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Current changes in the authorities of bailiffs

The President of the Russian Federation has signed the Decree No. 1240 «Amendments to the Statute Concerning Federal Bailiff Service» dated September 23, 2011, approved by the Presidential Decree No. 1316 dated October 13, 2004 (hereinafter - Decree). Alterations, introduced by the Decree have entered into force on January 1, 2012.

In this alert we will highlight the main changes introduced by the Decree.

1. Authorization of Federal Bailiff Service of the Russian Federation to retrieve debts and child search including interaction with agencies and authorities in accordance with their competence.

This amendment corresponds with changes in the Federal Law No. 229-FZ «On Enforcement Proceedings» (hereinafter – «Enforcement Proceedings Act»), and, in accordance to that changes the bailiff on his own initiative or basing on the application of the debtor declares the search of a child on the basis of the writ of execution, demanding removal of a child from custody (Article 65 of the Enforcement Proceedings Act).

In the course of changes introduced into the Enforcement Proceedings Act the legislator clarifies the way of search for a child and covered by the Decree.

It should be noted that even prior to entry of amendments into force the bailiffs were entitled to search for a debtor, for debtor's property or to search for a child search on their own or in co-operation with the Internal Affairs Agencies.

In turn, previously the debtor's search and child search were mostly carried out by Internal Affairs Agencies. However the amendments, directly regulating the bailiff's activity, aim at the specification of bailiffs' powers and guarantee the consolidation of such powers.

Moreover the Federal Bailiff Service of the Russian Federation was authorized to only debtor's search without specially established rights for interaction with all agencies and authorities in the process of search.

However, the Enforcement Proceedings Act still does not provide for the ability for direct interaction of bailiffs in the process of search is provided only with the help of Internal Affairs Agencies. (article 62 Enforcement Proceedings Act).

Direct reference to the rights of bailiffs to interact while search with all agencies and authorities may serve as a positive factor for the utmost effective judicial acts performance, performance of the acts of other authorities and officers, as well as general improvement of the law and order in the Russian Federation.

2. Precise definition of rights of the Federal Bailiff Service of the Russian Federation regarding interrogation in criminal proceedings and proceedings on administrative offenses within its competence.

It should be noticed, that the Criminal Procedure Code of the Russian Federation (hereinafter – «CPC RF») set forth that the Federal Bailiff Service of the Russian Federation shall be also deemed to be an interrogation body.(art. 40 CPC RF). The Code of Administrative Offences (hereinafter – «CAO») also pointed out the ability of Federal Bailiff Service to review the cases on administrative offenses (Article 23.68 of the CAO).

3. Possibility for the federal bailiffs to gratuitously obtain necessary information.

In accordance with the Decree, the Federal Bailiff Service is entitled to gratuitously request and obtain documents, information and other data, necessary for decision-making regarding its sphere of activity from federal state authorities, governmental authorities of the regions of the Russian Federation, local government authorities and from organizations regardless of organizational legal form.

This provision should be reviewed in the context of the requirements of the Federal Law of 21.07.1997 No. 118-FZ "On Bailiffs" (hereinafter - the "Law on Bailiffs"), pursuant to which the legitimate demands of the bailiff are to be fulfilled by all agencies, organizations, officers and citizens of the Russian Federation.

Information, including personal information, to the extent necessary to perform bailiff's duties in accordance with the Russian legislation on enforcement proceedings shall be provided upon request of a bailiff in the form of references, documents and their copies free of charge and within a specified period of time (Art. 14 of the Law on Bailiffs).

In turn, the Russian law, in particular the Federal law dd. February 9, 2009, No. 8-FZ "On Access to Information on the Activities of State Bodies and Local Self-government" and the Russian Federation Government Decree dd. October 24, 2011 No. 860 "On approval of Rules of Charging for the Provision of Information about the Activities of State Bodies and Local Self-government" foresees the cases of providing information on a reimbursable basis.

In applying the above cited federal laws and regulations that impose a different legal regime on provision of information, there may be conflict of law, resolution practice of which has not yet emerged.

4. Authority to change decisions of Federal Bailiff Service's officials and its territorial bodies, Federal Bailiff Service's directors.

Director of Federal Bailiff Service may not only cancel, but also change decisions of officials of Federal Bailiff Service and its territorial bodies which do not comply with requirements of the legislation of the Russian Federation, unless otherwise specified in the legislation of the Russian Federation.

This provision corresponds with Article 127 of the Law on Enforcement Procedure, which provides an opportunity to appeal the decision of bailiff in the chain of command, and Article 8 of the Law on Bailiffs, according to which the Chief Bailiff of the Russian Federation is entitled to cancel or change decisions of an official of the Federal Bailiff Service which does not comply with the legislation of the Russian Federation.

In virtue of the analysis of the major changes introduced by the Decree, we can state that much of them is of clarifying and specifying nature. However, the precise identification and clarification of authority of the Federal Bailiff Service Russia ensures more effective implementation of its powers and especially, broadening of its powers on execution of judicial acts, acts of state bodies and officials.