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## A Comparative Analysis of Executory Systems of Russia and USA

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*In this article author makes a comparative analysis of Executory systems of Russia and USA. Author gives short description of US Marshals and Russian service of officers of justice. Author analyses not only credentials of each structure? Bit also the way both Marshals and officers of justice use to train its stuff. In the final part of the article author describes his vision of future of Russian officers of justice as an executory body, and hopes that at least some part of Marshals experience will be used in this future.*

*Keywords: term1: Officers of justice, term2: executory, term3: US Marshals, term4: the new law «About executory process».*

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### **Point**

Today United States considers as an example of a country with the highly developed law system, beginning with the precedent court system and to the system of a greatly organized, highly qualified structure of US Marshals (Walker, 1967; Romanov, 2000; Mingalin, 2003).

The oldest federal law enforcement agency in the United States is truly the Marshals Service. The agency was formed by the Judiciary Act of Sept. 24, 1789. The act specifically determined that law enforcement was to be the U.S. Marshals' primary function. Therefore it appropriately defined marshals as law enforcement officers. Section 28 of the Judiciary Act authorizes the U.S. marshal or deputy marshal to execute federal judicial writs and process. It also required sworn personnel and continuity in office. Such language was designed to give the U.S. marshals

a wide latitude of powers and the authority to deputize. The direct connection to the federal court system indicated the early need to execute lawful precepts throughout the new nation. Many of the first U.S. Marshals had already proven themselves in military service during the American Revolution (Rosbuck, 2000). Among the first marshals was John Adams' son-in-law Congressman William Stephens Smith for the district of New York. Another New York district Marshal was Congressman Thomas Morris. Another early U.S. Marshal was Henry Dearborn for the district of Maine.

From the earliest days of the nation, Marshals were permitted to recruit Special Deputies as local hires or as temporary transfers to the Marshals Service from other federal law enforcement agencies. Marshals were also authorized to swear in a posse to assist them in manhunts and other

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duties on an ad hoc basis (Kraig, 2004). Marshals were given extensive authority to support the federal courts within their judicial districts, and to carry out all lawful orders issued by federal judges, Congress, or the President.

The Marshals and their Deputies served subpoenas, summonses, writs, warrants, and other process issued by the courts, made all the arrests, and handled all federal prisoners. They also disbursed funds as ordered by the courts. Marshals paid the fees and expenses of the court clerks, U.S. Attorneys, jurors, and witnesses. They rented the courtrooms and jail space and hired the bailiffs, criers, and janitors. They made sure the prisoners were present, the jurors were available, and that the witnesses were on time.

When Washington set up his first administration and the first Congress began passing laws, both quickly discovered an inconvenient gap in the constitutional design of the government: It had no provision for a regional administrative structure stretching throughout the country. Both the Congress and the executive branch were housed at the national capital; no agency was established or designated to represent the federal government's interests at the local level. The need for a regional organization quickly became apparent. Congress and the President solved part of the problem by creating specialized agencies, such as customs and revenue collectors, to levy tariffs and taxes, yet there were numerous other jobs that needed to be done. The only officers available to do them were the Marshals and their Deputies.

Thus, the Marshals also provided local representation for the federal government within their districts. They took the national census every decade through 1870. They distributed Presidential proclamations, collected a variety of statistical information on commerce and manufacturing, supplied the names of

government employees for the national register, and performed other routine tasks needed for the central government to function effectively. Over the past 200 years, Congress, the President and Governors have also called on the Marshals to carry out unusual or extraordinary missions, such as registering enemy aliens in time of war, sealing the American border against armed expeditions from foreign countries, and at times during the Cold War, swapping spies with the Soviet Union, and also retrieving North Carolina's copy of the Bill of Rights ([usmarshals.gov](http://usmarshals.gov). Retrieved on 2007-01-08).

Particularly in the American West, individual Deputy Marshals have been seen as legendary heroes in the face of rampant lawlessness (see Famous Marshals, below). Marshals arrested the infamous Dalton Gang in 1893, helped suppress the Pullman Strike in 1894, enforced Prohibition during the 1920s, and have protected American athletes at recent Olympic Games. Marshals protected the refugee boy Elián González before his return to Cuba in 2000, and have protected abortion clinics as required by Federal law. Since 1989, the Marshals Service has been responsible for law enforcement among U.S. personnel in Antarctica, although they are not routinely assigned there.

One of the more onerous jobs the Marshals were tasked with was the recovery of fugitive slaves, as required by the Fugitive Slave Act of 1850. They were also permitted to form a posse and to deputize any person in any community to aid in the recapture of fugitive slaves. Failure to cooperate with a Marshal resulted in a \$5000 fine and imprisonment, a stiff penalty for those days. The Oberlin-Wellington Rescue was a celebrated fugitive-slave case involving U.S. marshals. James Batchelder was the second marshal killed in the line of duty. Batchelder, along with others, was preventing the rescue of fugitive slave Anthony Burns in Boston in 1854.

In the 1960s the Marshals were on the front lines of the Civil Rights Movement, mainly providing protection to volunteers. In September 1962, President John F. Kennedy ordered 127 marshals to accompany James Meredith, an African American who wished to register at the segregated University of Mississippi. Their presence on campus provoked riots at the university, requiring President Kennedy to federalize the Mississippi National Guard to pacify the crowd, but the marshals stood their ground, and Meredith successfully registered. Marshals provided continuous protection to Meredith during his first year at «Ole Miss,» and Attorney General Robert F. Kennedy later proudly displayed a marshal's dented helmet in his office. U.S. Marshals also protected black schoolchildren integrating public schools in the South. Artist Norman Rockwell's famous painting «The Problem We All Live With» depicted a tiny Ruby Bridges being escorted by four towering U.S. marshals in 1964.

Just as America has changed over the past two centuries, so has its federal justice system – from the original 13 judicial districts, to 94 districts spanning the continent and beyond; and with tens of thousands of federal judges, prosecutors, jurors, witnesses, and defendants involved in the judicial process. The Marshals Service has changed with it, not in its underlying responsibility to enforce the law and execute the orders issued by the court, but in the breadth of its functions, the professionalism of its personnel, and the sophistication of the technologies employed (Rosbuck, 2000). These changes are made apparent by an examination of the contemporary duties of the modern Marshals Service.

Except for suits by incarcerated persons, non-prisoner litigants proceeding in forma pauperis, or (in some circumstances) by seamen, U.S. Marshals no longer serve process in private civil actions filed in the U.S. district courts. Under

the Federal Rules of Civil Procedure, process may be served by any U.S. citizen over the age of 18 who is not a party or an attorney involved in the case.

Today, almost all federal, local and state entities in US acknowledge the Marshals Service as the oldest or first federal law enforcement agency. Other federal agencies have mistakenly believed they were the first. However, their claims fall short when researched in proper context. Although they had equally important functions, they were not conceived on the model of law enforcement at the same time. Today The United States Marshals Service still executes all lawful writs, processes, and orders issued under the authority of the United States, and shall command all necessary assistance to execute its duties (Larry D. Ball, 2005). The Marshals Service occupies a uniquely central position in the federal justice system. It is involved in virtually every federal law enforcement initiative.

First mention of officers of justice can be tracked down all the way to the early Russian state – Ancient Rus the Pskov and Novgorod Judicial Deeds (yearly Russian written laws). These Deeds described a officer of justice as a powerful figure who represent the power of state. Next, after some changes were made the officers of justice (Law reform of 1864). Officers of justice are now elected by the head of the local courts after it is “made sure he is rightful and can perform the necessary actions” and therefore are part of judicial system. In such state the organization of officers of justice existed for more then a half of a century, till the revolutionary 1917 then communist party, lead by Lenin took the rule of the country. By the Decree of Soviet Narodnih Deputatov of 24 November 1917 officers of justice were dismissed together with courts. The new, Soviet country needed new law system together with powerful organizations to enforce these laws.

There for the courts and officers of justice were created completely anew with the ideals of people's society and communist ideology in mind. This ideology included the strong believe in such a bright future, were the necessity of courts or officers of justice shall become needless because of the society without money and without private property have no need for courts. Therefore courts and officers of justice were created for a short period of time in order to sustain order while communism will be build and it made whose organization both powerful in case of credentials and weak in case of no long term plans for it's existence. In years to come it become obvious communism is not coming as soon as it was indented but civil war and the next WW II, Cold war made the organization of court system and officers of justice a bit less then the top priority in the decisions, government had to face. And so with some changes here and where, the officers of justice existed until the early 1990, and the fall of the Soviet Union. The global change in a country course, the creation of the market economy demanded court system with the ability to solve the most hard economy disputes. 6 of November 1997 with the acceptance of a law "About the officers of justice in Russian federation" a new organization were born (usmarshals.gov. Retrieved on 2007-01-08).

Modern Russian system of law enforcement is made of Russian officers of justice. Today officers of justice main purpose is to make sure the courts decisions are made real. So one can say it is the most important part of Russian legal system. Although officers of justice, rather young organization, are already been through many changes. Russian legislators are trying to give officers of justice some adequate powers to enforce the courts decisions, and at the same way to make them act within legitimate field. Should Russian legislators use US Marshals as an

example for building up the future of officers in law, or there is some other way to form a working system of executing court decisions?

### **Example**

For the most part of its work to executes all lawful writs, processes, and orders issued by courts US Marshals cooperate closely with other enforce organization such as FBI and police department (Miller, 1999). By stating what US Marshals command all necessary assistance to execute its duties means what its getting all the help it needs. US Marshals is the most respectable organization in US legal system. In famous case U.S. vs Rostoff, Marshals kept a close eye on Rostoff wife and husband and eventually discovered the illegal scheme they used to hide their property in order to evade executing court order (Stumpf, 2002). Discovering such a scheme is not an easy task and took all the powers Marshals have in order to expose it. US judicial system is widely known for its superior efficiency. But this efficiency provided not only my judges and courts but this the help of Marshals as well. Americans know: if you won a case in a court, its decision will be properly executed. This assurance brings stability to US economy and social system, and the stability is the thing Russia needs now most of all. To execute a court's judgment can be a really hard job, cause in some cases court's judgment are not only about getting money or property form one person to another, but also some, rather unique cases which require to sustain a person from a certain action etc (Yarkov, 2002). In most cases US Marshals execute a judgment in the most strict case possible. It means, if the court's decision describes a certain things person has to do, Marshals have to find a way to make a person do this.

Let's take a look at one particularly interesting case. At the request of the U.S. Food and Drug Administration, U.S. Marshals seized

various animal food products stored under unsanitary conditions at the PETCO Animal Supplies Distribution Center located in Joliet, Illinois, pursuant to a warrant issued by a U.S. district court in Chicago. Marshals seized all FDA-regulated animal food susceptible to rodent and pest contamination. The seized products allegedly violate the Federal Food, Drug, and Cosmetic Act because they were being held under unsanitary conditions. (The act uses the term “unsanitary” to describe such conditions). During an FDA inspection of a PETCO distribution center in April, widespread and active rodent and bird infestation was found. FDA inspected the facility again in May and found continuing and widespread infestation (Kraig, 2004).

Russian officers of justice with the powers they have today can only gather some limited information about people and commercial organization who must execute some court orders or decisions. Of course they have some powers to execute it themselves, but in most cases such actions requires if not the initial presence of the person who must perform action described in court order or decision at least the solid prove what this person knows about officers of justice actions. And getting such prove can be really hard since it is so easy to evade meeting with officer of justice. And without powers to search for whose persons themselves officers of justice can't execute court orders of decisions properly. (Belyakov, 2003). For the most part of Officers of justice work is a paper work to describe the necessity of some actions and to warn the people who ought to perform tasks described in court's order or decision of the legal consequences what they can face in case of disobeying the court's order. But warnings made real are fewer then less and this calls for offenders to continue ignore the court's decision. Let's take a look at one particular example of how this system works. A person won a civil case about a treaty of an immovable

property rent and now has a court decision to get the immovable property he once gave to the rent back. Officers of justice upon receiving such order start an executive case and informs debtor about this case. Officer of justice can't perform the necessary actions to get the property back himself, because the court decision says what debtor must return the property himself. And so the long and painful process of finding the debtor begins. The information about possible location of debtor officer of justice can ask from burro of addresses or the court, which made the dissection, and if the debtor was smart enough to avoid ever showing up in known places. Since officer of justice can't inform the debtor about the executive case he has no other option to execute the court decision therefore the immovable property remained in debtor's possession. After more then half a year and only with the active help of the person, who was most interested in execution of this dissection – the owner of the immovable property, were this court decision executed. In order to do so the owner took the responsibility for finding the debtor into himself and were almost 24 hours a day waiting for debtor at his known place in order to inform debtor about executive case himself, instead of officer of justice. After the debtor were formally aware of the executive case the officer of justice were able to return the immovable property back to the owner without the debtor, since he had prove that debtor were aware of the executive case and refused to cooperate. So the hardest part were to inform the debtor of the executive case, and officer of justice would never do it himself, since he has a legal right to keep a look-out for people.

For this reason there are so many undone court orders and decisions and its number grows with each year. It is said what modern and democratic society can't exist without the proper court system and Russian worked hard to build own. (Maslenkov, 2004). Nowadays the court

system itself functions very effectively and every months more and more Russian citizens prefer to decide their argues in courts. But all this is useless until court orders and decisions will meet proper execution and Russian officers of justice require some serious changes in order to do it.

### Resume

As you can see, these two organizations – US Marshals and Russian officers of justice have the same purpose, but very different powers and methods to do it. Of course one can't say that Russian needs to take US Marshals for an example and reform officers of justice in its liking, since Russia as a country and as a legal system has many interesting and unique features. These features are mostly the legacy of its totalitarian past. In the past Russian already created many powerful enforce organizations and today, while trying to build a free and democratic society, creating another such powerful organization with powerful methods of operating is not such a great idea. Together with stabilizing the procedure of executing court decisions Russia needs to draw a hard line of how far officers of justice can

go chasing their just cause, and giving them the powers of US Marshals is not the best way. Russia needs to follow its own way in this matter, and what it will be is hard to say right now. But the need for such change is desperate indeed. The one way, which seems most reasonable and appropriate, is to widen little bit the officers of justice credentials give them at least some way to look for debtors not only on a paper, but in real life as well. Some say what giving them a credentials rather suitable for a intelligence or organ of domestic affairs will hurt civil rights, but they forget, what the court system, which does not work can hurt civil rights much more. The credentials, which should be given to the officers of justice we mean not the ability to read people mail or tap the phone or bug the office, no, what we suggest is the credentials to ask around, or keep a look-out for debtors. This part of US Marshals credentials can be essential in the work of Russian officers of justice as well, by drawing a hard line of what officers of justice can and cannot with the new credentials do we will make sure the continuing development of Russia as a country with the stable, civil democratic system.

### References

- L. D. Ball, *The united states marshals of New-Mexico and Arizona territories 1846-1912* (Lansing: Michigan University, 2005), 17.
- A. M. Belyakov, «Officers of justice: criminal inquiry», *Law and right*, 12 (2003), in Russian.
- R. Ernst, G. Stumpf, *Deadly affairs* (New York: Phaidon, 2002), 236-264.
- S. Kraig, *Court security officer* (New York: Phaidon, 2004), 47-64.
- C. C. Miller, *The U.S. Marshals Service* (Des Moines: Drake University, 1999), 183-196.
- S. L. Maslenkov, «Inquiry in criminal procedure in modern Russia: problems of perfection», (Nijniy Novgorod: University Press, 2004), in Russian.
- N. Mingalin, «Who has the right to prosecute an inquiry in Russian officers of justice service?», *World of justice*, 2 (2003), in Russian.
- A. K. Romanov, *Law system in England* (Moscow: Affair, 2000), in Russian.
- D. Rosbuck, *Work check-up, or how to execute the sentence?* (Boise, 2000), 186-201.
- United States Marshals Service: Historical Perspective* (usmarshals.gov. Retrieved on 2007-01-08)
- M. G. Walker, R. J. Walker, *The English legal system* (London, 1967).
- V. V. Yarkov, *Officer of justice hand book*, (Moscow: Bek Izdatelstvo, 2002), in Russian.

## **Сравнительный анализ систем исполнения судебных решений США и Российской Федерации**

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*В статье проводится сравнительный анализ систем исполнения судебных решений в США и Российской Федерации, дается краткая характеристика Федеральной службы судебных приставов России и службы судебных Маршалов США. Автор анализирует не только полномочия каждой структуры, но также даёт характеристику подходу каждой из этих структур к формированию своего аппарата.*

*Ключевые слова: судебные приставы-исполнители, Закон «Об исполнительном производстве», служба Судебных Маршалов США, новый Закон «Об исполнительном производстве».*

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