

# **Enforcement Atlas Republic of Kosova**

***EU Enforcement Atlas Project***

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***Civil enforcement proceedings in Kosov***

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## PART I INTRODUCTION

### I.1. Introduction

Chapter I.1 aims to provide a general introduction to the report and outline the objectives of the Enforcement Atlas.

Any decision rendered by a court or other legitimized authority (e.g., arbitration court) would be rendered futile if it cannot be effectively enforced.. Therefore, enforcement, and particularly the right of enforcement vested in each individual state, holds paramount importance. The Republic of Kosovo has long been engaged in the process of establishing, or rather rebuilding, a new legal system. This undertaking is a legitimate and natural consequence of a comprehensive transformation in Kosovo, encompassing social, political, and all other spheres. Kosovo is striving to catalyse a complete legal reform, spanning both public and private law, substantive and procedural aspects alike. This extensive process of profound reformation naturally incorporates enforcement law as a fundamental component of formal public law.

## PART II THE LEGAL FRAMEWORK

### II.1 Legislation affecting civil enforcement

The most important legal source of enforcement law in the Republic of Kosovo is the Law on Enforcement Procedure (VVG), which entered into force on 1.1.2014. This law has been amending and supplemented twice: 2017 by the Law No. 05/L-118 on Amending and Supplementing Law, No. 04/L-139 on Enforcement Procedure and 2023 by the Law No. 08/L-102 on Amending and Supplementing the Law No. 04/L-139 on Enforcement Procedure, amended and supplemented by the Law, No. 05/L-118.

In addition, there are many other legal provisions, scattered everywhere, which relate to enforcement and enforcement law or regulate it in one way or another. According to the legal hierarchy, the Constitution of the Republic of Kosovo is the most important source of law,

including, of course, enforcement law. As provided under Article 22 of the Constitution of the Republic of Kosovo, the most important European and international conventions covering human rights protection are directly applicable in Kosovo's legal system, and have constitutional status of the norms that in case of the conflict shall have priority over the domestic law. In fact, the provision of Art 6 of the Convention on Human Rights is the most important regulation regarding the right of enforcement, since the enforcement procedure is also a civil procedure. The most important provisions of the Constitution regarding enforcement proceedings are Articles 5, 7, 31 and 32, which ensure a fair trial and the right of appeal in enforcement proceedings as well. The violation of any of these provisions would constitute grounds for a constitutional complaint before the Constitutional Court pursuant to Art 113 par. 7 of the Constitution in conjunction with Art 46 et seq. of the Law on Constitutional Court.

As already mentioned, the Enforcement Procedure Law is the key legal source of enforcement law, and it regulates the legal norms on enforcement, i.e. the enforcement procedure, the enforcement bodies and all other aspects of enforcement law. Another aspect of enforcement law is probably also the security right of the creditor's claim. Another legal source of enforcement law is the Law on Contested Procedure<sup>1</sup> and the Law on Courts<sup>2</sup>. The provisions of the Law on Contested Procedure apply *mutatis mutandis* to enforcement proceedings, unless expressly provided otherwise.<sup>3</sup>

### II.2 Enforceable titles

Enforcement proceedings are predicated upon the existence of a title.<sup>4</sup> This title (titulus executionis) typically manifests in the form of an enforcement judgment, issued either in contentious or non-contentious proceedings.<sup>5</sup> Enforcement can also take the form of a credible document. Whether enforcement is carried out on the basis of an enforcement judgment or a

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<sup>1</sup> The Law (No. 03/L-2006) on Contested Procedure has entered into force on 2008; This Law has been twice amended by the Law (No. 04/L-118) on Amending and Supplementing of the Law on Contested Procedure from 2012, and Law (No. 08/L-020) on Amending and Supplementing of the Law on Contested Procedure from 2022.

<sup>2</sup> The new Law (No. 06/L-054) on Courts has entered into force on 2018.

<sup>3</sup> See the Art. 17 of the Law on Enforcement Procedure.

<sup>4</sup> See Morina, Iset (Ed.), Legal Dictionary on private, public and criminal law/Albanian-Serbian-English-German, „Enforcement document“, pg. 667.

<sup>5</sup> Brestovci, E drejta procedural civile II [Civil procedure law II], pg. 187

credible document is of central importance due to the different legal consequences, in particular with regard to the question of legal remedies.

An enforcement decision constitutes a legal instrument affirming the existence of a valid claim. It must contain specific details to meet the criteria of an enforcement decision/order, including information regarding the creditor, debtor, nature and amount of the established claim, deadline for debt repayment, and prescribed enforcement measures. The most important enforcement instrument is undoubtedly the enforcement judgment.<sup>6</sup> This encompasses court judgments or orders etc. issued in civil proceedings, whether by a court or arbitration tribunal. Enforcement orders within the meaning of this law also include settlements reached in proceedings before a court or arbitration tribunal. Additionally, decisions rendered by administrative bodies are recognized as enforcement order. Furthermore, judgments and settlements issued by foreign courts and arbitration tribunals also fall under the purview of enforcement orders. However, these are only enforceable after they have been recognized and declared enforceable by the ordinary courts in the Republic of Kosovo.

What is new in the Law on Enforcement Procedure of the Republic of Kosovo is the fact that this law recognizes notarial deeds and a mortgage agreements as enforcement titles for the first time.<sup>7</sup> In addition, another novelty in the Law on Enforcement Proceedings is the inclusion of the so-called European Enforcement Order as an enforcement order, even though Kosovo is not yet a member of the EU.<sup>8</sup>

With these new updates to the positive law, enforcement law recognizes so-called credible documents as enforcement titles. These legal acts do not play a subordinate role in legal practice. On the contrary, they are very popular and are often used, albeit with legal reservations, and attached to the application for enforcement as an enforcement title. Credible documents are legally defined and regulated in both the Law on Enforcement Procedure and the Law on Contested Procedure. This procedure entails summary contentious proceedings where cases are adjudicated based on prima facie documents, without oral hearings. Prima facie documents encompass various forms, including public deeds, certified private deeds, bills of

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<sup>6</sup> Morina, Iset, E drejta e përmbarimit [Enforcement Law], par. 183.

<sup>7</sup> See the Art. 22 I 3, 7 of the Law on Enforcement Procedure.

<sup>8</sup> See the Art. 22 I 9 of the Law on Enforcement Procedure.

exchange and cheques requiring protest, extracts from certified account books related to municipal costs for utilities and waste removal, as well as documents classified as public documents by law. However, the mandate procedure is seldom invoked, given that Articles 21 and 29 of the Law on Enforcement Procedure now acknowledge credible documents as valid enforcement titles.<sup>9</sup> .

### II.3 Service of documents to parties and third parties

The creditor initiates the enforcement process by submitting an enforcement proposal to the enforcement body . While the so-called "Private Enforcement Agent" is the central enforcement body under the new law, the court retains competence solely in family and labour law matters . However, the recent amendment to the Law on Enforcement Procedure extends the competence of the Private Enforcement Agent to include labour law matters as well .<sup>10</sup>

As stated above, the enforcement proposal must contain all important information about the enforcement, i. e. data about the creditor, the debtor, the nature and scope of the claim, the deadline for the fulfilment of the claim and the enforcement measure.<sup>11</sup> The attached enforcement order must be presented in the original or in the form of a certified copy.

Proceedings are conducted as summary proceedings, especially now with the Private Enforcement Agent assuming a prominent role. Private Enforcement Agents exhibit greater efficiency in conducting these proceedings.<sup>12</sup> As enforcement procedures are primarily conducted in writing, the enforcement body evaluates the application and renders decisions without oral hearings.

Enforcement proceedings encompass various enforcement measures depending on whether the creditor's claim pertains to monetary payment or other forms of claims. For monetary claims, enforcement may involve seizing movable or immovable property or attaching earnings.

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<sup>9</sup> See

<sup>10</sup> See Art. 3 of the Law No. 08/L -102 on Amending and Supplementing the Law No. 04/L-139 on Enforcement Procedure from 2023.

<sup>11</sup> See Art. 38 of the Law on Executive Procedure.

<sup>12</sup> See Morina, Iset, E drejta e përmbarimit [Enforcement Law], par. 66 ff.

The creditor may apply for one or more enforcement measures and the enforcement body is entitled to decide accordingly. If the creditor applies for enforcement measures against movable property due to a monetary claim, he should not provide any details about the movable property. On the contrary, the creditor may apply for execution against movable property in an unspecified manner. If the creditor does not have more detailed information about the debtor's assets, the creditor may file an application for the determination of the debtor's assets together with the enforcement proposal.<sup>13</sup> The affidavit of disclosure can then be carried out.

The decision of the enforcement body granting the enforcement proposal must be served on both parties, i. e. the creditor and the debtor, and does not need to be substantiated. Both the decision granting and the decision rejecting enforcement must contain information on the right of appeal pursuant to Art. 44 of the Law on Enforcement Procedure.

Upon the conclusion of the "decision phase," enforcement commences based on an enforcement order, initiating various enforcement measures even before the order attains legal binding. For instance, enforcement measures on movable property may coincide with the service of the enforcement order on real estate. The specific enforcement measures undertaken depend on the nature of the creditor's claim, whether monetary or non-monetary.

### II.4 Legal remedies, appeal and objection

In the Republic of Kosovo, the right of appeal has constitutional status. This naturally also applies to enforcement proceedings. For practical reasons, not only the legal remedies, but also the legal remedies of the debtor, creditor and third party are dealt with here. The institute of legal remedies in compulsory enforcement proceedings is very complicated, not least due to the fact that there are two enforcement bodies. While the objection and the appeal are provided for as ordinary legal remedies, the revision and the application for resumption of proceedings are not permitted as so-called extraordinary legal remedies. The application for *restitutio in integrum* is only permitted in cases in which the entitled party allows the time limits for the claim and the appeal to expire. The so-called "application for defence of legality" is probably

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<sup>13</sup> See Art. 45, 46 of the Art. 38 of the Law on Executive Procedure.

admissible due to the reference provision of Art. 17 Law on enforcement Procedure to the Law on Contested Procedure.

The debtor's legal remedies in enforcement proceedings are far more important, as they represent the normal case in these proceedings.

The debtor's most effective and probably most important legal remedy in enforcement proceedings is the objection. The debtor can file this appeal against the authorized enforcement order. It must be lodged with the court of first instance, irrespective of whether the order was issued by the court or by the private executor. This appeal must be made in writing and within seven days of service of the order. The appeal is only admissible for the reasons expressly and specifically stated in the law (*numerus clausus*). Thus, pursuant to Art 67 in conjunction with Art 71 of the VVG, the objection is only admissible if:

- a) the enforcement order does not have an enforceability clause,
- b) the enforcement order is subsequently declared null and void,
- c) the parties have agreed to postpone fulfilment of the claim for a period of time or forever,
- d) the right to enforce the claim is time-barred,
- e) the creditor is no longer the creditor named in the enforcement order,
- f) the enforcement body that issued the enforcement order was not competent to do so.

The debtor may also lodge an appeal against the decision of the court of first instance, although this generally has no suspensive effect. The appeal must be lodged by the court of first instance within seven days of notification of the decision to the court of second instance. This appeal will be sent to the other party for a statement.

The debtor may also lodge an immediate appeal against irregularities committed during the enforcement proceedings.

An important legal remedy, but one that is often used in practice, is the application for counter-enforcement. The debtor can lodge this legal remedy with the court of first instance if the enforcement has been completed and the following grounds apply:

- a. the enforcement order is declared null and void,

- b. the enforcement order is declared null and void,
- c. the creditor has obtained more than he is entitled to as a result of the enforcement, and
- d. the enforcement was carried out inadmissible object.

The application for counter-enforcement must be sent to the creditor for a statement within three days. If the creditor does not submit a statement, the court shall decide on the basis of the files.

### II.5 Postponement, suspension and termination of enforcement

If the creditor has enforced the claim, the proceedings conclude with a formal decision. The law provides for various options for both short-term and long-term suspensions, which may also lead to the termination of the proceedings.

Pursuant to Article 60 of the Law on Executive Procedure, enforcement is postponed at the creditor's request if no enforcement measures have been initiated. The enforcement body shall issue a decision (order), against which no appeal or legal remedy is permitted.

However, the suspension of enforcement proceedings upon the debtor's request is of particular practical importance. According to Article 61 of the Law on Executive Procedure, the creditor may request a stay of enforcement proceedings if they can credibly demonstrate that they will suffer significant and irreparable damage as a result of the enforcement. The law permits the filing of a request for a stay only under two specific conditions, namely:

- a. if an appeal is lodged against the enforcement order and
- b. if the creditor has filed an application to set aside the decision of the court of arbitration serving as the enforcement order.

However, the law exclusively regulates these two cases, omitting other potentially important instances necessitating a stay. The stay lasts a maximum of six months, requiring the debtor's application to resume proceedings. Third parties involved in enforcement proceedings can also apply for a stay.



The Law on Enforcement Procedure (Art. 65) also provides for the suspension of enforcement proceedings in addition to the stay, *ex officio*, for the three following reasons:

- a. if neither the debtor nor his assets can be found after three attempts by the enforcement body,
- b. if two attempts at enforcement by the enforcement body have been unsuccessful and
- c. if the creditor's stated address proves to be incorrect.

If no new application with new findings is filed by the creditor within the six months, the enforcement proceedings are terminated *ex officio*. This is not the only case in which enforcement proceedings are terminated. The proceedings are also terminated *ex officio*, if:

- a. the enforcement order or the declaration of enforceability is revoked and declared null and void,
- b. the third party has satisfied the claim in accordance with substantive law,
- c. the fulfilment of the claim becomes impossible for whatever reason or the so-called absolute limitation period has expired, and
- d. the creditor's claim is satisfied.

These provisions do not have a *numerus clausus* character, meaning enforcement proceedings can be terminated for reasons not explicitly provided in the law.

### II.6 Counter enforcement

An important legal remedy, often used in practice, is the application for counter-enforcement. The debtor may submit this legal remedy to the court of first instance if the enforcement has been completed and the following grounds apply:

- a. The enforcement order is declared null and void;
- b. (Repeated clause, should likely be revised or removed);
- c. The creditor has obtained more than they are entitled to as a result of the enforcement; and
- d. The enforcement was carried out on an inadmissible object.

Upon submission, the application for counter-enforcement must be forwarded to the creditor for a response within three days. Failure to provide a statement within this period prompts the court to decide based on the available case files.

### II.7. Objects and exemptions on enforcement

Enforcement proceedings, as civil proceedings, are governed by the foundational principles of civil law, particularly constitutionality and legality. As such, fundamental rights and basic principles must be upheld throughout these proceedings.

Due to the unique nature of enforcement proceedings, several specific principles apply. For example, the principle of formal legality dictates that only the enforceable title ("titulus") holds decisive significance for the enforcement body. Before enforcement proceedings commence, the title must be deemed enforceable, a determination typically made by the court. The focus is strictly on confirming the formal existence of a legally valid title.

According to Article 9 of the Law on Executive Procedure, the dignity of the debtor must be respected throughout the proceedings, with the principle of proportionality playing a crucial role. Enforcement seeks to assist creditors in fulfilling their claims while ensuring the dignity of debtors and their families is protected.

Compulsory enforcement proceedings are summary in nature, requiring the enforcement body to act promptly and efficiently. This is underscored by the requirement that the enforcement body must render a decision within seven days of the creditor's application for enforcement.

Unlike insolvency law, the principles of individual enforcement and the temporal priority of satisfying the first-ranking creditor over others apply in compulsory enforcement proceedings.

### II.8 (Court) penalties and fines

The enforcement proceedings in some legal systems have the possibilities to use compulsory measures when the debtor or any other person is not complying with the orders of the judicial

officer or court orders about enforcement activities: fines and penalties. Please describe if such system is also valid in your country and under which circumstances.

### PART III ORGANIZATION OF ENFORCEMENT

#### III.1 The status of the judicial officer

In Kosovo, the enforcement of established claims primarily remains the domain of the state, even after significant reforms. This means that the creditor may not enforce his established claims on his own and by his own will. If the debtor does not fulfil his obligations, the creditor must turn to the state. In this case, the court is normally responsible as the enforcement body. However, this was only the case until the new law on enforcement proceedings came into force. After the reform of 1 January 2014, the main enforcement body is the "private executor". The court remains the enforcement body in only two cases: when it comes to enforcement in family or labour law matters. For all other matters, the so-called "private executor" is responsible as the executing body. The fact that these bodies call themselves "private" only means that they carry out their tasks privately and do not receive a salary paid by the state. Otherwise, the "private executors" are legitimised by the state to carry out enforcement.

In other words: After the reform, it is mainly the so-called "private executors" who carry out enforcement proceedings. The status and jurisdiction of these "private executors" are regulated by the Law on Enforcement Proceedings. Art. 323 par. 3 of the Law on Enforcement Procedure regulates the status and jurisdiction of the "private executor". The procedure for appointing these "private executors" is also regulated. In addition, the law provides for the formal supervision of the work of the private executors. The private executors are obliged to join the Chamber of Private Executors. This chamber is a collegial body that also fulfils the rights and obligations of the private executor. The law also regulates in detail the cases of termination of the private executor's mandate.

#### III.2. Supervision over enforcement

Since it is the power of the State to conduct enforcement, it is of big importance to regulate the rights and responsibilities for the judicial officers. I must be clear what power the judicial officers have so they do not exceed their power. And when we talk about both the State and the private judicial officers, it is necessary to have a control mechanism to prevent any misuse of power or other irregularities in carrying out their tasks.

### III.3 Access to the premises

Enforcement, which is carried out on the premises of enforcement debtors, requires certain safeguards to protect against any harassment of enforcement debtors. If judicial officers require access to spaces that are closed, they may take action to open them. However, they may not access premises in the absence of debtors unless (for example) those debtors have first been notified by post or other appropriate manner of the planned time of enforcement. In such events, it may be assumed that debtors may be hiding or that there are other special reasons. In order to force entry, judicial officers may force entry to the extent necessary and justified having regard to the particular circumstances.

### III.4 Obstructing the judicial officer from carrying out enforcement

Prevention or obstruction of enforcement may happen in different ways. A person may impede the judicial officer in performing enforcement actions. In that case the judicial officer may remove the person from the premises by force and when necessary may demand police assistance. Refusal to provide essential information regarding debtor assets may also constitute obstruction.

### III.6 Mediation

The enforcement process should be sufficiently flexible so as to allow the judicial officer a reasonable measure of latitude to make arrangements with the debtor, where there is a consensus between the claimant and the debtor. In that respect, international standards, plead for a role of the judicial officer of a “post judicial mediator”, during the enforcement stage.

### PART IV ENFORCEMENT PROCEDURES

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

The principle of disposability also applies in compulsory enforcement proceedings, according to which the proceedings are generally opened and conducted at the request of the creditor. The application must contain all important information. It must also be accompanied by the enforcement order. This enforcement order must be provided with the so-called enforcement clause. This means that the application for enforcement can only be submitted to the enforcement body if the attached enforcement order is provided with the enforcement clause. This clause is issued in a separate procedure at the court of first instance. This clause does not require the authentic document that is attached to the application for enforcement as an enforcement order.

##### Initiation and course of the enforcement proceedings

The creditor submits an application for enforcement to the enforcement body. While under the new law the so-called "private executor" is the central enforcement body, the court is only competent in family and labour law matters. As stated above, the application must contain all important information about the enforcement, i.e. data about the creditor, the debtor, the nature and scope of the claim, the deadline for fulfilment of the claim and the enforcement measure. The attached enforcement order must be presented in the original or in the form of a certified copy.

The proceedings are summary proceedings. This is particularly the case now that the new law has created the private executor as the main enforcement body. The private executors are much more efficient in conducting the proceedings.

As enforcement proceedings are generally conducted in writing, the enforcement body reviews the application and makes a decision without an oral hearing. Enforcement can be carried out through various measures, depending on whether the creditor's claim involves the payment of money. If the claim is for the payment of money, enforcement may involve the seizure of movable or immovable property, or the attachment of claims, such as wages. The creditor may

request one or more enforcement measures, and the enforcement body is authorized to decide accordingly. If the creditor seeks enforcement against movable property due to a monetary claim, they do not need to provide specific details about the property. Instead, they may request enforcement measures against movable property in general terms.

If the creditor lacks detailed information about the debtor's assets, they may submit an application to establish the debtor's assets along with the enforcement application. This may lead to the issuance of an affidavit of disclosure.

The enforcement body's decision must be served on both the creditor and the debtor, but it does not require substantiation. Both the order granting enforcement and the order refusing enforcement must include information about the right to appeal, as outlined in Article 44 of the Law on Enforcement Proceedings.

Enforcement is carried out based on an enforcement order, meaning that enforcement measures can be taken even before the order becomes final. For example, enforcement measures may be initiated against movable property while the enforcement order is also served against immovable property. The specific enforcement measures taken depend on the type of claim, whether monetary or otherwise. The different types of enforcement measures are discussed in Chapter H.

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

The measures of compulsory enforcement are in fact the special compulsory enforcement proceedings. Which measure, i.e. which type of enforcement is carried out, depends on whether the established claim is a monetary claim or a claim that is not a monetary claim. The measures of compulsory enforcement under Kosovar law are modelled on the compulsory enforcement law of Western European countries (Austria, Germany and Switzerland). For this reason, the types of compulsory enforcement are presented only in their basic principles.

As for the enforcement against movable property pursuant to Art. 80 ff. of the Law on Enforcement Procedure<sup>14</sup>, the main enforcement body is Private enforcement agent. Private enforcement agent is the (materially) competent enforcement body.<sup>15</sup> In advance, the creditor may instruct the judicial officer to obtain information from himself and third parties. As a public authority, the judicial officer must ensure lawful behaviour. When examining the proper execution (the "how") of compulsory enforcement, a distinction must be made between the act of attachment (seizure) and the subsequent act of realisation (auction).

For successful enforcement are foreseen some actions: registration, sequestration, and evaluation, selling of such items and settling the credit from the amount obtained from sale of such items. The electronically way of delivery ist not allowed.

Enforcement body in principle, before starting the sequestration, delivers to the debtor enforcement decision and orders him to pay the amount of money together with the interests and procedural expenses, for which the enforcement is permitted.<sup>16</sup>

In any case, there must be an application by the creditor (for execution). If the bailiff receives documents in a foreign language, he must request the creditor to submit a translation (or have it translated himself at the creditor's expense); he may not simply reject the enforcement order for this reason.

Enforcement must take place in the right place and at the right time. If information is available (thanks to self or third-party information) that the debtor has movable assets, the bailiff visits the debtor at their home during normal daytime hours (only exceptionally at night or on Sundays) with the application, title, clause and order for service in their pocket.<sup>17</sup>

After ringing the doorbell, the bailiff first asks the debtor to make a voluntary payment.<sup>18</sup> If this is not done, the bailiff can still grant a payment deadline or make a deferral agreement. According to the Art. 87 par. 2 of the Law on Enforcement Procedure „In case of impossibility

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<sup>14</sup> Law on Enforcement Procedure, Nr. 04/L-139.

<sup>15</sup> See Art. 2, 5 of the Law on Enforcement Procedure, Nr. 04/L-139.

<sup>16</sup> According to the Art. 87 of the Law on Enforcement Procedure, Nr. 04/L-139.

<sup>17</sup> According to the Art. 50 of the Law on Enforcement Procedure, Nr. 04/L-139.

<sup>18</sup> According to the Art. 87 of the Law on Enforcement Procedure, Nr. 04/L-139.

to deliver the enforcement decision or write to the debtor on sequestration, it is permitted to perform the notification by posting a notice of the date of sequestration on the table of announcements at the enforcement body and also by leaving a copy of the enforcement decision at the premises at which sequestration shall occur”.

### IV.3 Attachment on the bank account of the debtor

Articles 152 – 166 of the Law on Enforcement Procedure stipulate the procedure for enforcing monetary claims against debtor’s bank account. This is one of the most relevant means of monetary credit. The legislative has been often involved to amending the regulations to increase the efficacy of enforcement. Enforcement for settlement of the monetary credit against the debtor may be applied for all monetary means he holds in his bank accounts, except in cases when the law provides for otherwise.<sup>19</sup>

### IV.4 Enforcement on immovable property

Articles 190 – 271 of the Law on Enforcement Procedure have foreseen the Enforcement on immovable property. According to the Art. 192: “Enforcement against immovable item shall be applied through noting of enforcement in the public book of immovable items, determination of the value of real estate, sale of real estate and payment of the enforcement creditor from amount of money obtained by the sale”. Article 193 provides that” Unless not provided otherwise by legal provisions, only the immovable item in its entirety may be assigned as the enforcement object by the provisions regulating the ownership and other real rights, as well as the public books of immovable items”<sup>20</sup>. In addition, Art. 198 sets the following criteria:

1. Together with the enforcement proposal for immovable item, creditor must present an extract from the public book of immovable item that the immovable item is registered as ownership of debtor.
2. If the right on immovable item from paragraph 1 of this Article is registered in the public book of immovable item under some other person and not debtor, the

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<sup>19</sup> See Art. 152 of the Law enforcement procedure, Nr. 04/L-139.

<sup>20</sup> See the Art. 193 to the Law on enforcement procedure.



enforcement proposal may be approved only after it is concluded the ownership of debtor according to the provisions of Article 45 and 46 of this law and after meeting the conditions for changes of the state in the public book of immovable items.

3. If immovable item is not registered in the public book of immovable items, the provisions of this law shall be valid for territories where such books do not exist.

According to the Art. 211 is also foreseen that:

1. Real servitudes, real encumbrances and the rights of construction on real estate will not elapse by sale of real estate.
2. Sale of real estate will not elapse personal servitudes recorded in real estate's book prior to the right for settlement of which the enforcement procedure is ongoing.
3. Other personal servitudes elapse with the enforcement of decision or writ on the sale of real estate.
4. The provisions of Article 210 paragraph 2. and 3. of this Law shall appropriately apply in relation to personal servitudes from paragraph 3. of this Article. Art. 234 is reworded:

Article 234 of the Law on Enforcement Procedure is reworded by the new Law on amending and supplementing it, and the new law provides that:

1. In the first session of the public sale, real estate cannot be sold at a price that is lower than fifty percent (50%) of the value of real estate as appraised. The starting offers for the first session that are lower than fifty percent (50%) of the appraised value will not be reviewed.
2. In case the real estate is not sold in the first session of the public sale, the enforcement body shall designate a second session of the public sale within a time frame of fifteen (15) to thirty (30) days. At this session, real estate shall not be sold at a value lower than one third ( $\frac{1}{3}$ ) of the value of real estate as appraised.
3. In case real estate is not sold in the second auction, the enforcement body shall, by proposal of creditor, render a decision to hand over the real estate to the ownership of creditor, in which case the claim against the debtor is considered fully covered.

4. In case there are no persons with the right of pre-emption or contractual right, then the person who according to this law has right of settlement with priority of his credit from selling price, shall acquire the right of pre-emption of the real estate at the price reached in the second session.

The new Art. 235 of the Law on Enforcement Procedure sets that:

1. In case the parties before the commencement of enforcement procedure have reached an agreement with the enforcement authority, that the real estate should be sold for a price lower than that provided under paragraph 1. of Article 22 of this Law, then the real estate can be sold with that price even in the first session. This agreement shall be valid only if in the enforcement procedure, the persons with registered rights in the public record of the real estate do not participate before the registration of the right of the claimant of the enforcement.
2. The lowest price by which the real estate can be sold according to the provision of paragraph 1. of this Article cannot be lower than one third (1/3) of the determined value.
3. Parties and persons secured with pledge can agree through the statements provided in the official records that the real estate can be sold at a lower price than that mentioned in paragraph 1. of Article 22 of this Law.
4. Provisions of paragraph 1. and 2. of this Article shall apply accordingly even in the case when the real estate is sold through direct agreement.

Article 242 is also important one since it provides that:

1. After depositing the price, the enforcement body shall issue a written decision or order concluding that the real estate has been sold to the buyer.
2. Through the written decision or order from paragraph 1. of this Article, the enforcement body shall decide that the real estate is to be handed to the buyer, whereas the public record official-holder of real estate shall be ordered to register the right of the property of the buyer over the real estate that he bought. Through this written decision or order the enforcement body shall order the cancellation of rights as provided in the written decision or order on sale of real estate.
3. No objection is allowed against the written decision or order from paragraph 1. of this Article, while the decision may be challenged through an appeal.

4. Decision or order under paragraph 1. of Article 242 of this Law is submitted to the parties, in accordance with the provisions of the Law on Contested Procedure.<sup>21</sup>

The fulfilment of credits by priority is regulated under Art. 254, providing that:

1. The priority to be paid from the amount earned from the sale of real estates have:
  - 1.1. expenses of the enforcement procedure;
  - 1.2. requests of the insured creditors with pledged, shall be realized by the order of priority before the enforcement proposer;
  - 1.3. the request of the enforcement proposer;
  - 1.4. claims of creditors insured with pledged, which are realized by order of priority, shall be settled after the enforcement proposer;
  - 1.5. rewards for personal servitudes, which are terminated through the sale of real estates.
2. If the debtor is due to pay interest apart from the principal amount, the interest shall be paid before the principal debt.
3. More persons at the same point within paragraph 1 of this Article, shall settle their claims according to the order of gaining the right of pledge and the right of settling the credit of the enforcement proposer, respectively according to the order of gaining the personal servitudes, unless the agreement provides otherwise.

Enforcement against non-registered real estate is regulated by Art. 271, which stipulates that::

1. If in the territory where public books of real estate are established, the real estate is not registered, the creditor should accompany the enforcement proposal with documents based on which the registration may be done.
2. After the delivery to the enforcement body of enforcement proposal and based on which the registration of real estate may be done, the enforcement body immediately shall deliver the documents to the enforcement authority, body or organization which keeps the registers for the purpose of registration. In this case the enforcement body halts acting until the conclusion of the registration procedure.

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<sup>21</sup> This par. 4 is reworded by the Law on amending and supplementin of the Law on ec

3. If the creditor in his enforcement proposal, proposes the building as enforcement object, or part of the building which is not registered in the public book of real estate, together with the declaration that registration cannot be done in sense of paragraph 1 and 2 of this Article, the enforcement body with decision or order will allow enforcement on real estate in non-registered ownership of debtor, if the creditor hands over or states the evidence of non-registered ownership, building permission issued in the name of debtor, or if the building permission is not in debtor's name, documents for legal actions by which the ownership of debtor on real estate or part of it may be obtained.

4. Upon request of the enforcement creditor, the enforcement body shall assign a duty to debtor or to third person to hand over documents from paragraph 3 of this Article, under threat of fine from Article 15 and 16 of this law. Upon the request of creditor, he will oblige, with the enforcement body decision, the competent state body to hand over documents from paragraph 3 of this Article.

5. When the enforcement body assigns enforcement against real estate which cannot be registered in public book of real estate in accordance with paragraph 3 of this Article, in conditions of sale will be particularly emphasized that it has no registered ownership, and instead of note, inventory will be conducted in manner foreseen in Article 270 paragraph 3 and 4 of this law.

### IV.5 Enforcement for settlement of non-monetary credits

According to Articles 272 and following of the Law on Enforcement Procedure, there are several enforcement procedures for settling non-monetary credits. These regulations are similar to those in comparative enforcement law. The special procedures include:

- Enforcement with purpose of handing over movable items, Art. 274 – 281 of the Law on enforcement procedure;
- Enforcement for eviction and hand over of real estate, Art. 282 – 289 of the Law on enforcement procedure;
- Enforcement for settlement of credit for commission, omission or tolerance/incorence, Art. 290 – 298 of the Law on enforcement procedure;

- Enforcement of decision for division of items, Art. 299 – 304 of the Law on enforcement procedure;
- Enforcement for the purpose of taking the statement of will, Art. 305 – 306 of the Law on enforcement procedure;
- Enforcement through registration of the rights in public book, Art. 307 – 311 of the Law on enforcement procedure;
- Enforcement of decision on reinstating to working place, Art. 312 – 317 of the Law on enforcement procedure;
- Enforcement of decisions from the area of family law – hand over and taking of child, Art. 318 – 322 of the Law on enforcement procedure;

## PART V ENFORCEMENT COSTS

### V.1 The costs of enforcement

Article 13 of the Law on Enforcement Procedure outlines the costs associated with enforcement, specifying that the creditor pays these costs in advance:

1. The procedural expenses regarding the determination and commission of enforcement shall be paid by the creditor in advance.
2. The enforcement proposal shall pay in advance the expenses from paragraph 1 of this article within deadline assigned by the enforcement body. The enforcement body shall suspend the enforcement if the expenses are not paid in advance within such deadline. If the expenses are not paid within deadline set by the enforcement authority for a certain activity, such activity shall not be completed.
3. The procedural expenses initiated by the court ex officio shall be covered by the court from its budgetary.
4. Debtor shall reimburse the creditor the procedural expenses and all other expenses incurred during enforcement procedure.
5. The creditor shall reimburse the debtor the expenses incurred without reasonable cause.

6. The enforcement body shall decide on request for payment of procedural expenses simultaneously with the enforcement decision, upon proposal of party, assigning the enforcement with the aim of accomplishing it.

Article 14 provides additional regulations on guarantees:

1. The enforcement authority shall order provision of guarantee with decision or writ. In cases foreseen by this law to leave guarantees, the guarantee shall be given in cash. The enforcement authority may allow provision of guarantee in the form of bank guarantee, securities and valuable items the value of which is easily determined in the market and which may be liquidated quickly and simply.
2. Institutions of the Republic of Kosovo and their bodies and services are not obliged to deposit guarantee when they appear as parties to enforcement procedure.
3. The opposing party shall obtain the right of legal pledge over the deposited guarantee.
4. If the enforcement authority in the enforcement procedure decides that the procedural expenses of the opposing party should be paid with regards to the action for which the guarantee is provided, upon the party proposal, the court in the same decision shall decide over the payment of the claim from such guarantee.
5. Guarantees may not be requested, if its provision may cause irreparable damage to the debtor.

## PART VI LINKS, LITERATURE AND SOURCES

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