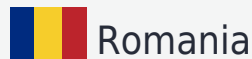


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How to enforce a court decision



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European Judicial Network
(in civil and commercial matters)

1 What does 'enforcement' mean in civil and commercial matters?

The enforcement provisions are set out in Articles 622 to 914 of the Code of Civil Procedure. The enforcement procedure is the second stage of civil proceedings and is principally intended to ensure the actual exercise of the right recognised by a court judgment or other enforceable title. By means of the enforcement procedure, a creditor who is the holder of a right recognised under a court judgment/enforceable title compels a debtor to meet the associated obligations that the latter has refused to meet voluntarily.

The Romanian Code of Civil Procedure sets out a list of direct and indirect enforcement measures.

Forms of direct enforcement are those that relate to the object of an obligation as established by the enforcement order, i.e. the seizure of movable assets – Articles 893 to 895 of the Code of Civil Procedure; the seizure of immovable assets – Articles 896 to 902 of the Code of Civil Procedure; and the enforcement of an obligation to carry out or refrain from carrying out a particular action – Articles 903 to 914 of the Code of Civil Procedure (including special provisions on enforcement of judgments regarding minors – Articles 910 to 914) and Articles 1527 et seq. of the Civil Code. In the case of enforcement of obligations to carry out a particular action, the law distinguishes between an obligation that can also be fulfilled by a person/entity other than the debtor and an *intuitu personae* obligation.

Indirect enforcement refers to the means of obtaining a sum of money that is the subject of an enforcement order through the forced sale of assets of the debtor. Examples of indirect enforcement measures are the attachment of sums of money or seizure (followed by sale) of assets. Another measure is the seizure of general proceeds from immovable assets.

Obligations likely to be subject to enforcement include monetary obligations, the handing over of an asset or the handing over of its use, the demolition of a building/abandonment of a plantation/discontinuation of works, or obligations in relation to the establishment of custody and residence of minors and access arrangements.

2 Which authority or authorities are competent for enforcement?

Court judgments and other enforceable titles are executed by a judicial enforcement officer (*executor judecătoresc*) serving the court of appeal in whose area of jurisdiction the immovable asset is located in the case of seizure of immovable assets/unharvested fruit and in the case of direct enforcement in respect of immovable assets. The seizure of movable assets and direct enforcement in respect of movable assets are carried out by a judicial enforcement officer serving the appeal court in whose area of jurisdiction the debtor's residence/registered office or the assets concerned are located. If the debtor's residence/registered office is located abroad, any judicial enforcement officer is competent.

Attachment is carried out, on the basis of the creditor's application, by a judicial enforcement officer whose office is located in the area of jurisdiction of the court of appeal covering the domicile/registered office of the debtor or third party subject to attachment. In the case of attachment of a natural or legal person's bank

account(s), competence lies with a judicial enforcement officer whose office is located in the area of jurisdiction of the appeal court covering the debtor's domicile/registered office or the main office/branch office of the credit institution where the debtor opened the particular account(s). If the debtor has several accounts, competence for attachment of all the accounts lies with a judicial enforcement officer at any of the locations where they were opened. The court of enforcement is the district court (*judecătorie*) in whose area of jurisdiction the debtor's domicile/registered office is located on the date of referral to the enforcement body. If the debtor's domicile/registered office is not in Romania, competence lies with the district court in whose area of jurisdiction the creditor's domicile/registered office is located and, if that is not located in Romania, with the district court in whose area of jurisdiction the registered office of the judicial enforcement officer empowered by the creditor is located.

The court of enforcement deals with applications for declarations of enforceability, applications opposing enforcement and any other issues arising in the course of enforcement, except for those that are by law within the jurisdiction of other courts or bodies.

The stamp duty for applications for declarations of enforceability is RON 20 for each enforceable title (Government Emergency Order No 80/2013 on judicial stamp duties, as amended).

3 What are the conditions under which an enforceable title or decision may be issued?

3.1 The procedure

Enforcement may take place only pursuant to a court judgment (final judgments, provisionally enforceable decisions) or other written act deemed an enforceable title under the law (notarial authentic deeds, debt securities, arbitration awards, etc.).

Upon receiving an application for enforcement filed by a creditor, the judicial enforcement officer arranges for its registration. The judicial enforcement officer issues a decision, concerning a declaration of enforceability, without summoning the parties. The declaration of enforceability enables the creditor to ask the competent judicial enforcement officer to make use, either simultaneously or successively, of all the available means of enforcement in order to exercise their rights, including entitlement to reimbursement of enforcement expenses. The declaration of enforceability has effect nationwide and also covers enforceable documents to be issued by the judicial enforcement officer in the context of the approved enforcement procedure.

Procedural documents may be served by the judicial enforcement officer either in person or through his/her procedural agent and, if this is not possible, in accordance with the legal provisions regarding summoning and the service of procedural acts.

As soon as he/she has received the application for enforcement, the judicial enforcement officer, by decision, arranges for the application to be registered and for the enforcement file to be opened or, where applicable, refuses to initiate the enforcement procedure, giving reasons for that refusal. The creditor is immediately notified of that decision. If the judicial enforcement officer refuses to initiate the enforcement procedure, the creditor may, within 15 days from the notification date, file a complaint to the court of enforcement.

Within not more than three days from the registration of the application, the judicial enforcement officer requests a declaration of enforceability from the court of enforcement and submits to that court, in the form of duly certified copies, the creditor's application, the enforceable document, the decision and proof of payment of judicial stamp duty.

The application for a declaration of enforceability is decided on within not more than seven days from its registration with the court, by a ruling handed down in closed session without the parties being summoned. The ruling may be delayed by 48 hours at most, and the reasons for the ruling are to be given within not more than seven days from its being handed down.

The declaration of enforceability enables the creditor to ask the judicial enforcement officer who requested the declaration to make use, either simultaneously or successively, of all the available means of enforcement provided for by law in order to exercise their rights, including entitlement to reimbursement of enforcement

expenses. The declaration of enforceability has effect nationwide. It also covers enforceable documents to be issued by the judicial enforcement officer in the context of the approved enforcement procedure.

The court may refuse the application for a declaration of enforceability only if: the application falls within the jurisdiction of a different enforcement body; the decision or, where applicable, the document is not an enforceable title; the document, other than a court judgment, does not meet all the formal requirements; the claim is not certain, of a fixed amount and due; the debtor enjoys immunity from enforcement; the instrument contains provisions that cannot be enforced; or if there are other impediments.

A court ruling granting an application for a declaration of enforceability is not open to appeal, but it may be reviewed if the enforcement itself is contested. A ruling rejecting an application for a declaration of enforceability may be appealed against exclusively by the creditor, within 15 days of its service.

The National Union of Judicial Enforcement Officers (*Uniunea Națională a Executorilor Judecătorești*) establishes and updates, subject to the approval of the Minister for Justice, the minimum fees for the services provided by judicial enforcement officers. The following minimum and maximum fees for the activities conducted were set by Order No 2550/2006 of 14 November 2006 of the Minister for Justice, as amended:

Notification and service of procedural documents: RON 20-400

Direct enforcement

- evictions: RON 150 - 2 200 for a debtor who is a natural person, RON 5 200 for a debtor who is a legal person;
- enforcing custody of minors or establishment of minors' domiciles: RON 50 - 1 000;
- enforcing access to minors - RON 50 - 500;
- enforcing the regaining of possession, the establishment of property boundaries, easements, the handing over of assets, etc.: RON 60 - 2 200 for a debtor who is a natural person and RON 5 200 for a debtor who is a legal person;
- enforcing discontinuation of works/demolition of a building: RON 150 - 2 200 for a debtor who is a natural person and RON 5 200 for a debtor who is a legal person.

Indirect enforcement

minimum fee

for claims below RON 50 000, 10% of the amount and RON 75 plus 2% of the amount exceeding RON 1 000

for claims over RON 50 000, but below RON 80 000, RON 1 175 plus 2% of the amount exceeding RON 50 000

for claims between RON 80 000 and RON 100 000, RON 1 775 plus 1% of the amount exceeding RON 80 000

for claims over RON 100 000, between RON 2 500 plus 1% of the amount exceeding RON 100 000 and RON 5 500 plus up to 0.5% of the amount exceeding RON 400 000

Attachment

minimum fee

for claims below RON 50 000, 10% of the amount and RON 75 plus 2% of the amount exceeding RON 1 000

for claims between RON 50 000 and RON 80 000, RON 1 175 plus 2% of the amount exceeding RON 50 000

for claims between RON 80 000 and RON 100 000, RON 1 775 plus 1% of the amount exceeding RON 80 000

maximum fee

for claims up to RON 50 000, 10%

for claims between RON 50 000 and RON 80 000, RON 5 000 plus up to 3% of the amount exceeding RON 50 000

for claims between RON 80 000 and RON 100 000, RON 5 900 plus up to 2% of the amount exceeding RON 80 000

for claims over RON 100 000, RON 6 300 plus up to 1% of the amount exceeding RON 100 000

maximum fee

for claims up to RON 50 000, 10%

for claims between RON 50 000 and RON 80 000, RON 5 000 plus up to 3% of the amount exceeding RON 50 000

for claims between RON 80 000 and RON 100 000, RON 5 900 plus up to 2% of the amount exceeding RON 80 000

for claims over RON 100 000, between RON 2 500 plus 1% of the amount exceeding RON 100 000 and RON 5 500 plus up to 0.5% of the amount exceeding RON 400 000 for claims over RON 100 000, RON 6 300 plus up to 1% of the amount exceeding RON 100 000
Following up non-payment of a bill of exchange, a promissory note or a cheque: RON 150 - 400

Establishment of facts and inventorisation of assets: RON 100 - 2 200 for a debtor who is a natural person, RON 5 200 for a debtor who is a legal person

Selling at a public auction an asset that is the subject of a judicial division: RON 150 - 2 200

Precautionary seizure: RON 100 - 1 200 for a debtor who is a natural person, RON 2 200 for a debtor who is a legal person

Judicial seizure: RON 100 - 1 200 for a debtor who is a natural person, RON 2 200 for a debtor who is a legal person

Precautionary attachment: RON 100 - 1 200 for a debtor who is a natural person, RON 2 200 for a debtor who is a legal person

Registration of an offer: RON 50 - 350

Confiscations: 10% of the proceeds (min.) - 10% of the proceeds (max.)

Advice on preparing enforcement documents: RON 20 - 200

3.2 The main conditions

See answer to Question 2.1.

The creditor and the debtor may agree that the enforcement action be taken wholly/partially against the debtor's monetary income alone, that the sale of seized assets be carried out by mutual agreement or that the debt be paid in another way admissible under the law.

For a judgment delivered by a foreign court, an additional procedure is required, as appropriate, namely a decision declaring enforceability (*exequatur*).

The debtor's income and assets may be subject to enforcement if they can be seized and only insofar as necessary to exercise the creditors' rights. Assets subject to a special circulation regime can be seized only in accordance with the conditions provided for by law.

As regards the debtor, there is a special condition whereby no enforcement procedure may be initiated unless the debtor has been summoned correspondingly for each form of enforcement. There are also other specific provisions in relation to the debtor, such as those regarding debtors who are minors or have reached the age of majority and have been declared as lacking legal capacity, against whom no enforcement action may be taken unless there is a guardian or a custodian.

4 Object and nature of enforcement measures

4.1 What types of assets can be subject to enforcement?

The debtor's income, including general revenues from immovable property, amounts in bank accounts, movable and immovable assets, etc. may be subject to enforcement. See answer to Question 1.

4.2 What are the effects of enforcement measures?

After movable assets owned by the debtor or held by third parties have been identified, they are seized. At the judicial enforcement officer's request, the seizure may be recorded in the Trade Register (*registru*l comerțului), in the Electronic Archive for Security Interests in Movable Assets (*Arhiva Electronică de Garanții Reale Mobiliare*), in the succession register (*registru*l succesoral) kept by the Chamber of Notaries Public (*camera notarilor publici*) or in other public records. From the moment of seizure of assets, they are no longer available to the debtor for

the enforcement period. Non-compliance incurs a judicial fine except where it constitutes a criminal offence. If the amount due is not paid, the judicial enforcement officer will sell the seized goods at a public auction, or by direct sale, or by other means admissible under the law (Article 731 et seq. of the Code of Civil Procedure).

Sums of money, securities or other seizeable intangible movable assets owed to the debtor or held on the debtor's behalf by a third party or which the latter will owe to the debtor in the future on the basis of existing legal relationships are subject to attachment. Any and all attached sums of money and assets are frozen from the date when the attachment injunction has been sent to the third party subject to attachment. From the time of freezing until the full payment of obligations stated in the enforcement order, the third party subject to attachment must not make any payment or conduct any operation that is likely to reduce the frozen assets. If the third party subject to attachment fails to meet the associated obligations, the creditor seeking payment, the debtor or the judicial enforcement officer may refer the matter to the court of enforcement with a view to the attachment being validated. The final validation decision has the effect of an assignment of claim and constitutes an enforcement order against the third party subject to attachment. After the attachment has been validated, the third party subject to attachment must make a deposit or payment within the limits of the amount expressly indicated in the validation decision. Failure to do so will result in enforcement being initiated against the third party subject to attachment on the basis of the validation decision (Article 781 et seq. of the Code of Civil Procedure).

As regards enforcement against immovable property, if the debtor does not pay the debt, the judicial enforcement officer initiates the selling procedure after the declaration of enforceability has been served and has been entered in the land register (Article 813 et seq. of the Code of Civil Procedure).

4.3 What is the validity of such measures?

The time limit applicable is six months (Article 697 et seq. of the Code of Civil Procedure) if the creditor has let this period elapse since the deadline for compliance with any enforcement action without having undertaken any other recovery actions.

The limitation period is three years (Article 706 et seq. of the Code of Civil Procedure).

5 Is there a possibility of appeal against the decision granting such a measure?

An appeal may be lodged against actual enforcement actions; the enforcement order may be appealed against for clarification of meaning, scope or application. If enforcement is carried out in accordance with a court judgment, the debtor cannot contest it by invoking reasons in fact/in law that the debtor could have brought at the proceedings before the court of first instance or before a court of appeal.

If enforcement is carried out under an enforceable instrument other than a court judgment, reasons in fact or in law relating to the substance of the right incorporated in the enforceable instrument may also be invoked in the appeal against enforcement, unless the law provides for a legal remedy to dissolve that enforceable instrument, including an action under ordinary law.

A new appeal cannot be lodged by the same party for reasons that existed on the date of a first appeal.

The competent court is the court of enforcement or, for clarification of the meaning, scope/application of the enforcement order, the court that issued the judgment to be enforced.

The appeal may be lodged within 15 days from the date on which:

- the appellant was made aware of the enforcement instrument;
- the relevant interested party was notified of the imposition of the attachment;
- the debtor was served the summons or the date on which he or she was made aware of the first enforcement action.

An appeal for clarification of meaning, scope or application of the enforcement order may be lodged at any time within the limitation period for the right to request enforcement. An appeal whereby a third party claims to have a right of ownership/other right *in rem* over the seized asset may be lodged within 15 days from the sale/date of

the forced handing over of the asset. Failure to lodge an appeal within the above-mentioned time limit does not preclude the third party from exercising their right by way of a separate application.

If it sustains the appeal against enforcement, the court will, where applicable, annul the enforcement order appealed against or issue a ruling for the correction, annulment or cessation of the enforcement action itself, the annulment or clarification of the enforceable title or execution of the enforcement act compliance with which has been refused. If the appeal is rejected, the appellant may be obliged to pay compensation, upon application, for the damages caused by delayed enforcement and, where an appeal has been lodged in bad faith, they will also be fined.

6 Are there any limitations on enforcement, in particular related to debtor protection or time limits?

Certain assets and property are exempt. Exempt movable assets are: goods for personal use/household items indispensable for the everyday life of the debtor and his/her family; religious items; items indispensable for disabled persons or intended for care of the sick; a three-month food supply for the debtor and his/her family and, if the debtor is exclusively engaged in agricultural activities, the food needed until the next harvest; animals providing the means of livelihood, and the feed needed for such animals until the next harvest; a three-month winter fuel supply for the debtor and his/her family; personal or family letters, photographs and paintings, etc.

In addition, the debtor's salary/pension may be subject to seizure of up to only one half of such net monthly income in the case of maintenance obligations, and up to one third for other types of obligation.

If income from work or sums of money paid regularly to the debtor that ensure his or her livelihood amount to less than the national net minimum wage, seizure may be effected only on the amount in excess of half the minimum wage.

Categories of income excluded from enforcement are: State benefits and child allowances, payments for the care of a sick child, maternity benefits, death benefits, State study grants, daily subsistence allowances, etc.

See also answer to Question 4.3.

Relevant links

<https://www.executori.ro>

<https://www.just.ro>

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