



# Slovakia

e-manual appendix





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## **What is enforced**

The right to judicial protection and a fair trial are a guarantee of protection of rights in judicial proceedings provided by a decision of court or other bodies but also a guarantee that these decisions will be enforced in the cases, when not performed voluntarily.

Enforcement as a feature of legislation governs satisfaction of legal protection and law enforcement. The term enforcement means enforcement proceedings of valid and enforceable decisions, which are performed under the conditions and prerequisites stipulated by procedural provisions, particularly to affect debtor's property rights, with the aim of satisfying a creditor's receivable.

The basic procedural provision governing the procedure of the enforcement is the Act No. 233/1995 Coll. on judicial officers and enforcement proceedings and on the amendment of other acts, as amended (the Enforcement Code) (Exekučný poriadok). This procedural provision stipulates the status and activities of judicial officers, the methods of enforcement, along with procedure for recovery of receivables and other matters related to enforcement.

## **Who enforces**

A judicial officer is a state-appointed and authorized person for the enforcement of judicial and other decisions. he/she must perform the enforcement activity impartially and independently and he/she is, in the performance of his/her activities, bound only by the Constitution of the Slovak Republic, laws and other generally binding legal provisions, namely by court decisions issued in enforcement proceedings. The role of judicial officers is to execute the enforceable title (an enforceable court decision) and to monitor the enforcement until it ends.

A judicial officer has the status of a public official in connection with the performance of enforceable activities, while the enforceable activity itself is the exercise of public power. Despite performing the enforcement activity independently, he/she is supervised by the Slovak Chamber of Executors, which is a self-governing professional organization along with the Ministry of Justice of the Slovak Republic.

However, the judicial officer is not the only essential party in enforcement proceedings. These include also the enforcement court and the parties in the proceedings, namely a creditor - the entity to whom an enforceable decision awards a claim for payment and a debtor - the entity whose obligation is to satisfy the claim.

## **Enforcement procedure**

Enforcement proceedings are initiated in response to a petition from the entitled party. The petition must be lodged by a creditor or his/her representative only, as the enforcement proceedings can be carried out only for entitlement arising from the enforceable decision and only under the conditions and methods stipulated by the law.

The petition for enforcement is delivered to the electronic mailbox of the District Court of Banská Bystrica - the competent court for the whole territory of the Slovak Republic. The role of the enforcement court is to review, whether a petition for enforcement and its annexes meets legal conditions for enforcement. The most essential part of the petition is the enforceable title, an enforceable court decision, which grants a right, establishes an obligation or affects assets.

Unless the enforcement court finds some grounds for rejecting the petition for enforcement, the court allocates a case to a judicial officer, particularly by electronically generated selection according to the regional court in whose jurisdiction the debtor's permanent residence or domicile is. Enforcement commences with the delivery of the court's authorization to a judicial officer. After the initiation of the enforcement, the judicial officer performs procedural actions aimed at recovering the creditor's claim. his/her first step is to notify the creditor and the debtor of the fact that the enforcement has commenced and of the methods to be performed and appeals to the debtor to satisfy the requested claim. For this reason, the enforcement agent serves the parties of enforcement proceedings with a document called the Notice of enforcement commencement, containing strict formal particulars stipulated by the law, namely the parties of enforcement proceedings, the enforceable title and description of the claim to be enforced.

If a debtor disagrees with enforcement, he/she has the right to lodge a petition to discontinue the enforcement within 15 days of the delivery of the Notice of enforcement commencement. This must be substantiated and must state all the facts that the debtor may apply till the day of lodging the petition and such petition has a suspensive effect, meaning a judicial officer does not perform any acts aimed at recovering claim, until the enforcement court does not rule on the petition.

In the case the debtor does not lodge a petition to discontinue enforcement with suspensive effect within the legal deadline; or he/she lodges a petition later than the court's decision has been delivered to a judicial officer rejecting the petition, the judicial officer commences the enforcement under methods stipulated by the law.

Depending on the obligation imposed by an enforceable title, we distinguish two types of enforcement, namely enforcement of the payment performance and enforcement of the performance other than the

payment.

If the basis for enforcement is an enforceable title establishing an obligation to pay a sum of money (the payment performance), enforcement may be conducted by means of:

- enforcement against wages and other permanent pecuniary income;
- attachment on the bank account of the debtor;
- enforcement against movable assets;
- enforcement against securities;
- enforcement on immovable property;
- enforcement against shares or undertaking;
- an order to suspend a driving licence.

Enforcement based on an enforcement title obliging performance other than the payment of a sum of money may be conducted by means of:

- eviction
- handing over or destroying movable assets at the debtor's expense;
- dividing up a shared item;
- rendering work and services.

A judicial officer selects the means of enforcement, in order to meet the enforced obligation and also to achieve that the value of debtor's attached assets would represent the value of the enforced obligation. A judicial officer may perform enforcement in single enforcement proceedings using several different means.

The debtor's property condition is the key factor for a judicial officer to make the decision on the matter. Ascertaining the assets of the debtor is performed via several available registers containing records of persons and their property, or through requests for co-operation from any third party, who is not a party in the proceedings, but could provide some relevant information on the debtor's property.

In this way, a judicial officer is able to ascertain, whether a debtor owns a bank account with the data on its balance, to demand in the Social Insurance Agency debtor's employer, perhaps even to investigate in registers, whether a debtor owns some immovable property or a motor vehicle.

Based on a debtor's ascertained assets, a judicial officer selects the means of enforcement and communicates it with a creditor and a debtor. At the same time obliges an entity that is going to perform enforcement (a wage payer, a bank institute, etc.), to make certain deductions/not to pay any money to a debtor. Enforcement is performed on the basis of Enforcement Order delivery containing details on selected means, which is delivered to a creditor, a debtor and also to an entity performing the enforcement. Subsequently, on the basis of the Enforcement Order the entity to make the payment towards the enforcement agent, who divides the enforced payment in a lawful manner, particularly, satisfying the judicial

officer's costs including VAT, the receivable with its incidentals and the costs of a creditor. A judicial officer's costs represent maximum 24 % of the recovered performance.

### **Duration of enforcement procedure**

The actual duration of the enforcement proceedings depends on the amount of debtor's assets, in other words, the more assets debtor has, the faster it is possible to satisfy the claim and eventually, to end the enforcement procedure.

The legislation in a way limits the duration of enforcement stipulating that a judicial officer may issue a notification of the suspension of enforcement when it was not possible, in the case of enforcement of a natural person's property within five years (or within 30 months in the case of a legal person's property) from the enforcement commencement or from the last distrained property, to identify assets or incomes that could be affected by the enforcement and which would be sufficient to cover at least the judicial officer's costs.

Enforcement may be discontinued when suspended by the court, when suspended by a judicial officer , or in the case, when a debtor has satisfied an enforced claim including costs of enforcement, or a judicial officer has enforced a claim including costs of enforcement.

The court ends enforcement proceedings for reasons stipulated by the law through the decision on the petition to suspend the enforcement, which has been lodged by a debtor. If enforcement ends other than through decision of the court on enforcement termination (most commonly recovery of the claim), a judicial officer issues the Notice of enforcement termination including the final account of enforcement.

If the enforcement has been terminated, the judicial officer discontinues all acts he/she has taken in order to attach the assets as a subject to enforcement, within three working days, and notifies immediately the persons or authorities concerned thereof.

### **Cost of enforcement procedure**

The costs of enforcement proceedings are the costs of a judicial officer, the costs of the parties in the enforcement proceedings and the costs of the state. A judicial officer's costs consist of a judicial officer's remuneration and reimbursement of expenses stipulated by the Enforcement Code. For the performance of enforcement activities, a judicial officer is entitled to remuneration and reimbursement of flat-rate expenses and necessary expenses associated with the conduct of proceedings, which are not covered by flat-rate expenses. These costs are paid by a debtor.

A judicial officer's remuneration represents the payment for the performed enforcement activity. The method of determining the remuneration depends on whether the subject of enforcement is the right to payment performance or performance other than the payment. The base for determining a judicial officer's remuneration for the performance of enforcement activities during enforcement on payment performance is the amount of the recovered performance, while the remuneration is in the amount of 20% of the base, if the legislation does not stipulate otherwise. The remuneration for enforcement for performance other than the payment is calculated individually depending on the method of enforcement. At the same time, the judicial officer is entitled to reimbursement of flat - rate expenses totalling EUR 60.

The creditor is obliged to pay the court fee the enforcement commencement in the amount of EUR 16.50 along with the costs for lodging a petition for enforcement.

