



# Slovenia

## Narrative National Report

**Author:** Andrej Ekart, Judge, District Court  
Maribor

“The content of this report represents the views of the author only and is his/her sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.”

## Table of Contents

<b>PART I: LEGAL FRAMEWORK .....</b>	<b>5</b>
I.1 Legislation affecting civil enforcement.....	5
I.2 Enforceable titles.....	7
I.3 Service of documents to parties and third parties .....	9
I.4 Legal remedies, appeal and objection.....	15
I.5 Postponement, suspension and termination of enforcement .....	18
I.6 Counter enforcement .....	22
I.7 Objects and exemptions on enforcement .....	23
I.8 (Court) penalties and fines .....	25
I.9 Access to information on the domicile and assets of the debtor .....	25
<b>PART II: ORGANIZATION OF ENFORCEMENT.....</b>	<b>28</b>
II.1 The status of the judicial officer.....	28
II.2 Supervision over enforcement .....	31
II.3 Access to the premises.....	32
II.4 Obstructing the judicial officer from carrying out enforcement .....	32
II.5 Time of enforcement .....	32
II.6 Mediation .....	33
<b>PART III: ENFORCEMENT PROCEDURES .....</b>	<b>33</b>
III.1 Initiation and end of the enforcement procedure .....	33
III.2 Enforcement against movable assets to settle pecuniary claims .....	34
III.3 Attachment on the bank account of the debtor.....	38
III.4 Enforcement against savings deposits and current accounts.....	41
III.5 Enforcement on immovable property.....	41
III.6 Enforcement against wages and other permanent pecuniary income .....	47
III.7 Attachment under the debtor's debtor.....	49
III.8 Enforcement against shares .....	50
III.9 Other attachment procedures .....	52
III.10 Handing over movable assets .....	52
III.11 Enforcement in reinstatement of employee to work .....	53
III.12 Eviction .....	53
III.13 Enforcement of obligations to act, refrain from acting or suffer action.....	54
III.14 Sequestration of goods .....	55
III.15 Enforcement of foreign enforceable documents from non-EU States .....	55





**PART IV: ENFORCEMENT COSTS ..... 58**

**IV.1 The costs of enforcement ..... 58**

**PART V: LINKS, LITERATURE AND SOURCES ..... 64**



## EXECUTIVE SUMMARY

In Slovenia court-based enforcement begins when a creditor files an application for enforcement with the enforcement court. The enforcement proceeding has two phases. The first one is authorization of enforcement (in Slovenian “dovolitev izvršbe”). The creditor must file an application for enforcement with the enforcement court and produce an enforceable title (e.g., enforceable court decision, court settlement, enforceable notary deed etc.). The court verifies the enforceable title and issues in an ex-parte procedure an enforcement decree, by which it determines the extent of enforcement and allows certain coercive measures in order to satisfy the creditor’s claim arising out of the enforceable title. The enforcement decree contains information about the parties (creditor and debtor), the enforceable title, the claim (type and extent of the claim) and the coercive measures (what measures are allowed to satisfy creditor’s claim). The enforcement procedure should be quick. In practice the enforcement court issues an enforcement decree based on an enforceable title within a week or two and serves it to the parties (the debtor alongside with creditor’s application for enforcement) and persons or institutions, which have to carry out the enforcement (coercive) measures: e.g., bailiff, bank, employer, land register, companies register, debtor’s debtor etc.

The second phase of enforcement includes the enforcement measures (in Slovenian “oprava izvršbe”). The competence to act in the second phase is decentralised. Judicial officers (private bailiffs) have limited competences in the enforcement procedure; they are competent for seizure and sale of movable property, evictions, seizure of unregistered real estate, handing over movable assets etc. All other enforcement measures are performed by the enforcement court, which is competent for enforcement against immovable property, enforcement against shares, attachment of bank accounts, enforcement against wages and other permanent pecuniary income, enforcement for reinstatement of employee to work, enforcement of obligations to act, refrain from acting or suffer action etc. For example, the enforcement court orders banks to attach the debtor’s bank accounts or employers to garnish the debtor’s salary and to transfer it to the creditor’s bank account.

Local courts have jurisdiction in enforcement cases. Usually, the court clerks conduct the enforcement, however, in practice, enforcement on immovable property, enforcement against shares and enforcement for reinstatement of employee to work is performed by enforcement judges.

In the first phase of the enforcement procedure the debtor can file an objection against the enforcement decree with the enforcement court within 8 days since the enforcement decree has been served to him. The debtor’s objection has to be reasoned and supported by appropriate evidence. Responses to the objection can be lodged within 8 days. The objection does not automatically suspend the enforcement measures. However, the debtor’s property generally cannot be sold and the creditor generally cannot be satisfied before the enforcement decree gets final. The enforcement decree gets final when the debtor has not filed any objection within 8 days or when the debtor’s objection has been rejected by the courts of first and second instance. When raising an objection against the enforcement decree the



debtor can also request the postponement of enforcement.

In the second phase of the enforcement procedure any party (creditor or debtor) can file a motion to cure irregularities in carrying out enforcement measures, e.g., irregularities resulting from the activities of the judicial officer. This remedy can be brought till the end of the enforcement proceedings.

The length of the enforcement procedure depends on the type of enforcement. If there is no objection against the decree of enforcement and the debtor has enough assets to satisfy the creditor's claim:

- in case of attachment of bank accounts or enforcement against wages and other permanent pecuniary income, the creditor can be satisfied within one month;
- in case of enforcement against movable assets to settle pecuniary claims, the creditor can be satisfied within three to six months;
- in case of enforcement against immovable property to settle pecuniary claims, the creditor can be satisfied within one or two years.

The costs in the first phase of enforcement include:

- initial fees (i.e., court fee) for filing the enforcement proposal in the amount of 55,00 EUR (regardless of the amount of the claim) or 44,00 EUR, if the enforcement proposal is lodged electronically;
- lawyer's fees (if the creditor uses his/her services – representation by a lawyer (attorney) is not obligatory): between 60,00 and 120,00 EUR (depending on the value of the claim) plus VAT (if applicable).

The enforcement costs in the second phase of the enforcement process depend on the objects and the manner of enforcement and can vary significantly. On one hand, in case of enforcement on debtor's bank accounts or on his/her salary, there do not occur any additional costs for the creditor. On the other hand, enforcement against real estate or movable items can be expensive and mostly depends on the amount of the claim. For example, if in case of seizure, valuation and sale of movable items by the judicial officer the value of the claim is 4.000,00 EUR, the enforcement fees of a judicial officer amount to 448,00 EUR plus VAT (in case the value of the claim is 20.000,00 EUR, the enforcement fees of a judicial officer would amount to 952,00 EUR).

## **PART I: LEGAL FRAMEWORK**

### **I.1 Legislation affecting civil enforcement**

The main source of Slovenian civil enforcement law is the Enforcement and Securing of Civil Claims Act<sup>1</sup> (ESCCA) of 1998, which has been amended several times. Slovenia has a court-based enforcement system. ESCCA regulates all procedural issues and the

<sup>1</sup> Zakon o izvršbi in zavarovanju (ZIZ), Official Gazette of the Republic of Slovenia (Uradni list Republike Slovenije) No. 51/1998, last amended by No. 66/19 – ZDavP-2M), available on: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1008> (6. 1. 2020).

provisions of the Code of Civil Procedure<sup>2</sup> (CCP) apply *mutatis mutandis* in enforcement and security proceedings, unless otherwise provided for in ESCCA (Art. 15 ECSCCA). Slovenian civil procedure and civil enforcement law is closely related to Austrian law. Until 1918 the major part of the territory of what is nowadays Slovenia was a part of Austria-Hungary (i.e., the Habsburg monarchy). Although Slovenia was later part of Yugoslavia (1918-1941, 1945-1991) it retained the main characteristics of the Austrian civil procedure.<sup>3</sup>

If during the enforcement procedure the debtor becomes insolvent, the law on insolvency (Financial Operations, Insolvency Proceedings, and Compulsory Settlement Act - FOIPCSA) applies and the enforcement court must suspend the enforcement procedure. In enforcement proceedings on the debtor's immovable property, the Land Register Act<sup>4</sup> (LRA) is applicable in order to establish compulsory mortgage on real estate and to enable the transfer of the title on that real estate. In cases of enforcement against the debtor's shares in a commercial company (e.g., Ltd.) the Register of Companies Act<sup>5</sup> (RCA) shall apply. The Property Code<sup>6</sup> (PC) regulates establishment and rang of pledges, mortgages and land charges (Ger. *die Grundschuld*).

In cases of enforcement against the debtor's immovable property in order to settle public pecuniary claims the civil enforcement court has jurisdiction and has to apply Tax Procedure Act<sup>7</sup> (TPA). When collecting some of the costs of the criminal proceedings the Criminal Procedure Act<sup>8</sup> (CPA) applies.

The Private International Law and Procedure Act<sup>9</sup> (PILPA) governs recognition and enforcement of foreign judgments and court settlements, unless EU regulations (e.g., No. 1215/2012, 805/2004, 1896/2006, 861/2007, 4/2009, 655/2014 etc.) apply.

---

<sup>2</sup> Zakon o pravdnem postopku (ZPP), Official Gazette of the Republic of Slovenia (Uradni list Republike Slovenije) No. 51/1998, last amended by No. 16/19 – ZNP-1 in 70/19 – odl. US, available on: <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1212> (7.1.2020).

<sup>3</sup> Aleš Galič, Slovenia, International Encyclopaedia of Laws, Civil procedure, suppl. 49, Kluwer Law International, Hague 2008, p. 20-21.

<sup>4</sup> Zakon o zemljiški knjigi (ZZK-1), Official Gazette of the Republic of Slovenia (Uradni list Republike Slovenije) No. 58/03, last amended by No. 16/19 – ZNP-1), available on: <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO3603> (7.1.2020).

<sup>5</sup> Zakon o sodnem registru (ZSReg), Official Gazette of the Republic of Slovenia (Uradni list Republike Slovenije) No. 13/94, last amended by No. 16/19 – ZNP-1), available on: <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO320> (7.1.2020).

<sup>6</sup> Stvarnopravni zakonik, Official Gazette of the Republic of Slovenia (Uradni list Republike Slovenije) No. 87/02 and 91/13, available on: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO3242> (8.1.2020).

<sup>7</sup> Zakon o davčnem postopku (ZDavP-2), Official Gazette of the Republic of Slovenia (Uradni list Republike Slovenije) No. 117/06, last amended by No. 66/19, available on: <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4703> (8.1.2020).

<sup>8</sup> Zakon o kazenskem postopku (ZKP), Official Gazette of the Republic of Slovenia (Uradni list Republike Slovenije) No. 63/94, last amended by No. 22/19), available on: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO362> (9.1.2020).

<sup>9</sup> Zakon o mednarodnem zasebnem pravu in postopku (ZMZPP), Official Gazette of the Republic of Slovenia (Uradni list Republike Slovenije) No. 56/99 in 45/08 – Zarbit, available on: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1258> (23.1.2020).



Recognition and enforcement of domestic and foreign arbitral awards is governed by the Arbitration Act.<sup>10</sup> In cases of enforcement of foreign notary agreements outside EU the Notary Act<sup>11</sup> applies (Slovenian notary deeds are enforceable instruments within the meaning of Art. 2(c) Reg. 1215/2012).

In cases of enforcement against movable assets, handing over movable assets, eviction etc., where a judicial officer (private bailiff) has to act, the Rules on the Performance of Bailiff Services<sup>12</sup> and Rules on the Tariff for Bailiff's Services and on the Reimbursement of Expenses Relating to Such Services<sup>13</sup> are applicable. Those rules are acts of the Ministry of Justice and prescribe in detail the performances of the judicial officer and his/her expenses.

## I.2 Enforceable titles

The following documents are considered as enforceable titles (Art. 17 and 18 ESCCA):<sup>14</sup>

- **court decision:** e.g., judgments in civil litigious procedures and criminal procedures (concerning civil claims), decrees in civil non-litigious and civil litigious proceedings, some decrees in civil enforcement procedures, decrees of criminal court concerning some costs of the criminal proceedings. Court decisions become enforceable when they are unappealable (final, Ger. *rechtskräftig*) and after the period for voluntary fulfilment of the debt has expired – this period usually lasts 15 days (see Art. 19/1 ESCCA, Art. 313 CCP). Prior to starting the enforcement, the creditor must produce a certificate of enforceability, which is issued by the court, which rendered the court decision in the first instance (Art. 40 and 42 ESCCA);
- **court settlement.** It becomes enforceable when the claim is due (Art. 20 ESCCA);
- **enforceable decision in administrative proceedings.** It becomes enforceable after it cannot be challenged before administrative bodies anymore (notwithstanding any subsequent judicial procedure) and after the period for voluntary fulfilment of the debt has expired;
- **payment order.** A payment order is issued by a court in form of a decree in cases where a creditor refers to invoice, cheque, bill of exchange (promissory

<sup>10</sup> Zakon o arbitraži (Zarbit), Official Gazette of the Republic of Slovenia (Uradni list Republike Slovenije) No. 45/08, available on: <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5288> (23.1.2020).

<sup>11</sup> Zakon o notariatu (ZN), Official Gazette of the Republic of Slovenia (Uradni list Republike Slovenije) No. 13/94, last amended by No. 91/13, available on: <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1329> (23.1.2020).

<sup>12</sup> Pravilnik o opravljanju službe izvršitelja, Official Gazette of the Republic of Slovenia (Uradni list Republike Slovenije) No. 18/03, 83/06, 59/11, 35/16 and 34/19, available on: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=PRAV4691> (7.1.2020).

<sup>13</sup> Pravilnik o tarifi za plačilo dela izvršiteljev in o povračilu stroškov v zvezi z njihovim delom, Official Gazette of the Republic of Slovenia (Uradni list RS) No. 18/03, 35/13 and 34/19, available on: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=PRAV4692>.

<sup>14</sup> See Vesna Rijavec, *Civilno izvršilno pravo*, GV Založba, Ljubljana 2003, p. 105-106.



note), public document (e.g. notarial deed without debtor's consent with immediate enforceability), extract from the books of account, certified by the responsible person, a legally certified private document (e.g. a private agreement on which a notary certifies that it has been signed by the debtor), a written statement of earnings from employment (Art. 23 ESCCA). The payment order has to be served to the debtor, who is ordered to pay the debt within 8 days. If he/she does not object within that timeframe, the payment order becomes enforceable and the court issues (in most cases) *ex officio* (*sua sponte*) the certificate of enforceability, which is needed for enforcement, and in most cases the enforcement procedure begins automatically. If the debtor files an objection against the payment order, the litigation procedure starts;

- **notarial agreement** (notarial deed). It is an enforceable title, if the debtor has expressed his/her consent with its enforceability. Most frequently mortgage (and pledge) agreements are concluded in form of a notarial deed. It becomes enforceable when the claim is due (Art. 20.a ESCCA);
- **land charge** (Ger. die Grundschuld, Art. 192-200 Property Code). It becomes enforceable when the claim is due (Art. 199 Property Code);
- **foreign court decision**. It has to be recognized and declared enforceable prior to starting the enforcement;
- **foreign court settlement**. It has to be declared enforceable prior to starting the enforcement;
- **foreign notarial agreement**. It has to be declared enforceable prior to starting the enforcement;
- **domestic arbitral award**. It has to be declared enforceable prior to starting the enforcement;
- **foreign arbitral award**. It has to be recognised prior to starting the enforcement;
- **a list of tax debts**, issues by the tax authority (i.e., list of enforceable tax decision, Art. 145 TPA). Tax decisions are enforceable after the period for voluntary fulfilment of the debt has expired (Art. 145/3 TPA).

The decisions issued in misdemeanour proceedings are enforced with the tax enforcement procedure, which is conducted by the tax authority (Art. 145 TPA). However, if enforcement against the debtor's immovable property in order to settle public pecuniary claims is needed, the civil enforcement court is competent to sell the debtor's property (Art. 145, 208 TPA).

According to Art. 21 ESCCA every enforceable title has to be suitable for enforcement. That means that it has to contain the following information: who is the creditor and the debtor and what debt the debtor has to fulfil. The claim has to be certain, that is why it has to be clear from the enforceable title what debt the debtor has to fulfil, to what extent and in which time. If the enforceable title is a decision which does not specify a time limit for voluntary fulfilment of obligations, the enforcement court



determines the time limit for voluntary fulfilment in the decree of enforcement (Slov. sklep o izvršbi), which is issued upon application of the creditor.

### **I.3 Service of documents to parties and third parties**

In every judicial proceeding (litigious, non-litigious, enforcement) the parties' right to be heard has to be respected. The service of judicial documents (and extrajudicial documents in certain cases) guarantees this basic procedural right.

#### **I.3.1 Legal basis**

The legal basis of the rules relating to the service of documents by a judicial officer (bailiff) are the provisions of CPC and ESCCA.

Slovenian judicial officers can serve judicial documents in all civil proceedings, including civil enforcement proceedings (Art. 132/2 CPC). However, most commonly judicial documents are served via postal services or electronically.

In Slovenia enforcement is court-based. It begins when a creditor files an application for enforcement with the enforcement court. Upon the creditor's application the enforcement court issues a decree of enforcement, with which it allows (grants) certain coercive measures in order to satisfy the creditor's claim arising from the enforceable title. Pursuant to Art. 44/1 ESCCA, a decree of enforcement contains information about the parties (creditor and debtor), the enforceable title, the claim (type and extent of the claim) and the object and means of enforcement (which coercive measures are allowed to satisfy the creditor's claim). A decree of enforcement has to be served to the parties (the debtor alongside with the creditor's application for enforcement) and persons or institutions, which have to carry out the enforcement (coercive) measures: e.g., judicial officer, bank, employer, land register, companies register, debtor's debtor etc. (Art. 45 ESCCA). In the following steps of the enforcement procedure the parties have to be informed about the procedural acts of the court or the opposite party as well. That is why the enforcement court serves the judicial documents to the parties during the whole enforcement procedure.

The ESCCA does not contain rules about the service of (judicial or extrajudicial) documents. Thus, the Code of Civil Procedure (CCP), which governs the service of documents, has to be applied (Art. 15 ESCCA). Judicial documents are (generally) most frequently served by postal services (regular mail), but they can be also served electronically (in certain types of procedures: enforcement, land register and insolvency procedures) to persons or institutions that have safe electronic mailbox (e.g., attorneys, state bodies, judicial officers and insolvency practitioners),<sup>15</sup> court officials and at the court (Art. 132/1 CCP). The court may order, upon a motion by the opposing party, that judicial documents shall be served by certain detective or judicial officer as well (Art. 132/2 CCP, Art. 7 ESCCA).

Service of documents in paper form shall be made between 6.00 a.m. to 8.00 p.m. Electronic service of documents can be performed 24 hours a day (Art. 139/1 CPC).

---

<sup>15</sup> Within the meaning of Art. 2 Reg. Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings, OJ L 141, 5.6.2015.

Thus, service of paper documents is not possible between 8.00 pm and 6.00 am.

### **1.3.2 The legal capacity to serve documents**

In Slovenia, a judicial officer (bailiff) can serve judicial documents in civil and commercial matters. However, the service of documents is not a monopoly of the judicial officer.

This activity also does not have to be personally exerted by the judicial officer; it can be exerted by his/her deputy as well. The deputy of the judicial officer can namely carry out all the activities of the judicial officer. Every judicial officer can have only one deputy (Art. 294/2,3 ESCCA).

In Slovenia, judicial officers can serve all judicial documents, e.g., judgments, decrees, actions, pleas of defense, expert opinions etc. (Art. 132. CPC). Judicial officers can serve only judicial documents, not extrajudicial documents (Art. 7, 21.a/5 ESCCA, 132 CPC).

As mentioned above, the service of judicial documents does not constitute a monopoly of the judicial officer. Judicial documents (e.g., judgments, decrees, actions, pleas of defense, expert opinions etc.) are most frequently served by postal services (regular mail), but they can also be served electronically (in certain types of judicial proceedings, e.g., enforcement, land register and insolvency proceedings) to persons or institutions that have safe electronic mail (e.g., lawyers, notaries, state bodies, judicial officers and insolvency practitioners),<sup>16</sup> by court officials and at the court (Art. 132/1 CCP). The court may order, upon a motion by the opposing party, that judicial documents shall be served by certain detective or judicial officer (Art. 132/2 CCP, Art. 7 ESCCA).

To sum up, the following persons or bodies may serve documents: postman, court officials (e.g., court courier), detectives and judicial officers (bailiffs). Electronic service of documents is possible in some types of judicial proceedings (e.g., enforcement, land register and insolvency proceedings).

The applicant can choose between a judicial officer and another person or body, who will service the documents. Regularly, judicial documents are served by postman or electronically. However, upon application of a party, judicial documents can be served by certain detective or judicial officer (Art. 132/2 CCP, Art. 7 ESCCA). In the latter case, the applicant has to cover the cost of the service of documents by a detective or a judicial officer (that is not the case when serving documents by postman or electronically).

A party to the judicial proceedings may have special reasons to engage a detective (not police) or a judicial officer. A postman serves judicial documents at the address, where the addressee has his/her or her (habitual) residence which is known to the court. But sometimes the address of the addressee is unknown (e.g., homeless people) or he/she has moved and the new address has to be discovered. In such cases, service

---

<sup>16</sup> Within the meaning of Art. 2 Reg. Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings, OJ L 141, 5.6.2015.

by detective or judicial officer can be more effective than service by postman (or court courier). Moreover, in enforcement cases the surprise effect is very important. That is why the debtor is not informed that the creditor has filed an application for enforcement and that the enforcement court has granted certain enforcement measures, which are specified in the decree of enforcement. In cases of enforcement against the debtor's movable property, the judicial officer often serves the decree of enforcement to the debtor directly prior to the first enforcement measure (e.g., seizure of movables) in order to achieve the surprise effect of enforcement (Art. 82/1 ESSCA).

All the activities do not have to be personally carried out by the judicial officer; they can be carried out by his/her deputy as well. The deputy of the judicial officer can namely exert all the activities of the judicial officer. Every judicial officer can have only one deputy (Art. 294/2,3 ESSCA).

Judicial officers (or their deputies) can serve judicial documents on the whole territory of Republic of Slovenia (Art. 7/2 ESSCA). The geographical jurisdiction of the judicial officer in the matter of service of documents is identical to that with regard to enforcement of court decisions (Art. 7/2 ESSCA).

There are no specific rules when the documents are served by a judicial officer. The same rules apply as in case of service of judicial documents by postman or judicial courier.

Service of documents in paper form shall be made between 6.00 a.m. to 8.00 p.m., electronic service of documents can be made 24 hours a day (Art. 139/1 CPC).

The judicial officer has access to information on how to locate the addressee in the framework of his/her mission of service of documents in enforcement cases, e.g., to serve a decree of enforcement to the debtor and to conduct the seizure of movable property (Art. 4/4 ESSCA). He/she has not such access to information when serving other judicial documents.

The following entities and/or persons have to provide information to the judicial officer to locate and/or find the addressee: government bodies, holders of public authority, other legal entities, sole proprietorships (entrepreneurs) and private individuals (Art. 4/1 ESSCA), i.e., any (public or private) entity and person when asked.

When serving a document, the judicial officer can always give information to the addressee on the content of the document. The content of every envelope containing judicial documents is written on the envelope (see Art. 12 Rules on the Envelope for Service by Mail in Contentious Proceedings).<sup>17</sup> However, when serving judicial documents, a judicial officer is not obliged to provide such information.

### **1.3.3 The contents of the documents to be served**

The documents to be served have to comply with a special format common to all

---

<sup>17</sup> Pravilnik o ovojnici za vročanje po pošti v pravnem postopku, Official Gazette of the Republic of Slovenia (Uradni list Republike Slovenije) No. 49/17, available on: <http://pisrs.si/Pis.web/pregledPredpisa?id=PRAV13200> (6.2.2020).

judicial officers. This content is prescribed by Art. 141 and 142 CPC and by Rules on the Envelope for Service by Mail in Contentious Proceedings.

To be valid, the documents served by the judicial officer have to include the following elements:

- The date of service to the addressee;
- The signature of the judicial officer having served the document;
- The signature of the person having served the document if he/she is not a judicial officer;
- Details of the addressee as a natural person: name, first name(s), address;
- Details of the addressee as a legal person: form, designation and address of head office.

When the document to be served is a document initiating proceedings, the following mentions are compulsory for the validity of the document:

- Details of the jurisdiction (name, address, ...);
- When the court hearing is at a fixed date, the date, time and place of the court hearing;
- The consequences for the addressee in case of lack of appearance of valid representation at the court hearing;
- Mentions relating to the claim: object of the claim;
- Mentions relating to the claim: factual elements on which the claim is based;
- For monetary claims: the amount of the claimed debt;
- For monetary claims: period for which the interests are owed;
- For monetary claims: interest rate;
- For monetary claims: the mention and/or copy of the documents on which the claim is based (only in cases of payment orders).

### **1.3.4 Service upon the addressee of other persons**

To be valid, the document does not have to be served to the addressee only. It can be handed to another person than the addressee when s/he is a natural person. If the recipient (addressee), who is a natural person, is not found at his/her place of residence, judicial documents shall be handed to an adult member of his/her household, who shall be obliged to accept them (see Art. 140/1 CPC).

If the service is attempted at the place of work of the recipient, but the latter is not found there, the documents may be left with any person employed in the same place, if he/she is willing to accept them (Art. 140/2 CPC).

If the addressee residing in an accommodation facility that includes a 24-hour residence (such as boarding schools, student homes, retirement homes, homes for

singles, social care institutions, hospitals) is not found at such a facility and also does not have a standard mailbox at this address, the judicial document is served to a person authorized to receive mail for residents at this facility (e.g., receptor, 140/3 CPC).

A letter must not be handed to another person if that person is the opponent of the party in the proceedings (Art. 140/4 CPC).

Another person must accept the document, if he/she is an adult member of the recipient's household (Art. 140/1 CPC) or a person authorized to receive mail for residents at the accommodation facility (e.g., receptor, 140/3 CPC). Another person must be able to receive the document, but does not have to indicate his/her name, first name, address or relation to addressee. The confidentiality of the document has to be respected (handing of the document placed in a closed envelop), a notice of information does not have to be left at the domicile of the recipient.

**Place of service of judicial documents.** Judicial documents can be served to the addressee (recipient), who is a natural person, at his/her place of residence or work, to his/her post office box (Art. 139.b CPC) or at court, if he/she happens to be there (Art. 139/2 CPC). If judicial documents cannot be served pursuant to Art. 139/2,3 CPC, the court shall order the service to be made at another time and a different place or that judicial documents shall be handed over to the addressee anywhere he/she will be found (Art. 139/4 CPC).

Service of judicial documents on legal entities, state authorities or other persons entered in the court register (e.g., entrepreneurs - sole proprietors), associations, and other persons subject to entry in a register shall be made in the address stated in the relevant register (Art. 139/3 CPC) or to the post office box (Art. 139.b CPC).

When the addressee is a legal entity, a document can be served to another person than the addressee. According to Art. 133 CPC, service of judicial documents upon government bodies, legal entities and sole proprietors can be effected by handing over the documents to the person, authorised to accept them, to an employee working in the office, business premises or headquarters of the legal entity to be served, to a legal representative or a procurator of the legal entity. In such a case the recipient must accept the document and hand it over to the addressee.

When the service to the addressee or to another person was not possible while his/her domicile was confirmed, there are two possibilities. In Slovenia, there is a distinction between service of more and less important judicial documents. More important judicial documents (e.g., lawsuit, judgment, appeal etc.) have to be served in a way that guarantees a higher possibility of the addressee to get acquainted with their content (Art. 142/1 CPC). Less important judicial documents (e.g., expert opinions, written declarations of witnesses, motion of the other party etc.) are served in a simplified manner (Art. 140, 141 CPC).

In case that the person (natural person or legal entity) to be served a more important judicial document is not found at the place where service has to be effected and the service to another person was not possible, a notice of information is left in the

letterbox of the addressee (at the domicile). This notice contains information where the judicial document is and that the addressee can take it within 15 days. If the addressee or a person he/she authorizes do not take the judicial document with 15 days (most commonly at the post office) the server (e.g., postman) leaves it in the letterbox of the addressee. In such a case, the judicial document is deemed to be served after the expiry of the 15-days deadline (Art. 142/3,4 CPC).

In case that the person (natural person or legal entity) to be served a less important judicial document is not found at the place where service has to be effected and the service to another person was not possible, the judicial document is left at the domicile of the addressee in his/her letterbox (Art. 141/2 CPC).

There are special formalities that have to be accomplished to enable service to a person who has no longer a known domicile, residence of work place in the country. A distinction between natural persons and legal entities has to be made. Judicial documents are always served at the official address of the legal entity, which is entered into the court register or other official register (Art. 143/5 CPC).

If a natural person has moved or has no longer a known domicile or residence of work place, the server (e.g., postman, judicial officer) tries to find out his/her new domicile and sends the judicial document to that address. If the server (e.g., postman, judicial officer) cannot find out the addressee's new domicile, he/she informs the court (Art. 143/2 CPC). The court makes an electronic inquiry into the register of inhabitants or into the register of employees and sends the judicial document to the new domicile or the new employer of the addressee (Art. 143/3 CPC). If this is not possible, the court orders the opposite party to communicate the addressee's new domicile, if he/she knows it, and informs the administrative body to start an administrative procedure to establish the domicile of the addressee. In addition to that, the court makes inquiries with relatives, household members, neighbours and janitors (facility managers) from the last known address, social services, the last employer or landlord, the police or hospitals. In such a case, the court serves the judicial document to the communicated domicile of the addressee (Art. 143/4 CPC).

### **1.3.5 The use of new technologies**

The judicial officer cannot serve a document electronically. This can be done only by court via trusted service providers (Art. 132/1, 141.a and 141.b CPC).

Electronic service occurs in a secure way, according to a set protocol. An acknowledgment of receipt is not necessary to validate the service if the addressee does not take the judicial document within 15 days from his/her secure mail inbox (Art. 141.a CPC). In case of electronic service of less important judicial documents, the document is deemed to be served the moment it arrives to the addressee's secure inbox (Art. 141.b CPC).

### **1.3.6 Probative value of the service of documents**

According to Slovenian law, service of judicial documents is exercise of state authority (*acta iure imperii*) and can have a specific probative value. Thus, the proof of receipt of a judicial document is a public document. Pursuant to Art. 224. CPC, a document



issued by a government body in the prescribed form and within the limits of its powers, or a document issued by a local government body or other statutory authority in the said form and manner (public document) shall prove the truth of what is certified or determined therein. That is why the proof of receipt of judicial documents has probative value. It proves that certain judicial document was served on a certain day to a certain person. However, this is a rebuttable presumption, because any party can prove otherwise (in such a case, the burden of proof is on the party rebutting the validity of the service of the judicial document).

In order to have a probative value, the service of the judicial document (e.g., documents initiating proceedings – action or order for payment, documents relating to the attachment of the debtor’s goods, summons, judgments etc.) should have been done by postman, court official (e.g., court courier), judicial officer or detective (Art. 132/1,2 CPC).

Service of an extrajudicial document can have a probative value if it is done by postman in cases when a loan instalment had not been paid regularly and the creditor withdraws from the loan contract (which was concluded in form of an enforceable notarial deed) and demands the whole amount of the loan to be returned immediately (Art. 20.a ESSCA).

#### **I.4 Legal remedies, appeal and objection**

According to Slovenian law the debtor has a possibility to challenge the decisions of the enforcement court and the enforcement measures.

In Slovenia judgments become enforceable when the time limit (of 15 days usually) for voluntary fulfilment of the claim has elapsed (Article 458(4) CPA) and no party lodged an appeal. The time limit for voluntary fulfilment of the claim begins running when the judgment is served to the defendant (Article 313(2) CPA). If an appeal against a judgment was filed, the judgment becomes enforceable 15 days after the decision of the court of appeals has been served to the defendant.<sup>18</sup> Thus, finality of a judgment (Ger. die Rechtskraft) is a prerequisite for its enforceability.<sup>19</sup>

The enforcement procedure has two phases. The first one is the authorization of enforcement (in Slovenian “dovolitev izvršbe”). The creditor must file an application for enforcement (Article 40 ESSCA) with the enforcement court. The court verifies the enforceable title and issues in an *ex parte procedure* a decree of enforcement by which it orders the extent of enforcement and the enforcement measures.<sup>20</sup> The second phase of enforcement includes the enforcement measures (in Slovenian “oprava izvršbe”). The competence to act in the second phase is decentralised. The judicial officer is competent to seize movable property, banks and credit institutions are obliged to attach the debtor’s bank accounts, employers are obliged to garnish the debtor’s salary and the court has competence over the garnishment of debts and the

<sup>18</sup> Rijavec, 2003, p. 109.

<sup>19</sup> Rijavec, 2003, p. 106; Galič, 2008a, p. 188.

<sup>20</sup> Rijavec, 2003, p. 171; Galič, 2008a, p. 187.



enforcement against real estate and shares.<sup>21</sup>

In the first phase of the enforcement procedure the debtor can file an objection against the decree of enforcement with the enforcement court within 8 days since it was served to him/her (Art. 9/3, 53 ESCCA). The debtor's objection has to be reasoned and supported by appropriate evidence (Art. 53/2 ESCCA). Responses to the objection can be lodged within 8 days. The objection does not automatically suspend the enforcement measures (Art. 9/6, Art. 46/1 ESCCA). However, the debtor's property cannot be sold and the creditor generally cannot be satisfied before the enforcement decree becomes final (Art. 46/2 ESCCA), except in cases of enforcement against the debtor's bank accounts (Art. 46/3 ESCCA). When raising an objection against an enforcement decree the debtor can also request the postponement of enforcement (Art. 71 ESCCA).

In the second phase of enforcement any party (creditor or debtor) can file a motion to cure irregularities in carrying out enforcement measures (Art. 52 ESCCA), e.g., irregularities resulting from activities of the judicial officer. This remedy can be brought till the end of enforcement proceedings.

A third person (a person other than the debtor) may lodge an objection against the decree of enforcement or against an enforcement measure, if he/she claims to possess a right to the object of enforcement that is incompatible with the enforcement against that object. He/she has to prove (with degree of likelihood) that he/she has a right on an object of enforcement that prevents the enforcement (e.g., ownership right, Art. 64 and 65 ESCCA). The objection may be filed until the enforcement procedure is concluded. The objection does not suspend the enforcement proceedings automatically, but the third party can request a postponement of enforcement (Art. 73 ESCCA).

The reasons for the debtor's objection against an enforcement decree are limited by law (Art. 55/1 ESCCA). The debtor can especially raise the following reasons for objection:

- the document, based on which the enforcement court granted the enforcement, is not an enforceable title (Art. 55/1/2 ESCCA) or is not (yet) enforceable (Art. 55/1/3 ESCCA);
- the enforceable title (e.g., judgment) was overruled, annulled, amended or in other way invalidated, the enforceable decision has lost its effect of enforceability (Art. 55/1/4,5 ESCCA);
- parties have agreed not to require, for a limited time or permanently, the enforcement based on a certain enforceable title (Lat. *pactum de non petendo*);
- the deadline by when, according to the law the enforcement may be requested, has expired (e.g., in cases of disturbance of possession, Art. 55/1/10 ESCCA, Art. 229 ESCCA);
- the enforcement court has allowed the seizure of items which are excluded from

---

<sup>21</sup> Rijavec, 2003, p. 174; Galič, 2008a, p. 187.



compulsory enforcement (with an enforcement decree) and, as a result of that exclusion, the possibilities for enforcement are limited (Art. 55/1/7 ESSCA);

- the enforcement creditor is not authorized to request enforcement on the basis of the enforceable title, respectively he/she is not authorized to request the enforcement against the debtor (Art. 55/1/12 ESSCA);
- the condition given in the enforceable title has not been met or the deadline for voluntary fulfilment of the claim has not expired yet (Art. 55/1/6 ESSCA);
- the claim (stemming out of the enforceable title) ceased to exist as a result of a fact that occurred at a time when the debtor could no longer submit evidence of such fact in the procedure from which the decision has derived, that is, after the conclusion of the court hearing or after the conclusion of a court settlement or an administrative settlement or in some other way (Art. 55/1/8 ESSCA);
- the fulfilment of the claim is postponed, prohibited, altered, or in some other way prevented, as the result of an event that occurred at a time when the enforcement debtor could no longer make it known in the procedure rendering the decision (Art. 55/1/9 ESSCA);
- the claim from the enforceable title is barred by a statute of limitations (Art. 55/1/11 ESSCA);
- the court that issued the enforcement decree was not competent (Art. 55/1/1 ESSCA);
- the judicial officer who issued the enforcement writ is not competent.

The decision regarding any objection (i.e., objection of a debtor or of a third party) or regarding irregularities in the enforcement procedure is rendered by the enforcement court (i.e., local court - court of first instance), namely the court that issued the challenged decision or conducts the enforcement procedure respectively. Usually, the enforcement judge decides about legal remedies (Art. 6/1 ESSCA). However, when deciding on the objection of a third party and the irregularities in the enforcement procedure a judicial clerk is also competent (Art. 6/3 ESSCA). There is no time limit for the court to decide on the objection.

The enforcement court (i.e., court of first instance) decides on the objection or irregularities in the enforcement procedure in form of a decree. Any party can file an appeal against a decree rendered by the enforcement court within 8 days (Art. 9 ESSCA). The appeal is to be lodged with the enforcement court (court of first instance); however, it is the higher court (as appellate court), which is competent to decide on the appeal (Art. 6/5 ESSCA). The opposite party can reply to a legal remedy within 8 days. Neither an objection nor an appeal suspends the enforcement.

Moreover, the debtor or the third party can file an action to oppose enforcement within 30 days after the finality of the decree, with which the objection has been rejected (Slov. *tožba na ugotovitev nedopustnosti izvršbe*, Art. 59/1, 65/3 ESSCA). Any party can lodge an appeal against the judgement, with which the litigation court decided upon the action to oppose enforcement. The debtor can raise the action if

he/she asserts:

- that the claim had extinguished or has been suspended after the issuing of the enforceable instrument (Slov. *opozicijski razlogi*) or
- that the claim exists and is not suspended, however the enforcement shall not be allowed (with an enforcement decree), because the conditions for the enforcement are not yet or not anymore met (e.g., the application for enforcement was filed too soon or after the deadline by when the enforcement could have been requested) or the enforcement creditor is not authorized to request enforcement on the basis of the enforceable title, respectively he/she is not authorized to request the enforcement against the debtor (Slov. *impugnacijski razlogi*).

### **I.5 Postponement, suspension and termination of enforcement**

Parties (creditor and debtor) and third parties can file a request for postponement of enforcement measures with the enforcement court, which is competent to decide on that request. There is one exemption: in cases of enforcement against the debtor's movable property or in eviction cases, the creditor has to send the request for postponement to the judicial officer. In such cases, the judicial officer is allowed to postpone (partially or entirely) the enforcement upon the request of the creditor, if the creditor encloses a written document proving the debtor's consensus with the postponement (Art. 72/4 ESCCA). The judicial officer must inform the enforcement court about the postponement of the enforcement measures.

The enforcement court decides on the request for postponement in the form of a decree, which is being served to both parties, to the third party (in cases that the third party requested the postponement) and to persons or institutions carrying out enforcement (e.g., to the judicial officer, bank or other credit institution, employer, debtor's debtor etc.). Although any party can file an appeal against a decree on postponement, the appeal does not suspend the postponement effect, i.e., the postponement effect enters already with the issue of the decree of the enforcement court (Art. 9/6 ESCCA). The enforcement court has to act quickly (Art. 11/1 ESCCA), but there is no prescribed deadline for the enforcement court to decide on the request for postponement.

#### **I.5.1 Request for postponement by the creditor**

The judicial officer is allowed to postpone (partially or entirely) the enforcement upon the request of the creditor, if the creditor encloses a written document proving the debtor's consent with the postponement of enforcement against the debtor's movable property or in case of eviction. The judicial officer must inform the enforcement court about the postponement of the enforcement measures (Art. 72/4 ESCCA).

The creditor's submission of a request for postponement of the enforcement does not postpone the carrying out of enforcement, except in case of enforcement against the debtor's movable property or in case of eviction, when a creditor produces to the

judicial officer the debtor's written consent with the postponement (Art. 72/3 ESCCA). The maximum timeframe for postponement upon a creditor's request is one year (Art. 74/3 ESCCA).

### **I.5.2 Request for postponement by the debtor**

The enforcement court may, at the debtor's request, postpone enforcement in whole or in part if the debtor proves that they would suffer irreparable or difficultly recoverable damage and that this damage is greater than that which could be caused to the creditor by the postponement, in the following cases:

1. if they have lodged an extraordinary legal remedy against the judicial decision, which is the enforceable title;
2. if they have lodged a request for reinstatement in the procedure in which the enforceable title (e.g., judgment) was issued;
3. if they have lodged an action for the annulment of the arbitral award which is the enforceable title;
4. if they have lodged an action for the annulment of the court settlement on the basis of which the enforcement was allowed;
5. if they have lodged an action for the invalidity of an enforceable notarial deed, on the basis of which the enforcement was allowed;
6. if they have filed an objection against the enforcement decree;
7. if they have filed a motion for annulment of the certificate of enforceability;
8. if enforcement is conditional on the fulfilment of a creditor's obligation and the debtor has refused to fulfil his/her obligation because the creditor has failed to fulfil his/her obligation and has not shown a willingness to fulfil it at the same time;
9. if the debtor or a participant in the procedure has requested the elimination of irregularities committed in the enforcement procedure;
10. if the debtor has filed an application for refusal of enforcement of a foreign judicial decision, a foreign court settlement or a foreign court settlement pursuant to EU Regulations 1215/2012 or 606/2013;
11. if the debtor has initiated a lawsuit or other proceedings for the inadmissibility of enforcement (Art. 59 and 60 ESCCA).

In addition, the enforcement court can also, on the debtor's request, postpone the enforcement for specifically justified reasons for a period of maximum 3 months and only once (Art. 71/2 ESCCA). In cases of eviction this deadline can be prolonged (decision of the Slovenian Constitutional Court No. U-I-171/16, Up-793/16, 11. 7. 2019). In cases of enforcement against real estate, where the debtor resides (debtor's home), the court can postpone the enforcement upon request of the debtor for 6 months, when the value of the creditor's claim is disproportionate to the value of the real estate and the debtor submits a reasoned opinion of the centre for social work (Art. 71/4 ESCCA). Additionally, in cases of enforcement against real estate, which is

the debtor's home, the court can postpone the enforcement upon request of the debtor for appropriate time, if the value of the creditor's claim is disproportionate to the value of the real estate and if the debtor presents specifically justified reasons for such postponement (Art. 71/5 ESCCA).

If the enforcement has been postponed because the debtor (or a third party) has lodged a legal remedy, the enforcement shall not continue until the legal proceedings regarding the legal remedy have been completed (Art. 74/1 ESCCA). If the enforcement court postponed the enforcement upon the debtor's request for any other reason, it shall determine the length of the postponement according to the circumstances of the particular case (Art. 74/2 ESCCA).

The judicial officer is not allowed to postpone (partially or entirely) the enforcement upon the request by the debtor; this falls within the exclusive competence of the enforcement court (Art. 71 ESCCA).

The debtor has to deposit a guarantee in case of a request for postponement only if the creditor proposes so. The debtor is free from depositing a guarantee, if this would endanger his/her subsistence (existence) or subsistence of his/her family members (Art. 71/3 ESCCA).

The debtor's submission of request for postponement of the enforcement does not postpone the carrying out of enforcement.

The enforcement court serves the debtor's request for postponement to the creditor, who has the right to make a statement and present evidence in opposition to the postponement or who can propose that the debtor shall deposit a guarantee (Art. 71/3 ESCCA).

Although the enforcement court has to act quickly (Art. 11/1 ESCCA), there is no prescribed deadline for the court to decide on the debtor's request for postponement.

In cases where the creditor and the debtor agree on payment of the claim in instalments the creditor is usually the one who lodges the request for postponement with the enforcement court. In such cases, the maximum time for the postponement of enforcement is 1 year (Art. 74/3 ESCCA).

The enforcement continues after the expiration of the postponement period (Art. 75/1 ESCCA). However, the enforcement court can on the creditor's request resume the enforcement before the expiration of the period of postponement, if the creditor proves that the reasons for the postponement ceased to exist or if he/she has lodged a security (Art. 75/2 ESCCA), e.g., the debtor does not respect the agreement to pay the claim in monthly instalments.

### **1.5.3 Request for postponement by the third party**

The enforcement court is allowed to postpone (partially or entirely) the enforcement upon the request of the third party, if that party lodged an objection or an action to oppose enforcement (Art. 73 ESCCA).

The enforcement court postpones the enforcement if the third party produces a final court decision or other authentic instrument, proving his/her right on the

enforcement object or if the existence of his/her right can be based on common knowledge (Art. 73/1 ESCCA). If the third party fails to prove his/her right on the proposed enforcement object in the manner referred to in Art. 73/1 ESCCA, the enforcement court shall postpone the enforcement in respect of that enforcement object if the third party proves the probable existence of his/her right and that he/she would suffer irreparable or difficult compensatory damage by immediate enforcement (Art. 73/2 ESCCA). On the creditor's proposal the enforcement court requires deposit of guarantee, unless this would endanger the subsistence (existence) of the third party or the subsistence of his/her family members (Art. 73/3 ESCCA).

The consequences of the postponement of the enforcement procedure are that no enforcement measures can be carried out during the postponement, i.e., the judicial officer is neither allowed to seize the debtor's movable assets nor to sell them at public auction. During the postponement of enforcement, enforcement measures are not permitted, however the enforcement court can decide on legal remedies lodged by either party or by a third party (e.g., during the postponement the enforcement court is allowed to decide upon the objection of a debtor or a third party).

#### **1.5.4 Suspension of enforcement**

The enforcement procedure is a (civil) judicial procedure. That is why it has to be (ex officio) suspended when general conditions for suspension of civil proceedings are met, i.e.:

1. upon the death or incapacitation of a party who does not have an attorney;
2. upon the death or cessation of power of a statutory representative of a party who does not have an attorney;
3. if a party which is a legal person ceases to exist or is prohibited to operate business under a final decision by a competent government authority;
4. upon coming into effect of legal consequences of bankruptcy proceedings;
5. if the court is prevented from operation due to state of war or other reasons;
6. if it is so provided by the statute (Art. 205/1 CPC, Art. 15 ESCCA).

Moreover, the enforcement procedure has to be suspended upon the beginning of the compulsory settlement procedure, which is a special type of insolvency procedure (Art. 132/1 FOIPCSA). There is no maximum time for the suspension of the enforcement procedure.

The consequences of the suspension of the enforcement procedure are (Art. 207 CPC):

- Deadlines for procedural acts stop running during the suspension.
- During the suspension the court may not perform any act of procedure.
- Acts of procedure performed by one party during the period of suspension shall not have any legal effect in respect of the opposing party until the proceedings are continued.

#### **1.5.5 Termination of enforcement proceedings**



The enforcement court *sua sponte* issues a decree on termination of the enforcement proceedings in the following cases:

- if a creditor withdrew the application for enforcement (Art. 43 ESCCA);
- if the goal of the enforcement procedure has been reached and the creditor's claim has been satisfied with the enforcement measures;
- if a debtor or someone else (third person) fulfilled the creditor's claim;
- if the enforcement court rejected the creditor's application for enforcement;
- if, after the beginning of the enforcement procedure, the enforceable title was annulled, amended, revoked, invalidated or in another manner rendered ineffective (Art. 76 ESCCA);
- if the certificate of enforceability has been annulled;
- if the enforcement measures have been unsuccessful, e.g., the judicial officer has unsuccessfully attempted to seize the debtor's movables (e.g., the debtor's assets could not be located) and the creditor did not propose a new seizure attempt within 3 months (Art. 81 ESCCA) or the debtor has not received any attachable earnings (incomes) within the period of one year (Art. 133.a, 141/5 ESCCA) or nobody bought the attached movables or real estate neither on the first nor on the second public auction (Art. 95, 194 ESCCA);
- the creditor was inactive, e.g., the creditor did not pay advanced funds for the costs of the enforcement procedure (Art. 38/2 ESCCA), the creditor did not pay advanced funds for the judicial officer's costs (Art. 38.a/5 ESCCA); or
- if the creditor proposed enforcement on real estate on which mortgages of higher rank exist and the higher mortgage creditor has proven that after the compulsory sale of the debtor's real estate (usually on public auction) the creditor, who filed the application for enforcement, could not be settled not even in a part (Art. 180 ESCCA).<sup>22</sup>

As a consequence of the termination of enforcement proceedings the enforcement court annuls all the enforcement measures (e.g., seizure, entry of compulsory mortgage into land register etc.), except in some specific cases, determined by law (Art. 76 ESCCA).

## **1.6 Counter enforcement**

In Slovenia the debtor is entitled to request the enforcement court a counter-enforcement order after the end of the enforcement procedure and to propose that the creditor returns what he/she unjustifiably received through enforcement:

1. if the debtor has settled the creditor's claim during the enforcement proceedings;
2. if the enforceable title has been abolished, amended, annulled or declared invalid;
3. if the enforcement decree has been fully or partially annulled or amended;

---

<sup>22</sup> See Rijavec 2003, p. 188-189.



4. if the litigious court declared the enforcement, which has already been carried out, inadmissible;

5. if the creditor has received fulfilment in a greater extent than he/she was entitled according to his/her claim, or if the provisions on restriction of enforcement have not been observed in the enforcement of salary and other pecuniary incomes (Art. 67/1 ESSCA).

The debtor may lodge the proposal for counter-enforcement within three months from the day when he/she became aware of its reason, but not later than one year after the enforcement proceedings have been completed. Before expiry of those deadlines the debtor is not entitled to file an action before the litigious court against the creditor demanding the return of what has been unjustifiably received through the enforcement (Art. 67/2,4 ESSCA).

The enforcement court serves the proposal for counter-enforcement to the creditor, who can respond within 8 days. If the creditor fails to respond or if he/she declares that he/she does not oppose the proposal for counter-enforcement, the enforcement court orders the creditor to return to the debtor within 15 days what he/she has unjustifiably received through enforcement (counter-enforcement decree). If the creditor opposes the proposal for counter-enforcement, the court decides on the proposal after the court hearing. If in the latter case the proposal is grounded, the enforcement court issues the counter-enforcement decree as well (Art. 68 ESSCA). There are no specific time limits for the court to decide on the proposal for counter-enforcement, however the court shall (as a general principle of enforcement) act quickly (Art. 11 ESSCA).

The counter-enforcement decree is an enforceable title. For this reason, the debtor can request enforcement upon the counter-enforcement decree, if the creditor does not voluntarily fulfil the claim arising from said decree (Art. 69 ESSCA).

## **I.7 Objects and exemptions on enforcement**

### **I.7.1 Exemptions**

In Slovenia certain objects are exempted from enforcement to guarantee the debtor a decent living standard that is considered fair due to the average situation in the society. Enforcement is not allowed:

- on certain movables (Art. 79/1 ESSCA), i.e.: 1. clothing, footwear, other objects for personal use, linen, dishes, furniture, stoves, refrigerators, washing machines and other household items, insofar as these are strictly necessary for the debtor and members of his/her household; 2. food and firewood required by the debtor and members of his/her household for six months; 3. working and breeding livestock, agricultural machinery and other working equipment which are indispensable for the debtor as a farmer for agricultural activity, and seed for use on his/her holding and feed for livestock for four months; 4. items which are indispensable to the debtor in the public service or scientific, artistic or other profession as a professional; 5. cash of the debtor who has a fixed monthly income up to the monthly amount exempted from enforcement by

law, in proportion to the time of the next income; 6. orders, medals, war memorials and other awards and recognitions, a wedding ring, personal letters, manuscripts and other personal debtor's files and pictures or photographs of family members; 7. devices which have been given to a disabled person or other person with a physical disability and are necessary for the performance of his/her life functions;

- on certain debtor's incomes (Art. 101 ESCCA), e.g.: maintenance (alimony), personal injury compensation under the rules on disability insurance; incomes from financial social assistance and social security benefits; benefits for childbirth, child, large family and child care; scholarships; disability benefits; funds provided by humanitarian organizations (charity); funds obtained to eliminate or mitigate the consequences of natural disasters or damage in the fields of agriculture, forestry; cash received from state's active employment policy etc. (see details infra in chapter III.6 Enforcement against wages and other permanent pecuniary income);
- on certain debtor's real estate: According to Art. 177 ESCCA the agricultural land and farm buildings of the farmer may not be subject to enforcement as much as the farmer needs them for his/her livelihood and the livelihood of his/her family members. There is one exemption from this rule: real estate may be subject to enforcement if a farmer has established contractual lien (mortgage) or land charge (Ger. die Grundschuld) to secure payment of his/her monetary debt;
- on objects that cannot be traded (lat. *res extra commercium*) (Art. 32/2 ESCCA);
- on mineral wealth and other natural resources (Art. 32/2 ESCCA);
- on facilities, devices and other things that are strictly necessary for the state or the self-governing local community to perform its tasks, as well as on movable and immovable things intended for the defense of the state (Art. 32/2 ESCCA);
- on facilities, devices and other things that the debtor urgently needs to perform public service (Art. 32/2 ESCCA).

Moreover, there are additional **restrictions** of enforcement which aim either to enable the debtor a decent living standard or the continuation of his/her commercial or professional activities (in other cases to prevent debtor's insolvency), e.g.:

- Enforcement against a debtor engaged in a business activity cannot be carried out on machinery, tools and other work preparations, insofar as these things are strictly necessary to carry out the activity, unless the debtor has established contractual lien on that movable to secure a monetary claim or the object was purchased with loan of the enforcement creditor (Art. 80 ESCCA);
- The debtor's salary (remuneration), pension or other regular monthly incomes may be subject to enforcement only to a certain extent. The debtor, who is a



natural person, has a right to freely dispose of 2/3 of his/her regular monthly incomes, but not less than 76 % of the Slovenian minimum gross wage (which is currently 940,58 EUR), which means that he/she can keep minimum 714,84 EUR monthly. However, there are some exemption to this rule: a) in cases of enforcing maintenance claims (alimony) the debtor must retain 50 % of the Slovenian minimum gross wage (i.e., 470,29 EUR), b) if the debtor has to maintain his/her family members he/she is allowed to keep monthly, in addition to 76 % of the Slovenian minimum gross wage, also a sum needed for the livelihood of his/her family members – that sum is determined by special law (Art. 102 ESCCA, see details infra in chapter III.6 Enforcement against wages and other permanent pecuniary income).

### **I.7.2 Enforcement on property of a foreign country**

In Slovenia, enforcement on the property of a foreign country is permitted only with the prior consent of the Minister for Foreign Affairs, unless the foreign country has expressly consented with the enforcement (Art. 14 ESCCA).

### **I.8 (Court) penalties and fines**

According to Art. 33 ESCCA the enforcement court may impose a fine on the debtor:

- if, contrary to the decision of the court, he/she hides, damages or destroys his/her property;
- if, contrary to the decision of the court, he/she performs acts which may cause irreparable or difficultly recoverable damage to the creditor;
- if he/she hinders the judicial officer from performing enforcement acts;
- if he/she acts contrary to the injunction of the court;
- if he/she obstructs the success of the enforcement proceedings, e.g., if he/she does not allow or hinder the view of the property or its valuation or if he/she refuses to provide statement of his/her assets (Art. 31, 33. ESCCA).

The court may impose a fine of up to EUR 10,000 on the natural person and up to EUR 100,000 on the legal person and the entrepreneur (Art. 33/2 ESCCA). Such fines can be imposed repeatedly and they can be turned to imprisonment. If the debtor does not pay the fine within the deadline for voluntary payment, the enforcement court *sua sponte* commences the enforcement for payment of the fine. If such enforcement is not successful, the enforcement court on its own motion (*sua sponte*) turns the fine to imprisonment. Every 100,00 EUR of the fine equal one day of imprisonment; a natural person can be kept in prison up to 30 days and an entrepreneur up to 100 days (Art. 33/5 ESCCA).

### **I.9 Access to information on the domicile and assets of the debtor**

#### **I.9.1 Access to information**

In Slovenia, government bodies, public authorities (e.g., administrative authorities),<sup>23</sup> holders of public authority (e.g., notaries), other legal persons,<sup>24</sup> sole proprietors (entrepreneurs) and private persons are obliged - at the request of the enforcement court or the judicial officer- to provide (free of charge) information on the debtor's assets (Art. 4/1 ESCCA). Moreover, the same applies for the request of the creditor who has an enforcement claim (i.e., who produces an enforceable title), however he/she has to pay a fee to access this information (Art. 4/6 ESCCA). The enforcement court has access to all types of information (Art. 4/2 ESCCA), while judicial officers and creditors only have access to certain information (Art. 4/1,6 ESCCA).

Some databases are electronic and the enforcement courts (not the judicial officer) have online (digital) access to those databases (Art. 13/3 Courts Act),<sup>25</sup> e.g., bank account register, register of employment, register of stocks and bonds etc. The land register and the companies register are public; as such, everyone can check whether the debtor is an owner of a certain real estate or whether he/she has a share in a specific commercial company. However, only courts, judicial officers and creditors with an enforceable claim can request the land register or the companies register to provide information on whether the debtor has rights in rem on real estate or his/her share in commercial companies.

According to Art. 4/1,6 ESCCA the following information relating to the debtor are (inter alia) accessible to enforcement courts, judicial officers and creditors with an enforceable claim:

- Name;
- Address(es);
- Date of birth;
- Identity number for natural persons;
- Tax number (tax ID);
- Workplace and employer;
- Social security number;
- ID number for legal persons;
- Amount of his/her salaries;
- Information on his/her bank accounts;
- Position of his/her bank accounts;
- Amount of tax paid (this information is only accessible to the enforcement

---

<sup>23</sup> E.g., all state bodies which administer databases with information required for efficient enforcement, the tax authorities, the social security services, bodies which administer public registries, land registries services.

<sup>24</sup> E.g., banks, the debtor's employers.

<sup>25</sup> Zakon o sodiščih (ZS), Official Gazette of the Republic of Slovenia (Uradni list Republike Slovenije) No. 45/08, last amended by No. 16/19 – ZNP-1), available on: <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO332> (2.4.2020).

court and the judicial officers);

- Movable tangible goods, which are entered into the register of non-possessory liens and seized goods;
- Movable intangible goods such as stocks, shares in a company, securities, bonds etc.;
- Real estate rights;
- Specific goods such as vehicles, ships, airplanes etc.;
- Contracts which may be subject to *actio pauliana*.

Enforcement courts have access to the required information in some cases via internet (online access where electronic databases exist, Art. 13/3 Courts Act), in other cases through an official request.

Judicial officers have access to the required information through a written official request in paper form (addressed to holders of databases, i.e.: government bodies, public authorities - e.g., administrative authorities), holders of public authority (e.g., notaries), other legal persons, sole proprietors (entrepreneurs) and private persons). In order to obtain information, judicial officers must produce an enforcement decree or a decree by which they were designated as the judicial officer in the certain enforcement case (Art. 4/4 ESCCA). They usually receive information within one or two weeks.

Creditors have access to the required information through a request (letter), if they produce an enforceable title (Art. 4/6 ESCCA).

Neither the enforcement court nor the judicial officer may request information from a debtor's doctor, attorney or notary, which are part of a confidential relationship or subject to professional secrecy (Art. 4/3 ESCCA).

The enforcement court, the judicial officer and the creditor must maintain confidentiality when secret, confidential or sensitive information come to their attention in the course of the enforcement proceedings. The enforcement court, the judicial officer and the creditor may process the data concerning the debtor, which they have obtained, only for the purpose of identifying the debtor's assets and carrying out enforcement on his/her property (Art. 4/5,7 ESCCA). The creditor may use data regarding contracts, which have been concluded by the debtor in the last 1 or 3 years, only for the purposes of lodging an action *pauliana* against a debtor's contractual partner (Art. 4/7 ESCCA).

There is a possibility to reuse information on the debtor's assets in subsequent procedures that involve the same debtor.<sup>26</sup>

In case the judicial officer breaches his/her duty of confidentiality or abuses his/her prerogatives, measures of disciplinary liability have to be applied (Art. 298 ESCCA), possibly along with civil and/or criminal sanctions.

---

<sup>26</sup> Rijavec, Keresteš, 2010, p. 47.



## **I.9.2 Statement of assets**

In Slovenia, the debtor has an obligation to declare his/her assets as part of the enforcement process (Art. 31 ESCCA). Such statement of assets should be given to the enforcement court or the judicial officer (Art. 31/1,11 ESCCA). The statement of assets has to be served to the creditor (Art. 31/6 ESCCA).

If the debtor refuses to state the assets or makes incorrect statements there are two types of sanctions. Firstly, the enforcement court must (*sua sponte*) sanction him within the enforcement procedure, i.e., the enforcement court imposes a fine on the debtor which can eventually, if not paid, be turned into imprisonment (Art. 31/3, 33 ESCCA). The second sanction is a criminal one. If the debtor is examined at the court, he/she has a duty to speak the truth and not to withhold anything. If he/she breaches this duty and makes incorrect statements of assets or withholds some facts, he/she commits perjury (Art. 238, 263 CPC, Art. 15 ESCCA), which is a criminal offence (Art. 284 Criminal Code).<sup>27</sup>

The creditor can request a declaration of the debtor's assets throughout the enforcement procedure, i.e., already in the proposal for enforcement or until the termination of enforcement (31/1 ESCCA).

## **PART II: ORGANIZATION OF ENFORCEMENT**

### **II.1 The status of the judicial officer**

#### **II.1.1 The jurisdiction and competences of the judicial officer**

Slovenian judicial officers (bailiffs) are predominantly liberal (self-employed) professionals and are members of the Chamber of Slovenian Bailiffs (Slov. Zbornica izvršiteljev Slovenije), i.e., private bailiffs. However, the enforcement court may employ a judicial bailiff, who is a public servant. In such a case the enforcement court may decide to perform certain enforcement measures by judicial bailiffs. There is only one judicial bailiff in Slovenia at the moment (employed at the Local Court Celje), that is why in this report the term judicial officer refers to private bailiff.

Judicial officers do not have the monopoly of all the enforcement of court decisions and other enforceable titles in civil matters, because the competences in enforcement cases are divided between them and the enforcement courts (judges and court clerks are competent to decide at the enforcement court).

There is no shortage of judicial officers in some areas. Every judicial officer is competent on the entire national territory (Art. 7/2 ESCCA). However, it has to be highlighted once again that Slovenia has a court-based enforcement procedure and judicial officers have only limited competences within the enforcement procedure. Judicial officers have to act especially in cases of enforcement against movable assets (for fulfilment of a monetary claim), handing over movable assets, eviction. In all other

<sup>27</sup> Kazenski zakonik (KZ-1), Official Gazette of the Republic of Slovenia (Uradni list Republike Slovenije) No.

50/12, last amended by No. 23/20, available on:

<http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5050> (2.4.2020).



types of enforcement (e.g., enforcement against real estate, bank accounts, salary, stocks and shares in commercial companies etc.) the enforcement court is competent to conduct the enforcement. Court decisions are rendered either by a judge (e.g., decisions on legal remedies, enforcement against real estate etc., Art. 6/1 ESCCA) or by judicial clerks (e.g., enforcement against bank accounts, salary etc., Art. 6/3 ESCCA). Local jurisdiction is vested with the court of first instance (local court) where the debtor has his/her habitual residence or seat. There are 44 local courts in Slovenia. In cases of enforcement against real estate, the local court on whose territory the real estate lies has exclusive jurisdiction (Art. 35, 166 ESCCA).

### **II.1.2 The obligations of the judicial officer**

In Slovenia the judicial officers bear obligations relating to their activities. The nature of these obligations is statutory and they are determined by law (Art. 7, 288 – 291 ESCCA).

The objects of these obligations are the following:

- Compulsory service of the judicial officer and possible cases of exemptions of service (Art. 132 CPC);
- Prohibition of service in certain cases (relationship, union, conflict of interests, Art. 288/2 ESCCA);
- Cases and conditions in which the judicial officer must exert his/her activities personally (e.g., Art. 43/3 ESCCA);
- Obligations relating to the professional activities of the judicial officer (e.g., Art. 192 ESCCA);
- Conditions of keeping of archives of the judicial officer (Art. 291/3 ESCCA);
- Bookkeeping (Art. 38.a, 38.b and 38.c ESCCA);
- Obligation to respect the tariff (Art. 292 ESCCA);
- Obligation of the judicial officer to be submitted to a control of his/her activities. In Slovenia judicial officers are under the control of the Ministry of Justice (ministrstvo za pravosodje, Art. 297 ESCCA), a president of a local court (Art. 297.a ESCCA) and the Chamber of Slovenian Bailiffs (Zbornica izvršiteljev Slovenije, Art. 297.b ESCCA);
- Professional secrecy (e.g., Art. 4/5 ESCCA);
- Obligation to take out professional and civil liability insurance (Art. 281/1/9, 285 ESCCA).

### **II.1.3 Inconsistencies and conflict of interest**

A judicial officer cannot exercise their function in cases concerning rights and obligations of him/herself, his/her spouse or partner, his/her relatives in direct line, his/her relatives in lateral line up to four removals, his/her guardian, adopter or adoptee, or in cases where he/she is a statutory representative, representative or a principal of the party of enforcement procedure, or, where the party is a legal entity,

he/she is a partner in a general partnership, limited partnership or limited liability company, or if other circumstances render his/her impartiality doubtful (Art. 288/2 ESCCA).

#### **II.1.4 Ethics and deontology**

In Slovenia, there are no rules in place relating to ethics or deontology applicable to the profession of the judicial officer. There are also no plans to create such rules.

However, it needs to be noted that enforcement in Slovenia is court-based and some enforcement acts are performed by judges who are bound by a Code of Judicial Ethics.<sup>28</sup> The rules of the Code of Judicial Ethics concern judicial independence, impartiality, competence (continuing education and training, professional competence, general knowledge, life and work experience, communication skills), commitment, compatibility of judicial office, discretion, attitude (towards parties and other participants, lawyers, prosecutors and other legal experts, colleagues and the court staff) and reputation of judicial office.

#### **II.1.5 Disciplinary proceedings against judicial officers**

In Slovenia, the ESCCA contains rules relating to discipline applicable to the profession of the judicial officer. According to Art. 298 ESCCA the judicial officer shall be liable to disciplinary sanctions if he/she violates the provisions of the ESCCA or other regulations in the performance of his/her duties as a judicial officer, or if he/she violates the reputation of the judicial officer's service by any of his/her actions. Disciplinary violations are serious disciplinary violations and violations of the reputation of judicial officers (actions that constitute a violation of the reputation of the judicial officers are determined by the statute of the Slovenian Chamber of Bailiffs).

There is a specialized competence of the Minister of Justice to deal with questions relating to the discipline of judicial officers (Art. 297/3 ESCCA). The Minister of Justice can initiate disciplinary proceedings against a judicial officer on their own motion (*sua sponte*) or on proposal of the Slovenian Chamber of Bailiffs, a president of the district court, a president of the local court, a president of the higher court and the parties to the enforcement proceedings in which the judicial officer performed the enforcement acts (Art. 298.a ESCCA).

Disciplinary rules are included in Art. 298 – 298.f ESCCA, they are specific to the profession of judicial officers and they apply to violations of the law relating to the professional exercise (Art. 298.č ESCCA).

---

<sup>28</sup> The first Code of Judicial Ethics was adopted by the Slovenian Association of Judges in 1972. After the Slovenian independence (1991), the Slovenian Association of Judges adopted a new Code of Judicial Ethics with a commentary on June 8, 2001, which remains valid today and is binding for judges who are members of the Association. In June 2015 (and again in June 2017), the Slovenian Judicial Council adopted the Judicial Ethics Code, which is binding for all judges (notwithstanding whether they are members of the Slovenian Association of Judges or not). The Code in force is identical in substance to the Code adopted in June 2015, as well as to the Code of Judicial Ethics, adopted by the Slovenian Judicial Association at the General Assembly on 8 June 2001.

There are levels of disciplinary sanctions. Pursuant to Art. 298.b/1 ESCCA, the sanctions, from the lowest to the highest, are:

- written reprimand (warning);
- public reprimand (warning);
- fine from 1.000 up to 10.000 EUR;
- deprivation of the right to perform enforcement acts from 1 to 10 years or permanently (meaning that the judicial officer can eventually be permanently dismissed).

The judicial officer can be suspended during the disciplinary proceedings (298.b/7 ESCCA). He/she can challenge the disciplinary sanction pronounced against him/her by filing an appeal against the decision of the Minister of Justice, which shall be decided by the disciplinary commission of the Slovenian Chamber of Bailiffs. The judicial officer can lodge an action against the decision of the disciplinary commission before the administrative court (Art. 298.d/3,6).

## II.2 Supervision over enforcement

In Slovenia judicial officers are submitted to control of their activities. There is a control mechanism to prevent any misuse of their power or other deficiencies in carrying out their tasks (breaches or wrong-doings while carrying out their activities). Judicial officers are under the control of the Ministry of Justice (ministrstvo za pravosodje, Art. 297 ESCCA), a president of a local court (Art. 297.a ESCCA) and the Chamber of Slovenian Bailiffs (Zbornica izvršiteljev Slovenije, Art. 297.b ESCCA).

The following activities of the judicial officers can be controlled (Art. 297, 297.a and 297.b ESCCA):

- all their statutory professional activities;
- mistakes or abuses that could be perpetrated during their activities;
- lack or excessive length in exerting their activities;
- non-enforcement of decisions against public authorities;
- unlawful practices;
- excessive costs or fees;
- absence or lack of information; and
- accountancy of the judicial officer.

These controls can be carried out at any time. The Minister of Justice supervises the activities of judicial officers *ex officio* (*sua sponte*) or at the proposal of the president of a local, district or higher court, the president of the Slovenian Chamber of Bailiffs, the prosecutor, the public prosecutor and a person having a legal interest (Art. 297/1 ESCCA). The president of the local court, which appointed a judicial officer in a particular enforcement matter, begins the supervision of the judicial officer's activities *ex officio* (*sua sponte*) or at the proposal of the Minister of Justice (Art. 297.a/2

ESCCA). The Slovenian Chamber of Bailiffs institutes supervision of judicial officers' activities *ex officio* (*sua sponte*) or at the proposal of the Minister of Justice or the president of the local court, which appointed the judicial officer in the particular enforcement matter (Art. 297.b/2 ESCCA).

Every judicial officer must report once a year to the presidents of the local courts by which he/she has been appointed in particular enforcement matters, to the Minister of Justice and to the Slovenian Chamber of Bailiffs about his/her activities in the previous year (Art. 297.c ESCCA).

The judicial officer cannot be assisted during a control. In addition, he/she cannot challenge the control he/she is submitted to.

### **II.3 Access to the premises**

In Slovenia a judicial officer is allowed to enter the debtor's home (apartment, house) in the presence of two adult witnesses, where neither the debtor nor a (legal) representative nor an adult member of his/her household is present (Art. 49/2 ESCCA).

Where enforcement has to be carried out at the premises of a legal entity, the judicial officer shall, prior to commencing enforcement actions, invite the legal representative of the legal entity to immediately designate the person who will be present in the actions. If the legal representative is not at the premises of the legal entity or does not designate a person to be present, the enforcement measures in the premises shall be carried out at the presence of two adult citizens (Art. 50 ESCCA).

When the enforcement action is to be conducted in a premise that is locked, whilst the debtor is not present or does not agree to open it, the judicial officer is allowed to enter the premises with court allowance and in the presence of two adult witnesses (Art. 49/3 ESCCA). If the first attempt to seize the debtor's movable assets has been unsuccessful because the debtor was not at home or at his/her business premises, the debtor shall have first been notified by post or other appropriate manner of the future planned enforcement at his/her locked premises.<sup>29</sup>

All the aforementioned rules are safeguards to protect against any harassment of enforcement debtors.

### **II.4 Obstructing the judicial officer from carrying out enforcement**

The judicial officer is authorized to remove a person from the place where an enforcement action is taking place, if such person obstructs its commission (Art. 49/1 ESCCA). Moreover, when performing enforcement actions, the judicial officer may, depending on the circumstances of the case, request the presence and assistance of the police, if he/she encounters resistance or threat or if he/she reasonably expects it. Police costs are part of the enforcement costs (Art. 51 ESCCA).

If the debtor refuses to give information necessary to identify his/her assets, he/she shall be fined (Art. 31, 33 ESCCA).

### **II.5 Time of enforcement**

---

<sup>29</sup> Andrej Ekart, *Uspešni in neuspešni rubeži premočnin*, *Pravosodni bilten* 1 /2015, p. 179-181.



In Slovenia enforcement can be carried out on working days, and during the day time (Art. 48/1 ESCCA). The day time is considered to be from 6 am to 10 pm (Art. 41/3 Rules on the Performance of Bailiff Services). If it is dangerous to delay the enforcement actions, the judicial officer may perform them on other days and at nights (Art. 48/2 ESCCA) without approval of the court.

## II.6 Mediation

In Slovenia, judicial officers cannot exert the activity of mediation. However, they may (during the enforcement) make some arrangements with the debtor, where there is a consensus between the creditor and the debtor. In practice they often de facto act as “post judicial mediators” during the enforcement stage.<sup>30</sup> But there is no obligation for such mediation or reconciliation prior to initiating enforcement measures; these arrangements are only measures of “soft-enforcement” judicial officers use in practice. However, the enforcement judge can (with the consent of both parties) suspend the enforcement procedure for 3 months in order to try to settle the dispute via court-based mediation (Art. 206/3 CPC and Art. 15 ESCCA).

## PART III: ENFORCEMENT PROCEDURES

### III.1 Initiation and end of the enforcement procedure

#### III.1.1 Initiation of enforcement

Generally, the enforcement procedure is initiated through the proposal for enforcement of the creditor (Art. 2/1 ESCCA), exceptionally ex officio (sua sponte), e.g., the enforcement of the decision of a criminal court regarding taking away of assets of the convicted and costs of the criminal procedure (Art. 131 Criminal Procedure Act).<sup>31</sup>

#### III.1.2 Determination of the means and object of enforcement

As a principle, it is the task of the enforcement creditor to deliver information on the (enforceable) assets of the debtor. That is why the creditor should indicate (in the request for enforcement) the objects of enforcement. However, there are some exemptions to this basic rule. If the creditor proposes enforcement against debtor’s movable assets, bank accounts, wages or other permanent pecuniary income or dematerialized securities (which are entered into central register of securities), he/she does not have to indicate the objects of enforcement; it is sufficient if he/she only specifies the means of enforcement (Art. 40/1,3,4 ESCCA). The search for the movable assets is the responsibility of the judicial officer, but the creditor can propose to the judicial officer the preferred enforcement against certain movable assets.

The creditor lodges the proposal for enforcement based on the enforceable document before the enforcement court. The enforcement proposal needs to meet certain requirements based on the enforcement legislation. It has to indicate: both parties

<sup>30</sup> Andrej Ekart, Izvršitelj včeraj, danes in jutri, Podjetje in delo 6-7/2019, p. 1309-1310.

<sup>31</sup> Zakon o kazenskem postopku, Official Gazette of the Republic of Slovenia (Uradni list Republike Slovenije) No. 32/12 – uradno prečiščeno besedilo, last amended by No. 22/19, available on: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO362> (14.4.2020).

(creditor and debtor) with information to identify them; the enforceable title; the debtor's obligation; the means or objects of enforcement; and other information, which, depending on the object of enforcement, is necessary for the enforcement to be carried out (Art. 40/1 ESCCA), however not the statement that the time limit for voluntary fulfilment has passed. In addition, when requesting enforcement, the creditor has to produce the enforceable title and, if he/she wants to enforce a judicial or administrative decision, the certificate of enforceability as well (Art. 40/5 ESCCA). The creditor is free in the choice of the judicial officer; thus, the enforcement court designates the judicial officer proposed by the creditor (Art. 44.a/3 ESCCA).

### III.1.3 Withdrawal of enforcement

The creditor may at any time (without the debtor's consent) withdraw the request for enforcement (Art. 43/1 ESCCA). In such a case the enforcement court issues a decree on termination of enforcement and annuls all the enforcement measures, insofar as the acquired rights of other persons are not thereby affected. In case of withdrawal from enforcement, the creditor can subsequently file a new request for enforcement (Art. 43/3 ESCCA).

Moreover, the creditor may withdraw the request for enforcement and retain the lien on the object of enforcement, if the debtor agrees. In such a case the enforcement court does not annul the mortgage in the land register or pledge in the companies register or the attachment of movable property (Art. 43/2 ESCCA).

### III.1.4 Enforceability of the enforcement document

When filing a request for enforcement the creditor has to attach the enforceable title and, if he/she wants to enforce a judicial or administrative decision, the certificate of enforceability as well (Art. 40/5 ESCCA). The certificate of enforceability is issued by the court or administrative authority that ruled on the claim at first instance (Art. 42/1 ESCCA), if the judicial or administrative decision has become final (ger. rechtskräftig) and the deadline for voluntary fulfilment of the claim has expired (Art. 19/1 ESCCA). The deadline for voluntary fulfilment begins to run the first day after the service of the decision to the debtor (Art. 19/2 ESCCA) and it is usually 15 days long.

## III.2 Enforcement against movable assets to settle pecuniary claims

### III.2.1 General

**Obligation to specify movables in the request for enforcement.** The creditor is not obliged to specify the movables, that shall be attached, in the request for enforcement. It is sufficient, if he/she proposes the means of enforcement against the debtor's movable assets (Art. 40/3 ESCCA), i.e., seizure, valuation and sale of movable items.

**Local jurisdiction:** The enforcement court, in whose territory the movable items are situated, is competent to decide on the enforcement proposal for movable items (Art. 77 ESCCA), if the creditor has specified those items and their location in the enforcement proposal. If the creditor has not indicated the movable items in the enforcement proposal, the enforcement court, where the debtor is domiciled, is

competent to decide on the enforcement proposal (Art. 78 ESCCA).

### III.2.2 The inventory

Prior to the inventory (i.e., seizure) of the movables the enforceable title must be delivered to the debtor (see above chapter regarding certificate of enforceability). Upon the enforcement proposal based on an enforceable title, the enforcement court issues the enforcement decree, with which it determines the extent of enforcement and grants the enforcement measures (e.g., inventory valuation and public sale of debtor's movable items and satisfaction of creditor's claim). The judicial officer shall, if possible, serve the enforcement decree to the debtor prior to the attachment (inventory) of the movables, if it has not been served to the debtor before that moment (Art. 82/1 ESCCA). If the judicial officer cannot perform the service of the enforcement decree prior to the inventory (e.g., because the debtor is not present when attaching his/her movable items), it shall be served to the debtor afterwards (Art. 82/2 ESCCA).

The judicial officer shall notify the creditor of the time and place of seizure (inventory, Art. 82/3 ESCCA). However, non-attendance of the parties does not obstruct the inventory – it can be performed in the absence of both parties (Art. 82/4 ESCCA).

**Rights of third parties.** If third parties have rights on the movable items that are in the possession of the debtor, they will need to notify the judicial officer for their rights on the items. According to Art. 84/2 ESCCA the judicial officer shall, above all, attach those movable items that are undisputed between the parties (creditor and debtor) or other persons (e.g., third parties), which attend the attachment; any party or other person (e.g., third party) can state to the judicial officer that he/she has a right on the movable item, which could be subject to attachment. If the judicial officer attaches a movable item, on which a right of a third party exists, which prevents the enforcement, the third party can lodge an objection with the enforcement court until the end of the enforcement procedure on that movable item (Art. 64/1,2 ESCCA). However, if the disputed movable item has already been sold on public auction, the third party has lost his/her right (e.g., ownership) on that item (Art. 76/2 ESCCA); in such a case his/her objection will be rejected (VSL sklep I lp 1435/2017, 21.06.2017).

**Position of matrimonial and extra-marital spouses.** It is not assumed that the matrimonial and extra-marital spouses are joint owners (or co-owners) of all movable items that are in the house, flat or their business premises. That is why the judicial officer can attach any movable items in their house, flat or business premises. However, any of the spouses (debtor or other spouse, who has a status of a third party) can remark that certain movable items are in joint ownership of the spouses. If the judicial officer nevertheless performs the attachment (seizure) of the disputed items, the spouse, who is not the debtor, can file the objection of a third party with the enforcement court (see e.g., decision of the Slovenian Constitutional Court Up-128/03, 27. 1. 2005).

**Debtor's items in possession of a third person.** Debtor's movable items may be attached if they are in the possession of the debtor or creditor (Art. 83/1 ESCCA). The debtor's items that are in the possession of third person may be inventoried only upon

consent of the latter (Art. 83/2 ESCCA).

**Custody of inventoried items.** The creditor decides on the custody of the inventoried items. Upon the request of the creditor the attached items may be left or handed over to the debtor for custody (Art. 67/1 Rules on the Performance of Bailiff Services). In other cases, inventoried items are stored by the judicial officer in his/her premises, which are intended for storage, or in a warehouse (Art. 65/1,2 Rules on the Performance of Bailiff Services).

The creditor gets the right of pledge over the inventoried items (Art. 87 ESCCA).

### III.2.3 Valuation of the movable items

The value of the movable items is determined by the judicial officer (Art. 89/2 ESCCA), if possible, right after the inventory (Art. 89/1 ESCCA). However, the parties can request a re-valuation. Upon the request and expenses of a party (creditor or debtor) the valuation of the attached movable items is performed by an expert (appraiser, Art. 89/3 ESCCA) that has been appointed by the enforcement court (Art. 89/4 ESCCA).

### III.2.4 Method of sale

In Slovenia the following methods of sale of movable items are available: oral public auction and direct settlement, i.e., direct sales contract between the judicial officer and the buyer (Art. 93/1 ESCCA). In the near future e-auctions will be available as well – the ESCCA allows this method of sale (Art. 93/1 ESCCA); unfortunately, technical conditions for e-auctions have not been prepared yet. Once sale by e-auction of tangible movable goods and intangible movable goods attached by the judicial officer will be in force, e-auctions will be performed by the judicial officer.

The judicial officer is the one that decides on the method of sale (Art. 93/2 ESCCA).

**Place of oral public auction.** The oral public auction (sale) can be organized:

1. at the premises of the judicial officer;
2. in public spaces intended for auctions;
3. at a place agreed between the creditor and the debtor;
4. at the place where a higher sale price will be obtained, if the creditor or the debtor proposes it at his/her own expense or;
5. at the place where the seized items are located if, due to their quantity, quality or other characteristics, they cannot be physically removed and taken to another place (Art. 90 Rules on the Performance of Bailiff Services).

Sales by oral public auctions are exercised by the judicial officer (Art. 93, 94 ESCCA).

There are certain time limits to take into consideration before the public sale can be effected. According to Art. 92/1 ESCCA the public auction can be performed after the decree of enforcement has become final (Ger. rechtskräftig), unless the debtor has agreed to an earlier sale or in the case that the items are fast-spoiling or if it is likely that the sales price will fall significantly. Moreover, at least fifteen days and not more than three months must elapse between the day of attachment and the day of sale,

unless the debtor has agreed to an earlier sale or in the case that the items are fast-spoiling or if it is likely that the sales price will fall significantly (Art. 92/2,3 ESCCA).

### **III.2.5 Sale through direct settlement**

The initiative for a sale of attached items by direct agreement is taken by the judicial officer (Art. 93/1 ESCCA).

### **III.2.6 Public sale of movables**

Most attached items are sold by oral public auction; e-auctions do not operate yet. Art. 99 and 187 ESCCA list certain persons that are exempted from buying the attached movables. These persons are: the debtor, the judge, the judicial officer or anyone else who exercises official duty in the procedure of sale (e.g., the deputy or assistant of the judicial officer, the expert who valued the movables) or any other person who cannot acquire the right of ownership on the movables which are the object of enforcement according to the law.

The judicial officer has the obligation to publish the place, day and hour of the public sale on the court's notification table and on the enforcement court's website. Upon proposal and expenses of the creditor or the debtor the judicial officer may publish a call for the public auction in the media (Art. 89 Rules on the Performance of Bailiff Services).

The potential buyers must deposit a guarantee (up to 10 % of the sales price) only if the judicial officer orders so (Art. 91, 92/3 Rules on the Performance of Bailiff Services). After the buyer has deposited the full price of the sold movables with the judicial officer, the deposited guarantees from the other bidders shall be returned.

A public auction can take place even if only one bidder participates (Art. 93, 94 Rules on the Performance of Bailiff Services). In such a case the judicial officer is not entitled to postpone the public sale.

There are maximum two sessions of public sale. In the first session of the public sale, the movables cannot be sold at a price that is lower than 100 percent (100 %) of their value as appraised. In the second session of the public sale, the movables cannot be sold at a price that is lower than 30 percent (30 %) of their value as appraised (Art. 94/1,2 ESCCA). The timeframe between the first and the second session is between 15 to 90 days (Art. 94/4 ESCCA, Art. 86/1 Rules on the Performance of Bailiff Services).

If the attached movables are not sold at the second session of the public auction, the enforcement procedure will be terminated (Art. 95/1 ESCCA).

### **III.2.7 Payment of the sale price**

The buyer shall pay the sale price immediately after the end of the public auction (Art. 96/1 ESCCA). However, according to Art. 96/6 ESCCA the judicial officer may hand over the sold items to the buyer even though he/she has not deposited the purchase price, if the creditor agrees to it (he/she can agree only up to the limit of the amount of the purchase price that would belong to him/her).

If the buyer fails to pay the purchase price immediately after the end of the public

auction and the creditor does not consent to the handing over of the sold items, the judicial officer may sell the items to the next best bidder (Art. 96/6 ESCCA).

If neither of the bidders make the compulsory deposition of the purchasing price within the determined deadlines, the judicial officer may consider that the public sale has failed. If this was the first session of the public auction, the creditor may request a second session within 30 days. If this was the second session of the public auction, the court terminates the enforcement against the movables and the attached movables are returned to the debtor (Art. 94, 95 ESCCA).

### **III.2.8 Handover of movables to the buyer**

At the handover of the sold movables to the buyer the judicial officer must deliver him/her a document about the public auction – i.e., minutes of the public auction (Art. 96/1 ESCCA, Art. 96 Rules on the Performance of Bailiff Services).

### **III.2.9 Payment to the creditor**

The priority order of the creditors that have to be paid from the sale revenues depends on the time a creditor gained pledge on the sold movable item. A lien (pledge) on a movable item can be obtained contractually or during the enforcement procedure (e.g., the enforcement creditor gains lien with the inventory). This means that the enforcement creditor gains lien on the movable item as well. Creditors with pledge shall be satisfied by order of priority (Art. 98/1 ESCCA). The expenses, interests of the enforcement creditor have the same rank as his/her main monetary claim (Art. 98/3 ESCCA).

If there are more creditors with the same order of settlement, they will be settled proportionally in their amount, if the amount earned through the sale of the movables is insufficient for complete settlement (Art. 98/2 ESCCA).

The settlement of the creditors can be disputed in court (Art. 98/7 ESCCA).

If there is only one creditor, his/her claims are satisfied in the following order:

- expenses of the enforcement procedure;
- expenses determined in the enforceable title;
- interests; and
- main claim (Art. 97/1 ESCCA).

### **III.3 Attachment on the bank account of the debtor**

In Slovenia court-based enforcement allows judicial officers only limited competences in the enforcement procedure (e.g., they conduct enforcement against movables, evictions etc.). Attachment on the debtor's bank accounts falls within the competence of the enforcement court (it decides the enforcement judge or the court clerk). The enforcement court is able (also electronically) to access information on the debtor's bank accounts prior to the attachment (Art. 40/4 ESCCA).

The enforcement court does not contact any individual bank requesting information on the bank accounts prior to the attachment. There is no need for that because the

enforcement court has direct access to a central database with information on the bank accounts (Art. 40/4, 4 ESCCA).

The bank account numbers do not have to be mentioned in the order for attachment (i.e., in the enforcement decree) to the bank (Art. 138 ESCCA).

The order of attachments is the following: first current accounts shall be attached, then other accounts (e.g., deposited savings, foreign currency accounts or any other accounts in the bank). However, the debtor may determine under which order the bank accounts shall be attached (Art. 144 ESCCA).

The attachment of the bank accounts is done electronically, if the relevant bank uses judicial safe electronic service of documents (Art. 132 CPC, Art. 15 ESCCA) – in practice all Slovenian banks use it in enforcement cases, that is why enforcement courts serve judicial documents to banks in an electronic form.

Upon attachment of the bank account the communication with the bank on the transfer of any funds is only partly done electronically, because only courts can electronically serve judicial documents to the banks, not vice-versa (generally, a bank cannot file documents with the court electronically). There is one exception to that basic rule. Pursuant to Art. 141/9 ESCCA and Art. 1/1, 3/7, 6/9, Annex 5 Rules on Templates, Types of Enforcements and the Automated Enforcement Procedure<sup>32</sup> banks must file notifications to the enforcement court via the Slovenian courts' e-portal (Slov. e-sodstvo)<sup>33</sup>, that:

- at the time of receipt of the enforcement decree there were no attachable funds on the debtor's bank account and even at least one year prior to the receipt of the enforcement decree there had been no inflow of attachable funds on the debtor's bank account (141/2 ESCCA); or
- one year after the receipt of the enforcement decree there was no inflow of attachable funds on the debtor's bank account (141/3 ESCCA).

Upon receiving the order for attachment (i.e., enforcement decree) the bank is obliged to inform the enforcement court in the following cases:

- if the debtor has no bank accounts with the bank (138/5 ESCCA);
- if at the time of receipt of the enforcement decree there were no attachable funds on the debtor's bank account and even at least one year prior to the receipt of the enforcement decree there had been no inflow of attachable funds on the debtor's bank account (141/2 ESCCA).

In addition, the bank shall immediately notify the enforcement court, when the creditor's claim has been fully satisfied (Art. 138/4 ESCCA). Moreover, upon the court's expressive request the bank is obliged to provide all explanations and documents showing whether and how it executed the enforcement decree (Art. 147/3 ESCCA) –

<sup>32</sup> Pravilnik o obrazcih, vrstah izvršb in poteku avtomatiziranega izvršilnega postopka, Official Gazette of the Republic of Slovenia (Uradni list Republike Slovenije) No. 104/11, 88/14 and 44/16, available on: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=PRAV10875> (17.4.2020).

<sup>33</sup> <https://evlozisce.sodisce.si/esodstvo/index.html> (17.4.2020).

in such a case the bank must disclose the numbers of all accounts held by the debtor in that bank or provide other information (e.g., the transactions history of all the debtor's accounts).

There is a time limit for the bank to inform the enforcement court on the existing bank accounts and funds. If the bank has fully satisfied the creditor's claim, it shall immediately notify the enforcement court (Art. 138/4 ESCCA). In addition, pursuant to Art. 141/3 ESCCA the bank shall inform the court, that one year after the receipt of the enforcement decree there was no inflow of attachable funds on the debtor's bank account.

Upon receipt of the attachment order the bank must block all the debtor's bank accounts and immediately transfer the money to the creditor's account (Art. 138/1,3 ESCCA).

The attachment does not apply to all funds found on the bank accounts, because certain amounts are exempted from attachment (Art. 137 ESCCA), i.e.:

- Certain debtor's incomes are fully exempted from enforcement (Art. 137, 101 ESCCA), e.g.: maintenance (alimony), personal injury compensation under the rules on disability insurance; incomes from financial social assistance and social security benefits; benefits for childbirth, child, large family and child care; scholarships; disability benefits; funds provided by humanitarian organizations (charity); funds obtained to eliminate or mitigate the consequences of natural disasters or damage in the fields of agriculture, forestry; cash received from state's active employment policy etc. (see details *infra* in chapter III.6 Enforcement against wages and other permanent pecuniary income);
- There are restrictions of enforcement regarding certain debtor's incomes. According to Art. 137 and 102 ESCCA the debtor's salary (remuneration), pension or other regular monthly incomes may be object to enforcement only to a certain extent. The debtor, who is a natural person, has a right to freely dispose of 2/3 of his/her regular monthly incomes, but not less than 76 % of the Slovenian minimum gross wage (which is currently 940,58 EUR), which means that he/she can keep minimum 714,84 EUR monthly. However, there are some exemption to this rule: a) in cases of enforcing maintenance claims (alimony) the debtor must retain 50 % of the Slovenian minimum gross wage (i.e., 470,29 EUR), b) if the debtor has to maintain his/her family members he/she is allowed to keep monthly, in addition to 76 % of the Slovenian minimum gross wage, also a sum needed for the livelihood of his/her family members – that sum is determined by special law (Art. 102 ESCCA, see details *infra* in chapter III.6 Enforcement against wages and other permanent pecuniary income).

The enforcement court does not have to send a separate transfer order to the bank in order to transfer the funds on the creditor's bank account. When issuing the enforcement decree the enforcement court orders the bank to block all the debtor's bank accounts and to immediately transfer the attached funds to the creditor's account (Art. 138/3 ESCCA), because in such a case the finality of the enforcement





decree is not a prerequisite for the satisfaction of the creditor's claim (Art. 46/3 ESCCA).

If there are insufficient funds on the debtor's accounts to settle the transfer order, the bank will block all accounts held by the named debtor, preventing all withdrawals of the attached funds and attaching the new inflow on the debtor's account until the claim is fully satisfied (Art. 141/1 ESCCA).

If there are more attachment orders, the banks conduct the payments in order according to the time of receipt of the attachment order (Art. 110 and 136, 141/7, 143/2 ESCCA).

The enforcement court is obliged to notify the bank to release the debtor's accounts upon full payment of the claim – in such a case the enforcement court issues (usually upon the creditor's withdrawal from the enforcement proposal) a decree on the termination of the enforcement procedure and serves it to the bank. The enforcement court is namely the one that has an overview over the means and objects of enforcement and can coordinate the implementation of the enforcement decree.

The bank can be held liable in case of its failure or failure of its official persons to comply with the attachment and transfer order (Art. 147/1 ESCCA). In such a case, (upon the creditor's request) the enforcement court orders the bank to pay from its (not the debtor's) bank accounts the claim to the creditor. In addition, the bank is also liable for damages incurred to the creditor due to the fact that it did not act according to the enforcement decree (Art. 147/2 ESCCA).

There are special rules for the enforcement of the debtor's funds in another currency. In such a case, the funds from the account of the debtor shall be exchanged into the national currency (Art. 139/1 ESCCA). If the claim arising from the enforcement title is in foreign currency, the court, upon the creditor's request, grants the enforcement to satisfy that claim in foreign currency from the debtor's bank funds in foreign currency (Art. 139/2 ESCCA).

### **III.4 Enforcement against savings deposits and current accounts**

Enforcement against savings deposits and current accounts is conducted in the same manner as attachment on the bank accounts of the debtor, described in Section III.3. Upon receipt of the enforcement order the bank must block all the debtor's bank accounts and immediately transfer the money to the creditor's account (Art. 138/1,3 ESCCA). For details see III.3.

### **III.5 Enforcement on immovable property**

#### **III.5.1 General**

In Slovenia enforcement is court-based, thus the vast majority of the enforcement measures (including enforcement on immovable property) are conducted by the enforcement court (Art. 166, 170, 178, 183 etc. ESCCA).

The enforcement court in whose territory the immovable item is situated is competent to decide on the enforcement proposal for the immovable item (Art. 166/1 ESCCA).

In Slovenia the vast majority of immovables are registered in the land register and cadastre (they are two separate registers).

### **III.5.2 Enforcement against unregistered real estate**

In case of unregistered real estate, the creditor, when filing the enforcement proposal, does not have to submit evidence for the right of ownership on the real estate, which is the object of enforcement. He/she only has to indicate where the real estate is located, its name, boundaries and area or other information necessary for its identification (Art. 211/1 ESCCA).

There is a special legal regime for such real estate. Upon the creditor's enforcement proposal, the enforcement court renders an enforcement decree and serves it to both parties and to the judicial officer. The judicial officer has to:

- conduct sequestering inventory (seizure) of the real estate;
- summon both parties (creditor and debtor) to the inventory sequestering session; and
- publish the minutes of the sequestering inventory on the court's notification table and in the Official Gazette of the Republic of Slovenia (Art. 211 ESCCA).

The effect of all this judicial officer's activities is that the enforcement creditor gains mortgage (pledge) on the unregistered real estate (Art. 211/3 ESCCA).

### **III.5.3 Enforcement against registered real estate**

The creditor does not have to annex an extract from the land register (public book) proving the ownership of the debtor to the enforcement proposal for the immovable item. He/she just has to specify the real estate's ID in the enforcement proposal in order that the enforcement court can check (via electronic insight into the land register) the debtor's ownership on proposed real estate (Art. 168/1 ESCCA).

There are two separate procedures for enforcement against registered and non-registered real estate. Enforcement against immovable items is performed through noting the enforcement in the public book of immovable items (land register), appraisal, sale of the immovable items and satisfaction of the creditors (Art. 167 ESCCA). In case of enforcement against unregistered real estate, instead of noting the enforcement in the land register, the judicial officer seizes the unregistered real estate and publishes the minutes of the sequestering inventory on the court's notification table and in the Official Gazette of the Republic of Slovenia (Art. 211 ESCCA, see III.5.2 supra).

After the issue of the enforcement decree against certain debtor's real estate the debtor has a right to propose to the enforcement court within 8 days to grant the enforcement on his/her other immovable or some other object of enforcement (Art. 169/1 ESCCA). The enforcement court serves the debtor's proposal to the creditor, who can respond within 8 days (Art. 169/2 ESCCA). However, the enforcement court does not need the consent of the creditor to change the object of enforcement. The enforcement court grants the enforcement on another immovable or another object of enforcement, if the debtor likely proves that this a suitable manner to fully satisfy

the creditor's claim (Art. 169/4 ESCCA). However, if the debtor proposes the assignment of the enforcement on certain other objects of enforcement (i.e., salary, pension, disability allowance or other regular monetary incomes) than the immovable property, he/she additionally has to demonstrate that it is probable (likely) that the creditor's claim shall be settled within a 1 year since the issue of the new enforcement decree (169/5 ESCCA).

In case that the ownership of the immovable is changed during the enforcement procedure, such change does not obstruct the continuation of the enforcement procedure against the new owner as a debtor. All previously completed enforcement actions shall remain valid and the new owner, during further enforcement, cannot exercise procedural steps which could not be exercised by the previous owner (Art. 24/4, 170 ESCCA).

After noting the enforcement on the real estate in the public book (land register) the same immovable can also be attached in favour of another creditor. The subsequent creditor is included in the already started procedure of enforcement against the same real estate (Art. 171 ESCCA).

Real encumbrances (mortgages and land charges) elapse by the sale of the attached real estate, unless the buyer and the enforcement creditor agree otherwise (Art. 173 ESCCA).

Real servitudes do not expire by the sale of the attached real estate, if:

- they have been established and registered in the land register before the rights of the mortgage, land charge or enforcement creditors;
- the mortgage, land charge or enforcement creditors agree with the establishment of real servitude;
- they have been established by judicial or administrative decision (Art. 174/1 ESCCA).

Other real servitudes expire by the sale of the attached immovable.

Neither rights of construction nor personal servitudes on real estate expire by the sale of the attached real estate, provided that the right of construction or personal servitude is recorded in the real estate's public book (land register) prior to the rights of mortgage, land charge or rights of enforcement creditors (174/2 ESCCA). Other rights of construction or personal servitudes elapse by the sale of the attached immovable, unless the holders of those rights otherwise agree with the buyer (Art. 174/4 ESCCA).

The lease contract on the real estate does not elapse by the sale of the real estate (Art. 175/1 ESCCA). However, if the lease contract was concluded after gaining the right of pledge or the right to settlement for which the enforcement was proposed (i.e., if the lease contract was concluded after the rights of mortgage, land charge and enforcement creditors), the buyer can terminate the lease contract and the leaseholder has to hand over the immovable within one month (Art. 175/3 ESCCA).

### III.5.4 The preparation of the sale of the real estate



The enforcement judge, who conducts enforcement against real estate, can (upon request) provide the person interested to buy the real estate with a permit to observe the immovable (Art. 176 ESCCA).

If the debtor damages the real estate, obstructs the enforcement process, obstructs its evaluation or observation, the enforcement court (more precisely the enforcement judge) can fine him/her. In addition, any person affected by causing damage on the real estate, obstructing the enforcement process (e.g. evaluation, observation) can file an action to refrain from causing damage on the real estate or obstructing the enforcement process (e.g. Art. 133 Code of Obligations)<sup>34</sup> and a proposal for injunction before the court and the court can issue the injunction ordering measures necessary for the protection of the real estate or for performing the enforcement without any obstacles (Art. 273/1/1 ESCCA).

There are rules with regard to real estate that cannot be attached (exemptions from enforcement on real estate). They apply to agricultural land and the farm buildings of the farmer as much as he/she needs them for his/her own livelihood and for the livelihood of his/her family members and other persons who he/she is legally obliged to support (Art. 177/1 ESCCA). However, if the farmer has established mortgage or land charge on the real estate and does not repay the credit, this real estate can be sold in the enforcement procedure as well (Art. 177/2 ESCCA).

### III.5.5 Valuation of the real estate

The value of the real estate is determined by a court decree on the basis of an expert evaluation (Art. 178 ESCCA).

Every person who has the right to be paid from the price of the real estate and who according to the order has priority in relation to the enforcement creditor, may propose the termination of enforcement, if the ascertained value of the real estate cannot cover the amount of the claim of the enforcement creditor (Art. 180 ESCCA).

### III.5.6 Conditions for sale

Pursuant to Art. 180 ESCCA the conditions for sale are made known through the following channels:

- the enforcement court issues a document on the sale of real estate (sale order) determining the value of the real estate and the manner and conditions for the sale, as well as the time and venue of the sale, if it is performed through public auction;
- the document on the sale is served to the parties;
- the document on the sale is served to persons who have a priority right to settle their credits and to persons who have a right for settlement with the same or lower rank in relation to the enforcement creditor;

---

<sup>34</sup> Obligacijski zakonik, Official Gazette of the Republic of Slovenia (Uradni list Republike Slovenije) No. 97/07 – uradno prečiščeno besedilo, 64/16 – odl. US in 20/18 – OROZ631, 104/11, 88/14 and 44/16, available on: <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1263> (17.4.2020).

- the document on the sale is served to the persons who have a recorded right or priority or legal right;
- the document on the sale is published at the court's notification table (billboard) and on the enforcement court's website;
- the document on the sale is delivered to the administrative authorities competent for the overview over the sale of agricultural real estate – they publish the document on the sale at their notification table (billboard) and on their website;
- the document on the sale is delivered to the state attorney;
- the creditor can at his/her own expenses publish the document on the sale in the media (e.g., in the local newspaper).

There is a time limit for publication of the conditions for sale. The document on the sale (sale order) has to be published at least 30 days prior to the sale of the real estate (Art. 181/6 ESCCA).

### III.5.7 Method of sale

In Slovenia, the following methods of sale of real estate are available: verbal public auction, written binding bids (offers) and direct settlement, i.e., direct sales contract with the buyer upon consent of the debtor and the creditors (Art. 183/1-4 ESCCA). In the near future e-auction will be available as well – the ESCCA allows that method of sale (Art. 183/2 ESCCA); unfortunately, technical conditions for e-auctions have not been prepared yet (Art. 75 Act amending Claim Enforcement and Security Act).<sup>35</sup>

The oral public sale is usually organized at the enforcement court, unless the court decides otherwise (Art. 183/2 ESCCA).

The sale is exercised by the enforcement judge (Art. 6/1 ESCCA) – the enforcement court is namely competent for enforcement against real estate.

### III.5.8 Sale by direct agreement

The initiative for a sale by direct agreement is taken by the parties and the creditors secured by pledge (Art. 183/4 ESCCA).

### III.5.9 Public sale of real estate

Most real estate is sold at oral public auctions at the premises of the court. Public auctions are conducted by the enforcement judge. Certain persons are exempted from buying the attached real estate: the debtor, the judge, any person who exercises official duty in the procedure of sale (e.g., the evaluator of the real estate) or any other person who cannot acquire the right of ownership on the real estate, which is the object of enforcement, according to the law (Art. 187 ESCCA).

Potential buyers must deposit a guarantee in the amount of 10 % of the evaluated price of the real estate (Art. 185/1,4 ESCCA). After the buyer deposits the full price of

---

<sup>35</sup> Zakon o spremembah in dopolnitvah Zakona o izvršbi in zavarovanju (ZIZ-L), Official Gazette of the Republic of Slovenia (Uradni list Republike Slovenije) No. 11/18, available on: <https://www.uradni-list.si/glasilo-uradni-list-rs/vsebina/2018-01-0458?sop=2018-01-0458> (20.4.2020).

the sold real estate with the enforcement court, the deposited guarantees shall be returned to the other bidders (Art. 185/5 ESCCA).

The public auction takes place even if only one bidder participates, but upon the proposal of the party (creditor or debtor) or the mortgage or land charge creditors the court may, considering all circumstances of the case, postpone the public auction (Art. 186 ESCCA).

There are two sessions of public sale. In the first session of the public sale, real estate cannot be sold at a price that is lower than 70 percent (70 %) of its value as appraised. In the second session of the public sale, real estate cannot be sold at a price that is lower than 50 percent (50 %) of its value as appraised (Art. 188/1,2 ESCCA). The time frame between the first and the second session of the public sale is at least 30 days (Art. 188/3 ESCCA).

In case that the real estate is not sold at the last session of the public auction, the enforcement court terminates the enforcement procedure against the debtor's real estate (Art. 194/1 ESCCA), but the enforcement creditor keeps his/her mortgage, obtained during the enforcement procedure (Art. 194/4 ESCCA).

#### **III.5.10 Payment of the sale price**

The deadline for payment of the sale price is determined by the enforcement judge and shall not exceed 6 months after the sale (Art. 184 ESCCA). In practice, enforcement judges usually set a 30-days long deadline.

If the purchase price is not paid within the set time limit, the buyer loses the deposited guarantee, which is distributed among the creditors. In addition, in such a case the enforcement court (upon the proposal of the enforcement creditor) invites the second or next bidder (e.g., the third bidder) to pay the sale price. If the second or next bidder agrees with the payment of the sale price, the enforcement court ascertains the sale of the real estate to the second (or next) bidder, otherwise the enforcement court considers that the public sale has failed, declares the sale invalid and schedules a new session (Art. 191/3 ESCCA).

#### **III.5.11 Handover of the real estate to the buyer**

After the buyer has paid the sale price, the enforcement court issues a decree on handover of the real estate to the buyer. In that decree the court:

- concludes that the buyer has gained ownership on the real estate that has been sold;
- determines that after the finality of that decree the right of the property of the buyer shall be registered in the land registry and that certain encumbrances on real estate (mortgages, land charges, real servitudes, personal servitudes rights of construction) shall be erased from the land register;
- orders the debtor to leave the premises (Art. 192/1,2 ESCCA).

In case the debtor does not voluntarily leave the premises, the buyer is entitled to evict the debtor after the finality of the decree on handover of the real estate (Art.

192/2,4 ESCCA).

### III.5.12 Payment to the creditor

The order of priority for the creditors to be paid from the sale revenues is the following (Art. 197, 198 and 199 ESCCA):

- Expenses of the enforcement procedure of every enforcement creditor.
- Real estate sales tax (which amounts to 2% of the sales price) or VAT.
- Priority claims (i.e., maintenance or alimony claims, damages for personal injuries, labour claims, social security claims), which have fallen due in the last year.
- Claims of creditors with pledges (mortgages or land charges). These claims shall be realized by the order of priority. It has to be stressed that the priority order of the creditors that have to be paid from the sale revenues depends on the time a creditor gained pledge (mortgage or land charge) on the sold real estate. A mortgage on real estate can be obtained either contractually or during the enforcement procedure (i.e., during the enforcement procedure the enforcement creditor gains compulsory mortgage, which is noted in the land registry). That means that the enforcement creditor (i.e., enforcement proposer) gains mortgage on real estate as well. Creditors with mortgages or land charges shall be satisfied by order of priority (Art. 198 ESCCA).
- Rewards for personal servitudes, which are terminated through the sale of real estates (Art. 199 ESCCA).

If there are more creditors with the same order of settlement, they will be settled proportionally in their amount, if the amount earned through the sale of the real estate is insufficient for complete settlement (Art. 200 ESCCA).

A person who has the priority right of purchase of the real estate which is the object of enforcement by sale has priority over the best bidder, providing that he/she gives a statement for matching the bid immediately after the conclusion of the bidding (Art. 182 ESCCA).

The settlement of the creditors can be disputed. Namely, after the finality of the decree on handover of the real estate to the buyer the enforcement court issues a decree on distribution of the sale revenues. Every party (creditor or debtor) or every person who has the right to be paid from the sale revenues can file an appeal against the decree on distribution of the sale revenues; the appellate court decides on this legal remedy (Art. 208 ESCCA).

### III.6 Enforcement against wages and other permanent pecuniary income

In Slovenia enforcement is court-based and judicial officers have only limited competences in the enforcement procedure (e.g., they conduct enforcement against movables, evictions etc.). Enforcement against wages and other permanent pecuniary income falls within the competence of the enforcement court (it decides the enforcement judge or the court clerk). The court where the debtor's domicile is

located is competent to decide on the enforcement proposal for attachment of wages and other permanent pecuniary income (Art. 100/1 ESCCA). If the debtor is not domiciled in Slovenia, the court where the debtor's debtor is domiciled is competent to decide on such enforcement proposal (Art. 100/2 ESCCA).

Prior to the attachment of wages and other permanent pecuniary income the enforcement court does not contact any employer requesting information whether the debtor is his/her employee. There is namely no need for that because the enforcement court has direct electronic access to a central database containing information on the debtor's employment or pension (social security register, Art. 40/4, 4 ESCCA). However, the enforcement court does not have online access to information on the level of the debtor's salary paid by the employer. That is why the enforcement court can request the employer to share information on the level of the debtor's salary anytime during the enforcement procedure and the employer is obliged to give that information (Art. 4 ESCCA). There is a time limit to provide such information – the employer is obliged to provide it immediately, not later than within 8 days (Art. 4/8 ESCCA).

The employer is obliged to inform the enforcement court on the termination of the employment and on the new employer of the debtor, if he/she knows the new employer. In case the previous employer is not aware who is the debtor's new employer, he/she informs the court thereof (Art. 133/2,3 ESCCA).

The employer can be held liable for payment of the instalments that ought to be paid, but were not deducted from the debtor's salary. He/she is liable both for the instalments and other damages incurred to the creditor due to the fact that the employer did not act according to the enforcement decree (Art. 134 ESCCA).

The debtor is also entitled to give his/her consent, in order to settle the claim, for sequestration of a part of his/her personal income and direct payment to the creditor, provided that the legal provisions with regard to the maximum amount that can be deducted from the income are respected (Art. 135 ESCCA). This kind of sequestration is performed without the involvement of the enforcement court (out-of-court sequestration).

There are limitations with regard to the enforcement against personal incomes (wages and other permanent pecuniary income), that is why some personal incomes or parts thereof cannot be sequestered. Certain debtor's incomes are **fully exempted** from sequestration (101 ESCCA), e.g.: social assistance; rewards due to bodily damage according to the provisions of disability guarantee; incomes based on temporary unemployment; children's allowances; student's scholarships and assistance to students and pupils; incomes of the war invalids; invalidity allowances; maintenance (alimony); benefits for childbirth, child, large family and child care; scholarships; disability benefits; funds provided by humanitarian organizations (charity); funds obtained to eliminate or mitigate the consequences of natural disasters or damage in the fields of agriculture, forestry; cash received from state's active employment policy etc. Exceptionally, pursuant to Art. 102/3 ESCCA) incomes of the war invalids and invalidity allowances can be object of enforcement for the settlement of maintenance



claims to a certain extent, because after the sequestration the debtor must be free to dispose of the amount of 50 % of the Slovenian minimum gross wage (i.e., 470,29 EUR). If the debtor is an invalid and has to maintain his/her family members, he/she is allowed to keep monthly, in addition to 50 % of the Slovenian minimum gross wage, an additional sum needed for the livelihood of his/her family members – that sum is determined by a special law (Art. 102 ESCCA).

With regard to other regular personal incomes of the debtor (e.g., salary, pension) there are **restrictions (limitations) of enforcement**. This means that certain percentage of the personal incomes is exempted from sequestration. According to Art. 102/1 ESCCA the debtor's salary (wage), pension or other regular monthly incomes may be subject to enforcement only to a certain extent. The debtor, who is a natural person, has a right to freely dispose of 2/3 of his/her regular monthly incomes, but not less than 76 % of the Slovenian minimum gross wage (which is currently 940,58 EUR), which means that he/she can keep 1/3 of his/her monthly income, but not less than 714,84 EUR. If the debtor has to maintain his/her family members he/she is allowed to keep monthly, in addition to 76 % of the Slovenian minimum gross wage, also a sum needed for the livelihood of his/her family members – that sum is determined by special law (Art. 102 ESCCA). However, there is an exemption to this exemption. When enforcing maintenance claims (alimony), the debtor must retain 50 % of the Slovenian minimum gross wage (i.e., 470,29 EUR).

In case the debtor is self-employed (sole entrepreneur) or in case the debtor's income is based on a contract for life nutrition and for life rent or based on a contract for life guarantee, the "2/3 rule" does not apply (Art. 102/2,4 ESCCA). This means that:

- the object of sequestration can be part of the debtor's incomes, which is higher than 76 % of the Slovenian minimum gross wage (which is currently 940,58 EUR), which means that the debtor can retain 714,84 EUR monthly. If the debtor has to maintain his/her family members he/she is allowed to keep monthly, in addition to 76 % of the Slovenian minimum gross wage, an additional sum needed for the livelihood of his/her family members – that sum is determined by special law (Art. 102 ESCCA);
- when enforcing maintenance claims (alimony), the debtor must retain the amount of 50 % of the Slovenian minimum gross wage (i.e., 470,29 EUR).

Debtor's war veteran allowances can be object of enforcement as well, however to a very limited extent, i.e., for the settlement of maintenance claims. In such a case after the sequestration the debtor must be able to dispose of the amount of 50 % of the Slovenian minimum gross wage (i.e., 470,29 EUR). If the debtor, who is a war veteran, has to maintain his/her family members, he/she is allowed to keep monthly, in addition to 50 % of the Slovenian minimum gross wage, an additional sum needed for the livelihood of his/her family members – that sum is determined by special law (Art. 102 ESCCA).

### III.7 Attachment under the debtor's debtor

#### III.7.1 General



The court where the debtor is domiciled is competent to decide on the enforcement proposal for attachment under the debtor's debtor (Art. 100/1 ESCCA). If the debtor is not domiciled in Slovenia, the court where the debtor's debtor is domiciled is competent to decide on such enforcement proposal (Art. 100/2 ESCCA).

The creditor is obliged to specify the claim, which is the object of enforcement, in the request for enforcement under the debtor's debtor. The claim of a debtor against his/her debtor has to be determined or at least determinable.<sup>36</sup>

### **III.7.2 The enforcement**

The debtor's debtor does not have a right to object or to appeal against the attachment order (Art. 107/4 ESCCA). The creditor receives a right of pledge on the attached claim (Art. 107/3 ESCCA).

In case there are more creditors the priority of the right of the pledges is organized according to the day of the service of the attachment order to the debtor's debtor (Art. 107/2, 110/1 ESCCA). If several creditors have acquired a pledge on the same day, their pledges have the same order (Art. 110/2 ESCCA).

Upon the creditor's proposal the enforcement court orders the debtor's debtor to provide a statement on whether and to what extent an amount is owned to the debtor, whether he/she is ready to settle the debt, and also if his/her obligation for paying the debt is conditioned with fulfilment of any other obligation (Art. 111/1 ESCCA). The enforcement court sets a deadline for such statement (Art. 111/1 ESCCA), which is usually 8 or 15 days long.

The debtor's debtor shall be held liable to the creditor for the damage caused by his/her non- declaration or provision of an inaccurate or incomplete declaration (Art. 112 ESCCA).

### **III.7.3 Distribution of the moneys received**

After the attachment order becomes final, the enforcement court (upon proposal of the creditor) issues the transfer order (Art. 115/1 ESCCA), upon which the debtor's debtor is obliged to pay the obligated amount of money to the creditor (Art. 120, 127 ESCCA).

In case more creditors claim the enforcement for the same debtor's claim the priority rule applies. i.e., the amounts are transferred based on the days of attachment (according to Art. 107/2 and 110/1 ESCCA a creditor gains pledge on the debtor's claim on the day of the service of the attachment order to the debtor's debtor). If several creditors have acquired a pledge on the same day, their pledges have the same order (Art. 110/2 ESCCA) and they have to be settled proportionally (Art. 110/3 ESCCA).

## **III.8 Enforcement against shares**

### **III.8.1 General**

The court where the company, in which the debtor has his/her shares, is situated is

---

<sup>36</sup> See case law: VSL sklep I lp 697/2016, 16.05.2016; VSL Sklep I lp 685/2019, 29.05.2019.

competent to decide on the enforcement proposal for attachment on the debtor's shares (Art. 164 ESCCA). If the debtor's shares in the company are in form of dematerialized securities, the court where the debtor is domiciled is competent to decide on the enforcement proposal for attachment of these dematerialized securities (Art. 163.a, 100/1 ESCCA).

The creditor is obliged to specify such shares in the request for enforcement (Art. 40/1, 165 ESCCA). However, if the debtor owns dematerialized securities, the creditor does not have to specify them in the request for enforcement. It is sufficient if he/she just proposes this means of enforcement and the enforcement court *sua sponte* checks whether the debtor has any dematerialized securities – the enforcement court has namely online access to the register of dematerialized securities (Art. 40/4 ESCCA).

### III.8.2 The enforcement

The attachment on the debtor's shares is effectuated through hand over of the enforcement decision (enforcement decree) to the institution which keeps the register of shares and through noting the enforcement in that public register (Art. 163.b and 165 ESCCA). There are two registers of shares. If dematerialized securities are the object of enforcement, the enforcement court serves the enforcement decree to KDD – Central Securities Clearing Corporation,<sup>37</sup> which keeps the central register of dematerialized securities (Art. 163.b and 163.c ESCCA). If other shares (e.g., in a limited liability company - Ltd.) are the object of enforcement, the enforcement court (which is a local court), serves the enforcement decree to the district court, which holds the companies register - i.e., the commercial register (Art. 165 ESCCA).

The creditor gains the right of pledge on the attached shares (Art. 163.c/1 and 165/3 ESCCA).

The registration in the register of shares (i.e., central register of dematerialized securities and companies register) is obligatory in order to effectuate the attachment (Art. 163.b and 165 ESCCA).

### III.8.3 Evaluation and sale

Dematerialized securities, that can be traded at the stock exchange, are sold through a broker selected by the enforcement court (163.c/3 ESCCA). The sales price of the dematerialized securities, that can be traded at the stock exchange, is determined by the bid of the bidder at the stock exchange. The broker has to sell the dematerialized securities under the most favourable conditions for the client. According to Art. 267/1 Market in Financial Instruments Act<sup>38</sup> the broker shall take all reasonable steps to execute the client's order and has to ascertain the most favourable conditions for sale, taking into account all relevant circumstances of the sale, such as: price, cost, speed, likelihood of conclusion and settlement of the transaction, value and characteristics of the order and other circumstances relevant to the execution of the order.

<sup>37</sup> See <https://www-en.kdd.si/about-kdd/company-profile> (28.4.2020).

<sup>38</sup> Zakon o trgu finančnih instrumentov (ZTFI-1), Official Gazette of the Republic of Slovenia (Uradni list Republike Slovenije) No. 77/18, 17/19 – popr. and 66/19, available on: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO7888> (28.4.2020).



Dematerialized securities that cannot be traded at the stock exchange are sold through a broker selected by the judicial officer, by the judicial officer through direct settlement (direct contract with a buyer) or by oral public auction (Art. 163.c/4 and 93/5 ESCCA). The sales price of dematerialized securities, that cannot be traded at the stock exchange and are sold through public auction or direct settlement, is determined in accordance with the provisions on valuation of movable assets (Art. 163.c/4 and 93/5 ESCCA). The value of such dematerialized securities is determined by the judicial officer (Art. 89/2 ESCCA), but at the request and expenses of a party (creditor or debtor) the valuation of the attached dematerialized securities is carried out by the expert (evaluator, Art. 89/3 ESCCA) that has been appointed by the enforcement court (Art. 89/4 ESCCA). In case the dematerialized securities, that cannot be traded at the stock exchange, cannot be sold through public auction or direct settlement, the enforcement court terminates the enforcement procedure and annuls their attachment (Art. 163.c, 94, 95 ESCCA).

Other shares (i.e., shares that are not dematerialized securities and which are entered into companies register, e.g., shares in Ltd.), are sold in the same manner as registered real estate (Art. 165/4 ESCCA), namely through verbal public auction, written binding bids (offers) and direct settlement, i.e., direct sales contract with the buyer, if the debtor and the creditors agree (Art. 165/4, 183/1-4 ESCCA). In the near future e-auction will be available as well – the ESCCA provides legal basis for such method of sale (Art. 165/4, 183/2 ESCCA); unfortunately, technical conditions for e-auctions have not been prepared yet (Art. 75 Act amending Claim Enforcement and Security Act). The oral public sale is usually organized in the enforcement court, unless the court decides otherwise (Art. 165/4, 183/2 ESCCA). The sale is exercised by the enforcement judge (Art. 165/4, 6/1 ESCCA) – the enforcement court is namely competent for enforcement against shares that are not entered into the central register of dematerialized securities. In case the shares cannot be sold (through verbal public auction, written binding bids (offers) or direct settlement) the enforcement court terminates the enforcement procedure against the debtor's shares (Art. 165/4, 194/1 ESCCA), but the enforcement creditor keeps his/her pledge on the attached shares, obtained during the enforcement procedure (Art. 165/4, 194/4 ESCCA).

### III.9 Other attachment procedures

**Enforcement against other debtor's property rights.** The court where the debtor is domiciled is competent to decide on the enforcement proposal for attachment of patent, usufruct (Ger. Nießbrauch) or any similar property right of the debtor (Art. 162/1 ESCCA). This kind of enforcement is conducted in the same manner as the enforcement against movable items (Art. 163/1 ESCCA). The attachment is accomplished on the day the enforcement decree was served to the debtor. The court prohibits the debtor to dispose of this right. With the attachment of the right, the creditor acquires a lien on it (Art. 163/2,3,4 ESCCA).

### III.10 Handing over movable assets

The enforcement court in whose territory the movable items are situated is competent to decide on the enforcement proposal with the purpose of handing over

of one or more specific items, or with the purpose of delivery of certain amount of substitute items and for the implementation of the enforcement (Art. 213 ESCCA).

Enforcement for handover of one or more certain items which are with the debtor is organized in a manner that the judicial officer takes away the items from the debtor and hands them over to the creditor (Art. 214/2 ESCCA).

The enforcement for handover of one or more certain items which are in the possession of third person is organized in the following manner. In case the third person is willing to hand them over to the judicial officer, the items shall be taken from the third person and handed over to the creditor (Art. 214/2 ESCCA). If the third person does not want to hand over the items, the creditor may propose to the enforcement court to transfer the debtor's claim against the third person for handover of items (Art. 214/3 ESCCA).

If the items were not found with debtor or the third person, the judicial officer informs the creditor and the creditor may propose to the enforcement court to evaluate the items and to order the debtor to pay the amount of their value to the creditor. The enforcement court assigns an expert to evaluate the movable items and issues a decision ordering the debtor to pay the amount of their value – that decision is an enforceable title (Art. 215/1,2 ESCCA) and upon that decision the creditor can file a proposal for enforcement of the monetary claim. The creditor must file such proposal within 8 days since the day he/she was informed that the items were not found with the debtor or the third person, otherwise the enforcement court terminates the enforcement (Art. 215/3,4 ESCCA).

### **III.11 Enforcement in reinstatement of employee to work**

The court in whose territory the employer (debtor) has his/her domicile or seat is competent to decide on the enforcement proposal based on an enforceable title forcing the employer to reinstate the employee to work, or to assign him/her to an appropriate position (Art. 230 ESCCA).

There is a 6-months deadline with regard to the enforcement request for reinstatement of work by the creditor (employee). The deadline starts running on the day the creditor could first lodge the enforcement proposal (Art. 231 ESCCA).

The creditor can request the court to issue a decision forcing the debtor to pay him/her monthly salaries which become claimable, from the day when the decision became final until the day of return to work (Art. 233/1 ESCCA).

### **III.12 Eviction**

The court covering the territory of the real estate is competent to decide on the enforcement proposal for eviction and hand over of the real estate and for the implementation of the enforcement (Art. 220 ESCCA).

The law sets certain deadlines with regard to the eviction procedure. There is a minimum deadline of 8 days between the service of the enforcement decree to the debtor and the eviction (Art. 221/2 ESCCA). The eviction is conducted by the judicial officer and can be implemented notwithstanding any legal remedy lodged by the

debtor (Art. 221/1, 2 ESCCA).

There are no special procedures in case juvenile persons are also to be evicted from the real estate. However, in practice, in such cases the judicial officer usually performs the eviction in cooperation with the centre for social work, which takes care for the new accommodation of the family.

The judicial officer provides the required workforce and the transportation means with the purpose of completing the enforcement (Art. 221, 222 ESCCA).

Movable items which have to be removed from the real estate shall be handed over to the debtor, if he/she is not present, to an adult member of his/her family or to a person authorized by the debtor (Art. 222/1 ESCCA). If nobody is present during the eviction, those movable items shall be handed over to another person for custody (Art. 222/2 ESCCA).

The debtor is liable for the costs of custody (Art. 222/3 ESCCA). In case the items cannot be handed over to the debtor or the debtor refuses to pay the custody costs, the items will be sold through an auction (Art. 223 ESCCA).

### **III.13 Enforcement of obligations to act, refrain from acting or suffer action**

#### **III.13.1 Enforcement of the decision for division of items**

The court on whose territory the (movable or immovable) items are situated is competent to decide on the enforcement proposal for division of items (Art. 234 ESCCA). The enforceable title must assign (determine) the manner of division (i.e., physical division of the item or division through sale), otherwise the enforcement court rejects the enforcement proposal (principle of suitability of the enforceable title, Art. 21 ESCCA).

If the parties (e.g., co-owners) cannot agree on the manner of division in the form of an enforceable title (e.g., by concluding a court settlement or a contract in the form of a notary deed), any party can file a proposal to the court, to start non-litigious procedures regarding the division of the co-owned item and the non-litigious court issues a decree ordering the manner of division. That decree is an enforceable title.

Physical division of items and division through sale of movable items is performed by the judicial officer (Art. 235 ESCCA). Division through sale of an immovable item is performed by the court (Art. 236 ESCCA).

The costs of carrying out the enforcement are covered by all co-owners proportionally with the value of portions belonging to them over the item in their co-ownership (Art. 237/1 ESCCA). There is one exception to this rule. A co-owner, who caused special costs, shall refund them to other co-owners (Art. 237/2 ESCCA).

#### **III.13.2 Enforcement of the decision in which the debtor has a duty to perform certain action, tolerate certain actions, or to omit certain actions**

The court on whose territory the debtor has to fulfil an obligation, arising from the enforceable title, is competent to decide on the enforcement proposal, if the debtor (based on the enforceable title) has a duty to perform, tolerate or omit certain action

(Art. 224 ESCCA).

The enforcement for the settlement of an obligation for action which can be performed by anyone is carried out in the manner, that the enforcement court authorizes the creditor to perform the action him/herself at the debtor's expenses or entrust another person with such action (Art. 225 ESCCA).

If the action assigned by the enforceable title may be completed only by the debtor, the enforcement court sets a deadline to the debtor for fulfilling the obligation with a warning that in case of non-compliance he/she shall be fined (Art. 226/1,2 ESCCA).

Upon the creditor's proposal the enforcement court orders the debtor to deposit with the enforcement court an amount of money for compensation of damage which the creditor may suffer by further behaviour of the debtor in contradiction with his/her obligation for tolerance and omission (Art. 227/2 ESCCA).

If the enforcement is completed based on an enforceable title (e.g., court decree), issued upon the claim due to obstruction of possession, or if the debtor has voluntarily fulfilled his/her obligation, and after this the he/she obstructs the possession again (similar to the previous obstruction), the enforcement court (upon the creditor's proposal) can enforce the same enforceable title once again (Art. 229/1 ESCCA).

### **III.14 Sequestration of goods**

In Slovenia the judicial officer is involved in the activity of sequestration of goods. According to Art. 85 and Art. 38 Rules on the Performance of Bailiff Services the judicial officer has to:

- safekeep the attached movable items, which have not been sold yet in the enforcement procedure (Art.85 ESCCA);
- safekeep the movable items in the process of attachment under the debtor's debtor (debtor's claims); if the debtor has a claim on handover of the movables against his/her debtor, the enforcement court orders the debtor's debtor to handover the movable items to the judicial officer, who has to safekeep them (Art. 157 ESCCA);
- in case of eviction, take into custody the movable items, which have been removed from the real estate and should be handed over to the debtor (Art. 222 ESCCA),
- in case of compulsory pledge on movable items (based on a decision of the enforcement court), safekeep those items, if the court orders so (Art. 248 ESCCA),
- safekeep the movable items if the court orders so with provisional, including protective, measures (Art. 260, 271 and 273 ESCCA). Those measures are usually valid until the end of litigation.

Sequestration concerns movable tangible goods. Sequestration in the hands of a sequester (judicial officer) can be ordered by a court decision; it is not possible neither on a voluntary basis nor on a contractual basis. Sequestration in the hands of a judicial officer can be ordered in case of counterfeit as well. As a sequester, the judicial officer can place the sequestered goods under seal (Art. 82/2 ESCCA).

### **III.15 Enforcement of foreign enforceable documents from non-EU States**



An enforceable decision issued in a non-EU State can be enforced directly in Slovenia without any recognition proceedings (Art. 108/5 PILPA). In such a case the enforcement court, when deciding upon the enforcement proposal based on a foreign decision, checks whether the foreign decision fulfils the conditions for recognition in Slovenia in an *ex parte* procedure; if the enforcement court renders a decree of enforcement, authorizing enforcement measures, some of that measures can be carried out notwithstanding any objection or appeal of the debtor (e.g., attachment of movable items, but not their sale). However, a party can file a proposal for the recognition of the foreign court decision in a separate (recognition) procedure as well – in such a case the decision having recognized the decision made in another non-EU State cannot be enforced until it is final (an objection or an appeal against the decree in the recognition procedure have a suspensive effect).

A non-enforceable court decision (e.g., declaratory or constitutive judgement) made in another non-EU State can be recognized directly in Slovenia without any proceedings (Art. 108/6 PILPA). Every court can decide during civil judicial proceeding (e.g., during litigation) as a preliminary question, whether a foreign declaratory or constitutive court decision fulfils the conditions for recognition in Slovenia – this is so called *incidenter* recognition. This means that prior to litigation (or any other civil procedure) a party is not obliged to begin a special (separate) procedure of recognition of a foreign court decision in order to gain effect of said decision in Slovenia. This effect can be ascertained during litigation (or other civil procedure), e.g., effect of a declaratory judgment, determining the existence and validity of a sales contract. A non-enforceable court decision can be object of a separate recognition procedure as well.

In Slovenia every district court (i.e., court of first instance) is in charge of dealing with requests relating to recognition of court decisions made in another non-EU State – a district court judge renders the decision (Art. 108 PILPA). An appeal before the Supreme Court of the Republic of Slovenia is possible against the decision of the district court (Art. 109/5 ESCCA).

The proceedings for the recognition of a court decision made in another non-EU State begin upon the request of an interested party, who has to produce (Art. 95/1 PILPA): a) the foreign court decision, b) a certificate of finality of the foreign court decision and c) a translation or a transliteration of both foreign documents, if they are not drafted in the Slovenian language (or another official language in Slovenia: i.e., Hungarian, on territory where the Hungarian minority lives, Italian, where the Italian minority lives).

The intervention of a lawyer is not compulsory in the recognition proceedings (Art. 86 CPC).

Every foreign court decision, whatever it is called, including a judgment, decree, order, decision, as well as a decision on the determination of costs or expenses by an officer of the court, can be recognized in Slovenia. This means that recognition proceedings concern judgments, orders in an urgent matter, orders for payment, judgments of the court of appeal and judgments of the supreme court (Art. 94 PILPA).





Certain items are checked during the proceedings for the recognition of a decision made in another non-EU State, based on which a foreign court decision cannot be recognized, namely:

- The regularity of the procedure carried out abroad. If the opposite party could not participate in the foreign procedure, upon objection of the opposite party, the Slovenian court rejects the recognition. E.g., where the judgment was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him/her to arrange for his/her defence (Art. 96 PILPA);
- The competence of the foreign judge. In case of exclusive jurisdiction of a Slovenian court the judge proves that *ex officio*, while in other cases only upon objection of the opposite party (Art. 97, 98 PILPA);
- *Res iudicata*. If the foreign judgment is irreconcilable with a Slovenian judgment involving the same cause of action and between the same parties or if a Slovenian court recognized another foreign judgment involving the same cause of action and between the same parties (*res iudicata* effect, Art. 99 PILPA);
- *Ordre public*. If such recognition is contrary to the public policy (*ordre public*) of the Republic of Slovenia (Art. 100 PILPA) the foreign judgment cannot be recognized;
- Reciprocity. The reciprocity between Slovenia and the state, whose court issued the foreign decision, is a precondition for the latter's recognition (Art. 101 PILPA);
- The authenticity of the court decision. A foreign court decision cannot be recognized if not produced in original or authentic copy (Art. 95/1 PILPA).

During the proceedings for the recognition of the court decision made in another non-EU State, the district judge of first instance cannot change the decision. However, the opposite party can file an objection against a decree on recognition of the foreign decision and a panel of 3 district judges decides upon the objection. The panel can change the decision of the district judge (Art. 109/4 PILPA). Any party can file an appeal against the decree on objection before the Supreme Court of the Republic of Slovenia (Art. 109/5 PILPA).

The recognition proceedings involve the participation of the opposite party. Upon request of one party the court, in an *ex parte* procedure, issues a decree on recognition, which shall be served to the opposite party, who can file an objection against the recognition decree. If there is a dispute between the parties about the facts, the court carries out an oral hearing (Art. 109/3, 4 PILPA).

When the decision recognizing a decision from a non-EU State is contested, the intervention of a lawyer is not necessary (Art. 86 CPC). Defendants sometimes contest the decision recognizing the foreign court decision. It is possible to contest the

decision refusing to recognise the decision made in a non-EU State. In such a case the applicant can file an appeal to the Supreme Court of the Republic of Slovenia (Art. 109/5 PILPA).

The contestation proceedings can involve the intervention of a lawyer, but such intervention is not mandatory (Art. 86 CPC). The average duration of proceedings for recognition, when not contested by the defendant, is up to three months. The average duration of proceedings for recognition, when contested by the defendant, is between one and two years.

In my opinion the proceedings in force for the recognition of a judgement given in another non-EU State are satisfying, because they are rather appropriate.

## **PART IV: ENFORCEMENT COSTS**

### **IV.1 The costs of enforcement**

#### **IV.1.1 General questions**

The judicial officer is always entitled to receive a remuneration for enforcement costs for the undertaken enforcement activities (Art. 293 ESCCA).

**The nature of the fees or remuneration received by the judicial officer.** The enforcement costs are governed by law and the judicial officer can receive remuneration for enforcement costs as prescribed by the Rules on the Tariff for Bailiffs Services and on the Reimbursement of Expenses Relating to Such Services (Art. 292 ESCCA).

The costs of the judicial officer present costs of the enforcement procedure (Art. 293 ESCCA). All enforcement expenses (including costs of the judicial officer) are paid first by the creditor (Art. 38/2 ESCCA). Once they occur, the creditor must demand reimbursement of the enforcement costs from the debtor and the enforcement court issues a decree ordering such reimbursement to the creditor (Art. 38/5, 8 ESCCA). This means that in the end the debtor has to cover all the enforcement costs.

The enforcement fees of a judicial officer (in terms of CEPEJ 2009 Guidelines)<sup>39</sup> are either:

- proportional based on the amount of the claim;
- proportional based on the value of the assets;
- proportional based on the type of claim;
- proportional based on time consumption or
- fixed regarding certain types of judicial officer's actions (see Art. 2 Rules on the Tariff for Bailiffs Services and on the Reimbursement of Expenses Relating to Such Services).

If the debtor is insolvent (in case of an ineffective (unsuccessful) enforcement), the

---

<sup>39</sup> The expenses of the process itself, in other words, the total amount for each action undertaken by the enforcement agent in the course of a single case.

creditor cannot successfully recover the enforcement fees from him/her. Having in mind that all the enforcement expenses are first paid by the creditor (Art. 38/2 ESCCA), the creditor him/herself has to bear the unpaid enforcement fees, if the debtor becomes insolvent.

#### **IV.1.2 Prepayment of enforcement costs**

The judicial officer can ask the creditor to prepay some enforcement costs before starting the enforcement, namely the enforcement expenses (enforcement fees) and the expenses of third persons (Art. 38.a/1 ESCCA, Rules on the Tariff for Enforcement Agent Services and on the Reimbursement of Expenses Relating to Such Services).

#### **IV.1.3 Creditor and enforcement fees**

The creditor is not informed in advance on the likely costs of the fees involved – neither the enforcement courts nor judicial officers do that. However, the Court Fees Act<sup>40</sup> (governing the initial fee) and the Rules on the Tariff for Enforcement Agent Services and on the Reimbursement of Expenses Relating to Such Services (governing third party expenses and enforcement expenses) are publicly available and any creditor can check the height of the enforcement costs by him/herself or can be counselled by his/her lawyer regarding it.

Certain fees or enforcement expenses are not negotiable with the creditor according to the law. The fee schedule is obligatory.<sup>41</sup>

The fees/expenses the judicial officer charged as a prepayment by the creditor during the enforcement procedure are always reimbursed from the debtor when the debtor pays in full (Art. 38, 38.b, 293 ESCCA).

A judicial officer is not entitled to receive a so called „extra remuneration“, depending on the success of the enforcement or the urgency of an enforcement case under the conditions agreed through a contract between him/her and the creditor. The fee schedule is obligatory and non-negotiable.<sup>42</sup>

#### **IV.1.4 Debtor and enforcement fees**

During the enforcement procedure the debtor has to pay court fees, if he/she files legal remedies. All the enforcement costs (including costs of the judicial officer) are paid first by the creditor (Art. 38/2 ESCCA). Once they occur, the creditor must demand reimbursement of the enforcement costs from the debtor and the enforcement court issues a decree ordering such reimbursement to the creditor (Art. 38/5, 8 ESCCA). This means that in the end the debtor always has to cover all the enforcement costs.

The debtor is not informed in advance on the likely costs or the fees involved. However, the Court Fees Act (governing the court fees) and the Rules on the Tariff for

---

<sup>40</sup> Zakon o sodnih taksah (ZST-1), Official Gazette of the Republic of Slovenia (Uradni list Republike Slovenije) No. 37/08, 97/10, 63/13, 58/14 – odl. US, 19/15 – odl. US, 30/16, 10/17 – ZPP-E, 11/18 – ZIZ-L in 35/18 – odl. US, available on: <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4729> (5.5.2020).

<sup>41</sup> Andrej Ekart, Izvršitelj včeraj, danes in jutri, Podjetje in delo 6-7/2019, p. 1302.

<sup>42</sup> Andrej Ekart, Izvršitelj včeraj, danes in jutri, Podjetje in delo 6-7/2019, p. 1302.



Enforcement Agent Services and on the Reimbursement of Expenses Relating to Such Services (governing third party expenses and enforcement expenses) are publicly available and any debtor can check the height of the enforcement costs by him/herself or by his/her lawyer.

The debtor cannot obtain an exemption from the obligation to pay the enforcement fees/expenses; he/she can only request the exemption from the court fees, if he/she files a legal remedy (Art. 10-16 Court Fees Act).

#### **IV.1.5 Period of voluntary fulfillment and fees**

When the creditor proposes an enforcement based on an enforceable title the period for voluntary fulfilment must have already expired. There is only one exception, namely in case that the enforceable title does not contain the deadline for voluntary fulfilment of the claim - in such a case the enforcement courts sets the deadline for voluntary fulfilment in the enforcement decree (Art. 21/2 ESCCA). This case appears extremely rarely – if in such a case the debtor fully pays the claim directly to the creditor before the term for voluntary fulfilment expires, the judicial officer is entitled to receive full payment of the initial fee (Tariff No. 16 Rules on the Tariff for Enforcement Agent Services and on the Reimbursement of Expenses Relating to Such Services). If in such a case the debtor fully pays the claim to the judicial officer before the term for voluntary fulfilment expires, the judicial officer is entitled to receive full payment of the initial fee and partial (50 %) payment of the enforcement expenses (Tariff No. 2 and 16 Rules on the Tariff for Enforcement Agent Services and on the Reimbursement of Expenses Relating to Such Services).

In case of a partial payment to the creditor before the expiry of the term for voluntary fulfilment, the judicial officer is entitled to receive full payment of the initial fee and has to start to implement enforcement measures (see Tariff No. 16 Rules on the Tariff for Enforcement Agent Services and on the Reimbursement of Expenses Relating to Such Services). In case of a partial payment to the judicial officer before the expiry of the term for voluntary fulfilment, the judicial officer is entitled to receive full payment of the initial fee and partial payment of the enforcement expenses (50 % in case of the first partial voluntary fulfilment, 25 % in case of every next partial voluntary fulfilment – see Tariff No. 2 and 16 Rules on the Tariff for Enforcement Agent Services and on the Reimbursement of Expenses Relating to Such Services).

#### **IV.1.6 Enforcement fees charged based on various phases within the enforcement process**

In Slovenia the enforcement process is divided in two phases: the first phase includes granting the enforcement (by the enforcement court) and the second phase includes carrying out (implementing) the enforcement. However, the payment of fees or enforcement cost does not depend on the phase of the enforcement process. The debtor has to refund the creditor all the enforcement costs that were necessary to carry out the enforcement (Art. 38 ESCCA).

The first phase (granting of enforcement by the enforcement decree) falls under the competence of the enforcement court. The judicial officer is involved in the second

phase of enforcement process. This is why the judicial officer is entitled to recovery of costs only in the second phase of the enforcement process.

The costs in the first phase include:

- initial fees (i.e., court fee) for filing the enforcement proposal in the amount of 55,00 EUR (regardless of the amount of the claim) or 44,00 EUR, if the enforcement proposal is lodged electronically (4011, 4041 Court Fees Act);
- lawyer's fees (if the creditor uses his/her services – representation by the lawyer (attorney) is not obligatory): between 60,00 and 120,00 EUR (depending on the value of the claim) plus VAT (if applicable) – see Tariff No. 27 Attorneys' Tariff.<sup>43</sup>

The amount of the enforcement costs in the second phase of the enforcement process depends on the objects and the manner of enforcement and can vary significantly. On one hand, in case of enforcement on the debtor's bank accounts or on his/her salary, there do not occur any additional costs for the creditor. On the other hand, the enforcement against real estate or movable items can be expensive.

E.g., in case of enforcement against movable items to recover a creditor's monetary claim in the amount of 4.000,00 EUR the enforcement fees of the judicial officer (in terms of the CEPEJ 2009 Guidelines) according to the Rules on the Tariff for Enforcement Agent Services and on the Reimbursement of Expenses Relating to Such Services would amount to:

- 50 points for acquaintance with the file and entry in the records - payment in the amount of 50 points (fixed amount, Tariff No. 16);
- 800 points for seizure and valuation of the movable items (in case the seizure was fully successful) – judicial officer's fees proportional based on the amount of the claim (Tariff No. 1);
- 800 points for the sale of the movable items and satisfaction of the creditor (judicial officer's fees proportional based on the amount of the claim - Tariff No. 4).

The sum of all points equals 1.650,00 point. The value of one point is 0,28 EUR (Art. 6/3) and this means that in such a case the enforcement fees of the judicial officer would amount to 462,00 EUR plus VAT.

The judicial officer is not entitled to an (additional) remuneration in form of performance fees.

#### **IV.1.7 Fee for the initiation of enforcement proceedings**

The creditor has to pay initial fees (i.e., court fees) for lodging the enforcement proposal with the enforcement court in the amount of 55,00 EUR (fixed amount, regardless of the amount of the claim) or 44,00 EUR, if the enforcement proposal was lodged electronically (4011, 4041 Court Fees Act). Once the enforcement court grants the enforcement and sends the enforcement proposal to the judicial officer (e.g., in

<sup>43</sup> Odvetniška tarifa, Official Gazette of the Republic of Slovenia (Uradni list Republike Slovenije) No. 2/15 in 28/18), available on: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=TAR1184> (18.5.2020).

case of enforcement against movable items) the judicial officer is entitled to remuneration in the extent of 50 points for acquaintance with the file and entry in his/her records (fixed amount, Tariff No. 16). The value of one point is 0,28 EUR (Art. 6/3) and this means that in such a case the judicial officer's fee for initiating a file would amount to 14,00 EUR plus VAT.

The payment of the court fee in the amount of 55,00 or 44,00 EUR is a precondition for the issue of the enforcement decree by the enforcement court (Art. 29.b/5 ESCCA). The judicial officer can ask the creditor to prepay the fee for initiation of his/her actions, but is not obliged to do that (Art. 38.a ESCCA).

#### IV.1.8 Enforcement expenses

The compensation for the enforcement expenses (enforcement fees) is:

- **proportional based on the amount of the claim:** e.g., in case of seizure, appraisal and sale of movable items by the judicial officer. If the value of the claim is 4.000,00 EUR the enforcement fees of a judicial officer are 800 points for seizure and valuation of the movable items (in case the seizure was fully successful) and 800 points for the sale of the movable items and satisfaction of the creditor (the sum of all the points equals 1.600,00 points). If the value of the claim is 20.000,00 EUR the enforcement fees of the judicial officer amount to 1.700 points for the seizure and valuation of the movable items (in case the seizure was fully successful) and 1.700 points for the sale of the movable items and satisfaction of the creditor (the sum of all points equals 3400,00 points). The value of one point is 0,28 EUR (Art. 6/3). This means that in case the value of the claim is 4.000,00 EUR the enforcement fees of the judicial officer would amount to 448,00 EUR plus VAT and in case the value of the claim is 20.000,00 EUR the enforcement fees of the judicial officer would amount to 952,00 EUR;
- **proportional based on the value of the assets:** e.g., in case of division of items (if the value of the assets is 100.000 EUR, the judicial officer is entitled to remuneration in the amount of 700,00 EUR plus VAT – Tariff No. 12);
- **proportional based on the type of claim,** e.g., eviction from business premises (up to 100 m<sup>2</sup> - 750 points (210 EUR), from 100 m<sup>2</sup> to 200 m<sup>2</sup> - 1000 points (280 EUR) and in case of more than 200 m<sup>2</sup> 1500 points (420 EUR), Tarif. No. 8/1);
- **proportional based on time consumption,** namely where the payment for the judicial officer's services cannot be assessed neither according to the value of the claim, thing or right nor in a fixed amount, the judicial officer's fee shall be assessed according to the actual time spent in the amount of 100 points (28 EUR) for each started half hour of work (Art. 5 Rules on the Tariff for Bailiffs Services and on the Reimbursement of Expenses Relating to Such Services);
- **fixed regarding certain types of judicial officer's actions** (see Art. 2 Rules on the Tariff for Bailiffs Services and on the Reimbursement of Expenses Relating to Such Services): e.g., 150 points (42 EUR) for sequestration, if the enforcement court orders the debtor's debtor to handover movable items to the judicial officer to safekeep them (Art. 157 ESCCA, Tariff No. 6); 250 points (70 EUR) for taking away movable items

from the debtor and handing over to the creditor (Tariff No. 7); 500 points (140 EUR) for eviction from the real estate, where the debtor lives or could live (Tarif. No. 8/1); 50 points for acquaintance with the file and entry in the judicial officer's records; calculation of default interest; voluntary fulfilment of the claim by the debtor; inquiry about the debtor's address and his/her employment etc. (Tariff No. 16);

- in case of valuation of real estate or movable items by an expert appointed by the court, the fees of the expert are calculated according to the Rules on Court Experts, Certified Appraisers and Court Interpreters<sup>44</sup> and depend on the complexity of the valuation – there are four levels of complexity: less complex, more complex, very complex and extremely complex valuation. E.g., in case of more complex valuation the expert is entitled to 102,00 EUR for the view of the object (Art. 39), 306,00 EUR for the written valuation report (Art. 40/1) and to refund of the travel costs (plus VAT, if the expert is obliged to pay VAT).

The debtor is not charged a fee for the use of the auction room within the framework of the enforcement proceedings.

The judicial officer is entitled to reimbursement of the enforcement expenses in case the enforcement activity was at least partially conducted (see e.g., Tarif No. 1 Rules on the Tariff for Bailiffs Services and on the Reimbursement of Expenses Relating to Such Services).

#### **IV.1.9 Expenses from third parties**

The judicial officer sometimes informs the creditor on the likely expenses of third parties prior to an enforcement activity (but he/she is not obliged to do that). The judicial officer always receives reimbursement for the expenses of third parties.

#### **IV.1.10 Performance fee**

The judicial officer is not entitled to an extra fee in case of successful or partially successful completion of the case (performance fee).

#### **IV.1.11 State as a creditor or debtor**

In Slovenia, in case the State is a creditor, it is exempted only from the payment of court fees (for initiation of the enforcement procedure, Art. 10 Court Fees Act), but it is not exempt from prepayment of other enforcement costs. It is not exempt from prepayment of enforcement costs in case the enforcement was unsuccessful.

In case the State is a debtor, it is not exempted from the payment of enforcement costs.

#### **IV.1.12 Legal aid**

A creditor can be exempt from the prepayment of the court fee for filing the enforcement proposal (initial fee), if he/she requests so (Art. 2, 11 Court Fees Act). A creditor can be exempted from the prepayment of the enforcement fees, if he/she

---

<sup>44</sup> Pravilnik o sodnih izvedencih, sodnih cenilcih in sodnih tolmačih, Official Gazette of the Republic of Slovenia (Uradni list Republike Slovenije) No. 84/18, available on: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=PRAV4692> (19.5.2020).

applies for legal aid for his/her enforcement case (Art. 1, 7, 26 Legal Aid Act).<sup>45</sup> If he/she receives legal aid for his/her enforcement case, the state is liable for the prepayment of the enforcement fees. In case the enforcement is unsuccessful, the state is liable for the payment of the enforcement costs in case of a financially vulnerable creditor.

## PART V: LINKS, LITERATURE AND SOURCES

### Links to enforcement legislation:

#### • In Slovenian:

- Enforcement and Securing of Civil Claims Act (ESCCA), *Zakon o izvršbi in zavarovanju (ZIZ)*, Official Gazette of the Republic of Slovenia (Uradni list Republike Slovenije) No. 51/1998, last amended by No. 66/19 – ZDavP-2M), available on: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1008> (6. 1. 2020).
- Code of Civil Procedure (CCP), *Zakon o pravdnem postopku (ZPP)*, Official Gazette of the Republic of Slovenia (Uradni list Republike Slovenije) No. 51/1998, last amended by No. 16/19 – ZNP-1 in 70/19 – odl. US, available on: <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1212> (7.1.2020)

#### • In English: /

#### • In French: /

### Literature:

- Ekart Andrej, Rijavec Vesna (2010), *Čezmejna izvršba v EU* (Ljubljana: GV Založba).
- Ekart, Andrej, Zangl, Sylvia, *The Admissibility of Defences against the Substantive Claim in Cross-Border Enforcement of Judgments in Europe*. *Lex localis* 4/2011, p. 311-333.
- Ekart Andrej, *Uspešni in neuspešni rubeži premičnin*, *Pravosodni bilten* 1 /2015, p. 179-181.
- Ekart Andrej, *Izvršitelj včeraj, danes in jutri*, *Podjetje in delo* 6-7/2019, p. 1298-1310.
- Ekart Andrej, Rijavec Vesna (2019), *Zakon o izvršbi in zavarovanju (ZIZ): z novelo ZIZ-L: razširjena uvodna pojasnila s podrobnim prikazom evropskega naloga za zamrznitev bančnih računov* (Ljubljana: Lexpera, GV založba).
- Galič Aleš, Jan, Matjaž, Jenull, Hinko (2002), *Zakon o izvršbi in zavarovanju: (vključno z novelo ZIZ-a)* (Ljubljana: GV založba).

<sup>45</sup> *Zakon o brezplačni pravni pomoči* Official Gazette of the Republic of Slovenia (Uradni list Republike Slovenije) No. 96/04 – uradno prečiščeno besedilo, 23/08, 15/14 – odl. US in 19/15, available on: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1265&d-16544-s=1&d-16544-o=2&d-16544-p=1> (20.5.2020).





- Galič Aleš (2008) Slovenia, (International Encyclopaedia of Laws, Civil procedure, suppl. 49). (The Hague: Kluwer Law International).
- Galič Aleš, Betetto Nina (2011) *Evropsko procesno pravo I* (Ljubljana: GV Založba).
- Galič Aleš (2019), Slovenia, International Encyclopaedia of Laws, Civil procedure (The Hague: Kluwer Law International).
- Galič Aleš (2020), Civil procedure in Slovenia (Alphen aan den Rijn: Wolters Kluwer).
- Habernik Damijan (2009). *Der Vollzug der Fahrnisexekution nach slowenischem und österreichischem Recht: Privat- und Gerichtsvollzieher im Vergleich*. Graz: Dissertation an der Rechtswissenschaftliche Fakultät der Karl-Franzens Universität Graz
- Ivanc Tjaša (2019) Project “B IA RE” (supported by the European Commission under the Specific Programme Civil Justice), National report – Slovenia (online source: [https://www.pf.um.si/site/assets/files/3539/national\\_report\\_slovenia.pdf](https://www.pf.um.si/site/assets/files/3539/national_report_slovenia.pdf), 28.5.2020).
- Keresteš Tomaž, Ekart Andrej, Slovenia: simplification of debt collection in the EU - European order for payment procedure and European small claims procedure. in: Rijavec Vesna (ed.), Ivanc Tjaša (ed.), Keresteš Tomaž (ed.). *Simplification of debt collection in the EU*. Alphen aan den Rijn: Kluwer Law International, cop. 2014. Str. 495-519. European monographs.
- Rijavec Vesna (2003) *Civilno izvršilno pravo* (Ljubljana: GV Založba).
- Rijavec Vesna, Keresteš Tomaž (2010) *Zakon o izvršbi in zavarovanju ZIZ z novelo ZIZ-H*, Uvodna pojasnila (Ljubljana: GV Založba).
- Rijavec Vesna, Ekart Andrej (2015), *Zakon o izvršbi in zavarovanju (ZIZ): z novelama ZIZ-J in ZIZ-K* (Ljubljana, IUS Software, GV založba).
- Rijavec Vesna. (ed.), Jelinek Wolfgang (ed.), Brehm Wolfgang (ed.), Ekart Andrej, Keresteš Tomaž, Zangl Sylvia, Spellenberg Ulrich, Wetzelberger Johannes (2012), *Die Erleichterung der Zwangsvollstreckung in Europa* (Baden-Baden: Nomos).
- Volk Dida (2008) *Zakon o izvršbi in zavarovanju s podzakonskim predpisom – nov postopek izvršbe na podlagi verodostojne listine*, Uvodna pojasnile (Ljubljana: Planet GV).
- Wedam-Lukić Dragica (1992) *Civilno izvršilno pravo* (Ljubljana: Uradni list Republike Slovenije).