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THE EFFECTIVENESS OF EXECUTIVE LABELING IN BINDING RELATIONSHIPS

Abstract

This article presents a comprehensive analysis of the executive inscription as a procedural mechanism for protecting creditors' rights within contractual relations under the legal system of the Republic of Kazakhstan. The study aims to evaluate the effectiveness of this notarial instrument by examining its inherent advantages and disadvantages, particularly in terms of procedural promptness and the guarantee of actual debt recovery. Special attention is devoted to identifying the key factors that influence the practical efficacy of executive inscriptions in contemporary legal practice. The methodological framework of the research encompasses comparative legal analysis, systemic analysis, dogmatic analysis of legal norms, and synthesis of judicial practice. The study examines relevant provisions of the Civil Procedure Code of the Republic of Kazakhstan, the Law of the Republic of Kazakhstan "On Notaries", subordinate legislation governing notarial procedures, and judicial decisions concerning the contestation and enforcement of executive inscriptions.

The findings reveal that while the executive inscription offers significant advantages in terms of procedural efficiency, cost reduction, and judicial workload optimization, its effectiveness is contingent upon several critical factors. These include the clarity of legislative requirements for establishing the indisputability of debt, the adequacy of procedural safeguards protecting debtors' rights, and the consistency of judicial interpretation in cases where inscriptions are challenged. The analysis demonstrates that the executive inscription embodies a delicate balance between the expedited resolution of uncontested claims and the preservation of fundamental procedural guarantees. The article concludes that the continued refinement of the legislative framework, informed by emerging judicial practice, is essential for maintaining this balance and ensuring the institution's optimal functioning within Kazakhstan's legal system.

Keywords: executive inscription, binding relations, debt collection, efficiency, indisputability, extra-judicial recovery, judicial practice.

Introduction

The legal foundation of the notariat is predicated upon the delegation of specific state functions to notarial bodies and individual notaries. This delegation, in turn, underpins the heightened legal significance ascribed to notarial acts, an attribute that manifests in two principal dimensions. Firstly, notarized documents are endowed with an elevated degree of evidentiary weight, functioning as preferential evidence in civil proceedings. Facts attested by a notary are presumed authentic (*prima facie* evidence), thereby shifting the burden of proof to the party contesting the act. This

presumption is rooted in the notary's public-law status, which implies impartiality, legal expertise, and a duty to meticulously verify the legality of the transaction and the authentic intent of the parties. Secondly, in instances expressly stipulated by law, certain notarial acts – such as notarized alimony agreements or loan contracts providing for incontestable recovery – acquire the force of a writ of execution. Consequently, upon default, the creditor may proceed directly to a bailiff for enforcement, circumventing the judicial process entirely. This mechanism significantly enhances the efficiency and expedition of rights protection, underscoring the functional utility of the notarial form.

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Given this foundational role, the institution of notaries is characterized by the state's entrustment of functions related to the certification of legally significant facts and the execution of documents, which are vested with augmented evidentiary and enforcement power by virtue of the notary's public status and the resultant public trust in their office.

A pivotal evolution in this domain occurred on January 1, 2016, with the introduction of substantial amendments to the Law of the Republic of Kazakhstan dated July 14, 1997 "On Notaries". These amendments reinstated a vital notarial instrument that had been abolished in 2000: the executive inscription (*iscolnitel'naya nadpis*). As a legal mechanism, the executive inscription embodies a broader policy objective of decompressing the judiciary by diverting cases of a relatively incontestable nature from court dockets. It is, therefore, intrinsically aligned with the conceptual essence of the notary as an organ of non-contentious jurisdiction¹. This reintroduction marks a significant shift in Kazakhstan's legal landscape, merging historical practice with contemporary needs for efficient dispute resolution.

Materials and Methods

The research employs a comprehensive set of methods to analyze the legal institution of the executive inscription. The formal-legal method is used to examine the normative provisions of the Law of the Republic of Kazakhstan "On Notaries" and the Rules for Performing Notarial Acts by notaries. The comparative-legal method allows for the assessment of Kazakhstan's legislation in the context of its international obligations under bilateral mutual legal assistance agreements. The systemic method facilitates the analysis of the executive inscription procedure as an interconnected set of legal requirements and actions. The analytical method is applied to evaluate scholarly perspectives and judicial practice concerning the application of executive inscriptions.

The materials for this study comprise the Law of the Republic of Kazakhstan dated July 14, 1997 "On Notaries" (with subsequent amendments and additions), the Rules for Performing Notarial Acts approved by the Ministry of Justice, international treaties of the Republic of Kazakhstan, including agreements with Georgia, the Kyrgyz Republic, and Turkmenistan on mutual legal assistance, as

well as scholarly works by researchers such as A.A. Bakytzhanova, and available materials of judicial practice.

Results and Discussion

1. The Concept, Legal Nature, and Functional Tension of the Executive Inscription

An executive inscription is statutorily defined as a notary's order for the recovery of a monetary debt or the reclamation of movable property from a debtor. Its normative foundation is established in Chapter 14-1 of the Law of the Republic of Kazakhstan "On Notaries", which prescribes two fundamental preconditions for its issuance: first, the submitted documents must irrefutably confirm the debtor's liability to the claimant; and second, no more than three years must have elapsed from the date the right to claim arose².

The scholarly assessment of this institution, as articulated by A.A. Bakytzhanova, emphasizes its procedural efficiency. The executive inscription is characterized as a highly effective mechanism for the expeditious realization of legal claims, contributing to a reduction in judicial caseloads. By enabling the swift enforcement of creditors' rights, it exerts a disciplinary influence on debtors. At a macro-procedural level, this mechanism alleviates the burden on the judiciary, streamlines document review, shortens consideration periods, and minimizes the overall time required for debt collection from the creditor's perspective [1, p. 37].

However, the very efficiency of this extrajudicial procedure gives rise to a fundamental legal tension. As Bakytzhanova further observes, an analysis of Kazakh judicial practice reveals that the unfair or contested fulfillment of obligations by debtors frequently leads to disputes concerning the judicial cancellation of executive inscriptions. This paradox – that a mechanism designed for indisputable claims often becomes the subject of dispute – is attributed to gaps and ambiguities within the legal framework governing this institution as a method of protecting the law of obligations [1, p. 37]. This tension between the desideratum of efficiency and the imperative of safeguarding debtor rights forms the central problematic of the executive inscription's application.

2. The Evolution and Scope of the Legislative Framework for Indisputable Claims

In response to the practical challenges identified in the jurisprudence, the legislative framework

¹ Бурибаев Е.А. Почему в нотариальной практике «не приживается» исполнительная надпись? URL: https://online.zakon.kz/Document/?doc_id=38496777#pos=27;3682 (дата обращения: 07.08.2025)

² Закон Республики Казахстан от 14 июля 1997 года № 155-І «О нотариате». URL: https://online.zakon.kz/document/?doc_id=1008028 (дата обращения: 07.08.2025)

has undergone significant evolution. Initially, the catalogue of claims amenable to indisputable collection via executive inscription was enumerated in Article 135 of the Civil Procedure Code. In a move aimed at enhancing legislative coherence and consolidating related norms, this provision was subsequently transferred to the specialized Law "On Notaries" (as amended up to January 21, 2019). This recodification was not merely a technical relocation but served to centralize the legal basis for this notarial action.

Currently, the law authorizes debt collection through executive inscriptions for a precisely defined list of indisputable requirements, which can be categorized as follows¹:

- Obligations Arising from Transactions: Fulfillment of obligations based on a notarized transaction, or a written transaction where the debtor acknowledges non-fulfillment.

- Financial Instruments and Security: Claims based on a protested promissory note, and foreclosure on pledged objects by pawnshops.

- Property and Contractual Claims: Recovery of a leased object, recovery of overdue lease payments, and debt collection from condominium owners for mandatory maintenance expenses.

- Public Services and Employment: Debt collection under public contracts for consumed utilities and services, and recovery of accrued but unpaid wages.

It is crucial to note the temporal limits on this mechanism. An executive inscription may be presented for compulsory execution within three years from its issuance. The procedure for restoring a missed deadline is governed by the norms of civil procedure legislation, thereby creating a formal link between the notarial and judicial systems.

3. Procedural Dynamics and Inbuilt Safeguards

The procedural regime governing the making of executive inscriptions, detailed in the Rules for Performing Notarial Acts, is designed to balance the efficiency of the process with fundamental due process rights. A key feature enhancing accessibility is the rule established in paragraph 221, which grants the creditor the right to apply to any notary, irrespective of the parties' location². This eliminates territorial barriers that might otherwise impede access to this remedy.

The application process itself is structured to ensure the reliability of the information. For individuals, it mandates details such as IIN and place of residence; for legal entities, it requires confirmation of signatory authority. A critical substantive requirement is the claimant's declaration confirming the absence of a court dispute regarding the obligation at the time of application [2]. This provision is designed to prevent the parallel pursuit of judicial and notarial remedies and to uphold the "indisputability" criterion.

The most significant procedural safeguard, however, is the debtor's right to object. The prescribed workflow is illustrative of a balanced approach:

- Issuance and Notification: After making the inscription, the notary must promptly notify the debtor, sending a copy with delivery confirmation.

- Suspensive Objection Period: A period of ten working days from the debtor's receipt of notification is established. During this time, the inscription is not yet executable.

- Debtor's Veto: If the debtor submits a written objection within this period, the notary is stripped of discretion. The law mandates the issuance of a resolution canceling the executive inscription within three working days.

- Execution: Only in the absence of a timely objection does the notary issue the executive inscription to the creditor for presentation to a bailiff.

This procedural architecture reveals a deliberate legislative choice. While the executive inscription offers a swift path to enforcement, the debtor's power to trigger its cancellation by a simple objection reasserts the primacy of judicial resolution in the face of any contestation. Furthermore, the rule that the notary's fee is non-refundable upon cancellation serves as a deterrent against frivolous or premature applications by creditors, as the financial risk of a successful debtor objection lies with the claimant.

4. Harmonization with International Legal Obligations

The reinstatement of the executive inscription in 2016 was not solely a matter of domestic legal policy but also a necessary step to align Kazakhstan's legal order with its international commitments. Prior to this reform, the domestic legal framework, which did not provide for the execution of such notarial acts, stood in direct conflict with bilateral treaties to which Kazakhstan is a party. International instruments, such as the mutual legal assistance agreements with Georgia,

¹ Civil procedural law of the Republic of Kazakhstan (31 October, 2015 № 377-V). URL: https://online.zakon.kz/Document/?doc_id=38726690#activate_doc=2 (accessed: 09.08.2025)

² Приказ Министра юстиции Республики Казахстан от 31 января 2012 года № 31 «Об утверждении Правил совершения нотариальных действий нотариусами». URL: https://online.zakon.kz/Document/?doc_id=31143652 (дата обращения: 09.08.2025)

the Kyrgyz Republic, and Turkmenistan, explicitly mandate the recognition and execution of notarial acts containing executive inscriptions¹. The 2016 amendments were therefore instrumental in resolving this normative conflict, enabling reciprocity and facilitating cross-border enforcement of notarial documents. This harmonization underscores the executive inscription's role not only as a domestic procedural tool but also as an instrument of international legal cooperation.

5. Concluding Assessment of the Procedural Mechanism

In sum, the legislation provides a sufficiently detailed and structured procedure for making executive inscriptions. A key constitutional safeguard is embedded in the design: the procedure explicitly preserves the parties' right to subsequently apply to a court for dispute resolution. The debtor's right to object and the notary's mandatory duty to cancel the inscription upon receipt of such an objection function as essential guarantees against potential abuse, ensuring that the extrajudicial mechanism does not become a tool for circumventing due process.

The executive inscription thus possesses the force of a writ of execution, with recovery governed by the Law on Enforcement Proceedings. Its primary advantages – cost-effectiveness and significantly reduced processing time compared to litigation – are substantial. However, these advantages are contingent upon the "indisputability" of the claim. When this condition is not met, as evidenced by the judicial practice of cancellation, the mechanism's efficiency is negated, and the dispute reverts to the judicial arena. Therefore, the executive inscription, as a distinct type of notarial act, successfully simplifies the protection of rights for citizens and legal entities, but only within the boundaries of its strictly defined and procedurally safeguarded scope. Its effectiveness ultimately depends on the clarity of the legal framework and the good faith of the parties, highlighting the need for continuous refinement to address the gaps identified in judicial practice.

Conclusion

The reinstitution of the executive inscription into Kazakhstan's notarial practice in 2016 marks a significant legislative recalibration, reintroducing a procedural mechanism designed to balance

the exigencies of efficient debt collection with the imperatives of fundamental procedural fairness. As the foregoing analysis demonstrates, this institution is emblematic of the dualistic nature of notarial activity. On one hand, it operationalizes the notary's function as an organ of non-contentious jurisdiction, offering a pathway for the rapid and economically viable resolution of uncontested claims. On the other hand, it is carefully circumscribed by procedural safeguards – most notably, mandatory debtor notification, a statutory right to object, and the notary's consequent obligation to cancel the inscription upon receipt of such objection – which serve to preclude arbitrary or unjust enforcement.

This legislative choice reflects a deliberate and evolving policy aimed at optimizing the allocation of judicial resources. The migration of the normative framework from the Civil Procedure Code to the specialized Law "On Notaries", supplemented by detailed implementing rules, signifies a conscious effort to consolidate and refine the legal basis for extrajudicial enforcement. This structural development is indicative of a broader strategy to recalibrate the relationship between judicial and non-judicial jurisdictions, reducing the burden on courts while preserving, and indeed enhancing, access to expedited forms of justice for claims of an indisputable nature.

The procedural architecture of the executive inscription, as currently constituted, incorporates multiple layers of protection that collectively safeguard its constitutionality. The threshold requirement of documentary proof establishing the indisputability of the debt, the debtor's power to trigger automatic cancellation through a timely objection, and the preservation of the right to subsequent judicial review form a coherent system of checks and balances. These mechanisms ensure that the procedural simplification inherent in the notarial process does not come at the expense of fundamental rights. Furthermore, the restoration of this institution has enabled the Republic of Kazakhstan to harmonize its domestic legislation with its international treaty obligations, thereby facilitating the cross-border recognition and enforcement of notarial acts under bilateral mutual legal assistance agreements.

Nevertheless, as the emerging body of judicial practice reveals, the practical efficacy of executive inscriptions remains contingent upon the precision and completeness of the legal framework. Instances in which debtors successfully contest and obtain the judicial cancellation of executive inscrip-

¹ Перечень международных договоров Республики Казахстан, включенных МТСЗН РК для заключения в Текущий план МИД РК. URL: <https://www.gov.kz/memleket/entities/dsm/documents/details/6368?lang=ru> (дата обращения: 09.08.2025)

tions frequently expose underlying ambiguities in statutory language or deficiencies in documentary practice. This jurisprudential feedback suggests that while the legislative foundation is substantially developed, it is not immutable. Continued doctrinal refinement and legislative attention may be necessary to address these emergent practical challenges and to close any interpretive gaps that could undermine the mechanism's reliability or invite abuse.

In sum, the notary's executive inscription constitutes a procedurally sophisticated instrument that effectively synthesizes the authority derived from publicly delegated functions with the accessibility and expeditiousness appropriate for the

resolution of indisputable claims. Its intrinsic value lies in this synthesis, positioning it as an integral component of Kazakhstan's legal architecture. By contributing to both the efficacy of debt recovery mechanisms and the overarching optimization of judicial resources, the executive inscription fulfills a vital role in the administration of civil justice, provided that its application remains anchored to the foundational criterion of indisputability and bounded by its carefully calibrated procedural safeguards. The ongoing task for both legislators and the judiciary will be to ensure that this balance is maintained and refined in response to the evolving demands of legal practice.

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МІНДЕТТЕМЕЛІК ҚАТЫНАСТАРДАҒЫ АТҚАРУШЫЛЫҚ ЖАЗБАНЫҢ ТИІМДІЛІГІ

Аңдатпа

Мақалада Қазақстан Республикасының құқықтық жүйесіндегі шарттық қатынастар аясында кредиторлардың құқықтарын қорғаудың процессуалдық тетігі ретінде атқарушылық жазбаның жан-жақты талданды. Зерттеудің мақсаты аталған нотариаттық институттың тиімділігін бағалау, оның артықшылықтары мен кемшіліктерін, әсіресе рәсімнің жеделдігі мен берешекті нақты өндіріп алу мүмкіндігін қамтамасыз ету тұрғысынан анықтау болып табылады. Сонымен қатар қазіргі құқық қолдану тәжірибесінде атқарушылық жазбаны қолданудың практикалық тиімділігіне әсер ететін негізгі факторларды айқындауға ерекше назар аударылады. Зерттеудің әдіснамалық негізін салыстырмалы-құқықтық талдау, жүйелік талдау, құқықтық нормаларды догматикалық талдау әдістері, сондай-ақ сот практикасын жинақтау құрайды. Зерттеу барысында Қазақстан Республикасының Азаматтық процесстік кодексінің, «Нотариат туралы» Қазақстан Республикасы заңының, нотариаттық іс-әрекеттерді реттейтін заңға тәуелді нормативтік құқықтық актілердің нормалары, сондай-ақ атқарушылық жазбаларды даулау және оларды орындау жөніндегі сот шешімдері талданды.

Зерттеу нәтижелері атқарушылық жазбаның рәсімнің жеделдігін қамтамасыз ету, тараптардың қаржылық және уақыттық шығындарын азайту, сондай-ақ сот жүйесіне түсетін жүктемені оңтайландыру сияқты елеулі артықшылықтарға ие екенін көрсетеді. Сонымен бірге бұл институттың тиімділігі бірқатар маңызды факторларға тәуелді екендігі анықталды. Олардың қатарына берешектің даусыздығын айқындауға қойылатын заңнамалық талаптардың айқындығы, борышкердің құқықтарын қорғауға бағытталған процессуалдық кепілдіктердің жеткіліктілігі, сондай-ақ атқарушылық жазбаларды даулау істері бойынша сот практикасының бірізділігі жатады. Зерттеу қорытындысында атқарушылық жазбаның даусыз талаптарды жедел өндіріп алу мен негізгі процессуалдық кепілдіктерді сақтау арасындағы теңгерімді қамтамасыз ететін құқықтық механизм екендігі негізделеді. Сонымен қатар бұл институттың құқықтық жүйеде тиімді жұмыс істеуін қамтамасыз ету мақсатында қалыптасып келе жатқан сот практикасын ескере отырып, заңнамалық реттеуді одан әрі жетілдірудің маңыздылығы атап өтіледі.

Түйінді сөздер: атқарушылық жазба, міндеттемелік қатынастар, борышты өндіріп алу, тиімділік, даусыздық, соттан тыс өндіріп алу, сот практикасы.

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ЭФФЕКТИВНОСТЬ ИСПОЛНИТЕЛЬНОЙ НАДПИСИ В ОБЯЗАТЕЛЬСТВЕННЫХ ОТНОШЕНИЯХ

Аннотация

В статье представлен комплексный анализ исполнительной надписи как процессуального механизма защиты прав кредиторов в договорных правоотношениях в правовой системе Республики Казахстан. Цель исследования заключается в оценке эффективности данного нотариального инструмента посредством выявления его преимуществ и недостатков, прежде всего с точки зрения оперативности процедуры и обеспечения реального взыскания задолженности. Особое внимание уделяется определению ключевых факторов, влияющих на практическую эффективность применения исполнительной надписи в современной правоприменительной практике. Методологическую основу исследования составляют сравнительно-правовой, системный и догматический методы анализа правовых норм, а также обобщение судебной практики. В работе проанализированы положения Гражданского процессуального кодекса Республики Казахстан, Закона Республики Казахстан «О нотариате», подзаконные нормативные акты, регулирующие нотариальную деятельность, а также судебные решения по делам об оспаривании и исполнении исполнительных надписей.

Результаты исследования показывают, что исполнительная надпись обладает существенными преимуществами, включая оперативность процедуры, снижение финансовых и временных затрат сторон, а также оптимизацию нагрузки на судебную систему. Вместе с тем эффективность данного института зависит от ряда ключевых факторов, среди которых — четкость законодательных требований к установлению бесспорности задолженности, достаточность процессуальных гарантий защиты прав должников и единообразие судебной практики при рассмотрении споров об оспаривании исполнительных надписей. Сделан вывод о том, что исполнительная надпись представляет собой механизм, обеспечивающий баланс между ускоренным взысканием бесспорных требований и соблюдением фундаментальных процессуальных гарантий. Подчеркивается необходимость дальнейшего совершенствования законодательного регулирования с учетом формирующейся судебной практики для обеспечения эффективного функционирования данного института в правовой системе Казахстана.

Ключевые слова: исполнительная надпись, обязательственные отношения, взыскание долга, эффективность, бесспорность, внесудебное взыскание, судебная практика.