

# CURRENT ISSUES OF IMPLEMENTING THE ASTREINTE INSTITUTION: ENHANCING THE EFFICIENCY OF COURT DECISION ENFORCEMENT IN UZBEKISTAN

Umirzokov Shohrukh Shukhrat ugli

Lecturer of the Department of Civil Law and Private International Law

The University of World Economy and Diplomacy

e-mail: umirzoqov.sh@uwed.uz

## Abstract

Ensuring the proper fulfillment of obligations by subjects of civil law is one of the most important and controversial issues both in the theory of domestic and foreign civil law and in the practice of law enforcement. In this regard, the scientific study of specific methods of ensuring the fulfillment of obligations is of great importance, many of which are gradually finding their expression in the legislation of the Republic of Uzbekistan. However, due to the lack of practical experience and the scarcity of theoretical sources, their essence, relevance and necessity of application are causing serious debate in the scientific and legal community. The Astreinte Institute stands out as one of such institutions. This article is devoted to considering some problematic aspects of determining the theoretical essence of the astreinte institute, as well as issues that may affect the subsequent amendments to the text of relevant regulatory legal acts of the Republic of Uzbekistan. The main purpose of the analytical article is to try to comprehensively determine the theoretical essence of the astreinte institution and its most important legal features.

**Keywords:** Astreinte, Enforcement proceedings, Court decisions, Creditor rights, Debtor liability, Civil obligations, Enforcement order, IPK (Economic Procedural Code), Non-material obligations, Priority of law index.

## Introduction

One of the fundamental characteristics of a rule-of-law state is that the government undertakes the obligation to ensure the genuine protection of civil rights and freedoms guaranteed by the Constitution and laws. The fulfillment of this task is primarily entrusted to judicial bodies, which are considered the principal guarantors of human rights and freedoms. Ensuring the absolute enforcement of court decisions, as well as establishing a fair judicial system that reliably safeguards the rights and legitimate interests of citizens, constitutes one of the key priorities of the ongoing judicial and legal reforms.

For this very purpose, the development and implementation of effective mechanisms for the enforcement of court decisions are of critical importance. The issue of enforcement is one of the most essential functions of the state in protecting the rights and interests of individuals and legal entities, ensuring the supremacy of law, and maintaining social order. Protecting the rights and interests of creditors is a particularly pressing matter in any activity involving individuals. Therefore, the state takes all available measures to provide creditors with comprehensive protection.



If a party that has assumed obligations fails to fulfill them in accordance with contractual terms, compulsory enforcement measures are applied against them, primarily based on a court decision. According to the fundamental principles of the legal system, the fair administration of justice and the enforcement of court rulings are carried out through enforcement proceedings, leading to a final resolution.

In today's legal practice, the untimely and incomplete execution of court decisions remains one of the most serious challenges. Particularly in cases where a debtor delays the performance of non-property obligations (e.g., demolition of a building, vacating a land plot, or surrendering an object), creditors are often forced into prolonged and ineffective waiting. In such situations, the *astreinte* (monetary penalty for delay) emerges as a modern and effective legal remedy.

## METHODS

Pursuant to Article 134 of the Constitution of the Republic of Uzbekistan, judicial acts adopted by courts are final and mandatory for enforcement throughout the entire territory of the Republic of Uzbekistan [1]. It should be particularly emphasized that ensuring the execution of court decisions is an indispensable condition for any meaningful discussion of the rule of law, a democratic society governed by law, and the principles of fair justice. In accordance with Article 10 of the Law "On Courts," court decisions that have entered into legal force are binding on all state bodies, public organizations, enterprises, institutions, officials, and citizens throughout the territory of the Republic, and their enforcement is mandatory [2]. Failure to enforce judicial acts constitutes grounds for applying liability measures stipulated by law. Furthermore, as expressly provided under Article 138 of the Constitution of the Republic of Uzbekistan, acts issued by the judiciary shall be binding on all state authorities, organizations, officials, and citizens [3].

According to indicator 7.6 of the Rule of Law Index 2023 published by the World Justice Project (WJP), an independent organization analyzing global enforcement systems, the Republic of Uzbekistan ranks 74th out of 142 countries in terms of efficiency and timeliness of court decision enforcement. This indicator has also been reflected in monitoring conducted by the International Union of Judicial Officers (UIHJ) [4]. These findings underscore the necessity to: Improve enforcement mechanisms for court decisions; Strengthen their organizational-legal foundations to international standards; Enhance the overall effectiveness of enforcement proceedings.

Taking into account the overwhelming caseload burdening enforcement officers, the fundamental purpose of incentive mechanisms and indirect pressure on debtors must be to establish motivations that encourage voluntary execution of enforcement instruments. Such an approach should render compulsory enforcement measures more advantageous for the debtor. One of the mechanisms encouraging voluntary compliance with court decisions is the institution of *astreinte* (from French "astreinte", meaning compulsion), borrowed from French legislation. This essentially refers to a penalty imposed for non-compliance with a court decision. The effectiveness of this system can also be observed in the legal practice of the Russian Federation. Specifically, according to the 2015 Federal Law on Amendments to Part One of the Civil Code of the Russian Federation [5], Article 308.3 was introduced into the Civil Code of the Russian Federation [6]. This article stipulates that, as a right of the creditor, when a debtor is ordered by court decision to fulfill an obligation in kind and fails to do so, the creditor may demand the



recovery of a monetary amount determined by the court based on principles of fairness, proportionality, and prevention of unjust enrichment from unlawful or improper conduct.

## RESULTS AND DISCUSSION

Judicial acts are subject to enforcement after they enter into legal force [7]. The principal legal instrument regulating the enforcement process of judicial acts is the Law of the Republic of Uzbekistan 'On Enforcement of Judicial Acts and Other Bodies' Documents' [8]. According to this Law, when enforcing judicial acts or documents of other authorities (officials) that are empowered by law to impose obligations on natural or legal persons to transfer monetary funds or other property to third parties, or to perform or refrain from performing certain actions, the Law governs the relations arising during compulsory enforcement proceedings.

However, the elements of the astreinte system we propose are not currently reflected in the legislation. Regarding the principles and forms of astreinte imposition, the following fundamental principles apply:

- The principle of fairness - the penalty amount must correspond to the debtor's financial capacity;
- The principle of proportionality - the fine must be proportionate to the obligation amount;
- Prevention of unjust enrichment - non-compliance with the court decision should not be economically advantageous for the debtor.

The astreinte may be imposed in the following exemplary forms:

- Imposition of penalties proportional to the damages incurred;
- Enforcement of periodic penalty payments (daily, weekly, monthly) based on the claim amount;
- A single lump-sum penalty payment

A single writ of execution shall be issued for each judicial act. However, if enforcement is to be carried out in different locations or for the benefit of multiple creditors, the court, upon the creditors' request, may issue multiple writs of execution, specifying either the place of enforcement or the portion of the enforcement decision applicable to each writ. In cases involving monetary recovery from multiple debtors, separate writs shall be issued corresponding to the number of debtors. Where enforcement concerns joint and several debtors, each writ must indicate the total recoverable amount, explicitly state the joint and several nature of liability, and list all liable debtors [9].

Judicial acts that have entered into legal force are binding upon all state authorities, public organizations, officials, and citizens throughout the territory of the Republic of Uzbekistan and must be strictly enforced. Failure to comply with judicial acts shall result in liability as prescribed by law. The mandatory nature of judicial acts does not preclude interested parties from seeking judicial protection of their rights and legally protected interests, provided such matters have not been previously adjudicated by the court [10].

**Could the introduction of the astreinte system into compulsory enforcement proceedings potentially worsen the financial situation of debtors who are already unable to repay their debts?** Certainly not. The scope of application of the astreinte institution must first be clearly defined. Specifically, we may include within its application:



- Enforcement of non-pecuniary obligations (such as demolition of unauthorized constructions or eviction orders);
- Mandatory submission or production of documents;
- Compulsory execution of contractual formation obligations.

Currently, our legislation does not fully link enforcement security measures with the stage of execution. Specifically, as an enforcement security measure, Part 3 of Article 454 of the Economic Procedural Code refers to Articles 105 and 106 of the same Code. According to Article 105 of the Economic Procedural Code, the court (judge) may consider enforcement security measures either upon application by parties to the case or on its own initiative. Provisional measures shall be granted if failure to implement such measures would complicate the enforcement of a judicial act or render it impossible to execute. Provisional measures may be permitted at any stage of court proceedings. When adjudicating cases involving property recoveries for state benefit, the court (judge) must consider provisional measures. An application for provisional measures must indicate the legal grounds and necessity for implementing such measures.

Pursuant to Article 106 of the Economic Procedural Code, the following provisional measures may be imposed:

1. Seizure of property or funds belonging to the respondent, whether in their possession or held by a third party;
2. Prohibition of specific actions by the respondent;
3. Restriction on third parties from transferring property to or fulfilling obligations toward the respondent;
4. Suspension of sale proceedings if a claim has been filed to exclude the property from seizure;
5. Stay of enforcement where the debtor is contesting the enforcement document in court, provided such a challenge is permitted by law;
6. Imposition of obligations on the respondent to perform specific actions to prevent damage or deterioration of disputed property;
7. Transfer of disputed property to a third party (custodian) for safekeeping.

The role of the astreinte institution in this process is that of a crucial legal mechanism applied by courts against parties who fail to voluntarily fulfill their legal obligations, serving several key functions. Primarily, this instrument is designed to effectively protect creditors' lawful rights and interests, ensuring that court decisions do not remain merely on paper but are fully enforced in practice.

The essence of astreinte lies in its function as a serious financial incentive that compels debtors to avoid delays or complete non-performance of their obligations. The astreinte system serves as an effective method to combat bad faith conduct, negligence, or willful disobedience of court orders by debtors. Moreover, this mechanism incorporates not only a punitive but also a preventive function - the debtor is aware in advance that non-compliance may lead to significant financial losses.

The importance of astreinte is that it enhances the efficiency of the judicial enforcement system, reduces the duration of enforcement proceedings, and decreases the workload of courts. Furthermore, this institution strengthens the principles of transparency and fairness in legal



relations, while serving to equally protect the legal rights of all entities participating in economic transactions.

## CONCLUSION

As emphasized above, the astreinte mechanism serves to enhance the efficiency of civil litigation by, on one hand, raising the general standard of good faith conduct among debtors in civil matters, and on the other hand, strengthening measures to ensure the execution of court decisions. From this perspective, the legislative expansion of astreinte's application to all types and forms of civil litigation appears promising.

Furthermore, it would be advisable to consider redirecting a portion of the astreinte amount to the relevant public legal institution's budget. In this case, the inherently multifaceted nature of the astreinte institution would also incorporate the punitive function of imposing fines for non-compliance with court decisions.

In conclusion, the implementation of this mechanism would lead to significant improvements in the enforcement system within the judicial framework of the Republic of Uzbekistan. The astreinte system would:

1. Serve as both a preventive and punitive measure;
2. Create additional revenue streams for the justice system;
3. Enhance overall compliance with judicial decisions; and
4. Strengthen the rule of law in civil legal relations.

This comprehensive approach would substantially upgrade the effectiveness of debt recovery procedures while maintaining fair balance between creditors' rights and debtors' obligations.

## REFERENCES

1. Constitution of the Republic of Uzbekistan <https://lex.uz/docs/-6445145>
2. Law of the Republic of Uzbekistan "On Courts" (No. O'RQ-703, dated 28.07.2021) <https://lex.uz/docs/-5534923>
3. Article 138 of the Constitution of the Republic of Uzbekistan <https://lex.uz/docs/-6445145>
4. The World Justice Project Rule of Law Index 2024 ISBN: 978-1-951330-67-5 176 p.
5. Civil Code of the Russian Federation (Part One) No. 51-FZ, dated 30.11.1994
6. On Amendments to Part One of the Civil Code of the Russian Federation: Federal Law No. 42-FZ, dated 08.03.2015 // Sobraniye Zakonodatelstva Rossiyskoy Federatsii, 2015, No. 10, Art. 1412
7. Civil Procedural Code of the Republic of Uzbekistan 22.01.2018. O'zbekiston Respublikasining Fuqarolik protsessual kodeksi
8. Law of the Republic of Uzbekistan "On Enforcement of Judicial Acts and Documents of Other Authorities" (No. 258-II, dated 29.08.2001) <https://lex.uz/docs/-26477>
9. Article 448 of the Civil Procedural Code of the Republic of Uzbekistan "Issuance of Writs of Execution"
10. Article 16 of the Civil Procedural Code of the Republic of Uzbekistan "Mandatory Nature of Judicial Acts"

