

## Procedures for enforcing a judgment - Croatia

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

In the Republic of Croatia, enforcement proceedings are governed by the provisions of the Enforcement Act (*Ovršni zakon*) (*Narodne Novine* (NN; Official Gazette of the Republic of Croatia), No 112/12, 25/13, 93/14, 55/16 and 73/17; hereinafter: OZ). This Act regulates the procedure in which courts and notaries public conduct involuntary collection of claims on the basis of enforcement title documents and authentic documents (enforcement procedure), unless determined otherwise by a special law.

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

Enforcement proceedings are conducted by courts on the basis of enforcement title documents, while notaries public conduct enforcement proceedings on the basis of authentic documents.

What constitutes an enforcement title document is provided for in Article 23 OZ, while authentic documents are prescribed by Article 31 OZ.

The Financial Agency (*Financijska agencija*) is also part of the enforcement procedure (hereinafter: Agency) - a legal entity which conducts enforcement according to the provisions of the OZ and the law governing enforcement on funds, as well as employers, the Croatian Pension Insurance Institute (*Hrvatski zavod za mirovinsko osiguranje*) and other authorities provided for by law.

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

Courts conduct enforcement proceedings on the basis of enforcement title documents, which, under the OZ, are as follows:

1. Enforceable court decisions and settlements,
2. Enforceable settlements referred to in Article 186.a of the Civil Procedure Act

3. Enforceable decisions of an arbitration court,
4. Enforceable decisions issued in an administrative proceeding and enforceable settlements reached in an administrative proceeding if it involves fulfilment of a pecuniary obligation unless otherwise provided for by law,
5. Notarial enforcement decision and notarial enforcement clause,
6. Settlements reached as a result of procedures before 'courts of honour' (*sudovi časti*) in chambers in the Republic of Croatia and settlements reached in mediation procedures in accordance with the provisions of the law governing mediation procedures,
7. Other documents determined by law as enforceable.

Enforceable documents are suitable for enforcement if they specify the creditor and debtor, the subject, type, scope and time for fulfilling the pecuniary obligation.

If the enforceable document is a decision which calls for the recovery of debt by payment or performing an action, it must also contain a deadline for voluntary fulfilment, and if the deadline for voluntary fulfilment was not specified, then the term is set by the court in the writ of execution.

### **3.1 The procedure**

A creditor initiates enforcement proceedings based on an enforceable document by submitting an application for enforcement to court. Applications for enforcement may be submitted by the creditor personally as a party in the proceedings, or via a representative. Enforcement proceedings may be instituted *ex officio*, when specifically prescribed by law.

Municipal courts have subject-matter jurisdiction in enforcement proceedings, unless otherwise provided for by law. Enforcement is conducted within the bounds defined by the writ of execution.

The writ of execution must specify the enforceable, i.e. authentic, document on the grounds of which the enforcement is conducted, the creditor and the party against whom enforcement is sought (the debtor), the claim being enforced, the means and subject of enforcement, as well as other information necessary to conduct the enforcement.

### **3.2 The main conditions**

The application for enforcement must contain the enforcement request, which will specify the enforceable or authentic document on the grounds of which the enforcement is sought, the creditor and the debtor, personal identification numbers of the creditor and the debtor, the claim the realisation of which is sought, the means needed to conduct the enforcement, and (if necessary) the subject of enforcement. The application must contain other prescribed information necessary to conduct the enforcement.

The application for enforcement on the grounds of an authentic document must contain:

1. a request for the court to order the debtor to settle the claim with any pertinent costs within eight days, and in the case of disputes involving bills of exchange and cheques within three days,
2. the enforceable application.

Therefore, the main conditions that must be satisfied for an enforcement order are: an enforceable or authentic document on the grounds of which the enforcement is ordered and an enforceable application.

## **4 Object and nature of enforcement measures**

The subject of enforcement is objects and rights that according to the law may be subject to enforcement with the aim of collecting on a claim. Enforcement is conducted to satisfy a creditor's claim on objects of enforcement that constitute an integral part of the debtor's property.

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

Debtor's assets (money, real estate, movable property, securities and participating interests) or certain non-proprietary rights of the applicant (the handing over and delivery of movable property, the vacating and handing over of real estate, the return to work, etc.) may be subject to enforcement. During the proceedings, the applicant may choose which subjects he/she wants to enforce.

Objects which are not traded may not be subject to enforcement, nor can other objects where that is prohibited by special legislation. Tax-based claims and other fees may also not be subject to enforcement.

Facilities, weapons and equipment intended for defence and facilities intended for the work of local and regional governments and judicial authorities also may not be subject to enforcement.

Whether a certain object or a right may be subject to enforcement, i.e. whether the enforcement of an object or a right has been limited, is evaluated with regard to the circumstances that existed at the time the enforcement application was submitted, unless explicitly otherwise provided for by the OZ.

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

The basic effects of enforcement measures are that the debtor's rights to dispose of their assets are restricted.

Enforcement procedures for real estate and movable property result in the sale of real estate or movable property to satisfy the creditor's claim from the amount gained from the sale.

Enforcement procedures over financial claims result in confiscation and the transfer to the creditor of the pecuniary claim, up to the amount necessary to satisfy the claim.

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

Enforcement measures are valid until the termination of enforcement proceedings, which occurs once the creditor's claim has been fully satisfied or after his or her withdrawal of the enforcement application.

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

The debtor has the right to:

- submit an appeal against an issued writ of execution, or
- lodge a complaint against a notary public decision issued on the grounds of an authentic document.

A timely and admissible appeal against a writ of execution issued on the grounds of an enforceable document does not stay the enforcement proceedings.

A timely and admissible complaint against a notary public decision issued on the grounds of an authentic document (submitted to the notary public, but ruled on by the court) redirects proceedings to a standard lawsuit (*klasična parnica*) which will continue before the court, and in which the parties, now the applicant (formerly the creditor) and the defendant (formerly the debtor), must substantiate their arguments in order to succeed in the proceedings. If the preconditions prescribed by the OZ have been satisfied, the debtor has the right to stay the enforcement proceedings.

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

The court defines the enforcement by the means and over the objects specified in the enforcement application. If several means and objects are suggested, the court, at the debtor's suggestion, limits enforcement to selected means or objects, if they are deemed sufficient to satisfy the claim.

One of the basic principles of the enforcement procedure is that, when conducting enforcement and security proceedings, the court is obliged to respect the dignity of the debtor by ensuring that enforcement is as favourable as possible.

Protection of the debtor is ensured by excluding and limiting the objects and means over which, or using which, the creditor's claim can be forcibly satisfied during enforcement proceedings, by providing the debtor with certain procedural and material guarantees during and in connection with enforcement. This protection is manifested in the acceptance of the principle of legality in determining whether enforcement is permitted, in determining the objects and means of enforcement, and in the procedure used to forcibly satisfy the creditor's claim.

There are limitations on the enforcement of real estate relating to objects that may not be subject to enforcement, as prescribed by Article 91 OZ.

There are limitations on the enforcement of movables relating to objects that may not be subject to enforcement, as by Article 135 OZ.

There are limitations on the enforcement of pecuniary claims which are prescribed by Article 173 OZ, while Article 172 OZ specifies which of the debtor's income is exempt from enforcement.

Article 212 OZ prescribes special rules on the enforcement of financial means which are exempt from enforcement or for which enforcement is restricted, while Articles 241 and 242 OZ prescribes special rules on the exemption and restriction of enforcement for legal entities.

Protection of debtors that are natural persons in enforcement procedures of pecuniary claims is provided for in Article 75 OZ, while the protection of legal entities is provided for in Article 76 OZ.

Provisions of the OZ which prescribe enforcement restrictions, i.e. which exclude certain objects from enforcement, provide protection for the debtor during the enforcement proceedings.

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