



Romania

e-manual appendix





**This publication was funded
by the European Union's
Justice Programme
(2014–2020)**

Disclaimer:

The content of this publication represents the views of the authors, only, and is their sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

What is enforced

Enforcement is one of the fundamental institutions of civil procedure law and also a significant justice component in a state governed by the rule of law, being considered the second stage of civil proceedings, regulated in BOOK V of the New Romanian Civil Procedure Code. Thus, the obligation established by a court judgment or other enforceable title is voluntarily fulfilled (art. 622 para. (1) of NCPC). However, if it is found that the debtor does not voluntarily comply with the provisions of a judgment, he/she can be obligated to comply by means of enforcement. According to art. 622 para. (2) of NCPC, forced execution “begins with the notification of the enforcement body /.../, unless otherwise stipulated in a special law”. It can thus be considered that enforcement in civil proceedings is not binding, being only possible in situations where the debtor does not voluntarily fulfill the obligation set out in the enforceable title. That is why it can, therefore, be defined as the procedure by which the creditor, holder of the right recognized under a judgment or other enforceable title, compels, with the help of the competent state bodies, his/her debtor who does not voluntarily meet his/her obligations arising from such a title to comply with them involuntarily/compulsorily.

Enforcement is the totality of legal norms which allow the creditor, holder of an objective right recognized by an enforceable title, to compel his/her debtor who has not fulfilled a civil obligation voluntarily, with the help of enforcement bodies, and, if necessary, with the help of public force, in order to obtain this right by force. An enforceable title is the written act drawn up according to the provisions of the law and based on which the creditor can request the capitalization of the claim that this written act ascertains. The enforceable title may be represented by a court judgment or another written act that the law recognizes as having an enforceable character.

In other words, enforcement proceedings are all the legal procedural means by which creditors can enforce their civil rights, being a method of recovering debts which have been established by enforceable titles (judgments or decisions of courts, notarial contracts involving assets or money, bank loans and other similar situations).

Therefore, it should be noted that the main conditions which must be met before the initiation of the enforcement procedure are: the existence of a certain, liquid and eligible claim, the existence of an enforceable title and taking certain steps prior to the forced execution.

Who enforces

Enforcement can only be achieved with the help of bodies vested with state authority in order to impose the proper implementation of the

provisions contained in a court judgment or another enforceable title. Therefore, enforcement bodies are indispensable in this stage of the civil proceedings.

Currently, in Romania there are two categories of enforcement bodies, namely:

- judicial (enforcement) officers;
- tax executors;

The New Civil Procedure Code/NCPC stipulates that the forced execution of any enforceable title, excepting those having as object revenues due to the general consolidated budget or the budget of the European Union and the budget of the European Atomic Energy Community is performed only by the judicial officer, even if special laws stipulate otherwise (art. 623).

The judicial officer operates based on Law no. 188/2000 on Judicial Officers, republished and updated, the Regulation for implementing this law and the Statute of the Romanian National Union of Judicial Enforcement Officers.

According to the first article of Law no. 188/2000, the enforcement of provisions with a civil character from the enforceable titles is carried out by the judicial officers, unless otherwise stipulated by law. Therefore, according to this legal text, the main enforcement body with full competence in the matter of civil enforcement is the judicial (enforcement) officer.

The three normative acts we have mentioned above regulate the competence of the judicial officers, the organization and functioning of judicial officers' offices, the representative bodies of judicial officers, their rights and obligations, the legal liability of judicial officers, the control over their activity, etc.

The tax executors are public servants who carry out their activity under the Fiscal Procedure Code. Unlike the judicial officer who is vested by the creditors, the tax executor is the employee of the enforcement body, with responsibilities in enforcement, being authorized before the debtor and third parties by the use of the tax executor's ID/certification/license and the delegation signed by the enforcement body, i.e. he/she is an employee who must fulfil his responsibilities included in the job description, answering for his/her professional acts in front of his/her employer or in/through a subordination relationship.

Another difference is that the profession of judicial officer is a liberal/freelance and independent legal profession, whereas that of tax executor is not a legal profession per se, the tax executor being only a person employed by the enforcement body with enforcement responsibilities, i.e. a civil servant with higher economic or legal education who works within the fiscal administration, empowered by the fiscal creditor to carry out the

enforcement acts. As a result, for the tax executor, the legislator did not provide as a prerequisite/requirement to have higher legal education, as in the case of the judicial enforcement officer.

There are differences between the two categories of executors also in terms of becoming legally liable for their acts and deeds committed by violating the professional obligations established by the law. The legal liability of the judicial officer, regulated by Law no. 188/2000 on Judicial Officers, is civil and disciplinary. In addition, the judicial officer may also be held criminally liable if he/she engages in a criminal deed.

Moreover, one should mention the judicial control over the acts of judicial officers carried out by the competent courts and the professional one exercised by the Ministry of Justice, through specialized general inspectors/officers, and by the National Union of Judicial Enforcement Officers, through its Board.

Since the tax executor is also a civil servant, the same disciplinary sanctions and liability apply to him/her as in the case of the other civil servants, as stipulated by Law no. 188/1999 on the Statute of the civil servants.

Enforcement procedure

NCPC regulates two methods of enforcement, namely, direct seizure and indirect seizure.

Direct seizure is that method of forced execution by which the creditor pursues the fulfillment in kind of the obligations stipulated in the enforceable title.

In its turn, direct seizure takes four forms, namely:

1. seizure of movable assets (art. 893-895 of NCPC);
2. seizure of immovable assets (art. 896-902 of NCPC);
3. enforcement of an obligation to carry out or refrain from carrying out a particular action (art. 903-909 of NCPC);
4. enforcement of judgments and other enforceable titles regarding minors (art. 910-914 of NCPC).

Indirect seizure is defined as that method of enforcement by which the creditor, who has a money claim, seeks to meet this claim by capitalizing on the debtor's assets or by garnishment on the sums of money held for him/her by third parties.

Indirect seizure in its turn, takes five forms, namely:

1. seizure of movable assets (art. 727-780 of NCPC);
2. garnishment (art. 781-794 of NCPC);
3. seizure of unharvested fruit and crops which have taken roots (art. 795-799 of NCPC);
4. seizure of the general income of immovable assets (art. 800-

812 of NCPC);

5. real estate seizure (art. 813–863 of NCPC).

Also, the stage of the issuance and distribution of the amounts achieved through the forced execution must be taken into account (art.864–887 of NCPC), after which the partial or total fulfillment of the claim rights which are the object of a forced execution can be ascertained.

Duration of enforcement procedure

The duration of an enforcement procedure may take into account certain factors which can occur from the moment it is initiated.

Irrespective of the enforcement method (direct or indirect), the duration of the enforcement may be extended in the event that an appeal against enforcement has been filed against these proceedings and the suspension of the enforcement has been requested until the appeal against enforcement has been solved. Obviously, the suspension of enforcement is ordered in all cases by the court, and the judicial officer will have the obligation to comply with this provision. Therefore, in this situation, the duration of the enforcement procedure can be extended until solving the appeal against enforcement.

Also, in the case of the indirect enforcement method, the duration of the enforcement may be conditioned by the salability of the frozen assets put up for sale. If these assets are not sold, then the creditor's claim right will not be realized and indirectly, the duration of the forced execution can be extended.

However, in the event that the court has not ordered the suspension of the forced execution or the assets are of interest for sale by public auction, the enforcement procedures may take between 6 weeks at most, in the case of direct enforcement or 12–15 weeks, in the case of indirect enforcement.

At the same time, it should be noted that in the event of an appeal against enforcement and the suspension of the enforcement was requested, and the court also ordered this, and, equally, after the conclusion of the judgment, the appeal was rejected, with approximation, enforcement proceedings may take no more than 30 weeks in the case of direct enforcement or 42–45 weeks in the case of indirect enforcement.

Cost of enforcement procedure

The enforcement civil legislation in Romania has established the principle according to which the party requesting the performance of an act or other activity that concerns forced execution is obligated to provide the necessary expenses for this purpose. It is also known that all the expenses incurred by the enforcement are borne by the debtor, unless the creditor has

given up on the forced execution, in which case they will be borne by him/her, unless otherwise stipulated by the law.

The legal source of the costs of the enforcement procedure is represented by the provisions of the New Civil Procedure Code (art. 670). Among the costs of the enforcement procedure, we can identify:

1. the stamp duties required to initiate the enforcement;
2. the judicial officer's fee, established according to the law;
3. the lawyer's fee in the enforcement stage;
4. the expert's, translator's and interpreter's fees;
5. the expenses incurred on the occasion of the publicity of the forced execution procedure and with the performance of other enforcement acts;
6. the transport expenses;
7. other expenses stipulated by law or necessary for carrying out the forced execution (administrator's / sequestration fee; cost of equipment or specialists' fees for certain material operations; expenses for drawing up the cadastral documentation, in order to open the land registry of the seized immovable asset, etc.).

The document establishing the costs of enforcement is represented by the written statement of the judicial officer, which is legally enforceable and is given without summoning the parties. This document can be subject to appeal by the interested party only with an appeal against enforcement, within 15 days from its communication.

