing the activity of the bailiff and his office; disciplinary control - which considers the assessment of the existence or lack of any disciplinary violations in the activity of the bailiff; jurisdictional/procedural control – which concerns procedural aspects of the enforcement activity of the bailiff; fiscal control - which concerns the activity of the bailiff as a taxpayer (the latter aspect was not the subject of research in this work).

The notion of disciplinary control is inseparable from the notion of discipline, which, in national legislation, has direct regulations in labor law. Thus, the Labor Code [3] contains rules that define labor discipline and the methods of ensuring it.

According to the univocal understanding of the doctrine, the disciplinary responsibility (which constitutes the subject of paragraph 5.1 of the thesis) arising from the professional's disciplinary control is specific and applicable to certain employment relationships. However, in the case of the bailiff, we are in the presence of atypical work relationships. This fact gives a special specificity to the procedures for ensuring discipline applicable to bailiffs. In contrast to labor legislation, we note that Law 113/2010 does not regulate two methods of ensuring labor discipline - the incentives and the penalties. Law 113/2010 does not provide for any way to stimulate bailiffs, including only sanctioning procedures.

Disciplinary control, by its essence, is meant to penalize and discourage the non-compliant behavior of the bailiff without having the possibility of repairing any error or damage caused by the bailiff's activity. Moreover, the purpose of disciplinary liability, unlike the civil-patrimonial one, is not reparative, to cover an injury caused, but to ensure a qualitative public service, disregarding the injury to a specific person. For this reason, the condition of the existence or absence of damage is insignificant for the disciplinary liability of the bailiff.

Following the analysis of the characteristics of the bailiff's disciplinary liability in the Republic of Moldova, we determined that the circle of subjects with the right to initiate a disciplinary procedure is more comprehensive than in most other states. Thus, the national legislator was much more open to litigants, leaving them the possibility of directly reporting to the Disciplinary Board, something that did not happen in other legislations (Romania, Latvia, Lithuania, etc.). We have argued in the chapter's content the reasons why we are skeptical about these regulations. We believe that the recommendation contained in Opinion No. 3 of the Consultative Council of European Judges (CCJE) on the principles and rules regarding the professional imperatives applicable to judges and, in particular, deontology, incompatible behaviors, and impartiality, which says the following: " [22]. An important question is whether action can be taken by

people who claim to have suffered as a result of a judge's professional error. **Such persons shall have the right to submit any complaint to the person or body responsible for initiating disciplinary action. But they may not have the right to personally initiate or insist on disciplinary action.** There has to be a filter. Otherwise, judges can often find themselves enduring disciplinary proceedings initiated by disgruntled litigants." [87]. Anticipating that this recommendation refers to the judge, we will mention that in terms of guarantees of independence and respect for the procedural status, the bailiff, the main actor in the second phase of the process, should benefit from similar regulations.

To make the work of the disciplinary body of bailiffs more efficient, we believe that it would be beneficial for the non-executive members to benefit from training at the beginning of their mandate, which would mainly cover the enforcement procedure and the organization of the bailiff's work, but also the regulations regarding administrative procedures (the activity of the Board being under the auspices of the Administrative Code). However, leaving these things to the individual self-training of each member is not correct either in relation to the members of the Disciplinary Board or with regard to the bailiffs and litigants who will be targeted in the disciplinary proceedings. In this sense, it would be beneficial to develop **a disciplinary procedure guide**; including helping the members of the College comply with the rigors of art. 137 of the Administrative Code.

Law no. 113 of 17.06.2010 on bailiffs provides for 15 disciplinary misbehaviors. Two of the 15 disciplinary misbehaviors (letters c) and f), art. 21, paragraph 2 Law 113/2010) refer to the professional ethics of bailiffs; the other 13 acts provided for by art. 21, paragraph 2 of Law 113/2010 are classic disciplinary misbehaviors, the qualification of which differs only by the form of guilt[1].

Also of interest are the findings of the authors Grosu Adrian and Vasile Josan, which are contained in a study on the limits of judicial control when contesting the decisions of the Disciplinary Board of Bailiffs, published in the collection of papers of the international conference "Civil Process and Enforcement" 2018, which propose a grouping of the grounds for sanctioning the bailiff into three basic categories:

I. Disciplinary misbehaviors related to the rights and obligations of the parties in the enforcement procedure (e.g., failure to communicate the documents from the enforcement procedure to the appropriate participants);

II. Disciplinary misbehaviors related to the rights and obligations of the bailiff in relation to NUEO and the other professional bodies (e.g., failure to present the materials requested by the Disciplinary Board);

III. Disciplinary misbehaviors related to public order and the proper performance of the bailiff's activity as an exponent of the public service (e.g., unjustified absence from the office for more than two consecutive working days).

Paragraph 4.2 refers to organizational-professional control. Although called free, the professions of notary and bailiff are subject to triple control - their acts and activity are controlled by a state institution (most often - the Ministry of Justice), of the professional order, belonging to which it is mandatory - Unions/professional associations and, in the procedural sense - by the courts). A specific feature of these professions is that the legislations of all states delegate part of the task of control to professional bodies, thus establishing self-regulation of the profession.

In the Republic of Moldova, the legal norm that outlines the core of professional control (but does not exhaust its entire area) is found in art. 33 of Law 113/2010, entitled "Supervision of bailiff's activity". According to this article, the Ministry of Justice and the National Union of Enforcement

Officers exercise the supervision of the bailiff's activity. The professional control of the bailiff's activity knows two forms - a dedicated control and a generalized control of current monitoring. The aspects included in professional control are incredibly vast.

According to CEPEJ, the quality of execution must be encouraged by the member states invited to "*establish standards/criteria of European quality*". Such quality standards must be periodically assessed "*through an independent evaluation system and random on-site inspection*" to measure the "*efficiency of enforcement services*".

In the Republic of Moldova, in 2016, the activities of developing professional standards for bailiffs started, and draft normative texts were even proposed. However, they remain at the draft stage, although as a result of the changes made in Law 113/2010, in force from 17.01.24, the need to develop professional standards is the responsibility of the Ministry of Justice, which is to develop and approve them.

Chapter 4.3 is dedicated to **procedural control.** When discussing procedural control, we automatically associate it with judicial control. For the most part, that association is fully justified, or, as a general rule, the act of the bailiff can be challenged in court according to the procedures established by the Enforcement Code and the Civil Procedure Code. However, there are aspects of procedural control entrusted to the professional body.

Control mechanisms exercised by the court over the actions undertaken in the context of forced execution cover, broadly speaking, three aspects related to the enforcement procedure:

1. Carrying out activities that ensure the course of the enforcement procedure;
2. Authorization/disposition of enforcement measures;
3. Exercising control over the legality of acts carried out by the bailiff.

The control of the legality of the bailiff's acts is exercised *ex officio* by the court, as well as upon notification to the court through the appeal submitted by the participant in the enforcement procedure or the third party whose interests are affected by the acts of the bailiff.

The establishment of the exceptional, ex officio control is justified by the legislator's intention to check, even in the absence of a notification, the correctness of the sale/transfer procedures for the payment of the debt of the goods, whose value is usually significant. However, that intention was in some places desecrated by how this control is carried out - in some situations, excessively formalistic, and as a result, the enforced execution is thwarted; in other conditions – excessively long (even if the law provides for the examination in 5 days, there are known cases that lasted years (!!!)). Thus, the court's ex officio intervention in this process causes the execution to be delayed, that is, it has the opposite effect to the expected and necessary one. For this reason, we would consider it helpful to review the regulations of the Enforcement Code to exclude this form of advance control.

In the same way, considerations regarding the usefulness of introducing the state tax for contesting the acts of the bailiff were presented. It is encouraging that the legislator has already regulated this through the State Tax Law no. 213 of 31.07.23.

Other aspects of improving judicial control were also indicated in this chapter - among which we will mention the specialization of judges in matters of forced execution, the exhaustive regulation in the Enforcement Code of the grounds for nullity of the bailiff's act (or they are not indicated in the respective normative act), etc.

III. GENERAL CONCLUSIONS AND RECOMMENDATIONS

The study carried out allowed us to formulate a series of conclusions, summarized below, depending on the subject/objective to which it refers:

1. The conclusion, derived from the study **of how the doctrine defined the legal nature of the status of the bailiff**, we deduced that the enforcement activity combines elements of administrative and jurisdictional activity, with the jurisdictional aspect still prevailing. As a derivative of this conclusion, we deduce that the bailiff is also located closer to the judicial power than to the executive - even if, as we showed in the last chapter of the thesis, it is subject to control by the Ministry of Justice and maintains numerous connections with it at the stage of joining the profession, suspension or termination of activity and disciplinary liability. However, we consider that this subject is not exhausted, constituting in itself a subject of research, even exclusively dedicated, because it requires a multidimensional approach (through the lens of labor law, administrative, criminal, procedural-civil law, etc.).

2. Regarding the doctrinal controversy regarding whether the bailiff is a representative of the creditor or a representative of the state, the conclusion we formed as a result of the research is that the bailiff identifies with the coercive force of the state and not with the will of the creditor, and his perception as a "representative" of the creditor damages the efficiency of the enforcement procedure and the public perception of the profession, being also in contradiction with the principles of the enforcement procedure. Thus, through our contribution, we formulated in chapter 1 of the thesis (page 25) a definition for the bailiff, which, in our opinion, brings together all the elements that define its status ("The bailiff is the representative of the public authority, charged with carrying out some duties of public interest, including related to the imposition of the execution of some obligations stipulated by the enforcement documents, acting within the limits of the law and the request of the interested person.")

3. One of the conclusions that emerged as a result of **the study of the three existing worldwide models of the organization of the bailiff profession** is that the way the profession is organized and conceptualized is strongly influenced by the legal culture of the state, its economic situation, the extent geographical and other criteria, there being no ideal model to recommend. All models of professional organization have the potential to ensure effective activity - the success of enforcement activity is only partly determined by how the profession is organized. However, in the case of the state's weak financial potential, the liberalization of the profession is the indicated solution. Also, in this aspect, we concluded that in the jurisdictions where the bailiff is a state official, his legal status is better defined, the social guarantees are more pronounced, and the conditions for exercising the position are more stable and predictable.

4. **The analysis of the origins and evolution of the bailiff profession**, the demands on it, and the skills offered to these professionals gave us interesting and valuable information on how the skills of the profession evolved and the training requirements of those who practice it - there were periods when for to enter the profession, a doctorate in law was required. Still, there were others when "some education" was considered sufficient. In this sense, the conclusion we formed is that it is not the complexity of the profession that determines the requirements for the candidates but the social, economic, etc. contexts and conjunctures. In the same way, we noted from the analysis made in this chapter that from the earliest times, those who practiced as bailiffs were required to establish material guarantees to cover possible damages - either in monetary form or through certain goods and warranties related to persons. This requirement is preserved even today, taking the shape of mandatory professional insurance. Still, we appreciate it as diluted, and we recommend strengthening the requirements of good reputation and financial discipline (p. 71), thereby offering our contributions to establishing candidate selection criteria. The general conclusion formed following the historical retrospective analysis of the profession, related to the objective of the research, is that the attribution, in some periods, in the Romanian space, of the profession of bailiff to the order of magistrates constituted a significant contribution to the consolidation of the status of bailiffs, imposing demands and higher professional standards of this profession.

5. In the Republic of Moldova, the status of the bailiff **is defined by the combination of features typical of all liberal professions and those specific to this profession only** (the latter deriving in particular from the coercive powers given to bailiffs and those for managing foreign funds). Thus, the profession of a bailiff is an atypical liberal profession compared to that of a lawyer or mediator. The legislator, however, is

not always consistent in terms of approaching the status of the bailiff - thus, in terms of criminal liability, the bailiff is assimilated to a public person (art. 123 Criminal Code), this being the only point of contact between the bailiff and the civil servant (or, according to the definition provided by the mentioned article, the notion of a public person also includes civil servants). Thus, the civil servant's criminal liability regime is also extended to the bailiff, but the prop of guarantees the state offers public servants - is not.

In analyzing the defining features of the bailiff profession, **we proposed a classification of them** into general parts derived from belonging to the liberal professions and those intrinsic to the profession, offering in this way a **personal contribution** to the study of this aspect. (see p. 82)

In the same way, we believe it is useful and would recommend drafting a framework law for the organization and operation of the liberal legal professions, which would strengthen their status and eliminate the regulatory syncopes that exist today.

6. The conclusion formed from the analysis **of the competence given by the legislator to the bailiff** is that they converge towards the idea that his status is that of a person endowed with public power. At the same time, we deduced from the research done on this aspect (1) the tendency to expand the competencies, sometimes even beyond the competencies traditionally given to other professionals (judges, notaries, etc.) and (2) the tendency to expand the profession in non-coercive fields, by obtaining the attributions of offering different services. We appreciated that trend as positive, proving the dynamism of the profession, but also putting professionals from the justice segment in a healthy competition, which would offer the highest quality services to citizens. In this sense, as the author's contribution, additional to the analysis carried out, a series of lex ferenda proposals were formulated (p. 69, 178) to provide certain new powers to bailiffs. Another conclusion related to the research on the skills of bailiffs is that by expanding non-coercive services, the image and social perception of the profession improves. Moreover, this non-coercive extension of bailiffs' powers is also a recommendation of the European institutions.

7. The conclusions formed as a result of the research into **the digitization of the bailiff's activities** open up opportunities to increase the transparency and efficiency of the profession, a fact that could contribute to diminishing those vulnerabilities of the profession that we indicated in chapter 3 of the paper and - implicitly – strengthen their status. Another value brought by digitization tools would be that they, by themselves, could constitute tools for instant control of the activity of bailiffs, becoming an effective substitute for on-site control - a method applied mainly by the NUEO and the Ministry of Justice.

8. The conclusions formed following the study of **the procedures for access to the profession** are summarized in the fact that the procedures for evaluating candidates for entry into the profession do not evaluate their managerial skills nor the evaluation of the psychological profile of each one. Following this conclusion, we argued why we consider these aspects essential (in fact, applied in the procedures of other states) and formulated some propositions of lex ferenda in this regard. Thus, assuming the legislator accepts the contributions to this aspect formulated on p. 81 and 122 of the work, selecting candidates could also be implemented through the prism of these criteria.

9. Another conclusion on the dimension **of access to the profession** was the need to increase the requirements for establishing an impeccable reputation - in particular by introducing as an elimination criterion the conviction of the person for serious, particularly serious, exceptionally serious crimes committed with intent, even if they were erased the criminal record; holding the status of debtor, who registers arrears older than three months in an enforcement file in progress; the quality of suspect or accused in a criminal case. During the elaboration of the thesis, part of the respective proposals materialized through the amendment project of Law 113/2010, registered with no. 330 on 29.09.2023 in the Parliament of the Republic of Moldova and adopted in the final reading on 21.12.23 (see the amendments contained in art. I, p. 2 of the mentioned project). In this way, the conclusions and recommendations from the paper ended up providing a **tangible, practical result** and contributing to increasing the quality and requirements of the procedures for access to the profession.

10. To encourage and offer opportunities for sustainable activity to people new to the profession, we considered it worthwhile to implement a mechanism that would establish maximum quotas from the portfolio of files held that belong to the same creditor. In addition, this mechanism would reduce the bailiff's dependence on a single client, thereby increasing his degree of independence. This requirement could be included in the possible professional standards, which we recommend that the decision-makers establish. Related to this recommendation, we will mention that by the draft amendment to Law 113/2010, registered with no. 330 on 29.09.2023 in the Parliament of the Republic of Moldova and adopted in the final reading on 21.12.23 the need to develop professional standards for bailiffs (see art. I, p. 6, 20, 32, 33, 41, etc.) and art. II para. (5) of the draft), the task of their elaboration being placed on the Ministry of Justice within six months of the law's entry into force. Thus, the stake of including the regulatory mechanism we refer to on p. 120 of the paper (as our contribution to solving this aspect) becomes much more defined and falls within clear time horizons.

11. To reveal **the impact of the international instruments intended to unify the status of the bailiff on the regulation of the profession**, we studied a series of recommendations of the Committee of Ministers of the European Union, as well as the CEPEJ Guidelines applicable to the researched field, the provisions of the World Enforcement Code, etc. The general conclusion is that the national regulations regarding the profession's status correspond to them. However, from the perspective of the opening of the accession negotiations of the Republic of Moldova to the European Union (decided on 14.12.23), the spectrum of applicable acts will widen; thus, the area of this research topic will expand considerably and offer you new research directions.

12. The analysis of the dimension **of the control of the activity of bailiffs** proved that the national regulations regarding the distribution of the powers of control of the activity of bailiffs are in accordance with good European practices and follow the model of most countries with a liberal system. Still, a more precise delineation of the lines of demarcation between them would be welcome. As our contribution, in the contents of paragraphs 4.1 and 4.3, we analyzed problematic aspects of the assessment of some disciplinary violations and the application of procedural control norms. As a result, we noticed that the current regulations on disciplinary offenses operate with terms subject to subjective interpretations (e.g., "serious", "systematic)", a fact that affects the quality of the qualification of alleged facts as offenses, leaves excessive room for discretion, the conclusion being that these regulations require improvements, to meet the standard of clarity and predictability of legal norms.

13. A vital conclusion related to **the way of exercising disciplinary control** - we considered it necessary to reduce the circle of subjects-holders of the disciplinary action so that this right is maintained only after the Minister of Justice and the NUEO Board, excluding the possibility of notifying the disciplinary body directly to the parties to the enforcement procedure. In this way, it would (1) increase the quality of referrals and the efficiency of the work of the Disciplinary Board, (2) eliminate the situations when the bailiff and the party to the enforcement procedure face each other directly in a disciplinary process. Our analysis convinced us that the working practices of the Disciplinary Board should be improved; in this sense, we considered the prior training of the members and their familiarization with the working methods of the previous members of the Board.

14. Another conclusion regarding the professional control of bailiffs is that it could be substantially improved and moved to more objective dimensions through **the adoption of professional standards, along with the implementation of a periodic audit system for them** and the implementation of IT tools for the determination of enforcement expenses and the sale of goods at auction would solve two of the most suspect aspects of the activity of bailiffs. As indicated on p. 10 of this chapter, **the legislator accepted this recommendation** and, through the bill amending Law 113/2010, registered with no. 330 on 29.09.2023 in the Parliament of the Republic of Moldova and adopted in the final reading on 21.12.23, the premises are created for the development of these standards and the terms for their adoption (6 months from the date of

entry into force of the law) and the first implementation audit of them (6 months after the adoption of the standards). We are betting that our contribution to formulating suggestions for the content of the professional standards (chapters 3, 4) will be valued, contributing to strengthening the profession.

15. Another conclusion formed from studying the normative framework is that it does not offer any solution - prompt and effective - for the situation when **the bailiff's office is in a case of impossibility of maintenance** (debts, lack/insufficiency of personnel, insufficient funds in the account, etc.). To strengthen the status of a trusted third party of the bailiff and give extra security to the litigants, we would recommend returning to the legal regulations that provided for the termination of the bailiff's activity in the case of the impossibility of maintaining the office, found by the NUEO Board. However, keeping a person who cannot organize and maintain his office in the position of managing foreign funds is considered very risky.

16. Analysis of the method of realization **of control over the procedural activities of the bailiff** leads to the conclusion that he still retains reminiscences of the generalized control over the enforcement procedure. Still, if we are to follow the recommendations of the Committee of Ministers of the Council of Europe, he should be eliminated. Thus, we formulated lex ferenda proposals in this regard.

In the segment of procedural control, we also identified a series of other problems, such as the uneven character of judicial practice and the duration of the examination of some proceedings - these led us to the idea of establishing enforcement judges as a measure to increase the speed and quality of judicial solutions on this segment. However, this concept requires careful elaboration, which would exceed the limits of our research topic.

Similarly, following the analysis, we determined that neither the Execution nor the Civil Procedure Code provides **a list of grounds for nullity of the bailiff's acts**, a fact that favors uneven judicial solutions. In their absence, procedural control can develop harmful, arbitrary, and confusing practices for both bailiffs and litigants.

In this sense, we considered that the invalidity of documents drawn up by the bailiff requires a separate study, different from the one we proposed in this work, which should be developed through a distinct research, followed by the transposition into law of the grounds of nullity.

17. The persistence of professional/status vulnerabilities erodes the image and stability of the profession as a whole, and their awareness would be a good starting point for strengthening the status of the bailiff, which is why I have formulated possible remedies for these. The conclusion is that the remedies, in most cases, are not changes to the normative framework but organizational, informative, and control measures.

We believe that the respective recommendations could give more stability and strengthening to the bailiff profession and, as a consequence – a more consolidated and efficient enforcement system, as it should be in light of the requirements of the ECHR.

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ADNOTARE

Novicov Oxana "Consolidarea statutului executorului judecătoresc în Republica Moldova", teză de doctor în drept. Școala doctorală de științe juridice a Universității de Stat din Moldova. Chișinău, 2024.

Structura tezei: Prezenta lucrare include 173 de pagini text de bază, adnotare în limbile română, engleză și rusă, lista abrevierilor, introducere, patru capitole, concluzii generale şi recomandări, bibliografie din 167 titluri. Rezultatele obținute sunt publicate în 6 lucrări științifice și 6 comunicări la foruri științifice.

Cuvintele-cheie: executare silită, executor judecătoresc, proces civil, garanții, competențe, acces în profesie, profesie liberală, control procesual, control profesional, control disciplinar, termen rezonabil, digitalizare, standard profesionale, contestarea actelor executorului judecătoresc.

Scopul tezei este detectarea oportunităților de consolidare a profesiei de executor judecătoresc prin examinarea complexă a statutului profesional al executorului judecătoresc și formularea recomandărilor de optimizare a reglementării unor aspecte de funcționare a profesiei.
Obiectivele tezei constau în analiza opiniilor autorilor naționali și străini referitor la modul de a defini activitatea executorului judecătoresc și statutul acestuia;efectuarea unui studiu comparativ a principalelor modele de organizare a profesiei de executor judecătoresc; analiza originilor și evoluției profesiei de executor judecătoresc, a exigențelor față de aceasta și competențelor oferite acestor profesioniști; precizarea caracteristicilor definitorii a profesiei de executor judecătoresc ca și profesie juridică liberală; evaluarea stării actuale de lucruri și a perspectivelor digitalizării profesiei de executor judecătoresc; studierea criteriilor și procedurilor de accedere în profesia de executor judecătoresc în Republica Moldova și alte state; abordarea comparativă și de perspectivă a competențelor executorului judecătoresc; analiza impactului instrumentelor internaționale destinate unificării statutului executorului judecătoresc asupra reglementării profesiei; delimitarea și analiza principalelor forme de control a activității executorului judecătoresc; formularea unor propuneri de *lege ferenda* în vederea înlăturării carențelor detectate și/sau îmbunătățirii modului de reglementare.

Noutatea şi originalitatea ştiinţifică: rezidă în realizarea unei prime cercetări, la nivel național, dedicată exclusiv statutului profesional al activității de executor judecătoresc, prin aplicarea unei optici triple – de studierea a profesiei dintr-o perspectivă internă, corelată cu cea socială și doctrinară. Originalitatea lucrării vine din îmbinarea inedită a aspectelor juridice, procesuale, sociale și chiar de psihologie și etică profesională, cât și formularea unor recomandări de lege ferenda axate nu doar pe aspecte procedurale, ci concentrate pe mecanisme intrinseci de funcționare a profesiei.

Rezultatele obținute: analiza temeinică a conceptelor și modelelor de organizare a activității de executor judecătoresc; elucidarea parcursului istoric al profesiei de executor judecătoresc și a modului cum contextul istoric influența statutul profesiei; detectarea tendințelor actuale și celor viitoare de dezvoltare a profesiei de executor judecătoresc; relevarea impactului recomandărilor internaționale destinate unificării statutului executorului judecătoresc și aplicarea acestora în reglementările naționale actuale; identificarea principalelor forme de control a activității executorului judecătoresc și formularea de recomandări de îmbunătățire a reglementărilor naționale în materie; recomandări de lege ferenda formulate și transmise autorităților competente pentru promovare.

Semnificaţia teoretică rezidă în abordarea mai multor probleme teoretice, ce țin în primul rând de statutul profesiei de executor judecătoresc; caracteristicile acesteia în calitate de profesie liberală, efectuarea unei ample analize comparative a diverselor aspecte ale profesiei cu (1) reglementările altor state și (2) recomandările internaționale în materie – oferind prin această un suport teoretic consistent pentru dezvoltarea acestui demers analitic.

Valoarea aplicativă a lucrării: este învederată prin recomandările de intervenție legislativă sau măsuri administrativ-organizatorice pentru (1) îmbunătățirea carențelor în definirea statutului executorului judecătoresc și (2) înlăturarea/diminuarea vulnerabilităților statutar-profesionale detectate. Astfel rezultatele cercetării sunt orientate spre aspecte aplicative și ar putea fi utile autorităților cu drept de inițiativă legislativă și celor ce formează politicile în domeniul justiției.

Implementarea rezultatelor științifice: unele concluzii și recomandări formulate au luat forma unor proiecte de modificare a legii, care au fost înaintate de UNEJ către Ministerul Justiției spre promovare. De asemenea, contribuțiile autorului la elaborarea manualului de drept procedural civil și a Ghidului executorului judecătoresc tot își au originile în aspectele cercetate prin prezenta lucrare. Rezultatele științifice vor fi aplicate și în cadrul cursului Organizarea profesiilor juridice și a celui de Drept execuțional.

ANNOTATION

Novicov Oxana ”Consolidation of the status of the bailiff in the Republic of Moldova", doctoral thesis. Doctoral School of Legal Sciences of the State University of Moldova. Chisinau, 2024.

Structure of the thesis: This work includes 173 of basic text pages, annotation in Romanian, English and Russian, list of abbreviations, introduction, four chapters, general conclusions and recommendations, bibliography consisting of 167 titles. The results obtained are published in 6 scientific papers and 6 communications in scientific forums.

Keywords: Key words: forced execution, bailiff, civil process, guarantees, competences, access to the profession, liberal profession, procedural control, professional control, disciplinary control, reasonable term, digitization, professional standards, challenging the acts of the bailiff.

The purpose of the thesis is the complex examination of the professional status of the bailiff and the formulation of recommendations to optimize the regulation of some aspects of the functioning of the profession.

The objectives of the thesis consist in the analysis of the way of conceptualization and evolution of the status of the bailiff, the detection of vulnerabilities and the opportunities to strengthen it on the dimension of (1) access to the profession, (2) the competences of the position, (3) the control of the activity of the bailiff and (4) the implementation of IT tools in enforcement activity.

Scientific novelty and scientific originality: it resides in the realization of a first research, at the national level, dedicated exclusively to the professional status of the bailiff activity, by applying a triple lens - studying the profession from an internal perspective, correlated with the social and doctrinal one. The originality of the work comes from the unique combination of legal, procedural, social and even psychology and professional ethics aspects, as well as the formulation of ferenda law recommendations focused not only on procedural aspects, but on the inner workings of the profession.

The obtained results: thorough analysis of the concepts and models of the organization of the bailiff activity; elucidating the historical course of the bailiff profession; detection of current and future trends in the development of the bailiff profession; revealing the international recommendations aimed at unifying the status of the bailiff and their application over the current national regulations; the delimitation and analysis of the main forms of control of the bailiff's activity and the formulation of recommendations to improve the national regulations in the matter.

The theoretical significance resides in the approach to several theoretical problems, primarily related to the status of the bailiff profession; its characteristics as a liberal profession, carrying out an extensive comparative analysis of the various aspects of the profession with (1) the regulations of other states and (2) the international recommendations in the matter - thus providing a consistent theoretical support for the development of this analytical approach.

The applicative value of the work: it is confirmed by the recommendations for legislative intervention or administrative-organizational measures to improve the shortcomings in defining the status of the bailiff. Thus, the research results are oriented towards application aspects and could be useful to the authorities with the right of legislative initiative and to those who form the policies in the field of justice.
Implementation of the scientific results: some conclusions and recommendations formulated took the form of law amendment projects, which were submitted by UNEJ to the Ministry of Justice for promotion. Likewise, the author's contributions to the development of the civil procedural law manual and the bailiff's Guide still have their origins in the aspects researched by this paper. The scientific results will also be applied in the course Organization of legal professions.

АННОТАЦИЯ

Новиков Оксана «Укрепление статуса судебного пристава в Республике Молдова», докторская диссертация. Докторская школа юридических наук Государственного университета Молдовы. Кишинев, 2024.

Структура диссертации: настоящая работа включает 173 страниц основного текста, аннотацию на румынском, английском и русском языках, список сокращений, введение, четыре главы, общие выводы и рекомендации, библиографию из 167 наименований. Полученные результаты опубликованы в 6 научных статьях и 6 сообщениях на научных форумах.
Ключевые слова: принудительное исполнение, судебный исполнитель, гражданский процесс, гарантии, полномочия, доступ к профессии, свободная профессия, процессуальный, профессиональный и дисциплинарный контроль, разумный срок, цифровизация, профессиональные стандарты, оспаривание действий.
Целью работы является комплексное рассмотрение профессионального статуса судебного пристава и выработка рекомендаций по оптимизации регулирования некоторых аспектов функционирования профессии.
Задачи диссертации заключаются в анализе концептуализации и эволюции статуса судебного исполнителя, выявлении уязвимостей и возможностей его укрепления в аспекте (1) доступа к профессии, (2) должностных компетенций, (3) контроль деятельности судебного пристава и (4) внедрение ИТ-инструментов в исполнительную деятельность.
Научная новизна и оригинальность: заключается в реализации первого исследования на национальном уровне, посвященного исключительно профессиональному статусу деятельности судебных приставов, с применением тройной оптики - изучения профессии с внутренней точки зрения, соотносимой с социальной и доктринальный. Оригинальность работы заключается в уникальном сочетании правовых, процессуальных, социальных и психологических аспектов, а также в формулировании рекомендаций по изменению закона, ориентированных не только на процессуальные аспекты, но и на внутреннюю работу профессии.
Полученные результаты: анализ концепций и моделей организации деятельности судебных приставов; разъяснение эволюции профессии; выявление текущих и перспективных тенденций развития профессии судебного пристава; выявление международных рекомендаций, направленных на унификацию статуса судебного пристава и их применение к действующим национальным нормативным актам; разграничение и анализ основных форм контроля за деятельностью судебных приставов и выработка рекомендаций по совершенствованию отечественного законодательства в этом вопросе.
Теоретическое значение заключается в подходе к ряду теоретических проблем, связанных со статусом судебного пристава; его характеристики как либеральной профессии, проводя обширный

сравнительный анализ различных аспектов профессии с (1) правилами других государств и (2) международными рекомендациями.

Прикладная ценность работы: рекомендации по законодательному вмешательству или административно-организационным мероприятиям по устранению недостатков в определении статуса судебного пристава. Результаты исследования ориентированы на прикладные аспекты и могут быть полезны органам власти для законодательной инициативы, и тем, кто формирует политику в сфере правосудия.

Внедрение научных результатов: некоторые сформулированные выводы и рекомендации были оформлены в виде проектов поправок к законам, которые были представлены для продвижения. Вклад автора в разработку руководства по гражданскому процессуальному праву и Справочника судебного пристава по-прежнему берет свое начало в аспектах, исследуемых в этой статье. Научные результаты будут также применены в преподавании курса «Организация юридических профессий».

NOVICOV OXANA

THE CONSOLIDATION OF THE BAILIFF'S STATUS IN THE REPUBLIC OF MOLDOVA

Specialty 553.03 – CIVIL PROCEDURAL LAW

Summary of the PhD thesis in law