

## Procedures for enforcing a judgment - Greece

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

Enforcement is the enforced satisfaction of a substantive claim incorporated in an enforceable title with the assistance of the public authorities. The following means are used for enforcement:

- removal of moveable goods by force
- eviction from immovable property by force
- attachment
- imprisonment
- fines
- compulsory administration
- statements required to be made on oath.

#### 2 Which authority or authorities are competent for enforcement?

As defined in the [new] Code of Civil Procedure (Articles 927-931 CCP), enforcement is exercised by an individual entitled to do so, who, on the official copy (*Apógrafa*), gives the corresponding order to a specific **bailiff** and specifies how and, if possible, the items on which the order will be enforced. In the case of seizure, they will designate as auctioneer a **notary** of the region where the seizure is to be effected. The order must be dated and signed by the beneficiary or their representative. The order gives the authority to perform all enforcement acts, unless otherwise specified therein.

The bailiff to whom the official copy is delivered with an order to execute the enforcement has the power to receive payments and give a written receipt and also surrender the official copy if the provision was fulfilled completely. The bailiff can also accept a

partial payment, in which case they must give a receipt and note this on the official copy. A partial payment does not hinder the progress of enforcement.

The bailiff has the authority, if required for the purpose of enforcement, to enter the dwelling or any other premises held by the debtor, to open doors and investigate, and to open closed furniture, utensils or containers. The bailiff may request the assistance of law enforcement authorities (usually the police), which much provide assistance.

If the debtor resists during the enforcement, the bailiff may use force to counter the resistance, and call on law enforcement authorities (usually the police) for assistance.

The bailiff draws up a report for each act of the enforcement procedure. If the enforcement was not effected, the bailiff draws up a report stating the reasons. For any offence committed during enforcement, the bailiff must prepare a report and submit it to the competent prosecutor.

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

An enforceable title is a public document certifying a claim and enabling the alleged beneficiary to request compliance of the debtor with its content by means of enforcement. The conditions that must be met are the existence of the title and the validity of the claim.

#### **3.1 The procedure**

Enforcement is an act of justice, the purpose of which is to provide legal protection, and not an administrative act. Applications addressed to the enforcement officers and every act of enforcement are procedural acts. The conditions which must be met for the purpose of enforcement are as follows:

- jurisdiction and competence of enforcement agents
- standing of the litigant
- competence to take part in court proceedings
- competence to act on a client's behalf
- existence of a legitimate interest
- capacity to sue and be sued
- existence of an enforceable title
- existence of a claim which can be satisfied by enforcement

It is possible to enforce both judicial and non-judicial decisions without it always being necessary to apply for a court order authorising the enforcement. The following are enforceable titles:

- final judgments by Greek courts
- rulings by Greek courts declared to be provisionally enforceable
- arbitration awards
- records of Greek courts containing a settlement or determining court costs
- notarised deeds
- payment orders made by Greek judges
- tenant eviction orders
- foreign titles declared to be enforceable
- orders and acts declared by law to be enforceable titles

Enforcement officials are divided into direct and indirect enforcement officials. Direct officials are appointed by the petitioning creditor. They are a) bailiffs, who are non-salaried public officials with the power to take action to seize goods in the debtor's possession, seize property, ships or aircraft belonging to the debtor, effect direct enforcement, arrest debtors whose imprisonment has been ordered and prepare auctions, b) notaries, or district civil court judges substituting for them, who have the power to conduct the voluntary or forced auction of the debtor's seized assets and to distribute the proceeds by drawing up a ranking list.

Indirect officials are the police, the armed forces, and the bailiff's witnesses who collaborate when resistance to enforcement is offered or threatened. All these officials are responsible for any culpable breach of their obligations in the performance of their duties.

The enforcement order itself is issued by the person with the right to effect it, i.e. the claimant, or his representative, who may but need not be a lawyer. The basic costs of enforcement are as follows:

- the bailiff's fee for seizure for claims of up to EUR 590: EUR 53, for claims of between EUR 591 and EUR 6 500: EUR 53 plus a 2.5 % surcharge on the amount, and for claims EUR 6 500 or more: EUR 53 plus a 1 % surcharge on the amount, capped at EUR 422 for every property, ship or aircraft seized;
- the bailiff's fee for preparing each auction or repeat auction programme or summary of seizure report for claims of up to EUR 590 = EUR 53, for claims of between EUR 591 and EUR 6 500 = 2 %, and for claims of EUR 6 501 or more = 1 %, capped at EUR 210;
- auctioneer's fee = EUR 30;
- bailiff's fee for any other act of enforcement = between EUR 240 and EUR 400, as agreed between the bailiff and his client;
- bailiff's witness fee = EUR 30 each, and EUR 60 if the witness is a bailiff;
- if enforcement is cancelled, the bailiff's fees are reduced by 50 %;
- EUR 0.50 for every kilometre which the bailiff and witnesses need to travel from the place where they are based in order to carry out any act;
- special bailiff's fee depending on the degree of complexity of enforcement: as agreed between the bailiff and his client (this is never paid by the person against whom the enforcement is addressed);

### 3.2 The main conditions

Substantive conditions for enforcement are:

- the existence of a legitimate interest, i.e. the need for the act of enforcement and the legal protection it provides;
- the validity of the claim;

The purpose of the regulation of the law on enforcement is to balance conflicting interests between creditors on the one hand and debtors or third parties on the other in the circumstances. The criteria which the courts apply in order to grant an enforcement measure are:

- swift satisfaction of creditors at little cost
- protection of the debtor's rights of personality and legitimate interests in general
- coincidence of the creditor's and the debtor's interests as regards the need to achieve the best possible price at auction
- protection of third party interests

### 4 Object and nature of enforcement measures

The object of enforcement measures may be the debtor's property and/or the debtor himself. Enforcement measures are material acts by officials who have been given authority for this purpose; they result directly or indirectly in the satisfaction of claims with enforcement by the state. Enforcement action may be taken against the following assets:

- movable property in the hands of the debtor or in the hands of the creditor or of a third party prepared to hand them over;
- the debtor's property rights in rem to third party moveable property;
- money;
- pecuniary claims against third parties held by the person subject to enforcement;
- immovable property belonging to the debtor or the debtor's property rights in rem;
- ships;
- aircraft;
- intellectual property rights, patents, film rights.

Enforcement action may not be taken against the following:

- the debtor's and his family's personal effects;
- food and fuel needed by the debtor and his family;
- medals, memorabilia, manuscripts, correspondence, family records and business books;
- books, musical instruments, works of art;
- tools, machinery, books or other items needed by persons who work for a living;
- perishables;
- shares in partnerships;
- statutory maintenance benefits;
- salary, pension or insurance benefits.

#### **4.1 What types of assets can be subject to enforcement?**

The debtor must comply with the decision ordering the enforcement measure, as must all third parties. If resistance is offered during enforcement, the bailiff may counter it with force and, at the same time, call the law enforcement authorities. The bailiff may recruit two adult witnesses or a second bailiff. In the event of non-compliance by the debtor:

- if the debtor fails in his obligation to effect an act which may also be effected by a third person, the creditor is entitled to effect the act at the debtor's expense;
- if the debtor fails in his obligation to effect an act which cannot be effected by a third person and depends solely on whether or not he is prepared to effect it, the court will order him to effect the act and, if he does not, will sentence him to a fine to the benefit of the creditor, and to imprisonment;
- if the debtor is obliged to refrain from or to acquiesce in some act, the court may make any infringement subject to a fine to the creditor's benefit and to imprisonment.

None of the above cases affects the creditor's right to demand compensation provided for under substantive law for losses sustained as a result of non-compliance by the debtor. It is possible in principle for an asset to be disposed of by the debtor; if, however, it is seized, disposal is prohibited and is null and void vis-à-vis the person who had it seized and vis-à-vis the creditors who have submitted their claims.

If enforcement is directed at the debtor's bank accounts, the bank is not obliged to disclose the exact details of them to the petitioner; if, however, a document seizing monetary claims in the debtor's hands is served on a bank, disposal of the amount seized is prohibited and is null and void vis-à-vis the person who had it seized, and the bank must state within eight days of service of the deed of seizure whether the claim seized (money on deposit in bank account) exists and, if it suffices to satisfy the person who had it seized, must pay them the sum of money.

#### **4.2 What are the effects of enforcement measures?**

There is no provision in principle which imposes time limits on the petitioner; there are certain time restrictions, but these are deadlines before which specific acts cannot be validly effected rather than binding time limits, and they do not directly stipulate a point after which the petitioner can no longer take action. The provision whereby different individual acts must be effected within a certain period after seizure or before an auction does not change the basis of the system. In order to prevent the procedure from dragging on indefinitely, there is merely an ultimate time limit of one year after which seizure or other acts cannot be effected on the basis of the same order, and an auction cannot be held on the basis of a seizure which, by reason of the expiry of this deadline, has been reversed by court decision.

#### **4.3 What is the validity of such measures?**

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

The only remedy against the enforcement procedure is an application to set aside judgment by default, which may be filed by the person against whom enforcement is directed or by any creditor with a legitimate interest within 15 days of the first act of enforcement if it relates to the validity of the title or the pre-trial proceedings; up to the final act of enforcement if it relates to the validity of any of the acts of enforcement, from the first act to the last; and six months after the final act of enforcement was effected if it relates to the validity of that act. Applications to set aside judgment by default may be also filed by a third party with a right to the object of the enforcement which has been challenged and which they are entitled to cite against the person against whom enforcement is directed without any specific deadline. The court with jurisdiction is the court in whose district the place of enforcement is located, specifically the district civil court if the enforceable title is a decision by the district civil court [*eirinodikeio*],

and the single-judge court of first instance [*monomelés protodíkeio*] in all other cases. The fact that an application to set aside judgment by default has been filed does not suspend enforcement; however, suspension of the enforcement procedure may be ordered by decision of the court at the request of the applicant, with or without a guarantee. This decision is communicated to the enforcement officers, who cannot effect any act of enforcement unless specifically permitted to do so in the decision.

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

The following limitations apply on enforcement, particularly regarding property seized: The following property items are excluded from seizure: (a) property having suffered direct damage, (b) shares in partnerships, (c) maintenance claims arising from law or by testamentary disposition, as well as claims for contributions of the spouses to the family needs, (d) claims on wages, pensions or insurance benefits, unless there is a pending claim for maintenance arising from law or testamentary disposition or to contribute to the needs of the family, in which case half of the property item can be seized, taking into account the amounts received by the debtor, the extent of obligations created by their marriage to meet family needs and the number of beneficiaries, (e) any kind of EU aid or subsidies in the hands of OPEKEPE as a third party, until they are deposited in the bank account of the beneficiaries or otherwise paid to them. The exemption laid down in paragraph 2 point (d) also applies when payment of the amount is made by deposit in a bank account of the debtor. The exemption applies only to the extent that the account has a balance that does not exceed, during the period from ordering the enforcement until the day of payment, the amount of the claim exempted from enforcement.

Further, the debtor has the right to appeal against the enforcement procedure with two remedies:

(a) **Application for opposition to Article 933 of the CCP**, which states that: Any objection of the person against whom the enforcement is addressed and any creditor with a legitimate interest, that concerns the validity of the enforceable title, the enforcement procedure or the claim, may be made only by notice of opposition filed with the district civil court if the enforceable title had been issued by that court, and the single-member court of first instance in all other cases. If several notices of opposition are filed by means of separate documents, the registrar must make sure that all of them are identified and heard in the same court hearing. Additional opposition grounds can only be submitted in a particular application lodged with the secretariat of the court at which the opposition is directed, under which a report is drawn up and communicated to the other party at least eight (8) days before the hearing. The discussion of the opposition must be scheduled within sixty (60) days of lodging and the summons is served to the defendant twenty (20) days before the hearing. The local competent court is the district court of the place of enforcement if other acts of the enforcement procedure follow the order served, otherwise the competent court is the court set out in Article 584. If the enforceable title is a judgment or order for payment, the objections are inadmissible to the extent applicable *res judicata* in accordance with Articles 330 and 633(2)(c), respectively. Contentions regarding the settlement of the claim must be demonstrated only in writing or by admission in court. The decision on the opposition must be delivered within sixty (60) days of its discussion.

(b) **Under Article 1000 of the CCP**, the debtor has the right to request the suspension of the auction against him. In particular, at the request of the debtor, which will not be accepted unless filed fifteen (15) working days before the day of the auction, the court referred to in Article 933, while hearing the case following the proceedings under Articles 686 et seq., can suspend the auction procedure for up to six (6) months from the original date of the auction if there is no risk of damage to the enforcement creditor and where it can reasonably be expected that the debtor will satisfy the enforcement creditor within this period or that, if this period elapses, the proceeds of the auction will be increased. This judgment must be delivered by noon of the last Monday prior to the auction and the suspension will always be granted subject to payment of: (a) any costs of expediting the auction, which will be estimated in the judgment, and (b) at least one quarter of the sum owed to the person expediting the auction. The judgment suspending the auction will be communicated to the auctioneer on the same day that it is delivered. Payment must be made by 10.00 on the day of the auction and, if no such payment is made, the auction will be carried out normally.

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