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How to enforce a court decision

Bulgarija

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

Enforcement is the final stage of the judicial process. It consists of the possibility for a claimant in whose favour the court has found to require from the competent enforcement body to take all steps within its remit and prescribed by law in order to enforce a satisfaction of the claimant's claim that the opposing party has not paid voluntarily.

The right to enforcement arises from the existence of an enforceable judicial instrument or another instrument and the issuing, on its basis, of an instrument authorising enforcement (writ of execution).

Enforcement measures include:

- attachment of movable property;
- attachment of immovable property;
- inventory and valuation of real property;
- sale of immovable property by public auction;
- attachment of a debtor's bank account;
- attachment of a vehicle;
- repossession;
- seizure of movable property;
- enforcement in respect of shares in a company;
- enforcement of a duty to surrender a child;
- enforcement in respect of marital property.

2 Which authority or authorities are competent for enforcement?

The officers competent to carry out enforcement in Bulgaria are the bailiffs, who can be:

1. State bailiffs
2. Private bailiffs.

The status of private bailiffs is governed by the Private Judicial Enforcement Act (Zakon za chastnoto sadebno izpalnenie (ZChSI)). The act defines a private bailiff as an officer delegated by the state to enforce private claims.

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

3.1 The procedure

Under Article 404 of the Civil Procedure Code (CPC), enforcement proceedings may be brought on the following grounds:

1. res judicata judgments and orders; judgments by appeal courts; enforcement orders; judicial settlements; enforceable judgments and orders or judgments and orders declared enforceable in advance or immediately; and judgments of arbitration tribunals and settlements sanctioned by such tribunals;
2. judgments, acts and judicial settlements delivered by courts in countries other than Bulgaria, if enforceable in Bulgaria without further proceedings;
3. - judgments, acts and judicial settlements delivered by courts in countries other than Bulgaria and the judgments and settlements delivered and sanctioned by arbitration tribunals in countries other than Bulgaria, when declared enforceable in Bulgaria.

Under Article 405 of the CPC, writs of execution are issued on the basis of a written application, with no need to serve a copy on the debtor.

Pursuant to Article 405(2) of the CPC, the following courts have jurisdiction over submitted applications:

- in the cases referred to in Article 404(1) of the CPC, the court of first instance that heard the case or issued the enforcement order and, where an act is immediately enforceable, the court that delivered the judgment or issued the enforcement order;
- in the cases envisaged in Article 404(2) and (3) of the CPC, the court competent to grant enforcement;
- with regard to the judgments delivered by domestic arbitration tribunals and the settlements sanctioned by such tribunals in arbitration proceedings, the Sofia City Court (Sofiyski Gradski Sad).

There is a two-week time-limit for appeals against orders granting or refusing an application for a writ of execution (Article 407 of the CPC).

Under Bulgarian law an application for a writ of execution may be filed by a party other than a lawyer, including the party seeking enforcement or their representative (who may be a lawyer). There are no special filing requirements to be satisfied in order to obtain a writ of execution.

Enforcement costs are set out in the Tariff of Fees and Costs envisaged in the Private Enforcement Act (State Gazette (SG) No 35/2006). The costs of issuing a writ of execution are borne by the person in whose favour the writ of execution is issued.

3.2 The main conditions

To set enforcement proceedings in motion, the interested party must apply in writing to a state or private bailiff, annexing a writ of execution or another enforceable instrument. The application must specify the preferred method of enforcement, which may be altered during the course of proceedings (Article 426 of the CPC).

An application for enforcement must be submitted to the bailiff with an area of practice covering the location of the property against which enforcement action is to be taken or of the debtor's registered office (if the enforcement is against receivables), the place where the debtor is obliged to act or to refrain from acting, and the permanent address of the creditor or of the debtor (at the creditor's choice) (if the enforcement is for recovery of maintenance).

The bailiff must summon the debtor in writing to satisfy the claim voluntarily, which the debtor must do within two weeks of receiving the summons. The summons warns the debtor that failure to satisfy the claim will result in enforcement action. The summons must specify the attachments and seizures imposed and enclose a copy of the enforceable instrument. When summoning the debtor to satisfy the claim voluntarily, the bailiff must also specify the date on which a property inventory will be compiled and, when enforcement concerns immovable property, send a seizure notice to the property registry.

On a mandate from the creditor, the private bailiff may take the following steps in connection with the enforcement proceedings: explore the debtor's property status, search records, obtain documents, papers, etc., determine the manner of enforcement, and be a keeper of the itemised property.

The bailiff draws up a record of any measure undertaken or performed by them.

Where the initial method of enforcement is changed, the bailiff must notify the debtor in writing of the change in accordance with Article 428 of the CPC.

Where, upon commencement of enforcement proceedings, the debtor does not have a permanent or current address on record, the district judge, acting on a motion filed by the creditor, must appoint an ad hoc representative of the debtor (Article 430 of the CPC).

4 Object and nature of enforcement measures

4.1 What types of assets can be subject to enforcement?

Enforcement action may be taken against the following property of the debtor:

movable goods;

wages;

income from immovable property, including rental income, etc.;

bank accounts;

immovable property;

shares and bonds issued by commercial undertakings;

movable and immovable property held in co-ownership or movable and immovable matrimonial property.

Under Article 442 of the CPC, a creditor may pursue enforcement against any thing or receivable of the debtor.

The precautionary measures imposed by the bailiff and the enforcement methods implemented must be proportionate to the amount of the obligation. If the precautionary measures concerned are found to be disproportionate, the bailiff must lift them.

Article 444 of the CPC lists the following items of property as unseizable (i.e. against which enforcement action may not be taken):

everyday items used by the debtor and their family, as specified in a list adopted by the Council of Ministers (Ministerski savet);

the food needed to feed the debtor and their family for one month or, in the case of farmers, until the new harvest, or its equivalent in other agricultural products;

the fuel needed for heating, cooking and lighting for three months;

the machinery and equipment a debtor needs in order to be able to continue to practice their occupation or profession;

part of the land owned by the debtor (up to 0.5 ha for vineyards and other croplands and up to 3 ha for general-purpose fields, along with the machinery and implements, fertilisers, plant protection products and seeds intended for sowing for a period of one year);

for livestock farmers, the necessary working cattle, notably two head of draught cattle, a cow, five head of sheep and goats, ten beehives and domestic fowl, along with the feed necessary to feed them until the next harvest or until they are turned out to graze;

the dwelling owned by the debtor, if the debtor and the members of their family have no other dwelling, regardless of whether the debtor resides there. If the dwelling exceeds the housing needs of the debtor and their family, as specified in a dedicated Regulation adopted by the Council of Ministers, a share thereof is sold, provided the conditions laid down in Article 39(2) of the Property Act (Zakon za sobstvenostta) have been satisfied;

other things and receivables protected by law against enforcement.

4.2 What are the effects of enforcement measures?

When summoning the debtor to satisfy the claim voluntarily, the bailiff must also specify the date on which a property inventory will be compiled and, when enforcement concerns immovable property, send a seizure notice to the property registry.

The attachment of movable property or a claim is imposed by compiling an inventory.

Attachment and seizure have the following effect vis-à-vis the debtor:

From the moment of their imposition, a debtor may neither dispose of the receivables or property (real or moveable) nor, on pain of criminal prosecution, alter, impair or destroy the property. These effects shall apply from the date of service of the summons to settle the debt voluntarily.

The attachment or seizure shall have the following effects vis-à-vis the creditor:

Under Article 452(1) of the CPC, any disposal of the attached movable property or receivables is invalid vis-à-vis the creditor and any joint creditor, unless the transferee can invoke Article 78 of the Property Act. The latter provision stipulates that anyone lawfully acquiring moveable property or bearer securities for consideration, even if unwittingly acquiring them from someone other than the owner, acquires ownership, unless the transfer of ownership of the movable property requires a notarial deed or notarial attestation of the signatures of the parties to the transaction. The same rule applies to the acquisition of other rights in rem to moveable property.

Where enforcement action is taken against real property, the invalidity shall have effect solely in respect of disposal transactions undertaken after the date of registration of the preventive attachment (Article 452(2) of the CPC).

4.3 What is the validity of such measures?

The law sets no time-limit for the validity of these measures. They are intended to satisfy the creditor's claim, so they are valid until enforcement proceedings end.

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

The remedies available in the enforcement process are set out in Sections I and II of Chapter 39 of the CPC.

A creditor may appeal against: (1) a bailiff's refusal to carry out the specified enforcement action; (2) a bailiff's refusal to make a new valuation of the property against which enforcement action is taken; and (3) the suspension, termination and completion of enforcement.

A debtor may appeal against: (1) an order by which a bailiff fines the debtor; (2) the taking of enforcement action against property that the debtor considers unseizable; (3) the seizure of an item of movable property or the debtor's eviction from an immovable property, pleading that the debtor was not duly notified of the enforcement; (4) a bailiff's refusal to make a new valuation of the property against which enforcement action is taken; (5) the designation of a third party as keeper; (6) a bailiff's refusal to suspend, terminate or complete the enforcement; and (7) the enforcement costs.

Third parties (not parties in the enforcement proceedings) may appeal against a bailiff's action only if enforcement is directed against things in their possession on the date of attachment, seizure or surrender.

A third party may file an appeal against the repossession of immovable property only if that third party was in possession of that property prior to the date on which the claim now being enforced was brought (Article 435 of the CPC).

Where a public auction has been held, the order awarding the property is subject to appeal by a party that paid a deposit not later than the last day of the auction, by a creditor who placed a bid in the auction without having to pay a deposit, or by the debtor, on the grounds that the auction was not conducted lawfully or that the property was not awarded to the highest bidder.

Under Article 436 of the CPC, appeals are to be filed within one week of the date of the contested action, if the party was present at the time of the action or had been summoned to attend, and in all other cases, within one week of the date of the communication. Appeals shall be lodged via the bailiff with the provincial court with jurisdiction over the place of enforcement. When an appeal is lodged, the bailiff must state the reasons for the contested action.

These appeals are examined in closed session, with the exception of those filed by third parties, which are examined in an open session to which all parties to the enforcement proceedings are summoned. Appeals are to be decided within one month.

Appeals do not suspend enforcement proceedings, but the court may decide to stay proceedings pending a ruling on the pleas in law set out in the appeal. If proceedings are stayed, the bailiff is notified without delay (Article 438 of the CPC).

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

Article 432 of the CPC sets out the different scenarios in which a court may lawfully stay enforcement proceedings on a motion of the creditor.

Pursuant to point 8 of Article 433(1) of the CPC, if the creditor fails to seek the performance of enforcement actions for two years, the enforcement proceedings will be terminated by the bailiff. The only admissible exception to this rule applies to maintenance cases.

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