

EU Enforcement Atlas Project

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Civil enforcement proceedings in the Montenegro

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ABBREVIATIONS

LESC	The Law on Enforcement and Securing of Claims
LEA	The Law on Enforcement Agents
LCP	The Law on Civil Procedure
The Chamber	The Chamber of the Enforcement Agents
The Ministry	The Ministry of Justice

PART I THE LEGAL FRAMEWORK

I.1 Legislation affecting enforcement

The civil enforcement system in Montenegro has been reformed in 2011. It is based on two relevant laws: the Law on Enforcement and Securing of Claims (LESC) and the Law on Enforcement Agents (LEA). LESC can be characterized as of material and procedural nature, while LEA regulates the organizational part..

Their application began in 2014 with the first enforcement agents who initiated work.

Since it, the laws are still into force with several changes. The most recent changes were implemented in 2019 for the purpose of aligning it with European acquis (European Enforcement Order Regulation, European Payment Order Regulation, etc.)

In addition to the above, it is prescribed that the Law on Civil Procedure (LCP) will apply to enforcement in case the matter is not regulated by the Law Enforcement and Securing of Claims (Art. 14 LESC)

The reform of civil enforcement in Montenegro introduced for the first time the self-employed (private) enforcement agent, as the new institution authorized to define and execute enforcement titles. It can be said that they have a monopoly on the enforcement, except in a few situations where enforcement is reserved for the courts. These specific cases are regulated by LESC and are related to the enforcement:

- for the handing over the child;
- for the returning an employee to work position;
- in case the debtor is required to perform certain activities that cannot be performed by another person. (Art. 4 LESC)
- The motion for counter enforcement
- The request of the creditor for payment of court penalties

The responsibilities of enforcement agents are comprehensive and include both stages - defining the enforcement procedure and executing enforcement as such. This applies to both judicial and non-judicial enforcement acts and particularly for all court decisions or orders.

I.2 Enforceable titles

As an enforceable title in the Montenegro can be considered:

1. A (domestic) executive (judicial) or authentic (non-judicial) document, if the law does not provide differently.

2. A foreign executive (judicial) or authentic (non-judicial) document, if the law does not provide differently.
3. A decision made in an administrative procedure that requires fulfilment of a monetary claim in case the enforcement is carried out on immovables, stocks and shares, or immovables of debtor.

The enforceable documents that are used to define and execute the enforcement procedure are the following (Article 18, LESC):

- an enforceable court decision and court settlement;
- decision and settlement that are considered enforceable documents by a separate law.
- mortgage agreement or pledge statement composed in accordance with the legal provisions on mortgage;
- notarial act that is an enforceable document in accordance with the law and a foreign notarial act if it contains all elements necessary for the enforcement in accordance with the notary law and is considered to be an enforceable document in the country of its origin;
- as well as other documents that are defined as enforceable documents by the law.

The Authentic (non-judicial acts) Documents that are used to define enforcement for the purpose of collecting monetary claims are the following (Article 25 LESC):

- bill of exchange and cheque;
- bond and other securities issued in series which entitle their owner to the payment of the nominal value;
- invoice with delivery note or other written proof that debtor is notified of the obligation incurred;
- excerpts from business books or accounts for performed utility services, electricity services, telephone and other similar services;
- bank guarantee;
- letter of credit;
- certified statement of the enforcement debtor where he authorizes the bank to transfer money from his account to the enforcement creditor's account;
- calculation of interest with evidence of the due date and the amount of receivables;
- certified temporary or finalized situations related to construction works and
- excerpt of open items signed and certified by the enforcement creditor and enforcement debtor.

I.3 Service of documents to parties and third parties

I.3.1. The legal basis

The service of documents in proceedings which are implemented by enforcement agents is an exclusive power of such enforcement agent.

The provisions regarding service of documents are explained in the LESC. (Articles 43-46)

According to the normative procedure of service of documents, there are two different options for the service: *the personal service* and *the public announcement service*.

The personal service means that it is done in person, directly by an authorized official in the enforcement office (the courier), the post or an authorized legal entity registered for the performance of such delivery activities, on the address of the place of domicile (or the residence) of natural persons or on the seat of the legal entity.

When personal service is not possible or the address of the recipient is unknown, it has to be done *through delivery by public announcement*. This procedure includes the announcement in a daily printed-medium published throughout the country and displaying the document on the notice board of the competent court. After the expiration of the deadline of eight days from the date when the document was posted on the notice board of the court, the service shall be deemed to have been effected. (Art. 45 LESC)

The public announcement service of documents is also prescribed by the law in situation when the enforcement agent can't service the document because the place of domicile/the residence of the party or the seat of entity is unknown.

The service of judicial documents performs the enforcement agents only on the court's order, in accordance with provisions of the Law on Civil Procedure (LCP). This law is also used in the service of documents in enforcement proceedings when situation is not regulated by the LESC (Art. 127-146 LCP).

Based on LCP, the service of documents also may be carried out electronically. The method is dominantly prescribed by the special law on electronical service of documents. The enforcement agents in Montenegro use this mode of service rarely because the other rules of procedure are not uniform.

Formal documents in the enforcement proceedings need to be served to the creditor and to the debtor. Depending on the type of enforceable assets (means), formal documents also need to be served to: the banks, the employer of the debtor, The Pension Fund, The Register of Immovable Property (Cadaster), The Register of Pledges, the debtor's debtor...

I.3.2. The contents of the documents to be served

Each document to be served, also needs to comply with the mandatory legal requirements (Art. 41-42 LESC; Art.145 LCP)

Based on Art. 41 LESC, every decision in enforcement proceeding needs to contain:

- the data of the enforcement agent who effected the service;
- the details about the creditor and debtor (for a natural person - full first and last name, address and date of birth, if available; for legal entity - form of legal entity, statutory name, seat and location of office);
- the enforceable title (executive or authentic document);
- the obligation (claim) of act for the debtor;
- the means and subject of enforcement and
- other information that is necessary for enforcement.

Apart from these elements, the writ of execution of the enforcement agent consists also of the costs of the service and the signature of the enforcement agent, as well as the instruction on the legal remedy (in case of rejection of the proposal for enforcement).

Every delivery note, next to the data of the enforcement agent who performs the service, contains:

- details of the addressee (full first name and last name with address for a natural person);
- form of legal entity, statutory name, location of office (for legal entity);
- name of the act that is served (with its number and date of issuing);
- The date of receipt of the delivery note by the recipient.

The delivery note needs to be signed by the addressee and the courier. (Article 146 LCP). In case the addressee refuses to sign the delivery note, this is noted on the delivery note.

There is no special format for the delivery note.. In practice this means that the enforcement agents working under private status, use their, office, templates for the service of documents. The contents may differ per office.

I.3.3. The practice of service of documents

When a document needs to be served to the debtor, the enforcement agent is obliged to send it to the address which is mentioned in the proposal for the enforcement. The enforcement agent will also check the addresses with the public registers.

Service of documents for natural persons has to be performed *in person* or to the legal representative (if there is one) or for legal entities to the authorized representative or in the seat or other business properties.

In case the debtor refuses to accept the document, the enforcement agent is allowed to leave the document. In the record of service, the enforcement agent will note the reasons of refusal by the addressee.

In case the person cannot be located, or does not have a domicile or residence, the documents will be served with public announcement service on the notice board of the competent court. Before announcement on the notice board of the court, the enforcement agent is obliged to publish the decision in the media published throughout the country.

The public announcement procedure will also be followed in case the enforcement agent, though the debtor has a registered address, concludes based on factual circumstances, that the debtor is not actually domiciling on the registered address.

According to the Art. 45 LESC, the npublic announcement procedure is considered as an effective service of documents.

I.3.4. Probative value of the service of documents

The delivery note is considered as an authentic (credible) act which represents a confirmation of the service of the document. When the delivery note is signed by the addressee and the courier, it means that the service of document is effected. (Art. 146 LCP)

Such effective service of document has a credible probative value and it constitutes proof of its contents. The enforcement agent guarantees the contents of the record of service.

If it is necessary, the laws predicted that it can be set aside, but for this a special procedure is needed.

I.4 Legal remedies, appeal and objection

The LESC prescribes the two-stage principle in enforcement, which implies that a dissatisfied party in enforcement proceeding can refer to the court, if such party is not satisfied with public enforcement agent's decision as a first-instance decision-maker. In enforcement proceedings in Montenegro are used two legal remedies:

- the complaint (objection) to the enforcement decision (writ of enforcement) and
- the request for the elimination of irregularities during enforcement.

(1) The complaint (objection) to the enforcement decision is the main legal remedy in enforcement procedure in Montenegro. (Art. 47-60 LESC)

The deadline for submission of complaints (*objection*) is 5 (five) days from the day the decision is delivered. The public enforcement agent is obliged to submit the case file within 5 days to

the court.. The objection is served to the creditor who, within 5 dys from the date of submission of the objection, may submit a response on the objection.

LESC (article 50) prescribes the legal grounds when a complaint (*objection*) is allowed, especially for executive and for authentic documents.

Regarding the jurisdiction, the competent court (individual judge, or 3-members court panel) is the one which has authority under the general rules on jurisdiction. It means when the debtor in enforcement proceeding is a natural person, it is decided by the courts of general authority; in case the debtor is a legal entity, it is decided by the Commercial court of Montenegro.

(2) *The Request for the elimination of irregularities during enforcement* (extraordinary legal remedy) is used when a party or a participant in the procedure believes that irregularities were committed during the implementation of the enforcement. Reasoned requests with evidence must be submitted within 3 (three) days from the day of knowledge of the irregularities, and no later than within 15 days from the date of completion of enforcement.

The request for elimination of irregularities is served to the parties and participants in the enforcement proceedings and the enforcement agent.

Filing a request for the elimination of irregularities during enforcement does not delay the enforcement proceeding.

About the request for the elimination of irregularities the competent court decides (single judge), within 3 (three) days from the date of receipt of the request.

If the court finds that the request is well-founded, the court will determine the irregularities committed by a decision, and annul the enforcement measures and undertaken actions and orders the elimination of irregularities caused by the decisions and actions of the enforcement agents. (Art. 65 LESC)

Also, in enforcement procedure is allowed the legal remedy called *The Return to the previous state (restitutio in integrum)*. However, this is only possible in case the deadline for objecting to the enforcement decision is missed. On the Return to the previous state, the competent court also decides. (Art. 35 LESC)

1.5 Postponement, suspension and termination of enforcement

According to LESC provisions, the enforcement agent is legitimated to carry out the entire enforcement. In principle, this also includes any decisions on postponement, suspension or termination of enforcement at the request of the creditor or the debtor or, exceptionally, ex officio.

The postponement of enforcement may be proposed by the creditor, the debtor or a third party. (Art. 70-76 LESC)

On the proposal of the creditor, the enforcement agent will accept the postponement of enforcement (in whole or in a part) if it has not initiated enforcement yet.. In case enforcement is initiated, the postponement will be rejected in case the debtor is against such postponement.

The debtor or the third party in the proceeding can propose the postponement only when the enforcement causes irreparable damages, as well as in case there are justified reasons, such as health and social threat. Postponement of enforcement shall be conditioned only by depositing a guarantee. It is the court who decides on the requests.

According to the article 75 LESC, the parties may agree to settle the claim (debt) in installments. In that case, the enforcement is postponed until the expiration of the deadline specified in the agreement on settlement in installments.

Based on article 77 LESC, *the suspension of enforcement* will be ordered in particular cases only. The enforcement agent will suspend the enforcement *ex officio* in following situations:

- when the executive document has been revoked, modified, annulled or repealed, or if the certificate of enforceability is revoked;
- if during the enforcement procedure the claim has been ceased due to the collapse of the subject of execution;
- the death of a natural person, if there is no heir; or the termination of the legal entity as a party, if there is no legal successor;
- set-off of claims and in other similar cases.

The termination of enforcement is used when the enforcement agent during the proceeding determines the death of a party or the termination of the legal entity. In such case, enforcement may continue after the creditors' announcement about successors.

I.6 Counter enforcement

Jurisdiction for the counter enforcement procedure (the situations when the debtor has an enforceable title to the creditor) in Montenegro has only the courts, not enforcement agents. While, the first instance courts are competent to order counter enforcement procedure, enforcement agent is authorised to execute the order.

I.7 Objects and exemptions on enforcement

Object on enforcement are things and rights on which law allows enforcement. The LESC prescribes which objects are exempted from enforcement; so all other are allowed.

In accordance with article 26 LESC, exempted from enforcement are:

- The things out of transaction;
- The objects, the weapons and the equipment intended for defense and security of the state.

In accordance with article 81 LESC, following is also exempted from enforcement:

- The clothes and footwear of the debtor and the family members, also furniture and the other items belonging to the household of the premises in which the debtor is living;
- The stock of food and heating for the needs of the executing debtor and members of his household for three months;
- The cash of a debtor who has a permanent monthly income up to a monthly amount exempted by law from enforcement;
- The medals, war memorials and other signs of decorations and recognitions, personal letters, manuscripts and other personal writings; family pictures;
- The aids that are necessary for the performance of debtors life functions;
- The postal consignment or postal money transfer addressed to the enforcement debtor, before being served on him.

If the enforcement is executed at the expense of one of these items, it can be the reason for submitting the Request for the Elimination of Irregularities during the enforcement procedure.

According to articles 203 and 204 LESC, the object exempted from enforcement are: object outside of the commerce, natural resources and goods in general use; such as the items (medals, weapons and equipment) necessary for defense, state and public security. Also, agricultural land and cultural goods and properties are exempted too.

I.8 Access to information on the domicile and assets of the debtor

For an efficient functioning enforcement system, it is important that the enforcement agent has easy access to information, keeping in mind the data protection provisions. The information about the debtor's assets can be obtained from various sources, in particular through (electronic) databases and through the parties directly. Access to information can be obtained via electronic means or in written.

The creditor is obligated to specify to an enforcement agent the address of the debtor, as well as other information about his sources of income and assets. If the enforcement agent hasn't enough information for enforcement, he is authorized to access to public registers. The agent is authorized to have digital access to government system which collect the personal information about citizens.

For example, in case the enforcement agent needs to serve a document to a natural person, he access to information about the domicile in The Population Register. He/She use those

information with the professional secrecy so he/she is allowed to request only the information which are in relation to an enforceable title.

According to previous mentioned, the main sources of information are:

- The Population Register;
- The Companies Register;
- The Register on Employments;
- The Tax-office registry;
- The Motor Vehicles Register;
- The Register of Pledges;
- The Register of Immovable Properties (Cadaster), which holds registrations of property, including mortgages and attachments on immovables;
- The Central Depository Agency (for stocks);
- The Central bank of Montenegro and the other banks.

Regarding banks, the enforcement agent may summon the creditor to state which bank has any moneys in their possession from the debtor. The enforcement agent is entitled to request (electronically) the bank if such bank has any assets from the debtor in their possession. The bank is obliged to respond immediately upon such request.

In all other situation, the law obliges the institutions to allow access to the information on enforcement agent's request.

PART II THE ORGANIZATION OF ENFORCEMENT

II.1 The status of the enforcement agent

II.1.1 The jurisdiction and competences of the enforcement agent

The status, rights and obligations of enforcement agents are regulated by The Law on Enforcement Agents (LEA).

According to this law, the enforcement agents in Montenegro have a special jurisdiction for the enforcement; they are authorized to define (order) the enforcement procedure and to execute enforcement (to execute/conduct enforcement measures). This apply to both judicial and non-judicial enforcement acts and particularly for all court decisions or orders (except in few cases that LESC prescribes – *look for more part I*). This, the agent is authorised to conduct enforcement procedure in total, except for a few particular cases prescribed by the law.

Based on Art. 5 LEA, the enforcement agent executes his activity in his official (local) area. The official area covers basic court jurisdic

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ion area where his/her official seat is located.

When the enforcement is based on the executive documents of the Commercial Court of Montenegro, the enforcement agent who is responsible for the area where the official residency of the debtor's seat is located determines and executes the order.

The Ministry of Justice determines the number of enforcement agents for every official area and their official seat in that area. One enforcement agent is appointed for every 25,000 citizens in a municipality area.

Provision of Article 5a LEA introduces equal distribution of cases. Equal distribution of the cases is obliged for the cases in which the state body, local self-government body, institution or other entity performing public duties or a business with the State as the major shareholder act as a creditor. The Chamber of Enforcement Officers is authorised to implement this provision through automatic software.

In according to Art. 17 LESC, the jurisdiction of enforcement agent depends whether the enforcement is based on an executive or a credible document. (*look for more part 2*)

The Article 10 LEA prescribes the conditions that the candidate for the enforcement agent need to fulfil to be appointed:

- to be a Montenegrin citizen (with exception in paragraph 2 of this article: a person who is a citizen of a member state of the European Union);
- to have generally good health and business capacity;
- to graduate from the Faculty of Law, VII1 level of education/qualification;
- to have at least five years of work experience in legal affairs;
- to pass the Bar Exam and the Exam for Enforcement Agent;
- not to be convicted of a criminal offense and sentenced to an unconditional imprisonment of at least six months or convicted of a criminal offense making him unworthy to perform enforcement's duties, not being charged for a type of felony that are prosecuted in the line of professional duty;
- not to be under bankruptcy proceedings as an entrepreneur, member of a partnership, or a general partner in a limited partnership.

II.1.2. The obligations of the enforcement agent

The basic obligations of the Montenegro enforcement agent are regulated in LEA. In according to them, the enforcement agent is obliged:

- to perform his profession as public service, independently, professionally and as their only occupation; (Art. 2 LEA)
- to adhere to the principle of discrimination; (Art. 3a LEA)
- to provide business premises and equipment for the work of the office in which he will perform his duties; (Art. 14 LEA)
- to conclude an insurance contract with an insurance company for liability of covering damages incurred during the performance of his/her activities, insurance for premises and equipment, as well as items entrusted to them for safekeeping in accordance with the law; (Art. 15 LEA)
- to have a seal and a stamp that contains the name "Montenegro", national coat of arms, the title "the public enforcement agent", his/her personal name and the office seat; (Art. 16 LEA)

- (upon request) to identify himself by an identity card issued by the Minister of Justice; (Art. 17 LEA)
- to take on any case (except in the situation from Article 28 LEA, such as when it has not paid the costs); (Art. 29 LEA)
- to keep as a business secret the data he acquires while performing his duties and must not use it to gain benefits for himself or others; (Art. 30 LEA)
- to submit a report on their assets and income, as well as the assets and income of spouses (married and unmarried) and children living in the same household, in accordance with the law regulating the prevention of corruption; (Art. 31a LEA)
- to maintain the financial books in which has to accurately record all incomes and expenses; (Art. 38 LEA)
- to keep a register of received proposals for enforcement and other demands. (Art. 39 LEA)
- to keep the case files and financial books permanently; (Art. 40 LEA)
- to open separate accounts (a separate account exclusively for the deposit of funds collected in the enforcement process, an account for depositing funds as collateral in the enforcement and security implementation process, an account for office work); (Art. 41 LEA)
- immediately to transfer the moneys from the special account to the creditor's account (latest by the first following working day); (Art. 42 LEA)

II.1.3 Inconsistencies and conflict of interest

If so requested (Article 29 LEA), the enforcement agent is obliged to perform at any case he is authorised, except in the case of:

- exemptions from Article 28 LEA;
- when the applicant has not paid the advance payment for the execution costs.

Based on the second paragraph of this article, the law prescribes the situation when the enforcement agent refuses to perform or denies taking action without justified reasons, the party has the right to lodge a complaint to The Chamber of Enforcement Agents. In this case, the Chamber will determine another enforcement agent who will take over the case. This provision does not have much practical application.

To the procedure of exemption of the enforcement agent shall be applied provisions of The Law on Civil Procedure (LCP), which refers to the exemption of the judge. About *The Request for the Exemption* decides the president of the court where the official seat of the enforcement agent is located and no objection is allowed against that decision. If the judge decides to exempt the enforcement agent, the creditor will entrust the case to another enforcement agent.

The request for exemption can be submitted only by the parties in enforcement proceedings, not the others participants.

The conflict of interest in enforcement proceeding is based on 15 Article of The Code of the Ethics. The conflict of interest exists where an enforcement agent or a related person has a private interest that affects or may affect the performance of his tasks and duties.

The related party is a person who is a relative of a enforcement agent by blood in a direct line to any degree, and in the lateral line to the fourth degree, a guardian, adoptive or adopted child, spouse or extramarital spouse or relative by marriage to the second degree, regardless of whether the marriage is terminated, or a person who lives in the same household with the enforcement agent.

Also, the enforcement agent may not undertake actions in the proceedings where he or any of his Deputies or Assistants has proprietary or another interest, except in case of payment of remuneration and reward to an enforcement agent in accordance with the law and prescribed Tariff.

An enforcement agent shall immediately notify the party on whose behalf he acts on the conflict of interest that arose or can arise in the process of enforcement.

II.1.4 Ethics and deontology

In accordance with article 51 LPEA, the ethics rules and standards of profesional behavior of the enforcement agents, their deputies and employers are provided by the provisions of the Code of Ethics.

The Code of Ethics (hereinafter: The Code) is adopted by the Assembly of Chamber in 2019.

According to basic principles of The Code, an enforcement agent shall :

- be independent in the performance of his duties;
- perform his duties professionally and conscientiously;
- refrain from inappropriate behavior and at any time act in accordance with the moral standards of his profession and protect his professional and personal reputation and the reputation of his profession;
- carry out his activities effectively and act in a manner that is most cost-effective and which, with regard to a specific case, causes the least cost;
- abide by the Constitution, laws and other general acts;
- not refuse to act in cases where he has jurisdiction, unless otherwise prescribed by the law and this Code;

- take cases in the order of their received;
- be obliged to provide to the court, competent ministry, other state authorities and bodies of the Chamber all the information on his work in accordance with the law and other general acts;
- keep as business secret confidential information which arises during the performance of his activities;
- be obliged to refrain from performing the duties and functions which are incompatible with the enforcement;
- not take the actions when he (she) or a related person has a private interest that affects or may affect the performance of his tasks and duties;
- not offer his services, nor attract clients in a dishonored or inadmissible manner;
- not contract or charge other amounts of compensation and rewards except those prescribed by applicable Tariff, nor amounts greater or lesser than those prescribed by the Tariff;
- be obliged to act conscientiously and carefully in his financial operations, and to perform the transfer of funds to the appropriate accounts in accordance with the law and other general acts;
- possess an official identification card issued by the Ministry of Justice, which he is required to present during the proceeding;
- be obliged to provide full and timely notification to the parties of all information regarding the action upon their application, to notify them of the actions taken and those he intends to take.

The Committee for Ethical Issues, which is elected and dismissed by the Assembly of the Chamber, determines whether the behavior of a enforcement agent towards his colleagues, bodies of the Chamber and employees involved unprofessional, incorrect and irresponsible attitude.

Based on the articles of The Code, everyone has the right to apply for an opinion as to whether behavior, act or omission of a public enforcement agent violated the Code; also the enforcement agent may request for an advisory opinion before the Committee prior of taking action.

II.1.5 Disciplinary proceedings against enforcement agents

Based on Art. 58 LEA, the Ministry of Justice and the President of the Chamber can submit a proposal to initiate disciplinary proceeding on their own initiative or at the complaint of the clients, their attorney and representative. The president of the court in the area where the enforcement agent is appointed can also submit such proposal at the complaint or initiative of the client.

The part of the Law that regulates disciplinary responsibility and disciplinary proceedings (Art. 54 to 64) classifies all disciplinary violations as mild, severe and most severe violations and lists all the actions that fall into every category.

According to art. 54 par. 1 LEA, the enforcement agents are disciplinary responsible only for infringements of their duties which are done with guilty (intent).

LEA prescribes the following disciplinary measures *for mild disciplinary violations*:

- *Admonish and*
- *Monetary penalty.*

The penalty is equal to the average monthly salary of the first instance court judge in that month when the measure is imposed.

Disciplinary measure *for severe disciplinary violations* is a monetary penalty up or equal to 24 average monthly salaries of the basic court judge in that month when the measure is imposed.

The most severe disciplinary violations results in enforcement agent's dismissal.

Also, according the Art. 62 LEA, *the enforcement agent can be temporary removal of duties*. It prescribes that when an enforcement agent is under disciplinary proceeding, the Disciplinary Commission might make a decision about his temporary removal from his position if it is necessary from the point of view of protecting reputation of the enforcement agent's function and parties' interests.

Mandatory temporary removal is prescribed in two cases:

- When an enforcement agent is charged with felony and prosecuted in the line of duty and that felony makes him unworthy of performing enforcement agent's responsibilities.
- When in a course of the criminal proceeding the enforcement agent is sentenced to a security measure of ban on performing his activity, but the court decision has not become final yet.

In the first instance, *the Disciplinary Commission* performs disciplinary proceeding to determine disciplinary responsibility of the enforcement agent in mild and severe violations and issues a verdict. The commission comprises three members (and three deputy members), who are appointed by the Minister of Justice among members of the judiciary - a representative of Basic Court proposed by The Judicial Council, a representative of State Prosecutor's Office proposed by The Prosecution Council; and one member-enforcement agent, proposed by the Chamber. (Art. 57 LEA)

The parties have the right to appeal against the decisions of the Disciplinary Commission to the second instance Disciplinary Commission. *The second instance Disciplinary Commission* has three members (and three deputy members): a representative of a Supreme Court (judge) proposed by Judicial Council, a representative of Special State Prosecutor's Office (special state

prosecutor) proposed by Prosecution Council and one member-enforcement agent, proposed by the Chamber. (Art.6 LEA)

The second instance Disciplinary Commission performs disciplinary proceedings to determine disciplinary responsibility of an enforcement agent in most severe disciplinary violations and submits to the Minister responsible for justice a proposal for dismissal.

The members are appointed for a period of two years. After this period, they can be reappointed once.

The Minister of Justice appoints the presidents of the commissions, who is a judge.

The sessions of the disciplinary commissions are not public, except on the enforcement agent's request.

II.2 Supervision over enforcement

The enforcement agent's profession becomes more and more complex. The enforcement agent, within the limitations based on law, as an exponent of the State, is entrusted with the power to perform certain activities of public interest. At the same time, the enforcement agent is responsible to run the office. While carrying out his profession, the enforcement agent needs to consider both his/her formal duties and good management of the office.

In Montenegro, authority for supervision over the enforcement have:

- 1) Competent courts (first instance courts of general jurisdictions and the Commercial Court of Montenegro);
- 2) The Ministry of justice and
- 3) The Chamber.

Supervision of the legality of the enforcement procedure is done exclusively *by the courts* (look for more part I.4).

Supervision on compliance by the enforcement agents is carried out *by the Ministry of justice*, which also has the authority to appoint them.

The Ministry can:

- carry out a review of enforcement agent's operations;
- proposes conducting disciplinary proceedings against enforcement agent;
- conducts a review of the operations of the Chamber's bodies;
- take other supervision measures in accordance with law.

According to Art. 52 LEA, *the Chamber* is required to control every enforcement agent's office at least once a year.

The Chamber, as a professional association of enforcement agents, through the Commission performs inspections (controls) *ex officio*. The method of controlling the work of enforcement agents is determined by the Assembly of the Chamber.

The Chamber can inspect in:

- the files and financial books of PEO;
- disposition stored items;
- receipts for the amounts charged in the name of the PEOs reward and fees,
- as well as to undertake all other actions in accordance with the law and other regulations.

If an irregularity in the work of the enforcement agent is established, prescribed measures will be taken against him/her by this law (for example: initiating the disciplinary proceeding).

The Chamber submits the report on the performed control to the Ministry.

II.3 Access to the premises

In case premises are locked, or a debtor refuses cooperation, Montenegro enforcement agents have the power to enter debtor's premises. They are not allowed to take any misuse of such power. Guidance in such matters is governed by the principle of proportionality.

Based on Article 224 LEA, Enforcement procedure for the purpose of eviction over immovable property is carried out by the enforcement agent, after removing persons and things (movables) from that immovable property, and to hand over the immovable property to the creditor in his possession.

Eviction of immovable property can be started after the expiration of eight days from the delivery of the writ of enforcement to a debtor, except when the decision on enforcement was adopted for the purpose of enforcement of a temporary measure, in which case enforcement can be started immediately after delivery of the decision.

Also, the Guardianship Authority (State Social service) shall be included when in the proceeding are include minors (kids).

II.4 Obstructing the enforcement agent from carrying out enforcement

Based on Article 224 LEA, the enforcement agent is authorized, with assistance of the police, to remove a person from the place where enforcement action is taken, if such person obstructs its order. The police officers are obliged to provide the enforcement agent with the appropriate police assistance in order to perform successfully of an enforcement actions.

The enforcement agent has a duty to submit previously a request for assistance to the police and to arrange with them about time and place of providing the assistance.

II.5 Time of enforcement

In accordance with article 62 LESC, enforcement can be carried out every day between 8:00 AM and 9:00 PM.

Besides this law rules, the enforcement agent is allowed to conduct enforcement outside these times, only if there is obvious avoidance or danger due to delay.

PART III ENFORCEMENT PROCEDURES

III.1 Initiation and end of the enforcement procedure

III.1.1 Initiation of enforcement

According to Article 2 LESC, the enforcement procedure is initiated by the proposal/request of the creditor. (*ex officio* only when it is prescribed by the law). In Montenegro it is necessary that a creditor submits a separate request to an enforcement agent to start enforcement.

The LESC prescribes the basic elements that must be specified in a proposal of the enforcement procedure:

- the creditor and the debtor,
- the enforcement title (act),
- the obligation of debtor,
- the means and the objects of enforcement,
- as well as other data necessary for conducting enforcement. (The Art. 37 LESC)

The enforcement agent can adopt, reject or dismiss the enforcement proposal. Based on Art. 40 LESC, he is obligated to decide within five days from the submission date.

Article 37 LESC regulates the content of the enforcement proposal. As mentioned above, the enforcement procedure can be based on an executive or an authentic document. (*for more see: part I.2*)

The enforcement procedure based on an executive document can be carried out before the enforceability (and legal validity) of the decision, which means it can be conducted immediately after accepting the proposal. It is important to mention that the judgment necessarily needs to be final and legally valid to initiate enforcement.

The opposite of this procedure, when a proposal for enforcement is based on an authentic document, it can't be conducted before the regular service of the document to a debtor (with the exemption of the bill of exchange). The proposal for enforcement must also include a request to compel the debtor to settle the claim within eight (8) days, along with the assessed costs but not success fee.

With the proposal for enforcement based on an authentic document, the creditor must attach the authentic document in original or authenticated copy.

The means and objects of enforcement do not need to be specified in the enforcement proposal. Also, the movable assets do not need to be specified. After service of the enforceable decision to a debtor, the enforcement agent is entitled to search for the debtor's assets.

III.1.2 Withdrawal of enforcement

According to Article 39 LESC, a request to withdraw of enforcement can be submitted only by the creditor. The creditor is the one who has the dispositive right to direct with the enforcement process.

Based on it, during the enforcement proceedings, the creditor may, withdraw the proposal for enforcement. He can do it fully or partially, without the consent of the executive debtor.

On the creditor's proposal, the enforcement agent will suspend the enforcement. With the decision to suspend enforcement, all taken enforcement actions, will be repealed.

If in this case, the enforcement has commenced, and the withdrawal of the enforcement proposal by the creditor resulted in damage to the debtor, the creditor is obligated to compensate for the damage.

After withdrawing the proposal, the creditor may submit a new enforcement proposal.

III.2 Enforcement against movable assets to settle pecuniary claims

The procedure regarding the attachment on movables (articles 82-101) can be summarized as follows:

1. *Service of the enforceable document to the debtor and order to the debtor to fulfill the obligations from the enforceable document* (Art. 44 LESC)

Prior to the attachment of the movables, the enforceable document needs to be served to the debtor before taking the first enforcement action.

Besides, the debtor needs to be ordered to fulfill the obligations from the enforceable document. Normally such order is done in the same act as the act on the service of the enforceable title.

2. Attachment of the movables (articles 82-90 LESC)

In practice, the enforcement agent is allowed to attach those goods that he/she was able to visually identify. An exception is the attachment on motor car vehicles, the enforcement agent is enabled to attach such vehicles by registration of the attachment in the Motor Car Vehicles Register, but after inventory.

The normative regulative prescribes only negative provisions. That means that the enforcement agent during the enforcement procedure, should be careful because the Article 81 LESC prescribes which items are exempt from the enforcement. *(look for more part I.7)*

According to Article 82 LESC, there are three (3) actions that the enforcement agent must carry out:

- 1) The inventory and the assessment of the movables,
- 2) The sale of the items and
- 3) The settle/pay of pecuniary claims.

The enforcement agent will make *an inventory*, a detailed description of the movables that are attached. That can be assets that are in possession of the debtor as well as his assets that are in possession of the creditor or third parties. The enforcement agent has legal access to any place or room necessary to identify the assets. In case such assets are with a third party, such party is obliged to cooperate (Art. 84 LESC).

The inventory should only include items necessary to settle the creditor's claims and to cover proceeding costs. (Art. 85 LESC)

The enforcement agent, debtor or third party keep and store the attached assets. In case the enforcement agent finds any cash during the attachment, he has also authority to keep such money. (Art. 86 LESC)

It is prohibited to dispose of the the attached assets. (Art. 87 LESC)

The consequence of the attachment is that the creditor has the right of pledge of the inventoried items. (Art. 88 LESC)

It is assumed that the matrimonial and extra-marital spouses are equal co-owners of all movable items that are in the house, flat or business premises of the debtor.

According to the Article 90 LESC, the inventory of items should be valued. *The assessment of items is carried out by an enforcement agent through an expert (appraiser) designated by them, and it can also be done by obtaining a report on the price from the relevant authorities and institutions. The law also allows that the creditor and the debtor can mutually determine the value of the items.*

3. Service of the act of attachment to the debtor

Based on Article 83 LESC, the enforcement agent will service the enforcement decision to the debtor just before proceeding to inventory the items and ask him to pay the amount specified for the enforcement, along with interest and costs. If the enforcement order could not be delivered to the debtor during the inventory of items, it will be left at the place where the inventory is being conducted. The creditor will be informed of the time and place of the inventory, if requested. The absence of parties does not prevent the inventory from being conducted. The party that did not attend the inventory will be informed about the conducted inventory. [Article 83 LESC]

If the first inventory of items is not successful, meaning it does not identify items that could be used for settlement, during 30 (thirty) days from receiving the note about failed inventory, the creditor can propose new inventory, while the enforcement agent can carry out new inventory without the creditor's proposal. If the second inventory is not proposed or the second inventory does not identify items that can be used in the enforcement procedure, the enforcement will be terminated. [Art. 89 LESC]

4. Public sale of the attached movables [articles 93-96 LESC]

The selling of inventoried items is done after the enforcement decision becomes legally valid (unless the debtor proposes or accepts the creditor's proposal to sell items earlier, or if these items are susceptible to rapid spoilage or there is a danger the value of inventoried items might significantly reduce). This need to be at least 15 days between the inventory of the attachment and the date of public sale.

The sale of the items is carried out through the public sale or direct agreement.

The public sale is announced in a national printed media, mentioning the location, day and time or the public sale and other details on sale. The announcement should be made public at least 15 days before the public sale. About the public sale, the enforcement agent also will inform

the creditor and the debtor. The terms of public sale determines the enforcement agent in accordance with the law.

The goods are always allocated to the highest bidder.

During the entire process the creditor and the debtor may agree on the sale by a direct agreement and the terms of such a sale.

The law doesn't prescribe that the public sale can be effect through e-auction.

5. *Distribution of the revenues from the public sale (Article 97-101 LESC)*

From the revenues, first will be paid:

- the costs of the enforcement,
- costs specified in the enforcement document,
- interest until the day of sale of item
- and principal claim.

In case there are no other creditors who are entitled on the revenues with priority, the enforcement agent will transfer the amount to the creditor.

Multiple secured creditors are satisfied in the order in which they acquired a lien (*prior tempore potior iure*).

Any surplus will be paid to the debtor.

6. *Handover of the movables to the buyer*

The enforcement agent will make an act (conclusion) on the public sale to hand over items to the buyer. In this act, the names and domiciles of the buyers are mentioned.

According to Art. 96 LESC, the buyer becomes the owner after taking possession of the items.

The Art. 100 LESC prescribes if the item could not be sold at the second public auction or through a direct agreement in deadline specified by the enforcement agent, the creditor can be proposed to take over the item for the debt.

III.3 Attachment on the bank accounts of the debtor

The attachment on the debtor's bank account is one of the basic assets in the Montenegrin enforcement process. Besides the parties, the bank is involved as third party.

First of all, the procedure of the attachment on the bank account depends if the debtor is the natural person or it is an legal entity.

Based on the Article 136 LESC, the attachment on the bank account for natural person is as follows:

- It is executed by ban and paying out (money transfer to enforcement agent special account);
- The creditor is obliged to provide which bank has any moneys from the debtor in their possession (if he possesses it);
- The organization responsible for the forced settlement (the National bank) is obliged to inform the enforcement agent if such bank has any assets from the debtor in their possession;
- The enforcement agent will deliver the ban decision to the bank where the debtor has his/her account and it is considered the ban is in effect on the day and the hour of the decision delivery;
- The bank is obliged to carry out immediately upon such request and it is forbidden to the bank to inform the debtor about the request of the enforcement agent.
- The enforcement agent will deliver the decision about the ban off accounts to the debtor only when the bank notifies him that the ban is in effect.

The enforcement according to this article cannot be executed at the expense of means in the debtor's account that come from wages, compensation instead of earning and pension.

The attachment (the enforcement decision) on the bank account can be sent electronically, while the bank has informed the enforcement agents (or the Chamber) on the email address that can be used. For this manner it is need the bank's agreed. In the opposite case, the enforcement agent, will notify the bank of the attachment, in person or by the post. From that moment, the bank accounts are considered blocked.

The attachment automatically refers to any deposited savings, current account(s), foreign currency account(s), or any other account or items from the debtor in the bank.

According to Art. 102 LESC, it is important to emphasize incomes that are exempt, such as:

- compensation for damage due to health damage, health impairment or loss of working capacity,
- compensation for damage granted due to support provider's death,
- compensation granted due to physical injuries in accordance with pension and disability insurance regulations,
- social aid,

- temporary unemployment benefits,
- child allowance benefits,
- scholarship and student support,
- compensation for work of a convicted person who is serving a prison sentence (except receivables on the basis of legal support as well as receivables for damage compensation caused by criminal act of a convicted person),
- such as other receivables that are not allowed to be transferred.

Montenegro does not have any software that would identify financial means of debtor exempt from enforcement or allows limited enforcement, which means there is a real threat enforced settlement includes those means as well and that would be against the law. Therefore, the enforcement agent should be careful, such as in daily communication with banks.

There is no certain minimal amount that must be kept in the person's account after the enforcement is executed.

The attachment on the bank account for legal entity is prescribed with the articles 205-218 LESC, as it follows:

- The Central Bank of Montenegro as the state authority implements the enforcement decision when the debtor is legal entity;
- The Central Bank identifies banks and accounts held by the debtor for executing domestic and international payment transactions and it instructs the banks to freeze all such accounts and provide information on the funds held in those accounts;
- the funds in the debtor's account cannot be used for other transfers; banks cannot open new accounts for the debtor;
- Banks promptly transfer funds to a special account of the enforcement agent.

The articles 216a i 136a LESC prescribes (the same) that if the bank has not started paying out the funds from the debtor's account within 45 days after the account ban decision is delivered, the enforcement agent within the next 5 (five) days should contact the creditor and give him no more than 15 days to express his perspective on further actions. If the creditor does not respond within the set deadline, the enforcement agent will terminate the process.

III.4 Enforcement on immovable property

One of the major and the commonly used enforcement procedures is the attachment on immovables. The enforcement procedure can be summarized as follows:

1. The enforcement actions

For the enforcement of immovable property, the enforcement agent needs to:

- register the enforcement decision at the Register for Immovables (Cadaster):
- determine the value of the property,
- sell the property and
- Settle the debt to creditors.

2. *Registration of the enforcement decision (Art. 158 LESC) and Determination of the value of the property (article 166-168 LESC)*

The enforcement agent forwards *ex officio* the decision (writ of enforcement) to the Register for Immovables (Cadaster). He can do it by the post only. This state authority registers it so the creditor acquires the right to settle his claim from the immovables (mortgage).

From the moment of registration, the immovables can be disposed of by the debtor but with registred mortgage.

The value of the immovable property shall be determined according to the market value on the day of appraisal. When determining the value of the price, the enforcement agent always request an assessment from a certified expert or appraiser.

The value of immovable property is determined with the enforcement decision (the writ) for which an appeal is allowed.

3. *Determination of the date and time of sale*

The Law provides for the immovable property shall be sold in one of two ways – direct deal or public sale. (Art. 172 LESC)

Public sale of immovables is done by the enforcement agent.

According to Art. 169 LESC, the enforcement agent needs to issue the Conclusion on Sale of the immovables that defines the way and terms of sale, as well as its time and place; and the time when the property can be viewed.

4. *Announcement of the public sale*

The public sale is published in printed media once. About the public sale, the enforcement agent will inform the debtor, the creditor as well as other participants of the process and persons who have *the right of first refusal*.

The actual selling will be done between day 15 and day 30 after the publishing of the Conclusion in the media.

5. *Public sale*

The auction is in public and is performed in enforcement agent office.

At the first public sale, the property cannot be sold for lesser value than market one. On the second session, the property can be sold for lower price but no less than 50% of the appraisal value. If the appraised value is less than the claim and the second public bidding was unsuccessful, the property can be sold at any price without any limitations, but not less than creditor claim value and only with consent of enforcement and mortgage creditors.

The buyer will have to pay the buying price in deadline of not more than 30 days of the day of sale (article 174 LESC).

6. *Registration of the report of public sale in the Cadaster (Article 181 LESC)*

The Conclusion about handing over the immovable property to the buyer will be registered in the Cadaster. Its legal consequence will be that the buyer becomes the owner, with no other charge in the Cadaster registry.

7. *Informing the debtor on the outcome of the public sale*

The enforcement agent will inform the debtor on the results of the public sale. He will send him/her the Conclusion about handing over the immovable property and order him to vacate the property and hand it over to the buyer.

When necessary, the enforcement agent is authorized to evict the debtor from the immovables. (according to articles 224-227 LESC)

8. *Distribution of the revenues of the sale (Articles 185-198 LESC)*

There are different options:

In case there the creditor initiated the public sale and there are no other creditors, the first have to be settled the costs of the enforcement proceedings, then the claim to the creditor. (article 187 LESC).

In case there is more than one creditor, the revenues will distribute as follows:

- 1) the costs of the enforcement proceedings;
- 2) the claims for alimony;

- 3) the claims secured by the right of mortgage;
- 4) the claims to reimburse personal servitude and real encumbrance that lose its power after the property is sold and then
- 5) the claims of the executive creditors who required the enforcement in the first place.

At any case, the amount exceeding of the claim will be paid to the debtor.

In case when the sale price is not enough to settle all claims, then the claims that have the same order of settlement are settled in a time manner (*prior tempore potior iure*).

III. 5 Enforcement against Wages and Other Permanent Pecuniary Income

Besides the attachment on the debtor's bank account, another one of the major activities of the Montenegro enforcement agent is enforcement on the wages or other permanent pecuniary incomes of the debtor.

Besides the parties, a third party, the employer or social security institute (State Pension Fund) is involved.

The procedure of the attachment on the debtor's periodic income is as follows:

1. *The order to the debtor to fulfill the obligations from the enforceable document (article 126 LESC)*

The enforcement decision at debtor's wage determines his ban to dispose freely. Also, the employer or State Pension Fund or other organization who do periodic payments to the debtor are obliged to inform and to transfer enforceable part of income to the enforcement agent account.

In that case, the employer does not pay to debtor the amount determined to be enforced, but transfers it directly to the enforcement agent's account.

2. *Attachment order on the periodic income*

Though possible, electronic attachment is seldom used. Most common, is the "regular" attachment; the enforcement agent will notify the employer or State Pension Fund on the attachment by post. The attachment will be sent according to general rules of service enforcement decisions. (*look part I.3.1 for details*)

3. *The exemptions to the Enforcement against Wages and Other Permanent Pecuniary Income (article 103 LESC)*

Not the full wages or pension can be under the attachment.

It can be arranged and executed up to the amount of one half of that income; if the debtor receives minimal wage or pension (450 euro), the enforcement can take up to one third of that wage or pension.

The enforcement at the expense of invalids and disability support can only be executed up to one half of that income, in case that follows:

- Social aid,
- compensation for damage due to health damage, health impairment or loss of working capacity,
- compensation for damage granted due to support provider's death.

The enforcement at the expense of income based on:

- cash annuities,
- life annuities,
- lifetime aid contracts or
- life insurance contracts

can only be executed on the amount that is over highest permanent social aid.

4. Statement of the employer or social security institution

The employer/ State Pension Fund or other organization who do periodic payments to the debtor are obliged to inform the enforcement agent about debtor's wages or other permanent pecuniary income.

5. Start of deduction by the employer or social security institution on the salary or social security benefits of the debtor

The employer is obliged to transfer directly to the enforcement agent's account the amount determined to be enforced; and the enforcement agent is obliged to transfer the money to the creditor's account no later than the next day.

6. The Liability of the employer (Art. 131 LESC)

In case the employer refuses to cooperate on the request of enforcement agent, the enforcement agent can order the employer to pay the debtor's debt to the creditor.

He is also responsible for the damage caused by it to the creditor.

The enforcement agent determines that the employer is responsible only on the creditor's proposal.

7. *Changing of the employer (Art. 130 LESC)*

In case the debtor changes of employer, the former employer is obliged to send the enforcement decision to the new employer, without delay. Also, he needs to inform the enforcement agent about it.

If the employer is not aware where the debtor is employed further, he should inform the enforcement agent without delay; then the enforcement agent will inform the creditor about it.

8. *Distribution of the moneys and items according to general rules*

In case different creditors have attached the periodic income of the debtor, transferred amount will be distributed in line with time principle among the creditors (*prior tempore potior iure*).

9. *The voluntary wage bans of debtor's wage*

The ban of the debtor's wage (which is put with his consent) will have legal effect of the wage enforcement decision.

It must be issued before the decision that bring the enforcement agent.

Exceptionally, that ban does not affect the enforcement procedure on wage in case of settling claims:

- at the expense of legal aid,
- compensation for damage due to health damage,
- health impairment or loss of working capacity,
- compensation for damage granted due to support provider's death.

III.6 Attachment under the debtor's debtor (debtor's claims)

The attachment under the debtor's debtor is very familiar with the attachment on the bank account or attachment against the salary or other periodic incomes. Besides the parties, a third party - *the debtor's debtor* is involved.

The procedure of the attachment under the debtor's debtor is as follows:

1. Service of the writ of enforcement to the debtor's debtor

Prior to the attachment, the enforcement decision needs to be served to the debtor on the manner prescribed in part I.3.1.

Based on the Art. 44 LESC, the enforcement decision on monetary claims must be served on the debtor's debtor.

Though possible, electronic attachment is rarely used. Most common, is the "regular" service; the enforcement agent will notify the debtor's debtor of the attachment in person or by the post.

2. Attachment order under the debtor's debtor

Based on the Article 106 LESC, the enforcement agent, by his decision, prohibits the debtor's debtor from settling the claim to the debtor; and the debtor is prohibited from collecting that claim.

The debtor's debtor has no right to object to the enforcement decision.

3. Statement of the debtor's debtor (article 109 LESC)

The creditor can propose that the debtor's debtor explain whether and at what amount is owned to the debtor, and whether she/he is ready to settle the debt, and if this obligation for paying the debt is conditioned with fulfilment of any other obligation.

The enforcement agent determines the deadline of this obligation.

According to article 110 LESC, the debtor's debtor shall be held liable to the creditor for the damage caused by the non-statement or for providing an inaccurate or incomplete statement in this regard.

4. Notification of the statement of the debtor's debtor to the debtor

Promptly after receipt the statement of the bank, the enforcement agent has to notify the creditor of such statement.

5. *The Depositing Claims (articles 113 and 117 LESC)*

After a period of five days from the day the notice of the debtor's debtor is delivered to the creditor, the enforcement agent will order the debtor's debtor to transfer/deposit the debt amount on his account.

6. *Authorities of the creditor (Article 118 LESC)*

The creditor is authorized to request payment from the debtor's debtor if that amount is due, to perform all necessary actions for realization of the transferred claim, such as to use the rights related to the pledge.

When the claim is transferred to the account of the enforcement agent, he/she is obliged to transfer the funds to the creditor, without delay.

III.7 Enforcement against shares

The procedure of the attachment on shares is as follows:

1. *Service of the enforcement document to the debtor (and order to the debtor to fulfill the obligations from the enforcement document)*

Prior to the attachment of the shares, the enforceable decision needs to be served to the debtor.

2. *Attachment of the shares*

The attachment on shares is done through the attachment order of the enforcement agent. In the attachment order, the enforcement agent informs the debtor that his shares are attached.

At the same time, the enforcement agent shall service the enforcement decision to the creditor, the debtor, and Central Depository Agency.

3. *Enforcement actions (article 137 LESC)*

Enforcement on shares is carried out by follow actions:

- registration and acquisition of a lien,
- seizure,

- appraisal,
- sale and
- debt settlement to the creditor.

4. *The body of implementing (article 138 LESC)*

The Central Depository Agency (CDA) is the Register of Shares.

CDA shall register the pledge (lien) on the shares, without delay.

When the enforcement decision is registered in CDA, the creditor acquires a right of pledges on the shares; from that moment, the debtor cannot dispose with them.

5. *The Sale and the Evaluation of shares (article 139 LESC)*

The enforcement agent determines the stock value.

Here are a few different situations:

- If the share is listed on a share exchange, its value is determined as average stock price during last 30 days based on the share exchange report.
- If the share is not listed or its value cannot be determined by report, the enforcement agent may request an expert to assess the value.
- If the shares are traded at the exchange, they will be cashed in there.
- The shares that are not listed at the share exchange will be sold through an authorized participant of bonds market (stock market) who is appointed by enforcement agent.

6. *Debt Settlement to the creditor (article 90-101 LESC)*

The debt settlement of the creditor from the enforcement proceeds on shares is carry out the same as the enforcement on movable assets. *(look for more parts III.2.5 and III.2.6)*

III. 8 Other attachments

Within the scope of this report, we have focused on the major enforcement procedures only. In addition, Montenegro law provides several other enforcement procedures. To a large extend for procedures the standard rules of the attachment on movables, attachment on immovables or attachment under a third party are followed.

Other examples of attachment procedures: attachment on shares of the company, attachment of other property rights, attachment on ships (with certain limitations in relation to size) etc.

The enforcement on shares of the company (Art. 143-144 LESC) is executed by registering and acquiring pledge right, seizure, assessment, sale and compensating the creditor. The enforcement agent registers the enforcement decision in the Company Registry and thus acquires pledge right of the share that is object to enforcement. At the same time with the register it, the share is seized. The debtor cannot dispose with seized shares of the company since the moment of registration.

III.9 Handing over movable assets

The procedure for handing over movable assets is as follows:

1. *Service of the enforceable document to the debtor and order to the debtor to fulfill the obligations from the enforceable document.*

As with any other attachment, also this procedure starts with the service of the enforceable decision to the debtor.

2. *Handing over movable assets located at the debtor or a third party*

According to articles 220 and 222 LESC, the enforcement procedure for handing over movable assets located at the debtor is carried out by seizing these assets from the debtor and handing them over to the creditor, with a confirmation.

The enforcement agent will apply the same if the assets are located at a third party which is willing to hand them over. If a third-party refuse cooperation, debtor's claim against the third party shall be transferred to the creditor. In that case, the creditor must request transfer.

The LESC doesn't prescribe any deadline for handing over movable assets located at the debtor or a third party.

4. *Handing over when movable assets are not located at the debtor or a third party*

If moveable assets are not found at the debtor or a third party, the creditor shall propose the other manner for settle the claim. He/she will send the proposal to the enforcement agent within eight days of being notified that the assets have not been found.

If he/she doesn't propose the other manner for settle the claim, the enforcement agent shall suspend the enforcement procedure.

The manner for settle the claim is different whether the assets are specifically identified or replaceable.

In case it is about *specifically identified assets*, the enforcement agent shall assess the value of the assets and order the debtor to pay the value within a specified period, under threat of forced enforcement. (Art. 221 LESC)

In the procedure for handing over *the assets that are replaceable*, the creditor may authorize the enforcement agent to acquire these assets from another source, within a specified period. The debtor is obliged to deposit an amount for the purchase of the assets, within a specified period. (Art. 223 LESC)

III. 10 Eviction

The procedure of eviction is as follows:

1. *Initiation of proceedings in order to obtain an enforceable title*

When the debtor receives the Conclusion about transferring the immovable property after public sell, he/she loses his/her ownership. Based on Art. 183 LESC, the debtor must vacate the property and handing over it to the buyer. If he/she refuses to release the property, the enforcement agent will order the debtor to vacate and transfer the property to the buyer, within the certain period of time.

Besides the eviction of the debtor, Art. 184 LESC prescribes the eviction of other individuals present in the immovable property. Exceptions are in the cases of the lease of immovables and registered easements or real encumbrances. (art. 162 and 163 LESC)

If the debtor does not do that within ordered period of time, the property will be vacated by force and transferred to the buyer according to the rules about vacating and transferring the property provided by the articles 224-227 LESC.

2. *The ordering to leave the premises and the following enforcement procedure (Article 224 LESC)*

The time limit for voluntarily fulfillment is eight days of the day of service the enforcement decision to the debtor. There is no deadline, and the enforcement must proceed immediately after the service of the decision when the enforcement is about provisional measure.

The enforcement agent transfers the property into possession of the creditor after removing individuals and belongings (movables) from the property.

3. *Informing the local authorities on the date and time of the eviction (Article 224 LESC)*

Prior to the eviction, the enforcement agent is obliged to inform the local authorities. If it is necessary, the Police is obliged to provide assistance in carrying out these actions. If minors are involved in the eviction, the enforcement agent shall notify the guardianship authority (social care authority).

4. *The actual eviction*

The actual eviction is done by the enforcement agent, in the presence of previously invited participants.

5. *The Removal of Moveable Items (Article 225 LESC)*

The moveable items that need to be removed shall be handed over to the debtor; if the debtor is not present, the items shall be handed over to an adult member of his household (or his authorized representative).

If none of the mentioned individuals are present during enforcement actions, the enforcement agent shall leave the items in the property. Also, he/she will send a notice to the debtor ordering to collect the items within 15 days; and warn him/her about the consequences of not collecting the moveable items.

About this action, the enforcement agent will be prepared a record.

If the moveable items aren't collected within the specified period or debtor states their refusal to collect them, the enforcement agent shall transfer the moveable items to the creditor or the buyer of the property, for free of charge.

6. *The act of eviction (Article 227 LESC)*

The enforcement agent will make an act of eviction. The costs of the eviction are on the account of the debtor. Normally the enforcement agent will continue the enforcement in order to collect the enforcement costs.

The payment of the costs of the enforcement procedure can be carry out on the moveable items from the property. The enforcement agent determines such the enforcement only on the creditor's proposal (in accordance with rules about sales of moveable assets to settle pecuniary claims).

III.11 Enforcement of obligations to act, refrain from acting or suffer action

The court and the enforcement agent are authorized for enforcement of obligations to act, refrain from acting or suffer action.

According to the Art. 229 LESC, the enforcement agent has the jurisdiction to carry out the enforcement when it is based on the enforcement document where the debtor is obliged to perform a certain action that can also be performed by another person (non-personal obligation).

The creditor can perform that action by another person or performing it by themselves.

The enforcement agent will decide about the costs that will arise from the performance of the obligation.

The courts are authorized for other situations: to perform act that cannot be done by another person, or to refrain from acting, or to suffer action (personal obligation). (Art. 228-233 LESC)

III.12 Sequestration of goods

Sequestration of goods is possible in different situations.

According to the Article 86 LESC, the enforcement agent decides on the manner of storage of listed and taken items.

If listed items are left in the custody of the debtor, they will be visibly marked as entered in the list. If listed items are left in the custody of the creditor, he is responsible for the risk of loss or damage to items. The creditor may register the right of pledge on the listed item.

Sequestration of goods is obliged if, during the attachment procedure, are found any cash, securities, valuables, such as the other high-value items suitable for such storage; all attached assets will be handed over to the enforcement agent.

Sequestration is obligatory when the enforcement is based on securities. Based on Article 141 LESC, the enforcement agent seizes such securities from the debtor. He is also authorized for the preservation or exercise of rights from securities.

The enforcement agent can oblige the debtor or a third party for the delivery of one or more individually specified items located to them. The enforcement for the items located at the

debtor is carried out by seizing those items from him/her and delivering them with a confirmation to the creditor. (Article 220 LESC)

All taken items can be the object of sale according to LESC provisions (93-96) about the sale of the moveable assets.

The Law doesn't prescribe a sequester; the enforcement agent takes all actions about storage of listed and taken items.

III.13 Enforcement of foreign enforceable documents (NOT European enforceable titles)

Article 12 LESC prescribes the enforcement of a foreign enforceable documents. Based on this provision, enforcement of a foreign enforceable document shall be determined and carried out in Montenegro under follows:

- 1) satisfy the conditions prescribed by law or international agreement for recognition and enforcement and
- 2) previously to be recognized by the competent court in Montenegro.

The procedure and conditions for recognizing foreign court decisions are prescribed by the Law on Private International Law.

In case that a foreign enforceable document satisfies those conditions, it is equated with a decision of the court of Montenegro and produces legal effect in our country.

The Basic Courts and the Commercial Court are competent for the recognition of foreign court decisions, depending on the subject matter.

The Law prescribes reciprocity as one of the conditions for recognition. The existence of reciprocity is always presumed, unless proven otherwise.

According to the fact that Montenegro is still not a part of the EU, those rules are concern on enforcement documents of countries in EU too. Besides that, the LESC prescribes that the enforcement agent shall carry out the European enforceable titles after Montenegro access to the EU.

PART IV ENFORCEMENT COSTS

The enforcement agents in Montenegro are authorized only to carry out the enforcement proceedings.

The creditor pays all costs of the proceeding in advance (it is not mandatory), but they shall be borne by the debtor in the end. The debtor also pays the reward for a successfully executed enforcement (success fee).

Based on the Article 44 LEA, the enforcement agents can charge:

- 1. *The Costs of Enforcement Proceedings***
- 2. *The Fee for Enforcement Agent's Work***

All costs are in accordance with the Tariff on rewards for work and cost reimbursements (hereinafter: The Tariff), which is adopted in 2016 by the Government.

In comparison with other countries, the enforcement fees in Montenegro are far below average. Also, fixed enforcement fees in the Montenegro are amounts including 21% VAT.

The enforcement fees are fixed and there is no different if the costs have to be paid by the natural person or a legal entity.

Ad 1 The Costs of Enforcement Proceedings

The enforcement agent calculates the costs of the enforcement proceedings. He/she has the right to request an advance for costs from the creditor; he is not obliged to act if it is not paid.

The compensation for the costs of the enforcement proceedings includes as follows:

- *the court fees and administrative fees;*
- *the costs of storing items;*
- *transportation costs;*
- *such as other actual costs in relation to the enforcement*

The enforcement agent has the right of the compensation for the costs related to issuing confirmations regarding the enforcement proceedings **5 euros** and the fee for photocopying documents and transcribing one's own document is **0.2 euros per page**. Those costs are charged to the applicant. (Article 11 Tariff)

The fee for reviewing documents is **10 euros**. (Article 4 Tariff)

If the enforcement agent has to work outside the office, he is entitled to compensation of transport and other necessary costs. (Article 12 Tariff)

Ad 2 The Fee for the Enforcement Agent's Work

The fee for the enforcement agent's work consists of:

- A. *Fee for preparing the case*
- B. *Fee for actions taken in enforcement proceeding*
- C. *Fee for successfully carried out enforcement*

Ad A Fee for preparing the case

Fee for preparing the case includes:

- determining if the proposal for enforcement is complete;
- calculating advance costs;
- such as other actions before the enforcement decision.

The fee for preparing the case is determined on the amount of the primary claim. Also, the fee depends of the value of the non-monetary subject matter (when it is determined in the enforcement document).

When the value of the non-monetary subject matter of the dispute is not determined in the enforcement document, the fee for preparing the case amounts to **35€**.

Based on Art. 5 Tarriff, the cases with the claims until 1.000 € are most common cases in Montenegro. The fee for preparing these cases is determined as a special. The fee amounts:

- **25 €** for claims up to 200 €,
- **35 €** for claims 200-500 €,
- **45 €** for claims 500-1,000 €.

The fees for upper claim are in the table (table 1) that follows:

The claim excluding interest and other costs - until (€)	Fee for preparing the case (€)
2.000	25
3.000	30
4.000	35

5.000	40
7.000	45
9.000	50
11.000	55
15.000	60
25.000	80
40.000	95
60.000	115
100.000	125
200.000	135
more	150

table 1

Ad B Fee for action taken in enforcement proceeding

The fee for action taken in enforcement proceeding is determined and charged according to the type of taken action. The enforcement action is based on enforcement agent's decision, so they are authorized to be paid for it.

Based on Art. 5 Tarriff, the cases with the claims until 1.000 € are most common cases in Montenegro. The fee for actions taken in items 1, 26, 27, and 28 of *the Table 2* amounts:

- **25 €** for claims up to 200 €,
- **35 €** for claims 200-500 €,
- **45 €** for claims 500-1,000 €.

The fees for action taken in enforcement proceeding are in the table that follows:

Article (LESC)	Enforcement action	€
41	the enforcement decision - on the creditor's proposal (writ)	20
27a	the enforcement decision - of changing the assets (writ)	10
159	the enforcement decision - on the creditor's accession (writ)	10
75	an agreement on the settlement of claims in installments	10
45	the conclusion about public announcement service	15
94	the sale of movable property	15
97;98	settlement after the sale of movable property	15
113	the transfer of claims for collection and instead of payment	15
139	the sale of shares and other securities	15
144	the sale of shares in a business company	15

149	handing over movables	15
151	handing over immovables	15
168	determining the value of immovable property	15
169	the sale of immovable property	15
178;179	the allocation of immovable property	15
181	transfer immovables to the buyer	15
197	settlement of claims	15
223	in case assets are not found	15
93	organizing a public sale	15
91	List of movable properties	20 + 25% for 1h
164	inspection of immovables	10
199	inventory of immovables where is no cadaster	45
92	Note instead of inventory of movable properties	5
65	appear in court (when the debtor's request is rejected)	30
32	Access to the information about debtor	10
44	The service of documents to the enforcement parties	5 (per service)
44	The service of documents to competent authorities	0,50 (per service)
43	Successful service of court's documents	15 (per service)

table 2

Ad C Fee for successfully carried out enforcement

The Fee for successfully carried out enforcement is determined on the amount of the primary claim. Also, the fee depends of the value of the non-monetary subject matter (when it is determined in the enforcement document).

When the value of the non-monetary subject matter of the dispute is not determined in the enforcement document, the fee for successfully carried out enforcement amounts to **300€** (eg. eviction).

The Tariff prescribes few rules when this type of fee shall be paid:

- This fee will not be charged if the principal claim is below 1,000 euros. (Art. 6.1 Tarriff)
- The amount of the fee for successfully carried out enforcement cannot exceed 10,000 euros. (Art. 6.1 Tariff)
- For the collection of a monetary claim from the account of the debtor/ the debtor's debtor, the amount of fee cannot exceed 5,000 euros. (Art. 6.2 Tariff)
- In case of partial execution, the fee is determined as a percentage of the amount achieved in enforcement. (Art. 6.3 Tariff)

- The fee for successful enforcement is reduced by 25% when the enforcement is carried out by transferring funds from the account of the debtor/ the debtor 's debtor. (Art. 7 Tariff)

The claim excluding interest and other costs - until (€)	Fee for successful enforcement (% of amount collected)
2.000	5
3.000	5
4.000	5
5.000	5
7.000	4
9.000	4
11.000	4
15.000	4
25.000	3
40.000	2
60.000	2
100.000	1,5
200.000	1,25
more	1

table 3

The costs when multiple parties participate

- Fee for preparing the case - increased by 10% for each subsequent party, maximum 200% of the full fee for one party with the highest claim.
- Fee for actions taken in enforcement proceeding - increased by 10% for each subsequent party, maximum 200% of the full fee for one party with the highest claim.
- Fee for successfully carried out enforcement - a fee for each completed enforcement for each individual claim exceeding the amount of 1,000 euros, proportionate to the amount of the collected claim.